

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. MANOLO L. MADDELA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, BRANCH II, AND CHOA PECK ALIAS AMADO PECK, RESPONDENTS.

G.R. No. L-30946. October 29, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

This mandamus proceeding presents one of those cases, hopefully rare, where a respondent Judge appears to be less than duly mindful of what the controlling doctrines of this Court require—very much less. He would deny petitioner Republic the right to appeal from an order allowing private respondent Choa Peck to take his oath as a naturalized citizen on the ground of the late filing of the record on appeal, counting such period from the time notice of such order was furnished the Provincial Fiscal. The rule is well-settled however that it is only upon receipt thereof by the Solicitor General that the time commences for elevating the matter to this Court. Mandamus is thus the appropriate remedy to which petitioner Republic is entitled.

As noted in the petition, private respondent Choa Peck filed with the Court of First Instance of Quezon a petition for naturalization on December 22, 1965. Thereafter, due hearing was appealed to obtain a favorable decision on November 19, 1966.[1] There was a motion for reconsideration denied by respondent Judge.[2] While the proper step for an appeal was taken, it was not allowed as respondent Judge denied the motion for extension of time to file the record on appeal.[3] On December 2, 1968, respondent Choa Peck filed a petition to take his oath with respondent Judge setting the same for hear-ing on December 27 of that year.[4] This was followed, on January 10, 1969, with an order from respondent Judge direct-ing the issuance of the certificate of naturalization to respondent Choa Peck after taking the oath as provided according to law, notice of which was received by the office of the Solicitor General on January 22, 1969.[5] On February 17, 1969, within the thirty-day period, petitioner Republic filed a notice of appeal and simultaneously a record on appeal based according to the petition on "five (5) fundamental grounds, namely: (1) the jurisdiction of the lower Court to hear the case considering that the petition was not published as required by law (2) the insufficiency of the alleged income of the petitioner-applicant, herein respondent Choa Peck alias Amado Peck (3) his use of an alias name, without judicial authority (4) his lack of good moral character, and (5) the irregularity in the hearing of the petition for oath-taking * * *." [6] As respondent Judge failed to take any action on the record on appeal, petitioner Republic, on June 6, 1969, moved that the record on appeal be approved.[7] Then came the challenged order of respondent Judge on August 9, 1969 dis-approving the record on appeal and dismissing the appeal on the ground that it was filed out of time, the period being counted from the time the Provincial Fiscal received the order of January 10, 1969, which was on the next day, January 11, 1969, rather than from the receipt by the Solicitor General on February 21, 1969.[8] Petitioner Republic decided to take up the matter with this Court in this mandamus proceeding in view of what it considered the utter futility of respondent Judge harboring a change of mind and manifesting conformity to what has been decided by this Court as to the period for filing an appeal.

The pertinent portion of the order of respondent Judge of August 9, 1969, complained of in this mandamus suit, reads as follows: "The petitioner, in his opposition, claims that the appeal was filed out of the reglementary period. The order of this Court issued after the final hearing allowing the petitioner to take his oath after the two-year period from the rendition of the judgment dated January 10, 1969 was received by the State through the Provincial Fiscal on January 11, 1969 and the notice of appeal filed by the Solicitor General is dated February 17, 1969 but received by the Court on February 21, 1969. The record on appeal was received by the Court on February 21, 1969. It is very evident therefore, that from January 11, 1969, the date of the receipt of the order by the Solicitor General through the Provincial Fiscal up to February 21, 1969, the filing of the notice of appeal by the Solicitor General, a period of forty-one days had lapsed so that the present appeal interposed by the Solicitor General was really filed out of time." [9] Its dis-positive portion states the following: "Considering that the appeal taken by the Solicitor General was filed out of the reglementary period, the record on appeal is hereby disapproved and the appeal dismissed." [10]

1. Thus on its face there is a failure to abide by what this Court has consistently decided. In *Republic v. Chiu*, [11] a 1964 decision, the opinion being penned by Justice Barrera, it was expressly stated: "As the Solicitor General received copy of the decision of the lower court on August 17, 1962, the period to appeal would have expired on September 16, 1962. The filing of the notice of appeal and record on appeal on September 4 and 6, 1962, respectively, were therefore made on time." [12] Then in *Qua v. Republic*, [13] decided the next year, such a doctrine was reiterated in an opinion written by the same jurist. Thus: "In the present case, the Solicitor General was not furnished copy of the order of the lower court of December 22, 1962, allowing petitioner to take the required oath of allegiance. Strictly speaking, therefore, no proper service of said order was ever made on the oppositor. However, considering that oppositor-appellant admits that copy of the disputed order was received by the Solicitor General on March 13, 1963, it is this date, not the date of receipt thereof by the Provincial Fiscal, that should be considered in determining the timeliness or untimeliness of the motion for reconsideration filed by the former." [14]

2. Nor does it avail private respondent to state that since the previous appeal was disallowed the substantive matters that would form the basis for a review of the grant of citizenship to respondent Peck could no longer be taken up in this appeal from the order of August 9, 1969. As was so clearly stated in *Yong Sai v. Republic*, [15] in an opinion by Justice Zaldivar: "It is a settled rule that the decision of the court of first instance in naturalization cases does not become final until after the expiration of the period to appeal from the order of the court authorizing the taking of the oath of allegiance as provided in Section 1 of Republic Act No. 530 - and this, notwithstanding that the applicant for citizenship had already taken his oath of allegiance. Likewise, it is a settled rule that an appeal from the order of the court of first instance authorizing the taking of the oath of allegiance, under Section 1 of Republic Act 530, subjects the entire naturalization proceedings to scrutiny by the Supreme Court, so that any matter pertinent to the determination of: whether or not the applicant for naturalization is really qualified to become a Filipino citizen, whether or not the original petition had complied with all the requirements of the law, and whether or not the procedural requirements in the lower court had been complied with, may be reviewed on appeal by this Court if those matters are not touched in the briefs or pleadings of the parties." [16] Only last May, this Court, through Justice Makasiar, made manifest anew its adherence to the doctrine that the merits for the petition for naturalization are still open for an inquiry when the question is elevated to us from an order allowing the oath-taking. Thus: "This High Tribunal never deviated from its ruling that a naturalization proceeding is not simply a private contest between the applicant and the Solicitor General but is a matter impressed with the highest public interest, involving as it does an inquiry as to when an alien should be allowed to enjoy the coveted boon of Filipino citizenship. It is for this reason that the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law. The government can at all stages of the

proceeding raise the issue of such non--compliance even without filing a formal opposition to the petition. For the government, it is never too late. The appeal from the order of the lower court authorizing the taking of the oath of allegiance subjects the entire naturalization proceedings to scrutiny by the Supreme Court to determine whether the applicant has all the qualifications and none of the disqualifications and whether he has complied with the procedural requirements of the law, even if those matters are not touched in the briefs or pleadings of the parties. And if the government files an opposition, it is not duty bound to specify the grounds therefor. If the applicant fails to establish by affirmative proof his compliance with the legal require-ments, the court should deny his application."^[17]

WHEREFORE, mandamus is granted, commanding the respondent judge or whoever may have succeeded him or is empowered to act in his place to approve the record on appeal and to elevate the records of the case together with all evidence, oral and documentary, to this Court for review, respondent Choa Peck being restrained from taking the oath of allegiance or representing himself to be or exercising any of the rights and privileges exclusively reserved for Filipinos. In the event that he has taken such oath and has been issued the certificate of naturalization, said respondent Choa Peck is ordered to surrender the original and all the copies of both the oath and the certificate of naturalization to the Clerk of this Court. With costs.

Concepcion, C.J., Reyes, Zaldivar, and Villamor, JJ., concur.

Makalintal, J., in the result.

Castro, J., reserves his vote.

Teehankee, Barredo, and Makasiar, JJ., did not take part.

[1] Petition, pars. 4 and 5.

[2] Ibid, pars. 6 and 7.

[3] Ibid, pars. 7 and 8.

[4] Ibid, par. 9.

[5] Ibid, par. 10.

[6] Ibid, par. 11.

[7] Ibid, par. 12.

[8] Ibid, pars. 12 and 13.

[9] Order, Annex C, Petition, p. 3.

[10] Ibid.

[11] G.R. No. L-20846, Oct. 31, 1964, 12 SCRA 352.

[12] Ibid, p. 354.

[13] G.R. No. L-21418, December 31, 1965, 15 SCRA 698.

[14] Ibid, p. 701.

[15] G.R. No. L-20483, September 30, 1966, 18 SCRA 264.

[16] Ibid, p. 267.

[17] Chua Bon Chiong v. Republic, G.R. No. L-29200, May 31, 1971, 39 SCRA 318, 323-324. The opinion cites: Tan Hoi v. Republic, 109 Phil. 689 (1960); Go Kay See v. Republic, G.R. No. L-17318, Dec. 29, 1962, 6 SCRA 888; Ong So v. Republic, G.R. No. L-20145, June 30, 1965, 14 SCRA 591; Pe v. Republic, G.R. No. L-20375, Jan. 31, 1966, 16 SCRA 99; Go Im Ty v. Republic, G.R. No. L-17919, July 30, 1966, 17 SCRA 797; Yong Sai v. Republic, G.R. No. L-20483, Sept. 30, 1966, 18 SCRA 264; Lim v. Republic, G.R. No. L-21193, Sept. 30, 1966, 18 SCRA 276; Chua Tiong Seng v. Republic, G.R. No. L-21422, Dec. 18, 1967, 21 SCRA 1300; Republic v. Santos, G.R. No. L-23919, July 29, 1968, 24 SCRA 314 and Republic v. Cloribel, G.R. No. L-27281, June 30, 1970, 33 SCRA 795.

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