

IN RE PETITION TO DECLARE ZITA NGO TO POSSESS ALL QUALIFICATIONS AND NONE OF THE DISQUALIFICATIONS FOR NATURALIZATION UNDER COMMONWEALTH ACT 473 FOR THE PURPOSE OF CANCELLING HE...

G.R. No. L-24252. January 30, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

On petition to declare Zita Ngo - also known as Zita Ngo Burca - "as possessing all qualifications and none of the disqualifications for natural-ization under Commonwealth Act 473 for the purpose of cancelling her Alien Registry with the Bureau of Immigration".[1] She avers that she is of legal age, married to Florencio Burca, a Filipino citizen, and a resident of Real St., Ormoc City; that before her marriage, she was a Chinese citizen, subject of Nationalist China, with ACR No. A-148054; that she was born on March 30, 1933 in Gigaquit, Surigao, and holder of Native Born Certificate of Residence No. 46333. After making a number of other alle-gations and setting forth certain denials, she manifests that "she has all the qualifications required under Section 2 and none of the disqualifications under Section 4 of Commonwealth Act No. 473" aforesaid.

Notice of hearing was sent to the Solicitor General and duly published.

The Solicitor General opposed and moved to dismiss the petition on two main grounds, viz: (1) that "there is no proceeding established by law, or the rules for the judicial declaration of the citizenship of an individual"; and (2) that as an application for Philippine citizenship, "the petition is fatally defective for failure to contain or mention the essential allegations re-quired under Section 7 of the Naturalization Law", such as, among others, petitioner's former places of residence, and the absence of the affidavits of at least two supporting witnesses.

Trial was held on December 18, 1964. Sole witness was petitioner. With the documentary evidence admitted, the case was submitted for deci-sion.

The judgment appealed from, dated December 18, 1964, reads:

"WHEREFORE, decision is hereby rendered dismissing the opposition, and declaring that ZITA NGO BURCA, peti-tioner, has all the qualifications and none of the disqualifica-tions to become a Filipino Citizen and that she being married to a Filipino Citizen, is hereby declared a citizen of the Philippines, after taking the necessary oath of allegiance, as soon as this decision becomes final and executory."

The controlling facts are not controverted. Petitioner Zita Ngo was born in Gigaquit, Surigao (now Surigao del Norte), on March 30, 1933. Her father was Ngo Tay Suy, and her mother was Dee See alias Lee Co, now both deceased and citizens of Nationalist Republic of China. She holds native born Certificate of Residence 46333 and Alien Certificate of Registra-tion A-148054. She married Florencio Burca, a native-born Filipino, on May 14, 1961.

1. By constitutional and legal precepts, an alien woman who marries a Filipino citizen, does not - by the mere fact

of marriage - automatically become a Filipino citizen.

Thus, by Article IV of the Constitution, citizenship is limited to:

- "(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
- (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
- (3) Those whose fathers are citizens of the Philippines.
- (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
- (5) Those who are naturalized in accordance with law."

And, on the specific legal status of an alien woman married to a citizen of the Philippines, Congress - in paragraph 1, Section 15 of the Revised Naturalization Law - legislated the following:

"Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

Jurisprudence has since stabilized the import of the constitutional and statutory precepts just quoted with a uniform pronouncement that an alien wife of a Filipino citizen may not acquire the status of a citizen of the Philippines unless there is proof that she herself may be lawfully naturalized.[2] Which means that, in line with the national policy of selective admission to Philippine citizenship, the wife must possess the qualifications under Section 2, and must not be laboring under any of the disqualifications enumerated in Section 4, of the Revised Naturalization Law.[3]

This Court, in *Ly Giok Ha, et al., vs. Galang, et al.*, L-21332, March 18, 1966, explains the reasons for the rule in this wise:

"Reflection will reveal why this must be so. The qualifications prescribed under section 2 of the Naturalization Act, and the disqualifications enumerated in its section 4, are not mutually exclusive; and if all that were to be required is that the wife of a Filipino be not disqualified under section 4, the result might well be that citizenship would be conferred upon persons in violation of the policy of the statute. For example, section 4 disqualifies only -

'(c) Polygamists or believers in the practice of polygamy; and

(d) Persons convicted of crimes involving moral turpitude'.

so that a blackmailer, or a maintainer of gambling or bawdy houses, not previously convicted by a competent court, would not be thereby disqualified; still, it is certain that the law did not intend such a person to be admitted as a citizen in view of the requirement of section 2 that an applicant for citizenship 'must be of good moral character'.

Similarly, the citizen's wife might be a convinced believer in racial supremacy, in government by certain selected classes, in the right to vote exclusively by certain 'herrenvolk', and thus disbelieve in the principles underlying the Philippine Constitution; yet she would not be disqualified under section 4, as long as she is not 'opposed to organized government', nor affiliated to groups 'upholding or teaching doctrines opposing all organized governments', nor 'defending or teaching the necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas'. Et sic de caeteris".

Indeed, the political privilege of citizenship should not be handed out blindly to any alien woman on the sole basis of her marriage to a Filipino - "irrespective of moral character, ideological beliefs, and identification with Filipino ideals, customs and traditions".[4]

The rule heretofore adverted to is to be observed whether the husband be a natural born Filipino,[5] a naturalized Filipino,[6] or a Filipino by election.

2. We next go to the mechanics of implementation of the constitutional and legal provisions, as applied to an alien woman married to a Filipino. We part from the premise that such an alien woman does not, by the fact of marriage, acquire Philippine citizenship. The statute heretofore quoted (Sec. 15, Revised Naturalization Law), we repeat, recites that she "shall be deemed a citizen of the Philippines" if she "might herself be lawfully naturalized".

How then shall she be "deemed" a citizen of the Philippines? An examination of the Revised Naturalization Law is quite revealing. For instance, minor children of persons naturalized under the law who were born in the Philippines "shall be considered citizens thereof", Similarly, a foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parents, "shall automatically become a Filipino citizen".[7] No conditions are exacted; citizenship of said minor children is conferred by the law itself, without further proceedings and as a matter of course. An alien wife of a Filipino does not fit into either of the categories just mentioned. Legal action has to be taken to make her a citizen.

There is no law or rule which authorizes a declaration of Filipino citizenship.[8] Citizenship is not an appropriate subject for declaratory judgment proceedings.[9] And in one case, we held that citizenship of an alien woman married to a Filipino must be determined in an "appropriate proceeding".[10]

Speculations arise as to the import of the term "appropriate proceeding". The record of this case discloses that, in some quarters, opinion is advanced that the determination of whether an alien woman married to a Filipino shall be deemed a Filipino citizen, may be made by the Commissioner of Immigration.[11] Conceivably, absence of clear legal direction on the matter could have given rise to divergence of views. We should aim at drying up sources of doubt. Parties interested should not be enmeshed in jurisdictional entanglements. Public policy and sound practice, therefore, suggest that a clear-cut ruling be made on this subject.

If an alien woman married to a Filipino does not become ipso facto a citizen, then she must have to file a "petition for citizenship" in order that she may acquire the status of a Filipino citizen. Authority for this view is Section 7 of the Revised Naturalization Law in which the plain language is: "Any person desiring to acquire Philippine citizenship, shall file with the competent court" a petition for the purpose. And this, because such alien woman is not a citizen, and she desires to acquire it. The proper forum, Section 8 of the same law points out, is the Court of First Instance of the province where the petitioner has resided "at least one year immediately preceding the filing of the petition".

It is quite plain that the determination of whether said alien wife should be given the status of a citizen should fall within the area allocated to competent courts. That this is so, is exemplified by the fact that this Court has taken jurisdiction in one such case originating from the court of first instance, where an alien woman had directly sought naturalization in her favor.[12]

And, as nothing in the Revised Naturalization Law empowers any other office, agency, board or official, to determine such question, we are persuaded to say that resolution thereof rests exclusively with the competent courts.

We accordingly rule that: (1) An alien woman married to a Filipino who desires to be a citizen of this country

must apply therefor by filing a petition for citizenship reciting that she possesses all the qualifications set forth in Section 2, and none of the disqualifications under Section 4, both of the Revised Naturalization Law; (2) Said petition must be filed in the Court of First Instance where petitioner has resided at least one year immediately preceding the filing of the petition; and (3) Any action by any other office, agency, board or official, administrative or otherwise - other than the judgment of a competent court of justice - certifying or declaring that an alien wife of a Filipino citizen is also a Filipino citizen, is hereby declared null and void.

3. We treat the present petition as one for naturalization. Or, in the words of the law, a "petition for citizenship". This is as it should be. Because a reading of the petition will reveal at once that efforts were made to set forth therein, and to prove afterwards, compliance with Sections 2 and 4 of the Revised Naturalization Law. The trial court itself apparently considered the petition as one for naturalization, and, in fact, declared petitioner "a citizen of the Philippines".

We go to the merits of the petition.

We note that the petition avers that petitioner was born in Gigaquit, Surigao; that her former residence was Surigao, Surigao, and that presently she is residing at Regal St., Ormoc City. In court, however, she testified that she also resided in Junquera St., Cebu, where she took up a course in home economics, for one year. Section 7 of the Naturalization Law requires that a petition for naturalization should state petitioner's "present and former places of residence". Residence encompasses all places where petitioner actually and physically resided.[13] Cebu, where she studied for one year, perforce comes within the term residence. The reason for exacting recital in the petition of present and former places of residence is that "information regarding petitioner and objection to his application are apt to be provided by people in his actual, physical surrounding".[14] And the State is deprived of full opportunity to make inquiries as to petitioner's fitness to become a citizen, if all the places of residence do not appear in the petition. So it is, that failure to allege a former place of residence is fatal.[15]

Viewed from another direction, we find one other flaw in petitioner's petition. Said petition is not supported by the affidavit of at least two credible persons, "stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act". Petitioner likewise failed to "set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case".[16]

The necessity for the affidavit of two witnesses cannot be overlooked. It is important to know who those witnesses are. The State should not be denied the opportunity to check on their background to ascertain whether they are of good standing in the community, whose word may be taken on its face value, and who could serve as "good warranty of the worthiness of the petitioner". These witnesses should indeed prove in court that they are reliable insurers of the character of petitioner. Short of this, the petition must fail.[17]

Here, the case was submitted solely on the testimony of the petitioner. No other witnesses were presented. This does not meet with the legal requirement.

Upon the view we take of this case, the judgment appealed from is hereby reversed and the petition dismissed, without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Ruiz Castro JJ., concur.

[1] Special Proceeding 653-0, Court of First Instance of Leyte, Branch V (Ormoc City), R. A. p. 5.

[2] Cua vs. Board, etc., 101 Phil., 521, 523; Ly Giok Ha, et al., vs. Galang, et al., 101 Phil. 459, 463. See also the second case of Ly Giok Ha, et al., vs. Galang, et al., L-21332, March 18, 1966; Lee Suan Ay, et al., vs. Galang, etc., et al., L-11855, December 23, 1959.

[3] Lo San Tuang vs. Galang, L-18775, November 30, 1963; Tong Siok Sy vs. Vivo, etc., et al., L-21136, December 27, 1963; Lao Chay, et al., vs. Galang, L-19977, October 30, 1964; Choy King Tee vs. Galang, L-18351, March 26, 1965; Austria, et al., vs. Conchu, L-20716, June 22, 1965; Co Im Ty vs. Republic, L-17919, July 30, 1966.

[4] Choy King Tee vs. Galang, L-18351, March 26, 1965; Brito, et al., vs. Commissioner of Immigration, L-16829, June 30, 1965.

[5] Austria, et al., vs. Conchu, *supra*.

[6] Ly Giok Ha, et al., vs. Galang, et al., 101 Phil. 459, 460; Lo San Tuang vs. Galang, *supra*; Lao Chay, et al., vs. Galang, *supra*.

[7] Paragraphs 2 and 3, Section 15, Revised Naturalization Law.

[8] Channie Tan vs. Republic, L-14159, April 18, 1960; Tan Yu Chin vs. Republic, L-15775, April 29, 1961; Palaran vs. Republic, L-15047, January 30, 1962.

[9] Obiles vs. Republic, 92 Phil. 864, 867; Delumen, et al., vs. Republic, 94 Phil. 287, 289; Tan vs. Republic, L-16108, October 31, 1961; San-tiago vs. Commissioner, L-14653, January 31, 1963; Board of Commissioners vs. Domingo, L-21274, July 31, 1963.

[10] Brito, et al., vs. Commissioner of Immigration, L-16829, June 30, 1965.

[11] Rollo, pp. 32-45.

[12] Co Im Ty vs. Republic, *supra*.

[13] Tan vs. Republic, L-22207, May 30, 1966.

[14] Tan vs. Republic, *supra*, citing Qua vs. Republic, L-19834, October 27, 1964.

[15] Tan vs. Republic, *supra*, citing Chang vs. Republic, L-20713, April 29, 1966; Chan Kiat Huat vs. Republic, L-19579, February 28, 1966; Republic vs. Reyes, et al., L-20602, December 24, 1965.

[16] Section 7, Revised Naturalization Law.

[17] Ong Kim Kong vs. Republic, L-20505, February 28, 1966, citing Ong vs. Republic, 55 O.G. No. 18, pp. 3290, 3295.

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