

EULOGIO RODRIGUEZ, SR. ETC., PETITIONER, VS. EL TESORERO DE FILIPINAS, RESPONDENT.

G.R. Nos. L-3054 & L-3056. September 16, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

Petitioners filed motions asking (1) that Mr. Justice Padilla be disqualified to act in these cases; (2) that the vote cast by the late Mr. Justice Perfecto before his death be counted in their favor; and (3) that the opinion of the Chief Justice be counted as a vote for the nullity of Executive Orders Nos. 225 and 226.

I.

As regards the motion to disqualify Mr. Justice Padilla, the Court is of the opinion that it must not be considered, it having been presented after Mr. Justice Padilla had given his opinion on the merits of these cases. As we have once said "a litigant x x x cannot be permitted to speculate upon the action of the Court and raise an objection of this sort after decision has been rendered." (Gov't. of the P.I. v. Heirs of Abella, 49 Phil., 374).

Furthermore, the fact that Justice Padilla, while Secretary of Justice, had advised the President on the question of emergency powers, does not disqualify him to act in these cases for he cannot be considered as having acted previously in these actions as counsel of any of the parties. The President is not here a party.

All the members of this court concur in the denial of the motion to disqualify Mr. Justice Padilla, with the exception of Mr. Justice Ozaeta and Mr. Justice Feria who reserve their vote.

II.

With respect to the motion to include the vote and opinion of the late Mr. Justice Perfecto in the decision of these cases, it appears that Mr. Justice Perfecto died and ceased to be a member of this Court on August 17, 1949, and our decision in these cases was released for publication on August 26, 1949. Rule 53, Sec. 1, in connection with Rule 58, Sec. 1, of the Rules of Court, is as follows:

"SECTION 1. Judges: who may take part.—All matters submitted, to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission; xx xx xx."

Under this provision, one who is not a member of the court at the time an adjudication is made cannot take part in that adjudication. The word "adjudication" means decision. A case can be adjudicated only by means of a decision. And a decision of this Court, to be of value and binding force, must be in writing duly signed and promulgated (Article VIII, Sec. 11 and 12, of the Constitution; Rep. Act No. 296, Sec. 21, Rule 53 Sec. 7, of the Rules of Court). Promulgation means the delivery of the decision to the Clerk of Court for filing and publication.

Accordingly, one who is no longer a member of this Court at the time a decision is signed and promulgated, cannot validly take part in that decision. As above indicated, the true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of. The vote cast by a member of the Court after deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. That vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in no way is that decision binding unless and until duly signed and promulgated.

And this is practically what we have said in the contempt case against Abelardo Subido, promulgated on September 26, 1948:

"que un asunto o causa pendiente en esta Corte Suprema solo se considera decidido una vez registrada, promulgada y publicada la sentencia en la escribania, y que hasta entonces el resultado de la votacion se estima como una materia absolutamente reservada y confidential, perteneciente exclusivamente a las camaras interiores de la Corte."

In an earlier case we had occasion to state that the decisive point is the date of promulgation of judgment. In that case a judge rendered his decision on January 14; qualified himself as Secretary of Finance on January 16; and his decision was promulgated on January 17. We held that the decision was void because at the time of its promulgation the judge who prepared it was no longer a judge. (*Lino Luna v. Rodriguez*, 37 Phil., 186).

Another reason why the vote and opinion of the late Mr. Justice Perfecto can not be considered in these cases is that his successor, Mr. Justice Torres, has been allowed by this Court to take part in the decision on the question of emergency powers because of lack of majority on that question. And Mr. Justice Torres is not bound to follow any opinion previously held by Mr. Justice Perfecto on that matter. There is no law or rule providing that a successor is a mere executor of his predecessor's will. On the contrary, the successor must act according to his own opinion for the simple reason that the responsibility for his action is his and of no one else. Of course, where a valid and recorded act has been executed by the predecessor and only a ministerial duty remains to be performed for its completion, the act must be completed accordingly. For instance, where the predecessor had rendered a valid Judgment duly filed and promulgated, the entry of that judgment which is a ministerial duty, may be ordered by the successor as a matter of course. But even in that case, if the successor is moved to reconsider the decision, and he still may do so within the period prodded by the rules, he is not bound to follow the opinion of his predecessor, which he may set aside according to what he may believe to be for the best interests of justice.

We are of the opinion, therefore, that the motion to include the vote and opinion of the late Justice Perfecto in the decision of these cases must be denied.

Mr. Justice Paras, Mr. Justice Bengzon, Mr. Justice Padilla, Mr. Justice Montemayor, Mr. Justice Alex. Reyes, and Mr. Justice Torres concur in this denial. Mr. Justice Ozaeta, Mr. Justice Feria and Mr. Justice Tuason dissent.

III.

In connection with the motion to consider the opinion of the Chief Justice as a vote in favor of petitioners, the writer has the following to say:

In my previous concurring opinion, I expressed the view that the emergency powers vested in Com. Act No. 671 had ceased in June 1945, but I voted for a deferment of judgment in these two cases because of two circumstances then present, namely, (1) the need of sustaining the two executive orders on appropriations as the lifeline of government and (2) the fact that a special session of Congress was to be held in a few days. I then asked, "Why not defer judgment and wait until the special session of Congress so that it may fulfill its duty as it clearly sees it?"

It seemed then to me unwise and inexpedient to force the government into imminent disruption by allowing the nullity of the executive orders to follow its reglementary consequences when Congress was soon to be convened for the very purpose of passing, among other urgent measures, a valid appropriations act. Considering the facility with which Congress could remedy the existing anomaly, I deemed it a slavish submission to a constitutional formula for this Court to seize upon its power under the fundamental law to nullify the executive orders in question. A deferment of judgment struck me then as wise. I reasoned that judicial statesmanship, not judicial supremacy, was needed.

However, now that the holding of a special session of Congress for the purpose of remedying the nullity of the Executive Orders in question appears remote and uncertain, I am compelled to, and do hereby, give my unqualified concurrence in the decision penned by Mr. Justice Tuason declaring that these two executive orders were issued without authority of law.

While in voting for a temporary deferment of the judgment I was moved by the belief that positive compliance with the Constitution by the other branches of the government, which is our prime concern in all these cases, would be effected, an indefinite deferment will produce the opposite result because it would legitimize a prolonged or permanent evasion of our organic law. Executive orders which are, in our opinion, repugnant to the Constitution, would be given permanent life, opening the way to practices which may undermine our constitutional structure.

The harmful consequences which, as X envisioned in my concurring opinion, would come to pass should the said executive orders be immediately declared null and void, are still real. They have not disappeared by reason of the fact that a special session of Congress is not now forthcoming. However, the remedy now lies in the hands of the Chief Executive and of Congress, for the Constitution vests in the former the power to call a special session should the need for one arise, and in the latter, the power to pass a valid appropriations act.

That Congress may again fail to pass a valid appropriations act is a remote possibility, for under the circumstances it fully realizes its great responsibility of saving the nation from breaking down; and furthermore, the President in the exercise of his constitutional powers may, if he so desires, compel Congress to remain in special session till it approves the legislative measures most needed by the country.

Democracy is on trial in the Philippines, and surely it will emerge victorious as a permanent way of life in this country, if each of the great branches of the government, within its own allocated sphere, complies with its own constitutional duty, uncompromisingly and regardless of difficulties.

Our Republic is still young, and the vital principles underlying its organic structure should be maintained firm and strong, hard as the best of steel, so as to insure its growth and development along solid lines of a stable and vigorous democracy.

With my declaration that Executive Orders Nos. 225 and 226 are null and void, and with the vote to the same effect of Mr. Justice Ozaeta, Mr. Justice Paras, Mr. Justice Feria, Mr. Justice Tuason and Mr. Justice Montemayor, there is a sufficient majority to pronounce a valid judgment on that matter.

It is maintained "by the Solicitor General and the amicus curiae that eight (8) Justices are necessary to pronounce a judgment on the nullity of the Executive Orders in question, under Section 9 of Rep. Act No. 296 and Art. VIII, section 10 of the Constitution. This theory is made to rest on the ground that said Executive Orders must be considered as laws, they having been issued by the Chief Executive in the exercise of the legislative powers delegated to him.

It is the opinion of the Court that the Executive Orders in question, even if issued within the powers validly vested in the Chief Executive, are not laws, although they may have the force of law, in exactly the same Banner as the judgments of this Court, Municipal Ordinances and ordinary Executive Orders cannot be considered as laws, even if they have the force of law.

Under Art. VI, section 26, of the Constitution, the only power which, in times of war or other national emergency, may be vested by Congress in the President, is the power "to promulgate rules and regulations to carry out a declared national policy." Consequently, the Executive Orders issued by the President in pursuance of the power delegated to him under that provision of the Constitution, may be considered only as rules and regulations. There is nothing either in the Constitution or in the Judiciary Act requiring the vote of eight (8) Justices to nullify a rule or regulation or an executive order issued by the President. It is very significant that in the previous drafts of section 10, Art. VIII of the Constitution, "executive order" and "regulation" were included among those that required for their nullification the vote of two thirds of all the members of the Court. But "executive order" and "regulation" were later deleted from the final draft, (Aruego, The Framing of the Philippine Constitution, Vol. I, pp. 495-6.) and thus a mere majority of six members of this Court is enough to nullify them.

All the members of the Court concur in this view.

FOR ALL THE FOREGOING, the Court denies the motion to disqualify Mr. Justice Padilla, and the motion to include the vote of the late Mr. Justice Perfecto in the decision of these cases. And it is the judgment of this Court to declare Executive Orders Nos. 225 and 226, null and void, with the dissent of Mr. Justice Bengzon, Mr. Justice Padilla and Mr. Justice Reyes, upon the grounds already stated in their respective opinions, and with Mr. Justice Torres abstaining.

But in order to avoid a possible disruption or interruption in the normal operation of the Government, it is decreed, by the majority, of course, that this judgment take effect upon the expiration of fifteen (15) days from the date of its entry. No cost to be charged.

Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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