

GO TEK, PETITIONER-APPELLEE, VS. DEPORTATION BOARD, RESPONDENT-APPELLANT.

G.R. No. L-23846. September 09, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is a deportation case. On March 3, 1964 the chief prosecutor of the Deportation Board filed a complaint against Go Tek, a Chinaman residing at Ilagan, Isabela and 1208-B, Misericordia Street, Sta. Cruz, Manila.

It was alleged in the complaint that in December, 1963 certain agents of the National Bureau of Investigation (NBI) searched an office located at 1439 O'Donnel Street, Sta. Cruz, Manila, believed to be the headquarters of a guerilla unit of the "Emergency Intelligence Section, Army of the United States," and that among those arrested thereat was Go Tek, an alleged sector commander and intelligence and record officer of that guerilla unit.

It was further alleged that fake dollar checks were found in Go Tek's possession and that, therefore, he had violated article 168 of the Revised Penal Code and rendered himself an undesirable alien.

The prosecutor prayed that after trial the Board should recommend to the President of the Philippines the immediate deportation of Go Tek as an undesirable alien, "his presence in this country having been and will always be inimical and a menace to the peace, welfare, and security of the community." (Case No. R-1116).

Go Tek filed a motion to dismiss on the ground that the complaint was premature because there was a pending case against him in the city fiscal's office of Manila for violation of article 168 (I.S. 64-7267). He contended that the Board had no jurisdiction to try the case in view of the obiter dictum in *Qua Chee Gan vs. Deportation Board*, 118 Phil. 868, 875, that the President may deport aliens only on the grounds specified in the law.

The Board, composed of Manuel A. Concordia, Arturo A. Alafriz and Manuel V. Reyes, in its resolution of April 21, 1964 denied Go Tek's motion. The Board reasoned out that a criminal conviction is not a prerequisite before the State may exercise its right to deport an undesirable alien and that the Board is only a fact-finding body whose function is to make a report and recommendation to the President in whom is lodged the exclusive power to deport an alien or dismiss a deportation proceeding.

In view of the denial of his motion to quash, Go Tek on June 10, 1964 filed in the Court of First Instance of Manila a prohibition action against the Board. On July 8, 1964 the court issued a writ of preliminary injunction restraining the board from hearing Go Tek's case.

After hearing, the trial court (Judge Federico C. Alikpala presiding) in its decision of October 31, 1964 granted the writ of prohibition and ordered the Board to desist from taking cognizance of the complaint against Go Tek.

The court, citing the said obiter dictum in the *Qua Chee Gan* case, held that mere possession of forged dollar checks is not a ground for deportation under the Immigration Law; that under section 37(3) of the law before an alien may be deported for having been convicted and sentenced to imprisonment for a term of one year or more

for a crime involving moral turpitude, a conviction is necessary, and that since Go Tek had not been convicted of the offense punished in article 168, the deportation proceeding was premature.

The Board appealed to this Court on the ground that the decision is contrary to law. The Solicitor General contends that the trial court erred in assuming that the President may deport undesirable aliens only on the grounds enumerated by law; in holding that mere possession of forged dollar checks is not a ground for deportation and that a criminal conviction is necessary, and in not finding that the Board has jurisdiction over Go Tek's case.

The Solicitor General in his motion of July 18, 1977 manifested that Judge Alikpala (to whom the criminal case was also assigned after the fiscal had filed it in court), in his order of June 16, 1965 dismissed provisionally the case against Go Tek for violation of article 168 (Criminal Case No. 78174).

The parties stipulated that the "Deportation Board is an agency of the President of the Philippines charged with the investigation of undesirable aliens and to report and recommend proper action on the basis of its findings therein."

The issue is whether the Deportation Board can entertain a deportation proceeding based on a ground which is not specified in section 37 of the Immigration Law and although the alien has not yet been convicted of the offense imputed to him.

We hold that the Board has jurisdiction to investigate Go Tek for illegal possession of fake dollar checks (as well as his alleged "guerilla" activities) in spite of the fact that he has not yet been convicted of illegal possession thereof under article 168 of the Revised Penal Code and notwithstanding that act is not among the grounds for the deportation of undesirable aliens as enumerated in section 37 of the Immigration Law. The charge against Go Tek before the Board was not premature.

The aforementioned obiter dictum in the Qua Chee Gan case, invoked by Go Tek and relied upon by the trial court, is not decisive of this case. In the Qua Chee Gan case the aliens were charged with economic sabotage which is a ground for deportation under Republic Act No. 503.

The ratio decidendi of the Qua Chee Gan case is that the provision of Executive Order No. 398, series of 1951, empowering the Deportation Board to issue a warrant of arrest upon the filing of formal charges against an alien, is "illegal" or unconstitutional because it is contrary to the provision in section 1(3), Article III of the 1935 Constitution that warrants shall issue upon probable cause to be determined by the judge after examining under oath the complainant and the witnesses he may produce. (Note that "under section 3, Article IV of the 1973 Constitution, probable cause may be determined "by the judge, or such other responsible officer as may be authorized by law.¹ See Santos vs. Commissioner of Immigration, L-25694, November 29, 1976. 74 SCRA 96, per Fernando, J.).

A thorough comprehension of the President's power to deport aliens may show the baselessness of the instant prohibition action of Go Tek. The President's power to deport aliens and the investigation of aliens subject to deportation are provided for in the following provisions of the Revised Administrative Code:

SEC. 69. Deportation of subject of foreign power. — A subject of a foreign power residing in the Philippine Islands shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the Governor-General except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses."

On the other hand, section 37 of the Immigration Law provides that certain aliens may be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the Commissioner's warrant "after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien." Thirteen classes of aliens who may be deported by the Commissioner are specified in section 37 (See *PO Siok Pin vs. Vivo*, L-24792, February 14, 1975, 62 SCRA 363, 368),

So, under existing law, the deportation of an undesirable alien may be effected (1) by order of the President, after due investigation, pursuant to section 69 of the Revised Administrative Code and (2) by the Commissioner of Immigration, upon recommendation of the Board of Commissioners under section 37 of the Immigration Law (*Qua Chee Gan vs. Deportation Board*, supra).

The State has the inherent power to deport undesirable aliens (*Chuoco Tiaco vs. Forbes*, 228 U.S. 549, 57 L. Ed. 960, 40 Phil. 1122, 1125). That power may be exercised by the Chief Executive "when he deems such action necessary for the peace and domestic tranquility of the nation.¹" Justice Johnson's opinion is that when the Chief Executive finds that there are aliens whose continued presence in the country is injurious to the public interest, "he may, even in the absence of express law, deport them." (*Forbes vs. Chuoco Tiaco and Crossfield*, 16 Phil. 534, 568, 569; *In re McCulloch Dick*, 38 Phil. 41).

"The right of a country to expel or deport aliens because their continued presence is detrimental to public welfare is absolute and unqualified" (*Tiu Chun Hai and Go Tarn vs. Commissioner of Immigration and the Director of NBI*, 104 Phil. 949, 956).

The Deportation Board is composed of the Undersecretary of Justice as chairman, the Solicitor General, and a representative of the Secretary of National Defense (Executive Order No. 455 dated June 25, 1951. 47 O.G. 2800).

Section 69 and Executive Order No. 398, reorganizing the Deportation Board, do not specify the grounds for deportation. Paragraph I(a) of Executive Order No. 398 merely provides that "the Deportation Board, *motu proprio* or upon complaint of any person, is authorized to conduct investigations in the manner prescribed in section 69 of the Revised Administrative Code to determine whether a subject of a foreign power residing in the Philippines is an undesirable alien or not, and thereafter to recommend to the President of the Philippines the deportation of such alien."

As observed by Justice Labrador, there is no legal nor constitutional provision defining the power to deport aliens because the intention of the law is to grant the Chief Executive "full discretion to determine whether an alien's residence in the country is so undesirable as to affect or injure the security, welfare or interest of the state. The adjudication of facts upon which deportation is predicated also devolves on the Chief Executive whose decision is final and executory." (*Tan Tong vs. Deportation Board*, 96 Phil. 934n 936; *Tan Sin vs. Deportation Board*, 104 Phil. 868, 872).

It has been held that the Chief Executive is the sole and exclusive judge of the existence of facts which warrant the deportation of aliens, as disclosed in an investigation conducted in accordance with section 69. No other tribunal is at liberty to reexamine or to controvert the sufficiency of the evidence on which he acted. (*Martin vs. Mott*, 12 Wheat., 19. 31, cited in *Re McCulloch Dick*, 38 Phil. 41, 62).

In the *Dick* case it was noted "that every alien forfeits his right of asylum in the country in which he resides, in the absence of treaty provisions to the contrary, when his conduct or his mode of life renders his presence there inimical to the public interests." "The reasons may be summed up and condensed in a single word: the public interest of the State." (38 Phil. 41, 47, 100).

"It is fundamental that an executive order for deportation is not dependent on a prior judicial conviction in a criminal case" (Ang Beng vs. Commissioner of Immigration, 100 Phil. 801, 803). Thus, it was held that the fact that an alien has been acquitted in a criminal proceeding of the particular charge does not prevent the deportation of such alien based on the same charge. Such acquittal does not constitute *res judicata* in the deportation proceedings. Conviction of a crime is not necessary to warrant deportation. (3 C.J.S. 743, note 40, citing *Lewis vs. Frick*, 233 U.S. 291, 58 L. Ed. 967 and *U.S. ex. rel. Mastoras* And in the *Tan Tong* case, *supra*, it was ruled that the Deportation Board could take cognizance of the charge of illegal importation against an alien, as a ground for deportation, even if he has not been convicted of that offense.

It should be borne in mind that the decision of the Deportation Board is merely recommendatory. The Chief Executive has to approve the board's recommendation. Abuses or harassments committed by the prosecutor or by the Board should first be brought to his attention.

WHEREFORE, the lower court's decision is reversed and set aside. The writ of preliminary injunction is dissolved. The case is remanded to the Deportation Board for further proceedings. Costs against the petitioner-appellee.

SO ORDERED.

Fernando (Chairman), Barredo, Concepcion Jr., and Santos, JJ., concur.

Antonio, J., please see note below.

CONCURRING:

ANTONIO, J.,

The law grants to the Chief Executive full discretion to determine whether an alien's residence in the country is so undesirable as to affect or injure the security, welfare or interest of the State. It is fundamental that an executive order for deportation is not dependent on a prior judicial conviction in a criminal case. (*Ang Beng, et al. v. Com. of Immigration*, 100 Phil. 801, 803, citing *Tan Tong v. Deportation Board*, 96 Phil.. 934).

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