Privy Council Appeals Nos. 34 *and* 35 *of* 1951

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

v.

Mohideen Abdul Cader Badurdeen - - - - - *Respondent*

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

v.

Mohamed Mohideen Abdul Cader - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER, 1952

Present at the Hearing :

LORD NORMAND
LORD OAKSEY
LORD REID
SIR LIONEL LEACH

[*Delivered by* LORD OAKSEY]

These are two appeals which, though not consolidated, were heard together by their Lordships from two decrees of the Supreme Court of Ceylon dated 24th May, 1951 (Basnayake, J.) reversing orders of the Commissioner for the Registration of Indian and Pakistani Residents dated 7th July, 1950, by which the Commissioner (now the appellant) refused the applications of the respondents for registration as citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (hereinafter referred to as "the Act").

The questions raised in the two appeals are identical in point of principle, namely, whether an applicant who is a married man permanently settled in Ceylon can be registered as a citizen although his wife, though ordinarily resident in Ceylon at the date of his application, has not been so resident for the seven years prior to 1st January, 1946, nor at all times since their marriage and his minor children have not been ordinarily resident in Ceylon during the whole period of their dependency upon the applicant.

In appeal No. 34 the applicant's wife had been ordinarily resident with the applicant for a period of one year and eight months before the date of his application (on 19th November, 1949) and was so resident at the date of his application, and his minor children, aged 12, 10 and 5 respectively, had been ordinarily resident in Ceylon with him since March, 1948, but had been dependent upon him since their birth. In appeal No. 35 the period of the wife's ordinary residence in Ceylon was one year and eleven months before her husband's application dated 15th November, 1949, and the period of the minor children's ordinary residence in Ceylon

was for the same length of time, but they had been dependent on him since their births on 13th June, 1940, 23rd December, 1942, and 1st February, 1947, respectively.

The question depends upon the true interpretation of the Act and Regulations made thereunder and in particular upon the interpretation of sections 6 (2) (ii) and 22, which are, so far as material, as follows:—

> " 6. It shall be a condition for allowing any application for registration under this Act that the applicant shall have—
>
> (1) first proved that the applicant is an Indian or Pakistani resident and
>
> * * * *
>
> (2) in addition, produced sufficient evidence . . . . to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant, namely—
>
> * * * *
>
> (ii) where the applicant is a male married person,
>
> * * * *
>
> 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 ; "
>
> " 22. In this Act, unless the context otherwise requires,—
>
> * * * *
>
> ' Indian or Pakistani resident ' means a person—
>
> (*a*) whose origin was in any territory which, immediately prior to the passing of the Indian Independence Act, 1947, of the Parliament of the United Kingdom, formed part of British India or any Indian State, and
>
> (*b*) who has emigrated therefrom and permanently settled in Ceylon,
>
> and includes a descendant of any such person ; "
>
> * * * *

It was contended on behalf of the appellant Commissioner before their Lordships' Board, firstly, that having regard to the definition of " Indian and Pakistani resident " in section 22 of the Act and the regulations which require the applicant to state the period of ordinary residence in Ceylon of the applicant's wife and minor children since the 1st January, 1939, it must be taken to be the general policy of the Act that only applicants who had permanently settled with their families in Ceylon could apply for citizenship. Secondly, that this policy is carried out in section 6 (2) (ii) of the Act by the provision that the wife of a married applicant must have been ordinarily resident in Ceylon and that the minor children must have been ordinarily resident while dependent upon the applicant and therefore that a male married applicant otherwise qualified cannot be registered unless his wife has ordinarily resided in Ceylon from the date of her marriage or since 1st January, 1939, whichever is the later date, and unless his minor children have been ordinarily resident in Ceylon since the date of their births during the whole period of their dependency on the applicant.

Their Lordships are unable to accept these contentions. In their opinion the reasons stated in the able judgments of Mr. Justice Basnayake in the Supreme Court of Ceylon afford the true interpretation of section 6 (2) (ii), which is undoubtedly a difficult section.

It is true that the form prescribed by the Regulations does require a statement by the applicant of the period of ordinary residence in Ceylon of the applicant's wife and of his dependent children since 1st January, 1939, or from the date of the marriage or of birth as the case may be, and that section 21 of the Act provides that every regulation " shall be as valid

and effectual as though it were herein enacted ". But the mere reference to the date 1st January, 1939, in the relative form does not, in their Lordships' opinion, make it necessary or proper to read into section 6 (2) (ii) a provision that the applicant's wife must have been ordinarily resident in Ceylon since that date. For the forms applicable in cases where the residence of dependents at the date of the application only is admitted to be sufficient, contain a similar requirement (see section 4 (2) (*b*) and 4 (3) and forms I.C. and I.E. for example). Their Lordships agree with Mr. Justice Basnayake in thinking that the date to which section 6 (2) (ii) most naturally refers is the date of the application, and that the past tense used in the words " has been ordinarily resident " is quite appropriate when speaking of residence at a particular date.

In their Lordships' opinion there are other insuperable difficulties in the way of the appellant's construction. If the words " while being so dependent " in section 6 (2) (ii) mean " during the whole period of the child's dependence " it is obvious and is conceded that in the case of a child born before 1st January, 1939, who had been dependent during the whole period of his life on his father the section might require that the child should have been ordinarily resident in Ceylon for a longer period than its father. Moreover, section 4 of the Act, which provides ((2) (*a*)) that an applicant may procure the registration of his wife in addition to his own whether or not she herself is possessed of the special residential qualification which the applicant must possess and the registration of any minor children who may be ordinarily resident in Ceylon and dependent on him, and section 4 (3) (*a*) which provides that the widow of any Indian or Pakistani resident who dies after qualifying for registration may exercise the privilege of applying for registration which her husband could have exercised provided that she has continued to be resident in Ceylon after her husband's death to the date of her application, but regardless of any previous residence, appear to their Lordships to be inconsistent with the construction of the Act for which the appellant contends. It would, in their Lordships' view, be an extraordinary provision that the husband should have to prove, for the purpose of his own registration, that his wife had been ordinarily resident in Ceylon for a longer period than it was necessary to prove in applying for his wife's registration.

There is no express provision in the Act that the husband's permanent settlement in Ceylon must have been achieved in company with his wife and children or that the minimum period of uninterrupted residence required for the husband has any application to his wife or children.

For these reasons, therefore, and for the reasons so clearly stated by Mr. Justice Basnayake, their Lordships will humbly advise Her Majesty that both these appeals should be dismissed. The appellant must pay the costs of the appeals.

(16565) Wt. 8096—1 110 10/52 D.L./PI/3

In the Privy Council

V. L. WIRASINHA, THE COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, COLOMBO

v.

MOHIDEEN ABDUL CADER BADURDEEN

V. L. WIRASINHA, THE COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, COLOMBO

v.

MOHAMED MOHIDEEN ABDUL CADER

DELIVERED BY LORD OAKSEY

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1952