



Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 144742 **November 11, 2004**

REPUBLIC OF THE PHILIPPINES, petitioner,
vs.
HAMILTON TAN KEH, respondent.

DECISION

CALLEJO, SR., J.:

The Republic of the Philippines, represented by the Office of the Solicitor General (OSG), filed the present petition for review on certiorari seeking to reverse and set aside the Decision¹ dated February 11, 2000 of the Court of Appeals in CA-G.R. SP No. 55339 which affirmed the orders promulgated by the Regional Trial Court (RTC) of Caloocan City, Branch 125, granting respondent Hamilton Tan Keh's petition for naturalization and his motion to present evidence of compliance with Republic Act No. 530. Likewise sought to be set aside is the appellate court's Resolution dated August 31, 2000, denying the petitioner's motion for reconsideration.

The case arose from the following undisputed factual antecedents:

On August 10, 1993, respondent Tan Keh filed with the court a quo a petition for naturalization under Commonwealth Act No. 473 (CA 473), otherwise known as the Revised Naturalization Law, as amended. He alleged in his petition that, inter alia, he is a resident of San Jose, Caloocan City and previously resided in Binondo, Manila, Sta. Cruz, Manila and Carmona, Cavite; he was born in the Philippines on May 22, 1959 and is a citizen of China; he is married to Lily Chu Ko, also a Chinese citizen, with whom he has three (3) children, all born in the Philippines; he has continuously resided in the Philippines except for brief visits abroad in connection with his business; he received primary, secondary and tertiary education in Philippine schools and is able to speak and write English and Tagalog; he is employed as company manager of KB Trading and earns therefrom an annual income of P100,000, more or less; he believes in the principles underlying the Philippine Constitution and he has conducted himself in a proper and irreproachable manner; he possesses all the qualifications under Section 2 and none of the disqualifications under Section 4 of CA 473; and he desires to become a citizen of the Republic of the Philippines. The petition was docketed as Naturalization Case No. C-24.

On July 4, 1994, the court a quo issued a Notice of Hearing stating in part:

WHEREFORE, notice is hereby given that said petition will be heard by this court, Regional Trial Court, Branch 125, Caloocan City, located at the 2nd Floor Genato Bldg., 12th Ave., Grace Park, Caloocan City, Metro Manila on April 27, 1995 at 8:30 in the morning.

Let a copy of this notice as well as the petition and its annexes be published, at the expense of the petitioner, in a newspaper of general circulation once a week for three (3) consecutive weeks and in the Official Gazette and to be posted in a public and conspicuous place and in the Office of the Clerk of Court.²

A copy of the said notice, as well as respondent Tan Keh's petition for naturalization, were published in the September 5, 12 and 19, 1994 issues of the Official Gazette. They were, likewise, published in the July 7-13, 1994, July 14-20, 1994 and July 21-27, 1994 issues of the "Newsline."

At the initial hearing on April 27, 1995, the OSG manifested in open court that the notice of hearing and the consequent publication suffered from a fatal defect in that they violated Section 10³ of CA 473. The said provision

proscribes the hearing of a petition for naturalization within thirty (30) days preceding any election. The hearing on April 27, 1995 was less than thirty (30) days preceding the May 8, 1995 senatorial, congressional and local elections. Accordingly, on the same day, the court a quo issued an Order canceling the April 27, 1995 hearing and resetting the same to June 9, 1995. However, it no longer ordered the republication of the notice of hearing and the petition.

A Motion to Dismiss respondent Tan Keh's petition for naturalization dated June 16, 1995 was filed by the OSG on the ground that the court a quo did not acquire jurisdiction over the action since the notice of hearing and the consequent publication were fatally defective. The court a quo, however, denied the motion to dismiss, as well as the subsequent motion for reconsideration filed by the OSG.

In the Order dated December 18, 1995, the court a quo granted respondent Tan Keh's petition for naturalization. The dispositive portion thereof stated:

IN VIEW OF ALL THE FOREGOING, the Court believes and so holds that the petitioner has complied with all the requirements to become a Filipino citizen. He has all the qualifications and none of the disqualifications. Upon the expiration of the two-year period provided for by Section 1, Republic Act No. 530, petitioner be allowed (sic) to become a naturalized citizen of the Philippines, after submission of satisfactory proof that he has complied with the other requirements of the aforementioned law.

SO ORDERED.⁴

On February 16, 1996, a few months after his petition for naturalization was granted, respondent Tan Keh filed with the court a quo a Motion for Leave of Court to Travel Abroad. The said motion was granted.

On July 7, 1997, respondent Tan Keh filed a Motion to Defer Oath-taking praying that since he left the country several times, he should be allowed to defer his oath-taking until such time that the two-year probationary period under Section 1 of Rep. Act No. 530 had been completed. The said motion was granted by the court a quo.

On February 22, 1999, respondent Tan Keh filed with the court a quo a Motion to Present Evidence of Compliance with the Requirements of Rep. Act No. 530. The OSG filed an Opposition thereto on the ground that respondent Tan Keh did not comply with the requirements under Section 1 of Rep. Act No. 530, particularly that proscribing an applicant from leaving the country during the two-year probationary period.

In the Order dated May 4, 1999, the court a quo granted respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530. The OSG sought reconsideration thereof but the court a quo, in the Order dated July 30, 1999, denied the motion.

The OSG then filed with the Court of Appeals a petition for certiorari alleging that the court a quo did not acquire jurisdiction over the action because the notice of hearing and the consequent publication violated Section 10 of CA 473; hence, the same were void and without legal effect. In denying the OSG's motion to dismiss and granting respondent Tan Keh's petition for naturalization, Judge Geronimo Mangay (now retired) allegedly acted with grave abuse of discretion. The OSG likewise imputed grave abuse of discretion on the part of respondent Judge Adoracion G. Angeles (who replaced Judge Mangay) in granting respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530 despite the fact that, in violation thereof, he left the country within the two-year probationary period.

After the parties had filed their respective pleadings, the appellate court rendered the assailed Decision dated February 11, 2000, dismissing the OSG's petition for certiorari as it ruled that the court a quo committed no grave abuse of discretion in denying the OSG's motion to dismiss and granting respondent Tan Keh's petition for naturalization, as well as in subsequently granting his motion to present evidence of compliance with the requirements of Rep. Act No. 530.

The OSG filed a motion for reconsideration of the assailed decision but the appellate court, in the assailed Resolution dated August 31, 2000, denied the same.

Hence, the recourse to this Court.

In support of its petition, the OSG advances the following arguments:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE CASE DESPITE THE FACT THAT THERE WAS A DEFECTIVE PUBLICATION. THE NOTICE OF HEARING TOOK PLACE WITHIN THE PROHIBITED PERIOD UNDER SECTION 10 OF COMMONWEALTH ACT NO. 473, AS AMENDED, OTHERWISE KNOWN AS THE "REVISED NATURALIZATION LAW." THE TRIAL COURT'S RESETTING OF THE HEARING ON A DATE OTHER

THAN THAT STATED IN THE PUBLISHED NOTICE OF HEARING DID NOT CURE THE DEFECT. A VALID AND NOT FATALY DEFECTIVE PUBLICATION IS A JURISDICTIONAL REQUIREMENT. HENCE, THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER THE ACTION.

II

THE COURT OF APPEALS ERRED IN RULING THAT SECTION 10 OF COMMONWEALTH ACT NO. 473, AS AMENDED, OTHERWISE KNOWN AS THE REVISED NATURALIZATION LAW, IS NOT A RESTRICTION IN THE PUBLICATION OF THE NOTICE OF HEARING.

III

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT DID NOT VIOLATE SECTION 1 OR (sic) R.A. NO. 530 EVEN THOUGH HE LEFT THE COUNTRY SEVERAL TIMES DURING THE TWO-YEAR PROBATIONARY PERIOD.

IV

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S TRAVEL ABROAD CAN BE CONSIDERED AS AN EXCEPTION TO SECTION 1 OF R.A. NO 530.⁵

The first two grounds shall be resolved jointly as they are interrelated. Sections 9 and 10 of CA 473 read:

Sec. 9. Notification and appearance. - Immediately upon the filing of a petition, it shall be the duty of the clerk of court to publish the same at the petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace, and residence of the petitioner, the date and the residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held until after six months from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the Interior,⁶ the Bureau of Justice,⁷ the Provincial Inspector⁸ of the Philippine Constabulary of the province and the Justice of the Peace⁹ of the municipality wherein the petitioner resides.

Sec. 10. Hearing of the petition. - No petition shall be heard within thirty days preceding any election. The hearing shall be public, and the Solicitor General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said naturalization certificate in the proper civil registry as required in Section 10 of Act No. 3753.

It is not disputed that there was publication of the notice of hearing and respondent Tan Keh's petition for naturalization in the Official Gazette and Newline once a week for three consecutive weeks. The OSG, however, contends that the said publication was defective because the initial hearing on April 27, 1995 took place within the prohibited period under Section 10 of CA 473, i.e., within thirty (30) days preceding the May 8, 1995 elections. The fact that the said hearing was reset to June 9, 1995 did not allegedly cure the defect since the court a quo did not order a republication of the notice of hearing of the latter date.

The OSG maintains that Section 10 of CA 473 also operates as a restriction on the requirement of publication such that the date indicated in the published notice of hearing must not be within thirty (30) days preceding any election. When the hearing was reset to and conducted on June 9, 1995, there was no publication of the notice thereof. Accordingly, the RTC did not allegedly acquire jurisdiction over respondent Tan Keh's petition for naturalization because publication is one of the jurisdictional requirements therefor. Citing jurisprudence, the OSG insists that naturalization laws must be construed strictly and doubts resolved against the applicant.

The Court is not persuaded.

A plain reading of Section 9 of CA 473 shows that for there to be a valid publication, the following requisites must concur: (1) the petition and notice of hearing must be published; (2) the publication must be once a week for three (3) consecutive weeks; and, (3) the publication must be in the Official Gazette and in a newspaper of general circulation in the province where the applicant resides. The said provision also requires that copies of the petition and notice of hearing must be posted in the office of the clerk of court or in the building where the office is located. Further, the petition shall not be heard within six (6) months from the date of last publication of the notice.

Publication is a jurisdictional requirement and non-compliance therewith affects the jurisdiction of the court.¹⁰ The rationale for the publication was enunciated in the early case of *Cui v. Republic of the Philippines*,¹¹ thus:

The publication required by law in the Official Gazette and in a newspaper of general circulation is a means of screening aliens applying for Filipino citizenship by giving the public a chance to come forward and protest the grant of such citizenship if they possess any information derogatory to the applicant....¹²

Significantly, the Solicitor General, personally or through his delegate, and the provincial fiscals, are the only officers or persons authorized by law to appear on behalf of the government and oppose an application for naturalization or move for the cancellation of a naturalization certificate already issued.¹³ The government as an agency of the people represents the public, and therefore the Solicitor General who appears on behalf of the government represents the public.¹⁴

On the other hand, Section 10 requires, in part, that "no petition shall be heard within thirty days preceding any election."

The fact that, in this case, the initial hearing was originally set during the prohibited period in Section 10, but well beyond the six (6) months prohibited period in Section 9, did not render the publication of the notice and the petition invalid. Respondent Tan Keh had strictly complied with all the requirements under Section 9. His petition and the notice of hearing were duly published once a week for three consecutive weeks in the Official Gazette during the month of September 1994 and in a newspaper of general circulation in July 1994. Moreover, the original date of hearing, April 27, 1995, was not within six (6) months from the last publication of the notice thereof.

On April 27, 1995, when it was pointed out by the OSG that the said hearing was within the prohibited period in Section 10, the court a quo forthwith cancelled the same and reset it to June 9, 1995. The OSG, as the representative of the Republic, the only other party apart from respondent Tan Keh who possessed an interest in the naturalization proceedings, was fully apprised of the new date of the hearing. There was, thus, no need for the republication of the notice of hearing and the petition for, clearly, the avowed purpose of Section 9 had already been accomplished.

There are two prohibited periods that must be reckoned with under Sections 9 and 10 of CA 473. Section 9 provides that the notice must set forth, inter alia, "the date of the hearing of the petition, which hearing shall not be held within six months from the date of last publication of the notice." Section 10, on the other hand, provides that "no petition shall be heard within thirty days preceding any election." The hearing on June 9, 1995 on respondent Tan Keh's petition was not within any of these two prohibited periods.

The case of *Te Tay Seng v. Republic*¹⁵ cited by respondent Tan Keh is instructive. In that case, the hearing on the petition for naturalization was set on May 5, 1959. The notice thereof was duly published in the Official Gazette and in a newspaper of general circulation once a week for three (3) consecutive weeks, the last day of publication being October 13, 1958. Thereafter, the applicant moved that the testimony of one of his character witnesses be taken on April 23, 1959 instead of on May 5, 1959, the date set for the hearing of the petition as indicated in the notice. The trial court therein granted the said motion and allowed the taking of the testimony on April 23, 1959. On appeal, among the arguments raised by the Republic was that the trial court did not acquire jurisdiction to take the testimony of the character witness before the publication of the date of hearing in the newspaper and the Official Gazette. The Court ruled against the Republic on this point, holding that "as from October 13, 1958, the last publication of the notice of hearing, to April 23, 1959, the date when the testimony of the character witness Francisco R. Lopez was taken or heard, the six months already had passed, and as it does not appear that an election was to be held within 30 days from April 23, 1959, the testimony of the character witness Francisco R. Lopez taken or heard on April 23, 1959 does not come under the prohibition above quoted."¹⁶

As discussed earlier, all the requisites for a valid publication under Section 9 had been complied with in respect of respondent Tan Keh's petition for naturalization. Further, the hearing thereon on June 9, 1995 was not within any of the prohibited periods under Sections 9 and 10. Contrary to the contention of the OSG, therefore, the court a quo acquired jurisdiction over respondent Tan Keh's petition for naturalization.

Anent the third and fourth arguments proffered by the OSG, which relate to the issue on whether respondent Tan Keh violated Section 1 of Rep. Act No. 530 because he left the country during the two-year period, albeit with leave of the court a quo, the Court believes that it is premature, at this point, to resolve this issue.

Sections 1 and 2 of Rep. Act No. 530 read:

Sec. 1. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the

court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant 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.

Sec. 2. After the finding mentioned in section one, the order of the court granting citizenship shall be registered and the oath provided by existing laws shall be taken by the applicant, whereupon, and not before, he will be entitled to the privileges of a Filipino citizen.

The assailed Order dated May 4, 1999 of respondent Judge Angeles merely granted respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530. It did not, as yet, make any finding with respect to whether respondent Tan Keh had fully complied with the above provision. Neither did it make a categorical ruling that respondent Tan Keh is already entitled to the issuance of a certificate of naturalization and allowed to take his oath as a Filipino citizen. The dispositive portion of the May 4, 1999 Order merely states:

WHEREFORE, premises considered, the instant Motion to Present Evidence of Compliance with the Requirements of RA 530 is hereby GRANTED.

Let the presentation of evidence be held on May 27, 1990 (sic) at 8:30 AM.

SO ORDERED.¹⁷

The said Order is, in fact, in accord with Section 1 of Rep. Act No. 530, which provides that a decision in a naturalization case becomes final only after two years from its promulgation and after another hearing is conducted to determine whether or not there was such compliance. As the Court of Appeals correctly ratiocinated:

At any rate, it would be precipitate for respondent judge to deny private respondent's motion to present evidence to show his compliance with the requirements of R.A. No. 530. If a hearing is held, petitioner would have the opportunity to show the perceived violations by private respondent of the law as to prevent him from embracing Philippine citizenship. In other words, whether or not private respondent has faithfully complied with the legal requirements to warrant his naturalization as a Filipino citizen would be better determined in the course of private respondent's presentation of evidence. At that point, private respondent has the burden of showing compliance.¹⁸

Indeed, the hearing on respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530 would be the proper venue where the OSG could fully ventilate its perceived violations by respondent Tan Keh of the said law. If the court a quo, after the said hearing and notwithstanding the OSG's opposition, issues to respondent Tan Keh the certificate of naturalization and allows him to take his oath, the OSG, if it is still so minded, may appeal the court a quo's order in accordance with the pertinent provisions of CA 473.¹⁹

In fine, the appellate court committed no reversible error in holding that respondent Judge Angeles did not commit any grave abuse of discretion in granting respondent Tan Keh's motion to present evidence of compliance with the requirements of Rep. Act No. 530.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairman), and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.
Tinga, J., on leave.

Footnotes

¹ Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Corono Ibay-Somera and Renato C. Dacudao, concurring.

² Rollo, p. 61.

³ *Infra*.

⁴ Rollo, p. 83.

⁵ Rollo, p. 16.

⁶ Now Office of the President.

⁷ Now Office of the Solicitor General.

⁸ Now Provincial Commander.

⁹ Now Regional Trial Court.

¹⁰ *Po Yo Bi v. Republic*, 205 SCRA 400 (1992).

¹¹ 101 Phil. 649 (1957).

¹² *Id.* at 653.

¹³ *Anti-Chinese League v. Felix*, 77 Phil. 1012 (1947).

¹⁴ *Ibid.*

¹⁵ 7 SCRA 522 (1963).

¹⁶ *Id.* at 524.

¹⁷ Rollo, p. 93.

¹⁸ *Id.* at 39-40.

¹⁹ In *Tan v. Republic* (37 SCRA 353 [1971]) for example, the Court held that "an order granting the petition to take the requisite oath of allegiance of one who had previously obtained a decision favorable to his application, is appealable, and that it is, therefore, improper and illegal to authorize the taking of the said order and before the expiration of the reglementary period to perfect the appeal."