KILOSBAYAN FOUNDATION AND BANTAY KATARUNGAN FOUNDATION, PETITIONERS, VS. EXECUTIVE SECRETARY EDUARDO R. ERMITA; SANDIGANBAYAN JUSTICE GREGORY S. ONG, RESPONDENTS.

G.R. No. 177721. July 03, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

Filed on May 23, 2007 was this petition for certiorari under Rule 65 of the Rules of Court.

Petitioners are people's and/or non-governmental organizations engaged in public and civic causes aimed at protecting the people's rights to self-governance and justice.

Respondent Executive Secretary is the head of the Office of the President and is in charge of releasing presidential appointments including those of Supreme Court Justices.

Respondent Gregory S. Ong is allegedly the party whose appointment would fill up the vacancy in this Court.

Petitioners allege that:

On May 16, 2007, respondent Executive Secretary, in representation of the Office of the President, announced an appointment in favor of respondent Gregory S. Ong as Associate Justice of the Supreme Court to fill up the vacancy created by the retirement on April 28, 2007 of Associate Justice Romeo J. Callejo, Sr. The appointment was reported the following day, May 17, 2007, by the major daily publications.

On May 18, 2007, the major daily publications reported that the appointment was "recalled" or "held in abeyance" by Malacañang in view of the question relating to the citizenship of respondent Gregory S. Ong. There is no indication whatever that the appointment has been cancelled by the Office of the President.

On May 19, 2007, the major daily publications reported that respondent Executive Secretary stated that the appointment is "still there except that the validation of the issue is being done by the Judicial and Bar Council (JBC)."

Petitioners contend that the appointment extended to respondent Ong through respondent Executive Secretary is patently unconstitutional, arbitrary, whimsical and issued with grave abuse of discretion amounting to lack of jurisdiction.

Petitioners claim that respondent Ong is a Chinese citizen, that this fact is plain and incontestable, and that his own birth certificate indicates his Chinese citizenship. Petitioners attached a copy of said birth certificate as Annex "H" to the petition. The birth certificate, petitioners add, reveals that at the time of respondent Ong's birth on May 25, 1953, his father was Chinese and his mother was also Chinese.

Petitioners invoke the Constitution:

> Section 7 (1) of Article VIII of the 1987 Constitution provides that "No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines." Sec. 2 of Art. IV defines "natural-born citizens as those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine Citizenship."[1]

Petitioners maintain that even if it were granted that eleven years after respondent Ong's birth his father was finally granted Filipino citizenship by naturalization, that, by itself, would not make respondent Ong a natural-born Filipino citizen.

Petitioners further argue that respondent Ong's birth certificate speaks for itself and it states his nationality as "Chinese" at birth. They invoke the Civil Code:

> Article 410 of the Civil Code provides that "[t]he books making up the civil register and all documents relating thereto x x x shall be prima facie evidence of the facts therein contained." Therefore, the entry in Ong's birth certificate indicating his nationality as Chinese is prima facie evidence of the fact that Ong's citizenship at birth is Chinese.
>
> Article 412 of the Civil Code also provides that "[N]o entry in a civil register shall be changed or corrected without a judicial order." Thus, as long as Ong's birth certificate is not changed by a judicial order, the Judicial & Bar Council, as well as the whole world, is bound by what is stated in his birth certificate.[2]

This birth certificate, petitioners assert, prevails over respondent Ong's new Identification Certificate issued by the Bureau of Immigration dated October 16, 1996, stating that he is a natural-born Filipino and over the opinion of then Secretary of Justice Teofisto Guingona that he is a natural-born Filipino. They maintain that the Department of Justice (DOJ) does not have the power or authority to alter entries in a birth certificate; that respondent Ong's old Identification Certificate did not declare that he is a natural-born Filipino; and that respondent Ong's remedy is an action to correct his citizenship as it appears in his birth certificate.

Petitioners thereupon pray that a writ of certiorari be issued annulling the appointment issued to respondent Ong as Associate Justice of this Court.

Subsequently, on May 24, 2007, petitioners filed an Urgent Motion for the Issuance of a Temporary Restraining Order (TRO), praying that a TRO be issued, in accordance with the Rules of Court, to prevent and restrain respondent Executive Secretary from releasing the appointment of respondent Ong, and to prevent and restrain respondent Ong from assuming the office and discharging the functions of Associate Justice of this Court.

The Court required respondents to Comment on the petition.

Respondent Executive Secretary accordingly filed his Comment, essentially stating that the appointment of respondent Ong as Associate Justice of this Court on May 16, 2007 was made by the President pursuant to the powers vested in her by Article VIII, Section 9 of the Constitution, thus:

> SEC. 9. The Members of the Supreme Court and Judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

Respondent Executive Secretary added that the President appointed respondent Ong from among the list of nominees who were duly screened by and bore the imprimatur of the JBC created under Article VIII, Section 8 of the Constitution. Said respondent further stated: "The appointment, however, was not released, but instead, referred to the JBC for validation of respondent Ong's citizenship."[3] To date, however, the JBC has not received the referral.

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Supporting the President's action and respondent Ong's qualifications, respondent Executive Secretary submits that:

- The President did not gravely abuse her discretion as she appointed a person, duly nominated by the JBC, which passed upon the appointee's qualifications.

- Justice Gregory S. Ong is a natural-born citizen as determined by the Bureau of Immigration and affirmed by the Department of Justice, which have the authority and jurisdiction to make determination on matters of citizenship.

- Undisputed evidence disclosed that respondent Ong is a natural-born citizen.

- Petitioners are not entitled to a temporary restraining order.[4]

Respondent Ong submitted his Comment with Opposition, maintaining that he is a natural-born Filipino citizen; that petitioners have no standing to file the present suit; and that the issue raised ought to be addressed to the JBC as the Constitutional body mandated to review the qualifications of those it recommends to judicial posts. Furthermore, the petitioners in his view failed to include the President who is an indispensable party as the one who extended the appointment.

As to his citizenship, respondent Ong traces his ancestral lines to one Maria Santos of Malolos, Bulacan, born on November 25, 1881, who was allegedly a Filipino citizen[5] who married Chan Kin, a Chinese citizen; that these two had a son, Juan Santos; that in 1906 Chan Kin died in China, as a result of which Maria Santos reverted to her Filipino citizenship; that at that time Juan Santos was a minor; that Juan Santos thereby also became a Filipino citizen;[6] that respondent Ong's mother, Dy Guiok Santos, is the daughter of the spouses Juan Santos and Sy Siok Hian, a Chinese citizen, who were married in 1927; that, therefore, respondent's mother was a Filipino citizen at birth; that Dy Guiok Santos later married a Chinese citizen, Eugenio Ong Han Seng, thereby becoming a Chinese citizen; that when respondent Ong was eleven years old his father, Eugenio Ong Han Seng, was naturalized, and as a result he, his brothers and sisters, and his mother were included in the naturalization.

Respondent Ong subsequently obtained from the Bureau of Immigration and the DOJ a certification and an identification that he is a natural-born Filipino citizen under Article IV, Sections 1 and 2 of the Constitution, since his mother was a Filipino citizen when he was born.

Summarizing, his arguments are as follows:

> - PETITIONERS' LACK OF STANDING AND INABILITY TO IMPLEAD AN INDISPENSABLE PARTY WHOSE OFFICIAL ACTION IS THE VERY ACT SOUGHT TO BE ANNULLED CONSTITUTE INSUPERABLE LEGAL OBSTACLES TO THE EXERCISE OF JUDICIAL POWER AND SHOULD PREVENT THIS CASE FROM PROCEEDING FURTHER FOR DETERMINATION ON THE MERITS BY THIS HONORABLE COURT.
>
> - RESPONDENT ONG IS, IN TRUTH AND IN FACT, A NATURAL-BORN CITIZEN OF THE PHILIPPINES, CONSIDERING THAT:
>
> - DY GUIOK SANTOS WAS A FILIPINO CITIZEN AT THE TIME OF HER MARRIAGE TO EUGENIO; and
>
> - HAVING BEEN BORN BEFORE JANUARY 17, 1973 OF A FILIPINO MOTHER AND WHO ELECTED FILIPINO CITIZENSHIP UPON REACHING THE AGE OF MAJORITY, RESPONDENT ONG MEETS THE REQUIREMENTS UNDER ARTICLE IV, SECTIONS 1 AND 2 OF THE 1987 CONSTITUTION.
>
> - THE BIRTH CERTIFICATE OF RESPONDENT ONG AS PRESENTED BY PETITIONERS CAN, IN NO WAY, WITHOUT MORE, ESTABLISH WITH FINALITY THAT HE IS A CHINESE NATIONAL, OR

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DISPROVE CONCLUSIVELY THAT HE IS, IN FACT, A NATURAL-BORN FILIPINO, DESCENDED FROM "INDIOS."

- IT IS NOT NECESSARY FOR RESPONDENT ONG TO RESORT TO JUDICIAL ACTION UNDER RULE 108 OF THE RULES OF COURT FOR HIM TO BE ABLE TO CLAIM AND ENJOY HIS RIGHTFUL STATUS AS A NATURAL-BORN FILIPINO.

- THE BUREAU OF IMMIGRATION HAS PREEMPTIVE LEGAL AUTHORITY OR PRIMARY ADMINISTRATIVE JURIDICTION TO MAKE A DETERMINATION AS REGARDS THE CITIZENSHIP OF RESPONDENT ONG, AND UPON SUBSEQUENT CONFIRMATION BY THE SECRETARY OF JUSTICE AS REQUIRED BY THE RULES, ISSUE A DECLARATION (I.E., IDENTIFICATION CERTIFICATE NO. 113878) RECOGNIZING THAT RESPONDENT ONG IS A NATURAL-BORN FILIPINO, THEREBY RENDERING NONEXISTENT ANY CONTITUTIONAL IMPEDIMENT FOR HIM TO ASSUME THE POSITION OF ASSOCIATE JUSTICE OF THE SUPREME COURT.[7]

Petitioners, in turn, filed a Consolidated Reply, in which they asserted their standing to file this suit on the strength of previous decisions of this Court, e.g., Kilosbayan, Incorporated v. Guingona[8] and Kilosbayan, Incorporated v. Morato,[9] on the ground that the case is one of transcendental importance. They claim that the President's appointment of respondent Ong as Supreme Court Justice violates the Constitution and is, therefore, attended with grave abuse of discretion amounting to lack or excess of jurisdiction. Finally, they reiterate that respondent Ong's birth certificate, unless corrected by judicial order in non-summary proceedings for the purpose, is binding on all and is prima facie evidence of what it states, namely, that respondent Ong is a Chinese citizen. The alleged naturalization of his father when he was a minor would not make him a natural-born Filipino citizen.

The petition has merit.

First, as to standing. Petitioners have standing to file the suit simply as people's organizations and taxpayers since the matter involves an issue of utmost and far-reaching Constitutional importance, namely, the qualification - nay, the citizenship - of a person to be appointed a member of this Court. Standing has been accorded and recognized in similar instances.[10]

Second, as to having to implead the President as an alleged necessary party. This is not necessary since the suit impleads the Executive Secretary who is the alter ego of the President and he has in fact spoken for her in his Comment. Furthermore, the suit does not seek to stop the President from extending the appointment but only the Executive Secretary from releasing it and respondent Ong from accepting the same.

Third, as to the proper forum for litigating the issue of respondent Ong's qualification for memberhip of this Court. This case is a matter of primordial importance involving compliance with a Constitutional mandate. As the body tasked with the determination of the merits of conflicting claims under the Constitution,[11] the Court is the proper forum for resolving the issue, even as the JBC has the initial competence to do so.

Fourth, as to the principal issue of the case - is respondent Ong a natural-born Filipino citizen?

On this point, the Court takes judicial notice of the records of respondent Ong's petition to be admitted to the Philippine bar.

In his petition to be admitted to the Philippine bar, docketed as B.E. No. 1398-N filed on September 14, 1979, under O.R. No. 8131205 of that date, respondent Ong alleged that he is qualified to be admitted to the Philippine bar because, among others, he is a Filipino citizen; and that he is a Filipino citizen because his father, Eugenio Ong Han Seng, a Chinese citizen, was naturalized in 1964 when he, respondent Ong, was a minor of eleven years and thus he, too, thereby became a Filipino citizen. As part of his evidence, in support of his petition, be

submitted his birth certificate and the naturalization papers of his father. His birth certificate[12] states that he was a Chinese citizen at birth and that his mother, Dy Guiok Santos, was a Chinese citizen and his father, Eugenio Ong Han Seng, was also a Chinese citizen.

Specifically, the following appears in the records:

P E T I T I O N

> COMES now the undersigned petitioner and to this Honorable Court respectfully states:
>
> - That he is single/married/widower/widow, Filipino citizen and 26 years of age, having been born on May 25, 1953, at SAN JUAN RIZAL, to spouses Eugenio Ong Han Seng and Dy Guiok Santos who are citizens of the Philippines, as evidenced by the attached copy of his birth certificate marked as Annex A (if born outside of wedlock, state so; or if Filipino citizen other than natural born, state how and when citizenship was acquired and attach the necessary proofs: By Nat. Case #584 of Eugenio Ong Han Seng (Father) See Attached documents Annex B, B-1, B-2, B-3, B-4.
>
> x x x
>
> V E R I F I C A T I O N
>
> Republic of the Philippines)
> City of Manila) S.S.
>
> I, GREGORY SANTOS ONG, after being sworn, depose and state: that I am the petitioner in the foregoing petition; that the same was prepared by me and/or at my instance and that the allegations contained therein are true to my knowledge.
>
> (Sgd.) GREGORY SANTOS ONG
> Affiant
>
> SUBSCRIBED AND SWORN to before me this 28th day of August, 1979, City of Manila, Philippines, affiant exhibiting his/her Residence Certificate No. A-_____, issued at _____, on _____, 19__.
>
> (Sgd.)
> Notary Public
> Until December 31, 1979
> PTR No. 3114917
> January 19, 1979, Pasig, MM
>
> Doc. No. 98;
> Page No. 10;
> Book No. VIII;
> Series of 1979.[13]

In fact, Emilio R. Rebueno, Deputy Clerk of Court and Bar Confidant, wrote respondent Ong a letter dated October 3, 1979 stating that in connection with his Petition for Admission to the 1979 Bar Examinations, he has to submit:

1) A certified clear copy of his Birth Certificate; and
2) A certification of non-appeal re his citizenship from the Office of the Solicitor General.

Respondent Ong complied with these requirements.

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It was on the basis of these allegations under oath and the submitted evidence of naturalization that this Court allowed respondent Ong to take the oath as a lawyer.

It is clear, therefore, that from the records of this Court, respondent Ong is a naturalized Filipino citizen. The alleged subsequent recognition of his natural-born status by the Bureau of Immigration and the DOJ cannot amend the final decision of the trial court stating that respondent Ong and his mother were naturalized along with his father.

Furthermore, as petitioners correctly submit, no substantial change or correction in an entry in a civil register can be made without a judicial order, and, under the law, a change in citizenship status is a substantial change. In Labayo-Rowe v. Republic,[14] this Court held that:

> Changes which affect the civil status or citizenship of a party are substantial in character and should be threshed out in a proper action depending upon the nature of the issues in controversy, and wherein all the parties who may be affected by the entries are notified or represented and evidence is submitted to prove the allegations of the complaint, and proof to the contrary admitted.[15]

Republic Act No. 9048 provides in Section 2 (3) that a summary administrative proceeding to correct clerical or typographical errors in a birth certificate cannot apply to a change in nationality. Substantial corrections to the nationality or citizenship of persons recorded in the civil registry should, therefore, be effected through a petition filed in court under Rule 108 of the Rules of Court.[16]

The series of events and long string of alleged changes in the nationalities of respondent Ong's ancestors, by various births, marriages and deaths, all entail factual assertions that need to be threshed out in proper judicial proceedings so as to correct the existing records on his birth and citizenship. The chain of evidence would have to show that Dy Guiok Santos, respondent Ong's mother, was a Filipino citizen, contrary to what still appears in the records of this Court. Respondent Ong has the burden of proving in court his alleged ancestral tree as well as his citizenship under the time-line of three Constitutions.[17] Until this is done, respondent Ong cannot accept an appointment to this Court as that would be a violation of the Constitution. For this reason, he can be prevented by injunction from doing so.

WHEREFORE, the petition is GRANTED as one of injunction directed against respondent Gregory S. Ong, who is hereby ENJOINED from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship.

This Decision is FINAL and IMMEDIATELY EXECUTORY.

No costs.

SO ORDERED.

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

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[1] Petition, p. 7; Rollo, p. 9.

[2] Id. at 10-11.

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[3] Respondent Executive Secretary's Comment, p. 6.

[4] Id. at 8, 12-13, 19 & 25.

[5] Being the child of the marriage of Jose Santos and Agata Cruz, "indios" of Barrio Santiago therein, per parochial record of baptism in Malolos, Bulacan.

[6] Laureto A. Talaroc v. Alejandro D. Uy, G.R. No. L-5397, 92 Phil. 52 (1952).

[7] Comment with Opposition, pp. 18-19.

[8] G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[9] G.R. No. 118910, July 17, 1995, July 17, 1995, 246 SCRA 540.

[10] Francisco, Jr. v. The House of Representatives, G.R. No. 160261, November 10, 2003, 460 SCRA 830; Tatad v. Secretary of the Department of Energy, G.R. No. 124360, November 5, 1997, 281 SCRA 330.

[11] See, Angara v. Electoral Commission, 63 Phil. 139 (1936).

[12] This is the same birth certificate that petitioners attach as Annex "H" to their Petition.

[13] Emphasis supplied.

[14] G.R. No. 53417, December 8, 1988, 168 SCRA 294.

[15] Id. at 299.

[16] Barco v. Court of Appeals, 465 Phil. 39 (2004); Lee v. Court of Appeals, 419 Phil. 392 (2001); Republic v. Valencia, 225 Phil. 408 (1986).

[17] See, Appendix "A" which is an Outline of respondent Ong's Alleged Ancestral Tree and the Status of his Citizenship under Three Constitutions, culled from his allegations herein.

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