

BALBIR SINGH, PETITIONER AND APPELLEE VS. THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION, RESPONDENT AND APPELLANT.

G.R. No. 11015. March 25, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Manila, setting aside a decision of respondent, the Board of Commissioners of the Bureau of Immigration, and making permanent a writ of preliminary injunction issued by said court, enjoining said Board and its agents and representatives from causing the arrest and deportation of petitioner Balbir Singh during the pendency of this case.

Petitioner is a citizen of India. He came to the Philippines on December 17, 1949. Testifying in support of his application for admission, as a non-preference quota immigrant, he stated, before a Board of Special Inquiry, on December 21, 1949, that he was here solely to establish a business of his own, namely, to follow the occupation of a dry goods merchant. Soon later, or on December 27, 1949, said Board rendered a decision granting his application. On October 4, 1954, he was arrested upon warrant issued by respondent herein, charging him as follows:

"That on representation under oath that he was going to settle in the Philippines as a merchant, he was allotted a 1949 Indian non-preference quota number by the Bureau of Immigration and was issued the corresponding immigration visa by the Philippine Consulate General at Calcutta, India; that he arrived in this country on December 17, 1949, and upon representation under oath that he was going to follow the occupation of dry goods merchant in this country, he was admitted on his documentation by the Board of special inquiry; that he is employed as security guard at Fort McKinley, a United States Army reservation; that he would not have been issued an immigration visa by the Philippine Consulate General at Calcutta, India, and would not have been admitted by the Board of special inquiry had at the time of application and entry it had been known that he was coming to the Philippines in order to engage in employment other than that of merchant." (Record, pp. 27-28.)

Thereafter investigated by a Board of Special Inquiry, petitioner testified before the same that, upon his admission into the Philippines, he stayed in Angeles, Pampanga, with one Kishim Singh, another citizen of India, and a merchant, to whom he is related; that, one month later, he came to Manila to start his own business as a "peddler"; that he was employed as a guard or night watchman of the U.S. Army, in the Port of Manila, in September or October 1951; that he had such job for about (3) months; that on December 10, 1951, he was transferred to the adjutant General Records Depository, where he worked up to February 16, 1953; that he was reassigned to the U.S. Military Hospital, at Ft. Wm. McKinley, where he rendered services as security guard from February 17 to September 26, 1953, and from July 27 to October 4, 1954, although he was carried on the payroll of said Hospital up to October 25, 1954, when his vacation leave expired; that he took said employment merely as a part time job, working only on eight-hour night shifts and for five days a week; and that, during all this time, he did not give up

his business, for he plied his trade at day time and on Saturdays and Sundays, up to the time of his arrest, on October 4, 1954 (see Exhibit B). Upon consideration of this evidence, the Board of Special Inquiry recommended that the charges be dropped. The Board of Commissioner, however, held otherwise, in a decision, dated December 28, 1954, the pertinent parts of which read:

"The records of this case show that the respondent arrived on December 17, 1949; that his application for admission as a non-preference quota immigrant was heard by a Board of Special Inquiry on December 21, 1949; that in this hearing the respondent testified that he was here solely to establish a business of his own; that he was admitted as a nonpreference quota immigrant by the Board of Special Inquiry which heard the above application in a decision dated December 27, 1949; and that he admitted that he had been employed as guard at the U.S. Army Hospital at Fort Wm. McKinley from February 17, 1953 to September 26, 1953 and then from July 27, 1954, to October 4, 1954.

Considering the above facts, and the respondent's testimony given before the Board of Special Inquiry to the effect that he came solely to establish a business this Board finds the respondent guilty as charged and hereby orders his deportation to the country whence he came on the first available transportation in accordance with law." (Record, p. 8)

Forthwith, or on January 11, 1955, the petitioner instituted this case in the Court of First Instance of Manila. In his petition therein he prayed for a writ of certiorari, with preliminary injunction, alleging that respondent had acted with grave abuse of discretion and without authority of law in rendering the aforementioned decision. Subsequently, or on January 15, 1955, said court issued a writ of preliminary injunction restraining respondent, its representatives, agents and any other persons assisting it, from causing the arrest and deportation of the petitioner until further orders of the court.

After appropriate proceedings, the same rendered judgment for the petitioner upon the ground that, there being "no evidence that petitioner's testimony before the Board of Special Inquiry on December 21, 1949, to the effect that he was here solely to establish a business of his own, was untrue and incorrect and that he then knew it to be so," it is most inaccurate * * * to find that the said testimony is false and misleading;" that "a departure in the course of time from one's commitment, after he has lived up to it for three full years does not stamp the said commitment as false and misleading from the start;" and that the decision of the Board of Commissioners adverse to the recommendation of respondent's own fact finding body, the Board of Special Inquiry, is an indication that "said respondent's decision has no evidence to support it, hence, it was rendered in grave abuse of discretion." We find ourselves unable to agree with this view.

To begin with, it is based upon the false premise that decision of appellate bodies reversing or rejecting conclusion of facts made by trial courts, must be considered, devoid of factual basis. It suggests that the findings of fact of board of special inquiry are final and conclusive upon the Board of Commissioners, contrary to the explicit statutory authority of the latter to review, on appeal; the decisions—including the findings of fact—of the former (Section 27, C.A. 613, as amended). Indeed, the Philippine Immigration Act of 1940 expressly confers upon the Commissioner of Immigration "immediate control, direction and supervision of all officers, clerk and employees of the Bureau of Immigration" (Section 2, C.A. 613, as amended).

Secondly respondent's decision adopted the facts set forth in the report of the Board of Special Inquiry, although the former did not accept the conclusions drawn therefrom by the latter.

Thirdly, the lower court was under the belief that petitioner had lived up to his commitment—to be here "solely" as a dry goods "merchant"—for "three full years". Such belief is erroneous. Petitioner had been, at most, a "peddler", not a "merchant", within the meaning of this term as used in immigration laws and statutes governing the registration of aliens. Thus, section 12 of Act No. 702 reads:

"The word 'laborer' or 'laborers' wherever used in this Act shall be construed to mean both skilled and unskilled manual laborers, including Chinese laundrymen and Chinese employed in mining, fishing, huckstering, peddling, or taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"The term 'merchant' as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as, is necessary in the conduct of his business as such merchant. The definition of 'laborer' and 'merchant' set out in this section shall receive the same construction as that given to it by the Federal Court of the United States and the ruling and regulations of the Treasury Department of the United States." (*Italics ours.*)

Pursuant to this legal provision, petitioner can not be deemed to have ever engaged in business as a "merchant", because: (a) he never had a "fixed place of business"; (b) from September or October, 1951 to September 26, 1953, and from July to October 1954, or for over one-half of the time of his stay in the Philippines, prior to his arrest, he had been a night watchman, and, as such engaged in manual labor which was not only not necessary, but, also, inimical to his avowed business—the sale of dry goods; and (c) as a "peddler" he had the status of a "laborer". Needless to say, the aforementioned provision is in harmony with the American Jurisprudence thereon.

"A peddler is to be distinguished from a merchant, the latter being one who is engaged in buying and selling merchandise, on a more or less large scale, at a fixed place of business, whereas the former is one who travels about from place to place making petty sales." (39 C.J.S., 191; *Italics ours*)

"The leading primary idea of a peddler is that of an itinerant or traveling trader, who carries goods about, in order to sell them, and who actually sells them to purchasers, in contradistinction to a trader who has goods for sale and sells them in a fixed place of business." (*State vs. Cohen*, 177 A. 403, 133 Me., 293; *Italic ours.*)

"The leading primary idea of a hawker and "peddler" is that of an itinerant or traveling trader, who carries goods about, in order to sell them, and who actually sells them to purchasers, in contradistinction to a trader who has goods for sale and sells them in a fixed place of business." (*Commonwealth vs. Bergeron*, 5 N. E. 2d. 31, 32, 296 Mass. 60; *Italics ours.*)

Then, also, the Philippine Immigration Act of 1940—pursuant to the provisions of which petitioner was allowed to enter this country and is now sought to be deported—is patterned after the immigration laws of the United States of February 5, 1917 and May 26, 1924. As stated in *Philippine Immigration Laws* by De la Rosa:

"The Philippine Immigration Act of 1940 is the basic law for the control and regulation of immigration into the Philippines. Drafted with the aid of two Americans, experts on immigration matters, who were invited to come to the Philippines only for the purpose of helping in the preparation of an immigration law for the Philippines, the Philippine Immigration Act of 1940 is frankly a simplified, streamlined, and improved version of the United States Immigration Acts of Feb. 5, 1917 and of May 26, 1924. As such it combines into one law the rich varied experience of the American people on matters of Immigration." (*Foreword, Philippine Immigration Laws*, by De la Rosa.)

Under the aforementioned immigration laws of the United States, persons admitted into the United States under a given status become subject to deportation upon change of such status.

"An alien who enters as a trader must maintain such status to be entitled to remain. If he fails to maintain his status, he is subject to deportation. *Kumaagi Koga vs. Berkshire* 75 F (2d) 820, certiorari denied, 295 US 757, 79 L. ed. 1700. Thus an alien who entered as a trader was subject to deportation upon changing his status as laundryman. *Sugaya vs. Raff*, 78 F (2d) 791." (*Philippine Immigration Laws* by De la Rosa, pp. 23-24, 25.)

"* * * At the time of his last entry into the United States in February, 1921, appellant was admitted under section 3 (6) of the Act of 1924 as a 'treaty trader.' It is essential to his right to remain in this country that he

continue to maintain such status. In *Kumaki Koga, et al. vs. Berkshire*, 75 F. (2d) 820, 822, this Court, speaking through Circuit Judge Garrecht, stated: 'Of course, one admitted as a 'treaty trader' would have to maintain such status. Should he fail to do so, he would be subject to deportation, as where one admitted as a merchant becomes a laborer, *United States ex rel: To Ming vs. Com'r et al.*, 52 F. (2d) 791 (D.C.N.Y.). See, also *Ex parte Wong Gar Wah (Wong Gar Wah vs. Carr)*, 18 F. (2d) 250 (C.C.A.9); *United States ex rel. Lam Shin Hing vs. Court, etc.*, 4 F. Supp. 591 (D.C.N.Y.). Our decision in *Kumaki Koga vs. Berkshire*, *supra*, and the cases cited in support thereof, notably *United States ex rel. To Ming vs. Commissioner*, 52 F. (2d) 791 (D.C.N.Y.), dispose of the appellant's contention based upon decisions dealing with entries prior to the Immigration Act of 1924, which hold that a Chinese entering as a merchant prior to the Immigration Act of 1924 could remain in the United States after abandoning his status as such. This was not a treaty right (*Chin Fong vs. Backus*, 241 U. S. 1, 5, 36 S. Ct. 490, 60 L. Ed 859), and hence was not extended to Japanese by the 'most favored nation' clause of our treaty with Japan and was terminated by the Immigration Act of 1924, as to entries made subsequent thereto under section 3 (6) of the Immigration Act, *supra*." (*Sugaya vs. Half*, 78 F. [2d] 989 990.)

"The law defines the classes of aliens which shall be excluded from admission to the United States but provides that the exclusion shall not apply to persons having the status or occupations of 'merchant.' This means necessarily having the 'status' at the time admission is sought, not a status to come or be established. The confounding of occupations, that of a salesman or manager with that of a merchant, cannot be accepted. A merchant is the owner of the business; a salesman or manager a servant of it; and especially so under the Immigration Law. The policy of the law must be kept in mind; it is careful to distinguish the status of a merchant from those below that status. A merchant is fixed in the business while a salesman or manager is but an employee and may withdraw from his employment and become a competitor in the ranks of labor, using the word in the sense the law implies.

So particular is the Law in regard to its distinctions and policy that if a merchant descends from his status he shall be 'deemed to be in the United States contrary to law and shall be subject to deportation'. (*Tulsidas vs. Insular Collector*, 262 U.S. 258; *Tom Hong vs. United States*, 193 U.S. 517)." (U.S. Immigration Exclusion and Deportation and Citizenship of the United States of America by Sidney Kansas, 2nd ed., p. 80.)

The theory adopted in the decision appealed from leads to the conclusion that, so long as there is no evidence as to the lack of sincerity of the alien immigrant when he gained admission upon the representation that he wanted or intended to be solely a merchant, once his entry has been allowed, his right to remain is unaffected by the fact, either that he has never engaged in business as a merchant, or that, in addition to his activities as such, he had taken a job as a laborer or otherwise undertaken some other occupation. Such theory would defeat the purpose of immigration laws. In fact, it would nullify the statutory classification of aliens who may be admitted under such laws, as well as the authority and duty of the Bureau of Immigration to determine what classes of aliens—even among those who belong to the nonpreference quota category—are best suited for admission. Indeed, the admission of laborers, specially those unskilled to which petitioner herein apparently belongs—is, as a matter of policy, not favored, on account of the competition they may and will offer to local labor and the social and economic, as well as, often times, political and international problems that may result therefrom. Hence, section 29 of Commonwealth Act No. 613, provides that:

"(a) The following classes of aliens shall be excluded from entry in the Philippines:

* * * * *

"(14) Persons coming to perform unskilled manual labor in pursuance of a promise or offer of employment, express or implied, but this provision shall not apply to persons bearing nonquota immigrant visas authorized by section twenty of this Act;"

Pursuant to the section last mentioned, in relation to said section 29, an unskilled laborer shall be excluded from entry unless he comes to the Philippines, (1) "in pursuance of a promise or offer of employment express or implied", (2) with a visa issued by a consular officer (3) authorized therefor by the Commissioner of Immigration, (4) upon proper application and satisfactory proof "that no person can be found in the Philippines willing and competent to perform the labor or service for which the immigrant is desired and that the immigrant's admission would be beneficial to the public interest." Thus, had petitioner herein not represented that he intended to be solely a dry goods merchant, he would not, and could not, have been admitted in the Philippines, for he had not complied with requirements (1) and (4).

In conclusion, considering that petitioner herein had never been, in legal contemplation, a "merchant", from his entry in this country up to his arrest by order of respondent herein; that, as an alleged "peddler", he had, under Act No. 702 the status of a "laborer"; that, when he worked as watchman for the U.S. Army in the Philippines for 28 months he was actually a laborer; that his services as such watchman, on eight-hour night duty, five-days a week, render it difficult to take on its face value his testimony to the effect that, during said period, he plied his trade as a peddler, at day time and on Saturdays and Sundays; that he was admitted as a nonpreference quota immigrant upon the representation that he would be engaged solely in business as a cloth merchant; and that the immigration authorities would have had no choice but to disapprove his application for admission in the Philippines, had he revealed at the hearing of said application that his real intention was to seek employment in this country, or to operate as a peddler, or to perform the duties of a watchman, either exclusively or in addition to peddling, we are of the opinion, and so hold, that respondent herein had neither exceeded its jurisdiction, nor abused its discretion, in rendering the decision complained of by petitioner herein. It is well settled that

"In exclusion cases, the Court has no power to overrule the findings of fact of the immigration authorities, unless such findings are manifestly unfair or the conclusions of the immigration authorities are arbitrary (*Ex parte Singh*, 12 F. Supp. 147). (*Kansas, Immigration, Exclusion and Deportation and Citizenship of U.S.A.*, Third Ed., p. 83.)

"In deportation proceedings the weight of evidence and credibility of witnesses rests with the Board of Review; and the District Court will not set aside the finding of such Board merely because it might take a different view of the facts. (*Morikichi Suwa vs. Carra*, 88 F. [2d] 119; *Kumaki Koga vs. Berkshire*, 75 F. [2d] 820.)

"Where the immigration authorities arrive at a conclusion from the evidence, though such conclusion is erroneous, it cannot be considered a denial of a fair hearing; and the courts will not interfere" (*Taranto vs. Hoff*, 88 F. [2d] 85; *italics ours.*)

Wherefore, the decision appealed from is hereby reversed and the writ of preliminary injunction issued by the lower court dissolved, with costs against petitioner-appellee. It is so ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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