Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-31935. January 22, 1980]

IN THE MATTER OF THE PETITION OF BABY NG *alias* NG KONG DING TO BE ADMITTED AS A CITIZEN OF THE PHILIPPINES. BABY NG *alias* NG KONG DING, *petitioner-appellee, vs.* **REPUBLIC OF THE PHILIPPINES,** *oppositor-appellant.*

SYLLABUS

POLITICAL LAW; CITIZENSHIP; NATURALIZATION; REQUIREMENT OF SUFFICIENCY OF INCOME, ESTABLISHED IN CASE AT BAR.— Upon a review of the record, We are satisfied that appellee's position in regard to the sufficiency of his income is well taken. It is indeed unfair to judge the financial capacity of appellee who has been living since his birth, 37 years before 1965 when he filed his petition, in a small and comparatively remote town, Alabat, Quezon Province, by the standards and cost of living in progressive communities. If a teacher in that town like the witness Hermenegildo Mascariña, whose testimony at the original hearing was corroborated substantially by Ambrosio Borlaza, a former councilor and Vice-Mayor thereof, has been able to live comfortably with his wife and six children on his salary of ₱243.36 a month, why should anyone wonder if petitioner, having only three children and with the financial capacity shown above would be able to maintain his family without any risk of him or any member of his family being a charge of the state?

D E C I S I O N

BARREDO, *J.*:

Appeal of the Republic of the Philippines from the order of the Court of First Instance of Quezon, Branch IV at Calauag, Quezon dated April 14, 1969 permitting the applicant for naturalization, Baby Ng *alias* Ng Kong Ding in its Naturalization Case No. 4-C, "to take his oath of allegiance as a Filipino citizen"

Supreme Court E-Library

and ordering that "the corresponding naturalization certificate be issued in his favor, to be registered in the local Civil Registry, with the consequent privilege(s) (of) enjoying all the civil and political rights of a Filipino citizen" (Pp. 80-81 Record on Appeal.)

On June 11, 1965 a decision was rendered in the abovementioned case granting the petition of above-named Baby Ng *alias* Ng Kong Ding for naturalization as a Filipino citizen. More than two years after said decision became final, on October 1, 1968, said petitioner moved, pursuant to Republic Act 530 for the presentation of evidence in the second and final hearing leading to the taking of the oath of allegiance and issuance of the corresponding certificate of naturalization. According to the trial court, at this latter proceeding, the petitioner testified and submitted and identified thirty-six (36) exhibits marked Exhibits AAA to FFFF-1 and "That in the cross-examination of the petitioner on October 16, 1968 by Provincial Fiscal Severino I. Villafranca, in representation of the Solicitor General, after he has not offered any objection to any of the exhibits presented by the petitioner, wherein photostat copies were substituted which are the faithful reproduction of the originals, it was shown that the petitioner never left the Philippines; that he reiterated his source of income as testified to during his direct-examination; and that he secured the corresponding permits or certificates from those concerned; that the petitioner clarified that the land on which his theater is constructed in Alabat belongs to Patricio Desembrana; that the reason his net income decreased from less than ₱8,000.00 in 1966 to a little less than ₱6,000.00 in 1967 is due to the fact that his piggery and poultry suffered pestilence; that petitioner's children do not speak or understand the Chinese language, as in fact they always speak in Tagalog; that the petitioner never uses chop-sticks in eating and rarely eats Chinese food, but that he uses the conventional spoon, knife and fork and eats native viands like *sinigang, dinuguan, paksiw, guinañga, pinakbet, caldereta, kandinga, dinayapan, pinangat,* and *sinarubot*; that the petitioner finished his Grade IV elementary schooling in Alabat, and after that improved himself through self-study and private tutor; that he loves Filipino customs and traditions and does not have the

Supreme Court E-Library

slightest intention to go to China; that he is willing to volunteer in the armed forces of the Philippines; that he has never smuggled silver coin and other items thru Hongkong or Taipei; that he has never used any counterfeit money; that he is against any group that would subvert our national economy; that he has never associated with any Chinese or any Chinese organization; that he is not prone to quarrel to anybody; that if his petition for naturalization is approved he intends to take advantage of his right of suffrage, because he has the welfare of the people at heart; that he has never contributed to any politician or political party; that he has no real property but that his wife inherited from her parents; that petitioner reserved his right to present the approval of his application for renunciation of citizenship from China, as in fact he presented the same on December 19, 1968." (Pp. 72-79, Record on Appeal.) There is nothing to show that the Republic's representative did not present any evidence.

In his brief, the Solicitor General has assigned the following alleged errors:

"I

"THE LOWER COURT ERRED IN NOT RULING THAT PETITIONER HAD NO 'LUCRATIVE INCOME.'

"II

"THE LOWER COURT ERRED IN NOT RULING THAT PETITIONER'S CHILDREN WERE NOT ENROLLED IN THE PRESCRIBED SCHOOL.

"III

"THE LOWER COURT ERRED IN NOT RULING THAT PETITIONER VIOLATED THE ANTI-*ALIAS* LAW.

"IV

"THE LOWER COURT ERRED IN NOT RULING THAT PETITIONER VIOLATED THE RETAIL TRADE ACT."

According to the Solicitor General:

Supreme Court E-Library

"Upon the original petition for naturalization filed on October 28, 1960, the lower court presided by Judge Union C. Kayanan rendered decision dated June 11, 1965, finding the petition as meritorious; the petitioner possessed of the qualifications and none of the disqualifications provided in Sections 2 and 4, respectively, of Commonwealth Act No. 473, and qualified to be admitted a citizen of the Philippines (pp. 39-40, Rec. on Appeal).

"No appeal was taken from the decision.

"On October 16, 1968, the lower court, after hearing, issued an order allowing petitioner to take the oath of allegiance as a naturalized Filipino citizen, in the following tenor:

> 'As soon as the petitioner filed his certificate of renunciation of citizenship from the Chinese embassy, in the absence of any opposition from the Provincial Fiscal in representation of the Solicitor General or after thirty (30) days from this date, let the petitioner take his oath.
>
> 'So Ordered.'

(p. 52, Rec. on Appeal).

"On December 20, 1968, the Republic filed a motion for reconsideration alleging that the court order dated October 16, 1968 failed to comply with the requirements of Section 1, Republic Act No. 530 that provided for a finding that the applicant or petitioner for naturalization has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies. Since at any stage of the proceedings in naturalization, the Government can question the right or qualifications of an applicant to become a Filipino citizen, the Republic's motion for reconsideration also raised grounds opposing the grant of citizenship, touching on the qualifications and disqualifications of petitioner, to wit: (1) that petitioner had no lucrative income; (2) petitioner violated the Retail Trade Act (Republic Act 1180); (3) that petitioner's children were not shown to have been given an education in prescribed school; and (4) petitioner violated the Anti-Alias Law (Com. Act No. 142) pp. 53-62, Rec. on Appeal.

"On January 20, 1969, petitioner opposed the motion for reconsideration filed by the Solicitor General, on the ground that

Supreme Court E-Library

there was no premature oath-taking, stating precisely there was yet unsubmitted the certificate of renunciation from the Republic of China at Taipei and its official translation in English, as well as advancing the excuse in behalf of the court order dated October 16, 1968 for not complying with the adverted Republic Act No. 530 (pp. 63-65, Rec. on Appeal).

"On February 28, 1969, the Republic filed its Omnibus Motion, giving additional logical reasons anent the trial court's failure to comply with Section 1 of Republic Act No. 530, with citation of case authorities and praying for a reconsideration of the court's order dated October 16, 1968 (pp. 66-68, Rec. on Appeal).

"On April 9, 1969, petitioner filed his opposition to the omnibus motion (pp. 70-71, Rec. on Appeal).

"Finally, on April 14, 1969, the lower court issued its order (earlier reproduced) allowing petitioner to take his oath and in effect, denying the government's motion for reconsideration and the omnibus motion (pp. 81-83, Rec. on Appeal).

"Thus, the appeal by the Government (pp. 81-83, *id.*)." (Pp. 2-5, Appellant's Brief.)

And in support of its first assigned error, counsel for the Republic contends thus:

"The petition was filed in the Court of First Instance of Quezon (Calauag) in October 1960. Petitioner should prove by competent evidence, to show income stability that for some years before and at the time of such filing, he was engaged in lawful occupation or profession, deriving enough income to support his wife and children. He had two children at the time of the filing and there at the hearing of the petition. He did not submit his income tax returns, from 1957 to 1961, obviously because as stated in his petition, in 3rd paragraph thereof, his average annual income was only ₱3,000.00 which was insufficient. He only presented in court his returns from 1962 to 1964, which show that in 1962, petitioner's net income was ₱4,088.10; in 1963, ₱3,892.50; and in 1964, ₱7,732.98, which hardly could be considered as lucrative within the contemplation of the law." (Page 6, Appellant's Brief.)

Answering such argument, appellee maintains in his brief:

Supreme Court E-Library

"In the determination of what is lucrative income within the contemplation of the law, it is respectfully submitted that the cost of living and the purchasing power of the peso in the particular locality where the petitioner resides should be given primary consideration.

"It is therefore our intention to establish the fact that the cost of living in Alabat, Quezon where the petitioner resides is very much lower than in other localities and especially that of Manila and that the purchasing power of the peso in the same locality is much higher than elsewhere.

"Thus, Mr. Hermenegildo Mascariña, one of the character witnesses of the petitioner, testified in part as follows:

"Q. Do you know if the petitioner owns any real property in the Philippines?

A. None sir.

Q. What is his occupation?

A. Merchant, sir.

"Q. Since when did you know petitioner to have engaged in business as a merchant?

A. Since 1951, sir.

Q. Where does he conduct his business?

A. At No. 1 corner of Burgos and Mabini Streets, Alabat.

Q. What can you say of the business of the petitioner as a merchant?

A. He is very prosperous and progressive, sir.

Q. Why were you able to say that petitioner's business is prosperous and progressive?

A. Judging from the flow of patrons and customers daily in his store and all the different wares being sold in his store I can say his business is very prosperous and his store is the most progressive store in Alabat.

Q. What can you say about the earnings of the petitioner as a merchant?

Supreme Court E-Library

FISCAL EBRON:

Objection, Your Honor, the witness is incompetent.

COURT:

May answer.

A. According to my observation, I believe that he is earning not less than ₱500.00 a month.

Q. Are the earnings of Baby Ng sufficient to maintain a decent family as obtaining in Alabat?

A. Yes sir.

"Q. Why do you say so?

A. Because the cost of living in Alabat is much cheaper than the cost of living in other municipalities and especially those living in the cities. The value of ₱1.00 may be sufficient for a family of 5 for the whole days consumption in Alabat and the prime commodities especially those coming from the farms like bananas and other fruits and vegetables are much cheaper in Alabat than those of other municipalities.

Q. How much do you earn as a teacher?

A. ₱243.36 per month, sir.

Q. Is that amount you receive sufficient for you to maintain decently your family in accordance with the standard of living as obtaining in Alabat?

A. It is sufficient, I have 6 children and my wife and I, we are 8, in the family. (pp. 32, 33 & 34 Testimony of Mr. Hermenegildo Mascariña-Hearing on February 15, 1965).

"On the other hand, the petitioner BABY NG KONG DING, in so far as pertinent, declared in open court as follows:

Q. Will you compare the standard of living in Alabat, Quezon with that of Manila?

A. If you are spending ₱10.00 per day in Alabat you will be spending ₱50.00 in the City of Manila, sir.

Q. How can you account for that?

Supreme Court E-Library

A. Because dinner costing ₱0.70 in Alabat will satisfy me already while in Manila it will cost me ₱3.50 up to ₱4.00 and the commercial place which I am renting at ₱20.00 in Alabat would probably call for a rental of ₱300.00 in Manila.

Q. What can you say about the standard of living in Alabat?

A. The cost of prime commodities there are cheap, sir. (pp. 11 & 12, t.s.n. Testimony of Baby Ng Kong Ding-Hearing on March 25, 1965).

"From the foregoing, it could readily be concluded that what may be considered as gainful employment in Alabat, Quezon where the present petitioner resides may not be so in other places especially in Manila.

"During the trial proper, the petitioner has established through his Individual Income Tax Returns that his net income are as follows:

(1) ₱4,088.10 in 1962 as per Exhibit 'MM' (p. 20 (1) – Record on Appeal);

(2) ₱3,892.50 in 1963 as per Exhibit 'NN' (p. 20 (2) – *Supra*);

(3) ₱7,732.98 in 1964 as per Exhibit 'OO' (p. 19 (3) – *Supra*);

"During the final hearing, the same petitioner by means of similar documents has proven that his further net income are as follows:

(1) ₱7,970.06 in 1965 as per Exhibit 'GGG' (p. 42, par. 6 - Record on Appeal);

(2) ₱5,938.88 in 1966 as per Exhibit 'HHH' (p. 42, par. 8 - *Supra*);

(3) P7,864.52 in 1967 as per Exhibit 'III' (p. 43, par. 1 - *Supra*).

"Considering the income of the petitioner as reflected in his several individual income tax returns and making as the basis the cost of living and the purchasing power of the peso in Alabat, Quezon, said income would undoubtedly surpass the standard of what is lucrative or gainful employment as intended by the law.

"Furthermore, if the income of the petitioner is not lucrative, then he could not have acquired the following personal properties, to wit:

(1) Chevrolet car model 1949 worth ₱1,200.00;

(2) Refrigerator Whirlpool RCA worth ₱2,800.00;

(3) Television set GE model 1964 worth ₱1,900.00;

Supreme Court E-Library

(4) Diesel generator worth ₱2,600.00;

(5) Household furniture worth ₱2,000.00;

(6) Jewelries worth ₱1,000.00;

(7) Piggery with eight (8) pigs and

(8) A bank deposit with the Philippine Savings Bank totalling ₱6,675.15 as per certificate marked Exhibit 'HH' (p. 30, Record on Appeal, lines 24 up to 32, which is a part of the trial court's findings as quoted in the Decision dated June 11, 1965.

"Finally, were it not for his gainful occupation, petitioner could not have built his house where his family lives at the Poblacion of Alabat, Quezon with an assessed value of ₱1,000.00 (p. 19, XI (2)-Record on Appeal)." (Pp. 2-8, Appellee's Brief.)

Upon a review of the record, We are satisfied that appellee's position in regard to the sufficiency of his income is well taken. It is indeed unfair to judge the financial capacity of appellee who has been living since his birth, 37 years before 1965 when he filed his petition, in a small and comparatively remote town, Alabat, Quezon Province, by the standards and cost of living in progressive communities. If a teacher in that town like the witness Hermenegildo Mascariña, whose testimony at the original hearing was corroborated substantially by Ambrosio Borlaza, a former councilor and Vice-Mayor thereof, has been able to live comfortably with his wife and six children on his salary of ₱243.36 a month, why should anyone wonder if petitioner, having only three children and with the financial capacity shown above would be able to maintain his family without any risk of him or any member of his family being a charge of the state?

The Republic's contention in its second assigned error is even less convincing. The evidence is indubitable that petitioner had at the time of the original hearing only two children of school age, Emelita aged 11 years and Nora aged nine years. (The third child Elenor was then only seven months old.) Emelita and Nora were both enrolled at the Alabat Elementary School, the only institution of learning of that level in that small community. The school was being operated by the municipality itself. No

Supreme Court E-Library

doubt, such a school would qualify under the requirements of the naturalization law, for it is unquestionably recognized by the government and must have been and is still teaching Philippine history, government and civics as part of its curriculum. Indeed, the evidence presented by petitioner on this score was superfluous.

As to the claim of the Solicitor General that the trial court erred in not holding that petitioner has violated the anti-*alias* law, suffice it to point out that in the certified true copy of the record of birth of petitioner issued by the Local Civil Registrar of Alabat, Quezon on January 12, 1965, it appears that petitioner's registered name is "Baby Ng (Ng Kong Ding)." How can a duly registered name be deemed an *alias* under the law? Moreover, it is important to note that the name Baby Ng *alias* Ng Kong Ding was stated plainly and completely in the petition for naturalization of petitioner. (Page 2, Record on Appeal.)

Incidentally, just to complete the petitioner's relevant circumstances, in his brief, he states:

"It is significant to state by way of further explanation that in his petition dated October 26, 1960, petitioner alleged, among others, that his Christian name is JOSE as it is required by the Catholic Church to adopt a Christian name by all who want to embrace the Catholic religion through baptism.

"Said allegation is substantiated by petitioner's Exhibit 'Q' (p. 17 (4) - Record on Appeal) which is the baptismal certificate duly issued by Parish Priest Jose Almira of Alabat, Quezon on January 7, 1965, to the effect that the petitioner was baptized at Alabat, Quezon, on February 10, 1948, by then Rev. P. Adelino Imperial of the Roman Catholic Church and that the petitioner was given or had adopted the Christian name JOSE. That is the justification of the use by the petitioner of the Christian name JOSE." (Pp. 13-14, Appellee's Brief.)

Accordingly, We overrule appellant's third assignment of error.

Lastly, in what apparently is a tenacious but vain attempt to block petitioner's naturalization, the Solicitor General posits that petitioner has violated the Retail Trade Law because he engaged in retail trade even before being naturalized as a Filipino citizen.

Supreme Court E-Library

What appellant has missed is that according to the recorded evidence not disputed by the government's representative at both the original and second hearings, petitioner had been maintaining and operating his *sari-sari* store at the corner of Burgos and Mabini streets in Alabat even way back in 1951 before the passage of the Retail Trade Act in 1954. And considering that said Act was not given retroactive effect in the sense that non-citizens already in the retail business before its passage have been allowed under said law to secure permits to continue thereat, all that petitioner had to do, in order not to violate the law, was to obtain such permit. To this effect, Exhibit KKK, which is the permit granted to petitioner by the Mayor of Alabat, Quezon is evidence of his compliance with the law. And if this is not enough, Exhibit JJJ, the permit issued to petitioner by the Municipal Treasurer of Alabat, Quezon, acting for and in behalf of the Secretary of Commerce and Industry states:

PERMIT TO ENGAGE IN THE
RETAIL BUSINESS

"THIS IS TO CERTIFY that BABY NG *alias* JOSE NG KONG DING, a citizen of China, holder of Alien Certificate of Registration No. 038819, dated February 28, 1964, and a resident of Alabat, Quezon, having complied with the requirements of Section 2 of Republic Act No. 1180 and the rules and regulations thereunder issued by the Secretary of Commerce and Industry, is hereby permitted to continue his retail business at Alabat, Quezon. This permit is valid until December 31, 1968, unless sooner revoked for cause." (Page 18, Appellee's Brief.)

Under these circumstances, We see no alternative but to hold that, contrary to the contention of the Republic, petitioner has not violated the Retail Trade Act.

In sum, finding as We do that the impugned order of the trial court of April 14, 1969, like its original decision of June 11, 1965 is adequately supported by strong and convincing evidence, We are of the considered opinion that petitioner has satisfactorily established his right to be a naturalized Filipino citizen and that, therefore, the appeal of the Republic should be overruled. Parenthetically, it may be stated that We realize that under the very strict criteria followed by this Court in naturalization cases

Supreme Court E-Library

in the past, the posture of the Solicitor General in his brief filed in May, 1972 could well have some degree of plausibility. We are aware, however, that a new policy of liberal attitude regarding Naturalization has been adopted temporarily, to the extent of naturalization being granted administratively under less stringent conditions than those in the Naturalization Law. It would be out of tune with the times for the Court now to go along lines already abandoned to some extent by the political authorities of the Republic.

ACCORDINGLY, the order appealed from is affirmed.

Antonio, Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.,* concur.

EN BANC

[G.R. No. L-34841. January 22, 1980]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN RETANIA *Y* RODELAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; OBJECTION ON THE GROUND THAT THE INFORMATION CHARGES MORE THAN ONE OFFENSE, WHEN DEEMED WAIVED.— We also rule that under Section 10, Rule 117 of the Rules of Court, assuming for the sake of argument that the information charges more than one offense, nevertheless, the accused who failed to move to quash the information upon that ground before pleading thereto is deemed to have waived such objection upon that ground. (*Prov. Fiscal of Nueva Ecija vs. Court of First Instance of Nueva Ecija,* 79 Phil. 165).