

TAN SIN, PETITIONER VS. THE DEPORTATION BOARD, RESPONDENT.*G. R. No. 11511. November 28, 1958*

Ponente: PADILLA, J.

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This is an appeal from a judgment of the Court of First Instance of Manila denying the appellant's petition for a writ of habeas corpus and/or prohibition, certiorari and mandamus (case No. 29958).

The material and relevant facts, as agreed upon by the parties, are: The petitioner is a Chinese citizen residing at Pasay City allowed to reside in the Philippines as a permanent resident. Sometime in 1953 he was charged with, and on 7 December 1953 convicted of, the crime of estafa in the Court of First Instance of Manila, and sentenced to suffer 4 months and 1 day of arresto mayor, to indemnify the offended party in the sum of P650, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs (case No. 21717). The Court did not recommend to the President his deportation after service of the sentence. The petitioner served his sentence in the national penitentiary but before his release on 7 December 1955 from confinement, charges against him were filed on 29 November 1955 by a special prosecutor in the Deportation Board alleging the fact of his conviction by final judgment of, the crime of estafa and service of sentence therefor, and praying that after hearing the Board recommended to the President his deportation as an undesirable alien (case No. R-567). The Deportation Board ordered that he be detained upon release from confinement pending the termination of the deportation proceedings instituted against him. On 5 December 1955 the petitioner filed in the Deportation Board a petition for bail. The Board granted his petition. After posting a cash bond in the sum of P1,000 and a surety bond of P5,000 with the Bureau of Immigration he was released from custody in the afternoon of 7 December 1955. On 9 February 1956 the petitioner filed in the Deportation Board a motion to dismiss. The Board denied his motion. Hence this petition filed in the Court of First Instance of Manila. After the parties had submitted their respective memoranda, the Court rendered judgment denying the petitioner's petition. He has appealed.

The appellant contends that it is Congress and not the President of the Republic that has absolute and inherent power to deport aliens; that the power to deport aliens may be exercised by the President of the Republic only for reasons provided by law, namely, section 37, Commonwealth Act No. 613, as amended by Republic Acts Nos. 144 and 503, and after hearing as provided for in section 69, Revised Administrative Code; and that although he was convicted by final judgment of the crime of estafa, still section 37(a), clause 3, Commonwealth Act No. 613, as amended, does not apply to him, because he was convicted only once of the crime of estafa, which conviction happened on the thirtieth year after his entry to the Philippines, and the sentence imposed upon him was only for 4 months and 1 day of arresto mayor.

Section 69 of the Revised Administrative Code provides:

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.

Pursuant thereto, on 5 January 1951 the President of the Republic promulgated Executive Order No. 398, 47 Off. Gaz., 6, reorganizing the Deportation Board.[1] Paragraph 1, sub-paragraphs (a) and (b) of the said executive order provides:

(a) The Deportation Board, *motu proprio* or upon complaint of any person, is authorized to conduct investigations in the manner prescribed in section 69 of the Revised Administrative Code to determine whether a subject of a foreign power residing in the Philippines is an undesirable alien or not, and thereafter to recommend to the President of the Philippines the deportation of such alien.

(b) The Deportation Board, *motu proprio* or upon the filing of the formal charges by the Special Prosecutor of the Board, shall issue the warrant of arrest against the alien or aliens complained of.

In *Tan Tong vs. Deportation Board*, (96 Phil., 934), speaking of the power of the President of the Republic to deport aliens, this Court said:

* * * 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 defining 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*.)

Section 37, Commonwealth Act No. 613, as amended, merely enumerates the grounds for which an alien may be arrested upon warrant of the Commissioner of Immigration or of any officer designated by him for the purpose: and after determination by the Board of Commissioners of the existence of the ground for deportation, an alien may be deported upon warrant issued by the Commissioner of Immigration. The fact that the ground upon which the appellant is sought to be deported is not among those mentioned in the law cited by him, does not mean that the power to deport an alien whose stay in the Philippines has become undesirable for causes not mentioned therein, has been withdrawn, from the President or abrogated by the enactment of Commonwealth Act No. 613, as amended. Section 52 of the last mentioned Act expressly provides that section 69 of Act No. 2711 (Revised Administrative Code) shall continue to remain in force and effect.

The order of the Deportation Board to hold the appellant in custody pending determination of the deportation proceedings instituted against him is legal. Temporary detention is a necessary step in the process of exclusion or expulsion of an undesirable alien and pending arrangements for his deportation, the Government has the right to hold him under confinement for a reasonable length of time.[1]

The Deportation Board has been legally constituted by the President of the Republic and vested with the power to issue warrants of arrest to apprehend undesirable aliens, and after investigation conducted in the manner prescribed in section 69 of the Revised Administrative Code, to recommend their deportation if found undesirable. The appellant has been taken into custody for the purpose of determining whether he is an undesirable alien.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1]The first Deportation Board during the Commonwealth Government was organized on 29 May 1936 by Executive Order No. 33, as amended by Executive Orders Nos. 257, dated 12 March 1940; 7, dated 18 July 1946; and 16, dated 5 September 1946. These executive orders were later on revoked and the Board was reorganized by Executive Order No. 37, dated 4 January 1947. The Board was again reorganized by Executive Order No. 398, dated 5 January 1951, which is herein cited and quoted.

[1]Borovsky vs. Commissioner of Immigration and Director of Prisons, 84 Phil. 161.

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