

1961

Present : L. B. de Silva, J.

M. M. SHAMSUDEEN, Petitioner, *and* THE MINISTER OF DEFENCE AND EXTERNAL AFFAIRS, Respondent

S. C. 68—Application for a Writ of Mandamus

Citizenship Act, No. 18 of 1948—Section 11—Application thereunder—Order of refusal—Person who should sign such order—Meaning of words “resident in Ceylon throughout a period”—Mandamus—Writ will not be issued if no purpose will be served.

When a person applies for registration as a citizen under the provisions of section 11 of the Citizenship Act, a letter refusing the application is not a valid order if it is signed by some person for the Permanent Secretary and does not convey a decision of the Minister.

The words “resident in Ceylon throughout a period” in Section 11 (1) (b) (1) mean uninterrupted residence in truth and in fact.

A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served.

¹(1922) 4 C. L. Recorder 133.

²(1933) 35 N. L. R. 309.

APPPLICATION for a Writ of Mandamus on the Minister of Defence and External Affairs.

C. Ranganathan, with *S. Sharvananda*, for Petitioner.

R. S. Wanasundera, Crown Counsel, for Respondent.

Cur. adv. vult.

October 23, 1961. L. B. DE SILVA, J.—

The petitioner applied for registration as a Citizen of Ceylon under the provisions of section 11 (1) of The Citizenship Act No. 18 of 1948, on the ground that his mother was a citizen of Ceylon by descent and that he had the necessary residential qualification under this sub-section. He supported his application with certain documentary evidence.

By the letter (X4) dated 5th February, 1959 on a letter-head of The Ministry of Defence and External Affairs, the petitioner was informed that he was not qualified to apply for Ceylon Citizenship under the Act and he was referred to the residential qualifications required by section 11 (1) (b) (1) of the Act. This letter was signed by some person for the Permanent Secretary. This letter did not convey a decision of the Hon. the Minister on the petitioner's application.

Under section 11 (2) (a), a person to whom this section applies, shall be registered as a citizen of Ceylon on his making an application in that behalf to the Minister in the prescribed manner, if he has the qualifications of section 11 (1) (b) (1).

The petitioner has applied to this Court for a writ of mandamus to compel the Hon. the Minister to register him as a citizen of Ceylon under sections 11 (2) (a) and 16 of the Act. At the hearing of this application, the learned Counsel for the petitioner only asked for a writ of mandamus to compel the Hon. the Minister to deal with the petitioner's application under section 11 (2) (a) and to make an appropriate order.

It was urged on behalf of the Respondent that it was not necessary for the Hon. the Minister to deal personally with applications of this kind and to make orders thereon. He may do so through an official of the Ministry and that the letter (X4) was a valid order under section 11 (2) (a) of the Act.

No material was placed before this Court to show that the letter (X4) was written under the authority of the Hon. the Minister and on his behalf or that the decision that the petitioner was not qualified to be registered as a citizen was a decision of the Minister or even of an Officer directed by the Minister to deal with this matter.

The learned Crown Counsel relied on the case of the *Point of Ayr Collieries Ltd. v. Lloyd George*¹ decided by the Court of Appeal in England. That case referred to an order by a Minister under the Defence (General)

¹ (1943) 2 A. E. R. 546.

Regulations, taking control of the Appellant's undertaking. In that case the order was issued in the name of the Minister and was signed by the Secretary to the Ministry. It was held in that case that orders of that nature need not be signed by the Minister, though it was desirable to do so in matters of such importance.

Lord Greene M.R., stated, "The most that I certainly intended to suggest was that, in a case of such importance as this, signature by the Minister himself might appear to be more appropriate than signature by some one on the staff of the Ministry, however highly placed. That was no more than a suggestion and, perhaps, was going outside the functions of this Court, but it is certainly not to be taken as suggesting for one moment that Orders such as these require for their validity the signature of the Minister himself. I am not speaking of other regulations, such as 18B, as to which different considerations may apply."

There may be cases when it is necessary for the Minister himself to sign the order, even if the inquiries themselves may have been conducted on his behalf by Officials of the Ministry. But in the present case, the order conveyed to the petitioner by the letter (X4) does not even purport to be written on behalf of the Minister.

The issue of a writ of mandamus is within the discretion of Court and will not be issued if it will be futile to do so. In this case I am satisfied that the petitioner has grossly failed to prove that his mother was a citizen of Ceylon by descent.

In support of his application, the petitioner submitted an affidavit from one Asanaliyar Omakutha that petitioner's maternal grand-father was a citizen of Ceylon by descent. When he was questioned at the inquiry into this application by an officer of the Ministry, Omakutha said that he did not know if the petitioner's maternal grand-parents came from India or were born in Ceylon.

It also transpired at the inquiry held in connection with this application that the petitioner had been away in India for certain periods in 1954, 1955 and 1957. He therefore did not have continuous residence in Ceylon for the required period. Mr. Justice H. N. G. Fernando held in *Mohideen v. The Prime Minister*¹, decided on 13.6.1961 that the words "resident in Ceylon throughout a period" in section 11 (1) (b) (1) meant uninterrupted residence in truth and in fact during this period. I respectfully agree with this finding.

As no purpose will be served by issuing a writ of mandamus in this case, I dismiss the application. The petitioner will pay the Respondent the costs of this application fixed at Rs. 105.

Application dismissed.

¹ (1961) 63 N. L. R. 263.