

ANTERO SORIANO, JR., PETITIONER AND APPELLANT, VS. HON. EMILIO L. GALANG, COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLEE.

G.R. No. 14323. April 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Manila, Hon. Bienvenido A. Tan, presiding, dismissing the petition of Antero Soriano, Jr., for certiorari against the Commissioner of Immigration for confiscating a cash bond in the amount of P2,000, executed by petitioner Antero Soriano, Jr., on behalf of alien temporary visitor Ngo Tiong Kian.

The petition alleges that petitioner, as bondsman of Ngo Tiong Kian, an alien temporary visitor, filed a cash bond in the amount of P2,000 for the release of said Chinaman in September, 1950, and again another bond for the same amount on July 30, 1956, also on behalf of said Chinaman, copy of which second bond is attached to the petition as Annex "A"; that on November 26, 1956, respondent declared the bond posted by petitioner in favor of said Chinaman confiscated, on the assumption that the Chinaman, as an alien temporary visitor, had engaged on gainful employment without first being permitted in writing to do so, and supposedly in violation of the conditions of his temporary stay in the country; that the petitioner moved for the reconsideration of the order of confiscation, alleging that the Chinaman had engaged in gainful employment without permission had not been established in a proper proceeding or inquiry, and that if an inquiry was had it was not in accordance with democratic processes; that assuming that the charge was established and that proper investigation thereof was conducted, no condition of the cash bond had been violated to warrant its confiscation or forfeiture, and said confiscation was not proceeded with by hearing to determine whether the bond should be forfeiture or not. The respondent denied the motion for reconsideration above mentioned with the warning that if a new cash bond is not filed for the Chinaman, the arrest and detention of Chinaman would be ordered. It is further alleged in the petition that the respondent had acted without or in excess of his jurisdiction, or with grave abuse of discretion, and that his order of forfeiture is illegal, null and void. Respondent presented an answer to the petition admitting that the petitioner had filed a bond for Chinaman Ngo Tiong Kian for P2,000 for his temporary stay, on September 28, 1950; that copy of the bond which petitioner executed is Annex "1" to the answer or Exhibit "2", which contains the statement that petitioner has applied to respondent for the temporary admission of Chinaman Ngo Tiong Kian and the respondent had agreed to the temporary stay of said Chinaman upon the filing of a cash bond by Soriano in the amount of P2, 000 and that among the conditions of the bond is one which reads as follows:

" (g) That the undersigned agrees that during the temporary stay of Ngo Tiong Kian he shall not acquire any property nor make any investment nor be employed nor engaged in any business enterprise or whatever undertaking in the Philippines, without the written consent for any such purpose previously granted by the Commissioner of Immigration;" (Annex "1" to Answer.)

The respondent further states in his answer that upon investigation by him the said Chinaman was found to have

been employed without the written permission from the respondent; that the bond forfeited was the bond dated September, 1950 and not the bond Annex "A", dated July 30, 1956; and that the bond confiscated is the one that contains the provision prohibiting the Chinaman from engaging in any lawful business or occupation without the permission of the Commissioner; that the confiscation of the bond rests exclusively within the discretion of the respondent Commissioner as provided in Section 37 (e) as amended by Republic Act No. 144 and Section 40 of the Immigration Act of 1940.

The trial of the case was had principally on the pleadings of the parties and the exhibits, without submission of further evidence. The court thereafter held that the power of respondent to allow aliens to post bonds for the temporary release in the Philippines rests exclusively within his sound discretion (of the respondent), and that the confiscation and forfeiture ordered by respondent in case at bar cannot be attacked in a certiorari proceeding as the court lacked the power to amend, reverse or nullify the acts of the Commissioner done or exercised within his discretionary power as conferred by law. After the denial of a motion for reconsideration, petitioner appealed to this Court.

In the first assignment of error, it is claimed that the respondent-appellee has no power to confiscate a bond similar to Exhibit "A" of the petitioner, which is a cash bond for "temporary release pending deportation proceedings" in the Bureau of Immigration, unless there be a breach of the conditions of the undertaking. The error of the petitioner-appellant is his insistence that the bond which the respondent-appellee declared forfeited is the bond furnished by him on behalf of the Chinaman on July 30, 1956, copy of which is attached to his complaint or petition as Annex "A". As stated by the respondent-appellee in his letter to the petitioner, dated November 26, 1956, and in his answer to the petition, the bond that was actually confiscated by respondent-appellee is that furnished by the petitioner-appellant dated September 28, 1950, for the sum of P2,000, copy of which is attached to the answer as Annex "1" thereof. This bond, as stated in the answer, is a bond for the temporary admission of Ngo Tiong Kian and is expressly conditioned that the latter "shall not acquire any property nor make any investment nor be employed nor engage in any business enterprise or whatever undertaking in the Philippines, without the written consent for any such purpose previously granted by the Commissioner of Immigration." It is not the bond, Annex "A", dated September 30, 1956, that was confiscated; it was the bond Annex "1", attached to the complaint that was, and this latter bond contains the condition above-quoted. It cannot, therefore, be argued on behalf of the petitioner-appellee that there was no breach of any of the conditions of the bond, for it is not denied that the Chinaman for whom the bond was executed did actually engage in a lawful occupation, having been employed as a store attendant of the Bingo Trading establishment located at 668 Juan Luna, Manila (see Annex "B" of Petition.)

The second alleged error is stated as follows:

"The lower court erred in considering that since the bond had already been confiscated and forfeited in favor of the government the remedy could no longer be that of certiorari."

We find no error in the holding of the court below that the remedy of certiorari does not lie. Certiorari lies only against a "tribunal, board or officer exercising judicial functions. (Sec. 1, Rule 67.) Hence, the proceeding for certiorari instituted by petitioner-appellant is not the proper remedy to contest or question the validity of the confiscation of the bond in question.

The third assignment of error is as follows:

"The lower court erred in refusing to review and to nullify the order of the appellee forfeiting and confiscating the cash bond, of the appellant posted for Ngo Tiong Kian, alien temporary visitor."

Under this assignment of error it is argued that it is true that under the provisions of Section 40 of Commonwealth

Act No. 618, the Commissioner of Immigration is entitled to declare the cash bond or part thereof forfeited when there is breach of any of the conditions imposed in the undertaking, but it is claimed that in the case at bar there was no breach of the conditions in the undertaking. The mistake of the petitioner-appellant, as already explained above, lies in the fact that he insists that the bond that had been confiscated is the bond dated July 30, 1956, executed by him. Note that this bond is a bond "for the temporary release of one Ngo Tiong Kian, Chinese, male, 34 years of age, pending investigation of charges for deportation" against him. The bond that was confiscated is that copy of which is annexed to the answer as Annex "1", which is one for the temporary admission of Ngo. Tiong Kian, and which contains the prohibition in its paragraph (g) against engaging in any business or undertaking without the permission of the Commissioner of Immigration. We cannot understand why in spite of the answer of the respondent that the bond confiscated is that dated September, 1950, petitioner-appellee's counsel insists that the bond that had been confiscated is the other one, copy of which is attached to his petition.

It is also argued under this assignment that the first bond, dated September, 1950, Annex "1" to the answer, has been superseded by the subsequent bond dated July 30, 1956, copy of which is attached to the complaint as Annex "A". There is no merit in this claim because the bond for the temporary admission into the Philippines of an alien, Annex "1" attached to the answer, is different from the bond for the temporary release of the Chinaman pending investigation of charges for deportation against him.

There is another reason why the petition should be dismissed. This is the fact that petitioner-appellant has not exhausted all the administrative remedies which he is entitled to pursue. The Commissioner of Immigration is directly under the control and supervision of the Secretary of Justice, and if it is believed that the said Commissioner has committed a grave abuse of discretion, as claimed in the case at bar, the remedy should have been for the petitioner-appellant to appeal to the Secretary of Justice for the reversal or review of the confiscation of the bond in question. Having failed to avail of this remedy, we must declare the petition for certiorari prematurely brought in accordance with principles and doctrines heretofore followed by us. (*Monies vs. Civil Service Board of Appeals, et al.*, 101 Phil., 490; 54 Off. Gaz. [7] 2174; *Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, et al.*, 102 Phil., 850; 56 Off. Gaz. [231 4032; *Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals*, 100 Phil., 850; 53 Off. Gaz., No. 10, p. 3065.)

The judgment appealed from is hereby affirmed, with costs against petitioner-appellant. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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