

MARTINIANO P. VIVO, AS ACTING COMMISSIONER OF IMMIGRATION, BOARD OF COMMISSIONERS, BUREAU OF IMMIGRATION AND DE-PORTATION OFFICER, BUREAU OF IMMIGRATION, PETITIONERS, VS. HON. A...

G.R. No. L-24576. July 29, 1968

Ponente: REYES, J.B.L. J.

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REYES, J.B.L. J.:

Petition for certiorari and prohibition with preliminary injunction to annul the order of 27 May 1965 of the respondent Court of First Instance of Manila, in its Civil Case No. 60906, which enjoined the above-named immigration officers from arresting and detaining, with a view to deporting the herein private respondents.

The private respondents Juan, Pedro, Julio, Marcelo, Jose, Manuel and Benito, all surnamed "Calacday", arrived in the Philippines from Hongkong, the first four on 18 November 1959, and the last three on 6 December 1959. Upon their arrival, they sought admission as Filipino citizens. After investigation, a board of special inquiry, in its decisions of 7 and 11 December 1959, found them to be the legitimate sons of a Filipino citizen, one Isaac Calacday, and thus admitted them into this country. The Bureau of Immigration then issued to each of them an identification certificate as a Filipino citizen, with the notation that their admission as such was by a decision of the Board of special inquiry, duly affirmed by the Board of Commissioners.

Sometime in February, 1963, however, Isaac Calacday confessed before an immigration official that the seven respondents were not his sons (Petition, page 4, paragraph 4; Annex "C" to Petition, page 2; Annex "I" to Answer Respondent's Manifestation, 29 November 1965, page 4). He retracted his confession in March, 1963, in an investigation in the Department of Justice with the explanation that, in a fit of anger, he disclaimed, under oath, paternity of the respondents because they refused to give him money (Annex "I" to Answer).

On 9 May 1963, Commissioner of Immigration Martiniano Vivo issued warrants of arrest against the herein private respondents, stating in said warrants their deportability under Section 37(a) (1) and Section 37(a)(2) in relation to Section 29(a) (17) of the Philippine Immigration Act of 1940, as amended, for having entered the Philippines "by means of false and misleading statements and that they were not lawfully admissible at the time of entry, not being properly documented for admission". The warrants directed any immigration officer or officer of the law to bring the respondents before the Commissioner, for them to show cause, if any there be, why they should not be deported (Annexes "B-1" and "B-2" to Petition).

Manuel Calacday was subsequently arrested. The others remained at large.

On 26 April 1965, the respondents filed before the respondent court a petition, docketed as Civil Case No. 60906, praying for three principal reliefs, namely: to restrain the arrest of those petitioners who have not been arrested to release Manuel Calacday who had been arrested; and to prohibit the deportation of all the petitioners, all upon the claim that they are Filipino citizens.

Respondent Commissioner of Immigration questioned the propriety of the remedy of prohibition, and insisted that habeas corpus is the proper one, but the respondent court invoked its general jurisdiction, which includes certiorari and prohibition, on the ground that habeas corpus would be proper only to the one already arrested but not to those not yet arrested.

On 27 May 1965, the respondent court, resolving the issue only of "whether the respondent Acting Commissioner of Immigration (herein petitioner) can summarily order the arrest and deportation of the petitioners (herein respondents) x without giving them a chance to be heard as Filipino citizens", and relying on the case of Commissioner of Immigration vs. Fernandez, et al., L-22696, 29 May 1964, issued the order, now being questioned before this Court, the dispositive part of which states:

"IN VIEW THEREOF, the Court finds the motion to be well-founded, and so hereby orders that the writ of pre-liminary injunction issued (sic) during the pendency of this action, enjoining the respondents from arresting and detaining the petitioners herein, with a view to their deportation, upon the filing by the petitioners of a bond in the amount of P10,000 each, to answer for whatever damages may be sustained by the respondents as a result of the issuance of the said writ. In the meantime, the respondents are hereby ordered to release Manuel Calacday and any other of them who may now be detained by virtue of the order of arrest issued by the respondents, within 48 hours after the filing of the said bond to guarantee their appearance here and at the investigation of their case by the Board of Immigration."

We agree with petitioning Commissioner that the court below is without jurisdiction to restrain the deportation proceedings of respondents Calacdays. These proceedings are within the jurisdiction of the Immigration authorities under Section 29 and 37 of the Philippine Immigration Act (C.A. No. 613). That jurisdiction is not tolled by a claim of Filipino citizenship, where the Commissioner or Commissioners have reliable evidence to the contrary and said officers should be given opportunity to determine the issue of citizenship before the courts interfere in the exercise of the power of judicial review of administrative decisions. We have so ruled in *Porta Perez, et al. vs. Board of Special Inquiry*, L-9236, 29 May 1956, wherein we said:

"The respondents impugn petitioners' claim to Philippine citizenship on the strength of a sworn statement of Tecla Socella, supposed mother of the petitioner Melanio Porta Perez as given in the birth certificate presented by him to the immigration authorities, to the effect that the said birth certificate refers not to the said petitioner but to one Melanio Perez now living in Pagbilao, Quezon Province. And there being thus substantial evidence that petitioners are not Filipino citizens but are Chinese nationals who have gained entry into this country through false representations, the respondents by way of special defense, contend that the present action is premature, and urge that they be allowed to proceed with their investigation until they shall have finally determined whether petitioners are or are not Filipino citizens, or are or are not subject to deportation.

We find merit in this contention. The present case is not one where the Philippine citizenship of the persons threatened with deportation is admitted or conclusively appears, there being reliable evidence that herein petitioners are aliens who have succeeded in gaining entry into this country through false representations. In line with the views expressed by this Court in the case of *Federico M. Chua Hiong v. The Deportation Board*, G.R. No. L-6038, March 19, 1955, we think it would be in the sound judicial discretion to allow the respondents to continue the proceedings already begun by them until they have determined whether or not the petitioners are aliens. Their decision on that question is, of course, not final but subject to review by the courts."

And in *Miranda vs. Deportation Board*, 94 Phil. 531, 533, this Court said:

"While the jurisdiction of the Deportation Board as an instrument of the Chief Executive to deport undesirable aliens exists only when the person arrested is an alien, however, the mere plea of citizenship does not divest the Board of its jurisdiction over the case. Petitioners should make "a showing that his claim is not frivolous"

(Ng Fung Ho vs. White, 259 U.S., 275), and must prove by sufficient evidence that they are Filipino citizens. [Kessier vs. Strecker (1939) 307 U.S., 21, 35-36.] If such is the primary duty of petitioners, it follows that the De-portation Board has the necessary power to pass upon the evidence that may be presented and determine in the first instance if petitioners are Filipino citizens or not. This is inherent in, or essential to the efficient exercise of, the power of the Deportation Board (Laurencio vs. Collector of Customs, 35 Phil., 37). It is not therefore, correct to state that the question of citizenship should be determined exclusively by the courts. As this Court ruled in a recent case:

"Resuelto por la Junta que tiene jurisdicción, es obvio que debe proseguir con el caso hasta su terminación. Si la Junta halla infundados los cargos de indeseabilidad del recurrente, el caso habrá terminado totalmente, pero si la halla indeseable, puede apelar contra el fallo, y si la apelación fracasa, entonces será el tiempo de considerar si demostrando causa razonable debe haber un juicio ulterior sobre la ciudadanía filipina que alega mediante habeas corpus." (Llanco vs. The Deportation Board, G.R. No. L-6272, prom. February 22, 1954.)"

It is well to note here that when the petition for certiorari and prohibition (the respondent judge considered it as such) was filed, deportation proceeding 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 Calacday 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.

It is clear from the order complained of that the court below misapprehended the import of the warrants issued by the Commissioner herein. Said warrants required the respondents to be brought to the immigration authorities, not to be deported, but "to show cause, if any there be, why he should not be deported from the Philippines", as expressly recited therein. There was no case of "summarily arresting and deporting" the respondents Calacday, as unwarranted assumed by the court below.

The Calacdays have alluded in this Court to certain documents in support of their claim to Philippine citizenship. The proper procedure is for said respondents to appear before the Immigration and there submit these documents as evidence on their part to show cause why they should not be deported.

Nevertheless we are of the opinion that the issuance of warrants of arrest by the Commissioners of Immigration, solely for purposes of investigation and before a final order of deportation is issued, conflicts with paragraph 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 examination 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."

It will be noted that the power to determine probable cause for warrant of arrest is limited by the Philippine Constitution to judges exclusively, unlike in previous organic laws and the Federal Constitution of the United States that left undetermined which public officials could determine the existence of probable cause. And in *Qua Chee Gan et al., vs. Deportation Board*, L-20280, promulgated on September 30, 1963, this Court pointed out that Executive Order No. 6 of July 29, 1947, issued by President Roxas, in prescribing the procedure for deportation of aliens, only required the filing of a bond by an alien under investigation, but did not authorize his arrest.

Discussing the implications of the provision of our Bill of Rights on the issuance of administrative warrants of arrest, this Court said in the same case:

[illegible]

Under the express terms of our Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.

The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas."

Following the same trend of thought, this Court, in *Moreno vs. Vivo* (L-22196, 30 June 1967, 20 SCRA, 562; PHILD. 1967B, page 741), distinguish between administrative arrest in the execution of a final deportation order and arrest as preliminary to further administrative proceedings. The Court remarked in said case:

"Section 1 (3), Article III of the Constitution, we perceive, does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation con-templates an order of arrest in the exercise of judicial power⁴ as a step preliminary or incidental to prosecu-tion or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation."

We see no reason why the cautionary bond requirement of the 1947 Executive Order No. 69 of President Roxas should not apply to deportation proceedings initiated by the Immigration Commissioners, considering the identity of ends sought to be served. Such notice and bonds should suffice to ensure the subject appearance at the hearings, without prejudice to more drastic measures in case recalcitrant respondents. But as long as the illegal entry or offense of the respondents Calacdays has not yet been established and their expulsion finally decided upon, their arrest upon administrative warrant violates the provisions of our Bill of Rights. The constitutional guarantees of individual liberty must be liberally construed and applied if we are to enjoy the blessings of a regime of justice, liberty and democracy that the Philippine Constitution sought to secure and consolidate.

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. But the warrants of arrest heretofore issued by the petitioner, Immigration Commissioner, against herein respondents Calacdays are declared null and void, without prejudice to said respondents being required to furnish bonds in such reasonable sums as the immigration Commissioners may fix, in order to guarantee their appearance at the hearing and other proceedings in their case, until final determination of their right to at in the Philippines. No costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

4 "Tu Chuan Hai vs. Commission of Immigration, 55 O.G. No. 28, pp. 5272, 5274-5275.

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