

64 N498 GPAD'S

1962  
67 C 62 TSFds.

Present : G. P. A. Silva, J.

S. S. M. K. MANSOOR, Petitioner, and THE MINISTER OF DEFENCE  
AND EXTERNAL AFFAIRS and another, Respondents

*S. C. 349/62—Application for the issue of a Mandate in the nature of a  
Writ of Certiorari and for the issue of a Mandate in the nature of  
a Writ of Mandamus under Section 42 of the Courts Ordinance*

*Certiorari—Mandamus—Affidavits tendered by the parties—Power of Court to  
allow cross-examination of the deponents—Citizenship Act, s. 12 (3).*

Where, in *certiorari* proceedings, the petitioner obtains an order of Court permitting him to cross-examine an officer on an affidavit sworn by him in support of the respondent's case, the respondent may be permitted to cross-examine the petitioner on his affidavit before the petitioner cross-examines the officer.

**A**PPPLICATION for the issue of writs of *Certiorari* and *Mandamus* against the Minister of Defence and External Affairs.

*M. Tiruchelvum, Q.C.*, with *V. Kumaraswamy* and *A. R. M. Mansoor*, for the Petitioner.

*A. C. Alles*, Solicitor-General, with *H. Deheragoda*, Crown Counsel, for the Respondents.

*Cur. adv. vult.*

June 20, 1963. G. P. A. SILVA, J.—

This matter came up before my brother Sri Skanda Rajah on 29th January 1963 on which date an application was made by counsel for the petitioner that Mr. K. T. Perera, Assistant Secretary to the Ministry of Defence and External Affairs and a prescribed officer in terms of section 12 of the Citizenship Act, who had sworn certain affidavits in connection with these proceedings, be tendered for cross-examination. The application was allowed and on 3rd June 1963 this came up for hearing before me, Mr. K. T. Perera too having been summoned for the purpose of cross-examination by the petitioner's counsel.

It was argued by Mr. Tiruchelvam, Senior Counsel for the petitioner, that the duties of the prescribed officer in exercising powers under section 12 (3) are of a quasi judicial nature and that it is obligatory on him, in deciding whether or not to send an application for registration as a citizen to the Minister of Defence and External Affairs, to act judicially. He cited in support of his contention the case of *Manickam v. The Permanent Secretary, Ministry of Defence and External Affairs*<sup>1</sup>. He further submitted that, if it is found that the prescribed officer has not acted judicially, the Supreme Court can interfere by way of Certiorari. Mr. Tiruchelvam also cited certain other English cases to show that the Supreme Court can correct an error made by the prescribed officer which appears on the face of it, for example, if he has acted in excess of his jurisdiction or has committed an error in law. While the authorities cited appear to support Mr. Tiruchelvam's contention, I feel that the main issue in this matter has reached another stage. According to the affidavit of the prescribed officer he had sent the application for registration as a citizen to the Minister of External Affairs in terms of section 12 (3). The petitioner contends that this statement in the affidavit is not correct and it is for that reason that the order was obtained from my brother Sri Skanda Rajah to summon the prescribed officer for cross-examination on his affidavit.

The Solicitor-General contended that the procedure of calling an officer who files an affidavit for cross-examination in an application of this nature is a very extraordinary course to be resorted to in exceptional circumstances and cited the case of *Regina v. Stokesley Justices*<sup>2</sup> to illustrate his point. He, therefore, opposed the application of the petitioner to cross-examine the prescribed officer on the affidavit. He also argued that such a procedure would amount to altering the character of these proceedings from affidavit evidence to oral evidence. He submitted further that the affidavit of the petitioner only contains hearsay evidence, when he states that his application for citizenship was not placed before the Minister of Defence and External Affairs for her decision as he could not possibly have had personal knowledge in regard to this matter and that, the affidavit of the petitioner being based on hearsay, does not require to be refuted. The Solicitor-General referred

<sup>1</sup> (1960) 62 N. L. R. 201.

<sup>2</sup> (1956) 1 A. E. R. 583.

to the case of *Kannuswamy v. The Minister of Defence and External Affairs*<sup>1</sup> in support of his contention. It seemed to me, and I indicated to the Solicitor-General, that the submissions he had made so far tantamounted to his asking me to revise the order already made by my brother Sri Skanda Rajah on the application to cross-examine the prescribed officer on whom a summons was accordingly issued to be present in Court for cross-examination. There is no jurisdiction for me to revise that order and the proper remedy for the respondent, if dissatisfied with the order of Sri Skanda Rajah J., dated 29th January 1963, would have been to appeal from that order in appropriate proceedings. All the arguments of the Solicitor-General addressed to me would have been appropriate at the stage at which this application was originally heard before my brother. Even if these arguments convinced me and I was inclined to take a view different from the view taken by Sri Skanda Rajah J. when he granted the application to cross-examine the prescribed officer, I do not have any jurisdiction at this stage to hold otherwise. In the circumstances the Solicitor-General made an application that he be permitted to cross-examine the petitioner on his affidavit before an opportunity is given to the petitioner to cross-examine the prescribed officer on his affidavit. He also added that if after cross-examination of the petitioner on his affidavit he succeeds in showing that the petitioner's affidavit amounts to nothing more than hearsay on the material point at issue, the necessity for the cross-examination of the prescribed officer will not arise, in view of the decision in the 63 N. L. R. case earlier referred to.

Mr. Tiruchelvam for the petitioner opposed this application on the ground that it was too late. While I agree that the Solicitor-General, on behalf of the respondents, should have made this application when this matter came up for hearing on the last occasion, I do not think the petitioner can reasonably oppose this application when he himself has obtained an order for the cross-examination of the prescribed officer on his affidavit in support of the respondent's case and when, admittedly, the cross-examination of the deponent of an affidavit in proceedings of this nature is a very extraordinary course.

I therefore allow the application of the Solicitor-General for cross-examination of the petitioner on his affidavit.

*Cross-examination of petitioner on his affidavit allowed.*

<sup>1</sup> (1961) 63 N. L. R. 380.