

**TOMAS L. CABILI, ESTEBAN R. ABADA, ENRIQUE B. MAGALONA.
JUSTINIANO MONTANO, GERONIMA PECSON, MACARIO PERALTA
JR., LORENZO SUMULONG, AND TEODORO DE VERA, PLAINTIFFS, VS.
VICENTE ...**

G .R. No. L-4638. May 08, 1951

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EXCERPTS FROM THE MINUTES OF MAY 8, 1951

"* * * * *

"In Civil Case G. R. No. L-4638, Cabili et al. v. Francisco et al., wherein eight senators composing the so-called Little Senate seek to annul the resolutions whereby the Senate of the Philippines reorganized its representation in the Commission on Appointments and to secure the reinstatement of Senator Enrique B. Magalona in that Commission, it appears that,

"Shortly after its organization in January 1950 the Philippine Senate elected twelve of its members to constitute the Senate representation in the Commission on Appointments, namely,

Senator

Esteban R. Abada of the Liberal Party

"

Enrique B. Hagalona of the Liberal Party

"

Justiniano Montano of the Liberal Party

"

Geronima Pecson of the Liberal Party

"

Macario Peralta, Jr. of the Liberal Party

"

Quintin Paredes of the Liberal Party

"

Ramon Torres of the Liberal Party

"

Pablo Angeles David of the Avelino Liberal Party

"

Exniliano T. Tirona of the Avelino Liberal Party

"

Eulogio Rodriguez of the Nacionalista Party

"

Camilo Osias of the Nacionalista Party

"These discharged their duties as such for about a year, or until January 1951, when as the result of a new alignment that divided the Senate into two factions, the Little Senate and the Democratic Group, the latter commanding a majority, the Senate approved a motion declaring vacant all the twelve positions occupied by senators in the Commission on Appointments. Subsequently another motion was carried appointing seven senators of the Democratic Group (Paredes, Torres, Francisco, Tirona, Angeles David, Rodriguez and Osias) to be members of the Commission, and leaving to the Little Senate the right to propose the remaining five. The Little Senate that had consistently opposed the reorganization mainly upon Constitutional grounds declined to name its members. Wherefore the Democratic Group proposed, and the Senate approved, another motion adding to the list of members of the Commission the names of Senators Abada, Montano, Pecson, Peralta and De Vera all belonging to the Little Senate.

"Net result is that, whereas in the original membership of the Commission on Appointments there were eight senators belonging to the Liberal Party, two senators of the Avelino Liberal Party and two senators of the Nacionalista Party, at present there are seven of the Liberal Party, three of the Avelino Liberal Party and two of the Nacionalista Party. The original 8-2-2 ratio has turned into 7-3-2. Explaining the modification, the respondents say:

'It is generally acknowledged that there are twenty-two Senators actually in office, of whom thirteen are members of the Quirino Liberal Party; four, members of the Avelino Liberal Party; three, members of the Nacionalista Party; and two, independent * * *.

'Since the Constitution provides for twelve Senators in the Commission, a number that is exactly one-half of the total membership of the Senate, it is convenient to take one-half of the membership of the different parties in the Senate to arrive at the approximate representation to which each party is entitled in the Commission. The Quirino Liberal Party having thirteen members, it is entitled to six and one-half representatives in the Commission. The Avelino Liberal Party having four, it is entitled to two. The Nacionalista Party having three, it is entitled to one and one-half. The Citizens Party having one, it is entitled to one-half, and, if Senator Arranz (independent) be entitled to representation, he too is entitled to one-half. Now, obviously, this result, not only is impossible to enforce because of the fractions involved, but also is insufficient to cover the Constitutional requirement of twelve Senators, there being only a total of eleven in the foregoing computation. Who, then, shall apportion the remaining membership * * * ?'

'And it was in the exercise of its Constitutional right and authority that the Senate, by a majority vote, decided in its discretion to raise the Quirino Liberal Party representation from six and one-half to seven; the Nacionalista Party representation from one and one-half to two; and the Avelino Liberal Party representation from two to three, making a total of twelve * * *.'

"Consequently there does not seem to be a clear departure from the constitutional mandate requiring proportional representation of the political organizations in the Commission on Appointments.

"The Court believes this case revolves upon two fundamental issues, thoroughly argued by the parties' counsel: the jurisdiction of the Court and the power of the Senate to change its members in the Commission on Appointments. There are other important, though corollary, issues.

"After careful deliberation, a majority of six justices[1] regretfully but necessarily reached the conclusion that the matter is beyond the Court's jurisdiction, it being no different in principle from the situation in *Alejandro vs. Quezon*[2] and *Vera et al., vs. Avelino et al.*[3] wherein we declined to entertain petitions to require the Senate to restore to certain suspended senators the exercise of their senatorial prerogatives. Here the petition attempts to force upon the Senate the reinstatement of Senator Magalona in the Commission on Appointments, and involves a lesser deprivation of legislative privileges. Needless to state, the conditions which impelled this Court to assume jurisdiction in *Avelino vs. Cuenco*, G. R. No. L-2821 [*] do not presently obtain.

"Three justices[4] believe we have jurisdiction, inasmuch as the petition describes a serious violation of the Constitution which may not be corrected without the Court's intervention. They also attribute controlling effect to the *Avelino v. Cuenco* case wherein this Court entertained and decided an analogous petition.

"On the power to reorganize the Commission, four justices [5] hold the view that inasmuch as the Constitution provides for membership of the Commission on the basis of party representation, such membership should at all times reflect the political alignment in the Senate, which must consequently be empowered to reshuffle the members of the Commission in accordance with the political tides in that Upper House. So that, if at any time after the Senate organization, what started as minority party should later manage to capture the majority votes therein, it has a right to effect a consequent alteration in Commission of Appointments [6] the better to discharge its newly acquired responsibilities. They find that the Commission on Appointments, according to recorded statements of its sponsors and some responsible leaders during the Constitutional Convention is 'a committee' 'creature and dependent' of the respective Houses[7] that is to 'serve at the pleasure'[8] of the House, and that the positions there are 'positions of confidence' and if the House desires to withdraw the confidence from some of its members it may do so' at any time. [9]

"Furthermore, remembering that confirmation of appointments by the Executive has usually been regarded as Within the province of the political branch of the Government, they discover no lawful objection to political coloring which the Constitution expressly recognized in the membership of the Commission on Appointments nor to changeable political hues in that Commission mirroring corresponding changes in the Legislative Chamber. Of course these justices do not spouse the theory that the members should and will vote in the Commission strictly as party men. The Constitution placed them there not to serve partisan interests but to promote the national well-being. However the Constitution intends that on matters admitting of honest differences of opinion each and everyone may bring to the crucible of committee discussions the divergent of principles of opposing parties so that a suitable course of action may be adopted with full knowledge of the conflicting views and with reasonable assurance of the wisdom of their choice.

"On the other hand four justices[10] opine that although in the selection of members of the Commission, party affiliation is a requisite qualification, the Constitution contemplates stability of tenure so as to insure for the members thus selected that liberty of action (free from party interests or squabbles) which should surround the actuations of the Commission on Appointments. They maintain that, as the Constitution reserved no power in the Senate to remove or substitute the Senate members of tile Commission, these should continue until that time when the Senate, upon the advent of new members elected in a general election shall organize itself anew, and upon

such organization shall select pursuant to Constitutional authority another set of members for the aforesaid Commission. They emphasize that the selection is to be made within thirty days after the organization of the Senate, which period being mandatory, conditions the Senate's power to select; the Constitution's purpose being to respect and enforce the will of the electorate as represented by the parties therein at that time, and any subsequent realignment of the senators can not alter that popular will (and the selection made according to it) until after a new national election of senators is made, and the new alignment is confirmed by the voters at large.

Mr. Justice Pablo declined to express his views on the second question, because it is unnecessary.

The petition will be dismissed without costs.

Mr. Justice Feria took no part."

[1] The Chief Justice, and Justices Pablo, Bengzon, Padilla, Montemayor and Jugo.

[2] 46 Phil., 83.

[3] 43 Off. Gaz., 3597.

[*] 83 Phil. , 17.

[4] Justices Tnason, Reyes and Bautista Angelo.

[5] The Chief Justice and Justices Bengzon, Reyes and Jugo.

[6] Even as it may change the Senate Presidency and all Senate Committees.

[7] Aruego, The Framing of the Philippine Constitution Vol. I, p. 274.

[8] Aruego, op. cit Vol I, p. 285.

[9] Aruego, op. cit. Vol. I, pp. 285, 286.

[10] Justices Padilla, Tuason, Montemayor and Bautista Angelo.

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