

## **IN THE MATTER OF THE PETITION OF JOSE PIO BARRETO, BENITO ONG BARRETO, AND SEBASTIAN ONG BARRETO TO BE ADMITTED CITIZENS OF THE PHILIPPINES, PETITIONERS AND APPELLEES, VS. THE R...**

*G.R. Nos. L-2733-40. December 21, 1950*

Ponente: PARAS, J.

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### **PARAS, J.:**

This is an appeal by the Government from three separate decisions of the Court of First Instance of Manila, granting the petitions for naturalization of Jose Pio Barretto, Benito Ong Barretto and Sebastian Ong Barretto.

The appellant and the appellees have each filed a joint brief in these three cases because the questions raised are the same.

That the petitioners-appellees possess the qualifications for naturalization and none of the disqualifications provided by law, is not controverted. The only legal contentions made by the appellant are (1) that the trial court erred in assuming jurisdiction because the legal requirements relative to publication of notice, particularly in the Official Gazette, have not been complied with, and (2) that the trial court erred in not holding that the appellees are not in a position to renounce effectively their Chinese nationality.

I. The petitions for naturalization were filed in the Court of First Instance of Manila on March 20, 1948. On April 1, 1948, the clerk of court issued notices of the petitions directing it to be published in the Official Gazette and in the newspaper Las Noticias, and the date of the hearing was set for July 30, 1948. On the latter date, appellees presented proof of publication of the notices in the newspaper Las Noticias, but in view of lack of publication in the Official Gazette due to the destruction by fire of the building that housed the Bureau of Printing, the court issued an order directing that the notices be published in the Official Gazette and set the hearing for November 5, 1948. On the latter date, appellees presented a certificate issued by the Bureau of Printing, to the effect that corresponding notices were published in the July, 1948, issue of the Official Gazette, No. 7, Vol. 44, though on the date of said certificate (November 2, 1948) said issue was not yet released.

It is argued for appellant that, in view of the requirement of section 9 of the Revised Naturalization Law, Commonwealth Act No. 473, that the hearing of the petition for naturalization "shall not be held within ninety days from the date of the last publication of the notice," the trial court had not yet acquired jurisdiction when it proceeded to hear the cases on November 5, 1948. It cannot be denied, in the face of the certification of the Bureau of Printing, that the notices appeared in the July, 1948, issue of the Official Gazette, and if said issue was not released on time, it was beyond the control of appellees. With reference to the date of the effectivity of statutes, it is provided that the Official Gazette "is conclusively presumed to be published on the date indicated therein as the date of issue." (Sec. 11, Revised Administrative Code.) This is obviously for the purpose of avoiding uncertainties likely to arise if the date of publication is to be determined by the date of the actual release of the Gazette. If the policy regarding so important a matter as fixing the date of the effectivity of statutes, is to

accept the date of issue indicated in the Official Gazette as conclusive, there is better reason for adopting said date of issue in respect of publication of notices in naturalization cases. This is specially so, because, as we have said in *Anti-Chinese League of the Philippines vs. Felix* (44 Off. Gaz., 1480, 1483[1]), the purpose of the publication in the Official Gazette and in one newspaper of general circulation, of the posting of notices in a public and conspicuous place in the office of the clerk of court or in the building where said office is located, and of the sending of copies of the petition to the Bureau of Justice, the Department of the Interior, the Provincial Inspector of the Philippine Constabulary and the Justice of the Peace of the municipality wherein the petitioner resides, "is to inform those officers and the public in general of the filing of such a 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 necessary information and evidence as there may be against the petitioner." And this purpose has undoubtedly been accomplished in the cases at bar, it appearing that due notice was published in the newspaper of general circulation *Las Noticias* and all other formal requisites were complied with, and the Solicitor General opposed the petitions and appeared at the hearing thereof. Moreover, as observed in *Delgado vs. Republic of the Philippines* (G. R. No. L-2546, January 28, 1950), in which the Solicitor General contended that there was no sufficient evidence to show that the petition for naturalization was published in the Official Gazette as required by law, "it is not shown how the non-publication prejudiced the opposition actually interposed against the application."

II. The second contention of appellant is that appellees have not shown that they were permitted by the Chinese Ministry of the Interior to renounce their Chinese Nationality, in accordance with the provisions of article 11, chapter III, of the Chinese Law of Nationality. A similar contention was overruled in L-2628, *Parado vs. Republic of the Philippines*, 47 Off. Gaz. (Supp. to No. 12), p. 19; 86 Phil., 340.

Wherefore, the appealed decisions are affirmed without costs. So ordered.

Feria, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

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[1] 77 Phil., p. 1012.

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PABLO, M., disidente:

El artículo 9 de la Ley de Naturalización dice así:

"Notificación y comparecencia.—Inmediatamente después de presentada una instancia, será deber del escribano publicarla a costa del solicitante, una vez a la semana durante tres semanas consecutivas, en la Gaceta Oficial y en uno de los periódicos de circulación general en la provincia donde reside el solicitante y disponer que se fijen copias de dicha instancia y un aviso general de la vista, en un lugar público y visible de su oficina o del edificio en que ésta se halla situada, haciéndose constar en el aviso el nombre, lugar de nacimiento y residencia del solicitante, la fecha y lugar de su llegada a Filipinas, nombres de los testigos que el solicitante se propone citar en su apoyo y la fecha de la vista del asunto, la que no ha de tener lugar dentro de los noventa días contados desde la fecha de la última publicación del aviso."

Dicha disposición requiere que el anuncio de la solicitud deberá publicarse en la Gaceta Oficial y en un periódico de circulación general en el lugar en que el solicitante reside. Solamente el periódico *Las Noticias* ha hecho la debida publicación del anuncio de las tres causas.

Hasta el día 2 de noviembre de 1948, en que el Director de la Imprenta Pública expidió el certificado, Exhíbito F-1, diciendo que "The July, 1948 issue of the Official Gazette is already printed, but not yet released," no estaba

aún publicada la gaceta. La simple impresión no equivale a publicación. Para que produzca efecto legal un anuncio en la Gaceta Oficial, es necesario que ésta sea publicada o puesta en circulación. Quien redacta una carta libelosa no incurre en responsabilidad criminal mientras esa carta no sea publicada o no llegue al conocimiento de un tercero. Así la Gaceta Oficial, aunque esté impresa, no se considera publicada mientras no se la ponga en circulación.

Se arguye que el Código Administrativo dispone que "Para el fin de fijar dicha fecha (fecha de la publicación) se supone concluyentemente que la Gaceta se publica en el día indicado allí como fecha de la publicación." (Art. 11, Cód. Adm. Rev.)

Por similitud,—sostiene la mayoría—el anuncio de las tres solicitudes debe considerarse publicado en la Gaceta del mes de julio de 1948. En el curso ordinario de los negocios, se pone en circulación la Gaceta Oficial en la fecha de la impresión. Por eso, la fecha de la Gaceta se supone que es la fecha de su publicación; pero la presunción no tiene lugar si, como en el caso presente, el mismo Director de la Imprenta Pública certifica que el número 7 de la Gaceta Oficial del mes de julio de 1948, aunque estaba impreso, no se había puesto aún en circulación. El día de la circulación de la Gaceta constituye el día de su publicación. Lo que importa es la publicación, no la fecha de la impresión. La decisión de un juez de primera instancia se promulga, no en la fecha en que la firma, sino en el día en que la publica en sesión abierta del juzgado o la entrega al escribano para su publicación. Una decisión puede ser firmada por el juez y retenida en su poder por más de un mes, y esa decisión no se considera promulgada en el día de la firma sino cuando se la entrega al escribano. La decisión de este tribunal no se considera promulgada al tiempo de su firma por los miembros, sino al tiempo de su entrega al escribano.

Si el fin primordial de la ley al exigir la publicación del anuncio en la Gaceta Oficial y en un periódico de circulación general es para que las autoridades y el público en general se enteren de la solicitud, no basta la publicación del anuncio en el periódico Las Noticias: esto es cumplimiento parcial de lo ordenado. Es indispensable que ese anuncio se publique también en la Gaceta Oficial.

La vista de las tres solicitudes en 5 de noviembre de 1948 ha sido prematura. La ley dispone que la vista no debe celebrarse dentro de los noventa días a contar desde la fecha de la última publicación del anuncio, y como en 2 de noviembre de aquel año la Gaceta no estaba aún publicada o puesta en circulación, no podía aún el juzgado válidamente celebrar la vista, como no puede legalmente apelación, la falta de prueba de la publicación del anuncio no se haya publicado debidamente.

En *Delgado contra República de Filipinas* (G.R. No. L-2546, Enero 28, 1950), se suscitó por primera vez, en apelación, la falta de prueba de la publicación del anuncio en la Gaceta Oficial. La decisión no es aplicable a los tres casos en discusión.

Voto por la revocación de las tres decisiones apeladas.

Judgments affirmed.

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