

EUGENE A. TAN, SILVESTRE J. ACEJAS AND ROGELIO V. FERNANDEZ, ON THEIR BEHALF AND ON BEHALF OF THE PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. DIOSDADO P. MACAPAGAL, ON HIS BEHALF...

G.R. No. L-34161. February 29, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

A five-page petition filed on October 6, 1971 by Eugene A. Tan, Silvestre J. Acejas and Rogelio V. Fernandez, respectively, of Roxas City, Romblon and Davao City, for declaratory relief as taxpayers, but purportedly suing on behalf of themselves and the Filipino people, in assailing the validity of the Laurel-Leido Resolution.[1] dealing with the range of the authority of the 1971 Constitutional Convention, would have this Court declare that it is "without power, under Section 1, Article XV of the Constitution and Republic Act 6132, to consider, discuss and adopt proposals which seek to revise the present Constitution through the adoption of a form of government other than the form now outlined in the present Constitution [the Convention being] merely empowered to propose improvements to the present Constitution without altering the general plan laid down therein." [2] Such a plea of the utmost seriousness was sought to be compressed in a five-page pleading. It is understandable, therefore, why the petition could hardly be characterized as possessed of merit. Accordingly, on October 8, 1971, this Court issued a resolution dismissing it. Then came on the last day of that month a printed thirty-two page motion for reconsideration. It is evident that petitioners took some pains this time, although the main reliance seems to be on a secondary authority, American Jurisprudence.[3] The show of diligence is impressive but the persuasive quality is something else. A perusal thereof yields the conclusion that petitioners are oblivious of the authoritative precedents in this juris-diction. The approach is not distinguished by its conformity with the law as it stands. In this sphere as elsewhere, new cults may be eroding ancient faiths. Considering, however, the compulsion of the fundamental principle of separation of powers, this Court cannot exercise the competence petitioners would erroneously assume it possesses, even assuming that they have the requisite standing, which is the first question to be faced.

1. What calls for prior determination is whether or not petitioners had the requisite standing to seek a declaration of the alleged nullity of a resolution of the Constitutional Convention.[4] In the categorical and succinct language of Justice Laurel: "The unchallenged rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained or will sustain, direct injury as a result of its enforcement." [5] There has been a relaxation of this rule. So it was announced by the present Chief Justice in Pascual vs. The Secretary of Public Works.[6] Thus: "Again, it is well settled that the validity of a statute may be contested only by one who will sustain a direct injury, in consequence of its enforcement. Yet, there are many decisions nullifying, at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that the 'expenditure of public funds, by an officer of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds,' which may be enjoined at the request of a

taxpayer." [7] Moreover, where a constitutional question is raised, a Senator has usually been considered as possessed of the requisite personality to bring a suit. Thus in *Mabanag vs. Lopez Vito*, [8] it was a member of the Senate who was heard by this Court in a suit for prohibition to prevent the enforcement of the congressional resolution proposing the parity rights amendment. [9] Likewise, in the latest case in point, *Tolentino vs. Commission on Elections*, it was a Senator who brought the action challenging the validity of Organic Resolution No. 1 of the 1971 Constitutional Convention. He was quite successful too. Petitioners in the present case cannot be heard to assert that they do qualify under such a category.

Moreover, as far as a taxpayer's suit is concerned, this Court is not devoid of discretion as to whether or not it should be entertained. It is our view that a negative answer is indicated. Nor should petitioners feel discriminated against just because in *Gonzales vs. Commission on Elections*, [10] a member of the Philippine Bar, now Delegate Ramon Gonzales, was allowed to prosecute his action for prohibition instituted by him as a taxpayer. Petitioners have no cause for legitimate resentment as such suit could be distinguished from the present.

2. Petitioner Gonzales in accordance with the control-ling doctrine had the good sense to wait before filing his suit until after the enactment of the statute [11] for the submission to the electorate of certain proposed amendments to the Constitution. [12] It was only then that the matter was ripe for adjudication. Prior to that stage, the judiciary had to keep its hands off. The doctrine of separation of powers calls for the other departments being left alone to discharge their duties as they see fit. The judiciary as Justice Laurel emphatically asserted "will neither direct nor restrain executive [or legislative] action* * *." [13] The legislative and executive branches are not bound to seek its advice as to what to do or not to do. Judicial inquiry has to be postponed in the meanwhile. It is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture. At such a time, it may pass on the validity of what was done but only "when * * * properly challenged in an appropriate legal proceeding." [14]

Such a principle applies as well when the inquiry concerns the scope of the competence lodged in the Constitutional Convention. The judiciary must leave it free to fulfill its responsibility according to its lights. There is to be no interference. Its autonomy is to be respected. It cannot be otherwise if it is to perform its function well. Such should be the case not only because it is a coordinate agency but also because its powers are transcendent, amounting as it does to submitting for popular ratification proposals which may radically alter the organization and functions of all three departments, including the courts. It is therefore much more imperative that the rule of noninterference be strictly adhered to until the appropriate time comes.

More specifically, as long as any proposed amendment is still unacted on by it, there is no room for the interposition of judicial oversight. Only after it has made concrete what it intends to submit for ratification may the appropriate case be instituted. Until then, the courts are devoid of jurisdiction. That is the command of the Constitution as interpreted by this Court. Unless and until such a doctrine loses force by being overruled or a new precedent being announced it is controlling. That is implicit in the rule of law. Petitioners' motion for reconsideration cannot therefore be sustained.

WHEREFORE, the motion for reconsideration is denied. No costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Resolution No. 2127 of the Constitutional Convention (1971).

[2] Petition, p.5.

[3] Practitioners relying on American Jurisprudence, or Corpus Juris Secundum for that matter, would be well-advised not to accept at face value the many American State decisions cited, in the appropriate footnotes of the text prepared by its editors, without reading the opinions therein rendered thereby there is likely to be that much needed refinement in the choice of persuasive precedents and the avoidance of indiscriminate lumping together of cases not at all applicable.

[4] Cf. Tolentino vs. Commission on Elections, L-34150, Oct. 16, 1971, 11 SCR A 702.

[5] People vs. Vera, 65 Phil. 56, 89 (1937).

[6] 110 Phil. 331 (1960).

[7] Ibid, pp. 342-343.

[8] 78 Phil. 1 (1947).

[9] Republic Act No. 73 (1946).

[10] L-28196, Nov. 9, 1967, 21 SCRA 774.

[11] Rep. Act. No. 4913 (1967).

[12] Resolutions Nos. 1 and 3 of Congress as a constituent body (1967).

[13] Planas vs. Gil, 67 Phil. 62, 73 (1939).

[14] Ibid.

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