

IN THE MATTER OF THE PETITION OF KHO ENG POE TO BE ADMITTED AS A CITIZEN OF THE PHILIPPINES, KHO ENG POE, PETITIONER AND APPELLEE VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND ...

G. R. No. L-17146. July 20, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the Republic of the Philippines from the decision of the Court of First Instance of Cotabato "finding the petition filed by Kho Eng Poe to be meritorious, granting the same and declaring him a Filipino citizen, subject to the conditions prescribed in Section 1 of Republic Act No. 530."

On January 12, 1961 the Office of the Solicitor General, through Pacifico P. de Castro, Assistant Solicitor General, and Eriberto D. Ignacio, Solicitor, filed a motion to withdraw the appeal, alleging that it had found, after a perusal of the record, that the grounds or reasons that induced the Provincial Fiscal of Cotabato to interpose the appeal, could not be sustained, and that the Office of the Solicitor General could find no other ground upon which to assail the qualifications of petitioner. After considering the merits of the motion, we denied it, and further required the Solicitor General to file the brief on behalf of the State or to make of record whether he would submit the case on the strength of his motion to withdraw the appeal. The same, solicitors thereafter made of record that they were submitting the case for decision upon the allegations made in their motion to withdraw the appeal.

Petitioner subsequently filed his brief.

It appears that on March 6, 1958 petitioner filed with the lower court his petition for naturalization. The notice of hearing required by law was duly published, and on December 3, 1958 the Solicitor General filed a motion to dismiss on the ground that the petition did not allege that petitioner had filed a declaration of intention, and that no such declaration was attached to the petition as required by law. While said motion was pending resolution, petitioner filed an amended petition which made it unnecessary for the lower court to pass upon the former. The amended petition was also published as required by law. On October 3, 1959, after petitioner had submitted his evidence, a formal or written opposition was filed by the Assistant Provincial Fiscal of Cotabato alleging as grounds therefor that petitioner had no religion and that the supporting witnesses had not known him for a period of ten years as required by law. Thereafter the opposition called its first witness in the very person of petitioner.

Upon the evidence the lower court found the following facts:

"The petitioner was born on February 22, 1931, in Ching kang, District of Fookien; China. His father is Kho Hau Sun alias Hau Sun and his mother is Chua Sin Sam—both spouses are Chinese citizens. The petitioner is at present a subject of the Republic of China and is a man of good moral character, as shown by the certificate issued to him by the Chinese Consul for Mindanao and: Sulu (Exhibit H).

"He is legally married to his wife Uy Siok Ching who is presently living with him at Villaceron Street

Extension, Cotabato City. Out of this marital union with his wife, two children were born, namely, Kho Wan Huen, born on October 2, 1956, in Cotabato, Cotabato, and Kho Wan Huy, also born in Cotabato, Cotabato, on November 6, 1957. The births of these children were registered in the office of the local Civil Registrar of Cotabato (Exhibits K and M) both of them were registered as aliens (Exhibits L and N). These children are not going to school as they are not yet of school age. His wife is also registered as an alien with the Philippine Immigration authorities (Exhibits J and J-1).

"Since petitioner came to the Philippines on October 7, 1958, he stayed in Manila until he came to Cotabato, Cotabato, in February 1951. While in Manila he studied at the Anglo-Chinese School and finished his first and second year high school at the Loyal Heart Institute. He continued his studies at the Far Eastern University and finished his third and fourth year high school in that institution of learning. From the time he landed in the port of Manila on October 7, 1938, he has continuously resided in the Philippines until at present.

"The petitioner has mingled and associated with Filipinos and, has evinced a sincere desire to learn and embrace their customs, traditions and ideals. He has willingly and voluntarily contributed to civic and charitable institutions.

"The petitioners has not filed any other petition with any other Court in the Philippines except the instant petition.

"He speaks and writes English and Tagalog. He also understands the Maguindanao Moro and some of the Visayan dialects, but he cannot write them.

"The petitioner has paid all taxes due from him to the government.

"He believes in the principles underlying our constitution and government.

"He is opposed to communism and is not a member of any subversive society or organization.

"He does not suffer of any contagious or incurable disease (Exhibit "S").

"He has not been accused or convicted of any crime (Exhibits O, P, Q and R).

"Under the law of the Republic of China, Filipinos can become also citizens of that country."

Upon the above facts the lower court ruled that petitioner had established "by his testimony and the testimony of his character witnesses that he possesses all the qualifications and none of the disqualifications to become a Filipino."

A perusal of the record, however, has convinced us that, while petitioner's testimony seems to have established the facts found by the lower court, the same thing cannot be said of the testimony of his character witnesses.

We have held heretofore that it is incumbent upon a petitioner for naturalization to prove affirmatively by his own testimony and that of at least two credible witnesses, not only that he possesses all the qualifications required under Section 2 of Commonwealth Act No. 47S, but also that he does not possess any of the disqualifications provided under Section 4 of the same Act. The testimony of petitioner's witnesses on the second requirement is, in our opinion, manifestly insufficient.

One of said witnesses, Jose S. Lim, testified on this matter as follows:

"Q.

In this affidavit Exhibit "V" you stated that the petitioner is not in any way disqualified in your opinion, is that correct?

"A.

Yes, sir.

"Q.

Why do you say that the petitioner is not in any way disqualified in your opinion?

"A.

Because he possesses all the qualifications to become a Filipino." (p. 55, transcript)

Aside from his answer to the last question quoted above, the witness gave no other testimony calculated to prove affirmatively that petitioner does not possess any of the disqualifications provided by law. His answer to the effect that petitioner is not in any way disqualified "because he possesses all the qualifications to become a Filipino" does not prove affirmatively that petitioner does not possess any of the disqualifications. To possess the qualifications is one thing, and it is another not to possess any of the disqualification. This is the reason why in previous decisions we held that it is incumbent upon petitioner in any case like the present to prove affirmatively, by his own testimony and that of the credible witnesses required by law, both his possession of the qualifications to be admitted as a citizen and his not possessing any one of the disqualifications provided by law.

We have noticed exactly the same insufficiency in the testimony of petitioner's other witness, Jose de la Rosa, the pertinent part of which reads as follows:

"Q.

Do you know of any disqualification to become a Filipino citizen?

"A.

In my opinion I do not know any disqualification.

"Q.

That is with respect to the petitioner?

"A.

Yes, sir.

"Q.

Do you know of any disqualification of a petitioner to become Filipino citizen?

"A.

That he is engaged in subversive activities resisting the government of the Philippines. That is one of the disqualifications.

"Q.

What else?

"A.

If he is against the Philippines.

"Q.

Can you say whether the petitioner is possessing any of the disqualifications you have just mentioned?

"A.

I don't think." (pp. 63-64, transcript)

Petitioner having failed to prove affirmatively by the testimony of credible witnesses in the required number that he does not possess any of the disqualifications provided by Section 4 of Commonwealth Act No. 473, the decision appealed from is hereby reversed, with the result that petitioner's petition for naturalization is hereby denied. With costs.

Bengzon, C. J. Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Re gala and Makalintal, JJ., concur

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