

1951

Present: **Basnayake J.**

**BADURDEEN, Appellant, and COMMISSIONER FOR THE
REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent**

S. C. Application 1,114—in the matter of an Appeal under Section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 6 (2) (ii)—
“ Ordinarily resident ”—“ While being so dependent ”.*

The applicant, who was born in India, was resident in Ceylon since 1928. In February, 1938, he married in India, but his wife remained in India with her parents in accordance with their wishes. He had two children born in India in 1938 and 1945 respectively. It was not till March, 1948, that his wife and children came to reside in Ceylon. During their stay in India they visited the applicant occasionally. Since March, 1948, the applicant's wife had a settled abode in Ceylon with her children and had no residence in any other country.

In an application made by the applicant on November 19, 1949, for acquisition of citizenship under the Indian and Pakistani Residents (Citizenship) Act, it was established that the applicant's wife had lived in Ceylon with her children for one year and eight months with the intention of remaining in Ceylon permanently. In regard to the applicant's children the evidence showed that they too were in Ceylon since March, 1948, and that the child of school-going age was attending school in Ceylon since September, 1948. Both the children were minors dependent on the applicant.

Held, that the applicant's wife had been “ ordinarily resident in Ceylon ” within the meaning of section 6 (2) (ii) of the Indian and Pakistani Residents (Citizenship) Act.

Held further, that the applicant's children had been “ ordinarily resident in Ceylon while dependent on the applicant ”, within the meaning of the same section.

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

N. K. Choksy, K.C., with *C. Shanmuganayagam* and *M. A. M. Hussein*, for the appellant.

D. Jansze, Crown Counsel, for the Commissioner for the Registration of Indian and Pakistani Residents.

Cur. adv. vult.

May 18, 1951. BASNAYAKE J.—

This is an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. The appellant-applicant (hereinafter referred to as the applicant), Mohideen Abdul Cader Badurdeen, is 34 years of age and was born in India. He has since 1928 resided in Ceylon. In February, 1938, he married in India. But his wife did not come to Ceylon. She remained in India with her parents in accordance with their wishes. The applicant has two children born in India in 1938 and 1945 respectively. It was not till March, 1948, that his wife and children came to reside here. During their stay in India they visited the applicant occasionally.

The applicant has the residential qualification contemplated in section 3. The only question that arises on this appeal is whether the conditions of section 6 (2) (ii) are satisfied in the case of the applicant. That provision reads:

“Where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)), that his wife has been ordinarily resident in Ceylon, and in addition, that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent.”

The Commissioner holds that the requirements of the above provision are not satisfied unless—

- (a) the wife of an applicant has been resident in this country from the date of her marriage or from January 1, 1939, whichever is later, and
- (b) each minor child dependent on him has been resident from January 1, 1939, or the date of birth whichever is later.

The result of the Commissioner's interpretation is that a person married before January 1, 1939, cannot secure registration unless—

- (i) his wife has been resident in this country from at least January 1, 1939, and
- (ii) each of his dependent minor children (if any) born after January 1, 1939, has been born here and has remained here since birth till the date of the application, and
- (iii) each of his dependent minor children (if any) born before January 1, 1939, has resided here from that date at least.

I am afraid that this view of the enactment is supported neither by the Act nor by the canons of construction of statutes. For a correct interpretation of section 6 (2) (ii) the meaning of the words “ordinarily resident” as used therein should first be ascertained. Those words are not uncommon in English legislation, especially in the Income Tax Acts. Some assistance can be gained from the judicial dicta of the English Courts. But before referring to them I shall examine the ordinary meaning of those words. For, the golden rule of interpretation is that the words of a statute must *prima facie* be given their ordinary meaning. “Reside” according to the dictionary means “to dwell permanently or for a considerable time, to have one's settled or usual abode, to live

in or at a particular place", "to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile". The word "ordinary" means "belonging to what is usual", "having or taking its place according to customary occurrence or procedure; usual; normal".

It will be sufficient for the purposes of this case to confine my attention to the remarks of Viscount Cave in *Leaven's* case¹ and of Lord Sumner in *Lysaght's* case². In the former case, Viscount Cave said:

"The expression 'ordinary residence' is found in the Income Tax Act of 1806, and occurs again and again in the later Income Tax Acts, where it is contrasted with usual or occasional or temporary residence; and I think that it connotes residence in a place with some degree of continuity and apart from accidental or temporary absence. So understood the expression differs little in meaning from the word 'residence' as used in the Acts; and I find it difficult to imagine a case in which a man while not resident here is yet ordinarily resident here."

In the latter case, Lord Sumner observed:

"My Lords, the word 'ordinarily' may be taken first. The Act on the one hand does not say 'usually' or 'most of the time' or 'exclusively' or 'principally', nor does it say on the other hand 'occasionally' or 'exceptionally' or 'now and then', though in various sections it applies to the word 'resident', with a full sense of choice, 'adverbs like 'temporarily' and 'actually'. I think the converse to 'ordinarily' is 'extraordinarily' and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinary'. Having regard to the times and duration, the objects and the obligations of Mr. Lysaght's visits to England, there was in my opinion evidence to support, and no rule of law to prevent, a finding that he was ordinarily resident, if he was resident in the United Kingdom at all."

I now turn to the facts of the instant case bearing in mind the words of the section, the definitions, and the judicial dicta quoted above.

Since March, 1948, the applicant's wife has had a settled abode in Ceylon with her children. During that time she had no residence in any other country. There is no requirement in the section or elsewhere in the Act that the residence should have commenced at a given period of time or that it should have a minimum duration. It is clear from the Act that the date in relation to which this question of ordinary residence has to be decided is the date of the application, for no other date is indicated expressly or by necessary implication. At the date of his application, viz., November 19, 1949, the applicant's wife had lived here with her children for one year and eight months with the intention of remaining in Ceylon permanently. That coupled with the fact that she had no other residence elsewhere clearly proves that she had been ordinarily resident in Ceylon⁴ at the relevant date.

¹ *Levene v. Commissioners of Inland Revenue*, (1928) A. C. 217 at 225.

² *Inland Revenue Commissioners v. Lysaght*, (1928) A. C. 234 at 243.

Now, coming to the applicant's children, the evidence is that they too have been here since March, 1948. The child of school-going age has been attending school here since September, 1948. The children are minors dependent on the applicant. I think in their case too it can be definitely said that they have been ordinarily resident here while dependent on the applicant. The section does not say that the period of residence here should be co-extensive with the period of dependence. The words are "while being so dependent", not "during the period of dependence". The words "while being so dependent" connote a state and not a time. The eminent qualification is "ordinarily resident". Considerations of time are involved in those words. Wife and minor children alike must satisfy the condition of "ordinary residence" at the date of the application. The children have to satisfy a further qualification, viz., that during their period of ordinary residence they were dependent on the applicant.

*Gout's case*¹ which the Commissioner regarded as inapplicable has in my opinion a bearing on the point and is of assistance as it holds that the question of 'ordinary residence' is one of fact and the motive with which residence is taken up is immaterial.

The appeal is allowed.

Appeal allowed.
