

IN THE MATTER OF THE PETITION FOR THE DECLARATION OF THE PETITIONER'S RIGHTS AND DUTIES UNDER SEC. 8 OF R.A. NO. 6132. KAY VILLEGAS KAMI, INC., PETITIONER.

G.R. No. L-32485. October 22, 1970

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for declaratory relief was filed by Kay Villegas Kami, Inc., claiming to be a duly recognized and existing non-stock and non-profit corporation created under the laws of the land, and praying for a determination of the validity of Sec. 8 of R.A. No. 6132 and a declaration of petitioner's rights and duties thereunder. In paragraph 7 of its petition, petitioner avers that it has printed materials designed to propagate its ideology and program of government, which materials include Annex B; and that in paragraph 11 of said petition, petitioner intends to pursue its purposes by supporting delegates to the Constitutional Convention who will propagate its ideology.

Petitioner, in paragraph 7 of its petition, actually impugns, because it quoted, only the first paragraph of Sec. 8(a) on the ground that it violates the due process clause, right of association, and freedom of expression and that it is an ex post facto law.

The first three grounds were overruled by this Court when it held that the questioned provision is a valid limitation on the due process, freedom of expression, freedom of association, freedom of assembly and equal protection clauses; for the same is designed to prevent the clear and present danger of the twin substantive evils, namely, the prostitution of electoral process and denial of the equal protection of the laws. Moreover, under the balancing-of-interests test, the cleansing of the electoral process, the guarantee of equal chances for all candidates, and the independence of the delegates who must be "beholden to no one but to God, country and conscience", are interests that should be accorded primacy.[1]

The petitioner should therefore be accordingly guided by the pronouncements in the cases of *Imbong* and *Gonzales*. [2]

The claim of petitioner that the challenged provision constitutes an ex post facto law is likewise untenable.

An ex post facto law is one which:

- (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;
- (2) aggravates a crime, or makes it greater than it was, when committed;
- (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
- (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law

required at the time of the commission of the offense;

(5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

(6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former con-viction or acquittal, or a procla-mation of amnesty.[3]

From the aforesaid definition as well as classification of ex post facto laws, the constitutional inhibition refers only to criminal laws which are given retroactive effect.[4]

While it is true that Sec. 18 penalizes a violation of any provi-sion of R.A. No. 6132 including Sec. 8(a) thereof, the penalty is im-posed only for acts committed after the approval of the law and not those perpetrated prior thereto. There is nothing in the law that remotely insinuates that Sec. 8(a) and 18, or any other provision thereof, shall apply to acts carried out prior to its approval. On the contrary, Sec. 23 directs that the entire law shall be effective upon its approval. It was approved on August 24, 1970.

WHEREFORE, the prayer of the petition is hereby denied and paragraph 1 of Sec. 8(a) of R.A. No. 6132 is not unconstitutional. Without costs.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, and Ruiz Castro, JJ., concur.

Concepcion, C.J., on official leave.

Fernando, J., concurs and dissents in accordance with his separate opinion in Imbong v. Comelec, L-32432 and Gonzalez v. Comelec, L-32443.

Villamor, J., concurs in the sense that the law is declared not ex post facto law. He dissents as to the rest.

Barredo, J., reiterates his views in Gonzales and Imbong insofar as they are relevant to the issues in this case. He dissents even as he agrees that Rep. Act 6132 is not ex post facto.

Teehankee, J., dissents in a separate opinion.

Zaldivar, J., reserves his vote.

[1] Imbong vs. Comelec, L-32432 and Gonzales vs. Comelec, L-32443, September 11, 1970.

[2] Ibid.

[3] Calder vs. Bull, 3 Dall. 386, Mekin vs. Wolfe, 2 Phil. 74.

[4] Fernandez vs. Oasan, L-9141, Sept. 25, 1956, 99 Phil. 934, 937.

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DISSENTING OPINION

TEEHANKEE, J.:

The Court's decision reaffirms its split-vote ruling last September 11, 1970 in *Imbong vs. Ferrer* and *Gonzales vs. Comelec*[1] upholding the constitutionality of the first paragraph of section 8(a) of Republic Act 6132. Inasmuch as I was unable to participate in the said cases,[2] I have expressed my contrary view in my separate dissenting opinion in *Badoy, Jr. vs. Ferrer*[3] that the challenged provision, together with the Act's other restrictions and strictures enumerated therein, "oppressively and unreasonably strait-jacket the candidates as well as the electorate and gravely violate the constitutional guaranties of freedom of expression, freedom of the press and freedom of association, and deny due process and the equal protection of the laws."

I therefore dissent from the Court's decision at bar for the same reasons and considerations stated in my separate dissenting opinion in the case of *Badoy*.

I only wish to add a few words on the statements in the main opinion in *Imbong-Gonzales* that "(W)hile it may be true that a party's support of a candidate is not wrong per se, it is equally true that Congress in the exercise of its broad law-making authority can declare certain acts as mala prohibita when justified by the exigencies of the times. One such act is the party or organization support proscribed in Sec. 8(a), which ban is a valid limitation on the freedom of association as well as expression, for the reasons aforesated. Senator Tolentino emphasized that 'equality of chances may be better attained by banning all organization support.'"

I trust that said statements were not intended, and should not be construed, as endorsing the contention of Senator Tolentino, the Act's sponsor, that "(T)he protection of the Constitution cannot be invoked for the right of association when the purpose is a malum prohibitum because such purpose would be 'contrary to law'" and "(O)nce the ban (on party and organization support) is approved into law, the freedom of association cannot be invoked against it" - - since the Constitution decrees only that "(T)he right to form associations or societies for purposes not contrary to law shall not be abridged." [4]

Such a concept of malum prohibitum vis-a-vis the Constitutional guarantee of freedom of association which has its root in the Malolos Constitution would render sterile and meaningless the Constitutional safeguard, should Congress be conceded, in the exercise of its broad law-making authority, the power to strike down at any time associations and societies by the simple expedient of declaring their purposes or certain activities, not wrong per se, as "contrary to law" or mala prohibita. I believe that such a concept begs the question. Obviously, the word "law" in the qualifying clause "for purposes not contrary to law" does not mean that an enactment of the legislature forecloses the question with finality and sounds the death-knell. Laws that would regulate the purposes for which associations and societies may be formed or would declare their purposes mala prohibita must pass the usual constitutional test of reasonableness and furthermore, must not abridge freedom of speech and press.[5]

[1] Nos. L-32432 and L-32443, jointly decided.

[2] The writer hereof was then on official leave.

[3] Nos. L-32456 and L-32551, October 17, 1970.

[4] Sponsorship speech of Senator Arturo Tolentino of July 20, 1970, notes in parentheses furnished; emphasis copied; cit, Art. III, Sec. 1(6), Philippine Constitution.

[5] See 2 Tañada and Carreon, *Political Law of the Philippine*, 209.

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