

KILOSBIYAN FOUNDATION, *et al.* v. EDUARDO ERMITA, *et al.*
G.R. No. 177721, 03 July 2007, Azcuna, J. (*En Banc*)

Changes which affect the civil status or citizenship of a party are substantial in character and should be threshed out in a proper action depending upon the nature of the issues in controversy, and wherein all the parties who may be affected by the entries are notified or represented and evidence is submitted to prove the allegations of the complaint, and proof to the contrary admitted.

Petitioners Kilosbayan Foundation and Bantay Katarungan Foundation are people's and/or non-governmental organizations engaged in public and civic causes aimed at protecting the people's rights to self-governance and justice. Respondent Executive Secretary Eduardo Ermita is the head of the Office of the President and is in charge of releasing presidential appointments including those of Supreme Court Justices. Respondent Gregory Ong is allegedly the party whose appointment would fill up the vacancy in this court.

Petitioners allege that Ermita, in representation of the Office of the President, announced an appointment in favor of Ong as Associate Justice of the Supreme Court to fill up the vacancy created by the retirement of Associate Justice Romeo Callejo, Sr. They contend that such appointment is patently unconstitutional, arbitrary, whimsical and issued with grave abuse of discretion amounting to lack of jurisdiction. They claim that Ong is a Chinese citizen, that this fact is plain and incontestable, and that his own birth certificate indicates Chinese citizenship. The birth certificate, petitioners add, reveals that at the time of Ong's birth on May 25, 1953, his father was Chinese and his mother was also Chinese. Petitioners invoke the Constitution which requires members of the Supreme Court to be natural-born citizens, or those citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine Citizenship. They maintain that even if it were granted that eleven years after Ong's birth, his father was finally granted Filipino citizenship by naturalization, that, by itself, would not make Ong a natural-born Filipino citizen. They further assert that this birth certificate prevails over Ong's new Identification Certificate issued by the Bureau of Immigration stating that he is a natural-born Filipino.

Petitioners thereupon pray for the annulment of the appointment of Ong as Associate Justice of this Court. They filed a motion for the issuance of a Temporary Restraining Order to prevent and restrain Ermita from releasing the appointment of Ong, and to prevent and restrain Ong from assuming the office and discharging the functions of Associate Justice of this Court.

ISSUE:

Whether or not Gregory Ong is a natural-born Filipino citizen

HELD:

Petition GRANTED.

It is clear from the records of this case that respondent Ong is a naturalized Filipino citizen. The alleged subsequent recognition of his natural-born status by the Bureau of Immigration and the DOJ cannot amend the final decision of the trial court stating that Ong and his mother were naturalized with his father. Furthermore, no substantial change or correction in an entry in a civil register can be made without a judicial order, and under the law, a change in citizenship status is a substantial change.

The series of events and long string of alleged changes in the nationalities of Ong's ancestors, by various births, marriages and deaths, all entail factual assertions that need to be threshed out in proper judicial proceedings so as to correct the existing records on his birth and citizenship. The chain of evidence would have to show that Dy Guiok Santos, Ong's mother, was a Filipino citizen, contrary to what still appears in the records of this Court. Ong has the burden of proving in court his alleged ancestral tree as well as his citizenship under the time-line of three Constitutions. Until this is done, Ong cannot accept an appointment to this Court as that would be a violation of the Constitution. For this reason, he can be prevented by injunction from doing so.