

PHILIPPINE CONSTITUTION ASSOCIATION, INC., JOSE E. ROMERO, SALVADOR ARANETA, GUILLERMO B. GUEVARRA, PIO PEDROSA, CONRADO BENITEZ, GUMERSINDO GARCIA, SR., JOSE M. ARUEGO, E. VOLT...

G.R. NO. L-21786. February 28, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

This is a petition for prohibition with preliminary injunction of the Philippine Constitution Association and some of its individual members,[1] with the then Auditor General Pedro M. Gimenez as principal respondent[2] to declare unconstitutional and void certain items of the General Appropriations Act[3] for the fiscal year 1963-1964, more specifically its Special Provisions 1, 2, 4 and 6 for the Senate, and its Special Provisions 1, 3, 4 and 5 for the House of Representatives insofar as they would authorize the payment to any member of Congress of any emolument, per diem or allowance for expenses other than that expressly set forth in the provision of the 1935 Constitution dealing with compensation of legislators.[4] It also sought a writ of preliminary injunction to restrain respondent Auditor from passing in audit and countersigning checks or treasury warrants for the payment to senators and representatives of expenses for entertainment, representation, personal and clerical services, and for any other purpose except for the payment of their salaries and traveling expenses to and from their respective places of residence while attending the sessions of Congress as authorized by the then Constitution, and likewise restraining respondent Disbursing Officer from taking any action whatsoever on, or with regard to, any of such vouchers, checks or treasury warrants, issued for the payment of such kind of expenses.

Respondents were required to answer but no preliminary injunction was issued. In the answer of the then Auditor General Gimenez filed by the then Solicitor General Arturo A. Alafritz, there was a denial of the truth of the matter as to the money appropriated by Congress being compensations, per diems, emoluments and other allowances, for, as set forth therein, they were "necessary incidental expenses in connection with the performance of the legislative duties of the Congressmen and Senators; * * *"[5] Independently of the validity of such appropriations, it was likewise alleged as a special and affirmative defense that the action had no legal basis, the declaration of Congress as to the nature of such expenses being a conclusive finding of fact and imparting verity on its face which cannot be impugned by this Court. There was, as could be expected, reliance on the well-settled doctrine of separation of powers with its stress on mutual respect among the three departments and non-interference with each other.[6]

No writ of preliminary injunction was issued but the late justice Alejo Labrador, then a member of this Court, was designated as Commissioner to receive evidence in support of the petition for preliminary injunction. While the late Justice Labrador did his best to hasten proceedings, still with the various incidents that took place, respondents being adamant in their stand that no intrusion was allowable, coupled with delays that usually attend hard-fought legal suits, it was not until June 29, 1964 that the late jurist was able to submit a report with the recommendation that a writ of preliminary injunction be issued.

It would appear rather obvious that as of the time of the filing of the report on the next to-the-last day of the fiscal year 1963-1964, this petition could hardly escape being declared moot and academic as the items in the General Appropriations Act for such fiscal year would automatically lapse by operation of law. There would thus be nothing to prohibit. Moreover, there was the unsatisfactory state of the record as it developed. Respondents, as could be expected, did rely on what Justice Cardozo aptly referred to as the "blurred edge and the uncertain line" of legal concepts, especially when they deal with the prerogatives of coordinate branches of the government, and did make full use of the resources the law afforded to preclude a full-dress judicial inquiry. There was thus another obstacle to the resolution of the issue posed. For except in clear cases, especially so where constitutional rights are involved, it has been stressed by principal counsel for petitioners, former Justice Roman Ozaeta, now deceased, as the ponente in *Santiago vs. Far Eastern Broadcasting*,^[7] "that the constitutionality of a law will not be considered unless the point is specially pleaded, insisted upon, and adequately argued."^[8] It is to be admitted that there was no question as to the issue of validity being vigorously pleaded as well as insisted upon, but there was lack of adequacy as to the facts and consequently a failure to meet the necessary standard requisite for the nullification of a legislative act. Parenthetically, it is to be observed that such difficulty need not attend a petition of this character if filed now in view of the specific provision in the present Constitution: "The records and books of accounts of the National Assembly shall be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually the itemized expenditures for each Member."^[9] At any rate, what further militates against any further action on the part of this Tribunal with respect to this petition is that with the 1935 Constitution having been replaced by the present Charter, the determination of any alleged violation of a section thereof binding on a Congress which had likewise passed out of existence, assumes a rather academic aspect.

WHEREFORE, the petition is dismissed for being moot and academic.

Zaldivar, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

Aquino, J., took no part.

[1] The other petitioners were Jose E. Romero, Salvador Araneta, Guillermo B. Guevarra, Pio Pedrosa, Conrado Benitez, Gumersindo Garcia, Sr., Jose M. Aruego, E. Voltaire Garcia, and Roman Ozaeta.

[2] The other respondents were Jose Velasco, Auditor of the Congress of the Philippines; Eladio Salita, Disbursing Officer of the Senate, and Jose Aviles, Disbursing Officer of the House of Representatives.

[3] Republic Act No. 3845.

[4] Section 14 of Article VI of the 1935 Constitution reads as follows:

"The Senators and the Members of the House of Representatives shall, unless otherwise provided by law, receive an annual compensation of seven thousand two hundred pesos each, including per diems and other emoluments or allowances, and exclusive only of traveling expenses to and from their respective districts in the case of Members of the House of Representatives, and to and from their places of residence in the case of Senators, when attending sessions of the Congress. No increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and of the House of Representatives approving such increase. Until otherwise provided by law, the President of the Senate and the Speaker of the House of Representatives shall each receive an annual compensation of sixteen thousand pesos."

[5] Answer, par. 4, 2.

[6] There was a separate answer on behalf of respondent Eladio Salit a filed by his counsel, now Associate Justice Ramon C. Aquino, after whose appointment, another member of the bar, Attorney Leandro C. Sevilla was

retained as counsel.

[7] 73 Phil. 408 (1941).

[8] Ibid, 412.

[9] Article VIII, Section 8, par. (2) of the Constitution.

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