

LAO GI ALIAS FILOMENO CHIA, SR., HIS WIFE, ONG UE, AND HIS CHILDREN FILOMENO, JR., MANUEL, ROSITA VICENTA AND DOMINGA, ALL SURNAMED CHIA, PETITIONERS, VS. HONORABLE COURT OF APP...

G.R. No. 81798. December 29, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On September 3, 1958 the Secretary of Justice rendered Opinion No. 191, series of 1958 finding Filomeno Chia, Jr., alias Sia Pieng Hui to be a Filipino citizen as it appears that his father Filomeno Chia, Sr. is a Filipino citizen born on November 28, 1899 being the legitimate son of Inocencio Chia and Maria Layug of Guagua, Pampanga. However on October 3, 1980 the Minister of Justice rendered Opinion No. 147, series of 1980 cancelling Opinion No. 191, series of 1958 and setting aside the citizenship of Filomeno Chia, Sr. on the ground that it was founded on fraud and misrepresentations. A motion for reconsideration of said Opinion was denied by the Minister of Justice on February 13, 1981.

On March 9, 1981 a charge for deportation was filed with the Commission on Immigration and Deportation (CID) against Lao Gi alias Filomeno Chia, Sr., his wife and children.

An amended charge was filed with the CID on March 19, 1981 alleging that said respondents refused to register as aliens having been required to do so and continued to refuse to register as such. On August 31, 1981 another amended charge was filed alleging that Manuel Chia committed acts of undesirability.

On September 4, 1981 said respondents filed a motion to dismiss the amended charges on the ground that the CID has no authority to reopen a matter long settled under Opinion No. 191, series of 1958. The motion to dismiss was opposed by the private prosecutor. The CID special prosecutor also filed an opposition on the ground that the citizenship may be threshed out as the occasion may demand and that due process was accorded to respondents. The respondents filed a reply thereto. The motion to dismiss was denied by the CID and a motion for reconsideration of said denial was also denied in a resolution dated December 10, 1981.

Said respondents then filed with this Court on February 11, 1982 a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction and restraining order docketed as G.R. No. 59619. After requiring a comment thereon, on April 28, 1982 this Court en banc resolved to dismiss the petition for lack of merit.

Earlier, Manuel Chia was charged with falsification of public documents in the Court of First Instance (CFI) of Manila in Criminal Case No. 60172 for alleging that he was a Filipino citizen in the execution of a Deed of Absolute Sale of certain real property. He was acquitted by the trial court in an order dated May 5, 1982 on the ground that Opinion No. 191, series of 1958 of the Secretary of Justice may be equated as *res judicata* and that revocation thereof by Opinion No. 147, series of 1980 cannot be considered just, fair, and reasonable.

On June 1, 1982 respondents filed a motion for reconsideration of the aforesaid resolution of this Court dismissing the petition but this was denied by another resolution of this Court dated August 17, 1982. A second motion for reconsideration thereof was also denied by this Court on September 16, 1982.

On September 23, 1982 the CID set the deportation case against respondents for hearing and Acting Commissioner Victor G. Nituda gave respondents three (3) days to move for reconsideration of the order directing them to register as aliens and to oppose the motion for their arrest. On September 27, 1982 respondents filed said motion for reconsideration and opposition but this was denied by Acting Commissioner Nituda on September 28, 1982. The latter directed respondents to register as aliens within two (2) days from notice thereof. The deportation case was set for hearing on October 5, 1982 but on the same day respondents filed the petition for certiorari and prohibition with a prayer for injunctive relief in the Court of First Instance of Manila docketed as Civil Case No. 82-12935 whereby a writ of preliminary injunction was issued. On April 17, 1985 a decision was rendered by the trial court dismissing the petition for lack of legal basis and for want of supervisory jurisdiction on the part of the trial court on the particular subject involved. The writ of preliminary injunction previously issued was dissolved.

An appeal therefrom was interposed to the Court of Appeals. In due course a decision was rendered on August 19, 1987 dismissing the appeal with costs against petitioners. A motion for reconsideration of the decision filed by petitioners was also denied in a resolution dated January 7, 1988.

Hence, the herein petition for certiorari filed by petitioners wherein they seek to set aside the decision of the Court of Appeals and ask that a new one be rendered setting aside the order of the CID dated September 28, 1982 and directing it to proceed with the reception of the evidence in support of the charges against the petitioners. The issues raised in the petition are as follows:

- "1. The issues raised in G. R. No. 59619 before the Honorable Supreme Court were different from the issues raised in Civil Case No. 82-12935-CV.
2. The minute resolution of the Honorable Supreme Court in G.R. No. 59619 did not make a categorical ruling that petitioner entered and remained in the Philippines by false pretenses.
3. The issue of whether or not petitioners' citizenship was secured by fraud is precisely the subject matter of the proceedings before the Commission on Immigration and Deportation, in which no evidence had been presented yet in support of the charge of fraud in the acquisition of petitioners' citizenship.
4. Petitioners are not subject to immediate deportation.
5. The order for the arrest of petitioners in case of failure to register as aliens was premature since there was no competent determination yet that their citizenship was indeed procured by fraud.
6. The Honorable Court of Appeals overstepped its appellate jurisdiction, when it ruled on matters not covered by the Decision of the lower court."

There can be no question that the CID has the authority and jurisdiction to hear and determine the deportation case against petitioners and in the process determine also the question of citizenship raised by the petitioners. Section 37 (a) (1) of the Immigration Act provides as follows:

"SEC. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

- (1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or

at any place other than at a designated port of entry. (As amended by Sec. 13, Rep. Act No. 503.) x x x."

From the foregoing provision it is clear that before any alien may be deported upon a warrant of the Commissioner of Immigration, there should be a prior determination by the Board of Commissioners of the existence of the ground as charged against the alien.

In this case it appears that petitioners are charged with having entered the Philippines by means of false and misleading statements or without inspection or admission by the immigration authorities at a designated port of entry.

After appropriate charges are filed in the CID the specific grounds of which he should be duly informed of, a hearing should be conducted, and it is only after such a hearing by the CID that the alien may be ordered deported. In such a hearing, Opinion No. 191, Series of 1958 of the Secretary of Justice and Opinion No. 147, Series of 1980 of the Minister of Justice will bear much weight in the determination by the CID of the citizenship of said petitioners.

The petitioners question the Order of Acting Commissioner Nituda that they register as aliens as required by the Immigration Act. While it is not disputed that it is also within the power and authority of the Commissioner to require an alien to so register, such a requirement must be predicated on a positive finding that the person who is so required is an alien. In this case where the very citizenship of the petitioners is in issue there should be a previous determination by the CID that they are aliens before the petitioners may be directed and required to register as aliens.

The power to deport an alien is an act of the State. It is an act by or under the authority of the sovereign power.[1] It is a police measure against undesirable aliens whose presence in the country is found to be injurious to the public good and domestic tranquility of the people.[2]

Although a deportation proceeding does not partake of the nature of a criminal action, however, considering that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process should not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings.

Under Section 37(c) of the Philippine Immigration Act of 1940 as amended, it is provided:

"c" No alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration."

Hence, the charge against an alien must specify the acts or omissions complained of which must be stated in ordinary and concise language to enable a person of common understanding to know on what ground he is intended to be deported and enable the CID to pronounce a proper judgment.[3]

Before any charge should be filed in the CID a preliminary investigation must be conducted to determine if there is a sufficient cause to charge the respondent for deportation.[4] The issuance of warrants of arrest, arrests without warrant and service of warrants should be in accordance likewise with Rule 113 of the 1985 Rules of Criminal Procedure;[5] search warrants issued by the CID shall be governed by Rule 126 of the 1985 Rules of Criminal Procedure;[6] and so the matter of bail, motion to quash, and trial,[7] among others. Fealty to the prescribed rules of procedure in deportation cases shall insure a speedy, fair and just dispensation of justice.

The Court takes note of the fact that a private prosecutor is assisting in the prosecution of the case by the special prosecutor of the CID. The Court sees no reason why a private prosecutor should be allowed to participate in a deportation case. Under the 1985 Rules on Criminal Procedure, particularly Section 16, Rule 110 thereof, an

offended party may intervene in a criminal prosecution when there is civil liability arising from the criminal action claimed by said party. In such case he may intervene by counsel.

In deportation cases, the Court cannot conceive of any justification for a private party to have any right to intervene. Even if such party can establish any damages due him arising from the deportation charge against the alien, such relief cannot be afforded him in the deportation proceeding. His recourse if at all is in the ordinary courts. Thus the Court rules that the intervention of a private prosecutor should not be allowed in deportation cases. The possibility of oppression, harrassment and persecution cannot be discounted. The deportation of an alien is the sole concern of the State. This is the reason why there are special prosecutors and fiscals tasked to prosecute such cases.

WHEREFORE, the petition is hereby GRANTED and the questioned order of the respondent Commission on Immigration and Deportation dated September 28, 1982 is hereby set aside. The respondent Commission on Immigration and Deportation is hereby directed to continue hearing the deportation case against petitioners and thereafter, based on the evidence before it, to resolve the issue of citizenship of petitioners, and if found to be aliens, to determine whether or not the petitioners should be deported and/or otherwise ordered to register as aliens. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea JJ., concur.

[1] In re R. McCulloch Dick, 38 Phil. 41, 211, 224 (1918).

[2] Forbes vs. Chuoco Tiaco and Crossfield, 16 Phil. 534 (1910).

[3] Section 9, Rule 110, 1985 Rules of Criminal Procedure.

[4] Section 15, Preliminary Investigation, Deportation Rules of Procedure; Rule 112, 1985 Rules of Criminal Procedure.

[5] Sections 5 and 6 of the Deportation Rules of Procedure.

[6] Section 7, supra.

[7] Sections 16, 17 and 21, supra; Rules 114, 117 and 119, 1985 Rules of Criminal Procedure.

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