

1957

*Present* : Sinnetamby, J.

A. MURUGIAH, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

*Citizenship Case No. 136—Application 2,103*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for registration thereunder—Piecemeal inquiry not permissible—Sections 9 (3) (a), 14 (7).*

Where the Commissioner holds an inquiry under section 9 (3) (a) of the Indian and Pakistani Residents (Citizenship) Act pursuant to a notice issued under section 9 (1) calling upon the applicant to satisfy him in regard to certain issues, it is his duty to adjudicate upon those matters all at the same time and not by piecemeal investigation. It is not open to him to hold against the applicant on one issue and not deal with the other issues on the ground that it is not necessary to answer them in view of his finding on the issue which he has already considered. Section 14 (7) of the Act contemplates one order, either allowing or refusing the application.

**A**PPPEAL under the Indian and Pakistani Residents (Citizenship) Act.

*S. Nadesan, Q.C.*, with *A. Deva Rajah*, for the applicant-appellant.

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

*Cur. adv. vult.*

March 12, 1957. SINNETAMBY, J.—

In this case the appellant sought registration under the Act in respect of himself and two minor children dependent on him.

After due inquiry by the Investigating officer the Deputy Commissioner served on the applicant a notice in terms of Section 9 (1) of the Act calling upon him to prove, (1) his residence from 1939 to 1942, (2) residence of his wife from January, 1939, to March, 1941, and from April, 1943, to June, 1946, (3) the residence of his children for certain stated periods, and (4) that he was permanently resident in Ceylon. The applicant showed cause and the Deputy Commissioner in terms of Section 9 (3) (a) made an order appointing the time and place for inquiry into these matters. The applicant appeared on the due date and the Deputy Commissioner opened his inquiry into item (1) only of the several matters which the applicant was called upon to establish. Having heard the evidence of several witnesses the Deputy Commissioner made order that the item (1) was proved. He then proceeded to fix a date for inquiry into the other matters. But before doing so he served another notice under Section 9 (3) (a) limiting the inquiry into the three matters which were not disposed of at the earlier inquiry. These matters were duly fixed for inquiry and the applicant led further evidence. At the conclusion of the hearing the Deputy Commissioner reserved his order and finally held that the applicant had failed to prove the requirement in respect of his wife's residence but did not give his findings in respect of the other matters fixed for inquiry. He did not deliver his order in respect of items (3) and (4) of the original notice under Section 9 (3) (a).

Presumably, the Deputy Commissioner did not consider it necessary to adjudicate upon all these matters in view of his findings in respect of the residence of his wife. The learned Counsel who appeared for the appellant, apart from contesting the correctness of the Deputy Commissioner's findings in respect of the wife's residence, also contended that the proceedings were a nullity inasmuch as the Deputy Commissioner held a piecemeal investigation into the application. Section 9 certainly does not contemplate anything but one inquiry and one order. The matters which an applicant may be called upon to prove are invariably so connected with each other that piecemeal adjudication would cause prejudice. The evidence, for instance, in respect of husband's residence would certainly be very relevant and pertinent to the question of his wife's residence, and to consider separately the evidence in respect of the wife's residence independent of the evidence of the husband's residence may in certain cases lead to a wrong conclusion. In this case it is not known whether the Deputy Commissioner in considering the issues raised in requirements 2, 3 and 4 of the notice under Section 9 (3) (a) took into consideration the evidence in respect of requirement (1). The scheme of the Act contemplates one application and one adjudication in respect of the matters which an applicant must prove before he can proceed in a claim for registration. Section 7 provides for the application being in a prescribed form containing all relevant particulars and answers for which provision is made in the form.

Section 7 (2) provides for the applicant including in his application a request that his wife and minor children dependent on him should be registered simultaneously with himself. This is subject to certain

exceptions. If the applicant failed to prove the residence of his wife and children at the time of the application he is permitted to do so at any time before the final disposal of his application by Section 7 (2) (6). Section 8 provides that the Commissioner shall refer the application "for verification of particular statements therein" to an Investigating Officer. Section 9 (1) provides that where the Commissioner is of opinion that the *prima facie* case has not been established he shall cause to be served on the applicant a notice setting out the ground on which the application will be refused giving the applicant an opportunity to show cause to the contrary. In this connection, it is relevant to consider the provisions of Section 6 which stipulates what conditions have to be established before an application can be allowed. *Inter alia* the applicant must establish that apart from himself and his wife, his dependent minor children were also resident in Ceylon.

It is obvious that the inquiry must take place in respect of the residence not only of the applicant but also of his wife and children. Section 14 (7) prescribes what the Commissioner should do at the close of the inquiry. One of two alternative courses are open to him: if he is satisfied that "there is a *prima facie* case" established he has to take the steps prescribed by Section 10. But if he is not so satisfied he may "make an order refusing the application". There is also provision in the same Sub-Section that the order must be made forthwith "upon the conclusion of the inquiry". But if he is unable to do so he may give a date on which he proposes to make the inquiry and shall make the order on that day.

It is obvious, therefore, that the Act contemplates one inquiry, considers an application as one application, and contemplates only one order by the Commissioner. The object of this, it will be reasonable to assume, is to avoid a multiplicity of inquiries which apart from additional costs which applicants may have to incur would result in the Commissioner not having before him all the facts in regard to all the matters which an applicant must establish before he can successfully obtain registration. In my view the Commissioner in not complying with the requirements of the Act must be held to have failed to hold a proper inquiry. The learned Crown Counsel stated that he could not contend the steps taken by the Commissioner were in accordance with the law. What is still more unsatisfactory is that the Deputy Commissioner imagined that his conclusions in regard to requirement (2) was conclusive and final, and that, therefore, it was not necessary for him to give his findings in regard to requirements (3) and (4). He did not appreciate that his findings in regard to requirement (2) may be reversed in an appeal. The appeal comes up before this Court without any findings by the Deputy Commissioner on requirements (3) and (4). It is not open to a Commissioner to act in that way.

I accordingly set aside the order of the Deputy Commissioner and send the case back for steps to be taken in accordance with the law. The appellant will be entitled to costs of appeal which is fixed at Rs. 105.

*Order set aside.*