

SAMUEL C. OCCENA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE COMMISSION ON AUDIT, THE NATIONAL TREASURER, THE DIRECTOR OF PRINTING, RESPONDENTS.

G.R. No. 56350. April 02, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The challenge in these two prohibition proceedings against the validity of three Batasang Pambansa Resolutions[1] proposing constitutional amendments, goes further than merely assailing their alleged constitutional infirmity. Petitioners Samuel Occena and Ramon A. Gonzales, both members of the Philippine Bar and former delegates to the 1971 Constitutional Convention that framed the present Constitution, are suing as taxpayers. The rather unorthodox aspect of these petitions is the assertion that the 1973 Constitution is not the fundamental law, the Javellana[2] ruling to the contrary notwithstanding. To put it at its mildest, such an approach has the arresting charm of novelty - but nothing else. It is in fact self defeating, for if such were indeed the case, petitioners have come to the wrong forum. We sit as a Court duty-bound to uphold and apply that Constitution. To contend otherwise as was done here would be, quite clearly, an exercise in futility. Nor are the arguments of petitioners cast in the traditional form of constitutional litigation any more persuasive. For reasons to be set forth, we dismiss the petitions.

The suits for prohibition were filed respectively on March 6[3] and March 12, 1981.[4] On March 10 and 13 respectively, respondents were required to answer each within ten days from notice.[5] There was a comment on the part of the respondents. Thereafter, both cases were set for hearing and were duly argued on March 26 by petitioners and Solicitor General Estelito P. Mendoza for respondents. With the submission of pertinent data in amplification of the oral argument, the cases were deemed submitted for decision.

It is the ruling of the Court, as set forth at the outset, that the petitions must be dismissed.

1. It is much too late in the day to deny the force and applicability of the 1973 Constitution. In the dispositive portion of *Javellana v. The Executive Secretary*,[6] dismissing petitions for prohibition and mandamus to declare invalid its ratification, this Court stated that it did so by a vote of six[7] to four.[8] It then concluded: "This being the vote of the majority, there is no further judicial obstacle to the new Constitution being considered in force and effect." [9] Such a statement served a useful purpose. It could even be said that there was a need for it. It served to clear the atmosphere. It made manifest that as of January 17, 1973, the present Constitution came into force and effect. With such a pronouncement by the Supreme Court and with the recognition of the cardinal postulate that what the Supreme Court says is not only entitled to respect but must also be obeyed, a factor for instability was removed. Thereafter, as a matter of law, all doubts were resolved. The 1973 Constitution is the fundamental law. It is as simple as that. What cannot be too strongly stressed is that the function of judicial review has both a positive and a negative aspect. As was so convincingly demonstrated by Professors Black[10] and Murphy,[11] the Supreme Court can check as well as legitimate. In declaring what the law is, it may not only nullify the acts of

coordinate branches but may also sustain their validity. In the latter case, there is an affirmation that what was done cannot be stigmatized as constitutionally deficient. The mere dismissal of a suit of this character suffices. That is the meaning of the concluding statement in *Javellana*. Since then, this Court has invariably applied the present Constitution. The latest case in point is *People v. Sola*,^[12] promulgated barely two weeks ago. During the first year alone of the effectivity of the present Constitution, at least ten cases may be cited.^[13]

2. We come to the crucial issue, the power of the Interim Batasang Pambansa to propose amendments and how it may be exercised. More specifically as to the latter, the extent of the changes that may be introduced, the number of votes necessary for the validity of a proposal, and the standard required for a proper submission. As was stated earlier, petitioners were unable to demonstrate that the challenged resolutions are tainted by unconstitutionality.

(1) The existence of the power of the Interim Batasang Pambansa is indubitable. The applicable provision in the 1976 Amendments is quite explicit. Insofar as pertinent it reads thus: "The Interim Batasang Pambansa shall have the same powers and its Members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the interim National Assembly and the regular National Assembly and the Members thereof."^[14] One of such powers is precisely that of proposing amendments. The 1973 Constitution in its Transitory Provisions vested the Interim National Assembly with the power to propose amendments upon special call by the Prime Minister by a vote of the majority of its members to be ratified in accordance with the Article on Amendments.^[15] When, therefore, the Interim Batasang Pambansa, upon the call of the President and Prime Minister Ferdinand E. Marcos, met as a constituent body, it acted by virtue of such competence. Its authority to do so is clearly beyond doubt. It could and did propose the amendments embodied in the resolutions now being assailed. It may be observed parenthetically that as far as petitioner *Occena* is concerned, the question of the authority of the Interim Batasang Pambansa to propose amendments is not new. In *Occena v. Commission on Elections*,^[16] filed by the same petitioner, decided on January 28, 1980, such a question was involved although not directly passed upon. To quote from the opinion of the Court penned by Justice Antonio in that case: "Considering that the proposed amendment to Section 7 of Article X of the Constitution extending the retirement of members of the Supreme Court and judges of inferior courts from sixty-five (65) to seventy (70) years is but a restoration of the age of retirement provided in the 1935 Constitution and has been intensively and extensively discussed at the Interim Batasang Pambansa, as well as through the mass media, it cannot, therefore, be said that our people are unaware of the advantages and disadvantages of the proposed amendment."^[17]

(2) Petitioners would urge upon us the proposition that the amendments proposed are so extensive in character that they go far beyond the limits of the authority conferred on the Interim Batasang Pambansa as successor of the Interim National Assembly. For them, what was done was to revise and not to amend. It suffices to quote from the opinion of Justice Makasiar, speaking for the Court, in *Del Rosario v. Commission on Elections*^[18] to dispose of this contention. Thus: "3. And whether the Constitutional Convention will only propose amendments to the Constitution or entirely overhaul the present Constitution and propose an entirely new Constitution based on an ideology foreign to the democratic system, is of no moment; because the same will be submitted to the people for ratification. Once ratified by the sovereign people, there can be no debate about the validity of the new Constitution. 4. The fact that the present Constitution may be revised and replaced with a new one * * * is no argument against the validity of the law because 'amendment' includes the 'revision' or total overhaul of the entire Constitution. At any rate, whether the Constitution is merely amended in part or revised or totally changed would become immaterial the moment the same is ratified by the sovereign people."^[19] There is here the adoption of the principle so well-known in American decisions as well as legal texts that a constituent body can propose anything but conclude nothing.^[20] We are not disposed to deviate from such a principle not only sound in theory but also advantageous in practice.

(3) That leaves only the questions of the vote necessary to propose amendments as well as the standard for proper submission. Again, petitioners have not made out a case that calls for a judgment in their favor. The language of the Constitution supplies the answer to the above questions. The Interim Batasang Pambansa, sitting as a constituent body, can propose amendments. In that capacity, only a majority vote is needed. It would be on indefensible proposition to assert that the three-fourth votes required when it sits as a legislative body applies as well when it has been convened as the agency through which amendments could be proposed. That is not a requirement as far as a constitutional convention is concerned. It is not a requirement either when, as in this case, the Interim Batasang Pambansa exercises its constituent power to propose amendments. Moreover, even on the assumption that the requirement of three-fourth votes applies, such extraordinary majority was obtained. It is not disputed that Resolution No. 1 proposing an amendment allowing a natural-born citizen of the Philippines naturalized in a foreign country to own a limited area of land for residential purposes was approved by the vote of 122 to 5; Resolution No. 2 dealing with the Presidency, the Prime Minister and the Cabinet, and the National Assembly by a vote of 147 to 5 with 1 abstention; and Resolution No. 3 on the amendment to the Article on the Commission on Elections by a vote of 148 to 2 with 1 abstention. Where then is the alleged infirmity? As to the requisite standard for a proper submission, the question may be viewed not only from the standpoint of the period that must elapse before the holding of the plebiscite but also from the standpoint of such amendments having been called to the attention of the people so that it could not plausibly be maintained that they were properly informed as to the proposed changes. As to the period, the Constitution indicates the way the matter should be resolved. There is no ambiguity to the applicable provision: "Any amendment to, or revision of, this Constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not later than three months after the approval of such amendment or revision." [21] The three resolutions were approved by the Interim Batasang Pambansa sitting as a constituent assembly on February 5 and 27, 1981. In the Batasang Pambansa Blg. 22, the date of the plebiscite is set for April 7, 1981. It is thus within the 90-day period provided by the Constitution. Thus any argument to the contrary is unavailing. As for the people being adequately informed, it cannot be denied that this time, as in the cited 1980 Occena opinion of Justice Antonio, where the amendment restored to seventy the retirement age of members of the judiciary, the proposed amendments have "been intensively and extensively discussed at the Interim Batasang Pambansa, as well as through the mass media, [so that] it cannot, therefore, be said that our people are unaware of the advantages and disadvantages of the proposed amendment[s]." [22]

WHEREFORE, the petitions are dismissed for lack of merit. No costs.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur. Teehankee, J., dissents in a separate opinion.

Abad Santos, J., on official leave.

[1] Resolution Nos. 28, 104 and 106 (1981).

[2] *Javellana v. The Executive Secretary*, L-36142, March 31, 1973, 50 SCRA 30.

[3] L-56350, *Samuel C. Occena v. The Commission on Elections, The Commission on Audit, The National Treasurer and the Director of Printing*.

[4] L-56404, *Ramon A. Gonzales v. The National Treasurer and the Commission on Elections*. The other co-petitioners are Manuel B. Imbong, Jo Aurea Marcos-Imbong, Ray Allan T. Drilon, Nelson V. Malana and Gil M. Tabios.

[5] There was on March 24 an amended petition in Occena, adopting the theory of petitioner Gonzales that the

1935 Constitution was once again in force and effect.

[6] It should not be lost sight of that four other cases were decided in the joint resolution of dismissal, dated March 31, 1973, *Tan v. The Executive Secretary*, L-36164; *Roxas v. Melchor*, L-36165; *Monteclaro v. The Executive Secretary*, L-36236; *Dilag v. The Honorable Executive Secretary*, L-36283, all reported in 50 SCRA 30.

[7] The six votes came from Justices Makalintal, Castro, Barredo, Makasiar, Antonio and Esguerra.

[8] The four votes were cast by then Chief Justice Concepcion, the late Justice Zaldivar, and Justice Teehankee as well as the writer of this opinion.

[9] 50 SCRA at 141. Concepcion, C.J., dissented from this concluding statement.

[10] *Black, The People and the Court* 56-58 (1962).

[11] *Murphy, Elements of Judicial Strategy* 17-18 (1964).

[12] G.R. No. 56158-64, March 17, 1981.

[13] Cf. *Garcia v. Domingo*, L-30104, July 25, 1973, 52 SCRA 143; *Buendia v. City of Baguio*, L-34011, July 25, 1973, 52 SCRA 155; *Flores v. Flores*, L-28930, August 17, 1973, 52 SCRA 293; *Alfanta v. Nao*, L-32362, September 19, 1973, 53 SCRA 76; *People v. Molina*, L-30191, October 7, 1973, 53 SCRA 495; *People v. Zamora*, L-34090, November 26, 1973, 54 SCRA 47; *Republic v. Villazor*, L-30671, November 28, 1973, 54 SCRA 83; *Paulo v. Court of Appeals*, L-33845, December 18, 1973, 54 SCRA 253; *People v. Bacong*, L-36161, December 19, 1973, 54 SCRA 288 and *Asian Surety and Insurance Co. v. Herrera*, L-25232, December 20, 1973, 54 SCRA 312.

It may be mentioned that the first of such cases, *Garcia*, was promulgated on July 25, 1973 with the writer of this opinion as ponente and the next case, *Buendia*, also on the same date, with Justice Teehankee as ponente, both of whom were dissenters in *Javellana*, but who felt bound to abide by the majority decision.

[14] 1976 Amendments, par. 2. The last sentence follows: "However, it shall not exercise the powers provided in Article VIII, Section 14(1) of the Constitution." Article VIII, Section 14, par. (1) reads as follows: "Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the National Assembly."

[15] Article XVII, Section 15 of the Constitution reads as follows: "The interim National Assembly, upon special call by the interim Prime Minister, may, by a majority vote of all its Members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof."

[16] L-52265, 95 SCRA 755.

[17] *Ibid*, 762.

[18] L-32476, October 20, 1970, 35 SCRA 367.

[19] *Ibid*, 369-370.

[20] Cf. *Ex parte Kerby*, 205 P279 (1922).

[21] Article XVI, Section 2 of the Constitution.

[22] L-52265, 95 SCRA 755, 762. The writer of this opinion, along with retired Chief Justice Concepcion and

Justices Makalintal and Bengzon, is committed to the view expressed in the ponencia of the retired Chief Justice that in the final analysis the question of proper submission reduces itself not as to power, which is the concern of the judiciary, but as to wisdom, which is entrusted to the constituent body proposing the amendments. *Gonzales v. Commission on Elections*, L-28196, November 9, 1967, 21 SCRA 774, 801. The opposing view was set forth by Justice Sanchez.

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DISSENTING OPINION

TEEHANKEE, J.:

I vote to give due course to the petitions at bar and to grant the application for a temporary restraining order enjoining the plebiscite scheduled for April 7, 1981.

1. Consistently with my dissenting opinion in *Sanidad vs. Comelec*[1] on the invalidity of the October 1976 amendments proposals to the 1973 Constitution for not having been proposed nor adopted in accordance with the mandatory provisions thereof, as restated by me in *Hidalgo vs. Marcos*[2] and *De la Llana vs. Comelec*[3], questioning the validity of the December 17, 1977 referendum-exercise as to the continuance in office as incumbent President and to be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments, I am constrained to dissent from the majority decision of dismissal of the petitions.

I had held in *Sanidad* that the transcendental constituent power to propose and approve amendments to the Constitution as well as to set up the machinery and prescribe the procedure for the ratification of the amendments proposals has been withheld by the Constitution from the President (Prime Minister) as sole repository of executive power and that so long as the regular National Assembly provided for in Article VIII of the Constitution had not come to existence and the proposals for constitutional amendments were now deemed necessary to be discussed and adopted for submittal to the people, strict adherence with the mandatory requirements of the amending process as provided in the Constitution must be complied with. This means, under the prevailing doctrine of *Tolentino vs. Comelec*[4] that the proposed amendments to be valid must come from the constitutional agency vested with the constituent power to do so, i.e. in the Interim National Assembly provided in the Transitory Article XVII which would then have to be convened and not from the executive power as vested in the President (Prime Minister) from whom such constituent power has been withheld.

2. As restated by me in the 1977 case of *Hidalgo*, under the controlling doctrine of *Tolentino*, the October 1976 constitutional amendments which created the Interim Batasang Pambansa in lieu of the Interim National Assembly were invalid since as ruled by the Court therein, constitutional provisions on amendments "dealing with the procedure or manner of amending the fundamental law are binding upon the Convention and the other departments of the government (and) are no less binding upon the people" and "the very idea of departing from the fundamental law is anachronistic in the realm of constitutionalism and repugnant to the essence of the rule of law." The proposed amendments at bar having been adopted by the Interim Batasang Pambansa as the fruit of the invalid October, 1976 amendments must necessarily suffer from the same congenital infirmity.

3. Prescinding from the foregoing and assuming the validity of the proposed amendments, I reiterate my stand in Sanidad that the doctrine of fair and proper submission first enunciated by a simple majority of six Justices (of an eleven-member Court prior to the 1973 Constitution which increased the official composition of the Court to fifteen) in *Gonzales vs. Comelec*[5] and subsequently officially adopted by the required constitutional two-thirds majority vote of the Court (of eight votes, then) in *Tolentino* is fully applicable in the case at bar. The three resolutions proposing complex, complicated and radical amendments of our very structure of government were considered and approved by the Interim Batasang Pambansa sitting as a constituent assembly on February 27, 1981. It set the date of the plebiscite for thirty-nine days later on April 7, 1981 which is totally inadequate and far short of the ninety-day period fixed by the Constitution for submittal to the people to "sufficiently inform them of the amendments to be voted upon, to conscientiously deliberate thereon and to express their will in a genuine manner." [6]

4. "The minimum requirements that must be met in order that there can be a proper submission to the people of a proposed constitutional amendment" as stated by retired Justice Conrado V. Sanchez in his separate opinion in *Gonzales* bears repeating as follows: "x x x we take the view that the words 'submitted to the people for their ratification,' if construed in the light of the nature of the Constitution - a fundamental charter that is legislation direct from the people, an expression of their sovereign will - is that it can only be amended by the people expressing themselves according to the procedure ordained by the Constitution. Therefore, amendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word 'submitted' can only mean that the government, within its maximum capabilities, should strain every effort to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. x x x What the Constitution in effect directs is that the government, in submitting an amendment for ratification, should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification or rejection. For, as we have earlier stated, one thing is submission and another is ratification. There must be fair submission, intelligent consent or rejection. If with all these safeguards the people still approve the amendments no matter how prejudicial it is to them, then so be it. For the people decree their own fate."

Justice Sanchez therein ended the passage with an apt citation that "x x x The great men who builded the structure of our state in this respect had the mental vision of a good Constitution voiced by Judge Cooley, who has said 'A good Constitution should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought, which alone, if the government is to be safe, can be allowed efficacy. x x x Changes in government are to be feared unless the benefit is certain.' As Montaigne says: 'All great mutations shake and disorder a state. Good does not necessarily succeed evil; another evil may succeed and a worse.'"

[1] 73 SCRA 333 (1976).

[2] 80 SCRA 538 (1977).

[3] 80 SCRA 525 (1977).

[4] L-34150, Oct. 16, 1971, 41 SCRA 702 and Resolution denying motion for reconsideration dated Nov. 4, 1971.

[5] 21 SCRA 774.

[6] 21 SCRA, at page 817.

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