

IN RE: PETITION FOR INCLUSION IN THE PERMANENT LIST OF QUALIFIED VOTERS. (MRS.) ROSALIA TAN COHON, PETITIONER-APPELLANT, VS. THE ELECTION REGISTRAR, CITY OF CEBU, RESPONDENT-A...

G.R. No. L-29166. August 29, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

After the Court of First Instance of Cebu rendered the following decision in its Election Case No. 2, entitled "In re Petition for Inclusion in the Permanent List of Qualified Voters, Mrs. Rosalia Tan Cohon, Petitioner, versus The Election Registrar, City of Cebu, Respondent", on November 3, 1967:

"From the decision of the City Court of Cebu, denying her petition for inclusion in the registry of voters, the petitioner appealed to this Court.

From the facts adduced during the hearing before the City Court, it appears that petitioner was a Chinese citizen when she married Antonio S. Cohon in 1952; that the latter became a Filipino citizen by naturalization in 1962. Upon her petition, her alien registry in the Bureau of Immigration was cancelled. She was recognized as a Filipino citizen and was allowed to register as voter during the elections of 1963 and 1965. However, on November 4, 1967, she was informed by the Election Registrar that she was not included in the new registry list of voters because her Filipino citizenship has not been duly established. The decision of the Election Registrar was based on the ruling of the Supreme Court in the case of Zita Ngo Burca, G. R. No. L-24252 promulgated January 30, 1967, wherein among other things, the following was held:

'and (3) Any action by any other office, agency, board, or official, administrative or otherwise - other than the judgment of a competent court of justice - certifying or declaring that an alien wife of a Filipino citizen is also a Filipino citizen, is hereby declared null and void'.

The petitioner claims that the above mentioned decision should not be given retroactive effect and should not be applied to her. When the case was called before this Court, Atty. Achilles V. Manit, representative of the Commission on Elections, contested the right of petitioner to appeal from the decision of the City Court.

Republic Act No. 5178 provides that the decisions of the municipal court in inclusion and exclusion proceedings are appealable to the Court of First Instance, while the decisions of the City Court and the Court of First Instance shall be immediately executory and shall, be final as to questions of fact. It is clear, therefore, that the City Court and the Court of First Instance have the same jurisdiction in so far as inclusion and exclusion proceedings are concerned. Appeal from the decision of the City Court on these matters to the Court of First Instance is not justified and it cannot be entertained". (Pp. 52-54, Record on Appeal)

the petitioner, herein appellant, filed the following notice of appeal:

"Petitioner, through counsel, respectfully gives notice of her intention to appeal from the order of 3 November 1967, copy of which she received on the same day, to the Supreme Court.

Notice is hereby given that an appeal will also and concurrently with this appeal be taken from the order of the City Court of 26 October 1967, notice of which was re-ceived on the same date, directly to the Supreme Court - the Court of First Instance having resolved that the decision of the City Court on inclusion and exclusion of voters, as distinguished from such a deci-sion issued by a municipal court, is not appealable to it. In the event that this ruling of the Court of First Instance is correct, petitioner is taking an appeal from the decision of the City Court directly to the Supreme Court to preserve her rights.

Petitioner hereby submits for the appro-val of the Court the Cash Appeal Bond in the sum of P120.60 which she filed with the Clerk of Court." (Pp. 54-55, Record on Appeal)

The appeal is now before this Court.

Appellant has filed her brief, but respondent has not filed any. In appellant's brief, the assignment of errors is as follows:

"I

"THE TRIAL COURT ERRED IN HOLDING THE INSTANT PETITION WANTING IN MERITS AND DE-NYING THE SAME.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE RULING IN THE CASE OF ZITA NGO BURCA, G.R. NO. L-24252, JANUARY 30, 1967 Is AP-PLICABLE TO THE INSTANT PETITION.

III

THE TRIAL COURT ERRED IN GIVING THE RU-LING IN SAID ZITA NGO BURCA CASE A RETROACTIVE EFFECT." (P. 7)

To begin with, outside of the statement made in the notice of appeal aforequoted that "an appeal will also be taken from the order of the City Court of 26 October 1967, notice of which was received on the same date, directly to the Supreme Court", there is no showing that any such appeal from the order of the City Court of Cebu has in fact been taken. The records of this Court do not disclose any such appeal. In any event, it is extremely doubtful if such an appeal could legally be made after the unsuc-cessful prosecution of the appeal appellant had perfected to the Court of First Instance, both as a matter of law and in point of time. We have to consider this, therefore, as purely an appeal from the decision of the Court of First Instance.

Thus considered, the first thing that strikes Us is that whereas His Honor dismissed the appeal of appellant from the City Court without passing on the merits of her case, it is to be noted that in her above-quoted assign-ment of errors, appellant does not complain against such dismissal, and instead, she discusses under them errors allegedly committed by the City Court and not by the Court of First Instance. The question that arises now is whether or not, under these circumstances, this Court may take up the errors assigned by appellant.

Before resolving this question, however, it must first be determined whether or not appellant's appeal to this Court is proper. It is to be recalled that orders in voters' inclusion and exclusion proceedings in Courts of First Instance have been held to be unappealable, for the simple reason that the right to appeal is, as a gen-eral rule, statutory and when there is no express provi-sion of law allowing an appeal, the right thereto is not a necessary element of due process. (Nuval v. Guray, 52 Phil. 645; Lucena v. Tan, 84 Phil. 548) And with respect, to the particular cases of inclusion of voters for purposes of their registration in 1967, which is governed exclusively by Rep. Act 5178, entitled "An Act to facilitate implemen-tation of Republic Act Numbered Three Thousand Five Hundred Eighty-Eight, as amended, on the registration of voters for nineteen hundred sixty-seven only, extending the

per-iods for registration of voters and related proceedings thereunder, providing for additional Registration Boards, and granting additional powers to the Commission on Elec-tions, and for other purposes", par. (c) of section 1 thereof provides, as pointed out by the court a quo, that "The decisions of the Municipal Court shall be appealable to the Court of First Instance within two (2) days from receipt of notice by the parties and the decisions of the City Court and the Court of First Instance shall be imme-diately executory and shall be final as to questions of face." This implies that an appeal could have been made from the order of the City Court of Cebu on questions of law and necessarily, such an appeal would have been direct to this Court. Indeed, such implicit authority under the quoted legal provision is a necessary consequence of the constitutional jurisdiction of this Court, of which Congress cannot deprive it, to "review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in -- (5) all cases in which an error or question of law is involved". (Sec. 2, Art. VIII, Constitution of the Philippines; *Marquez v. Prodigalidad*, 83 Phil. 813)

As this case stands, however, the present appeal is not from the order of the City Court, but from the deci-sion of the Court of First Instance dismissing appellant's appeal from the order of the City Court. Can this Court entertain this appeal? The answer is in the affirmative, in virtue of the constitutional mandate just referred to. And this is so, inspite of the fact that appellant has not assigned such dismissal as an error, because, an appeal on any question of law involving the Election Code, even if not in an election contest, must of necessity be, as in a criminal case, wherein the appeal "confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from" (*U.S. v. Abijan*, 1 Phil. 83) or, in other words, "such an appeal throws the whole case open to review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from whether they are made the subject of assignments of error or not", (*Peo. v. Olfindo*, 47 Phil. 1) and the fact that the revised rules of 1964, Section 7, Rule 124, has eliminated the provision of the old rules to the effect that in criminal cases, "appellants are not required to make assignments of error although it is advisable for them to do so", (Sec. 7, Rule 120 of the Rules of 1940) has not changed the prin-ciple of total review in the appeal of all criminal cases. After all, even under the old provision, it has been held that:

"Section 7, Rule 120 of the Rules' of Court, provides that 'The briefs in crimi-nal cases shall have the same contents as provided in sections 17 and 18 of Rule 48 applicable in civil cases except that ap-pellants are not required to, make assignment of errors although it is advisable for them to do so'. This provision connotes that, unlike in appeals in civil cases, an assign-ment of errors is unessential to invoke appel-late review. (It should be noted that there the law or the Rules of Court require an as-signment of errors to be made, this formality is essential to authorize the appellate court to entertain the appeal. In view of such re-quirement, an appeal will be dismissed without benefit of review if the brief contains no as-signment of errors.)

The rule means that, notwithstanding the absence of an assignment of errors, the appel-late court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the of-fense charged but also on prejudicial errors to the right of accused which are plain, fun-damental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict. The section, of the Rules of Court doing away with formal assignments of error does not dis-pense with the necessity of pointing out in some other form technical and non-fundamental errors which do not affect the substantial rights of an accused to a fair trial, and are not patent. Such technical and non-fundamental errors must be specified with convenient pro-position and argument if they are to be made the basis for modification or reversal of the appealed judgment or for further proceedings. Attention is invited to section 17(c), Rule 48 of the Rules of Court, which provides that the appellee's brief shall contain, among other things, 'the substance of the proof in suffi-cient detail to make it clearly intelligible, the rulings and orders of the court, x x x, and any other matters necessary to an unders-tanding of the nature of the controversy on the appeal, with page references to the record'. The reviewing court is not expected to search the record for every error of which the appel-lant might take advantage but did not, nor would it be fair to the adverse party

for the court to do so". (Pp. 267-268, *Villareal v. Peo.*, Phil. 264)

Accordingly, the Court holds that the court a quo did not commit any error in dismissing appellant's appeal from the order of the City Court. This result makes it impossible for this Court to consider the errors alleged in appellant's brief. Nonetheless, in view of the fact that the two matters involved in the assigned alleged errors are of public interest, those of inclusion in the permanent list of voters and of the alleged Filipino citizenship of appellant, (*Abañil et al. v. Justice of the Peace Court of Bacolod, Negros Occidental, et al.*, 70 Phil. 28), it is made clear that even as it is here held that the order of the City Court in question has become final, the same does not constitute *res adjudicata* as to any of the matters therein contained. It is ridiculous to suppose that such an important and often intricate matter of citizenship may be passed upon and determined with finality in such a summary and peremptory proceedings as that of inclusion and exclusion of persons in the registry list of voters. Even if the City Court had granted appellant's petition for inclusion in the permanent list of voters on the allegation that she is a Filipino citizen qualified to vote, her alleged Filipino citizenship would still have been left open to question. In the case of *Mayor v. Villacete*, 2 SCRA 542, several petitions were filed to exclude petitioners from the list of voters for not being, allegedly, Filipino citizens. A motion to dismiss was filed alleging that the trial court had no jurisdiction to entertain the petitions because the ground upon which the same was based is the citizenship of petitioners which cannot be inquired into in an exclusion case, and that this ground which involves their status as Filipino citizens does not come within the purview of Section 121, in relation to Section 123, of the Revised Election Code. The motion having been denied, Mayor and the rest of petitioners filed separate cases of prohibition before this Court, but because their petitions could not be acted upon immediately, the trial court proceeded to hear the exclusion cases and thereafter rendered a decision holding that petitioners were not Filipino citizens and as such were disqualified to vote in the ensuing elections. The elections were held on November 10, 1959; and feeling aggrieved in the circumstances, petitioners filed with this Court on December 11, 1959, a petition for certiorari attributing to the trial court the commission of a grave abuse of discretion amounting to lack of jurisdiction. This Court dismissed the case for being moot, since the elections of November 10, 1959 had been held. Nevertheless, the decision further said:

"We hold that these two petitions are now moot since with the elections held on November 10, 1959 the purpose for which they had been filed has become *functus officio*. And this is so because their purpose is to prevent the trial court from acting on the exclusion case filed before it on the ground of lack of jurisdiction so that if they succeed their names may continue in the permanent list of voters and they may in turn vote in the elections scheduled for November 10, 1959. Evidently, this objective has become purposeless with the holding of the elections thereby rendering these cases moot.

It is true that the decision of a court of first instance in an exclusion case is final and unappealable except when the petition is tried before the justice of the peace when the case may be appealed to the corresponding court of first instance, for which reason petitioners have instituted the present civil action of certiorari considering it to be the only legal remedy available to them to bring to this court the issue concerning the lack of jurisdiction of the trial court. Nevertheless, we still hold that this petition does not serve now any useful purpose considering that its main objective is to dispute the action of the trial court insofar as the last elections are concerned. It should be here stated that considering the summary character of an exclusion case the decision that a court of first instance may render thereon, even if final and unappealable, does not acquire the nature of *res adjudicata* (*Nuval v. Guray*, 52 Phil. 645). In this sense, it does not operate a bar to any future action that a party may take concerning the subject passed upon in this exclusion case.

We are not oblivious of the fact that new elections will be held this year and that because of the exclusion of their names from the permanent list of voters petitioners are not now considered as qualified voters in their respective precincts, but their situation is not without a remedy. They can still file such appropriate action as they may find necessary to seek their reinstatement wherein they can establish that they are Filipino citizens

and qualified voters in the municipality where they reside thereby rendering ineffective the previous ruling rendered by the trial court. Verily, they -still have enough time to take such action." (Pp.-544-545, Mayor v. Villacete, 2 SCRA)

Definitely, a voter's inclusion case cannot be used as a backdoor to gain the status of Filipino citizenship by judicial declaration.

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed with costs against appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano and Teehankee, JJ., concur. Reyes, J., is on official leave of absence.

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