HARRY NARINE-SINGH AND MEARL INDRA NARINE-SINGH (*Applicants*) } APPELLANTS;

1955

*Apr. 4
*Apr. 19

AND

THE ATTORNEY GENERAL OF CANADA (*Respondent*) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Immigration—Deportation Order—Meaning of "ethnic"—"Asian"—The Immigration Act, R.S.C. 1952, c. 325, s. 61(g)—The Immigration Regulations, 1953, s. 20(2).

Section 61 (*g*) of the *Immigration Act*, R.S.C. 1952, c. 325 authorizes the making of regulations respecting the prohibiting or limiting of admission of persons into Canada by reason of nationality, citizenship, ethnic group, class or geographical area of origin. Regulation 20 (2) provides that subject to the provisions of the Act and to the regulations authorized by it, the landing in Canada of any "Asian" is limited to certain classes, none of which embraced the present appellants. The latter, who were born in Trinidad, where their parents and grandparents were also born, appealed from an Order of Detention and Deportation made by a Special Inquiry Officer under the provisions of the above Act.

1955

NARINE-SINGH v. ATTORNEY GENERAL OF CANADA

Held: That the dictionary meaning of the word "ethnic" applicable under Regulation 20 (2) was: "pertaining to race; peculiar to a race or nation" and the Order was authorized by the regulation and the regulation itself was within the statute.

Decision of the Court of Appeal for Ontario [1954] O.R. 784, affirming the judgment of Aylen J., affirmed.

APPEAL from a judgment of the Court of Appeal for Ontario (1) affirming the judgment of Aylen J.

F. A. Brewin, Q.C. for the appellants.

J. D. Pickup, Q.C. for the respondent.

The judgment of the Court was delivered by:—

KELLOCK J.:—This appeal is from an order of the Court of Appeal for Ontario (1) dismissing an appeal from an order of Aylen J. (1) which had, in turn dismissed an application on behalf of the appellants, husband and wife, for a writ of habeas corpus with *certiorari* in aid and, in the alternative, by way of *certiorari,* for an order quashing an order of detention and deportation, dated the 5th of April, 1954, made against the appellants by a Special Inquiry Officer under the provisions of the *Immigration Act* on the ground that the said order was made without jurisdiction. Both the appellants were released, the male appellant entering into a bond requiring him to surrender when called upon so to do.

The order in question proceeded upon the ground that the appellants were "Asians" and, as such, excluded by the terms of s-s. (2) of Regulation 20, passed under the provisions of s. 61(*g*) of the *Immigration Act,* R.S.C., 1952, c. 325. Without considering whether the appeal might have been rejected upon any other ground, it is sufficient to say that, in our view, the order was authorized by the regulation and that the regulation itself is within the statute.

The argument on behalf of the appellants was based upon the difference between the phraseology employed in s. 39(*c*) of the former Act, R.S.C., 1952, c. 145, and that of s. 61 (*g*) of the present statute, in that the earlier statute authorized the Governor in Council, *inter alia,* to prohibit the landing in Canada of immigrants belonging to any "nationality or race", whereas s. 61 of the present Act authorizes the making of regulations respecting

(1) [1954] O.R. 784.

(*g*) the prohibiting or limiting of admission of persons by reason of
(i) nationality, citizenship, ethnic group, occupation, class or geographical area of origin.

Under the provisions of the earlier statute, the relevant regulation prohibited the landing in Canada of any immigrant "of any Asiatic race", whereas s-s. (2) of Regulation 20 of the existing regulations provides that

subject to the provisions of the Act and to these regulations, the landing in Canada of any Asian is limited to the following classes of person or persons . . .,

none of which classes embraces the appellants.

It appears that both appellants were born in Trinidad, from whence they had come to Canada, and that in reply to the question "of what race are you?", the answer in each case was "East Indian".

Mr. Brewin contends that the use of the word "Asian" in the regulation is justified only by the words "geographical area of origin" in the statute and that his clients, having been born in Trinidad and alleging that their parents and grandparents were also born there, are not within the statute. It is not necessary to consider the true meaning of the words referred to nor the word "nationality" as, in our view, the words "ethnic group" justify the regulation. In Mr. Brewin's submission the words "ethnic group" cannot be interpreted as in any sense equivalent to "race" but are to be given a much narrower meaning.

According to the Oxford Dictionary, the meaning of the word "ethnic" here appropriate, is "pertaining to race; peculiar to a race or nation; ethnological". An example given of the use of the word is "That ethnic stock which embraced all existing European races". Similarly, the word "ethnically" is equated to "racially". Further, one of the meanings given to the word "race" is

a group of persons connected by common descent or origin. In the widest sense the term includes all descendents from the original stock but may also be limited to a single line of descent or to the group as it exists at a particular period.

A second meaning given is "a group of several tribes or peoples forming a distinct ethnical stock."

1955

NARINE-SINGH v. ATTORNEY GENERAL OF CANADA

Kellock J.

We therefore think that for present purposes at least, the change in the language of the statutes and the regulations is not of significance. The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Cameron, Weldon, Brewin & McCallum.*

Solicitor for the respondent: *J. P. Varcoe.*

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*PRESENT: Kerwin C.J. and Estey, Locke, Fauteux and Abbott JJ.