1953 *Present :* **Swan J.**

R. SIVAN PILLAI, Appellant, *and* COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 949—Indian and Pakistani Residents DD 46

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for registration as citizen—*Prima facie *case not established—Failure to show cause—Refusal of application—Right of appeal—Sections 9 (1) and (2), 10, 11, 15 (1).*

The appellant made an application to be registered as a citizen of Ceylon. Subsequently the Commissioner served a notice under Section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, intimating to the appellant that he had decided to refuse his application unless the appellant showed cause to the contrary within three months. The appellant did not show cause and, thereupon, the Commissioner in terms of Section 9 (2) of the Act refused the appellant's application and notified him accordingly.

Held, that the act done by the Commissioner under Section 9 (2) of the Act was purely administrative and that there was no right of appeal from such an order.

APPEAL from an order of the Commissioner for the Registration of Indian and Pakistani Residents.

S. Sharvananda, for the appellant.

M. Tiruchelvam, Crown Counsel, for the respondent.

Cur. adv. vult.

February 3, 1953. SWAN J.—

This is an appeal under Section 15 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, as amended by Act No. 37 of 1950. Learned Crown Counsel appearing for the respondent has taken a preliminary objection, to wit, that the appellant has no right of appeal. It was agreed that the preliminary objection should be considered first.

The appellant had on 24.12.1950 made an application to be registered as a citizen of Ceylon. On 29.2.1952 the Commissioner served a notice under Section 9 (1) intimating to the appellant that he had decided to refuse his application on the grounds set out in the schedule, unless the appellant showed cause to the contrary by letter within three months from the said date. The grounds of tentative refusal set out in the schedule read as follows :—

> " You have not proved that you are an Indian or Pakistani resident, no evidence having been offered that your origin or the origin of any ancestor of yours was in pre-partition British India or an Indian State. "

The appellant did not show cause by letter or otherwise ; and on 16.6.52 the Commissioner in terms of Section 9 (2) of the Act refused the appellant's application and notified him accordingly. Mr. Thiruchelvam contends that the Commissioner had no option in the matter ; that as the appellant had failed to show cause the Commissioner was bound by Section 9 (2) to refuse his application. He drew my attention to the wording of Section 9 (2) " shall make order refusing the application " which, he submits, are mandatory. He further submits that no appeal lies from an order of refusal made under Section 9 (2). Mr. Sharvananda says that Section 15 (1) is wide enough to cover an order of refusal made under Section 9 (2).

Section 15 (1) reads as follows :—

> " An appeal against an order refusing or allowing an application for registration may be preferred to the Supreme Court in the prescribed manner by the applicant or, as the case may be, by the person who lodged any objection which has been overruled by the order. "

I have considered the matter very carefully and have come to the conclusion that the objection taken by learned Counsel for the respondent is sound and must be upheld. To begin with one must realize that Indian and Pakistani residents have no right to claim Ceylon citizenship. The Act permits them to exercise the *privilege* of procuring registration as citizens of Ceylon. Section 6 sets out the conditions which have to be fulfilled by an applicant for registration. Section 7 (*a*) provides that the application should be in the prescribed form and should contain relevant particulars, and Section 7 (*b*) requires that it should be supported by affidavits. Upon receiving the application the Commissioner or his Deputy is required to refer the application to the investigating officer of the area in which the applicant claims to be ordinarily resident ; and the investigating officer is required to make such investigations as may appear to him to be necessary, and furnish a report to the Commissioner as to the nature of the investigations conducted by him, the facts which were disclosed to him in the course of such investigations, and his conclusions as to the correctness or otherwise of the particulars or statements set out in the application. Section 8 (4) provides that the report of the investigating officer shall be taken into consideration by the Commissioner in dealing with the application. Section 9 (1) provides that where the Commissioner

is of the opinion that a *prima facie* case has not been established he shall cause to be served on the applicant a notice setting out the grounds on which the application will be refused and giving the applicant an opportunity to show cause to the contrary within three months from the date of the notice. Section 9 (2) provides that if no cause is shown the Commissioner shall make order refusing the application.

I am of the opinion that the act done by the Commissioner under Section 9 (2) was purely administrative and that no appeal lies from such an order. It should be noted that even where the Commissioner thinks that the applicant has made out a case for registration he is not empowered to allow the application. Section 10 provides that he shall give public notice that an order allowing the application will be made unless written objections are received by him from any member of the public within a month from the publication of the notice. Where no such objections are received he is required by Section 11 to "forthwith make order allowing the application". It seems to me quite clear that an order made under Section 9 (1) or Section 11 is in the nature of an order nisi that becomes automatically absolute after the expiry of the stipulated period. The Commissioner has no discretion or option in the matter. He is bound in the one case to refuse, in the other case to allow the application. I am also of the opinion that when he makes such an order he is exercising a fundamentally administrative function, and against such an order there is no right of appeal, nor would this Court interfere upon an application for writs of *certiorari* and *mandamus*. In *B. Johnson & Co. (Builders) Ltd. v. Minister of Health* [1] the Court of Appeal pointed out the difference between a function which was purely administrative and one which was of a quasi-judicial nature. Lord Greene M.R. in the course of his judgment said :—

> "If the legislature chooses to mix, for the purpose of one essentially administrative process, a quasi-judicial element so as to make a sort of hybrid operation of it, one cannot expect lines of division to produce an entirely logical result. The quasi-judicial element must not be permitted to cause irruptions into a purely administrative sphere."

In the Act we are dealing with it seems to me to be quite clear that the Commissioner in making an order under Section 9 (2) or Section 10 is exercising an essentially administrative function. It is only when cause is shown by an applicant against an order made under Section 9 (2), or by a member of the public against an order made under Section 10, that a quasi-lis comes into being and quasi-judicial functions are super-imposed on the Commissioner. At the ensuing inquiry, or an inquiry initiated by the Commissioner under Section 13 the Commissioner must perform the quasi-judicial functions imposed on him as required by Section 14. I have no hesitation in holding that the right of appeal conferred by Section 15 (1) is only against an order made after an inquiry held as aforementioned.

The appeal is rejected.

Appeal rejected

[1] *(1947) 2 A.E.R. 395.*