

## **JULIO OZAMIZ, PETITIONER, VS. HONORABLE MARIANO ZOSA AS JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL AND ELEUTERIO QUIMBO, RESPONDENTS.**

*G.R. No. L-28228. August 31, 1970*

Ponente: CONCEPCION, C.J.

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### **CONCEPCION, C.J.:**

Petitioner Julio Ozamiz seeks to annul an order of dismissal of respondent Honorable Mariano Zosa as Judge of the Court of First Instance of Misamis Occidental.

Said petitioner is a resident of the municipality of Jimenez, province of Misamis Occidental, and a registered voter of Precinct No. 1 of the same municipality. On September 30, 1967, he filed with the Court of First Instance of said province, presided over by respondent Judge, a petition for the exclusion of respondent Eleuterio Quimbo from the list of voters of Precinct No. 16 of said municipality, alleging that he is a citizen, not of the Philippines, but of China. At the hearing of the petition on October 7, 1967, Quimbo filed a motion to dismiss upon the ground "that the petition fails to allege jurisdictional facts" - namely, that he had "applied for registration" and that the same had been "validated or approved"; that "the petition fails to include the election registrar and members of the election board as indispensable parties"; and that having previously exercised the right of suffrage and been elected vice-mayor, he is "presumed to be a Filipino citizen." In an order of the same date, respondent Judge granted the motion and dismissed the petition for exclusion, without costs, upon the theory that the court "has no jurisdiction to inquire into the citizenship" of Quimbo and "that an inquiry" into such question "does not come within the purview of Secs. 7 and 15, Republic Act No. 3588 and Sec. 123 of the Revised Election Code, Republic Act 180, as amended," in view of the summary nature of such proceedings. A reconsideration of said order having been denied, petitioner commenced the present action, alleging that respondent Judge had acted with grave abuse of discretion in issuing the order of October 7, 1967, and, accordingly, prayed that the same be annulled.

More specifically, petitioner maintains that, in proceedings for the exclusion of voters, the court may pass upon any question necessary to decide the issue therein raised, including the question of citizenship of the person sought to be stricken from the list of voters, if the determination of said issue depends - as in the case at bar - upon his political status; and that, if the exclusion case were heard on the merits, he would introduce the documentary evidence attached to the petition herein, showing: (1) that, according to the records in the office of the local civil registrar of Jimenez, Misamis Occidental, Eleuterio Quimbo was born a Chinese citizen, the legitimate son of Laureano Quimbo, born in "Amoy, China," and Angela Azcuna, born in said municipality of Jimenez; and (2) that unlike his brothers, Pedro and Camilo Quimbo, and their mother, Angela Azcuna - after the death of her husband - who filed the requisite affidavits of election of Philippine citizenship and took their respective oaths of allegiance to the Republic of the Philippines, Eleuterio Quimbo had filed no such affidavit of election of Philippine citizenship.

In his unverified answer to the petition herein, respondent Quimbo, inter alia, adopted and reiterated the allegations made, on his behalf, by the Provincial Fiscal of Misamis Occidental, in his likewise, unverified answer to the petition for exclusion, to the effect that his father, Laureano Quimbo: "was born in Mandawe, Cebu, as an illegitimate son of Victoria Quimbo (deceased), who was a Filipino citizen"; that, accordingly, Laureano Quimbo had followed the Philippine citizenship of his mother; and that his son, Eleuterio Quimbo, did not have to elect, therefore, such citizenship. Said respondent averred, also, that "the issue at bar has become purely academic," inasmuch as the 1967 elections - to which said petition "refers naturally" - "are over".

Petitioner's contention is well taken, inasmuch as the authority to order the inclusion in or exclusion from the list of voters necessarily carries with it the power to inquire into and settle all matters essential to the exercise of said authority, unless the law provides otherwise. We are not aware of, and respondents have not pointed out, any such law. Apparently, respondent Judge could not conceive that so important an attribute as one's nationality could be left for determination in an exclusion proceeding, considering the summary nature thereof, and that the decision therein of the Court of First Instance is not - he thought - appealable to a higher court. This process of reasoning overlooks, however, the fact that - except insofar as the right to remain in the list of voters for the elections in relation to which the proceedings had been held - said decision does not constitute *res adjudicata*, not only as regards the nationality of the person concerned, but, even as to his right to vote. In other words, whatever said decision may be, it would neither be conclusive on his political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election. Thus, in *Tan Cohon v. Election Registrar*,<sup>[1]</sup> this Court, speaking through Mr. Justice Barredo, stated:

"x x x 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 proceeding 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."

Insofar as decisions in cases of exclusion do not bar subsequent litigations or constitute *res adjudicata*, the foregoing view reiterates that taken in *Mayor v. Villacete*,<sup>[2]</sup> on May 31, 1961, and first expressed, on December 29, 1928, in *Nuval v. Guray*.<sup>[3]</sup>

We have not overlooked the fact that the Mayor case was dismissed upon the ground that it had become academic, in that the case served no useful purpose, since it sought to dispute the lower court's order of exclusion insofar as the 1959 elections were concerned, and said elections had taken place before the Supreme Court could render its decision. It should be noted, however, that the exclusion proceedings involved therein were held under Rep. Act No. 180, known as the Revised Election Code, pursuant to which a list of voters was prepared for each election, regular or special (Rep. Act No. 180, sections 101 and 102). The case at bar refers, however, to proceedings conducted under Rep. Act No. 3588, as amended by Rep. Acts Nos. 4730 and 5178, the main feature of which is the establishment of a permanent list of voters, substantially distinct and different from that provided for in the Revised Election Code. Under such Code, the inclusion and exclusion proceedings were held in connection with the preparation of the list of voters for each election, so that, after such election, the proceedings became moot, since another list would be prepared for each subsequent election. Upon the other hand, under Rep. Act No. 3588, as amended, inclusion and exclusion proceedings take place always in relation to the contents of one and the same

list of voters, the permanent one.

It is true that, unlike the decisions of courts of first instance in inclusion and exclusion proceedings, under Rep. Act No. 180, as amended, which could not be appealed, those rendered under Rep. Act No. 3588, as amended, are appealable to the Supreme Court,[4] and that petitioner herein contests the order complained of in a pleading captioned "petition for certiorari". Inasmuch, however, as the same was filed on November 3, 1967, or ten (10) days after notice of said order,[5] and, hence, within the period to appeal therefrom, We hold that said petition may and should be regarded as one for review of the order in question.

Then, again, in the Cohon case, a decision of the City Court of Cebu, denying the inclusion of Mrs. Cohon in the list of voters, was brought for review to the Court of First Instance, which dismissed the proceedings upon the ground that the same raised questions of fact, and that the decision of the City Court is - pursuant to Rep. Act No. 5178 - "immediately executory and x x x final as to questions of fact." Thereupon, petitioner gave notice of her intention to appeal from said order of dismissal. The notice, likewise, stated "that an appeal will also x x x be taken from the order of the City Court x x x." In the Supreme Court, appellant assailed, however, not the order of dismissal of the Court of First Instance, but the decision of the City Court. After finding that the Court of First Instance had not erred in dismissing the case and that the records did not disclose any appeal taken from the decision of the City Court, We held it "impossible" for Us to consider the errors allegedly committed by the latter. As a consequence, the ruling therein made is not controlling on the question whether the case at bar should be dismissed as moot, by reason of the fact that the 1967 and 1969 elections have taken place long ago.

In this connection, Dr. Jose P. Laurel - a foremost constitutionalist and one of the outstanding framers of our Fundamental Law, whose wealth of experience in the practical operation of our political system is acknowledged - had the following to say, on behalf of the Court, in *Abañil v. Justice of the Peace Court of Bacolod*[6]:

"While the present controversy may seem academic because the 1938 election is over, we have nevertheless assumed the task of deciding the same on its merits in view of the imperative necessity and importance of having a correct electoral census in the municipality of Talisay, Negros Occidental, and for that matter in any municipality or city in the Philippines, for use in future elections. In the scheme of our present republican government, the people are allowed to have a voice therein through the instrumentality of suffrage to be availed of by those possessing certain prescribe qualifications (Article V, Constitution of the Philippines; sections 93 and 94, Election Code). The people in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect constitute him a representative of the whole people. This duty requires that the privilege thus bestowed should be exercised, not exclusively for the benefit of the citizen or class of citizens professing it, but in good faith and with an intelligent zeal for the general benefit and welfare of the state. (U.S. vs. Cruikshank, 92 U.S., 588.) In the last analysis, therefore, the inclusion in or exclusion from the permanent electoral list of any voter concerns not only the latter in his individual capacity but the public in general."

The considerations that impelled this Court to decide the *Abañil* case on the merits, despite the fact that the election therein contemplated was over, acquire greater significance in the present case. Indeed, the right of suffrage involved therein is dependent upon the question whether or not respondent Eleuterio Quimbo is a foreigner, and our laws are particularly, as well as justifiably, concerned about any form of alien intervention in our political life, whereas the *Abañil* case hinged merely on the ability of some Filipinos to prepare their own ballots as one of the requirements for the possession and exercise of the right of suffrage.

Needless to stress, this right is but an attribute of sovereignty, which, in a democratic state, particularly one of the republican type, like ours, resides in the Filipino people, and "it is elementary that such sovereignty be exercised exclusively by nationals." [7] For this reason, it has been deemed necessary to warn courts "that they should ever

endeavor to bar the possibility that judicial proceedings should be utilized to circumvent the policy of our constitution and laws, even temporarily." [8] In the case at bar, by adopting a theory -neither supported by any statute, decision or legal principle, nor advanced by any of the parties, who thus impliedly accept the jurisdiction of the lower court - the same allowed respondent Quimbo to vote in two (2) general elections, despite the debatable nature of his right to participate therein. What is more, he would, also, manage to participate in the processes for the amendment or revision of no less than our Fundamental Law, soon scheduled to begin, even if he were not entitled thereto, unless the exclusion proceedings against him were finally disposed of soon enough, and this is likely to suffer delays, if the present case were dismissed as moot, to give way to a new proceeding for his exclusion.

WHEREFORE, the order complained of is hereby set aside, and respondent Judge or the Court of First Instance of Misamis Occidental is hereby directed to immediately hear and decide on the merits the petition for exclusion of respondent Eleuterio Quimbo, with the costs of this instance against him.

**IT IS SO ORDERED.**

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, and Villamor, JJ., concur.  
Castro, Teehankee, and Barredo, JJ., in the result.  
Makasiar, J., did not take part.

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[1] L-29166, August 29, 1969.

[2] L-16190 and L-16369.

[3] 52 Phil. 645, 648.

[4] *Tan Cohon v. Election Registrar*, *supra*.

[5] October 24, 1967.

[6] 70 Phil. 28, 30-31.

[7] *Co Chiong v. Cuaderno*, 83 Phil. 242, 251; italics supplied.

[8] *Board of Commissioners v. Domingo*, L-21274, July 31, 1963.

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