

1962

Present : Tambiah, J.

MOHAMED SAHIB, Appellant, *and* COMMISSIONER
FOR REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

S. C. 160 of 1960—Citizenship Case No. C 9933

Indian or Pakistani resident—Application for registration as citizen after expiry of prescribed period—Jurisdiction of Commissioner—Indian and Pakistani Residents (Citizenship) Act (Cap. 350), ss. 4, 5—Regulation 3A.

A person, who applies for citizenship under section 4 of the Indian and Pakistani Residents (Citizenship) Act after the expiry of the period prescribed in section 5, is not entitled to claim that his application is within time merely because he had been described as a dependant of another person in a similar application made earlier by the latter within the prescribed period.

In view of the imperative provisions of section 5 of the Indian and Pakistani Residents (Citizenship) Act, no officer can authorise a person to apply for registration under that Act two years after the prescribed date. Even if such an application has been received the Commissioner has no jurisdiction to entertain it.

APPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

H. V. Perera, Q.C., with *S. Sharvananda*, for the appellant.

Shiva Pasupati, Crown Counsel, for the respondent.

Cur. adv. vult.

October 10, 1962. TAMBIAH, J.—

The appellant made an application under section 4 of the Indian and Pakistani Residents (Citizenship) Act (Cap. 350) to be registered as a citizen of Ceylon. The application in Form 1A, which contains the necessary particulars required by the said Act, was signed by the appellant on the 4th of December 1956.

At the inquiry before the Deputy Commissioner, although he was satisfied that the appellant had resided in Ceylon during certain periods, nevertheless he called upon the appellant to adduce evidence that the appellant had been resident in Ceylon during the period 1.1.1936–13.12.1943. After inquiry, the Deputy Commissioner refused the appellant's application on the ground that the appellant had not proved that he had been resident in Ceylon during the said period.

In appeal, the counsel for the respondent took up the objection that the appellant had not made the application within the time prescribed by law to claim the privilege of being registered as a citizen of Ceylon and therefore the Deputy Commissioner should not have entertained this application nor should this Court entertain it.

Section 5 of the Indian and Pakistani Residents (Citizenship) Act (supra) enacts :

“ The privilege or extended privilege conferred by this Act shall be exercised in every case *before the expiry of a period of two years reckoned from the appointed date ; and no application made after the expiry of that period shall be accepted or entertained, whatsoever the cause of the delay* ”.

Section 24 of the Indian and Pakistani Residents (Citizenship) Act (Cap. 350) defines the ‘ appointed date ’ as ‘ the 5th day of August 1949 ’.

Therefore, if the appellant's application is regarded as the application in Form 1A, signed by him on the 4th of December 1956, then his application should not have been entertained by the Deputy Commissioner nor should it be entertained by this Court.

It was submitted on behalf of the appellant that the latter had made an earlier application through his brother, one Mohamed Hussain Abdul Cader, son of Maraikarthamby Kader Sahib Seyedahamedthamby. The

application of the appellant's brother, which was produced by the Commissioner at the request of this Court, was carefully perused by me and I find nothing in it to suggest that the appellant's brother had made any application on behalf of the appellant.

The applicant's brother, by his application dated 4th August 1951, in Form 1A, had made a request that he be registered as a citizen of Ceylon under the said Act. In cage II of the application, he stated: "I request that, simultaneously with myself, my illegitimate child/each illegitimate minor child of mine mentioned in paragraph 10 of this application be registered as a citizen of Ceylon". The cage in paragraph 10 of the application has the following printed words: "where the applicant is an unmarried female, the names and dates of birth of any illegitimate minor children of hers, who are ordinarily resident in Ceylon and dependent on her and whose registration she desires simultaneously with her registration. This cage was left blank by the appellant's brother. The appellant's name is only mentioned in cage 7 in which every applicant is required to state the names, addresses and relationship of all dependants. In this cage, the appellant is referred to as the dependant brother of the applicant, carrying on business as a partner in premises Nos. 96/4 and 5, Prince Street, Colombo 11.

One of the formal requirements of an application for registration is that an applicant should mention also the names, addresses and relationship of all his dependants. Therefore, the entry of the name of the appellant in cage 7 is one of the particulars which the appellant's brother had to mention *in his own application*. In no other place is the appellant's name found in the application made by his brother to indicate that an application was made on behalf of the appellant. The only reasonable conclusion which could be arrived at, therefore, is that the appellant's brother had made the application dated August 1951 *only on his behalf and not on behalf of his brother*, the appellant. In view of this finding, the contention of the appellant's counsel that the petition, which was inquired into by the Commissioner was not the petition dated 4th December 1956, presented by the appellant, but the petition of his brother, dated August 1951, is untenable. The further argument of the appellant's counsel that the petition filed by the appellant's brother, on behalf of himself as well as on behalf of the appellant, was adopted by the appellant when he filed the petition dated 4th December 1956, also fails. It must also be noted that the terms of the petition filed by the appellant dated December 1956, does not state that the appellant had adopted the earlier petition by his brother.

The contention of the counsel for the appellant that the appellant was a minor at the time the appellant's brother made the application dated August 1951, is not borne out by the evidence in the instant case. The appellant, while giving evidence on the 19th of February 1958, stated that he was twenty-nine years of age. Therefore, on the 19th of February 1951, he would have been about twenty-one years of age. No proof has

been adduced before this Court that the appellant was a minor at the time his brother made the application on his behalf, dated 4th August 1951.

Section 3A of the Regulations made under the Indian and Pakistani Residents (Citizenship) Regulations, 1949, states as follows (vide Government Gazette No. 10,462, dated 10.10.1952, Part I, Section I, Volume I page 1732) :

“(1) The Commissioner shall not entertain an application made by any Indian or Pakistani resident if that application is not in the appropriate form specified for that person in regulation 2 or regulation 3, as the case may be.

(2) Notwithstanding that an application made by any Indian or Pakistani resident is not in the appropriate form specified for that person in regulation 2 or regulation 3, the Commissioner may entertain any such application—

(a) if it contains all the information and particulars which are required to be specified in the form appropriate to that person, if and only if, that person on being requested by notice in writing by the Commissioner to supply the remaining information and particulars appropriate to his case within one month from the date of the notice, supplies such information and particulars within such time ;

(b) if it does not contain all the information and particulars which are required to be specified in the form appropriate to that person, if and only if, that person on being requested by notice in writing by the Commissioner to supply the remaining information and particulars appropriate to his case within one month from the date of the notice, supplies such information and particulars within such time. ”

As there was no application made on behalf of the appellant by the appellant's brother, there was no necessity for the Commissioner even to have called for particulars from anyone under sub-section 2 (a) or (b) abovementioned.

The counsel for the appellant also relied on a note, purported to have been made by an officer in the Commissioner's office which reads as follows :

“ With reference to your interview with the Commissioner on 28.11.56, I have the honour to request you to see me with your client on 3.12.56 at 10 a.m. at this office ”

Under this note is found another note which reads as follows :

“ Get dependant brother fill in Form 1A ”.

It was submitted on the appellant's behalf that the latter note was an invitation by the Commissioner, or by an officer on the Commissioner's behalf, requesting the appellant to regularise the application made on his behalf by his brother, by filling in the proper form. I cannot agree.

In view of the imperative provisions of section 5 of the Indian and Pakistani Residents (Citizenship) Act (supra), no officer can authorise a person to apply for registration under the said Act two years after the prescribed date. Even if any application had been received, the section clearly states that it should not be entertained by the Commissioner.

The Indian and Pakistani (Citizenship) Act (supra) confers a privilege on a person, whose alleged origin is India or Pakistan, to have his name registered as a citizen of Ceylon within the limited period prescribed by law. A statute which confers a privilege must be strictly construed (vide Maxwell on Interpretation of Statutes (9th Ed.) 298 ; (11th Ed.) p. 345).

The counsel for the appellant, relying on the decisions in *Caruppiah v. Commissioner for Registration of Indian and Pakistani Residents*¹ and *S. S. Seyed Ali Idroos v. Commissioner for Registration of Indian and Pakistani Residents*², submitted that once the issues have been framed by the Commissioner and an inquiry had been proceeded with on those issues, it was not open for the Crown to challenge the application on any other ground. In both the abovementioned cases, the applications were made within the prescribed time, but the Court in each case held that the mere failure to file an affidavit, as required by section 7 of the Act, did not render the proceedings null and void when there was evidence which contained all the requirements of the affidavit. These cases, therefore, stand on a different footing from the one before this Court. In the instant case, no application has been made, as required by the law, by the appellant to have his name registered as a citizen of Ceylon.

The counsel for the appellant also urged that, at the most, this was a case of contingent jurisdiction and, if the parties had proceeded on a particular footing and the inquiry was held, then it was too late in the day to raise any question of jurisdiction. It must however be noted that the doctrine of estoppel cannot be evoked to render valid a transaction which the Legislature has, on grounds of general public policy, enacted shall be invalid (vide *Re Stapleford Colliery Co., Barrow's case*³) or to give the court a jurisdiction which is denied to it by statute (vide *Griffiths v. Davies*⁴; *J & F Stone Lighting & Radio Ltd. v. Levitt*⁵), or to oust the statutory jurisdiction of the court under an enactment which precludes the parties contracting out of its provisions (vide *Sollev. Butcher*⁶). In my view, the instant case is not one where the tribunal has contingent jurisdictions, but rather one in which it has no jurisdiction since the

¹ (1960) 62 N. L. R. 17.

² (1960) 62 N. L. R. 109.

³ (1880) 14 Ch. D. 432 C. A. at p. 441.

⁴ (1943) 1 K. B. 618 C. A.

⁵ (1947) A. C. 209 H. L.

⁶ (1950) 1 K. B. 671 C. A.

appellant has made the application after the prescribed statutory period. It is with regret that I dismiss the appellant's appeal, since his application should not have been entertained by the Deputy Commissioner nor could it be entertained by this Court.

On the facts, no doubt, a good deal could be said on behalf of the appellant. The Commissioner has misdirected himself on a number of matters, but it is unnecessary for me to go into the facts in view of my finding that the appellant had not made an application within the prescribed time.

I dismiss the appellant's appeal with costs fixed at Rs. 105.

Appeal dismissed.