

TAN TONG ALIAS CHEOÑGA, PETITIONER AND APPELLANT, VS. THE DEPORTATION BOARD, RESPONDENT AND APPELLEE.

G.R. No. L-7680. April 30, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu denying a petition for a writ of prohibition against the Deportation Board. Petitioner Tan Tong was originally charged before the Bureau of Immigration with being a communist, subject to deportation. The Board of Commissioners found that Tan Tong was engaged in communistic activities and in smuggling, and so it recommended that Tan Tong be deported to China and that his activities related to smuggling be referred to the Office of the President for action under the provisions of section 69 of the Revised Administrative Code. The order is dated October 6, 1962. On November 7, 1962, special prosecutor Emilio L. Galang charged Tan Tong before the Deportation Board with affiliation with the communist party and with having fraudulently engaged in unlawful importation of merchandise, especially American cigarettes. Tan Tong filed a motion to quash the proceedings before the Board, first, on the ground that said charges had already been investigated by the Bureau of Immigration, and second, that insofar as the charge of smuggling is concerned, the proceedings are beyond the Board's jurisdiction, because no deportation proceedings for smuggling can be instituted before his conviction by a competent court (in accordance with section 2702 of the Revised Administrative Code). The motion to quash was denied and thereupon Tan Tong instituted this action in the Court of First Instance of Cebu, alleging that the respondent Deportation Board has no jurisdiction to consider the charges which had been or were being investigated by the Bureau of Immigration, and because it lacks jurisdiction to consider the charges of smuggling in accordance with the provisions of section 2702 of the Revised Administrative Code. The petition having been denied Tan Tong appealed to this Court, wherein he makes and limits himself to the following assignment of error:

That the trial court erred in ruling that respondent board can subject the petitioner to deportation for unlawful importation even without a preceding court conviction for said offense.

The gist of appellant's contention is contained in the following paragraph of his brief:

"In view of the wordings of section 2702, it is obvious that our lawmaking body has expressly imposed the requisites and conditions wherein the power to deport in case of unlawful importation is to be exercised and from its clear context Congress has prescribed that in this particular case, conviction of an alien for said offense must first be had and only thereafter may the power to deport be exercised."

The fallacy of appellant's argument is based on the failure to distinguish between the power to deport and the proceedings necessary for the exercise of said power. The power to deport aliens is lodged in the President of the Republic of the Philippines. As an act of state, it is vested in the Executive by virtue of his office, subject only to the regulations prescribed in section 69 of the Revised Administrative Code or to such future legislation as may be promulgated on the subject. (In re McCulloch Dick, 38 Phil., 41.) There is no provision in the Constitution nor act of the legislature denning the power, as it is evident that it is the intention of the law to grant to the Chief

Executive full discretion to determine whether an alien's residence in the country is so undesirable as to affect or injure the security, welfare or interest of the state. The adjudication of facts upon which deportation is predicated also devolves on the Chief Executive whose decision is final and executory. (In *Re McCulloch Dick*, supra.) The only provision of law heretofore enacted by the legislature on deportation is section 69 of the Revised Administrative Code which is as follows:

"Sec. 69. Deportation of subject to foreign power.—A subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses."

The above provision does not define the cases in which the Chief Executive may exercise his power to deport; neither does it limit or curtail said power. What it does is to prescribe the procedure necessary for the exercise of the power that the alien may have his "day in court."

By no form or manner of reasoning can the inference be made that by section 2702 of the Revised Administrative Code the Legislature, intended that an alien can be deported for illegal importation only upon conviction therefor in a competent court, and thereby deprived the Deportation Board of its power to investigate charges of unlawful importation of merchandise against an alien, especially, when as appears from the record, no criminal action for unlawful importation has been filed against him. The language of the provision and the chapter in which it is found do not justify petitioner's contention. No derogation of a power vested in the Chief Executive or a limitation thereof can be presumed by implication from the mere addition of the clause "he may be subject to deportation" at the end of section 2702. This section punishes illegal importation and imposes, in addition to the penalty prescribed, the liability to deportation if the person found guilty is an alien. Its sole import is that if a competent court has found an alien guilty of a violation of section 2702 of the Revised Administrative Code, the proceedings outlined in section 69 of the said Code are no longer necessary for deportation. Beyond this it is unreasonable, if not absurd, to presume that the legislature intended more. It could not have intended that if there is no conviction for a crime of unlawful importation, or if no charges have been filed against an alien therefor, the Deportation Board may not proceed to investigate said charges against him and recommend deportation. The reason for the provision (Sec. 2702) is that if a competent court has found the alien guilty of a violation of the law, it is no longer necessary that the proceedings outlined in section 69 be resorted to before his deportation may be ordered by the Chief Executive for that would be a mere duplicity.

The appeal should be, as it is hereby, dismissed and the decision appealed from affirmed, with costs against the petitioner-appellant.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

Appeal dismissed.

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