

HERMINIO A. ASTORGA, IN HIS CAPACITY AS VICE-MAYOR OF MANILA, PETITIONER, VS. ANTONIO J. VILLEGAS, IN HIS CAPACITY AS MAYOR OF MANILA, THE HON., THE EXECUTIVE SECRETARY, ABELARD...

G.R. No. L-23475. April 30, 1974

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

The present controversy revolves around the passage of House Bill No. 9266, which became Republic Act 4065, "An Act Defining the Powers, Rights and Duties of the Vice-Mayor of the City of Manila, Further Amending for the Purpose Sections Ten and Eleven of Republic Act Numbered Four Hundred Nine, as Amended, Otherwise Known as the Revised Charter of the City of Manila."

The facts as set forth in the pleadings appear undisputed:

On March 30, 1964 House Bill No. 9266, a bill of local application, was filed in the House of Representatives. It was there passed on third reading without amendments on April 21, 1964. Forthwith the bill was sent to the Senate for its concurrence. It was referred to the Senate Committee on Provinces and Municipal Governments and Cities headed by Senator Gerardo M. Roxas. The committee favorably recommended approval with a minor amendment, suggested by Senator Roxas, that instead of the City Engineer it be the President Protempore of the Municipal Board who should succeed the Vice-Mayor in case of the latter's incapacity to act as Mayor.

When the bill was discussed on the floor of the Senate on second reading on May 20, 1964, substantial amendments to Section 1[1] were introduced by Senator Arturo Tolentino. Those amendments were approved in toto by the Senate. The amendment recommended by Senator Roxas does not appear in the journal of the Senate proceedings as having been acted upon.

On May 21, 1964 the Secretary of the Senate sent a letter to the House of Representatives that House Bill No. 9266 had been passed by the Senate on May 20, 1964 "with amendments." Attached to the letter was a certification of the amendment, which was the one recommended by Senator Roxas and not the Tolentino amendments which were the ones actually approved by the Senate. The House of Representatives thereafter signified its approval of House Bill No. 9266 as sent back to it, and copies thereof were caused to be printed. The printed copies were then certified and attested by the Secretary of the House of Representatives, the Speaker of the House of Representatives, the Secretary of the Senate and the Senate President. On June 16, 1964 the Secretary of the House transmitted four printed copies of the bill to the President of the Philippines, who affixed his signatures thereto by way of approval on June 18, 1964. The bill thereupon became Republic Act No. 4065.

The furor over the Act which ensued as a result of the public denunciation mounted by respondent City Mayor drew immediate reaction from Senator Tolentino, who on July 5, 1964 issued a press statement that the enrolled copy of House Bill No. 9266 signed into law by the President of the Philippines was a wrong version of the bill

actually passed by the Senate because it did not embody the amendments introduced by him and approved on the Senate floor. As a consequence the Senate President, through the Secretary of the Senate, addressed a letter dated July 11, 1964 to the President of the Philippines, explaining that the enrolled copy of House Bill No. 9266 signed by the secretaries of both Houses as well as by the presiding-officers thereof was not the bill duly approved by Congress and that he considered his signature on the enrolled bill as invalid and of no effect. A subsequent letter dated July 21, 1964 made the further clarification that the invalidation by the Senate President of his signature meant that the bill on which his signature appeared had never been approved by the Senate and therefore the fact that he and the Senate Secretary had signed it did not make the bill a valid enactment.

On July 31, 1964 the President of the Philippines sent a message to the presiding officers of both Houses of Congress informing them that in view of the circumstances he was officially withdrawing his signature on House Bill No. 9266 (which had been returned to the Senate the previous July 3), adding that "it would be untenable and against public policy to convert into law what was not actually approved by the two Houses of Congress."

Upon the foregoing facts the Mayor of Manila, Antonio Villegas, issued circulars to the department heads and chiefs of offices of the city government as well as to the owners, operators and/or managers of business establishments in Manila to disregard the provisions of Republic Act 4065. He likewise issued an order to the Chief of Police to recall five members of the city police force who had been assigned to the Vice-Mayor presumably under authority of Republic Act 4065.

Reacting to these steps taken by Mayor Villegas, the then Vice-Mayor, Herminio A. Astorga, filed a petition with this Court on September 7, 1964 for "Mandamus, Injunction and/or Prohibition with Preliminary Mandatory and Prohibitory Injunction" to compel respondents Mayor of Manila, the Executive Secretary, the Commissioner of Civil Service, the Manila Chief of Police, the Manila City Treasurer and the members of the municipal board to comply with the provisions of Republic Act 4065.

Respondents' position is that the so-called Republic Act 4065 never became law since it was not the bill actually passed by the Senate, and that the entries in the journal of that body and not the enrolled bill itself should be decisive in the resolution of the issue.

On April 28, 1965, upon motion of respondent Mayor, who was then going abroad on an official trip, this Court issued a restraining order, without bond, "enjoining the petitioner Vice-Mayor Herminio Astorga from exercising any of the powers of an Acting Mayor purportedly conferred upon the Vice-Mayor of Manila under the so-called Republic Act 4065 and not otherwise conferred upon said Vice-Mayor under any other law until further orders from this Court."

The original petitioner, Herminio A. Astorga, has since been succeeded by others as Vice-Mayor of Manila. Attorneys Fortunato de Leon and Antonio Raquiza, with previous leave-of this Court, appeared as amici curiae, and have filed extensive and highly enlightening memoranda on the issues raised by the parties.

Lengthy arguments, supported by copious citations of authorities, principally decisions of United States Federal and State Courts, have been submitted on the question of whether the "enrolled bill" doctrine or the "journal entry" rule should be adhered to in this jurisdiction. A similar question came up before this Court and elicited differing opinions in the case of *Mabanag, et al vs. Lopez Vito, et al.* (March 5, 1947,) 78 Phil, Reports 1. While the majority of the Court in that case applied the "enrolled bill" doctrine, it cannot be truly said that the question has been laid to rest and that the decision therein constitutes a binding precedent.

The issue in that case was whether or not a resolution of both Houses of Congress proposing an amendment to the (1935) Constitution to be appended as an ordinance thereto (the so-called parity rights provision) had been passed

by "a vote of three-fourths of all the members of the Senate and of the House of Representatives" pursuant to Article XV of the Constitution.

The main opinion, delivered by Justice Pedro Tuason and concurred in by Justices Manuel V. Moran, Guillermo F. Pablo and Jose M. Hontiveros, held that the case involved a political question which was not within the province of the judiciary in view of the principle of separation of powers in our government. The "enrolled bill" theory was relied upon merely to bolster the ruling on the jurisdictional question, the reasoning being that "if a political question conclusively binds the judges out of respect to the political departments, a duly certified law or resolution also binds the judges under the 'enrolled bill rule' born of that respect,"

Justice Cesar Bengzon wrote a separate opinion, concurred in by Justice Sabino Padilla, holding that the Court had jurisdiction to resolve the question presented, and affirming categorically that "the enrolled copy of the resolution and the legislative journals are conclusive upon us," specifically in view of Section 313 of Act 190, as amended by Act No. 2210. This provision in the Rules of Evidence in the old Code of Civil Procedure appears indeed to be the only statutory basis on which the "enrolled bill" theory rests. It reads:

"The proceedings of the Philippine Commission, or of any legislative body that may be provided for in the Philippine Islands, or of Congress (may be proved) by the journals of those bodies or of either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or secretary, printed by their order; provided, that in the case of acts of the Philippine-Commission-or the Philippine Legislature, when there is in existence a copy signed by the presiding officers and secretaries of said bodies, it shall be conclusive proof of the provisions of such acts and other due enactment thereof."

Congress devised its own system of authenticating bills duly approved by both Houses, namely, by the signatures of their respective presiding officers and secretaries on the printed copy of the approved bill.[2] It has been held that this procedure is merely a mode of authentication[3] to signify to the Chief Executive that the bill being presented to him has been duly approved by Congress and is ready for his approval or rejection.[4] The function of an attestation is therefore not of approval, because a bill is considered approved after it has passed both Houses. Even where such attestation is provided for in the Constitution authorities are divided as to whether or not the signatures are mandatory such that their absence would render the statute invalid.[5] The affirmative view, it is pointed out, would be in effect giving the presiding officers the power of veto, which in itself is a strong argument to the contrary.[6] There is less reason to make the attestation a requisite for the validity of a bill where the Constitution does not even provide that the presiding officers should sign the bill before it is submitted to the President.

In one case in the United States, where the (State) Constitution required the presiding officers to sign a bill and this provision was deemed mandatory, the duly authenticated enrolled bill was considered as conclusive proof of its due enactment.[7] Another case however under the same circumstances, held that the enrolled bill was not conclusive evidence.[8] But in the case of *Field vs. Clark*,[9] the U.S. Supreme Court held that the signatures of the presiding officers on a bill, although not required by the Constitution, is conclusive evidence of its passage. The authorities in the United States are thus not unanimous on this point.

The rationale of the enrolled bill theory is set forth in the said case of *Field vs. Clark* as follows:

"The signing by the Speaker of the House of Representatives, and, by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the President, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, and is deposited in the public archives,

its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled Act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the Act, so authenticated, is in conformity with the Constitution."

It may be noted that the enrolled bill theory is based mainly on "the respect due to coequal and independent departments," which requires the judicial department "to accept, as having passed Congress, all bills authenticated in the manner stated." Thus it has also been stated in other cases that if the attestation is absent and the same is not required for the validity of a statute, the courts may resort to the journals and other records of Congress for proof of its due enactment. This was the logical conclusion reached in a number of decisions,[10] although they are silent as to whether the journals may still be resorted to if the attestation of the presiding officers is present.

The (1935) Constitution is silent as to what shall constitute proof of due enactment of a bill. It does not require the presiding officers to certify to the same. But the said Constitution does contain the following provisions.

Sec. 10 (4). "Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in its judgment require secrecy; and the yeas and nays on any question shall, at the request of one-fifth of the Members present, be entered in the Journal."

Sec. 21 (2). "No bill shall be passed by either House unless it shall have been printed and copies thereof in its final form furnished its Members at least three calendar days prior to its passage, except when the President shall have certified to the necessity of its immediate enactment. Upon the last reading of a bill no amendment thereof shall be allowed, and the question upon its passage shall be taken immediately thereafter, and the yeas and nays entered on the Journal."

Petitioner's argument that the attestation of presiding officers of Congress is conclusive proof of bill's due enactment, required, it is said, by the respect due to a co-equal department of the government,[11] is neutralized in this case by the fact that the Senate President declared his signature on the bill to be invalid and issued a subsequent clarification that the invalidation of his signature meant that the bill he had signed had never been approved by the Senate. Obviously this declaration should be accorded even greater respect than the attestation it invalidated which it did for a reason that is undisputed in fact and indisputable in logic.

As far as Congress itself is concerned, there is nothing sacrosanct in the certification made by the presiding officers. It is merely a mode of authentication. The law-making process in Congress ends when the bill is approved by both Houses, and the certification does not add to the validity of the bill or cure any defect already present upon its passage. In other words it is the approval by Congress and not the signatures of the presiding officers that is essential. Thus the (1935) Constitution says that "[e]very bill passed by the Congress shall, before it becomes law, be presented to the President." [12] In *Brown vs. Morris*, supra the Supreme Court of Missouri, interpreting a similar provision in the State Constitution, said that the same "makes it clear that the indispensable step is the final passage and it follows that if a bill, otherwise fully enacted as a law, is not attested by the presiding officer, other proof that it has 'passed both houses' will satisfy the constitutional requirement."

Petitioner agrees that the attestation in the bill is not mandatory but argues that the disclaimer thereof by the Senate President, granting it to have been validly made, would only mean that there was no attestation at all, but would not affect the validity of the statute. Hence, it is pointed out, Republic Act No. 4065 would remain valid

and binding. This argument begs the issue. It would limit the court's inquiry to the presence or absence of the attestation and to the effect of its absence upon the validity of the statute. The inquiry, however, goes farther. Absent such attestation as a result of the disclaimer, and consequently there being no enrolled bill to speak of, what evidence is there to determine whether or not the bill had been duly enacted? In such a case the entries in the journal should be consulted.

The journal of the proceedings of each House of Congress is no ordinary record. The Constitution requires it. While it is true that the journal is not authenticated and is subject to the risks of misprinting and other errors, the point is irrelevant in this case. This Court is merely asked to inquire whether the text of House Bill No. 9266 signed by the Chief Executive was the same text passed by both Houses of Congress. Under the specific facts and circumstances of this case, this Court can do this and resort to the Senate journal for that purpose. The journal discloses that substantial and lengthy amendments were introduced on the floor and approved by the Senate but were not incorporated in the printed text sent to the President and signed by him. This Court is not asked to incorporate such amendments into the alleged law, which admittedly is a risky undertaking,[13] but to declare that the bill was not duly enacted and therefore did not become law. This We do, as indeed both the President of the Senate and the Chief Executive did, when they withdrew their signatures therein. In the face of the manifest error committed and subsequently rectified by the President of the Senate and by the Chief Executive, for this Court to perpetuate that error by disregarding such rectification and holding that the erroneous bill has become law would be to sacrifice truth to fiction and bring about mischievous consequences not intended by the law-making body.

In view of the foregoing considerations, the petition is denied and the so-called Republic Act No. 4065 entitled "AN ACT DEFINING THE POWERS, RIGHTS AND DUTIES OF THE VICE-MAYOR OF THE CITY OF MANILA, FURTHER AMENDING FOR THE PURPOSE SECTIONS TEN AND ELEVEN OF REPUBLIC ACT NUMBERED FOUR HUNDRED NINE, AS AMENDED, OTHERWISE KNOWN AS THE REVISED CHARTER OF THE CITY OF MANILA" is declared not to have been duly enacted and therefore did not become law. The temporary restraining order dated April 28, 1965 is hereby made permanent. No pronouncement as to costs.

Castro, Teehankee, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Zaldivar, Fernando, and Barredo, JJ., took no part.

Makasiar, J., on official leave.

[1] Amending Section 10 of R.A. No. 409 defining the powers and duties of the Vice-Mayor.

[2] See Rules of the House of Representatives, Rules II(d) and IV(j) and Rules of the Senate, Sections 3(e) and 6(h).

[3] *Brown vs. Morris*, 290 SW 2d 160, 164.

[4] *Taylor vs. Wilson*, 22 NW 119, 120.

[5] See annotations in 95 ALR 273.

[6] *Brown vs. Morris*, *supra*, at pp. 164-165.

[7] *Hammond vs. Lynch*, 151 NW 81, 88

[8] *Lynch vs. Hutchinson*, 76 NE 370.

[9] 143 U.S. 294, 303; 36 L. ed. 294

[10] Gray vs. Taylor, 113, 588, 591 affirmed in 227 U.S. 51, 57. 57 L. ed. 413, 416; Pelt vs. Payne. 30 SW 426, 427.

[11] Field vs. Clark, supra, at p. 303; Mabanag vs. Lopez Vito, 78 Phil. 1. 13; Morales vs. Subido, G.R. No. L-29658, Feb. 27, 1969, 27 SCRA 131, 134.

[12] Article VI, Section 20(1). The 1973 Constitution similarly provides in Article VIII, Section 20(1) that "(E)very bill passed by the National Assembly shall, before it becomes a law, be presented to the Prime Minister x x x."

[13] See, for example, the decisions of this Court in Casco Phil. Chemical Co. vs. Gimenez, L-17931, Feb. 28, 1963, 7 SCRA 347 and Morales vs. Subido, supra.

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