

GAN TSITUNG, PETITIONER AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLEE.

G.R. No. L-20819 (With Resolution of Feb. 21, 1967). November 29, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Manila annulling a decision thereof and canceling the certificate of naturalization issued pursuant thereto.

On December 24, 1954, the Court of First Instance of Manila rendered a decision granting the petition for naturalization as citizen of the Philippines, filed on November 14, 1953, by appellant Gan Tsitung. On the latter's motion, he was, on December 26, 1956, allowed to and did take his oath of allegiance as citizen of the Philippines and the corresponding certificate of naturalization was issued to him. Subsequently, or on May 10, 1962, the Solicitor General filed a petition praying that said decision and certificate of naturalization be respectively annulled and cancelled, upon the ground that the notice of the filing of said petition and of the hearing thereof had been published in the Official Gazette only once, instead of once a week for three (3) consecutive weeks, in violation of Section 9 of the Revised Naturalization Law. After due hearing said court issued on October 15, 1962, the order complained of granting the relief sought by the Solicitor General. Hence the present appeal.

The only issue in this appeal is whether said violation of the Revised Naturalization Law had deprived the lower court of its jurisdiction to hear said application and, accordingly, nullified the decision granting the same. Appellant maintains the negative view, relying upon *Barretto vs. Republic*, 87 Phil. 731 (Dec. 21, 1950), and *Delgado vs. Republic*, G. R. No. L-2546 (Jan. 28, 1950). The aforesaid issue was, however, neither decided nor raised in the *Delgado* case. Moreover, the view adopted in the *Barreto* case was abandoned in *Ong Son Cui vs. Republic*, 101 Phil. 649 (May 29, 1957), in which we explicitly held that "there being only, one publication of said notice of hearing in this case in the Official Gazette, the same is clearly incomplete and, therefore, insufficient to confer jurisdiction to the court a quo to try the case and grant the petition." This doctrine was reiterated in *Celestino Co y Quing Reyes vs. Republic*, 104 Phil. 889 (November 29, 1958), upon the ground that non-compliance with the provisions of Section 9 of the Revised Naturalization Act, relative to the publication of the aforesaid notice once a week for three (3) consecutive weeks.

"* * * affects the jurisdiction of the court. It constitutes a fatal defect, for it impairs the very root or foundation of the authority to decide the case, regardless of whether the one to blame therefor is the clerk of court or the petitioner or his counsel. * * *."

The same conclusion was reached in *Ng Bui Kui vs. Republic*, 104 Phil. 957 (Dec. 27, 1958) and *Tan Cona vs. Republic*, 107 Phil. 710 (April 27, 1960). In the case last cited we declared that publication of said notice twice in the Official Gazette was sufficient to confer upon the lower court "jurisdiction to hear and render judgment therein."

It is urged, however, that the rule laid down in these cases cannot retroactively affect the decision rendered in

favor of appellant herein on December 24, 1954, and the oath of allegiance taken by him and the certificate of naturalization to him issued on December 26, 1956, but, if the lower court had no jurisdiction to hear appellant's petition for naturalization, it follows necessarily that said decision is null and void, and that so are, accordingly, the oath of allegiance taken and the certificate of naturalization issued pursuant thereto. *Pomeroy vs. Director of Prisons*, L-11284-85 (February 24, 1960), cited by appellant is not in point, for that case specifically limited its effect to final judgment which are valid, although tainted with an error that "in no wise affected the jurisdiction of the court * * * to render it".

Wherefore, the order appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Bengzon, C. J. Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

RESOLUTION

February 21, 1967

CONCEPCIÓN, C. J.:

Petitioner-appellant has filed a motion for reconsideration of the decision of this Court affirming the appealed order of the lower court directing the cancellation of his certificate of naturalization.

In support of said motion, he maintains that this Court has erred: (1) "in holding that publication of notice of a petition for naturalization in less than three consecutive issues in the Official Gazette is a jurisdictional defect rendering all proceedings taken under such a petition null and void from the very beginning;" (2) in not adhering to the view adopted in *Barretto vs. Republic* (87 Phil. 731) 1 and *Delgado vs. Republic*, G. R. No. L-2546 (January 28, 1950); (3) in applying retroactively the view taken by this Court in *Ong Son Cui vs. Republic*, 101 Phil., 649; and (4) in not holding that the decision of the lower court granting his petition for naturalization and its order allowing him to take the corresponding oath of allegiance are *res adjudicata*.

Upon consideration of the reason adduced by petitioner in support of said motion and of reply thereto filed by the Solicitor General, the Court is satisfied that the rule laid down in the *Ong Son Cui* case should be maintained and reiterated, and that, accordingly, the first, second and fourth grounds relied upon in the motion for reconsideration are untenable.

With respect to the third ground of said motion, the Court finds that the possible solutions to the issue therein posed may be to apply the ruling in *Ong Son Cui* (a) to all similar cases, regardless of the time at which the certificate of naturalization has been issued; or (b) only the cases pending decision on May 29, 1957, in which no certificate of naturalization had, as yet, been issued; or (c) even to cases in which a certificate of naturalization has been issued provided that the same has taken place after said date.

The decision in the case at bar had adopted the first alternative, upon the theory that publication of the requisite notice had been incomplete, and hence "insufficient to confer jurisdiction to the court a quo to try the case and grant the petition". And we reached this conclusion – despite the fact that the failure to publish the notice more than once had been due to a written directive issued by the clerk of court – for such directive is contrary to the explicit provision of the law and the applicant was aware of both, the illegality of said directive and the fact that notice had been published only once.

The Court realizes, however, that the rulings in the *Barretto* and *Delgado* cases – although referring to situations

the equities of which are not identical to those obtaining in the case at bar – may have contributed materially to the irregularities committed therein and in other analogous cases, and induced the parties concerned to believe, although erroneously, that the procedure followed was valid under the law.

Accordingly, and in view of the implications of the issue under consideration, the Solicitor General was required, not only, to comment thereon, but, also, to state "how many cases there are, like the one at bar, in which certificates of naturalization have been issued after notice of the filing of the petition for naturalization had been published in the Official Gazette only once, within the periods (a) from January 28, 1950" (when the decision in *Delgado vs. Republic* was promulgated) "to May 29, 1957" (when the *Ong Son Cui* was decided) "and (b) from May 29, 1957 to November 29, 1965" (when the decision in the present case was rendered).

After mature deliberation, and in the light of the reasons adduced in appellant's motion for reconsideration and in the reply thereto of the Government, as well as of the data contained in the latter, the Court holds that the doctrine laid down in the *Ong Son Cui* case shall apply and affect the validity of certificates of naturalization issued after, not on or before, May 29, 1957.

Although there are divergent views on the precise time at which the decision of a court of last resort, declaring a given statute, process or proceeding null and void as unconstitutional or illegal, shall affect the validity of acts performed under such law or of similar processes or proceedings in analogous cases, the precedents appear overwhelmingly to favor such a solution as is just, fair and reasonable, having in mind public interest, as well as that of the parties directly concerned. As Professor Freund has put it, the issue "involves considerations, not only of principle, but, also of practical administration."

In this connection, we find that there can be no plausible issue on the applicability of the *Ong Son Cui* doctrine to cases pending decisions on May 29, 1957, when said doctrine was adopted, even if the corresponding notices may have been published prior thereto. No right is vested before the rendition of judgment, and, hence, could be affected thereby.

Neither does the Court find any cogent reason for not applying said doctrine to cases in which the certificate of naturalization has been issued after said date, even if the corresponding decision may have been rendered prior thereto. Indeed, such decision does not become executory until after an order shall have been issued, not less than two years later, finding, after due notice and hearing, that the applicant for naturalization has complied with the additional requirements prescribed in Republic Act No. 530. Besides, the status of a naturalized citizen of the Philippines does not attach except upon issuance of the corresponding certificate of naturalization subsequently to the order afore-mentioned, and the taking of the requisite oath. Moreover, the *Ong Son Cui* doctrine became part of the jurisprudence and, hence, of the law of the land, since May 29, 1957. Inasmuch as everybody is presumed to know such law, public policy demands that all acts subsequently performed in contravention thereof –affecting as they do the jurisdiction of the Court or its power to act be deemed void.

Conversely, the people had no reason to doubt the validity of certificates of naturalization issued on or before May 29, 1957, even if notice of the petition for naturalization had been published once only, considering the status of our jurisprudence at that time. Consequently, these certificates should not be nullified, because the cancellation thereof would affect the validity of acts and/or legal relations established in justified reliance upon the validity of said documents; and thus cause undue harm to the parties concerned and do violence upon public interest. For the reasons already adverted to, no such reliance is warranted as regards certificates issued after the decision in *Ong Son Cui*.

It should be noted, furthermore, that a similar view was, in principle, taken in *Rutter vs. Esteban* (93 Phil. 68) in which this Court declared the Moratorium Law unconstitutional, and, hence, null and void, but only from the date

of the promulgation of the decision therein (May 18, 1953), Said moratorium being deemed effective prior thereto, despite the fundamental infirmity of the legislation that established it.

Considering that the certificate of naturalization of petitioner herein was issued on December 24, 1954, or before the Ong Son Cui case had been decided, our decision in the present case is hereby reconsidered, insofar only as this aspect of the issue is concerned, and the appealed order of the Court of First Instance of Manila, accordingly, reversed, without special pronouncement as to costs.

Reyes, J. B. L., Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

CONCURRING

DIZON, J.:

I concur with the majority resolution – hereinafter referred to as the Resolution – penned by the Chief Justice.

Reasons for this separate opinion are, firstly, the desire of the writer to state or emphasize some undisputed facts which, in his opinion, tend to show the justice and fairness of the Resolution, and secondly, to set forth his personal views on some aspects of the issue before the Court.

I fully agree with the ruling made in the Resolution to the effect that "the doctrine laid down in the Ong Son Cui case shall apply and affect the validity of certificates of naturalization issued after, not on or before, May 29, 1957" and that "certificates of naturalization issued on or before May 29, 1957, even if notice of the petition for naturalization had been published once only" * * * should not be nullified, because the cancellation thereof would affect the validity of acts and/or legal relations established in justified reliance upon the validity of said documents, and thus cause undue harm to the parties concerned and do violence upon public interest. Consequently, I agree likewise with the dispositive portion of the Resolution reconsidering our original decision and, as a result, reversing the appealed order of the Court of First Instance of Manila which directed the cancellation of the certificate of naturalization of petitioner-appellant Gan TsiTung.

Section 9 of the Revised Naturalization Law provides that immediately upon the filing of a petition for naturalization, "it shall be the duty of the Clerk of Court to publish the same at petitioner's expense, once a week for three consecutive weeks in the Official Gazette, * * *" (Italics supplied).

Immediately after the last World War and until recently, for reasons well beyond the control of the agency of the government in charge of the publication of the Official Gazette, it had not been possible to publish it regularly every week. Its publication had to come out irregularly and at much longer intervals. Thus, during at all time, it was not possible to comply literally with the law requiring a weekly publication of the petition.

Then, on January 28, 1950 this Court decided the case of Luis Gutierrez Delgado vs. Republic (G. R. No. L-2546). This decision was followed on December 21 of the same year by the one We rendered in the Barretto cases (G. R. Nos. L-2738 & L-2739). Said decisions substantially held – and they were so understood by both Bench and Bar – that one publication of the petition for naturalization in the Official Gazette constituted substantial compliance with the law on the matter.

However, years later, or more specifically on May. 29, 1957, in the Ong Son Cui case, We abandoned and/or reversed the doctrine laid down in the cases referred to above and held instead that the requirement of three publications is an element of jurisdiction in naturalization proceedings and that, therefore, trial courts lack jurisdiction to hear and decide the petition unless it had been previously published thrice in the Official Gazette, as required by law (G. R. No. 9858).

Speaking of the Ong Son Cui case, the Resolution clearly says that since May 29, 1957, the doctrine laid down therein "became part of the jurisprudence and, hence, of the law of the Land". This, indeed, is the settled rule supported by a multitude of authorities and long respected by the Courts, for it merely states, in effect, an ancient legal maxim that "*legis interpretatio legis vim obtinet*" the interpretation put upon the written law by competent courts has the force of law and becomes, as it were, a part of the statute itself. But if this is true with the doctrine laid down in the Ong Son Cui case, the same must perforce be true in the case of the doctrine laid down in the Delgado and Barretto cases. There can be no question, therefore, that said doctrine - that one publication of the petition for naturalization in the Official Gazette is substantial compliance with the provisions of Section 9 of the Revised Naturalization Law - became part of our jurisprudence and, hence, a part of the law of the land since January 28, 1950 when the Delgado case decision was promulgated. From all the foregoing, I draw the conclusion that all acts done and proceedings had prior to May 29, 1957 when that doctrine was abandoned - which was clearly within the power of this Court to do are valid and should not be disturbed. The Resolution, in fact, expresses the same view when it says that "public policy demands that all acts subsequently performed in contravention thereof (of the doctrine laid down in Ong Son Cui) - affecting as they do the jurisdiction of the Court or its power to act - be deemed void" (*Italics supplied*). Therefore, to be fully consistent with this view, it would seem reasonable to hold that decisions of courts of first instance rendered before May 29, 1957 and granting, after due hearing, letters of naturalization to a particular applicant should likewise be allowed to stand and that only such acts and proceedings had after that date should be deemed void, without prejudice to taking up the case anew from that point on.

Section 9 of the Revised Naturalization Law explicitly places the matter of the publication of the petition exclusively in the hands of the Clerk of Court and makes it his official duty to cause said publication. It is, of course, unnecessary to say that the petitioner has no kind of control over the Clerk of Court nor may he interfere with the manner in which the latter believes he should comply with this particular duty. Therefore, where the Clerk of Court directed, as in the present case, that the publication of the petition in the Official Gazette be made only once, the clear presumption must be that he was acting pursuant to, and in "justified reliance" - as the Resolution says - of the Delgado and Barretto cases doctrine, and that, as far as the petitioner was concerned, he had the perfect right to assume that the Clerk of Court was regularly complying with his official duty on the matter.

The foregoing considerations amply justify, in my opinion, the doctrine laid down in the Resolution - that a decision of a court of last resort abandoning or overruling an earlier opinion, shall not be given retroactive effect so as to impair vested rights acquired under the latter. In this connection, it is true, of course, that citizenship conferred upon an alien is a mere "privilege" granted by the State (*Tochio vs. Republic*, G. R. No. L-19637, February 26, 1965; *Uy Ching Ho vs. Republic*, G. R. No. L-19582, March 26, 1965), but it is nonetheless true that once that "privilege" has been granted in appropriate proceedings, the naturalized citizen acquires a vested right to it a vested right of which he may not be deprived without due process of law, and only upon some legal ground as, according to law, is sufficient for Purposes of denaturalization.

For all the foregoing, as already stated heretofore, my vote is to reconsider our original decision and, accordingly, to reverse the appealed order.

Bengzon, J. P., J., concurs.

CONCURRING AND DISSENTING

CASTRO, J.:

I am in full agreement with the general conclusion reached by the majority that the Ong Son Cui doctrine (Son Cui vs. Republic, 101 Phil. 649) relating to the jurisdictional nature of three publications in the Official Gazette should not be given retroactive effect so as to affect prior cases. I hold the view, however, that the determination of what cases are appropriately regarded as prior cases and hence saved from the unsettling effects of the Ong Son Cui ruling is as important as the general conclusion of non-retroactivity itself. The majority is of the opinion that the citizenship of any person who had taken his oath of allegiance and been issued a certificate of naturalization prior to May 29, 1957 is to be respected. The ruling of the majority would thus operate to set aside the citizenship of persons whose petitions for naturalization had been granted prior to, but who took their oaths of allegiance on or after, the date the Ong Son Cui decision was promulgated. Considering that the law imposes, a two year waiting period before a person whose petition for naturalization has been granted by the court may take his oath of allegiance, a considerable number of persons may be expected to lose their citizenship by operation of the adopted by the majority.

I am not unaware of the basis utilized in holding the Ong Son Cui doctrine as inapplicable to cases where the naturalized citizen has taken his oath of allegiance before May 29, 1957. It is true that, upon the taking of the oath by the petitioner, nothing more needs to be done either by the petitioner or by the Government.

Upon the other hand, the pronouncements of this Court in *Ong Son Cui vs. Republic*, supra; *Celestino Co vs. Republic*, G. R. L-10961, November 29, 1958; and *Pedro Tan Cona vs. Republic*, 107 Phil. 710, lead me to conclude that decisions rendered before the Ong Son Cui decision became final, where no appeal was taken by either party, are and should be outside the reach of the Ong Son Cui doctrine. Jurisdiction, as generally understood and as defined in *Ong San Cui*, *Celestino Co* and *Pedro Tom, Cona*, relates to the power of the court to bear and decide a case. I refer to the following statements of the court:

In *Ong Son Cui*;

"It could be seen that, under the aforequoted section of the Revised Naturalization Law, the notice of hearing of the application for citizenship should be published three times in the Official Gazette, or, in the language of the law, once a week for three consecutive weeks, and so in the order of publication of the notice of hearing at the present case it was enjoined that the same be made 'once a week for three consecutive weeks in the Official Gazette and in the Voz de Manila. The notice of hearing of this case should therefore have been published three times not only in the Voz de Manila but in the Official Gazette as well. And there being only one publication of said notice of hearing in this case in the Official Gazette, the same is clearly incomplete and therefore insufficient to confer jurisdiction to the court a quo to try the case and grant the petition. * * * ." (Italics supplied).

In *Celestino Co*:

"Upon the other hand, in order that a court could validly try and decide any case, 'it must have jurisdiction both over the subject matter and over the persons of the parties' (Comments on the Rules of Court, by Moran, Vol. 1 [1957 ed.])

"In short, non-compliance with the requirements thereof, relative to the publication of the petition, affects the jurisdiction of the court. It constitutes, a fatal defect, for it impairs the very root or foundation of the authority to decide the case * * * ." (Italics supplied).

In *Tan Cona*:

"There being no sufficient publication of the petition in the Official Gazette, and following the above mentioned decisions, this Court hereby holds that the Court below had no jurisdiction to hear the petition and render judgment therein." (*Italics supplied*). The question of jurisdiction should thus be concerned with the power of the court at the time it hears and decides particular case, not at a subsequent time. If at the time a court heard and decided a case, it had jurisdiction under the prevailing interpretation of the law defining its jurisdiction, then a subsequent change in the interpretation of the law should not affect the decision rendered by it, from which no appeal has been interposed. Since under the prior ruling, i.e., the ruling in *Barretto vs. Republic*, 87 Phil. 731, and *Delgado vs. Republic*, G. R. L-2546, January 28, 1950, publication in the Official Gazette of a petition in less than three consecutive issues was sufficient, courts of first instance had the power to hear and decide petitions for naturalization published in less than three consecutive issues of the Official Gazette a decision of a court of first instance granting a petition for naturalization before the abandonment of the *Barretto* and *Delgado* ruling should not be affected by the *Ong Son Cui* doctrine.

The jurisdiction of a court has been exercised where it has rendered a decision and that decision has not been appealed and hence has become final. True it is that a decision granting a petition for naturalization does not become executory until after the two-year waiting period, but that decision becomes final, in the sense that it becomes non-appealable, before the expiration of such waiting period. As a matter of fact, the two-year period begins to run only from the date the decision of the naturalization court becomes final, that is, it begins to run after the lapse of thirty days from notice of the decision to the parties in case no appeal is taken, and in case of an appeal, from the date of promulgation of the decision of this court (*Qua vs. Republic*, G. R. L-21418, Dec. 31, 1965). It is also true that upon the expiration of the two-year period, the petitioner must file a petition for oath-taking, and at a hearing thereon show that he has fulfilled the additional requirements established by Republic Act 530 (*Go vs. Republic*, 104 Phil. 977). We are, however, here concerned only with persons who did successfully show fulfillment of such requirements and who did actually take their oaths of allegiance, although after May 29, 1957. I think that equitable considerations in the cases of such persons are as strong and urgent as in the cases of persons who happened to have taken their oaths of allegiance before May 29, 1957.

It should also be pointed out that May 29, 1957 is the date of the rendition of the *Ong Son Cui* decision of this Court, not the date when that decision became final. The date of entry of the judgment, that is, upon the expiration of fifteen (15) days after service of notice of the judgment to the parties (Sec. 10, Rule 51, New Rules of Court), is in my view, the appropriate cut-off date.

Upon the foregoing, and upon the general proposition that the primary function of this Court, I take it, is to settle (not unsettle) cases, I would hold that decisions granting petitions for naturalization which were rendered by courts of first instance at least thirty days prior to the date the *Ong Son Cui* judgment became final, and which were not appealed, or if appealed, were affirmed by this Court at least fifteen days prior to the date the *Ong Son Cui* judgment became final, remain good and valid, although notice of the original petition was published in less than three consecutive issues of the Official Gazette. The citizenship of the petitioners who in such cases did in fact take their oaths of allegiance and were issued certificates of naturalization should, correspondingly, remain good and valid.

This Court would then decisively resolve the issue to the extent called for; and in doing so, it would not only be following its rationale to its logical and equitable end, but would avoid further cases coming up for review and protect other affected parties (who should be covered) from possible harassment.

It may not be amiss to mention here, in support of my view, that although this Court, in *Tan Chong vs. Secretary of Labor*, 79 Phil. 249, said that the principle of *stare decisis* should not be applied when there is a contradiction between precedent and the law, it nevertheless took pains to specifically state and emphasize that in reversing the

Boa doctrine, it did not intend to deprive persons of Filipino citizenship previously conferred upon them by courts of justice.

Regala and Makalintal, JJ., concur.

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