

PAULINO J. GARCIA, ET AL., PETITIONERS, VS. PANFILO LEJANO, ET AL., RESPONDENTS.*G.R. No. 12220. August 08, 1960*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for review by way of certiorari of a decision of the Court of Appeals which reverses that of the Court of First Instance of Manila ordering petitioners to return respondent Panfilo Lejano to the office of Chief of the Rizal Provincial Hospital and declaring same entitled to all the emoluments, privileges and prerogatives appurtenant thereto:

This appeal stems from an action of quo warranto instituted by Lejano against petitioners alleging therein that the latter removed him from his office as Chief of the Rizal Provincial Hospital without legal cause, the act of removal consisting in preventing him against his will from discharging the duties of said office by detailing or assigning him elsewhere and putting in his place petitioner Pedro N. Mayuga.

Petitioners in their answer set up the following defenses: (1) the complaint does not state sufficient facts to constitute a cause of action; (2) by reporting for duty to his new assignment as Acting Senior Medical Supervisor and Statistician, Lejano may be considered as having consented to the same; (3) the Secretary of Health, as department head, has the power to appoint, remove and transfer employees and subordinates in his department pursuant to the provisions of Section 79 (D) of the Revised Administrative Code; (4) pursuant to the authority granted by said law, the Secretary of Health and Director of Hospitals have detailed Lejano to some assignments other than the position of Director of the Rizal Provincial Hospital, with the approval of the President of the Philippines; (5) after the termination of his detail as previously stated, Lejano was designated as Acting Medical Supervisor and Statistician of the Bureau of Hospitals, which position has the rank of a Senior Hospital Inspector; (6) upon Lejano's designation as Senior Medical Supervisor and Statistician of the Bureau of Hospitals, Dr. Pedro N. Mayuga was designated as Acting chief of the Rizal Provincial Hospital; (7) the designation of Dr. Mayuga in the Rizal Provincial Hospital was impelled by the demands of the service because under a training program undertaken with the assistance of the FOA-PHILCUSA, said hospital would be utilized as a training hospital and it was found imperative to place there members who can give the proper training; (8) Dr. Mayuga, who had been abroad, was considered the best choice to head that hospital considering his technical preparation; (9) respondent Lejano is not technically prepared for the work to be undertaken incident to the training hospital because he is nearing the retirement age and has been the subject of unfavorable report by the FOA; and (10) in view of the conversion of the Rizal Provincial Hospital into a training hospital it becomes necessary to substitute respondent Lejano in order that the project sponsored by the FOA may not be jeopardized. In addition, petitioners advanced other reasons tending to justify the transfer of Lejano to another position in the Department of Health.

After trial, the lower court rendered decision dismissing the complaint on the ground that plaintiff failed to prove his cause of action. On appeal, the Court of Appeals reversed the decision ordering petitioners to return Lejano to his position as Chief of the Rizal Provincial Hospital. The case is now before us in view of the petition for review

interposed by petitioners which this Court has given due course.

Stripped of unnecessary details, the salient facts for the proper determination of the issues herein involved are:

Respondent Lejano was appointed Chief of the Rizal Provincial Hospital effective November 21, 1947. On September 18, 1954, by Special Order No. 9 of the Bureau of Hospitals, respondent was relieved of his duties as Chief of the Rizal Provincial Hospital by petitioner Pedro N. Mayuga and was directed to proceed to Bohol to assume the duties and responsibilities as Chief of the hospital of said province, but on respondent's protest, the latter was instead directed to report to the central office for another assignment. Respondent was detailed in the central office from September 24, 1954 to October 15, 1954 and then to the North General Hospital from October 16, 1954 to August 30, 1955 during which period several attempts were made to send him to Malolos, Bulacan to assume the duties as Chief of the Bulacan Provincial Hospital. Respondent characterized these attempts as indicative of a desire to ultimately effectuate his transfer to the Bulacan Provincial Hospital and divest him of his duties and prerogatives as Chief of the Rizal Provincial Hospital without legal cause.

Petitioners made representations with the Office of the President for authority to detail respondent outside of his station for more than the reglementary period. Respondent wrote the President in turn to withhold any authority to temporarily assign him to the Bulacan Provincial Hospital because the circumstances of the case no longer warrant his assignment there. In an order issued by authority of the President, the further detail of respondent out of the Rizal Provincial Hospital was set to be "not beyond August 31, 1955", but in violation of this authority, respondent was appointed as Acting Senior Medical Supervisor and Statistician of the Bureau of Hospitals effective August 30, 1955. Respondent in a letter dated August 31, 1955 declined this appointment and reiterated his desire to resume the duties of his office as Chief of the Rizal Provincial Hospital, whereupon, on the same date, August 31, 1955, he was ordered by the Director of the Hospitals to show cause within 72 hours why he should not be administratively dealt with for insubordination. And in a letter addressed to respondent's counsel, the Director of the Hospitals stated that respondent could not be returned to the Rizal Provincial Hospital because he had decided to appoint him as Acting Senior Medical Supervisor and Statistician of the Bureau of Hospitals.

Upon the foregoing facts, the Court of Appeals made the following finding:

"We find that the real intention of the defendant Elicaño, Director of the Bureau of Hospitals, was as expressed in his Special Order No. 9, dated September 18, 1954, to remove the plaintiff as Chief of the Rizal Provincial Hospital and appoint in his place the defendant Pedro N. Mayuga, Chief of the Bohol Provincial Hospital. The subsequent detail of the plaintiff-appellant in the Central Office and in the North General Hospital was done for no other purpose than to see if he would yield and at the same time to prevent him from continuing as Chief of the Rizal Provincial Hospital."

Considering that the position of respondent as Chief of the Rizal Provincial Hospital is embraced in the unclassified service of our government from which he cannot be removed except for cause, as provided for in Article XII, Section 1, of our Constitution, in relation to pertinent provisions of the Revised Administrative Code, as amended,[1] and it appearing that his proposed transfer to the central office as Acting Senior Medical Supervisor and Statistician of the Bureau of Hospitals is without his consent, it follows that, in the light of the ruling laid down by this Court in a series of cases,[2] such transfer is tantamount to removal without valid cause and as such is invalid and without any legal effect.

But it is contended that the case of respondent Lejano is different from the Lacson case because while in the latter the real purpose was to remove Lacson from his position as Provincial Fiscal of Negros Oriental and to transfer him to that of Provincial Fiscal of Tarlac permanently, in the present case the government, has no such intention because the directive given to Lejano was merely to assume the position of Acting Senior Medical Supervisor and

Statistician of the Bureau of Hospitals in a temporary capacity, pending his transfer to the Labor Hospital as chief which position he has expressly asked for in order to be near his family in Quezon City. It is claimed that his transfer is not to remove him from his position but merely to give him a temporary assignment elsewhere which can be done without doing violence to the constitutional prohibition. This claim, however, is belied by the evidence which shows in bold relief that what was extended to Lejano was not a mere temporary assignment but a veritable new appointment which he respectfully declined in a letter he addressed to his immediate superior.

Thus, the record shows that on August 29, 1955 respondent was extended an appointment as Acting Senior Medical Supervisor and Statistician in the Bureau of Hospitals effective on the same date, by the Secretary of Health, upon the recommendation of the Director of Hospitals (Annex 2, Answer of Defendants). And on September 5, 1955, as though expecting the acceptance by Lejano of such appointment, the same officials extended to Dr. Pedro N. Mayuga an appointment to take his place (Annex 3, Idem.) Then, in a letter sent by the Director of Hospitals to counsel for respondent concerning the same matter, the former made it clear that Lejano could no longer be returned to the Rizal Provincial Hospital because in the interest of the service he had been definitely appointed to a position in the central office effective upon entrance to duty. The letter even added that "the Bureau of Hospitals has nothing personal against him and although Dr. Lejano has already served the Bureau for quite a long time, it is our firm decision to place the interest of the service over and above all considerations." (*Italics supplied*). Verily, the real intention was not merely to transfer Lejano temporarily but to remove him definitely from his position as Chief of the Rizal Provincial Hospital.

But the Solicitor General does not see anything improper in the transfer of respondent even if definitely if the same is done in the interest of the service for, according to him, it is his duty as a government official "to give way to a person better prepared to run the Rizal Provincial Hospital in view of said institution having been designated as a training hospital by the FOA-PHILCUSA, which has been giving much aid, particularly in equipment, to said hospital." It is his opinion that when the transfer is motivated solely by the interest of the service such act cannot be considered violative of the Constitution as, otherwise, "every time the department head desires to transfer an employee from one position to another for the purpose of improving the service, he cannot do so unless it is with the consent of the employee concerned."

We do not agree to this view. While temporary transfers or assignments may be made of the personnel of a bureau or department without first obtaining the consent of the employee concerned within the scope of Section 79 (D) of the Administrative Code which partly provides that "The Department Head also may, from time to time, in the interest of the service, change the distribution among the several. Bureaus and offices of his Department of the employees or subordinates authorized by law", such cannot be undertaken when the transfer of the employee is with a view to his removal. Such cannot be done without the consent of the employee. And if the transfer is resorted to as a scheme to lure the employee away from his permanent position, such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service. It is not without reason that this Court made the following observation:

"To permit circumvention of the constitutional prohibition in question by allowing removal from office without lawful cause, in the form or guise of transfers from one office to another, or from one province to another, without the consent of the transferee, would blast the hopes of these young civil service officials and career men and women, destroy their security and tenure of office and make for a subservient, discontented and inefficient civil service force that sways with every political wind, that blows and plays up to whatever political party is in the saddle. That would be far from what the framers of our Constitution contemplated and desired. Neither would that be our concept of a free and efficient Government force, possessed of self-respect and reasonable ambition." (*Lacson vs. Romero*, 84 Phil., 740; 47 Off. Gaz., No. 4, 1778, 1788.)

It is insisted that, inasmuch as the Rizal Provincial Hospital has been designated by the FOA-PHILCUSA as a

training hospital in order to serve as a training center for doctors and the government is in duty bound to place at the head thereof a person technically prepared for the work to be undertaken and in the opinion of the health authorities respondent Lejano is not qualified to assume the job in view of his advanced age and his inefficiency as found by the FOA, public interest demands that his transfer be effected regardless of his consent as an exception to the rule safeguarding his tenure of office. It is intimated that a salutary rule of public service should be that when a person accepts a government position or seeks one, as is the usual norm, he should be deemed to have done so with the implied understanding that he may be transferred from one position to another in the interest of public service.

While the policy so advocated is salutary in effect for it tends to promote public interest and is novel in the sense that it is not one of those reasons by which an employee may be transferred under the law, the same runs counter to the doctrine laid down by this Court in the cases above adverted to, for public interest is not one of the grounds for removal as therein indicated (See *Lacson vs. Romero*, supra). And even if an exception be made with regard to public interest if only to promote the objective of the government, doubt is entertained as to whether the removal of Lejano from his position may be considered justified it not appearing clearly that he is unfit for the new job. On the contrary, the very health authorities who are sponsoring his transfer have expressed the opinion that he has built up quite a good record in his long service to the government.

Thus, Dr. Elicaño in his letter dated June 29, 1955 requesting respondent's assignment to the Bulacan Provincial Hospital, made the following comment:

"This request is being made because this Bureau wishes to avail of his varied experience in order to bring about needed improvements in the latter institution. A few months before, there has been violent reaction in some quarters in that province regarding conditions in the hospital. Although Dr. Delfin Ordoñez, who is presently detailed thereat, is doing satisfactory work recently, more can be expected if Dr. Lejano actually lends his services. With this detail, it is hoped that Dr. Lejano shall be able to effect improvements which can ONLY BE REALIZED THRU THE MANAGEMENT OF A MAN WHO HAS SPENT TWENTY EIGHT YEARS OF HIS LIFE IN THE ADMINISTRATION OF A PUBLIC HOSPITAL." (Page 85, Record; Emphasis supplied.)

Executive Officer Vicente Kierulf, speaking for the Director of Hospitals, heaped upon respondent the following praise in connection with his work as Chief of the Rizal Provincial Hospital:

"Hospital which grew up in a phenomenal manner as the Rizal Provincial Hospital, with only P72,772.00 as its budget in 1947 (date when appellant became its Chief) to the size that it is today with a budget of P332,338.00 is one from the story books, its being true makes it stranger than fiction. Certainly, that it grew and prospered is undeniably due to its meritorious services to the people." (Exhibit D-1, p. 18, Record).

The least we can say is that respondent Lejano has proven to be an efficient and valuable director of a public hospital. If the intention, as it seems to be, is to convert the Rizal Provincial Hospital into a training center, the proper and convenient step to take would be to retain him as head of that institution and give him a technical assistant who may help him in operating the training center. After all, an institution of that nature has two aspects: one technical and the other administrative. By adopting this arrangement, the objective of the government may be accomplished without jeopardizing the right of respondent to his position which is guaranteed by our Constitution.

All things considered, we are persuaded to affirm, as we hereby do, the decision appealed from, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, and Gutierrez David, JJ., concur.

[1] Sections 670, 668 and 694, Revised Administrative Code, as amended by Commonwealth Act No. 177, Sections 6 and 22.

[2] Lacson vs. Romero, 84 Phil., 740, 47 Off. Gaz., No. 4, 1778; Santos vs. Mallare, 87 Phil., 289; 48 Off. Gaz., No. 5, 1787; Alzate vs. Mabutas, 51 Off. Gaz., No. 5, 2452; Gorospe vs. De Veyra, 96 Phil., 645; 51 Off. Gaz., [2] 692; Rodriguez vs. Del Rosario, 93 Phil., 1070; 49 Off. Gaz., [12] 5427.

DISSENTING OPINION

CONCEPCION, J.:

The majority opinion is predicated upon our decisions in Lacson vs. Romero, 84 Phil., 740; 47 Off. Gaz., No. 4, 1778; Delos Santos vs. Mallare, 87 Phil., 289; 48 Off. Gaz., No. 5, 1787; Alzate vs. Mabutas, 51 Off. Gaz., No. 5, 2452; Gorospe vs. De Veyra, 96 Phil., 545; 51 Off. Gaz. [2] 692; Rodriguez vs. Del Rosario, 93 Phil., 1070; 49 Off. Gaz. [12] 5427; applying the constitutional provision to the effect that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." This mandate of our fundamental law is based upon a sound principle of government, but it was not intended for a situation analogous to the one obtaining in the present case. In the very case of De los Santos vs. Mallare, cited, in the majority opinion, this Court, speaking thru Mr. Justice Tuason, said:

"As has been seen, three specified classes of positions—policy-determining, primarily confidential and highly technical—are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution. These positions involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them." (*Italics supplied.*)

The case at bar hinges on the applicability thereto of the view just quoted, which, apart from the fact that its wisdom and validity are not contested, is borne out by Article XII, section 1, of our Constitution, reading:

"A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination." (*Italics supplied.*)

Although, normally, the functions of the head of a provincial hospital are neither policy determining, nor primarily confidential or highly technical in nature, since early in 1953, the Rizal Provincial Hospital was, by agreement between our Government and the FOA-PHILCUSA authorities in the Philippines, converted into a hospital for the training of physicians and nurses working, in different parts of the Archipelago, under the Bureau of Hospitals. From an ordinary hospital; devoted to tasks peculiar to institutions of this kind, the main function of the Rizal Provincial Hospital became, therefore, to familiarize said physicians and nurses with the most advanced methods in the treatment and care of the sick, in the light of the latest developments in the field of science and the complexities of modern society. The hospital, to be sure, kept on receiving, treating and taking care of patients, but this activity became secondary and incidental to said primary objective, namely: to see to it that the doctors and nurses in charge of our public hospitals in the Philippines were posted on the best methods to meet the needs of the ailing people and prepared to impart to them the benefits of said methods, after a reasonable opportunity to apply and test the same, and to have adequate practice in the use thereof, under the guidance of men qualified therefor. In this manner, the hospital undertook, in effect, to give post-graduate courses for physicians and nurses, and the position of the head of the organization partook of a highly technical nature.

Hence, the action taken by the Director of Hospitals and the Secretary of Health in transferring respondent herein from the Rizal Provincial Hospital to said Bureau, as its Acting Medical Supervisor and Statistician, finds support in the above quoted pronouncement in the De los Santos case, apart from being explicitly authorized by the second paragraph of section 79 (D) of the Revised Administrative Code, which provides:

"The Department Head also may, from time to time, in the interest of the service, change the distribution among the several Bureaus and offices of his Department of the employees or subordinates authorized by law."

The opinion of the majority quotes from a letter of Dr. Elicaño, as Director of Hospitals, dated June 29, 1955, and from an indorsement of Vicente Kierulf, as executive officer of the Bureau of Hospitals, to bolster up the assertion that respondent had "built up quite a good record in his long service to the government". This assertion is not warranted by the quotations adverted to.

The aforementioned indorsement referred to certain charges preferred against members of the staff of the Rizal Provincial Hospital, the papers relative to which were forwarded to the Secretary of Health. In doing this, Mr. Kierulf paid homage to the meritorious services rendered by said hospital, to the people, based upon the "phenomenal" growth of its budget from P74,772.00 in 1947 to P362,438.00 in 1955. Apart from the fact that, under the conditions then and now existing, said budgetary growth does not warrant the conclusion drawn therefrom by Mr. Kierulf, this officer did not "heap" any "praise" upon respondent herein. On the contrary, Mr. Kierulf recommended that disciplinary action be taken against some members of said staff, and that respondent be required to "reside within the hospital compound or at least in the town of Pasig, except when he is on leave or on off-duty." Thus, he was, in effect, found to have somewhat contributed to the conditions that led to the formulation of said charges.

Again, said letter mentioned the twenty-eight (28) years spent by respondent in the administration of public hospitals, which is, indeed, a long time devoted to public service. However, Dr. Elicaño did not appraise—much less praise—the quality of the work done by respondent during said period, for reasons presently to be stated.

It appears, that upon an inspection made, on May 24, 1954, a committee of representatives of the Bureau of Hospitals and the FOA-PHILCUSA, which had supplied the Rizal Provincial Hospital with a substantial amount of equipment to enable it to perform its role as an institution for the training of physicians and nurses, found its administration unsatisfactory. Among other things, the committee reported that "the hospital was not clean"; that certain sections of the hospital were "very dirty"; that some equipment "evidenced lack of care and maintenance"; that not "all hospital equipment was * * * utilized"; that some equipment were "being misused"; that, although, "rehabilitated for fourteen months", the hospital had not, as yet, "fulfilled all of its documentation"; that no facilities for hand-washing had been observed, thus indicating "that the doctor and/or the nurse does not wash their hands in between treatments and caring for patients"; that the "obstetrical patients utilize the same equipment as the medical and surgical patients and the bed pans are not sterilized between use"; that "the beds were dirty * * * and many of the bedside tables were very dirty"; that a "spot check" of other tables revealed that "they were dirty, drawers were filled with food and covered with ants"; that the hospital technique was "poor" for a "nurse taking care of new borns should not be taking care of isolation cases, as well as general medical and surgical cases"; that "toilet and shower facilities were dirty"; that "much of the equipment was covered with dust, including the over head lights"; that "dirt and dust in the operating room contaminates the operation field"; and that the "morgue table was sitting in a makeshift shed with no cover over it", and had "never been used in the year that they have had it."

No attempt has been made to impugn the accuracy of this report. Respondent merely tried to prove that an inspection of the Bohol Provincial Hospital, of which Dr. Pedro N. Mayuga is the director, disclosed similar conditions. However, the same cannot be blamed on him, for he was assigned elsewhere at the time of said

inspection.

At any rate, the flaws found in respondent's administration of the Rizal Provincial Hospital led the representatives of the Department of Health and the FOA-PHILCUSA agencies in the Philippines to the conclusion that it was necessary to strengthen the staff of said hospital by, among other things, placing another man as the head thereof. Dr. Mayuga, who had undergone special training abroad, was chosen therefor.

As regards the fate of respondent herein, it was deemed best to shift him to another branch of the service, for two (2) reasons, namely: he had been in the Government for many years and was soon due for retirement, owing to his advanced age. Hence, a number of conferences between respondent, on the one hand, and Dr. Elicaño and the Secretary of Health on the other, ensued. Eventually, respondent agreed on being assigned or transferred elsewhere, whereupon he was detailed to the Bohol Provincial Hospital. However, he wanted to be near his family which stayed in Quezon City, in view of which he was soon directed to report to the central office and then assigned to the North General Hospital. Subsequently, he was instructed to relieve the Director of the Bulacan Provincial Hospital, to which he objected because its rank is lower than that of Director of the Rizal Provincial Hospital. Hence, he was detailed to the North General Hospital. Although near his family and retaining his salary and rank as Director of the Rizal Provincial Hospital, respondent was not fully satisfied with his last assignment, seemingly because he did not enjoy thereunder the quarter allowance to which said officer was entitled. Considering his wish to be near his family and retain his salary and rank, as well as his quarter allowance, the Labor Hospital operated in Quezon City appeared to be most suitable for the purpose, save for the fact that the item available in said institution was smaller than that of Director of the Rizal Provincial Hospital. The Department of Health needed time to secure an increase in the item of the Labor Hospital, and in order not to interfere with the execution of the plans agreed upon with the FOA-PHILCUSA, respondent was transferred to the Bureau of Hospitals, as Acting Senior Medical Supervisor and Statistician thereof.

Dr. Elicaño and the Secretary of Health testified that respondent had agreed thereto, but respondent denied it. His testimony and that of Dr. Elicaño and the Secretary of Health shows, however, that the three (3) had reached some sort of agreement, although there may have been a misunderstanding as to the terms and conditions thereof. Indeed, the opinion of the majority states that "as though expecting the acceptance" by respondent of his transfer to the Bureau of Hospitals, "the same officials extended to Dr. Pedro N. Mayuga, an appointment to take his place". Said expectation is clearly indicative of a previous agreement, and this is further confirmed by the fact that counsel for respondent explicitly admitted, during the hearing in the lower court, that, in trying to transfer the respondent herein, the Secretary of Health "was actuated by good motive." (t.s.n., p. 48.) In any event, the unsatisfactory conditions found in the Rizal Provincial Hospital when it was inspected on May 24, 1954, prompted said transfer, in the interest of the service, and justified it.

I find myself unable to agree with the view of the majority to the effect that "if the intention, as it seems to be, is to convert the Rizal Provincial Hospital into a training center, the proper and convenient step to take would be to retain him (respondent) as head of that institution and give him a technical assistant who may help him in operating the training center. After all, an institution of that nature has two aspects; one technical and the other administrative". To begin with, there is not only an "intention to convert" the Rizal Provincial Hospital into a training center. It has already been converted into, and operated as such center since March of 1953. Secondly, respondent has actually administered the aforementioned center for over a year, and failed in the test. Thirdly, the question whether the head of a training center should be a technician or merely an administrator is essentially one of policy, which by law is under the control of the department head, and may not be reviewed by the courts of justice. Fourthly, although the head of a hospital need not be an expert in all branches of the service, he must be fairly enlightened thereon to be able to formulate policies that will promote efficiency therein. It is, to say the

least, difficult to see how the activities of an institution, operated to train physicians and nurses in the latest methods developed by science, can be directed by one who, as admitted by respondent herein, has never made any operation of "mectomy, nefrectomy and laferectomy", and does not even know what these operations are and that the same are always done in training hospitals. Fifthly, the Republic of the Philippines has embarked on a policy of promoting the development of science in many fields of endeavor. The magnitude of this undertaking and the transcendental nature thereof are such as to place the same beyond the purview of the common problems for which civil service laws, and the rules and regulations promulgated in pursuance thereof, are intended. The exacting demands of science, in its high levels, can not be satisfactorily met by the possession of qualifications of general nature, such as those usually ascertainable by the application of said laws, rules and regulations. Knowledge of the peculiarities of a given scientist and faith in him have often proven to be the key to the success or failure of many a scientific project. The exercise of judgment by the proper executive or administrative officer in the choice of the man to whom such project will be entrusted, should not be unduly hampered, therefore, by judicial intervention. There may be a possibility of abuse of power. But, in the language of this Court in *Angara vs. Electoral Commission* (63 Phil., 139, 177), "the possibility of abuse is not an argument against the concession of the power as there is no power that is not susceptible of abuse". We pointed out, in the same case, that from the fact that the constitutional body involved therein "may not be interfered with in the exercise of its legitimate power, it does not follow that its acts, however illegal or unconstitutional, may not be challenged in appropriate cases over which the courts may exercise jurisdiction". (Do., do., 178). However, as Justice Laurel put it in *Zanduetta vs. De la Costa* (66 Phil., 615, 626-627), "when a case of that kind arises, it will be the time to make the hammer fall and heavily. But not until then . . ." Such, to my mind, is not the case before us.

Hence, I dissent.

Reyes, J. B. L., and Barrera, JJ., concur.

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