

PHILIPPINE MEDICAL ASSOCIATION, PETITIONER, VS. BOARD OF MEDICAL EXAMINERS AND JOSE MA. TORRES, RESPONDENTS.

G.R. No. L-25135. September 21, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action for certiorari and mandamus, against the Board of Medical Examiners and Jose Ma. Torres, to annul a re-resolution of the former and a certificate issued by the same author-izing the latter to practice medicine in the Philippines without examination.

The facts are not disputed. Jose Ma. Torres - hereinafter referred to as respondent - is a Spanish subject and a member of the Missionary Sons of the Immaculate Heart of Mary, otherwise known as the Claretian Missionaries. Having graduated from the University of Barcelona, Spain, with the degree of Licentiate Medicine and Surgery, he is entitled, under the laws of Spain, to practice medicine and surgery throughout the territory thereof.

On January 21, 1955, respondent was granted special authority to practice medicine in Lamitan, Basilan City, where he resides, pursuant to Section 771(e) of the Revised Administrative Code reading:

"SEC. 771. Persons exempt from registration.- Registration shall not be required of the following classes of persons: x x x x

"(e) In cases of epidemics or in municipali-ties where there is no legally qualified practicing physician, or when the circumstances require it, in the interest of the public health, the Director of Health may issue special authorizations, to all medical students who have completed the first three years of their studies, or to persons who have qualified in medicine, and to graduate or re-gistered nurses, who may request it. "

This authority was revoked, on November 8, 1960, by the then Se-cretary of Health, upon the ground that "the conditions under which it was granted no longer obtained in Lamitan, Basilan City, there being enough practising physicians in that locality." Said officer restored the authority on December 19, 1960, to be revoked again, on January 22, 1963. It was renewed once more, on September 1, 1963, and, once again, it was revoked on February 10, 1964, upon the recommendation of the Board of Medical Examiners - herein-after referred to as the Board. On motion for reconsideration filed by respondent, the Board issued, on April 6, 1965, its Resolution No. 25, series of 1965, which was approved by the President, granting respondent a certificate to practice medicine in the Philippines without the examination required in Republic Act No. 2882, otherwise known as the Medical Act of 1959. The resolution relied therefor upon The Treaty on the Validity of Academic Degrees and The Exercise of the Professions between the Republic of the Philippines and the Spanish State, signed at Manila on March 4, 1949, and ratified on May 19, 1949.[1]

Petitioner herein, Philippine Medical Association, is a do-mestic corporation. On June 14, 1965, it addressed the Chairman of the Board a communication requesting reconsideration of said resolution No. 25, upon the ground that, pursuant to said Medical Act of 1959, respondent has to take and pass the examination there-in prescribed, before he can be allowed to practice medicine in the Philippines. This letter was followed by another, dated

October 6, 1965, to which said Chairman replied on October 8, 1965, stating "that the final decision on the matter will have to come from the President of the Philippines upon whose authority said resolution has been finally approved and implemented.

Thereupon, or, on October 18, 1965, petitioner commenced the present action, for the purpose stated at the beginning of this decision, upon the theory that the Board had violated. Republic Act No. 2382 in granting respondent's certificate for the general practice of medicine in the Philippines without the examination prescribed in said Act; that the Board had exceeded its authority in passing said Resolution, because, of which the same is null and void; that the Board should therefore, be ordered to cancel the certificate issued in pursuance of said resolution; and that petitioner has no other plain, adequate and speedy remedy in the ordinary course of law.

In their respective answers, respondents, admit the basic facts, but not the conclusions drawn therefrom by the petitioner and allege that the resolution in question is sanctioned by the provisions of the Treaty above referred to; that petitioner has no cause of action; and that the petition should be dismissed for failure of the petitioner to exhaust the available administrative remedies.

Respondents cite the cases of *Costas vs. Aldanese*[2] and *Almario vs. City Mayor*[3] in support of the theory that petitioner herein has no sufficient interest or "personality" to maintain the present case. In the first case, it was held that the president of the Association of Philippine (Marine) Engineers[4] had no particular "individual" interest, and, hence, no cause of action for mandamus to compel the Collector of Customs to implement Section 1203(j) of the Administrative Code, providing that steamers making round trips of more than 48 hours or travelling at night shall carry the complement of marine engineers therein specified. In the second case, a citizen of the Philippines, as such, who is not an applicant for any stall or booth, or the representative of any such applicant, stall-holder or any association of persons who are deprived of the right to occupy stalls in said market, "is not the real party in interest who has the capacity, right or personality" to bring an action for mandamus, to compel the officers of Pasay City to comply with the provisions of Republic Act No. 37, by ejecting, from the public market of said City, stallholders who are nationals of the Philippines.

Said cases are not in point. To begin with, both are actions mandamus, whereas the case at bar is mainly one for certiorari. Although, petitioner herein, likewise, seeks a writ of mandamus, directing the Board to cancel the certificate of registration issued the respondent, this would be a necessary consequence of the writ of certiorari annulling the disputed resolution. Moreover, said two cases were commenced by individuals who, as such, had no special interest in the relief therein prayed for. Indeed, in the *Almario* case it was intimated that the result might have been otherwise had it been brought by an "association" whose members have an interest in the subject-matter of the action.

This was confirmed by *PHILCONSA vs. Gimenez*,⁵ in which we sustained the right of the Philippine Constitution Association to assail the constitutionality of Republic Act No. 3836, insofar as it allowed retirement gratuity and commutation of vacation and sick leave to members of Congress and to elective officials thereof. Further authority in favor of petitioner herein is supplied by *Nacionalista Party vs. F. Bautista Angelo*⁶ in which the Nacionalista Party successfully impugned the validity of the designation of the then Solicitor General as Acting Member of the Commission on Elections.

It is our considered opinion that the view adopted in the last three (3) cases should be maintained and that, in line therewith, petitioner herein has sufficient interest to prosecute the case at bar and a cause of action against respondents herein.

As regards their objection based upon petitioner's failure to appeal to the President, suffice it to say that the rule

requiring exhaustion of administrative remedies is concededly subject to exceptions, among which are cases involving only questions of law or when jurisdiction is in issue⁷ or the action complained of bears the approval of a department secretary, as the disputed resolution, which was approved by the Executive Secretary "by authority of the President or as an alter ego of the Executive."⁸ The case at bar falls under these exceptions to said rule.

The main issue herein hinges on the interpretation of Article I of the Treaty aforementioned, reading as follows.

"The nationals of both countries who shall have obtained degrees or diplomas to practice the liberal professions in either of the Contracting States, issued by competent national authorities, shall be deemed competent to exercise said professions in the territory of the other, subject to the laws and regulations of the latter. When the degree or diploma of Bachelor, issued by competent national authorities allows its holder without requiring further evidence of proficiency to pursue normally higher courses of study, he shall also be deemed qualified to continue his studies in the territory of either Party in conformity with the applicable laws and regulations of the State which recognizes the validity of the title or diploma in question, and with the rules and regulations of the particular educational institution in which he intends to pursue his studies.

This Treaty provision was the subject matter of our resolution of August 15, 1961, in connection with the petition of Arturo Efren Garcia for admission to the Philippine Bar without taking the Bar examination. After completing, in Spain, the course prescribed therefor, Garcia had been graduated from the College of Law of the Universidad Central de Madrid with the degree of "Licenciado en Derecho", which entitled him to practice law in Spain. Having invoked the provisions of said Treaty in support of his claim of exemption from the requisite bar examinations, this Court denied his petition upon the ground, among others " x x x that the privileges provided in the Treaty invoked by the applicant are made expressly subject to the laws and regulations of the contracting State in whose territory it is desired to exercise the legal profession; and Section 1 of Rule 127, in connection with Sections 2, 9, and 16 thereof, which have the force of law, require that before anyone can practice the legal profession in the Philippines he must first successfully pass the required bar examinations; x x x."

We find no plausible reason to depart from this view. On the contrary, we reiterate the same, inasmuch as the theory of respondent herein cannot be accepted without placing graduates from our own educational institutions at a disadvantage vis-a-vis Spanish graduates from Spanish schools, colleges or universities. Indeed, the latter could - under respondent's pretense - engage in the practice of medicine in the Philippines without taking the examination prescribed in Republic Act No. 2882, whereas the former would have to take and pass said examination. Worse still, since - as we ruled in the Garcia case - the benefits of the aforementioned Treaty cannot be availed of in the Philippines except by Spanish subjects, the result would be - should respondent's contention be sustained - that graduates from Spanish schools of medicine would be entitled to practice medicine in the Philippines without examination, if they were Spanish subjects but not if they are Filipinos.

Surely said Treaty was not made to discriminate against Philippine schools, colleges or universities, much less against nationals of the Philippines.

WHEREFORE, we hold that said Treaty merely extended to diplomas issued or degrees conferred by educational institutions of Spain the same recognition and treatment that we accord to similar diplomas or degrees from local institutions of learning; that holders of said Spanish diplomas or degrees must take the examination prescribed by our laws for holders of similar diplomas or degrees from educational institutions in the Philippines; that resolution No. 25, series of 1965, of respondent Board is violative of Republic Act No. 2882 and hence, null and void; and that, respondent Board of Medical Examiners should be, as it is hereby ordered to cancel the certificate of registration, for the practice of medicine in the Philippines, issued in favor of respondent Jose Ma. Torres, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Effective on January 5, 1951.

[2] 45 Phil. 345.

[3] L-21565, January 31, 1966.

[4] Not the association itself.

5 G. R. No. L-23325, December 18, 1965.

6 85 Phil. 101.

7 Cariño v. ACCFA, L-19808, September 29, 1966; Tapales v. The President and the Board of Regents, L-17523, March 30, 1963; Danan v. Secretary of Agriculture, L-19547, January 31, 1967.

8 Gonzalez v. Hechanova, L-21897, October 22, 1963; Extensive Enterprise v. Sarbro, L-22383 L- 22386, May 16, 1966; Santos v. Secretary of Public Works, L-16949, March 18, 1967; Lacson-Magallanes v. Jose Paño, L-27811, November 17, 1967.

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