

IN THE MATTER OF THE PETITION FOR NATURALIZATION OF YAO MUN TEK, YAO MUN TEK, PETITIONER-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLEE.

G.R. No. L-23383. January 28, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

On January 9, 1951, a decision was rendered by the Manila Court of First Instance granting petitioner Yao Mun Tek his petition for naturalization (pp. 70-73, rec.).

In an order dated January 26, 1953, the Manila Court of First Instance allowed him to take his oath of allegiance as a Filipino citizen and directed the clerk of court to issue in his favor the corresponding certificate of naturalization, after finding that he had complied with the provisions of R.A. No. 530 (p. 113, rec.). Thereafter that same day, January 26, 1953, petitioner took his oath of allegiance (p. 114, rec.) without waiting for the expiration of thirty days from January 27, 1953 the date of receipt by the Solicitor General of the order allowing him to take his oath of allegiance (p. 122, rec.).

On June 18, 1963, the Solicitor General filed a petition dated June 13, 1963 to declare the decision granting petitioner his petition for naturalization null and void and to cancel the certificate of naturalization on the ground that the notice of hearing of his application for naturalization was published only once in the Official Gazette, not once a week for three consecutive weeks as required by law, and that Atty. Marcelo P. Karaan was substituted as his character witness in lieu of his original witness Dr. Albino Sycip on the ground that Dr. Sycip was not available on the day of the hearing due to pressure of work, without first amending the petition, without Atty. Karaan executing an affidavit attesting to the good character of the petitioner, since he was not one of those who signed the original joint affidavit attached to the petition, and without any amended petition containing the substitution having been published (pp. 131-133, rec.).

In an order dated May 27, 1964, the Manila Court of First Instance nullified the decision dated January 9, 1951, granting Philippine citizenship to the petitioner and cancelled the certificate of naturalization issued in his favor (pp. 189-198, rec.).

After his motion for reconsideration on the said order was denied (p. 209, rec.), petitioner interposed this appeal (p. 210, rec.).

On September 14, 1946, petitioner Yao Mun Tek filed his application for naturalization which specifically mentions Dr. Albino Sycip and Atty. Perfecto Jose as his character witnesses (p. 1, rec.), together with their joint affidavit (Exh. A, p. 5, rec.). The notice of petition for Filipino citizenship was published in the Official Gazette only once -- in the issue of September, 1946 (Exh. B-1, p. 10, rec.), and in the Manila Post on September 18, September 25 and October 2, 1946 (Exh. B, p. 9, rec.). Said notice was likewise posted together with copies of the petition and affidavits attached thereto on the bulletin board of the Court of First Instance of Manila then located at the Central Hotel Building, Azcarraga St. (now Claro M. Recto Avenue), corner Rizal Avenue (see back of p.

8, rec.).

But the said notice of the petition as posted and as published once in the Official Gazette of September, 1946 and thrice in the Manila Post on September 18, 25 and October 2, 1946 does not contain paragraphs 7, 8, 10 and 11 of the petition, to wit: that he has all the qualifications under Sec. 4 of Com. Act No. 473, as amended by Com. Act No. 535; that he believes in the principles underlying the Philippine Constitution; that he has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relation with the constituted government as well as with the community in which he is living; that he has mingled socially with the Filipinos and has evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos; that he is not opposed to organized government or affiliated with any association or group of persons who uphold and teach the doctrines opposing all organized government; that he is not defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success or predominance of his ideas; that he is not a polygamist nor a believer in the practice of polygamy; that he has not been convicted of any crime involving moral turpitude; that he is not suffering from any incurable, contagious disease; that the nation of which he is a citizen is not at war with the Philippines; that it is his intention in good faith to become a citizen of the Philippines and to renounce absolutely and forever all allegiance and fidelity to any prince, foreign potentate, State or sovereignty, particularly to China of which he is a citizen; that he will reside continuously in the Philippine from the date of the filing of the petition up to the time of his admission to Philippine citizenship; and that he has not heretofore made any petition for citizenship to any country.

The petition itself does not expressly and specifically allege that he is of good moral character and that he is not suffering from mental alienation as required by Secs. 2 and 4 in relation to Sec. 7 of Com. Act No. 473, as amended.

To the petition is attached the certificate of arrival (Exh. C, p. 4, rec.). No declaration of intention was annexed to the petition presumably because the petitioner believes that he is exempted from filing the same for he alleged that he has resided in the Philippines continuously for at least thirty years before the filing of his application and that he has given primary and secondary education to all his children in the private schools recognized by the government and not limited to any race or nationality.

The clerk of court as ex officio sheriff of the Court of First Instance of Manila certified that he had served a copy of the petition and its annexes on the Solicitor General (see back of p. 8, rec.).

On November 14, 1947, Atty. Vicente Sotto, through his assistant Atty. Laura G. Rafales, filed an intervention as amicus curiae and an opposition to the petition on the ground that petitioner does not possess the qualifications required by law to be a Filipino citizen; that petitioner filed his application to escape deportation, to obtain facilities to exploit our natural resources, to operate steam vessels and other public services and to strangle economically the Filipino people by means of profiteering, blackmarketing and other condemnable methods; and that there is no law in the Chinese Republic allowing the Filipinos to acquire Chinese citizenship (p. 16, rec.).

On July 18, 1950, petitioner, through counsel, filed a petition to substitute Atty. Marcelo P. Karaan for his witness Dr. Albino C. Sycip on the ground that the latter will not be able to attend the hearing on July 26, 1950 due to pressure of work as President and General Manager of the China Banking Corporation, attaching thereto the affidavit of Atty. Karaan as Annex B-1 now Exh. A-1 (pp. 20-22, rec.), which motion was granted in an order dated July 22, 1950, because there was no objection thereto (p. 24, rec.).

But the petition was not amended to substitute Atty. Karaan for Dr. Albino Sycip, much less was there any such amended petition published in the Official Gazette and in a newspaper of general circulation in Manila once a week for three consecutive weeks nor posted in the bulletin board of the court.

His landing certificate of residence dated June 30, 1950, Exh. D, shows that he is from Amoy, China, born on December 13, 1909, and son of a merchant with local residence as 1051 Aceyteros (p. 34, rec.); while his petition states that his residence is 584 Alva-rado, Manila (p. 1, rec.).

His alien certificate of registration dated July 17, 1950 states that his address is 584-B Alvarado, Manila and that he is a sub-accountant of the China Banking Corporation at Dasmariñas, Manila (Exh. E, p. 35, rec.).

His marriage certificate (Exh. F) dated October 15, 1933 states that he resides at 666 Ilaya, Tondo, Manila (p. 36, rec.).

The birth certificates of his children Evangeline Yao Khim Kheng and Bonifacio Yao state that they were born respectively on October 26, 1934 and May 14, 1936 and his residence as 666 and 666-A Ilaya, Tondo, Manila (Exhs. H and H-1, pp. 38-39, rec.).

His daughter, Evangeline Yao, was a first year high school student in the Philippine Chinese High School at 881 Reina Regente St., Manila (Exh. I, p. 46, rec.); while his sons Leoncio Yao and Bonifacio Yao were enrolled in the Anglo Chinese School respectively in the 4th and 5th grade as of September 6, 1950 (Exh. I-2, p. 48, rec.).

It is now a well imbedded principle that a judgment directing issuance of certificate of naturalization is a mere grant of political privilege; and that neither estoppel nor res judicata may be invoked to bar the State from initiating an action for the can-cellation or nullification of the certificate of naturalization thus issued.[1]

The statutory requirement that the notice of hearing in a naturalization case shall be published once a week for three consecutive weeks in the Official Gazette and in a news-paper of general circulation in the city or province, is juris-dictional and non-compliance therewith renders all the proceedings in such a case null and void.[2] This rule however applies only to certificates of naturalization issued after May 29, 1957 when the Ong Son Cui case was decided.[3]

But there are several causes, hereinafter mentioned, which nullify the 1951 decision granting petitioner Filipino citizenship, the 1953 order allowing him to take his oath of allegiance, his oath of allegiance, and the certificate of naturalization issued in his favor.

(1) His petition for naturalization was not posted nor published in its entirety as required by law; for paragraphs 7, 8, 10 and 11 thereof were omitted, which omission is fatal to the validity of his petition. We repeat that the requirement of Sec. 9 of Com. Act No. 473 that a copy of the petition shall be published and posted must be strictly and fully complied with, for the same is jurisdictional.[4]

(2) Neither does the petition allege that he is of good moral character and that he is not suffering from mental alienation as directed by Secs. 2 and 4 in relation to Sec. 7 of Com. Act No. 473, as amended. This serious infirmity cannot be disregarded.[5]

(3) His petition was not amended to substitute Atty. Marcelo Karaan as his character witness in lieu of Dr. Albino Sycip, much less was such an amended petition posted on the bulletin board of the court and published in the Official Gazette and a newspaper of general circulation. Death of one character witness may justify such substitution[6] but not when both character witnesses are alive, as in the instant case.[7] The reason why the names and addresses of the character witnesses should be mentioned in the petition and in the notice of publication is to give the government the opportunity to ascertain whether the cha-racter witnesses are citizens of the Philippines, whether they are credible persons, and whether they have personal knowledge of the petitioner during his residence in the country for the period of time required by law, so that the witnesses will not make impositions on the court.[8]

(4) His petition does not state his previous residences at 666 Ilaya, Tondo, Manila and at 1051 Aceyteros,

Manila.[9]

(5) Finally, the oath of allegiance taken by the petitioner on January 26, 1953 immediately after the order allowing him to take such oath of allegiance issued on the same day, is null and void because the order was not yet final as the period of thirty (30) days within which the government may appeal from the receipt on January 27, 1953 of said order by the Solicitor General had not yet elapsed.[10]

WHEREFORE, the appealed decision is hereby affirmed; and the judgment of the Manila Court of First Instance dated January 9, 1951 granting the petition for naturalization, the order dated January 26, 1953 allowing petitioner Yao Mun Tek to take his oath of allegiance, his oath of allegiance likewise dated January 26, 1953, and the certificate of naturalization issued in his favor also on January 26, 1953, are hereby declared null and void and accordingly cancelled and revoked. With costs against petitioner-appellant.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Barredo, and Villamor, JJ., concur.

Dizon, J., in the result.

Fernando and Teehankee, JJ., no part.

[1] Republic vs. Hon. Andres Reyes, etc., et. al., L-23075, Aug. 19, 1970; Reyes vs. Republic, L-22550, May 19, 1966, Vol. 17 SCRA, 169-176; Reyes, et. al. vs. Republic, L-20602, Dec. 24, 1965; Republic vs. Go Bon Lee, L-11499, Apr. 29, 1961.

[2] Ong Son Cui vs. Republic, 101 Phil., 609.

[3] Gan Tsitung vs. Republic, L-20819, Feb. 21, 1967, Vol. 19, SCRA, 401, 404-405.

[4] Dy vs. Republic, L-21958, Sept. 28, 1970; Yu Tiu vs. Republic, L-19844, June 30, 1965, 14 SCRA, 587, 589-590; Kiat vs. Republic, L-19915, June 23, 1965, 14 SCRA, 389-392, 393; Luchayco vs. Republic, L-25814, July 30, 1969, 28 SCRA, 997, 1000; Ngo vs. Republic, L-25805, Feb. 27, 1969, 27 SCRA, 88, 90-91.

[5] Dy vs. Republic, supra; Fidelo vs. Republic, L-17796, Sept. 29, 1965.

[6] Pe vs. Republic, L-7872, July 20, 1956, 99 Phil., 586; Singh vs. Republic, 51 O.G., 5172; 97 Phil., 622; Lui vs. Republic, 100 Phil., 258, 264.

[7] Hong vs. Republic, L-9224, May 29, 1957, Vol. 101 Phil., 635, 641.

[8] Hong vs. Republic, supra; Singh vs. Republic, supra.

[9] Dy vs. Republic, supra; Tan Tiu vs. Republic, L-21558, Jan. 30, 1970, 31 SCRA, 124-125; Zabaleta vs. Republic, L-25401, July 30, 1969, 28 SCRA, 654-657; Lim Siong vs. Republic, L-26601, June 30, 1969, 28 SCRA, 687, 690-691.

[10] Oh Hek How vs. Republic, L-27429, Aug. 27, 1969; Lim Siong vs. Republic, supra; Ong vs. Republic, L-20605, June 30, 1966; Ong vs. Republic, L-20145, June 30, 1965, 14 SCRA, pp. 591, 595-596.

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