1957 *Present :* H. N. G. Fernando, J.

M. U. R. C. MEERA, Petitioner, *and* N. Q. DIAS (Controller of Immigration and Emigration) *et al.*, Respondents

S. C. 198—Application for a Writ of Certiorari and for a Writ of Mandamus

Immigrants and Emigrants Act, No. 20 of 1948—Sections 10 and 14 (3) (b)—Effect thereon of Amending Act No. 16 of 1955, ss. 7, 26 (1)—Constitution Order in Council, 1946, s. 29 (2)—Interpretation Ordinance (Cap. 2), s. 6 (3) (b).

A non-citizen holding a temporary residence permit issued under the Immigrants and Emigrants Act No. 20 of 1948 is precluded by section 10 of that Act, as amended by Act No. 16 of 1955, from having it renewed or extended, although, prior to the date of the Amending Act, he would have been entitled to the renewal or extension of the permit under section 14 (3) (*b*) of the principal Act. The amended section 10 of the Immigrants and Emigrants Act is not *ultra vires* of the Legislature as being in conflict with the provisions of section 29 (2) of the Constitution Order in Council.

The right conferred by the former section 14 (3) (*b*) of the principal Act cannot properly be deemed to be a "right acquired" within the meaning of section 6 (3) (*b*) of the Interpretation Ordinance.

APPLICATION for a writ of *certiorari* and for a writ of *mandamus* on the Controller of Immigration and Emigration.

L. G. Weeramantry, with *M. S. M. Nazeem* and *N. R. M. Daluwatte*, for the petitioner.

V. Tennekoon, Acting Deputy Solicitor-General, with *J. W. Subasinghe*, Crown Counsel, for the respondents.

Cur. adv. vult.

[1] *(1920) 21 N. L. R. 360.*

July 16, 1957. H. N. G. FERNANDO, J.—

The petitioner has applied for a writ of Mandamus directing the Controller of Immigration and Emigration to issue to the petitioner a temporary residence permit authorising the continued residence in Ceylon of the petitioner. A temporary residence permit had been issued under the Immigrants and Emigrants Act No. 20 of 1948 to the petitioner for a period of two years commencing from 23rd February 1951, and thereafter other such permits were issued to him, the last of which expired on 19th February 1956. Before its expiration, the petitioner applied to the Controller for an extension of his permit for a period of one year and for present purposes I can assume that his application was either for an extension of the then existing permit or for the issue of a new permit and that the application on whichever basis it was made has been refused by the Controller by his letter of 8th February 1956.

Section 10 of the Act of 1948 in effect prohibited the entry of a non-citizen into Ceylon unless he had in his possession a passport and a visa or a residence permit. Section 14 then provided *inter alia* for the issue of permanent residence permits for indefinite periods and of temporary residence permits for definite periods exceeding six months, as well as for extension of the period of temporary permits : sub-section 3 (*b*) of the same section declared that a temporary residence permit shall not be refused in the case of British subjects who had been ordinarily resident in Ceylon for at least five years immediately prior to the appointed date which was 1st November 1949, and the allegation of the applicant that he was a person to whom that sub-section applied has not been challenged. If, therefore, section 14 of the Act remained in its original form it would appear *prima facie* that the applicant might well have been entitled to the grant either of a temporary residence permit or of an extension of his last permit. But the question whether he would have been so entitled has become academic in consequence of Act No. 16 of 1955 which amended the principal Act in certain very important respects. The Amending Act replaced the original section 14 and substituted for it a new section which provides only for the issue of visas to persons seeking to enter Ceylon and contains no provision of any description corresponding to sub-section 3 (*b*) of the original section ; and under section 10 as amended a visa is now the only prescribed entry document. In the absence of provision in the existing law for the grant or renewal of temporary residence permits, there is no statutory duty (to issue such a permit) which the Controller can now be enjoined to perform by writ of Mandamus.

It is argued for the petitioner, however, that the new section is *ultra vires* the Legislature and that the former section is therefore still law. The ground of this argument is that in prohibiting the entry into Ceylon of persons who are not citizens except under the authority of visas granted by the Controller, and in not providing at the same time, (as the former sub-section (3) (*b*) of section 14 did) a right upon persons of the description there mentioned to documents entitling them to enter and reside in Ceylon, the present section is void as being in conflict with the provisions of section 29 of the Constitution. In support of this ground

of objection it is stated that the new section imposes upon persons of the community described as the "Indian community" disabilities to which members of other communities are not made liable, or else confers on members of other communities privileges not conferred on the members of the Indian community.

Citizenship of Ceylon is regulated by the Citizenship Act No. 18 of 1948 and by the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 which generally provide for citizenship by birth and by registration respectively. Those Acts have been held by their Lordships of the Privy Council in *G. S. N. Kodakan Pillai v. P. B. Mudanayake* [1] to be *intra vires* and the same decision also held to be *intra vires* the Parliamentary Elections Amendment Act No. 48 of 1949 which restricted the franchise to citizens of Ceylon. While clearly declaring that what is prohibited for the Legislature by section 29 of the Constitution cannot be done even indirectly, the Privy Council held that, although standards such as those adopted in the case of the Citizenship Acts may operate to exclude the immigrant to a greater extent than they exclude other people, they do not create disabilities on a community as such, and their Lordships expressed the opinion that "the migratory habits of Indian Tamils are facts directly relevant to their suitability as citizens of Ceylon and had nothing to do with them as a community." The legislation which was the immediate occasion of the case which went before the Privy Council was what is referred to in the judgment as the Franchise Act, but it would appear that the argument put forward was that that Act read together with the Citizenship Acts was offensive to section 29 (2) of the Constitution ; and while their Lordships held that both enactments are *intra vires* they did not consider it necessary to examine the Franchise Act *separately* with reference to section 29 for the reason (obvious in the context) that if both read together were not *ultra vires*, then each separately is *intra vires*. In the present application of course the petitioner is precluded from arguing that either or each of the Citizenship Acts is *ultra vires* and he is restricted to the argument that section 14 of the Immigrants and Emigrants Act in its present (amended) form is *ultra vires*.

This argument raises for decision the same question which Their Lordships asked themselves, namely "what is the pith and substance or the true character of the legislation", and the answer in my opinion is that the Legislature has controlled the entry into Ceylon of non-citizens by a system of visas, conferring on an executive authority the discretion to refuse an entry document. The discrimination if any, therefore, which ensues from the legislation is a discrimination between citizens and non-citizens, a feature not in any way rare in legislation of a similar type enacted by other Sovereign Legislatures. If it was proper for the Legislature of Ceylon to deny the franchise to non-citizens, it clearly follows that it was not improper for the same Legislature to deny rights of entry to non-citizens. Indeed, in my opinion, the decision in *Kodakan Pillai v. Mudanayake*, that the Citizenship Acts properly laid down qualifications for citizenship and do not offend against section 29 of the Consti-

[1] *(1953) 54 N. L. R. 433.*

tution, has the necessary consequence that the Legislature is free to confer rights or privileges exclusively on citizens or to impose restrictions or disabilities applicable solely to non-citizens. I would hold, therefore, that section 14 of the Immigrants and Emigrants Act is *intra vires*.

There is one point, however, to which I should refer although it was not argued by Counsel for the petitioner. Section 26 (1) of the amending Act 16 of 1955 contains a saving provision for, *inter alia*, temporary residence permits issued before the coming into operation of the amending Act and provides that any such permit in force immediately preceding the date of operation "shall continue in force after that date for the duration of such permit and shall thereafter cease to have effect." The section thereafter reads as follows:—" . . . . and the provisions of written law applicable to such permits before such date shall apply to such permits after that date during the period of the validity of such permits in like manner as they were applicable before that date."

If the provision last set out above were to be read by itself it may be possible to contend that the phrase *the provisions of written law applicable to permits before such date* includes those parts of the original section 14 of the Act which authorized the extension of temporary residence permits and declared that a temporary residence permit will not be refused to a resident British subject, or (to be specific) includes the former sub-section (2) and the former sub-section (3) (*b*) of section 14. But the provision itself reserves the application of the former written law *during the period of the validity of such permit*, and one has therefore to ascertain the meaning of this latter phrase. In my opinion that meaning cannot be determined without reference to the first part of the savings section. Read as a whole, section 26 (1) first declares that a temporary residence permit in force prior to the amending Act *shall continue in force* for the duration of such permit and shall thereafter cease to have effect. Each existing permit is thus given validity *for its duration*, that is to say, for the period specified in it at the time when the Amendment took effect. The subsequent provision which keeps alive the earlier written law is only ancillary to the first part of the saving section, the intention clearly being that once a permit is continued in force for a particular period it may be necessary to utilise or have recourse to the former written law applicable to such permits. But any construction of the latter part of the section which would authorise an extension of the duration of the permit or confer a right to a new permit would in my opinion be quite inconsistent with the substantive saving enactment which as already pointed out *validates an existing permit only for the duration therein specified* and explicitly terminates its effect thereafter.

I have considered also whether the former section 14 (3) (*b*) of the principal Act conferred on the petitioner such a right as would, notwithstanding the subsequent repeal, be kept alive by section 6 (3) (*b*) of the Interpretation Ordinance, which preserves "any right acquired" under repealed law. In construing, in the case of *Abbot v. Minister of Lands* [1], a similar section which preserved "any right acquired or accrued" under repealed law, the Privy Council held that "the mere right existing

[1] *1895 A.C. 425.*

in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a 'right accrued' within the meaning of the enactment". Numerous statutes confer rights in the same general sense as did section 14 (3) (*b*) of the principal Act, that is they declare members of the public or of a specified class *to be qualified to obtain or secure* some advantage, privilege or permission whether from the Executive or a private party, and if the Interpretation Enactment does save such rights, then nearly every repeal would be ineffective to alter prior law unless there were appended special provision to bar the operation of section 6 (3) (*b*) of the Interpretation Ordinance. The decision of the Privy Council draws a distinction between what may be termed an abstract right, and a specific right which is already being possessed or enjoyed at the time of a repeal or towards the securing of which some statutory step has been taken at that time. While therefore section 6 (3) (*b*) *may* have assisted the petitioner if his application for a permit had been pending at the time of the repeal of the former section 14 of the Act of 1948, it affords him no advantage in the present context.

The application for a writ of Mandamus is refused with costs which I fix at Rs. 210.

Application refused.