

ERNESTO C. HIDALGO, PETITIONER, VS. HONORABLE FERDINAND MARCOS Y EDRALIN AND COMMISSION ON ELECTIONS, RESPONDENTS.*G.R. No. L-47329. December 09, 1977*

Ponente: CASTRO, C.J.

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Considering the allegations, issues presented, and arguments adduced (a) in the petition for mandamus and/or prohibition, (b) in the Solicitor General's Comment on the petition, (c) in the petitioner's reply to the Comment, and (d) at the hearing on December 1, 1977, the Court, without passing upon the question of the suability of the President, considering that the Commission on Elections, which is the government entity called upon to implement Presidential Decree No. 1229, is impleaded, Resolved NOT to give due course to the petition and to DISMISS the same, for the reasons hereunder set forth.

(1) The President cannot be compelled by mandamus or otherwise to convene the "interim National Assembly" because, *inter alia*, this body was abrogated and supplanted by the interim Batasang Pambansa by virtue of the 1976 amendments to the Constitution, particularly Amendment No. 1 which partly provides that "There shall be, in lieu of the interim National Assembly, an Interim Batasang Pambansa."

(2) The 1976 amendments to the Constitution ratified by the people in the October 16-17, 1976 referendum-plebiscite and now form part of the Constitution, hence, the December 17, 1977 referendum, contrary to the petitioner's posture, may not be said to be designed to effectuate their ratification. The holding of the coming referendum is an exercise authorized by one of those amendments, i.e., Amendment No. 7, which provides that a referendum may be called "at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest."

(3) No constitutional infirmity attaches to Presidential Decree No. 1229 because the referendum called for therein will not result in an amendment to the Constitution. The question, "Do you vote that President Ferdinand E. Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution?," to be submitted to the people in the December 17, 1977 referendum, is in neither the nature nor the form of an amendment. It merely asks the people to either reaffirm or repudiate the confidence in the President which they had previously expressed. If the people vote "yes," Amendment No. 3, which provides, *inter alia*, that "The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions and likewise he shall continue to exercise his powers and prerogatives under the Nineteen Hundred and Thirty Five Constitution and the powers vested in the President and the Prime Minister under this Constitution," will simply be reaffirmed and reinforced. If the people vote "no," the President, as he has categorically announced, will, in deference to "the will" of the people and exercising a public officer's prerogative, resign. The cessation in office, for any reason, by

the incumbent President will not result in an amendment to the Constitution, the provisions of which will remain unaltered.

It is clear from the above that the petition does not pose any question of sufficient importance or significance to warrant the further attention of the Court.

The dismissal of the instant petition is immediately executory.

Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., on official leave.

Teehankee and Muñoz Palma, JJ., files a dissent.

Barredo, J., concurs and reiterates his separate opinion in L-47245.

Martin, J., on sick leave.

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DISSENTING OPINION

MUÑOZ PALMA, J.:

In the performance of my duties as a private citizen I abide by the majority decisions of this Tribunal, but as a member of the Court I must feel free to speak on the basis of my own opinion on the transcendental legal questions posed in a litigation before Us, for I have sworn to preserve and defend the Constitution as a Justice of the highest Court of the land.

I concur with the dissenting Opinion of Justice Claudio Teehankee in this case and state in addition the following:

For the same reasons that I have given in Gualberto J. dela Llana vs. Comelec, L-47245, there is no other recourse for me but to dissent from the majority Resolution and vote to give due course to this Petition of Ernesto Hidalgo and to enjoin the forthcoming Referendum of December 17, 1977 provided for in P.D. 1229.

1. In Sanidad vs. Commission on Elections, et al., L-44640 and others, October 12, 1976, it is my view that P.D. 991 and 1033 which called for a national referendum-plebiscite on October 16, 1976 for the purpose of securing the vote of the people on certain proposed amendments to the Constitution of 1973, are null and void for they contravene Article XVI on the amendatory process of the 1973 Constitution and Section 15 of Article XVII, Transitory Provisions, thereof.

Considering that the forthcoming Referendum of December 17, 1977 submits the following question:

"Do you vote that President Ferdinand E. Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution?"

thereby making reference to amendment No. 3 of the 1976 Amendments to the Constitution,* and considering further that the proposed referendum is being justified under amendment No. 7 thereof,** it follows that P.D. 1229 is null and void for being with-out constitutional and legal basis. Amendments 3 and 7 were not validly proposed and ratified as discussed in the dissenting Opinions in Sanidad.

2. The issue raised by Petitioner that P.D. 1229 will result in effecting an amendment to the Constitution merits serious consideration from the Court. I cannot but share the fears and apprehension of petitioner Hidalgo that the call for the people to vote on the proposed question although denominated as a referendum will in reality cause further amendment to the Constitution in the sense that the offices of the President and Prime Minister are merged in one person for an indefinite period of time thereby setting at naught the provisions of the Constitution on the form of government being constituted and abolishing the separate positions of "President of the Philippines" and "Prime Minister" which have been created under Articles VII and IX respectively of the 1973 Constitution.

What will be "institutionalized" (borrowing the term used in P.D. 1229) is the concentration of the powers of President and Prime Minister in one particular individual for an indefinite length of time divesting the interim National Assembly (now Interim Batasang Pambansa) and even the regular National Assembly, if and when these two bodies are organized, of their power and prerogative to elect a President and Prime Minister of their choice for a term expressly provided for in the Constitution. Under Sec. 2, Article VII, the President's term is for six years, while the Prime Minister has no fixed term but holds his post as long as he enjoys the confidence of the National Assembly that elected him. With a non confidence vote, the Prime Minister steps down from his post. (Sec. 13(1), Art. VIII)

If the purpose of P.D. 1229 is to "institutionalize the precedent and tradition of the Chief of State or Head of the Government submitting himself to the accounting of the people regularly and periodically when circumstances so require," such objective will be achieved by constituting the legislative body of the government, the National Assembly, as provided for in Section 2, Article VIII of the 1973 Constitution, to whom the Prime Minister and the Cabinet shall be responsible for the program of the government and determination of the guidelines of the national policy. (Sec. 2, Art. IX)

In a republican state, and the Philippines is one (Sec. 1, Art. II), the people, in whom the supreme power resides, govern through their duly elected representatives in a legislative body, and in the parliamentary system provided for in the Constitution, the powers of government are equally shared by the National Assembly on the one hand and the Prime Minister and the Cabinet on the other. Accountability to the people is assured through the regular processes provided for in the Constitution, more particularly Section 13, Article VIII thereof, and not through referenda.

If the desire of the national leaders is to accomplish certain basic changes in our system of government, such as may be a reversion to the presidential type, let the changes be submitted to the people in their true context and through constitutional amendatory processes, but not by means of referendums.

Hence, my dissenting vote.

* Amendment No. 3 - The incumbent President of the Philippines shall, within 30 days from the election and selection of the Members, convene the interim Batasang Pambansa and preside over its sessions until the Speaker shall have been elected. The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions, and likewise he shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution.

** Amendment No. 7 - The barangays and sanggunians shall continue as presently constituted but their functions, powers, and composition may be altered by law.

Referenda conducted through the barangays and under the supervision of the Commission on Elections may be

called at any time the Govern-ment deems it necessary to ascertain the will of the people regarding any important matter, whether of national or local interest.

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DISSENTING OPINION

TEEHANKEE, J.:

I vote to give due course to the petition and to grant the same insofar as it prays that the scheduled December 17, 1977 referendum be enjoined.

1. The petition basically questions the validity of the October 1976 Amendments to the 1973 Constitution for not having been proposed nor adopted in accordance with the mandatory provisions of Article XVI thereof (granting the constituent power to the regular National Assembly) or of Transitory Article XVII, section 15 thereof (granting the constituent power to the interim National Assembly). The petition should be granted, for as stated in my dissenting opinion in *Sanidad vs. Comelec*[1], "(T)he transcendental constituent power to propose and approve amendments to the Constitution as well as set up the machinery and prescribe the procedure for the ratification of his proposals has been withheld from the President (Prime Minister) as sole repository of the Executive Power, presumably in view of the immense powers already vested in him by the Constitu-tion but just as importantly, because by the very nature of the constituent power, such amendments proposals have to be prepared, deliberated and matured by a deliberative assembly of representatives such as the interim National As-sembly and hence may not be antithetically entrusted to one man."

2. Hence, I held therein that under the controlling doctrine of *Tolentino vs. Comelec*[2] the October 16, 1976 Referendum-Plebiscite to adopt the October, 1976 amendments which created an Interim Batasang Pambansa in lieu of the interim National Assembly could not receive the Court's sanction since the Court had ruled in *Tolentino* that the Con-stitutional provisions on amendments "dealing with the pro-cedure or manner of amending the fundamental law are binding upon the Convention and the other departments of the govern-ment (and) are no less binding upon the people" and "the very idea of departing from the fundamental law is anachronistic in the realm of constitutionalism and repugnant to the essence of the rule of law." [3]

In point of law, I submitted that it was "not legally tenable" for the majority in the *Sanidad* case "without overruling the con-trolling precedent of *Tolentino* (and without mustering the re-quired majority vote [of eight] to so overrule)" - since there was only a plurality (not a majority) of 7 out of 10 votes sustain-ing the incumbent President's exercise of constituent powers[4] - "to accept the proposed amendments as valid notwithstanding their being 'not in conformity with the letter, spirit and intent of the provision of the charter for effecting amendments.'"

3. Prescinding from the foregoing, as stated in my separate dissenting opinion in the companion case of *De la Llana vs. Comelec* resolved by the Court on even date, (and herein reproduced by reference) the question to be submitted at the scheduled December 17, 1977 exercise is not one that may proper-ly be submitted at a referendum - since it does not fall within the context and purview of "any important matter, whether of national or local interest" that may be submitted in a referendum "to ascertain the will of the people" under paragraph 7 of the October, 1976 Amendments (which authorized for the first time the holding of such referendums).

The matter of President Marcos continuing in office as incumbent President (when he as incumbent President and the Batasang Bayan unanimously concur that "no election is possible under the Constitution for the position he presently holds"[5]) and to be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution is not a proper subject for submittal in a referendum, which is purely consultative and does not authorize a yes or no vote on the continuation in office of a single personality (notwithstanding the majority's contrary dictum).

4. The proposed question would in effect do away with and render nugatory the provisions of the Constitution for regular and free contested elections insofar as they provide that the members of the regular National Assembly[6] or the interim Assembly[7] (as proposed to be substituted by the interim Batasang Pambansa[8]) shall elect their Prime Minister[9] and gives currency to petitioner's apprehensions that such referendums are being used to replace the general elections called for by the Constitution.[10] The fundamental provisions of the Constitution which call for contested elections, with the parliament (regular or interim National Assembly) vested with the power of withdrawing its confidence from the Prime Minister "by electing a successor by a majority vote of all its members"[11] and the Prime Minister advising the President (as the symbolic head of state[12]) in writing to dissolve the National Assembly "whenever the need arises for a popular vote of confidence on fundamental issues," whereupon the President shall so dissolve the National Assembly and call for new elections,[13] would thus be eroded and nullified. Such erosion by means of referendums of the whole structure and spirit of the Constitution for free contested elections and of the parliamentary system of government therein mandated should not receive the sanction of the Court.

[1] L-44640, with Guzman vs. Comelec, L-44684, and Gonzales vs. Comelec, L-44714, October 12, 1976.

[2] 41 SCRA 702 (1971).

[3] Resolution on Motion for Reconsideration in Tolentino vs. Comelec dated Nov. 4, 1971.

[4] The seven-vote plurality of the ten-member Court then was composed of Castro, C.J., and Barredo, Makasiar, Antonio, Aquino, Concepcion Jr. and Martin, JJ. (with the Chief Justice opining that it was "not necessary" to "venture to rule on whether or not the President is vested with constituent power"); while two members, Teehankee and Muñoz Palma, JJ. voted against with Fernando, J. "confining (himself) to the expression of serious doubts on the question rather than a dissent."

[5] Solicitor General's Comment, pp. 6, 8; P. D. No. 1229.

[6] Constitution, Article VIII.

[7] Idem, Transitory Article XVII.

[8] Idem, October, 1976 Amendments.

[9] Idem, Article IX.

[10] In petitioner's language, "(P)D No. 1229 is another form of introducing a new Amendment to the 1973 Constitution, by adopting referenda as a substitute for regular elections as parts of the Fundamental Law, aside from abolishing or aligning itself to the basic method of the amendatory process laid down already. This matter will never be brought out to the attention of the electorate on December 17, 1977." Petitioner's Reply, page 10.

[11] Constitution, Article VIII, sec. 13(1).

[12] Idem, Article VII, sec. 1.

[13] *Idem*, Article VIII, sec. 13(2).

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