

~~P.C.~~
~~CL.G.2~~

Judgment
21, 1965

IN THE PRIVY COUNCIL

No. 4 of 1963

O N A P P E A L

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

FEB 1966

B E T W E E N :-

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LONDON, W.C.1.

10 M.K.S. SEYED MOHAMED SHAREEF Appellant

80960

- and -

THE COMMISSIONER FOR THE REGISTRATION
OF INDIAN AND PAKISTANI
RESIDENTS Respondent

C A S E F O R T H E A P P E L L A N T

RECORD

1. This is an appeal by Special Leave of the Privy Council granted on the 26th day of February 1962, from an Order of the Supreme Court of Ceylon (de Silva J.) dated the 14th day of December, 1960, whereby the Supreme Court dismissed, without reasons, the Appellant's appeal from the Order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents (hereinafter called the "Deputy Commissioner") dated the 15th day of 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 (hereinafter called "the Act").
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2. The Appellant duly made an application for registration as a citizen of Ceylon under Section 4(1) of the Act. By a Notice under Section 9(1) of the Act dated the 31st July 1956, the Deputy Commissioner informed the Appellant that he had decided to refuse the application unless the Appellant showed cause to the contrary. The Appellant, by a letter dated the 28th October 1956, showed cause and asked for an inquiry. At the inquiry into his application which commenced on the 22nd April 1957, the Appellant was called upon to prove:-
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- 40
- p.63 1.15 -
p.65 1.15
p.62 1.1 -
p.63 1.14
- p.49 1.17 -
p.57 1.40
- p.1 1.1 -
p.6 1.40
p.7 1.1 -
p.8 1.22
- p.8 1.23 -
p.9 1.20
- p.9 1.23 -
p.11 1.15

RECORD

"(a) that he was an Indian and Pakistani Resident;

(b) that he was resident in Ceylon during the period 1.1.1936 to 4.8.1951 without absence not exceeding 12 months on any single occasion;

(c) that he was, on the date of his application possessed of an income or a sufficient means of livelihood;

(d) that he had permanently settled in Ceylon; 10

(e) that he was unmarried at the date of his application."

p.49 1.17 - p.57 1.40 3. The Deputy Commissioner having heard evidence on several dates of inquiry between the 22nd April 1957 and the 29th August 1958 and having caused investigations to be conducted (presumably under Section 13 of the Act) into certain matters connected with the application, made order on the 15th September 1958 refusing the Appellant's application. 20

p.56 1.38 4. In his order the Deputy Commissioner answered in favour of the Appellant, all the issues except issues 2 and 4. The answer to issue 4 was merely consequential upon his answer to issue 2 which he answered against the Appellant mainly because he rejected as a forgery a school certificate (Exhibit A2 referred to in the proceedings as Schedule Q) which the Appellant produced to prove his residence in Ceylon during the period 1936 to 1943. 30

5. The Deputy Commissioner's view of Exhibit A2 largely depended upon investigations he had caused to be conducted into its genuineness. The facts relating to the investigations may be briefly summarised as follows:-

(a) When the Appellant produced Exhibit A2 at the inquiry held on the 22nd April 1957, the Deputy Commissioner, mistakenly thinking that the certificate purported to be one issued in 1943, took the view that freshness of the writing was suspicious and should be 40

investigated; and on 20th July 1947 the Deputy Commissioner initiated an investigation into the genuineness of Exhibit A2, by a letter addressed to the Deputy Commissioner (Administration). No notice of this investigation was given to the Appellant.

p.18 l.20 -
p.19 l.14

10 (b) On the 2nd September 1957, the Investigating Officer sent a written report to the Deputy Commissioner stating as his opinion, inter alia that Exhibit A2 was not a true copy of the original and that Exhibit A2 must have been issued sometime between 1.1.52 and 1.9.53. The fact that the Deputy Commissioner had obtained this report was not disclosed to the Appellant. Nor was the Appellant at any stage shown the report or informed of the points made against him in the report.

p.19 l.17 -
p.20 l.25

20 (c) Having ascertained from the Director of Education that the school in question was under the administrative control of the Education Department, the Deputy Commissioner, by his letter of the 19th September 1957, requested the Director of Education to direct an officer to investigate and report on the genuineness of Exhibit A2. The Director of Education was at the same time furnished with a copy of the Investigating Officer's report. No notice was given to the Appellant of this investigation.

p.25 ll.15-35

p.26 ll.1-23

30 (d) On the 20th January 1958, the Director of Education wrote to the Deputy Commissioner the following letter:

p.34 ll.8-20

"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.

40 (e) When on the 18th February 1958 the applicant **was** confronted with the contents of the letter referred to in paragraph (d) above, Counsel for the Appellant submitted that the Commissioner should not accept this letter as correct without the person who made the report being called. Whereupon the Deputy

p.39 ll.15-26

p.41 ll.6-20

RECORD

Commissioner ascertained that the name of the person who made the report was Sandarasegaram an inspector of schools.

p.42 11.1-15

(f) On 11th April 1958, the Director of Education wrote to the Deputy Commissioner cancelling the letter referred to in paragraph (d) above and stating that the matter was being further investigated; and on 19th May 1958 the Director of Education wrote to the Deputy Commissioner as follows:-

p.42 11.16-33

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"Further to my letter of even number dated 11.4.1958, I have to inform you that the Q Schedules in question are genuine".

The Deputy Commissioner did not, at any stage, attempt to ascertain from the Director of Education either the reasons for the further investigations or the reasons for the reversal of the earlier finding. Not until the last date of inquiry did the Deputy Commissioner inform the Appellant of the Director of Education's letter of the 19th May.

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p.43 11.1-25

(g) By his letter of the 23rd May 1958, the Deputy Commissioner asked the Director of Education for the name of the officer who conducted the later investigations, and stated:

"I make this inquiry as it appears to me necessary that the officer should be summoned to give evidence at the resumed inquiries into the applications for citizenship made by the above parties".

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p.43 1.27-p.44 1.10

Although he was, on the 20th June 1958, informed that the officer was Mr. J.M. Mushin C.C.S., Assistant Secretary, Ministry of Education, he did not summon the officer.

(h) By his letter of the 13th August 1958 the Deputy Commissioner informed the Appellant as follows:-

"I have the honour to inform you that the enquiry into your application for registration as a citizen of Ceylon will be resumed at 9.30 a.m. on Friday, 29th August 1958.

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In accordance with the request made by your Counsel at the last date of inquiry, I

10 have issued summons on Mr. Sabapathy Ponniah, Head Master of the Bopitiya Tamil Mixed School, Rangala. A copy of the summons is annexed for Your information. As a request has also been made that summons be issued on the officer in the Education Department who made a report on the School Schedule submitted by you, I shall be glad if you will please remit a sum of Rs.25/- to cover the cost of the officer's travelling expenses. Any balance left over will be refunded to you".

Somasegaram, whose findings on the genuineness of Exhibit A2 had been reversed, was thereupon summoned to give evidence.

20 (i) On the last date of inquiry, after Somasegaram had given evidence, the Deputy Commissioner read out the letters he had received from the Director of Education. Counsel for the Appellant closed his case after the Appellant was examined by the Deputy Commissioner on matters other than the genuineness of Exhibit A2.

p.46 11.14-22

p.47 11.1-22

30 (j) In the course of the inquiry the Deputy Commissioner called as a witness an officer of the Department of Immigration and Emigration to produce an application made by the Appellant in 1954 for a Temporary Residence Permit. From the reasoning in the order it appears that this document was produced because it did in the view of the Deputy Commissioner, supply circumstantial evidence in support of the view that Exhibit A2 did not exist in 1954. This document was produced evidently as a result of an investigation of which the Appellant had no notice.

p.37 1.22-p.39 1.7

p.55 11.18-26

6. Section 14 of the Act provides:-

40 "Where, in considering any application, the Commissioner is of opinion that any matter or matters arising therefrom or connected therewith should be further investigated, he may of his own motion order an inquiry and specify in the order each matter which is to be inquired into and the date and the place appointed by him for the inquiry.

A copy of such order shall in every case be served on the applicant."

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The relevant subsection of Section 15 is as follows:-

"15.(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."

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7. It is respectfully submitted that -

(a) the investigations conducted by the Deputy Commissioner in the course of the hearing are referable to section 14 of the Act and his failure to take the statutory steps under that section makes the evidence obtained at the investigations inadmissible in law; and that, in any event, the failure to give notice to the Appellant of the matters investigated by the Deputy Commissioner deprived the Appellant of a fair opportunity to present his case;

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(b) the Deputy Commissioner dealt with the Appellant's application in a manner contrary to the principles of natural justice;

(c) the proceedings at the inquiry show that the Deputy Commissioner failed to appreciate the need to approach his duty judicially and that the findings of fact upon which he based his order should be reviewed.

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8. The Deputy Commissioner's decision on the issue of residence was based -

(a) on the view that the Q Schedule Certificate (Exhibit A2) produced by the Appellant was a forgery;

(b) on the inference he drew from the contents of the Appellant's application for a Temporary Residence Permit; and

(c) on the rejection of the oral evidence led at the hearing.

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9. The Deputy Commissioner's reasons for

holding that the said certificate was a forgery may be briefly summarised as follows:-

- (a) the recent writing appeared to be suspicious and the report of the Investigating Officer deepened his suspicions; p.51 11.31-34
- (b) the Head Teacher's evidence "almost confirmed the report of the Investigating Officer." p.51 11.42-48
- 10 (c) the Investigating Officer's report (which was not disclosed to the Appellant) and the report of Sandarasegaram (which the Deputy Commissioner did not see) afforded sufficient material for an independent decision; p.53 11.36-41
- 20 (d) the later report of the Director of Education was not acceptable because the Deputy Commissioner was not informed of the reasons for making further inquiries or of the basis of the revised finding and also because it appeared to him from the evidence of Sandarasegaram that the later decision was prompted by the meritorious record of the Head Teacher; and p.53 11.29-35
p.53 11.42-47
- 30 (e) the superintendent of the Estate in which the school was situated was not called to corroborate the Head Teacher's statement that he copied into the new register the original entries in folios 22 and 23 of the old register. p.54 11.1-14

10. As to the Deputy Commissioner's finding that Exhibit A2 is a forgery, it is humbly submitted that -

- (a) the Deputy Commissioner's finding that the Q Schedule Certificate was a forgery is unjustified.
- 40 (b) the original report by the Director of Education which the Deputy Commissioner accepted was as much a bare report as the final report; and Sandarasegaram in giving evidence before the Deputy Commissioner merely stated that his finding was based on circumstantial evidence and did not state what that evidence was.

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(c) the Investigating Officer's report was based largely on two misconceptions, namely,

p.19 11.21-33

(i) that the Q Schedule certificate would ordinarily be a true copy of the counterfoil kept in the school;

p.20 11.1-8

(ii) that the certificate would necessarily be issued at the time the pupil left the school.

In any event, the information contained in the report was acted upon without being tested by cross examination and without regard to the statutory provisions of section 13 of the Act. 10

(d) the evidence of the Head Teacher far from confirming the vital part of the Investigating Officer's report, contradicted the basic misconceptions on which that report was based particularly those referred to in subparagraph (d) above. The failure on the part of the Deputy Commissioner to appreciate the true import of the school master's evidence is presumably due to the fact that, the report not having been disclosed, evidence contradicting it could not be specific or pointed. 20

(e) there was no material upon which the Deputy Commissioner could reasonably hold the certificate to be a forgery, and in the circumstances the Deputy Commissioner should have accepted it in evidence when the proper authority, whose view he had invited, reported it to be genuine; and in any event, the final report of the Director of Education being prima facie proof of the genuineness of an official document issued by an officer under his control, the Deputy Commissioner was wrong in placing upon the Petitioner the onus of calling corroborative evidence to support the Head Teacher. 30

(f) before rejecting the final report of the Director of Education on the ground that he was not informed of the reasons for the second inquiry and of the basis of the final decision, the Deputy Commissioner should, in fairness, have asked for that information and thereafter called the officer responsible for 40

the final report as a witness if he considered his evidence necessary. Such a course was clearly adapted to elicit the truth of the matter under investigation because -

10 (i) it appeared from the evidence of Sandarasegaram that the officer who conducted the second inquiry had before him not only the facts known to the Deputy Commissioner but also additional documents not available either to the Deputy Commissioner or to Sandarasegaram; p.45 11.37-41

20 (ii) the Deputy Commissioner had chosen not to disclose to the Appellant the later report until the last date of inquiry; and, when he did disclose it, the Deputy Commissioner gave no indication that he was rejecting the report. On the contrary the fact that, on examining the Appellant afterwards, the Deputy Commissioner asked the Appellant nothing relevant to the genuineness of Exhibit A2 naturally created the impression that the genuineness of the Exhibit was no longer in question. p.47 11.1-8

30 (g) The Deputy Commissioner's comment that the final decision was prompted by the meritorious record of the Head Teacher was based on hearsay; and it also appears to indicate that he wrongly took the view that such a consideration was irrelevant to the question whether or not the teacher had committed forgery.

40 (h) the Deputy Commissioner's attitude to the final report of the Director of Education, his omission to indicate to the Petitioner that the adverse report of Sandarasegaram had been reversed, his suggestion to the Appellant, as late as the 15th August 1958, that Sandarasegaram should be summoned at the Appellant's expense, and his omission to tell the Appellant the point he was intending to make against the Appellant by calling the clerk from the Immigration and Emigration Department are some of the matters which indicate, it is submitted with respect, that he did not appreciate the need to approach his duty judicially.

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p.54 l.48-55 1.31

11. In regard to the application made by the Appellant for a Temporary Residence Permit the Deputy Commissioner's reasoning is a little difficult to follow but he appears to have taken the view that the Appellant had actually stated therein that he had no documents in support of his evidence prior to 1944.

It is humbly submitted that the nil entry against the words "Prior to 1944" in the list of documents filed with the application was not an answer to a query (as the Deputy Commissioner appears to have wrongly thought) as to what evidence the Appellant had to prove his residence before 1944; the list contained the documents actually filed with the application in support of his answer to the query in cage 14(a) of the form. The evidence of the official witness on this point is as follows:-

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"In cage 4(a) of the application, in answer to the query 'If previously resident in Ceylon, give full particulars of total residence and periods of absence' (answer is) Resident even prior to 1944 - for details please see attached proof."

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The significance of the year 1944 arises out of section 14(3)(b) of the Immigrants and Emigrants Act No.20 of 1948 whereunder an Indian is entitled to a Temporary Residence Permit upon proof of his residence from 1944 to 1949. The Appellant's evidence on which the Deputy Commissioner has commented is in no way inconsistent with the statements in the application and its truth is borne out by the statutory provisions referred to. If the Deputy Commissioner had given notice of the point he had against the Appellant his lawyers could have brought to the notice of the Deputy Commissioner the relevant law referred to herein.

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p.34 l.25-
p.35 l.43
p.35 l.1-
p.36 l.15

12. In addition to Schedule 'Q' (Exhibit A2), there was oral evidence led at the inquiry to prove the Appellant's residence in Ceylon between 1936 and 1944. At an early stage of the inquiry the Appellant relied only on Exhibit A2 and on his own evidence. At a later stage, when it appeared that the genuineness of Exhibit A2 was in question, he produced two witnesses, Suban and Hameed, who knew the Appellant at the time he was attending school. Having held that Exhibit A2 was a forgery the Deputy Commissioner rejected the

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oral evidence. The Deputy Commissioner did not expressly deal with the evidence of the Appellant but in regard to the evidence of the two witnesses he made the following comments:

p.55 l.37 -
p.56 l.27

10 "As I said earlier these two witnesses were called after Counsel had informed me at the previous day's enquiry that there were no more witnesses to be called - vide folios (144) & (145). I must, therefore, consider their testimony with caution. I will take the witness Abdul Suban (Evidence at folio 149). I was by no means impressed by the witness who appeared to have been prepared for the occasion. He was careful to say that the applicant and his brother Sheriff (the applicant for citizenship in Case C.9933) came to the estate in 1951 to get their School Certificates and "they also told me that they would want my testimony at an enquiry that would be held in regard to their application for citizenship." This statement was presumably meant to corroborate the School Teacher's claim that he issued the schedules in 1951 and not between 1952 and 1953 and reported by the Investigating Officer (vide folio 112). The other witness Mohamed Shahul Hameed (evidence at folio 150) spoke to facts similar to those testified to by the other witness. This witness however gave the show away when he said "I had information that applicant's mother was living somewhere near Ratnapura - in spite of applicant's assertion that his mother lived at Chilaw and not elsewhere. It is indeed strange that this witness who claims to have known applicant's father so intimately, and the applicant and his brother since 1934, and having been on visiting terms, should display such ignorance."

40 13. It is submitted, with respect that the rejection of the oral evidence is unreasonable for the following reasons -

(a) In regard to the first point made against the two witnesses, the adverse inference drawn by the Deputy Commissioner is unreasonable because the statement of Counsel quoted by the Deputy Commissioner was made on the first date of inquiry when the Appellant could reasonably have relied

RECORD

on the oral evidence of the Appellant supported as it was by Exhibit A2 which he knew to be genuine.

(b) The reason which the Deputy Commissioner gives for taking the view that Suban was coached for the occasion is based generally upon the view he took of Exhibit A2 and specifically upon the misconception that a Schedule Q certificate is invariably issued on the day a pupil is withdrawn from school. This misconception arose out of the undisclosed erroneous report of the Investigating Officer. 10

(c) The ground for rejecting Hameed's evidence is also unreasonable. The Deputy Commissioner failed to appreciate a fact directly relevant to the matter on which he has commented, namely, that the Appellant's mother was living apart from her husband from a date prior to 1934, and that the witness had never met the Appellant's mother. 20

p.14 ll.24-26
p.37 ll.3-4

p.58 l.15 -
p.61 l.30
p.62 l.1 -
p.63 l.12

14. The Appellant appealed and the Supreme Court (de Silva J.), after hearing Counsel, dismissed the appeal without reasons.

p.63 l.14 -
p.65 l.15

15. On the 26th February 1962, the Appellant was granted Special Leave to appeal to Her Majesty in Council.

16. The Appellant humbly submits that this appeal should be allowed for the following among other reasons. 30

R E A S O N S

(1) BECAUSE the Deputy Commissioner's finding that Exhibit A2 is forgery is not justified by the evidence.

(2) BECAUSE the finding of forgery is based mainly upon:

(a) information, which was obtained through investigations conducted contrary to the requirements of Section 14 and which the Appellant was not given an opportunity to disprove by cross-examination or otherwise; and 40

(b) misinterpretation of Exhibit A2

and of the Appellant's application for a Temporary Residence Permit.

- (3) BECAUSE the Deputy Commissioner, by omitting to give the statutory notice under Section 14 and by withholding from the Appellant the points made against the Appellant in the Investigator's Report, virtually deprived the Appellant of a fair opportunity of presenting his case.
- 10 (4) BECAUSE the findings of the Deputy Commissioner are vitiated, by his failure to distinguish his duty as Judge from his functions as an investigator, administrator and quasi-prosecutor under the Act.
- (5) BECAUSE the Deputy Commissioner wrongly rejected the oral evidence led at the inquiry to prove the Appellant's residence in Ceylon in the crucial period between 1935 and 1943.
- 20 (6) BECAUSE there is sufficient evidence both oral and documentary to establish the Appellant's residence in Ceylon in the crucial period.
- (7) BECAUSE the Deputy Commissioner was wrong in placing upon the Appellant the onus of producing evidence to corroborate the head teacher.
- (8) BECAUSE the Deputy Commissioner did not pay due regard to the final report of the
30 Director of Education.

E.F.N. GRATIAEN

WALTER JAYAWARDENA

No. 4 of 1963

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