

QUA CHEE GAN, ET AL., PETITIONERS AND APPELLANTS, VS. THE DEPORTATION BOARD, RESPONDENT AND APPELLEE.

G.R. No. 10280. September 30, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Manila (in Sp. Proc. No. 20037) denying the petition for writs of habeas corpus and/or prohibition, certiorari, and mandamus filed by Qua Chee Gan, James Uy, Daniel Dy alias Dy Pac, Chan Tiong Yu, Chua Chu Tian, Chua Lim Pao alias Jose Chua, and Basilio King. The facts of the case, briefly stated, are as follows: On May 12, 1952, Special Prosecutor Emilio L. Galang charged the above-named petitioners before the Deportation Board, with having purchased U.S. dollars in the total sum of \$130,000.00, without the necessary license from the Central Bank of the Philippines, and of having clandestinely remitted the same to Hongkong; and petitioners Qua Chee Gan, Chua Lim Pao alias Jose Chua, and Basilio King, with having attempted to bribe officers of the Philippine and United States Governments (Antonio Laforteza, Chief of the Intelligence Division of the Central Bank, and Capt. A. P. Charak of the OSI, U. S. Air Force) in order to evade prosecution for said unauthorized purchase of U. S. dollars:[1]

Following the filing of said deportation charges, a warrant for the arrest of said aliens was issued by the presiding member of the Deportation Board. Upon their filing surety bond for P10,000.00 and cash bond for P10,000.00, herein petitioners-appellants were provisionally set at liberty.

On September 22, 1952, petitioners-appellants filed a joint motion to dismiss the charges presented against them in the Deportation Board for the reason, among others, that the same do not constitute legal ground for deportation of aliens from this country, and that said Board has no jurisdiction to entertain such charges. This motion to dismiss having been denied by order of the Board on February 9, 1953, petitioners-appellants filed in this Court a petition for habeas corpus and/or prohibition, which petition was given due course in our resolution of July 7, 1953, but made returnable to the Court of First Instance of Manila (G. R. No. L-6783). The case was docketed in the lower court as Special Proceeding No. 20037. At the instance of petitioners and upon their filing a bond for P5,000.00 each, a writ of preliminary injunction was issued by the lower court, restraining the respondent Deportation Board from hearing Deportation Charges No. R-425 against petitioners, pending final termination of the habeas corpus and/or prohibition proceedings.

On July 29, 1953, the respondent Board filed its answer to the original petition, maintaining among others, that the Deportation Board, as an agent of the President, has jurisdiction over the charges filed against petitioners and the authority to order their arrest; and that, while petitioner Qua Chee Gan was acquitted of the offense of attempted bribery of a public official, he was found in the same decision of the trial court that he did actually offer money to an officer of the United States Air Force in order that the latter may abstain from assisting the Central Bank official in the investigation of the purchase of \$130,000.00 from the Clark Air Force Base, wherein said petitioner was involved.

After due trial, the court rendered a decision on January 18, 1956, upholding the validity of the delegation by the President to the Deportation Board of his power to conduct investigations for the purpose of determining whether the stay of an alien in the country would be injurious to the security, welfare and interest of the State. The court, likewise, sustained the power of the Deportation Board to, issue warrants of arrest and fix bonds for the alien's temporary release pending investigation of charges against him, on the theory that the power to arrest and fix the amount of the bond of the arrested alien is essential to and complement the power to deport aliens, pursuant to Section 69 of the Revised Administrative Code. Consequently, the petition was dismissed without costs. Hence, the petitioners instituted the present appeal.

It may be pointed out at the outset that after they were provisionally released on bail, but before the charges filed against them were actually investigated, petitioners- appellants raised the question of jurisdiction of the Deportation Board, first before said body, then in the Court of First Instance of Manila, and now before us. Petitioners appellants contest the power of the President to deport aliens and, consequently, the delegation to the Deportation Board, of the ancillary power to investigate, on the ground that such power is vested in the Legislature. In other words, it is claimed, for the power to deport to be exercised, there must be a legislation authorizing the same.

Under Commonwealth Act No. 613 (Immigration Act of 1940), the Commissioner of Immigration was empowered to effect the arrest and expulsion of an alien, after previous determination by the Board of Commissioners of the existence of ground or grounds therefor (Sec. 37). With the enactment of this law, however, the legislature did not intend to delimit or concentrate the exercise of the power to deport on the Immigration Commissioner alone, because in its Section 52, it provides:

"Sec. 52. This Act is in substitution for and supersedes all previous laws relating to the entry of aliens into the Philippines, and their exclusion, deportation, and repatriation therefrom, with the exception of section sixty-nine of Act Numbered Twenty-seven hundred and eleven which shall continue in force and effect: * * *." (Com. Act No. 613).

Section 69 of Act No. 2711 (Revised Administrative Code) referred to above reads:

"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."

While it may really be contended that the aforequoted provision did not expressly confer on the President the authority to deport undesirable aliens, unlike the express grant to the Commissioner of Immigration under Commonwealth Act No. 613, but merely lays down the procedure to be observed should there be deportation proceedings, the fact that such a procedure was provided for before the President can deport an alien—which provision was expressly declared exempted from the repealing effect of the Immigration Act of 1940—is a clear indication of the recognition, and inferentially a ratification, by the legislature of the existence of such power in the Executive. And the exercise of this power by the Chief Executive has been sanctioned by this Court in several decisions.[2]

Under the present and existing laws, therefore, deportation of an undesirable alien may be effected in two ways: by order of the President, after due investigation, pursuant to Section 69 of the Revised Administrative Code, and by the Commissioner of Immigration, upon recommendation by the Board of Commissioners, under Section 37 of

Commonwealth Act No. 613.

Petitioners contend, however, that even granting that the President is vested with power to deport, still he may do so only upon the grounds enumerated in Commonwealth Act No. 613, as amended, and on no other, as it would be unreasonable and undemocratic to hold "that an alien may be deported upon an unstated or undefined ground depending merely on the unlimited discretion of the Chief Executive. This contention is not without merit, considering that whenever the legislature believes a certain act or conduct to be just cause for deportation, it invariably enacted a law to that effect. Thus, in a number of amendatory acts, grounds have been added to those originally contained in Section 37 of Commonwealth Act No. 613, as justifying deportation of an alien, as well as other laws which provide deportation as part of the penalty imposed on aliens committing violation thereof.

Be this as it may, the charges against the herein petitioners constitute in effect an act of profiteering, hoarding or blackmarketing of U.S. dollars, in violation of the Central Bank regulations—an economic sabotage—which is a ground for deportation under the provisions of Republic Act 503 amending Section 37 of the Philippine Immigration Act of 1940. The President may therefore order the deportation of these petitioners if after investigation they are shown to have committed the act charged.

There seems to be no doubt that the President's power of investigation may be delegated. This is clear from a reading of Section 69 of the Revised Administrative Code which provides for a "prior investigation, conducted by said Executive (the President) or his authorized agent." The first executive order on the subject was that of Governor General Frank Murphy (No. 494, July 26, 1934), constituting a board to take action on complaints against foreigners, to conduct investigations and thereafter make recommendations. By virtue of Executive Order No. 33 dated May 29, 1936, President Quezon created the Deportation Board primarily to receive complaints against aliens charged to be undesirable, to conduct investigation pursuant to Section 69 of the Revised Administrative Code and the rules and regulations therein provided, and make the corresponding recommendation.[3] Since then, the Deportation Board has been conducting the investigation as the authorized agent of the President.

This gives rise to the question regarding the extent of the power of the President to conduct investigation, i.e., whether such authority carries with it the power to order the arrest of the alien complained of, since the Administrative Code is silent on the matter, and if it does, whether the same may be delegated to the respondent Deportation Board.

Let it be noted that Section 69 of the Revised Administrative Code, unlike Commonwealth Act No. 613 wherein the Commissioner of Immigration was specifically granted authority, among others, to make arrests, fails to provide the President with like specific power to be exercised in connection with such investigation. It must be for this reason that President Roxas, for the first time, saw it necessary to issue his Executive Order No. 69, dated July 29, 1947, providing—

"For the purpose of insuring the appearance of aliens charged before the Deportation Board created under Executive Order No. 37, dated January 4, 1947, and facilitating the execution of the order of deportation whenever the President decides the case against the respondent, I, Manuel Roxas, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that all respondents in deportation proceedings shall file a bond with the Commissioner of Immigration in such amount and containing such conditions as he may prescribe.

Note that the executive order only required the filing of a bond to secure appearance of the alien under investigation. It did not authorize the arrest of the respondent.

It was only on January 5, 1951, when President Quirino reorganized the Deportation Board by virtue of his

Executive Order No. 398, that the Board was authorized *motu proprio* or upon the filing of formal charges by the Special Prosecutor of the Board, to issue the warrant for the arrest of the alien complained of aim to hold him under detention during the investigation unless he files a bond for his provisional release in such amount and under such conditions as may be prescribed by the Chairman of the Board.

As has been pointed out elsewhere, Section 69 of the Revised Administrative Code, upon whose authority the President's power to deport is predicated, does not provide for the exercise of the power to arrest. But the Solicitor General argues that the law could not have denied to the Chief Executive acts which are absolutely necessary to carry into effect the power of deportation granted him such as the authority to order the arrest of the foreigner charged as undesirable.

In this connection, it must be remembered that the right of an individual to be secure in his person is guaranteed by the Constitution in the following language:

"3. The right of the people to "be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Sec. 1, Art. III, Bill of Rights, Philippine Constitution).

As observed by the late Justice Laurel in his concurring opinion in the case of *Rodriguez, et al. vs. Villamiel, et al.* (65 Phil. 230, 239), this provision is not the same as that contained in the Jones Law wherein this guarantee is placed among the rights of the accused. Under our Constitution, the same is declared a popular right of the people and, of course, indisputably it equally applies to both citizens and foreigners in this country. Furthermore, a notable innovation in this guarantee is found in our Constitution in that it specifically provides that the probable cause upon which a warrant of arrest may be issued, must be determined by the judge after examination under oath, etc., of the complainant and the witnesses he may produce. This requirement—"to be determined by the judge"—is not found in the Fourth Amendment of the U. S. Constitution, in the Philippine Bill or in the Jones Act, all of which do not specify who will determine the existence of a probable cause. Hence, under their provisions, any public officer may be authorized by the Legislature to make such determination, and thereafter issue the warrant of arrest. Under the express terms of our Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And, if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.

The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas. Be that as it may, it is not imperative for us to rule, in this proceeding,—and nothing herein said is intended to so decide—on whether or not the President himself can order

the arrest of a foreigner for purposes of investigation only, and before a definitive order of deportation has been issued. We are merely called upon to resolve herein whether, conceding without deciding that the President can personally order the arrest of the alien complained of, such power can be delegated by him to the Deportation Board.

Unquestionably, the exercise of the power to order the arrest of an individual demands the exercise of discretion by the one issuing the same, to determine whether under specific circumstances, the curtailment of the liberty of such person is warranted. The fact that the Constitution itself, as well as the statute relied upon, prescribe the manner by which the warrant may be issued, conveys the intent to make the issuance of such warrant dependent upon conditions the determination of the existence of which requires the use of discretion by the person issuing the same. In other words, the discretion of whether a warrant of arrest shall issue or not is personal to the one upon whom the authority devolves. And authorities are to the effect that while ministerial duties may be delegated, official functions requiring the exercise of discretion and judgment, may not be so delegated. Indeed, an implied grant of power, considering that no express authority was granted by the law on the matter under discussion, that would serve as a curtailment or limitation on the fundamental right of a person, such as his security to life and liberty, must be viewed with caution, if we are to give meaning to the guarantee contained in the Constitution. If this is so, then a delegation of that implied power, nebulous as it is, must be rejected as inimical to the liberties of the people. The guarantees of human rights and freedom can not be made to rest precariously on such a shaky foundation.

We are not unaware of the statements made by this Court in the case of *Tan Sin vs. Deportation Board* (104 Phil., 868). It may be stated, however, that the power of arrest was not squarely raised in that proceeding, but only as a consequence of therein petitioners proposition that the President had no inherent power to deport and that the charges filed against him did not constitute ground for deportation.

In view of the foregoing, Executive Order No. 398, series of 1951, insofar as it empowers the Deportation Board to issue warrant of arrest upon the filing of formal charges against an alien or aliens and to fix bond and prescribe the conditions for the temporary release of said aliens, is declared illegal. As a consequence, the order of arrest issued by the respondent Deportation Board is declared null and void and the bonds filed pursuant to such order of arrest, decreed cancelled. With the foregoing modification, the decision appealed from is hereby affirmed. No costs. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] On Jan. 22, 1952, Qua Chee Gan was charged in the Court of First Instance of Rizal of the crime of attempted bribery (Crim. Case No. 3346) in connection with the alleged offer of P25,000.00 to Laforteza and Charak in order that the latter may refrain from filing the corresponding charges against the former, which case was dismissed by order of the court of March 20, 1952, on the ground that the aforesaid amount was tendered to Capt. Charak who is not an officer of the Philippine Government.

[2] *In re Patterson*, 1 Phil. 93; see also *In re McCulloch Dick*, 38 Phil. 41; *Tan Tong vs. Deportation Board*, 96 Phil. 934; *Ang Beng, vs. Commissioner of Immigration*, 100 Phil. 801.

[3] Amended by Executive Orders Nos. 257, dated March 12, 1940; No. 7, dated July 18, 1946; No. 37, dated January 4, 1947.

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