

IN THE MATTER OF THE PETITION TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. ALBINO CHING, PETITIONER AND APPELLANT VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.*G. R. No. L-22394. July 09, 1966*

Ponente: CONCEPCION, C.J.

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Appeal, taken by petitioner Albino Ching, from several orders of the Court of First Instance of Manila.

On January 5, 1961, the Court of First Instance of Manila, Branch VIII, then presided over by Hon. Juan P. Enriquez, Judge, rendered a decision granting petitioner's application in this case to be naturalized as Filipino citizen. Over two (2) years later, or on May 30, 1963, petitioner filed a motion praying that a date be set for the reception of evidence regarding compliance by him with the requirements of Republic Act No. 530, as a condition precedent to the taking of the oath of allegiance and the issuance of the corresponding certificate of naturalization. This motion was set for hearing on May 18, 1963. Prior thereto, Judge Enriquez had been promoted to the Court of Appeals and Judge Manuel F. Barcelona had succeeded him as Judge of said Branch VIII of the Court of First Instance of Manila. By virtue of Administrative Order No. 28, dated February 15, 1963, the Secretary of Justice had authorized Branch II of said court, presided over by Hon. Jose N. Leuterio, Judge, to hear all cases pertaining to said Branch VIII[1] - including the one at bar - during May, 1963. Acting on said motion of appellant, Judge Leuterio issued, therefore, on May 18, 1963, an order setting the hearing of this case for the reception of petitioner's evidence on June 8, 1963.

The Office of the Solicitor General alleges that its representative was not present when this order was issued and that appellant's counsel informed him that the case had been transferred to Branch VI, presided over by Hon. Gaudencio Cloribel, Judge, to which both proceeded on the same date, and before which petitioner's testimony was introduced in evidence. The version given by petitioner, in his brief, is that he, "with the conformity of the representative of the Office of the Solicitor General, was able to have said motion transferred and heard before" said Branch VI. What petitioner said, however, in a motion filed on May 28, 1963, is that he had "talked with Judge Gaudencio Cloribel and asked the latter if he would be willing to receive petitioner's evidence in connection with his oath-taking as a Filipino citizen and to which said Judge agreed." Petitioner further alleged, in said motion, that inasmuch as said evidence had already been introduced before Judge Cloribel, it would be vest that "said Judge be also allowed to handle the oath-taking of the petitioner" herein. Forthwith, Judge Leuterio denied the motion, upon the ground that he had "no power or authority" to grant the relief therein prayed for.

This notwithstanding, on May 29, 1963, appellant filed an before Branch VI an "urgent petition" praying, for the same reasons given in his motion of May 28, 1963, that he be allowed to take his oath before said Branch VI. Thereupon, Judge Cloribel issued an order finding that petitioner had complied with the provisions of Republic Act No. 530 and administered his oath of allegiance. The next day, May 30, 1963, another order was entered by Judge Leuterio setting aside and nullifying said order of Judge Cloribel of May 29, 1963, and petitioner's

aforementioned oath of allegiance, as well as "all the proceedings had before Branch VI", for the following reasons:

"Administrative Order No. 28 of 1963 of the Secretary of Justice had not conferred any power or authority upon Branch VI of this Court to act on any case pending before Branch VIII. That authority was conferred upon Branch II. It is the opinion, therefore, of the Judge of Branch II, that the Honorable Judge of Branch VI has no authority to act on any matter pending in the Court of Branch VIII and that any action of the Honorable Judge of Branch VI in this case is a nullity and had been rendered without authority. The Judge of this Branch knows of no rule or practice which would authorize any Judge of the Court to take cognizance of any case pending in another branch without the authority of the Honorable Secretary of Justice, or without the case first having been raffled, or, at the least, without the consent of the Judge concerned. In fact, the assignment of cases to the different branches of this Court is made by raffle, and in public, to the end that there may be a fair and Impartial distribution of cases, and to prevent the parties from selecting judges. The importance of this procedure was recognized by the Supreme Court, when, in Section 7 of Rule 23 of the Revised Rules of Court, it provided that: "Sec. 7. Assignment of Cases. - In the assignment of cases to the different branches of a Court of First Instance, or their transfer from one branch to another whether by raffle or otherwise, the parties or their counsel shall be given written notice sufficiently in advance so that they may be present therein if they so desire."

On the other hand, this Branch, in the exercise of its authority conferred upon it by Administrative Order 28 of the Secretary of Justice had fixed the date of the hearing; and this Court not having set aside or modified the order, no Judge of this Court except the Judge of Branch VIII, in the opinion of this Court, can act and advance the hearing, even with the consent of a Judge of another branch of this Court. Courtesy, at the least, to a coordinate branch of this court demands that a Judge of one branch should not act without authority upon a case pending before another branch, especially on matters affecting the merits of this case. If the order of Branch VI were allowed to remain, then it would destroy the practice so meticulously followed by this Court of assigning cases by raffle and in public, and confusion will be the concomitant result for what is there to prevent a judge of one branch from hearing a case pending in another branch, or even setting aside a decision or an order entered by another branch?

"The Court wishes to call the attention of the Solicitor General to the actuations of the Solicitor in charge of this case. The Solicitor concerned should have known or ought to know that all cases pertaining to Branch VIII are to be heard in Branch IX. This, notwithstanding, the Solicitor had accommodated the petitioner and consented to the hearing of this case in Branch VI notwithstanding that this Court had set the case for hearing on June 8, and had denied a motion of the petitioner to authorize Branch VI to hear this case and to allow the petitioner to take his oath. The Solicitor in charge, it appears, had agreed expressly or impliedly to the taking of oath of allegiance by the petitioner on the same date that the order showing compliance with Republic Act 530 had been entered. Considering that in the opinion of the Judge of this Branch the oath of allegiance may not be taken until the period of appeal had expired, the fact that petitioner had been allowed to take his oath under Republic Act 530 shows that the Solicitor in charge had consented to the taking of the oath of allegiance and thereby waived the right of appeal. This, in the opinion of the Court, is irregular."

The record shows that subsequently, or on July 6, 1963, the parties appeared before Branch VIII, presided over by Judge Barcelona, and petitioner introduced his documentary evidence in support of the motion for his oath-taking. When the hearing was resumed on July 20, 1963, petitioner took the witness stand. After his testimony in chief and his cross-examination by a representative of the Solicitor General, Judge Barcelona asked him several questions, which elicited the following facts, namely:

- That, according to said documentary evidence, appellant has criminal records for 1) speeding and driving with a delinquent license on March 19, 1956; 2) reckless driving and driving on the wrong lane on August 17, 1956; and 3) driving without headlight on January 22, 1958, for each of which he had been fined;

- That on June 25, 1956, he had been charged in the Office of the City Fiscal of Manila with damage to property through reckless imprudence, although the charge was later dropped by the Assistant Fiscal who investigated it; and

- That, at the hearing of his petition for naturalization before Judge Enriquez, on December 23, 1960, he denied being the same person accused and convicted and fined in the criminal cases above referred to and even denied falsely that he knew how to drive a motor vehicle.

Thereupon, Judge Barcelona asked him to explain, if he could, these discrepancies between his testimony on December 23, 1960 and that given by him on July 20, 1963, and warned him that he could, if he wanted to, refuse to answer the question upon the ground that it would incriminate him. After consulting his counsel, appellant refused to answer. Then said counsel asked for a continuance to study the "proper step" to "take in view of the development". Accordingly, Judge Barcelona ordered that the hearing of the case be continued to August 24, 1963.

On that date, petitioner's counsel appeared before the Court and asked that the hearing be, once more, postponed to another date, upon the ground that petitioner "had gone to Surigao yesterday". Judge Barcelona considered this move as "clearly designed to delay the disposition" of petitioner's motion to take his oath of allegiance, and, consequently, issued the appealed order dismissing said motion. On September 23, 1963, petitioner moved for a reconsideration of said order, alleging that his departure for Surigao on August 23, 1963 was due to the sudden illness of his father-in-law, and that the aforementioned inconsistencies in his testimony "could be due to the fact that petitioner could have misunderstood the question in his earlier testimony".

Judge Barcelona set this motion for hearing on December 7, 1963, but, on October 16, 1963, petitioner moved for the postponement of said hearing to any day in March, 1964, upon the ground that he would be very busy in December attending to his business and the inventory and closing of his books and that it is necessary "to give the petitioner sufficient time to prepare for said hearing". On December 7, 1963, Judge Barcelona denied this motion for postponement as "obviously intended merely for delay", as well as said motion for reconsideration, for lack of merit.

On January 7, 1964, petitioner filed "his notice of intention to appeal * * * to the Supreme Court from the Order dated August 24, 1963, denying his petition to take oath, and from the Order dated December 7, 1963, denying his motion for reconsideration of said Order of August 24, 1963, on the ground that the same are contrary to law". In his brief, petitioner now assails : 1) the authority of Judge Leuterio to annul the proceedings before Judge Cloribel, upon the theory that a court cannot annul the proceedings before a coordinate court; and 2) the wisdom of the appealed Orders of Judge Barcelona, upon the ground that he "should have given a chance to petitioner-appellant to present his evidence preparatory to take oath".

As regards the first issue raised by the petitioner, it should be noted, however, that he has not appealed from the Orders of Judge Leuterio, so that the same are not subject to review in this appeal.[2] At any rate, since pursuant to law and the administrative rules and regulations, the validity of which is not disputed, the case at bar had been duly assigned by the Secretary of Justice to Branch II of the Court of First Instance of Manila, presided over by Judge Leuterio, during May, 1963, it is obvious, not only that the latter had the power to control, during said month, any and all proceedings in the case, but, also, that, pursuant to petitioner's own theory, Judge Cloribel could not, without the consent of Judge Leuterio, deprive the latter of his aforementioned authority, which it is his bounden duty to perform, much less nullify said authority by arrogating the same unto himself (Judge Cloribel) over the objection of Judge Leuterio, as reflected in his order of May 28, 1963, denying petitioners motion of that date for permission to take the oath of allegiance before Judge Cloribel.

With respect to the orders of Judge Barcelona dated August 24 and December 7, 1963, suffice it to say that motions for postponement are addressed to the sound discretion of the Court^[3] which, under the circumstances obtaining in this case has not been abused, but has been wisely exercised, and, hence, should not be interfered with,^[4] especially considering that the purpose of the postponement sought was patently to delay or gain time^[5] Moreover, neither petitioner's motion for reconsideration of September 23, 1963, which is not verified, nor his brief, contains an offer of any additional evidence which he would introduce if said motion were granted. Petitioner's allegation that he has not been given a chance to present his evidence is thus absolutely devoid of merit.

WHEREFORE, the Orders appealed from are hereby affirmed, with costs against petitioner-appellant. It is so ordered.

Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., and Sanchez, JJ., concur.

[1] For Judge Barcelona was seemingly on vacation.

[2] De Guzman vs. Trinidad, et al., 109 Phil., 363; Licup vs. Manila Railroad Co., L- 16196, May 30, 1961; Dominguez vs. De Jesus, L-15089, April 28, 1962; Tabotabo vs. Tabotabo, L-10909, April 30, 1962; Canite vs. Madrigal & Co., et al., L-17836, August 30, 1962.

[3] Casilan vs. Gancayco, 104 Phil., 418; Hap Hong Hardware vs. Philippine Milling Co., L-16778, May 28, 1961; Blue Bar Coconut Co. vs. Hilario, L-12699, May 31, 1961; Gutierrez vs. Medel, L-14455, April 26, 1962; Cardenas vs. Camus, L-17191, June 30, 1962; De Casa vs. Reyes, L-18564, August 31, 1962; Acierto vs. Laperal, L-15983, October 31, 1962; Republic vs. Mambulao Lumber Co., L-18942, November 30, 1962; Dayao vs. Lopez, L-17698, December 27, 1962; Philippine National Bank vs. Santos Donasco, L-18638, February 28, 1963.

[4] Cementeno vs. CFI of Iloilo, Branch II, L-9571, April 29, 1957; De los Reyes vs. Capule, 102 Phil., 464; Dayao vs. Lopez, L-17698, December 27, 1962; Acierto vs. Laperal, L-15983, October 31, 1962.

[5] Dayao vs. Lopez, *supra*.

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