

FIDELA Y. VARGAS, PETITIONER, VS. RADM THOMAS J. KILCLINE, US NAVAL BASE COMMANDER, LCDR FRANK J. NIVERT, JAGC, USN, APPOINTED SENIOR MEMBER, BOARD OF INVESTIGATION, LCDR THOMAS...

G.R. No. L-45319. June 06, 1986

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petitioner is a member of the Philippine Bar and licensed to practice law in the Philippines. In her petition for prohibition with preliminary injunction, she seeks to enjoin the US Naval Base Commander and the members of the Board of Investigation at Subic Bay from investigating her for alleged court misconduct and incompetence to practice law before the United States Navy Courts Martial.

The records show that on several occasions, petitioner had been appearing as a defense counsel for US Navy servicemen accused of violating the United States Uniform Code of Military Justice before the United States Navy Courts Martial within the military base at Subic Bay.

Prior to the filing of the petition, Lieutenant David S. Durbin of the US Judge Advocate General Corps requested petitioner's presence before a "Board of Investigation" composed of respondents LCDR Frank Nivert, LCDR Thomas Lawrence and Lt. Timothy Rathbun that was constituted by respondent Rear Admiral Thomas J. Kilcline to investigate her on the following matters:

- "a. Demonstrated incompetence as counsel before Courts Martial;
- b. Deliberate use of frivolous and unwarranted dilatory tactics;
- c. Unethical conduct in the representation of co-defendants in the face of obvious conflicts of interests." (Rollo, p. 18.)

Petitioner requested respondent Kilcline to withdraw his order and for the board to refrain from proceeding with their investigation. Apparently, the request was not heeded. Petitioner then filed the instant petition raising the following arguments: (1) that it is only this Court and not respondents who can discipline her or stop her from practising her law profession in the Philippines; and (2) that the U. S. Board of Investigation does not have the power to investigate and to recommend her suspension to the U.S. Judge Advocate General from the practice of law inside the U.S. Military Base which is part of the Philippine territory.

Respondents, while reserving their rights to challenge this Court's jurisdiction over their persons, filed a comment arguing that: "each constituted court of law has an inherent right to police its own Bar; that the government of the Philippines has given permission for United States Courts Martial to operate in its sovereign territory by Article XIII of the Military Bases Agreement as amended, and that Attorney Vargas has submitted to the limited jurisdiction of courts martial to police its own bar by appearing before such courts martial." (Rollo, p. 126.)

The Solicitor General, in his comment advanced the view that the US Naval Base commander and the Board of Investigation were performing governmental functions in carrying the task of investigating petitioner and therefore are immune from suit.

This petition lacks merit.

Section 18 of Rule 138 of the Revised Rules of Court as amended provides the scope of the license to practice law within the Philippines to wit:

"Section 18. Certificate. - The Supreme Court shall thereupon admit the applicant as a member of the bar for all the courts of the Philippines, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of court, which certificate shall be his authority to practice." (Emphasis supplied.)

Petitioner, having been admitted to the Philippine bar, has authority to appear as counsel for all the courts of the Philippines. Under Rule 139 of the Revised Rules of Court in relation to par. 5 Section 5 Article X of the 1973 Philippine Constitution, this Court can admit and on lawful grounds suspend or totally prohibit by disbarment, members of the Philippine bar from the practice of law.

However, respondents do not seek to bar petitioner from practicing her law profession in accordance with her license from this Court. They do not seek to bar her to practice law in accordance with Philippine law. Petitioner is to be investigated in connection with her appearances as defense counsel before the U.S. Navy Courts Martial which is beyond her license to practice law in the Philippines.

The right to practice the law profession proceeds not from the territorial boundaries of the licensing authority but within the jurisdiction of the licensing authority.

Petitioner has confused her license to practice law in the Philippines to include the courts of other jurisdiction located within the Philippine territory. The United States Navy Courts Martial are courts duly constituted and under the jurisdiction of the United States Government. They are not extensions of the Philippine courts. They function independently and are guided by their own rules on procedures. Under Article XIII of the Military Bases Agreement as amended, the Philippine Government agreed that the United States will exercise exclusive jurisdiction over the following:

"ARTICLE XIII

1. Subject to the provisions of this Article,

a) x x x x

b) The military authorities of the United States shall have the right to exercise within the Republic of the Philippines all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States;

2. a) x x x x

b) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of the Republic of the Philippines."

In the above instances, the United States Government possesses ample powers to determine a cause and adjudicate upon its merits to the exclusion of the Philippine courts. Petitioner by appearing voluntarily before US military courts submits to their jurisdiction but her status as a member of the Philippine bar and the exercise of her profession in Philippine Courts remain unaffected.

In the light of the foregoing, the instant petition is dismissed for lack of merit.

SO ORDERED.

Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.
Teehankee, C.J., files a brief concurrence.

CONCURRING OPINION

TEEHANKEE, C.J.:

I concur. I only wish to add, in order to avoid any misinterpretation of the statement in the main opinion that "the United States Navy courts martial are courts duly constituted and under the jurisdiction of the United States Government," that it is not to be taken as departing from the well-established principle that military commissions or tribunals or courts martial are admittedly not courts and do not form part of the judicial system and judicial process. As stressed in the leading case of *Toth vs. Quarles* (350 U.S. 5), "(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved," and "the presiding officer at a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law despite strenuous efforts to eliminate the danger." (See my separate dissenting opinion in *Aquino, Jr. vs. Military Commission No. 2*, 63 SCRA 546, 611, 621).

As pointed out in the main opinion, under the Military Bases Agreement between the Philippine and United States Governments, it is stipulated that

"b) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of the Republic of the Philippines."

This is but in support of the thesis of the main opinion that petitioner, when she appears before United States Navy courts martial as defense counsel for United States Navy servicemen accused of violations of the military law of the United States, submits to the jurisdiction of these so-called military courts, "but her status as a member of the Philippine bar and the exercise of her profession in Philippine Courts remain unaffected."

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