

1952

Present: Swan J.

ARUNASALAM PERIASAMY, Appellant, and COMMISSIONER
FOR REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

S. C. 39—Application No. L 649

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Sections 9 and 14 (5)—Application for citizenship—Refusal—Notice thereof to applicant—Cause shown thereafter through proctor—Common law right of representation by proctor or advocate—Applicant's right to be heard.

Where a letter requesting for an opportunity to show cause against the refusal of an application for registration as citizen under the Indian and Pakistani Residents (Citizenship) Act was written to the Commissioner by a proctor on behalf of the applicant, and not by the applicant himself—

Held, (i) that section 9 (1) of the Act did not debar the applicant from showing cause through a proctor. A party has a common law right to be represented by a proctor or advocate, unless the legislature expressly forbids it.

(ii) that the Commissioner should fix the matter for inquiry and make his final order after hearing the applicant.

APPPEAL from an order of the Commissioner for the Registration of Indian and Pakistani residents in Ceylon.

E. R. S. R. Coomaraswamy, for the applicant-appellant.

Douglas Jansze, Crown Counsel, for the respondent.

Cur. adv. vult.

April 3, 1952. SWAN J.—

The applicant-appellant had applied to the respondent, who is the Commissioner for the Registration of Indian and Pakistani Residents in Ceylon, to be registered as a Citizen of Ceylon. The application, which was dated 13th October, 1950, was made under Section 7 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. On 12th May, 1950, the Commissioner informed the appellant that he had decided to refuse the application on the grounds that the appellant had not proved—

- (a) that his wife and dependent minor children had been ordinarily resident in Ceylon, and
- (b) that he had permanently settled in Ceylon within the meaning of the Act.

By the notice conveying this information to the appellant the Commissioner also intimated to him that he should show cause, if any, as required by Section 9 (1) of the Act, within three months of the said notice.

By a letter dated 10th July, 1951, written on his behalf by Proctor K. Vijayarajnam the appellant stated as follows:—

“ I appeal to you against your decision to refuse my client's application dated 13th October, 1950, on the following grounds:—

- (1) My client is in a position to adduce ample evidence to satisfy you—
 - (a) That his wife has been ordinarily resident in Ceylon from the date of her marriage to my client.
 - (b) That his children have been ordinarily resident in Ceylon from the date of their birth.
 - (c) That all his children were born in Ceylon.
 - (d) That all his children have been and are being educated in Ceylon.
 - (e) That even his first marriage in 1939 was contracted in Ceylon.

- (2) My client submits that the second ground stated in the schedule to Form 3 cannot be sustained because—
 - (a) My client at the date of his application and since then has been permanently settled in Ceylon.
 - (b) My client has no intention whatsoever of leaving Ceylon at any time.
 - (c) My client made only two remittances to India of Rs. 60 each in 1949 and that, too, to his aged mother under a moral duty. His statement on these occasions is not inconsistent with an intention on his part to be a Citizen of Ceylon, especially because nearly two years have elapsed since his declaration.
 - (d) My client has satisfied every one of the conditions set out in Act No. 3 of 1949 and, therefore, he cannot be requested to satisfy any condition not set out in the Act.

In view of the above, I hope you will grant Citizenship rights to my client. But if you require further proof, please let me know on what date and at what time Mr. E. R. S. R. Coomaraswamy, Advocate, and I may attend at your office with my client, and adduce the necessary proof and legal argument to satisfy you regarding the above matters.”

To this letter the Commissioner sent no reply, not even a bare acknowledgment. On 24th September, 1951, i.e., more than three months after the notice requiring the appellant to show cause, the Commissioner made the following order:—

“ By notice under Section 9 (1) of the Act the applicant was informed of my decision to refuse his application unless he showed cause to the contrary within 3 months of the date of that notice, viz., May 12, 1951. Two grounds of refusal were noted in the Schedule to the notice referred to, viz., that he had not proved that his wife and dependent

minor children had been ordinarily permanently settled in Ceylon within the meaning of the Act. The period of 3 months elapsed on August 12, 1951. Up to that date no letter had been received from the applicant in reply to the notice. A letter dated 10th July, 1951, was, however, received by me on 11th July, 1951, from Mr. K. Vijayarajnam, Proctor S. C. & N. P., Kandy, wherein he stated that the notice addressed to his client Mr. Arunasalam Periyasamy had been referred to him: He proceeded to make certain representations in reference to the notice.

2. Section 9 (3) of the Act speaks of cause being shown 'by the applicant'. There is no express provision whereunder such cause can be shown by someone other than the applicant on behalf of the applicant. Section 14 (5) of the Act makes express provision for an applicant to 'be represented at an inquiry under Section 9 or Section 12 or Section 13 by Proctor, or by Advocate and Proctor, or by another Agent or Adviser authorised by him in writing or by oral statement made in the presence of the Commissioner'. On a reading of Section 14 (5) and Section 9 (3), it is clear that the absence of any reference in Section 9 (3) to representation of an applicant at that stage necessarily implies that he cannot at that stage be represented, but must show cause by letter signed by himself. The letter received from Mr. K. Vijayarajnam in the present case is therefore of no avail as the applicant had not himself shown cause by the last date available to him. The position is that the application must be refused in terms of Section 9 (2) of the Act.

3. Even on the substantial point whether the representations made in Mr. Vijayarajnam's letter of 10th July, 1951, would have amounted to cause shown, if those same representations had been made by the applicant himself, I find that they do not in fact constitute cause shown in respect of the first ground of refusal set out in the Schedule to the notice under Section 9 (1).

4. What Section 9 (1) requires an applicant to do is to show cause and not merely state that he has cause to show or that he is prepared to show cause. Section 7 (1) (b) of the Act requires every application to be supported by affidavits of the applicant as to the facts and particulars set out in the application. Section 9 could hardly require the applicant to do merely what he had already done in terms of Section 7 (1) (b). A mere statement or affidavit of the applicant himself in response to a notice under Section 9 (1) takes his case no further than it stood on the date of his making the application, nor would it meet the requirements of Section 9 (3) merely to state that the applicant can produce evidence to satisfy the Commissioner. Section 8 of the Act requires the Commissioner to refer each applicant to an Investigating Officer and it is only after the receipt of the Investigating Officer's report that the Commissioner issues a notice under Section 9 (1) in appropriate cases. The applicant will, therefore, already have had an opportunity of presenting evidence to the Investigating Officer. It is clear therefore, that a mere statement that an applicant has evidence to produce is insufficient to constitute cause shown in

response to a notice. He must at least recite the evidence which he can adduce to establish the fact which he is noticed as not having proved.

5. As regards the first ground of refusal set out in the Schedule to the notice, the letter from Mr. Vijayaratham contains no recital of evidence relied upon, so that even if the representations made in regard to that ground had been sent in to me in writing by the applicant himself, they would not have amounted to cause shown. As regards the second ground of refusal set out in the notice, I should have been prepared to accept the representations made as amounting to cause shown as this question was one more for argument than for proof of fact if they had been made by the applicant himself.

6. As no cause has been shown by the applicant against refusal of his application within the time allowed by notice under Section 9 (1), the application is refused. "

It is against this order that the appellant appeals, and his prayer is that the order be set aside and the Commissioner be directed to give him an opportunity of adducing evidence to prove that he is entitled to be registered as a citizen of Ceylon.

There can be no question that an applicant for registration to whom the Commissioner has issued a notice under Section 9 can show cause by letter. In the Regulations framed under the Act and published in *Gazette* No. 10,004 of the 5th August, 1949, there is a special form for the notice under Section 9. The relevant regulation, to wit, regulation No. 6, says that a notice under Section 9 (1) of the Act shall be substantially in Form 3; and looking at Form 3, I find that the concluding words are " *unless you show cause to the contrary by letter addressed to me.* "

The first point to consider, therefore, is whether such a letter must be written by the applicant himself. The Commissioner seemed to think that in the absence of express provision that cause could be shown by somebody other than the applicant a letter written by a proctor in his behalf was not sufficient. He drew that inference from the provision in Section 14 (5) that an applicant could be represented at an inquiry under Sections 9, 12 or 13 by a proctor, or advocate and proctor, or another agent or adviser. I do not think the reasoning sound. A party has a common law right to be represented by a proctor or advocate unless the legislature, as in the case of the Rural Courts Ordinance, expressly forbids it. It is hardly necessary to stress the point because learned Counsel for the respondent was prepared to concede that a letter by a proctor showing cause would satisfy the requirements of the Section.

The next point to determine is whether the Commissioner could, in view of the request made in Mr. Vijayaratham's letter dated 10.7.51, have disposed of the application without fixing the matter for inquiry, and hearing what the appellant or his lawyers had to urge in support of the grounds set out in that letter. Learned Counsel for the respondent contends that the scheme of the Act is such that it was incumbent on the

appellant to show cause and have the matter disposed of before the three months had expired. Showing cause, he submits, is something more than offering to show cause. Undoubtedly it is. But what we have here is not merely an offer to show cause but a request for an opportunity to show cause; and, in effect, a refusal to grant such opportunity.

It appears to me that an order made under Section 9 (1) is in the nature of an order *nisi* which would become absolute after three months, unless cause is shown to the contrary. If the applicant had ignored the notice his application *ipso facto* would have been deemed to have been refused. If on receipt of the notice the applicant merely stated his reasons by letter and did nothing further, it would have been within the rights of the Commissioner to have decided the matter upon the material contained in that letter. But where he had been expressly asked to give the applicant an opportunity of being heard in support or explanation of the grounds urged in his letter, the applicant had the right to be heard.

Counsel for the respondent says that the grounds stated in Mr. Vijayaratnam's letter are a mere repetition of the grounds in the original application. Even if that were so, the applicant had the right to be heard, and the Commissioner could not have disposed of his application without giving him an opportunity of being heard.

I set aside the order of the Commissioner refusing the appellant's application and direct the Commissioner to fix the matter for inquiry and make his final order after hearing the applicant and/or his proctor, or advocate and proctor.

The appellant will be entitled to the costs of this appeal.

Order set aside.
