

**FELIZARDO S. PACETE, PETITIONER, VS. THE SECRETARY OF THE COM-MISSION ON APPOINTMENTS CONGRESS OF THE PHILIPPINES, THE SECRETARY OF JUSTICE &#038; THE DISBURSING OFFICER OF THE DEPAR...***G.R. No. L-25895. July 23, 1971*

Ponente: FERNANDO, J.

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The question raised in this mandamus and prohibition proceeding, whether the filing of a motion for reconsideration with the Commission on Appointments, without its being thereafter acted on, suffices to set at naught a confirmation duly made of an ad interim appointment, is not a new one. That was put to us in *Altarejos v. Molo*.<sup>[1]</sup> As set forth in the opinion of the Chief Justice, the answer must be in the negative. The confirmation stands; it must be given force and effect. As we decided then, so we do now. As a consequence, petitioner, as will be more fully explained, has made out a case for mandamus and prohibition. He is entitled to the remedies prayed for.

The facts are undisputed. In his suit for mandamus and prohibition filed with this Court on April 4, 1966, petitioner Felizardo S. Pacete alleged that he was appointed by the then President of the Philippines on August 31, 1964 as Municipal Judge of Pigcawayan, Cotabato. He assumed office on September 11, 1964 and discharged his duties as such. As his appointment was made during the recess of Congress, it was submitted to the Commission on Appointments at its next session in 1965. On May 20 of that year, he was unanimously confirmed. As a matter of fact, two days later, he was sent a congratulatory telegram by the then Senate President Ferdinand E. Marcos, who was likewise the Chairman of the Commission on Appointments.<sup>[2]</sup> More than nine months after such confirmation, to be exact on February 7, 1966, the then Secretary of Justice, whom he likewise included in his petition, through the Judicial Super-intendent, advised petitioner to vacate his position as municipal judge, the ground being that his appointment had been by-passed. Petitioner was taken by surprise and sought clarification from the principal respondent, the then Secretary of the Commission on Appointments.<sup>[3]</sup> He was informed that on May 21, 1965, a day after his confirmation, one of the members of the Commission on Appointments, the then Senator Rodolfo Ganzon, wrote to its Chairman stating that he was filing a motion for the reconsideration of the confirmation of the appointment of petitioner as municipal judge of Pigcawayan, Cotabato, in view of derogatory information which he had received.<sup>[4]</sup> Respondent Secretary of the Commission on Appointments thus was led to notify the then Secretary of Justice accordingly, following what he considered to be the prevailing practice of such body that the mere presentation of such letter "automatically vacated the confirmation of the appointment in question \* \* \*."<sup>[5]</sup> Respondent Secretary of Justice through the Judicial Superintendent then advised petitioner that he should vacate his position as municipal judge, as he had not been duly confirmed. The Disbursing Officer of the Department of Justice was likewise named respondent as he had, as a consequence, withheld petitioner's salaries.<sup>[6]</sup>

Petitioner would buttress his plea for prohibition against the enforcement of the directive of respondent Secretary

of Justice for him to vacate his position and mandamus to compel respondent Secretary of the Commission on Appointments to issue to him the certificate of confirmation on the ground that the letter of the then Senator Ganzon, even on the assumption that it was a motion to reconsider an appointment duly confirmed, was without force and effect as it was not approved by the body as a whole. It is his contention that the confirmation of his appointment had become final and executory upon the adjournment of the fourth regular session of the Fifth Congress at midnight of May 21, 1965.[7] He further submitted "that the power to approve or disapprove appointments is conferred by the Constitution on the Commission on Appointments as a body and not on the members individually. The Commission exercises this power thru the vote of the majority of the members present at a quorum as provided by Section 10 of its Rules. Once an appointment is approved by that majority, the approval becomes an act of the Commission and it cannot be changed, voided, vacated or set aside except by the same Commission acting thru the required majority. A mere motion to reconsider it, unless approved by said majority, has no force and effect. To contend otherwise is to make the will of a single member prevail over the will of the Commission and to make that member more powerful than the very Commission of which he is only a part." [8]

In a resolution dated April 13, 1966, this Court required respondents to answer such petition. In the answer of respondent Secretary of the Commission filed on May 18, 1966, the dismissal of the suit was prayed for on the ground that there was a recall of the confirmation of petitioner's appointment upon the filing of the motion for reconsideration by Senator Ganzon. It was likewise alleged as a special defense that there was no infringement of the Constitution, the question involved being merely one of interpretation or construction of the rules of the Commission involving its internal business which cannot be made a subject of judicial inquiry.[9] The respondent Secretary of Justice as well as respondent Disbursing Officer of the Department of Justice, in the answer filed on their behalf on May 21, 1966 by the then Solicitor General, now Associate Justice, Antonio P. Barredo, admitted the facts, but sought the dismissal of the petition on the ground that with the notification of respondent Secretary of the Commission on Appointments that petitioner's appointment was not duly confirmed, respondent Secretary of Justice had no alternative but to give it full faith and credence coming as it did from the agency entrusted by the Constitution with the power to confirm.[10]

At the hearing scheduled on July 20, 1966, the parties, after arguing, were given an additional period of ten days within which to submit memoranda of authorities. In petitioner's memorandum submitted on August 1, 1966, it was contended that his confirmation became final and irrevocable upon the adjournment of the fourth regular session of the Fifth Congress on May 21, 1965, as no rule of the Commission as to a motion for reconsideration could have the force and effect of defeating the constitutional provision that an ad interim appointment is effective "until disapproved by the Commission on Appointments or until the adjournment of the next session of the Congress." [11] The memorandum submitted for the respondents squarely disputed such a contention on the view that there could be no confirmation in the constitutional sense until a motion for reconsideration had been turned down, invoking at the same time the principle of the respect to be accorded the actuation of an independent constitutional agency like the Commission on Appointments.

As was noted, the controlling principle is supplied by *Altarejos v. Molo*, [12] which interpreted Rule 21 of the Revised Rules of the Commission on Appointments, which reads: "Resolution of the Commission on any appointment may be reconsidered on motion by a member presented not more than one (1) day after their approval. If a majority of the members present concur to grant a reconsideration, the appointment shall be reopened and submitted anew to the Commission. Any motion to reconsider the vote on any appointment may be laid on the table, this shall be a final disposition of such a motion." Our holding was that the mere filing of a motion for reconsideration did not have the effect of setting aside a confirmation. There was a need for its being duly approved. Hence, as set forth at the outset, petitioner must prevail.

1. *Altarejos v. Molo* was an original action for mandamus to compel respondent therein as Secretary of the Commission on Appointments to issue a certificate of confirmation of petitioner's appointment as Provincial Assessor of Masbate. He was extended an ad interim appointment on July 24, 1964. He took his oath of office and qualified as such on August 1, 1964. His appointment was then submitted to the Commission on Appointments during the regular session of Congress in 1965. It was confirmed by the Commission on Appointments on May 19, 1965. On the same day, a member thereof, Congressman Jose Aldeguer, filed with its Secretary, respondent Molo, a motion for reconsideration. The next day, there was a motion by the then Senator Francisco Rodrigo that all pending motions for reconsideration be laid on the table. It was approved. Then came the adjournment on May 20, 1965. Subsequently, about a week later, Congressman Aldeguer withdrew his motion for reconsideration.[13]

This Court gave full attention to the argument that the motion for reconsideration of Congressman Aldeguer on May 19, 1965 had the effect of recalling the confirmation of petitioner's appointment and that, accordingly, it should be considered non-existent. It rejected it. The Chief Justice, who spoke for the Court, explained why: "This pretense is devoid of merit. Respondent's theory would give to the mere filing of a motion for reconsideration the effect which it would have if the motion were approved, and, hence, would dispense with the necessity of such approval, for which the concurrence of a majority of the members present is necessary. It is inconsistent with Rule 21 of the Revised Rules of the Commission, reading: ' \* \* \* Resolution of the Commission on any appointment may be reconsidered on motion by a member presented not more than one (1) day after their approval. If a majority of the members present concur to grant a reconsideration, the appointment shall be reopened and submitted anew to the Commission. Any motion to reconsider the vote on any appointment may be laid on the table, this shall be a final disposition of such a motion.' "[14] His opinion continued: "Pursuant to this provision, the vote of a majority of the members present in favor of the motion for reconsideration is necessary to 'reopen' the appointment - and, hence, to 'recall' its confirmation - and to require a resubmission of the appointment for confirmation." [15] Moreover, in holding that this Court "cannot escape the conclusion that petitioner's appointment as Provincial Assessor of Masbate" had been duly confirmed, the Chief Justice likewise noted the categorical answer of the Chairman of the Commission on Appointments to a question by Senator Almendras as to the effect of motions for reconsideration unacted upon after adjournment. Thus: "In case of an adjournment sine die, the motions for reconsideration are considered as not approved and therefore the motions for reconsiderations are not valid nor of any effect whatsoever." [16] When the question was repeated by Senator Almendras, who did not want to leave any doubt on the matter, this was the reply of the Chairman: "The ruling of the Chair is reiterated. In case of an adjournment sine die, the period for filing the motion for reconsideration having expired, under Sec. 22, then the motion for reconsideration not having been acted upon is not approved and, therefore, has no effect whatsoever. The confirmation, therefore, will stand." [17]

Nothing can be clearer, therefore, than that this Court is committed to the principle that a mere motion for reconsideration to a confirmation duly made which is not approved cannot have the effect of setting aside such confirmation, a principle that is based not merely on the express language of Rule 21, but a reflection of the settled interpretation of the Commission on Appointments, speaking through its Chairman. While on certain aspects not material, the facts of this case may be distinguished, from *Altarejos v. Molo*, there being no motion to lay on the table and no withdrawal of such motion for reconsideration, the principle that calls for application cannot be any different. What is decisive is that a confirmation duly made is not nullified simply by a motion for reconsideration being filed, without its being voted upon and approved.

2. The *Altarejos* ruling possesses the merit of interpreting Rule 21 of the Commission on Appointments conformably to the letter and spirit of the constitutional provisions on the appointing power of the President. The first one reads: "The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the

Navy and air forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments." [18] The other provision is worded thus: "The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." [19]

A distinction is thus made between the exercise of such presidential prerogative requiring confirmation by the Commission on Appointments when Congress is in session and when it is in recess. In the former the President nominates, and only upon the consent of the Commission on Appointments may the person thus named assume office. It is not so with reference to ad interim appointments. It takes effect at once. The individual chosen may thus qualify and perform his function without loss of time. His title to such office is complete. In the language of the Constitution, the appointment is effective "until disapproval by the Commission on Appointments or until the next adjournment of the Congress." [20]

The constitutional requirement is clear. There must either be a rejection by the Commission on Appointments or non-action on its part. No such thing happened in this case. Petitioner, as pointed out, had instead in his favor a unanimous vote of confirmation. He could thus invoke constitutional protection. For respondents to argue that the mere filing of a motion for reconsideration did suffice to set it aside, even in the absence of any further action, is, as stressed by petitioner, to lose sight of what is provided in the Constitution. That would be moreover tantamount to imparting to a move of a single member of a collective body a decisive weight. It is bad enough if the minority were to prevail. A one-man rule, which is the effect of what respondent Secretary of the Commission on Appointments contends, is infinitely worse. It is indefensible in principle and pernicious in operation. It can find no shelter in the constitutional prescription. Rather it makes a mockery of what is therein ordained. Petitioner's stand is thus unassailable.

3. Nor does the insistence of respondent Secretary of the Commission on Appointments, in his answer, that the question involved is beyond the jurisdiction of this Court, elicit approval. It would extend the boundaries of the political question doctrine beyond its legitimate limits. The courts are called upon to see to it that private rights are not invaded. Thus even legislative acts and executive orders are not beyond the pale of judicial scrutiny. Certainly, there is nothing sacrosanct about a rule of the Commission on Appointments, especially so, when as in this case, a construction sought to be fastened on it would defeat the right of an individual to a public office. It certainly can be inquired into in an appropriate case, although the utmost deference should be paid to the interpretation accorded it by the Commission on Appointments itself. In the terse language of Justice Brandeis, speaking of the rules of the United States Senate, which, under its Constitution, has the task of confirmation: "As the construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one." [21] The task becomes unavoidable when claims arising from the express language of the Constitution are pressed upon the judiciary. So it is in this case. It is a truism that under the circumstances, what cannot be ignored is the primacy of what the fundamental law ordains.

Such an approach, it is heartening to note, is implicit in the memorandum on behalf of respondent Secretary of Justice, submitted by the then Solicitor General Barredo. Thus: "Although the Commission on Appointments is not a power in our tripartite system of government, it is to all intents and purposes, like the Electoral Tribunals, when acting within the limits of its authority, an independent organ (Cf. *Angara vs. Electoral Commission*, 63 Phil. 139). Its actuation in the exercise of its power to approve appointments submitted to it by the President of the Philippines is exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the powers as will constitute a denial of due process (Cf. *Morero vs. Bocar*, 37 O. G.

445)."[22] As due process is impressed with both substantive and procedural significance, the scope of judicial inquiry is thus not unduly limited.

WHEREFORE, petitioner is entitled to the writ of mandamus and the Secretary of the Commission on Appointments is commanded to issue the certificate of confirmation prayed for by petitioner. The incumbent Secretary of Justice is prohibited from giving any further force and effect to the Department of Justice directive of February 7, 1966 advising petitioner to vacate his position as municipal judge in view of the communication received from the then Secretary of the Commission on Appointments, inasmuch as the right of petitioner to perform his functions as municipal judge of Pigcawayan, Cotabato is in accordance with law, his confirmation having been duly confirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Villamor, and Makasiar, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Dizon and Castro, JJ., on official leave.

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[1] L-25726, October 21, 1968, 25 SCRA 550.

[2] Petition, paragraphs 1 and 2.

[3] Ibid, paragraph 4. The then Secretary of the Commission on Appointments was Teodoro K. Molo, likewise the respondent in *Altarejos v. Molo*.

[4] Ibid, paragraph 5.

[5] Ibid, paragraph 5 and Exhibit H.

[6] Ibid, paragraph 25.

[7] Ibid, paragraph 8.

[8] Ibid, paragraph 9.

[9] Answer of respondent Secretary of the Commission on Appointments, A, paragraph 4 and C.

[10] Answer of respondent Secretary of Justice and Disbursing Officer of the Department of Justice.

[11] Memorandum for Petitioner citing Section 10 paragraph (4), Article VII of the Constitution of the Philippines, which provides: "The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the adjournment of the next session of the Congress."

[12] L-25726, October 21, 1968, 25 SCRA 550.

[13] Ibid, pp. 551-552.

[14] Ibid, p. 553.

[15] Ibid.

[16] Ibid, p. 554.

[17] Ibid, p. 555.

[18] Article VII, Section 10, paragraph (3), Constitution.

[19] Ibid, paragraph (4).

[20] Ibid.

[21] United States v. Smith, 286 US 6, 33 (1932).

[22] Memorandum, p. 4.

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