1960 *Present :* **T. S. Fernando, J.**

V. MANICKAM, Petitioner, *and* THE PERMANENT SECRETARY, MINISTRY OF DEFENCE AND EXTERNAL AFFAIRS, Respondent

S. C. 57—In the matter of an application for the issue of mandates in the nature of a Writ of Certiorari and a Writ of Mandamus under Section 42 of the Courts Ordinance

Citizenship by registration—Registration of spouse of citizen of Ceylon—Claim disallowed by prescribed officer—Error of law on face of record—Certiorari—*Supplementary evidence by means of affidavit—Admissibility—Citizenship Act, No. 18 of 1948, s. 11A.*

The following letter sent by a prescribed officer was received by a person who sought under section 11A of the Citizenship Act to be registered as a citizen of Ceylon on the ground that he was the spouse of a citizen of Ceylon by descent :—

"With reference to your application for Ceylon Citizenship made under section 11A of the Citizenship Act No. 18 of 1948 and the inquiry held in this connection, in this office, on 11th September 1959, I have the honour to inform you that your application for Ceylon Citizenship is disallowed.

I have to point out to you that you got married during your illegal overstay and clearly with the intention of securing Ceylon citizenship and circumventing Visa Regulations.

You are hereby warned that if you fail to leave Ceylon within one month from the date of this letter removal action against you will be unavoidable."

Held, that the letter was a speaking order, with the ground in support of it appearing thereon. The ground specified in it was bad in law and was not one which could legitimately form a justification for the refusal to send the petitioner's application to the Minister. The order was therefore liable to be quashed by way of *certiorari* on the ground of error of law on the face of the record.

Held further, (i) that an affidavit supplementing the reasons already appearing on the order should not be entertained.

(ii) that a prescribed officer, in deciding whether or not to take the action described in section 11A (3) of the Citizenship Act, acts judicially and is, therefore, amenable to a writ of *certiorari*.

APPLICATION for writs of *certiorari* and *mandamus* against the Permanent Secretary, Ministry of Defence and External Affairs.

C. Ranganathan, with *S. Sharvananda*, for the petitioner.

B. C. F. Jayaratne, Crown Counsel, with *H. L. de Silva*, Crown Counsel, for the respondent.

Cur. adv. vult.

August 10, 1960. T. S. FERNANDO, J.—

By the Citizenship (Amendment) Act, No. 13 of 1955, Parliament introduced a new Section 11A to the Citizenship Act, No. 18 of 1948, laying down the conditions under which a spouse, or the widow or widower, of a citizen of Ceylon by descent or registration may be registered as a citizen of Ceylon. As required by sub-section (2) of this new Section, the petitioner who claimed registration as a citizen sent an application in the prescribed form to the respondent who was one of the prescribed officers, the other being the Assistant Secretary of the same Ministry—vide Regulation 14A made under Section 25 of the Citizenship Act and published in *Gazette* No. 10,832 of August 31, 1955. This application reached the respondent on 4th November 1958 and a copy thereof has been annexed to the petition to this Court and marked X1.

Sub-section (3) of Section 11A imposes on the prescribed officer a duty to send the application to the Minister if he is satisfied that the applicant has the following qualifications :—

(*a*) that the applicant is of full age and of sound mind ;

(*b*) that the applicant is, and intends to continue to be, ordinarily resident in Ceylon ;

(*c*) that the applicant has been resident in Ceylon throughout a period of one year immediately preceding the date of the application ; and

(*d*) that the applicant is the spouse, or the widow or widower, of a citizen of Ceylon by descent or registration.

To the petitioner's application (of which X1 is a copy) ere attached the following documents :—

(1) a certificate of his marriage on 24th June 1958 to a citizen of Ceylon ;

(2) a certificate of birth of his wife ;

(3) a certificate of the marriage of his wife's parents ;

(4) a certificate of birth of his son Balasubramaniam, born on 31st December 1957.

It may be mentioned here that in the last named document, viz. the certificate of birth of the petitioner's son, the child's parents are described as married. At the date of the registration (3rd January 1958) this description was incorrect as the marriage took place only on 24th June 1958.

An inquiry into the petitioner's application for registration appears to have been held on 11th September 1959 by a prescribed officer, the then Assistant Secretary of the Ministry, Mr. Tennekoon. Thereafter

the petitioner received the document X6 dated 16th December 1959 the text of which is reproduced below :—

" With reference to your application for Ceylon Citizenship made under Section 11A of the Ceylon Citizenship Act, No. 18 of 1948 and the inquiry held in this connection, in this office, on 11th September 1959, I have the honour to inform you that your application for Ceylon Citizenship is disallowed.

I have to point out to you that you got married during your illegal overstay and clearly with the intention of securing Ceylon citizenship and circumventing Visa Regulations.

You are hereby warned that if you fail to leave Ceylon within one month from the date of this letter removal action against you will be unavoidable.

I am, Sir,
Your obedient servant,
(sgd.) H. E. TENNEKOON,
for Permanent Secretary. "

(Initialled)
Staff Assistant

The petitioner contends that the order contained in X6 has been made without authority and is *ultra vires*, the only authority competent in law to disallow an application for registration under Section 11A being the Minister himself. It has at no time been submitted that the petitioner's application was refused by the Minister acting under sub-section (4) of Section 11A which enacts that " the Minister may refuse an application sent to him under sub-section (3) if he is satisfied that it is not in the public interest to grant the application ". On the other hand, it was specifically stated by learned Counsel for the respondent at the argument before me that in spite of the use of the expression " disallowed " appearing in X6, this document served merely as information to the petitioner that the prescribed officer had decided not to send the application to the Minister for the reason that he was not satisfied that the petitioner had the necessary qualifications.

It may be mentioned that in regard to the qualifications necessary to obtain registration it is not doubted that the petitioner is of full age and of sound mind or that he is the spouse of a citizen of Ceylon by descent. On behalf of the respondent it has been pointed out that the prescribed officer need send the application to the Minister only where the former is satisfied that the applicant has the necessary qualifications, and an affidavit made by Mr. Tennekoon on 17th May 1960—on which date he held the office of Permanent Secretary of the Ministry—declares that after inquiry into the petitioner's application for registration he was not satisfied (*a*) that the petitioner was and intended to continue to be ordinarily resident in Ceylon or (*b*) that he had been resident in Ceylon throughout a period of one year immediately preceding the date of his application for registration. The notes of such inquiry as has been held by the prescribed officer have not been placed before me. The contents of this

affidavit have been criticized by petitioner's Counsel as being an afterthought on the part of the prescribed officer. In support of that criticism, Counsel invited me to examine X6, the order of disallowance of the application. He pointed out that the only reason set out in X6 for the disallowance is that contained in paragraph 2 thereof, viz. that the petitioner got married during his illegal overstay with the intention of securing Ceylon citizenship and circumventing Visa Regulations. It is unfortunate that X6 did not set out the reasons now to be found in the affidavit of Mr. Tennekoon. Counsel described X6 as a speaking order and submitted that the only reason appearing in the order itself is bad in law and that the order is liable to be quashed by way of certiorari on the ground of error of law on the face of the record.—(see *R. v. Northumberland Compensation Appeal Tribunal* [1]). Crown Counsel, on the other hand, submitted that X6 is not a speaking order, and that the use of the expression "disallowed" therein meant no more than that the application did not reach the stage when it had to be sent to the Minister. In support of paragraph 2 of X6, Crown Counsel's interpretation of that paragraph is that it is extraneous to the real reason for not sending the application to the Minister and was intended merely as a warning to the applicant of the impending action for his removal. It does appear to me that X6 is couched in unfortunate terms. It purports to be a letter sent by the Permanent Secretary who, it is conceded, has not the power of refusal or disallowance. It indicates also that the inquiry was held by Mr. Tennekoon at a time when he was Assistant Secretary and not the Permanent Secretary. If then it was he who decided not to forward the application to the Minister, and X6 was merely a communication of that fact to the petitioner, X6 should have been signed by Mr. Tennekoon as prescribed officer and not "for Permanent Secretary".

Technical irregularities of this nature serve not merely to spotlight defects of procedure but also to emphasize that in dealing with such important matters as applications for citizenship the decisions on which can involve serious consequences to applicants that care which the public are entitled to expect from the officers concerned has been wanting. As it is, X6 is open to the objection either that the Permanent Secretary was usurping a function entrusted to the Minister, if the former purported to disallow the application, or that he took action to withhold the application from being sent to the Minister without satisfying himself that the petitioner had not the necessary qualifications. On the other hand, if X6 be considered as a reply to the petitioner by Mr. Tennekoon himself as prescribed officer, there is force in the contention that the affidavit of Mr. Tennekoon dated 17th May 1960, is apparently self-contradictory inasmuch as in paragraph 3 thereof it is stated that he was not satisfied after inquiry that the petitioner had been resident in Ceylon throughout a period of one year immediately preceding the date of his application for registration (i.e. during the period 4.11.57 to 3.11.58) while in paragraph 2 it is stated that he was satisfied that the petitioner's continued stay

[1] *(1952) 1 A. E. R. at 122.*

in Ceylon after 1956 was illegal. Moreover, as petitioner's Counsel submitted, if the decision contained in X6 was made by the Permanent Secretary, the affidavit of Mr. Tennekoon who was not the Permanent Secretary at the relevant date is of no value. I do not, however, need to consider the effect of this affidavit as, in my opinion, it is not permissible by way of affidavit, for the respondent to supplement the reasons already appearing on the order X6. If, therefore, this affidavit be kept out of consideration as being inadmissible for the purpose for which it was sought to be utilised, one has to return to the examination of the order X6 itself. Upon a fair construction of that document, it seems to me that it is best described as a speaking order, with the ground in support of it appearing thereon. The ground specified in it is bad in law and is not one which can legitimately form a justification for the refusal to send the application to the Minister. In these circumstances, as I have earlier in this judgment referred to the fact that it has not been doubted that the petitioner is of full age and of sound mind or that he is the spouse of a citizen of Ceylon by descent, it remains only to say that it must be assumed for the purposes of the petition before me that the petitioner had also the qualifications (*b*) and (*c*) to which he had sworn in his application.

I may add that a prescribed officer in deciding whether or not to take the action described in Section 11A (3) of the Act is performing a quasi-judicial function, but, even on an assumption that he is performing primarily an administrative function, I am satisfied that in the course of performing that function he is required to act judicially in deciding whether to send the application to or withhold it from the Minister. In these circumstances, the prescribed officer's action is liable to be quashed by way of *certiorari*.—(see *R. v. Manchester Legal Aid Committee* [1].) I should add that learned Crown Counsel did not submit that the remedy by way of *certiorari* did not lie in this case.

Even if the order X6 is not considered as a refusal of the application but only as evidence of the decision of the respondent not to send the application to the Minister, that decision, having in my opinion been reached for the reason appearing on X6 itself, error of law is shown on the face of the record, and the decision has to be quashed by way of a mandate in the nature of a writ of certiorari. As a result of the quashing of the order, it follows for the reasons already indicated by me that no good cause for failing to send the application to the Minister exists. The respondent must therefore be ordered by way of mandamus to send the application to the Minister for such action as he may deem fit to take under sub-section (4) of Section 11A. The two orders indicated by me above are accordingly hereby made.

The petitioner will be entitled to the costs of these proceedings.

Application allowed.

[1] *(1952) 1 A. E. R. at 489.*