

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF FIRST INSTANCE OF ALBAY, BRANCH I, HON. PERFECTO QUICHO, PRESIDING JUDGE, AND DOMINGO ONG CHUA, RESPONDENTS.

G.R. No. L-30728. October 15, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Certiorari to set aside the order of respondent Court of March 8, 1968 disallowing petitioner's Record on Appeal filed on September 21, 1967 in Naturalization Case No. 46; to set aside the order of April 14, 1969 of respondent Court denying petitioner Republic's Motion for Reconsideration dated March 27, 1968; and mandamus to compel respondent Court to approve petitioner Republic's Record on Appeal.

On March 30, 1959, respondent Court rendered a decision granting the Petition for Naturalization of private respondent Domingo Ong Chua. On April 6, 1961, respondent Court issued an order allowing Domingo Ong Chua to take his oath as a Filipino citizen, and directing the issuance to him of a Certificate of Naturalization. Domingo Chua thereafter took his Oath of Allegiance and was issued a Certificate of Naturalization. Copies of the decision of March 30, 1959 and the order of April 6, 1961, were, however, only served upon the Solicitor General on September 29, 1966. On October 11, 1966, petitioner Republic through the then Solicitor General Antonio P. Barredo, now Associate Justice of this Court, filed with respondent Court an Omnibus Motion for Reconsideration of the decision of March 30, 1959, to declare null and void the order of April 6, 1961 as well as the Oath of Allegiance; to cancel the Certificate of Naturalization, and, pending final determination of Republic's Omnibus Motion, to enjoin Domingo Ong Chua from using his Certificate of Naturalization or acting in any manner as a citizen of the Philippines.

Respondent Domingo Ong Chua opposed the Omnibus Motion on the grounds that (1) by reason of inexcusable laches the State could no longer question the decision of March 30, 1959, much less appeal therefrom, said decision having already become final; and (2) assuming that the State may still re-open the case, the points raised in the motion do not have any factual and legal basis.

On January 19, 1967, when the counsel of Domingo Ong Chua questioned the authority of the Provincial Fiscal to appear for petitioner, respondent Court issued an order stating that, although the Provincial Fiscal was authorized, to appear for the Solicitor General, the Court wanted to know whether he had authority to receive pleadings and processes for and in behalf of the Solicitor General. Consequently, the hearing of the Omnibus Motion was transferred to February 22, 1967.

On February 8, 1967, the Solicitor General, on behalf of petitioner Republic, filed his reply to the opposition, and on February 17, 1967, he filed a Manifestation, dated February 15, 1967, informing respondent Court and private respondent Domingo Ong Chua that in naturalization cases, the Solicitor General, and not the Fiscal delegated to appear at the hearing, is the counsel of record, hence, all pleadings, notices, orders or judgments, etc, should be served upon the Solicitor General, although the Provincial Fiscal of Albay may be furnished with copies of the

same.

After hearing the Omnibus Motion and the Opposition thereto, with the parties submitting their evidence, respondent Court, without deciding whether or not petitioner is "estopped to question the decision on the ground of laches," issued an order of September 6, 1967, denying respondent Republic's Omnibus Motion for Reconsideration on the ground that there is no valid reason to set aside the decision, as Domingo Ong Chua was qualified under the Naturalization Law. Copy of the said order was served upon the Office of the Solicitor General on September 18, 1967.

On September 18, 1967, the Provincial Fiscal of Albay, "in representation of the Solicitor General," filed with respondent Court the Government's Notice of Appeal, - dated the same date, and on September 21, 1967, the Provincial Fiscal of Albay filed with the respondent Court the Republic's Record on Appeal.

Respondent Domingo Ong Chua opposed the approval of the Record on Appeal of the Government, contending, among others, that (a) the Record on Appeal of the Government was signed only by the Provincial Fiscal of Albay, not as delegate or representative of the Solicitor General, and, hence, was a mere scrap of paper, and (b) that the said Record on Appeal did not include such data as would show that the appeal was perfected on time. A reply to said opposition was filed by the Solicitor General asserting that authority had actually been given to the Provincial Fiscal of Albay to file the Notice of Appeal as well as the Record on Appeal, and also that the latter contained such data showing that the appeal was seasonably interposed. Domingo Ong Chua filed his rejoinder to respondent Republic's reply, and the respondent Court, on March 8, 1968, issued an order ruling in favor of Domingo Ong Chua by disapproving the Record on Appeal and dismissing the appeal of the Government.

Petitioner Republic, on March 28, 1968, sought to have the said order reconsidered, but the same was denied.

Hence, this instant petition for certiorari with mandamus.

We find the petition meritorious.

I

There is no question that the 30-day period of appeal in naturalization cases allowed the Government is counted from notice of, or receipt by, the Solicitor General of the decision, and not from the date of its receipt by the Provincial Fiscal. The Naturalization Law prescribes that the Solicitor General shall appear on behalf of the Government "either himself or through his delegate, or the Provincial Fiscal concerned." It is evident that the Fiscal appears not in substitution, but merely as representative, or the Solicitor General who remains the counsel of record for the Republic in the naturalization case.[1] In *Lim vs. Republic*, [2] We ruled that the validity of naturalization proceedings is vitiated, by the failure of the court to serve notice of hearings to the Solicitor General, as required by law. This rule applies even if the notices were sent to the Provincial Fiscal who was duly authorized by the Solicitor General to appear in his behalf. It is evident, therefore, that since the decision of the respondent Court granting the petition for naturalization was only served upon the Solicitor General on September 29, 1966, the period to appeal should be counted from the aforesaid date.

II

It is not disputed that the Provincial Fiscal of Albay was authorized to appear for the Solicitor General in the aforesaid naturalization case. When the Office of the Solicitor General was served on September 18, 1967 a copy of the order of respondent Court denying its Omnibus Motion, the Provincial Fiscal on September 19, 1967 filed the Government's Notice of Appeal, thus:

"COMES NOW the undersigned Provincial Fiscal, in representation of the Solicitor General, to this Honorable

Court respectfully makes known his intention to appeal x x x" (*Italics supplied.*)

It was on October 21, 1967 when the Provincial Fiscal filed the Republic's Record on Appeal. It is true that in the Record on Appeal the Provincial Fiscal failed to mention that he was acting for and in representation of the Solicitor General, but this was of no importance. The order of respondent Court of January 19, 1967 explicitly recognized that the Provincial Fiscal was authorized to appear for the Solicitor General. The authority of the Provincial Fiscal to appear on behalf of the Solicitor General was again reiterated in the Manifestation of the Solicitor General of February 15, 1967.

Considering the aforementioned circumstances, it is evident that when the Provincial Fiscal filed the Record on Appeal of the Government, he did so on behalf of the Solicitor General. It must be presumed that official duty has been regularly performed and, therefore, the burden is upon the private respondent to show affirmatively the absence of such designation or authority of the Provincial Fiscal to file the Record on Appeal in representation of the Solicitor General.

III

It is also claimed that the Record on Appeal is defective, as it does not state when the Office of the Solicitor General received a copy of the order of September 6, 1967, denying the motion for reconsideration of the March 30, 1959 decision, as well as the cancellation of the Oath of Allegiance and the Certificate of Naturalization of Domingo Ong Chua.

The main point to consider is whether, on the face of the Record on Appeal, the petitioner's appeal was perfected on time.

From the Record on Appeal of the Government, it could be seen that the decision of March 30, 1959 and the order of April 6, 1961 were served upon the Solicitor General on September 29, 1966, and that on October 12, 1966, the Solicitor General filed the Omnibus Motion for Reconsideration dated October 5, 1966. From September 29, 1966 to October 12, 1966, a period of 13 days had elapsed. It is evident, therefore, that the Government had 17 more days within which to file the Notice of Appeal and the Record on Appeal, from the date of receipt by the Solicitor General of the Court's order denying the Omnibus Motion.

Considering that according to the Record on Appeal respondent Court's order denying the Omnibus Motion was issued on September 6, 1967 and that the Government's Notice of Appeal and the Record on Appeal were filed on September 18, 1967 and September 21, 1967, respectively, it is obvious, therefrom, that the appeal was perfected on time. For even assuming that the order of respondent Court denying the Omnibus Motion was received by the Solicitor General on the same date that it was issued on September 6, 1967, it cannot be denied that when the Notice of Appeal and the Record on Appeal were filed on September 18, 1967 and September 21, 1967, respectively, the remaining 17-day period within which the Government could perfect its appeal had not yet expired. In other words, the absence of any statement of the date of the receipt of the order would not change at all the fact that the basis of said record, there are sufficient data showing that the petitioner's appeal was perfected on time.

WHEREFORE, as prayed for, the orders of the respondent Court of March 8, 1968, and of April 14, 1969, in Naturalization Case No. 46, are hereby set aside, and the respondent Court is directed to approve the Record on Appeal of herein petitioner.

IT IS SO ORDERED.

Makalintal, C. J., Fernando, Fernandez and Aquino, JJ., concur.
Barredo, J., took no part.

[1] Republic vs. Chiu, G.R. No. L-20846, October 31, 1964, 12 SCRA, 352.

[2] G. R. No. L-27126, May 29, 1970, 33 SCRA, 338, 347.

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