

11, 1958

P.C. Appeal Nos. ~~18 and 23~~ of 1956.

# In the Privy Council.

UNIVERSITY OF LONDON  
W.C.1.

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TRINITY COLLEGE, LONDON  
SCHOOL OF ADVANCED  
LEGAL STUDIES

## ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

52049

~~HERBERT ERNEST TENNEKOON,~~  
Commissioner for Registration of Indian  
and Pakistani Residents, Colombo . . . *Respondent-Appellant*

AND

10 ~~PUTHUPATTI KITNAN DURAISAMY~~  
~~of Glentilt Estate, Maskeliya . . .~~ *Appellant-Respondent*

~~AND BETWEEN~~

HERBERT ERNEST TENNEKOON,  
Commissioner for Registration of Indian  
and Pakistani Residents, Colombo . . . *Respondent-Appellant*

AND

MURUGAPILLAI PANJAN of Letchumy-  
pathy Stores, Iruwanthampola, Koslanda *Appellant-Respondent.*

## Case

20 on behalf of the Respondent-Appellant as against the above-named  
Appellant-Respondent MURUGAPILLAI PANJAN.

RECORD.

1. The above-named Appellant-Respondent Murugapillai Panjan  
is an Indian Tamil whose appeal against the order of the Commissioner  
for Indian and Pakistani Residents dated the 14th August, 1953, refusing  
to register him as a citizen of Ceylon under the Indian and Pakistani  
Residents (Citizenship) Act, No. 3 of 1949, was allowed by the Supreme  
Court of Ceylon, from the judgment of which Court dated the  
25th February, 1955, the Respondent-Appellant is now appealing.

p. 42.

p. 50.

2. The appeal raises similar questions to those raised by the appeal  
30 in the case of Puthupatti Kitnan Duraisamy, ~~with which it is, by order~~  
~~of the Judicial Committee of the Privy Council, consolidated.~~

3. The facts in this case are as follows :—

The above-named Appellant-Respondent Murugapillai Panjan  
applied to be registered under the Act as a citizen of Ceylon on the

p. 1. 26th May, 1951, stating in his application that he was a single man, an Indian resident and had been continuously resident in Ceylon during the period of ten years commencing on the 1st January, 1936, and ending on the 31st December, 1945, and from the 1st January, 1946, to the date of the application and making a declaration in the terms of s. 6 (2) (iii) and (iv) of the Act. In his supporting affidavit he deposed that he had been born at Thathamangalam Village, Trichy district, on the 3rd January, 1924, that he was the manager of Letchumypathy Stores, Koslanda, and that he had resided at Iruwanthampola, Koslanda, from 1936 to 1942, 10 at Egodawatha Estate, Koslanda, from 1942 to 1947, and at Letchumypathy Stores, Koslanda, from 1947 to date.

pp. 7, 8, 9, 10, 11. The application was supported by various letters or certificates speaking as to the said Appellant-Respondent's good character and length of residence in Ceylon. There was however no contemporary documentary evidence as to his residence in Ceylon from 1936 to 1947 but only letters of recent date.

p. 8. 4. On the 4th April, 1952, the above-named Appellant-Respondent in answering a questionnaire submitted to him stated that he had an interest in certain property in India, being entitled to a  $\frac{1}{4}$  share of his 20 father's estate worth Rupees 2,000, that he had paid visits of one month each to India in 1946 and 1947 to see his parents and that he had remitted money to India but was not certain how many times.

p. 12. The Investigating Officer reported on the application as follows :—

ll. 6-30. “ Residence From 1936 (1st. Jan.) to date of application.

“ 1936 to 1942.—The applicant says that he was at Iruwanthampola Estate with his relations. There is no documentary evidence to show that he was actually living in Ceylon and not in India. The three letters (P.7, 8 and 9) are intended by the applicant to prove his residence during the period 1936 to 1942. In my opinion 30 this evidence is highly unreliable.

“ From 1942 to 1947.—The applicant says that he was working at a boutique at Egodawatte Estate, Koslanda. He says that he was there from Aug., 1942, to July, 1947. Unfortunately that boutique is now closed down.

“ From Sept., 1947, to the date of his application, he has been at Letchumy Stores, Iruwanthampola. I have examined the books and I have found that he has resided at the above residence during this period.

“ Visits to India. He has made two visits to India, in 1946 40 and 1949, to see his parents. Both visits lasted a month each.

“ Interests in India.—He is entitled to  $\frac{1}{4}$  share of his father's property which is worth Rs. 2,000. His parents are now permanently residing in India and the applicant says that they do not desire citizenship as asked for (*vide* p. 3). Remittances. The

applicant has remitted money to India but he does not know the exact amount or the occasions he has remitted. He has remitted Rs. 76 in 1951.

“ Interests in Ceylon.—He is now the Manager of Letchumy Stores. He has contributed Rs. 2,034.10 towards his business in 1951 July.”

The said Appellant-Respondent gave further details of the remittance of Rs. 76 in a letter written to the Investigating Officer on the 23rd July, 1952. p. 13.  
 In this he stated that he had sent to his parents in India Rs. 15 on the 31st January, 1950, Rs. 15 on the 28th February, 1950, Rs. 23 on the 31st May, 1950, and Rs. 23 on the 30th June, 1950, and that these remittances had been made under a General Permit dated the 18th December, 1949, issued under the Defence (Finance) Regulations. This General Permit, which was enclosed in the letter, was in fact a permit issued by the Controller of Exchange, granting authority for the said Appellant-Respondent to remit to India a total sum of Rs. 336 in monthly instalments extending from January, 1950, to April, 1951. In the formal application for this permit, made by the said Appellant-Respondent on the 24th August, 1949, and signed by him, he had declared himself to be temporarily resident in Ceylon, had stated that his father, mother, two brothers and sister were dependants, that during the period 1st July, 1948, to 31st March, 1949, he had been regularly remitting Rs. 25 per month to each of them and that the purpose of the remittance sought to be authorised was “ Home Expenses at India.”

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ll. 12-20.  
 p. 13, l. 25.  
 p. 14, ll. 13-16.  
 p. 28, l. 15.  
 ll. 30-34.

5. On the 9th October, 1952, C. M. Agalawatte, a Deputy Commissioner for the Registration of Indian and Pakistani Residents, gave the said Appellant-Respondent notice that he had decided to refuse his application for registration unless he showed cause to the contrary within a period of three months. The grounds for such refusal were specified as follows :—

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“ You have failed to prove—

p. 18, ll. 22-29.

(1) that you had permanently settled in Ceylon: the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon ;

(2) that you were resident in Ceylon during the period 1st January, 1936, to July, 1947, without absence exceeding 12 months on any single occasion.”

The said Appellant-Respondent replied by his proctor on the 8th November, 1952, that he had been unaware of the implications of the declaration made by him to the Department of Exchange Control, that he had since his first arrival in Ceylon treated Ceylon as his permanent home and that such had been his intention at the time he made his application for registration as a citizen of Ceylon, and for these reasons requesting the holding of an enquiry.

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The said Appellant-Respondent's application for registration as a citizen of Ceylon was accordingly referred for inquiry.

pp. 35-39.

6. At the enquiry, which was held on the 7th July, and the 29th July, 1953, before V. L. Wirasinha, Commissioner for the Registration of Indian and Pakistani Residents, the said Appellant-Respondent produced documents and called evidence to show that he had been continuously resident in Ceylon for the required period. He also himself gave evidence in support of his application, stating in the course of his evidence that he had not made any remittances to India before obtaining the permit from the Controller of Exchange, that the Rs. 76 he had remitted had been sent to his father in order to assist in the payment of certain medical expenses and that since then he had not made any remittances. With regard to the declaration made by him that he was temporarily resident in Ceylon, the said Appellant-Respondent's testimony was that he did not know the meaning of what he signed, as the form was in English, a language which he did not understand. 10

p. 37, ll. 8-17.

pp. 32, 40.

7. At the said enquiry there was also received in evidence, at the instance of the said Appellant-Respondent, a copy of the evidence given in another case by A. H. Abeynaike, Deputy Controller of Exchange, Colombo. The said Abeynaike deposed that the form of application of the 24th August, 1949, in which the said Appellant-Respondent had declared that he was temporarily resident in Ceylon was a form drafted "on the initiation of the Controller of Exchange," from whom under the Defence (General) Regulations a permit is required for the remittance of moneys abroad. The said Abeynaike further deposed that his own practice in the Department was normally to accept without further investigation declarations made by persons temporarily resident in Ceylon as to who their dependants abroad are but that declarations from persons permanently resident in Ceylon he would test further, requiring proof of necessity and obligation. 20

ll. 21-30.

p. 41, ll. 4-8.

p. 42.

8. At the end of the enquiry the Commissioner made an order refusing the application. The grounds of his refusal were thus stated by him :— 30

p. 42, l. 36-p. 43,  
l. 24.

"The applicant's case is, basically, that his conduct and action, combined with length of residence in Ceylon, clearly indicates the acquisition of domicile in Ceylon, which is not controverted by the declaration made to the Controller of Exchange to the effect that he was temporarily resident in Ceylon. It has been sought to explain away the declaration referred to in two ways, firstly, that the applicant, not being able to read or understand English, which was the language in which the form had been printed, did not know what he was signing. This representation I find unacceptable. Although the applicant could not read or understand English, he could quite easily have had the meaning of the declaration explained to him by someone who did. The natural presumption that when he signed the declaration he knew what the declaration meant has not been effectively rebutted. The second approach is that the declaration was deliberately false, that the applicant wanted very much to send money to his father, to assist him in obtaining treatment for his eyes, and the applicant therefore made a false declaration to the Controller of Exchange lest, having made a true declaration to the effect that he was permanently resident in Ceylon, he should 40

fail to secure authority for the remittances. The applicant himself did not, in his evidence, take up this position—it was advanced by his Proctor in the course of argument. The applicant himself could not earlier take up that position because he had already stated that he did not know the meaning of what he signed.

10 “ Whatever the approach taken by the applicant may be, the point which I have to decide is whether the applicant’s conduct and action so clearly indicate that he had permanently settled in Ceylon that they must prevail over the declaration that the applicant was temporarily resident in Ceylon.

“ Several authorities were cited to me in support of the contention that declaration of intention are of no avail, if they are inconsistent with action and conduct.

\* \* \* \* \*

p. 44, ll. 10-27.

20 “ In the case before me the action and conduct of the applicant are not inconsistent with the declaration that he was temporarily resident in Ceylon. Although the applicant’s residence in Ceylon answers a quantitative test, it does not answer a qualitative test. All that he can show apart from length of residence is that he has invested a sum of about Rs. 2,000 in the business venture in Ceylon. This is very little indeed to go upon. It is a matter of common knowledge that numerous Indians, having either worked on estates in Ceylon, or having traded in Ceylon, have eventually returned to India and settled there. The applicant’s action and conduct are not of such a nature as to suggest that the declaration which he made that he was temporarily resident in Ceylon was not, in fact, the truth.

30 “ Mr. Hari Hara Aiyer made a further suggestion that, even if the applicant was only temporarily resident in Ceylon at the time when he made his last remittance in June, 1950, he had in fact permanently settled in Ceylon by the date of his application, namely, 26th May, 1951.

\* \* \* \* \*

p. 44, l. 35- p. 45,  
l. 8.

40 “ The point is whether an applicant or an ancestor of his should have permanently settled in Ceylon at least by the date of coming into operation of the Act, or whether it is sufficient that he had permanently settled in Ceylon by the date of his application. The Indian and Pakistani (Citizenship) Act, No. 3 of 1949, was the result of negotiations between the Governments of India and Ceylon relating to a body of persons whose origin was in India and who had permanently settled in Ceylon. What was in issue was the status of a fairly large number of Indian and Pakistani residents who were already permanently settled in Ceylon and the Act was designed to benefit that body of persons. I am of opinion therefore that what the Act requires is that an applicant should have permanently settled in Ceylon not merely by the date of his application, but at any rate by the date of coming into operation of the Act, namely, 5th August, 1949. In the present case, even if the correct view were that an applicant need have permanently

settled in Ceylon only by the date of his application, there is no evidence of a change of intention between June, 1950, and May, 1951, in the way of positive action and conduct indicating an intention to reside permanently in Ceylon.

“ The application is refused.”

p. 46.

9. By Petition of Appeal dated the 13th November, 1953, the said Appellant-Respondent appealed against this order to the Supreme Court of Ceylon.

p. 49.

10. The appeal was first argued on the 13th October, 1954, before Swan, J., who on the following day referred it to a fuller Bench. Thereafter it was argued before a Bench consisting of Gratiaen, J., and Sansoni, J., together with the appeal of the above-named Respondent Puthupatti Kitnan Duraisamy. On the 25th February, 1955, Gratiaen, J., delivered the judgment of the Court in the following terms :—

p. 50.

p. 50, ll. 12-22.

“ This appeal came up before us on a reference by Swan, J., and was argued before us together with a similar appeal— S.C. No. 517/54 Application No. J 154. It is not denied that if the judgment pronounced by us on 18th February, 1955, be correct, the appellant for the same reasons is entitled to succeed on this appeal. We accordingly allow the appeal for the same reasons as those contained in our connected judgment and direct the Commissioner to take appropriate steps under section 14 (7) of the Act on the basis that a *prima facie* case for registration has been established to the satisfaction of this Court. The appellant is entitled to the costs of this appeal.”

p. 52.

11. On the 16th March, 1955, the Respondent-Appellant applied to the Supreme Court of Ceylon for Conditional Leave to Appeal to the Privy Council. The application was heard on the 16th and 17th June, 1955, together with the similar application in the case of Duraisamy and was granted on the 20th December, 1955, for the same reasons. On the 2nd February, 1956, the Respondent-Appellant was granted Final Leave to Appeal.

p. 54.

p. 59.

12. The Respondent-Appellant repeats the submissions made by him in his case as against the Appellant-Respondent Puthupatti Kitnan Duraisamy and humbly submits that the judgment and order of the Supreme Court of Ceylon of the 25th February, 1955, are erroneous and should be reversed and the order of the Commissioner of the 14th August, 1953, should be restored with costs for the following amongst other

## REASONS

- (1) BECAUSE the Indian and Pakistani Residents (Citizenship) Act, 1949, expressly requires applicants for registration to prove that they are permanently settled in Ceylon. 40
- (2) BECAUSE proof by an applicant that he has resided in Ceylon for the required period and that he satisfies

the statutory tests imposed by the Act does not of itself constitute proof that he is permanently settled in Ceylon.

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- (3) BECAUSE having regard to the declarations made by the said Appellant-Respondent to the Controller of Exchange that he was temporarily resident in Ceylon, he cannot in these proceedings be heard to say in contradiction of such declarations that he is permanently settled in Ceylon.
- (4) BECAUSE the said Appellant-Respondent failed to prove that he is permanently settled in Ceylon.
- (5) BECAUSE the said Appellant-Respondent is a person who has not, within the meaning of section 6 (1) of the Act, proved that he is a Pakistani or Indian resident and is accordingly not entitled under the provisions of the Act to be registered.
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- (6) BECAUSE, the Supreme Court having applied what is submitted to be a wrong test, the findings of the Commissioner should be treated as having been undisturbed.
- (7) BECAUSE on the evidence before him the Commissioner's findings ought not to be disturbed.
- (8) BECAUSE the order of the Commissioner was right for the reasons therein stated and the judgment of the Supreme Court was wrong.

FRANK SOSKICE.

MONTAGUE SOLOMON.

**In the Privy Council**

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**ON APPEAL**

*From the Supreme Court of Ceylon.*

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BETWEEN

~~HERBERT ERNEST TENNEKOON, Commis-~~  
~~sioner for Registration of Indian & Pakistani~~  
~~Residents, Colombo . Respondent-Appellant~~

AND

~~PUTHUPATTI KITNAN DURAISAMY of~~  
~~Cherilt Estate, Maskeliya Appellant-Respondent~~

~~AND BETWEEN~~

HERBERT ERNEST TENNEKOON, Commis-  
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Residents, Colombo . Respondent-Appellant

AND

MURUGAPILLAI PANJAN of Letchumpathy  
Stores, Iruwanthampola, Koslanda  
*Appellant-Respondent.*

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**Case**

on behalf of the Respondent-Appellant as against  
the above-named Appellant-Respondent  
**MURUGAPILLAI PANJAN.**

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