

KISHU DALAMAL, PETITIONER, VS. DEPORTATION BOARD, RESPONDENT.

G.R. No. L-16812. October 31, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Kishu Dalamal, a British subject, was charged, together with other aliens, with having committed certain irregularities in violation of the Central Bank Rules and Regulations before the Deportation Board in a complaint filed by a Special Prosecutor of the Department of Justice.

Acting on the complaint, the Chairman of the Deportation Board issued a warrant of arrest against Dalamal pursuant to the authority given to said Board by Section 1(b) of Executive Order No. 398. On August 5, 1958, Dalamal was accordingly arrested, but he was subsequently released upon filing a bond in the amount of P10,000.00.

Considering that the warrant for his arrest issued by the Deportation Board is illegal because it was issued in violation of Section 1(3), Article III, of our Constitution, Dalamal interposed the present petition for habeas corpus seeking the annulment of the warrant of arrest as well as the cancellation of the bond filed by him for his provisional liberty.

The grounds on which the illegality of the warrant of arrest are predicated may be itemized as follows: (a) Section 1(b) of Executive Order No. 398 under which the warrant of arrest was issued by the Deportation Board is repugnant to Section 1(3), Article III, of our Constitution, under which only judges are empowered to issue warrants, either of arrest or of search, and only upon probable cause, to be determined by a judge after examination under oath or affirmation of the complainant or the witnesses he may produce; and (b) assuming arguendo that the President has the power to order the arrest of an alien as an incident of his power of investigation with a view to his deportation, the delegation of such power to the Deportation Board is unlawful it being in violation of the principle that a power that has been delegated by Congress cannot in turn be delegated.

Before we go into the merits of the case, let us make a brief digression.

During the American regime it was the Governor General who exercised the power to deport aliens upon the authority of Section 69 of Act 2711, known as the Administrative Code of 1917. Pursuant thereto, the Governor General designates an agent for the purpose of investigating the charges preferred against him, and upon the report he may later submit, the alien's deportation is either ordered or denied. The investigation is conducted in the manner and form prescribed in said Section 69 (*In re McCulloch Dick*, 38 Phil., 41).

Prior to Section 69 of the Administrative Code of 1917 the statute which was then in force authorizing the Governor General to institute and maintain deportation proceedings against aliens was Act No. 2113 which also prescribed the manner and form in which the investigation should be conducted. The provisions of this Act were later incorporated into the Administrative Code of 1916, which in turn were later incorporated into and embodied

in Section 69 of the Administrative Code of 1917. It may, therefore, be said that this Section 69 is now the only provision governing deportation proceedings in the Philippines incident to the power of deportation of the President.

Section 69 provides:

"SEC. 69. Deportation of subject to foreign power.—A subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the President of the Philippines 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."

Is there any provision in the section above-quoted which authorizes the President, directly or indirectly, to issue a warrant of arrest against an alien in the course of his investigation with a view to determining if he is liable for deportation?

We find none. The section merely prescribes the procedure to be followed in the deportation proceedings, such as there must be prior investigation during which 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. And yet, it was under the authority of this section that Executive Order No. 398 was promulgated which, among others, authorizes the Deportation Board to order the arrest of the alien complained of. Verily, this order transcends the authority given to the President by Section 69.

It is argued that Executive Order No. 398 insofar as it authorizes the Deportation Board to issue warrants of arrest against the aliens complained of is violative of Section 1(3), Article III, of our Constitution, which provides that "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," upon the theory that only judges may issue such warrants, whether of arrest or of search, and only upon probable cause, a requirement not prescribed in Executive Order No. 398. On this point, there is a divergence of opinion on the part of the members of the Court; some expressed the view that the pertinent provision of our Constitution only refers to criminal proceedings, where a judge is the sole arbiter, while other members opined that it involves both criminal as well as administrative. We will not however elaborate on this point it being unnecessary for the decision of this case.

In re McCulloch Dick, *supra*, this Court stated:

"* * * deportation of aliens by the Governor-General, as an act of state, upon prior investigation conducted in the manner and form prescribed in section 69 of the Administrative Code may properly be regarded as made 'under the combined powers of the Governor-General and the Philippine Legislature; authority for such deportations having been conferred upon the Governor-General, so far as that may be necessary, by the provisions of that section.

"* * * the Supreme Court of the United States" has held, in the case of *Tiaco vs. Forbes* (*supra*), not only that Congress has the power to do so, but that it did in fact delegate full power to the Philippine Government to deport aliens as an act of state; and, further, that when the Governor-General does in fact deport an alien, by authority of an Act of the Philippine Legislature, the deportation may properly be treated as an act of state, done under 'the combined powers' of the Philippine Legislature and the Governor-General." (38 Phil., pp. 71, 98-99)

Whenever, therefore, the President exercises his power of deporting an alien upon prior investigation conducted in the manner and form prescribed in Section 69 of the Administrative Code of 1917, he does so, not only as an act of state, but also "under the combined powers" of the President and the Legislature. As an act of state, the President has the inherent power to order the deportation of an alien and as incident thereof, his arrest, while at the same time that power may be deemed vested in him thru delegation by the Legislative thru the enactment of appropriate statute (Section 69, Revised Administrative Code). But insofar as his power to order the arrest of an alien is concerned, either as a measure to insure his appearance at the investigation proceedings to determine if he is liable to deportation, or as an incident of his inherent power to deport to make effective his deportation order, assuming only arguendo that he has such incidental power, that power cannot be delegated either under the principle of *delegata potesta non potest delegari*[1] or upon the theory that it is non-delegable because it involves the exercise of judgment or discretion.

Thus, in a case we recently decided, we made, thru Mr. Justice Barrera, the following observation:

"Unquestionably, the exercise of the power to order the arrest of an individual demands the exercise of discretion by the one issuing the same, to determine whether under specific circumstances, the curtailment of the liberty of such person is warranted. The fact that the Constitution itself, as well as the statute relied upon prescribe the manner by which the warrant may be issued, conveys the intent to make the issuance of such warrant dependent upon conditions the determination of the existence of which requires the use of discretion by the person issuing the same. In other words, the discretion of whether a warrant of arrest shall issue or not is personal to the one upon whom the authority devolves. And authorities are to the effect that while ministerial duties may be delegated, official functions requiring the exercise of discretion and judgment, may not be so delegated. Indeed, an implied grant of power, considering that no expresa authority was granted by the law on the matter under discussion, that would serve as a curtailment or limitation on the fundamental right of a person, such as his security to life and liberty, must be viewed with caution, if we are to give meaning of the guarantee contained in the constitution. If this is so, then a delegation of that implied power, nebulous as it is, must be rejected as inimical to the liberties of the people. The guarantees of human rights and freedom can not be made to rest precariously on such a shaky foundation. (*Qua Chee Gan, et al. vs. The Deportation Board*, G. R. No. L-10280, September 30, 1963)

Our conclusion, therefore, is that Executive Order No. 398 insofar as it authorizes the Deportation Board to issue warrants of arrests against aliens complained of is null and void, it being a power that cannot be delegated, nor is authorized by Section 69 of the Revised Administrative Code.

Wherefore, petition is granted. The warrant of arrest issued by respondent is hereby set aside and the bond put up by petitioner cancelled. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] "It is a general principal of law, expressed in the maxim *delegatus non potest delegare*,' that a delegated power may not be further delegated by the person to whom such power is delegated, and that in all cases of delegated authority, where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either express or necessarily implied." (2 Am. Jur. 2d, p. 52)

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