

[WITH RESOLUTION OF AUGUST 30, 1962]

G. R. No. L-14129. July 31, 1962

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal of the Solicitor General from the order of the Court of First Instance of Pangasinan dismissing the information against the defendant.

The records show that the statement of the case and of the facts, as recited in the brief of plaintiff-appellant, is complete and accurate. The same is, consequently, here adopted, to wit:

"In an information filed by the Provincial Fiscal of Pangasinan in the Court of First Instance of that Province, defendant Guillermo Manantan was charged with a violation of Section 54 of the Revised Election Code. A preliminary investigation conducted by said court resulted in the finding of a probable cause that the crime charged was committed by the defendant. Thereafter, the trial started upon defendant's plea of not guilty, the defense moved to dismiss the information on the ground that as justice of the peace, the defendant is not one of the officers enumerated in Section 54 of the Revised Election Code. The lower court denied the motion to dismiss, holding that a justice of the peace is within the purview of Section 54. A second motion was filed by defense counsel who cited in support thereof the decision of the Court of Appeals in *People vs. Macaraeg*, (C.A.-G.R. No. 15613-R, 54 Off. Gaz., pp. 1873-76) where it was held that a justice of the peace is excluded from the prohibition of Section 54 of the Revised Election Code. Acting on this second motion to dismiss, the answer of the prosecution, the reply of the defense, and the opposition of the prosecution, the lower court dismissed the information against the accused upon the authority of the ruling in the case cited by the defense."

Both parties are submitting this case upon the determination of this single question of law: Is a justice of the peace included in the prohibition of Section 54 of the Revised Election Code?

Section 54 of the said Code reads:

"No justice, judge, fiscal, treasurer, or assessor of any province, no officer or employee of the Army, no member of the national, provincial, city, municipal or rural police force, and no classified civil service officer or employee shall aid any candidate, or exert any influence in any manner in any election or take part therein, except to vote, if entitled thereto, or to preserve public peace, if he is a peace officer."

Defendant-appellee argues that a justice of the peace is not comprehended among the officers enumerated in Section 54 of the Revised Election Code. He submits that the aforementioned section was taken from Section 449 of the Revised Administrative Code, which provided the following:

"Sec. 449.—Persons prohibited from influencing elections.—No judge of the First Instance, justice of the peace, or treasurer, fiscal or assessor of any province and no officer or employee of the Philippine Constabulary, or any Bureau or employee of the classified civil service, shall aid any candidate or exert influence in any manner in any election or take part therein otherwise than exercising the right to vote." When, therefore, Section 54 of the Revised Election Code omitted the words "justice of the peace," the omission revealed the intention of the

Legislature to exclude justice of the peace from its operation.

The above argument overlooks one fundamental fact. It is to be noted that under Section 449 of the Revised Administrative Code, the word "judge" was modified or qualified by the phrase "of First Instance," while under Section 54 of the Revised Election Code, no such modifications exists. In other words, justices of the peace were expressly included in Section 449 of the Revised Administrative Code because the kinds of judges therein were specified, i.e., judge of the First Instance and justice of the peace. In Section 54, however, there was no necessity anymore to include justice of the peace in the enumeration because the legislature had availed itself of the more generic and broader term, "judge" It was a term not modified by any word or phrase and was intended to comprehend all kinds of judges, like judges of the courts of First Instance, judges of the courts of Agrarian Relations, judges of the courts of Industrial Relations, and justices of the peace.

It is a well known fact that a justice of the peace is sometimes addressed as "judge" in this jurisdiction. It is because a justice of the peace is indeed a judge. A "judge" is a public officer, who, by virtue of his office, is clothed with judicial authority (U.S. m. Clark 25 Fed. Case. 441, 442). According to Bouvier, Law Dictionary, "a judge is a public officer lawfully appointed to decide litigated questions according to law. In its most extensive sense the term includes all officers appointed to decide litigated questions while acting in that capacity, including justice of the peace, and even jurors, it is said, who are judges of facts."

A review of the history of the Revised Election Code will help to justify and clarify the above conclusion.

The first election law in the Philippines was Act No. 1582 enacted by the Philippine Commission in 1907, and which was later amended by Act Nos. 1669, 1709, 1726 and 1768. (Of these 4 amendments, however, only Act No. 1709 has a relation to the discussion of the instant case as shall be shown later.) Act No. 1582, with its subsequent amendments were later on incorporated in Chapter 18 of the Administrative Code. Under, the Philippine Legislature, several amendments were made through the passage of Act Nos. 2310, 3336 and 3387. (Again, of these last 3 amendments, only Act No. 3387 has pertinence to the case at bar as shall be show later.) During the time of the Commonwealth, the National Assembly passed Commonwealth Act No. 233 and later on enacted Commonwealth Act No. 357, which was the law enforced until June 21, 1947, when the Revised Election Code was approved. Included as its basic provisions are the provisions of Commonwealth Acts Nos. 233, 357, 605, 666, 657. The present Code was further amended by Republic Acts Nos. 599, 867, 2242 and again, during the session of Congress in 1960, amended by Rep. Acts Nos. 3036 and 3038. In the history of our election law, the following should be noted:

Under Act,1582, Section 29, it was provided:

"No public officer shall offer himself as a candidate for elections, nor shall he be eligible during the time that he holds said public office to election at any municipal, provincial or Assembly election, except for reelection to the position which he may be holding, and no judge of the First Instance, justice of the peace, provincial fiscal, or officer or employee of the Philippine Constabulary or of the Bureau of Education shall aid any candidate or influence in any manner or take part in any municipal, provincial, or Assembly election under the penalty of being deprived of his office and being disqualified to hold any public office whatsoever for a term of 5 years: Provided, however, that the foregoing provisions shall not be construed to deprive any person otherwise qualified of the right to vote at any election. (Enacted January 9, 1907; Took effect on January 15, 1907.)

Then, in Act 1709, Sec. 6, it was likewise provided:

"* * *No judge of the First Instance, justice of the peace, provincial fiscal or officer or employee of the Bureau of Constabulary or of the Bureau of Constabulary or of the Bureau of Education shall aid any candidate or

influence in any manner or take part in any municipal, provincial or Assembly election. Any person violating the provisions of this section shall be deprived of his office or employment and shall be disqualified to hold any public office or employment whatever for a term of 6 years. Provided, however, that the foregoing provisions shall not be construed to deprive any person otherwise qualified or the right to vote at any election. (Enacted on August 31, 1907; Took effect on September 15, 1907.)

Again, when the existing election laws were incorporated in the Administrative Code on March 10, 1917, the provisions in question read:

SEC. 449.—Persons prohibited from influencing elections.—No judge of the First Instance, justice of the peace, or treasurer, fiscal or assessor of any province and no officer or employee of the Philippine Constabulary, or any Bureau or employee of the classified civil service, shall aid any candidate or exert influence in any manner in any election or take part therein otherwise than exercising the right to vote." (Italics supplied)

After the Administrative Code, the next pertinent legislation was Act No. 3387. This Act reads:

"SEC. 2636.—Officers and employees meddling with the election.—Any judge of the First Instance, justice of the peace, treasurer, fiscal or assessor of any province, any officer or employee of the Philippine Constabulary or of the police of any municipality, or any officer or employee of any Bureau or the classified civil service, who aids any candidate or violated in any manner the provisions of this section or takes part in any election otherwise by exercising the right to vote, shall be punished by a fine of not less than P100.00 nor more than P2,000.00, or by imprisonment for not less than 2 months nor more than 2 years, and in all cases by disqualification from public office and deprivation of the right of suffrage for a period of 5 years." (Approved, December 3, 1927.) (Italics supplied.)

Subsequently, however, Commonwealth Act No. 357 was enacted on August 22, 1938. This law provided in Section 48:

"SEC. 48. Active intermentum of public officers and employees.— No justice, judge, fiscal, treasurer or assessor of any province, no officer or employee of the Army, the Constabulary of the National, provincial, municipal or rural police, and no classified civil service officer or employee shall aid any candidate, nor exert influence in any manner in any election nor take part therein, except to vote, if entitled thereto, or to preserve public peace, if he is a peace officer."

The last law was the legislation from which Section 54 of the Revised Election Code was taken.

It will thus be observed from the foregoing narration of the legislative development or history of Section 54 of the Revised Election Code that the first omission of the word "justice of the peace" was effected in Section 48 of Commonwealth Act No. 357 and not in the present Code as averred by defendant-appellee. Note carefully, however, that in the two instances when the words "justice of the peace" were omitted (in Com. Act No. 357 and Rep. Act No. 180), the word "judge" which, preceded in the enumeration did not carry the qualification "of the First Instance." In other words, whenever the word "judge" was qualified by the phrase "of the First Instance," the words "justice of the peace" would follow; however, if the law simply said "judge," the words "justice of the peace" were omitted.

The above-mentioned pattern of congressional phraseology would seem to justify the conclusion that when the legislature omitted the words "justice of the peace" in Rep. Act No. 180, it did not intend to exempt the said officer from its operation. Rather, it had considered the said officer as already comprehended in the broader term "judge".

It is unfortunate and regrettable that the last World War had destroyed congressional records which might have offered some explanation of the discussion of Com. Act No. 357, which legislation, as indicated above, had

eliminated for the first time the word "justice of the peace." Having been completely destroyed, all efforts to seek deeper and additional clarifications from these records proved futile. Nevertheless, the conclusions drawn from the historical background of Rep. Act No. 180 is sufficiently borne out by reason and equity.

Defendant further argues that he cannot possibly be among the officers enumerated in Section 54 inasmuch as under the said section, the word "judge" is modified or qualified by the phrase "of any province." The last mentioned phrase, defendant submits, cannot then refer to a justice of the peace since the latter is not an officer of a province but of a municipality.

Defendant's argument in that respect is too strained.

If it is true that the phrase "of any province" necessarily removes justices of the peace from the enumeration for the reason that they are municipal and not provincial officials, then the same thing may be said of the Justices of the Supreme Court and of the Court of Appeals. They are national officials. Yet, can there be any doubt that Justices of the Supreme Court and of the Court of Appeals are not included in the prohibition?" The more sensible and logical interpretation of the said phrase is that it qualifies fiscals, treasurers and assessors who are generally known as provincial officers.

"The rule of *"casus omisus pro omisso habendus est"* is likewise invoked by the defendant-appellee. Under the said rule, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally. If that rule is applicable to the present, then indeed, justices of the peace must be held to have been intentionally and deliberately exempted from the operation of Section 54 of the Revised Election Code.

The rule has no applicability to the case at bar. The maxim *"casus omisus"* can operate and apply only if and when the omission has been clearly established. In the case under consideration, it has already been shown that the legislature did not exclude or omit justices of the peace from the enumeration of officers precluded from engaging in partisan political activities. Rather, they were merely called by another term. In the new law, or Section 54 of the Revised Election Code, justices of the peace were just called "judges."

In insisting on the application of the rule of *"casus omisus"* to this case, defendant-appellee cites authorities to the effect that the said rule, being restrictive in nature, has more particular application to statutes that should be strictly construed. It is pointed out that Section 54 must be strictly construed against the government since proceedings under it are criminal in nature and the jurisprudence is settled that penal statutes should be strictly interpreted against the state.

Amplifying on the above argument regarding strict interpretation of penal statutes, defendant asserts that the spirit of fair play and due process demand such strict construction in order to give "Fair warning of what the law intends to do, if a certain line is passed, in language that the common world will understand." (Justice Holmes, in *McBoyle vs. U.S.* 283, U.S. 25, L.Ed, 816.)

The application of the rule of *"casus omisus"* does not proceed from the mere fact that a case is criminal in nature, but rather from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration. In the present case, and for reasons already mentioned, there has been no such omission. There has only been a substitution of terms.

The rule that penal statutes are given a strict construction is not the only factor controlling the interpretation of such laws instead, the rule merely serves as an additional, single factor to be considered as an aid in determining the meaning of penal laws. This has been recognized time and again by decisions of various courts. (3 Sutherland, *Statutory Construction*, p. 56.) Thus, cases will frequently be found enunciating the principle that the intent of the legislature will govern (*U.S. vs. Corbet*, 215, U.S. 233). It is to be noted that a strict construction should not be

permitted to defeat the policy and purposes of the statute (*Ash Sheep Co. vs. U.S.* 252 U.S. 159). The court may consider the spirit and reason of a statute, as in this particular instance, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the law makers (*Crawford, Interpretation of Laws*, Sec. 78, p. 294). A Federal District court in the U.S. has well said:

"The strict construction of a criminal statute does not mean such construction of it as to deprive it of the meaning intended. Penal statutes must be construed in the sense which best harmonizes with their intent and purpose." (*U.S. vs. Betteridge*, 43 F. Supp. 53, 56, cited in 3 *Sutherland Statutory Construction* 56.)

As well stated by the Supreme Court of the United States, the language of criminal statutes, frequently, has been narrowed where the letter includes situations inconsistent with the legislative plan (*U.S. vs. Katz*, 271 U.S. 354; See also *Ernest Brunchan, Interpretation of the Written Law* [1915] 25 *Yale L.J.* 129.)

Another reason in support of the conclusion reached herein is the fact that the purpose of the statute is to enlarge the officers within its purview. Justices of the Supreme Court, the Court of Appeals, and various judges, such as the judges of the Court of Industrial Relations, judges of the Court of Agrarian Relations, etc., who were not included in the prohibition under the old statute, are now within its compass. If such were the evident purpose, can the Legislature intend to eliminate the justice of the peace within its orbit? Certainly not, this point is fully explained in the brief of the Solicitor General, to wit:

"On the other hand, when the legislature eliminated the phrases "Judge of the First Instance" and "justice of the peace", found in Section 449 of the Revised Administrative Code, and used "judge" in lieu thereof, the obvious intention was to include in the scope of the term not just one class of judge but all judges, whether of first instance, justices of the peace or special courts, such as judges of the Court of Industrial Relations." * * *

"The weakest link in our judicial system is the justice of the peace court, and to so construe the law as to allow a judge thereof to engage in partisan political activities would weaken rather than strengthen the judiciary. On the other hand, there are cogent reasons found in the Revised Election Code itself why justices of the peace should be prohibited from electioneering. Along with justice of the appellate courts and judges of the Courts of First Instance, they are given authority and jurisdiction over certain election cases (See Secs. 103, 104, 117-123). Justices of the peace are authorized to hear and decide inclusion and exclusion cases and if they are permitted to campaign for candidates for an elective office the impartiality of their decisions in election cases would be open to serious doubt. We do not believe that the legislature had, in Section 54 of the Revised Election Code, intended to create such an unfortunate situation." (pp. 7-8, Appellant's Brief.)

Another factor which fortifies the conclusion reached herein is the fact that even the administrative or executive department has regarded justices of the peace within the purview of Section 54 of the Revised Election Code.

In *Traquilino O. Calo, Jr. vs. The Executive Secretary, the Secretary of Justice; etc.* (G. R. No. L-12601), this Court did not give due course to the petition for certiorari and prohibition with preliminary injunction against the respondents, for not setting aside, among others, Administrative Order No. 237, dated March 31, 1957, of the President of the Philippines, dismissing the petitioner as justice of the peace of Carmen, Agusan. It is worthy of note that one of the causes of the separation of the petitioner was the fact that he was found guilty in engaging in electioneering, contrary to the provisions of the Election Code.

Defendant-appellee calls the attention of this Court to House Bill No. 2676, which was filed on January 25, 1955. In that proposed legislation, under Section 56, justices of the peace are already expressly included among the officers enjoined from active political participation. The argument is that with the filing of the said House Bill, Congress impliedly acknowledged that existing laws do not prohibit justices of the peace from partisan political activities.

The argument is unacceptable. To begin with, House Bill No. 2676 was a proposed amendment to Republic Act No. 180 as a whole and not merely to section 54 of said Rep. Act No. 180. In other words, House Bill No. 2676 was a proposed re-codification of the existing election laws at the time that it was filed. Besides, the proposed amendment, until it has become a law, cannot be considered to contain or manifest any legislative intent. If the motives, opinions, and the reasons expressed by the individual members of the legislature, even in debates, cannot be properly taken into consideration in ascertaining the meaning of a statute (Crawford, Statuary Construction, Sec. 213, pp. 375-376), fortiori what weight can we give to a mere draft of a bill.

On law, reason and public policy, defendant-appellee's contention that justice of the peace are not covered by the injunction of Section 54 must be rejected. To accept it is to render ineffective a policy so clearly and emphatically laid down by the legislature.

Our law-making body has consistently prohibited justices of the peace from participating in partisan politics. They were prohibited under the old Election Law since 1907 (Act No. 1582 and Act No. 1709). Likewise, they were so enjoined by the Revised Administrative Code. Another law which expressed the prohibition to them was Act No. 3387, and later, Com. Act No. 357.

Lastly, it is observed that both the Court of Appeals and the trial court applied the rule of "expressio unius, est exclusio alterius". In arriving at the conclusion that justices of the peace are not covered by Section 54. Said the Court of Appeals: "Anyway, guided by the rule of exclusion, otherwise known as *expressio unius est exclusio alterius*, it would not be beyond reason to infer that there was an intention of omitting the term "justice of the peace from Section 54 of the Revised Election Code. * * *"

The rule has no application. If the legislature had intended to exclude a justice of the peace from the purview of Section 54, neither the trial court nor the Court of Appeals has given the reason for the exclusion. Indeed, there appears no reason for the alleged change. Hence, the rule of *expressio unius est exclusio alterius* has been erroneously applied (Appellant's Brief, p. 6.)

"Where a statute appears on its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow. by not so including them, the maxim *expressio unius est exclusio alterius*, should not be invoked." (Blevins vs. Mullally, 135 p. 307, 22 Cal. App. 519.)

For the above reasons, the order of dismissal entered by the trial court should be set aside and this case is remanded for trial on the merits.

Bengzon, C. J., Bautista Angelo, Labrador, Conception, Barrera and Makalintal, JJ., concur.

RESOLUTION

August 30, 1962

REGALA, J.:

This resolution refers to a motion for reconsideration filed by the counsel for defendant-appellee, Guillermo Manantan.

Defendant-appellee does not dispute the correctness of this Court's ruling in the main case. He concedes that a justice of the peace is covered by the prohibition of Section 54, Revised Election Code. However, he takes exception to the dispositive portion of this Court's ruling promulgated on July 31, 1952, which reads:

"For the above reasons, the order of dismissal entered by the trial court should be set aside and this case is remanded for trial on the merits."

It is now urged by the defendant-appellee that the ultimate effect of remanding the case to the lower court for trial on the merits is to place him twice in jeopardy of being tried for the same offense. He calls the attention of this Court to the fact that when the charge against him was dismissed by the lower court, jeopardy had already attached to his person. To support his claim, he cites the case of *People vs. Labatete*, 107 Phil., 697.

Defendant-appellee's plea of double jeopardy should be rejected. The accused cannot now invoke the defense of double jeopardy. When the government appealed to this Court the order of dismissal, defendant Manantan could have raised that issue by way of resisting the appeal of the state. Then again, when defendant-appellee filed his brief, he could have argued therein his present plea of double jeopardy. Yet, on neither occasion did he do so. He must, therefore, be deemed to have waived his constitutional right thereunder. This is in accord with this Court's ruling in the cases of *People vs. Rosalina Casiano*, 111 Phil., 64; and *People vs. Finuila*, 103 Phil., 992; hereunder quoted:

"* * * defendant herein has filed a brief in which she limited herself to a discussion of the merits of the appeal. Thus, she not only failed to question, in her brief, either expressly or impliedly, the right of the prosecution to interpose the present appeal, but, also, conceded in effect the existence of such right. She should be deemed, therefore, to have waived her aforementioned constitutional immunity.

It is true that in *People vs. Hernandez* (94 Phil., 49; 49 Off. Gaz., 5342), *People vs. Ferrer*, L-9072 (October 23, 1956), *People vs. Bao*, 106 Phil., 243; 56 Off. Gaz. (51) 7768 and *People vs. Golez*, 108 Phil., 855; 59 Off. Gaz. (3) 388 we dismissed the appeal taken by the Government from a decision or order of a lower court, despite defendant's failure to object thereto. However, the defendants in those cases, unlike the defendant herein, did not file any brief. Hence, they had performed no affirmative act from which a waiver could be implied. (*People vs. Casiano*, supra).

"In his appeal brief, appellant's counsel does not raise this question of double jeopardy, confining himself as he does, to the discussion of the evidence in the record, contending that the guilt of the appellant has not been proven beyond reasonable doubt. One aspect of this case as regards double jeopardy is that said defense may be waived, and, that failure to urge it in the appeal may be regarded as a waiver of said defense of double jeopardy. (*People vs. Pinuila*, supra).

There are other grounds raised by the defendant-appellee in this motion for reconsideration. The Court, however, does not believe that they were well taken.

For the above reasons, the motion for reconsideration filed in this case, is, as it hereby, denied.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Makalintal, JJ., concur.

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