

JOSE CALACDAY, PEDRO CALACDAY, JUAN CALACDAY, JULIO CALACDAY, MANUEL CALACDAY, MARCELO CALACDAY AND BENITO CALACDAY, PETITIONERS, VS. MARTINIANO P. VIVO, AS ACTING COMMISSIONER ...

G.R. No. L-26681. May 29, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

Vivo v. Montesa[1] supplies the law of the case for this prohibition proceeding filed with the Court of First Instance of Manila on May 14, 1965.[2] Petitioners[3] would enjoin the then Acting Commissioner of Immigration, Martiniano P. Vivo,[4] from taking them into custody or conducting deportation proceedings against them or cancelling their identification certificates on the assumption that the previous decisions of the Board of Inquiry, affirmed by the Board of Immigration Commissioners declaring them Filipino citizens, had become final and conclusive, respondent Vivo being thus devoid of any authority to take steps to deport them under the appropriate provisions of the Philippine Immigration Act of 1940, as amended.[5] Petitioners were successful in the lower court notwithstanding the special and affirmative defense interposed by respondent Vivo that the remedy of prohibition would not lie as the action thus far taken was within his lawful competence, judicial review not being available until after a decision by the Board of Commissioners on the deportation proceeding before it. The lower court in its order of September 19, 1966 found abuse, if not lack of jurisdiction, and ordered respondents "to desist and refrain from arresting or causing the arrest and deportation of petitioners * * *." [6] That is the order now on appeal before us.

Included in its dispositive portion was a declaration that the writ of preliminary injunction issued was made permanent. In the meanwhile, however, the preliminary injunction issued by the lower court as far back as May 27, 1965 was the object of a certiorari and prohibition petition with us in the aforesaid Vivo v. Montesa decision filed on the very next day, May 28, 1965. Petitioner Vivo premised such an action on what he categorically asserted to be the controlling doctrine that the lower court did assert jurisdiction over a matter which by clear mandate of the law was beyond his competence.

Such a contention was upheld by us. There is this categorical pronouncement in our decision rendered on July 29, 1968, the opinion being penned by Justice J. B. L. Reyes: "It is well to note here that when the petition for certiorari and prohibition (the respondent judge considered it as such) was filed, deportation proceedings had been started against the respondents (petitioners below) but had not been completed. In view of the non-completion of the proceedings, the Board of Commissioners has not rendered as yet any decision. The respondents Calacdays, therefore, are not being deported. Before the Board reaches a decision, it has to conduct a hearing where the main issue will be the citizenship or alienage of the respondents. Therefore, there is nothing so far for the courts to review." [7] It is clear, therefore, that the appealed order of September 19, 1966 should be reversed, the lower court being devoid of jurisdiction to act on the petition before it.

1. In thus ruling as we did in *Vivo v. Montesa*, we reaffirm the principle followed with undeviating regularity in earlier decisions.[8] One of them, *Miranda v. Deportation Board*,[9] traces such a doctrine to a 1916 decision, *Laurencio v. Collector of Customs*,[10] which in turn found support in two opinions of Justice Holmes of the United States Supreme Court.[11] A qualification announced in *Chua Hiong v. Deport-ation Board*[12] is not to be lost sight of however. In the language of Justice Labrador, who spoke for the court: "There is also no question that a respondent who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings. When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly en-join the deportation proceedings." [13] There is nothing in this petition for prohibition, however, that called for the judiciary taking over from respondent Commissioner of Immigration. The conclusion reached by us in *Vivo v. Montesa* was thus irresistible. As expressed in its dispositive portion: "[In view of the foregoing], the writ prayed for is hereby granted, the order issued in Civil Case No. 60906 of the Court of First Instance of Manila is set aside, and the proceedings ordered discontinued."

2. There is another reason why a reversal of the appealed order is called for. The then Solicitor General, Antonio P. Barredo, now a member of this Court, on behalf of respondent Commissioner of Immigration, assigned as one of the errors the failure of the lower court to make findings of facts therein. An examination of the three-paragraph order of September 19, 1966, two of which were found in the dispositive portion thereof, will readily disclose that the lower court addressed itself solely to the legal question which it believed was the crucial point of inquiry. No reference whatsoever was made as to the facts of such controversy. All that it stated was that petitioner did agree to submit the case before it for decision on the pleadings. That is not to comply with the constitutional provision which reads: "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based." [14]

We have ruled previously that orders or rulings on motions before the final disposition of the case are not covered by such a requirement. The decision which falls within the terms of the above constitutional provision is the judgment rendered after the previous presentation of the proof in an ordinary civil or criminal case, or upon a stipulation of facts upon which the determination of the case depends.[15] The order now on appeal is thus the decision to which the Constitution makes reference. On its face, it is undoubted there was a failure to yield obedience to the Constitution. That cannot be denied. The constitutional mandate is not subject to misinterpretation. It is plain and un-ambiguous. It speaks categorically. It does not only require a statement of the facts but that they be expressed "clearly and distinctly." The lower court was deaf to such a command.

3. One last point. The *Vivo Montesa* decision likewise includes in its opinion the following: "Nevertheless, we are of the opinion that the issuance of warrants of arrest by the Commis-sioners of Immigration, solely for purposes of investigation and before a final order of deportation is issued, conflicts with para-graph 3, Section 1, of Article III (Bill of Rights) of our Constitution, providing: '3. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examin-ation under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.'" There was thus a reaffirmation of the view first given expression in *Qua Chee Gan v. Deportation Board*, [16] followed in subsequent cases, [17] the latest of which is *Neria v. Vivo*. [18]

WHEREFORE, the order of the lower court of September 19, 1966 is reversed and set aside and the writ of prohibition prayed for denied. Without pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Teehankee, and Villamor, JJ., concur.
Barredo, J., took no part.

Castro, J., on leave.

[1] G.R. No. L-24576, July 29, 1968, 24 SCRA 155.

[2] Civil Case No. 60906.

[3] Petitioners are Jose Calacday, Pedro Calacday, Juan Calacday, Julio Calacday, Manuel Calacday, Marcelo Calacday and Benito Calacday.

[4] The other respondents named were the Board of Commissioners of the Bureau of Immigration and the deportation officer thereof.

[5] The provisions referred to read as follows: "Section 37. (a) The following aliens shall 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 warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien: (1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry; (2) Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry; * * *."

[6] Order of September 19, 1966, Annex B, Brief for Respondent-Appellant, p. 43.

[7] *Vivo v. Montesa*, G.R. No. L-24576, July 29, 1968, 24 SCRA 155.

[8] Cf. *Lianco v. Deportation Board*, 94 Phil. 370 (1954); *Miranda v. Deportation Board*, 94 Phil. 531 (1954); *Chua Hiong v. Deportation Board*, 96 Phil. 665 (1955); *Porta Perez v. Board*, G.R. No. L-9236, May 29, 1957.

[9] 94 Phil. 531 (1954).

[10] 35 Phil. 37.

[11] *United States v. Ju Toy*, 198 US 253 (1905); *Chin Yow v. United States*, 208 US 8 (1908).

[12] 96 Phil. 665 (1955).

[13] *Ibid*, p. 617.

[14] Art. VIII, Section 12, Constitution.

[15] *Soncuya v. National Loan & Investment Board*, 69 Phil. 602 (1940).

[16] G.R. No. L-10280, September 30, 1963, 9 SCRA 27.

[17] *Dalamal v. Deportation Board*, G.R. No. L-16812, October 31, 1963, 9 SCRA 382 and *Marano v. Vivo*, G.R. No. L-22196, June 30, 1967, 20 SCRA 562.

[18] G.R. No. L-26611-12, September 30, 1969, 29 SCRA 701.

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