

In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

V. L. WIRASINHA, Commissioner for the Registration of Indian and Pakistani Residents, Colombo *Appellant*

AND

MOHAMED MOHIDEEN ABDUL CADER . . . *Respondent.*

10 **Case for the Respondent.**

1. This is an appeal from the judgment and decree of the Supreme Court of the Island of Ceylon (Basnayake, J.) dated the 18th May, 1951, allowing the Respondent's appeal under Section 15 of the Indian and Pakistani Residents Citizenship Act, No. 3 of 1949 (hereinafter referred to as "the Act") against an order made by the Appellant under Section 14 (7) (b) of the Act dated the 7th July, 1950, refusing the Respondent's application under Section 4 of the said Act for the registration of himself his wife and his three daughters as citizens of Ceylon.

20 2. The Act, the material provisions of which are annexed to the Respondent's case in *The Commissioner for the Registration of Indian and Pakistani Residents, Colombo v. Mohideen Abdul Cader Badurdeen* (Privy Council Appeal No. 34 of 1951), provides for the granting to Indian and Pakistani residents in Ceylon of the status of citizens of Ceylon by registration, upon the conditions and in the manner provided by the Act. The conditions for allowing any application for registration are laid down by Section 6. In particular Section 6 (2) (ii) requires the applicant to produce sufficient evidence to satisfy the Commissioner—

30 "where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)) that his wife has been ordinarily resident in Ceylon, and in addition that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent."

The Appellant held that the requirements of this subsection were not satisfied unless—

(A) the wife of an applicant had been resident in Ceylon from the date of her marriage or from the 1st January, 1939, whichever was later, and

(B) each minor child had been resident from 1st January, 1939, or the date of birth whichever was later.

The issue for determination in this appeal is whether the Appellant was right in so holding or whether Basnayake, J., was right in holding that the requirements of the section were satisfied if at the date of the application the wife and minor children had a settled abode in Ceylon with the intention of remaining there permanently and if also the minor children during their period of residence in Ceylon were dependent on the applicant.

pp. 1-7.

3. On the 15th November, 1949, the Respondent applied under Section 4 of the Act for the registration as citizens of Ceylon of himself, his wife Seyed Ahamed Ammu Salma, his daughter Abdul Cader Zakinathum Niza born on the 13th June, 1940, his daughter Abdul Cader Nustath 10 Jahan Begum born on the 23rd December, 1942, and his daughter Abdul Cader Refeequa Begum, born on the 1st February, 1947. In the course of his application he stated that he was an Indian resident ; that he had been continuously resident in Ceylon during the period of seven years commencing on 1st January, 1939, and ending on 31st December, 1945 ; and that he had been continuously resident in Ceylon from 1st January, 1946, to the date of this application. In the particulars attached to the said application which he verified by affidavit, the Respondent set out the following places and periods of residence in Ceylon from January, 1939, to the date of this application with reference to himself, his wife and his minor children 20 respectively :—

p. 7.

(A) *Respondent* : 357 Dam Street, Colombo—3 years from 1939 to 1941 ; 80 New Moon Street, Colombo—4 years from 1942 to 1946 ; 257 Messenger Street, Colombo—1 year 1947 ; 104 Messenger Street, Colombo—2 years from 1948 to 1949.

(B) *Respondent's Wife* : 57 Messenger Street, Colombo—1 month, December 1947 ; 104 Messenger Street, Colombo—1 year 10 months from 1948 to the date of the application.

(C) *Respondent's three daughters* : 57 Messenger Street—1 month December 1947 ; 1 year and 10 months from January 1948 30 until the date of the application.

p. 8.

4. On the 6th February, 1950, the Appellant caused to be served on the Respondent a notice under Section 9 (1) of the Act that he had decided to refuse his application unless he showed cause to the contrary within a period of three months from the said date by a letter addressed to the Appellant. The ground of refusal was stated as follows :—

“ That your wife and minor children have not been ordinarily resident in Ceylon.”

p. 9.

5. On the 20th March, 1950, the Respondent addressed a letter to the Appellant requesting that his application for registration be allowed and 40 stating that (1) his wife had resided with him in Ceylon from 1939 to the end of 1941 when she was evacuated to India because of the threat of air raids ; (2) between 1943 and 1947 his wife and family came to Ceylon on a number of occasions and stayed with him for two or three months at a time but that they could not stay longer for want of accommodation as it was practically impossible to secure a house at that time ; (3) that in 1947 he had been able to secure a house and from that date his wife and family

had been resident with him in Ceylon ; (4) that in his application he had omitted to mention that his wife had resided in Ceylon during the period 1939 to 1941.

6. The report of the Investigating Officer contained the following passage :— p. 39, l. 30.

“ Documents in proof of his residence in Ceylon from 1944 were produced and are submitted with the application.

“ Married in 1932. Wife and children are residing permanently in Ceylon from December 1947 and are with him at address.”

10 7. The Appellant held an inquiry on the 15th May, 1950, and the 26th June, 1950. On the latter date the Respondent called as a witness one Royal who deposed (*inter alia*) as follows :— pp. 10-11.

20 “ I used often to accompany my wife on visits to applicant’s wife. On such occasions I used to see applicant’s wife at his house. In December, 1939, and earlier, when I contested the San Sebastian Ward, applicant’s wife was very useful to me in canvassing the votes of Muslim ladies of the ward. The polling was about 8th December, 1939. That was the last time I contested a Municipal Election. I cannot give definite dates between which or periods in which applicant’s wife was present in Ceylon. Applicant’s wife has been living at Messenger Street since December, 1947. I have often seen applicant’s wife there since December, 1947, but cannot be certain that she never went to India since then.” p. 10, l. 37.

8. On the 7th July, 1950, the Appellant made an order under Section 13 (7) of the Act refusing the application on the grounds set out in paragraph 2 hereof. The order contained the following passages :— pp. 12-13.

“ The applicant has definitely not proved that his wife and children were ordinarily resident in Ceylon before December, 1947.” p. 12, l. 22.

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30 “ I am prepared to grant that the applicant’s wife and children were ordinarily resident in Ceylon on the date of the application.” p. 12, l. 33.

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40 “ The latter part of section 6 (2) (ii) itself provides the interpretation of the period of the wife’s residence required. This section requires that dependent minor children should have been ordinarily resident while being so dependent. Clearly a minor child should have been ordinarily resident in Ceylon at every point of time at which he was dependent on the applicant, not only at the time of application. It would be absurd to require children’s ordinary residence over such a period but the wife’s ordinary residence only at the date of the application. The wording of the section does not militate against the interpretation that the wife should have been ordinarily resident from the date of marriage or from 1.1.39, whichever was later ; and in view of the requirement regarding children’s residence, I am convinced that this is the correct interpretation.” p. 13, l. 13.

9. On the 6th October, 1950, the Respondent filed a petition of appeal to the Supreme Court pursuant to Section 15 (1) (a) of the Act. pp. 14-15.

pp. 16-17.

10. The judgment of Basnayake, J., in the Supreme Court included the following passage :—

p. 16, l. 25.

“ The applicant has the special residential qualifications required by section 3 of the Act and the sole question that arises on this appeal is whether the conditions prescribed in section 6 (2) (ii) exist. The Commissioner has refused the application on the ground that the applicant is not entitled to succeed unless he is able to prove—

(A) that his wife has resided here since at least 1st January, 1939, and 10

(B) that his minor children dependent on him had been resident here since their birth.

In my judgment in the appeal of Mohideen Abdul Cader Badurdeen (Application No. 1114 of 1950), I have pointed out that the Commissioner's construction of the enactment is wrong and indicated the true meaning of the provision. In the instant case the Commissioner states: ‘ I am prepared to grant that the applicant's wife and children were ordinarily resident in Ceylon on the date of the application.’

On that finding of fact the applicant is entitled to succeed.” 20

p. 18.

The learned judge therefore allowed the appeal as aforesaid. A decree was passed accordingly.

p. 19.

11. On the 28th May, 1951, the Appellant applied to the Supreme Court for conditional leave to appeal to His Majesty in Council. Conditional leave was granted on the 8th June, 1951, and final leave on 3rd July, 1951.

p. 21.

p. 25.

12. The Respondent respectfully submits that this appeal should be dismissed with costs for the following amongst other

### REASONS.

- (1) BECAUSE the words “ ordinarily resident ” in Section 6 (2) (ii) of the Act should be interpreted according to their ordinary meaning. 30
- (2) BECAUSE there are no words in the subsection or elsewhere in the Act imposing a requirement that the wife or minor children of an applicant should have been resident in Ceylon for a particular period of time.
- (3) BECAUSE the subsection only requires that the wife of an applicant should at the date of the application have been ordinarily resident in Ceylon and that each minor child dependent on the applicant should have been ordinarily resident in Ceylon while being so dependent. 40
- (4) BECAUSE the aforesaid requirements were satisfied in the present case.
- (5) BECAUSE the judgment of Basnayake, J., was right and should be upheld.

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