

SALVADOR P. LOPEZ, PRESIDENT OF THE UNIVERSITY OF THE PHILIPPINES; BOARD OF REGENTS, UNIVERSITY OF THE PHILIPPINES; AND OSEAS DEL ROSARIO, OFFICER-IN-CHARGE, COLLEGE OF EDUCATIO...

G.R. No. L-32991. June 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case presents the question of whether or respondent Dr. Consuelo S. Blanco was duly elected Dean of the College of Education, University of the Philippines, in the meeting of the Board of Regents on July 9, 1970, at which her ad interim appointment by University President Salvador P. Lopez, one of the petitioners here, was submitted for consideration.

he question was originally ventilated in a petition for certiorari filed by Dr. Blanco in the Court of First Instance of Quezon City, presided by respondent Judge Vicente Ericta, who decided the question affirmatively on December 3, 1970. The dispositive portion of the decision was amended three days later, or on December 6, to read as follows:

* * * WHEREFORE, the Court renders judgment:

(1) Declaring petitioner, CONSUELO S. BLANCO, the duly elected Dean of the College of Education, University of the Philippines, and as such entitled to occupy the position with a three-year term of office from May 1, 1970 to April 30, 1973;

(2) Declaring null and void the appointment of respondent Oseas A. del Rosario as Officer-in-Charge of the College of Education, University of the Philippines; and

(3) Issuing a permanent injunction (a) commanding respondent Oseas A. del Rosario to desist from further exercising the functions and duties pertaining to the Office of Dean of the College of Education, University of the Philippines, and (b) commanding respondent Board of Regents from further proceeding in the matter of the appointment or election of another person as Dean of said college.

* * * * *

The case is before this Court on appeal by certiorari taken by the President and the Board of Regents of the University and by Oseas A. del Rosario, respondents below, the last as officer-in-charge appointed to discharge the duties and functions of the office of Dean of the College of Education.[1] The petition for review was filed on January 5, 1971. On January 11, 1971 this Court, pursuant to its resolution of January 7, issued a writ of preliminary injunction to stop the immediate execution of the judgment appealed from, as ordered by respondent Judge.

The facts and circumstances surrounding the ad interim appointment of Dr. Consuelo S. Blanco and the action

taken thereon by the Board of Regents have a material bearing on the question at issue. The first such appointment was extended on April 27, 1970, "effective May 1, 1970 until April 30, 1971, unless sooner terminated and subject to the approval of the Board of Regents and to pertinent University regulations." Pursuant thereto Dr. Blanco assumed office as ad interim Dean on May 1, 1970.

The only provisions of the U.P. Charter (Act. No. 1870) which may have a bearing on the question at issue read as follows:

SEC. 7. A quorum of the Board of Regents shall consist of a majority of all the members holding office at the time the meeting of the Board is called. All processes against the Board of Regents shall be served on the president or secretary thereof.

SEC. 10. The body of instructors of each college shall constitute its faculty, and as presiding officer of each faculty, there shall be a dean elected from the members of such faculty by the Board of Regents on nomination by the President of the University.

Article 78 of the Revised Code of the University provides:

Art. 78. For each college or school there shall be a Dean or Director who shall be elected by the Board of Regents from the members of the faculty of the University unit concerned, on nomination by the President of the University.

The Board of Regents met on May 26, 1970, and President Lopez submitted to it the ad interim appointment of Dr. Blanco for reconsideration. The minutes of that meeting disclose that "the Board voted to defer action on the matter in view of the objections cited by Regent Kalaw (Senator Eva Estrada Kalaw) based on the petition against the appointment, addressed to the Board, from a majority of the faculty and from a number of alumni * * *." The "deferment for further study" having been approved, the matter was referred to the Committee on Personnel, which was thereupon reconstituted with the following composition: Regent Ambrosio F. Tangco, chairman; Regent Pio Pedrosa and Regent Liceria B. Soriano, members. The opinion was then expressed by the Chairman of the Board that in view of its decision to defer action Dr. Blanco's appointment had lapsed, but (on the President's query) that there should be no objection to another ad interim appointment in favor of Dr. Blanco pending final action by the Board.

Accordingly, on the same day, May 26, 1970, President Lopez extended another ad interim appointment to her, effective from May 26, 1970 to April 30, 1971, with the same conditions as the first, namely, "unless sooner terminated, and subject to the approval of the Board of Regents and to pertinent University regulations."

The next meeting of the Board of Regents was held on July 9, 1970. The minutes show:

* * * * *

2. Deanship of the College, the President having issued an ad interim appointment for Dr. Consuelo Blanco as Dean effective May 26, 1970:

Note: The Personnel Committee, to which this case was referred, recommended that the Board request the President of the University to review his nomination for the Deanship of the College of Education in the light of the testimonies received and discussions held during the Committee's meeting on June 4 and June 11, 1970 on this matter.

Chairman Tangco asked that the documents received by the Committee on the matter be entered in the official record, the same attached hereto as Appendix "A" pages 57 to 179.

Board action: Following some discussion on what Regent Tangco explained to be the rationale or intention (i.e.,

that the President would discuss with Dr. Consuelo S. Blanco a proposal to withdraw her appointment as Dean) behind the wording of the Personnel Committee's recommendation, and in view of some uncertainty over whether the Board would be acting upon the recommendation as "diplomatically" stated in the agenda or as really intended according to Regent Tangco's explanation, the Personnel Committee withdrew its recommendation as stated in the Agenda. The Chairman took a rollcall vote on the appointment of Dr. Blanco as Dean. The Chairman having ruled that Dr. Blanco had not obtained the necessary number of votes, the Board agreed to expunge the result of the voting, and, on motion of Regent Agbayani duly seconded, suspended action on the ad interim appointment of Dr. Blanco. The Chair stated that this decision of the Board would in effect render the case subject to further thinking and give the Board more time on the question of the deanship of the College of Education, and, since the Board had not taken action on the appointment of Dr. Blanco either adversely or favorably her ad interim appointment as Dean effective May 26, 1970 terminated as of July 9, 1970.

The roll-call voting, on which the Chairman of the Board of Regents based his ruling aforesaid gave the following results: five (5) votes in favor of Dr. Blanco's ad interim appointment, three (3) votes against, and four (4) abstentions all the twelve constituting the total membership of the Board at the time.[2] The next day, July 10, 1970, Dr. Blanco addressed a letter to the Board requesting "a reconsideration of the interpretation made by the Board as to the legal effect of the vote of five in favor, three against and four abstentions on my ad interim appointment." On August 18, 1970 Dr. Blanco wrote the President of the University, protesting the appointment of Oseas A. del Rosario as Officer-in-Charge of the College of Education. Neither communication having elicited any official reply, Dr. Blanco went to the Court of First Instance of Quezon City on a petition for certiorari and prohibition with preliminary injunction, the decision wherein is the subject of the present appeal.

Considerable arguments have been adduced by the parties on the legal effect and implications of the 5-3-4 vote of the Board of Regents. Authorities, mostly judicial precedents in the American jurisdictions, are cited in support of either side of the belabored question as to whether an abstention should be counted as an affirmative or as a negative vote on a particular proposition that is being voted on. Thus it is submitted, on the part of the petitioners, that if the abstentions were considered as affirmative votes a situation might arise wherein a nominee (for the office of Dean as in this case) is elected by only one affirmative vote with eleven members, of the Board abstaining; and, on the part of the respondent, that according to the prevailing view "an abstention vote should be recorded in the affirmative on the theory that refusal to vote indicates acquiescence in the action of those who vote;" * * * that "the silence of the members present, but abstaining, is construed to be acquiescence so far as any construction is necessary." A logician could make a creditable case for either proposition. It does seem absurd that a minority – even only one – of the twelve members of the Board of Regents who are present could elect a Dean just because the others abstain. On the other hand, there is no lack of logic either in saying that a majority vote of those voting will be sufficient to decide an issue on the ground that if construction is at all necessary the silence of the members who abstain should be construed as an indication of acquiescence in the action of those who vote affirmatively. This apparent dichotomy, indeed, accounts for the conflict in the American court decisions, from which both parties here have drawn extensively in support of their respective positions.

In the present case, however, this Court does not find itself confronted with an ineluctable choice between the two legal theories. It should be noted that an abstention, according to the respondents' citations, is counted as an affirmative vote insofar as it may be construed as acquiescence in the action of those who vote affirmatively. This manner of counting is obviously based on what is deemed to be a presumption as to the intent of the one abstaining, namely, to acquiesce in the action of those who vote affirmatively, but which presumption, being merely prima facie, would not hold in the face of clear evidence to the contrary. It is pertinent, therefore, to inquire into the facts and circumstances which attended the voting by the members of the Board of Regents on the ad interim appointment of Dr. Blanco in order to determine whether or not such a construction would govern. The

transcript of the proceedings in the meeting of July 9, 1970 show the following statements by the Regents who participated in the discussion:

Regent Tangco : Mr. Chairman, I would like to put on record that this statement here is a compromise statement. The Committee, after hearing the testimonies and going over the materials presented to the Committee, was in favor of recommending to the Board that the nomination of Professor Blanco cannot be accepted by the Board, but it was felt that it should be presented in a more diplomatic way to avoid any embarrassment on the part of both the appointee and the President. And so means were studied as to how it could be done and it was felt that it could be done in such a way that the appointee could request relief from the appointment, that it would be the best to save embarrassment all around. And so the final decision was to ask the President to review this matter, but with the understanding that he will talk this over with Dean Blanco and for the appointment to be withdrawn. So actually although this statement here is not in that light, again that is the decision of the Committee. Inasmuch as apparently either the meaning of the decision was not made clear or maybe was not understood very well, I would like to put that on the record.

Regent Kalaw : I would like to take note of the comments of Dr. Tangco here on a previous agreement. I understand that while the Committee recommended the disapproval of the appointment of Dr. Blanco, the Committee felt that it was more tactful and diplomatic to present the motion on this level but premised by the findings of the Committee that the President would make an agreement with Dean Blanco to make a withdrawal * * *.

Regent Tangco : Mr. Chairman, I wish to just make a correction that the decision was to ask the President for her to request relief and not to consult. I want to put that on record now. It was only that we wanted to avoid anything on this on the record of the Board to save embarrassment. But inasmuch as that statement has been made, I want to make it of record that the agreement was for the President to ask her to submit or better ask her to the withdrawal.

Regent Pedrosa : Mr. Chairman, in order to cut this matter once and for all, may I suggest that the members of the Committee inhibit themselves from voting in this matter. I don't think it would affect the majority vote or whatever the rest of the members of the Board decide.

Regent Tangco : Mr. Chairman, I was going to inhibit myself from the start.

Regent Pedrosa : And I am inhibiting myself. We are only two members now; Dr. Soriano is not here, so that we leave the votation on this matter to the other members of the Board.

Regent Kalaw : Mr. Chairman, what is the votation for?

Chairman : The question before this Board is the Committee recommendation. Incidentally, if the Board accepts the Committee recommendation it is also a lack of confirmation of the ad interim appointment of Dean Blanco * * *.

* * * * *

Chairman : There is only one more question before this Board to discuss fully I believe. The question is, the Chair asks the Board to vote on the Committee action in the form of a recommendation as presented in the Agenda. Regent Tangco, the chairman of that Committee, says that this is merely a polite cover, diplomatic cover, according to Regent Kalaw, for the reaction of the Committee, and Regent Tangco requests that we act not on the Committee recommendation in this form as presented in the Agenda but in terms gentlemen's agreement.

Chairman: In brief, Regent Tangco informs the Board of the action that the Committee was to request the President to call Dr. Blanco and prevail upon her to withdraw.

Regent Escobar : On what basis?

Regent Tangco : On the testimonies presented to us and also to avoid further embarrassment on the part of the appointee. The decision of the Committee was to ask Dean Blanco because there will be too much embarrassment which I think is not going to gain any matter one way or the other.

Chairman : We have to make a ruling. I think that we cannot act on a gentlemen's agreement because we do not have that gentlemen's agreement before us.

Regent Pedrosa : Mr. Chairman, may I interrupt you. In view of the fact that I have announced that I would desist from participating in the Board and Regent Tangco has done likewise then I presume the President will not also participate. Why doesn't the Board proceed to the decision of whether * * *.

Chairman : Yes, I am saying, Mr. Regent, there is a ruling that this Board will have to act on the Committee recommendation presented here, unless the Committee withdraws this recommendation.

Regent Tangco : The Committee is so doing, Mr. Chairman.

Chairman : The Committee will withdraw this recommendation, in which case the issue is simply we only have to act on the issue of to confirm or not to confirm the ad interim appointment issued to Dr. Blanco.

* * * * *

Chairman : The Committee is withdrawing this recommendation.

Regent Silva : Per se, as it is written. But I think the Committee, if I get it right, is actually putting a recommendation for non-confirmation.

Regent Kalaw : Since the Committee is withdrawing the recommendation and the Board would act on it per se, I think Regent Silva is right. (*Italics supplied*)

The voting which followed shows the following result:

Affirmative votes: Regent Fonacier

" Escobar

" Barican

" Lopez

" Agbayani

Negative votes: Regent Kalaw

" Silva

" Corpuz

Abstentions: Regent Tangco

" Leocadio (Substituting for Regent Soriano)

" Pedrosa

" Virata

Regent Leonides Virata, who was not a member of the Personnel Committee, made the following explanation

before casting his vote:

A. I abstain, but I want to say this. There must be some other way of solving this problem. I am at sea in this, because although I have been reading all these documents here, but a decision is being asked now that I am not ready myself.

After the result of the voting was known the Board Chairman, Secretary Corpuz, announced that "the vote is not a majority * * * (and that) there is no ruling in the Code of the University on the counting of votes and the treatment of abstention."

What transpired immediately afterwards appears in the transcript of the proceedings, as follows:

Regent Agbayani: Mr. Chairman, could I ask for another one-minute recess?

(ONE--MINUTE RECESS AT THIS POINT)

Chairman: The meeting is resumed. Mr. Regent? (Addressing Regent Agbayani)

Regent Agbayani: Mr. Chairman, I move that we do not proceed with the action now on this matter.

Chairman: To suspend in effect the action of the Board?

Regent Agbayani: The result brings us back to the previous status, that no action has been taken.

Chairman: There is a motion to suspend action; that is to say, to suspend the voting of the Board on this matter with the effect, first, to return the case to its original status to render the case subject to further thinking - and second, that the Board has not confirmed the appointment. The appointment, in other words, will be good from May 26 up to today.

Regent Agbayani: Mr. Chairman, the Board did not confirm exactly. It cannot be said that the Board confirmed or did not confirm, but the appointment terminates. The ad interim appointment terminates when the Board meets, just like in Congress, where the ad interim appointment is good only up to the first day of the session.

Chairman: So in effect, in suspending action on this matter now, the Board in effect gives itself time to study the question not of Dean Blancobut the question of the deanship of the College, and the Board has not taken action on the confirmation either adversely or favorably, but that the ad interim appointment has terminated today.

Regent Escobar: Mr. Chairman, does it mean that all the deliberations regarding this matter should be erased from the record? Because the record of the voting is there.

Chairman: Well, it follows.

Regent Escobar: It follows suit, because we are now asking for a reconsideration of any deliberations to the effect that if there was a voting it should be banned from appearing in the record.

Regent Silva: We have made statements here today.

Chairman: The record of the voting, which is incomplete by the way because there was no circulation to consider, will not appear in the record.

Regent Silva: The result of the votes; the deliberations regarding this matter.

Regent Agbayani: I have no objection.

Chairman: The record of the voting will not appear. Any objection to the motion for reconsideration? No objection, approved.

From the foregoing record of the meeting of the Board of Regents it is very clear: (1) that the Personnel Committee, to which the matter of Dr. Blanco's appointment had been referred for study, was for recommending that it be rejected; (2) that, however, the rejection should be done in a diplomatic way "to avoid any embarrassment on the part of both the appointee and the President;" and (3) that the "final decision" of the committee was to ask the President of the University to talk to Dr. Blanco "for the appointment to be withdrawn." That decision, as announced by Regent Tangco, Chairman of the Personnel Committee, was restated and clarified by Regent Kalaw, and then reiterated first by Regent Tangco and then by the Chairman. On that note Regent Pedrosa suggested that the members of the Personnel Committee, as well as the President, should inhibit themselves from voting. When the matter was actually submitted to a vote, however, the definition of the issue became somewhat equivocal. Regent Tangco announced that the committee was withdrawing its recommendation, whereupon the Chairman stated that the issue was "to confirm or not to confirm the ad interim appointment issued to Dr. Blanco." This was then followed by a remark from Regent Silva that the withdrawal by the committee referred to the recommendation "per se, as it is written," butt that the committee, he thought, was "actually putting a recommendation for non-confirmation." Regent Kalaw thereupon expressed her concurrence with Regent Silva's opinion.

The votes of abstention, viewed in their setting, can in no way be construed as votes for confirmation of the appointment. There can be no doubt whatsoever as to the decision and recommendation of the three members of the Personnel Committee: it was for rejection of the appointment. If the committee opted to withdraw the recommendation it was on the understanding (also referred to in the record as gentlemen's agreement) that the President would talk to Dr. Blanco for the purpose of having her appointment withdrawn in order to save them from embarrassment. No inference can be drawn from this that the members of the Personnel Committee, by their abstention, intended to acquiesce in the action taken by those who voted affirmatively. Neither, for that matter, can such inference be drawn from the abstention of Regent Virata, who categorically stated that he was abstaining because he was not then ready to make a decision.

All arguments on the legal question of how an abstention should be treated, all authorities cited in support of one or the other position, become academic and purpose-less in the face of the fact that respondent Dr. Blanco was clearly not the choice of a majority of the members of the Board of Regents, as unequivocally demonstrated by the transcript of the proceedings. This fact cannot be ignored simply because the Chairman, in submitting the question to the actual vote, did not frame it as accurately as the preceding discussion called for, such that two of the Regents present (Silva and Kalaw) had to make some kind of clarification.

In any event, in the same meeting of July 9, 1970, before it adjourned, the Board of Regents resolved without a vote of dissent, to cancel the action which had been taken, including the result of the voting, and "to return the case to its original status - to render the case subject to further thinking." In effect, as announced by the Chairman, "the Board has not acted on the confirmation either adversely or favorably, but that the adinterim appointment has terminated." Indeed the formal decision of the Board was that all deliberations on the matter should not appear in the record. And it cannot be seriously argued that the Board had no authority to do what it did: the meeting had not yet been adjourned; the subject of the deliberations had not yet been closed, and as in the case of any deliberative body the Board had the right to reconsider its action. No title to the office of Dean of the College of Education had yet vested in respondent Blanco at the time of such reconsideration.

One of the prayers of Dr. Blanco in her petition below is that she be declared duly elected as Dean of the College of Education and, as such, legally entitled to the said position with a 3-year tenure of office as provided in the Revised Code of the University of the Philippines (Art. 79, Ch 6, Title Two). Obviously this prayer is not in order inasmuch as she has not been elected to said position. On the other hand, Dr. Blanco does not ask that she be

recognized as Dean by virtue of her ad interim appointment dated May 26, 1970, effective up to April 30, 1971. Aside from the fact that the point has become moot, since the tenure has expired, it is seriously to be doubted whether such an appointment is authorized under the law and regulations. It should be noted that both under the Charter (Sec. 10) and under the Revised Code of the University (Art. 78) the Dean of a college is elected by the Board of Regents on nomination by the President of the University. In other words the President's function is only to nominate, not to extend an appointment, even if only ad interim; and the power of the Board of Regents is not merely to confirm, but to elect or appoint. At any rate the ad interim appointment extended to Dr. Blanco on May 26, 1970, although made effective until April 30, 1971, was subject to the following condition: "unless sooner terminated and subject to the approval of the Board of Regents." The Board, as has been shown, not only did not elect Dr. Blanco in its meeting of July 9, 1970, but declared the appointment terminated as of that day.

WHEREFORE, the decision appealed from is reversed and set aside; the petition of respondent Consuelo S. Blanco for certiorari and prohibition before respondent. Court is ordered dismissed; and the writ of preliminary injunction issued by this Court is made permanent, without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, and Makasiar, JJ., concur.

Reyes, J.B.L., and Antonio, JJ., took no part.

Barredo, J., see concurring opinion.

[1] A communication from the Secretary of the U.P. dated August 3, 1970, quoted in the petition of Dr. Blanco in the trial court, states; "The Board of Regents, on recommendation of the President of the University, confirmed the appointment of Dr. Oseas del Rosario as Officer-in-Charge, College of Education, University of the Philippines, without additional compensation, effective July 10, 1970 until July 9, 1971 unless sooner terminated with the appointment of a dean * * *."

[2] Secretary of Education Onofre Corpuz, Ex-officio Chairman; Senator Eva Estrada Kalaw; Representative Aguedo Agbayani; U.P. President Salvador P. Lopez; Director of Public Schools Liceria Soriano, Eduardo R. Escobar; Pio Pedrosa; Tomas Fonacier; Ambrosio Tangco; Leonides Virata, Abel Silva and Fernando Barican.

CONCURRING OPINION

BARREDO, J.:

I would like to reserve my opinion as to whether or not the announcement of Secretary Corpuz, as chairman of the Board of Regents, that "the vote is not a majority" is correct from the legal standpoint. To start with, the Secretary who was then presiding counted his own negative vote. In the absence of a rule clearly authorizing him to vote, I am inclined to believe he should have done so only in case of a tie. And, of course, it would have been better, if the President of the University who proposed the appointment of Dean Blanco did not also vote.

Now, with respect to the question as to how the recorded abstentions should be counted, while I see the point in the explanation in the main opinion that abstentions may be considered as presumptively affirmative votes only if there are no circumstances indicating the view of those abstaining to be otherwise, I am not prepared to draw the conclusion that the remarks of Regents Pedrosa and Virata appearing in the minutes may not be interpreted as evidence of nothing more than their feeling that the matter be left entirely to the decision of those who would vote, such that if the majority were to vote in favor, they would not have any further objection to the result of such

voting.

It is indeed regrettable that the action of the board was not as clear and categorical as should be expected of the Board of Regents of the state university. If such a simple matter as the election of a dean cannot be decided by the corresponding university authorities in a non-controversial manner, is there hope that more important and complicated matters requiring deeper study and consideration and affecting the fundamental policies of the institution and the various curricula to be adopted can be settled and decided forthrightly and without equivocation? I am frankly dis-appointed, being an alumnus of the University, that a thing that should have been dealt with with no under consideration in mind than the fitness of the candidate had to be treated with "diplomacy" and halfway propositions, as if there was fear that the outcome would not be considered by all concerned as fully just and fair. I realize I am not supposed to render judgment here on how the University should be run or how its officials should conduct themselves, but I feel that it is within the scope of my authority to express myself on a matter of public interest that had to reach this Court only because simple things have not been done the simple way.

I agree, however, with the main opinion insofar as it holds that the approval without dissent of the motion for reconsideration of Regent Agbayani ad the result of terminating the second proposed appointment of Dean Blanco. I would say that this move was what saved the situation from being more complicated. In other words, on the basis of the action taken by the board on July 9, 1970, I vote that Dean Blanco ceased to be Dean of the College of Education on that day.

It is on this understanding that I concur in the judgment in this case reversing the decision of the trial court, dismissing the petition for certiorari and prohibition filed by Dean Blanco with said court, and making the writ of preliminary injunction issued by the Court in this case permanent, without costs.

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