

**IN THE MATTER OF THE PETITION OF CELESTINO CO Y QUING REYES TO BE ADMITTED A CITIZEN OF THE PHILIPPINES.
CELESTINO CO Y QUING REYES, PETITIONER AND APPELLEE, VS.
REPUBLIC OF THE...**

G.R. No. L-10761. November 29, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by the Office of the Solicitor General, from a decision, of the Court of First Instance of Manila, granting the petition for naturalization, as citizen of the Philippines, of appellee Celestino Co y Quing Reyes.

Appellant maintains that:

"1. The lower court erred in not finding that the petitioner appellee has failed to comply with all the requisites prescribed by the law to acquire Philippine citizenship.

"2. The lower court erred in finding that the petitioner-appellee possesses all the qualifications prescribed by Revised Naturalization Law.

"3. The lower court erred in granting Philippine citizenship to the herein petitioner-appellee."

From the viewpoint of this Court, the question raised in the first assignment of error is the only one that requires consideration, namely: did the Court of First Instance of Manila erred in hearing this case and granting the petition in the case at bar, despite the undisputed fact that said petition was published in the Official Gazette only once, instead of three (3) times, as required in section 9 of Commonwealth Act 473. This provision reads:

"Immediately upon the filing of a petition, it shall be the duty of the clerk of the court to publish the same at petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace and residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held within ninety days from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the Interior, the Bureau of Justice, the Provincial Inspector of the Philippine Constabulary of the province and the justice of the peace of the municipality wherein the petitioner resides."

This section "was squarely construed and applied in *Ong Son Cui vs. Republic of the Philippines*, 101 Phil., 649, in which we said:

"It could be seen that, under the aforequoted section of the Revised Naturalization Law, the notice of hearing

of the application for citizenship should be published three times in the Official Gazette, or, in the language of the law, 'once a week for three consecutive weeks, and so in the order of publication of the notice of hearing of the present case it was enjoined that the same be made 'once a week for three consecutive weeks in the Official Gazette and in the Voz de Manila/ The notice of hearing of this case should therefore have been published three times not only in the Voz de Manila but in the Official Gazette as well. And there being only one publication of said notice of hearing in this case in the Official Gazette, the same is clearly incomplete and therefore insufficient to confer jurisdiction to the court a quo to try the case and grant the petition. It is argued, however, that there has been a substantial compliance with law because the notice of hearing in question was published three times in the Voz de Manila and once in the Official Gazette; but since the law expressly provides that the notice of hearing be published three times, this should be strictly observed; for, as correctly pointed out by the Solicitor General in his brief,

"The publication required by law in the Official Gazette and in a newspaper of general circulation is a means of screening aliens applying for Filipino citizenship by giving the public a chance to come forward and protest the grant of such citizenship if they possess any information derogatory to the applicant. The official organ of the government caters to the officials and employees of the government and to the lawyers as well. These people, by reason of their occupation are in a better position to acquire knowledge of aliens running afoul of the law than the average reader who scans the newspapers for news. If the law was not after the number of times the notice is published in the Official Gazette, it could have expressed in words that a single publication in the Official Gazette would suffice; but when the law expressly provides its publication 'once a week for 3 consecutive weeks' the intention to give the reading public 3 chances to read that item is very clear. A single publication therefore of the notice where the law requires 3 is an incomplete publication, and an incomplete publication is not a valid publication. The grant of citizenship is only a mere privilege, and a strict compliance with law on the part of the applicant is essential.'

"Petitioner may contend, however, that the law provides that the publication of the notice of hearing should be made for three consecutive weeks and as the Official Gazette is now being published monthly, and not weekly as it was before, petitioner cannot actually comply with law; and because he had the notice of hearing in question published, once, in the Official Gazette, he should be given the benefit of having followed the law. This contention does not merit serious consideration. While it is true that the notice of hearing in question cannot actually be published for three consecutive weeks in the Official Gazette, it is no less true that said notice may be published three times consecutively, although not weekly, in the Official Gazette, and because the true intent of the law is that the said notice be published 3 times, it is our considered opinion that in the instant case the single publication of the notice of hearing in question is not a sufficient compliance with law."

We find no valid reason to depart from such view. Indeed, said section 9 requires that the petition for naturalization be published "once a week, for three (3) consecutive weeks, in the Official Gazette." This provision demands compliance with the following requirements, namely: (1) the publication must be weekly; (2) it must be made three (3) times; (3) and these must be "consecutive".

Compliance with the first condition was, admittedly, impossible, inasmuch as, until recently, the Official Gazette was not published weekly. Petitioner could have, and, hence, he should have, complied, however, with the second and third conditions. Hence, the publication once in the Official Gazette is not a substantial compliance with the provisions of the aforementioned section 9.

Appellee alleges, however, that the sufficiency of said publication was not questioned in the lower court and cannot be raised for the first time on appeal; that the duty to publish the petition is imposed by law upon the clerk of court, not upon petitioner; and that non-compliance with said section 9 "is not a fatal defect unless it is actually established that it prejudices the opposition to the application."

This pretense is untenable. The decision of the lower court granting appellee's petition for naturalization affected

his personal status and accordingly, it "is in the nature of a judgment in rem" (2 C. J. 1123; U. S. vs. Gleason [C.C.N.Y.] 78 Fed. 396 [aff. 90 Fed. 778, 33 CCA 272] ; In re O'Sullivan, 137 Mo. A. 214, 117 S.W. 651; Esker vs. McCoy, 5 Oh. Dec. [Reprint] 573; 6 Am. L. Rec. 694; 3 C.J.S. 853; 31 Am. Jur. 98). As stated in Scott vs. Stroback (49 Ala. 477, 490): "A judgment admitting an alien to citizenship has none of the properties or qualities of a judicial proceeding in personam. It is rather in rem." (Italics ours.)

"A proceeding in rem is not confined to the status of things, but extends to the statue of individuals and their relation to others." (1 Am. Jur., p. 436.)

"Proceedings in rem include not only those instituted to obtain decrees or judgments against property as forfeited in the admiralty or the English exchequer, or as a prize, but also suits against property to enforce a lien or privilege in the admiralty courts, and suits to obtain a sentence judgment, or decree of other upon the personal status or relations of the party, such as marriage, divorce, bastardy settlement, or the like. Cunningham vs. Shanklin, 60 Cal. 118, 125, citing Bouv." (21 Words and Phrases [Permanent Edition] p. 542.)

Accordingly, the decision of the lower court, in the case at bar, if valid, would be binding upon "all the world" (Smith vs. Smith, W. Va. 83 S.E. 2d. 923, 926). In the language of the Court in Bartero vs. Real Estate Savings Bank (10 Mo. App. 76, 78) :

"A judgment in rem is generally said to be a judgment declaratory of the status of some subject-matter, whether this be a person, or a thing. Thus the probate of a will fixes the status of the document as a will; so a decree establishing or dissolving a marriage is a judgment in rem, because it fixes the status of the person. A judgment or forfeiture against specified articles of goods for violation of the revenue laws is a judgment in rem. In such case the judgment is conclusive against all the world, * * *" (21 Words and Phrases [Permanent Edition] p. 540.)

Upon the other hand, in order that a court could validly try and decide any case, "it must have jurisdiction both over the subject matter and over the persons of the parties" (Comments on the Rules of Court, by Moran, Vol. I [1957 ed.] p. 128). Jurisdiction over the plaintiff or petitioner is acquired by his voluntary submission to the authority of the Court, resulting from the filing of the complaint or petition. Jurisdiction over other parties may be obtained, either by their voluntary appearance or by service of summons (42 Am. Jur. p. 7). In a proceeding in rem, which binds the "whole world

", the latter is, in legal contemplation, a party therein, for, otherwise, it could not be bound by the result thereof. It being impossible to serve summons personally upon every human being in this world, the summons must be published as-provided by law. Otherwise, the court would have no jurisdiction over all parties concerned and, as a consequence, any decision rendered in the case would be a nullity (42 Am. Jur. 8; Scott vs. McNeal, 154 U.S. 34, 38 L. ed. 896, 14 S. Ct. 1108; Pennoyer vs. Neff, 95 U.S. 714, 24 L. ed. 565; Earle vs. McVeigh, 91 U.S. 503, 23 L. ed. 398; Hobby vs. Bunch, 83 Ga. 1, 10 S.E. 113, 20 Am. St. Rep. 301; Davies vs. Thompson, 61 Okla. 21, 160 P. 75, LftA 1917-B 395; Greenwood vs. Furr [Tex Civ. App.] 251 S.W. 332; 44 Am. Jur. 98). For this reason, it is well settled that the procedure prescribed by law for the naturalization of an alien "should be strictly followed" (2 C.J. 1120, citing In re Hollo, 206 Fed. 852; Ex parte Lange, 197 Fed. 769; In re Liberman, 193 Fed. 301; State vs. King County Superior Ct, 75 Wash. 239, 134 P. 916; see, also, 3 C.J.S. 844). In the language of Corpus Juris Secundum, naturalization laws "should be rigidly enforced and strictly construed in favor of the government and against applicant for citizenship" (3 C.J.S. 833). And such, accordingly, has been the criterion adopted by this Court in the interpretation and application of our naturalization laws. (Pardo vs. Republic, 85 Phil., 323; 47 Off. Gaz., 3447-3450; Ng vs. Republic, 94 Phil., 366; 50 Off. Gaz., 1599; Yu vs. Republic, L-3808, July 29, 1952; Bautista vs. Republic, 87 Phil., 818; De la Cruz vs. Republic, 49 Off. Gaz. [3J 958; Tiao vs. Republic, 95 Phil, 709; Sam vs Republic, 98 Phil, 592; 53 Off. Gaz., [1] 145; Ong Son Cui vs. Republic, 101 Phil., 649; 55 Off. Gaz. [22] 4044.)

As the Supreme Court of the U.S. has aptly put it in *V.S. vs. Gingsberg* (243 U.S. 472, 61 L. ed. 853, 856), and quoted, approvingly, by this Court in *Bautista vs. Republic of the Philippines* (*supra*):

"An alien who seeks political rights as a member of this nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of the matters so vital to the public welfare."

In the language of the editors of the *American Jurisprudence*:

"* , * , * it is not thin the province of the courts to make bargains with applicants for naturalization. The courts have no choice but to require that there be a full compliance with the statutory provision." (2 Am. Jur. p. 577.)

Referring, specifically to service of notice by publication, *American Jurisprudence* has this to say:

"Substituted service and service by publication was unknown to the common law but depends upon statutory authorization, and the principle of statutory construction that there must be strict compliance with enactments modifying the course of common law in regard to legal proceedings is exemplified in the cases involving the construction and application of provisions authorizing substituted and constructive service. When, by the local law, substituted or constructive service is in certain situations submitted in the place of personal service when the latter is inconvenient or impossible, a strict and literal compliance with the provisions of the law must be shown in order to support the judgment based on such substituted or constructive service. Jurisdiction is not to be assumed and exercised on the general ground that the subject matter of the suit is within the power of the court. The inquiry must be as to whether the requisites of the statute have been complied with, and such compliance must appear on the record. The fact that the defendant had actual knowledge of attempted service does not render the service effectual if in fact the process was not served in accordance with the requirements of the statute." (42 Am. Jur. pp. 55-56.)

In short, non-compliance with the requirements thereof, relative to the publication of the petition, affects the jurisdiction of the court. It constitutes a fatal defect, for it impairs the very root or foundation of the authority to decide the case, regardless of whether the one to blame therefor is the clerk of court or the petitioner or his counsel. Failure to raise this question in the lower court would not cure such defect. Upon the other hand, for obvious reasons, public interest demands that the courts of justice refrain from performing invalid acts. Consequently, it is not only proper, but, also, advisable, and, even, necessary, that the issue raised in appellant's first assignment of error be considered and decided by us. In any event, the provisions of section 10, Rule 9, of the Rules of Court, relative to the implied waiver of defenses not pleaded in the answer or motion to dismiss," shall not apply to * * * naturalization * * * proceedings, except by analogy or in a suppletory character and whenever practicable and convenient"—pursuant to Rule 132 of said Rules of Court—and it is, neither "practicable", nor "convenient", to do so in the case at bar.

Wherefore, the decision appealed from is hereby reversed, with costs against petitioner-appellee. It is so ordered.

Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., and Endencia, JJ., concur.

DISSENTING

PARAS, C. J.,

I consider that the judgment appealed from is in accordance with law.

Section 9 of Commonwealth Act No. 473 requires that the clerk of court publish the petition for naturalization at the petitioner's expense, once a week for three consecutive weeks, in the *Official Gazette*, a publication under-

taken by the Government through the Bureau of Printing, and in one of the newspapers of general circulation in the province where the petitioner resides. It is admitted that at the time the petition was filed the Official Gazette was being published once a month. It is on account of the failure to have published the petition for naturalization in the Official Gazette once a week for three consecutive weeks that the majority voted to reverse the judgment of the lower court granting the petition for naturalization. I regret to be unable to subscribe to their view.

The majority admits that compliance was impossible and suggests that Section 9 of Commonwealth Act No. 473 must be construed to mean that the publication in the Official Gazette should be made once a month for three consecutive months. I cannot, however, persuade myself to believe that this construction could have been the intention of the legislature. An obligation based on an impossible condition is void (Art. 1183, New Civil Code). Had the legislature merely provided in said act that such petitions should be published in three consecutive issues of the Official Gazette, or had it been a fact that the Official Gazette was being published at the time of the passage of said act once a week, then I shall have been convinced by the majority view. The significant fact of which we may take judicial notice and which I cannot lose sight of is that at the time of the passage of Commonwealth Act No. 473, the Official Gazette was being regularly published three times a week—every Tuesday, Thursday, and Saturday, so that the legislature could not have intended that the publication of the petition for naturalization be simply made in three consecutive issues of the Gazette. The legislature clearly meant what the law provides—publication in the Official Gazette, once a week for three consecutive weeks.

"Where an act is free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." (Gooden vs. Police Jury of Lincoln Parish, 48 So. 196, 122 La. 755; Flanagan vs. City of New Orleans, 9 Orleans App. 19.)

"Courts may not look beyond letter of unambiguous statute in pretended attempt to ascertain reason prompting enactment." (Item Co. v. National Dyers & Cleaners, 130 So. 879, 15 La App. 108, followed in Deverges vs. National Dyers & Cleaners, 130 So. 882 15 La. App. 339.)

"Where an act is free from ambiguity, the court will not give its language a different interpretation from that which the words used clearly import." (Denton vs. Reading, 22 La Ann. 607.)

"Where language is clear and unambiguous a statute must be held to mean what it plainly expresses, and no room is left for construction." (Walker vs. Vicksburg, S. & P. Ry. Co., 34 So. 749, 110 La. 718.)

When the Government no longer published the Official Gazette three times a week, but monthly, such that one of the conditions imposed by the statute became impossible of compliance without the fault of the appellee, I am of the opinion that such condition ceases to be mandatory or obligatory, and should be dispensed with.

"A statute should be interpreted in a way that will make it practically workable without doing violence to other rules of construction." (Nevada vs. Slemmons, 43 ALR (2d) 693, 244 Iowa 1068, 59 N. W. (2d) 793.)

"* * * Hence if a statute apparently requires the performance of things which cannot be performed, or apparently bases its commands upon the assumption of an impossible state of affairs, the courts must seek for some interpretation of its terms, not too strained or fantastic, which will avoid these results. But yet they are not at liberty to reconstruct the statute, or to import into it, on merely conjectural grounds, a meaning which its terms will not warrant. * * *" (Black on Interpretation of Laws, 2nd Ed., p. 121.)

In *Anti-Chinese League of the Philippines vs. Felix, et al.*, 77 Phil., 1012; 44 Off. Gaz. 1480, 1483, we have said that the purpose and intention of the legislature in requiring the publication of the petition for naturalization in the Official Gazette and in one newspaper of general circulation, among other requirements, was to inform the officers concerned and the public in general of the filing of such petition in order that the public officers and private citizens supposed to be acquainted with the petitioner may furnish the Solicitor General or the provincial

fiscal with such information and evidence as there may be against the petitioner. This purpose has been accomplished in the instant case by the publication of appellee's petition for naturalization once in the Official Gazette and once a week for three consecutive weeks in a newspaper of general circulation. As a matter of fact, an opposition to the application was interposed by the Provincial Fiscal who appeared at the trial. And yet it is to be noted that the record of this case is silent as to how the opposition has been prejudiced by the non-publication of the petition in two more issues of the Official Gazette. (Delgado vs. Republic of the Philippines, G. R. No. L-2546, Jan. 28, 1950; Barretto vs. Republic of the Philippines, 87 Phil., 731; Bautista vs. Republic of the Philippines, 87 Phil., 818.)

Montemayor, J., concurs.

Judgment reversed.

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