

TAN SENG PAO, PETITIONER AND APPELLEE, VS. COMMISSIONER OF IMMIGRATION, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-14246. April 27, 1960*

Ponente: BARRERA, J.

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On July 30, 1958, petitioner Tan Seng Pao filed with the Court of First Instance of Manila, a petition for a writ of habeas corpus alleging, inter alia, that on October 12, 1949, respondent Commissioner of Immigration issued a warrant for his arrest as a result of which he was apprehended and taken into custody by respondent and or his agents and deputies; that thereafter; deportation proceedings were instituted against him and on February 1, 1950, a decision was rendered by the Board of Immigration Commissioners convicting him and holding him liable to deportation; that no steps were thereafter taken by respondent to effectuate said decision, or if steps were taken, the same were ineffectual or inadequate, as he was still being detained by respondent at the Immigration Detention Station; that on May 8, 1958, petitioner, through counsel, filed a motion for reconsideration of said decision, in order to give respondent an opportunity to correct and/or grant administrative relief, in connection with petitioner's "illegal continued detention"; that although 2 months had elapsed from the filing of petitioner's motion for reconsideration, no definite step was taken by respondent to resolve the same, and there is no prospect of any action thereon in the immediate future; that on July 1, 1958, petitioner's counsel called respondent's attention to the pendency of said motion for reconsideration and urged for an early investigation, but respondent took no action thereon; and that the non-execution of the order of deportation and respondent's inaction on his said motion for reconsideration for an unreasonable length of time, had rendered petitioner's continued detention without authority of law and in gross violation of the Constitution and the Universal Declaration of Human Rights, because said non-execution of the order of deportation has rendered the same *functus officio*.

On August 1, 1958, respondent Commissioner of Immigration filed his return to the writ stating, inter alia, that petitioner's motion for reconsideration of the decision of the Board of Immigration Commissioners dated February 1, 1950, was still pending, although one of the members of said board had already given his vote on said motion; that petitioner failed to file with him a petition for release on bail pending execution of the order of deportation and has not, therefore, exhausted all administrative remedies and, consequently, his petition is premature, thereby giving the court no jurisdiction nor justification to entertain the same; and that if there was any delay in the deportation of petitioner, it was not due to the fault of the Government or any of its officials, inasmuch as diplomatic negotiations have ceaselessly been undertaken to effect petitioner's immediate deportation to his country of origin.

After submission by the parties of their respective memoranda, the petition was submitted for decision. On August 8, 1958, the court rendered a decision granting the petition, subject to the conditions stated in the dispositive part thereof, which reads:

"WHEREFORE, the Court hereby orders the release from custody of the herein petitioner under the terms and conditions as made by the Supreme Court in an almost similar case (Victor Borovsky vs. Commissioner of

Immigration and Director of Prisons, supra), which are as follows: 'The petitioner shall be placed under the surveillance of the immigration authorities or their agents in such form and manner as may be deemed adequate to insure that he keep peace and be available when the Government is ready to deport him. The surveillance shall be reasonable and the question of reasonableness shall be submitted to. this Court or to the Court of First Instance of Manila for decision in case of abuse. He shall also put up a bond for the above purpose in the amount of P5,000.00 with sufficient surety or sureties, which bond the Commissioner of Immigration is authorized to exact by Section 40 of Commonwealth Act No. 613.' "

From the aforementioned decision, respondent appealed to us.

Respondent Commissioner of Immigration claims that the lower court should not have entertained petitioner's petition for habeas corpus inasmuch as the latter's motion for reconsideration of the decision of the Board of Immigration Commissioners, filed on May 8, 1958, was still pending with said board.

There is some merit in this contention. In submitting said motion for reconsideration, petitioner has invoked the authority of the aforementioned board to reconsider its decision. His filing, hardly two months thereafter, with the lower court of a petition for a writ of habeas corpus was improper and premature, because said board has yet to act on his said motion for reconsideration. In the case of *Johnson vs. Commissioner of Immigration* (101 Phil., 654; 56 Off. Gaz. [44] 6767), we held:

"Without need of going into all the questions raised, we think the petition for habeas corpus must be denied as premature, the same having been filed before the Board of Commissioners of the Bureau of Immigration, the agency primarily entrusted with the final determination of petitioner's right to stay permanently in the Philippines, has rendered its decision.

'In the absence of exceptional circumstances, habeas corpus proceeding to prevent deportation is premature if proceedings are still pending before the Commissioner of Immigration,' (*U. S. ex rel. Loucas vs. Commissioner of Immigration*, D.C.N.Y., 49 P 2d 473 cited in 89 C.J.S. p. 528.)

"No exceptional circumstances have been shown to take this ease out of the general rule. It is not even claimed, and indeed it does not appear, that the Board has been unduly delaying its decision. There is, therefore, in our opinion no justification for judicial interference."

In the instant case, although a decision has already been rendered by the Board of Immigration Commissioners ordering the deportation of petitioner, the deportation proceedings may be considered still pending because petitioner himself, by filing said motion for reconsideration, has sought to have its decision reversed. It may be stated, in this connection, that petitioner's motion for reconsideration has, at the time of the filing of the petition for habeas corpus with the lower court, been partly acted upon by the immigration authorities, as it appears that one of the members of the Board of Immigration Commissioners had already given his vote thereon. It cannot, therefore, be claimed that said board had been unduly delaying its decision, to warrant judicial interference.

Furthermore, petitioner failed to file with respondent a petition for release on bail while awaiting deportation, a practice which is usually done by deportees and, therefore, has not exhausted administrative remedies before filing the petition for habeas corpus with the lower court. That respondent might require excessive bail which petitioner would then not be able to furnish is not, in our opinion, a legal excuse for his failure to file said petition with respondent.

Respondent finally contends that the lower court erred in granting petitioner the writ of habeas corpus, on the main ground that he had been under detention by the immigration authorities for 8 years since he was ordered deported, without said order having been carried out. The lower court considered said long continued detention of petitioner as unreasonable, citing the cases of *Mejoff vs. Director of Prisons* (90 Phil., 70); *Borovsky vs.*

Commissioner of Immigration, et al. (90 Phil., 107; 47 Off. Gaz., 136); Chirskoff vs. Commissioner of Immigration, et al. (90 Phil., 256); and Andreau vs. Commissioner of Immigration, et al. (90 Phil., 347), wherein this Court granted the writ of habeas corpus to petitioners in said cases, as they had been under detention by the immigration authorities from 2 to 4 years, while awaiting deportation.

It is to be noted, however, that this Court was constrained to grant the release of petitioners in said cases, because "there was no ship or country which would take them." Petitioners therein were stateless Russians who have no country to which they may be deported or which would be willing to accept them. In the instant case, petitioner is a Chinese citizen and not a stateless alien, and has a known country, Formosa (from whence he came), to which he may be removed. If there is any delay in the shipment of petitioners from this country, it is not due to the fault or negligence of the Government or of its officers. If diplomatic negotiations which have been pursued relentlessly by our Government have not yielded tangible results leading to the immediate or early removal of petitioner and other aliens similarly Situated, the delay should not be considered a ground for declaring the order of deportation *functus officio*. Otherwise, it would be within the power of the countries of undesirable aliens ordered deported from this country to render ineffective or unenforceable warrants of deportation, by simply frustrating all diplomatic efforts aimed at their removal from this country.

In conclusion, we hold and declare that, as long as the continued detention of a deportee is not attributable to the fault or negligence of the Government or of its officers, and his deportation is not rendered impossible by his citizenship status by reason of which no country or ship will accept him, warrant for his deportation should stand in all its force and vigor, rather than be declared *functus officio*.

Wherefore, the judgment of the court *a quo*, as well as the order granting petitioner's release on bail pending this appeal, are reversed and set aside, without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., on leave, took no part.

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