

MACARIO KING, ET AL., PETITIONERS-APPELLEES, VS. PEDRO S. HERNAEZ, ETC., ET AL., RESPONDENTS-APPELLANTS.*G.R. No. L-14859. March 31, 1962*

Ponente: BAUTISTA ANGELO, J.

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On January 1, 1957, Macario King, a naturalized Filipino citizen, became the owner of the business establishment known as "Import Meat and Produce" a grocery wholesale and retail business, previously owned by the Philippine Cold Stores, Inc. In the business 15 persons were employed 12 of whom are Filipinos and the other 3 Chinese. The three Chinese were old employees of the previous owner, the Philippine Cold Stores, Inc., one having been employed as purchaser and the other two as salesmen.

Three weeks after King had acquired the business as aforesaid, he sought permission from the President of the Philippines to retain the services of the three Chinese employees pursuant to Section 2-A of Commonwealth Act 108, coursing his letter thru the Secretary of Commerce and Industry. This official recommended to the President the disapproval of King's request on the ground that aliens may not be appointed to operate or administer a retail business under Section 1 of Republic Act No. 1180 which requires that its capital be wholly owned by citizens of the Philippines, the only exception thereto being the employment of technical personnel which may be allowed after securing to that effect an authorization from the President. The President approved the recommendation of the Secretary of Commerce and Industry since the positions of purchaser and salesmen occupied by the three Chinese employees are not technical positions within the meaning of Section 2-A of Commonwealth Act 108, as amended by Republic Act No. 134.

As a result of such adverse ruling, Macario King and his three Chinese employees filed a petition for declaratory relief, injunction and mandamus on August 25, 1958 against the Secretary of Commerce and Industry and the Executive Secretary before the Court of First Instance of Manila praying that they be given relief because they are "uncertain and in doubt as to their rights and duties under Republic Act No. 1180 and Commonwealth Act No. 108, as amended by Republic Act No. 134, in view of the aforesaid rulings of the Department of Commerce and Industry and of the Executive Secretary." They alleged that said rulings are illegal in view of the respective situations and positions of petitioners in the retail establishment, the purposes and language of the laws above-mentioned, and, the constitutional guarantee of the rights of an employer to employ and of an employee to work accorded to citizens and aliens alike. The lower court issued a writ of preliminary injunction ex parte upon petitioners' filing a bond in the amount of P5,000.00.

Respondents filed an answer setting up certain affirmative and special defenses tending to show that the petition does not allege facts sufficient to constitute a cause of action. With regard to the declaratory relief, respondents claim that such remedy is not available to petitioners because they have already committed a breach of the statute which is apparent on the face of the petition, meaning that the employment of the three Chinese as salesmen and purchaser in the store of Macario King is a violation of Section 1 of the Retail Trade Act which provides that only citizens of the Philippines can engage in retail trade, as well as of Section 2-A of the Anti-Dummy Law which

prohibits Chinese citizens to intervene in the management, operation, administration or control of such business, whether as an officer, employee or laborer with or without remuneration. Respondents further claim that the three Chinese employees are not technical men who are exempted from the operation of the law, and even if they are, they need the authorization of the President which they failed to obtain in their case.

With regard to the petition for preliminary injunction, respondents contend that the requisites for its issuance have not been satisfied. And with regard to the petition for mandamus, respondents alleged that petitioners have failed to show that respondents have unlawfully neglected any duty which they are called upon to perform and which would make them liable for such relief. Hence, respondents prayed that the petition be dismissed and that the writ of preliminary injunction issued by the court ex parte be lifted.

To this answer, petitioners filed a reply, which was followed by a rejoinder and sur-rejoinder, with a detailed discussion of the arguments advanced in support thereof. And because the motion to dismiss filed by respondents had been denied for lack of merit, trial proceeded, after which the lower court entered judgment holding "that petitioner Macario King may employ any person, although not a citizen of the Philippines or of the United States of America, including the three petitioners herein as purchaser and salesmen, in any position in his retail business not involving participation, or intervention in the management, operation, administration or control of said business; that petitioners Lim Pin, Chang Pak and Ng See Keng are entitled to continue as purchaser and salesmen, respectively, in Macario King's Import Meat and Produce or in any other retail establishment; that the writ of preliminary injunction issued against respondents ordering them to desist from interfering by criminal and/or administrative action with the rights of the petitioners as above defined, is hereby declared final; and, finally respondents are hereby ordered to allow and permit petitioners to enjoy and exercise their rights in the manner and to the extent aforesaid." Respondents took the present appeal before this Court.

The center of controversy between petitioners-appellees and respondents-appellants hinges on the interpretation to be given to Section 1, Republic Act No. 1180, in relation to Section 2-A, Commonwealth Act 108, as amended by Republic Act No. 134. For ready reference we quote the pertinent provisions:

"Section 1. No person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business: x x x" (Italics supplied)

"Sec. 2-A. Any person, corporation, or association which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines, or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by the Constitution or the laws of the Philippines; or leases, or in any other way transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; or in any manner permits or allows any person, not possessing the qualifications required by the Constitution or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein, with or without remuneration except technical personnel whose employment may be specifically authorized, by the President of the Philippines upon recommendation of the Department Head concerned.x x x." (Italics supplied)

With regard to the Retail Trade Law, this Court had already occasion to rule on its constitutionality. We held that the same is valid and that its purpose is to completely nationalize the retail trade in the Philippines. In other

words, its primordial purpose is to confine the privilege to engage in retail trade to Filipino citizens by prohibiting any person who is not a Filipino citizen or any entity whose capital is not wholly owned by citizens of the Philippines from engaging, directly or indirectly, in the retail business. The nationalization of retail trade is, therefore, complete in the sense that it must be wholly owned by a Filipino citizen or Filipino controlled entity in order that it may be licensed to operate. The law seeks a complete ban to aliens who may not engage in it directly or indirectly. And the reasons behind such ban are the pernicious and intolerable practices of alien retailers who in the past have either individually or in organized groups contrived in many dubious ways to control the trade and to dominate the distribution of goods vital to the life of our people thereby resulting not only in the increasing dominance of alien control in retail trade but at times in the strangle hold on our economic life. These reasons were well expressed by Mr. Justice Labrador in the following wise:

"But the dangers arising from alien participation in the retail trade does not seem to lie in the predominance alone; there is a prevailing feeling that such predominance may truly endanger the national interest. With ample capital, unity of purpose and action and thorough organization, alien retailers and merchants can act in such complete unison and concert on such vital matters as the fixing of prices, the determination of the amount of goods or articles to be made available in the market, and even the choice of the goods or articles they would or would not patronize or distribute, that fears of dislocation of the national economy and of the complete subservience of national retailers and of the producers and consumers alike, can be placed completely at their mercy. x x x

"x x x Grave abuses have characterized the exercise of the retail trade by aliens. It is a fact within judicial notice, which courts of justice may not properly overlook or ignore in the interests of truth and justice, that there exists a general feeling on the part of the public that alien participation in the retail trade has been attended by a pernicious and intolerable practices, the mention of a few of which would suffice for our purposes; that at some time or other they have cornered the market of essential commodities, like corn and rice, creating artificial scarcities to justify and enhance profits to unreasonable proportions; that they have hoarded essential foods to the inconvenience and prejudice of the consuming public, so much so that the Government has had to establish the National Rice and Corn Corporation to save the public from their continuous hoarding practices and tendencies; that they have violated price control laws, especially on foods and essential commodities, such that the legislature had to enact a law (See. 9, Republic Act No. 1168), authorizing their immediate and automatic deportation for price control convictions; that they have secret combinations among themselves to control prices, cheating the operation of the law of supply and demand; that they have connived to boycott honest merchants and traders who would not cater or yield to their demands, in unlawful restraint of freedom of trade and enterprise. They are believed by the public to have evaded tax laws, smuggled goods and money into and out of the land, violated import and export prohibitions, control laws and the like, in derision and contempt of lawful authority. It is also believed that they have engaged in corrupting public officials with fabulous bribes, indirectly causing the prevalence of graft and corruption in the Government. As a matter of fact appeals to unscrupulous aliens have been made both by the Government and by their own lawful diplomatic representatives, action which impliedly admits a prevailing feeling about the existence of many of the above practices.

"The circumstances above set forth create well founded fears that worse things may come in the future. The present dominance of the alien retailer, especially in the big centers of population, therefore, becomes a potential source of danger on occasions of war or other calamity. We do not have here in this country isolated groups of harmless aliens retailing goods among nationals; what we have are well organized and powerful groups that dominate the distribution of goods and commodities in the communities and big centers of population. They own no allegiance or loyalty to the State, and the State cannot rely upon them in times of crisis or emergency. While the national holds his life, his person and his property subject to the needs of his country, the alien may even become the potential enemy of the State." (Lao H. Ichong vs. Hernandez, et al., G.R. No. L-7995, May 31, 1957).

The purpose of the enactment of the Retail Trade Law, therefore, is clear. As expressed by this Court, it is to translate the general preoccupation of the Filipinos against the threat and danger to our national economy caused by alien dominance and control of the retail business by weeding out such threat and danger and thus prevent aliens from having a strangle hold upon our economic life. But in so doing the legislature did not intend to deprive aliens of their means of livelihood. This is clearly pointed out in the explanatory note of the law:

"This bill proposes to regulate the retail business. Its purpose is to prevent persons who are not citizens of the Philippines from having a strangle hold upon our economic life. If the persons who control this vital artery of our economic life are those who owe no allegiance to this Republic, who have no profound devotion to our free institutions and who have no permanent state in our people's welfare, we are not really the masters of our own country. All aspects of our life, even our national security, will be at the mercy of other people.

"In seeking to accomplish the foregoing purpose, we do not propose to deprive persons who are not citizens of the Philippines of their means of livelihood. While this bill seeks to take away from the hands of persons who are not citizens of the Philippines a power that can be wielded to paralyze all aspects of our national life and endanger our national security, it respects existing rights."

It is in the light of this view of the Retail Trade Law that the issue was posed whether the prohibition to aliens from engaging in such trade is intended merely to ban them from its ownership and not from its management, control or operation. However, from the context of the law as well as from the decision of this Court in the Ichong case, it may be safely inferred that the nationalization of the retail trade is merely confined to its ownership and not its management, control, or operation. Nevertheless, this apparent Haw in the Retail Trade Law cannot be availed of by an unscrupulous alien as a convenient pretext to employ in the management of his business persons of his ilk to flout the law or subvert its nationalistic purpose, for in pari materia with such law we have the Anti-Dummy Law (Commonwealth Act No. 108, as amended by Republic Act No. 134), which seeks "to punish acts of evasion of the laws of nationalization of certain rights, franchises or privileges." Read in connection with the Retail Trade Law, the Anti-Dummy Law would punish acts intended to circumvent the provisions of the former law which nationalize the retail business.

The question that now arises is: Is the employment of aliens in non-control positions in a retail establishment or trade prohibited by the Anti-Dummy Law?

Petitioners contend that their employment is not prohibited either by the Retail Trade Law or the Anti-Dummy Law. The three Chinese petitioners testified that they had nothing to do with the management and control of the business, nor do they participate in its profits outside of their monthly salaries. They had been employed long before the enactment of Republic Act No. 1180. They only wait for customers and sell according to the prices appearing on the tags previously fixed by their manager Macario King. They desire to continue in the employ of Macario King in his business and their job is their only means of earning support for themselves and their families. Lim Pin who is employed as buyer declared that his duties include no more than buying the groceries appearing in a list prepared and given to him from time to time by Macario King and at no more than the prices indicated in said list. Respondents did not present any evidence to contradict these facts, as they merely relied on their motion to dismiss.

It is evident that petitioners theory is that since they do not intervene in the management, operation, administration or control of the retail establishment of Macario King they are not covered by the Anti-Dummy Law. Indeed, they contend, Section 1, of Republic Act No. 1180 mirrors the legislative intent to nationalize the retail trade merely thru the ownership by Filipinos of the business, and as stated by this Court in the Ichong case, the ownership of the retail business by non-citizens lies at the foundation of the prohibition, and since there is nothing in the Retail Trade Law which prohibits a Filipino-owned retail enterprise from employing an alien and

the dummy law merely limits the prohibition to any position that relates to management, operation, administration or control, petitioners contend that they may be allowed to continue in their positions without doing violence to both the Retail Trade Law and the Anti-Dummy Law. In other words, they draw a line of distinction between one class of alien employees occupying positions of control and another class occupying non-control positions.

Respondents, on the other hand, sustain a different view. They hold that the language of the Anti-Dummy Law bans aliens' employment in both control and non-control positions. They contend that the words management, operation, administration and control, followed by and blended with the words "whether as an officer, employee or laborer therein", signify the legislative intent to cover the entire scale of personnel activity so that even laborers are excluded from employment, the only exemption being technical personnel whose employment may be allowed with the previous authorization of the President. This contention, according to respondents, results from the application of the rule known in statutory construction as *redendo singula singulis*. This means that the antecedents "management, operation, administration and control" and the consequents "officer, employee, and laborer" should be read distributively to the effect that each word is to be applied to the subject to which it appears by context most properly related and to which it is most applicable (Vol. 2, Sutherland, Statutory Construction, Section 4819).

We agree to this contention of respondents not only because the context of the law seems to be clear on what its extent and scope seem to prohibit but also because the same is in full accord with the main objective that permeates both the Retail Trade Law and the Anti-Dummy Law. The one advocates the complete nationalization of the retail trade by denying its ownership to any alien, while the other limits its management, operation, administration and control to Filipino citizens. The prevailing idea is to secure both the ownership and management of the retail business in Filipino hands. It prohibits a person not a Filipino from engaging in retail trade directly or indirectly while it limits the management, operation, administration and control to Filipino citizens. These words may be technically synonymous in the sense that they all refer to the exercise of a directing, restraining or governing influence over an affair or business to which they relate, but it cannot be denied that by reading them in connection with the positions therein enumerated one cannot draw any other conclusion than that they cover the entire range of employment regardless of whether they involve control or non-control activities. When the law says that you cannot employ an alien in any position pertaining to management, operation, administration and control, "whether as an officer, employee, or laborer therein", it only means one thing: the employment of a person who is not a Filipino citizen even in a minor or clerical or non-control position is prohibited. The reason is obvious : to plug any loophole or close any avenue that an unscrupulous alien may resort to flout the law or defeat its purpose, for no one can deny that while one may be employed in a non-control position who apparently is harmless he may later turn out to be a mere tool to further the evil designs of the employer. It is imperative that the law be interpreted in a manner that would stave off any attempt at circumvention of this legislative purpose.

In this respect, we agree with the following remark of the Solicitor General: "Summing up, there is no point in distinguishing employments in positions of control from employments in non-control positions except to facilitate violations of the Anti-Dummy Law. It does not require ingenuity to realize that the law is framed up the way we find it so that no difficulties will be encountered in its enforcement. This is not the first time, to use the words of the United States Supreme Court x x x that a government wants to know, without being put to a search, that what it forbids is carried out effectively."

There is an intimation in the decision of the trial court that if the employment of aliens in non-control positions is prohibited as respondents so advocate, it may impair the right of a citizen under our Constitution to select, pick and employ any one who in his opinion may be amenable to his business provided he is not a criminal, a

communist, or affected by a contagious disease, in the same manner as one may not be deprived of his right to associate with people of his own choice because those are rights that are guaranteed by our Constitution. The language of the trial, court on this matter follows:

"There is no question that a Filipino citizen has a right under the Constitution and the laws of this Republic to engage in any lawful business, to select, pick and employ anyone who in his opinion may be amenable, congenial, friendly, understanding and profitable to his business provided that they are not criminals, say communists, or affected by some contagious disease or morally unfit. The right to associate with our friends or people of our choice cannot be seriously contracted in a democratic form of government. This is one of the most cherished privileges of a citizen. Nullify it and it will produce a communist control of action in our free movement and intercourse with our fellow citizens as now prevails in Russia and other Soviet satellites. History has amply demonstrated that in countries where personal liberties are limited, curtailed or hampered, communism thrives; while in the lands where personal liberties are protected, democracy lives. We need but look at the horizons and see terrible and sinister shadows of some catastrophic events threatening to annihilate all our hopes and love for liberty if we are to traffic with our rights as citizens like any other ordinary commodities. It is our sacred and bounden duty to protect individual rights so that by their benign influence real democracy may be nurtured to full maturity.

x x x x

"There is no need of any lengthy discussion as to the rights of a Filipino citizen to employ any person in his business provided the latter is not a criminal, affected with some contagious disease, or a recognized human derelict. The right to employ is the same as the right to associate. The right to associate is admittedly one of the most sacred privileges of a Filipino citizen. If a Filipino citizen has the right to employ any person in his business, has a naturalized citizen the same rights? We hold and sustain that under the Constitution and laws of this country, there is no difference between a natural-born citizen and a naturalized citizen, with the possible exception, as provided by the Constitution, that while the former can be President, Vice-President or member of Congress, the latter cannot. But outside of these exceptions, they have the same rights and privileges."

It is hard to see how the nationalization of employment in the Philippines can run counter to any provision of our Constitution considering that its aim is not exactly to deprive a citizen of a right that he may exercise under it but rather to promote, enhance and protect those that are expressly accorded to a citizen such as the right to life, liberty and pursuit of happiness. The nationalization of an economic measure when founded on grounds of public policy cannot be branded as unjust, arbitrary or oppressive or contrary to the Constitution because its aim is merely to further the material progress and welfare of the citizens of a country. This is what we expressed in no uncertain terms in the *Ichong* case when we declared constitutional the nationalization of the retail trade. Indeed, we said there that it is a law "clearly in the interest of the public, nay of the national security itself, and indisputably falls within the scope of police power, thru which and by which the State insures its existence and security and the supreme welfare of its citizens." True, this fundamental policy was expressed in a decision the subject of which concerns the constitutionality of the Retail Trade Act, but since the Anti-Dummy Law is but a mere complement of the former in the sense that it is designed to make effective its aims and purposes and both tend to accomplish the same objective either by excluding aliens from owning any retail trade or by banning their employment if the trade is owned by Filipinos, and the target of both is "the removal and eradication of the shackles of foreign economic control and domination" thru the nationalization of the retail trade both in ownership and employment, the pronouncement made in one regarding its constitutionality applies equally if not with greater reason to the other both being complementary one to the other. Indeed, in nationalizing employment in retail trade the right of choice of an employer is not impaired but its sphere is merely limited to the citizens to the exclusion of those of other nationalities.

We note that the case cited by the trial court to substantiate its conclusion that freedom to employ is guaranteed by

our Constitution is *Meyer vs. Nebraska*, 67 Law Ed., 1042, which is also the same case relied upon by petitioners in support of their proposition that "the liberty I guaranteed by the Constitution includes the right to engage in any of the common occupations of life." We also note that this is the same case cited by counsel for Lao Ichong to support the same proposition in his advocacy of the unconstitutionality of the nationalization of the Retail Trade Law which did not deserve favorable consideration by this Court in the Ichong case. To refute counsel's argument that the retail trade is a common occupation the pursuit of which cannot be impaired and consequently the right to employ therein is guaranteed by our Constitution, suffice it to state that we brushed aside such theory in the Ichong case in view of the monopolistic control exercised by aliens in the retail business and their "deadly strangle hold on the national economy endangering the national security in times of crisis and emergency." The circumstances surrounding the enforcement of the Retail Trade Law being the very foundation of the Anti-Dummy Law the same circumstances that justify the rejection of counsel's proposition in the Ichong case should also apply with regard to the application of the Meyer case in the consideration of the unconstitutionality of the Anti-Dummy Law.

The thinking of the lower court that the nationalization of employment in retail trade produces communistic control or impairs a right guaranteed by the Constitution to a citizen seems to have as basis its pronouncement that "the right to employ is the same as the right to associate." This premise has no foundation in law for it confuses the right of employment with the right of association embodied in the Bill of Rights of our Constitution. Section 1, paragraph 6, of said Bill of Rights, provides that "the right to form associations or societies for purposes not contrary to law, shall not be abridged", and this has as its main purpose "to encourage the formation of voluntary associations so that thru the cooperative activities of individuals the welfare of the nation may be advanced."^[1] Petitioners have never been denied the right to form voluntary associations. In fact, they can so organize to engage in any business venture of their own choosing provided that they comply with the limitations prescribed by our regulatory laws. These laws cannot be assailed as abridging our Constitution because they were adopted in the exercise of the police power of the State (*Lao Ichong case*, *supra*).

Against the charge that this nationalization movement initiated by Congress in connection with several measures that affect the economic life of our people places the Philippines in a unique position in the free world, we have only to cite the cases of *Commonwealth vs. Hana*, 81 N.E. 149, and *Bloomfield vs. State*, 99 N.E. 309, which this Court considered as basic authorities for nationalization of legislative measures in the *Lao Ichong case*. Similar laws had been declared constitutional by the Supreme Court of California and the United States Supreme Court in a series of cases involving contracts under the Alien Land Law, and because of the similarities of the facts and laws involved therein we can consider the decisions rendered in said on Philippine Political Law, 10th ed., p. 647 cases of persuasive force and effect in the determination of the present case.^[2]

We wish to add one word with regard to the procedural aspect raised in respondents' brief. It is respondents' theory that a complaint for declaratory relief will not prosper if filed after a contract or statute has been breached. The law does not even require that there shall be an actual pending case. It is sufficient that there is a breach of the law, or an actionable violation, to bar a complaint for declaratory judgment (Vol. 2, *Moran*, Comments on the Rules of Court, 1957 Ed., 145). The pertinent provisions of the Anti-Dummy Law postulates that aliens cannot be employed by Filipino retailers except for technical positions with previous authority of the President, and it is contended that Macario King had in his employ his Chinese co-petitioners for a period of more than 2 years in violation of Section 2-A of Republic Act No. 134. Hence, respondents contend, due to their breach of the law petitioners have forfeited their right to file the present action for declaratory relief.

It appears, however, that alien petitioners were already in the employ of the establishment known as "Import Meat and Produce" previously owned by the Philippine Cold Stores, Inc. when Macario King acquired the ownership of

said establishment and because of the doubt he entertained as regards the scope of the prohibition of the law King wrote the President of the Philippines to request permission to continue said petitioners in his employment, and immediately after the request was denied, he instituted the present petition for declaratory relief. It cannot, therefore, be said that King has already breached the law when he filed the present action.

WHEREFORE, the decision appealed from is reversed. The preliminary injunction issued by the trial court on December 6, 1958 is hereby lifted, The petition for mandamus is dismissed, with costs against appellees.

Bengzon, C.J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.
Padilla, J., took no part.

[1] Sinco on Philippine Political Law, 10th ed., p. 547.

[2] Porterfield vs. U. S. Webb, 195 Cal. 71; Carter vs. Utley, 195 Cal. 84; In re Y. Akado, 188 Cal. 739; In re Okahara, 191 Cal. 353; O'Brien vs. Webb, 263 U. S. 313, 68 L. Ed., 318; Terrace vs. Thompson, 263 V. S. 197, 68 L. Ed., 255; Porterfield vs. Webb, 263 U. S. ' %. 326, 68 L. Ed., 278; Prick vs. Webb, 326 L. Ed., 323.

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