

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS, PIO NERIA, PETITIONER-APPELLEE, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT-APPELLANT.

G.R. No. L-24800. May 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This proceeding for habeas corpus (sp. proc. 60733) by Pio Neria seeks to inquire into the legality of his arrest on April 23, 1965 by agents of the respondent Commissioner of Immigration, and his subsequent detention or confinement at the Bureau of Immigration's detention station at Engineering Island, Manila.[1]

The petitioner claims that the warrant of exclusion is-sued by the respondent is illegal because it is based on a decision rendered by the Board of Immigration Commissioners without or in excess of its jurisdiction, or with grave abuse of discretion, in violation of section 27 (b), Comm. Act 613, as amended.

On July 9, 1961 the petitioner, with three other persons, supposedly his widowed mother (Dolores Neria) and two younger brothers (Felix and Manuel Neria), arrived at the Manila International Airport from Hongkong on board a Cathay Pacific Airways plane. The petitioner was armed with Certificate of Registration and Identity 621, issued by the Philippine Consulate in Hongkong (exh. 12-A). The immigration inspector at the airport, not satisfied with the petitioner's travel documents and those of his companions upon primary inspection thereof, referred the matter of their admission to the Board of Special Inquiry for investigation "to determine filiation and paternity to a Filipino citizen" (exh. 12). Accordingly, the Board of Special Inquiry No. 1 conducted a hearing on July 14, 1961, at which time the petitioner offered oral and documentary evidence to support his claim for admission as a Filipino citizen (exhs. 13, 13-A, 13-B, 13-C; pp. 342-355, 361, 362, 363, rec.). After the conclusion of the investigation, the said board on August 2, 1961 deliberated on the case and unanimously voted for petitioner's admission. The board on the same date rendered its decision, declaring Dolores Neria a Filipino citizen (I.C. 61-2311-C; exh. A, 1), and the petitioner a Filipino citizen as he is an illegitimate son of Dolores (I.C. 61-2312-C; exhs. A, 1), and allowing his admission into the Philippines. This written decision was subsequently submitted to the members of the Board of Immigration Commissioners, who, acting separately thereon on different dates, voted as follows: Associate Commissioner Talabis, "Noted", on August 13, 1961 (exh. 1-A); Associate Commissioner De la Rosa, "Noted", on August 31, 1961 (exh. 1-B); and Commissioner Galang, "Exclude all", including the petitioner, either on August 17, 1961 (exh. 1-C) or August 31, 1961, or even afterwards (tsn, pp. 10-12, 18, Baria). On September 1, 1961 the Immigration authorities issued Identification Certificate 16306 (exh. C) to the petitioner, attesting that he "was admitted as a citizen of the Philippines" per decision of the Board of Special Inquiry No. 1 dated August 2, 1961. On September 4 a copy of the decision was received by petitioner's counsel (exhs. 6, 6-A, H).

On January 24, 1962, the Secretary of Justice issued Memorandum Order 9 (exh. 7), directing that

“[i]t appearing that for the past several years, the Board of Commissioners of Immigration has not met

collectively to discuss and deliberate on the cases coming before it (Memorandum dated January 16, 1962 of the former First Deputy Commissioner of Immigration and the Memorandum dated January 19, 1962 of the Commissioner of Immigration), pursuant to the authority vested in the Department Head by Section 79 (c) of Act No. 2711, as amended, the public in-terest so requiring, it is hereby ordered that all decisions purporting to have been rendered by the Board of Commissioners on appeal from, or on review motu proprio of, decisions of the Board of Special Inquiry are set aside. The Board of Commissioners is directed to review, in accordance with Section 27 (b) of Commonwealth Act No. 613, as amended, all decisions of the Board of Special Inquiry admitting entry of aliens into the country and give preference to all cases where entry has been permitted on the ground that the entrant is a citizen of the Philippines, following the principle laid down in Section 30 of Commonwealth Act 613, as amended, that 'the burden of proof shall be upon such alien to establish that he is not subject to exclusion' and the ruling of this Department that 'Citizenship is a status of privilege, power and honor of inestimable value. When doubts exist concerning a grant of it, they should be resolved in favor of the Government against the claimant' (1st Indorsement, April 12, 1947, from Secretary of Justice Roman Ozaeta to the Commissioner of Immigration)."

In compliance with the above directive, the Board of Immigration Commissioners, composed of Acting Commissioners Martiniano P. Vivo, Marcial O. Rañola and Virgilio N. Gaston, proceeded to review motu proprio the entire proceedings had before the Board of Special Inquiry No. 1 relative to the petitioner's case (I.C. 61-2312-C) and that of his supposed relatives. A hearing officer of the Bureau of Immigration was directed to conduct an investigation of the entire proceedings of and the evidence presented before the Board of Special Inquiry No. 1. On the basis of a memorandum dated July 30, 1962 of the hearing officer (exhs. 11, O), the new Board of Immigration Commissioners found that the petitioner had not satisfactorily established his claim for admission as a Filipino citizen and, consequently, reversed the decision of the Board of Special Inquiry No. 1, and ordered that the petitioner be excluded from the Philippines as an alien not properly documented for admission and be returned to the port from whence he came or to the country of which he is a national (exh. F). On September 15, 1962 the petitioner moved for a reconsideration of said decision (exh. 8). This motion was denied by the new Board on October 12, 1962 (exh. 9), and the petitioner was informed of this denial by letter dated October 18, 1962 (exh. 10).

On January 23, 1963 the petitioner filed a petition for certiorari and prohibition (CC 52875), praying the Court of First Instance of Manila to restrain the Commissioner of Immigration and the Board of Immigration Commissioners from arresting and expelling him, and prohibit them from taking any further steps or actions contrary to the decision rendered by the Board of Special Inquiry No. 1 on August 2, 1961 (exh.15). This petition was given due course, and a writ of preliminary injunction was issued as prayed for (exhs. 18, 19). But this petition was dismissed on March 31, 1964, "without prejudice and without costs" (exh. 20).

On April 30, 1965 the present petition for habeas corpus was filed, the petitioner claiming that the respondent's agents picked him up at Rosario St., Manila, in the evening of the previous April 23 on the supposed claim that he was not properly documented for admission as a Filipino citizen when he entered the Philippines; and that since then he "has been unlawfully and illegally confined, restrained and deprived of his liberty in the Bureau of Immigration Detention Station in the Engineering Island, Manila." On the same date, the lower court required the respondent to bring the petitioner before the court on May 3, 1965 at 8:30 o'clock in the morning. The clerk of court issued the corresponding writ of habeas corpus directing the respondent to submit his return. The latter's written return of May 6, 1965 states, among other things, that the petitioner was under lawful custody on a valid process commanding his exclusion from the Philippines and ordering his return to the port where he came from or to the country of which he is a national.

On June 18, 1965 the lower court dismissed the petition on the ground that "the present Board of Commissioners did not act without due process of law, in excess of jurisdiction, or with grave abuse of discretion, in reviewing

motu proprio and reversing the decision of the Board of Special Inquiry, the petitioner is legally detained on a warrant issued by the respondent Commissioner of Immigration." On June 23 the petitioner moved for a reconsideration of said decision. On July 2, 1966 the respondent filed opposition to the motion for re-consideration, to which the petitioner filed a reply.

On July 20, 1965 the lower court set aside its decision of June 17, 1965, and, on the same date, rendered an amended decision completely reversing its decision of June 17, granted the writ of habeas corpus and ordered the immediate release of the petitioner. The lower court held that "the decision rendered by the new Board of Commissioners is null and void for lack of jurisdiction, and no administrative action being possible because the question involved in this case is purely a legal question, the doctrine of exhaustion of administrative remedies has no application in this case." On July 22 the clerk of court issued the corresponding writ of habeas corpus. On July 23 the respondent perfected an appeal from the amended decision. On July 26 the petitioner filed an urgent motion for admission to bail. On July 27 the lower court granted the petition and fixed the amount of bail for the petitioner's release at P20,000.[2] On this last date also, the lower court ordered the transmittal of the original records of the case to this Court.

The legality or illegality of the petitioner's detention or confinement[3] depends upon resolution of the issue of whether the decision of the new Board of Immigration Commissioner is null and void for having been rendered without or in excess of its jurisdiction, or with grave abuse of discretion, in violation of section 27 (b), Comm. Act 613, as amended, which provides in part that

"[t]he decision of any two members of the board [of Special Inquiry] shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision. * * *."

The resolution of this issue, in turn, depends upon the determination of the date when the decision of the Board of Special Inquiry No. 1 was promulgated, August 2, 1961 when it was actually rendered, or September 4, 1961 when the petitioner was actually notified thereof and a copy received by his counsel. The date of promulgation is important. It is from that date that the one-year period commenced within which the Board of Immigration Commissioners could review motu proprio the entire proceedings of the Board of Special Inquiry No. 1.

According to the Solicitor General, the correct date of promulgation is September 4, 1961, because under the Immigration Rules and Regulations,[4] the decision of a Board of Special Inquiry "shall be rendered in writing"[5], and under section 27 supra the written decision "shall be promulgated"; that the words "rendition" (from "rendered") and "promulgation" (from "promulgated") connote two separate and distinct acts required to be accomplished by the Board of Special Inquiry, for rendition is the date when a judge signs his decision and files it with the clerk of court, whereas promulgation is the date when such decision is published, officially announced, is made known to the public, or delivered to the clerk of court for filing, coupled with notice to the parties or to their counsel; and that in this case, rendition was accomplished on August 2, 1961 when the Board of Special Inquiry No. 1 concluded its hearing on the petitioner's case (I.C. 61-2332-C), deliberated thereon, voted for his admission into the Philippines and rendered its written decision, and promulgation was accomplished on September 4, 1961 when the petitioner was actually notified of the decision, copy of which was received by his counsel.

No amount of hair-splitting in regard to the words "rendition" and "promulgation" would convey different meanings. This Court defined promulgation as "the delivery of the decision to the Clerk of Court for filing and publication"[6]. The word "promulgate" was viewed by the majority in *People vs. Dinglasan* (77 Phil. 764) as the entry made by the clerk of a judgment or order in the book of entries of judgments made by said clerk.[7]

The petitioner's argument, at all events, is without merit. Section 27 (b), *supra*, provides that proceedings of the Board of Special Inquiry -- its appraisal of a case on the merits, the result of its deliberation, its decision and notice thereof to an alien, and the time when an appeal may be brought therefrom -- "shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration." Quoted hereunder for ready reference are the pertinent sections of the Immigration Rules and Regulations:

"All proceedings of the boards shall be made of record. Utmost care must be exercised in taking down the testimony of the applicant and his witnesses, especially with regard to dates, names, and description of persons and places. Doubtful and contradictory answers should, as far as practicable, be clarified." (sec. 10)

"At the conclusion of the hearing in any case, the Board shall at once proceed to deliberate and decide on the merit thereof. The result of such deliberation, including the vote of each member of the board, shall be recorded as part of the proceedings and immediately reported for notation to the officer in charge at the port, or other duly authorized official." (sec. 11)

"If the result of the deliberation shows that at least two members vote for landing, a note thereof shall be made and the alien shall without waiting for the decision to be put in writing, be released from custody, if the other member of the board does not dissent and give notice of his desire to appeal; otherwise, the alien shall remain in the detention station. If a dissenting member appeals from the decision of the other two members, the case shall be taken before the Board of Commissioners for decision." (sec. 12)

"The decision of any two members of the board shall prevail. The decision in any case shall be rendered in writing as soon as possible, but not later than two days from the date of the deliberation. If for any reason the board is not able to promulgate its decision within the above prescribed period, the reason or reasons therefor shall be noted in the records of the proceedings." (sec. 13, Subdivision E, Rule 1)

"When an alien is excluded by a board of special inquiry he shall be advised of the decision together with the reason or reasons therefor; also of his right to appeal his case to the Board of Commissioners. In every case the alien shall be furnished with a copy of the decision upon promulgation thereof. If the applicant appeals, he shall thereupon be informed of his right to be represented by attorney or counsel in prosecuting his appeal. An attorney or counsel representing an appellant shall have access to the records of the proceedings of the board in the particular case, and may also appear in person before the Board of Commissioners on behalf of his client." (sec. 14)

"Appeal must be in writing and filed with the board of special inquiry which decided the case, within forty-eight hours from the time a copy of the decision is furnished the applicant. No appeal filed after this period shall be accepted." (sec. 16, Subdivision B, Rule 2)

"The record of the hearing and all documents considered by a board of special inquiry in reaching its decision shall be forwarded, within two days from the date of notice of intention to appeal is filed, to the Commissioner of Immigration for reconsideration by the Board of Commissioners." (sec. 17, Subdivision C, Rule 2)

If, as provided in section 12 above, "the result of the deliberation [of the Board of Special Inquiry] shows that at least two members vote for landing, a note thereof shall be made and the alien shall, without waiting for the decision to be put in writing, be released from custody", then promulgation can take place even before a decision is actually written and a copy thereof served upon the alien. Again, if, as provided in section 14 above, "[i]n every case the alien shall be furnished with a copy of the decision upon promulgation thereof," then notice of a decision of the board shall be made only after or upon promulgation, and not before. In both sections 12 and 14, therefore, promulgation always takes place before copy of the written decision of the board is furnished to an alien. Of course, section 12 contemplates an alien who is under "custody", while section 14 contemplates a case of an alien "excluded by a board of special inquiry". Nonetheless, there seems to be no reason why the same rule would not apply to the case at bar, where the petitioner, who was "unanimously voted" for admission by the Board of

Special Inquiry No. 1, was at liberty pending the conclusion of the investigation of his filiation and paternity to a Filipino citizen. And in any of these circumstances, the date of promulgation is the date when the Board of Special Inquiry in question voted and resolved to admit an alien, and this date can be ascertained from the minutes of the proceedings had before such board.[8] This, in effect, was our ruling in *Macario Arocha, etc. vs. Martiniano Vivo, etc., et al., and Martiniano Vivo, etc., vs. Hon. Francisco Arca, etc., et al.*,[9] on the issue of the correct date of promulgation of a decision of the Board of Immigration Commissioners reversing that of the Board of Special Inquiry. This Court, speaking thru Mr. Justice J.B.L. Reyes, held that "the operative date of the Commissioners' action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision in extenso was prepared, written and signed",

"because the decision in extenso must relate back to the day the resolution to exclude was actually adopted. Necessarily, the extended opinion had to be posterior to the day when the Commissioners voted and resolved to reverse the findings of the Board of Special Inquiry. The Secretary's certificate (Annex F, L-24853) shows that the Board of Immigration Commissioners acted upon not less than eight immigration cases (including that of the Gatchalians) on July 6, 1962; and it was of course impracticable to prepare and sign fully reasoned decisions in all these cases on the same day."

In this case, August 2, 1961 was the date when the Board of Special Inquiry No. 1 concluded its hearing of petitioner's case (I.C. 61-2312-C), deliberated on it, and voted for his admission as a citizen of the Philippines. August 2, 1961 was also the date when the decision in extenso was rendered. That date and not September 4, 1961, therefore, is the date of promulgation of the decision of the Board of Special Inquiry No. which decision should "prevail and shall be final * * * unless reversed by the Board of Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision." [10] Computing the one-year period from August 2, 1961, the Board of Immigration Commissioners had until August 2, 1962 within which to review the proceedings motu proprio.

The case of the petitioner (I.C. 61-2312-C) was included in the agenda of the Board of Immigration Commissioners for review motu proprio for July 24, 1962. The case was referred to the Immigration hearing officer, who, on July 30, 1962, submitted his memorandum to the said board. The case was again included in the agenda of the said board for August 2, 1962, the date it was considered submitted for decision. The minutes of the meeting of the Board of Immigration Commissioners presented by its Secretary Pio Noche and read into the records of this case, however, reveal that the petitioner's case was actually acted upon and decided, not on August 2, 1962, as the decision (exhs. E and 3) and the warrant of exclusion (exh. 4) would tend to show, but on August 8, 1962. Thus:

"Q Let me clarify, Mr. Noche. You have the agenda for the Board meetings, and you have the [Minutes of the] actual Board meetings. Your agenda shows that the case of Neria is included, but the minutes itself does not show that it was actually deliberated upon on August 2, 1962, am I right?

"A The case of Neria had been agendaed, as I said, since July 24.

"COURT:

"Just answer the question. Does your minutes show that the case of Neria was acted upon on that date?

"A It does not, your honor," (tsn, pp. 57-58, May 13, 1965)

"Atty. Carag:

"Your Honor please, may we just be permitted to read on the record what appears on the minutes, because I believe that is his personal record and he shall take it.

'Minutes of Special Meeting held on August 8, at 4:30 P.M.' And under the hearing 'Admission Cases' Paragraph No. 7 – 'Dolores Neria, et al., Admission filed as P.I. citizens, exclude' and that this meeting was adjourned 7:30 p.m., August 8, 1962.' (tsn, p. 43, May 13, 1965.)

"Q I notice, Mr. Noche, that there had been changes or corrections in this number appearing between the word August and the figure 1962 (on Exh. F). Were you the one who made those corrections?

"A I was the one who made those corrections.

"Q Could you tell the Court what was originally written there? Before you made the correction?

"A The original date was August 8, 1962.

"Q August 8, 1962; now, when you originally wrote August 8, 1962 in Exhibit 'F', that was the date when the Board of Commissioners met as a body and deliberated on and voted in this particular case, am I right?

"A Yes." (tsn, pp. 12-14, May 13, 1965.)

"Q Will you please state why you made the correction of the date August 2, 1962?

"A I made the correction upon the direction of the Commissioner, although the Board of Commissioners actually decided this case, according to my notes, on August 8, 1962, the case was actually submitted for resolution by the Board on August 2, 1962, and according to the Board of Commissioners, August 2 should be the date of the decision, inasmuch as the case was submitted on August 2 for resolution by the Commissioners this date August 2, 1962, should be the date of the decision." (See t.s.n., pp. 12-14; 21-22, hearing of May 13, 1965; Baria).

Appropos are the following observations of the learned trial judge, the Hon. Luis Reyes:

"The minutes of the meeting of the new Board of Commissioners and, the testimony of its Secretary show that as late on August 8, 1962, the new Board of Commissioners was only deliberating on the case of the petitioner. The admission of the Secretary of the new Board of Commissioners that the case of the petitioner was not acted upon on August 2, 1962, shows that the alteration of the date of the decision of the new Board of Commissioners from August 8, 1962 to August 2, 1962 was deliberate. The fact that the case of the petitioner was submitted to the new Board of Commissioners for its resolution on August 2, 1962, is no excuse for ante-dating its decision which was actually rendered after that date. On August 2, 1962, it did not reverse the decision of the Board of Special Inquiry No. 1, because having actually deliberated on the case of the petitioner on August 8, 1962, it could not have on August 2 resolved to reverse the decision of the Board of Special Inquiry."

"The alteration of the true date of the decision of the new Board of Commissioners, made upon instruction of the respondent Commissioner of Immigration, is revealing; it shows that the respondent Commissioner knew that the one-year period was to be computed from August 2, 1961; it shows also that he knew that if the decision of the Board of Special Inquiry No. 1 had to be reversed, the new Board of Commissioners had to act not later than August 2, 1962."

As it was on August 8, 1962 when the Board of Immigration Commissioners as a body deliberated on and voted for the reversal of the decision of the Board of Special Inquiry No. 1, the review *motu proprio* was effected 6 days beyond the one-year period fixed by section 27 (b), *supra*. The said decision of the Board of Immigration Commissioners, and the warrant of exclusion issued on the strength of such decision, are therefore, as correctly found by the lower court, null and void, for "lack of jurisdiction," since the decision of the Board of Special Inquiry No. 1 by that time had already become "final."

The respondent also contends that the petitioner's petition for habeas corpus was prematurely filed, because he

did not first appeal the decision of the Board of Immigration Commissioners to the Secretary of Justice, who, by law, is vested with power of control and supervision over the said Board.[11] We have already held that the principle of exhaustion of administrative remedies is inapplicable "where the question in dispute is purely a legal one"[12], or where the controverted act is "patently illegal" or was performed without jurisdiction or in excess of jurisdiction and "nothing of an administrative nature is to be or can be done" thereon.[13] The case at bar falls under these exceptions, as correctly found by the lower court:

"the facts are not disputed. This decision (amended) is mainly based on the record of the proceedings of the new Board of Commissioners and also on the testimony of its secretary, which is not disputed by the parties. The matters determined by the Court, namely: (1) the meaning of the term 'promulgation' in relation to the Rules and Regulations of the Bureau of Immigration, and (2) the time the reversing decision of the new Board of Commissioners was actually rendered, involve questions of law."

It is of no moment that before the present petition for habeas corpus was instituted, the petitioner had previously filed petition for certiorari and prohibition. The dismissal of that petition was "without prejudice", and, therefore, avoided the effects of the Rules of Court provision (Rule 30, sec. 3, now Rule 17, sec. 3) that dismissal for failure to prosecute is equivalent to "an adjudication on the merits [with prejudice]."[14] The order of dismissal therein did not settle the legality of the acts of the Board of Commissioners, nor the legality of petitioner's arrest and detention. The order dismissing the petition for certiorari and prohibition simply recites that the same is "dismissed without prejudice and without costs."

The ruling in *Aurora Villamin Sy vs. Commissioner of Immigration*[15] that the action of petitioners therein is barred by the principle of laches is not applicable to this case for factual differences. In that case, the special proceeding for habeas corpus "was not instituted until October 4, 1962, or almost seven (7) years after the rendition of the decision of the Board of Commissioners on December 8, 1965 and the issuance of the warrant for her deportation on January 12, 1956."

ACCORDINGLY, the decision appealed from is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Angeles, JJ., concur.

[1] This Court ordered the release of the petitioner on P30,000 bail per Resolution of December 3, 1965.

[2] Upon motion by respondent-appellant for preliminary injunction, this Court restrained the lower court from enforcing its order of July 27, 1965, per Resolution of August 23, 1965.

[3] In habeas corpus proceedings, the only jurisdiction of a court is to inquire into the existence of lawful cause for restraint or custody of a petitioner. (cf. *Aurora Villamin Sy vs. Commissioner of Immigration*, L-21453, Nov. 29, 1965, and the cases therein cited.)

[4] The Immigration Rules and Regulations (Adm. Order No. 1 dated Oct. 30, 1940, Bureau of Immigration) was promulgated by the Commissioner of Immigration pursuant to section 3, C.A. 613, as amended.

[5] See Rule 1, Sub. E. 13, Immigration Rules and Regulations.

[6] Cf. *Araneta vs. Dinglasan*, 84 Phil. 368, 433.

[7] The late Justice Perfecto, dissenting, was of the same view as the respondent-appellant herein that "promulgation is to be accomplished not only by delivery of the decision to the clerk of court for filing, "but must be notified to the parties or their counsel, who will be served by the clerk with true copies thereof." (77 Phil. 771-772.)

[8] Cf. secs. 10, 11, 17, Immigration Rules and Regulations.

[9] L-24844 and L-24853, Oct. 26, 1967.

[10] Sec. 27 (b), *supra*.

[11] Sec. 79 (C), Rev. Adm. Code, in relation to sec. 2, Comm. Act 613, as amended.

[12] cf. *Gonzales vs. Hechanova, etc., et al.*, L-21897, Oct. 22, 1963 and the cases therein cited; see also *Abaya vs. Villegas, et al.*, L-25641, Dec. 17, 1966 and the cases therein cited.

[13] See Note 12.

[14] cf. *Aquizap vs. Basilio, et al.*, L-21293, January, 1968.

[15] See Note 3.

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