

FERDINAND S. TOPACIO, PETITIONER, VS. ASSOCIATE JUSTICE OF THE SANDIGANBAYAN GREGORY SANTOS ONG AND THE OFFICE OF THE SOLICITOR GENERAL, RESPONDENTS.

G.R. No. 179895. December 18, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Ferdinand Topacio (petitioner) via the present petition for certiorari and prohibition seeks, in the main, to prevent Justice Gregory Ong (Ong) from further exercising the powers, duties and responsibilities of a Sandiganbayan Associate Justice.

It will be recalled that in *Kilosbayan Foundation v. Ermita*,^[1] the Court, by Decision of July 3, 2007, enjoined Ong "from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship."^[2]

On July 9, 2007, Ong immediately filed with the Regional Trial Court (RTC) of Pasig City a Petition for the "amendment/ correction/ supplementation or annotation of an entry in [his] Certificate of Birth," docketed as S.P. Proc No. 11767-SJ, "*Gregory Santos Ong v. The Civil Registrar of San Juan, Metro Manila, et al.*"^[3]

Meanwhile, petitioner, by verified Letter-Request/Complaint^[4] of September 5, 2007, implored respondent Office of the Solicitor General (OSG) to initiate post-haste a quo warranto proceeding against Ong in the latter's capacity as an incumbent Associate Justice of the Sandiganbayan. Invoking paragraph 1, Section 7, Article VIII of the Constitution^[5] in conjunction with the Court's Decision in *Kilosbayan Foundation v. Ermita*,^[6] petitioner points out that natural-born citizenship is also a qualification for appointment as member of the Sandiganbayan and that Ong has failed to meet the citizenship requirement from the time of his appointment as such in October 1998.

The OSG, by letter of September 25, 2007, informed petitioner that it "cannot favorably act on [his] request for the filing of a quo warranto petition until the [RTC] case shall have been terminated with finality."^[7] Petitioner assails this position of the OSG as being tainted with grave abuse of discretion, aside from Ong's continuous discharge of judicial functions.

Hence, this petition, positing that:

IN OCTOBER OF 1998, RESPONDENT WAS NOT DULY-QUALIFIED UNDER THE FIRST SENTENCE OF PARAGRAPH 1, SECTION 7, OF THE 1987 CONSTITUTION, TO BE APPOINTED AN ASSOCIATE JUSTICE OF THE SANDIGANBAYAN, MERELY ON THE STRENGTH OF AN IDENTIFICATION CERTIFICATE ISSUED BY THE BUREAU OF IMMIGRATION AND A 1ST INDORSEMENT DATED 22 MAY 1997 ISSUED BY THE SECRETARY OF JUSTICE, BECAUSE, AS OF OCTOBER 1998, RESPONDET'S BIRTH CERTIFICATE INDICATED THAT RESPONDENT IS A CHINESE CITIZEN AND BECAUSE, AS OF OCTOBER 1998, THE RECORDS OF THIS HONORABLE COURT DECLARED

THAT RESPONDENT IS A NATURALIZED FILIPINO CITIZEN.[8] (Underscoring supplied)

Petitioner thus contends that Ong should immediately desist from holding the position of Associate Justice of the Sandiganbayan since he is disqualified on the basis of citizenship, whether gauged from his birth certificate which indicates him to be a Chinese citizen or against his bar records bearing out his status as a naturalized Filipino citizen, as declared in *Kilosbayan Foundation v. Ermita*.

Ong, on the other hand, states that *Kilosbayan Foundation v. Ermita* did not annul or declare null his appointment as Justice of the Supreme Court, but merely enjoined him from accepting his appointment, and that there is no definitive pronouncement therein that he is not a natural-born Filipino. He informs that he, nonetheless, voluntarily relinquished the appointment to the Supreme Court out of judicial statesmanship.[9]

By Manifestation and Motion to Dismiss of January 3, 2008, Ong informs that the RTC, by Decision of October 24, 2007, already granted his petition and recognized him as a natural-born citizen. The Decision having, to him, become final,[10] he caused the corresponding annotation thereof on his Certificate of Birth.[11]

Invoking the curative provisions of the 1987 Constitution, Ong explains that his status as a natural-born citizen inheres from birth and the legal effect of such recognition retroacts to the time of his birth.

Ong thus concludes that in view of the RTC decision, there is no more legal or factual basis for the present petition, or at the very least this petition must await the final disposition of the RTC case which to him involves a prejudicial issue.

The parties to the present petition have exchanged pleadings[12] that mirror the issues in the pending petitions for certiorari in G.R. No. 180543, "*Kilosbayan Foundation, et al. v. Leoncio M. Janolo, Jr., et al.*," filed with this Court and in CA-G.R. SP No. 102318, "*Ferdinand S. Topacio v. Leoncio M. Janolo, Jr., et al.*,"[13] filed with the appellate court, both of which assail, inter alia, the RTC October 24, 2007 Decision.

First, on the objection concerning the verification of the petition.

The OSG alleges that the petition is defectively verified, being based on petitioner's "personal knowledge and belief and/or authentic records," and having been "acknowledged" before a notary public who happens to be petitioner's father, contrary to the Rules of Court[14] and the Rules on Notarial Practice of 2004,[15] respectively.

This technicality deserves scant consideration where the question at issue, as in this case, is one purely of law and there is no need of delving into the veracity of the allegations in the petition, which are not disputed at all by respondents.[16]

One factual allegation extant from the petition is the exchange of written communications between petitioner and the OSG, the truthfulness of which the latter does not challenge. Moreover, petitioner also verifies such correspondence on the basis of the thereto attached letters, the authenticity of which he warranted in the same verification-affidavit. Other allegations in the petition are verifiable in a similar fashion, while the rest are posed as citations of law.

The purpose of verification is simply to secure an assurance that the allegations of the petition or complaint have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal, not a jurisdictional requirement.[17]

In the same vein, the Court brushes aside the defect, insofar as the petition is concerned, of a notarial act performed by one who is disqualified by reason of consanguinity, without prejudice to any administrative complaint that may be filed against the notary public.

Certiorari with respect to the OSG

On the issue of whether the OSG committed grave abuse of discretion in deferring the filing of a petition for quo warranto, the Court rules in the negative.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[18]

The Court appreciates no abuse of discretion, much less, a grave one, on the part of the OSG in deferring action on the filing of a quo warranto case until after the RTC case has been terminated with finality. A decision is not deemed tainted with grave abuse of discretion simply because the affected party disagrees with it.[19]

The Solicitor General is the counsel of the government, its agencies and instrumentalities, and its officials or agents. In the discharge of its task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law.[20]

The pertinent rules of Rule 66 on quo warranto provide:

SECTION 1. Action by Government against individuals. â€ An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:

- (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
- (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or
- (c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

SEC. 2. When Solicitor General or public prosecutor must commence action. â€ The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

SEC. 3. When Solicitor General or public prosecutor may commence action with permission of court. â€ The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought. (*Italics and emphasis in the original*)

In the exercise of sound discretion, the Solicitor General may suspend or turn down the institution of an action for quo warranto where there are just and valid reasons.[21] Thus, in *Gonzales v. Chavez*,[22] the Court ruled:

Like the Attorney-General of the United States who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started, our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party. Abandonment of a case, however, does not mean that the Solicitor General may just drop it without any legal and valid reasons, for the discretion given him is not unlimited. Its exercise must be, not only within the parameters get by law but with the best interest of the State as the ultimate goal.[23]

Upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand.[24]

It appears that after studying the case, the Solicitor General saw the folly of re-litigating the same issue of Ong's citizenship in the quo warranto case simultaneously with the RTC case, not to mention the consequent risk of forum-shopping. In any event, the OSG did not totally write finis to the issue as it merely advised petitioner to await the outcome of the RTC case.

Certiorari and Prohibition with respect to Ong

By petitioner's admission, what is at issue is Ong's title to the office of Associate Justice of Sandiganbayan.[25] He claims to have been constrained to file the present petition after the OSG refused to heed his request to institute a suit for quo warranto. Averring that Ong is disqualified to be a member of any lower collegiate court, petitioner specifically prays that, after appropriate proceedings, the Court

. . . issue the writs of certiorari and prohibition against Respondent Ong, ordering Respondent Ong to cease and desist from further exercising the powers, duties, and responsibilities of a Justice of the Sandiganbayan due to violation of the first sentence of paragraph 1, Section 7, of the 1987 Constitution; . . . issue the writs of certiorari and prohibition against Respondent Ong and declare that he was disqualified from being appointed to the post of Associate Justice of the Sandiganbayan in October of 1998, considering that, as of October of 1998, the birth certificate of Respondent Ong declared that he is a Chinese citizen, while even the records of this Honorable Court, as of October of 1998, declared that Respondent Ong is a naturalized Filipino; x x x[26]

While denominated as a petition for certiorari and prohibition, the petition partakes of the nature of a quo warranto proceeding with respect to Ong, for it effectively seeks to declare null and void his appointment as an Associate Justice of the Sandiganbayan for being unconstitutional. While the petition professes to be one for certiorari and prohibition, petitioner even adverts to a "quo warranto" aspect of the petition.[27]

Being a collateral attack on a public officer's title, the present petition for certiorari and prohibition must be dismissed.

The title to a public office may not be contested except directly, by quo warranto proceedings; and it cannot be assailed collaterally,[28] even through mandamus[29] or a motion to annul or set aside order.[30] In *Nacionalista Party v. De Vera*,[31] the Court ruled that prohibition does not lie to inquire into the validity of the appointment of a public officer.

x x x [T]he writ of prohibition, even when directed against persons acting as judges or other judicial officers, cannot be treated as a substitute for quo warranto or be rightfully called upon to perform any of the functions of the writ. If there is a court, judge or officer de facto, the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office, the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an improper remedy by which to determine the title to an office.[32]

Even if the Court treats the case as one for quo warranto, the petition is, just the same, dismissible.

A quo warranto proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment.[33] It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office,[34] and may be commenced by the Solicitor General or a public prosecutor, as the case may be, or by any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.[35]

Nothing is more settled than the principle, which goes back to the 1905 case of *Acosta v. Flor*,^[36] reiterated in the recent 2008 case of *Feliciano v. Villasin*,^[37] that for a quo warranto petition to be successful, the private person suing must show a clear right to the contested office. In fact, not even a mere preferential right to be appointed thereto can lend a modicum of legal ground to proceed with the action.^[38]

In the present case, petitioner presented no sufficient proof of a clear and indubitable franchise to the office of an Associate Justice of the Sandiganbayan. He in fact concedes that he was never entitled to assume the office of an Associate Justice of the Sandiganbayan.^[39]

In the instance in which the Petition for Quo Warranto is filed by an individual in his own name, he must be able to prove that he is entitled to the controverted public office, position, or franchise; otherwise, the holder of the same has a right to the undisturbed possession thereof. In actions for Quo Warranto to determine title to a public office, the complaint, to be sufficient in form, must show that the plaintiff is entitled to the office. In *Garcia v. Perez*, this Court ruled that the person instituting Quo Warranto proceedings on his own behalf, under Section 5, Rule 66 of the Rules of Court, must aver and be able to show that he is entitled to the office in dispute. Without such averment or evidence of such right, the action may be dismissed at any stage.^[40] (Emphasis in the original)

The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, or by any other, except in the form especially provided by law.^[41] To uphold such action would encourage every disgruntled citizen to resort to the courts, thereby causing incalculable mischief and hindrance to the efficient operation of the governmental machine.^[42]

Clearly then, it becomes entirely unwarranted at this time to pass upon the citizenship of Ong. The Court cannot, upon the authority of the present petition, determine said question without encroaching on and preempting the proceedings emanating from the RTC case. Even petitioner clarifies that he is not presently seeking a resolution on Ong's citizenship, even while he acknowledges the uncertainty of Ong's natural-born citizenship.^[43]

The present case is different from *Kilosbayan Foundation v. Ermita*, given Ong's actual physical possession and exercise of the functions of the office of an Associate Justice of the Sandiganbayan, which is a factor that sets into motion the *de facto* doctrine.

Suffice it to mention that a *de facto* officer is one who is in possession of the office and is discharging its duties under color of authority, and by color of authority is meant that derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer.^[44] If a person appointed to an office is subsequently declared ineligible therefor, his presumably valid appointment will give him color of title that will confer on him the status of a *de facto* officer.^[45]

x x x A judge *de facto* assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well-established principle, dating back from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge, so far as the public or third persons who are interested therein are concerned.^[46]

If only to protect the sanctity of dealings by the public with persons whose ostensible authority emanates from the State, and without ruling on the conditions for the interplay of the *de facto* doctrine, the Court declares that Ong may turn out to be either a *de jure* officer who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired, or a *de facto* officer who enjoys certain rights, among which is that his title to said office may not be contested except directly by writ of quo warranto,^[47] which contingencies all depend on the final outcome of the RTC case.

With the foregoing disquisition, it becomes unnecessary to dwell on the ancillary issues raised by the parties.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Azcuna, Tinga, Velasco, Jr., Nachura, Reyes, and Brion, JJ., concur.

Corona, J., on official leave.

Chico-Nazario, and Leonardo-De Castro, JJ., no part.

[1]G.R. No. 177721, July 3, 2007, 526 SCRA 353.

[2] Id. at 367.

[3] Vide rollo, pp. 25-46.

[4]Id. at 19-22.

[5] No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines. (Underscoring supplied)

[6] Supra note 1.

[7] Rollo, p. 24.

[8]Id. at 7-8.

[9]Vide footnote 16 of Comment, id. at 89.

[10] Vide Entry of Judgment/Certificate of Finality of December 27, 2007, id. at 123.

[11] Id. at 124, 127.

[12] Petitioner filed a Counter Manifestation with Opposition to the Motion to Dismiss, to which Ong filed a Reply. After petitioner filed a Rejoinder, Ong filed a Comment ad cautelam, to which petitioner submitted a Reply.

[13] Petitioner filed on February 13, 2008 a "Petition for Certiorari with Ad Cautelam Motion to Certify to the Supreme Court" which also assails the RTC Orders of October 30, 2007, November 7, 2007 and December 26, 2007 and calls for the reopening of the RTC proceedings.

[14] RULES OF COURT, Rule 7, Sec. 4, as amended, reads:

Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

(Underscoring supplied)

[15] Resolution of July 6, 2004 in A.M. No. 02-8-13-SC, Rule IV, Sec. 3 of which reads:

A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;

(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree. (Underscoring supplied)

[16] Alternative Center for Organizational Reforms and Development, Inc. (ACORD) v. Zamora, G.R. No. 144256, June 8, 2005, 459 SCRA 578, 590 citing Decano v. Edu, 99 SCRA 410, 420 (1980).

[17] Iglesia ni Cristo v. Ponferrada, G.R. 168943, October 27, 2006, 505 SCRA 828, 840-841.

[18] Feliciano v. Villasin, G.R. No. 174929, June 27, 2008, 556 SCRA 348, 363-364.

[19] Marohomsalic v. Cole, G.R. No. 169918, February 27, 2008, 547 SCRA 98.

[20] Orbos v. Civil Service Commission, G.R. No. 92561, September 12, 1990, 189 SCRA 459.

[21] Amante v. Hilado, 67 Phil. 338 (1939); cf. Gumaru v. Quirino State College, G.R. No. 164196, June 22, 2007, 525 SCRA 412, 423 holding that the Solicitor General cannot refuse to represent the government without a just and valid reason; cf. Commission on Elections v. Court of Appeals, G.R. No. 108120, January 26, 1994, 229 SCRA 501 even insofar as control over criminal cases before appellate courts is concerned.

[22] G.R. No. 97351, February 4, 1992, 205 SCRA 816.

[23] Id. at 838-839.

[24] Calderon v. Solicitor General, G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876, 882.

[25] Rollo, p. 257 as petitioner justifies his failure to implead the nominating and appointing authority as indispensable parties whose official actions are allegedly the very acts assailed.

[26] Id. at 14-15.

[27] Vide id. at 254-255, 257 where petitioner admits that the action consists of both a quo warranto case and a certiorari case.

[28] Gonzales v. COMELEC, et al., 129 Phil 7, 29 (1967).

[29] Pilar v. Sec. of the DPWTC, et al., 125 Phil. 766 (1967).

[30] Gamboa, et al. v. CA, et al., 194 Phil. 624 (1981).

[31] 85 Phil. 126 (1949).

[32] Id. at 133.

[33] Sec. Defensor Santiago v. Sen. Guingona, Jr., 359 Phil. 276, 302 (1998).

[34] RULES OF COURT, Rule 66, Sec. 1.

[35]RULES OF COURT Rule 66, Sec. 5.

[36] 5 Phil. 18 (1905).

[37]G.R. No. 174929, June 27, 2008, 556 SCRA 348.

[38] Vide Garcia v. Perez, 188 Phil. 43, 47 (1980).

[39] Rollo, p. 9.

[40] Feliciano v. Villasin, G.R. No. 174929, June 27, 2008, 556 SCRA 348, 366.

[41] Tayko v. Capistrano, 53 Phil. 866, 872 (1928).

[42] Tarrosa v. Singson, G.R. No. 111243, May 25, 1994, 232 SCRA 553.

[43] Rollo, pp. 233-234.

[44]Civil Service Commission v. Joson, Jr., G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.

[45]Carlo Cruz, THE LAW OF PUBLIC OFFICERS (1999) 37 citing Regala v. Court of First Instance of Bataan, 77 Phil. 684 (1946).

[46] Tayco v. Capistrano, supra at 872-873.

[47]Ibid.

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