

AASJS (ADVOCATES AND ADHERENTS OF SOCIAL JUSTICE FOR SCHOOL TEACHERS AND ALLIED WORKERS) MEMBER – HECTOR GUMANGAN CALILUNG, PETITIONER, VS. THE HONORABLE SIMEON DATUMANONG, IN H...

G.R. No. 160869. May 11, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an original action for prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure.

Petitioner filed the instant petition against respondent, then Secretary of Justice Simeon Datumanong, the official tasked to implement laws governing citizenship.[1] Petitioner prays that a writ of prohibition be issued to stop respondent from implementing Republic Act No. 9225, entitled "An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63, As Amended, and for Other Purposes." Petitioner avers that Rep. Act No. 9225 is unconstitutional as it violates Section 5, Article IV of the 1987 Constitution that states, "Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law."

Rep. Act No. 9225, signed into law by President Gloria M. Arroyo on August 29, 2003, reads:

SECTION 1. Short Title.-This Act shall be known as the "Citizenship Retention and Reacquisition Act of 2003."

SEC. 2. Declaration of Policy.-It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

SEC. 3. Retention of Philippine Citizenship.-Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

SEC. 4. Derivative Citizenship. -The unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who reacquire Philippine citizenship upon effectivity of this Act shall be deemed

citizens of the Philippines.

SEC. 5. Civil and Political Rights and Liabilities. - Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in the active service as commissioned or noncommissioned officers in the armed forces of the country which they are naturalized citizens.

SEC. 6. Separability Clause. - If any section or provision of this Act is held unconstitutional or invalid, any other section or provision not affected thereby shall remain valid and effective.

SEC. 7. Repealing Clause. - All laws, decrees, orders, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 8. Effectivity Clause. - This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or two (2) newspapers of general circulation.

In this petition for prohibition, the following issues have been raised: (1) Is Rep. Act No. 9225 unconstitutional? (2) Does this Court have jurisdiction to pass upon the issue of dual allegiance?

We shall discuss these issues jointly.

Petitioner contends that Rep. Act No. 9225 cheapens Philippine citizenship. He avers that Sections 2 and 3 of Rep. Act No. 9225, together, allow dual allegiance and not dual citizenship. Petitioner maintains that Section 2 allows all Filipinos, either natural-born or naturalized, who become foreign citizens, to retain their Philippine citizenship without losing their foreign citizenship. Section 3 permits dual allegiance because said law allows natural-born citizens of the Philippines to regain their Philippine citizenship by simply taking an oath of allegiance without forfeiting their foreign allegiance.[2] The Constitution, however, is categorical that dual allegiance is inimical to the national interest.

The Office of the Solicitor General (OSG) claims that Section 2 merely declares as a state policy that "Philippine

citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship." The OSG further claims that the oath in Section 3 does not allow dual allegiance since the oath taken by the former Filipino citizen is an effective renunciation and repudiation of his foreign citizenship. The fact that the applicant taking the oath recognizes and accepts the supreme authority of the Philippines is an unmistakable and categorical affirmation of his undivided loyalty to the Republic.[3]

In resolving the aforecited issues in this case, resort to the deliberations of Congress is necessary to determine the intent of the legislative branch in drafting the assailed law. During the deliberations, the issue of whether Rep. Act No. 9225 would allow dual allegiance had in fact been the subject of debate. The record of the legislative deliberations reveals the following:

x x x x

Pursuing his point, Rep. Dilangalen noted that under the measure, two situations exist - - the retention of foreign citizenship, and the reacquisition of Philippine citizenship. In this case, he observed that there are two citizenships and therefore, two allegiances. He pointed out that under the Constitution, dual allegiance is inimical to public interest. He thereafter asked whether with the creation of dual allegiance by reason of retention of foreign citizenship and the reacquisition of Philippine citizenship, there will now be a violation of the Constitution...

Rep. Locsin underscored that the measure does not seek to address the constitutional injunction on dual allegiance as inimical to public interest. He said that the proposed law aims to facilitate the reacquisition of Philippine citizenship by speedy means. However, he said that in one sense, it addresses the problem of dual citizenship by requiring the taking of an oath. He explained that the problem of dual citizenship is transferred from the Philippines to the foreign country because the latest oath that will be taken by the former Filipino is one of allegiance to the Philippines and not to the United States, as the case may be. He added that this is a matter which the Philippine government will have no concern and competence over.

Rep. Dilangalen asked why this will no longer be the country's concern, when dual allegiance is involved.

Rep. Locsin clarified that this was precisely his objection to the original version of the bill, which did not require an oath of allegiance. Since the measure now requires this oath, the problem of dual allegiance is transferred from the Philippines to the foreign country concerned, he explained.

x x x x

Rep. Dilangalen asked whether in the particular case, the person did not denounce his foreign citizenship and therefore still owes allegiance to the foreign government, and at the same time, owes his allegiance to the Philippine government, such that there is now a case of dual citizenship and dual allegiance.

Rep. Locsin clarified that by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. However, he said that this is not a matter that he wishes to address in Congress because he is not a member of a foreign parliament but a Member of the House.

x x x x

Rep. Locsin replied that it is imperative that those who have dual allegiance contrary to national interest should be dealt with by law. However, he said that the dual allegiance problem is not addressed in the bill. He then cited the Declaration of Policy in the bill which states that "It is hereby declared the policy of the State that all citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act." He stressed that what the bill does is recognize Philippine citizenship but says nothing about the other citizenship.

Rep. Locsin further pointed out that the problem of dual allegiance is created wherein a natural-born citizen of

the Philippines takes an oath of allegiance to another country and in that oath says that he abjures and absolutely renounces all allegiance to his country of origin and swears allegiance to that foreign country. The original Bill had left it at this stage, he explained. In the present measure, he clarified, a person is required to take an oath and the last he utters is one of allegiance to the country. He then said that the problem of dual allegiance is no longer the problem of the Philippines but of the other foreign country.[4] (Emphasis supplied.)

From the above excerpts of the legislative record, it is clear that the intent of the legislature in drafting Rep. Act No. 9225 is to do away with the provision in Commonwealth Act No. 63[5] which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. On its face, it does not recognize dual allegiance. By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. Plainly, from Section 3, Rep. Act No. 9225 stayed clear out of the problem of dual allegiance and shifted the burden of confronting the issue of whether or not there is dual allegiance to the concerned foreign country. What happens to the other citizenship was not made a concern of Rep. Act No. 9225.

Petitioner likewise advances the proposition that although Congress has not yet passed any law on the matter of dual allegiance, such absence of a law should not be justification why this Court could not rule on the issue. He further contends that while it is true that there is no enabling law yet on dual allegiance, the Supreme Court, through *Mercado v. Manzano*,[6] already had drawn up the guidelines on how to distinguish dual allegiance from dual citizenship.[7]

For its part, the OSG counters that pursuant to Section 5, Article IV of the 1987 Constitution, dual allegiance shall be dealt with by law. Thus, until a law on dual allegiance is enacted by Congress, the Supreme Court is without any jurisdiction to entertain issues regarding dual allegiance.[8]

To begin with, Section 5, Article IV of the Constitution is a declaration of a policy and it is not a self-executing provision. The legislature still has to enact the law on dual allegiance. In Sections 2 and 3 of Rep. Act No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.[9] Congress was given a mandate to draft a law that would set specific parameters of what really constitutes dual allegiance.[10] Until this is done, it would be premature for the judicial department, including this Court, to rule on issues pertaining to dual allegiance.

Neither can we subscribe to the proposition of petitioner that a law is not needed since the case of *Mercado* had already set the guidelines for determining dual allegiance. Petitioner misreads *Mercado*. That case did not set the parameters of what constitutes dual allegiance but merely made a distinction between dual allegiance and dual citizenship.

Moreover, in *Estrada v. Sandiganbayan*,[11] we said that the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and passed laws with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence, in determining whether the acts of the legislature are in tune with the fundamental law, we must proceed with judicial restraint and act with caution and forbearance.[12] The doctrine of separation of powers demands no less. We cannot arrogate the duty of setting the parameters of what constitutes dual allegiance when the Constitution itself has clearly delegated the duty of determining what acts constitute dual allegiance for study and legislation by Congress.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.
Austria-Martinez, and Corona, JJ., on leave.

[1] Executive Order No. 292, also known as the "Administrative Code of 1987," Book IV, Title III, Chapter 1 (on the Department of Justice), states:

x x x x

SEC. 3. Powers and Functions. - To accomplish its mandate, the Department shall have the following powers and functions:

x x x x

(6) Provide immigration and naturalization regulatory services and implement the laws governing citizenship and the admission and stay of aliens;

x x x x

[2] Rollo, p. 9.

[3] Id. at 48.

[4] 11 JOURNAL, HOUSE OF REPRESENTATIVES (August 26, 2003).

[5] AN ACT PROVIDING FOR THE WAYS IN WHICH PHILIPPINE CITIZENSHIP MAY BE LOST OR REQUIRED. (Approved on October 21, 1936.)

x x x x

SECTION 1. How citizenship may be lost. - A Filipino citizen may lose his citizenship in any of the following ways and/or events:

(1) By naturalization in a foreign country;

x x x x

[6] G.R. No. 135083, May 26, 1999, 307 SCRA 630.

[7] Id. at 643.

[8] Rollo, pp. 55-56.

[9] Supra note 7.

[10] RECORDS, CONSTITUTIONAL COMMISSION 365 (July 8, 1986).

[11] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

[12] Id. at 431.

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