Supreme Court E-Library

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[G.R. No. L-23545. November 7, 1979]

BENITO SICHANGCO, for and in behalf of his minor children, SI BENG, SI SON and SI LUNA, *petitioner-appellee, vs.* **THE BOARD OF COMMISSIONERS OF IMMIGRATION,** *respondent-appellant.*

SYLLABUS

1. ADMINISTRATIVE LAW; DEPARTMENT OF JUSTICE; THE SECRETARY OF JUSTICE CAN MODIFY, NULLIFY OR SET ASIDE THE DECISION OF THE BOARD OF COMMISSIONERS OF IMMIGRATION; CASE AT BAR.—The Board of Commissioners of Immigration was, and still is, under the supervision and control of the Department of Justice (see Republic Act No. 997; Art. V, Part XXI, Reorganization of the Executive Branch of the National Government, February, 1972). By virtue of his power of control, the Secretary of Justice can modify, nullify or set aside the decision of the Board of Special Inquiry on September 11, 1961, as well as the act of "noting" of the said decision by the then members of the Board of Commissioners, namely, Deputy Commissioner Felix Talabis on September 21, 1961, Deputy Commissioner Francisco de la Rosa on September 28, 1961, and Acting Commissioner Pio S. Noche on October 3, 1961 [Sec. 79(c), Rev. Adm. Code; *Mondano vs. Silvosa*, 97 Phil. 143, 146-8; *Hebron vs. Reyes*, 104 Phil. 175, 187-9; *Province of Pangasinan vs. Secretary of Public Works and Communications*, L-27861, Oct. 31, 1969, 30 SCRA 134). The Department Head can even directly exercise the powers of the chief of the bureau or office under him pursuant to Section 37, Act No. 4007, which provides: "The provisions of the existing law to the contrary notwithstanding whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division, or service. (Cited in *Mondano vs. Silvosa, supra,* p. 148). Hence, then Secretary of Justice Jose W. Diokno validly

Supreme Court E-Library

issued on January 24, 1962, Memorandum Order No. 9, setting aside all decisions purporting to have been rendered by the Board of Commissioners (see *Arocha vs. Vivo*, L-24844, Oct. 26, 1967, 21 SCRA 532, 540-541), This principle suffices to dispose of this petition.

2. **ID.; DECISIONS OF ADMINISTRATIVE OFFICERS ARE NOT TO BE DISTURBED BY THE COURTS; EXCEPTION.**— In a long string of cases, the Supreme Court has consistently adhered to the rule that decisions of administrative officers are not to be disturbed by the courts except when the former have acted without or in excess of their jurisdiction or with grave abuse of discretion.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; WRITS OF PROHIBITION; WHEN ISSUED.**— It is well settled that writs of prohibition should be allowed only upon a showing of lack or excess of jurisdiction or of authority or grave abuse of discretion on the part of a tribunal, corporation, board or person exercising function judicial or ministerial, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law (Section 2, Rule 65, New Rules of Court).

TEEHANKEE, *J., separate opinion:*

POLITICAL LAW; COMMONWEALTH ACT NO. 613; BOARD OF SPECIAL INQUIRY; DECISION THEREOF CAN BE REVERSED BY THE BOARD OF COMMISSIONERS ACTING *MOTU PROPRIO* ON REVIEW WITHIN A PERIOD OF ONE YEAR FROM PROMULGATION; CASE AT BAR.— The issue is decisive, because as likewise stated by Mr. Justice Makasiar in his opinion (at page 9): "(S)ection 27(b) of Commonwealth Act No. 613, as amended, states that the decision of the *Board of Special Inquiry* 'shall prevail and shall be *final* unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings *within one year* from the *promulgation* of said decision.' Otherwise stated, *within a period of one year from promulgation,* the decision of the Board of Special Inquiry can be reversed by the Board of Commissioners acting *motu proprio*

Supreme Court E-Library

on review, in the absence of an appeal. *Absent a reversal,* the decision of the *Board of Special Inquiry* prevails and becomes *final* after the lapse of *one year* from its *promulgation."* (emphasis supplied). The trial court's finding of fact is fully supported by the evidence of record. As correctly found by the trial court, *no evidence* whatever was *presented by respondent board* to show that it had ever voted or taken action on September 4, 1962 and that such action was duly *recorded and entered* in the minutes of the proceedings on said date within the one-year mandatory period, which was to form the basis of its written decision backdated September 4, 1962 which was sent by ordinary mail together with a letter signed by Pio S. Noche, secretary, dated September 4, 1962, much later only on *October 26, 1962*. Exhibit E-1, and the envelope marked Exhibit E-2, which shows that such letter was *mailed only on October 26, 1962*. October 26, 1962 was in fact *45 days after* the lapse of the jurisdictional one-year period on *September 11, 1962* and the notoriety of the practice in government offices and agencies of ante-dating their communications and actions is only too well known.

APPEARANCES OF COUNSEL

Mabanag, Elegir & Associates for petitioner-appellee.
Office of the Solicitor General for respondent-appellant.

D E C I S I O N

MAKASIAR, *J.*:

The petitioner herein, Sy Te, whose name was changed to Benito Sichangco with judicial approval, was recognized by the Bureau of Immigration as a Filipino citizen by birth in an order dated February 19, 1960 (CEB No. 3187-R) [pars. 2, 3 and 4, Petition, p. 1, rec.; Exhs. C, 8, pp. 52, 77, rec.]. Said petitioner is married to Cheng Yok Ha. Three sons were born in China allegedly out of their marriage, namely, Si Beng, Si Son and Si Luna, and were still minors at the time of the filing on November 20, 1962 with the trial court of the petition for prohibition with preliminary injunction.

Supreme Court E-Library

On August 28, 1961, these minors, duly provided with certificates of registration and identity issued by the Philippine Consulate at Hongkong, properly documented, arrived in the Philippines and sought admission, claiming to be the children of petitioner Benito Sichangco. An investigation was conducted by the Board of Special Inquiry No. 1 of the Bureau of Immigration. After hearing, the said Board of Special Inquiry No. 1 rendered a decision on September 11, 1961 (Exh. C) admitting these minors into the Philippines as citizens thereof, being the children of the petitioner herein, who is a Filipino (photostatic copy of said decision was attached to the petition as Annex B). Subsequently, the said decision was submitted to the then members of the Board of Commissioners, composed of Deputy Commissioner Felix Talabis, who "noted" the decision on September 21, 1961; Deputy Commissioner Francisco de la Rosa, who "noted" the decision on September 28, 1961; and Acting Commissioner Pio S. Noche, who "noted" the decision on October 3, 1961.

On October 3, 1961, the minor children of petitioner Benito Sichangco were issued by the Bureau of Immigration Identification Certificates Nos. 16632 (for Si Beng), 16636 (for Si Son) and 16637 (for Si Luna), photostatic copies of which are attached to the petition as Annexes C, D and E.

On January 24, 1962, then Secretary of Justice Jose W. Diokno issued Memorandum Order No. 9, wherein he found "that for the past several years, the Board of Commissioners of Immigration has not met collectively to discuss and deliberate on the cases coming before it," for which reason he set aside "all decisions purporting to have been rendered by the Board of Commissioners on appeal from, or on review *motu proprio* of, decisions of the Boards of Special Inquiry," and directed the Board of Commissioners "to review in accordance with Section 27(b) of Commonwealth Act No. 613, as amended, all decisions of the Boards of Special Inquiry admitting entry of aliens into this country and give preference to all cases where entry has been permitted on the ground that the entrant is a citizen of the Philippines, following the principle laid down in

Supreme Court E-Library

Section 30 of Commonwealth Act No. 613, as amended, that 'the burden of proof shall be upon such alien to establish that he is not subject to exclusion' x x x."

Pursuant to Memorandum Order No. 9, a committee composed of Legal Officer Gavino M. Yaptiangco, Jr. and Immigration Officers Lamberto Almeda and Benjamin de Mesa examined the pretended right of the said minors as alleged children of petitioner to admission, and thereafter forwarded its findings to the Commissioner of Immigration (pp. 12-14, Appellant's Brief), recommending the exclusion of said minors, the revocation of the order declaring Sy Te or Benito Sichangco a Filipino citizen, and the filing of deportation proceedings against him.

More than a year after the issuance on October 3, 1961 of their identification certificates, the minors herein received, by ordinary mail, on October 26, 1962, a letter from the respondent Board of Commissioners composed of Acting Commissioner Martiniano P. Vivo, Deputy Commissioners Virgilio Gaston and Marcial Rañola (now deceased), containing its decision dated September 4, 1962 (Exh. E), which reversed the decision rendered by the previous Board of Commissioners, dated September 11, 1961 (Exh. C) and ordered the said minors' exclusion from the Philippines.

Hence, petitioner Benito Sichangco, in behalf of the minors Si Beng, Si Son and Si Luna, filed a petition for prohibition with preliminary injunction on November 20, 1962 before the Court of First Instance of Manila, to annul the decision of the Board of Commissioners of Immigration excluding the abovenamed minors from the Philippines (Exh. E).

On November 20, 1962, the same date as the filing of the petition, the trial court issued *ex parte* a writ of preliminary injunction upon the filing of a bond in the sum of ₱3,000.00 by petitioner, restraining the petitioner from enforcing or executing its decision or otherwise excluding and/or deporting the above-named minors from the Philippines. Said writ was effectively served on the respondent on November 26, 1962.

Supreme Court E-Library

After trial by the court *a quo*, a decision was entered on August 25, 1964, declaring the decision of the respondent Board of Commissioners dated September 4, 1962, reversing the decision of the previous Board of Commissioners dated September 11, 1961, to have been rendered on October 26, 1962, more than a year from the first decision, and therefore illegal and null and void, and the injunction earlier issued was made permanent, with costs against respondent Board.

Hence, this appeal by the respondent Board.

The Board of Commissioners of Immigration was, and still is, under the supervision and control of the Department of Justice (see Republic Act No. 997; Art. V, Part XXI, Reorganization of the Executive Branch of the National Government, February, 1972). By virtue of his power of control, the Secretary of Justice can modify, nullify or set aside the decision of the Board of Special Inquiry on September 11, 1961, as well as the act of "noting" of the said decision by the then members of the Board of Commissioners, namely, Deputy Commissioner Felix Talabis on September 21, 1961, Deputy Commissioner Francisco de la Rosa on September 28, 1961, and Acting Commissioner Pio S. Noche on October 3, 1961 [Sec. 79(c), Rev. Adm. Code: *Mondano vs. Silvosa*, 97 Phil. 143, 146-8; *Hebron vs. Reyes*, 104 Phil. 175, 187-9; *Province of Pangasinan vs. Secretary of Public Works and Communications*, L-27861, Oct. 31, 1969, 30 SCRA 134).

The Department Head can even directly exercise the powers of the chief of the bureau or office under him pursuant to Section 37, Act No. 4007, which provides:

"The provisions of the existing law to the contrary notwithstanding whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division, or service. (Cited in *Mondano vs. Silvosa*, *supra*, p. 148).

Supreme Court E-Library

Hence, then Secretary of Justice Jose W. Diokno validly issued on January 24, 1962, Memorandum Order No. 9, setting aside all decisions purporting to have been rendered by the Board of Commissioners (see *Arocha vs. Vivo*, L-24844, Oct. 26, 1967, 21 SCRA 532, 540-541), This principle suffices to dispose of this petition.

Moreover, the individual action of the members of the previous Board of Commissioners in "noting" the decision of the Board of Special Inquiry on different dates was not a valid decision of affirmance by the said Board of Commissioners in the exercise of its power of review *motu proprio* under Section 27(b) of Commonwealth Act No. 613, as amended, otherwise known as the Immigration Act of 1940.

Section 27(b) of the Immigration Act reads:

"(b) A board of special inquiry shall have authority [1] to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and [2] to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue subpoena and/or subpoena *duces tecum*. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. *The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal unless reversed by the Board of Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision.* At the conclusion of the hearing of any case, the board of special inquiry shall at once proceed to deliberate and decide on the merits thereof. The decision shall be promulgated, and the findings and recommendation, in proper cases, submitted not later than two days from the date of the deliberation. Should the board of special inquiry need more time to make a written decision of findings and recommendation in view of the nature of the case, the chairman thereof shall report the case to the Commissioner of Immigration who may grant an extension of time if he considers it necessary" (emphasis supplied).

Supreme Court E-Library

Respondent-appellant correctly stated that the word "noted" simply meant that the members of the Board of Commissioners had taken cognizance of the existence of the decision of the Board of Special Inquiry No. 1, dated September 11, 1961; that a mere notation does not constitute an exercise of its powers of review, *motu proprio* pursuant to Section 27(b) of Commonwealth Act No. 613, as amended; and that a decision of the Board of Commissioners, requires a judicious review and deliberation by said Board as a body, of the proceedings, the evidence and the law involved, the formulation of findings of facts and conclusion of law.

In a case having a similar factual situation entitled *Arocha vs. Vivo* (L-24844, Oct. 26, 1967, 21 SCRA 532, 540-541), in dismissing a similar contention by appellee therein as untenable, this Court cited three reasons that negate appellee's contention, the first two of which can apply in the instant case. The Court said thus:

"First, even disregarding the ambiguity of the term 'Noted,' the former Immigration Commissioners appeared to have acted individually in this particular instance and not as a Board. It is shown by the different dates affixed to their signatures that they did not actually meet to discuss and vote on the case. This was officially made of record by the Secretary of Justice in his Memorandum Order No. 9, on January 24, 1962, wherein he stated: 'that for the past several years, the Board of Commissioners of Immigration *has not met collectively* to discuss and deliberate in the cases coming before it x x x.'

"*Individual action by members of a board plainly renders nugatory the purpose of its constitution as a Board.* The Legislature organized the Board of Commissioners precisely in order that they should deliberate collectively and in order that their views and ideas should be exchanged and examined before reaching a conclusion (See *Ryan vs. Humphrise*, LRA 1915F 1047). This process is of the essence of a board's action, save where otherwise provided by law and the salutary effects of the rule would be lost were the members to act individually, without benefit of discussion. (Emphasis supplied).

'The powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts

Supreme Court E-Library

are official only when done by the members convened in session, upon a concurrence of at least a majority and with at least a quorum present.' (42 Am. Jur. 389, Sec. 74).

'Where the action needed is not of the individuals composing a board but of the official body, the members must be together and act in their official capacity, and the action should appear on the records of the board.' (*Penn. R. Co. vs. Montgomery Co. Pass. R. Co.*, 167 P 2d 62, LRA 766).

'Where a duty is entrusted to a board, composed of different individuals, that board can act officially only as such, in convened session, with the members, or a quorum thereof, present.' (*State vs. Kelly*, 21 ALR 156).

"Secondly, in consonance with the foregoing principles, the aforementioned Memorandum Order of the Secretary of Justice, issued in the exercise of his powers of control and supervision as Department Head (Adm. Code, Sec. 79 [c], expressly declares that —

"'x x x the public interest so requiring, it is hereby ordered that all decisions purporting to have been rendered by the Board of Commissioners on appeal from or on review *motu proprio* of decisions of the Board of Special Inquiry, are set aside.'

and this nullification included the alleged 1961 decision which the appellee now invokes and upon which he relies."

Hence, there was no decision rendered by the previous Board of Commissioners dated September 11, 1961 that could have been reversed by the respondent Board of Commissioners, as found by the trial court.

To the same effect is the ruling of the court in the fairly recent case of *Commissioner of Immigration vs. Garcia* (L-28082, June 28, 1974, 57 SCRA 603, 613). The Court stated thus:

"The decisive issue is whether the ruling of the Board of Commissioners, as strengthened by Antonio Caoile's testimony, should prevail over the decision of the Board of Special Inquiry which was 'noted' by Deputy Commissioner De la Rosa and Talabis but disapproved by Commissioner Galang. The first Board of

Supreme Court E-Library

Commissioners did not meet collectively to discuss and deliberate on the decision of the Board of Special Inquiry, its action was set aside by Memorandum Order No. 9 of the Secretary of Justice. Individual action by the members of the Board of Commissioners renders nugatory the purpose of its constitution as a board (*Arocha vs. Vivo, supra*)."

In the same case, the Court had occasion to clarify statements made by it in the earlier case of *Commissioner of Immigration vs. Fernandez* (L-22696, May 29, 1964, 11 SCRA 184), which had been heavily relied upon by the lower court in its decision. Whatever was declared by the lower court, relying on the statements of the Supreme Court in the latter case, has been watered down by the decision in the case of *Commissioner of Immigration vs. Garcia, supra*, considering that the two cases arose from the same facts. Relevant portions of the Garcia case are hereinbelow quoted:

"One ground relied upon by the Court of Appeals in granting the petition for *habeas corpus* is the pronouncement of this Court in the 1964 bail incident (*Commissioner of Immigration vs. Fernandez, supra*). It was intimated in that case that it was improper for the new Board of Commissioners to have set aside the decision of the Board of Special Inquiry after the two Deputy Commissioners had 'noted' that decision and, thereby, affirmed it.

"What this Court said in the bail incident regarding the finality of the decision of the Board of Special Inquiry was an *obiter dictum*. The *ratio decidendi* of the decision in the bail incident, which was a *certiorari* and prohibition case, was that the Court of Appeals did not abuse, much less gravely abuse its discretion in granting bail to Teban Caoile. Hence, *certiorari* did not lie.

"The finality of the decision of the Board of Special Inquiry was not the primary issue in the bail incident. It was the Court of Appeals that was called upon to rule first on that issue in the light of the evidence presented in the trial court. That issue was not foreclosed by the decision in the bail incident."

Section 27(b) of Commonwealth Act No. 613, as amended, states that the decision of the Board of Special Inquiry "shall prevail and shall be final unless reversed on appeal by the Board

Supreme Court E-Library

of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings within one year from the promulgation of said decision." Otherwise stated, within a period of one year from promulgation, the decision of the Board of Special Inquiry can be reversed by the Board of Commissioners acting *motu proprio* on review, in the absence of an appeal. Absent a reversal, the decision of the Board of Special Inquiry prevails and becomes final after the lapse of one year from its promulgation.

The respondent Board of Commissioners rendered on September 4, 1962 its decision reversing that of the Board of Special Inquiry No. 1 dated September 11, 1961, well within the one-year period required by law. The lower court's declaration that the respondent Board of Commissioners' decision was antedated, stems from a wrong appreciation of the facts.

As urged by respondent Board of Commissioners, the trial court erred in finding that the decision of the respondent Board of Commissioners dated September 4, 1962 was not rendered on that date, but only on October 26, 1962, the date of mailing of said decision. Respondent correctly pointed out that the petitioner himself introduced in evidence a copy of the decision of the Board of Commissioners which was dated September 4, 1962. The law presumes that official duty has been regularly performed: that a writing is truly dated (Sec. 5[m], [u], Rule 131, Rules of Court). No contrary evidence was adduced by petitioner indicating another date of rendition of the decision of the Board of Commissioners. Hence, the presumptions are not rebutted (pp. 45-46, appellant's brief).

It is true that the copy of the decision of the Board of Commissioners dated September 4, 1962 was sent by mail to the petitioner's minor children herein only on October 26, 1962, and received by the said minors on the same date. This fact, however, does not work to vitiate said decision. All that the Immigration Law requires is that the decision of reversal of the Board of Commissioners be promulgated within one year from the rendition of the decision of the Board of Special Inquiry.

Supreme Court E-Library

Notice of said decision of reversal may be sent even after the one-year period has elapsed. In the case of *Neria vs. Commissioner of Immigration* (L-24800, May 27, 1968, 23 SCRA 807, citing *Arocha vs. Vivo, supra*), the Supreme Court ruled that "the operative date of the Commissioners' action is that when the resolution (of exclusion) *was noted and adopted by them as a Board*, regardless of the date when the decision *in extenso* was prepared, written and signed," and with more reason, as in this case, regardless of the date when such decision is mailed, "because the decision *in extenso* must relate back to the day the resolution to exclude was actually adopted. Necessarily, the extended opinion had to be posterior to the day when the Commissioners voted and resolved to reverse the findings of the Board of Special Inquiry. The Secretary's certificate shows that the Board of Immigration Commissioners acted upon not less than eight Immigration cases (including that of the Gatchalians) on July 6, 1962; and it was of course impracticable to prepare and sign fully reasoned decisions in all these cases."

The Supreme Court, in many cases, had issued brief resolutions or decisions with the additional reservation to prepare an extended resolution or decision by employing the phrase "without prejudice to an extended opinion."

In the most recent case of *Go Yu Tak Wai vs. Vivo, et al.* (L-22257, May 25, 1977, 77 SCRA 55, 59-61, WE reiterated:

"*Issue.* — The legal question in this appeal is whether, for purposes of Section 27(b) of the Immigration Law, a resolution of the Commissioners which reversed the decision of the Board of Special Inquiry and which was adopted within one year from the promulgation of the said decision is sufficient or whether it is necessary that the Commissioners' written decision in amplification of the resolution of reversal or containing their findings, be promulgated within the said one-year period. That question is not new.

"*Ruling.* — This Court had already held that 'the operative date of the Commissioners' action is that when the resolution of exclusion was voted and resolved to reverse the findings of the Board of Special Inquiry' (*Arocha vs. Vivo*, L-24844, and *Vivo vs. Arca*, L-24853, both

Supreme Court E-Library

decided on October 26, 1967, and reported in 21 SCRA 532, 538, per Justice J. B. L. Reyes; *Neria vs. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 806, 815: *Go Oh vs. Vivo*, L-24898, March 31, 1971, 28 SCRA 228, 238).

"Consequently, the Commissioners were justified in using March 11, 1963 as the date of their written decision although it was actually prepared or drafted on August 13, 1963 and was mailed to Go Yu Tak Wai on August 27, 1963 (Exh. H-3). The decision (Exh. A or H) related back to the date when the Commissioners deliberated on the decision of the Board of Special Inquiry and voted or resolved to reverse it or to exclude Go Yu Tak Wai.

"Section 27(b) specifies that as a rule the decision of the Board of Special Inquiry 'shall be promulgated and the findings and recommendations, in proper cases, submitted not later than two days from the date of the deliberation.' The absence of such a requirement with respect to the decision of the Board of Commissioners supports the view that such decision need not be promulgated within the one-year period. It suffices that the Commissioners should review the decision of the Board of Special inquiry and deliberate upon it within one year from the promulgation on the Board of Special Inquiry's decision and that the minutes of their deliberation should reflect the action which they took within the said statutory period.

"Moreover, as noted by the Solicitor General, Section 27(c) expressly requires that the decision of the Commissioners in case of *an appeal* from the decision of the Board of Special Inquiry, excluding an alien, should 'be put in writing and promulgated not less than seven days from the time the case is submitted for decision.' In contrast, no such requirement is provided for in Section 27(b) with respect to the Commissioner's decision in case they *motu proprio* review the decision of the Board of Special Inquiry.

"The trial court erred in holding that under Section 27(b) a written decision should be signed and promulgated by the Commissioners within one year from the promulgation of the decision of the Board of Special Inquiry."

In a long string of cases, the Supreme Court has consistently adhered to the rule that decisions of administrative officers are not to be disturbed by the courts except when the former have acted without or in excess of their jurisdiction or with

Supreme Court E-Library

grave abuse of discretion. Thus, in the case of *Deluao vs. Casteel* (L-21906, Dec. 24, 1968, 26 SCRA 475, 496, citing *Pajo vs. Ago, et al.*, L-15414, June 30, 1960) and *Ganitano vs. Secretary of Agriculture and Natural Resources, et al.* (L-21167, March 31, 1966), the Supreme Court held that:

"x x x It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts (*Coloso vs. Board of Accountancy*, G.R. No. L-5750, April 20, 1953). In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. (54 Am. Jur. 558-559) Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. " (See also *Singh vs. Board of Commissioners*, L-11015, Feb. 25, 1961).

It was therefore incumbent upon the petitioner herein to show that the respondent Board of Commissioners had acted without or in excess of their jurisdiction or with grave abuse of discretion. Petitioner failed to do so. On the other hand, respondent Board has fully elucidated the factual basis of the decision of reversal dated September 4, 1962. Respondent Board showed that the decision of the Board of Special Inquiry warranted a reversal for being evidently erroneous (see appellant's brief, pp. 40-44).

The respondent Board of Commissioners likewise insists with reason that the trial court erred in making permanent the writ of preliminary injunction restraining the respondent from "enforcing or executing its decision . . . or otherwise excluding and/or deporting the minors Si Beng, Si Son and Si Luna from the Philippines." It is well-settled that writs of prohibition should be allowed only upon a showing of lack or excess of jurisdiction or of authority or grave abuse of discretion on the part of a tribunal, corporation, board or person exercising function judicial or ministerial, and there is no appeal or any other plain, speedy,

Supreme Court E-Library

and adequate remedy in the ordinary course of law (Section 2, Rule 65, New Rules of Court). The reason for the aforestated rule has been stated in the case of *Solidum vs. Hernandez* (L-16570, Feb. 28, 1963, 7 SCRA 320, 325) wherein the Supreme Court declared that:

"x x x In the exercise of discretion, inferior tribunals, corporations, boards or persons should be allowed some latitude of independence, a freedom of movement and judgment consistent with the trust reposed on them by law or regulation to mediate over specific disputes. If every act or ruling of them were to be subjected to the scrutiny and re-examination of a superior tribunal, and, in every instance must be reconciled with the views of the reviewing body, then the administration of justice will greatly be hampered. The discretion of lower tribunals will then be but a word, not a reality.

"Thus, We have always adhered to the standard that for grave abuse of discretion to prosper as a ground for prohibition, it must be first demonstrated that there was such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos v. Province of Tarlac*, 67 Phil. 480; *Bibby de Padilla v. Horilleno*, 60 Phil. 511; *Alafriz v. Nable*, 72 Phil. 278). Similarly, We have ruled that there is 'excess of jurisdiction' where the court has jurisdiction but has transcended the same or acted without any statutory authority (*Leung Ben v. O'Brien*, 38 Phil. 182; *Salvador Campos y Cia v. Del Rosario*, 41 Phil. 45). In other words, prohibition ought to be issued only after the reviewing tribunal shall have convinced itself that the lower court has exercised its power 'in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion or to a virtual refusal to perform the duty enjoined or to act in contemplation of law (*Tavera-Luna, Inc. v. Nable*, 67 Phil. 340)."

The same rule was restated in the case of *Delfin vs. CA* (L-21022, Feb. 27, 1965, 13 SCRA 366).

Moreover, the extraordinary remedy of prohibition cannot be resorted to where the petitioner, as in this case, has an adequate remedy in the ordinary course of law by way of appeal in due time (see *Solidum vs. Hernandez,* and *Delfin vs. CA*, *supra*). As aptly ruled in the case of *De Bisschop vs. Galang* (L-18365, May 31, 1963, 8 SCRA 244, 248-9):

Supreme Court E-Library

"x x x 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 v. 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 v. Wyatt*, 186 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."

Anent the costs taxed against the respondent Board of Commissioners, since the latter is a government agency in the Philippines, sued in its official capacity, it is the Philippine Government itself that was in effect sued. Consequently, Section 1, Rule 142, of the New Rules of Court apply. Said rule states in part: "No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law." No such law exists. Hence, it was erroneous for the trial court to have taxed costs against the respondent Board of Commissioners of Immigration.

WHEREFORE, THE DECISION APPEALED FROM SHOULD BE, AS IT IS HEREBY, REVERSED, WITH COSTS AGAINST PETITIONER-APPELLEE.

Fernando, C.J., Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., dissents in a separate opnion.

Barredo., J., concurs in the dissent of Teehankee, *J.*

Abad Santos, J., concurs in the result.

Supreme Court E-Library

SEPARATE OPINIONS

TEEHANKEE, *J.*, *dissenting*:

The established facts in the record are as follows:

The three minor children born in China of the marriage of Benito Sichangco, a Filipino citizen, and his wife, arrived in the Philippines on August 28, 1961. Duly provided with certificates of registration and identity issued by the Philippine Consulate at Hongkong, properly documented, they sought admission as petitioner's children.

After the corresponding investigation and hearing, the Board of Special Inquiry rendered its decision on *September 11, 1961* admitting the minors into the Philippines as citizens thereof, being the children of petitioner. On or about *October 26, 1962*, the minors received by ordinary mail a letter from respondent Board of Commissioners enclosing copy of its *motu proprio* decision *dated September 4, 1962* reversing the September 11, 1961 decision of admission of the Board of Special Inquiry as confirmed by the previous Board of Commissioners, and instead ordering their exclusion from the Philippines.

Upon a petition for prohibition by petitioner on behalf of his three minor children and after trial, the lower court rendered its judgment of August 11, 1964, finding that respondent Board's adverse decision dated September 4, 1962 "was *rendered on October 26, 1962* which was *more than one year* from the first decision. Consequently, it is declared illegal, null and void."

The lower court, appraising the evidence, found that respondent Board's adverse decision dated September 4, 1962 "was *ante-dated* based on the ground that had that decision been rendered on September 4, 1962, the copy to the petitioner should have been mailed immediately thereafter. But since the copy of such decision was only mailed on October 26, 1962, as shown by Exhibit E-2, which was not contested or denied by the respondents, strong presumption exists in favor of the petitioner that such decision was rendered not on September 4, 1962, but only on October 26, 1962. At any rate, it is not the date of the

Supreme Court E-Library

decision that counts but the date when copy was *officially recorded* and *copy furnished* the party."

The lower court further cited *several instances* where respondent board had *ante-dated* its adverse decisions of reversal so as to make it appear that they were rendered and promulgated within the jurisdictional one-year period, thus: "The Court also takes judicial notice that the decisions of the same Commissioners of Immigration had been *ante-dated* in the case which was tried before this Court (Civil Case No. 54882, entitled *Go Yu Tak Wai vs. Hon. Martiniano Vivo*), which is now elevated to the higher court, because in that case it was found out that the decision was *ante-dated* as proven by the fact that it was *officially filed on record much later* than the date of such decision. This incident also happened in the case of *Chua Kian @ Chua Quian vs. Martiniano Vivo, et al.*, Civil Case No. 51870, decided by Hon. Francisco Arca, Branch I of this Court, a certified copy of which was presented as Exhibit F, where it was found by the Honorable Judge that the decision of the said Commissioner of Immigration was *ante-dated*. Again in the case of *Commissioner of Immigration vs. Hon. F. Fernandez, et al.*, G.R. No. L-22696, decided by Honorable Justice Jose Ma. Paredes on May 29, 1964, the same incident happened. The decision of the Commissioner of Immigration was *found by the Honorable Supreme Court that it was also ante-dated*. The pertinent part of the Supreme Court decision is quoted as follows:

'The actuation of the new Board of Commissioners in reviewing a decision already passed upon by its predecessor Board, may breed chaos in the Bureau of Immigration. If sanctioned, without any legal and plausible grounds, it may lead to an insecurity of status already established by a previous Board. If by a whimsical stroke of fate, two or three Boards of Commissioners are constituted within the span of one year, and each wanted to exercise the right to review already deliberated and decided cases, where will persons similarly situated, as Teban Caoili, be? Let us ponder. An *arbitrary, abusive and indiscriminate* exercise of the right to review, even if granted by law, will obliterate the right of an individual to *due process* — a *destructive blow to the rule of law*.' (Decision of the Hon. Supreme Court, May 29, 1964)."

Supreme Court E-Library

I. The fundamental issue at bar is one of *fact* assuming that this Court could review the findings of fact of the trial court in this appeal directly from the trial court, *viz*, whether the trial court correctly found on the basis of the evidence that respondent board's adverse decision was *ante-dated* as of September 4, 1962 so as to make it appear that it was rendered within the one-year jurisdictional period which lapsed on September 11, 1962 and at the very least that respondent board failed to establish that it did act within said one-year period on the one hand *or* whether on the other hand, as stated in the opinion of my esteemed colleague, Mr. Justice Makasiar, "(T)he lower court's declaration . . . stems from a wrong appreciation of the facts." (at page 9).

The issue is decisive, because as likewise stated by Mr. Justice Makasiar in his opinion (at page 9): "(S)ection 27(b) of Commonwealth Act No. 613, as amended, states that the decision of the *Board of Special Inquiry* 'shall prevail and shall be *final* unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioners after a review by it, *motu proprio* of the entire proceedings *within one year* from the *promulgation* of said decision.' Otherwise stated, *within a period of one year from promulgation*, the decision of the Board of Special Inquiry can be reversed by the Board of Commissioners acting *motu proprio* on review, in the absence of an appeal. *Absent a reversal*, the decision of the *Board of Special Inquiry* prevails and becomes *final* after the lapse of *one year* from its *promulgation*." (emphasis supplied).

The trial court's finding of fact is fully supported by the evidence of record. As correctly found by the trial court, *no evidence* whatever was *presented by respondent board* to show that it had ever voted or taken action on September 4, 1962 and that such action was duly *recorded and entered* in the minutes of the proceedings on said date within the one-year mandatory period, which was to form the basis of its written decision backdated September 4, 1962 which was sent by ordinary mail together with a letter signed by Pio S. Noche,

Supreme Court E-Library

secretary, dated September 4, 1962, much later only on *October 26, 1962*, Exhibit E-1, and the envelope marked Exhibit E-2, which shows that such letter was *mailed only on October 26, 1962*. October 26, 1962 was in fact *45 days after* the lapse of the jurisdictional one-year period on *September 11, 1962* and the notoriety of the practice in government offices and agencies of ante-dating their communications and actions is only too well known.

What is *worse*, is that the printed certification dated September 4, 1962 but issued on *March 4, 1965* (bearing a date even after the date of respondent board's brief dated *February 26, 1965* but filed with this Court actually on *March 16, 1965*) *purported* to be "sgd." by Mr. Pio S. Noche, secretary of respondent board (who previously as Acting Deputy Commissioner had *confirmed* the Board of Special Inquiry's decision of admission of September 11, 1961) and purporting to show that respondent board had voted for exclusion on September 4, 1962 as a prop for giving the decision the same date, notwithstanding that it was promulgated by ordinary mail only on *October 26, 1962*, *45 days after* the lapse of the jurisdictional one-year period, so as to invoke the Arocha ruling that "the decision *in extenso* must relate back to the day the resolution to exclude was actually adopted" is *NOT a part of the evidence of record*. It was *never presented as evidence* to the trial court (and it could *not* have been so presented, because it was *issued by Mr. Noche only on March 4, 1965, long after* the *trial and decision* of the *court below*). Said certification of Mr. Noche was *belatedly submitted* only for the *first time* in this Appeal as *Annex 3 of respondent board's brief* (at page 68 thereof) in *printed* form, and *without the actual signature* of Mr. Noche. *Neither Mr. Noche* nor any *member* of respondent board *was ever presented at the hearing*, much less to authenticate said certification which shows on its face that it was issued only on *March 4, 1965 during* the pendency of *this appeal*.

Verily petitioner-appellee has cause to complain in his brief that "(I)f, as claimed by respondent Board, this document has

Supreme Court E-Library

existed since September 4, 1962, why is it being presented for the *first time* only in *this appeal*? No explanation has been given as to why this important, not to say decisive document has not been offered in evidence in the court below. Of course, there is one explanation — and that is, that it did not exist at all prior to the trial of this case, and the production of this document at this late stage of this case, is but another brazen attempt to justify what the trial court found to be 'the practice of *changing or reversing* decision *after* it has elapsed for one year' and which the trial judge described as 'not only condemnable but also *illegal bordering* on *falsification.*'"

Said purported certification has patently *NO probative value*. It does *not* form part of the record of the case. *NO* authentic or signed copy was ever identified or submitted or admitted as an exhibit or as part of the record at the trial. A *plain, simple printed* copy (*without* signature nor authentication) and by its face issued only on *March 4, 1965* long *after* the trial and decision below and during the *appeal* proceedings in *this* Court was merely *attached* to appellant's brief as Annex "3" thereof. This is *bogus* evidence. And for the majority to reverse the appealed decision on the basis of such legally nonexistent evidence is rank denial of substantive due process and a gross violation of the cardinal rule that only matters duly submitted in evidence or of which the courts may take judicial notice shall be considered in the determination of a case.

For ready reference, the same, submitted as Annex 3 of respondent's brief, is herewith reproduced as is:

'ANNEX '3'

"Republic of the Philippines
Department of Justice
BUREAU OF IMMIGRATION
Manila

BOARD OF COMMISSIONERS

"It is hereby certified that in the admission as PI citizens case of Si Beng, *et al.*

Supreme Court E-Library

"Review *Motu Proprio*

"(I.C. Nos. 61-3165-WCA, No. to 61-3167-C s. 19 . . .) the Board of Commissioners voted as follows:

"Commissioner Vivo	Exclude
Ass. Com. Gaston	Exclude
Ass. Com. Rañola	Exclude

Manila, Sept. 4, 1962.

"Certified true copy:

"PIO S. NOCHE[1]
Secretary

"(Sgd.)[2] PIO S. NOCHE
Secretary

"Mar. 4, 1965"

It is to be noted that (a) the supposed certification marked as[1] does not even indicate that it was ever signed; and (b) the prefix "(Sgd.)" marked above as[2] is only printed. The entire alleged document was *never* identified nor submitted nor admitted in evidence. As indicated by[1] the entire alleged document is *not even certified.*

Contrary, then, to the majority decision's bare pronouncement that the lower court's decision "stems from a wrong appreciation of the facts," the facts of record show that the lower court correctly ruled that there was *nothing* to show that the decision of *October 26, 1962* had *in fact* been voted on and adopted on *September 4, 1962* so as to be able to apply thereto the *Arocha* ruling that "the operative date of the Commissioners' action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision *in extenso* was prepared, written and signed."

II. The vital issue of law before the Court is that the decision on a review *motu proprio* by respondent board (whether for inclusion or exclusion) must be duly put in *writing* and *promulgated* (with proper service whether personally or by registered mail, as *in service of final orders or judgments*

Supreme Court E-Library

under Rule 12, Section 7 [applying suppletorily the Rules of Court], as required by *substantive due process*; of *Peo. vs. Sumilang*, 77 Phil. 764, 767) *within* the statutory one year period.

I had set forth this view in *Go Yu Tak Wai vs. Vivo*, 77 SCRA 55 (1977) which was concurred in by the late Mr. Chief Justice Castro and Mr. Justice Antonio, with Mr. Justice Barredo filing a similar opinion. This case really does *not* constitute authority for the majority decision's ruling (as cited on pages 10-12 thereof) for the Court was split six to four without reaching the required 8-vote majority either way and the lower court's decision declaring the board's decision *in extenso* as null and void for having been issued beyond the statutory one-year period was legally deemed *affirmed.*

I stressed therein that "*(P)ublic policy and due process* butress such a construction. Where the alien has appealed from an adverse decision or a dissenting special inquiry board member has appealed a favorable decision, the applicant for admission knows as mandated by the law that a *final decision* must be handed down *within seven days* from submittal of the appeal for decision. Where there has been no appeal and the Board of Commissioners conducts a review *motu proprio* of which the applicant is likely unaware, both public policy and due process demand that where *no adverse decision is promulgated* within the *statutory one-year period of finality*, the decision of the special inquiry board shall have become final and beyond the Commissioners' authority to reverse or set aside thereafter. (Otherwise, such one-year period would be an elastic rather than a fixed period and would have no meaning, as in this case where the appellee would have been ordered excluded by a decision of reversal promulgated *five months after* the lapse of the one-year period.)"

I further submitted therein that "(S)uch a view is certainly in consonance with the law's policy of a definite date of fixed *finality* of the special inquiry board's decision — be it of inclusion or exclusion of an alien — and to *reduce to the minimum* any opportunity or occasion for *anomalies and irregularities* in the admission or exclusion of aliens and applicants for admission

Supreme Court E-Library

under the procedures for appeal or review *motu proprio* established by the Act. In *Neria vs. Commissioner of Immigration*,[1] the Court through the now Chief Justice[2] precisely noted a deliberate *ante-dating* by *six days* of the Board of Commissioner's action of reversal *motu proprio* of the special inquiry board's admission and declared the decision of reversal *null and void*, ruling that 'the said decision of the Board of Immigration Commissioners, and the warrant of exclusion issued on the strength of such decision, are therefore, as correctly found by the lower court, null and void, for '*lack of jurisdiction,*' since the decision of the Board of Special Inquiry No. 1 by that time had already become final.'"

Prescinding from the foregoing, what is vital and indispensable then, under prevailing jurisprudence, specially where the Board of Commissioners conducts *motu proprio* a review of the Special Inquiry Board's decision of admission within the concededly jurisdictional and mandatory period of *one year* from *promulgation* of the Special Inquiry's Board's decision is that the Commissioners' adverse vote and action must be within said one-year period and must be duly *promulgated*, *i.e.* recorded and entered in the minutes of the proceedings (following the *Arocha* ruling). Here, the record is NIL insofar as any such action of the Commissioners is concerned. All that we have is their decision obviously *ante-dated* to September 4, 1962 but nothing to show that they had *in fact acted upon and voted* in their *motu proprio* review on *September 4, 1962*. To cite the impugned decision itself (which was sent out by ordinary mail only 45 days on October 26, 1962) as proof of the very *factum probandum* is to beg the question.

In *Neria vs. Commissioner of Immigration, supra*, the Court through the late Chief Justice Fred Ruiz Castro stressed the necessity of such *promulgation* of the boards' actions, as indeed the Immigration Act stresses that such actions and decisions must be *promulgated*, thus:

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[1] 23 SCRA 806. 816-818 (May 27. 1968).

[2] Reference is to the late Chief Justice Fred Ruiz Castro.

Supreme Court E-Library

"According to the Solicitor General, the correct date of promulgation is September 4, 1961, because under the Immigration Rules and Regulations, the decision of a Board of Special Inquiry 'shall be rendered in writing,' and under Section 27(b), *supra*, the written decision 'shall be *promulgated*'; that the words 'rendition' (from 'rendered') and 'promulgation' (from 'promulgated') connote two separate and distinct acts required to be accomplished by the Board of Special Inquiry, for rendition is the date when a judge signs his decision and files it with the clerk of court, whereas *promulgation* is the date when such decision is *published, officially announced*, is *made known to the public*, or *delivered to the clerk of court for filing, coupled with notice to the parties or to their counsel*; and that in this case, rendition was accomplished on August 2, 1961 when the Board of Special Inquiry No. 1 concluded its hearing on the petitioner's case (I.C. 61-2312-C), deliberated thereon, voted for his admission into the Philippines and rendered its written decision, and promulgation was accomplished on September 4, 1961 when the petitioner was *actually notified* of the decision, copy of which was received by his counsel.

"No amount of hair-splitting in regard to the words 'rendition' and 'promulgation' would convey different meanings. This Court defined promulgation as 'the *delivery* of the decision to the Clerk of Court *for filing and publication*.' The word 'promulgate' was viewed by the majority in *People vs. Dinglasan* (77 Phil. 764) as the entry made by the clerk of a judgment or order in the book of entries of judgments made by said clerk.

x x x x x x x x x

"As it was on August 8, 1962 when the Board of Immigration Commissioners as a body deliberated on and voted for the reversal of the decision of the Board of Special Inquiry No. 1, the review *motu proprio* was effected 6 days beyond the one-year period fixed by Section 27 (b), *supra*. The said decision of the Board of Immigration Commissioners, and the warrant of exclusion issued on the strength of such decision, are therefore, as correctly found by the lower court, *null and void* for 'lack of jurisdiction,' since the decision of the Board of Special Inquiry No. 1 by that time had already become 'final.'"

I vote, therefore, for affirmance of the appealed decision.