

1955                    *Present* : Basnayake, A.C.J., and Gratiaen, J.

H. E. TENNEKONE (Commissioner for the Registration of Indian and Pakistani Residents), Petitioner, and P. K. DURAISWAMY, Respondent

*S. C. 150*—*In the matter of an Application for Conditional Leave to Appeal to the Privy Council in re an Application made under section 7 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949*

*Privy Council*—*Conditional leave to appeal—Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, s. 15—Judgment of Supreme Court—Right of appeal therefrom—“Civil suit or action”—Appeals (Privy Council) Ordinance (Cap. 85), s. 3, Rule 1 (b) of Schedule.*

A judgment given in an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act is a judgment in a “civil suit or action in the Supreme Court” within the meaning of section 3 of the Appeals (Privy Council) Ordinance.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*M. Tiruchelcam*, Deputy Solicitor-General, with *V. Tennekoon*, Crown Counsel, for the Respondent-Petitioner.

*Walter Jayawardena*, with *S. P. Amerasingham*, for the Appellant-Respondent.

*Cur. adv. vult.*

December 20, 1955.    BASNAYAKE, A.C.J.—

At the conclusion of the argument of this application for conditional leave to appeal to the Privy Council, we made order allowing the application and reserved our reasons to be delivered on a later date.

It is common ground that the question involved in the appeal is one which, by reason of its great general or public importance, ought to be submitted to Her Majesty the Queen in Council for decision.

The only question in dispute was whether an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (hereinafter referred to as the Act) comes within the ambit of section 3 of the Appeals (Privy Council) Ordinance (hereinafter referred to as the Ordinance). That section reads :

“ From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council against the judgments and orders of such Court shall be subject to and regulated by—

- (a) the limitations and conditions prescribed by the Rules set out in the Schedule, or by such other Rules as may from time to time be made by His Majesty in Council; and
- (b) such general Rules and Orders of Court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force ”.

Learned Counsel for the respondent opposed the application on the ground that the judgment from which the applicant sought to appeal was not a judgment in a “ civil suit or action in the Supreme Court ”. He relied on certain decisions of this Court in which applications for leave to appeal were refused. I shall presently refer to those decisions. But before I do so I think I should refer to the relevant statute law by which the right of appeal to the Privy Council has been granted and regulated since its grant.

The right of appeal to the Privy Council was granted by section 52 of the Charter of Justice of 1833 (hereinafter referred to as the Charter), the relevant portion of which reads as follows :—

“ And we do further grant, ordain, direct and appoint that it shall be lawful for any Person or Persons being a Party or Parties to any Civil Suit or Action depending in the said Supreme Court to appeal to Us, Our Heirs and Successors in Our or Their Privy Council against any final Judgment, Decree, or Sentence, or against any Rule or Order made in any such Civil Suit or Action, and having the effect of a final or definitive Sentence ”.

The exercise of that right was at first regulated by the Charter itself and later, till their repeal by the Ordinance, by section 42 of the Courts Ordinance and section 779 of the Civil Procedure Code. Finally in 1909, when the Ordinance was enacted in order to bring about uniformity of practice in all the Colonies, the provisions of the Courts Ordinance and the Civil Procedure Code were repealed. The history of the legislation shows that the Ordinance was merely re-enacting the already existing legislation in a slightly different form and in a form capable of easy revision of the procedural aspects of it.

An examination of the decisions of this Court as to the meaning and scope of the words "civil suit or action" in the Charter, the legislation that was repealed by the Ordinance, and the Ordinance itself, shows that the question that arises for decision is not entirely free from doubt. It also reveals that there are two conflicting lines of decisions. I shall first refer to the line of decisions on which Counsel for the respondent relies.

In the case of *Sockalingam Chetty v. Manikam*<sup>1</sup>, this Court, following the decisions of *In re Ledward*<sup>2</sup>, *In re Keppel Jones*<sup>3</sup>, and *In re De Vos*<sup>4</sup>, held that there was no right of appeal to the Privy Council from a judgment of the Supreme Court in insolvency proceedings. In *Soertsz v. Colombo Municipal Council*<sup>5</sup>, it was held that there was no right of appeal to the Privy Council from a judgment of the Supreme Court on a case stated under section 92 of the Housing and Town Improvement Ordinance. That decision was followed in the case of *R. M. A. R. A. R. R. M. v. The Commissioner of Income Tax*<sup>6</sup>, and *Settlement Officer v. Vander Poorten et al.*<sup>7</sup>. In the latter case it was held that no appeal lies as of right to the Privy Council from an order made by the Supreme Court dismissing an appeal from an order of the District Court made in the exercise of a special jurisdiction vested in it under the Waste Lands Ordinance.

I shall next refer to the line of decisions on which the petitioner relies. The first of that line of decisions is *Subramaniam Chetty v. Soysa*<sup>8</sup>, where it was held that proceedings under section 282 (2) of the Civil Procedure Code to have a sale in execution set aside on the ground of a material irregularity in conducting it, was a civil suit or action for the purpose of the Ordinance. The next is the case of *In re Goonesinha*<sup>9</sup> where it was held that an application for a writ of certiorari, being an application for relief or remedy obtainable through the Court's power or authority, constitutes an action and comes within the ambit of the Ordinance. In the case of *Controller of Textiles v. Mohamed Miya*<sup>10</sup>, a similar application for leave to appeal to the Privy Council was granted, but the question whether proceedings for a writ of certiorari come within the ambit of the expression "civil suit or action" does not appear to have been decided. But in the later case of *G. S. N. Kodakan Pillai v. P. B. Mudanayake*<sup>11</sup>, another application for leave to appeal from an order granting a writ of certiorari, it was held that such proceedings came within the scope of the expression "action". The last of this line of cases is *Attorney-General v. V. Ramaswami Iyengar*<sup>12</sup> where it was held by my brother Gratiaen that a judgment of this Court in an appeal under section 43 of the Estate Duty Ordinance is a judgment in a civil suit or action.

In this state of the decisions of this Court I formed the view, though not without hesitation, that the better course would be to grant the leave applied for. I was influenced largely by two considerations—one being that leave has been previously granted by this Court in the case of an

<sup>1</sup> 32 N. L. R. 65.

<sup>2</sup> 3 Lorenz 234 (1859).

<sup>3</sup> (1877) Ram. 379.

<sup>4</sup> (1899) 2 Broune 331.

<sup>5</sup> 32 N. L. R. 62.

<sup>6</sup> 37 N. L. R. 417.

<sup>7</sup> 43 N. L. R. 456.

<sup>8</sup> 25 N. L. R. 314.

<sup>9</sup> 41 N. L. R. 75.

<sup>10</sup> 49 N. L. R. 105.

<sup>11</sup> 51 N. L. R. 350.

<sup>12</sup> 55 N. L. R. 572.

appeal under this very Act, in the case of *Badurdeen v. Commissioner for the Registration of Indian and Pakistani Residents*<sup>1</sup>, without objection being taken either in this Court or in the Privy Council, and the other that the question that arises for decision is admittedly one which by reason of its great importance should be submitted to Her Majesty in Council for decision.

GRATIAEN, J.—

At the conclusion of the argument, we over-ruled the objection that the order of this Court dated 18th February 1955 under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (as amended in 1950) had not been made in "a civil suit or action". It was conceded that the question involved in the appeal was "of great general or public importance". Accordingly, we exercised our discretion in favour of the petitioner under Rule 1 (B), and granted conditional leave to appeal to Her Majesty in Council. I shall now set out my reasons for holding that the proceedings before this Court under the Act constituted a "civil suit or action" within the meaning of the Appeals (Privy Council) Ordinance.

The Deputy Commissioner had refused the respondent's application for the registration of himself, his wife and minor children as citizens of Ceylon under the Act. The respondent appealed to this Court against the Deputy Commissioner's order and the present petitioner (as Commissioner) was made a party to the appeal in accordance with established practice; vide *Karuppanan's case*<sup>2</sup>. The appeal was in due course allowed by Sansoni J. and myself, and the present petitioner was directed to take appropriate action under section 14 (7) on the basis that a *prima facie* case for registration had been established. This is the order (reported in *56 N. L. R. 313*) against which the petitioner seeks leave to appeal to Her Majesty in Council.

In refusing the respondent's application for registration as a citizen of Ceylon, the Deputy Commissioner had performed a judicial function, but it may be conceded that the proceedings before him, as a statutory tribunal, did not at that stage constitute a "civil suit or action". Nevertheless, a person aggrieved by a refusal of his application has a remedy by way of appeal to this Court, which is then empowered in an appropriate case to enter a mandatory decree directing the Commissioner (as respondent to the appeal) to take further steps under the Act on the basis that the aggrieved person (as appellant) is *prima facie* entitled to the benefit of registration as a citizen of this country. This decree fundamentally affects the civil status of the person concerned and, with great respect to my Lord the Acting Chief Justice, I had no hesitation in reaching the conclusion that the parties to the appeal were parties to "a civil suit or action in the Supreme Court" within the meaning of the Appeals (Privy Council) Ordinance.

In this context, the words "civil suit or action" stand primarily in contradistinction to "criminal" proceedings. In addition, they exclude judgments and orders made by the Supreme Court in the exercise of a

<sup>1</sup> *52 N. L. R. 354*.

<sup>2</sup> (1953) *54 N.L.R. 481* at 484.

statutory jurisdiction which is merely of a consultative or administrative character or in proceedings which can be equated to arbitration proceedings. The present application related to an order for a mandatory decree affecting civil rights and therefore falls within the ambit of the Ordinance. There is no earlier ruling of this Court which compels us to refuse the remedy of an appeal to Her Majesty in Council.

*Application allowed.*

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