

1960

Present : T. S. Fernando, J.

P. SANDANAM, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS,
Respondent

S. C. 59—Citizenship Application N4508

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Appeal from order of Commissioner—Computation of time limit—Reservation of order after inquiry—Prior notice to applicant necessary—Sections 9 (3), 14 (7).

The time limit for appeal from an order made under the Indian and Pakistani Residents (Citizenship) Act must be computed as from the date when the order was communicated to the applicant.

Where, after an inquiry into an application made by a person for registration as a citizen under the Indian and Pakistani Residents (Citizenship) Act, an order is not made forthwith, it is the duty of the Commissioner, under section 14 (7) of the Act, to give notice of the date on which he proposes to make the order. Failure to give such notice to the applicant would render the order invalid.

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

S. P. Amerasingham, for the applicant-appellant.

Ananda G. de Silva, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 24, 1960. T. S. FERNANDO, J.—

An inquiry was held by a Deputy Commissioner on 6th January 1956 into an application made by the appellant for registration as a citizen under Act No. 3 of 1949 after notice given in terms of section 9 (3) of the same Act, and at the conclusion of that inquiry the Deputy Commissioner reserved his order. Section 14 (7) required the Deputy Commissioner, where he was not making an order forthwith upon the conclusion of an inquiry held in pursuance of section 9 (3), to give notice to the applicant of the date on which he proposed to make the order. The Deputy Commissioner failed to comply with this requirement so that the applicant had no notice of the date on which the order was to be made. It would appear from the record that at the conclusion of the inquiry on 6th January the Deputy Commissioner had not himself decided upon any date for the making of the order. The record also shows that on 17th January 1956 in the perfunctory order reproduced below the Deputy Commissioner refused the application:—

“ I refuse the application. The evidence of witnesses and applicant does not corroborate each other’s.

As such their evidence is unreliable. *vide side lines.*

A. P. F. C. has not been established. ”

It does not appear on record that the appellant was present before him on 17th January 1956, and there is no record to show that this order was communicated to the appellant. In reply to an inquiry made by the appellant on 12th September 1957 as to the result of his application a reply was sent to him on 28th September 1957 to say that his "application was refused after inquiry on 17th January 1956". A petition of appeal was preferred on 5th March 1958, and learned Crown Counsel submits that the appeal is out of time. As to this point, Mr. Amerasingham replies that even the letter of 28th September 1957 sent by the Commissioner did not contain a copy of the order or any of the reasons for refusal of the application, and that it was only after the appellant had paid a sum of money for a certified copy of the order that such a copy was supplied to him on 13th December 1957. He submits that if the date of communication of the order be considered as 13th December 1957, the appellant is not out of time. He relies on the decision of two judges in the case of *Subramaniam v. The Commissioner for Registration of Indian and Pakistani Residents*¹. That case is undoubtedly authority for holding that the appeal preferred in this case has not been shown to be out of time.

A further argument has been submitted by Mr. Amerasingham that there has been no valid order at all upon the inquiry held into the appellant's application. The order that had to be made was an order in terms of section 14 (7) of the Act and, as that order was not made forthwith upon the conclusion of the inquiry, it was required to be made on a date of which the applicant had prior notice. The requirement in respect of notice of the date of the order is, in my opinion, an imperative provision of the law. The order in question was admittedly not made on such a date and, therefore, there has been no valid order hitherto made upon this application.

The order of 17th January 1956 purporting to refuse the appellant's application must be set aside. Inquiry shall be held afresh after notice given to the appellant. The appellant is entitled to the costs of this appeal fixed at Rs. 105.

Order set aside,

¹ (1955) 57 N. L. R. 186.