

1957

Present : H. N. G. Fernando, J.

V. PANDARAM, Appellant, and THE COMMISSIONER FOR
REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS *et al.*, Respondents

S. C. 259—Citizenship Application DD. 2,106

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Sections 6 (2) (i)
and 14 (4)—“ Suitable employment ”.*

An applicant can, in the absence of special circumstances which might indicate the contrary, be assumed to have a suitable employment to support himself and his dependants (irrespective of their number) within the meaning of section 6 (2) (i) of the Indian and Pakistani Residents (Citizenship) Act if he has an employment which is reasonably likely to be regular and permanent and which is of a common and recognized type.

In the context of the statute, Cages 13 and 14 of the Form of application must be regarded as nothing more than a means of eliciting information as to the employment and income of the applicant and his dependants.

APPPEAL under the Indian and Pakistani Residents (Citizenship) Act.

Walter Jayawardena, with *S. P. Amarasingham*, for the applicant-appellant.

H. V. Perera, Q.C., with *N. D. M. Samarakoon* and *N. V. Wirasekera*, for the objector.

V. Tennekoon, Crown Counsel, with *Mervyn Fernando*, Crown Counsel, for the respondent.

Cur adv. vult.

May 28, 1957. H. N. G. FERNANDO, J.—

There arises upon this appeal the necessity to construe yet another provision of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, namely section 6 (2) (i), which requires an applicant to satisfy the Commissioner—

- (a) that he is possessed of an assured income of a reasonable amount, to support the applicant and his dependants, if any ; or
- (b) that he has a business or employment or a lawful means of livelihood, to support the applicant and his dependants, if any.

The form in which I have set out the requirements is not exactly that in which it appears in the Statute, but it is clear from the arguments of Counsel that they agree that this form correctly represents the requirements which the Legislature intended to impose. I should add that Crown Counsel who appeared on behalf of the Commissioner quite rightly desired not to be heard, since the decision of the Commissioner was one

given in a judicial capacity upon objection taken to the registration of the applicant, and that I decided to hear Counsel on behalf of the objector although the latter had not been made a respondent to this appeal.

The Commissioner had decided that, in regard to requirement “(b)” the income of an applicant from a business or employment must be sufficient to support himself and his dependants, and that no account can be taken of any wages received by the wife or minor children of the applicant. It was on the other hand contended for the applicant that those wages, because the husband or father of the recipient has a right of control over them, can be taken into account, either as an assured income possessed by the applicant or as a lawful means of livelihood available for utilisation by the applicant, in determining whether the requirement taken as a whole is satisfied. Alternatively, it was contended that, in view of the receipt of wages by the wife and a minor child, the applicant can at the least claim that the wife and child should not be regarded as dependent on him and that accordingly the need to support them should be ignored for the purpose of the determination whether or not the applicant's own wages from employment are sufficient to support himself and his dependants.

The applicant in the present case had to meet a further difficulty. Cage 13 of the Form of application required him to specify the business or employment, if any, if the applicant had a business or employment claimed by him to be sufficient to support himself and his dependants. But the note against this cage is as follows:—

“Paragraph 13 should only be filled up if the applicant claims that the income from the business or employment is adequate”.

The applicant did not specify his employment in Cage 13, but instead specified his own wages and those of his wife and one minor child in Cage 14. The Commissioner has held that the omission of the applicant to fill up Cage 13 (considered in the context of the note to that cage) constitutes an admission that his own wages from employment are insufficient to support himself and his dependants. Having therefore first decided that the applicant's wages alone could be taken into account, the Commissioner did not consider the question of fact whether those wages are or are not adequate to support him and his dependants, because in his view the admission conclusively decided that question against the applicant. Having regard to the provisions of section 14 (4) of the Act, this view of the Commissioner was unwarranted; the Form is such that an applicant can easily be led (or misled) into thinking that where there are two or more wage-earners in a family, cage 14 is the appropriate one to fill up; moreover, the Note against Cage 13 does not explicitly state that Cage 13 *must be filled up* if the applicant claims that his wages are adequate, nor does the Note to Cage 14 warn the applicant that it is to be filled up *only if his own wages are inadequate*. In the context of the Act, the two Cages must be regarded as a means of eliciting information as to the employment and income of the applicant and his dependants, and not as a “concealed trap”. If, for example, the wages of an applicant

are in fact manifestly adequate for the support of himself and his dependants, it would surely be contrary to the principles of natural justice to assume inadequacy merely because Cage 14, and not Cage 13, is filled in by the applicant. It will be seen in any event that, in view of the construction which should in my opinion be placed upon the requirement in section 6 (2) (i), this matter of filling up the Cages is merely a "red herring".

With much respect to the learned Counsel who represented both sides before the Commissioner and in this Court, the view I have formed is different from those for which they respectively contended. It is clear that the condition laid down in section 6 (2) (i) will be fulfilled if an applicant can satisfy either of the requirements (a) and (b) which I have set out above; but consideration of requirement (a) is of much assistance in construing requirement (b) which is the one relevant in the present case. I agree with Counsel for the respondent that requirement (a) is intended to apply to cases of "investment income" or "unearned income", and requirement (b) to cases where an applicant is engaged in some "activity".

In the case of an applicant who claims to fulfil requirement (a), he must be possessed of an *assured income of a reasonable amount* to support himself and his dependants. According to the dictionary meaning of "assured", the income must be "secured" or "certain" in the sense that the applicant's right to it is permanent and unconditional and the source of the income must be such that there is certainty, or at least reasonable certainty, that it will yield or produce income. But it is not enough that the applicant has such a right to income from such a source: requirement (a) imposes a second condition relating to the *amount* of the income, namely that the amount must be reasonable. The applicant will therefore have to establish that, to support himself and his dependants, he will have an income which is firstly assured and secondly of a reasonable amount; and the second condition requires the Commissioner to take into consideration the amount of the income and to decide whether or not it is a "reasonable" amount to "support" the applicant and his dependants.

Requirement (b) is that an applicant must *have a suitable business or employment or other lawful means of livelihood*, to support himself and his dependants. It is significant that the Legislature has not expressly referred in this instance (as it did in requirement (a)) to the income derived by the applicant or to the amount of such income, and I cannot agree with Mr. Perera's contention that the omission of such a reference is due to the necessities or intricacies of draftsmanship: if requirement (b) was intended to import a condition of the same nature as the second condition included in requirement (a), the intention could have been expressed by the insertion of a very few words. To take therefore the case of an applicant who has an employment, the condition is only that *it must be suitable*, having regard to the need to support the applicant and his dependants. There would in my opinion be many cases in which the question of "suitability" is concluded by the very nature of an employment: if for instance, an applicant is employed by the

Government or a local authority as a Doctor or a clerk, his employment would be *prima facie* "suitable" within the meaning of the requirement, and a further detailed or precise "means test" by reference to wages and the actual number of dependants would not ordinarily be necessary. An employment which is reasonably likely to be regular and permanent, and not casual or intermittent, and which is of a common or recognised type, would *prima facie* be "suitable" to support the applicant and his dependants, if only for the reason that numerous citizens do in fact support their families with the wages derived from such employment. There being no hint in the Statute of an intention to discriminate in favour of applicants in employments which are comparatively more remunerative, an employment cannot be considered "unsuitable" merely because the wages derived therefrom are comparatively low. Indeed Cage 13 of the Form only requires the nature of the employment to be specified; the Form does not require an applicant to state the amount of the wages, and thus assumes that an employment can be considered suitable *per se*. Particularly then, as in the present case, if the employment is one in a trade for which wages and conditions of service, including the provision of housing and medical facilities, are laid down by law, it must be considered "suitable" within the meaning of the requirement unless for any special reason it appears to be unsuitable. A possible such reason might be that, having regard to the standard of living to which an applicant and his family have been previously accustomed, the wages from the employment in question are likely to be insufficient for the support of the family; another might be that the employment is unsuitable in the case of the particular applicant for reasons of health, physique or capacity. But where, as in the present case, the applicant has for a long period had the same employment and is of a class of persons ordinarily engaged in such employment, there is nothing which can displace the reasonable assumption that the employment is suitable to support him and his family irrespective of its number of members. To hold otherwise would be to let in the absurdity that Kangany or Rubber Tapper X with a wife and three children might obtain citizenship whereas Kangany or Rubber Tapper Y might be disqualified solely for the reason that the stork had visited his line-room once too often.

I would therefore hold that in the case of an applicant who has an employment which is reasonably likely to be regular and permanent and which is of a common and recognised type, it should be assumed in the absence of special circumstances which might indicate the contrary that the employment is suitable having regard to the need of the applicant to support himself and his dependants and that this assumption should be made all the more readily if the employment is one in respect of which wages and conditions are prescribed by law. In such cases no mathematical computation by reference to the amount of wages and the number of dependants is necessary or permissible.

The appeal is allowed. In view of the fact that the appeal is against a judicial determination by the Commissioner upon an objection and that the objector was not made a party to the petition of appeal, there will be no order as to costs.

Post Scriptum

For purposes of clarity I should add that the Commissioner should have rejected the objections to the application. The order refusing the application is set aside and an order allowing the application has to be substituted therefor.

Appeal allowed.

