

FRANCISCA CARMONA, PETITIONER AND APPELLANT, VS. VICENTE ALDANESE, INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G. R. No. 33062. September 10, 1930

Ponente: JOHNSON, J.

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JOHNSON, J.:

Section 69 of the Administrative Code is as follows:

"A subject of a foreign power residing in the Philippine Islands shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the Governor-General except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses."

It appears from the return that on January 15, 1930, the Governor-General issued an order, through the Chief of Police of the City of Manila, to the Director of Prisons, which recites:

"Whereas, after an investigation duly conducted in accordance with the provisions of section 69 of the Administrative Code, it appears that Chinese prisoners * * *, Francisca Carmona y Siason, * * *, are subjects of foreign power, residing in the Philippine Islands, and now confined at Bilibid Prisons for crimes:

* * * * *

"Now, therefore, by virtue of the powers in me vested, you are hereby authorized and ordered to deport the above-named Chinamen (one of whom is a British Indian) from the Philippine Islands, and thereafter to exclude them from said Islands."

That is to say, after an investigation was duly made by the Office of the Governor-General under the provisions of section 69 of the Administrative Code, it was found that the petitioner, who was then residing in the Philippine Islands and confined in Bilibid, for crimes, was the subject of a foreign power, and for such reason she was ordered deported. It must be conceded that, if the petitioner is in truth and in fact a citizen of the Philippine Islands, she ought not to be deported. If the petitioner is an alien, it must also be conceded that she ought to be deported. Be that as it may, under the provisions of section 69, the power to deport is exclusively vested in the Governor-General after the making of an investigation, in which the person concerned shall be informed of the charges and allowed three days to prepare his or her defense, in which she shall have the right to be heard by counsel, to produce witnesses, and to cross-examine the opposing witnesses. It appears from the return to the writ that after an investigation duly conducted under the provisions of section 69, the petitioner is an alien confined in Bilibid for crimes. Notwithstanding that fact the petitioner now seeks to have that same question tried and decided by the courts.

In the case of *Severino vs. Governor-General and Provincial Board of Occidental Negros* (16 Phil., 366), it was held:

"The courts in the Philippine Islands have no jurisdiction to interfere, by means of a writ of mandamus or injunction, with the Governor-General as the head of the executive department in the performance of any of his official acts."

In the dissenting opinion of Justice Malcolm, *In re McCulloch Dick* (38 Phil., 41), on page 135, he said:

"The delicacy of the question is apparent when we come to realize the position of the Governor-General. The Organic Law gives to him supreme executive power. He more than any one else personifies sovereignty. He more than any one else is the Government. In the exercise of his important duties, he is responsible not to the courts but, through the President to the sovereign people. Any collision between the Chief Executive and the highest court in the Philippines is to be deplored.

"This position it is urged may leave a person without a remedy. The answer is that it leaves possible wrongs without a judicial remedy. Final decision must be left somewhere."

In the case of *Forbes vs. Chuoco Tiaco and Crossfield* (16 Phil., 534), in an exhaustive opinion this court held:

"1. The Government of the United States in the Philippine Islands, Powers of.—The Government of the United States in the Philippine Islands is a government possessed with 'all the military, civil, and judicial powers necessary to govern the Philippine Islands' and as such has the power, through its political department, to deport aliens whose presence in the territory is found to be injurious to the public good and the domestic tranquillity of the people. Deportation or expulsion is a police measure having for its object the purging of the State of obnoxious foreigners. It is a sort of national disinfectant.

"2. The Governor-General, Powers of.—The Governor-General, acting in his political and executive capacity, is invested with plenary power to deport obnoxious aliens whose continued presence in the territory is found by him to be injurious to the public interest, and in the absence of express and prescribed rules as to the method of deporting or expelling them, he may use such methods as his official judgment and good conscience may dictate.

* * * * *

"The question whether or not the courts will ever intervene or take jurisdiction in any case against the chief executive head of the government is one which has been discussed by many eminent courts and learned authors. They have been unable to agree. They have not been able to agree even as to what is the Weight of authority, but they all agree, when the intervention of the courts is prayed for, for the purpose of controlling or attempting to control the chief executive head of the government in any matter pertaining to either his political or discretionary duties, that the courts will never take jurisdiction of such case. The jurisdiction is denied by the courts themselves on the broad ground that the executive department of the government is a separate and independent department, with its duties and obligations, the responsibility for the compliance with which is wholly upon that department. In the exercise of those duties the chief executive is alone accountable to his country in his political character and to his own conscience. For the judiciary to interfere for the purpose of questioning the manner of exercising the legal, political, inherent duties of the chief executive head of the government would, in effect, destroy the independence of the departments of the government and would make all the departments subject to the judicial. Such a conclusion or condition was never contemplated by the organizers of the government. Each department should be sovereign and supreme in the performance of its duties within its own sphere, and should be left without interference in the full and free exercise of all such powers; rights, and duties which rightfully, under the genius of the government, belong to it. Each department should be left to interpret and apply, without interference, the rules and regulations governing it in the performance of what may be termed its political duties. Then for one department to assume to interpret or to

apply or to attempt to indicate how such political duties shall be performed would be an unwarranted, gross, and palpable violation of the duties which were intended by the creation of the separate and distinct departments of the government.

* * * * *

"Under the system of government established in the Philippine Islands the Governor-General is 'the chief executive authority, one of the coordinate branches of the Government, each of which, within the sphere of its governmental powers, is independent of the others. Within these limits the legislative branch can not control the judicial nor the judicial the legislative branch, nor either the executive department. In the exercise of his political duties the Governor-General is, by the laws in force in the Philippine Islands, invested with certain important governmental and political powers and duties belonging to the executive branch of the Government, the due performance of which is entrusted to his official honesty, judgment, and discretion. Sp far as these governmental or political or discretionary powers and duties which adhere and belong to the Chief Executive, as such, are concerned, it is universally agreed that the courts possess no power to supervise or control him in the manner or mode of their discharge or exercise."

This decision was later affirmed by the Supreme Court of the United States, in 228 U. S., 549,[1] in which that court held:

"Where the act originally purports to be done in the name and by the authority of the State, a defect in that authority may be cured by the subsequent adoption of the act.

"The deportation of a Chinaman from the Philippine Islands by the Governor-General prior to an act of the legislature authorizing such deportation is to be considered as having been ordered in pursuance of such statute.

"Sovereign states have inherent power to deport aliens, and Congress is not deprived of this power by the Constitution of the United States.

"The ground on which the power to deport aliens rests necessitates that it may have to be exercised in a summary manner by executive officers.

"The local government of the Philippine Islands has all civil and judicial power necessary to govern the Islands, and this includes the power to deport aliens."

The Legislature having invested the power to deport an alien in the Governor-General after a hearing and investigation in and of which the person sought to be deported shall be informed of the charges and has the right to appear both in person and by counsel, and to cross-examine the witnesses and present evidence in his or her behalf, and it appearing from the return in the instant ease that the order to deport was made "after an investigation duly conducted in accordance with the provisions of section 69 of the Administrative Code," the deporting order was an executive act, the grant or refusal of which is invested alone in the Governor-General.

As stated the law does not contemplate that any citizen of the Philippine Islands should be deported. Be that as it may, after a compliance with the provisions of section 69, the power to deport an alien is vested exclusively in the Governor-General. It is not claimed or asserted that the investigation was not duly made in accord "with the provisions of section 69 of the Administrative Code." In other words, the validity of the return is not questioned. Hence, we must assume that the order was made "after an investigation duly conducted in accordance with the provisions of section 69 of the Administrative Code," in which the Governor-General found as a fact that the petitioner was an alien confined in Bilibid Prisons, for crimes, and that the petitioner was informed of her legal rights and given an opportunity to defend. If in truth and in fact the petitioner is a bona fide citizen of the Philippine Islands, she should have appeared and made her defense at the hearing before the Governor-General in

whom the power to grant relief, if any, is vested and not in the courts.

We are clearly of the opinion that the writ should be denied. The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1] 40 Phil., 1122; 57 Law. ed., 960.

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