

**THE DEPORTATION BOARD, MAGNO S. GATMAITAN VS. CHAIRMAN,
ARTURO A. ALAFRIZ AND MANUEL V. REYES AS MEMBERS,
PETITIONERS, VS. HON. GUILLERMO S. SANTOS, JUDGE OF THE
COURT OF FIRST ...**

G.R. No. 20239. February 29, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition for certiorari and prohibition, filed by the Solicitor General on behalf of the Deportation Board and its members, seeking to restrain enforcement of and nullify the writ of preliminary injunction issued by the Court of First Instance of Manila in Civil Case No. 51409 of said court, and to declare respondent Robert La Rue Stewart not entitled to the relief prayed for therein. The facts of the case, as may be gathered from the records, are as follows:

On August 17, 1962, Robert La Rue Stewart, also known as Bob Stewart, an American citizen resident of the Philippines was charged by Special Prosecutors before the Deportation Board, of being an undesirable alien (Dep. Case No. R-999). It was charged, among others, that Stewart, in violation of the provisions of the Revised Election Code, aided candidates running for office in the 1961 general elections and/or otherwise tried to influence the said elections. Before the hearing of the charges, Stewart (who was previously ordered arrested, but was released on bail) orally moved for the dismissal of the electioneering charge. Allegedly even before Stewart could state the ground of his motion, the Chairman of the Deportation Board denied the same. Thereupon, he filed a petition for prohibition in the Court of thirist Instance of Manila (Civil Case No. 51409) to restrain the Deportation Board from proceeding with the hearing of the deportation case insofar as it relates to the charges of electioneering, claiming that under Section 185 of the Revised Election Code, jurisdiction to entertain electioneering charge against a foreigner is vested in the courts and the deportation of said alien is made an additional penalty after the latter is found (by the court) to have committed a serious violation of the election code. The respondent Board, therefore, it was alleged, acted with grave abuse of authority and/or discretion, and without authority, in proceeding with the hearing of the electioneering charges against Stewart. Contending further that the continuation of the proceedings will work injustice and irreparable injury to his rights name, honor and reputation, petitioner prayed for the issuance of a writ of preliminary injunction pending final termination of the case.

The Deportation Board, respondent in the lower court, while not questioning the jurisdiction of the said court to entertain the prohibition case, nevertheless, opposed the issuance of a writ of preliminary injunction, contending that petitioner Stewart was not entitled to the principal relief prayed for in his petition, predicated such contention on the allegation that the power of the President to deport undesirable aliens being inherent to his position as head of the executive branch of the government,[1] could not be diminished or limited by the enactment by the legislature of Section 185 [2] of the Revised Election Code. The Deportation Board, therefore, it was claimed, possesses jurisdiction to entertain and pass upon the electioneering charges filed in said Board against Stewart.

Notwithstanding respondent Board's opposition, the lower court, by order of September 4, 1962, directed the issuance of the writ of preliminary injunction with respect to the charge of electioneering upon Stewart's filing a bond for P3,000.00. The motion for reconsideration of the aforementioned order having been denied, the Deportation Board filed the instant petition for the purpose already stated at the beginning of this opinion.

The issue before us now is, therefore, limited to the question whether the lower court gravely abused its discretion in issuing the writ of preliminary injunction pending the determination by said court of the disputed jurisdiction of the Deportation Board to conduct the investigation of the electioneering charges against Stewart.

The reason given by the lower court for the issuance of such writ of preliminary injunction is that the action being one for prohibition, preliminary injunction is an indispensable provisional remedy to insure that the relief asked for by the petitioner shall not be rendered academic or ineffective. It is settled that where the principal case was to restrain the commission or continuance of the act complained of, the provisional remedy of preliminary injunction is proper to preserve the status quo of things in order not to render ineffective any decision or relief that may be subsequently rendered therein.[3] This is not to say, that the mere filing of an action with prayer for the restraint or discontinuance of certain acts automatically entitles the plaintiff to the special remedy of preliminary injunction. Thus, where an alien, claiming that he is actually a Filipino citizen, filed an action for declaratory relief to determine his citizenship, his prayer for a writ of preliminary injunction to restrain the immigration authorities from taking him into their custody was denied.[4] Citizenship not being the proper subject for declaratory judgment,[5] it is clear that he is not entitled to the relief demanded in the main case, and pursuant to Section 3 of Rule 60, preliminary injunction shall not issue.

The same thing cannot be said, however, of the instant case. With the filing of Civil Case No. 51409, Stewart presented for resolution of the lower court the question of whether the investigation of a foreigner for alleged violation of the Revised Election Code falls exclusively within the jurisdiction of the courts, in view of the provision of Section 185 of said code requiring prior judicial conviction before deportation may attach as an additional penalty, or whether, as claimed by herein petitioners, the Deportation Board, as agent of the President, has also authority to conduct such investigation and make the proper recommendation for action of the Chief Executive. In a recent case[6], we said:

"Petitioners contend, however, that even granting that the President is invested with power to deport, still he may do so only upon the grounds enumerated in Commonwealth Act No. 613, as amended, and on no other, as it would be unreasonable and undemocratic to hold that an alien may be deported upon an unstated or undefined ground depending merely on the unlimited discretion of the Chief Executive. This contention is not without merit, considering that whenever the legislature believes a certain act or conduct to be a just cause for deportation, it invariably enacts a law to, that effect. Thus, in a number of amendatory acts, grounds have been added to those originally contained in Section 37 of Commonwealth Act No. 613, as justifying deportation as part of the penalty imposed on aliens committing violation thereof."

In view thereof, it cannot be definitely said, at this stage of the proceeding, pending final determination of the issue on the authority of the Deportation Board to investigate electioneering charges and before trial on the merits, that respondent Stewart is indubitably not entitled to the relief demanded in said case.

Wherefore, finding no grave abuse of discretion attending the issuance of the writ of preliminary injunction by the lower court in Civil Case No. 51409, this petition is hereby dismissed and the writ prayed for denied, without costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador Concepción, Reyes, J. B. L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] Citing *In re McCulloch Dick*, 38 Phil. 41. [2] Section 185. Penalties. -- Any one found guilty of a serious election offense shall be punished with imprisonment of not less than one year and one day but not more than five years; and any one guilty of a less serious elections offense, with imprisonment of not less than six months but not more than one year. In both cases the guilty party shall be further sentenced to suffer disqualification to hold a public office and deprivation of the right of suffrage for not less than one year but not more than nine years; and to pay the costs; and, if he were a foriegner, he shall, in addition, be sentenced to deportation for not less than five years but not more than ten years, which shall be enforced after the prison term has been served. *** (Revised Election Code.)

[3] *Calo vs. Roldan*, 76 Phil. 445, 452; see also *De la Cruz, vs. Tan Torres*, 107 Phil., 1163. [4] *Bureau of Commissioners vs. Domingo*, G. R. No. L-21274, July 31, 1963.

[5] *Tan vs. Republic*, G. R. No. L-16198, Oct. 31, 1962; *Tin Navarro vs. Commissioner*, 110 Phil., 468; *Bureau of Commissioners vs. Domingo*, *supra*.

[6] *Qua Chee Gan, et al. vs. Deportation Board*, G. R. No. L-10280, Sept. 30, 1963.

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