

IN THE MATTER OF THE PETITION OF TANPA ONG ALIAS PEDRO TAN TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. TANPA ONG ALIAS PEDRO TAN, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE P...

G. R. No. L-20605. June 30, 1966

Ponente: REGALA, J.

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REGALA, J.:

The Government appeals from the decision of the Court of First Instance of Cagayan granting Philippine citizenship to Tanpa Ong.

On October 26, 1958, the petitioner, a citizen of Nationalist China, married, with 7 children, filed with the lower court a petition for naturalization. Although no formal opposition was filed against the application for naturalization, the provincial fiscal, during the hearing, appeared in behalf of the Solicitor General for the government and cross-examined the witnesses for the petitioner. On March 9, 1960, the lower court rendered judgment in favor of the applicant, finding him to possess all the qualifications and none of the disqualifications to become a citizen.

On April 18, 1962, pursuant to Republic Act No. 530, petitioner filed a petition for the execution of judgment in order that he may take his oath of allegiance. On May 9, 1962, the lower court ordered the granting of the petition. And on May 15, 1962, upon a manifestation filed by the provincial fiscal of Cagayan that he would not interpose any appeal from the order of the court, the petitioner took his oath as a Filipino citizen and a certificate of naturalization was issued to him.

The Office of the Solicitor General, on May 25, 1962, received from the Clerk of Court of the Court of First Instance of Cagayan copies of the petition for execution of judgment, the court order allowing petitioner to take his oath as a citizen of the Philippines and for the issuance to him of a certificate of naturalization, the oath of allegiance, and the certificate of naturalization.

On June 1, 1962, the said Solicitor General filed a motion for reconsideration of the order of May 9, 1962, with a prayer that said order be set aside; to declare the oath of allegiance to be of no legal effect; and to cancel and render null and void the certificate of naturalization, on the ground that the applicant does not have a lucrative trade or occupation. The lower court denied the motion, hence this appeal.

It is contended that the lower court erred: (1) in not finding that petitioner has failed to establish by satisfactory and competent evidence that he meets all the requirements set forth in section 1 of Republic Act No. 530; and (2) in prematurely administering the oath of allegiance to the petitioner notwithstanding the fact that the order of May 9, 1962 was not yet final.

In his main petition, Tanpa Ong stated that he is employed in the Philippine American Cigar and Cigarette Manufacturing Co., Pasay City, as promotional salesman for the Cagayan Valley, from which he derives an

annual income of P3,000.00. During the hearing of the petition for naturalization, he testified that in addition to his income, his wife is earning P1,440.00 a year as teacher in the Ke Bing School. When his petition to take his oath was heard, he also stated that he resigned from the Philippine American Cigar and Cigarette Manufacturing Co. and got employment with the La Suerte Cigar and Cigarette Manufacturing Co. with a salary of P3,000.00 a year plus allowance and per diems at P300.00 a month. So he claims that all in all he has a lucrative income of P8,040.00 a year.

We cannot agree with the contention of petitioner that he has a lucrative income. The additional income of petitioner's wife is immaterial for; under the law, the petitioner should be the one to possess "some known lucrative trade, profession or lawful occupation." (paragraph 4, section 2, Commonwealth Act No. 473; *Li long Pek vs. Republic*, G. R. No. L-20912, November 29, 1965). Also, allowances are not to be considered in determining the lucrativeness of the income for they may or may not be given, the employer not being in duty bound to give them. (*Yu Kian Chie vs. Republic*, G. R. No. L-20169, February 26, 1965.) Likewise, the considerable increase of petitioner's income after the filing of the petition cannot be taken into account for the requirement of the law in this respect has reference to the time of the filing of the petition. (See *Dy vs. Republic*, G. R. No. L-20348, December 24, 1965, and cases cited therein.)

Thus, the income of the petitioner as contemplated in the naturalization law is only P3,000.00 a year. Considering that he has a wife and seven children to support, this income is not sufficient to meet the high cost of living at present. In the case of *Keng Giok vs. Republic*, G. R. No. L-13347, August 31, 1961, We held that an income of P9,074.50 per annum is not sufficient for a married applicant with a wife and five children to support.

We agree with the Solicitor General that the court below has administered the oath of allegiance to the petitioner ahead of time. It was on May 9, 1962 that the court issued the final order allowing the petitioner to take his oath. Barely six days thereafter, or on May 15, 1962, the petitioner was allowed to take his oath.

Under section 3, Rule 41 of the Rules of Court, appeal may be taken within thirty days from notice of an order or judgment. Section 1, Rule 39, provides that a judgment or order becomes final when no appeal has been perfected within the prescribed period. Applying the said provisions,[1] when the petitioner took his oath of allegiance on May 15, 1962, the time to appeal had not yet expired and the order of May 9, 1962 had not yet become final.

Petitioner, however, contends that the provincial fiscal represented the government without intervention from the Solicitor General from the commencement of the proceedings until the applicant took his oath and for this reason, being thoroughly familiar with the case, acted accordingly in filing a manifestation that he will not interpose an appeal from the order that granted petitioner's motion to take his oath and such manifestation waived the right to appeal; and when a waiver of the right to appeal is made, the decision becomes inevitably final and executory. He further contends that the Solicitor General cannot now dishonor what the provincial fiscal did in this case as it is presumed that the latter was properly authorized. On this contention, this Court in the case of *Republic vs. Chiu*, G. R. No. L-20846, October 31, 1964, has ruled:

"There is no question that the appearance of the City Attorney for the government, in the hearing, was authorized. This authorization, however, in the light of the foregoing provision of law, cannot be construed to have divested the Solicitor General of his control of the stand or defense of the State, nor did it make of the City Attorney of Davao the counsel of record for the oppositor Republic of the Philippines. Note that the law prescribes that the Solicitor General shall appear on behalf of the government 'either himself or through his delegate or the provincial fiscal concerned.' It did not say, 'the Solicitor General or the provincial fiscal can appear on behalf of the Republic of the Philippines, in order to make of the latter an alternate of the state counsel. As thus worded, what the law allows is merely the physical substitution of the Solicitor General in such proceedings. Consequently, notwithstanding the delegation to the City Attorney of the duty to appear at

and attend the hearing in this case, the Solicitor General remained the counsel of record for the oppositor. This is not a case where a party litigant is represented by two lawyers, notice to the one of whom is notice to the client. Here, the City Attorney did not appear as counsel for the Republic, but merely as representative of the Solicitor General who, as stated, remained the counsel of record for the Republic."

Fortunately, it has been the consistent doctrine of this Court that the right or qualifications of an applicant to become a Philippine citizen may be inquired into at any stage of the proceedings, and, as a matter of fact, the State may not only interpose an appeal from the decision granting the petition, but can object to petitioner's qualifications during the hearing of the petition to take oath, [2] or else the privileges of citizenship will be conferred to those who lack the necessary qualifications due to the leniency or unawareness of some representatives of the Government of recent doctrines of this Court concerning naturalization.

IN VIEW OF THE FOREGOING, the order allowing the applicant to take the oath of allegiance, as well as the oath administered pursuant thereto, and the corresponding certificate of citizenship issued, are hereby declared null and void. Judgment reversed, with costs against the petitioner-appellee.

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

[1] Under Rule 143, the Rules of Court may be applied to naturalization cases "by analogy or in a suppletory character and whenever practicable and convenient."

[2] See Republic vs. Go Bon Lee, G. R. No. L-11499, April 29, 1961; Ono Ching Guan vs. Republic, G. R. No. L-15691, March 27, 1961; Lim Lian v. Republic, G. R. No. L-3575, Dec. 16, 1950; Yap Chin vs. Republic, G. R. No. L-4177, May 29, 1953; Urn Hok Albano vs. Republic, G. R. No. L-10921, Oct. 31, 1958; Dalmacio Cheng @ Benito Lim vs. Republic, G. R. No. L-20013, March 30, 1965; and Ong So vs. Republic, supra.

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