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13, 1953

No. 7 of 1952

# In the Privy Council.

UNIVERSITY OF LONDON  
W.C.1.

-5 OCT 1956

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON.

INSTITUTE OF ADVANCED  
LEGAL STUDIES

14237

BETWEEN

GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI *Appellant*

AND

1. PUNCHI BANDA MUDANAYAKE
2. VICTOR LLOYD WIRASINGHA and
- 10 3. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM *Respondents.*

## Case for the Appellant.

RECORD.

1. This is an appeal from an Order dated the 28th September, 1951, of the Supreme Court of Ceylon (Jayetileke, C.J., and Pulle and Swan, J.J.) which quashed an Order dated the 2nd July, 1951, whereby the third Respondent, the Revising Officer for Electoral District No. 84 (Ruwanwella), directed the Registering Officer of that Electoral District to include the Appellant's name in the Register of Electors for the year 1950.

2. The Appellant is a member of the Indian Tamil Community (one of the communities which form part of the population of Ceylon), who immigrated into Ceylon from India; who has settled down and become domiciled in Ceylon; who is a British subject; and whose name, from 1935 until the 1950 register was prepared, appeared in the Electoral Register.

3. The first Respondent is the Assistant Registering Officer for the said Electoral District No. 84 (Ruwanwella) to whom were assigned duties in connection with the steps to be taken for the revision of the Electoral Register of that district. The second Respondent is the Commissioner of Parliamentary Elections.

4. The appeal raises the question whether two Acts of the Ceylon Legislature, namely the Citizenship Act, No. 18 of 1948, and the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, are repugnant to Section 29 of the Ceylon (Constitution and Independence) Orders in Council 1946 and 1947, and, to the extent of such repugnance, void.

5. The Ceylon (Constitution and Independence) Orders in Council 1946 and 1947 are a consolidation of the Ceylon (Constitution) Order in

Council, 1946, and of certain amendments thereto made in 1947. In its amended form, which is applicable to this Case, Section 29 thereof runs as follows :—

“ 29.—(1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

“ (2) No such law shall—

- (a) prohibit or restrict the free exercise of any religion ; or
- (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other 10 communities or religions are not made liable ; or
- (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions ; or
- (d) alter the constitution of any religious body except with the consent of the governing authority of that body :

Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing 20 authority of that body.

“ (3) Any law made in contravention of sub-section (2) of this Section shall, to the extent of such contravention, be void.

“ (4) In the exercise of its powers under this Section Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island :

“ Provided that no Bill for the amendment or repeal of any of the provisions of this Order shall be presented for the Royal assent unless it has endorsed on it a certificate under the hand of the 30 Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House (including those not present).

“ Every certificate of the Speaker under this sub-section shall be conclusive for all purposes and shall not be questioned in any court of law.”

6. The contention of the Appellant is that, in the light of the history of Ceylon, and in particular of the long-standing conflicts between the different communities in the Island and of the precautions taken, in the 40 course of the various provisions made by His Majesty's Government in the United Kingdom for the grant to Ceylon of legislative power and of independence, to protect the interests of minority communities, the inference is inevitable that the Government of Ceylon, fearful lest the Indian Tamil Community, with support from India, should achieve a substantial increase in political power, has sought to destroy such political

power and rights as the Indian Tamil Community already possesses, and to achieve this destruction in violation of the spirit of the said Section 29 of the Ceylon (Constitution and Independence) Orders in Council 1946 and 1947 by the device of separately enacting the Citizenship Act, No. 18 of 1948, under which very few Indian Tamils were to have the status of citizenship, and the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, under which the right to vote was made to depend on citizenship.

7. The Tamils permanently resident in Ceylon belong, with few exceptions, to one or other of two communities: the Ceylon Tamils and the Indian Tamils. The Ceylon Tamils are the descendants of Indian immigrants of centuries ago, who settled in the northern and eastern parts of Ceylon and engaged in agriculture and fishing. The Indian Tamils began to come from India to Ceylon about 1837 as labourers, at first on coffee estates and later on tea and rubber estates. Census and other official publications show that until the coffee industry failed about 1880 the demand for Indian labour was seasonal, that few women or families came with the labourers to Ceylon, and that most of the labourers came for the crop and went home to India after the crop. From 1887 the tea plantations attracted Indian labourers. From the census reports of 1891 and 1901 it can be deduced that usually their families remained in India and that they themselves returned to India after their term of service. The census reports of 1911, 1921 and 1946, however, when compared with the earlier reports, show that after 1901 there was an increasing tendency for Indian Tamil labourers to bring their families with them and to settle permanently in Ceylon. The Ceylon Tamil Community now exceeds 800,000 and the Indian Tamil Community exceeds 700,000.

8. The Citizenship Act, No. 18 of 1948, one of the two Acts impugned in these proceedings, came into force on the 15th November, 1948. It confers citizenship of Ceylon by right of descent or by virtue of registration. With respect to a person born before the 15th November, 1948, it provides that he shall become a citizen of Ceylon by descent (except in the case of illegitimate persons) only if:

(A) his father (and also his paternal grandfather if he himself was born outside Ceylon) was or were born in Ceylon; or

(B) his paternal grandfather and great-grandfather were both born in Ceylon; and

(C) if he had by the law of any other country of which he was a citizen renounced such citizenship.

40 With respect to a person born on or after the 15th November, 1948, the Act provides that he shall only become a citizen of Ceylon by descent if at his birth his father is a citizen of Ceylon; if his birth, if outside of Ceylon, was registered in the prescribed manner; and if he had renounced any other citizenship.

9. Under the same Act, citizenship by registration may be conferred on any applicant of full age and sound mind who is and intends to continue to be ordinarily resident in Ceylon, if he is

(i) a person whose mother is or was, or if alive on the 15th November, 1948, would have been, a citizen of Ceylon by

descent, and who has been resident in Ceylon throughout a period immediately preceding his application of seven years if he be married or of ten years if he be unmarried ; or

(ii) the spouse, widow, or widower of a citizen of Ceylon and has been resident in Ceylon throughout one year immediately preceding application ; or

(iii) a person who, having been a citizen of Ceylon by descent, lost his citizenship by becoming a citizen of any other country in which he has been resident, and has renounced such other citizenship in accordance with the law of such other country, 10 provided the Minister does not decide to disallow such application on grounds of public policy.

The Minister also has a limited power under the same Act of granting in his discretion citizenship by registration to applicants who are persons of eminence or are British subjects to whom naturalisation had been granted in Ceylon under earlier laws.

The Act also provides for including minor children in a certificate of registration.

A certificate of registration confers from the date thereof the status of citizenship of Ceylon by registration, provided that the person named 20 in the certificate (unless a minor child) subscribes the prescribed oath or affirmation of citizenship and also, if he be not a British subject, of allegiance. The Act also deals with the loss of citizenship.

10. The effect of these two Acts, if they be valid, will be that any person born before the 15th November, 1948, and not already possessing the qualifications stated in paragraph 8 of this Case will have no possibility of becoming a citizen of Ceylon unless he is or becomes " a person of eminence " and the Government chooses to give him citizenship by registration under the provisions mentioned in paragraph 9 of this Case. (The rigour of this position may have been modified to some extent by an 30 Act, itself of doubtful validity, the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, under which application could be made for citizenship by registration on somewhat easier conditions ; but the right to apply under this Act came to an end on the 5th August, 1951.)

Such a person will thus always be deprived of the vote, no matter how long he resides in the Island nor how close his connexion therewith ; and moreover, his children and his children's children, since they will not be children of a citizen of Ceylon, will similarly remain voteless, however long they and their ancestors may have lived in Ceylon and however closely they may have identified themselves with the life of the Island. 40

11. Thus the result of the Citizenship Act was and (the Appellant submits) was intended by the Government to be that only a quite trifling proportion of the Indian Tamil Community should be able now or at any future time to become citizens of Ceylon. As British subjects resident in Ceylon, they had previously enjoyed full rights of citizenship, including, when qualified to vote, the right of voting in the election of members of the House of Representatives under the system of government established by The Ceylon (Constitution) Order in Council, 1946. They enjoyed the

franchise on conditions which were laid down by The Ceylon (State Council Elections) Order in Council, 1931, and were continued after the Soulbury Report, 1945 (Cmd. 6677 of 1945) (which in paragraph 223 had recommended that universal suffrage on the existing basis should be retained), by the Ceylon (Parliamentary Elections) Order in Council, 1946. The Soulbury Report in paragraph 238, considering the power of Ceylon to determine the conditions of the franchise, had described the franchise as “only a means to an end, and the end is to give people such a share of political power as may enable them to redress their grievances themselves. But their ability to do this involves the absence of any discriminatory legislation regarding the franchise and an adequate measure of enfranchisement.” Paragraph 239 shows that the Soulbury Commission had in mind the position of the Indian Community. The Appellant submits that Section 29 of The Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, is properly to be construed in the light of the history and in a way which affords an adequate protection of that position.

12. The other Act impugned in this Case, the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, which came into force on the 26th May, 1950, deprived of the franchise everyone who is not a citizen of Ceylon, with the result that almost the whole Indian Tamil Community were—if this Act be valid—disfranchised. The effect can be seen from the figures of registered voters on the registers in the eleven constituencies in which there are a substantial number of Indian Tamil residents, for the year 1947 and, after the amendment, for 1950. In most of the constituencies in the Island the number of registered electors increased between 1947 and 1950, and in some constituencies in which the number fell the fall was generally small; but in the eleven constituencies mentioned there was in each case a heavy fall, brought about almost wholly by a reduction in the number of Indian Tamil electors. The comparison (subject to possible small errors) between 1947 and 1950 in respect of these eleven constituencies is as follows :—

No.	Constituency Name	Fall in total number of electors	Fall in number of Indian Tamil electors	Number of Indian Tamils on 1950 Register
28	Nuwara Eliya ..	15,089	14,386	319
29	Talawakelle ..	16,384	16,290	244
30	Kotagala .. ..	9,641	10,054	137
31	Nawalapitiya ..	12,649	13,633	675
40 32	Maskeliya .. ..	15,734	17,388	203
76	Badulla .. ..	15,264	19,649	1,291
78	Bandarawella ..	379	4,586	275
79	Haputale .. ..	4,073	5,661	322
84	Ruwanwella ..	3,252	6,827	396
85	Dehiowita .. ..	1,764	5,037	177
89	Balangoda .. ..	7,338	9,786	811

It will be observed that the number of Indian Tamils registered in these constituencies has fallen from about 128,127 to about 4,850, or a loss of 96 per cent.

pp. 7 to 9.

p. 43, l. 42 to  
p. 44, l. 33.p. 7, ll. 21 to 24 ;  
p. 9, ll. 9 to 18.

p. 10, ll. 31 to 35.

pp. 11 to 12.

p. 25, l. 31 to  
p. 26, l. 42.  
p. 27, ll. 1 to 30.

pp. 13 to 23.

p. 23, ll. 16 to 20.

pp. 13 to 23.

p. 13, ll. 27 to 32.

p. 13, l. 33 to  
p. 15, l. 43.p. 15, l. 44 to  
p. 16, l. 12.p. 16, l. 12 to  
p. 17, l. 21.

p. 17, ll. 22 to 32.

13. The proceedings out of which this appeal arises began with a claim, duly made by the Appellant on the 22nd January, 1951, and addressed to the Registering Officer of the Electoral District, to have his name inserted in the register of electors for Electoral District No. 84 (Ruwanwella) in accordance with the Ceylon (Parliamentary Elections) Order in Council 1946, which entitled every British subject of full age possessing certain residential qualifications, and not suffering from any of certain specified disqualifications, to be registered as an elector if he was domiciled in Ceylon. The Appellant satisfied the requirements for registration in Ruwanwella as laid down in the said Order in Council, and contended that the Ceylon (Parliamentary Elections) Amendment Act, 1949, above mentioned, purporting to restrict the franchise to citizens of Ceylon, was *ultra vires* the Legislature and that the electoral qualifications required by law were therefore the qualifications laid down in the Order in Council of 1946, standing unamended. 10

14. On the 26th February, 1951, the first Respondent, as Assistant Registering Officer authorised to deal with the Appellant's claim to be registered, rejected it; and the Appellant, on the 8th March, 1951, appealed to the third Respondent, as Revising Officer. The appeal was supported by an affidavit, and the Registering Officer in an affidavit in reply contradicted only one statement in the Appellant's affidavit, viz., a statement which he took to mean that non-Sinhalese names had been deleted from the register without inquiry. The Registering Officer stated that the deletions were made on information gathered by enumerators that the disqualified persons were not citizens of Ceylon. 20

15. The third Respondent gave judgment on the 2nd July, 1951. He allowed the appeal, and directed the Registering Officer to enter the Appellant's name in the Ruwanwella register of electors for 1950.

In his reasons for judgment, the third Respondent stated the questions before him substantially as follows :— 30

(1) Whether the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, requiring the possession of the status of citizenship as defined by the Citizenship Act, No. 18 of 1948, as a condition of being an elector, is *ultra vires* the Legislature repugnant to Section 29 of the Ceylon (Constitution and Independence) Orders in Council 1946 and 1947, and therefore void.

(2) Whether the said Citizenship Act itself is similarly repugnant and void.

The third Respondent traced the legislative history leading up to these measures, quoting from the Soulbury Report 1945, and set out the wording and effect of the Citizenship Act, No 18 of 1948. After considering the terms of the said Section 29 and the nature of the protection thereby given, the third Respondent pointed out that, although the Citizenship Act does not expressly exclude persons of any community from citizenship, its effect is to disfranchise most, if not practically all, of the Indian Tamils. 40

- Taking into account (as their Lordships of the Judicial Committee, it is submitted, have approved) public general knowledge and evidence of the effect of the legislation, he thought it was clear that from 1931 the question of the franchise was very much in the forefront and that the Acts were an attempt to regulate the franchise to the advantage of the indigenous communities and to the disadvantage of the Indian Tamil Community. Although the impugned Acts did not require a two-thirds majority under Section 29 (4) of the Order in Council, they could still, in his view, be void if under the guise of dealing with one matter they encroached upon the field forbidden to Parliament by Section 29 (2). The effect and design of the Acts was, he held, to deprive of the franchise many of the Indian Tamil Community who had the franchise before, without affecting the electoral power of the indigenous communities; and there was no escape from the conclusion that the Acts were part of an electoral plan to reduce the electoral power of the Indian Tamil Community, and were therefore repugnant to the said Section 29 of the Order in Council. Accordingly the third Respondent answered the two questions which he had considered in the affirmative, and made an Order directing that the Appellant be registered as an elector.
- 10
16. No appeal lay from this Order; but the first and second Respondents, in proceedings in which the third Respondent and the now Appellant were made Respondents, severally applied to the Supreme Court for a mandate in the nature of a writ of certiorari quashing the decision of the third Respondent. The proceedings were consolidated by consent, and heard together.
- 20
17. In the proceedings before the Supreme Court, the now Appellant sought to put in affidavits by (1) P. Sundaram, advocate, Deputy President of the Senate, who from 1931 until 1936 had been Minister of Labour, Industries and Commerce; (2) V. E. K. R. S. Thondaman the leader of the Ceylon Indian Congress group in Parliament and the owner of estates employing over 2,000 Indian Tamils and C. V. Velupillai a member of Parliament, jointly; and (3) S. N. Subbiah a member of Parliament and President of the Badulla District Committee of the Ceylon Indian Congress.
- 30
18. These affidavits called specific attention to facts in the constitutional history of Ceylon, referred to a number of public documents, and exhibited the Report of the Donoughmore Commission, certain Sessional Papers, the Report of the Soulbury Commission, the Jackson Report on Immigration, the first Report of the Delimitation Commission, the form used by registering officers in 1950, Reports of Parliamentary Proceedings ("Hansard") and the Bulletin of Statistics showing the number of registered electors, the electoral registers for the eleven constituencies mentioned in paragraph 12 of this Case for 1947 and 1950 (and also for 1949 for one constituency where there had been a bye-election), and "Hansard" containing statements in Parliament by the Prime Minister and other Ministers. The affidavits also contained personal details showing the qualification of the deponents to speak to the matters set out, and giving facts within their own knowledge showing the effect on the Indian Tamil Community of the two Acts.
- 40

p. 17, ll. 32 to 48.

p. 18, l. 1 to  
p. 19, l. 17.p. 19, l. 18 to  
p. 23, l. 12.

p. 23, ll. 13 to 18.

pp. 1 to 5.

pp. 13 to 23.  
p. 36, ll. 15 to 16.

p. 38, l. 20 to  
p. 39, l. 41.

19. The Supreme Court held that these affidavits and the matters set out or referred to therein were inadmissible. The Appellant respectfully submits, firstly, that most of the matters contained in the affidavits relate to facts and knowledge of which the Court takes judicial notice, and that the affidavits conveniently collate and present such facts and knowledge, and, secondly, that where, as here, it is alleged that the legislative plan reflected in the two Acts is a plan to circumvent by indirect methods a clear restriction on legislative powers, it is not only permissible for the Court but its bounden duty to examine the evidence adduced in support of such an allegation. The Appellant has therefore printed the affidavits as an appendix to this Case, and at the hearing of the appeal will ask leave to refer thereto. 10

pp. 35 to 55.  
p. 37, l. 7 to  
p. 38, l. 19.

p. 39, l. 42 to  
p. 42, l. 23.

p. 42, ll. 24 to 38.

20. The judgment of the Supreme Court was delivered on the 28th September, 1951. The Court held that the question as to what is the law which lays down the qualification of voters in general, is a question going to the jurisdiction of the Revising Officer, and thus a fit matter for certiorari. In considering whether the third Respondent's decision of this question was *ex facie* erroneous, the Court examined the Ceylon (Constitution) Order in Council, 1946, Sections 29 and 37, and pointed out that a Bill relating solely to the franchise need not be reserved, and can be passed by a simple majority. The Court then referred to the Ceylon Independence Act, 1947, and the Ceylon Independence Order in Council, 1947, and pointed out that under the consolidated Order, the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, Bills are no longer reserved and Parliament can pass any legislation subject to the limitations contained in the said Section 29. 20

p. 42, l. 39 to  
p. 45, l. 11.

p. 45, ll. 12 to 19.

p. 45, l. 19 to  
p. 47, l. 46.

p. 47, l. 47 to  
p. 48, l. 26.

p. 48, l. 27 to  
p. 51, l. 23.

p. 51, ll. 23 to 28.

21. The Court then examined the Citizenship Act, No. 18 of 1948, the Ceylon (Parliamentary Elections) Order in Council, 1946, and the relevant amendments made thereto by the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949. The Court held that the substantial question, whether the provision requiring a voter to be a citizen of Ceylon instead of being, as previously, a British subject, is void, depends on the interpretation of the said Section 29 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. It considered that, on the authorities, the proper rule of interpretation is that the language of a statute must be permitted to speak for itself, and that it is only where expressions are ambiguous that reference can be made to extraneous materials. Canadian authorities were, the Court held, concerned with basically different problems; and American decisions relied on by the Appellant were held to be based on the language of the legislation they impugned. Accordingly the Court concluded that if Act 48 of 1949, read with Act 18 of 1948, does not (as a mere matter of construction) offend against the restrictions laid down in the said Section 29 of the Order in Council, it does not matter what effects they produce in their actual operation. 30 40

p. 51, l. 29 to  
p. 52, l. 26.

p. 52, l. 30 to  
p. 53, l. 20.

22. The Court therefore proceeded "to examine the two impugned Acts to see whether they violate the provisions of Section 29." As their language was, in its view, free from ambiguity, the Court held their practical effect and the motive for their enactment to be irrelevant. The Court



thought that the Attorney-General had rightly conceded that in the contemplation of Section 29 the Indians are a "contemplated community" and that citizenship and the franchise are "contemplated benefits"; but it held that a law can only be void under Section 29 (3) if it be established both (1) that the law makes persons of any community liable to disabilities or restrictions, and (2) that those disabilities or restrictions are ones to which persons of other communities are not made liable. Hence the Court considered that if disabilities or restrictions are based on the existence or non-existence of facts attaching to persons of all  
 10 communities the second test cannot be satisfied; and it thought equally that the first test is not satisfied merely because a large section of the Indian community is in fact disqualified, if that result is not the necessary legal effect of the language used. The statutory requirements as laid down apply by their terms equally to persons of any community.

23. For these reasons the Court held that the third Respondent had made a fundamental error in travelling outside the language of the Acts, in considering their effect on the Indian Tamil Community, and in treating the previously qualified Indians as having a vested right to the franchise, instead of paying attention to the inherent power of a sovereign  
 20 state to determine who its citizens should be and what qualifications they should possess to exercise the franchise. The Court accordingly declared the Acts valid, quashed the order of the third Respondent, and returned the record to him for a fresh determination.

p. 53, l. 21 to  
p. 54, l. 45.

p. 54, l. 46 to  
p. 57, l. 12.

24. The Appellant respectfully submits that the said Section 29 of the Order in Council was intended to provide, and on its proper construction does provide, an effective protection of the various communities in Ceylon; that the third Respondent was right in considering whether extraneous circumstances showed that the impugned Acts were designed to circumvent the constitutional safeguards and in coming to the conclusion that they  
 30 were so designed; that the Courts are entitled to look at the constitutional history of Ceylon and at evidence showing the intention of the legislators and the effect of legislation whenever it is alleged that legislation is outside the competence of a legislature; and that in the present case the impugned Acts are void under subsection (3) of the said Section 29.

25. The Appellant therefore submits that the Order of the Supreme Court was wrong and should be set aside and that the Order of the third Respondent should be restored for the following amongst other

pp. 35 to 55.  
pp. 13 to 23.

## REASONS.

- 40 (1) BECAUSE to determine whether a legislature has passed legislation which it is prohibited from passing, the Courts may have regard not only to the language of the impugned legislation but to external evidence of the design intention and effect of the legislation.
- (2) BECAUSE it was the design intention and effect of the Ceylon Citizenship Act, No. 18 of 1948, and the Ceylon

(Parliamentary Elections) Amendment Act, No. 48 of 1949, that operating together they should deprive of the franchise the great majority of the Indian Tamil Community who previously had the franchise, while not so affecting other communities.

- (3) BECAUSE the impugned Acts operating together make persons of the Indian Tamil Community liable to disabilities to which persons of other communities are not made liable.
- (4) BECAUSE the impugned Acts are therefore void under 10 Section 29 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.
- (5) BECAUSE the Orders in Council are capable of being construed as giving effective protection to Ceylon communities against discrimination in any guise.
- (6) BECAUSE the Supreme Court placed too narrow a construction on the Orders in Council.
- (7) BECAUSE the Supreme Court wrongly refused to look beyond the language of the impugned Acts to ascertain whether or not they were a colourable device for 20 prohibited discrimination.
- (8) BECAUSE as Revising Officer the third Respondent rightly held the impugned Acts to be void.

D. N. PRITT.

FRANK GAHAN.

S. CANAGARAYAR.

A P P E N D I X



IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

I N T H E M A T T E R of an application for a Mandate  
in the nature of a Writ of Certiorari under Section 42 of the  
Courts Ordinance (Cap.6)

PUNCHI BANDA MADANAYAKE, Assistant Registering Officer for  
Electoral District No.84 (Ruanwella), The Kachcheri,  
Kegalle. ... Petitioner

Vs.

S.C.Application

10 No.368 1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM, Revising  
Officer for Electoral District No.84 (Ruanwella),  
Kegalle  
2. Govinda Sellappah Nayar Kodakan Pillai of 220,  
Yatiantota. Respondents

-and-

I N T H E M A T T E R of an application for a Mandate  
in the nature of a writ of Certiorari under Section 42 of  
the Courts Ordinance (Cap.6).

20 VICTOR LLOYD WIRASINHA, Commissioner of Parliamentary  
Elections, Colombo. Petitioner

Vs.

S.C.Application

No.369.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM Revising  
Officer for Electoral District No.84 (Ruanwella),  
Kegalle.  
2. Govinda Sellappah Naya Kodakan Pillai of 220,  
Yatiantota. Respondents.

Copy Affidavit of Periannan Sundaram

30 I, PERIANNAN SUNDARAM of Croydon, Fairfield Gardens,  
Colombo 8, not being a Christian, do hereby solemnly,  
sincerely and truly declare and affirm as follows :-

Copy Affidavit  
of Periannan  
Sundaram dated  
21st August  
1951.

1. I was born in Ceylon in the Year 1890, and with the  
exception of the three years I spent in England as a student  
I have lived in Ceylon all my life.

2. I am a Tamil. My father and I were born in "Nillomally  
Estate, Madulkelle". My father's father was himself a Tamil  
who immigrated from South India into Ceylon.

40 3. I graduated at the University of Cambridge in the year  
1916 and obtained the Degrees of M.A. and LL.B. I was called  
to the Bar in England in the same Year.

Copy Affidavit  
of Periannan  
Sundaram dated  
21st August  
1951.

4. In 1916 I was admitted an Advocate of the Supreme Court of Ceylon and from that time I have been practising as an Advocate in Colombo. I am a Lecturer in Law at the Ceylon Law College.

5. The Constitution under which Ceylon was governed from the year 1931 to the Year 1947 is generally known as the Donoughmore Constitution, as it was framed on the Report of a Royal Commission of which the Chairman was Lord Donoughmore. The legislative body under that Constitution was named the State Council which consisted of 58 members.

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6. In the first General Elections that were held for the State Council in 1931 I was an elected Member representing the Constituency of Hatton from 1931 till 1936 and I functioned during those years as the Minister of Labour, Industries and Commerce.

7. Under the present Constitution which came into force in 1947 I was elected a Member of the Senate of which House I am today a Member and Deputy President and Chairman of Committees.

8. Since my return from England in the Year 1916 I have been taking an active part in politics in Ceylon. I know the political history of Ceylon during the British period, the life of the people of Ceylon, the conditions in which they live and the groups into which they divide politically.

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9. There are in the main two big linguistic groups in Ceylon; the Sinhalese speaking people who at present number above five millions and the Tamil speaking group who at present number two millions. About 90 per cent of these two groups speak only Sinhalese or Tamil as the case may be.

English is used as an official language of the country and according to the last Census of 1946, Table 36, the literate in English is 367, 622 out of a population of over Six Millions. This number is drawn from the Sinhalese speaking and Tamil speaking groups as well as the Dutch settlers and the British residents.

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10. The Tamil speaking group consists of Tamils who are mostly Hindus by religion and Muslims who are adherents of the Islamic faith. The Tamils in Ceylon divide into two groups called the Ceylon Tamils and the Indian Tamils.

11. The Ceylon Tamils are the people who have been living in Ceylon for centuries and they, in the main, occupied the Northern and Eastern parts of Ceylon. The chief occupation of these people is agriculture to a large extent and fishing to a smaller extent. They number according to the 1946 Census over 800,000.

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12. The Indian Tamils consist of people who had migrated from South India to Ceylon since about the year 1837 and according to the Census of 1946 number over 700,000. These people are mainly workers in the tea and rubber plantations; mostly they live in the central hilly parts of Ceylon which are not contiguous with the Northern and Eastern parts occupied by the Ceylon Tamils. In the parts that they occupy they live in the midst of the Sinhalese people.

Copy Affidavit  
of Perianan  
Sundaram dated  
21st August  
1951.

10 13. The different groups I have referred to above and cer-  
tain other groups are spoken of and are referred to as  
"communities" both in the common language and the political  
language of the country. One speaks of the "Sinhalese  
community", "the Ceylon Tamil community", "the Indian commu-  
nity", "the Muslim community" and so on. At times people speak  
of Indian community which may refer to the Indian Tamil  
community or a slightly larger body of people. Apart from  
the Indian Tamil community above referred to there are in  
Ceylon other Indians who are more or less temporarily  
20 resident and are engaged in trade or other occupation, but  
they are comparatively very small in number. The term  
"community" as referring to these different groups of people  
has been used in the historical and constitutional documents  
of Ceylon.

14. I attach hereto marked R1 copy of the Report of the  
Donoughmore Commission at page 91 of which occurs the follow-  
ing passage:

30 "The representatives of the various communities do not  
trust one another, and communal representation has not  
helped to develop an uniting bond or link. The minority  
communities are fearful that any preponderance of govern-  
mental power held by another community will inevitably be  
used against them and are keenly on the alert for signs  
of discrimination. In addition to the difficulty presented  
by the divisions and attitude of mind of the indigenous  
peoples there is the question of the representation of  
the European section of the population, which usually forms  
a community too small in numbers or too scattered in dis-  
tribution and too much isolated from the general life of  
40 the country to be likely to secure representation by any  
system of territorial election. In Ceylon we have a  
characteristic example of these difficulties. All the  
indigenous peoples of the land are collectively described  
by the term "Ceylonese". They consist of Low-country and  
Kandyan Sinhalese, of Ceylon and Indian Tamils, of Ceylon  
and Indian Moors, of Malays and of Burghers".

50 Chapter five proceeds to discuss the case for representation  
of the various communities and considers at pages 96 to 97 the  
case of the Indian Tamils. Throughout that Chapter the term  
"community" is used with reference to the different groups  
of people above referred to.

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15. I attach hereto marked R2 Sessional Paper XXXIV of 1929 and I refer to the use of the term "community" in paragraphs 21 and 24 of Governor Stanley's Despatch.

16. I attach hereto marked R3 a Report of the Soulbury Commission of 1945 to which is attached as Appendix I, Sessional Paper XIV of 1944 and I refer to the use of the term "communities" in paragraph V of Appendix I.

I also refer to the use of the term "community" in paragraphs 37, 56, 67, 71 and 87 of the main Report.

Paragraph 121 states: "Of these minorities the Ceylon Tamils number about 700,000. They constitute a compact and closely knit community dwelling chiefly in the Northern and Eastern Provinces".

10

Paragraph 123 of the same Report states: "The Indian Tamil community is of much later origin. These Tamils first came to the Island as labourers on the plantations in 1837 and the systematic recruiting of them began in 1839".

Paragraph 127 states: "The Muslim community numbering nearly 400,000 is scattered all over the Island.....by far the largest portion of this community is descended from Arab merchants and mariners....."

20

I also refer to the use of the term "community" in paragraphs 128, 129 and 130.

Paragraph 188 contains the following statements :-

"Distribution of political power between the various communities is determined by the extent of the franchise (with which is connected the question of immigration) and by the method of representation".

I also refer to the use of the term "community" in paragraphs 315 and 316.

30

17. The Indian Tamil community in Ceylon consists of immigrants from India and their descendants. Of the Indians who have migrated into Ceylon, by far the greatest portion consists of Indian Tamils who had come to work on the plantations. In the Census Reports, Administration Reports, and other State documents reference is made to Indian Immigration. Indian labourers began coming into Ceylon in or about the year 1837. Reference is made to this in Soulbury Report R3 in paragraph 123.

40

18. By its Act XIV of 1939 the Government of India prohibited the emigration of Indian labour to any British or foreign country. Thereafter an arrangement was entered into between the Government of India and the

Government of Ceylon whereby on the Government of Ceylon enacting Ordinance No. 3 of 1847 prohibiting the emigration of Indian labour to any such Colony, the Government of India permitted the emigration of its labour into Ceylon. The Government of India made this exemption as regards Ceylon by its Act XIII of 1847.

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19. It would appear that during the 19th century many, if not most, of the Indian Immigrants returned to their homes after a period of service in Ceylon.

10. 20. Ceylon Administration Report 1905, Volume I under the Head "Population" gives the following :-

"3. Indian Immigrants: The total number of Indian coolies who arrived in the Island in 1905 was 160,080 and of those who departed 65,513".

20 4. Table A gives the arrivals and departures of Indian Coolies in the period 1871-1905. The largest number of arrivals and of excess of arrivals over departures ever recorded in any year was in 1900, when the arrivals numbered 207,994 and the excess of arrivals over departures 95,058. The cause of this unprecedentedly large number of arrivals into the Island was, as explained in my Report for that year, due to the Railway and Irrigation works which were then under construction in the Island. The largest number of arrivals recorded in any year previous to 1900 was in 1876 and 1877 when a famine in South India compelled a large number of coolies to seek employment in Ceylon. From 1879 to 1886 the number of coolies going back to India exceeded the number of those arriving in Ceylon owing to the depression in the coffee planting industry due to leaf disease. The success of tea cultivation renewed the demand for coolies, and from 1887 the excess of arrivals over departures has continued to be large, except in 1899, when there was a deficit of 13,236 which, as stated in previous Reports, was due to good harvests in Southern India and to the closing of the Northern immigration route. In 1901, in spite of an unusually large number of departures, there was an excess of 2,260 arrivals.

40 5. From 1901 the arrivals, the departures, and the excess of arrivals over departures gradually increased till the year under report the arrivals amounted to 160,080 (more than double the number in the previous year), the departures to 65,513 and the excess of arrivals over departures to 94,567. This is attributed to severe drought and scarcity in South India and to increased agricultural activity, especially in connection with rubber cultivation in Ceylon.



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Table A - Arrivals and Departures of Indian Coolies  
1871 - 1905

<u>Year</u>	<u>Arrivals</u>	<u>Departures</u>	<u>Excess or Deficit</u>	
1871	88,529	58,610	29,919	
1872	80,121	74,035	6,086	
1873	89,012	80,629	8,383	
1874	125,156	89,727	35,429	
1875	86,712	95,519	-8,807	
1876	164,797	91,960	72,837	
1877	167,196	88,609	78,587	10
1878	101,093	91,188	9,905	
1879	76,897	80,750	-3,853	
1880	45,600	73,683	-28,083	
1881	53,837	63,240	-9,353	
1882	50,907	57,820	-6,913	
1883	39,204	52,962	-13,758	
1884	45,777	50,085	-4,308	
1885	47,794	48,863	-1,069	
1886	39,907	45,250	-5,343	
1887	72,660	55,121	17,539	20
1888	82,587	55,805	26,782	
1889	61,735	52,619	9,116	
1890	84,106	45,756	38,350	
1891	103,149	60,042	43,107	
1892	116,472	67,616	48,856	
1893	91,676	73,181	18,495	
1894	85,256	66,293	18,964	
1895	123,611	80,673	42,938	
1896	128,350	93,281	35,069	
1897	153,075	109,213	43,862	30
1898	136,864	105,706	31,158	
1899	68,393	81,629	-13,236	
1900	207,994	112,936	95,058	
1901	120,603	118,343	2,260	
1902	87,763	63,917	23,846	
1903	63,446	47,714	15,731	
1904	77,302	56,246	21,056	
1905	160,080	65,513	94,567	
Total	<u>3,327,711</u>	<u>2,554,534</u>	<u>773,177</u>	

21. At the end of 1901 the estimated total population of Indian Tamils on estates in Ceylon was 452,879. 40

22. The Census Report of 1921 Vol.I at page 202 the number of Indian Tamils at that Census as 603,000. Page 206 of the same Report states: "Of the Indian Tamils 30.9% were born in Ceylon and 69.1% outside".

23. Soulbury Report R3 at page 143 gives the estimated population of the Indian Tamils in 1931 as 711,028 and in 1943 as 830,324.

24. Although the people belonging to the Indian Tamil community are the result of immigration during the

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last hundred years or so, yet a large percentage of those persons are permanently settled in Ceylon.

25. In 1927 at the time of the Donoughmore Commission Inquiry it was estimated that 40 to 50% of immigrant labourers might be regarded as permanent residents of Ceylon.

10 In 1938 at the time of the Jackson Report on Immigration into Ceylon it was estimated that 70 to 80% of Indian estate population was permanently settled in Ceylon. I attach hereto a copy of that Report Sessional Paper III of 1938 marked R4. The last paragraph of page 25 and the first two paragraphs of page 26 refer to this.

Paragraph 221 of Soulbury Report R3 estimates that 85% of the Indians whose names appear in the preliminary lists for electoral districts other than Colombo were either born in Ceylon or had resided in Ceylon for at least 10 years and anticipated that in a short time most of them would be regarded as permanently settled in the Island and as qualified for the franchise.

20 26. Though a very large percentage of the Indian Tamil population in Ceylon, most of whom have been born in Ceylon, might thus be considered to be permanently settled in Ceylon, the percentage of persons who were born in Ceylon and whose fathers were born in Ceylon would be negligible.

30 27. Though a very large percentage of the Indian Tamils could, as stated above, be considered as permanently settled in Ceylon, only a negligible number amongst them could possess the qualification for citizenship by descent as required by the Ceylon Citizenship Act No.18 of 1948. However, in respect of the Sinhalese community, or the Ceylon Tamil community, or the Muslim community, or the Burgher community, it could be said that almost every person possesses the qualifications for citizenship by descent as required by that Act.

28. Thus almost all the members of the Indian Tamil community have been denied citizenship by the Ceylon Citizenship Act No.18 of 1948.

29. Since Act 48 of 1949 which amends the Ceylon (Parliamentary Elections) Order-in-Council 1946 requires citizenship as the qualification for the franchise for electing Members to Parliament the members of the Indian Tamil community who had thus been denied citizenship have also been deprived of the franchise.

40 30. That almost all the members of the Indian Tamil community have thus been deprived of the franchise is further shown by the Electoral Registers which have been prepared as a result of the last revision carried out in 1950.

31. Almost all the Indians whose names were inserted in the Electoral Registers made in 1947 were retained in the Registers

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revised in 1948 and 1949. The Act 48 of 1949 was brought into operation on 26th May, 1950.

The revision of the Registers in 1950 was made after that date. A comparison of the Electoral Registers for 1947 and 1950 shows that almost all the Indian Tamils have been left out of the 1950 Registers.

AFFIRMED this Twenty first day of August One thousand Nine hundred and Fifty one at Colombo. ) Sgd. Illegibly

10

Before me, Sgd. T.B. Subasinghe. JUSTICE OF THE PEACE.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

I N T H E M A T T E R of an application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap.6)

PUNCHI BANDA MADANAYAKE, Assistant Registering Officer for Electoral District No. 84 (Ruanwella), The Kacheri, Kegalle. ... Petitioner.

20

S.C.Application No.368. Vs.

- 1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM, Revising Officer for Electoral District No. 84 (Ruanwella), Kegalle.
2. Govinda Sellappah Nayar Kodakan Pillai of 220, Yatiyantota. Respondents.

-and-

I N T H E M A T T E R of an Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap.6)

30

VICTOR LLOYD WIRASINHA, Commissioner of Parliamentary Elections, Colombo. Petitioner

S.C.Application No.369. Vs.

- 1. NAMASIVAYAMPILLAI SIVAGNANASUDERAM, Revising Officer for Electoral District No.84 (Ruanwella), Kegalle
2. GOVINDA SELLAPPAH NAYAR KODAKAN PILLAI of 220, Yatiyantota. Respondents.

40

Copy Affidavit of Vana Ena Kana Runa Saumiamoorthy,  
Thondaman and Cannappan Velsingham Velupillai

Copy Joint  
Affidavit of  
Vana Ena Kana  
Runa Saumia-  
moorthy  
Thondaman  
and Cannappan  
Velsingham  
Velupillai  
dated 21st  
August 1951.

I, VANA, ENA, KANA, RUNA SAUMIAMOORTHY THONDAMAN of Wavendon Group, Ramboda, and Cannappan Velsingham Velupillai of Talawakelle, not being Christians, do solemnly, sincerely and truly declare and affirm as follows :

10 1. I, Thondaman, am the elected representative in the House of Representatives representing the Nuwara Eliya constituency. I am the leader of the Ceylon Indian Congress group in Parliament which group consists of seven elected members in a House of 95 elected members and 6 appointed members.

2. I, Thondaman, am 38 years old and have lived in Ceylon for the last 27 years at Wavendon Group, Ramboda.

20 3. I am the owner of a tea estate called Wavendon Group of the extent of 614 acres which estate was owned by my father since 1909 and is situated at Ramboda within the electorate I represent. I am also a part owner of another property called Devon Estate which is of the extent of 453 acres. This estate is situated in the Kotagala Electoral District. I am also the owner of a cocoa estate of the extent of 101 acres in the Wattegama electoral district. These three estates are worked by labourers most of whom are members of the Indian Tamil community. The number of people resident in these estates are approximately as follows :-

	<u>Indian Tamils.</u>	<u>Sinhalese.</u>
Wavendon Group	1,238	103
Devon Estate	848	7
30 Angatenne and Udakanatte ) Estates }	33	35

40 4. I, Velupillai, was born in Ceylon in the year 1914 on a tea estate called Meddacumbura in the Dimbulla District, within the electoral district of Kotagala. From that time up to now I have lived in Ceylon always in the tea estate areas. I passed the London Matriculation Examination in the year 1933 from a secondary school in Colombo and thereafter I had been a teacher at Gamini Vidyalaya, Nuwara Eliya till about 1938. After that I joined the Ceylon Indian Congress Trade Union of which I was General Secretary for two years. In 1947 I was elected to the House of Representatives to represent the Talawakelle constituency and am now a member of Parliament.

5. We are both members of the Indian Tamil Community settled in Ceylon. We both come from the Indian Tamil community that work on the tea plantations in Ceylon.

Copy  
Joint Affidavit  
of V.E.K.R.  
Saumiamoorthy  
Thondaman and  
C.V.Velupillai  
dated 21st  
August 1951.

6. We are both fully conversant with the life of the Indian Tamil people living in Ceylon. We are also conversant with the lives of the other communities living in Ceylon.

7. By far the greatest number of Indian Tamils living in Ceylon consists of plantation workers. These are found on the plantations in the central parts of the Island. In certain parts of the Island the Indian Tamil Community form the majority of the total population of those parts. When the first Delimitation Commission under the present constitution was appointed the following direction was given to that Commission by Section 41(4) which reads as follows :-

10

"Where it appears in any area of a province a substantial concentration of persons united by a community of interest, whether racial, religious or otherwise but differing in one or more of these respects from the majority of the inhabitants of that area, the Commission may take such division of the province into electoral districts as may be necessary to render possible the representation of that interest. In making such division the Commission shall have due regard to the desirability of reducing to the minimum the disproportion in the number of persons resident in the several electoral districts of the province".

20

8. The Delimitation Commission followed that direction and in its report which we attach hereto marked R5 carved out the following seven areas as electoral districts in which the Indians, meaning thereby Indian Tamils, were in a majority of the total population of those districts.

Electoral District No.	Name of Electoral District.	Percentage of Indian Tamils to the total population of the electoral District.
28	Nuwara Eliya	59.0%
29	Talawakelle	79.5%
30	Kotagala	53.6%
31	Nawalapitiya	51.1%
32	Maskeliya	60.6%
76	Badulla	42.2%
		but all Tamils form 50.3%
79	Haputale,	57.0%

30

40

We refer in particular to paragraphs 61 and 70 of that report. The said report proceeds to give the percentage of the population according to race and religion of each of the electoral districts in which the whole of the country had been carved out.

9. Apart from the seven electoral districts in which the Indian Tamils were in a majority, the said report R5

also shows that in the following electoral districts the Indian Tamils are found in a substantial concentration though in a minority.

<u>Electoral District No.</u>	<u>Name of Electoral District.</u>	<u>Percentage of Indian Tamils.</u>
	Colombo Central	15.6%
	Matugama	11.5%
	Agalawatte	12.2%
10	Matale	17.9%
	Minipe	25.6%
	Kandy	10.4%
	Galaha	12.4%
	Gampola	26.1%
	Maturata	22.9%
	Alutnuwara	21.0%
	Bandarawella	26.6%
	Welimada	17.1%
	Buttala	13.1%
20	Ruanwella	17.2%
	Nivitiagala	17.7%
	Balangoda	23.8%

10. As anticipated by the report of the Delimitation Commission the 1947 election returned seven Indian Members to Parliament representing the following electorates:

1. Nuwara Eliya
2. Talawakelle
3. Kotagala
4. Nawalapitiya
5. Maskeliya
- 30 6. Alutnuwara
7. Badulla.

11. The question of the qualifications under which the Indians or Indian Tamils were to be given the franchise was the subject of political controversy from the time adult suffrage was contemplated. We refer to pages 96 and 97 of the Donoughmore Report (R1) and generally to Chapter 5 of that report and paragraphs 30 to 36 of Sessional Paper 34 of 1929 (R2). Ultimately the conditions of the Indian franchise were settled and embodied in the (Ceylon State Council Elections) Order-in-Council 1931 a copy of which we attach hereto marked R6. The Soulbury Report R3 discusses the subject of franchise in Chapter 10 and recommended in paragraph 223 that universal suffrage on the then basis shall be retained. These recommendations were embodied in the (Ceylon Parliamentary Elections) Order-in-Council 1946, a copy of which we attach hereto marked R7. The qualifications of electors contained in R7 are the same as contained in R6. Under these qualifications a large percentage of the Indian Tamils would have been entitled to the vote.

50 12. In the electoral registers prepared in 1947 a very

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Thondaman and  
C.V.Velupillai  
dated 21st  
August 1951.

large number of Tamils found their place in the registers as is shown in the following table:

<u>Electorate</u>	<u>Total number of voters.</u>	<u>Total number of Tamil Voters.</u>
<u>1947</u>		
Badulla (Multi-member constituency)	43,396	20,940
Haputale	11,123	6,983
Nuwara Eliya	24,295	14,705
Talawakelle	19,299	16,534
Kotagala	17,092	10,807
Nawalapitiya	22,580	14,308
Maskeliya	24,427	17,591
Ruanwella	29,177	7,223
Dehiowita	28,932	5,214
Bandarawella	14,311	4,861
Balangoda (multi-member constituency)	63,438	10,597

10

Almost all the Tamil workers in the above electorates were Indian Tamils and only a very small percentage would be Ceylon Tamils.

20

13. Act 48 of 1949 amended the qualifications for the franchise in such a way as to deny the vote to those who are not citizens. Practically the whole of the Indian Tamil Community along with members of the European community would not be citizens within the meaning of the Ceylon Citizenship Act No.18 of 1948. Thus practically the whole of the Indian Tamil community has been deprived of the vote by Act 48 of 1949 which came into force on 26th May, 1950.

30

14. The electoral registers prepared in 1950 by reason of the revision undertaken in that year have been published and they show that practically all the Indian Tamil voters have been left out of the registers.

Electoral Registers Revised in 1950.

<u>Electorate</u>	<u>Total number of voters</u>	<u>Tamil voters</u>	<u>Rest of the voters</u>
<u>1950.</u>			
Badulla	28,134	1,291	26,843
Haputale	7,049	322	6,727
Nuwara Eliya	9,279	319	6,960
Talawakele	2,914	244	2,670
Kotagala	7,738	137	7,601
Nawalapitiya	9,935	675	9,260
Maskeliya	8,691	203	8,488
Ruanwella	25,926	396	25,530
Dehiowita	27,174	177	26,997
Bandarawela	13,935	275	13,660
Balangoda	56,105	811	85,294

40

The Tamil voters found in the above mentioned registers are mostly Ceylon Tamils.

15. The extent to which voters have been left out in the 1950 registers is shown by the following table which compares the position between 1947 and 1950.

Electorate	1947		1949		1950	
	Total No. of Voters	No. of Tamil Voters	Total No. of Voters	Tamil Voters	Total No. of Voters	No. of Tamil Voters
10 Badulla	43,398	20,940			28,134	1,291
Haputale	11,122	5,983			7,049	322
Nuwara Eliya	24,368	14,705			9,279	319
Talawakelle	19,298	16,534			2,914	244
Kotagala	17,379	10,191			7,738	137
Nawalapitiya	22,584	14,308			9,935	675
Maskeliya	24,425	17,591	22,303	15,289	8,691	203
Ruanwella	29,178	7,223			25,926	396
Dehiowita	28,938	5,214			27,174	177
Bandarawella	14,314	4,861			13,935	275
20 Balangoda	63,443	10,597			56,105	811

Registers were printed for the years 1947 and 1950 and the Register for Maskeliya was printed in 1949 as there was a bye-election in that year for that constituency. Registers for 1948 and other registers for 1949 were not printed and are not available for preparation of similar tables. We are aware that there has been no outflow of the Indian Tamil population from the above electoral district except the normal movement of workers from estate to estate. This normal movement has not affected a reduction of the total Indian Tamil population in any electoral district. The omission of the Indian Tamil voters from the above registers is due to their failure to have the citizenship qualification and due to no other cause. We annex hereto marked R8 a form issued in 1950 by registering officers which calls for particulars relating to citizenship.

16. In preparing the above lists given in the earlier paragraphs we have picked out names which are distinctively Tamil. In very nearly all the names in Ceylon it is possible to distinguish a Sinhalese and a Tamil and a Muslim name. We are well acquainted with Sinhalese, Tamil and Muslim names and are able to distinguish one from another.

17. Under the Parliamentary Elections Order-in-Council, electoral registers were first prepared in 1947. The statutory provision requires their revision every year, but the revision up to 1949 did not show any marked difference in the total number of voters of each district as shown by the following table:-



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Thondaman and  
C.V.Velupillai  
dated 21st  
August 1951.

Electoral District	No. of Electors at General Election 1947	No. of Electors after 1949 revision	No. of Electors after 1950 revision
1.Colombo North	30,791	35,781	35,652
2.Colombo Central	55,994	62,571	58,368
3.Colombo South	31,864	34,755	32,922
4.Wellawatte- Galkissa	38,664	42,898	43,135
5.Ja-Ela	51,274	54,150	55,304
6.Negombo	55,642	59,353	60,603
7.Mirigama	55,474	58,981	56,766
8.Gampaha	54,520	59,121	57,368
9.Attanagalla	55,948	58,684	58,288
10.Kelaniya	47,638	52,849	58,057
11.Avissawella	50,009	54,511	52,414
12.Kotte	45,754	46,515	47,444
13.Horana	51,108	53,596	53,930
14.Moratuwa	57,723	57,829	55,090
15.Panadura	53,479	54,588	56,358
16.Kalutara	51,031	41,341	51,264
17.Matugama	48,407	50,146	46,203
18.Agalawatte	35,803	48,158	36,093
19.Dambulla	26,388	28,012	30,102
20.Matale	37,847	39,112	29,266
21.Minipe	28,295	28,851	22,928
22.Wattegama	32,009	33,162	31,893
23.Kadugannawa	63,213	68,535	68,513
24.Kandy	32,119	33,160	27,803
25.Galaha	37,874	39,680	32,760
26.Gampola	32,734	36,603	25,587
27.Maturata	28,708	31,296	26,719
28.Nuwara Eliya	24,295	24,692	9,279
29.Talawakelle	19,299	18,505	2,914
30.Kotagala	17,092	17,876	7,738
31.Nawalapitiya	22,580	20,740	9,935
32.Maskeliya	24,427	22,303	8,691
33.Ambalangoda- Balapitiya	104,843	100,257	92,995
34.Beddegama	38,457	42,694	39,491
35.Udugama	36,893	38,484	38,239
36.Galle	48,340	47,000	43,740
37.Weligama	51,174	49,497	40,726
38.Akuressa	45,886	46,419	43,235
39.Matara	39,930	39,664	41,162
40.Hakmana	44,414	41,386	42,072
41.Deniyaya	29,542	34,207	32,840
42.Beliatte	41,570	40,382	41,543
43.Hambantota	31,841	32,651	37,044
44.Kayts	33,045	34,253	30,138
45.Vaddukoddai	37,334	39,399	34,130
46.Kankasanturai	38,871	39,149	38,433
47.Jaffna	42,546	40,313	29,489
48.Kopay	32,999	34,122	32,903

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Electoral District	No. of Electors at General Election 1947	No. of Electors after 1949 revision	No. of Electors after 1950 revision	Copy Joint Affidavit of V.E.K.R. Saumiamoorthy Thonadaman and C.V.Velupillai dated 21st August 1951.
49. Point Pedro	41,682	42,966	43,218	
50. Chavakachcheri	28,377	29,591	30,687	
51. Mannar	14,587	14,638	15,086	
52. Vavuniya	11,099	12,230	13,093	
53. Trincomalee	18,421	17,625	14,256	
54. Muttur	16,649	17,593	16,696	
10 55. Kalkudah	22,030	21,944	22,203	
56. Batticaloa	27,409	27,361	24,925	
57. Paddiruppu	22,358	22,816	23,457	
58. Kalmunai	22,753	23,517	22,106	
59. Pottuvil	18,164	19,341	22,056	
60. Puttalam	14,035	15,004	15,246	
61. Nikaweratiya	29,808	41,364	34,241	
62. Dodangaslanda	34,275	43,228	36,506	
63. Kurunegala	38,497	42,112	40,562	
64. Dambadeniya	33,314	38,452	38,497	
20 65. Wariyapola	31,886	33,674	35,212	
66. Dandegamuwa	33,767	33,941	34,291	
67. Bingiriya	36,156	40,133	39,270	
68. Chillaw	31,053	33,808	35,917	
69. Nattandiya	34,025	37,283	35,932	
70. Madawachchiya	11,400	13,122	13,350	
71. Anuradhapura	11,581	16,112	13,563	
72. Kalawewa	15,957	19,051	19,502	
73. Horawapotana	12,751	13,934	14,331	
74. Polonnaruwa	5,838	11,378	14,982	
30 75. Alutnuwara	16,487	19,821	16,166	
76. Badulla	43,396	47,072	28,134	
77. Bandarawela	14,311	16,634	13,935	
78. Welimada	19,978	25,137	21,188	
79. Haputale	11,123	12,932	7,049	
80. Buttala	17,151	18,392	20,034	
81. Mawanella	34,491	41,039	36,221	
82. Kegalle	41,791	43,175	35,426	
83. Dedigama	29,556	40,369	34,764	
84. Ruanwella	29,177	35,391	25,926	
40 85. Dehiowita	28,932	34,871	27,174	
86. Kiriella	30,307	35,255	28,937	
87. Ratnapura	25,961	37,803	27,578	
88. Nivitigala	28,486	39,393	29,245	
89. Balangoda	63,438	69,408	56,105	

We attach hereto Hansard Vol.X, No.17, Part II marked R9 and a copy of the quarterly Bulletin of Statistics Vol.1 No.1 marked R10 from both of which the figures are taken for the above table.

18. We attach hereto the respective electoral registers prepared in 1947, 1949 and 1950 for the following electoral

Copy districts marked as follows:-

Joint Affidavit of V.E.K.R.	Badulla	1947 marked	R11A	1950 marked	R11B
Saumiamoorthy Thondaman and C.V.Velupillai dated 21st August 1951.	Haputale	" "	R12A	" "	R12B
	Nuwara Eliya	" "	R13A	" "	R13B
	Talawakelle	" "	R14A	" "	R14B
	Kotagala	" "	R15A	" "	R15B
	Nawalapitiya	" "	R16A	" "	R16B
	Maskeliya	" "	R17A.1949 R17B	" "	R17C
	Ruanwella	" "	R18A	" "	R18B
	Dehiowita	" "	R19A	" "	R19B
	Bandarawela	" "	R20A	" "	R20B
	Balangoda	" "	R21A	" "	R21B

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19. I, Vana, Ena, Kana, Runa, Savumiamoorthy Thondaman give below the number of Indian Tamil labourers on the estates belonging to me whose names appeared in the electoral list of 1947 of domicile. Almost all the labourers who lived on the said estates in 1947, were also residing on them in 1950. Notwithstanding this as a result of the 1950 revision, on the basis of citizenship the numbers of Indian Tamil labourers on the said estates whose names have been registered are as follows :-

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	1947		1950	
	Indian voters	Other voters	Indian voters	Other voters
Wavendon Group	354	42	nil	37
Devon Estate	136	3	nil	1

The said names were deleted in 1950 on the ground that these Indian Tamil labourers were not citizens of Ceylon.

We are personally aware that the same procedure that was adopted for the revision of the voters' lists in respect of these said estates was adopted in respect of practically all the other estates and plantations in which Indian Tamil labourers have been residing.

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AFFIRMED to at Colombo on this }  
21st day of August, 1951. } Sgd.S.Thondaman.

Before me,

Sgd. T.B.Subasinghe. Sgd. Illegibly.

Justice of the Peace.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

I N T H E M A T T E R of an application for a Mandate  
in the nature of a Writ of Certiorari under Section 42 of the  
Courts Ordinance (Cap.6).

PUNCHI BANDA MADANAYAKE, Assistant  
Registering Officer for Electoral  
District No.84 (Ruanwella), The Kachcheri,  
Kegalle. Petitioner

10 S.C.Application  
No.368.

Vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM  
Revising Officer for Electoral District  
No.84 (Ruanwella) Kegalle.
2. Govinda Sellappah Nayar Kodakam Pillai.  
of 220 Yatiyantota. Respondents.

-and-

I N T H E M A T T E R of an application for a Mandate  
in the nature of a Writ of Certiorari under Section 42 of the  
Courts Ordinance (Cap.6)

20

VICTOR LLOYD WIRASINGHA, Commissioner  
of Parliamentary Elections, Colombo.  
Petitioner

S.C.Application  
No.369.

Vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM  
Revising Officer for Electoral District  
No.84 (Ruanwella) Kegalle,
2. Govinda Sellappah Nayar Kodakam Pillai.  
of 220 Yatiyantota. Respondents.

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Copy Affidavit of Sangaralingam Muniyandipillai  
Subbiah.

Copy  
Affidavit of  
S.M.Subbiah  
dated 24th  
August 1951.

I, SANGARALINGAM MUNIYANDIPILLAI SUBBIAH of Lower King  
Street, Badulla, being a Hindu, do solemnly sincerely and truly  
declare and affirm as follows :-

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1. I was born in the year 1912 at Nawalapitiya. I have been  
resident in Ceylon since birth. I belong to the community  
commonly known as the Indian Tamil Community in Ceylon. I am  
the President, Badulla District Committee of the Ceylon Indian  
Congress. I am the first member for Badulla representing  
that multi member constituency in the House of Representatives.

2. My father was also born at Nawalapitiya in the year 1876.

Copy  
Affidavit of  
S.M.Subbiah  
dated 24th  
August 1951.

My father was working as a Head Kankany in Gallamaduna Estate, Dolosbage till he retired in 1925. Thereafter he settled in Ceylon and is now leading a retired life.

3. My grand father Sangaralingam came from India to this country about the year 1860 during the time of the Coffee plantations as recruiter of labour for the Coffee Plantations. After the Coffee Plantations failed, he worked as Kankany on a Tea Estate viz:

The Gallamaduna Tea Estate, Dolosbage, at which Estate my father later worked as Head Kankany.

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4. I am well acquainted with the life of the Indian Tamil Community, the vast majority of whom are workers on Tea and Rubber Plantations. I am conversant with the history of the Immigration of Indian Tamil Estate Workers.

5. During the days of the Coffee Plantations only a very small resident labour force was required for maintenance of the Estates. A large labour force was required only during the cropping season and for this reason most of the Indian Tamil population of those days returned to their homes in India at the end of the cropping season.

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6. Sir Emerson Tennent in his book on Ceylon, gives the total strength of labour required at crop-time as 129,200 and quotes statistics published by Ferguson in the Ceylon Observer of 11.7.1857 (Vide Ceylon by Sir, Emerson Tennent Vol.11 Page 238 - 243).

7. The Coffee Industry failed about the year 1880. Immigration and Emigration figures show that during the years 1879 to 1886 there had been a large exodus of Indian Tamil Coolies and this period marks the period of the complete failure of the Coffee Industry.

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8. The Tea Industry however attracted a large immigrant labour force and from 1887 onwards there has been more or less a steady flow of Indian Tamil Immigrants into this country till 1939 in which year India placed a ban on emigration of unskilled labour.

9. The earlier batches of Indian Tamil labourers recruited for the Tea and Rubber Plantations also showed a tendency to return to their homes after a period of service in Ceylon. The census reports of 1891 and 1901, show for instance, a great disparity between the number of males and females constituting the estate population. The majority of labourers had apparently left their families behind, intending to return to India at the end of their service.

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Copy  
Affidavit of  
S.M.Subbiah  
dated 24th  
August 1951.

10. But gradually the Indian Tamil Workers on Estates, came in with their families and settled down in this country. The disparity between the number of male workers and female workers on estates steadily decreased as the census figures for the years 1911, 1921 and 1946 would show.

11. As the early estate workers left their wives behind in India the number of Ceylon born persons in this Community was almost negligible in the year 1901 and in years preceding that year.

10 12. The following figures are taken from the census reports for the years 1911, 1921 and 1946.

Year	Indian Tamil population in Ceylon.	India born Tamil Population in Ceylon.	Tamil Estate Population	India born Tamil Estate Population
1911	530,983	430,853	513,467	359,974
1921	602,735	416,419	(not separately given)	328,123 (Born in Madras Province. Tamils as such not given).
1946	780,589	(given as percentage actual figures not found in report)	665,853	.....

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13. If birth of two successive generations in Ceylon is applied as the test of Citizenship and franchise is made dependent on Citizenship only descendants of those born in Ceylon prior to 1901 would satisfy the requirements. The vast majority of the Indian Community resident in Ceylon have thus been denied Citizenship rights under Act 18 of 1948 and denied the rights of franchise as a result of Act 48 of 1949.

14. The Government of the day had this result very much in view, when it introduced the Citizenship Bill in Parliament, as would be seen from the following extracts from the speeches of various Ministers in support of the Citizenship Bill.

Hon.Mr.J.R.Jayawardene, Minister of Finance,

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"Hon.Members naturally wish to know why we have rules different from those obtaining in other countries, and why we have made stringent rules regarding those who were born in Ceylon before the appointed date. That is a crucial part of this Bill, which Hon. Members have attacked.

The reason is this: I do not think it is necessary for us to hide it. In this country we have an immigrant problem. That problem was not created by this Government. It was

Copy  
Affidavit of  
S.M.Subbiah  
dated 24th  
August 1951.

not created by the Sinhalese. I remember a former member of the State Council representing Narammala (the late Mr.Siripala Samarakkody) citing in the State Council certain despatches sent by British Governors to England to the effect that they deliberately introduced Indians into Ceylon so that the Sinhalese race may be crushed and destroyed". (Columns 1937 and 1938 Hansard of 19.8.1948 (marked R22).

"When therefore they come into this House and have to consider legislation which undoubtedly - I do not want to hide the fact - will effect the Indian Immigrants in this country" (bottom of Column 1740 Hansard of 19.8.1948 (marked R22)

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Hon.Mr.A.Ratnayake, Minister of Food and Co-operative Undertakings.

"There is a feeling that we are introducing a very restrictive legislation" (Column 1774 Hansard of 19.8.1948) (Marked R22).

"I have to mention one other instance where the Indians failed to support us.....  
If the Indians by their conduct and by their attitude show us that they are our real friends, that their interests are in Ceylon, that they will not look to India for assistance, that they will not try to intimidate Ceylon by resorting to India at every turn, then we shall be confident that we are in the midst of friends - So long as we do not feel so, we will have to make legislation some what restrictive".  
(Column 1775 Hansard of 19.8.1948 (marked R22)

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When the Bill was discussed in Committee Dr.Perera moved an amendment so as to enable persons born in Ceylon to acquire Citizenship if the father or mother was born in Ceylon.

The Hon.Mr.D.S.Senanayake, Prime Minister.

"One thing I might say with regard to that is, since our nationality is derived from the father, there is the possibility, if mother is included, of dual nationality being claimed. We are opposing it".

Dr.Perera: "The position obtains in the United States Legislation"

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The Hon.Mr.D.S.Senanayake: "Never mind, but we will not have it here".

Dr.Perera: "Why are you so unique?"

Copy  
Affidavit of  
S.M.Subbiah  
dated 24th  
August 1951.

The Hon.Mr.D.S.Senanayake: "We want to be unique"  
Hansard: of 20.8.1948 Columns 1828 and 1829.(Marked R23)

While speaking on the Parliamentary Elections Amendments  
Bill The Hon.Mr.D.S.Senayayake said:-

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"My good friend the Hon.Member for Kankasenturai said  
something about the Indian people here being discriminated  
against. We have passed the Indian and Pakistani Residents  
(Citizenship) Bill which permits bona fide Indian residents  
as Citizens. They would come in, after they have registered  
themselves as citizens." Hansard of 18.10.1949 Column 384  
(marked R24)

Hon.Mr.J.R.Jayawardene:

"Hon.Members speaking on this debate seems to have carried  
on the same debate they did on the Citizenship Bill. ~~Whether~~  
that was racial or unfair to the Indians is not a matter for  
consideration today. It is part of the statute Law of  
Ceylon. We know who a Citizen of Ceylon is and naturally  
a change has to be made in our law as regards the vote"  
(Hansard of 20.10.1949 Column 518)

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And again "It may be that certain sections of the Indians  
who had the right to vote under the Old Constitution are  
being deprived of that right today". (Column 519 of  
Hansard of 20.10.1949 (marked R25)).

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The fact that a very large percentage of Indian Tamils  
settled in this country would be de-citizenised and dis-  
franchised was very much in the minds of the legislature  
and the Ministers at the time Acts 18 of 1948 and 48 of  
1949 were enacted and in the course of the speeches in  
Parliament Honourable Ministers made no attempt to disguise  
the fact that discrimination against the Indian Tamil  
community was directly intended.

SIGNED to the truth and correctness  
hereof at Colombo on this 24th  
August, 1951.

Sgd. Illegibly

Before me,

Sgd. Illegibly.

J.P.

True Copy  
Illegibly. (LS)  
Registrar, Supreme Court,  
CEYLON,  
18th January 1952.

5R  
Stamp



In the Privy Council.

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**ON APPEAL**

*from the Supreme Court of Ceylon.*

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BETWEEN

**GOVINDAN SELLAPPAH**  
**NAYAR KODAKAN PILLAI** *Appellant*

AND

- 1. PUNCHI BANDA**  
**MUDANAYAKE**
- 2. VICTOR LLOYD**  
**WIRASINGHA** and
- 3. NAMASIVAYAMPILLAI**  
**SIVAGNANASUNDERAM** *Respondents.*

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**Case for the Appellant.**

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LEE & PEMBERTONS,  
46 Lincoln's Inn Fields,  
London, W.C.2,  
*Solicitors for the Appellant.*