

1961

Present: H. N. G. Fernando, J.

P. M. K. MOHIDEEN, Petitioner, and THE PRIME MINISTER AND MINISTER FOR DEFENCE AND EXTERNAL AFFAIRS,  
Respondent

*S. C. 29/1961—In the matter of an Application for a Writ of Mandamus under Section 42 of the Courts Ordinance*

*Citizenship Act, No. 18 of 1948—Section 11 (1) (b) (i)—“Resident throughout a period of seven years”.*

In an application by a person to be registered as a citizen of Ceylon under the provisions of section 11 (1) (f) (i) of the Citizenship Act No. 18 of 1948 the qualifying period of residence in Ceylon immediately preceding the date of the application must be shown to have been uninterrupted. Casual absence during the qualifying period would interrupt the acquisition of the qualification.

**A**PPPLICATION for the issue of a writ of Mandamus directing the Prime Minister and Minister for Defence and External Affairs to register the petitioner as a citizen of Ceylon.

*V. K. Palasuntheram*, for petitioner.

*Mervyn Fernando*, Crown Counsel, for respondent.

*Cur. adv. vult.*

June 13, 1961. H. N. G. FERNANDO, J.—

This is an application for an order in the nature of a writ of Mandamus directing the Prime Minister and Minister for Defence and External Affairs to register the petitioner as a Citizen of Ceylon. The petitioner's application for citizenship was made on the basis of section 11 (1) (b) (i) of the Citizenship Act, No. 18 of 1948, on the ground that the petitioner's mother was a person who if alive would have been a citizen of Ceylon by descent.

The Permanent Secretary to the Ministry by his letter of 23rd March 1960 informed the petitioner that the application cannot be considered “as you do not have the necessary residence qualification, i.e. seven years uninterrupted residence in Ceylon immediately prior to the date of application”. The language employed in this letter is slightly incorrect, but the ground of refusal intended to be stated was quite obviously that the applicant had not (in terms of the section) been resident in Ceylon “throughout a period of seven years immediately preceding the date of his application”.

The petitioner has been the holder of a temporary residence permit from 1952, if not earlier, and the Visas on the permit establish that he visited India on at least three occasions, that is, in 1952, 1954 and 1955, so that he was not in fact physically resident in Ceylon during the entirety of the seven years prior to his application for citizenship. Counsel has relied on several decisions, relating mainly to Tax and Franchise matters, to the effect that a person may be properly regarded as being resident in some place or country notwithstanding absence therefrom even for long periods, and also that for certain purposes a person may be regarded as being resident in more places than one. But I do not find those decisions of assistance in interpreting the statutory provision now under consideration. *Prima facie*, the expression "resident throughout a period of seven years" must be taken to mean resident without any absence whatever, and there is nothing in the context to indicate that a more liberal meaning was intended or should be accepted. I cannot agree with the contention that, in laying down as a permanent condition applicable to the grant of citizenship to an alien, the Legislature could not reasonably have intended that casual absence during the qualifying period would interrupt the acquisition of the qualification.

In *Kodakan Pillai v. Mudanayake*<sup>1</sup> the Privy Council pointed out that this 1948 Act and the *Indian and Pakistani Residents Citizenship Act, No. 3 of 1949*, should be considered together as laying down the policy of the Legislature on the question of citizenship rights. The last-mentioned Act in laying down the qualification for citizenship by virtue of residence *prior to the date of the enactment* required that an applicant should have been *uninterruptedly resident* for a specified period, but nevertheless expressly provided that temporary absence for periods not exceeding twelve months should not be regarded as an "interruption". Such an exception was reasonable and to be expected in the context of legislation applicable to persons who had been resident in Ceylon before the time of the enactment. The absence of such an exception in the 1948 Act confirms me in the opinion that the Legislature, in prescribing the qualification for future registration as a citizen, forewarned that the qualifying period of residence must be in truth and in fact uninterrupted.

The application is refused, with costs fixed at Rs. 105.00.

*Application refused.*

<sup>1</sup> (1953) 54 N. L. R. 433.