

DR. JOSE CUYEGKENG, ET AL., PETITIONERS, VS. DR. PEDRO M. CRUZ, AS MEMBER OF BOARD OF MEDICAL EXAMINERS, RESPONDENT.

G.R. No. 16263. July 26, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This quo warranto proceeding was initiated on November 25, 1959. The prayer in the petition, as amended on December 1, 1959, reads:

"Wherefore, it is respectfully prayed that judgment be rendered in favor of the petitioners:

ON THE FIRST CAUSE OF ACTION:

- Declaring the petitioners as duly qualified for the position of member of the Board of Medical Examiners and that any one of them is legally entitled to be appointed as members of said Board;
- Declaring the appointment of the respondent Dr. Pedro M. Cruz as a member of the Board of Medical Examiners illegal and therefore null and void and ousting him therefrom and perpetually prohibiting him (unless appointed in accordance with law) from exercising the rights and performing the duties and functions connected therewith.

ON THE SECOND CAUSE OF ACTION:

- That pending the hearing on the merits of this case, a writ of preliminary injunction be issued forthwith ex parte ordering the respondent to cease, desist and refrain from assuming the office of member of the Board of Medical Examiners and exercising the rights and performing the duties and functions connected therewith, particularly to give or conduct the next examinations for physicians scheduled on or about December 14, 1959, or to take part in any way in the giving or conducting thereof, and after due hearing to make said injunction permanent;
- Ordering the respondent to pay the costs of this suit.

Petitioners further pray for such further and other relief as this Honorable Court "may deem just and proper under the premises."

By a resolution dated December 3, 1959, this Court denied the petition for a writ of preliminary injunction.

The petitioners are doctors Jose Cuyegkeng, Pedro N. Mayuga, Benjamin Roa, Timoteo Alday, Dominador Jacinto, Alejandro Gaerlan and Rosita Rivera-Ramirez. Their alleged cause of action is predicated upon the fact that their names appear in a list of qualified physicians, approved and submitted, to the President of the Philippines, by the Executive Council of the Philippine Medical Association of the Philippines pursuant to the provisions of section 13 of Republic Act No. 2382, for appointment as members of the Board of Medical Examiners, and that respondent Dr. Pedro M. Cruz, whom the President appointed to said board, was not named

in said list.

Soon after the institution of this case, the officers and members of said Council of the Philippine Medical Association, which is said to be an incorporated association of the medical profession in the Philippines, were allowed to intervene and then filed a petition in intervention, joining the petitioners in praying for the relief sought by them.

It appears that, on October 16, 1959, said Council, acting in conformity with section 13 of Republic Act No. 2882, otherwise known as The Medical Act of 1959, approved and submitted to the President a revised list of qualified physicians, including petitioners herein, for appointment to the aforementioned Board. The letter of said Council transmitting the aforementioned list reads as follows.

"October 16, 1959
Hon. Enrique C. Quema
Assistant Executive Secretary
Office of the President
Republic of the Philippines
Malacañang, Manila

Dear Sir:

In compliance with your request as contained in your letter of October 15, addressed to the Executive Council of the Philippine Medical Association, and pursuant to a decision reached by the said Council at a special meeting held yesterday, please be informed that the nominee who placed 13th in our order of priority for recommendation as members of the Board of Medical Examiners, namely, Dr. Rosita Rivera-Ramirez, is now being recommended as No. 12. With the disqualification of Dr. Dionisio R. Parulan (No. 11) by virtue of his candidacy to an elective post, we hereunder enumerate our twelve recommendees in the modified order:

- Dr. Cesar Filoteo
- Dr. Jose Cuyegkeng
- Dr. Edgardo Caparas
- Dr. Antonio Guytingco
- Dr. Pedro N. Mayuga
- 6. Dr. Benjamin Roa
- Dr. Jose Cocjin
- Dr. Timoteo Alday
- Dr. Dominador Jacinto
- Dr. Alejandro Gaerlan
- Dr. Oscar Chacon
- Dr. Rosita Rivera-Ramirez

Thank you for your interest on this matter.

Very truly yours,

FOR THE EXECUTIVE COUNCIL

S/ALBERTO Z. ROMUALDEZ

T/ALBERTO Z. ROMUALDEZ, MD."

By a letter of the Assistant Executive Secretary dated November 18, 1959, said Council was advised that the President had decided to appoint, as member of said Board, Dr. Cesar Filoteo, Dr. Oscar Chacon, Dr. Edgardo Caparas, Dr. Jose Cocjin, Dr. Antonio Guytingco and Dr. Pedro M. Cruz. Said letter follows:

"OFFICE OF THE PRESIDENT
OF THE PHILIPPINES

Manila, November 18, 1959

The Executive Council
Philippine Medical Association
1850 Taft Avenue, Manila

Gentlemen:

The President wishes me to thank you for your letter of October 16, 1959, submitted a revised list of recommendees for appointment as members of the Board of Medical Examiners under the provisions of Republic Act No. 2382.

After mature deliberation, the President has decided to appoint in the board two graduates from the University of the Philippines, two from the University of Santo Tomas and two government physicians irrespective of alma mater. The following were the candidates selected and appointed by the President:

1. Dr. Cesar Filoteo U. P.
2. Dr. Oscar Chacon U. P.
3. Dr. Edgardo Caparas U. S. T.
4. Dr. Jose Cocjin U. S. T.
5. Dr. Antonio Guytingco Government Physician
6. Dr. Pedro M. Cruz Government Physician

Of the twelve (12) names submitted in your above-mentioned letter of October 16, 1959, Dr. Antonio Guytingco and Dr. Alejandro Gaerlan, government physicians, happen to be both personal physicians of the President. For this reason, the President decided on renewing the appointment of Dr. Pedro M. Gruz, also a government physician, whose term under the old law would not have expired until August 7, 1960, were it not for the enactment of Republic Act No. 2382.

Very truly yours,

(Sgd.) Enrique C. Quema

t/ENRIQUE C. QUEMA

Assistant Executive Secretary"

The first five (5) persons mentioned in this letter were included in the list aforementioned, but the name of the last, namely, that of respondent herein, did not appear in said list. Petitioners herein, as well as the intervenors, maintain that, pursuant to section 13 of Republic Act No. 2382, the President cannot appoint to the Board of Medical Examiners any person not named in the list submitted by the Executive Council of the Philippine Medical Association, and that, accordingly, the aforementioned appointment of respondent is null and void.

Respondent alleged in his answer that three (3) of petitioners herein are, pursuant to section 14 of Republic Act No. 2382, not qualified for appointment to the Board of Medical Examiners, they being members of the professional staff of certain private medical colleges; that there is no cause of action against him for none of the petitioners and intervenors claim to be entitled to the office in question; that the aforementioned list, submitted by the executive Council of the Philippine Medical Association, is merely recommendatory in nature and, as such, not binding upon the President; that insofar as Section 13 of Republic Act No. 2382 may be construed as limiting the choice of the President, in a mandatory manner, in the selection of members of the Board of Medical Examiners, to the list aforementioned, said legal provision is unconstitutional and void; and that inclusion in the list above referred to is not one of the qualifications prescribed in section 14 of Republic Act No. 2382 for appointment to said Board.

The members of this Court are split into three (3) groups in their views on the issues thus raised by the pleadings. Section 13 of Republic Act No. 2382, upon which the petitioners and the intervenors rely, provides:

"The Board of Medical Examiners, its composition and duties.—The Board of Medical Examiners shall be composed of six members to be appointed by the President of the Philippines from a confidential list of not more than twelve names approved and submitted by the executive council of the Philippine Medical Association, after due consultation with other medical associations, during the months of April and October of each year. The chairman of the Board shall be elected from among themselves by the members at a meeting called for the purpose. The President of the Philippines shall fill any vacancy that may occur during any examination from the list of names submitted by the Philippine Medical Association in accordance with the provisions of this Act.

"No examiner shall handle the examinations in more than four subjects or groups of subjects as hereinafter

provided. The distribution of subjects to each member shall be agreed upon at a meeting called by the chairman for the purpose. The examination papers shall be under the custody of the Commissioner of Civil Service or his duly authorized representative, and shall be distributed to each member of the Board who shall correct, grade, and sign, and submit them to the said Commissioner within one hundred twenty days from the date of the termination of the examinations.

"A final meeting of the Board for the deliberation and approval of the grades shall be called by the Commissioner of Civil Service immediately after receipt of the records from the members of the Board of Medical Examiners. The secretary of the Board shall submit to the President of the Philippines for approval the names of the successful candidates as having been duly qualified for licensure in alphabetical order, without stating the ratings obtained by each."

One group of members of this Court is of the opinion that the provisions of this section are mandatory in character; that, although Congress may, by law, prescribe the qualifications for appointment to a public office created by statute, such as membership of the Board of Medical Examiners, and has specified the qualifications for eligibility to said Board in Section 14 of Republic Act No. 2382, reading:

"Qualifications of examiners.—No person shall be appointed a member of the Board of Medical Examiners unless he or she (1) is a natural-born citizen of the Philippines, (2) is a duly registered physician in the Philippines, (3) has been in the practice of medicine for at least ten years, (4) is of good moral character and of recognized standing in the medical profession, (5) is not a member of the faculty of any medical school and has no pecuniary interest, directly or indirectly, in any college of medicine or in any institution where any branch of medicine is taught, at the time of his appointment: Provided, That of the six members to be appointed, not more than two shall be graduates of the same institution and not more than three shall be government physicians."

inclusion in the list submitted by the Executive Council of the Philippine Medical Association, in compliance with section 13 of the same Act, is not one of the qualifications enumerated in said section 14; that by confining the selection of the six (6) members of the Board of Medical Examiners to the twelve (12) person included in said list, the framers of the law have evinced the intent, not merely to prescribe the qualifications for eligibility to said Board, but, also, to limit and curtail, and, hence, to reduce and impair the power of appointment vested in the President by the Constitution, which authority connotes necessarily a reasonable measure of freedom, latitude or discretion in the exercise of the power to choose the appointees (67 C. J. S. 157-158); and that, consequently, the pertinent portion of section 13 of Republic Act No. 2382 is unconstitutional and the appointment of respondent herein lawful and valid.

It may not be amiss to note, in this connection, that none of the cases cited in the memorandum of the intervenors herein (*Marks vs. Frantz* [1956] 179 Kan. 638, 298 P 2nd 316; *Railroad et al. vs. Willis* [1947] 305 Ky. 224, 203 S. W. 2nd 18; *Bradley vs. Board of Zoning Adjustment* [1926], 255 Mass. 160, 150 N. E. 892) is in point for the constitutions of Kansas, Kentucky and Massachusetts contain no provision identical or analogous to that found in our fundamental law, vesting in the President all executive powers not conferred upon others, and explicitly stating that all officers of the Government whose appointment are not otherwise provided for in the charter of said states shall be appointed by him. The authority of the chief executive of those states to appoint the officers involved in said cases springs mostly from statutes, unlike the President of the Philippines, whose appointing power emanates from our Constitution.

Another group adheres to the view that said portion of section 13 of Republic Act No. 2382 is merely directory in nature. Indeed, in their respective pleadings, the petitioners, as well as the intervenors, refer to the persons named in the list aforementioned as "recommendees". They are identically referred to in the communication transmitting said list to the President of the Philippines, which communication is, in turn, described in said pleadings as a letter

of "recommendation". By their very acts therefore, the intervenors have clearly expressed the belief, which was shared by the President, that the function of the former under said section 13 is purely recommendatory. Needless to say, a "recommendation", as such, implies merely an advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made. The members of the Court constituting this group feel, therefore, that, although section 13 of Republic Act No. 2382 is constitutional, respondent herein has a valid title to his office as member of the Board of Medical Examiners.

The third group, which is bigger than any of the two (2) groups already adverted to, deems it unnecessary, either to inquire into the constitutionality of said section 13, or to determine whether the same is mandatory or directory, for the reasons presently to be stated.

The letter to the Executive Council of the Philippine Medical Association dated November 18, 1959, informing the Association of the action taken by the President, states that he "had decided to appoint in the Board two graduates from the University of the Philippines, two from the University of Santo Tomas and two government physicians irrespective of alma mater". The list submitted by the Executive Council of the Philippine Medical Association included two (2) government physicians, namely, Dr. Antonio Guytingco and Dr. Alejandro Gaerlan, both of whom were "personal physicians of the President". Believing, perhaps, that their appointment to the Board may either deprive him completely of the benefits of their professional services, or impair the quality or usefulness thereof, or that a choice in favor of his two (2) personal doctors, as representatives of the government physicians in said Board, may smack of, or be misconstrued as, an act of nepotism, it was deemed best to appoint to the Board only one of them so that the other could continue giving his undivided attention to the health of the President. Hence, the latter had to look for another government physician for appointment to the Board. In this connection, it should be noted that respondent's professional competency for the post he now holds is not disputed. In fact, he had been a member of said Board twice before. What is more, when the questioned appointment was extended to him, on November 18, 1959, respondent was a member of said Board, and his term as such would have expired on August 7, 1960, had it not been for the approval of Republic Act No. 2382 on June 20, 1959. The President made, therefore, said appointment, which, the members of the Court belonging to the third group believe, is sanctioned by section 15 of Republic Act No. 2382, reading:

"Tenure of office and compensation of members.—The members of the Board of Medical Examiners shall hold office for one year: Provided, That any member may be reappointed for not more than one year. Each member shall receive as compensation ten pesos for each candidate examined for registration as physician, and five pesos for each candidate examined in the preliminary or final physician examination.

"The President of the Philippines, upon the recommendation of the Commissioner of Civil Service, after due investigation, may remove any member of the Board of Medical Examiners for neglect of duty, incompetency, or unprofessional or dishonorable conduct."

The members of said group opine that it is not absolutely necessary that the person reappointed under this provision be included in the list mentioned in section 13 of Republic Act No. 2382, for, in case of conflict between two (2) provisions of the same statute, the last in order of position is frequently held to prevail (82 C. J. S. 718), unless it clearly appears that the intent of Congress is otherwise, and no such intent is patent in the case at bar. Furthermore, the purpose of section 13, in requiring the favorable indorsement of the Philippine Medical Association, evidently, to reasonably assure that the members of the Board of Medical Examiners are among the best in their profession, and one who has already held, or who still holds a position in said Board, is presumed to belong to such class, in the absence of proof to the contrary. There is not even the slightest suggestion that respondent does not live up to the standard required for membership in said Board.

In conclusion, although none of the groups already adverted to have sufficient votes to constitute the requisite

majority, the members of this Court are unanimous in the opinion that respondent herein has a good and valid title to his office.

Lastly, this is a quo warranto proceeding, which, pursuant to Rule 68 of the Rules of Court, may be brought, either by the Government or by a private individual. Not every individual may, however, initiate the proceedings. Section 6 of said Rule provides:

"When an individual may commence such an action.—A person claiming to be entitled to a public office usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

Thus, one who does not claim to be entitled to the office allegedly usurped or unlawfully held or exercised by another cannot question his title thereto by quo warranto. In the case at bar, petitioners do not claim to be entitled to the office held by respondent herein. None of them has been appointed thereto and none of them may, therefore, be placed in said office, regardless of the alleged flaws in respondent's title thereto. They merely assert a right to be appointed to said office. Considering, however, that there are seven (7) petitioners and that only one (1) office is involved in this case, none of them can, or does, give an assurance that he will be the one appointed by the President, should said office be declared vacant. In short, the claim of each petitioner is predicated solely upon a more or less remote possibility that in said event, he may be the recipient of the appointment. It is obvious, therefore, that none of them has a cause of action against respondent herein (*Acosta vs. Flor*, 5 Phil., 18, 22; *Lino Luna vs. Rodriguez*, 36 Phil., 401; *Nueno vs. Angeles*, 76 Phil., 12).

Upon the other hand, the petition in intervention is predicated upon the right of the intervenors to submit a list of recommendees for appointment to the Board of Medical Examiners. Such right does not entitle the intervenors, under the above provision of Rule 68, to question the title of respondent herein. Hence, the petition for quo warranto has no leg to stand on.

Wherefore, the writ prayed for should be, as it is hereby, denied, with costs against the petitioners. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, Endencia, and Barrera, JJ., concur.
Montemayor, and Gutierrez David, JJ., concur in the result.

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