1961 *Present :* **T. S. Fernando, J.**

P. KANNUSAMY, Petitioner, *and* THE MINISTER OF DEFENCE AND EXTERNAL AFFAIRS, Respondent

S. C. 104 of 1961—In the matter of an Application for the issue of a mandate in the nature of a Writ of Mandamus in terms of section 42 of the Courts Ordinance

Citizenship Act No. 18 of 1948, as amended by Act No. 13 of 1955—Section 11A (4)—Effect of words "public interest"—Mandamus.

Sub-section (4) of section 11A of the Citizenship Act No. 18 of 1948, as amended by Act No. 13 of 1955, reads as follows :—

"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."

[1] *(1913) 5 Bal. N. C. 30.*
[2] *(1919) 6 C. W. R. 109.*
[3] *(1942) 43 N. L. R. 565 at 566.*
[4] *(1942) 43 N. L. R. 562.*
[5] *(1911) 15 N. L. R. 157.*

Held, in an application for registration as a citizen of Ceylon in terms of section 11A, that inasmuch as the statute permits the Minister to disallow an application where he is satisfied that it is not in the public interest to grant it, the Court should not review a disallowance of an application by examining whether it is actually not in the public interest to grant it. The Minister is the sole judge of the requirements of the public interest.

APPLICATION for the issue of a Writ of Mandamus directing the Minister of Defence and External Affairs to register the petitioner as a citizen of Ceylon.

M. Tiruchelvam, Q.C., with *K. Thevarajah*, for the petitioner.

D. St. C. B. Jansze, Q.C., Attorney-General, with *Mervyn Fernando*, Crown Counsel, for the respendent.

Cur. adv. vult.

November 16, 1961. T. S. FERNANDO J.—

The petitioner who was an applicant for registration as a eitizen of Ceylon in terms of section 11A of the Citizenship Act, No. 18 of 1948, as amended by the Citizenship (Amendment) Act, No. 13 of 1955, was informed by the Permanent Secretary to the Minister of Defence and External Affairs by letter dated November 23, 1960 that the former had been directed by the Minister to inform him (the petitioner) that his application for citizenship under section 11A of the Citizenship Act has been disallowed.

The petitioner has applied to this Court for the issue of a mandate in the nature of a Writ of Mandamus ordering and directing the respondent to grant his application for registration. In his amended petition the petitioner claims that he has all the qualifications specified in section 11A (3) of the Act, but that the respondent has wrongfully and illegally adopted a practice whereby applications for citizenship under section 11A are refused in the case of applicants who are in Ceylon on visas at the time of application. The petition goes on to allege further that " the petitioner is credibly informed and verily believes that his application was not considered by the respondent but has been dealt with by an official in the respondent's Ministry who has applied a rule of thumb by refusing the application on the ground that the petitioner was residing in Ceylon on a residence visa at the time he made his application ". The petition is supported by the petitioner's own affidavit which contains, inter alia, the allegations referred to above.

At one stage of the argument, in view of the averments in the petition and affidavit I have just referred to that the application for citizenship was not considered by the respondent but has been dealt with by an official in the Ministry, I inquired from counsel for the petitioner whether he desires to move to amend the caption and prayer of the petition or

amend the petition in any other way. Counsel, however, after consideration indicated to me that he does not propose to move to amend. I shall therefore proceed to consider the application on the basis that the allegation is that, although the respondent has considered the application, she has applied a rule or test that it was not open to her in law to apply. When I drew the attention of learned counsel for the petitioner to the fact that his client's affidavit contains on this point matter that is only hearsay, counsel submitted that the respondent has not attempted to counter the relevant allegations in the petition and affidavit and argued that whether or not the respondent applied an inadmissible rule or test in refusing the application is a matter entirely within the peculiar knowledge of the respondent, and that the petitioner can adduce no further proof in the circumstances and cannot affirmatively prove a negative propcsition of fact. He contended that section 106 of the Evidence Ordinance places the burden of proving that such a rule of thumb or test was not applied upon the respondent who is the best person to say whether or not such a rule or test was in fact applied. The learned Attorney-General indicated that the position he was taking was that an allegation founded on hearsay does not require to be refuted. In these circumstances, Mr. Tiruchelvam wanted an opportunity to summon the Permanent Secretary of the Ministry concerned to be examined in regard to the allegation that the application was refused merely because the applicant was at the time of application resident in Ceylon by virtue of a visa granted to him. Counsel were unable to refer me to any previous instance in which oral evidence was admitted in applications to this Court for mandates in the nature of writs of *madamus*, *certiorari*, etc., but it became unnecessary to consider further the application for summons to call evidence as I was satisfied that the substantial prayer of the petitioner cannot in any event be granted by this Court.

The learned Attorney-General has drawn my attention to sub-section (4) of section 11A which is reproduced below:—

> (4) 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.

According to the papers annexed to the petition itself is a document by which the petitioner has been informed by direction of the Minister that his application has been disallowed. Where the Act permits the Minister to disallow an application *where the Minister is satisfied* that it is not in the public interest to grant it, I cannot conceive that Parliament intended that this Court should review a disallowance of an application by examining whether it is actually not in the public interest to grant it. Parliament clearly intended that the Minister should be the sole judge of the requirements of the public interest, and in making a determination on the question it can hardly be doubted that the Minister may consider not merely the qualifications of the applicant but, among other things,

questions of policy and expediency as well. The decision of the Minister is a thing for which she must be answerable in Parliament, but her action cannot be controlled by the Court. As to what considerations should weigh with the Minister, it is not open to the Court to substitute its own opinion in place of the Minister's opinion that the granting of a particular application for citizenship under section 11A is not in the public interest. I am therefore compelled to the conclusion that it is not open to this Court to direct the Minister by way of *mandamus* to grant an application for citizenship in terms of section 11A of the Act.

The application is dismissed with costs.

Application dismissed.