

M. K. S. Seyed Mohamed Shareef — — — — *Appellant*

v.

The Commissioner for the Registration of Indian and Pakistani
Residents — — — — — *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH JUNE 1965

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST

LORD GUEST

LORD PEARCE

LORD WILBERFORCE

LORD PEARSON

(Delivered by LORD GUEST)

This is an appeal by special leave of the Board from an order of the Supreme Court of Ceylon (de Silva J.) dismissing without reasons the appellant's appeal from an order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents (referred to hereafter as "the Deputy Commissioner") dated 15th September 1958 refusing the appellant's application for registration as a citizen of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.

Under this Act Indian or Pakistani residents may be granted the status of citizenship of Ceylon provided they fulfil certain residential qualifications. These were in the appellant's case (1) uninterrupted residence in Ceylon for ten years prior to 1st January 1946 and (2) uninterrupted residence from 1st January 1946 till the date of the application for residence which in the appellant's case was 4th August 1951. Occasional absence for less than twelve months on any one occasion does not interrupt the continuity of residence (section 3). The application for registration is made to the Commissioner under section 4 (1) of the Act. The procedure under the Act is that the Commissioner refers the application for verification of the particulars to the investigating officer who makes a report to the Commissioner. This report must be taken into consideration by the Commissioner in dealing with the application (section 8). If the Commissioner is of opinion that a *prima facie* case has not been established he serves on the applicant a notice setting forth the grounds upon which the application will be refused unless the applicant shows cause within three months of the notice. If no cause is shown the Commissioner refuses the application. If however cause is shown by the applicant he may hold an inquiry (section 10). The Commissioner may also hold an inquiry of his own motion (section 14). Provisions for inquiries are contained in section 15. Subsections (3) and (4) are in the following terms:—

“(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.

(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."

At the close of the inquiry the Commissioner shall either proceed as if a *prima facie* case for allowing an application had been made out or make an order refusing the application (section 15(7)). There is provision in section 16 for an appeal against an order refusing or allowing an application to the Supreme Court.

The appellant duly made application to the respondent for registration as a citizen of Ceylon under section 4 of the Act. In his application dated 4th August 1951 he stated *inter alia* that he had been continuously resident in Ceylon for a period of ten years from 1st January 1936 to 31st December 1945 and that he had been continuously resident in Ceylon from 1st January 1946 to the date of the application. The Deputy Commissioner gave notice to the appellant on 31st July 1956 under section 10(1) of the Act (then section 9(1)) that he had decided to refuse the application unless the appellant showed cause to the contrary on various grounds *inter alia* that the applicant had failed to prove (1) that he was resident in Ceylon during the period 1st January 1936 to 4th August 1951 without absence exceeding twelve months on any single occasion and (2) that he had permanently settled in Ceylon. The appellant by letter dated 25th October 1956 showed cause and asked for an inquiry. The inquiry opened on 22nd April 1957 and on various dates between then and 29th August 1958 the Deputy Commissioner heard evidence and caused investigations to be conducted into various details connected with the application. On 15th September 1958 the Deputy Commissioner refused the application. The appellant's appeal to the Supreme Court of Ceylon was refused by de Silva J. without reasons on 14th December 1960.

After the order of the Deputy Commissioner was made and the record made available to the appellant he became aware of the investigations which had been made by the Deputy Commissioner without his knowledge.

When the appellant gave evidence before the Deputy Commissioner on 22nd April 1957 he produced his School Certificate known as a "Q Schedule" which was in the following terms:—

" Name of School	K, Boputuya Estate, Tamil Mixed School.
Full Name of Pupil	M. K. S. Mugamed Sharrif, Neen Thurugala, Girindi Ella, Rangala.
Full Name of Parent	Seyed Ahamed Thamby
Admission number of Pupil	8 Date of Admission 17.11.1935
Age of Admission	8. Passed fifth standard (Vth)
Last standard passed in	{ Reading X Sp. x. Writing X — Arithmetic X —
	Sgd. S. Ponniah
	Signature of Head Teacher
Date of Withdrawal	1.12.1943."

When this Certificate was produced the Deputy Commissioner, mistakenly thinking that the Certificate purported to be issued in 1943, formed the view that the freshness of the writing was suspicious and he accordingly initiated an investigation into the genuineness of the School Certificate. No notice of this investigation was given to the appellant. On 2nd September 1957 the investigating officer sent a report to the Deputy Commissioner stating that in his opinion *inter alia* the Certificate was not a true copy of the original and that the Certificate must have been issued sometime between 1st January 1952 and 1st September 1953. This report was in the following terms:—

“ *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.

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.

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.

Admission and Withdrawal Register

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.”

Neither the fact that this report had been obtained nor the terms of the report were at any time disclosed to the appellant. The Deputy Commissioner on 19th September 1957 then requested the Director of Education to direct an officer to report on the genuineness of the School Certificate. No notice was given to the appellant of the fact that this investigation was being made.

The next stage in the proceedings was that the Head Teacher, S. Ponniah, who signed the School Certificate was examined on 21st September 1957 at length by the Deputy Commissioner. The witness said that he had issued the School Certificate in 1951 when the pupil asked for it. He stated that the documents from which the information on the certificate was obtained had been lost. The material upon which the examination by the Deputy Commissioner was made was evidently taken from the Report of the Investigating Officer, dated 2nd September 1957.

On 20th January 1958 the Director of Education wrote to the Deputy Commissioner as follows:—

“ In continuation of my letter of 2.1.58, it is reported that Q Schedules in question have been issued under false pretexts and that they are not genuine.”

The Deputy Commissioner did not at any stage call for the report on which this letter was based.

At the resumed inquiry on 18th February 1958 the appellant was confronted by the Deputy Commissioner with the contents of the above letter from the Director of Education. He persisted that he attended the Thangala Girindi Ella School from 1935 to 1943. His advocate then asked for the attendance of the officer who made the report, Mr. Sandarasegaram. Before the next hearing on 29th August 1958, when the officer who made the report gave evidence, the Deputy Commissioner had been told on 11th April 1958 by the Director of Education that the matter was being further investigated, and on 19th May 1958 he had received a letter from the Director of Education informing him that the Q Schedules, i.e. the School Certificates, were genuine. The

Deputy Commissioner was informed on 20th June 1958 that the further inquiries which resulted in the opinion by the Director that the certificates were genuine were conducted by Mr. M. J. M. Mushsin, C.C.S., Assistant Secretary, Ministry of Education, Colombo. Neither the communication of 19th May 1958 nor the communication of 20th June 1958 were disclosed to the appellant prior to the resumed hearing on 29th August 1958.

At this resumed hearing Mr. Sandarasegaram was examined by the Deputy Commissioner. He said that he had visited the school and that he found by circumstantial evidence that the schedules were not genuine. He did not say what this circumstantial evidence was. He did not know of the Assistant Secretary's finding that the schedules were genuine but he understood that the benefit of doubt had been given to the Head Teacher of the School and that the officer who made the inquiry took into account his report and "the meritorious record of the teacher and the documents produced of which I am unaware". During the course of the hearing the Deputy Commissioner for the first time disclosed to the appellant the letter dated 20th January 1958 from the Director of Education to the Deputy Commissioner in which he stated that the Q schedules had been issued under false pretences and were not genuine.

At the conclusion of the evidence the Deputy Commissioner read out the correspondence between him and the Director of Education previously referred to in which the Director informed the Deputy Commissioner that the schedules were genuine and disclosed that the name of the officer who conducted the inquiries was Mr. Mushsin. The Deputy Commissioner then recorded the following addendum:—

" Mr. Aluwihare mentions that he does not want the Head Teacher of the School called in, although he was summoned at his request as no questions for clarification arose from the evidence of the inspector of schools. Mr. Aluwihare does not wish to examine the applicant any further."

He then recalled the appellant and asked him some questions about a Temporary Residence Permit in which it was stated he was resident in Ceylon since 1944.

The appellant's advocate then handed in a statement signed embodying his submission on behalf of the appellant. This statement included *inter alia* the following:—

" We have to prove

- (1) residence from 1.1.36 to date of application without absence from the Island more than a year on any single occasion.
- (2)
- (3)

(1) We have produced school registers and " Q " Schedules, covering the period 1.1.36 to 1944 i.e. for 10 years period to 1946. The " Q " Schedules were admitted to be genuine i.e. the School Certificate. The Education Officer stated that if the " Q " schedules were genuine, the supplementary documents, i.e. the school register must be genuine. Even on the Inspector's own reasoning, the school register, the genuineness of which he originally said was in doubt, has to be taken as genuine. The matter is now put beyond doubt by the authoritative letter of the Director of Education which was issued after the Inspector took had agreed " (Sic). " The terms of the letter are that the " Q " Schedules are genuine. No qualification is mentioned. It follows that all supplementary documents are genuine.

....."

The appellant submitted that the order of the Supreme Court should be set aside and the finding of the Deputy Commissioner quashed on the ground that in the conduct of the Inquiry the Deputy Commissioner contravened the principles of natural justice. It is therefore necessary to detail quite shortly the grounds upon which he arrived at his decision which were given in his order.

Having detailed the issues before him the Deputy Commissioner stated that the report of his investigating officer impelled him to make further inquiries. He detailed the evidence of S. Ponniah the school teacher who signed the school certificate which he found most unsatisfactory and "almost confirmed the report of the investigating officer". He then referred to the report of the Director of Education that the school schedules were not genuine and stated that Mr. Sandarasegaram the officer who made the inquiry confirmed the report of the Director. His order then proceeds as follows:—

"Before I proceed to discuss the foregoing evidence, I should refer to a subsequent letter of the Director of Education dated 19th May, 1958 (folio 160) who informed me that the Q Schedules in question were genuine. On my enquiry from the Director, I was informed by letter of 20th June, 1958 (folio 164) that the further enquiries were made by the Assistant Secretary, Ministry of Education. I have not been informed of the reasons for making further enquiries on the basis on which this finding was carried out. I myself might have made the enquiry but it appeared to me that no purpose would be served by doing so, especially in view of the reports earlier made by my Investigating Officer and the Inspector of Schools from which I could myself arrive at an independent decision. In fact that was the only course left to me. 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."

Having considered the school teacher's evidence further he concluded that his story was a fabrication. He finally rejected the school schedules produced as not genuine and stated that the applicant had failed in his proof of residence in Ceylon between 1936 and 1943. The other matters in issue he determined in the applicant's favour except that in view of his determination of failure to prove residence from 1936 to 1943 he was unable to say that the applicant was permanently settled in Ceylon.

The Deputy Commissioner in fulfilling his duties under the Act occupies an anomalous position. In his position as a member of the executive he regulates the investigation into the matters into which he considers his duty to enquire and as an officer of state he must take such steps as he thinks necessary to ascertain the truth. When conducting an inquiry under sections 10, 13 or 14 he is acting in a semi-judicial capacity. In this capacity he is bound to observe the principles of natural justice (section 15(4)). In view of his dual position his responsibility is increased to avoid any conduct which is contrary to the rules of natural justice. These principles have often been defined and it is only necessary to state that they require that the party should be given fair notice of the case made against him and that he should be given adequate opportunity at the proper time to meet the case against him (*Ridge v. Baldwin* [1964] A.C.40.).

It is against these principles that the Deputy Commissioner's conduct must be examined. It is noteworthy that the initial suspicion engendered in the Deputy Commissioner's mind was ill founded. He thought the school certificate to be dated 1.12.43 whereas 1.12.43 was expressly stated to be the "Date of Withdrawal". The freshness of the writing had in these circumstances not the same significance. The investigation therefore started so to speak "on the wrong foot" with the Deputy Commissioner entertaining an erroneous suspicion against the appellant. It is not doubted that under section 15 the Deputy Commissioner has wide powers of inquiry and investigation not enjoyed by a judge in a civil or criminal trial, and that he is not bound to conduct the inquiry according to the normal rules of evidence. But the appellant complains that information which was obtained behind his back was in some cases not disclosed to him until the last moment and in others was never disclosed to him at all. Counsel for the appellant argued that it was unfair not to disclose the report of the investigating officer dated

2nd September 1957 and that the report upon which the letter from the Director of Education dated 20th January 1958 was made should have been obtained by the Deputy Commissioner and disclosed to the appellant. Their Lordships consider that it would have been in accordance with normal fair conduct of an inquiry that this should have been done, and what was scarcely fair to the appellant was that the School Teacher, Ponniah, should have been examined or rather cross-examined by the Deputy Commissioner who had the details of the investigating officer's report without disclosing this report to the appellant's advocate.

Such procedure made it almost impossible for the appellant's advocate who had no direct knowledge of the terms of the report to re-examine the witness and clear up any difficulties raised. It is also to be noted that it was apparently never put to the witness that his report was a fabrication which was the conclusion ultimately reached by the Deputy Commissioner.

Their Lordships now pass to the 18th February 1958 when at the conclusion of the Inquiry the appellant was confronted with the opinion of the Director of Education that the Q schedule was not genuine. His advocate not unnaturally asked that the reporter should be called to give evidence. As a result Mr. Sandarasegaram was examined by the Deputy Commissioner on 29th August 1958 the last day of the Inquiry. In the meantime the Deputy Commissioner had received information from the Director of Education that the Q schedules were considered genuine, that his previous opinion was cancelled and that this was the result of inquiries made by a senior official in the C.C.S. But Mr. Sandarasegaram's evidence proceeded on the basis of his report that the Q schedules were not genuine and it was only at the conclusion of his evidence that the Deputy Commissioner read the letters from the Director of Education to the effect that the Q schedules were genuine. It is in the light of these developments that the appellant's advocate's statements and submissions have to be considered.

The impression which would naturally have been left upon his advocate, in view of the course of the proceedings, was that the last report of the Director of Education concluded the matter of the genuineness of the Q schedules in his client's favour. By the Deputy Commissioner's failure to point out to him that he was by no means convinced of their genuineness and that he proposed to rely on the superseded report of Mr. Sandarasegaram he may well have been misled into thinking that the Deputy Commissioner did not require any further argument or evidence on this aspect of the matter. During the whole conduct of the inquiry the appellant was never told the details of the case against the genuineness of the document and he was never given a proper opportunity of answering that case.

Counsel for the appellant claimed that the Deputy Commissioner should have called Mr. Mushsin to explain his reasons for concluding that the Q schedules were genuine. No doubt the appellant could have asked for him to be called. But the Deputy Commissioner in holding the inquiry was under a duty to ascertain the truth and in any event the appellant's advocate at that stage was under the impression that Mr. Mushsin's opinion was being accepted by the Deputy Commissioner. However this may be, it is apparent from the passage from the Deputy Commissioner's order previously quoted that he was prepared to disregard the opinion of Mr. Mushsin without hearing his evidence and to prefer the investigating officer's report and the evidence of Mr. Sandarasegaram, the Inspector of Schools, to the effect that the schedules were not genuine, which opinion had been cancelled by the Director of Education. In the whole circumstances their Lordships are satisfied that the appellant was not fairly treated and that the principles of natural justice were not complied with by the Deputy Commissioner.

Their Lordships must record their regret that they did not have the assistance of the reasons of the Supreme Court in dismissing the appeal, a decision reached, as they understand, after two days hearing.

It follows that the order of the Deputy Commissioner must be quashed. Their Lordships have had to consider what further orders should be made. It would not be proper in their view upon the state of the evidence to make

a finding that the appellant had made out a *prima facie* case. It would however in their Lordships' opinion be preferable in accordance with the usual practice in such cases, that the appellant's application should be heard by a different Deputy Commissioner. It will of course be for the respondent to decide whether upon the existing state of the evidence he is prepared to admit the appellant's claim or whether a further inquiry is to take place.

Their Lordships will therefore humbly advise Her Majesty that the order of the Supreme Court dated 14th December 1960 should be set aside, that the order of the Deputy Commissioner dated 15th September 1958 should be quashed, and that the case should be remitted to the Supreme Court for the purpose of placing *de novo* the appellant's application for registration before the respondent under the Indian and Pakistani Residents (Citizenship) Act, 1949.

The respondent must pay the appellant's costs before the Board and the Supreme Court.

In the Privy Council

M. K. S. SEYED MOHAMED SHAREEF

v.

THE COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS

DELIVERED BY
LORD GUEST

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