

PAZ M. GARCIA, COMPLAINANT, VS. HON. CATALINO MACARAIG, JR., RESPONDENT.

Adm. Case No. 198-J. May 31, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint filed by one Paz M. Garcia against the Honorable Catalino Macaraig, Jr., formerly Judge of the Court of First Instance of Laguna, Branch VI, now Undersecretary of Justice, in his former capacity as judge, for alleged "dishonesty, violation of his oath of office as judge gross incompetence, violation of Republic Act 296 or the Judiciary Act of 1948, as amended, (particularly) Sections 5, 55 and 58 thereof, committed (allegedly) as follows:

"2. That from July 1, 1970 up to February 28, 1971 inclusive, as such incumbent Judge, respondent herein, has not submitted his monthly reports containing the number of cases filed, disposed of, decided and/or resolved, the number of cases pending decisions for one month, two months to over three months, together with the title, number, number of hours of court session held a day, etc., as evidenced by the certificate issued by Hon. Eulalio D. Pichay, Judicial Superintendent, Dept. of Justice, copy of which is hereto attached as Annex 'A', Item No. 1, in violation of Circular No. 10 of the Dept. of Justice dated February 6, 1952, copy of which is hereto attached as Annex 'B';

"3. That he has not submitted his certificate of service (New Judicial Form No. 86, Revised 1966) from July to December, 1970 and from January to February, 1971 inclusive as evidenced by the certificate issued by Judge Pichay, Judicial Superintendent, Dept. of Justice Annex 'A', Item No. 2 thereof;

"4. That as incumbent Judge of Branch VI, Court of First Instance of Laguna and San Pablo and knowing fully well that he has never performed his official duties or discharged the duties appertaining to his office, he has collected and was paid his salaries from July to December, 1970 and from January to February 1971 as evidenced by the certificate issued by the cashier Mrs. Santos of the Department of Justice hereto attached as Annex 'C' and the certificate of Mr. Pichay Annex 'A', last paragraph thereof, aggravated by his repeated failure to submit the certificate of service in flagrant violation of section 5 of the Judiciary Act of 1948 as amended which provides as follows:

'x x x District judges, judges of City Courts, and municipal Judges shall certify on their application for leave, and upon salary vouchers presented by them for payment, or upon the payrolls upon which their salaries are paid, that all special proceedings, applications, petitions, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of ninety days or more have been determined and decided on or before the date of making the certificate and x x x no salary shall be paid without such certificate' (Underscoring supplied).

"5. That his deliberate failure to submit the monthly reports from July to December, 1970 and from January, 1971 to February, 1971 stating therein the number of hours of session that the Court holds daily, the accomplishments of the Court constitutes a clear violation of Section 55 and 58 of the Judiciary Act of 1948,

as amend-ed.

"6. That by his deliberate viola-tion of his Oath of Office as a Dis-trict Judge of the Court of First Instance of Laguna and San Pablo, Branch VI he has manifested such moral bankruptcy as to deny his fitness to perform or discharge official duties in the administration of justice.

"7. That on June 29, 1970, respondent Judge wrote to the Honorable Secretary of Justice informing him that he was entering upon the performance of his duties, which letter of his reads in full:

'I have the honor to inform you that I am entering upon the performance of the duties of the office of Judge of the Court of First Instance of La-guna and San Pablo City (Branch VI) today, June 29, 1970.'

"That such actuation of deliberately telling a deliberate falsehood aggra-vates his moral bankruptcy incompatible to the requirements of the highest de-gree of honesty, integrity and good moral character appertaining to hold-ing the position of Judge in the admi-nistration of justice."

Upon being so required, in due time, respondent filed an answer alleging pertinently that:

"THE FACTS

"Respondent took his oath as Judge of the Court of First Instance of La-guna and San Pablo City with station at Calamba on June 29, 1970. The court, being one of the 112 newly created CFI branches, had to be orga-nized from scratch. After consulta-tions with the officials of the province of Laguna, the municipality of Calamba and the Department of Just-ice, respondent decided to accept the offer of the Calamba Municipal Government to supply the space for the courtroom and offices of the court; to utilize the financial as-sistance promised by the Laguna pro-vincial government for the purchase of the necessary supplies and mate-rials; and to rely on the national government for the equipment needed by the court (Under Section 190 of the Revised Administrative Code, all these items must be furnished by the provincial government. The provincial officials of Laguna, however, informed the respondent that the province was not in a position to do so).

"As to the space requirements of the court, the Municipal Mayor of Ca-lamba assured the respondent that the court could be accommodated in the west wing of the Calamba municipal building as soon as the office of the municipal treasurer and his personnel are transferred to another location. When the projected transfer of the municipal treasurer's office was about to be effected, the treasurer and several municipal councilors objected. The municipal mayor then requested the respondent to look over some of the office spaces for rent in Calamba, with the commitment that the municipal government will shoulder the payment of the rentals. Respondent's first choice was the second floor of the Republic Bank branch in Calamba, but the nego-tiations failed when the owner of the building refused to reduce the rent to P300 a month. The next suitable space selected by respondent was the second floor of the Laguna Development Bank. After a month's negotiations, the municipality finally signed a lease agreement with the owner on Oc-tober 26, 1970. Another month passed before the municipal government could release the amount necessary for the improvements to convert the space that was rented, which was a big hall with-out partitions, into a courtroom and offices for the personnel of the court and for the assistant provincial fis-cal. Thereafter, upon respondent's representations, the provincial govern-ment appropriated the amount of P5,000 for the purchase of the supplies and materials needed by the court. Early in December, 1970 respondent also placed his order for the necessary equipment with the Property Officer of the Department of Justice but, unfortunately, the appropriation for the equipment of courts of first in-stance was released only on December 23, 1970 and the procurement of the equipment chargeable against this allotment is still under way (please see enclosed certification of the Financial Officer of the De-partment of Justice marked Annex 'A').

"When respondent realized that it would be sometime before he could actually preside over his court, he applied for an extended leave (during the 16 years he had worked in the De-partment of Justice, respondent had, due to pressure of duties, never gone on extended leave, resulting in his forfeiting all the leave benefits he

had earned beyond the maximum ten months allowed by the law). The Secretary of Justice, however, prevailed upon respondent to forego his leave and instead to assist him, without being extended a formal detail, whenever respondent was not busy attending to the needs of his court.

"Charges Have No Basis -

"Complainant has charged respondent with dishonesty, violation of his oath of office, grave incompetence and violation of Sections 5, 55 and 58 of the Judiciary Act.

"It is respectfully submitted that -

"A. Respondent's inability to perform his judicial duties under the circumstances mentioned above does not constitute incompetence. Respondent was, like every lawyer who gets his first appointment to the bench, eager to assume his judicial duties and rid himself of the stigma of being 'a judge without a sala', but forces and circumstances beyond his control prevented him from discharging his judicial duties.

"B. Respondent's collection of salaries as judge does not constitute dishonesty because aside from the time, effort and money he spent in organizing the CFI at Calamba, he worked in the Department of Justice (please see enclosed certification of Undersecretary of Justice Guillermo S. Santos marked Annex 'B'). Indeed, even if respondent did no more than exert efforts to organize his court, he could, as other judges have done, have collected his salaries as judge without being guilty of dishonesty.

"Incidentally, when respondent took his oath as CFI judge which position then carried a salary of P19,000 per annum, he automatically ceased to be Chief of the Technical Staff of the Department of Justice and Member of the Board of Pardons and Parole, positions from which he was receiving P16,200 and P8,000 per annum, respectively. Also, in anticipation of the judicial duties which he was about to assume, respondent took a leave of absence from his professorial lecturer's duties in the U.P. College of Law where he was receiving approximately P600 a month.

"C. Sections 5, 55 and 58 of the Judiciary Act and Circular No. 10 dated February 6, 1952 of the Department of Justice are not applicable to a Judge not actually discharging his judicial duties.

"The Department of Justice has never required judges who have not actually started to perform their judicial duties to comply with the abovementioned statutory provisions and circular (please see enclosed certification of Judge Eulalio D. Pichay, Judicial Superintendent, marked Annex 'C').

"Moreover, a reading of these sections and circular makes evident the folly of requiring a judge who has not entered into the performance of his judicial duties to comply with them. Taking Section 5, how could a judge who has not started to discharge his judicial duties certify that 'all special proceedings, applications, petitions, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of ninety days or more have been determined and decided on or before the date of making the certificate.' And how could such a judge hold court in his place of permanent station as required by Section 55; observe the hours of daily sessions of the court as prescribed by Section 58; and render the reports required by Circular No. 10 when his court is not yet in physical existence. Clearly, therefore, Sections 5, 55 and 58 of the Judiciary Act and Circular No. 10 cannot apply to such a judge."

In view of the nature of the allegations of complainant and respondent in their respective complaint and answer and considering, in the light thereof, that the material facts are more or less undisputed, the Court feels that this case can be disposed of without any further proceeding.

After mature study and deliberation, the Court is convinced that the complaint must be dismissed. To begin with, We cannot discern any tinge of dishonesty in the actuations of the respondent complained of. As We see it, the situation is not exactly as complainant has attempted to portray it. Complainant's theory is that respondent

collected or received salaries as judge when in fact he has never acted as such, since the date he took his oath up to the filing of the complaint. In the sense that respondent has not yet performed any judicial function, it may be admitted that respondent has not really performed the duties of judge. What is lost sight of, however, is that after taking his oath and formally assuming his position as judge, respondent had a perfect right to earn the salary of a judge even in the extreme supposition that he did not perform any judicial function for he could, while preparing himself for his new job or for any good reason, take a leave, as in fact, he had planned to do, were it not for the request of the Secretary of Justice for him to forego the idea and, instead, help the Department in whatever way possible which would not, it must be presumed, impair his position as a judge. This is more so, when, as in this case, the government offices or officers in duty bound to furnish him the necessary place and facilities for his court and the performance of his functions have failed to provide him therewith without any fault on his part. That respondent took it upon himself to personally work for early action on the part of the corresponding officials in this direction and, in his spare time, made himself available to the Department of Justice to assist the Secretary, what with his vast experience, having worked therein for sixteen years, is, far from being dishonesty, to his credit. In the circumstances, it was certainly not improper that he rendered some kind of service to the government, since he was receiving salaries, while being unable to perform his regular duties as judge without any fault on his part. As to whether or not in doing so he placed in jeopardy the independence of the judiciary and failed to act according to the correct norm of conduct which a judge should observe vis-a-vis service to the other departments of the government will be discussed anon. At this juncture, the only point we settle is that complainant's theory of dishonesty can-not hold water.

Admittedly respondent has not prepared and submitted any of the reports of accomplishments and status of cases in his sala which are usually required of judges under existing laws as well as the corresponding circulars of the Department of Justice. The reason is simple. He has not yet started performing any judicial functions. None of those laws and circulars apply to him, for all of them contemplate judges who are actually holding trials and hearings and making decisions and orders. On the other hand, respondent could not be blamed for taking his oath as he did, for he had a valid confirmed appointment in his favor. In other words, he simply made himself available for the purposes for which he was appointed. That he could not actually hold office in the court to which he was appointed was not of his making. The other officials in charge of providing him therewith seem to have been caught unprepared and have not had enough time to have it ready. Conceivably, under the law, with the permission of this Court, respondent could have been assigned to another court pending all these preparations, but that is something within the initiative and control of the Secretary of Justice and not of the respondent.

Of course, none of these is to be taken as meaning that this Court looks with favor at the practice of long standing, to be sure, of judges being detailed in the Department of Justice to assist the Secretary even if it were only in connection with his work of exercising administrative authority over the courts. The line between what a judge may do and what he may not do in collaborating or working with other offices or officers under the other great departments of the government must always be kept clear and jealously observed, lest the principle of separation of powers on which our government rests by mandate of the people thru the Constitution be gradually eroded by practices purportedly motivated by good intentions in the interest of the public service. The fundamental advantages and the necessity of the independence of said three departments from each other, limited only by the specific constitutional precepts on check and balance between and among them, have long been acknowledged as more paramount than the serving of any temporary or passing governmental conveniences or exigencies. It is thus of grave importance to the judiciary under our present constitutional scheme of government that no judge of even the lowest court in this Republic should place himself in a position where his actuations on matters submitted to him for action or resolution would be subject to review and prior approval and, worst still, reversal, before they can have legal effect, by any authority other than the Court of Appeals or this Supreme

Courts, as the case may be. Needless to say, this Court feels very strongly that it is best that this practice is discontinued.

WHEREFORE, the herein administrative complaint is hereby dismissed. Let a copy of this resolution be furnished the Secretary of Justice.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, and Villamor, JJ., concur.

Fernando, J., concurs fully and in addition submits a brief separate opinion.

Ruiz Castro and Teehankee, JJ., took no part.

Makasiar, J., concurs with the opinion of J. Fernando.

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CONCURRING OPINION

FERNANDO, J.:

I join the rest of my brethren in yielding concurrence to the ably-written opinion of Justice Barredo. Respondent Judge clearly should be exculpated of the charge filed against him. What is more the opinion of the Court possesses the merit of setting forth in forthright and unequivocal language the disapproval of the practice hitherto followed of having members of the judiciary perform non-judicial functions. There is no doubt to my mind of its repugnancy to the fundamental concept of separation of powers. It is to that aspect of the question as well as what, to my mind, is the doubtful constitutionality of allowing the Secretary of Justice to exercise supervisory authority over lower court judges that this brief concurring opinion addresses itself.

1. The doctrine of separation of powers, a basic concept under our Constitution,[1] embodies the principle of a tripartite division of governmental authority entrusted to Congress, the President, and the Supreme Court as well as such inferior courts as may be created by law. Three departments of government are thus provided for, the legislative vested with the lawmaking function, the executive with the enforcement of what has been thus enacted, and the judiciary with the administration of justice, deciding cases according to law.[2] The reason for such a doctrine is to assure liberty, no one branch being enabled to arrogate unto itself the whole power to govern and thus in a position to impose its un-fettered will. If it were so, the rights of the individual could with impunity be disregarded; he could be placed at its mercy. The three departments are coordinate and coequal, each having exclusive cognizance of matters within its jurisdiction and supreme in its own sphere. That is to guarantee independence, no interference being allowed on matters left to the exclusive concern of each. Much less is control by only one of the three departments of any or both of the others permissible.[3]

It is to be admitted that the realities of government preclude the independence of each of the departments from the other being absolute. This is so especially as between the legislative and executive departments. What the former enacts, the latter implements. To paraphrase Roosevelt, the letter of the Constitution requires a separation, but the impulse of a common purpose compels cooperation. It could be carried to the extent of such powers being blended, without undue danger to liberty as proved by countries having the parliamentary forms of government. This is especially so in England and in Switzerland, where the tradition of freedom possesses strength and durability. It does not admit of doubt, however, that of the three branches, the judiciary is entrusted with a

function the most sensitive and delicate. It passes upon controversies and disputes not only between citizens but between citizens and government, the limits of whose authority must be respected. In a system like ours, every exercise of government competence, whether coming from the President or from the lowest official, may be challenged in court in an appropriate legal proceeding. This is an aspect of the theory of checks and balance likewise provided for in the Constitution.[4] It is thus indispensable that judicial independence should, by all means, be made secure. Not only that. The feeling that judges are not in any way subject to the influence of the executive and legislative branches must be pervasive; otherwise, there would be loss of confidence in the administration of justice. With that gone, the rule of law is placed in dire peril.

Nor is the force, to my mind, of the preceding observation blunted by the recognition that there could be no precise delineation of the respective competence allotted to the legislative, the executive and the judicial departments under the Constitution. Necessarily, overlapping and interlacing of functions could not entirely be avoided. For as observed by Justice Holmes in his famous dissent in a case of Philippine origin:[5] "The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other. * * * When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on." [6] Further on, he added: "It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments, were it ever so desirable to do so, which I am far from believing that it is, or that the Constitution requires." [7]

2. While the doctrine of separation of powers is a relative theory not to be enforced with pedantic rigor, the practical demands of government precluding its doctrinaire application, it cannot justify a member of the judiciary being required to assume a position or perform a duty non-judicial in character. That is implicit in the principle. Otherwise there is a plain departure from its command. The essence of the trust reposed in him is to decide. Only a higher court, as was emphasized by Justice Barredo, can pass on his actuation. He is not a subordinate of an executive or legislative official, however eminent. It is indispensable that there be no exception to the rigidity of such a norm if he is, as expected, to be confined to the task of adjudication. Fidelity to his sworn responsibility no less than the maintenance of respect for the judiciary can be satisfied with nothing less.

It is apposite to quote from an opinion of Justice Cardozo, as Chief Judge of the New York Court of Appeals,[8] when that Court nullified a section of a New York statute that would vest in a justice of its Supreme Court the power to investigate at the instance of its governor. His opinion explained why: "He is made the delegate of the Governor in aid of an executive act, the removal of a public officer. * * * At the word of command he is to give over the work of judging, and set himself to other work, the work of probing and advising. His findings when made will have none of the authority of a judgment. To borrow Bacon's phrase, they will not 'give the rule or sentence.' They will not be preliminary or ancillary to any rule or sentence to be pronounced by the judiciary in any of its branches. They will be mere advice to the Governor, who may adopt them, or modify them, or reject them altogether. From the beginnings of our history, the principle has been enforced that there is no inherent power in Executive or Legislature to charge the judiciary with administrative functions except when reasonably incidental to the fulfillment of judicial duties. * * * The exigencies of government have made it necessary to relax a merely doctrinaire adherence to a principle so flexible and practical, so largely a matter of sensible approximation, as that of the separation of powers. Elasticity has not meant that what is of the essence of the judicial function may be destroyed by turning the power to decide into a pallid opportunity to consult and recommend * * *." [9]

Our holding today has been foreshadowed in *Noblejas v. Teehankee*, [10] a 1968 decision. Justice J.B.L. Reyes,

who penned the opinion, first referred to the above Richardson decision as well as to Federal Radio Commission v. General Electric Co.[11] It went on to state: "In this spirit, it has been held that the Supreme Court of the Philippines and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions; and a law requiring the Supreme Court to arbitrate disputes between public utilities was pronounced void in Manila Electric Co. vs. Pasay Transportation Co. (57 Phil. 600)."[12] It is clear from the above Noblejas decision that even prior to the Constitution, there was a commitment to the principle that a member of the judiciary cannot be asked to discharge non-judicial functions. For in Manila Electric Co. v. Pasay Transportation Co.,[13] mentioned therein, Justice Malcolm, speaking for this Court, was quite explicit. Thus: "The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions."[14]

3. Nonetheless, as now decided, respondent Judge Macaraig should not be held in any wise accountable. No taint of bad faith can be attached to his conduct. What he was required to do was in accordance with the practice heretofore followed by the Department of Justice. He is, under the statute in force, under the administrative supervision of its head. Nor can the good faith of Secretary of Justice Abad Santos be impugned. What was done by him was likewise in accordance with what previous secretaries of justice were accustomed to do. The root of the evil then is the statutory authority of the Department of Justice over courts of first instance and other inferior courts.[15] While a distinction could be made between the performance of judicial functions which in no way could be interfered with by the Department and the task of administration which is executive in character, still the conferment of such competence to a department head, an alter ego of the President, is, to my mind, not only unwise but of doubtful constitutionality. For in issuing administrative rules and regulations over matters deemed non-judicial, they may trench upon the discretion of judges which should be exercised according to their conscience alone. What is more, the influence that the Secretary has over them is magnified. It is already unavoidable under our scheme of government that they court his goodwill; their promotion may at times depend on it. With this grant of authority, the assertion of independence becomes even more difficult. It is thus objectionable in principle and pernicious in operation. That certainly is not the way to reduce to the minimum any participation of the executive in judicial affairs arising from the power to appoint. As it is, even when the government as the adverse party in criminal cases, tax suits, and other litigations is in the right, a favorable decision from the lower courts could be looked upon with suspicion. The judiciary must not only be independent; it must appear to be so.

The presence in the statute books of such power of administrative oversight then, is, to my mind, anomalous. More specifically, were it not for such power granted the department head, respondent Judge in this case could not have been called upon to assist the Secretary of Justice. Considering that the Constitutional Convention is about to meet, it is to be hoped that it be made clear that the judiciary is to be totally freed from any supervisory authority of an executive department.

[1] Cf. "The separation of powers is a fundamental principle in our system of government." Angara v. Electoral Commission, 63 Phil. 139, 156 (1936) per Laurel, J.

[2] Law covers not only statutes but likewise, treaties, executive orders to implement statutes, and ordinances, municipal corporations being delegated with the competence of legislating over local affairs.

[3] Cf. Luzon Stevedoring Corp. v. Social Security Commission, L-26175, July 31, 1970, 34 SCRA 178.

[4] As pointed out by Justice Laurel in the previously cited Angara decision, the President may approve or

disapprove legislation, his veto however being subject to be overridden; he may convene the legislative body in special sessions; Congress may confirm or reject Presidential appointments; it may apportion the jurisdiction of the courts and determine what funds to appropriate for their support; it may impeach certain officials; and lastly as far as the judiciary is concerned, it has the power of judicial review enabling it to annul executive or legislative acts.

[5] *Springer v. Government of the Philippine Islands*, 277 US 189 (1928).

[6] *Ibid*, pp. 209-210.

[7] *Ibid*, p. 211.

[8] *In re Richardson*, 160 NE 655 (1928).

[9] Cf. *Hayburn's Case*, 2 Dall. 409 (1792); *United States v. Ferreira*, 13 How. 40 (1851); *Gordon v. United States*, 117 US 697 (1865); *Matter of Sanborn*, 148 US 222 (1893); *Interstate Commerce Commission v. Brimson*, 154 US 447 (1894); *Muskrat v. United States*, 219 US 346 (1911); *Tutun v. United States*, 270 US 738 (1926); *Liberty Warehouse Co. v. Grannis*, 273 US 70 (1927).

[10] L-28790, April 29, 1968, 23 SCRA 405.

[11] 281 US 469 (1930).

[12] *Noblejas v. Teehankee*, L-28790, April 29, 1968, 23 SCRA 405, 409-410.

[13] 57 Phil. 600 (1932).

[14] *Ibid*, p. 605.

[15] Section 83, Administrative Code of 1917, as amended, reads as follows: "Bureaus and offices under the Department of Justice. - The Department of Justice shall have executive supervision over the Office of the Solicitor General, the Courts of First Instance and the Inferior Courts, the Public Service Commission, the Bureau of Prisons, the General Land Registration Office, the Court of Industrial Relations, the National Bureau of Investigation, the Bureau of Immigration, the Board of Pardons and Parole, the Deportation Board and the Code Commission. The Office of the Government Corporate Counsel shall be merged with the Office of the Solicitor General. * * *"

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