

IN THE MATTER OF THE PETITION OF ENG SIONG ONG ALIAS LORENZO ONG TO BE ADMITTED A CITIZEN OF THE PHILIPPINES, ADELA YAP, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES...

G.R. No. L-27430. May 17, 1972

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Adela Yap, the legal wife of Eng Siong Ong alias Lorenzo Ong who is a naturalized Filipino citizen, filed a petition for a judicial declaration that she has all the qualifications and none of the disqualifications to become a Filipino citizen under Section 15 of Commonwealth Act No. 473. The petition was filed in the case entitled "In the Matter of the Petition of Eng Siong Ong, alias Lorenzo Ong, to be admitted a Citizen of the Philippines", docketed as Naturalization Case No. 445 of the Court of First Instance of Cebu, which is the same case where the petition for naturalization of her husband was granted. Eng Siong Ong is already a naturalized Filipino citizen, as evidenced by Certificate of Naturalization No. 3200 issued on June 16, 1962.

In her petition, Adela Yap made allegations which serve as basis for evidence to show that she has all the qualifications, and none of the disqualifications, to be a Filipino citizen, as required by the Revised Naturalization Law (Commonwealth Act No. 473). She also alleged that she had applied for cancellation of her alien registry with the Bureau of Immigration after the naturalization of her husband, but her application was denied on the ground that under the new policy of the Bureau of Immigration the qualifications of the wife to acquire Philippine citizenship should be passed upon by the courts in a judicial proceeding and not in an administrative proceeding. She prayed that she be declared a Filipino citizen by marriage to a citizen of the Philippines and that her alien certification of registration in the Bureau of Immigration and other government offices be ordered cancelled.

The notice of hearing on the aforementioned petition of Adela Yap was duly published in the "Republic News", a newspaper of general circulation in the City and province of Cebu and in other provinces of the Philippines.

On May 9, 1966, after due hearing, the Court of First Instance of Cebu issued an order, the dispositive portion of which reads as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this Court finds and so hereby declares that the movant Adela Yap is possessed of all the qualifications and none of the disqualifications for Philippine citizenship by naturalization prescribed by the pertinent provisions of Commonwealth Act No. 473, as amended, under which law she might herself be lawfully naturalized, if that were necessary.

"Let all the administrative agencies of the Government, particularly the Local Civil Registrar of Cebu City and the Commissioner of Immigration act in accordance with the implication of this order."

The Solicitor General appealed to this Court from the foregoing order of the Court of First Instance of Cebu. In his appeal the Solicitor General makes the following assignment of errors:

1. The trial court erred in taking cognizance of and jurisdiction over the proceedings despite lack of publication of the petition in the Official Gazette as required by law.
2. The trial court erred in proceeding with the hearing of the petition notwithstanding that it was fatally defective on its face.
3. The trial court erred in finding that the petitioner has all the required qualifications to be naturalized even if it is patent that she is without any lucrative occupation.
4. The trial court erred in granting the petition.

Appellee Adela Yap filed her brief in answer to that of the Solicitor General. This case was considered submitted for decision on July 8, 1968.

While this case was pending decision, this Court, on October 4, 1971, rendered a decision in the case of Moy Ya Lim Yao vs. Commissioner of Immigration, G.R. No. L-21289 (41 SCRA 292), wherein it was held that "under Section 15 of Commonwealth Act No. 473 (Revised Naturalization Law) an alien woman marrying a Filipino, native born or naturalized, becomes ipso facto a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law". It was also held that "an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as a Filipino citizen, provided that she does not suffer from any of the disqualifications under said Section 4." [1] The decision, in effect, ruled that it is not necessary for an alien woman who is married to a Filipino citizen to prove in a judicial proceeding that she possesses all the qualifications set forth in Section 2 and none of the disqualifications under Section 4, both of the Revised Naturalization Law.

On February 22, 1972 counsel for Adela Yap filed a motion to dismiss the appeal of the Solicitor General upon the ground that said appeal had become moot and academic under the rulings laid down by this Court in the abovementioned Moy Ya Lim Yao case.

This Court required the Solicitor General to comment on the motion to dismiss appeal. In his comment, the Solicitor General asserts that the appeal has not become academic, but that what became academic is the judicial proceedings instituted by Adela Yap to declare her possessed of the qualifications and none of the disqualifications for Philippine citizenship by naturalization – which proceedings were had in the same case as that of her husband (Naturalization Case No. 455 of the Court of First Instance of Cebu). It is the stand of the Solicitor General that the petition filed by Adela Yap has become unnecessary under the rulings in the Moy Ya Lim Yao case. The Solicitor General further avers that the dismissal of the appeal would render final the order of the lower court that was appealed from, so that what should be dismissed is the petition of Adela Yap which was filed in Naturalization Case No. 455 of the Court of First Instance of Cebu, and the result would thus be the setting aside of the order appealed from.

This Court required the appellee Adela Yap to file a reply to the comment of the Solicitor General. In his reply, counsel for Adela Yap states that the reasons for the appeal interposed by the Solicitor General in this case have no more validity in the light of the rulings of this Court in the decision in the Moy Ya Lim Yao case, so that what remains to be done is to have the appeal dismissed.

The writer of this decision, along with three other members of this Court had dissented from the majority opinion in the Moy Ya Lim Yao case, but as long as the decision in that case is not set aside the ruling therein should be followed and applied. Accordingly, this Court sustains the stand of the Solicitor General that under the ruling in the Moy Ya Lim Yao case the proceedings had in the Court of First Instance of Cebu in connection with the petition of Adela Yap had become unnecessary, and the order issued by the Court of First Instance of Cebu

granting said petition should be set aside and given no effect.[2]

Inasmuch as the petition was filed in Naturalization Case No. 455, which was the case in connection with the petition for naturalization of her husband Eng Siong Ong alias Lorenzo Ong and the judgment in that case as far as Eng Siong Ong is concerned has become final, it is only the petition of Adela Yap that should be ordered dismissed for having become moot and academic.

WHEREFORE, the motion of petitioner-appellee, Adela Yap, to dismiss the appeal of the Solicitor General is denied; and judgment is hereby rendered, setting aside the order of the Court of First Instance of Cebu, dated May 9, 1966, that was appealed from, and ordering the dismissal of the petition filed by petitioner-appellee Adela Yap in Naturalization Case No. 455 of the Court of First Instance of Cebu. No costs.

IT IS SO ORDERED.

Reyes, J.B.L., Acting C.J., Makalintal, Fernando, Teehankee, and Barredo, JJ., concur.

Makasiar, J., dissents in accordance with the dissenting opinion of Mr. Justice Jose B. L. Reyes in the Moy Ya Yao case.

Castro and Antonio, JJ., did not take part.

Concepcion, C.J., on official leave.

[1] As quoted from the decision.

[2] Felisa Lee, etc. vs. Commissioner of Immigration, G.R. No. L-23446, December 20, 1971; 42 SCRA 561.

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