

1957 Present : H. N. G. Fernando, J., and T. S. Fernando, J.

P. ANNAMALAI, Appellant, and THE COMMISSIONER  
FOR REGISTRATION OF INDIAN AND PAKISTANI  
RESIDENTS, Respondent

*Citizenship Case No. 159 of 1956*

*In the matter of an Appeal under Section 15 of the Indian and Pakista...  
Residents (Citizenship) Act*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for  
registration—Order of refusal—Procedure that must be followed—Power of  
Supreme Court to order fresh inquiry—Sections 9, 10, 11, 12, 13, 14 (c) and  
(7), 15.*

An order refusing an application for registration under the Indian and Pakistani Residents (Citizenship) Act will not be valid if it is made only after holding an inquiry in purported pursuance of section 13 and without compliance with the procedure prescribed in section 9. In such a case the Supreme Court can, by virtue of the appellate jurisdiction conferred by section 15, order that the proper steps be taken\*.

*Obiter* : The power to hold an inquiry under section 13 cannot be exercised at any stage after the publication of a statutory notice under section 10.

**A**PPPEAL under Section 15 of the Indian and Pakistani Residents (Citizenship) Act.

*Walter Jayawardena*, with *M. Sanmuganathan*, for the applicant-appellant.

*J. W. Subasinghe*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

February 12, 1957. H. N. G. FERNANDO, J.—

This appeal raises a question of some difficulty and importance concerning the procedure which should be followed in the consideration and disposal of applications for Registration under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. The first step in the procedure (prescribed by section 8) is that an application shall on receipt be referred to an investigating officer for a report in which that officer will *inter alia* set out a statement of facts and conclusions relevant to the application; his report must be taken into consideration when the application is dealt with. It is necessary to set out the text of sections 9 to 12 of the Act, and of sub-sections (6) and (7) of section 14 before I refer to the point in dispute. (References to the "Commissioner" in each case should be construed as being applicable to the Deputy Commissioner who deals with the particular application.)

\* This ruling was subsequently confirmed in *Mohamed Ali v. Commissioner for Registration of Indian and Pakistani Residents (Citizenship Case No. 255, Application No. C 4697, S. C. Minutes of March 28, 1957)*.—Ed.

“ s. 9. (1) Where, upon the consideration of any application, the Commissioner is of opinion that a *prima facie* case has not been established, he shall cause to be served on the applicant a notice setting out the grounds on which the application will be refused and giving the applicant an opportunity to show cause to the contrary within a period of three months from the date of the notice.

(2) Where no cause is shown by the applicant within the aforesaid period, the Commissioner shall make order refusing the application and cause a copy of the order to be served on the applicant.

(3) Where cause is shown by the applicant within the aforesaid period, the Commissioner may either—

(a) make an order appointing the time and place for an inquiry and cause a copy of that order to be served on the applicant ;

or

(b) take the steps he is hereinafter authorised to take whenever there is a *prima facie* case for allowing an application.

s. 10. Where, upon the consideration of an application, the Commissioner is of opinion that there is a *prima facie* case for allowing the application, he shall give public notice in the prescribed manner that an order allowing the application will be made unless any written objection to the making of such order together with a statement of the grounds or facts on which such objection is based, is received by him from any member of the public within a period of one month from the date on which the notice is published.

s. 11. Where no objection is received in response to the notice within the period specified therein, the Commissioner shall forthwith make an order allowing the application.

s. 12. Where any objection is received within the period specified in the notice, the Commissioner shall make order appointing the date and the place for an inquiry into the matter of the objection.

A copy of such objection and of the statement referred to in section 10 and of the order shall in every case be served on the applicant.

s. 14. (6) Save as otherwise provided in sub-section (7), at the close of an inquiry the Commissioner shall make order allowing or refusing the application, or give notice of the date on which he proposes to make such order. Where he gives such notice he shall make the order on that date.

(7) At the close of an inquiry held in pursuance of section 9 (3) (a) or of section 13, the Commissioner shall either—

(a) take the steps he is hereinbefore authorised to take whenever there is a *prima facie* case for allowing an application ;  
or

(b) make order refusing the application. ”

No difficulty should be experienced in understanding and following the procedure which is contemplated in sections 9 to 12. If the Commissioner forms the opinion that a *prima facie* case has not been established, notice must issue on the applicant stating the grounds on which the application will be refused and affording an opportunity for cause to be shown to the contrary within three months ; if no such cause is shown the application is refused ; but if cause is duly shown the Commissioner will either fix the matter for inquiry or else if he now thinks a *prima facie* case to be established, will take further steps accordingly. It will be seen that the applicant has a right under section 9 to know whether and why it is proposed to refuse his application and to show cause why it should not be refused, and that the Commissioner cannot make an order of refusal until he (the Commissioner) performs his corresponding duty. If after that duty is performed, cause is shown within the prescribed time, the Commissioner cannot refuse the application except after inquiry appointed in pursuance of section 9 (3) (a) ; the only alternative to such an inquiry is that the Commissioner will change his mind and decide for the time being that the application should be granted.

Sections 10 to 12 deal with the case converse to that contemplated in section 9. Where his opinion is that a *prima facie* case is established, he will give public notice of the intention to allow the application and any member of the public can object to the allowance within one month of the notice ; if no objection is received the Commissioner must allow the application ; but if objection is duly received then again he must appoint a date for inquiry into the objection. These sections also apply when the Commissioner forms a favourable opinion after cause is shown, or an inquiry is held, under section 9.

I shall now refer firstly to sub-section (7) of section 14 in order to ascertain what follows after the Commissioner has under section 9 (3) (a) held an inquiry. Sub-section (7) provides only two alternatives : the Commissioner *shall* either refuse the application (paragraph b), or where as a result of the inquiry he changes his mind and decides that a *prima facie* case has been established, he will proceed under section 10 in the same way as though he had originally thought a *prima facie* case to be established.

Where an inquiry has been held under section 12 into any objection, sub-section (6) of section 14 will apply and the ultimate order after that inquiry must be one either allowing or else refusing the application.

It will be seen from this examination of the sections to which I have already referred that an order of refusal can only be made in the cases which for convenience I enumerate in the following paragraphs:—

- (i) Where, after notice of intended refusal is served under section 9 (3) (a), the applicant fails to show cause in response to the notice (section 9 (2)).
- (ii) Where, after cause is shown and after the inquiry referred to in section 9 (3) (a), the Commissioner decides to refuse the application (section 14 (7) (b)).
- (iii) Where the Commissioner has published a notice under section 10 of his intention to allow the application and objection has been duly made, and, after the inquiry held in pursuance of section 12 into that objection, the Commissioner decides to refuse the application (section 14 (6)). (This stage may be reached if the Commissioner's opinion was favourable to the applicant either upon his first consideration, or upon cause having been shown, or upon inquiry under section 9 (3) (a) into the cause shown.)
- (iv) I should add that there is probably another ground for refusal contemplated in these sections, namely that after a time has been appointed for an inquiry under section 9 (3) (a) the applicant fails to appear at the inquiry and to support the cause he desires to urge in favour of his application.

The substantial complaint of the appellant in the present case is that the order refusing his application was not made in any of the circumstances which I have mentioned above and was therefore invalid. What has occurred in this case and in certain others, the appeals in which have been laid by pending our decision, is that the Deputy Commissioner refused the application without taking the steps prescribed in the provisions of the Act to which I have so far referred, but only after holding an inquiry in purported pursuance of section 13, which is in the following terms:—

“ s. 13. Where, in considering any application, the Commissioner is of opinion that any matter or matters arising therefrom or connected therewith should be further investigated, he may of his own motion order an inquiry and specify in the order each matter which is to be inquired into and the date and the place appointed by him for the inquiry.”

Notice was served on the applicant informing him that his application was fixed for inquiry under section 13; an inquiry was held in pursuance of that notice, and after the inquiry the Deputy Commissioner made a reasoned order refusing the application.

The submission for the appellant has been that an order of refusal cannot lawfully be made if the only step taken by the Deputy

Commissioner was to hold such an inquiry. Crown Counsel on the other hand has contended that section 13 empowers the Commissioner to take action under it *in considering an application*, that is to say at a stage before he comes to form either the adverse opinion referred to in section 9 or the favourable opinion referred to in section 10. In this contention the reference in section 13 to a matter being *further* investigated would mean an investigation further to that conducted by an investigating officer under section 8. In other words Crown Counsel argues that when an application is being considered, the Deputy Commissioner, if he finds himself unable to reach a *prima facie* conclusion either way can conduct an investigation by means of an inquiry under section 13 and act upon the result of that inquiry; the provisions of sub-section (7) of section 14 would apply at the termination of the inquiry and the Commissioner would thereupon have the duty either to take further action by public notice under section 10 *or else to refuse the application*.

: If such had been the Legislature's intention, section 13 seems to be out of place: if it was contemplated that an inquiry be held by the Commissioner in order merely to supplement the investigation already conducted under section 8 by an investigating officer, one would have expected to find that intention set down in the section which immediately followed section 8. But that is not the only consideration against Crown Counsel's view, nor do I consider it an important consideration. Far more important is the consideration that in that view the Commissioner can by deciding to hold an inquiry under section 13 render inapplicable the explicit and important provisions in section 9 which ensure that an application will not be refused except in the circumstances which I have enumerated earlier, the essential prerequisite for refusal being the notice of intended refusal on specified grounds and the opportunity to show cause against a refusal within three months of the notice. I find myself quite unable to subscribe to the view that in enacting section 13 the Legislature intended to qualify in any way the conditions precedent to an order of refusal which it had already laid down explicitly in section 9. This opinion in reality concludes the argument on the particular question raised in this appeal as to the validity of the present order of refusal; but as the matter has been fully argued we should, I think, examine section 13 with a view to interpreting the intention of the Legislature as to the application of the section.

In principle there would be no objection to the holding of an inquiry by the Commissioner *before* he forms an opinion whether or not a *prima facie* case has been established; indeed it may be desirable in some cases that particular matters be thus investigated at an early stage. Hence it is not at first sight unreasonable to suppose that section 13 contemplates an inquiry being held prior to the making of a tentative order under section 9 or section 10, as the case may be. What renders such a supposition unreasonable, however, is the provision in sub-section (7) of section 14 which compels the Commissioner at the termination of an inquiry under section 13 to make an order of refusal where the material then before him has not in his opinion established a *prima facie* case..

Of course if the opinion formed by the Commissioner upon an inquiry is favourable to the applicant and the step of publishing notice of an intention to allow the application were to be taken, no inconsistency with the other sections, and no prejudice to an applicant or even to the public would arise. But this consideration is of little or no importance or assistance having regard to the fact that sub-section (7) of section 14 prescribes the alternative step of refusal which for reasons already stated would create both inconsistency and injustice. I hold therefore that an inquiry under section 13 cannot precede, or be held in substitution for, the procedure envisaged in section 9. Whether, however, an inquiry, which is not in purported pursuance of section 13, into any relevant matter, can be conducted by the Commissioner in order to assist him to reach one of the two alternative opinions referred to in section 9 and section 10 respectively, is a question which I do not consider it necessary to examine.

Can then the Legislature have intended an inquiry under section 13 to be held after the procedure envisaged in section 9 or in section 10 has been followed? Let me consider first the case where an inquiry has been fixed under section 9 (3) (a) and has been concluded. Sub-section (7) of section 14 requires the Commissioner to make his order at the close of the inquiry or upon a date which he must fix at the close of the inquiry. If he makes the order forthwith there would clearly seem to be no scope thereafter for action under section 13; if, however, he only appoints a date for his order, a course which would be taken whenever the mind of the Commissioner is not made up at the close of the inquiry under section 9 (3) (a), an occasion may arise for the utilisation of the power conferred by section 13. Thus if some matter had been overlooked, or not adequately investigated at the first inquiry, then section 13 would fulfil an useful purpose in providing for the further investigation of that matter before the ultimate order is made under sub-section (7) of section 14. No difficulty or prejudice would to my mind arise from this construction since the alternative orders, one of which must be made at the termination of the inquiry under section 13, are the same as would have to be made after the inquiry under section 9 (3) (a). In passing I should mention that I doubt whether the making of the ultimate order can by this means be postponed beyond the date originally fixed by the Commissioner at the close of the inquiry under section 9 (3) (a).

I have also to consider whether there would be scope for the utilisation of section 13 in a similar manner in a case where an inquiry has been held under section 12 into an objection duly lodged after the notice under section 10. The holding of an inquiry under section 13 into some matter after order has been reserved under sub-section (6) of section 14 in an inquiry into an objection may in some instances be desirable for the same reasons to which I have referred in the preceding paragraphs. But I experience some difficulty in so construing the statute for the reason that one of the two alternative steps which must follow the holding of an inquiry under section 13, namely the step referred to in paragraph (a) of sub-section 7 of section 14, would be quite inappropriate in the circumstances. Once notice has been published under section 10 of an intention to allow

an application and an inquiry is held into an objection lodged within one month of that notice, it would be very nearly absurd that the identical step of publishing a notice under section 10 giving another opportunity for objections should again be taken.

Apart from the absurdity which can result if section 13 is utilised after action is taken under section 10, general considerations also appear to arise. Section 11 confers on an applicant a statutory right that his application will be allowed if no objection is received within one month; and where objection is duly received all that section 12 contemplates is *an inquiry into the matter of the objection*; if I may put it in that way, the effect of a notice under section 10 is that the statute assures the applicant of success, subject only to the decision of the Commissioner upon any objection duly lodged and substantiated. In the absence of express provision in section 13 qualifying that assurance, the powers conferred by that section should not in my opinion be construed to affect that statutory right in any way or to authorise the Commissioner to investigate any matter other than a matter duly raised in an objection. Hence one is forced to the conclusion that the power to hold an inquiry under section 13 cannot be exercised at any stage after the publication of a statutory notice under section 10.

The order in the present case refusing the appellant's application, not having been made in accordance with the procedure set out in section 9, is invalid. In *Solamuthu v. The Commissioner for Registration of Indian and Pakistani Residents*<sup>1</sup> my brother Gunasekara stated "there has been no proper inquiry into the appellant's application and an order cannot be made upon it until such an inquiry has been held." That language is particularly appropriate to the present case where an essential step in the prescribed procedure has been completely ignored by the Deputy Commissioner. Once the order appealed from is set aside on such ground it must follow in my opinion that the steps hitherto taken upon the application were a nullity, and that proper steps must now be taken by the Commissioner even without a direction from this Court on that behalf. But I entirely agree with my brother Gunasekara's views as to the implied power of this Court which flows from the jurisdiction conferred by section 15 of the Act. The order appealed from is set aside and I direct the Commissioner to consider and deal with the application under the provisions of sections 9 and 10 of the Act. The respondent will pay to the appellant costs fixed at Rs. 262·50.

T. S. FERNANDO, J.—

I agree with the views expressed by my brother in his judgment and also agree that the order indicated by him should be made.

*Order set aside.*

<sup>1</sup> (1956) 58 N. L. R. 157.