

RAUL A. VILLEGAS, PETITIONER, VS. ASSEMBLYMAN VALENTINO L. LEGASPI, COURT OF FIRST INSTANCE OF CEBU, BRANCH II, PRESIDED BY HON. FRANCISCO P. BURGOS, DISTRICT JUDGE; BRIGIDA VER...

G.R. No. 53869. March 25, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

These two cases (L-53869 and L-51928) filed in May, 1980 and September, 1979, respectively, involve the prohibition in Section 11, Article VIII of the 1973 Charter, which used to read:

"Sec. 11. No member of the National Assembly shall appear as counsel before any court inferior to a court with appellate jurisdiction, x x x"

The antecedent facts follow:

L - 53869

On September 27, 1979, a complaint for annulment of bank checks and damages was filed by Raul A. Villegas against the Vera Cruz spouses and Primitivo Cania, Jr. (private respondents) before the Court of First Instance of Cebu, Branch XVI, then presided by Hon. Ceferino E. Dulay (Civil Case No. 431-L). An Answer, dated October 11, 1979, was filed by private respondents through their counsel, Assemblyman Valentino L. Legaspi, a member of the Batasang Pambansa from the province of Cebu. Raul A. Villegas "challenged" the appearance of Assemblyman Legaspi as counsel of record on the ground that he is barred under the Constitution from appearing before Courts of First Instance, which are essentially trial Courts or Courts of original jurisdiction. After the Opposition and Reply to the Opposition were filed, Judge Dulay issued an Order inhibiting himself from the aforesaid case because Assemblyman Legaspi was like-wise the lawyer of his wife in two pending cases. The case was re-raffled and re-docketed as Civil Case No. R-18857, and transferred to Branch II, presided by Judge Francisco P. Burgos (respondent Court).

In an Order, dated February 27, 1980, Judge Burgos denied the disqualification of Assemblyman Legaspi, as well as the Motion for Reconsideration filed thereafter. Hence, this recourse to Certiorari and Prohibition.

A temporary Restraining Order was issued ex-parte by this Tribunal on May 22, 1980 enjoining respondent Court from acting in Civil Case No. R-18857 below.

L - 51928

Edgardo P. Reyes filed, on July 3, 1979, Civil Case No. 33739 before the Court of First Instance of Rizal (Pasig), Branch XXI, against N. V. Verenigde Buizenfabrieken Excelsior-De Maas and private respondent Eustaquio T. C. Acero to annul the sale of Excelsior's shares in the International Pipe Industries Corporation (IPI) to Eustaquio

T. C. Acero, allegedly on the ground that, prior thereto, the same shares had already been sold to him (Reyes). Assemblyman Estanislao Fernandez entered his appearance as counsel for Excelsior. This appearance was questioned on the ground that it was barred by Section 11, Article VIII of the 1973 Constitution, above-quoted.

Initially, this case (L-51928) was filed as a Supplemental Petition to L-51122 (Eugenio Puyat, et als. vs. Hon. Sixto T. J. de Guzman), but this Court ordered it docketed separately. And since the issue involved is on all fours with L-53869, the Court opted to re-solve Case No. L-51928 jointly with L-53869 instead of with L-51122 as originally directed.

The novel issue for determination is whether or not members of the Batasang Pambansa, like Attorneys Valentino L. Legaspi and Estanislao A. Fernandez, can appear as counsel before Courts of First Instance.

A comparison of Section 11, Article VIII, of the 1973 Constitution prohibiting any Assemblyman from appearing as counsel "before any Court inferior to a Court with appellate jurisdiction", and the "similar" provision of Section 17, Article VI, of the 1935 Charter is elucidating. The last sentence of the latter provision reads:

"x x x No member of the Commission on Appointments shall appear as counsel before any Court inferior to a collegiate Court of appellate jurisdiction."

A significant amendment is the deletion of the term "collegiate". Further, the limitation now comprehends all members of the Batasang Pambansa, and is no longer confined to members of the Commission on Appointments, a body not provided for under the 1973 Constitution.

Under the amendment to Article VIII of the 1973 Constitution, ratified in a national plebiscite held on April 7, 1981, Section 11 now reads:

"SEC. 11. No member of the Batasang Pambansa shall appear as counsel before any court without appellate jurisdiction, x x x"

The term "collegiate" remains deleted, and the terminology is now "Court without appellate jurisdiction."

Although the cases at bar were filed prior to the aforesaid amendment, they should be resolved under the amended provision. We abide by the proposition that "as a general rule, the provisions of a new Constitution take effect immediately and become operative on pending litigation." [1]

Clearly, what is prohibited to a Batasang Pambansa member is "appearance as counsel" "before any Court without appellate jurisdiction."

"Appearance" has been defined as "voluntary submission to a court's jurisdiction". [2] "Counsel" means "an adviser, a person professionally engaged in the trial or management of a cause in court; a legal advocate managing a case at law; a lawyer appointed or engaged to advise and represent in legal matters a particular client, public officer, or public body". [3] Ballantine's Law Dictionary says a counsel is a "counselor; an attorney at law; one or more attorneys representing parties in an action". [4] Thus, "appearance as counsel" is a voluntary submission to a court's jurisdiction by a legal advocate or advising lawyer professionally engaged to represent and plead the cause of another. This is the common, popular connotation of this word which the Constitution must have adopted. In one case, [5] in resolving the question of what constitutes "appearance as an advocate," the Court held that "advocate" means one who pleads the cause of another before a tribunal or judicial court, a counselor.

Judging from the prescribed criteria, there should be no question that Assemblyman Valentino L. Legaspi, in preparing the Answer for private respondent-spouses in Civil Case No. R-18857 before the Court of First Instance of Cebu, Branch II, appears as their counsel. Similarly, Assemblyman Estanislao A. Fernandez appears as counsel for Excelsior in Civil Case No. 33739 of the Court of First Instance of Rizal (Pasig), Branch XXI. They represent

and plead the cause of another before a Court of justice.

The next poser then arises: are the Courts of First Instance, where Assemblymen Legaspi and Fernandez, respectively, appear as counsel of record, Courts with appellate jurisdiction?

There are authorities to the effect that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a case already instituted and does not create that cause.[6] Or, that it necessarily implies that the subject-matter has been instituted in and acted upon by some other court whose judgment or proceedings are to be reviewed.[7] In an early Philippine case,[8] it was held to mean jurisdiction to review the judgment of an inferior court. And, that it calls for and demands previous legitimate jurisdiction by a court of origin.[9]

By law, Courts of First Instance are Courts of general original jurisdiction.[10] However, under the same statute, their jurisdiction has been stated to be of two kinds: (a) original and (b) appellate.[11] They have appellate jurisdiction over all cases arising in City and Municipal Courts, in their respective provinces except over appeals from cases tried by Municipal Judges of provincial capitals or City Judges pursuant to the authority granted under the last paragraph of Section 87 of the Judiciary Act.[12]

It is rather clear that Courts of First Instance, by virtue of a specific bestowal by the Judiciary Act of 1948, as amended, can be Courts with appellate jurisdiction. And, by the deliberate omission of the word "collegiate" in both the original and amended Section 11, Article VIII of the 1973 Constitution, the obvious intention of the framers is that Courts of First Instance, as appellate Tribunals, no longer fall within the ambit of the previous prohibition. They are single-Judge Courts with appellate jurisdiction from decisions and orders of City and Municipal Courts.[13] Stated otherwise, under the amended proviso, Courts of First Instance are not Courts without appellate jurisdiction.

It is contended, however, that the Courts of First Instance in these two cases took cognizance of the suits in the exercise of their exclusive original and not appellate jurisdiction, hence, Assemblymen Fernandez and Legaspi are still prohibited from appearing before said Courts as counsel. There is merit to this contention.

It should be borne in mind that Courts of First Instance have dual "personality". Depending on the case before it, said Courts can be either of appellate or original jurisdiction. The question then to be resolved is whether or not Assemblymen can appear as counsel before Courts of First Instance in cases originally filed with them.

We are of the considered opinion that, to render effective the Constitutional provision, appearance by legislators before Courts of First Instance should be limited to cases wherein said Courts exercise appellate jurisdiction. This is true to the time-honored principle that whatever is necessary to render effective any provision of a Constitution, whether the same be a prohibition or a restriction, must be deemed implied and intended in the provision itself.[14]

It bears repeating that under Section 17, Article VI of the 1935 Charter, it was provided that members of the Commission on Appointments shall not "appear as counsel before any Court inferior to a collegiate Court of appellate jurisdiction." The intent was clear that members of the Commission on Appointments could not appear before Courts of First Instance. Uppermost in the minds of the framers was "appellate jurisdiction" more than Court. Under Section 11, Article VIII of the 1973 Constitution, the scope of the prohibition was expanded to embrace all members of the National Assembly who were barred from "appear(ing) as counsel before any Court inferior to a Court with appellate jurisdiction." The common denominator was still "appellate jurisdiction" more than "Court". Under the amendment ratified in the April 7, 1981 referendum, members of the Batasang Pambansa are prohibited from "appear(ing) as counsel before any Court without appellate jurisdiction." Consistently, the principal criterion is "appellate jurisdiction." So that, when a legislator appears in an original case filed with a

Court of First Instance, he would not be appearing before a Court with "appellate jurisdiction."

Appellate practice is all that is permitted because of the admitted predominance of lawyers in the legislature.[15] Their office has always favored them with the influence and prestige that it carried. Today, as before, it is only "appellate practice" that is allowed with the significant difference that, this time, the Court need not be a collegial body. This is so because with the removal of the legislative power to re-view appointments the source of power and influence that members of the National Assembly could unduly exert in the exercise of the legal profession has been greatly minimized.

This is a situation where the restricted meaning must prevail over the general because the nature of the subject matter of the context clearly indicates that the limited sense is intended.[16] In fact, the original amendment proposed by Antonio V. Raquiza, Delegate of the First District, Ilocos Norte, in Resolution No. 345 entitled "Prohibiting Members of the National Assembly to Use Their Office As a Means of Promoting Self-Interest" - was to bar a National Assembly member from appearing as counsel before any Court. In the "Whereas" clauses, that proposal was believed to be an "improvement" over Section 17, Article VI of the 1935 Constitution and the purpose of the proposed amendment was explained as follows:

"x x x

"2. The Constitutional provision enumerates the kind of court or administrative cases where a legislator cannot appear. In our proposal he is absolutely barred because it is feared that the practice of his profession will interfere with the performance of his duties or that because the power of his office might influence the administration of justice.

x x x " (Emphasis ours)[17]

The co-author of Resolution No. 345, Delegate Leocadio E. Ignacio from the lone District of Isabela, and Floor Leader of the 1971 Constitutional Convention, elucidated further on the purpose behind the prohibition when he wrote in his Position Paper that "The prohibition against appearing as counsel is necessary because of the undue influence which members of Congress enjoy when they practice before the Courts and especially before administrative agencies. It is an accepted fact that our legislature is composed of a predominance of practising lawyers, and who are therefore expected to be naturally not averse to exerting all influence that they can muster in the pursuit of their profession." Continuing, he said: "The inability to practice as counsel x x x should be part of the sacrifices entailed in running for the position of lawmaker.[18] The amendment proposed by Delegate Gonzalo O. Catan, Jr. of Negros Oriental even went further: "No member of the National Assembly shall, during his term of office, appear as counsel, directly or indirectly, in any Court or administrative body x x x".[19] Delegate Emerito M. Salva from the Second District, Ilocos Norte, substituted his own amendment, thus:

"Section 13. No member of the National Assembly shall, during his term of office, practice directly or indirectly any occupation or profession or be allowed to engage directly or indirectly in any trade, business, or industry."[20]

and explained:

"10.2 Explaining the substitute amendment, Delegate Salva said that the assemblymen should render full-time service to the nation. He pointed out that they should be barred from the practice of their respective professions since they would reasonably be compensated for devoting their time to the work of the National Assembly."[21]

While Section 11, Article VIII, as finally adopted by the Constitutional Convention, did not carry the several amendments proposed, they are reflective of the sentiment prevailing at the 1971 Constitutional Convention, and

reinforce the conviction that appearance as counsel by Assemblymen was meant to be confined to appellate practice and not unlimited practice before Courts of First Instance. That sentiment has been carried over to the amendment ratified in the April, 1981 plebiscite. For, there is no substantial difference between "Court inferior to a Court with appellate jurisdiction" (the original 1973 provision) and "Court without appellate jurisdiction" (the amended provision).

The objective of the prohibition, then and now, is clearly to remove any possibility of undue influence upon the administration of justice, to eliminate the possible use of office for personal gain, to ensure impartiality in trials and thus preserve the independence of the Judiciary. The possible influence of an Assemblyman on a single Judge of the Court of First Instance, though not entirely removed, is definitely diminished where the latter Court acts in the exercise of its appellate instead of original jurisdiction. The upper hand that a party represented by an Assemblyman by virtue of his office possesses is more felt and could be more feared in original cases than in appealed cases because the decision or resolution appealed from in the latter situation has already a presumption not only of regularity but also of correctness in its favor.

In fine, "appellate practice" is an intended qualification dictated by principles of reason, justice and public interest.

The limited application to "appellate practice" is a viewpoint favored by a constitutionalist of eminence, Chief Justice Enrique M. Fernando, in his scholarly work "The Constitution of the Philippines,[22] where he said:

"It is to be noted that at present he may appear as counsel in any criminal case, but he cannot do so before any administrative body. Also, while it is only appellate practice that is allowed a member of the National Assembly, formerly, such a limitation applied solely to a Senator or Representative who was in the Commission on Appointments, a body abolished under the present Constitution. Those differences should be noted" (Emphasis supplied).[23]

Chief Justice Enrique M. Fernando also expounded on the reason behind the Constitutional prohibition, thus:

"x x x The need for it was felt by the 1934 Constitutional Convention, a sentiment shared by the last Constitutional Convention, because of the widespread belief that legislators found it difficult to resist, as perhaps most men, the promptings of self-interest. Clearly, the purpose was and is to stress the fiduciary aspect of the position. There is thus fidelity to the maxim that a public office is a public trust. x x x"[24]

Since the respective Courts of First Instance, before which Assemblymen Legaspi and Fernandez appeared as counsel, were acting in the exercise of original and not appellate jurisdiction, they must be held barred from appearing as counsel before said Courts in the two cases involved herein.

WHEREFORE, granting the Writs prayed for, the Order issued on February 27, 1980 by the Court of First Instance of Cebu, Branch II, in Civil Case No. R-18857, is hereby set aside, and Attorneys Estanislao A. Fernandez and Valentino Legaspi hereby declared prohibited from appearing as counsel before the Court of First Instance of Rizal (Pasig), Branch XXI, in Civil Case No. 33739, and before the Court of First Instance of Cebu, Branch II, in Civil Case No. R-18857, respectively. The Restraining Order issued heretofore in L-53869 is hereby made permanent.

No costs in either case.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Ericta, Plana, and Escolin, JJ., concur. Aquino, J., no part.

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- [1] 16 Am Jur., 2d, p. 219 citing *Cassard v. Tracy*, 52 La Ann 835, 27 So 368.
- [2] *Pacilio vs. Scarpati*, 300 N.Y.S. 473, 478.
- [3] Webster's Third New International Dictionary, 1966, p. 518.
- [4] Third Edition, 1969, p. 278.
- [5] *Haverty Furniture Co. vs. Fausta*, 124 S.N. 2d 694, 697.
- [6] *Marbury vs. Madison*, 5 U.S. 137, 175, 2 L. Ed. 60; *In re Constitutionality of House Bill No. 222*, 90 SW2d 692, 293.
- [7] *Ex parte Evans*, 52 S.E. 419, 420.
- [8] *U.S. vs. Atienza*, 1 Phil. 737 (1903).
- [9] *De Rivera vs. Halili*, 9 SCRA 59 (1963).
- [10] Sec. 39, Judiciary Act.
- [11] Sec. 43, *ibid*.
- [12] Sec. 45, *ibid*.
- [13] Sec. 45, *ibid*.
- [14] Black, on Interpretation of Laws, 2nd ed., 1911, p. 29.
- [15] "Legislative Department," (U.P. Law Center Constitutional Revision Project, 1970) p. 297.
- [16] *Marcos and Concordia vs. Chief of Staff, AFP*, 89 Phil. 246, 248 citing 11 Am. Jur. 680-682.
- [17] "Committee Reports, Vol. 33, Committee on Legis. Power, Part I, as compiled by the National Library".
- [18] "Speeches and Position Papers, V.6: Hermoso-Oliveros: Compiled by National Library, 1976".
- [19] Prop. Amend. No. 69 to CC/C Legis. Power Rep. 03/4-6-72; Date Submitted: 7-14-72; 5:31 P.M."
- [20] Prop. Amend. No. 127 to CC/C Legis. Power/Rep. 03/4-6-72; Date Submitted: 8-28-72; 2:50 p.m."
- [21] Minutes, October 11, 1972 p. 4.
- [22] Second Edition, p. 205.
- [23] Under the amendment to Article VIII of the 1973 Constitution ratified in a national plebiscite held on April 7, 1981 "no member of the Batasang Pambansa shall appear as counsel x x x before any court x x x in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his office, x x x". (Emphasis supplied)
- [24] Fernando, *The Constitution of the Philippines*, p. 205, Second Edition.

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