

CARMEN PLANAS, PETITIONER, VS. JOSE GIL, COMMISSIONER OF CIVIL SERVICE, RESPONDENT.*G.R. No. 46440. January 18, 1939*

Ponente: LAUREL, J.

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This is an original action of prohibition instituted in this court by which the petitioner seeks to enjoin the respondent Commissioner of Civil Service from conducting the investigation ordered by authority of the President of the Philippines. The case arose as a result of the publication in one of the local dailies of a statement in which the petitioner, then and now a member of the municipal board of the City of Manila, criticized the acts of certain government officials in connection with the general election for Assemblymen held on November 8, 1938. The statement as published in the issue of *La Vanguardia* of November 17, 1938, is translated as follows:

"All opposition efforts in the country are useless just as all movement toward the unification of the opposition as long as in the opposition group there are people who present their candidacies and then speculate on these candidacies, offering them to the highest bidder. In Manila, the opposition should have won the November 8 elections, but lost instead because of a disastrous division due to people who commercialized their candidacies.

"The Constitution prohibits the reelection of the President precisely so that the President may devote all his time to the administration of public affairs for the welfare of the people, but the President was the first to play politics, publicly expressing his preference for candidates of his liking; and with the President all other officials of the government also moved, taking part in electoral campaigns.

"With the government machinery feverishly functioning to flatten the opposition and prevent candidates supported by the people from going to the National Assembly, and with frauds and violations of all rules of the civil service to push to victory the candidates of the Nacionalista Party and the administration, all constructive opposition in the country is useless. In past elections, all the municipal and city mayors have been mobilized to insure the victory of the candidates of the administration, depriving the people of their right to vote for the candidates of their own choosing.

"Even members of the cabinet moved, one of them, the Hon. Eulogio Rodriguez going to the extent of speaking at meetings in the Province of Rizal to counteract the avalanche of votes for the opposition, instead of staying in his office in the government. The opposition is struggling within the law, but the party in power uses means that are not worthy of gentlemen in order that it may predominate in the government forever; never has it tried to fight fairly.

"It may be said that the President of the United States is also making electoral campaigns, but the situation in the United States is different. There the President is allowed to run for reelection while in the Philippines the Constitution wisely provides against the reelection of the President. It is reasonable to believe that the President is from this moment paving the way for his reelection. It is to be feared that the new National Assembly will change this wise provision of our Constitution to permit the reelection of President Manuel L. Quezon."

On November 18, 1938, the day following the publication of the foregoing statement, the petitioner received a letter, Annex A, signed as follows: "By authority of the President: Jorge B. Vargas, Secretary to the President" in which letter the statement is quoted in full and the petitioner is informed thus:

"In the above statement, you appear to make the following charges: (1) That the President of the Philippines has violated the Constitution in that he has taken part in politics, expressing his preference for the candidates of the Nacionalista Party; (2) That the whole government machinery has been put in action to prevent the election to the National Assembly of the candidates of the people; (3) That the candidates of the Nacionalista Party and of the administration have won the election through frauds and violations of the civil service rules; (4) That the administration does not permit the people to freely elect the candidates of their choice.

"You are hereby directed to appear before the Commissioner of Civil Service, either alone or accompanied by counsel, at 9 o'clock a. m., on November the 22nd, to prove the statements made by you. Failure to sustain your charges or to prove that they have been made in good faith will be considered sufficient cause for your suspension or removal from office."

At the appointed time, the petitioner, accompanied by her counsel, appeared, at the office of the respondent and delivered to him a letter, Annex B, in which she voiced objection to the authority of the respondent to conduct the investigation. The respondent Commissioner did not desist from proceeding with the investigation, but announced before adjourning the hearing of November 22nd that he would decide the question raised as to his jurisdiction on November 26, 1938. It was at this state of the investigation that the petitioner filed in this court her original petition for prohibition of November 25, 1938, in which she at the same time prayed for the issuance of a writ of preliminary injunction enjoining the respondent commissioner from continuing with the investigation. The petition for the issuance of a writ of preliminary injunction was denied by resolution of this court dated November 25, 1938. The next day the petitioner requested the respondent, in writing (Annex D), to refrain from making any ruling on the question of his jurisdiction to investigate the petitioner and to abstain from taking any further step in connection with said investigation until the jurisdictional issue could be finally passed upon by this court. On the same day, the request of the petitioner was denied and the respondent ruled that he had jurisdiction to proceed with the investigation (Annex E.) The respondent also notified the petitioner to appear before him on Saturday, December 9, 1938, and to testify in her behalf and produce such other evidence as she might desire to present in support of the charges contained in her statement of November 17, 1938. The original petition of November 25th was amended by another of December 2nd. The amendment was allowed by this court. The Solicitor-General filed his amended answer accordingly.

Petitioner contends in her amended petition:

"(a)

That the respondent is absolutely without jurisdiction to investigate petitioner with a view to her suspension or removal in connection with her statement of November 17th;

"(b)

That the said investigation with a view to petitioner's suspension or removal is against Article VII, sec. 11 (1) of the Constitution of the Philippines and is not warranted by any statutory provision;

"(c)

That even under the statutes in force before the approval of the Constitution of the Philippines, petitioner, as Councilor of the City of Manila, cannot be investigated administratively with a view to her suspension or removal except for acts or conduct connected with the discharge of her official functions;

"(d)

That petitioner, as an elective official, is accountable for her political acts to her constituency alone, unless such acts constitute offenses punishable under our penal laws, and not to executive officials belonging to a party opposed to that to which petitioner is affiliated;

"(e)

That petitioner's statement of November 17th made by her as a private citizen and in the exercise of her right to discuss freely political questions cannot properly be the subject of an administrative investigation had with a view to her suspension or removal, and is only cognizable by our courts of justice in case the contents of said statement infringe any provision of our Penal Code;

"(f)

That if petitioner's statement of November 17th, as asserted in the Vargas letter of November 21st Annex 'C', constitute sedition or any other criminal offense in that said statement 'tends to create general discontent, and hatred among the people against their government, to make them lose faith in the effectiveness of lawful processes to secure a change in the control of the government, and to present the next National Assembly as an illegal body, constituted by men who have been elected through wholesale frauds and violations of the civil service rules', then petitioner's responsibility is a matter that should be heard and decided by the competent courts in a trial publicly and impartially conducted, and should not be the subject of an administrative investigation with a view to suspension or removal held behind closed doors, with the power of final decision resting in the hands of the very officials imputing seditious or other criminal utterances to the petitioner;

"(g)

That the authority sought to be conferred on respondent by means of the two letters Annexes A and C both signed 'By authority of the President: Jorge B. Vargas, Secretary, to the President' is without any force or effect, since the powers and prerogatives vested in the President of the Philippines by our Constitution and by our laws can be exercised by the President alone, and cannot be delegated to Mr. Jorge B. Vargas or to any other person;

"(h)

That the proposed investigation with a view to petitioner's suspension or removal by this Honorable Court, would constitute an exercise of arbitrary, inquisitorial, unlawful, and oppressive powers on the part of respondent, tending to the suppression of the constitutional right of petitioner, as a citizen, to express freely and without fear of political persecution her honest opinions concerning the policies and political conduct of government officials."

Petitioner prays:

"(1)

That a writ of preliminary injunction be forthwith issued directing the respondent Commissioner of Civil Service to desist from the investigation sought to be conducted by him of petitioner, with a view to her suspension or removal, in connection with her statement published November 17th, until further orders of this Honorable Court;

"(2)

That upon due hearing the respondent be permanently prohibited from proceeding further in connection with said investigation;

"(3)

That the orders contained in the two letters of Mr. Jorge B. Vargas (Annexes 'A' and 'C') and the respondent's resolution dated November 26, 1938 (Annex 'E'), under which respondent seeks to undertake the investigation so many times referred to herein, be declared arbitrary and unconstitutional, and therefore without any force or effect;

"(4)

For costs of the petitioner and for such other remedy as to this Honorable Court may seem just and equitable."

Upon the other hand, the Solicitor-General contends in his amended answer:

(a)

That respondent not only has jurisdiction but is in duty bound to investigate the charges contained in the petitioner's statement published on November 17, 1938, by virtue of and pursuant to the order of His Excellency, the President of the Philippines (par. 3);

(b)

That the power to order an investigation is vested in the President of the Philippines by section 11 (1) of Article VII of the Constitution and section 64 (c) of the Revised Administrative Code (Id.);

(c)

That the question of whether or not the good of the public service requires the investigation in question is a matter on which the opinion of the Chief Executive is conclusive and not subject to review by the courts (par. 4,[b])

(d)

That an administrative investigation of any act or conduct of any person in the government service is independent and exclusive of any judicial action that the interested parties may institute arising from the same act or conduct (par. 4, [c]);

(e)

That petitioner's theory that an elected provincial or municipal official is accountable to his or her constituency alone and is not subject to any administrative investigation but only to a criminal prosecution in court," has no basis either in law or in precedent (par. 5, [a]);

(f)

That such investigation is neither arbitrary nor unlawful nor inquisitorial because sanctioned by the Constitution and statutory provisions (par. 5, [b]);

(g)

That the petition does not state a cause of action nor does it appear that petitioner has suffered any grievance that calls for the court's intervention, for it is not alleged that petitioner has been removed or suspended from office or that she has, in any way been deprived of any civil or political right (par. 7, [a]);

(h)

That the present action is premature and that there is no justification for the court to entertain the same (par. 9); and

(i)

That this court has no jurisdiction over the case under the doctrine of separation of powers (par. 10).

The Solicitor-General, under the last paragraph (par. 10) of his amended answer, raises the question of jurisdiction of this court over the acts of the Chief Executive. He contends that "under the separation of powers marked by the Constitution, the court has no jurisdiction to review the orders of the Chief Executive, evidenced by Annex A and Annex C of the petition, which are of purely administrative character." Reliance is had on the previous decisions of this court: *Severino vs. Governor-General* ([1910], 16 Phil., 366) ; *Abueva vs. Wood* ([1924], 45 Phil., 612); and *Alejandrino vs. Quezon* ([1924], 46 Phil., 83). Although this is the last point raised by the Government in its answer, it should, for reasons that are apparent, be first to be considered. If this court does not have jurisdiction to entertain these proceedings, then, the same should be dismissed as a matter of course; otherwise, the merits of the controversy should be passed upon and determined.

It must be conceded that the acts of the Chief Executive performed within the limits of his jurisdiction are his official acts and courts will neither direct nor restrain executive action in such cases. The rule is non-interference. But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts when these are properly challenged in an appropriate legal proceeding. The classical separation of governmental powers, whether viewed in the light of the political philosophy of Aristotle, Locke, or Montesquieu, or of the postulations of Mabini, Madison, or Jefferson, is a relative theory of government. There is more truism and actuality in interdependence than in independence and separation of powers, for as observed by Justice Holmes in a case of Philippine origin, we cannot lay down "with mathematical precision and divide the branches into watertight compartments" not only because "the great ordinances of the Constitution do not establish and divide fields of black and white" but also because "even the more specific of them are found to terminate in a penumbra shading gradually from one extreme o the other." (*Springer vs. Government* [1928], 277 U. S., 189; 72 Law. ed., 845, 852.) As far as the judiciary is concerned, while, it holds "neither the sword nor the purse" it is by constitutional placement the organ called upon to allocate constitutional boundaries, and to the Supreme Court is entrusted expressly or by necessary implication the obligation of determining in appropriate cases the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation. (Sec. 2 [1], Art. VIII, Constitution of the Philippines.) In this sense and to this extent, the judiciary restrains the other departments of the government and this result is one of the necessary corollaries of the "system of checks and balances" of the government established.

In the present case, the President is not a party to the proceeding. He is neither compelled nor restrained to act in a particular way. The Commissioner of Civil Service is the party respondent and the theory is advanced by the Government that because an investigation undertaken by him is directed by authority of the President of the Philippines, this court has no jurisdiction over the present proceedings instituted by the petitioner, Carmen Planas. The argument is farfetched. A mere plea that a subordinate officer of" the government is acting under orders from the Chief Executive may be an important averment, but is neither decisive nor conclusive upon this court. Like the dignity of his high office, the relative immunity of the Chief Executive from judicial interference is not in the nature of a sovereign passport for all the subordinate officials and employees of the Executive Department to the extent that at the mere invocation of the authority that it purports the jurisdiction of this court to inquire into the validity or legality of an executive order is necessarily abated or suspended. The facts in *Severino vs. Governor General*, *supra*, *Abueva vs. Wood*, *supra*, and *Alejandrino vs. Quezon*, *supra*, are different, and the doctrines laid down therein must be confined to the facts and legal environment involved and whatever general observations might have been made in elaboration of the views therein expressed but which are not essential to the determination of the issues presented are mere obiter dicta.

While, generally, prohibition as an extraordinary legal writ will not issue to restrain or control the performance of

other than judicial or quasi-judicial functions (50 C. J., 658), its issuance and enforcement are regulated by statute and in this jurisdiction it may issue to any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, whose acts are without or in excess of jurisdiction. (Sees. 516 and 226, Code of Civil Procedure.) The terms "judicial" and "ministerial" used with reference to "functions" in the statute are undoubtedly comprehensive and include the challenged investigation by the respondent Commissioner of Civil Service, which investigation if unauthorized and is violative of the Constitution as contended is a fortiori without or in excess of jurisdiction. The statutory rule in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, "the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions." (Dimayuga and Fajardo vs. Fernandez [1922], 43 Phil., 304, 307; Aglipay vs. Ruiz [1937], 35 Off. Gaz., 2164.) This court, therefore, has jurisdiction over the instant proceedings and will accordingly proceed to determine the merits of the present controversy.

As is seen from the foregoing relation of facts various legal questions are propounded. Reducing, however, the issues to what is considered is the fundamental legal proposition presented, we are asked in these proceedings to prohibit the respondent Commissioner of Civil Service from conducting or continuing with the investigation ordered by authority of the President of the Philippines. It is not denied that the President did authorize the issuance of the order, but it is contended "that the said investigation with a view to petitioner's suspension or removal is against Article VII, sec. 11 (1) of the Constitution of the Philippines and is not warranted by any statutory provision." (Par. XV [b], amended petition.) It, therefore, becomes necessary to inquire into the constitutional and legal authority of the President to order the investigation which has given rise to the present controversy.

A perusal of our Constitution will show that extensive authority over the public service is granted the President of the Philippines. Article VII of the Constitution begins in its section 1 with the declaration that "The Executive power shall be vested in a President of the Philippines." All executive authority is thus vested in him, and upon him devolves the constitutional duty of seeing that the laws are "faithfully executed." (Art. VII, sec. 11, subsec. 1, last clause.) In the fulfillment of this duty which he cannot evade, he is granted specific and express powers and functions. (Art. VII, sec. 11.) In addition to these specific and express powers and functions, he may also exercise those necessarily implied and included in them. (Myers vs. United States [1926], 272 U. S., 52; 71 Law. ed., 160; 47 Sup. Ct. Rep., 21; Willoughby, Constitution of the United States, sec. 953, citing Taft's Our Chief Magistrate and His Powers, p. 139.) The National Assembly may not enact laws which either expressly or impliedly diminish the authority conferred upon the President of the Constitution. (Cf. Concepcion vs. Paredes [1921], 42 Phil., 599.) The Constitution provides that the President "shall have control of all the executive departments, bureaus, and offices" (Art. VII, sec. 11 [1], first clause) and shall "exercise general supervision over all local governments as may be provided by law" (Ibid, second clause). This power of control and supervision is an important constitutional grant. The President in the exercise of the executive power under the Constitution may act through the heads of the executive departments. The heads of the executive departments are his authorized assistants and agents in the performance of his executive duties, and their official acts, promulgated in the regular course of business, are presumptively his acts. (Runkle vs. United States [1887], 122 U. S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141. See also U. S. vs. Eliason [1839], 16 Pet, 291; 10 Law. ed., 968; Jones vs. U. S. [1890], 137 U. S. 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; Wolsey vs. Chapman [1880], 101 U. S., 755; 25 Law. ed., 915; Wilcox vs. Jackson [1836], 13 Pet., 498; 10 Law. ed., 264.) The power of removal which the President may exercise directly and the practical necessities of efficient government brought about by administrative

centralization easily make the President the head of the administration. (Willoughby, Constitution of the United States, Vol. II, 2nd ed., sec. 959.) Independently of any statutory provision authorizing the President to conduct an investigation of the nature involved in this proceeding, and in view of the nature and character of the executive authority with which the President of the Philippines is invested, the constitutional grant to him of power to exercise general supervision over all local governments and to take care that the laws be faithfully executed must be construed to authorize him to order an investigation of the act or conduct of the petitioner herein. Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon a knowledge of actual facts and conditions disclosed after careful study and investigation.

Viewed from the totality of powers conferred upon the Chief Executive by our Constitution, we should be reluctant to yield to the proposition that the President of the Philippines who is endowed with broad and extraordinary powers by our Constitution, and who is expected to govern with a firm and steady hand without vexatious or embarrassing interference and much less dictation from any source, is yet devoid of the power to order the investigation of the petitioner in this case. We should avoid that result.

Our attention has been directed to the fact that, with reference to local governments, the Constitution speaks of general supervision which is distinct from the control given to the President over executive departments, bureaus and offices. This is correct. But, aside from the fact that this distinction is not important insofar as the power of the President to order the investigation is concerned, as hereinabove indicated, the deliberations of the Constitutional Convention show that the grant of the supervisory authority to Chief Executive in this regard was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which recognizes the right of local self-government (People ex rel. Le Roy vs. Hurlbut [1871], 24 Mich., 44) and the legal theory which sanctions the possession by the state of absolute control over local governments (Booten vs. Pinson, L. R. A. [N. S., 1917-A], 1244; 77 W. Va., 412 [1915]). The result was the recognition of the power of supervision and all its implications and the rejection of what otherwise would be an imperium in imperio to the detriment of a strong national government.

Apart from the constitutional aspect, we find that section 64 of the Administrative Code of 1917 provides as follows:

"In addition to his general supervisory authority, the Governor-General (President) shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth in this chapter.

"Among such special powers and duties shall be:

* * * * *

(c)

To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted."

This provision of the law, in existence before the taking

effect of the Constitution, still subsists. It is not inconsistent with the Constitution and has not been abrogated or repealed by the National Assembly. (See sec. 2, Art. XV, Constitution.)

It is next urged that assuming the power of the President to order the investigation, that investigation should be in accordance with law; that the petitioner as an elective official can be proceeded against administratively only on the grounds specifically stated in the law, namely, disloyalty, dishonesty, oppression, misconduct, or maladministration in office; and that as an elective official she is responsible for her political acts to her constituency alone. At the risk of repetition, it should be observed that in the letter addressed by Secretary Vargas, by authority of the President, to Miss Planas, the latter is informed as follows: "In, the above statement, you appear to make the following charges: (1) That the President of the Philippines has violated the Constitution in that he has taken part in politics, expressing his preference for the candidates of the Nacionalista Party; (2) That the whole government machinery has been put in action to prevent the election to the National Assembly of the candidates of the people; (3) That the candidates of the Nacionalista Party and of the administration have won the election through frauds and violations of the civil service rules; (4) That the administration does not permit the people to freely elect the candidates of their choice"; and in that letter she is directed to appear before the Commissioner of Civil Service to prove the statement made by her. In the letter designating the respondent commissioner as investigator of the petitioner, it is stated: "The charges contained in the foregoing statement tend to create general discontent, and hatred among the people against their government, to make them lose faith in the effectiveness of lawful processes to secure a change in the control of the government, and to present the next National Assembly as an illegal body, constituted by men who have been elected through wholesale frauds and violations of the civil service rules. The interest of the public 'service requires that these charges be investigated, so that, if found to be true, appropriate action may be taken against the parties alleged to have been guilty of illegal acts, and if found untrue and made without justifiable motives, the party making them may be proceeded against in accordance with section 2440, in connection, with section, 2078, of the Revised Administrative Code." Assuming that this is not one of the grounds provided by law for which the petitioner may be investigated administratively (sec. 2078, Rev. Adm. Code), there is weight in the argument that the investigation would still be in order if for no other purpose than to cause a full and honest disclosure of all the facts so that, if found proper and justified, appropriate action may be taken against the parties alleged to have been guilty of the illegal acts charged. This is essential to render effective the authority vested in the President by the Constitution to "take care that the laws be faithfully executed." (Sec. 11, par. 1, Art. VII.) The enforcement of the law and the maintenance of peace and order are primarily an executive obligation. The declaration that the President should "take care that the laws be faithfully executed" is more an imposition of an obligation than a conferment of power. His oath requires him to "faithfully and conscientiously fulfill" his duties as President, "preserve and defend" the Constitution and "execute" the law. This duty of the Executive to see that the laws be faithfully executed is not limited to the enforcement of legislative acts or the express terms of the Constitution but also includes the due enforcement of rights, duties, obligations, prerogatives and immunities growing out of the Constitution itself and of the protection implied by the nature of the government under the Constitution. (*Cunningham vs. Neagle*, 135 U. S., 1; 34 Law. ed., 55.)

Petitioner contends that she has not abused the right of free speech, and in this connection directs our attention to the provisions of section 1 (pars. 1 and 8) of the Bill of Rights. She also urges that "in the supposition that the statement in question is libelous * * *, the corresponding criminal or civil action should be brought in the courts of justice at the initiative, not of the government, but of the individuals claiming to have been defamed by the statement." (P. 11, printed memorandum of the petitioner.) We are vigilantly alive to the necessity of maintaining and protecting the constitutional guaranty of freedom of speech and of the press, no less than the right of assembly and petition which, according to Stimson (*The American Constitution As It Protects Private Rights*, 152), is its origin rather than its derivation. We do not forget that when repression of political and religious discussion became intense—when censorship of the press was resorted to most vigorously by the Long Parliament In England—John Milton, that great historiographer of Cromwell, in his *Areopagitica*, denounced the suppression of

truth and appealed for "the liberty to know, to utter, and to argue freely according to conscience, above all liberties" ("Areopagitica", 73, 74, Ambler's Reprint). And this court has had occasion to vindicate this right, and it is now a settled doctrine that the official conduct and the policies of public officials can be criticized (U. S. vs. Bustos, 37 Phil., 731), and that criticism of the constitution and legislation, of government measures or policies cannot be suppressed or prevented (U. S. vs. Perfecto, 43 Phil., 225), unless the intention be to incite rebellion and civil war (Cooley, Constitutional Limitations, 614). In the present case, however, the petitioner is not denied the right, nor is she being investigated because she had exercised that right. She has a perfect right to criticize the Government, its administration, its policies and officials, but she may not, on the plea of freedom of speech and of the press, impute violations of law and the commission of frauds and thereafter fold her arms and decline to face an investigation conducted to elicit the truth or falsity of the charges formulated by her. Otherwise, the guarantee which, in the language of Wendell Phillips, is "at once the instrument, and the guarantee, and the bright consummate flower of all liberty" would degenerate into an unbridled license, and render the Government powerless to act.

The petition is hereby dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Conception, JJ., concur.

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