

1953

Present : Gratiaen, J.

K. EASIAH, Appellant, and COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent*S. C. Application 263—In the matter of an appeal under Section 15 of the Indian and Pakistani Residents (Citizenship) Act*

Application for registration as citizen—Prima facie case not established—Failure to show cause—Refusal of application—Right of appeal—Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (as amended by Act No. 37 of 1950), ss. 9 (1) and (2), 15 (1).

When an applicant fails to show cause against an order *nisi* made under section 9 (1) of the Indian and Pakistani Residents (Citizenship) Act, the Commissioner has no option but to make an order under section 9 (2) refusing registration.

The jurisdiction of the Supreme Court under section 15 (1) is confined, as in the case of any other appellate jurisdiction, to the correction of errors made by the tribunal of first instance.

Quære, whether an order made under section 9 (2) is of a purely administrative character.

APPPEAL from an order of the Commissioner for the Registration of Indian and Pakistani Residents.

V. K. Palasuntharam, for the applicant-appellant.

M. Tiruchelvam, Crown Counsel, for the respondent.

Cur. adv. vult.

June 10, 1953. GRATIAEN, J.—

The facts arising on this appeal are substantially the same as those which were recently considered by my brother Swan in *Sivanpillai v. Commissioner for the Registration of Indian and Pakistani Residents*¹.

The appellant had applied 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 Act No. 37 of 1950. After due consideration of the application and of the statutory report furnished by an investigating officer the Commissioner made an order *nisi* under section 9 (1) intimating to the appellant that, unless he showed cause to the contrary within the period of three months prescribed by the Act, his application for registration would be refused. The appellant did not avail himself of this opportunity but chose instead, after the statutory period fixed by law had expired, to appeal to this Court under section 15 (1) against the Commissioner's refusal to grant him the privilege of registration.

My brother Swan has held in *Sivanpillai's case* (*supra*) that in such circumstances the remedy by way of appeal to this Court was not available. I agree with this conclusion, but, with great respect, I would

¹ (1953) 54 N. L. R. 310.

prefer not to attempt to solve the difficult question whether the order under appeal is of a judicial, a quasi-judicial or a purely administrative character. A person who desires to avail himself of the privilege of citizenship under the Act is required to follow the procedure prescribed by that Act. If he does so, he has a right of appeal to this Court against an order which is adverse to him. If he does not, it necessarily follows that no good grounds exist for interference with the refusal of his application. The jurisdiction of this Court under section 15 (1) is confined, as in the case of any other appellate jurisdiction, to the correction of errors made by the tribunal of first instance. In this case there has been no such error to which the appellant can point. The Commissioner had no option but to make an order under section 9 (2) refusing registration after the appellant had failed to show cause against the order *nisi* within the period of three months prescribed by the Act. I would therefore dismiss the appeal with costs.

Appeal dismissed.
