

GEORGE DE BISSCHOP, PETITIONER AND APPELLEE, VS. EMILIO L. GALANG, IN HIS CAPACITY AS COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.

G.R. No. 18365. May 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on question of law from an order issued on 27 March 1961, in Civil Case No. 41477 of the Court of First Instance of Manila (Judge Antonio Canizares, presiding), the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, and for the proper determination of the case of herein petitioner, the Court hereby grants the petition for prohibition and orders respondent Commissioner of Immigration to desist and refrain from arresting and expelling the petitioner from the Philippines unless and until proper and legal proceedings are conducted by the Board of Commissioners of the Bureau of Immigration in connection with the application for extension of stay filed by petitioner with said Board."

The facts are not disputed. Petitioner-appellee George de Bisschop, an American citizen, was allowed to stay in this country for three years, expiring 1 August 1959, as a prearranged employee of the Bissmag Production, Inc., of which he is president and general manager. He applied for extension of stay with the Bureau of Immigration, in a letter dated 10 July 1959. In view, however, of confidential and damaging reports (Exhibits P, Q, and It) of Immigration Office, Benjamin de Mesa to the effect that the Bissmag Production, Inc., is more of a gambling front than the enterprise for promotions of local and imported shows that it purports to be, and that de Bisschop is suspected of having evaded payment of his income tax, the Commissioner of Immigration, in a communication of 10 September 1959, advised him that his application for extension of stay as a prearranged employee has been denied by the Board of Commissioners, and that he should depart within 5 days. Thereafter, counsel of de Bisschop requested for a copy of the adverse decision of said Board, but the legal officer of the Bureau of Immigration replied, on 11 September 1959, in this tenor:

"In reply to yours of even date requesting that you be furnished copy of the decision, order or resolution of the Board of Commissioners denying the application for extension of stay of Mr. GEORGE DE BISSCHOP, please be advised that, pursuant to immigration practice and procedure and as is usual in such cases where the result is a vote for denial, for reasons of practicability and expediency, no formal decision, order or resolution is promulgated by the Board. The denial of the petition for extension was expressed by the majority members of the Board as follows:

For denial, Tulabia, 8-24-59;
O.K. for extension, De la Rosa, September 9;
Denial, Galang, 9-10.

Thereafter, Mr. Bisschop was simply advised of said denial as per letter of this Office dated September 10, 1959.

In view thereof, you and your client are advised anew that Mr. Bisschop is hereby required to depart within five (5) days of this notice."

No request for reinvestigation was made with the Bureau of Immigration. Instead, to forestall his arrest and the filing of the corresponding deportation proceedings, de Bisschop filed the present case on 18 September 1959. Pending resolution of the main case for prohibition, a writ of preliminary injunction was issued ex-parte by the court a quo on the same day ordering herein respondent-appellant to desist from arresting and detaining petitioner-appellee. During the hearing, only documentary evidence were presented.

In his brief, appellant Commissioner raises two main issues: That the lower court erred (a) in holding that the Commissioners of Immigration are required by law to conduct formal hearing on all applications for extension of stay of aliens; and (b) in ruling that said Commissioners are enjoined to promulgate written decisions in such cases.

After a careful study of the case, we fully agree with appellant's contention on several grounds.

The administration of immigration laws is the primary and exclusive responsibility of the Executive branch of the government. Extension of stay of aliens is purely discretionary on the part of immigration authorities. Since Commonwealth Act No. 613, otherwise known as the Philippines Immigration Act of 1940, is silent as to the procedure to be followed in these cases, we are inclined to uphold the argument that courts have no jurisdiction to review the purely administrative practice of immigration authorities of not granting formal hearings in certain cases as the circumstances may warrant, for reasons of practicability and expediency. This would not violate the due process clause if we take into account that, in this particular case, the letter of appellant-commissioner advising de Bisschop to depart in 5 days is a mere formality, a preliminary step, and, therefore, far from final, because, as alleged in paragraph 7 of appellant's answer to the complaint, the "requirement to leave before the start of the deportation proceedings is only an advice to the party that unless he departs voluntarily, the State will be compelled to take steps for his expulsion". It is already a settled rule in this jurisdiction that a day in court is not a matter of right in administrative proceedings.

"The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on Constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law as is judicial process. While a day in court is a matter of right in judicial proceedings, in administrative proceedings, it is otherwise since they rest upon different principles. * * * in certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradiction, that the right to a notice and hearing are not essential to due process of law." (Cornejo vs. Gabriel and Provincial Board of Rizal, 41 Phil. 188, 193-194)

With respect to the contention that the decision of the Board of Commissioners on matters of petition for extension of stay of aliens should be promulgated in writing, appellee relies on Section 8 of the Immigration Act, which provides that in "any case coming before the Board of Commissioners, the decision of any two members shall prevail". However, we agree with the Solicitor General that the word "decision", as employed in this section, obviously refers to the number of "votes" necessary to constitute the decision of the said Board. The Sampaguita Shoe case (102 Phil. 850), which was taken into account by the lower court, is not applicable to the case at bar; it applies to judicial decision, as provided in Section 1, Rule 35, of the Rules of Court. On the other hand, as pointed out in appellant's brief, where the intention of the lawmaker is otherwise, the immigration laws specifically enumerate when the decisions of the Board of Commissioners shall be in writing, to wit: (1) in cases of appeal from a decision of the Board of Special inquiry as to matters of admission or exclusion of aliens, as provided in

Section 27(c) of the Immigration Act; and (2) the decision of the Board of Commissioners in cases of deportation under Section 37, paragraph (a) and (c). But there is nothing" in the immigration law which provides that the Board of Commissioners must render written decisions on petitions for extension of stay.

Finally, though not brought out in appellant's brief, there is another reason why prohibition will not lie herein. Prohibition is not favored by the courts. The writ should issue with caution, and only in cases of extreme necessity- which condition does not obtain in this case. Moreover, it will issue only if there is no other plain, speedy, and adequate remedy (Section 2, Rule 67, Rules of Court). This Court has already ruled that "the use of habeas corpus to test the legality of aliens confinement and proposed expulsion from the Philippines is now a settled practice" (*Lao Tang Bun vs. Fabre*, 81 Phil. 682, 683). This is because habeas corpus, aside from being thorough and complete, affords prompt relief from unlawful imprisonment of any kind, and under all circumstances. It reaches the facts affecting jurisdiction, or want of power, by the most direct method, and at once releases the applicant from restraint when it is shown to be unauthorized (cf. *People ex rel. Livingston vs. Wyatt*, 18G N.Y. 383; 79 N.E. 330). And it has already been held by a long line of American decisions that the existence of this adequate remedy by habeas corpus will bar the issuance of a writ of prohibition.

"It has been repeatedly decided by the Supreme Court that the writ of habeas corpus is a proper remedy for reviewing proceedings for the deportation of aliens and to ascertain whether jurisdiction has been therein exceeded. *United States vs. Jung Ah Lung*, 124 U.S. 621 8 S. Ct. 663, 31 L. Ed. 591; *Chin Yow vs. United States*, 208 U.S. 8, 28 S. Ct. 201, 52 L. Ed. 369; *Ng Fung Ho vs. White*, 259 U.S. 276, 42 S. Ct. 492, 66 L. Ed. 938; *Bilokumsky vs. Tod*, 263 U.S. 149, 44 S. Ct. 54, 68 L. Ed. 221. While in the state courts it is very generally held that the existence of an adequate remedy by habeas corpus will prevent the issuance of a writ of prohibition. *Livingstone vs. Wyatt*, 186 N.Y. 383, 79 N.E. 330, 10 L.R.A. (N.S.) 159, 9 Ann. Cas. 972; *Parks vs. Ryan*, 24 N.M. 176, 173 P. 858.; *In re Heffner*, 16 Okl. Cr. 691, 182 P. 88; *State vs. Second Judicial District Court (Nev.)* 18 P.(2d) 449; *Wessels vs. Superior Court*, 200 Cal. 403, 253 p. 135, and in *Bedford vs. Wingfield*, 27 Grat. 329, the Supreme Court of Virginia said that the writ of prohibition issues only in cases of extreme necessity. * * * It is a principle of universal application, and one which lies at the very foundation of the law of prohibition, that the jurisdiction is strictly a sufficient reason for withholding the writ, that the party aggrieved has another and complete remedy at law." (*Kabadian vs. Doak*, 65 F. (2d) 202, 205)

WHEREFORE, the order appealed from is reversed. The petition for prohibition is dismissed, and the writ of preliminary injunction issued by the court a quo is hereby dissolved, with costs against petitioner-appellee George de Bisschop.

SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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