

TEOFISTO T. GUINGONA, JR., AND LAKAS-NATIONAL UNION OF CHRISTIAN DEMOCRATS (LAKAS-NUCD), PETITIONERS, VS. NEPTALI A. GONZALES, ALBERTO ROMULO AND WIGBERTO E. TAÑADA, RESPONDENTS...

G.R. No. 106971. March 01, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

In motions separately filed by respondent Senator Wigberto Tañada on October 27, 1992 and respondents Senate President Neptali A. Gonzales and Senator Alberto Romulo on October 30, 1992, said respondents moved for a reconsideration of our decision dated October 20, 1992, on the following grounds:

Senator Tañada alleges that:

- 1) The decision was premised on an erroneous appreciation of relevant factual precedents;
- 2) The decision ignored the reality of the multi-party system recognized both by the letter and spirit of the 1935 and 1987 Constitutions;
- 3) It is mandatory to fill up twelve (12) seats in the Commission on Appointments;
- 4) The Senate did not act with grave abuse of discretion when it elected respondent Tañada to the Commission on Appointments.

In their Motion for Reconsideration/Clarification, Senators Gonzales and Romulo allege:

- 1) That the decision is inconsistent with the Supreme Court's ruling in the two cases of Coseteng vs. Mitra, Jr.[1] and Daza vs. Singson.[2]
- 2) It is mandatory to have twelve (12) members of the Commission on Appointments to enable it to function as a constitutional body.
- 3) The Tolentino Compromise Formula was adopted by the Senate and accepted by all political parties and must govern the selection of respondent Senators to the Commission on Appointments.
- 4) The election of the respondents Senators is in compliance with the multi-party system which contemplates a realignment of political parties to remove fractional membership of any party in the Commission.

On December 16, 1992, the petitioner-in-intervention Nationalist People's Coalition (NPC) filed its separate Comments to the Motions of respondents Senators while the petitioners filed on January 7, 1993 their separate Comments on the Motions of the respondents.

Considering the grounds set forth in the Motions of the respondents and in the light of the reasons/arguments submitted in refutation thereof, We deny both Motions for Reconsideration on the following grounds:

(1) The decision is based on a simple interpretation and application of Article VI, Section 18 of the 1987 Constitution and We quote pertinent portions thereof.

"It is an established fact to which all the parties agree that the mathematical representation of each of the political parties represented in the Senate is as follows:

LOP -7.5

LP-PDP-LABAN-.5

NPC -2.5

LAKAS-NUCD -1.5

It is also a fact accepted by all such parties that each of them is entitled to a fractional membership on the basis of the rule on proportional representation of each of the political parties. A literal interpretation of Section 18 of Article VI of the Constitution leads to no other manner of application than as above. The problem is what to do with the fraction of .5 or 1/2 to which each of the parties is entitled. The LDP majority in the Senate converted a fractional half membership into a whole membership of one senator by adding one half or .5 to 7.5 to be able to elect Senator Romulo. In so doing one other party's fractional membership was correspondingly reduced leaving the latter's representation in the Commission on Appointments to less than their proportional representation in the Senate. This is clearly a violation of Section 18 because it is no longer in compliance with its mandate that membership in the Commission be based on the proportional representation of the political parties. The election of Senator Romulo gave more representation to the LDP and reduced the representation of one political party -- either the LAKAS-NUCD or the NPC.

x x x

We find the respondents' claim to membership in the Commission on Appointments by nomination and election of the LDP majority in the Senate as not in accordance with Section 18 of Article VI of the 1987 Constitution and therefore violative of the same because it is not in compliance with the requirement that twelve senators shall be elected on the basis of proportional representation of the political parties represented therein. To disturb the resulting fractional membership of the political parties in the Commission on Appointments by adding together two halves to make a whole is a breach of the rule on proportional representation because it will give the LDP an added member in the Commission by utilizing the fractional membership of the minority political party, who is deprived of half a representation.

The provision of Section 18 on proportional representation is mandatory in character and does not leave any discretion to the majority party in the Senate to disobey or disregard the rule on proportional representation; otherwise, the party with a majority representation in the Senate or the House of Representatives can by sheer force of numbers impose its will on the hapless minority. By requiring a proportional representation in the Commission on Appointments, Section 18 in effect works as a check on the majority party in the Senate and helps to maintain the balance of power. No party can claim more than what it is entitled to under such rule. To allow it to elect more than its proportional share of members is to confer upon such a party a greater share in the membership in the Commission on Appointments and more power to impose its will on the minority, who by the same token, suffers a diminution of its rightful membership in the Commission."^[3]

The membership of the late Senator Lorenzo Tañada in the Commission on Appointments for the year alluded to by respondents is not disputed. The questioned decision however refers to the former Senator's membership in the Commission during his first election as Senator in 1953-1954.^[4] In the following years the composition of the Commission on Appointments showed varying membership from the Nacionalista Party and Liberal Party, not discounting the various coalitions of the rival groups within their own ranks. During this period, his membership in the Commission was acquiesced to by the other members of the Senate, including the Nacionalista Party which had a fractional vote. His membership in the Commission was never contested nor disputed by any party nor member of the Senate so that the question of whether his sitting as member of the Commission was

constitutionally valid or not never reached the Court. The older Tañada's membership in the Commission on Appointments cannot thus be considered by respondent Senator Tañada as a precedent sufficient to overrule the clear mandate of Article VI, Section 18 of the Constitution.

It is a matter of record that in the political ventures of the late Senator Lorenzo Tañada, he had his Citizens Party coalesce with the Nacionalista Party and got himself elected as Senator under the banner of the latter party. His election to the Commission was principally due to the alliance of his Citizens Party with the Nacionalista Party and not because he was elected thereto on the strength of his being the lone representative of the Citizens' Party.[5] Senator Tañada was included in the Nacionalista Party ticket in 1953 until he parted ways temporarily with the same before the end of 1955. In 1959 he ran as a guest candidate of the Nacionalista Party for a term of 6 years and again got re-elected in 1965 for another 6-year term under the Nacionalista Party. The Nacionalista-Citizens Party coalition of 12 Senators in the Senate from 1965-1967 gave the coalition 6 members in the Commission on Appointments, including the late Senator Lorenzo Tañada. As early as those years, the Senate recognized the rule on proportional representation in the Commission by resorting to a coalition of political parties in order to resolve and avoid fractional membership in the Commission. This practice was repeated 1968-1970 where the lone elected Senator of the Citizens Party was nominated and elected to the Commission on Appointments as the Senator to complete a whole number in the proportional representation to the Commission, with the late Senator Tañada becoming the 16th Senator of the Coalition, enabling it to put 8 members in the Commission. Likewise in 1970, the late Senator Tañada filled up the 18th membership of the Coalition to become the 9th member representing the Coalition in the Commission.

The election of the late Senator Lorenzo Tañada to the Commission on Appointments does not reflect any practice or tradition in the Senate which can be considered as a precedent in the interpretation of the constitutional provision on proportional representation in the Commission on Appointments. No practice or tradition, established by mere tolerance, can, without judicial acquiescence, ripen into a doctrine of practical construction of the fundamental law. In the absence of judicial confirmation of the constitutionality of the challenged legislative practice the repeated erroneous legislative interpretation of a constitutional provision, does not vest power on the legislature.[6]

2) We take note of an erroneous reference in our decision to the listing of the party affiliation of the Senators based on the result of the election on May 11, 1992, giving the LDP only 15 members and including Senator Teofisto Guingona as a member of the Lakas-NUCDP. Respondents, however, accepted the fact that for purposes of determining the proportional representatives of each political party to the Commission on Appointments, the basis thereof is the actual number of members of each political party at the time of election of the members of the Commission on Appointments in the Senate.[7] In fact, respondents affirmed that the affiliation of Senator Guingona with the Lakas-NUCDP upheld the doctrine enunciated in *Daza vs. Singson*,[8] recognizing changes in alignments of membership in the Commission based on changing political alignments at the time of the organization of the Commission on Appointments. This issue therefore has no significance as an argument to set aside our decision.

3) Senator Tañada was actually nominated by the LP because the house rules require that the party must make the nomination. In fact he nominated himself as representative of the LP-LDP-LABAN. It was the Majority Leader, an LDP Senator, (Senator Romulo) who presented the motion to elect respondent Senator Tañada (along with the Senators belonging to the other Minority parties -- NPC and LAKAS-NUCD) as part of his function or duty to present for election and votation those previously nominated by the various political parties. In nominating the twelve (12) Senators to the membership in the Commission on Appointments, Senator Romulo moved:

"Mr. President, pursuant to the Motion just approved, I have the honor to submit for election to the

Commission on Appointments the 12 Senators to compose its membership: Senators Angara, Herrera, Alvarez, Aquino, Mercado, Ople, Sotto and Romulo for the LDP; Senators Tolentino and Osmeña for NPC; Senator Rasul, for Lakas-NUCD, and Senator Tañada for LP-PDP, Mr. President." [9]

4) This Court has ruled that, under Article VI, Section 18 of the Constitution providing for a multi-party system, entitlement to proportional representation in the Commission on Appointments requires a minimum membership in each house. [10] The statement of this Court in *Daza vs. Singson* [11] to the effect that "under the Constitutional provision on membership of the Commission on Appointments, the members thereof are NOT limited to the majority and minority parties therein but extends to all the political parties represented in each house of Congress", does not and should not be construed to mean that all political parties, irrespective of numerical representation in the Senate, are entitled by Constitutional fiat to at least one representation in the Commission. The Supreme Court in the subsequent case of *Coseteng vs. Mitra, Jr.* [12] made this clear where it ruled that proportional representation in the Commission on Appointments requires a minimum membership of a party in each house. The mere presence of one Senator belonging to a political party does not ipso facto entitle such a party to membership in the Commission on Appointments.

5) We have declared that the Constitution does not require that the full complement of 12 Senators be elected to the membership in the Commission on Appointments before it can discharge its functions and that it is not mandatory to elect 12 Senators to the Commission. The overriding directive of Article VI, Section 18 is that there must be a proportional representation of the political parties in the membership of the Commission on Appointments and that the specification of 12 members to constitute its membership is merely an indication of the maximum complement allowable under the Constitution. The act of filling up the membership thereof cannot disregard the mandate of proportional representation of the parties even if it result in fractional membership in unusual situations like the case at bar.

Section 18 provides, in part, as follows:

"There shall be a Commission on Appointments consisting of the President of the Senate as ex-officio Chairman, twelve Senators, and x x x, elected by each house on the basis of proportional representation x x x."

The respondents' contention that the use of the word "shall" in Section 18 indicating the composition of the Commission on Appointments makes the election of the Senators mandatory, omitting that part of Section 18 which provides that (they shall be) elected by each house on the basis of proportional representation. This interpretation finds support in the case of *Tañada vs. Cuenco*, [13] where this Court held that the constitutional provision makes mandatory the election of the specified number of Senators to the Commission on Appointments but also ruled that they should be elected on the basis of proportional representation of the political parties. In case of conflict in interpretation, the latter mandate requiring proportional representation must prevail. Such interpretation is the only correct and rational interpretation which the court can adopt in consonance with its solemn duty to uphold the Constitution and give effect the meaning intended by its framers to every clause and word thereof.

The Constitution does not require the election and presence of twelve Senators and twelve Representatives in order that the Commission may function. Article VI, Section 18 which deals with the Commission on Appointments, provides that "the Commission shall rule by majority vote of all the members", and in Section 19 of the same Article, it is provided that the Commission "shall meet only while Congress is in session, at the call of its Chairman or a majority of all its Members, to discharge such powers and functions as are herein conferred upon it". In implementing these provisions, the Rules the Commission on Appointments provide that the presence of at least thirteen (13) members is necessary to constitute a quorum, "Provided however, that at least four (4) of the members constituting the quorum should come from either house". [14] Even if the composition of the

Commission is fixed by the Constitution, it can perform its functions even if not fully constituted, so long as it has the required quorum, which is less than the full complement fixed by the Constitution. And the Commission can validly perform its functions and transact its business even if only ten (10) Senators are elected thereto. Even if respondent Senator Tañada is excluded from the Commission on Appointments for violation of the rule on proportional representation, the party he represents still has representation in the Commission in the presence of house members from the LP-LDP-LABAN such as Congressman Juan Ponce Enrile.

Respondents ask for a clarification of our statement which suggested a practical solution to break the impasse in the membership of the Senate in the Commission on Appointments, which we quote:

"x x x On the other hand, there is nothing to stop any of the political parties from forming a coalition with another political party in order to fill up the two vacancies resulting from this decision." [15]

The statement is merely a suggestion but not an exclusive solution. It is not part of the disposition of the case. It does not contemplate a realignment of political parties, as otherwise this Court would have explicitly said so. What we intimated is merely this: That those entitled to fractional memberships may join their half-memberships form a full membership and together nominate one from their coalition to the Commission on Appointments. For example, the NPC and the LAKAS-NUCD may join their half-memberships and jointly nominate one of their own Senators to the Commission. In the same way the LDP and the LP-PDP-LABAN may nominate Senator Wigberto Tañada to fill up the other slot to complete the membership to twelve. But the latter, as a coalition, may not insist in electing both Senator Tañada and Senator Romulo to fill up two slots because this is certainly a violation of the rule on proportional representation.

Who decides the question of proportionality? The power to choose who among them will sit as members of the Commission on Appointments belongs to the Senate. The number of senators is fixed by the Constitution to twelve, but the number of senators to be chosen must comply with the rule on proportional representation. The question of who interprets what is meant by proportional representation has been a settled rule - that it belongs to this Court.

The acceptance by the Senate of Senator Tolentino's formula to settle temporarily the impasse concerning the membership in the Commission on Appointments by leaving the final decision to the Supreme Court is a Senate recognition that the determination of proportional representation under Article VI, Section 18 of the Constitution is a function of this Court.

Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court, it becomes a legal issue which the Court is bound by Constitutional mandate to decide. The framers of our Constitution, in borrowing from constitutions of other states, thought it wise to vest in the Supreme Court the role of final arbiter in cases of conflicts in the interpretation of the fundamental law. In this role, the Court serves as a check on the unbridled use of power by the legislative majority to silence the minority. Democracy may breed but it will not sanction tyranny by force of numbers.

The election of respondents Senators Tañada and Romulo is a clear disregard of the constitutional provision and when done over the objections of their colleagues in the Senate, constitutes a grave abuse of discretion. We quote from our decision:

"x x x The election of Senator Romulo and Senator Tañada as members of the Commission on Appointments by the LDP Majority in the Senate was clearly a violation of Section 18 of Article VI of the 1987 Constitution. Their nomination and election by the LDP Majority by sheer force of superiority in numbers during the Senate organization meeting of August 27, 1992 was done in grave abuse of discretion. Where power is exercised in a manner inconsistent with the command of the Constitution, and by reason of numerical strength, knowingly

and not merely inadvertently, said exercise amounts to abuse of authority granted by law and grave abuse of discretion is properly found to exist."^[16]

For lack of merit, the Motions for Reconsideration are DENIED with FINALITY.
SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.
Gutierrez, Jr., J., on terminal leave.

[1] 187 SCRA 377 (1990).

[2] 180 SCRA 496 (1989).

[3] Decision, pp. 6-10; Rollo, pp. 270-274.

[4] See Tañada vs. Cuenco, 103 Phil. 1051 (1957).

[5] Ibid.

[6] See Board of Trustees of Lawrence University vs. Outagamie County, 136 N.W. 619 (1912); Amos vs. Moseley, 77 So. 619 (1917), 11 AM JUR 700.

[7] See Comment to Petition filed by respondents Senate President Neptali A. Gonzales, Senators Alberto Romulo and Wigberto E. Tañada, p. 10; Rollo, p. 131.

[8] Supra, note 2.

[9] TSN, Session of August 27, 1992, Annex "E" of Petition, p. 29; Rollo, p. 111.

[10] Supra, note 1.

[11] Supra, note 7.

[12] Supra, note 1.

[13] Supra, note 4.

[14] RULES OF THE COMMISSION ON APPOINTMENTS, Chapter 3, Sec. 10.

[15] Decision, p. 12; Rollo, p. 276.

[16] Decision, pp. 12-13; Rollo, pp. 276-277.

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