

FRANKLIN M. DRILON AS PRESIDENT AND IN REPRESENTATION OF THE LIBERAL PARTY OF THE PHILIPPINES (LP), AND HON. JOSEPH EMILIO A. ABAYA, HON. WAHAB M. AKBAR, HON. MARIA EVITA R. ARA...

G.R. No. 180055. July 31, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In August 2007, the Senate and the House of Representatives elected their respective contingents to the Commission on Appointments (CA).

The contingent in the Senate to the CA was composed of the following senators with their respective political parties:

Sen. Maria Ana Consuelo A.S. Madrigal

PDP-Laban

Sen. Joker Arroyo

KAMPI

Sen. Alan Peter Cayetano

Lakas-CMD

Sen. Panfilo Lacson

UNO

Sen. Jinggoy Ejercito Estrada

PMP

Sen. Juan Ponce Enrile

PMP

Sen. Loren Legarda

NPC

Sen. Richard Gordon

Lakas-CMD

Sen. Mar Roxas

LP

Sen. Lito Lapid

Lakas-CMD

Sen. Miriam Defensor-Santiago

PRP

The members of the contingent of the House of Representatives in the CA and their respective political parties were as follows:

Rep. Prospero C. Nograles

Lakas-CMD

Rep. Eduardo C. Zialcita

Lakas-CMD

Rep. Abdullah D. Dimaporo

Lakas-CMD

Rep. Jose Carlos V. Lacson

Lakas-CMD

Rep. Eileen R. Ermita-Buhain

Lakas-CMD

Rep. Jose V. Yap

Lakas-CMD

Rep. Rodolfo T. Albano III

KAMPI

Rep. Eduardo R. Gullas

KAMPI

Rep. Rodolfo "Ompong" G. Plaza

NPC

Rep. Conrado M. Estrella

NPC

Rep. Emmylou J. Taliño-Mendoza

NP

Rep. Emmanuel Joel J. Villanueva

CIBAC Party List

In the second week of August 2007, petitioners in the first petition, G.R. No. 180055, went to respondent then Speaker Jose de Venecia to ask for one seat for the Liberal Party in the CA. Speaker Jose de Venecia merely said that he would study their demand.[1]

During the session of the House of Representatives on September 3, 2007, petitioner in the first petition, Representative Tañada, requested from the House of Representatives leadership[2] one seat in the CA for the Liberal Party.[3] To his request, Representative Neptali Gonzales II[4] begged the indulgence of the Liberal Party "to allow the Legal Department to make a study on the matter." [5]

In a separate move, Representative Tañada, by letter of September 10, 2007, requested the Secretary General of the House of Representatives the reconstitution of the House contingent in the CA to include one seat for the Liberal Party in compliance with the provision of Section 18, Article VI of the Constitution.[6] Representative Tañada also brought the matter to the attention of then Speaker De Venecia, reiterating the position that since there were at least 20 members of the Liberal Party in the 14th Congress, the party should be represented in the CA.[7]

As of October 15, 2007, however, no report or recommendation was proffered by the Legal Department, drawing Representative Tañada to request a report or recommendation on the matter within three days.[8]

In reply, Atty. Grace Andres of the Legal Affairs Bureau of the House of Representatives informed Representative Tañada that the department was constrained to withhold the release of its legal opinion because the handling lawyer was directed to secure documents necessary to establish some of the members' party affiliations.[9]

Hence spawned the filing on October 31, 2007 of the first petition by petitioner former Senator Franklin M. Drilon (in representation of the Liberal Party), et al., for prohibition, mandamus, and quo warranto with prayer for the issuance of writ of preliminary injunction and temporary restraining order, against then Speaker De Venecia, Representative Arthur Defensor, Sr. in his capacity as Majority Floor Leader of the House of Representatives, Senator Manuel B. Villar in his capacity as ex officio chairman of the CA, Atty. Ma. Gemma D. Aspiras in her capacity as Secretary of the CA, and the individual members of the House of Representatives contingent to the CA.[10] The petition in G.R. No. 180055 raises the following issues:

- a. WHETHER THE LIBERAL PARTY WITH AT LEAST TWENTY (20) MEMBERS WHO SIGNED HEREIN AS PETITIONERS, IS CONSTITUTIONALLY ENTITLED TO ONE (1) SEAT IN THE COMMISSION ON APPOINTMENTS.
- b. WHETHER THE HOUSE OF REPRESENTATIVES' RESPONDENTS HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSTITUTING THE COMMISSION ON APPOINTMENTS IN CONTRAVENTION OF THE REQUIRED PROPORTIONAL CONSTITUTION BY DEPRIVING THE LIBERAL PARTY OF ITS CONSTITUTIONAL ENTITLEMENT TO ONE (1) SEAT THEREIN.
- c. WHETHER AS A RESULT OF THE GRAVE ABUSE OF DISCRETION COMMITTED BY THE HOUSE OF REPRESENTATIVES RESPONDENTS, THE WRITS PRAYED FOR IN THIS PETITION BE ISSUED NULLIFYING THE CURRENT COMPOSITION OF THE COMMISSION ON APPOINTMENTS, RESTRAINING THE CURRENT HOUSE OF REPRESENTATIVE MEMBERS FROM SITTING AND PARTICIPATING IN THE PROCEEDINGS OF THE COMMISSION ON APPOINTMENTS, OUSTING THE AFFECTED RESPONDENTS WHO USURPED, INTRUDED INTO AND UNLAWFULLY HELD POSITIONS IN THE COMMISSION ON APPOINTMENTS AND REQUIRING THE RESPONDENTS TO RECONSTITUTE AND/OR REELECT THE MEMBERS OF SAID COMMISSION.[11] (*Italics in the original*)

And it prays that this Court:

- Immediately upon the filing of the instant Petition, issue a Temporary Restraining Order and/or a Writ of Preliminary Prohibitory and Mandatory Injunction, enjoining all Respondents and all persons under their direction, authority, supervision, and control from further proceeding with their actions relating to the illegal and unconstitutional constitution of the Commission on Appointments and to the unlawful exercise of its members' functions, contrary to the rule on proportional representation of political parties with respect to the House of Representatives contingent in the said Commission;
- After careful consideration of the merits of the case, render judgment making the injunction permanent and ordering Respondents and all persons under their direction, authority, supervision, and control;

x x x x

- Declare Respondents' action in not allotting one (1) seat to Petitioners null and void for being a direct violation of Section 18, Article VI of the Constitution;
- Declare the proceedings of the Commission on Appointments null and void, insofar as they violate the rule on proportional representation of political parties in said Commission;
- Oust the affected respondents, whoever they are, who usurped, intruded into and have unlawfully held positions in the Commission on Appointments and
- Require Respondents to alter, reorganize, reconstitute and reconfigure the composition of the Commission on Appointments in accordance with proportional representation based on the actual numbers of members belonging to duly accredited and registered political parties who were elected into office during the last May 14, 2007 Elections by, at the very least, respecting and allowing Congressman Alfonso V. Umali, Jr. as the duly nominated Commission on Appointments member of the Liberal Party of the Philippines to sit therein as such.[12]

Respondents Senator Villar and CA Secretary Aspiras filed their Comment[13] on December 6, 2007, moving for the dismissal of the petition on these grounds:

- THE POWER TO ELECT MEMBERS TO THE COMMISSION ON APPOINTMENTS BELONGS TO EACH HOUSE OF CONGRESS PURSUANT TO THE CONSTITUTION. AS SUCH, THE PETITION IS NOT DIRECTED AT THE HEREIN RESPONDENTS.
- THE CONSTITUTION DOES NOT REQUIRE THAT THE COMMISSION MUST HAVE COMPLETE MEMBERSHIP IN ORDER THAT IT CAN FUNCTION. WHAT THE CONSTITUTION REQUIRES IS THAT THERE MUST AT LEAST BE A MAJORITY OF ALL THE MEMBERS OF THE COMMISSION FOR IT TO VALIDLY CONDUCT ITS PROCEEDINGS AND TRANSACT ITS BUSINESS.[14] (Emphasis in the original)

Then Speaker De Venecia and Representative Defensor filed their Comment and Opposition[15] on February 18, 2008, moving too for the dismissal of the petition on these grounds:

- THE ACTS COMPLAINED OF DO NOT CONSTITUTE GRAVE ABUSE OF DISCRETION THAT WILL JUSTIFY THE GRANT OF THE EXTRAORDINARY WRIT OF MANDAMUS.[16]
- THE LIBERAL PARTY DOES NOT POSSESS THE REQUISITE NUMBER OF MEMBERS THAT WOULD ENTITLE THE PARTY TO A SEAT IN THE COMMISSION ON APPOINTMENTS. IT IS, THEREFORE, NOT THE PROPER PARTY TO INSTITUTE THE INSTANT PETITION FOR QUO WARRANTO.[17]
- THE PETITIONERS FAILED TO EXHAUST THE REMEDIES AVAILABLE TO THEM.[18]

- THE CONFLICTING CLAIMS OF THE PARTIES AS TO THE AFFILIATION OF THE MEMBERS NEED TO BE SETTLED IN A TRIAL.[19] (Emphasis in the original)

Meantime, Senator Ma. Ana Consuelo A.S. Madrigal of PDP-Laban, by separate letters of April 17, 2008 to Senator Villar and Speaker Prospero Nograles, claimed that the composition of the Senate contingent in the CA violated the constitutional requirement of proportional representation for the following reasons:

- PMP has two representatives in the CA although it only has two members in the Senate and thus [is] entitled only to one (1) seat.
- KAMPI has only one (1) member in the Senate and thus is not entitled to a CA seat and yet it is represented in the CA.
- PRP has only one (1) member in the Senate and thus is not entitled to a CA seat and yet it is represented in the CA.
- If Senators Richard Gordon and Pilar Juliana Cayetano are Independents, then Sen. Gordon cannot be a member of the CA as Independents cannot be represented in the CA even though there will be three Independents in the CA.
- If Sen. Alan Peter Cayetano is now NP, he still can sit in the CA representing NP.[20]

She also claimed that the composition of the House of Representatives contingent in the CA violated the constitutional requirement of proportional representation for the following reasons:

- Lakas-CMD currently has five (5) members in the Commission on Appointments although it is entitled only to four (4) representatives and thus [is] in excess of a member;
- KAMPI currently has three (3) members in the Commission on Appointments although it is entitled only to two (2) representatives and thus is excess of a member;
- Liberal Party is not represented in the Commission on Appointments although it is entitled to one (1) nominee; and
- Party-List CIBAC has a representative in the Commission on Appointments although it only has two members in the House of Representatives and therefore [is] not entitled to any seat.[21]

Senator Madrigal thus requested the reorganization of the membership of the CA and that, in the meantime, "all actions of [the] CA be held in abeyance as the same may be construed as illegal and unconstitutional."[22]

By letter of May 13, 2008, Senator Madrigal again wrote Senator Villar as follows:

Today, I was advised that the Committee on Budget and Management of Senator Mar Roxas has endorsed the ad interim appointment of Rolando G. Andaya as Secretary of the Department of Budget and Management for approval by the CA in the plenary. I believe it is imperative that the serious constitutional questions that I have raised be settled before the plenary acts on this endorsement by the Committee on Budget and Management. Otherwise, like Damocles' sword, a specter of doubt continues to be raised on the validity of actions taken by the CA and its committees.[23]

Still later or on May 19, 2008, Senator Madrigal sent another letter to Senator Villar declaring that she "cannot in good conscience continue to participate in the proceedings of the CA, until such time as [she] get[s] a response to [her] letters and until the constitutional issue of the CA's composition is resolved by the leadership of the Commission,"[24] and that without any such resolution, she would be forced to invoke Section 20 of the CA rules against every official whose confirmation would be submitted to the body for deliberation.[25]

The CA Committee on Rules and Resolutions, by letter-comment of May 26, 2008, opined that the CA has neither the power nor the discretion to reject a member who is elected by either House, and that any complaints about the election of a member or members should be addressed to the body that elected them.[26]

By letter of May 28, 2008, Senator Villar advised Senator Madrigal as follows:

x x x x

Noting your position that you will not continue to participate in the proceedings of the CA ... "until the constitutional issue of the CA's composition is resolved by the leadership of the Commission" x x x, the Secretary of the Commission, upon my instructions, transmitted the same to the CA Committee on Rules and Resolutions. It was my intention to have the Committee study and deliberate on the matter and to recommend what step/s to take on your request that "all actions of the Commission be held in abeyance" x x x.

In view however, of your manifestation during the May 26, 2008 meeting of the CA Committee on Rules and Resolutions, and of the written comment of Sen. Arroyo that "If there is a complaint in the election of a member or members, it shall be addressed to the body that elected them, namely the Senate and/or the House," I have given instructions to transmit the original copies of your letters to the Senate Secretary for their immediate inclusion in the Order of Business of the Session of the Senate so that your concerns may be addressed by the Senate in caucus and/or in plenary.[27] (Emphasis and underscoring supplied)

Undaunted, Senator Madrigal, by letter of June 2, 2008 addressed to Senator Villar, reiterated her request that all actions of the CA be held in abeyance pending the reorganization of both the Senate and House of Representatives contingents.[28]

Senator Madrigal thereafter filed on June 13, 2008 the second petition, G.R. No. 183055, for prohibition and mandamus with prayer for issuance of temporary restraining order/writ of preliminary injunction against Senator Villar in his capacity as Senate President and Ex-Officio Chairman of the CA, Speaker Nograles, and the CA,[29] alleging that respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction

- . . . IN FAILING TO COMPLY WITH THE CONSTITUTIONALLY REQUIRED PROPORTIONAL PARTY REPRESENTATION OF THE MEMBERS OF THE COMMISSION ON APPOINTMENTS;

- . . . IN CONTINUOUSLY CONDUCTING HEARINGS AND PROCEEDINGS ON THE APPOINTMENTS DESPITE THE COMMISSION ON APPOINTMENTS' UNCONSTITUTIONAL COMPOSITION WHICH MUST BE PROHIBITED BY THIS HONORABLE COURT; and

- . . . IN FAILING, DESPITE REPEATED DEMANDS FROM PETITIONER, TO RE-ORGANIZE THE COMMISSION ON APPOINTMENTS IN ACCORDANCE WITH THE MANDATED PROPORTIONAL PARTY REPRESENTATION OF THE 1987 CONSTITUTION, WHICH REQUIREMENT MUST BE ENFORCED BY THIS HONORABLE COURT.[30] (Emphasis in the original)

She thus prayed for the

- . . . issu[ance of] a temporary restraining order/a writ of preliminary injunction to enjoin Respondents from proceeding with their illegal and unlawful actions as officials and members of the Commission on Appointments which composition is unconstitutional, pending resolution of the instant Petition;

- Declar[ation that] the composition of the Commission on Appointments [is] null and void insofar as it violates the proportional party representation requirement mandated by Article VI, Section 18 of the 1987 Philippine Constitution;

- Issu[ance of] a Writ of Prohibition against respondents Senate President Manuel Villar, Speaker Prospero

Nograles and Secretary Gemma Aspiras to desist from further proceeding with their illegal and unlawful actions as officers of the Commission on Appointments, the composition of which is null and void for being violative of the proportional party representation requirement under Article VI, Section 18 of the 1987 Philippine Constitution; and

- Issu[ance of] a Writ of Mandamus commanding respondents Senate President Manuel Villar, Speaker Prospero Nograles and Secretary Gemma Aspiras to reorganize and reconstitute the Commission on Appointments in accordance with the 1987 Constitution.[31]

The Court consolidated G.R. No. 180055[32] and G.R. No. 183055 on July 1, 2008.

Petitioners in the first petition, G.R. No. 180055, later filed on August 15, 2008 a Motion with Leave of Court to Withdraw the Petition,[33] alleging that with the designation of Representative Alfonso V. Umali, Jr. of the Liberal Party as a member of the House of Representatives contingent in the CA in replacement of Representative Eduardo M. Gullas of KAMPI, their petition had become moot and academic.

In his Comment of August 19, 2008 on the second petition, respondent Senator Villar proffered the following arguments:

I.

Petitioner has no standing to file [the] petition.

II.

Petitioner failed to observe the doctrine of primary jurisdiction or prior resort. Each House of Congress has the sole function of reconstituting or changing the composition of its own contingent to the CA.

III.

Petitioner is estopped.

IV.

Presumption of regularity in the conduct of official functions.

V.

The extraordinary remedies of Prohibition and Mandamus and the relief of a TRO are not available to the Petitioner.[34] (Emphasis in the original; underscoring supplied)

In his Comment and Opposition[35] filed on September 3, 2008, Speaker Nograles proffered the following arguments:

- WITH RESPECT TO THE HOUSE OF REPRESENTATIVES, THE PETITIONS HAVE ALREADY BECOME MOOT AND ACADEMIC UPON THE ELECTION OF REPRESENTATIVE ALFONSO V. UMALI, JR., MEMBER OF THE LIBERAL PARTY, TO THE HOUSE CONTINGENT TO THE COMMISSION ON APPOINTMENTS.[36]

- THE ACTS COMPLAINED OF DO NOT CONSTITUTE GRAVE ABUSE OF DISCRETION THAT WILL JUSTIFY THE ASSUMPTION OF JURISDICTION BY THE

HONORABLE COURT AND THE GRANT OF THE EXTRAORDINARY WRITS OF MANDAMUS AND PROHIBITION.[37]

- THE REMEDY OF THOSE WHO SEEK TO RECONSTITUTE THE HOUSE CONTINGENT TO THE

COMMISSION ON APPOINTMENTS RESTS, IN THE FIRST INSTANCE, WITH THE HOUSE OF REPRESENTATIVES.[38]

- CONSIDERING THE AFOREMENTIONED FACTS AND JURISPRUDENCE, IT IS SUBMITTED THAT SENATOR MADRIGAL HAS NO STANDING TO PURSUE THE INSTANT CASE.

E. THE PETITION IS NOT ACCOMPANIED BY A VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING AS REQUIRED BY RULE 65 SECTIONS 2 AND 3 AND SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 28-91. (Emphasis and underscoring in the original)

The first petition, G.R. No. 180055, has thus indeed been rendered moot with the designation of a Liberal Party member of the House contingent to the CA, hence, as prayed for, the petition is withdrawn.

As for the second petition, G.R. No. 183055, it fails.

Senator Madrigal failed to show that she sustained direct injury as a result of the act complained of.[39] Her petition does not in fact allege that she or her political party PDP-Laban was deprived of a seat in the CA, or that she or PDP-Laban possesses personal and substantial interest to confer on her/it locus standi.

Senator Madrigal's primary recourse rests with the respective Houses of Congress and not with this Court. The doctrine of primary jurisdiction dictates that prior recourse to the House is necessary before she may bring her petition to court.[40] Senator Villar's invocation of said doctrine is thus well-taken, as is the following observation of Speaker Nograles, citing *Sen. Pimentel, Jr. v. House of Representatives Electoral Tribunal*:[41]

In order that the remedies of Prohibition and Mandamus may be availed of, there must be "no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law".

It is worth recalling that, in the 11[th] Congress, Senator Aquilino Pimentel advocated the allocation of a position in the Commission on Appointments for the Party-List Representatives. Just like the Petitioner in the instant case, Senator Pimentel first wrote to the Senate President, requesting that the Commission on Appointments be restructured to conform to the constitutional provision on proportional representation. xxx Without awaiting final determination of the question xxx, Pimentel filed a Petition for Prohibition and Mandamus with the Supreme Court. In the said case, the Honorable Court ruled:

"The Constitution expressly grants to the House of Representatives the prerogative, within constitutionally defined limits, to choose from among its district and party-list representatives those who may occupy the seats allotted to the House in the HRET and the CA. Section 18, Article VI of the Constitution explicitly confers on the Senate and on the House the authority to elect among their members those who would fill the 12 seats for Senators and 12 seats for House members in the Commission on Appointments. Under Section 17, Article VI of the Constitution, each chamber exercises the power to choose, within constitutionally defined limits, who among their members would occupy the allotted 6 seats of each chamber's respective electoral tribunal.

x x xx

Thus, even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and the CA, their primary recourse clearly rests with the House of Representatives and not this Court. Under Sections 17 and 18, Article VI of the Constitution, party-list representatives must first show to the House that they possess the required strength to be entitled to seats in the HRET and the CA. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and the CA can the party-list representatives seek recourse to this Court under its power of judicial review. Under the doctrine of primary jurisdiction, prior recourse to the House is necessary before petitioners may bring the instant case to the court. Consequently, petitioner's direct recourse to this Court is premature.

Following the ruling in Pimentel, it cannot be said that recourse was already had in the House of Representatives. Furnishing a copy of Petitioner's letter to the Senate President and to the Speaker of the House of Representatives does not constitute the primary recourse required prior to the invocation of the jurisdiction of the Supreme Court. Further, it is the Members of the House who claim to have been deprived of a seat in the Commission on Appointments that must first show to the House that they possess the required numerical strength to be entitled to seats in the Commission on Appointments. Just like Senator Pimentel, demanding seats in the Commission on Appointments for Congressmen, who have not even raised the issue of its present composition in the House, is not Senator Madrigal's affair.[42] (*Italics, underscoring, and emphasis supplied by Representative Nograles*)

It bears noting that Senator Villar had already transmitted original copies of Senator Madrigal's letters to the Senate Secretary for inclusion in the Order of Business of the Session of the Senate to address her concerns. Senator Madrigal's filing of the second petition is thus premature.

Senator Madrigal's suggestion - that Senators Pilar Juliana Cayetano and Richard Gordon be considered independent senators such that the latter should not be allowed to be a member of the CA,[43] and that Senator Alan Peter Cayetano be considered a member of the NP such that he may sit in the CA as his inclusion in NP will entitle his party to one seat - involves a determination of party affiliations, a question of fact which the Court does not resolve.

WHEREFORE, the Motion with Leave of Court to Withdraw the Petition in G.R. No. 180055 is GRANTED. The Petition is WITHDRAWN. The Petition in G.R. No. 183055 is DISMISSED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.
Brion, J., on official leave.

[1] Vide rollo (G.R. No. 180055), pp. 23-24.

[2] Vide id. at 14.

[3] Ibid.

[4] In what capacity he replied to Representative Tañada is not mentioned in the rollo.

[5] Rollo (G.R. No. 180055), p. 14.

[6] Id. at 25.

[7] Ibid.

[8] Id. at 14-15.

[9] Id. at 53.

[10] Id. at 3-44.

[11] Id. at 26.

[12] Id. at 35-36.

[13] Id. at 69-77.

- [14] Id. at 71, 73.
- [15] Id. at 111-181.
- [16] Id. at 113.
- [17] Id. at 125.
- [18] Id. at 133.
- [19] Id. at 137.
- [20] Rollo (G.R. No. 183055), pp. 34-35.
- [21] Id. at 37.
- [22] Id. at 37-38.
- [23] Id. at 39.
- [24] Id. at 42.
- [25] Ibid.
- [26] Id. at 43.
- [27] Id. at 44.
- [28] Id. at 46.
- [29] Id. at 3-29.
- [30] Id. at 12.
- [31] Id. at 26-27.
- [32] Id. at 106.
- [33] Id. at 245-257.
- [34] Id. at 133.
- [35] Id. at 158-184.
- [36] Id. at 163.
- [37] Id. at 164.
- [38] Id. at 174.
- [39] Vide David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 327.
- [40] Sen. Pimentel, Jr. v. House of Representatives Electoral Tribunal, 441 Phil. 492, 503 (2002).
- [41] Id. at 497-498, 500-503.
- [42] Rollo (G.R. No. 183055), pp. 175-176.
- [43] Id. at 18-19.

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