

1953

Present : Palle J.

R. F. BILLIMORIA, Appellant, *and* COMMISSIONER FOR
REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS

*S. C. 690—Appeal under the Indian and Pakistani Residents
(Citizenship) Act*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, as amended by Act
No. 37 of 1950—Section 2A (b)—Effect of words “while in Ceylon”.*

The words “while in Ceylon” in paragraph (b) of Section 2A of the Indian and Pakistani Residents (Citizenship) Act connote actual physical presence in Ceylon.

APPEAL from an order of the Commissioner for the Registration of Indian and Pakistani Residents.

Cyril E. S. Perera, Q.C., with R. Manicavasagar, for the applicant-appellant.

M. Tiruchelvam, Crown Counsel, for the Commissioner-respondent.

Cur. adv. vult,

December 15, 1953. PULLE J.—

On the 19th October, 1941, the appellant made an application to be registered as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. In that application he stated that he had been continuously resident in Ceylon during the period of ten years commencing on 1st January, 1936, and ending on 31st December, 1945, and thereafter he had been continuously resident from 1st January, 1946, to the date of the application. Whether the appellant had these periods of uninterrupted residence within the meaning of section 3 of the Act had to be considered in relation to the fact that in October, 1941, he went to Bombay and there he became an employee under an Indian military organization called the Indian Engineer's (Railway) Unit. From Bombay he proceeded to Africa on service with that unit and eventually returned to Ceylon in July, 1946. It is obvious that at the time he made his application he was not qualified for citizenship because the continuity of his residence in Ceylon had been interrupted. Vide section 3 (3). In 1951 the appellant requested that his case be reconsidered in the light of section 2A of the Act as amended by the Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950, which came retrospectively into operation on 5th August, 1949.

The question arising on this appeal is whether the Commissioner was wrong in holding that the appellant's case was not covered by section 2A, paragraph (b), which reads as follows :—

“(2A) For the purposes of this Act, the continuity of residence of an Indian or Pakistani resident shall be deemed to have been uninterrupted notwithstanding his absence from Ceylon for any period,—

(b) if, having become while in Ceylon a member or an employee of any of His Majesty's forces, he was during that period on service in any other country as such member or employee”.

It was argued for the appellant that although he was in Bombay at the time he became an employee under the military unit he became so, in a legal sense, *while in Ceylon*. I cannot accept this argument. Paragraph (b) does not, in my opinion, make an exception in favour of an applicant who became an employee of one of His Majesty's forces at a point of time when he could have been regarded as a *resident* of Ceylon. The words “while in Ceylon” are self explanatory and connote actual physical presence in Ceylon. In other words, the commencement of the period of “absence from Ceylon” must be coincident with the time of departure from Ceylon of the applicant in the character of an employee of one of His Majesty's forces.

The appeal fails and is dismissed with costs which I fix at Rs. 157.50.