

IN THE MATTER OF THE PETITION OF PESSUMAL BHROJRAJ TO BE ADMITTED A CITIZEN OF THE PHILIPPINES, PESSUMAL BHROJRAJ, PETITIONER-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITO...

G.R. No. L-24023. May 08, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Upon petition filed on September 18, 1961, Pessumal Bhrojraj, born on January 15, 1897, in Hyderabad, Sind, India, and who immi-grated into the Philippines about the year 1917, sought Philippine citizenship. The State opposed. The Court of First Instance of Surigao del Norte, in its decision rendered on July 7, 1963,[1] declared him eligible to be admitted as a Filipino citizen and granted his petition. The State appealed.

Reasons there are why the judgment should go for the State.

1. A condition usually required before a petition for naturalization may be considered is that petitioner should file with the Bureau of Justice a declaration of bona fide intention to become a citizen of the Philippines one year prior to the institution of the proceedings.[2] One statutory exception set forth in Section 6 of the Revised Naturalization Law, as amended by Commonwealth Act 535, is accorded "those who have resided continuously in the Philip-pines for a period of thirty years or more before filing their appli-cation."

Paragraph 7 of the petition avers that petitioner continuously resided in the Philippines for 44 years at least immediately pre-ceding the filing of said petition: since 1917, 32 years in the island of Corregidor and Manila, and 12 years in Surigao, Surigao del Norte since the year 1949. The truth of this averment, however, was challenged by the State. By his own testimony, petitioner brought forth the fact that since his arrival in the Philippines, he has visited his native India four times, in 1919, 1923, 1938 and 1948, each lasting from five to seven months. By the standard in a *Sy See vs. Republic*, 5 SCRA 189, 192, petitioner "cannot be considered as having resided in the Philippines continuously as required by Section 5 of the Naturalization Act." These absences impose on petitioner the burden of proving that they are compatible with con-tinuous residence. Remiss in this, his case must fail. He has not discharged this burden. The filing of a declaration of intention is mandatory.[3] Without the required declaration of intention, the court a quo did not acquire jurisdiction to entertain his petition.[4] Such failure to file the declaration of intention "rendered the entire proceeding null and void." [5]

2. Back to the law. Amongst the qualifications for naturali-zation is that the applicant "must have some known lucrative trade, profession, or lawful occupation,[6] Neither the averments of the petition nor the evidence adduced by petitioner complies with this indispensable requirement. Says paragraph 3 of the petition: "My trade or profession is merchant in which I have been engaged since 1917 and from which I derive an average annual income of SIX THOUSAND (P6,000) pesos." This alone would suffice to disqualify petitioner.

But let us go to the evidence. His income tax return for 1960 shows an annual net income of P2,097.43.[7] With

four children, three of them studying and a wife to support, this income does not meet the requirement of lucrative income.[8]

Nor will his testimony that his two elder sons by his first wife are giving him monthly pension totalling P400 be of help. This pension cannot be added to his income to make it lucrative. For, such pensions are not to be included in determining petitioner's financial capability for citizenship purposes. Like bonuses, commissions and allowances, said pensions are contingent, speculative and pre-carious.[9] The record shows that his two sons are still single. What if they marry and raise families of their own? What if their earnings take a dip, or become just sufficient for their own support? Imponderables there still are which could mean loss of their income. The net result is that the amount given him may be reduced; it may vary from time to time; it may even be totally cut out. Some such uncertain source indeed cannot be considered in assessing the amount of his lucrative income. But even if these P400 were to be included, nonetheless, the total will not measure up to the required lucrative income. It is well to recall at this point that the income for purposes of naturalization must be gauged as of the time of the filing of his application for naturalization.[10] Accordingly, adding the amount of P4,800.00 per year given to him by his said sons to his income of 2,097.43, his total income would only be P6,897.43. With a wife and four children to support as aforesaid and the low purchasing power of the peso coupled with the increased cost of living, again we say that his income is short of being lucrative.[11]

For the reasons given, the judgment under review is hereby reversed, and the petition for naturalization of Pessumal Bhrojjraj is hereby dismissed.

Costs against petitioner.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Zaldivar, Fernando, Capistrano, and Teehankee, JJ., concur.

Makalintal, J., in the result

Barredo, J., did not take part.

Concepcion, C.J., and Castro, J., on official leave.

[1] Naturalization Case No. 39.

[2] Hao Su Siong vs. Republic, 5 SCRA 628, 631; Section. 5, Revised Naturalization Law.

[3] Ong Khan vs. Republic, L-14866, October 28, 1960; Yap vs. Republic, 2 SCRA 856, 859; Lim. vs. Republic, 16 SCRA 12, 14; Lim Cho Kuan vs. Republic, 16 SCRA 25, 27; Chua Lian Yan vs. Republic, L-26416, April 26, 1969.

[4] Law Tai vs. Republic, 19 SCRA 852, 855, citing Ong Khan vs.

Republic, supra, and Sy Ang Hoc vs. Republic, 1 SCRA 886, 889-890.

[5] Sio Kim vs. Republic, L-20415, December 29, 1965.

[6] Fourth paragraph, Section 2, Revised Naturalization Law.

[7] Exhibit Q-4.

[8] Chua Bok vs. Republic, 23 SCRA 209, 210-211; Law Tai vs. Republic, supra, at footnote 14; Chua Eng Hok. vs. Republic, L-20497, October 29, 1965 (P4,000.00). In Lim vs. Republic, 17 SCRA 691, 692, we held that

petitioners P3,600-a-year income when he was still single fails of the statutory requirement; and that with a wife and four children, petitioner "is certainly in a worse position."

[9] In *pari materia*: *Ng vs. Republic*, 25 SCRA 574, 578; *King vs. Republic*, 18 SCRA 179, 182; *Tan vs. Republic*, 17 SCRA 339, 340.

[10] *Cu King Nan vs. Republic*, 23 SCRA 1313, 1318; *Teh San vs. Republic*, 23 SCRA 733, 734; *Choa Ek Yong vs. Republic*, 22 SCRA 915, 916; *Sia Faw vs. Republic*, 21 SCRA 893, 894; *Pe vs. Republic*, 16 SCRA 99, 103.

[11] In the following cases, it was held that the income of applicants with a wife were adjudged not lucrative: P6,300.00 with one child, *Tan vs. Republic*, L-16013, March 30, 1963; P7,133.29, with four children, *Go Bon The vs. Republic*, L-16813, December 27, 1963; around P6,000.00 with four children, *Ty Eng Hua vs. Republic*, L-20897, May 30, 1967; around P6,000.00 with three children, *Ong Chian Suy vs. Republic*, L-21739, May 30, 1967. See other cases cited in *Law Tai vs. Republic*, *supra*. See also *Chua Lian Yan vs. Republic* *supra*, wherein we cited the case of *Tan vs. Republic*, 7 SCRA 526, 528, in which we held some six years back that an applicant with an annual income of P6, 300.00 but married and with only one child would not qualify as having the required income within the meaning of the fourth paragraph of Section 2 of the Revised Naturalization Law.

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