

QUITERIO HERMO, PETITIONER, VS. HON. ROSALIO G. DELA ROSA, JUDGE, RTC-BRANCH 28, MANILA, RESPONDENT.*A.M. No. RTJ-92-897. November 24, 1998*

Ponente: QUISUMBING, J.

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The administrative case now before us stemmed from the petition for naturalization filed by Sorsogon governor Juan G. Frivaldo on September 20, 1991 and heard before the sala of herein respondent, Hon. Rosalio G. dela Rosa, then presiding judge of Branch 28, Regional Trial Court of Manila. That case was docketed as SP Proc. No. 91-58645.

Respondent judge set Frivaldo's petition for hearing on March 16, 1992 in an order dated October 7, 1991.[1] He directed publication of the order and of Frivaldo's petition in the Official Gazette and in a newspaper of general circulation once a week for three consecutive weeks, the last publication of which should be at least six months before the date of hearing. Judge de la Rosa likewise required the posting of the order and of the petition in a public and conspicuous place in the office of the Clerk of Court of the Manila RTC. Frivaldo caused the publication of respondent's order in the Philippine Star.

On January 20, 1992, Frivaldo filed a motion[2] to set the hearing of his petition ahead of schedule since he was planning to run in the elections of May 11, 1992 and he had to file his certificate of candidacy before March 15, 1992, just a day before the scheduled hearing. Respondent judge granted the motion and reset the hearing of February 21, 1992. It does not appear that the order granting the motion was published or posted. On February 27, 1992, respondent judge rendered his decision[3] granting Frivaldo's petition and on the same day, Frivaldo took his oath of allegiance.[4]

Quiterio Hermo, of Sorsogon, Sorsogon, learned of the above proceedings when a friend of his, through his secretary Alma Catu, sought information about the progress of the case from the Clerk of Court of Branch 28. Catu went to the office of the branch clerk on March 9, 1992 and was informed that the hearing of the petition was reset to an earlier date and that it was still awaiting resolution. Later, Catu discovered that the petition had already been favorably decided in favor of Frivaldo as early as February 27, 1992, or 11 days before she went to the office of the branch clerk.[5]

In a letter dated March 16, 1992, Hermo complained to Justice Ernani Cruz Paño, then the Court Administrator, and charged respondent judge with gross ignorance of the law and malfeasance in the performance of his official duties. Attached to his letter was a complaint-affidavit outlining the alleged irregularities committed by respondent judge in the proceedings held before his sala in connection with Frivaldo's petition.[6]

Specifically, Hermo is questioning the following steps taken by respondent in connection with Frivaldo's petition:

1. Non-publication of respondent's order of publication in the Official Gazette;
2. Resetting of the hearing to an earlier date, which date is within six months from the date of the petition's last

publication which was November 21, 1991;

3. Allowance of the petition and of Frivaldo's taking his oath of allegiance on the same date the petition was heard;
4. Allowing Frivaldo to take his oath of allegiance before two years had elapsed from the date of the decision;
5. Non-submission by Frivaldo of the affidavit of two disinterested persons to "testify on (his) wherewithals";
6. Allowance of Frivaldo's petition despite the fact that he was convicted of libel in a case filed in Sorsogon; and
7. An apparent attempt to cover up the proceedings as shown by Alma Catu's experience when she tried to inquire into the progress of the case.

Aside from this administrative case, three other petitions were filed before this Court in connection with Frivaldo's petition and his reacquisition of his Filipino citizenship: G.R. No. 104654, G.R. No. 105715, and G.R. No. 105735. Essentially, these petitions dealt with the following issues: (1) whether or not Frivaldo, then a naturalized American citizen, validly reacquired his Filipino citizenship in SP Proc. 91-58645, and (2) whether or not Frivaldo was qualified to run in the 1992 elections and serve as governor of Sorsogon. These petitions were consolidated and were decided by this Court on June 6, 1994 in the case of *Republic v. De la Rosa*.^[7]

On June 15, 1993, this Court resolved to hold in abeyance action on the complaint filed by Hermo pending the determination of the main case. On July 26, 1994, Hermo filed an urgent motion to resolve his complaint, in view of our decision in *Republic v. De la Rosa*.

On February 18, 1997, we referred this case to the Office of the Court Administrator, already under Justice Alfredo Benipayo, for evaluation, report, and recommendation. The OCA submitted its report on April 16, 1997.^[8]

In *Republic v. De la Rosa*, this Court remarked on the proceedings before respondent judge:

...The naturalization proceedings in SP Proc. No. 91-58645 was full of procedural flaws, rendering the decision an anomaly.

...

The trial court never acquired jurisdiction to hear the petition for naturalization of private respondent. The proceedings conducted, the decision rendered and the oath of allegiance taken therein, are null and void for failure to comply with the publication and posting requirements under the Revised Naturalization Law.

...

The proceedings of the trial court was marred by the following irregularities: (1) the hearing of the petition was set ahead of the scheduled date of hearing, without a publication of the order advancing the date of hearing, and the petition itself; (2) the petition was heard within six months from the last publication of the petition, (3) petitioner was allowed to take his oath of allegiance before the finality of judgment; and (4) petitioner took his oath of allegiance without observing the two-year waiting period.

A decision in a petition for naturalization becomes final only after 30 days from its promulgation and, insofar as the Solicitor General is concerned, that period is counted from the date of his receipt of the copy of the decision (*Republic v. Court of First Instance of Albay*, 60 SCRA 195 [1974]).

Section 1 of R.A. No. 530 provides that no decision granting citizenship in naturalization proceedings shall be executory until after two years from its promulgation in order to be able to observe if: (1) the applicant has left the country; (2) the applicant has dedicated himself continuously to a lawful calling or profession; (3) the

applicant has not been convicted of any offense or violation of government promulgated rules; and (4) the applicant has committed any act prejudicial to the interest of the country or contrary to government announced policies.

Even discounting the provision of R.A. No. 530, the courts cannot implement any decision granting the petition for naturalization before its finality.[9]

We do not see any substantial reason now to disturb the foregoing findings.

However, the duty to publish the petition and to post the same as well as the general notice of hearing belongs to the clerk of court. Failure of the clerk of court to fulfill this duty might not necessarily be imputable to respondent judge.

But, the failure to observe the procedure required by law as regards the date of hearing the petition and granting the same is clearly attributable to respondent judge. Section 1 of Republic Act No. 530 clearly provides that

...no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation...

Under Section 2 of the same law, the applicant may only take his oath of allegiance after the Solicitor General finds that within the period of two years from the date the decision granting citizenship is promulgated, the applicant

...has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.

As earlier stated, respondent judge heard Frivaldo's petition before the lapse of six months from the date the petition was published in a newspaper of general circulation.[10] He allowed Frivaldo to take his oath of allegiance on the same day the petition was granted, disregarding the requisite two-year waiting period.

Needless to say, observance of the law he is bound to know is required of respondent judge. The procedure he followed is clearly erroneous, thus precluding any inference that they were due only to some mistake or mere inadvertence.

As observed in the report submitted by the Office of the Court Administrator:

The errors committed by respondent Judge in the instant case are very patent...

The actuations of respondent Judge in outrightly granting the Petition of Mr. Juan G. Frivaldo despite the clear provisions of the Revised Naturalization Law (CA No. 63 as amended by CA No. 473) is highly irregular.

Under Section 9 of the aforesaid law, a petition for naturalization and the order setting the same for hearing must be published once a week for three consecutive weeks in the Official Gazette and a newspaper of general circulation.[11] Compliance therewith is jurisdictional (*Po Yo Bi v. Republic*, 205 SCRA 400 [1992]). In the case at bar, respondent allowed the hearing of the petition way ahead of the scheduled hearing, without publishing the order advancing the date of the hearing and the petition itself. Respondent should have known that publication and posting of the petition and order in its full text are jurisdictional requirements and absent thereof the court cannot acquire jurisdiction over the petition (*Sy v. Republic*, 55 SCRA 724 [1974]). Moreover, the petition was within the six months period from the last publication of the petition. What the law provides is that the new petition must be heard till after 6 months from the last day of publication. But this respondent Judge did not observe.

What made the matter more questionable is the fact that six (6) days after the hearing of the petition was scheduled, a decision was rendered by respondent Judge on February 27, 1992. On that very same day it was rendered, Mr. Frivaldo was allowed to take his oath of allegiance despite the fact that the decision has not yet become final.[12]

WHEREFORE, we find respondent judge liable for serious procedural lapses with regard to the proceedings in SP Proc. No. 91-58645, and order him to pay a FINE of P5,000.00 to be deducted from benefits previously withheld from him pending the determination of this administrative case.

SO ORDERED.

Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, and Pardo, JJ., concur.

Narvasa, C.J., No part: Related to a party.

Martinez, J., on leave.

[1] Rollo, p. 38.

[2] Id., pp. 39-40.

[3] Id., p. 45.

[4] Id., p. 46.

[5] Id., pp. 8, 15.

[6] Id., pp. 6-8.

[7] 232 SCRA 785 (1994).

[8] Rollo, pp. 70-73.

[9] Republic v. De la Rosa, supra, pp. 795-797.

[10] It does not appear that the petition was published in the Official Gazette as required by C.A. No. 473.

[11] Actually, only the petition is required to be published in the Official Gazette and a newspaper of general circulation in the province where petitioner resides. See Section 9, C.A. No. 473.

[12] Rollo, pp. 71-72.

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