

1957 *Present : Gunasekara, J.*

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

Citizenship Case No. 203—Application No. H. 4,138

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for registration as citizen—Prima facie case not established—Notice to applicant—Proof of service thereof—Sections 9 (1), 9 (2), 20.

Where an application for registration was refused by the Commissioner under section 9 (2) of the Indian and Pakistani Residents (Citizenship) Act on the

ground of the failure of the applicant to show cause in response to the notice under section 9 (1) alleged to have been sent to him by post in a registered letter—

Held, that before the notice could be deemed, under section 20 of the Act, to have been duly served, it must be proved conclusively that it was duly posted to the applicant.

APP^{EAL} against an order made under section 9 (2) of the Indian and Pakistani Residents (Citizenship) Act.

S. P. Amarasingham, with *A. Devarajah*, for applicant-appellant.

T. A. de S. Wijesundera, Crown Counsel, for respondent.

Cur. adv. vult.

November 28, 1957. GUNASEKARA, J.—

This is an appeal against an order made under section 9 (2) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, refusing an application for registration under the Act. The question for decision is whether there was before the deputy commissioner who made the order sufficient evidence to prove that a notice under section 9 (1) of the Act had been sent to the appellant by post in a registered letter addressed to his last-known place of residence or of business. Section 20 provides that a notice so sent to an applicant shall be deemed to have been duly served on him, and the order under appeal appears to have been made on the footing that the necessary notice had been so sent to the appellant.

The material upon which the deputy commissioner based such a finding has not been set out in his order. It has been contended by the learned crown counsel, however, that the deputy commissioner's file contains sufficient documentary evidence to prove that the notice in question had been sent to the appellant in the manner specified in section 20.

There are in the deputy commissioner's file the originals and the office copy of two notices under section 9 (1) and two envelopes in which the original notices could have been sent by post. The notices are dated the 24th September 1956 and addressed to the appellant. One gives his address as No. 228, Main Street, Wattagama (which is the address given in his application), and the other as No. 317, Trincomalee Street, Matale (an address from which he had once written to the deputy commissioner). The envelopes are addressed to the appellant, one at the Wattagama address and the other at the Matale address. They bear postmarks and endorsements indicating that they have been through the post as registered articles sent by the deputy commissioner from Kandy on the 24th September 1956, the envelope addressed to Wattagama being labelled at the Kandy Post Office as registered article No. 473 and the other as No. 489.

The learned crown counsel conceded that the decision in *Sockalingam Chettiar v. The Commissioner for Registration of Indian and Pakistani*

*Residents*¹ stood in the way of a contention that these facts were sufficient by themselves to prove conclusively that a notice was duly posted to the appellant. He maintained, however, that there were certain additional facts in the present case that served to distinguish it from *Sockalingam Cheltiar's case*.

There is a note on the office copy of the notices indicating that the one addressed to Wattagama was sent in registered packet No. 473 of the 24th September 1956 and the other in No. 489 of the same date, and a corresponding note has been made on each of the original notices themselves. The notices also bear date-stamps of the deputy commissioner's office, the former with the date 29th September 1956 and the latter 26th September 1956. It was contended by the learned crown counsel that these circumstances were sufficient to prove that the notices had been posted to the appellant in the envelopes in question and were returned on the dates appearing in the date-stamps.

The argument assumes that the reference to postal registration numbers that is noted on the office copy of the notices was written there about the time when the envelopes were posted, and those on the original notices about the time when the envelopes were returned. There is no evidence as to the existence of any course of business according to which these references would have been so noted, nor as to who noted them, and they do not appear in the certified copies of the notices that have been prepared for the purposes of the appeal to this court. I am therefore unable to say that there can be no reasonable doubt that the postal registration numbers were noted on the office copy of the notice and on the originals contemporaneously with the posting of the envelopes or their being returned, or at any time before the certified copies were prepared. Moreover, the deputy commissioner's file contains, besides these notices, the originals and the office copy of another communication in duplicate bearing the same date as the notices and addressed to the appellant at the same addresses. This is a letter calling for certain death certificates. The originals of this letter, too, bear the same date-stamps as the notices and, within the date-stamps, numbers corresponding to the postal registration numbers appearing on the envelopes. (In this case the numbers are not noted on the office copy.) It may well be that each of the envelopes contained, when it was posted, one of the duplicates of this letter and also the appropriate duplicate of the notice. But it is not possible to say that there can be no reasonable doubt on that point. For these reasons I am unable to accept the contention that this case is distinguishable from *Sockalingam Cheltiar's case*¹.

The deputy commissioner's order is set aside, and the respondent is directed to cause to be served on the appellant a fresh notice in terms of section 9 (1) of the Act and to proceed thereafter in due course of law. He will pay the appellant Rs. 105 as costs of this appeal.

Order set aside.