

IN THE MATTER OF THE PETITION FOR NATURALIZATION OF JOSE GO (ALIAS JOSEPH GOTIANUY), PETITIONER AND APPELLANT, VS. ANTI-CHINESE LEAGUE OF THE PHILIPPINES AND FELIPE FERNANDEZ, O...

G.R. No. L-1563. August 30, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

From a decision of Judge Higinio B. Macadaeg of the Court of First Instance of Cebu denying his petition for naturalization, Jose Go has appealed to this court.

Appellant was born of Chinese parents on December 5, 1914, in Cebu City, where he has continuously resided up to the present. He commenced his studies in the Cebu Chinese School, and after finishing the third grade he had a Mrs. Shelton for tutor. Later he enrolled in the De la Salle College in Manila, where he finished the intermediate course. Sometime in 1929 he left for Hongkong and enrolled for three years in the De la Salle College of that city. Thence he proceeded to the United States and continued his studies in Armstrong College in California, in the University of California, and in New York University. He returned to the Philippines in August, 1940. He is married to Gim F. Lock, an American-born citizen of Chinese parents. He has no children. He speaks and writes English and the Visayan-Cebuano dialect.

Since his return to the Philippines appellant has been engaged as insurance agent and inspector of the Visayan Surety Company, from which occupation he averages an annual income of P2,500. He is also engaged in the export of copra, with a capital of P120,000. He owns real property in Cebu City with an assessed value of P7,800. In the words of the trial court: "He is not opposed to organized government nor is he affiliated with any association or group of persons upholding doctrines opposed or antagonistic to organized government. He does not believe in the necessity or in the wisdom and propriety of violence, personal assault, or assassination for the success or attainment of his ideas. He is not a polygamist nor a believer in the practice of polygamy. He has never been convicted of any crime involving moral turpitude and he is not suffering from any incurable disease nor from mental alienation. He believes in the principles underlying the Philippine Constitution."

The trial court's decision denying the petition was based on the proofs presented by the oppositors—Atty. Vicente Sotto, in behalf of the so-called Anti-Chinese League of the Philippines, and Mr. Felipe Fernandez, a Filipino citizen residing in Cebu City—consisting of the testimony of two political detainees named Pedro Gerona and Pedro Labra. These witnesses testified in substance that in the month of November, 1943, the appellant sold to the Japanese Navy one Fairbanks-Morse motor and two truck tires. Pedro Gerona also testified that he saw the appellant on different occasions in the Normal School where the offices of the Japanese Kempei-tai were located. Pedro Labra also testified that appellant was a prominent member of the Chinese Association of Cebu City, which according to him donated to the Japanese Navy P50,000 in cash and some scrap iron, and that appellant frequently visited the offices of the Kempei-tai.

In rebuttal appellant vehemently denied the imputations of Gerona and Labra and swore that in August, 1942, he evacuated to the barrio of Tupsan, municipality of Mambajao, Oriental Misamis, where he stayed until about September, 1944, when he came back to Cebu and after three days left with his father for the mountains. He was corroborated by Francisco Vibares, of Tupsan, Mambajao, who testified that during the period mentioned by appellant, that is to say, from August, 1942, to August or September, 1944, the appellant lived in the barrio of Tupsan, Mambajao, Oriental Misamis, in the house of a cousin of the witness, and that he came to know the appellant because he (witness) supplied appellant with goat's milk every day.

Appellant also presented Exhibit J, a clearance issued to him by the CIC on August 14, 1945.

The trial court declared that appellant lacked the qualification required by section 2 of Commonwealth Act No. 473, in that he had not conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with the constituted government as well as the community in which he was living. As additional reason for denying the petition the trial court invoked paragraph (f) of section 4 of Commonwealth Act No. 473, which disqualifies "persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos."

- Neither the so-called Anti-Chinese League of the Philippines nor Felipe Fernandez, a private individual, is a proper party-oppositor in this case. These oppositors should have presented their opposition, and any proof they might have in support thereof, to the Solicitor General, who, either personally or thru his delegate or the provincial fiscal, is the only officer or person authorized by law to appear on behalf of the Government and oppose an application for naturalization. (Sec. 10, Revised Naturalization Law; Anti-Chinese League of the Philippines vs. Felix and Lim, 44 Off. Gaz., 1480.) Nevertheless, inasmuch as an assistant provincial fiscal appeared at the trial of the case and made the oppositions of said oppositors his own, and the Solicitor General appears to have approved his actuation, we consider the defect or irregularity complained of by the appellant in his first assignment of error as having been cured or corrected.

- The testimony of the two witnesses for the oppositors is of doubtful credibility. They were both under prosecution for treason. One of them, Pedro Labra, has been found guilty by this court and sentenced to life imprisonment (see G. R. No. L-857, Oct. 19, 1948). Said testimony was, in our opinion, successfully rebutted by the appellant and his witness Francisco Vibares. Moreover, the trial judge apparently misconstrued said testimony when he said in his decision that the sale by the appellant of a motor and two truck tires to the Japanese Navy took place "sometime in the month of November, 1944," whereas according to said witnesses it took place sometime in November, 1943, when the appellant was in Mambajao, Oriental Misamis.

But even assuming that the appellant did sell such merchandise to the Japanese Navy and that he was a member of the Chinese Association of Cebu City, which allegedly donated P50,000 in cash and some scrap iron to the Japanese Navy, such transaction would not, in our opinion, be a sufficient ground to reject appellant's petition, specially if we take into consideration the clearance issued to him by the CIC. The trial court itself said that it was not convinced that the appellant was a spy of the Japanese, notwithstanding the efforts of the oppositors to prove that he was.

- We find no basis in the record for the finding that appellant had not mingled socially with the Filipinos or had not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos. There is no opposition to the petition on that score. At the trial the appellant testified without contradiction: "Since my birth I have been a resident here and I have been in contact with Filipinos and all my friends are in Cebu and our contact became to be more friendly. . . . I am more familiar with the customs and laws of the Philippines and the United

States. I was brought up here, also my schooling, for the last fifteen years, has been with the Philippines and the United States."

- In reasoning out its decision, the trial court said: "It seems . . . that the law makes it mandatory on the part of the court to grant Filipino citizenship if and when the applicant succeeds in proving that he has all the qualifications and none of the disqualifications required by law. This court believes that the time has come when a more rigid policy should be adopted in granting Filipino citizenship . . . This court would even go farther by subscribing to a policy calculated to make it discretionary on the part of [the] courts to grant or not to grant Filipino citizenship even though the applicant shall have satisfactorily proven that he has all the qualifications and none of the disqualifications provided for by law. . . ."

We cannot subscribe to that proposition. It is the sworn duty of the judge to apply the law without fear or favor, to follow its mandate—not to tamper with it. The court cannot adopt a policy different from that of the law. What the law grants, the court cannot deny.

- The Solicitor General contends that appellant has not satisfactorily proven that the laws of China grant to Filipinos the right to become naturalized citizens or subjects thereof. The same contention was urged on us in *Jose Leelin vs. Republic of the Philippines*, G. R. No. L-1761, wherein we said: "It suffices to say that in previous cases a translation of the Chinese naturalization law, made and certified to be correct by the Chinese Consulate General in Manila, was admitted and considered sufficient evidence to establish that the laws of China permit Filipinos to become citizens of that country."

The judgment appealed from is reversed and appellant's petition for naturalization is hereby granted. The corresponding certificate of naturalization will accordingly be issued and registered in the proper civil registry as required by law. No pronouncement as to costs.

Moran, C.J., Paras, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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