

1959

Present : Sinnetamby, J.

G. BALAKRISHNAN, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

*S. C. 7—Citizenship Case No. E. 4935*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 6 (2) (i)—“Assured income”.*

A daily paid labourer who is able to obtain fairly regular employment and secure a lawful means of livelihood is possessed of an assured income within the meaning of section 6 (2) (i) of the Indian and Pakistani Residents (Citizenship) Act.

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

*A. C. Krishnarajah*, for the Applicant-Appellant.

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

April 28, 1959. SINNETAMBY, J.—

The applicant was required to establish to the satisfaction of the Deputy Commissioner (1) that he was permanently settled in Ceylon, (2) that he was resident in Ceylon from 1st January, 1936, to June, 1951, without absence exceeding 12 months on any single occasion, and (3) that he was on the date of his application possessed of an assured income of a reasonable amount or had some suitable business or employment or other lawful means of livelihood to support himself and his dependants. The Deputy Commissioner was satisfied in regard to requirements (1) and (2), but in regard to requirement (3) he held that the applicant had not established that he was possessed of an assured income of a reasonable amount or had some other suitable business or employment. The reason he gives for this finding is that the applicant had “got employed under different contractors on a land on which the Central School, Matugama, is situated. This employment is not secure.” He also says “The applicant also admitted it.” What he has admitted is that he is not a Government servant nor is he paid by an estate and that he is a casual labourer paid by a contractor. He however states that he is paid Rs. 2/50 a day and that he sometimes works for 20 days in a month and at other times for about 25 days in a month. Quite a large number of people in this country are employed in this way, being daily paid labourers under contractors or other persons who employ daily paid

labour. If the inference drawn by the Deputy Commissioner is correct, all these people must be regarded as persons not having suitable employment or other lawful means of livelihood. The fact remains that from the year 1950 up to the date on which he gave evidence the applicant had been employed in this way and has been able to maintain himself and to be in receipt of an income of at least Rs. 50 a month, according to him. Having regard to the status and position of the applicant, one cannot say that this income is insufficient for his requirements.

My attention was drawn to certain observations of H. N. G. Fernando, J. in the case of *Pandaram v The Commissioner for the Registration of Indian and Pakistani Residents*<sup>1</sup>. In the course of his observations the learned Judge stated, "An employment which is reasonably likely to be regular and permanent and not casual or intermittent and which is of a common or recognized type would prima facie be suitable to support the applicant and his dependants." The learned Judge was there referring to the facts of that particular case and I do not think he meant that what he stated should be accepted as a principle governing all cases. The best test to ascertain whether a person has suitable employment to support himself and his dependants would be to see if in the recent past he has been able from his employment to so maintain himself. If he has, it seems to me that such employment must also be regarded as suitable. To take any other view would mean that every daily paid labourer whose services could be dispensed with on a day's notice would come within the category of persons not possessed of a suitable employment or other lawful means of livelihood. Even if the view is taken that for an employment to be suitable it must have some degree of permanence, nevertheless it seems to me that a daily paid labourer who is able to obtain fairly regular employment and secure a lawful means of livelihood would comply with the requirements of section 6 (2) (i) of the Act.

The other reason given by the Deputy Commissioner is that the applicant had applied and indeed had been registered in the Employment Exchange. It would seem that there is some evidence to show that the object of his so registering himself was to improve his lot. He was in fact offered by the Employment Exchange a permanent job as a sweeper at the Meegahatenna Police Station but he refused it. He apparently preferred to be a labourer on a daily paid basis than be a sweeper at the Police Station.

In these circumstances the Deputy Commissioner, in my opinion, was wrong in holding that the applicant had failed to satisfy him in regard to the third requirement. I would accordingly set aside the order of the Deputy Commissioner and send the case back for steps to be taken on the basis that the applicant has made out a prima facie case for registration. The applicant is entitled to the costs of appeal which I fix at Rs. 105.

*Order set aside.*