

1957

Present: Sinnetamby, J.

M. K MARIANTHONY, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

*Citizenship Case No. 48—Application Q. 3590*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1919—Application for registration thereunder—Scope of inquiry—Sections 7 (1) (b), 9 (3) (a).*

A Commissioner holding an inquiry under section 9 (3) (a) of the Indian and Pakistani Residents (Citizenship) Act has no jurisdiction to inquire into matters outside the scope of that inquiry. He cannot, therefore, reject an application for registration under the Act on the ground that it is not in conformity with the requirements of section 7 (1) (b).

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

*S. P. Amerasingham*, for the applicant-appellant.

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

March 12, 1957. SINNETAMBY, J.—

In this case the applicant was served with a notice under Section 9 (3) (a) requiring him to satisfy the Commissioner in regard to three matters (1) Residence ; (2) that the applicant was of Indian or Pakistani origin ; and (3) that he was permanently settled in Ceylon. When the applicant appeared at the inquiry the Commissioner began to examine him in regard to the application form which the applicant had submitted for registration as a Ceylon citizen. He questioned him as to where the applicant signed and as to what was stated in the affidavit, and in the course of that evidence the applicant made the following statement : " What I said earlier that the forms were signed by me at the Controllor's office is correct. What is stated in the affidavit is false. " Acting upon this statement the Deputy Commissioner held that the application was not in proper form and has not been properly sworn to or affirmed before a Justice of the Peace. He accordingly rejected the application as it did not conform with the requirements of Section 7 (1) (b).

The first question that arises for consideration is whether when dealing with an inquiry under Section 9 (3) (a) it is open to a Deputy Commissioner to go into the question of whether the application is in proper form. It seems to me that he is not entitled to do so. The inquiry contemplated by Section 9 (3) (a) is confined to the merits of the application itself and has nothing to do with the form in which the application is made.

When a person comes ready for inquiry into the matters contained in the notice served under Section 9 (3) (a), he naturally does not address his mind or his attention to other matters. When therefore he is suddenly

subjected to a cross-examination on matters in respect of which he has had no time to think he is apt to make statements which may not be strictly accurate. To pounce upon a remark made by a witness under such circumstances in regard to a matter which does not form the subject matter of the inquiry and utilise it to reject his application is neither fair nor consistent with principles of natural justice. In my view it is utterly wrong to do so.

A Commissioner holding an inquiry under Section 9 (3) (a) in pursuance of a notice under Section 9 (1) has no jurisdiction to inquire into matters outside the scope of that inquiry and must conform himself to the matters referred to in the notice.

I accordingly set aside the order of the Deputy Commissioner and remit the case back to him for an inquiry into the merits of the application and into matters specified in the notice that was served on him under Section 9 (3) (a).

The applicant will be entitled to costs of this appeal fixed at Rs. 105.

*Order set aside.*