

1960

Present : Sinnetamby, J.

S. VELOO, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 3 (Citizenship Cases)—V. 7102

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

In an application made by a person for the registration of himself and his wife and children under the Indian and Pakistani Residents (Citizenship) Act—

Held, that, for the purpose of ascertaining whether an applicant is possessed of an assured income within the meaning of section 6 (2) (i) of the Act, one is entitled to aggregate not only his personal earnings but also that of the members of the family who live with him and are dependent on him : in other words, the applicant is entitled to consider his own earnings with the earnings of those whose application for citizenship may under section 4 (2) be included in his application, and who under the proviso to section 4 (1) cannot, independently of him, apply for citizenship.

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

S. Mahendra, for the applicant-appellant.

Ian Wikramanayake, Crown Counsel, for the respondent.

Cur. adv. vult.

April 1, 1960. SINNETAMBY, J.—

The applicant in this case had applied for registration of himself, his wife and children under the Indian and Pakistani Residents (Citizenship) Act. The only ground on which his application was refused was that in the Deputy Commissioner's view he was not possessed of an assured income. The evidence was to the effect that the applicant was in receipt of a monthly income of about Rs. 50 from a new business which he had started with another partner and that his wife and one child namely a daughter earned between them about Rs. 100. The applicant's evidence was that with his income of Rs. 50 he was unable to maintain the entire family but with the earnings of his wife and daughter he was in a position to do so. The Deputy Commissioner accepted this evidence, but took the view that it was only the applicant's income that should

be taken into consideration in deciding the issue of whether the applicant was possessed of an assured income. Against the refusal of the application this appeal has been preferred.

In order to decide the question that arises in this case I think it is necessary to consider the scope of the legislation in question and the object which it was intended to achieve. Section 3 of the Act provided for the acquisition of citizenship by Indian and Pakistani Residents who were possessed of certain residential qualifications. Section 4 provided that an applicant irrespective of sex or age was entitled to apply for registration; provided that a married woman, who was living with her husband and a minor who was dependent on his or her parent, was not entitled to make a separate application independently of the husband or the father. It will thus be seen that where the head of the family applies for registration he must include in his applications his wife who is living with him, and every minor child dependent on him. It is also clear from Section 4 that a minor who is not dependent on his or her father, as the case may be, is entitled to make a separate application. The word "dependant" has not been defined in the Act but the ordinary dictionary meaning is that a dependant is one who depends for support and maintenance on another. So far as the minor child Seethaiammah is concerned, one may assume that her earnings were not as much as that of the mother. Although it is not known exactly how much of the Rs. 100 was earned by the mother and how much by the daughter, I think it will be reasonable to assume from the fact that she was regarded as a dependant, that the daughter's earnings were not sufficient to enable her to maintain herself.

The requirement in Section 6 is that in order to qualify for citizenship the applicant must be "possessed of an assured income of a reasonable amount, or has some suitable business or employment or other means of livelihood, to support the applicant and the applicant's dependants". Clearly the object of this requirement is to ensure that the applicant does not become a drag on the community or a burden on the state. It was obviously not considered desirable to grant citizenship rights to vagrants and people who could not maintain themselves. In, therefore, interpreting the words "possessed of an assured income" one must not lose sight of this fact. Section 6 (2) (i) states that an applicant must be possessed of an assured income. It does not stipulate that he should have the legal right to that income: in other words it is not necessary that he should be the *de jure* possessor of that income. It is sufficient if he is in *de facto* possession of it. Where a husband, wife, and child, live together, one is entitled to assume that the husband and father is the head of the family and has control of the earnings of those who are dependent on him. Therefore, he though not in *de jure* possession is certainly in *de facto* possession of the earnings of all the members of the family. The question of whether in this case the applicant is subject to Hindu law has not been considered, but, if he was, then clearly as *karta* he is entitled to manage and be in possession of the family earnings. It seems to me, however, that for the purpose of ascertaining whether

an applicant is possessed of an assured income one is entitled to aggregate not only his personal earnings but also that of the members of the family who live with him and are dependent on him: in other words, the applicant is entitled to consider his own earnings with the earnings of those whose application for citizenship may under Section 4 (2) be included in his application, and who under the proviso to Section 4 (1) cannot, independently of him, apply for citizenship. It certainly was not the object of the Legislature to break up a family by granting citizenship rights to some and denying it to other members of the same family.

For the reasons I have given, the Deputy Commissioner was clearly wrong in his decision, which cannot be allowed to stand. Apart from that the possession of an assured income is not the only requirement contemplated by Section 6 (2) (i); for if the applicant had "other lawful means of livelihood" to support himself and his family, then too he would qualify. It cannot be said that the head of a family has no lawful means of livelihood if the earnings of his wife and children are available to him and the aggregate amount is sufficient to maintain them. In the case of *Chandiram v. Commissioner*¹ H. N. G. Fernando, J., took a similar view and held that an adult daughter, who was not in possession of a separate income, had a lawful means of livelihood, where the means of livelihood consisted entirely of the maintenance provided by her parents with whom she was living.

I would accordingly allow the appeal with costs fixed at Rs. 105. The Commissioner will take the necessary steps on the basis that the applicant has made out a prima facie case for the registration of himself, his wife and his dependants.

Appeal allowed.

¹ (1957) 59 N. L. R. 85.