

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. ANDRES, REYES, ET AL., RESPONDENTS.*G. R. No. L-20602. December 24, 1965*

Ponente: BARRERA, J.

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After due publication and hearing of the application for naturalization filed by Tan Chiong, the Court of First Instance of Rizal (in Civil Case No. 461), finding him to possess all of the qualifications and none of the disqualifications for admission to Philippine citizenship, granted the said application in a decision rendered on September 30, 1960. The Solicitor General filed a notice of appeal. However, before the appeal could be perfected, the same was withdrawn by the first Assistant Solicitor General.

On October 29, 1962, and before the applicant could take the necessary oath as a Filipino citizen, the Solicitor General filed a motion to vacate the decision in the case and an opposition to the oath-taking of the former, on the ground among others, that the petition filed therein was void for failure to state the previous places of residence of petitioner; that he (petitioner) failed to file a declaration of intention; he showed lack of sincere desire to embrace the customs and traditions of the Filipinos by not bringing (his family to the Philippines; he used an alias without judicial authority; and the character witnesses who testified during the hearing of the application were not credible persons within the concept of the law. This motion having been denied by the court in its order of December 7, 1962, and reception of applicant-petitioner's evidence, preparatory to his oath-taking, having been scheduled, the Government filed the present petition for certiorari, claiming that the respondent Judge acted without or in excess of his jurisdiction or with grave abuse of discretion in granting the application for naturalization and issuing the aforementioned order of December 7, 1962.

In his answer, respondent-applicant contests the propriety of this certiorari proceeding, for the reason that no motion for reconsideration was first filed in the lower court, and that this remedy cannot be availed of to correct the error of judgment allegedly committed by the lower court. Furthermore, it was pointed out that the issues raised by the oppositor Republic of the Philippines involve findings of fact which may be inquired into by this Tribunal.

The petitioner-oppositor's failure to file a motion for reconsideration in the lower court before instituting this proceeding was explained to be demanded by the urgency of the need for a restraining order to prevent the enforcement of the lower court's order of December 7, 1962, which might be utilized to stall the deportation of the applicant's two minor children, as overstaying visitors, which was then already ordered by the Commissioner of Immigration. In View of this circumstance and considering the nature of the present case, the filing of the instant petition may be treated to have been made in substantial compliance with the Rules.

On the alleged impropriety of the present certiorari proceeding, it may be stated that, while it is true that in an ordinary judicial contest, appeal would be the appropriate remedy to review the correctness of a decision of the lower court, a naturalization proceeding is so infused with public interest that it has been differently categorized

and given special treatment. Thus, unlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence.[1] A decision or order granting citizenship will not even constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured.[2] For the same reason, issues even if not raised in the lower court may be entertained on appeal.[3] As the matters brought to the attention of this Court allegedly justifying a denial, instead of approval of, the application of Tan Chiong involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence.

In the application dated March 21, 1959, filed by Tan Chiong, it was stated, *inter alia*, that he is a citizen of Nationalist China, born on November 25, 1911, having emigrated to and arrived in the Philippines in October, 1924 aboard the vessel "SS Anting"; he is a merchant (business executive) with an average annual income of P52,000.00; married to Gan Luan, who was then residing in Hongkong with their six children, namely, Tan Chun Yu, born on February 10, 1932; Tan Chun Kiat—May 5, 1934; Tan Chun Sin—March 12, 1936; Tan Puy Keng—December 8, 1942; Tan Puy Tin—November 25, 1944; and Tan Chun Ho—December 24, 1945; he speaks and writes English and Tagalog; has resided in the Philippines for about 35 years, specifically in the municipality of San Juan province of Rizal since 1947; he has conducted himself in a proper and irreproachable manner during the entire period of his stay in this country. In short, he has all the qualifications and none of the disqualifications for admission to Philippine citizenship. These allegations were found substantiated by the lower court, and the petition was granted.

As pointed out by the oppositor Republic of the Philippines, however, the petition mentioned merely that petitioner-applicant was residing at No. 2 San Luis, San Juan, Rizal, without specifying the previous places of his residence, considering that he had been in this country allegedly since 1924, and he had been a resident of San Juan only in 1947. The omission to state the places of his residence from 1924 to 1947 is fatal to the petition.[4]

The applicant also admits that he did not file a declaration of intention for the reason that, as a resident of this country for more than 30 years, he is exempted from this requirement of the law.[5] For this exemption to be availed of, however, it is necessary for applicant to show that all of his children of school age had received their primary and secondary education in government-recognized schools where Philippine history, civics and government are part of the curriculum. [6]

It is not denied that of herein applicant's six children, only two—Tan Puy Tin and Tan Chun Ho—were brought to the Philippines in 1960 (when they were 16 and 15 years of age, respectively) and enrolled in the Grades VI and V Classes in the Jose Rizal College. It was claimed that the three elder children were then already of legal age and, therefore, no longer covered by the requirement; so with the youngest daughter—Tan Chun Ho—who was adopted by the applicant's brother according to Chinese custom. Later, she got married and it is contended that she had thus become emancipated. Applicant's failure to bring them to the Philippines at a much earlier date was allegedly due to his financial difficulties at the start, and later to the stringency of our immigration laws.

As previously ruled by this Court, the provision of the law requiring an applicant for naturalization to enroll his children in recognized local schools, must be complied with for the "duration of the entire period of residence required of him." [7] As herein applicant is invoking his alleged continuous residence for more than 30 years in order to avail of the exemption from filing the necessary declaration of intention, the same period must also be reckoned for purposes of determining whether the other requirements of the law had been complied with. Considering that all of his children were born when the applicant was already residing in the Philippines, the latter

was under obligation to give to his said children the training that this country desires of its citizens, if he were to be allowed the privilege of acquiring Philippine citizenship. This, herein, applicant failed to do. Four of his children never came to the Philippines. The belated coming of two of them in 1960 and their enrollment in the Grades V and VI classes? of a local educational institution, apparently in an effort to create some semblance of compliance with the requirement of the law, did not cure the deficiency. The fact that he was financially incapable of bringing them to the Philippines during the said period, or that the same was made difficult by our strict immigration laws are not valid excuses for non-compliance with the law.[8] Neither does the marriage of a child,[9] or his adoption by a godfather,[10] constitute sufficient reason to exempt an applicant from the legal requirement under consideration. Even on this ground alone, therefore, the application for naturalization should have been denied.

In addition, the oppositor notes that in the clearance from the Anti-Dummy Board which was submitted during the trial, as well as in his income tax returns and residence certificates, the applicant has been referred to as "Sotero Tan Chiong". The petition for naturalization, however, which was duly published, appeared only in the name of Tan Chiong." That the applicant is known by another name which was not disclosed in the published petition is sufficient to warrant the denial of the applicant.

Lastly, while the character witnesses presented by the applicant—a lawyer and an accountant—may be reliable, responsible individuals, yet, considering that the applicant invoked his alleged residence for more than 30 years, in order to qualify as "insurers of the latter's conduct and behavior", it is necessary that said witnesses must have known him for the same number of years. Since, admittedly, these witnesses came to know the applicant only in 1947, they cannot be considered as "credible witnesses" within the contemplation of the Revised Naturalization Law.

Wherefore, and for the foregoing considerations, the decision and order in question are set aside, and the petition for naturalization is dismissed. The writ of preliminary injunction heretofore issued is made permanent. No costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P. and Zaldivar, JJ., concur.

Makalintal, J., concurs in the result.

Decision and order set aside.

[1] Fong vs. Republic, G.R. No. L-15991, May 30, 1961.

[2] Republic vs. Go Bon Lee, G. R. No. L-11499, April 29, 1961, see also Gan Tsitung vs. Republic, G. R. No. L-20819, Nov. 29, 1965.

[3] Cheng vs. Republic G. R. No. L-20013, March 30, 1965.

[4] Uytengsu vs. Republic, G. R. No. L-6379, Sept. 29, 1954 (95 Phil. 890); Co. vs. Republic, G. R. No. L-15794, Dec. 29, 1962; Ngo vs. Rep. G. R. No. L-18319, May 31, 1963; Gaw Ching vs. Rep. G. R. No. L-19419, Sept. 30, 1964; Serwani vs. Rep. G. R. No. L-18219, Dec. 27, 1963; Qua vs. Rep. G. R. No. 19834, Oct. 27, 1964; Dy Pek Long vs. Rep. G. R. No. L-18758, May 30, 1964; Tan vs. Rep. G. R. No. L-19694, Mar. 30, 1965; Lee vs. Rep. G. R. No. L-20151, Mar. 31, 1965; Cheng vs. Rep. G. R. No. L-20013, Mar. 30, 1965; Go vs. Rep. G. R. No. L-20558, Mar. 31, 1965.

[5] Sec. 6. Revised Naturalization Law.

[6] Chan Lai vs. Rep. 106 Phil. 210 (Sept. 23, 1959); Tan Chu Keng vs. Rep. G. R. No. L-13139, May 24, 1961.

[7] Chan Lai vs. Republic, *supra*.

[8] Republic vs. Go Bon Lee, *supra*; Chan Lai vs. Republic, *supra*.

[9] Lee Choo vs. Republic, 106 Phil. 755 (Dec. 28, 1959; Yu Soon Seng vs. Republic, 105 Phil. 558 (April 29, 1959); Tan Ten Koc vs. Republic, G. R. No. L-18344, Feb. 28, 1964.

[10] Tan Hoi vs. Republic, 109 Phil. 689 (Sept. 30, 1960).

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