

JUANITO SORIA, PETITIONER-APPELLANT, VS. COMMISSIONER OF IMMIGRATION, RESPONDENT?APPELLEE.

G.R. No. L-24102. January 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Manila in its Civil Case No. 48793 denying appellant's petition for certiorari with preliminary injunction. Originally taken to the Court of Appeals, this case was subsequently certified to us there being no question of fact involved.

The petitioner, Juan Soria, came to the Philip-pines on December 2, 1960 as a temporary visitor for the purpose of visiting his relatives. His authorized stay was for one (1) month, but it was repeatedly extended, the last extension being until November 1, 1961.

In a letter dated December 7, 1960, the petitioner, through counsel, requested the Commissioner of Immigration that he be admitted as a citizen of the Philippines. He alleged, among other things, that he was born in Bangued, Abra, on September 23, 1918; that he was an illegitimate son of one Maria Soria, a Filipino citizen, and Chua Chemco, a Chinese; that along with his mother and sister, he was taken to China by his father sometime in 1931; that his father died in China while his mother was still living; that in 1949 he escaped to Hongkong from the Chinese mainland; that while in Hongkong he made representations with the Philippine consulate there so that he might be allowed to enter the Philippines as a returning Filipino citizen, but that no action was taken thereon. The petition was heard on December 16 and 29, 1960 and on February 21, 1961 by an investigator in the Bureau of Immigration. On March 13, 1961 the investigator submitted his Citizen Evaluation Board Report, giving a summary of the material allegations of the petition as well as the evidence submitted to substantiate them, and concluding that "Juan Soria is a Filipino citizen by illegitimate birth, entitled to recognition as such." Upon review of said report, the Commissioner of Immigration found the evidence presented in-sufficient to prove the petitioner's claim of illegitimacy. Consequently, he denied the petition in a letter dated March 22, 1961, which reads as follows:

"March 22, 1961

Mr. Juanito Soria

Vigan, Ilocos Sur

S i r :

Please be advised that your peti-tion for recognition as a Philippine citizen was denied by the Commissioner of Immigration, for insufficiency of evidence that you are the illegitimate son of a Chinese father and a Filipino mother.

Very truly yours,

For the Commissioner:

(SGD.) A.R. ACURRANTES

Chief, Law & Investigation

Division"

Upon receipt of the aforequoted letter the petitioner went to the Court of First Instance of Manila on a petition for mandamus with preliminary injunction (Civil Case No. 47781), praying that he be declared a citizen of the Philippines, and that respondent Commissioner of Immigration be compelled to cause his documentation as such and restrained from ordering his deportation before final judgment. Before the case could be heard on the merits, however, the petitioner's counsel moved to dismiss the petition on the ground that his client had left the Philippines and had lost interest in the further prosecution of the case. In its order dated October 28, 1961, the lower court granted the motion.

It appears that while the mandamus case was pending in the lower court the petitioner was able to secure from the Department of Foreign Affairs his documentation as a Filipino citizen. On November 2, 1961 the Philippine Vice-Consul in Bangkok, Thailand, issued to the petitioner a Certificate of Registration and Identity certifying "that Juanito Soria has been documented as Philippine citizen pursuant to SECFORAF'S Cable No. 1676-V dated October 2, 1961." Armed with said certificate, the petitioner came back to the Philippines on November 5, 1961 and sought admission as a Filipino citizen. However, the Bureau of Immigration denied him entry on the ground that he was improperly documented and that he was still an alien as shown by the records of the said office. The Commissioner of Immigration thereupon ordered his arrest and exclusion from the Philippines.

To forestall the execution of the said order the petitioner, on November 18, 1961, went to the Court of First Instance of Manila on a petition for certiorari with preliminary injunction, praying that "judgment be rendered declaring the petitioner a citizen of the Philippines at birth; annulling the order in question and directing the respondent Commissioner of Immigration and all persons acting under him to desist from arresting the petitioner and excluding him from the Philippines and otherwise molesting him and treating him as an alien." In support of his allegation that the respondent Commissioner of Immigration had acted without or in excess of his jurisdiction or with grave abuse of discretion in issuing the order complained of, the petitioner contended, among other things, that: (1) said respondent arbitrarily set aside the findings of the Department of Foreign Affairs that he was a Filipino citizen without considering the evidence submitted to the Philippine Vice-Consul in Bangkok, Thailand and without knowing the basis for the official act of said Department; and (2) the questioned order was based on an incomplete and irregular investigation of his request for admission as a Filipino citizen where no final or formal decision was rendered. In effect, the petitioner was seeking a review not only of the order of exclusion but also of the denial of his petition for admission as a Filipino citizen, which was the subject of his petition for mandamus previously dismissed by the lower court upon motion of his own counsel. Finding that the respondent had neither abused his discretion nor acted without jurisdiction in both instances, the trial court dismissed the petition on July 1, 1963. The petitioner moved to reconsider but was turned down; hence, this appeal.

Several errors are alleged to have been committed by the lower court, namely: (1) in denying the petition for certiorari; (2) in holding that the respondent did not abuse his authority; (3) in applying the memorandum circular of the Department of Justice dated August 28, 1958; and (4) in not declaring that he is a Filipino citizen.

Under the first and second assigned errors the petitioner contends that he was not given a full, fair and free hearing by the respondent Commissioner of Immigration, and was denied the right to present all his evidence in support of his claim of illegitimacy, as shown by the following portion of the transcript of his testimony:

"Q. Do you have anything else to say or submit in support of your allegations that you are the illegitimate son of a Chinese father and a Filipino mother?

"A. No more for the present.

MANIFESTATION BY COUNSEL: We wish to reserve the right to present the relatives of petitioner and such other documents as we may later on deem fit to submit in support of his claim of illegitimacy. In the meantime we are submitting Exhibits A to J to form part of his evidence.

"Q. That is all."

In disposing of the contention of the petitioner, the lower court made the following observation:

"After going over the records of this case, particularly the evidence presented by the petitioner during the said investigation to prove that he was the illegitimate son of a Chinese father and a Filipino mother, the Court believes that no better evidence than that already presented during the investigation could be presented by the petitioner. It appearing that his birth certificate or a certified copy thereof cannot be presented in evidence by the petitioner in support of his petition, and secondary evidence having been introduced during the investigation, it is believed that the other evidence that the petitioner might have presented would only be cumulative. As a matter of fact, the investigator, Atty. Leon M. de Villa, considered the evidence presented by the petitioner as sufficient to establish his claim that he was the illegitimate son of a Chinese father and a Filipino mother. However, the respondent Commissioner of Immigration has the right and authority to disregard the conclusion and disapprove the recommendation of the investigator."

We do not see that the lower court committed the first two errors assigned. In the first place the hearings wherein the petitioner submitted evidence, as well as the respondent's decision based thereon, preceded the petition for mandamus which was dismissed upon the petitioner's own motion. Obviously, in filing that petition he considered the evidence already complete and was willing to stand thereon. Secondly, the petitioner merely says that the additional evidence he intended to present is material, but he fails to state what it consists of and how it would bear on his claim. Instead, he has merely reproduced in his brief the complete report of the investigator and prays that reference be made to the findings therein.

It is also to be noted that the manifestation of the petitioner's counsel reserving the right to present additional evidence was made during the hearing on December 16, 1960; that before the investigator submitted his report two more hearings were held - one on December 29, 1960 and the other on February 21, 1961; and that during those two hearings the petitioner presented various documents as well as two witnesses who testified in his favor. Evidently there is no basis for the petitioner's contention that he was not given a full, fair and free hearing by the respondent.

The petitioner also contends that the respondent committed a grave abuse of discretion by not writing a decision discussing the issues involved instead of merely noting "Denied for insufficiency of evidence" across the last page of the report of the investigator. The petitioner overlooks the fact that the Chief of the Law and Investigation Division of the Bureau of Immigration, in behalf of the Commissioner, sent him a letter dated March 22, 1961, advising him his "petition for recognition as a Philippine citizen was denied by the Commissioner of Immigration, for insufficiency of evidence that you are the illegitimate son of a Chinese father and a Filipino mother." It is clear that the said letter is itself the decision, and that although it does not contain an extended opinion, it nevertheless discloses the only issue involved and reason for the ruling.

Regarding the third assignment of error, the petitioner, who did not present his birth certificate before the respondent, now avers that the lower court should not have applied the second sentence of the last paragraph of the Memorandum Circular of the Secretary of Justice dated August 28, 1958, which provides that "where the

petition for cancellation of such alien certificate of registration is based on the alleged illegitimacy of the petitioner, no such cancellation shall be effected unless his birth certificate or a certified copy thereof is presented in evidence in support of the petition." He argues that this provision of the circular is contrary to both the law and the constitution.

The averment of petitioner is premised on a wrong assumption. In his memorandum submitted to the lower court the petitioner proceeded on the theory that the denial of his petition for admission as a Filipino citizen was not final because the respondent's findings were not submitted to the Department of Justice, as required by the communication of the Secretary of Justice dated November 15, 1950. In rejecting the petitioner's contention, the lower court held that the communication relied upon had been superseded by the Memorandum Circular of the Secretary of Justice dated August 28, 1958, quoting the last paragraph thereof as follows:

"Petitions for the cancellation of alien certificates of registration should, in the first instance, be decided on the merits by the Commissioner of Immigration, and his decision thereon shall be final, unless the interested party desires to appeal to the Secretary of Justice or to the proper court of justice if he believes that the decision of the Commissioner of Immigration is palpably contrary to law or has committed a clear abuse of discretion. Provided, however, where the petition for cancellation is based on the alleged illegitimacy of the petitioner no such cancellation shall be effected unless his birth certificate or a certified copy thereof is presented in evidence in support of the petition."

It is obvious that although the second sentence was included in the foregoing quotation, it was neither applied nor relied upon by the lower court, since it was irrelevant to the petitioner's contention therein. What the Court did was to rule adversely upon the petitioner's argument that since the respondent's decision was not submitted to the Department of Justice it never acquired the character of finality.

The last assigned error, namely, that the lower court erred in not declaring the petitioner a Filipino citizen, is without merit. His petition was for certiorari and this remedy is available against action taken without or in excess of jurisdiction or with grave abuse of discretion. The order of respondent Commissioner of Immigration for the exclusion of petitioner falls under neither category; and the facts on which the said order was based were not properly in issue. It is true that one of the prayers in the petition is that judgment be rendered declaring petitioner a citizen of the Philippines. But it is now well-settled that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual.[1] In the case of *Tan vs. Republic*, G. R. No. L-16108, October 31, 1961, this Court said:

"If the petition be considered as one for declaratory judgment, the facts do not warrant the filing of the said special civil action. If the petition seeks to compel the Commissioner of Immigration to cancel her and her children's alien certificate of registration, this petition would not lie because such a remedy of cancellation of alien certificate of registration can only be had by virtue of a judgment of a competent court, in an action where the citizenship of parties is a material matter in issue, declaring the Filipino citizenship of the petitioner and her children, and such declaration cannot be obtained directly because there is no proceeding at present provided by law or the rules for such purpose."

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] *Danilo Channie Tan v. Republic*, L-14159, April 18, 1960; *Palaran v. Republic*, L-15047, Jan. 30, 1962; *Tan Yu Chin v. Republic*, L-15775, April 29, 1961; *Tan v. Republic* L-16108, October 31, 1961; *Santiago v.*

Commissioner, L-14653, Jan. 31, 1963; Commissioner v. Domingo, L-21274, July 31, 1963; Lao Yap Diok, et al. v. Republic, L-19107-09, Sept. 30, 1964; In re Mallari Adm. Case No. 533, April 29, 1968.

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