

1961

Present : Gunasekara, J.

SETHU RAMASAMY, Petitioner, and A. E. G. MOREGODA
(Controller of Immigration and Emigration), Respondent

*S. C. 457—Application for a Mandate in the Nature of a Writ
of Mandamus*

Deportation order—Subsequent authorisation by Prime Minister for issue of visa to deported person—Power of Controller to cancel such visa—Immigrants and Emigrants Act, No. 20 of 1948, as amended by Act No. 16 of 1955, ss. 5 (1), 11 (2) (g), 12, 14, 17, 31 (1), 31 (3)—Regulations 5, 20 (1)—Mandamus—Futility of result as ground for refusal.

Where a person deported upon an Order made in terms of section 31 of the Immigrants and Emigrants Act is subsequently authorised by the Prime Minister (who is also the Minister of Defence and External Affairs) to be granted visas to re-enter and reside in Ceylon, such visas, although they are bound to be issued by the Controller, may be cancelled later by the Controller in his absolute discretion by virtue of regulation 20 (1) of the Regulations made under the Immigrants and Emigrants Act.

A *mandamus* will not be granted when it appears that it would be futile in its result.

APPPLICATION for a writ of *mandamus* directing the Controller of Immigration and Emigration to issue to the petitioner a residence visa for 2 years in terms of section 14 of the Immigrants and Emigrants Act.

S. Nadesan, Q.C., with *M. Tiruchelvam, Q.C.*, and *V. K. Palasuntheram*, for petitioner.

B. C. F. Jayaratne, Crown Counsel, for respondent.

Cur. adv. vult.

June 6, 1961. GUNASEKARA, J.—

This is an application for a mandate in the nature of a writ of *mandamus* directing the Controller of Immigration and Emigration to issue to the petitioner a residence visa for 2 years in terms of section 14 of the Immigrants and Emigrants Act, No. 20 of 1948, as amended by Act No. 16 of 1955.

The petitioner, an Indian citizen, was deported on the 4th December 1959 upon an Order made in terms of section 31 of the Act. The manager of his business in Ceylon wrote to the Prime Minister on the 12th March 1960 representing that the deportation of the petitioner affected the management of the business adversely and asking that the petitioner be granted an entry visa and a residence visa.

It is common ground that the Prime Minister having considered the request made on behalf of the petitioner "directed that he be issued an Entry Visa to enter Ceylon and thereafter on his arrival in Ceylon a Residence Visa". The Permanent Secretary to the Ministry of Defence and External Affairs replied to the manager by a letter dated the 18th March 1960 that the Prime Minister (who was, of course, the Minister of Defence and External Affairs) had authorized the issue of such visas to the petitioner. He asked to be informed at which Ceylon Visa Office in India the petitioner wished to have his passport endorsed with an entry visa so that the necessary instructions might be issued to the appropriate office. He was informed that the office would be the one at "Trichy".

On the 22nd September 1960 the petitioner applied to the Ceylon Visa Office at Tiruchinapalli for a visit visa and such a visa was granted to him on the 27th September for entry into and stay in Ceylon until the 27th October 1960. He arrived in Ceylon about the 6th October and immediately applied to the Controller of Immigration and Emigration for a residence visa for 2 years. By a letter dated the 27th October 1960 the Controller replied that his request could not be granted. Thereupon, on the 31st October the petitioner made his present application, contending that the Controller was obliged in law to issue to him a residence visa in accordance with the direction given by the Prime Minister.

The application was taken up for hearing before T. S. Fernando, J. on the 11th November 1960, and on that day the hearing was adjourned to enable the petitioner to inquire from the Ministry whether the direction given by the Prime Minister in March 1960 had been countermanded. The petitioner's proctor wrote to the Permanent Secretary on the next day making this inquiry. The latter replied on the 5th January 1961 stating that the petitioner was "a person against whom a Deportation Order had been issued and executed" and that the visa granted to him was "void and of no effect in terms of section 17 of the Immigrants and Emigrants Act No. 20 of 1948 as amended by Act No. 16 of 1955". At the hearing before me counsel for both sides presented their arguments upon the footing that the direction in question had not been countermanded. The respondent's position, which is set out in an affidavit dated the 22nd March 1961, is that the petitioner was refused a residence visa "as it was considered neither legal nor proper for the subject of a Deportation Order to be permitted to enter or to remain in Ceylon".

In terms of regulation 5 of the Regulations made under the Act the Controller of Immigration and Emigration is a prescribed authority for the purpose of granting visas. Section 5 (1) of the Act provides that in the exercise, performance or discharge of the powers, duties or functions conferred, imposed or assigned by or under the Act the Controller shall be subject to the general or special directions of the Minister. It is contended on behalf of the petitioner that the respondent is therefore under a duty to comply with the direction given by the Prime Minister to the Controller in March 1960.

Section 17 of the Act, which is referred to in the Permanent Secretary's letter of the 5th January 1961, reads as follows :

Where a deportation Order or removal Order is made under this Act in respect of any person, any endorsement or *visa* granted or issued to that person shall be deemed to be void and of no effect for the purposes of this Act.

I agree with the learned counsel for the petitioner that the endorsements and visas contemplated in this section are only existing ones and not any that may be granted after the making of the Order.

In support of the view that the grant of a visa to the petitioner would not be lawful the learned crown counsel sought to rely on section 11 (2) (g), which is in these terms :

Except in such circumstances as may be prescribed, no endorsement or *visa* shall be granted or issued to any person who . . . is the subject of a deportation Order in force under this Act.

The circumstances in which a visa may be issued to such a person are prescribed in regulation 12, which provides that

No *visa* to enter Ceylon shall be granted or issued to any person referred to in section 11 (2) of the Act, except . . . (b) where the Minister directs that a *visa* be granted or issued to such person.

It seems clear, therefore, that a valid visa to enter Ceylon can be granted or issued to the subject of a deportation Order if the Minister has directed that a visa be granted or issued to such person.

A deportation Order is an Order made by the Minister requiring the subject of the Order " to leave Ceylon and to remain thereafter out of Ceylon " (section 31 (1)). In terms of section 31 (3),

A person with respect to whom a deportation Order is made shall leave Ceylon in accordance with the Order, and shall thereafter so long as the Order is in force remain out of Ceylon.

Mr. Nadesan contends that once the Minister has given a direction that a visa be granted or issued to such a person the deportation Order, which has been made by the Minister, ceases to be in force, and that a valid residence visa can be issued to him by the Controller. I agree with this contention and with the further contention that it is the Controller's duty to obey the direction given to him by the Prime Minister to issue such a visa to the petitioner.

This view of the matter, however, cannot conclude the question whether the application should be granted ; for, as has been pointed out by Mr. Jayaratne, a mandamus will not be granted when it appears that it would be futile in its result. Regulation 20 (1) provides, among other

things that it shall be a condition of every visa that the prescribed authority may, in his absolute discretion, cancel such visa. The respondent is thus enabled to render ineffective any mandate requiring him to issue a visa, for he has the power to cancel it as soon as it has been issued. The application is therefore refused.

The respondents will have their costs.

Application refused.

