

IN THE MATTER OF THE PETITION OF JUANITO SY TO BE ADMITTED A CITIZEN OF THE PHILIPPINES.

G.R. No. L-32287. February 28, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

From the records, it appears that on February 17, 1961, petitioner Juanito Sy filed in the Manila Court of First Instance a petition for naturalization, which does not expressly state that he is of good moral character as required by Section 7 of Commonwealth Act No. 473, as amended; although said petition expressly includes the general averment that he has all the qualifications and none of the disqualifications, with the latter specifically enumerated, including his not having been convicted of any crime involving moral turpitude (pp. 3-5, ROA).

The notice of the petition as published in the Daily Mirror, a newspaper of general circulation, and as posted on the Court bulletin board, did not restate verbatim the petition, but merely summarized some of the averments therein (pp. 6-7, ROA).

After hearing, the Court rendered a decision dated December 11, 1961 granting the petition "subject to the provisions of Republic Act 530" (pp. 7-9, ROA).

On December 22, 1961, the Office of the Solicitor General received a copy of the said decision, from which no appeal was interposed (p. 10, ROA).

On May 20, 1965, the Solicitor General filed a motion to dismiss the case for failure to prosecute and for lack of interest on the part of the petitioner on the ground that he failed to file a motion that he be allowed to present evidence to comply with Section 1 of Republic Act No. 530, despite the lapse of about four years from December 22, 1961, invoking Section 3 of Rule 17 of the Revised Rules of Court authorizing the dismissal of a case upon the defendant's motion or the court's own motion for failure of the plaintiff to prosecute his action for an unreasonable length of time, or to comply with the rules or any order of the court (pp. 10-11, ROA).

On May 21, 1965, petitioner filed an opposition to the motion to dismiss as well as a motion to set for final hearing pursuant to Republic Act No. 530, claiming that the delay in prosecuting his case was due to the fact that he had been very busy attending to a criminal case he filed against certain persons, which case was terminated only a few months before and that he is now ready to secure clearances preparatory to his oath-taking under Section 1 of Republic Act No. 530 (pp. 11-12, ROA).

On May 22, 1965, the court denied the motion to dismiss and set the reception of petitioner's evidence on June 19, 1965 (p. 12, ROA).

On July 16, 1965, the Government filed an opposition to the petitioner's oath-taking as a naturalized Filipino citizen as well as a motion to dismiss the petition for naturalization on the ground that his annual income of P3,000.00 at the time of the filing of the application is not lucrative even though petitioner is a bachelor (Anthony Sy vs. Republic, L-19636, June 30, 1965 and cases cited therein); that because of the inadequacy of his income,

he delayed his petition to have the case set for oath-taking in spite of the lapse of almost four years from the decision of December 11, 1961; that petitioner failed to file his statement of assets and liabilities for 1957 as required by Section 5 of Republic Act No. 2070, otherwise known as the Tax Census Law, which penalizes such omission and such failure renders the petitioner liable to deportation; and that petitioner has not conducted himself in an irreproachable manner as he has failed to notify the Bureau of Immigration of his change of address from 69 Ongpin St., Binondo, Manila, to 652 Barcelona St., San Nicolas, Manila, and then to 519 Lavezares St., San Nicolas, Manila (pp. 12-14, ROA).

On September 7, 1965, after the hearing on the oath-taking, the Government filed a supplemental opposition on the ground that petitioner finished his elementary education at the Westminster High School, a Chinese school run and operated by Chinese subjects and populated mainly by Chinese students, showing that petitioner has not evinced a sincere desire to acquire Filipino citizenship (pp. 14-15, ROA).

On September 13, 1965, petitioner filed a reply to said supplemental opposition asserting that his obtaining his elementary education up to the fifth grade at the Westminster High School allegedly operated by Chinese subjects and populated mainly by Chinese students was not of his own desire but that of his parents; that his filing a declaration of intention one year prior to the filing of his petition shows his sincerity to become a Filipino citizen; that the case of *Harry Ong Ping Seng vs. Republic* (L-19575, Feb. 26, 1965), is not applicable to him because said case involved an applicant-parent who enrolled his children in a Chinese school, clearly indicating that the said applicant did not evince a sincere desire to mingle socially with the Filipinos; that his having completed his high school education at the National University, owned and operated by Filipinos and patronized by Filipino students, evinced his sincere desire to become a Filipino; and that he has complied with the requirements of Section 1 of the Republic Act No. 530 (pp. 15-16, ROA).

On December 28, 1965, the Solicitor General received a copy of the order dated October 23, 1965, stating that the petitioner satisfactorily established his compliance with the requirements of Republic Act No. 530 with the specific finding that in 1964, his net income as an employee of Liong Hong Trading was P5,400.00, and allowed petitioner to take his oath of allegiance as a Filipino citizen (pp. 16)19, ROA).

On December 29, 1965, the Government appealed from said order of October 23, 1965 (p. 18, ROA).

(1) We have ruled with undeviating uniformity "that a naturalization proceeding is not simply a private contest between the applicant and the Solicitor General but is a matter impressed with the highest public interest, involving as it does an inquiry as to when an alien should be allowed to enjoy the coveted boon of Filipino citizenship. It is for this reason that the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law. The government can at all stages of the proceeding raise the issue of such non-compliance even without filing a formal opposition to the petition. For the government, it is never too late. The appeal from the order of the lower court authorizing the taking of the oath of allegiance subjects the entire naturalization proceeding to scrutiny by the Supreme Court to determine whether the applicant has all the qualifications and none of the disqualifications and whether he has complied with the procedural requirements of the law, even if those matters are not touched in the briefs or pleading of the parties. And if the government files an opposition, it is not duty bound to specify the grounds therefor. If the applicants fails to establish by affirmative proof his compliance with the legal requirements, the court should deny his application." (*Chua Bon Chiong, etc. vs. Republic*, L-29200, May 31, 1971, 39 SCRA 318, 323-324; *Republic vs. Cloribel, et. al.*, L-27281, June 30, 1970, 33 SCRA 795, 799-800; *Republic vs. Santos*, L-23919, July 1968, 24 SCRA 314, 317-320; *Yong Sai vs. Republic*, L-20483, Sept. 30, 1966; *Lim vs. Republic*, L-21193, Sept. 30, 1966; *Ching Leng vs. Republic*, L-6268, May 10, 1954; *Tan Hoi vs. Republic*, L-15266, Sept. 30, 1960; *Go Kay See vs. Republic*, L-17318, Dec. 27, 1962; *Ong So vs. Republic*, L-20145, June 30, 1965; *Pe vs. Republic*, L-20375, Jan.

31, 1966; *Go Im Ty vs. Republic*, 17919, July 30, 1966; *Chua Tiong Seng vs. Republic*, L-21422, Dec. 18, 1967.)

(2) The requirement by Section 9 of Commonwealth Act No. 473, as amended, that the copy of the petition to be posted and published should be a textual or verbatim restatement of the petition as filed, is jurisdictional. Non-compliance therewith, as in the instant case, nullifies the proceedings including the decision rendered therein in favor of the applicant (*Chua Bon Chiong vs. Republic*, supra; *Dy vs. Republic*, L-21958, September 28, 1970, 35 SCRA 65, 73; *Luchayco vs. Republic*, L-25814, July 30, 1969, 28 SCRA 997, 1000; *Ngo vs. Republic*, L-25805, February 27, 1967, 27 SCRA 88, 90-91).

(3) The consistent doctrine is that the lucrative level of an applicant's annual income is determined as of the time of the filing of the application (*In re Lim Biak Chiao vs. Republic*, L-28541, January 14, 1974; *Tan Kian Sy vs. Republic*, L-31376, July 28, 1972, 46 SCRA 66; *Sy vs. Republic*, L-24857, February 17, 1970, 31 SCRA 408; *Pessumal Bhrojraj vs. Republic*, L-24023, May 8, 1969, 28 SCRA 21; *Tan vs. Republic*, L-22077, February 18, 1967, 19 SCRA 367; *Tan vs. Republic*, L-19580, April 30, 1965, 13 SCRA 663, 667; *Ong Tai vs. Republic*, L-19418, December 23, 1964, 12 SCRA 550).

Mr. Justice Fernando, in behalf of the Court, in the *Lim Biak Chiao* case, supra, restated the accepted definition of a gainful employment to the effect that it is not enough that his income is sufficient for the ordinary necessities and that such an income to be lucrative must leave him an appreciable margin over his expenses to be able to provide for his adequate support in the event of unemployment, sickness or disability to work and thus avoid his becoming the object of charity or a public charge. Thus an applicant with only one child was disqualified despite the fact that his annual income was P6,300.00 (*Tan vs. Republic*, L-16013, March 30, 1963, 7 SCRA 526). Petitioner's income of about P3,000.00 in 1961 cannot be considered lucrative in the City of Manila where the cost of living is high and said income would even be less adequate the moment he gets married, even if he had already an income of about P5,400.00 in 1964, about three years after the decision in his favor dated December 11, 1961 (*Segundo Sy Cezar vs. Republic*, L-14009, May 31, 1961, 2 SCRA 395; *Tan vs. Republic*, L-14860, May 30, 1961, 2 SCRA 201; *Jew Chong vs. Republic*, L-14343, May 23, 1961, 2 SCRA 99). An income of P250 a month in 1961 was not within the lucrative level (*Yu vs. Republic*, L-20895, Feb. 28, 1967; *Sia Faw vs. Republic*, L-24782, Nov. 17, 1967, 21 SCRA 893). An income of P200.00 a month with free board and lodging was not lucrative in 1960 (*Sy vs. Republic*, L-24857, Feb. 17, 1970, 31 SCRA 408, 411; *Ong Ling Chuan vs. Republic*, L-18550, Feb. 28, 1964). An income of P300.00 a month is likewise inadequate (*Kock Tee Yap vs. Republic*, L-20992, May 14, 1966; see also *Leon Te Poot vs. Republic*, L-20017, March 28, 1966; *Lim vs. Republic*, L-23591, March 28, 1969). An increase in the income of the petitioner subsequent to the filing of the petition cannot be taken into consideration (*Leon Te Poot vs. Republic*, supra; *Tan vs. Republic*, L-22077, Feb. 18, 1967).

(4) We have likewise repeatedly ruled that failure to aver in the petition that the applicant is of good moral character as required by Section 7 of Commonwealth Act No. 473, as amended, being a jurisdictional requirement, is fatal to the petition (*Chua Bon Chiong, etc. vs. Republic*, supra; *Tan Kian Sy vs. Republic*, L-31376, July 28, 1972; *Dy vs. Republic*, supra; *Pidelo vs. Republic*, L-7796, Sept. 29, 1955, 97 Phil. 632). In *Lim Cho Kuan vs. Republic* (L-21198, Jan. 22, 1966, 16 SCRA 25), reaffirmed in the 1972 case of *Tan Kian Sy vs. Republic*, supra, We enunciated the rationale of this jurisdictional requirement, thus:

"The above-quoted provision contains two parts: (1) that the applicant must be of good moral character and believe in the principles underlying the Philippine Constitution; and (2) he must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living. The first part speaks of the personal quality and belief of the applicant; whereas, the second part speaks of his public and social

conduct. Stated otherwise, a person's conduct in relation to the constituted government and the community at large may be irreproachable but his private life or dealings with a particular individual may be such as to render his moral character objectionable. For this reason, the law mentions the aforesaid requisites separately and even puts a comma between them. It follows that good moral character and proper and irreproachable conduct should be alleged and proved separately. Otherwise, the Legislature would have omitted the phrase 'he must be of good moral character ***,' 'if the same is necessarily included in the phrase 'must have conducted himself in a proper and irreproachable manner during his entire period of his residence in the Philippines in his relations with the constituted government as well as with the community in which he is living.'" (46 SCRA 74-75).

(5) Until October 23, 1965, the date of the appealed order, the applicant failed to submit a duly authenticated copy of the intention to renounce Chinese nationality issued by the Ministry of Interior of the Republic of China. This fact justifies likewise the denial of his petition (*Oh Hek How vs. Republic*, L-27429, Aug. 27, 1969, 29 SCRA 94; *Leng vs. Republic*, L-19836, June 21, 1965).

WHEREFORE, the decision dated December 11, 1961 and the order dated October 23, 1965, are hereby reversed and set aside, with costs against petitioner-appellee.

Esguerra and Muñoz Palma, JJ., concur.

Makalintal and Castro, JJ., concur in the result.

Teehankee, J., took no part.

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