[IN THE PRIVY COUNCIL]

1958 *Present:* **Lord Morton of Henryton, Lord Tucker, Lord Cohen, Lord Denning and Mr. L. M. D. de Silva**

H. E. TENNEKOON (Commissioner for Registration of Indian an Pakistani Residents), Appellant, *and* MURUGAPILLAI PANJAN, Respondent

Privy Council Appeal No. 23 of 1956

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Sections 6 and 2 (as amended by section 4 of Act No. 37 of 1950)—Application for registratio as citizen of Ceylon—Proof of permanent settlement in Ceylon—Proof of bein an "Indian or Pakistani resident"—Relevant date.

In an application made by an Indian resident for registration as a citize of Ceylon, under section 4 (1) of the Indian and Pakistani Residents (Citizenshi Act, No. 3 of 1949—

Held, that, for the purpose of proving permanent settlement in Ceylon, (a it was not necessary for the applicant to prove a change of his Indian domicile (*b*) too much weight should not be attached to the statement as to temporar residence in Ceylon made by the applicant in the "Form M. O." which h signed for the purpose of remitting certain sums of money to India.

Held further, that the applicant should prove that he was "an Indian resident" as defined in section 22, at the date of his application and not at the date of th coming into operation of the Act.

APPEAL from a judgment of the Supreme Court.

Sir Frank Soskice, Q.C., with *M. Solomon*, for the appellant.

C. S. Barr Kumarakulasinghe, with *Mrs. Kshama Fernando*, for the respondent.

Cur. adv. vult.

May 19, 1958. [*Delivered by* LORD MORTON OF HENRYTON]—

This is an appeal from the Supreme Court of Ceylon. It will be convenient to refer to the respondent as "the Applicant".

On the 26th May, 1951, the applicant applied for registration as a citizen of Ceylon, under section 4 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, hereafter referred to as "the Act". His application was refused on the 14th August, 1953, but an appeal by the applicant to the Supreme Court of Ceylon was successful. The appellant now appeals from the decision of the Supreme Court, with the leave of that Court.

It is convenient to observe at once that the decision of the Commissioner refusing the application was given five months before the decision of the Deputy Commissioner in the case of *Tennekoon v. Duraisamy*[1], judgment in which has just been delivered by their Lordships' Board; but the judgment of the Supreme Court allowing the appeal of the applicant in the present case was delivered a week after the judgment of that Court in *Duraisamy's* case. The applicant in the present case did not raise any preliminary objection to the jurisdiction of the Board.

The relevant provisions of the Act have already been set out in the judgment of the Board in *Duraisamy's* case, and need not be repeated. The question in the present case is whether the Commissioner who heard the case (Mr. V. L. Wirasinha) was justified in holding that the applicant had failed to prove that he was "permanently settled" in Ceylon within the meaning of section 22 of the Act, as amended by section 4 of the Indian and Pakistani Residents (Citizenship) (Amendment) Act, No. 37 of 1950.

The facts in the present case are as follows :—

The applicant applied to be registered under the Act as a citizen of Ceylon on the 26th May, 1951, stating in his application that he was a single man, an Indian resident and had been continuously resident in Ceylon during the period of ten years commencing on the 1st January, 1936, and ending on the 31st December, 1945, and from the 1st January, 1946, to the date of the application and making a declaration in the terms of section 6 (2) (iii) and (iv) of the Act. In his supporting affidavit he deposed that he had been born at Thathamangalam Village, Trichy district on the 3rd January, 1924, that he was the manager of Letchumypathy Stores, Koslanda, and that he had resided at Iruwanthampola, Koslanda, from 1936 to 1942, at Egodawatte Estate, Koslanda, from 1942 to 1947 and at Letchumypathy Stores, Koslanda, from 1947 to date.

The application was supported by various letters or certificates speaking as to the said applicant's good character and length of residence in Ceylon. There was, however, no contemporary documentary evidence as to his residence in Ceylon from 1936 to 1947 but only letters of recent date.

On the 4th April, 1952, the applicant, in answering a questionnaire submitted to him, stated that he had an interest in certain property in India, being entitled to a ¼ share of the estate of his father (who was still living), that he had paid visits of one month each to India in 1946 and 1947 to see his parents and that he had remitted money to India but was not certain how many times.

The Investigating Officer reported on the application as follows :—

"Residence From 1936 (1st Jan.) to date of application.

"1936 to 1942—The applicant says that he was at Iruwanthampola Estate with his relations. There is no documentary evidence to show that he was actually living in Ceylon and not in India. The three

[1] *(1958) 59 N. L. R. 481.*

letters (P.7, 8 and 9) are intended by the applicant to prove his residence during the period 1936 to 1942. In my opinion this evidence is highly unreliable.

" From 1942 to 1947.—The applicant says that he was working at a boutique at Egodawatte Estate, Koslanda. He says that he was there from Aug., 1942, to July, 1947. Unfortunately that boutique is now closed down.

" From Sept. 1947, to the date of his application, he has been at Letchumy Stores, Iruwanthampola. I have examined the books and I have found that he has resided at the above residence during this period.

" Visits to India. He has made two visits to India, in 1946 and 1949, to see his parents. Both visits lasted a month each.

" Interests in India.—He is entitled to ¼ share of his father's property which is worth Rs. 2,000. His parents are now permanently residing in India and the applicant says that they do not desire citizenship as asked for (*vide* p. 3). Remittances. The applicant has remitted money to India but he does not know the exact amount or the occasions he has remitted. He has remitted Rs. 76 in 1951.

" Interests in Ceylon.—He is now the Manager of Letchumy Stores. He has contributed Rs. 2,034·10 towards his business in 1951 July ".

The applicant gave further details of the remittance of Rs. 76 in a letter written to the Investigating Officer on the 23rd July, 1952. In this he stated that he had sent to his parents in India Rs. 15 on the 31st January, 1950, Rs. 15 on the 28th February, 1950, Rs. 23 on the 31st May, 1950, and Rs. 23 on the 30th June, 1950, and that these remittances had been made under a General Permit dated the 18th December, 1949, issued under the Defence (Finance) Regulations. This General Permit, which was enclosed in the letter, was in fact a permit issued by the Controller of Exchange, granting authority for the applicant to remit to India a total sum of Rs. 336 in monthly instalments extending from January, 1950, to April, 1951. In the formal application for this permit, made by the applicant on the 24th August, 1949, and signed by him, he had declared himself to be temporarily resident in Ceylon, had stated that his father, mother, two brothers and sister were dependants, that during the period 1st July, 1948, to 31st March, 1949, he had been regularly remitting Rs. 25 per month to each of them and that the purpose of the remittance sought to be authorised was " Home Expenses at India ".

It is common ground that the form so signed, though marked " Form M.O. " was the same in all relevant particulars as the " Form B " referred to in *Duraisamy's* case.

On the 9th October, 1952, C. M. Agalawatte, a Deputy Commissioner for the Registration of Indian and Pakistani Residents, gave the applicant notice that he had decided to refuse his application for registration unless

he showed cause to the contrary within a period of three months. The grounds for such refusal were specified as follows :—

" You have failed to prove—

(1) that you had permanently settled in Ceylon ; the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon ;

(2) that you were resident in Ceylon during the period 1st January, 1936, to July, 1947, without absence exceeding 12 months on any single occasion. "

The applicant replied by his proctor on the 8th November, 1952, that he had been unaware of the implications of the declaration made by him to the Department of Exchange Control, that he had since his first arrival in Ceylon treated Ceylon as his permanent home and that such had been his intention at the time he made his application for registration as a citizen of Ceylon, and for these reasons requesting the holding of an enquiry.

The applicant's application for registration as a citizen of Ceylon was accordingly referred for inquiry.

At the enquiry, which was held on 7th July, and the 29th July, 1953, before V. L. Wirasinha, Commissioner for the Registration of Indian and Pakistani Residents, the applicant produced documents, and called evidence to show that he had been continuously resident in Ceylon for the required period. It would appear from the Commissioner's Order that he accepted this evidence. The applicant himself gave evidence in support of his application, stating in the course of his evidence that he had not made any remittances to India before obtaining the permit from the Controller of Exchange, that the Rs. 76 he had remitted had been sent to his father in order to assist in the payment of certain medical expenses and that since then he had not made any remittances. With regard to the declaration made by him that he was temporarily resident in Ceylon, the applicant's testimony was that he did not know the meaning of what he signed, as the form was in English, a language which he did not understand.

At the said enquiry there was also received in evidence, at the instance of the applicant, a copy of the evidence given in another case by A. H. Abeynaike, Deputy Controller of Exchange, Colombo. The said Abeynaike deposed that the form of application of the 24th August, 1949, in which the applicant had declared that he was temporarily resident in Ceylon was a form drafted " on the initiation of the Controller of Exchange " from whom under the Defence (General) Regulations a permit is required for the remittance of moneys abroad. The said Abeynaike further deposed that his own practice in the Department was normally to accept without further investigation declarations made by persons temporarily resident in Ceylon as to who their dependants abroad are, but that declarations from persons permanently resident in Ceylon he would test further, requiring proof of necessity and obligation.

At the end of the enquiry the Commissioner made an order refusing the application, upon grounds which will be considered later, and the applicant appealed to the Supreme Court.

The appeal was first argued before Swan, J., and that learned Judge, on the 14th October, 1954, referred it to a fuller Bench. Thereafter it was argued before a Bench consisting of Gratiaen, J., and Sansoni, J., together with the appeal in *Duraisamy's* case. On the 25th February, 1955, Gratiaen, J., delivered the judgment of the Court in the following terms :—

> " This appeal came up before us on a reference by Swan, J., and was argued before us together with a similar appeal—S. C. No. 517/54 Application No. J 154. It is not denied that if the judgment pronounced by us on 18th February, 1955, be correct, the appellant for the same reasons is entitled to succeed on this appeal. We accordingly allow the appeal for the same reasons as those contained in our connected judgment and direct the Commissioner to take appropriate steps under section 14 (7) of the Act on the basis that a *prima facie* case for registration has been established to the satisfaction of this Court. The appellant is entitled to the costs of this appeal. "

The appeal S. C. No. 517/54 Application No. J 154 there mentioned is the appeal in *Duraisamy's* case, and their Lordships' comments upon the judgment of the Supreme Court in that case apply equally to the present case. In the present case also they are of opinion that the Supreme Court was clearly right in allowing the appeal.

It is plain that the Commissioner based his refusal of the application entirely upon his view that the applicant had failed to prove that he had permanently settled in Ceylon.

In their Lordships' view the approach of the Commissioner to the determination of this question was wrong in the two important respects, which they mentioned and discussed in their judgment in *Duraisamy's* case in regard to the Deputy Commissioner's decision in that case. The Commissioner thought, wrongly, that the applicant had to prove a change of domicile, and he attached far too much weight to the statement as to temporary residence in Ceylon made by the applicant in the form which he signed. Their Lordships' observations on these two matters in *Duraisamy's* case apply equally, *mutatis mutandis*, to the present case ; but the statement as to temporary residence made by the applicant in the present case is of even less evidential value than the statements made by Mr. Duraisamy, for two reasons. First, the applicant was illiterate and the form was filled in in English—a language with which the applicant was unfamiliar—by someone else. Secondly, it is obvious that the applicant, or the person who filled in the form for him, did not fully understand the vital question 7. That question, and the answer to it, were as follows :—

7. Nationality :—

If not a Ceylon National—

(i) State aggregate period of residence in Ceylon : 20 years
Twenty years ;

(ii) If aggregate period of residence in Ceylon exceeds 10 years state whether temporarily or permanently resident in Ceylon : Temporarily ;

(iii) If temporarily resident in Ceylon state country of permanent residence and permanent address in that country : M. Panjan, Letchimipathy Store, Iruwanthampola Estate, Koslanda.

Thus, although the applicant stated, in answer to question 7 (ii) that he was temporarily resident in Ceylon, in answer to question 7 (iii) he gave an address in Ceylon, thereby indicating that he was permanently resident in that country.

One more matter should be mentioned in regard to the Commissioner's Order. He expressed himself as follows ;—

" It is pertinent to inquire by what date an applicant should have permanently settled in Ceylon. Only Indians or Pakistani residents can procure registration under the Act. In terms of Section 22 of the Act, no Indian or Pakistani is an Indian or Pakistani resident unless he ' has emigrated ' from his country of origin and ' permanently settled in Ceylon ' or unless he is the descendant of such a person, or unless, being himself of Indian or Pakistani origin, he is a person ' permanently settled in Ceylon '. The point is whether an applicant or an ancestor of his should have permanently settled in Ceylon at least by the date of coming into operation of the Act, or whether it is sufficient that he had permanently settled in Ceylon by the date of his application. The Indian and Pakistani (Citizenship) Act No. 3 of 1949, was the result of negotiations between the Governments of India and Ceylon relating to a body of persons whose origin was in India and who had permanently settled in Ceylon. What was in issue was the status of a fairly large number of Indian and Pakistani residents who were already permanently settled in Ceylon and the Act was designed to benefit that body of persons. I am of opinion therefore that what the Act requires is that an applicant should have permanently settled in Ceylon not merely by the date of his application, but at any rate by the date of coming into operation of the Act, namely 5th August, 1949. "

In their Lordships' opinion the provisions of the Act, and in particular the use of the present tense in section 6 (1), make it reasonably clear that an applicant must prove that he is " an Indian or Pakistani resident ", as defined in section 22, at the date of the application. If the relevant date had been the coming into operation of the Act, there would surely have been an express reference to that date in section 6 (1).

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs of this appeal.

Appeal dismissed.