

**EUGENIO J. PUYAT, ERWIN L. CHIONGBIAN, EDGARDO P. REYES,
ANTONIO G. PUYAT, JAIME R. BLANCO, RAFAEL R. RECTO and
REYNALDO L. LARDIZABAL, petitioners, vs. HON. SIXTO T. J. DE
GUZM...**

G.R. No. 51122. March 25, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This suit for Certiorari and Prohibition with Preliminary Injunction is poised against the Order of respondent Associate Commissioner of the Securities and Exchange Commission (SEC) granting Assemblyman Estanislao A. Fernandez leave to intervene in SEC Case No. 1747.

A question of novel import is in issue. For its resolution, the following dates and allegations are being given and made:

a) May 14, 1979. An election for the eleven Directors of the International Pipe Industries Corporation (IPI) a private corporation, was held. Those in charge ruled that the following were elected as Directors:

Eugenio J. Puyat Eustaquio T.C. Acero

Erwin L. Chiongbian R. G. Vildzius

Edgardo P. Reyes Enrique M. Belo

Antonio G. Puyat Servillano Dolina

Jaime R. Blanco Juanito Mercado

Rafael R. Recto

Those named on the left list may be called the Puyat Group; those on the right, the Acero Group. Thus, the Puyat Group would be in control of the Board and of the management of IPI.

b) May 25, 1979. The Acero Group instituted at the Securities and Exchange Commission (SEC) quowarranto proceedings, docketed as Case No. 1747 (the SEC Case), questioning the election of May 14, 1979. The Acero Group claimed that the stockholders' votes were not properly counted.

c) May 25-31, 1979. The Puyat Group claims that at conferences of the parties with respondent SEC Commissioner de Guzman, Justice Estanislao A. Fernandez, then a member of the Interim Batasang Pambansa, orally entered his appearance as counsel for respondent Acero to which the Puyat Group objected on Constitutional grounds. Section 11, Article VIII, of the 1973 Constitution, then in force, provided that no Assemblyman could "appear as counsel before x x x any administrative body", and SEC was an administrative body. Incidentally, the same prohibition was maintained by the April 7, 1981 plebiscite. The cited Constitutional prohibition being clear, Assemblyman Fernandez did not continue his appearance for

respondent Acero.

d) May 31, 1979. When the SEC Case was called, it turned out that:

(i) On May 15, 1979, Assemblyman Estanislao A. Fernandez had purchased from Augusto A. Morales ten (10) shares of stock of IPI for P200.00 upon request of re-spondent Acero to qualify him to run for election as a Director.

(ii) The deed of sale, however, was nota-rized only on May 30, 1979 and was sought to be registered on said date.

(iii) On May 31, 1979, the day following the notarization of Assemblyman Fernandez' purchase, the latter had filed an Urgent Motion for Intervention in the SEC Case as the owner of ten (10) IPI shares alleging legal interest in the matter in litigation.

e) July 17, 1979. The SEC granted leave to intervene on the basis of Atty. Fernandez' ownership of the said ten shares.[1]It is this Order allowing intervention that precipitated the instant petition for Certiorari and Prohibition with Preliminary Injunc-tion.

f) July 3, 1979. Edgardo P. Reyes instituted a case before the Court of First Instance of Rizal (Pasig), Branch XXI, against N.V. Verenigde Buizen-fabrieken Excelsior - De Maas and respondent Eustaquio T. C. Acero and others, to annul the sale of Excelsior's shares in the IPI to respondent Acero (CC No. 33739). In that case, Assemblyman Fernandez appeared as counsel for defendant Excelsior. In L-51928, we ruled that Assemblyman Fernandez could not appear as counsel in a case originally filed with a Court of First Instance as in such situation the Court would be one "without appellate jurisdiction."

On September 4, 1979, the Court en banc issued a temporary Restraining Order enjoining respondent SEC Associate Commissioner from allowing the participation as an intervenor, of respondent Assemblyman Estanislao Fernandez at the proceedings in the SEC Case.

The Solicitor General, in his Comment for respondent Commissioner, supports the stand of the latter in allowing intervention. The Court en banc, on November 6, 1979, resolved to consider the Comment as an Answer to the Petition.

The issue which will be resolved is whether or not Assemblyman Fernandez, as a then stockholder of IPI, may intervene in the SEC Case without violating Section 11, Article VIII of the Constitution, which, as amended, now reads:

"SEC. 11.

No Member of the Batasang Pambansa shall appear as counsel before any court without appellate jurisdiction,

before any court in any civil case wherein the Government, or any subdivision, agency, or instrumentality thereof is the adverse party,

or in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his office,

or before any administrative body.

Neither shall he, directly or indirectly be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled cor-poration, during his term of office.

He shall not accept employment to intervene in any cause or matter where he may be called to act on account of

his office. (Emphasis and paragraphs supplied)

What really has to be resolved is whether or not, in intervening in the SEC Case, Assemblyman Fernandez is, in effect, appearing as counsel, albeit indirectly, before an administrative body in contravention of the Constitutional provision.

Ordinarily, by virtue of the Motion for Intervention, Assemblyman Fernandez cannot be said to be appearing as counsel. Ostensibly, he is not appearing on behalf of another, although he is joining the cause of the private respondents. His appearance could theoretically be for the protection of his ownership of ten (10) shares of IPI in respect of the matter in litigation and not for the protection of the petitioners nor respondents who have their respective capable and respected counsel.

However, certain salient circumstances militate against the intervention of Assemblyman Fernandez in the SEC Case. He had acquired a mere P200.00 worth of stock in IPI, representing ten shares out of 262,843 outstanding shares. He acquired them "after the fact", that is, on May 30, 1979, after the contested election of Directors on May 14, 1979, after the quo warranto suit had been filed on May 25, 1979 before SEC and one day before the scheduled hearing of the case before the SEC on May 31, 1979. And what is more, before he moved to intervene, he had signified his intention to appear as counsel for respondent Eustaquio T. C. Acero, [2] but which was objected to by petitioners. Realizing, perhaps, the validity of the objection, he decided, instead, to "intervene" on the ground of legal interest in the matter under litigation. And it may be noted that in the case filed before the Rizal Court of First Instance (L-51928), he appeared as counsel for defendant Excelsior, co-defendant of respondent Acero therein.

Under those facts and circumstances, we are constrained to find that there has been an indirect "appearance as counsel before x x x an administrative body" and, in our opinion, that is a circumvention of the Constitutional prohibition. The "intervention" was an afterthought to enable him to appear actively in the proceedings in some other capacity. To believe the avowed purpose, that is, to enable him eventually to vote and to be elected as Director in the event of an unfavorable outcome of the SEC Case would be pure naiveté. He would still appear as counsel indirectly.

A ruling upholding the "intervention" would make the constitutional provision ineffective. All an Assemblyman need do, if he wants to influence an administrative body is to acquire a minimal participation in the "interest" of the client and then "intervene" in the proceedings. That which the Constitution directly prohibits may not be done by indirection or by a general legislative act which is intended to accomplish the objects specifically or impliedly prohibited.[3]

In brief, we hold that the intervention of Assemblyman Fernandez in SEC No. 1747 falls within the ambit of the prohibition contained in Section 11, Article VIII of the Constitution.

Our resolution of this case should not be construed as, absent the question of the constitutional prohibition against members of the Batasan, allowing any stockholder, or any number of stockholders, in a corporation to intervene in any controversy before the SEC relating to intra-corporate matters. A resolution of that question is not necessary in this case.

WHEREFORE, respondent Commissioner's Order granting Atty. Estanislao A. Fernandez leave to intervene in SEC Case No. 1747 is hereby reversed and set aside. The temporary Restraining Order heretofore issued is hereby made permanent.

No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Ericta, Plana, and Escolin, JJ., concur.

Barredo, J., reserved his vote.

Aquino, J., no part.

[1]p. 23, Rollo.

[2]p. 6, *ibid*.

[3]Am. Digest, 2d Dicennial Ed., Vol. 5, citing *Atkinson vs. Board, etc.*, 108 P 1046.

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