

TAN GUAN, PETITIONER AND APPELLEE, VS. JOAQUIN NATIVIDAD, COLLECTOR OF CUSTOMS OF THE PORT OF CEBU, RESPONDENT AND APPELLANT.

G. R. No. 16160. September 29, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the appellee arrived at the port of Cebu on the steamship Yazoo on the 24th day of May, 1919, and asked permission to enter the Philippine Islands. He based his right to enter the Philippine Islands upon the ground that he was the minor son of a resident Chinese merchant. A board of special inquiry was appointed to inquire into his right to enter the territory of the United States.

Tan Guan himself testified that he was 21 years of age. His father testified that his son, Tan Guan, was 22 years old; that in 1912 he was 16 years of age. The hearing took place on the 24th day of June, 1919. The father further testified that he was married when he was 23 years old; that Tan Guan was born the next year; and that he, the father, was 46 years old at the time of the examination. That fact would make Tan Guan at least 22 years of age.

At the conclusion of the hearing the board of special inquiry reached the conclusion that Tan Guan was not a minor was not the minor son of a resident Chinese merchant and refused him the right to enter the Philippine Islands.

Later, a rehearing was granted to Tan Guan, upon motion. At the rehearing the only witness presented was his alleged mother. She was asked if she did not declare before a board of special inquiry in 1912 that Tan Guan was 16 years old, and she said she could not remember, but that she thought Tan Guan at that time was 15 years old. She testified that Tan Guan was born in China; that her husband was in the house at the time Tan Guan was born; while the father testified that at the time of the birth of Tan Guan he was in Manila, and that the only knowledge he had of the birth of Tan Guan was the information which he received from his wife through a letter. At the close of the rehearing the board of special inquiry again denied Tan Guan the right to enter the Philippine Islands, upon the ground that he was not the person whom he represented himself to be. From that order of the said board an appeal was taken to the Collector of Customs, who affirmed said order.

Later, a petition for the writ of habeas corpus was presented in the Court of First Instance of the Province of Cebu, to which petition the Collector of Customs of the port of Cebu presented his answer.

Among other things the petitioner, in his petition for the writ of habeas corpus, alleged that the board of special inquiry had not been named or appointed by the Collector of Customs, nor were they authorized or empowered by the Collector of Customs, or by any other person, to make and constitute a board of special inquiry to determine, in accordance with law, the right of the petitioner to land in the Philippine Islands.

In the answer of the Collector of Customs he alleged that the members of the board of special inquiry who investigated the petitioner were designated by the Insular Collector of Customs as qualified to serve on boards of

special inquiry at the port of Cebu and were duly appointed by the respondent, and that the record, decisions, findings, and proceedings were and are legal, lawful, and effectual.

Upon the issue thus presented the cause was submitted for decision. After a consideration of the questions presented, the Honorable Adolph Wislizenus revoked the order of the department of customs, granted the petition for the writ of habeas corpus, and enjoined the Collector of Customs from deporting Tan Guan, on the ground and for the reason that "the board of special inquiry was not legally appointed and was without any authority in the case." From that judgment the Collector of Customs appealed to this court.

During the hearing on the petition for the writ of habeas corpus the Collector of Customs at the port of Cebu, in answer to the following question presented by the judge, gave the following explanation concerning the method of appointing the board of special inquiry at the port of Cebu:

"Q. Then you want to say that these three persons mentioned, Messrs. Alfredo de Leon, Jose Borromeo, and Agustin Vinluan have carried out these, proceedings marked Exhibit A and rendered judgment as shown by Exhibit A without receiving any appointment?-A. No, sir; I do not mean that and I should like the court to permit me to explain. At the customhouse of Cebu there are actually six persons appointed on March 3, 1919, by the Insular Collector of Customs, who form the general immigration board in the Philippines, and are authorized to sit as members of said board to investigate the right of foreigners to enter the Philippine Islands. The Collector of Customs appoints three of them to form the board of special inquiry. It has been the practice always to appoint the person first in the list who is Mr. Alfredo de Leon, assistant collector of Cebu, as president of the board and any of the others following as member, and Mr. Agustin Vinluan as stenographer and member, in order that the Collector of Customs may not always have to sign the appointment before the constitution of the board. It has always been the practice for Messrs. De Leon, Borromeo, and Vinluan to constitute the board unless one of them is incapacitated."

In addition to the foregoing explanation, there was presented in evidence Exhibit G, which reads as follows:

"THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
"DEPARTMENT OF FINANCE,
"BUREAU OF CUSTOMS,
"MANILA.

March 3, 1919.

"SPECIAL ORDER No. 73.-Amending Manila Customhouse Special Order No. 62.

"PARAGRAPH I. Paragraph I of Manila Customhouse Special Order No. 62 is hereby amended to read as follows:

"PARAGRAPH I. By virtue of the authority vested in the Insular Collector of Customs by law, the following officials of the Bureau of Customs are hereby designated under the provisions of section 17 of the Act of Congress approved February 5, 1917, published in the Philippine Islands, April 4, 1917, as qualified to serve on board of special inquiry at the port of Cebu, namely:

"Alfredo de Leon, Deputy Collector of Customs; Capt. Jose U. Borromeo, secret service agent; Nicolas Leyva, surveyor; Agustin Vinluan, clerk and stenographer; Miguel Castellon, clerk; Teodulo Tomakin, inspector of customs."

"PAR. II. Philippine customs and immigration officers shall give due publicity to the terms of this order.

"V. ALDANESE,
"Insular Collector of Customs."

We have decided in cases without number that the administration of the immigration laws in the Philippine Islands is in the hands of the department of customs. (In re Allen, 2 Phil., 630; Chieng Ah Sui vs. Collector of Customs, 22 Phil., 361 [239 U. S., 139]; Tan Chin Hin vs. Collector of Customs, 27 Phil., 521; Singh vs. Collector of Customs, 38 Phil., 867; sec. 6, Act of Congress of Feb. 6, 1905; sec. 1, Act of Congress of Feb. 5, 1917.)

From Exhibit G above quoted it appears that Alfredo de Leon, Jose U. Borromeo, Nicolas Leyva, Agustin Vinluan, Miguel Castellon, and Teodulo Tomakin were duly appointed by the Collector of Customs of the Philippine Islands, on the 3d day of March, 1919, "to serve on board of special inquiry at the port of Cebu."

From the record it appears that Messrs. Alfredo de Leon, Jose Borromeo, and Agustin Vinluan, who were mentioned in said appointment by the Collector of Customs above quoted (Exhibit G), acted as the board of special inquiry in the present case. Said persons having been duly appointed by the Collector of Customs of the Philippine Islands "to serve on board of special inquiry at the port of Cebu," on the 3d day of March, 1919, it required no further appointment in order to justify them in acting as said board of special inquiry. All that was necessary after said appointment, in order to justify said persons to act as a board of special inquiry, was simply a designation by the Collector of Customs at the port of Cebu. That designation may be in writing, or it may be a mere verbal order. The fact that the Collector of Customs at the port of Cebu formulated a written appointment to the persons who constituted the board of special inquiry in the present case did not in any way affect their authority to act by virtue of the appointment of the Collector of Customs of the Philippine Islands. A new appointment for each new case was not necessary in view of the provisions of Exhibit G above quoted.

The judgment of the lower court granting the petition for the writ of habeas corpus for the reason which it gave, copied above, should, therefore, be revoked. With reference to the right of the appellee to enter the Philippine Islands, a careful examination of the record made by the department of customs has been made and no abuse of power, authority, or discretion on the part of the department of customs has been found.

Therefore, the judgment of the Court of First Instance revoking and annulling the order of the department of customs is hereby annulled and set aside, and it is hereby ordered and decreed that the order of the department of customs ordering the deportation of the appellee be and the same is hereby confirmed, and that the record be returned to the lower court with direction that a judgment in accordance herewith be entered, and that the appellee be deported from the Philippine Islands; and, without any finding as to costs, it is so ordered.

Mapa, C. J., Araullo, Malcolm, Avanceña and Villamor JJ., concur.

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