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Judgment
21, 1965

IN THE PRIVY COUNCIL

No. 4 of 1963

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

M.K.S. SEYED MOHAMED SHAREEF Appellant

- and -

THE COMMISSIONER FOR THE
REGISTRATION OF INDIAN AND
PAKISTANI RESIDENTS Respondent

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C A S E FOR THE RESPONDENT

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1. This is an appeal by Special Leave from a Judgment of the Supreme Court of the Island of Ceylon, dated the 14th day of December 1960, whereby the said Court dismissed the Appellant's appeal from the Order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents, dated the 15th day of September 1958, which said Order refused the Appellant's application to be registered as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949, as amended by the Amendment Acts No. 37 of 1950 and No. 45 of 1952, (hereinafter called "the Act".)

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pp.49-58

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2. The main question raised by this appeal is whether or not the inquiry conducted by the said Deputy Commissioner into the Appellant's said application was in accordance with the Act and the principles of natural justice.

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3. The Act provides for a procedure whereby Indian or Pakistani Residents who possess the residential and other qualifications prescribed by the Act may apply to be a citizen of

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Ceylon. An application for registration under the Act is to be in a prescribed form and supported by an affidavit of the applicant, and may also be supported by affidavits of other persons or certified copies of documents.

The Act provides also that a Commissioner for the Registration of Indian and Pakistani Residents is to be appointed and that a Deputy Commissioner or Deputy Commissioners and also Investigating Officers may be appointed.

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An application for registration is to be made to the Commissioner. If the Commissioner refuses the application, the applicant may show cause to the contrary within a prescribed period, in which event the Commissioner may either allow the application or appoint a time and place for an inquiry.

4. The following provisions of the Act are relevant to the present appeal:-

"3. (1) This Act shall, subject to the provisions of section 4, apply solely to those Indian or Pakistani residents in Ceylon who are possessed of the special residential qualification, which in each case shall consist -

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(a) in the first instance, of uninterrupted residence in Ceylon immediately prior to the first day of January, 1946, for a period not less than the appropriate minimum period hereinafter specified; and

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(b) secondly, of uninterrupted residence in Ceylon from the aforesaid day to the date of the application made in that case for registration under this Act.

(2) The appropriate minimum period of uninterrupted residence required by paragraph (a) of sub-section (1) shall -

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(a) in the case of a person who

in unmarried at the date of his application for registration be a period of ten years; and

(b) in the case of any married person be a period of seven years.

10 (3) For the purposes of this Act, the continuity of residence of an Indian or Pakistani in Ceylon shall, notwithstanding his occasional absence from Ceylon, be deemed to have been uninterrupted if, but only if, such absence did not on any one occasion exceed twelve months in duration."

"6. It shall be a condition for allowing any application for registration under this Act that the applicant shall have -

20 (1) first proved that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of sections 3 and 4 to exercise the privilege of procuring such registration,"

30 "8. (1) As soon as may be after the receipt of each application, the Commissioner shall refer the application, for verification of the particulars and statements therein and for such report thereon as may be necessary, to the investigating officer of the area or each of the areas in Ceylon, in which the applicant claims to be, or have been, ordinarily resident.

(2) The investigating officer to whom an application is referred shall -

(a) make such investigations as may appear to him to be necessary for verifying the particulars and statements set out in the application; and

40 (b) furnish a report to the Commissioner as to the nature of the investigations conducted by him, the facts which were disclosed

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to him or discovered by him in the course of such investigations, and his conclusions as to the correctness or otherwise of the particulars or statements set out in the application.

(3) For the purposes of sub-section (2) the investigating officer may -

(a) visit the place where the applicant resides and each of the other places, if any, where he claims to have resided; or

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(b) examine the originals of any documents of which copies were sent with the application.

(4) The report of the investigating officer on each application shall be taken into consideration by the Commissioner in dealing with that application."

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"14.

(2) Every inquiry shall be conducted by the Commissioner: Provided that if the Commissioner so directs, any inquiry may be held by the Deputy Commissioner who shall, in that event, exercise all the powers and perform all the functions vested in the Commissioner in that behalf by this Act.

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(3) The Commissioner shall, for the purposes of any inquiry under this Act, have all the powers of a District Court -

(a) to summon witnesses,

(b) to compel the production of documents, and

(c) to administer any oath or affirmation to witnesses.

10 (4) The proceedings at an inquiry shall as far as possible be free from the formalities and technicalities of the rules of procedure and evidence applicable to a court of law, and may be conducted by the Commissioner in any manner, not inconsistent with the principles of natural justice, which to him may seem best adapted to elicit proof concerning the matters that are investigated."

"18.

(3) In the performance of his duties and the exercise of his functions under this Act, the Commissioner shall be subject to the general direction and control of the Minister.

20 (4) In all matters for which no express provision is made in this Act, the Deputy Commissioner or each Deputy Commissioner, and each investigating officer, shall perform such duties and exercise such functions as may be assigned to him by the Commissioner with the general or special approval of the Minister.

(5) Every officer appointed for the purposes of this Act shall be deemed to be a public servant within the meaning of the Ceylon Penal Code."

30 5. The Appellant applied under the Act for registration as a citizen of Ceylon, by application dated the 4th August 1951, in which inter alia he stated that he had been continuously resident in Ceylon during the period of ten years commencing on January the 1st 1936 and ending on December the 31st 1945 and also from January 1946 to the date of the application. The application does not appear to have been supported by any documentary evidence. By Notice dated the 31st July 1956, the Deputy Commissioner for the
40 Registration of Indian and Pakistani Residents informed the Appellant of his decision to refuse the application on the grounds specified in the Schedule which were that he had failed to prove inter alia the following :-

p.1

p.9,l.14;
p.12,
11.24-4
p.7

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"2. that you were resident in Ceylon during the period 1.1.1936 to 4.8.51, without absence exceeding 12 months on any single occasion.

4. that you had permanently settled in Ceylon.

5. that you were unmarried at date of application or in the alternative that your wife and dependent minor children, if any, were resident in Ceylon. Wife from first anniversary of Marriage and children from first anniversaries of birth to date of application without absence exceeding 12 months on any single occasion."

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pp.8-9

6. By his letter dated the 25th October, 1956, the Appellant stated that he had sufficient proof to satisfy the requirements of the Act, and the Deputy Commissioner by Notice dated the 14th March 1957 fixed a time and place for an inquiry into the Appellant's application.

pp.9-11

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p.12

7. The inquiry was opened on the 22nd April, 1957 when the Appellant gave evidence and called two witnesses.

pp.12-15

The Appellant testified that he was aged 30 years and produced his birth certificate. He said that he had been brought from India to Ceylon together with his two brothers by his parents when he was 5 or 6 years old. His parents were residing at Chilaw for 4 or 5 years and thereafter, while his mother remained at Chilaw, his father took him to Rangala. His father commenced business in Rangala, while the applicant was admitted to the Girindi Ela Tamil School (also called K/Bopitiya Estate Tamil Mixed School) in 1935. He continued to attend this School till 1943, when his father who had gone to Nagoor (in India) on a pilgrimage died there. The applicant continued to attend School for 4 or 5 months thereafter, living with an acquaintance of his father's at Rangala. His mother was taken to India by his brother, where she died in 1948 without returning to Ceylon. He himself commenced business in January 1944 with his brothers as hawkers in Kurunegala,

p.14,1.22

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p.12,11.25-
26p.14,11.30-
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p.12,1.31
p.14,1.38

where he continued till 1947. From 1947 to 1951 he was employed as a salesman in a firm in Colombo and thereafter started a business of his own, also in Colombo.

Record
p.12,1.34
& p.13,1.5

8. The first of the two witnesses called by the Appellant, one Dawood, testified as to the Appellant's residence in Colombo from 1947 to 1951. This witness said that the Appellant was an employee of a business firm in Colombo at this time and produced the firm's register kept by him (the witness) under the Shop Act.

p.16,11.8-10

10 p.16,11.33-35

The second witness, one Mohamood, gave evidence as to the Appellant's residing and carrying on business in Kurunegala from the beginning of 1944 for about three years.

p.17,11.14-23

The Appellant himself also produced some documentary evidence, as to which no issue arises in this case, as to his employment in Colombo from March 1947 to May 1951 and as to his residence in Ceylon between August 1944 and January 1947.

p.13,1.1
p.69
p.15,1.14;
pp.67-68

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9. In proof of his residence in Ceylon for the period prior to 1943 the Appellant produced his School (Schedule Q) Certificate. This document purported to state the name of the school, viz. K/Bopitiya Estate, Tamil Mixed School, the full name of the pupil viz. the Appellant, and of his parent, the admission number of the pupil, the date of his admission, 17.11.1935, and his age on admission, the standard passed and the subjects in which the pupil had passed. It purported to be signed by S. Ponniah as Head Teacher, following which the date of withdrawal is stated as "1.12.1943".

p.12,1.24
p.67

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At the end of the hearing on the 22nd April 1957 the Advocate for the Appellant stated that there were no more witnesses and no documents to produce.

p.18,1.11

On the 20th July 1957 the Deputy Commissioner wrote to the Deputy Commissioner (Administration) enclosing a copy of the School Schedule and pointing out that, although it had been issued under the date 1.12.43, the writing appeared to have been done recently. The letter went on to request the

pp.18-19

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p.19,1.7

detailing of "an Investigating Officer to visit the school and check up the genuineness of the School Schedule. He should report whether the School register from which the particulars have been extracted was made available for his inspection and whether he is satisfied that the particulars in the Schedule are correct."

pp.19-20

10. The Investigating Officer reported to the Deputy Commissioner on the 2nd September 1957. His report was as follows :-

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"Report on copy of School Schedule (Q) -
INO/9.C.8009/G/C

I examined the original of the Schedule Q in the Q Schedule book of the K/Bopitiya Estate Tamil School. The following is a copy of the original.

Name: M.K.S. Mugahamed Sheriff

Date of withdrawal: 1.12.43.

Admission number: 8 1935

Signature of Teacher.

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It would appear from the above that the copy handed over to you is not a true copy of the original which does not contain the date of admission except the year. The pupil's age is not given nor the standard passed with subjects. The Head Teacher could not have issued this Q Schedule on 1.12.43 because the Q Schedule leaf prior to this gives the date of withdrawal of a student as 1.1.52 and the Q Schedule following this gives the date of withdrawal as 1.9.53. Therefore he should have issued this Q Schedule sometime between 1.1.52 and 1.9.53.

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When I asked the Head Teacher for the examination Schedule Book from which he would have taken these particulars he told me that it was lost in December, 1953.

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Admission and Withdrawal RegisterRecord

10 The first 23 pages of the old admission and withdrawal register are missing. On page 25 is a fresh registration which is not in chronological order. There are two other fresh registrations on P.24 and P.37. This name appears on p.37, which is towards the end of the book giving the admission No.8 and the date of admission and withdrawal as 17.11.35 and 1.12.43 respectively. It does not give the last standard passed. The writing appears to be fresh. On asking the teacher from where he obtained these particulars he said it was from the old Register whose pages are missing."

20 11. On the 7th September 1957 the Deputy Commissioner wrote to the Appellant informing him that the inquiry would be resumed on the 14th September following, and indicating that he wished to hear further evidence, oral and documentary, from the Appellant's witness Dawood. The inquiry was accordingly resumed on the 14th September, 1957, when Dawood again gave evidence, producing documents relating to the Appellant's residence and employment for the period 1947 to 1951.

pp.21-22

p.24

30 12. On the 19th September 1957 the Appellant's advocate telephoned the Deputy Commissioner stating that the Appellant had "got down" the School Master who had issued the Q Schedule from Jaffna, where he was on holiday, and asking whether the Deputy Commissioner could arrange an appointment to have his evidence recorded. The Deputy Commissioner said that it was difficult to arrange such an appointment at such short notice but that he would try to find some time to take the evidence of the witness on the 21st September, 1957, on which day the School Master S. Ponniah, attended and gave evidence in the presence of the Appellant and his advocate.

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p.24, l.37-
p.25, l.12p.26, l.31-
p.30, l.21

He said that he was and had been since 1935 the Head Teacher K/Bopitiya Tamil Mixed School and that he was the only teacher. He identified his signature on the Schedule and said that he had

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issued it in 1951. The whole of the substance of the Investigating Officer's report was put to this witness in detail and, it is submitted, accepted by him. The effect of the evidence given by him in explanation of the matters reported upon by the Investigating Officer was as follows :-

- "(a) that the particulars given in a Q Schedule certificate are based on entries in the Admission Register, Examination Schedule and Log Books; 10
- (b) that the Admission Register contains the date of admission and date of withdrawal, admission number, the age of the student, standards passed and the address of the parent or guardian;
- (c) that the Examination Schedule contains the name of the child, the age, the number of days attended during the year and the subjects studied and passed; 20
- (d) that the counterfoils of the Q schedule book contain only the name of the pupil, the date of admission and the date of withdrawal, although more particulars are entered in the foils;
- (e) that a Q schedule is issued only on application, and that the one in question was issued to the applicant in 1951;
- (f) that all the old Attendance Registers one new Attendance Register and the Examination Schedule were lost in a burglary which occurred at his home in 1953 during the School Holidays while he was away at Jaffna, but that 3 new Attendance Registers were not lost, although they had been among the books that had been removed to his home. 30
- (g) that the Q schedule book was not lost in the burglary because it had not been removed by the witness to his home but had been left in the school drawer; 40

(h) that the Superintendent of the Estate, Mr. Pope, reported the burglary to the Education Department;

(i) that the witness did not enter the dates of issue in the Q Schedule Certificates prior to 1953 and began doing so only thereafter at the request of an Inspector of the Education Department;

10 (j) that he had 2 Admission Registers, the first starting in 1935, the second at the date when the first ended.

(k) that the first 23 folios of the earlier Admission Register were missing, and that in any event folios 1-21 had been left blank because the particulars required to be entered applied only to a Management School.

20 (l) that folios 22 and 23 of the earlier Admission Register became loose in the process of the Register being taken to and from the Estate Office for Examination;

(m) that he transferred the particulars contained in folios 22 and 23 of the earlier Register to the first available folios of the new Register viz. folios 37 and 38, on the oral instructions of the Estate Superintendent, Mr. Pope, who said that he would take responsibility for it;

30 (n) that folio 37 of the new Register contained the particulars relating to the applicant;

(o) that all the other loose leaves in the earlier Register were fastened by him in that Register, and it was only the particulars in folios 22 and 23 that were transferred to folios 37 and 38 of the new Register;"

40 At the end of that day's hearing the Appellant's Advocate stated that the Appellant would endeavour to ask the school teacher to produce his register "but no date can be mentioned now". The Deputy Commissioner informed the Appellant and his

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Advocate that he would not fix a date for the resumption of the inquiry until he heard from them.

p.26

13. In the meantime, the Deputy Commissioner had on the 19th September 1957 written to the Director of Education enclosing a copy of the Schedule Q issued by the Head Teacher and of the report of the Investigating Officer and requesting the Director to detail one of his officers to look into the matter and report on the genuineness of the School Schedule furnished by the Appellant.

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p.34,1.8

On the 20th January 1958 the Director of Education wrote, reporting "that Q Schedules in question have been issued under false pretexts and that they are not genuine."

p.34,1.24

14. The inquiry was resumed on the 18th February 1958, when the Appellant's Advocate expressed the wish that the evidence of two further witnesses then present should be recorded .

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p.34,1.30-
p.35,1.44

These were Abdul Suban and Mohamed Shahul Hameed. The former of these witnesses testified that he was on the Girindi Ella Estate in 1934 and that the Appellant came there in 1934 with his father, who brought three children with him and stayed there till 1943, in which year he returned to India where he died. He said that from 1934 to 1943 the Appellant attended the Bopitiya School and that some time after the return of the Appellant's father to India, the Appellant's uncle, who was resident at Kurunegala, came and took him away. In 1951 the Appellant and his brother came to the estate to get their School Certificates.

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p.36,1.1-
p.37,1.15

The second of the two witnesses, Hameed, testified that in 1934 he was a transport agent, transporting goods between Kandy and Colombo and in the Kandy district. He came to know the Appellant's father at Girindi Ella Estate. As far as he knew, the Appellant's father was at the estate for 10 or 12 years

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with three of his children, who left for Kurunegala about three months after the Appellant's father went back to India. This witness in answer to the Deputy Commissioner said that he had never met the Appellant's mother in Ceylon but that he had information that she was living somewhere near Ratnapura and that the Appellant's father, of whom he was a close friend, had told him so.

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p.37,11.3-15

10 The applicant himself had testified on the 22nd of April 1957 that when his father took him to Rangala his mother had continued to live at Chilaw.

p.14,1.26

20 Another witness testified at this hearing, namely one Nandasena, a clerk in the Department of Immigration and Emigration, who produced an application for a temporary residence permit dated the 15th February 1954 made by the Appellant. In the form of application the Appellant had been required to state what documentary evidence was being produced in support of his previous residence and financial position, and he had stated that in respect of the period "prior to 1944" there was none.

pp.37-39

15. At the same hearing on the 18th February 1958 the Appellant again gave evidence as follows :-

p.39,11.15-21

30 "If the Director of Education has reported that Q Schedule furnished by me in respect of the period 17.11.35 to 1.12.43 or my education of the Thangala Girindi Ella School has been issued under false pretexts and that the document is not genuine. I have nothing to say. I attended this school from 1935 to 1943."

40 At this stage the Appellant's Advocate submitted "that if this report is to be accepted the party who makes the report must be called to give evidence" and requested "that the officer who made the report be summoned to give evidence". The Deputy Commissioner thereupon adjourned the inquiry. The Appellant's Advocate expressed the wish that a summons be issued also on the school teacher i.e. S. Ponniah.

p.39,1.22-
p.40,1.3

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pp.40-41

p.41

p.42

p.42

pp.43-44

p.44

p.44,119

16. On the same day the Deputy Commissioner wrote to the Director of Education asking for the name and address of the officer who had inquired into the matter and had made the report as to the falsity of the School Certificate, to enable him to be served with a summons requiring his attendance at the resumed inquiry. By letter dated the 13th March 1958 the Director of Education informed the Deputy Commissioner of the name and address of this officer, who was in fact an Inspector of Schools called Sandarasegaram. On the 11th April 1958 the Director of Education wrote to the Deputy Commissioner saying that the previous letter of the 20th of January 1958 should be treated as cancelled, that the matter was being further investigated and that a further letter would be sent as early as possible. On the 19th of May 1958 the Director of Education wrote to the Deputy Commissioner "I have to inform you that the "Q" Schedules in question are genuine". In answer to a further inquiry of the Deputy Commissioner, the Director of Education wrote on the 20th June 1958 that the further inquiries in the matter had been made by another official of the Ministry of Education namely one Mushsin, Assistant Secretary.

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17. The inquiry was resumed on the 29th August 1958 in the presence of the Appellant and his Advocate, when Sandarasegaram, the Inspector of Schools, gave evidence. This witness testified that he had visited the estate school on the instructions of the Education Officer of the area to ascertain the genuineness of the school schedule. He had met the Head Teacher of the school, examined the relevant records and reported his conclusion to the Education Officer. The letter of the 20th January 1958 from the Director of Education to the Deputy Commissioner was read out and the witness stated that he had not reported that the schedules were issued under false pretexts, but that he had found by circumstantial evidence that the schedules were not genuine. He stated that if the records of the school were available to him at

that time he could explain what he meant by circumstantial evidence. At that stage the Deputy Commissioner appears to have inquired whether the Head Teacher of the school, Ponniah, who was present, had brought the records, but he had not done so.

Record
p.45, ll.12-14

10 In answer to the Appellant's Advocate, the witness Sandarasegaram testified that, following upon his report, the Assistant Secretary at the Ministry of Education had summoned him for further inquiry into the genuineness of the School Schedules and that he had been given

20 "to understand at the enquiry that the benefit of the doubt in regard to the genuineness of of the school schedules should be given to the Head Teacher of the School. The Official who inquired took into account my report and the meritorious record of the teacher and the documents produced of which I am unaware. The teacher himself was present at the enquiry. The Officer who enquired into the matter is a member of the Ceylon Civil Service. A school schedule is based on particulars obtained in the admission Register of a School Examination schedules and attendance registers. A genuine "Q" Schedule can resent [result?] only from genuine entries in the admission and other registers. In considering the genuineness of the School Schedule I had gone into the question of the genuineness of the entries in the Admission Register. My report was specifically directed to the question of the genuineness of the school schedules."

p.45, l.34
- p.46, l.10

30 At the conclusion of this witness's evidence the rest of the correspondence that had passed between the Director of Education and the Deputy Commissioner was read out, and the Appellant's Advocate stated that he did not want the Head Teacher of the school to be called "as no questions for clarification arose from the evidence of the Inspector of Schools", and that he did not wish to examine the Appellant any further. The Appellant however appears to have been recalled by the Deputy Commissioner and asked some questions about certain visits made by him

p.46, ll.13-22

p.46, ll.23-29

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to India. He was then examined by his own advocate and was asked about the application for a Temporary Residence Permit as to which evidence had been given at the preceding hearing. As to this his evidence was as follows :-

- p.47,11.14-18 "In my application for a Temporary Residence Permit I stated that I was resident in Ceylon since 1944. At that time I had to say that I was in Ceylon from 1944 onwards. No one asked me whatever I was in Ceylon before." 10
- p.47,1.19
pp.48-49 The Appellant's Advocate then closed his evidence, submitted written submission on behalf of the Appellant and the inquiry was closed.
- pp.49-58 18. The Deputy Commissioner announced his decision on the 15th September, 1958, upon which date he made his Order refusing the Appellant's application.
- p.56,1.35 With regard to the Appellant's claim to continuous residence in Ceylon, he accepted that the Appellant had established his period of residence from 1944 to 1951 but found that the Appellant had failed in his proof of residence between 1936 and 1943 at Girindi Ella Estate. 20
- p.51,1.24 The Deputy Commissioner dealt at length with the School Schedule Q which the Appellant had produced and which the Deputy Commissioner treated, it is submitted rightly, as the main evidence relied upon by the Appellant to establish his residence in Ceylon during this period. The Deputy Commissioner said that owing to the recent writing in the School Schedule it had appeared to him necessary to have it verified by an Investigating Officer of the Department. The Deputy Commissioner said expressly that the effect of this report was to lead him to the view that further inquiry into this matter was imperative and that he was therefore very happy when the Appellant's Counsel expressed a wish to have recorded the evidence of the School Teacher 30
- p.51,11.31-41 40

who issued the School Schedule. The Deputy Commissioner set out at length in his decision the evidence of the school teacher, which he he considered "most unsatisfactory" and which he found "almost confirmed the report of the Investigating Officer".

Record
p.51,1.42-
p.53,1.1

The Deputy Commissioner then referred both to the Director of Education's letter of the 20th January 1958, in which he had reported that the Q schedules in question were issued under false pretexts, and also to his further letters of the 19th May 1958 and the 20th June 1958 in which he had stated that the Q Schedules in question were genuine and that the further enquiries which led to this conclusion had been made by the Assistant Secretary, Ministry of Education. The Deputy Commissioner however did not base his decision upon the result of any of these Departmental enquiries but in terms upon the evidence that had been given before him, which he expressly stated was sufficient to enable him to take an independent decision. The passage in which he indicated how he arrived at his conclusion was as follows :-

p.53,1.7

p.53,1.25
p.53,1.30

"It appears to me from the evidence of the Inspector of Schools (folio 174) that the decision of the Assistant Secretary, Ministry of Education, to regard the Q Schedules as genuine, was prompted by a meritorious record of the teacher. For my part, I would not be content to abide by that decision, and as I have stated earlier, the evidence before me is sufficient to take an independent decision.

p.53,1.42-
-54,1.47

To revert to the Teacher's evidence, the Superintendent of the estate was not called as a witness to corroborate the teacher's statement about the loss of the old admission register and the alleged report made to Education Department about the loss of the admission and other registers. The teacher's statement that he copied into the new admission register the original entries in folios 22 and 23 in the old admission register on the oral instructions of the Superintendent of the estate who undertook to take the responsibility

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remain uncorroborated. In the circumstances I cannot help coming to the conclusion that the teachers story is a fabrication. His statements amount to a story of a loss of an admission register which I don't believe - which at the time of the loss was minus two folios only which incidentally contained particulars of the admission of the applicant in this case, as a student. It is very significant that the entry regarding the admission of the applicant's brother, the enquiry into whose application under No.C.9933, was concluded along with this enquiry, also had his name in the same missing folios. Normally I would not draw into this inquiry matters connected with another's application, but the investigations of the Investigating Officer of this Department and of the Inspection of the Education Department covered the two schedules issued simultaneously by the School Teacher to the brothers and the dates examined viz. the registers at the school as establishing the genuineness of the School Schedules were common to both. So far as the enquiry into the genuineness of the school schedules go, the enquiry cannot be separated. The application in this case and that of the applicant's brother succeeds or fails in regard to the period of their schooling on the question of the genuineness of the schedules. It is not my intention to delve any further into the matter, except to say that I reject as not genuine the School Schedule produced."

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p.55,l.32-
p.56,l.32

19. The Deputy Commissioner considered also other evidence in the enquiry in arriving at his conclusion that the Appellant had not proved his residence in Ceylon during the material period. In particular he dealt with the evidence of the two witnesses Abdul Suban and Mohamed Shahul Hameed who gave oral evidence as to the Appellant's residence in Ceylon during this period, rejecting the evidence of both.

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20. The Deputy Commissioner also found that the Appellant had not proved that he was permanently settled in Ceylon. This

however was expressly stated by him to be in view of his finding that the Appellant had not proved his residence in Ceylon from 1936 to 1943, and it is not contended by the Respondent, that if there had not been this adverse finding as to residence, there would not have been sufficient evidence adduced by the Appellant to discharge the initial burden of proof that he was permanently settled in Ceylon.

Record
p.57, l.14

10 As to the other matters which the Appellant was required by the Act to show, the Deputy Commissioner found in favour of the Appellant and no question as to any of these matters arises in this case.

21. By Petition of Appeal dated the 3rd December 1958 the Appellant appealed to the Supreme Court of the Island of Ceylon against the Deputy Commissioner's Order, which appeal was dismissed by Order of the said Supreme Court dated the 14th December 1960.

pp.58-61

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pp.62-63

22. The Respondent respectfully submits that the Deputy Commissioner conducted the said inquiry into the Appellant's application fairly and justly and in accordance with the Act. The Act expressly frees a Commissioner or Deputy Commissioner inquiring into an application for registration from the formalities and technicalities of the rules of procedure and evidence applicable to a Court of law. It is submitted that a Commissioner or Deputy Commissioner may pursue his inquiries and authorise his Investigating Officer to make investigations in any manner that seems to him appropriate and convenient, provided only that the procedure adopted is fair to the Applicant. Certain steps are obligatory under the Act, but for the rest there is a discretion as to how an inquiry and investigation are to be conducted. The Act does not expressly specify all the duties and functions of the Commissioner (or Deputy Commissioner) nor of the Investigating Officer, as the terms of Section 18 show. It is submitted that there was in this case no reason why the Deputy Commissioner should not have made further inquiry into the authenticity of the School Certificate, when he observed that the writing appeared to be recent, or have instructed

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his Investigating Officer to make further investigations into the matter, and that indeed it was his duty so to do.

23. The Respondent further respectfully submits that the record shows that the inquiry was conducted with fairness to the Appellant. The Head Teacher, Ponniah, gave evidence on the 21st September 1957 at the request and in the presence of the Appellant, whose witness in effect he was. Each and every allegation in the Investigating Officer's report as to the authenticity of the School Certificate was put to this witness explicitly and in the presence of the Appellant. Thereafter, at a subsequent hearing, the Appellant was recalled to give further evidence about the document. Accordingly, both the Appellant and his witness were given every opportunity of dealing with the allegations in the Investigating Officer's report and of meeting the criticisms directed against the genuineness of the document,

24. No complaint, it is submitted can be made as to the conduct of the inquiry in respect of the Head Teacher's failure to produce his register. The Record shows that the Appellant's Advocate, when the witness first gave evidence, said that he would endeavour to ask him to produce his register at some future date. Despite this, at the final hearing, although the Head Teacher was present, he did not bring his records and the Appellant's Advocate informed the Deputy Commissioner that he did not want him called again, and closed his evidence.

25. With regard to the Deputy Commissioner's correspondence with the Director of Education it is submitted that in the result no harm was done to the Appellant. The whole correspondence was disclosed to him before the close of the inquiry. The officer of the Ministry of Education who made the original adverse report as to the genuineness of the School Certificate was called before the Deputy Commissioner at the Appellant's

request and testified fully as to the matters upon which he had based his report and also as to the subsequent reversal of it by a superior official of the Ministry. No request was ever made by the Appellant that this superior official of the Ministry who made the second report should be called to give evidence before the Deputy Commissioner.

10 26. In any event it is respectfully submitted that any investigation by the Ministry of Education into the matter of the School Certificate would necessarily be based substantially upon the same material that the Deputy Commissioner had before him in his inquiry, that is to say, the school certificate itself, the Head Teacher's statement of the date when the certificate was issued, his explanation of its consistency with such of the school documents as were extant and his account of
20 how certain material school documents came to be missing. Accordingly, the Deputy Commissioner rightly disregarded the results of both departmental inquiries conducted by the Ministry of Education and based himself substantially upon what was in evidence before him.

27. It is further submitted that the inquiries conducted by the Ministry of Education, which in the result exonerated the Head Teacher, were inquiries of a totally different sort from the inquiry that the Deputy Commissioner had to carry
30 out. These were in effect inquiries into the alleged misconduct of the Head Teacher, whereas what the Deputy Commissioner was required to consider was whether the School Certificate could be accepted as a genuine document and supported the Appellant's claim to have been uninterruptedly resident in Ceylon from 1936 to 1943. As to this, the onus of proof was upon the Appellant and it is respectfully submitted that the Deputy Commissioner
40 rightly concluded on the material before him that the Appellant had not discharged such onus.

28. The Respondent humbly submits that this appeal should be dismissed with costs for the following (among other)

RecordR E A S O N S

1. BECAUSE the Deputy Commissioner conducted the said inquiry fairly and justly and in accordance with the Act.
2. BECAUSE the Appellant failed to discharge the onus of proving that he was uninterruptedly resident in Ceylon from 1936 to 1943 which by the express terms of the Act was upon him.
3. BECAUSE on the evidence before him the Deputy Commissioner rightly concluded that the School Certificate was not genuine. 10
4. BECAUSE the Appellant had notice of all the allegations made as to the authenticity of the School Certificate and full opportunity of producing documentary or oral evidence to meet these allegations.
5. BECAUSE when there arose a question as to the genuineness of a material document which had been tendered in evidence by the Appellant in support of his case, the Deputy Commissioner was entitled to investigate the matter or cause it to be investigated. 20
6. BECAUSE the Deputy Commissioner's findings of fact, which were fatal to the Appellant's case, were affirmed by the Supreme Court of Ceylon and ought not to be disturbed. 30
7. BECAUSE the decision and Order of the Deputy Commissioner was right for the reasons therein stated and the Supreme Court of Ceylon rightly upheld it.

MARK LITTMAN

MONTAGUE SOLOMON

No. 4 of 1963

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN:

M.K.S. SEYED MOHAMED SHAREEF
Appellant

- and -

THE COMMISSIONER FOR THE
REGISTRATION OF INDIAN AND
PAKISTANI RESIDENTS
Respondent

C A S E

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