

IN THE MATTER OF THE PETITION FOR ADMISSION AS CITIZEN OF THE PHILIPPINES. OH HEK HOW, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.*G.R. No. L-27429. August 27, 1969*

Ponente: CONCEPCION, C.J.

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A decision granting his petition for naturalization as citizen of the Philippines having been rendered, on January 16, 1964, petitioner Oh Hek How filed, on January 17, 1966, a motion alleging that he had complied with the requirements of Republic Act No. 530 and praying that he be allowed to take his oath of allegiance as such citizen and is-sued the corresponding certificate of naturalization. Upon petitioner's testimony, taken on February 9, 1966, the date set for the hearing of said motion, the Court of First Instance of Zamboanga del Norte issued forthwith an order authorizing the taking of said oath. On that same date, petitioner took it and the certificate of naturalization was issued to him.

The Government seasonably gave notice of its intention to ap-pear from said order of February 9, 1966 and filed its record on appeal. Before the same was approved, it, also, moved to cancel petitioner's certificate of naturalization, upon the ground, among others, that it was issued and the oath taken before said order of February 9, 1966, had become final and executory. Acting upon this motion and petitioner's opposition thereto, the court issued, on October 3, 1966, an order granting the motion, but, at the same time, authorizing the taking of a new oath by the petitioner and the issuance in his favor of ano-ther certificate of naturalization, after thirty (30) days from notice to the Solicitor General. Thereafter, or on November 26, 1966, the court approved the record on appeal and, once more, authorized the petitioner to "take a new or proper oath to validate the first one made on February 9, 1966." The case is now before us on said re-cord on appeal filed by the Government.

At the outset, it is obvious that the oath of allegiance taken by petitioner on November 28, 1966, and the certificate of naturali-zation issued to him in pursuance thereof, as well as the authority given therefor by the lower court, are null and void. Indeed, the order of February 9, had not - and up to the present has not - become final and executory, in view of the appeal duly taken by the Govern-ment. What is more, petitioner's second oath was taken, not only after the filing of the notice of appeal[1] and the submission of the re-cord on appeal, but, also, after the approval thereof. In other words, the lower court had already lost its jurisdiction over the case.[2]

Again, petitioner's net income in 1960 and 1961 was P3,945.65 and P5,105.79, respectively, or from about P330 to P425 a month. His income tax return for 1962, filed subsequently to the institution of this case, showed a net income of P6,485.50 for that year, or about P540 a month. Considering that petitioner has a wife and three (3) children, one of them of school age, at the time of the filing of his application for naturalization, his aforementioned income is not a lucrative one. Indeed, it has been held that the following incomes are not lucrative, from the viewpoint of our naturalization laws, namely: (1) P4,2003or P5,000 a year4 for one married, with five (5) children; (2) P6,000 a year for one married, with two (2) minor children5; and (3) P6,0006 or P6,300

a year⁷ for one married, with only one (1) child.

Lastly, it is conceded that petitioner has not secured from the Minister of the Interior of Nationalist China the permission required by the laws thereof for a valid renunciation of his Chinese citizenship. In *Go A. Leng v. Republic*,⁸ a decision granting the application for naturalization of a Chinese national was reversed by this Court, upon the ground, among others, of "his failure to secure" the aforementioned permission.

It is argued that the same is not required by our laws and that the naturalization of an alien, as a citizen of the Philippines, is governed exclusively by such laws and cannot be controlled by any foreign law. Section 12 of Commonwealth Act No. 473 provides, however, that before the naturalization certificate is issued, the petitioner shall "solemnly swear", inter alia, that he renounces "absolutely and forever all allegiance and fidelity to any foreign prince, potentate" and particularly to the state "of which" he is "a subject or citizen." The obvious purpose of this requirement is to divest him of his former nationality, before acquiring Philippine citizenship, because, otherwise, he would have two nationalities and owe allegiance to two (2) distinct sovereign-ties, which our laws do not permit, except that, pursuant to Republic Act No. 2639, "the acquisition of citizenship by a natural born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries shall not produce loss or forfeiture of his Philippine citizenship, if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired." The question of how a Chinese citizen may strip himself of that status is necessarily governed - pursuant to Articles 15 and 16 of our Civil Code - by the laws of China, not by those of the Philippines.⁹ As a consequence, a Chinese national cannot be naturalized as a citizen of the Philippines, unless he has complied with the laws of Nationalist China requiring previous permission of its Minister of the Interior for the renunciation of nationality.

The view to the contrary, adhered to in *Parado v. Republic*,¹⁰ *Chausintek v. Republic*¹¹ and *Lim so v. Republic*,¹² has been superseded by our ruling in the subsequent case of *Go A. Leng v. Republic*,¹³ which we hereby reiterate.

WHEREFORE, the order appealed from is reversed, and the oath of allegiance taken, on November 28, 1966, by petitioner Oh Hek How, as well as the certificate of naturalization issued in pursuance thereto, are hereby declared null and void, with costs against said petitioner, who is, moreover, directed to surrender the aforementioned certificate of naturalization to the Clerk of the Court of First Instance of Zamboanga del Norte, within ten (10) days after this decision shall have become final.

IT IS SO ORDERED.

Dizon, Makalintal, Sanchez, Castro, Teehankee, JJ., concur.

Reyes, Zaldivar, JJ., on leave.

[1] *Qua v. Republic*, G.R. No. L-21418, Dec. 31, 1965; *Jose Syson v. Republic*, G.R. No. L-21199, May 29, 1967; *Republic v. Santos*, G.R. No. L-23919, July 29, 1968.

[2] *Kwan Kwock How v. Republic*, G.R. No. L-18521, Jan. 30, 1964; *Tio Tek Chai v. Republic*, G.R. No. L-19112, Oct. 30, 1964; *Lee v. Republic*, G.R. No. L-20148, April 30, 1965; *Cheng v. Republic*, G.R. No. L-20013, March 30, 1965; *Lee Ng Len v. Republic*, G.R. No. L-20151, March 31, 1965; *Tan Huy Liong v. Republic*, G.R. No. L-21671, Feb. 28, 1966; *Ong Kim Kong v. Republic*, G.R. No. L-20505, Feb. 28, 1966; *Co Im Ty v. Republic*, G.R. No. L-17919, July 30, 1966; *Lim Eng Yu v. Republic*, G.R. No. L-20809, Aug. 31, 1966; *Yong Sai v. Republic*, G.R. No. L-20483, Sept. 30, 1966; *Dy Bu Si v. Republic*, G.R. No. L-22076, Oct. 29,

1966; Syson v. Republic, G.R. No. L-21199, May 29, 1967; Go Yanko v. Republic, G.R. No. L-21542, Aug. 10, 1967; Cu King Nan v. Republic, G.R. No. L-20490, June 29, 1968; Republic v. Santos, G.R. No. L-23919, July 29, 1968; Leon Te Poot v. Republic, G.R. No. L--20017, March 28, 1969.

3 Uy v. Republic, G.R. No. L-19578, October 27, 1964.

4 Tio Tek Chai v. Republic, G.R. No. L-19112, October 30, 1964.

5 Ng v. Republic, G.R. No. L-21179, January 22, 1966.

6 Chua Lian Yan v. Republic, G.R. No. L-26416, April 25, 1969.

7 Tan v. Republic, G.R. No. L-16013, March 30, 1963.

8 G.R. No. L-19836, June 21, 1965.

9 Yañes de Barnuevo v. Fuster, 29 Phil. 606; Babcock Templeton v. Babcock, 52 Phil. 130; Gonzales v. Gonzales, 58 Phil. 67; Sikat v. Canson, 67 Phil. 207; Arca v. Javier, 95 Phil. 579, 584-585; Vivo v. Cloribel, G.R. No. L-25411. Oct. 26, 1968.

10 86 Phil. 340.

11 89 Phil. 4.

12 89 Phil. 74.

13 Supra.

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