

CASIMIRO BAYANI, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 13283. January 23, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the appellant arrived at Manila, on the 21st day of August, 1917, on the steamship Loongsang and requested permission to enter the Philippine Islands upon the ground that he was a citizen thereof, having been born in said Islands. His right to enter was inquired into by a board of special inquiry. At the conclusion of said inquiry his request to enter was denied. An appeal was taken to the Collector of Customs and the decision of the board of special inquiry was by him confirmed. Thereupon a writ of habeas corpus was petitioned for in the Court of First Instance of Manila. At the conclusion of the hearing on said petition the writ was denied and the present appeal was perfected.

The appellant now alleges that he has not been given a full, free, and fair hearing before the board of special inquiry, and that the order denying him the right to enter the Philippine Islands should be set aside and that he should be granted a new trial on the merits. The appellant now alleges that the record of the proceedings before the board of special inquiry shows that said board had abused its authority in not giving him a full, free, and fair hearing; that it appears from the record that the said hearing was in great part made up of leading and misleading questions and untrue statements, calculated to confuse the witnesses and not adapted to discover the real merits of the petitioner's rights; that the board failed to present questions and refused to permit the attorney for the appellant to present questions which would bring to light the real, material, and important facts justifying his right to enter the Philippine Islands; that the Court of First Instance failed to find from the record that the board of special inquiry had abused its authority, power and discretion in refusing the appellant permission to land in the Philippine Islands, and that the decision of said board was arbitrary, frivolous and capricious and was not sustained by the evidence.

In reply to said alleged errors the Attorney-General, Quintin Paredes, admits that appellant has not been accorded a free, full, and fair hearing and recommended that he be given a new trial. The Attorney-General in his brief said:

"The issue raised by this appeal is whether the record shows abuse of discretion and authority on the part of the board of special inquiry which heard this case. Counsel for appellant directs attention to some very ill-advised action on the part of members of the board in their examination of the witnesses in this case. The misstatement of material facts to witnesses (rec, pp. 10 and 12) and the barring of a witness before she had concluded her testimony (rec., p. 12) unquestionably are serious irregularities. And in the opinion of the undersigned, this petitioner was not accorded such a hearing as the law contemplates and assures immigrants. It is recommended that the record be remanded to the immigration officials with instructions to grant this applicant a new hearing.

"Respectfully submitted."

While the hearings before the board of special inquiry are summary in that no special pleadings, etc., are required,

they are, nevertheless, judicial in character, and the persons tried by such a board are entitled to a full, free, and fair hearing just as in any other cases where the rights of individuals are being inquired into. Such individuals have the right to be represented by an attorney, if they so desire. They have a right to present witnesses to support their request to enter. Their attorney has a right to present whatever pertinent questions he may desire to such witnesses, as will demonstrate or will tend to show the right of the immigrant to enter the country. (Edwards vs. McCoy, 22 Phil. Rep., 598; Ang Eng Chong vs. Collector of Customs, 23 Phil. Rep., 614; Go Kiam vs. Collector of Customs, R. G. No. 7099 ;[1] Loo Bun Hian vs. Collector of Customs, R. G. No. 7074 ;[1] Lim Yiong vs. Collector of Customs, 36 Phil. Rep., 424; Ex parte Lam Pui, 217 Fed. Rep., 456; Jouras vs. Allen, 222 Fed. Rep., 756; U. S. vs. Ruiz, 23 Fed. Rep., 431 [?]; Ex parte Petkos, 212 Fed. Rep., 275; Ex parte Ung King Ieng, 213 Fed. Rep., 119; Lim Ching vs. Collector of Customs, 33 Phil. Rep., 186; Ex parte Gregory, 210 Fed. Rep., 680; Louie Dai vs. U. S., 238 Fed. Rep., 68, 74; Ex parte Lee Dung Moo, 230 Fed. Rep., 746; Ex parte Tom Toy Tin, 230 Fed. Rep., 747; Ex parte Chin Loy You, 223 Fed. Rep., 883; Ex parte Wong Foo, 230 Fed. Rep., 534.)

The decisions of the customs administrative officers are final in cases like the present, unless there has been an abuse of the power and discretion vested in them. The courts, however, do not hesitate to review the decision of such administrative officers whenever it is alleged and shown that they have grossly abused the power and discretion conferred upon them, or where they acted in open violation of the law. (Ko Poco vs. McCoy, 10 Phil. Rep., 442; Chin Yow vs. U. S., 208 U. S. 8, 11; U. S. vs. Ju Toy, 198 U. S., 253; Ex parte Lung Foot, 174 Fed. Rep., 70; Lorenzo vs. McCoy, 15 Phil. Rep., 559; Lim Yiong vs. Collector of Customs, 36 Phil. Rep., 424.)

An alien seeking to enter territory of the United States, even though the hearing is summary, is entitled to a free, full, and fair hearing before he is denied the right to enter. The right to a hearing includes the right to have the evidence considered by the board. He is not only entitled to have the evidence which he presents considered, but he is entitled to present all of the evidence which he has and which is germane to the question of his right to enter. While the board of special inquiry is not technically a judicial body and the procedure is not technically judicial, nor are the proceedings defined by any particular rules or statutes, nevertheless, the board is required, under the procedure which it adopts, to give the immigrant or the alien an opportunity to show by proof that his request should be granted. (Edwards vs. McCoy, 22 Phil. Rep., 598.)

It appears from the record that all of the witnesses presented by the appellant were people of humble origin and very ignorant. They were not accustomed, perhaps, to scenes of judicial proceedings. They were therefore, naturally, under the strain born of timidity and known ignorance. For that reason they were easily excited and intimidated. The board should have allayed their fears and put them, as far as possible, at their ease, at least to the point of indicating to them that they were under the protection, so long as they obey the law, of judicial authority. This the board did not do. Upon the contrary the board, with the evident intent to confuse and to unduly excite the witnesses, made statements to them which were positively untrue and unsupported by any part of the record. And not only that, but the board actually intimidated one important witness, apparently without reason, by informing her that she could give no further testimony in that case and that she was therefore forever barred from testifying before it. The entire examination by the board from the beginning to the end, of all of the witnesses, was made in a spirit of hostility. For that reason the board was rendered incapacitated to properly and judicially weigh and consider the evidence impartially. Where the record itself discloses the fact that the evidence is weighed in the spirit of hostility there cannot be that impartial, free, full and fair hearing contemplated by the law. (Ex parte Tom Toy Tin, 230 Fed. Rep., 747; Jouras vs. Allen, 222 Fed. Rep., 756.)

It is the duty of the board to make an effort to arrive at the truth by hearing all of the witnesses and to permit them, without intimidation, to state all of the facts and to answer all of the pertinent questions put to them either by their attorney or by the board. (Ex parte Chin Loy You, 223 Fed. Rep., 833.)

The essential thing in investigations like the present as well as all other judicial or quasi-judicial proceedings is that there shall have been an honest effort to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.

The burden of proving his right to enter the territory of the United States is upon the immigrant who seeks that privilege. To sustain that burden he has a right to call and present witnesses. To that end either he or his attorney should be permitted to ask such pertinent and material questions as will tend to support his contention. A denial of any of these rights is not authorized in law and amounts to an unfair and unjust hearing. If witnesses are presented by the board to dispute or to overcome the proof adduced by the immigrant then, of course, the latter, either by himself or by his attorney, has a perfect right to test the credibility of such witnesses by a proper cross-examination. (Ex parte Ung King Ieng, 213 Fed. Rep., 119.)

After a careful examination of the record we are persuaded that the recommendation of the Attorney-General should be adopted. It is, therefore, hereby ordered and decreed that the record be returned to the court whence it came with directions that the judgment appealed from be reversed and that an order be issued directing and commanding the board of special inquiry to give to the appellant a rehearing as speedily as the facts and circumstances will permit, and without any findings as to costs. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Street, and Avanceña, JJ., concur.

[1] Not published.

CONCURRING OPINION

MALCOLM, J., concurring:

I agree with counsel for appellant and with the Attorney-General that petitioner was not accorded such a hearing by the board of special inquiry as the law contemplates and assures immigrants. Abuse of discretion is, therefore, disclosed. This is sufficient for the resolution of the case. As to the rights of attorneys before boards of special inquiry, especially the attorney's right of cross-examination, I withhold my opinion until the point is considered and decided by the court in an appeal now pending (Dee See Choon vs. Collector of Customs, 16 Off. Gaz., 931). No assignment of error on this point is made or discussed by appellant in the instant case.

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