

VALENTINO L. LEGASPI, PETITIONER, VS. THE HONORABLE MINISTER OF FINANCE AND THE HONORABLE COMMISSIONER AND/OR THE BUREAU OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. 58289. July 24, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition filed by the Honorable Valentino L. Legaspi, incumbent member of the interim Batasang Pambansa, praying that this Court declare Presidential Decree 1840 "granting tax amnesty and filing of statement of assets and liabilities and some other purposes" unconstitutional.

The petition contains the following allegations:

"5. That said decree was issued by the President under supposed legislative powers granted him under Amendment No. 6 of the Constitution proclaimed in full force and effect as of October 27, 1976 pursuant to Proclamation No. 1595 and which is quoted as follows:

'Whenever in the judgment of the President, there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction, which shall form part of the law of the land.'

"6. That said decree was promulgated despite the fact that under the Constitution '(T)he Legislative power shall be vested in a Batasang Pambansa' (Sec. 1, Article VIII) and the President may grant amnesty only 'with concurrence of the Batasang Pambansa (Sec. 11, Art. VII);

"7. That Amendment No. 6 is not one of the powers granted the President by the Constitution as amended in the plebiscite of April 7, 1981 ; that while Section 16 of Art. VII of the Constitution provides:

'All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed and are hereby vested in the President unless the Batasang Pambansa provides otherwise.'

such re-confirmation of existing powers did not mean to include the President's legislative powers under Amendment No. 6; by 'the laws of the land which are not herein provided for or conferred upon any official' only those laws that have been passed by the existing and/or prior legislature are intended;

"8. That the Respondents are intending and in fact implementing the provisions of the questioned decree and the same tends to affect all taxpayers in the Philippines including herein Petitioner; that he is now in a quandary on whether to take advantage of the benefits of said decree since the same is of doubtful constitutionality leaving him no protection as guaranteed by the decree and thus subject him to prosecution for violation of which otherwise would have held him immune under said decree;

"9. That as a member of the Batasang Pambansa he knows that the subject of the questioned decree has not

been brought to the attention of the Batasang Pambansa requiring immediate attention, the fact being that the original tax amnesty decree which the questioned decree amended or modified has long been effective and implemented by the Respondents while the Batasang Pambansa was in session;

"10. That Presidential Decree No. 1840 is patently null and void having been passed without the concurrence of the Batasang Pambansa and it is likewise of public interest and of the nation that the question of whether the President retained his legislative power after lifting Martial Law and after the Constitution was amended on April 7, 1981 be resolved;

"11. That the questioned decree being the first dated after the lifting of Martial Law and the April 7 amendments brings to test the validity of the exercise of standby emergency powers invoked in Amendment No. 6." (Pp. 3-6, Record.)

As the petitioner himself puts it in his memorandum, the issue is: Whether the 1973 Constitution as amended by Plebiscite-Referendum of 1976, retained the same amendments, more particularly Amendment No. 6, after it was again amended in the Plebiscite held on April 7, 1981?

On the issue thus formulated by petitioner, it is maintained that "Amendment No. 6 is rendered inoperable, deleted and/or repealed by the amendments of April 7, 1981". Opening his discussion of this proposition thus:

"Amendment No. 6 as originally submitted to the people for ratification under Pres. Dec. No. 1033, and thereafter approved reads as follows:

'Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction, which shall form part of the law of the land.'

Whether the matter or that there was an exigency which required immediate action, let it be conceded that in the judgment of the President such facts do exist. (Underscoring ours)

"It is to be observed that the original text mentions President (Prime Minister). This is so because under No. 3 of the same amendment,

'x x x. The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions, and likewise he shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution.'

Parenthetically, the term 'Incumbent President' employed in the transitory provisions could only refer to President Ferdinand E. Marcos (Aquino vs. Commission on Elections, 62 SCRA 275).

"After the April 7 amendments there exists no longer 'a President (Prime Minister)' but 'A President' and 'A Prime Minister.' They are now two different offices which cannot be held by a single person — not a transitory one but a regular one provided for and governed by the main provisions of the newly amended Constitution. Subsequent events accept the reality that we are no longer governed by the transitory provisions of the Constitution." (Pp. 27-28, Record.)

petitioner rationalizes his affirmative position thereon this wise:

"Is Amendment No. 6 of the 1973 Constitution as approved in 1976 reproduced or unaffected by the April 7, 1981 amendment? Or, is it considered repealed by Omission?

"The Constitutional provisions of the Presidency do not restate the provisions of Amendment No. 6 which grants the President (Prime Minister) limited powers to legislate. This is tantamount to a withdrawal or deletion of such grant.

"There is no way by which the incumbent President be referred to anymore as the 'incumbent President' in the amendment of 1976. While it is true that Amendment No. 6 fails to distinguish between 'incumbent' and 'regular' all provisions with reference to the powers of the Presidency is deemed foreclosed by Article VII of the newly amended Constitution. Article VII enumerates presidential powers. To construe that the 1976 Amendments are still applicable, other than that referring to the Interim Batasang Pambansa would be an incompatibility to the application of the present constitutional provisions.

"Generally taken, the 1976 amendments are amendments to the transitory provisions of the Constitution. Insofar as the office of the President or the Prime Minister is concerned they have ceased to be governed by the transitory provisions but under the newly amended Constitution.

"Batas Pambansa Blg. 125 called for the election of a President under the newly amended Constitution. President Marcos ran as candidate and was proclaimed the duly elected President of the Philippines by resolution no. 2 of the Batasang Pambansa dated June 21, 1981. He took his oath of office as the duly elected President. The Prime Minister, the Members of the Cabinet and the Executive Committee took their oaths after having been appointed and are now exercising their functions pursuant to the new provisions. We even consider ourselves the Fourth Republic because of a new system of Government. What particular part of the newly amended Constitution would Amendment No. 6 fit in?

"President Ferdinand E. Marcos ceased to be the incumbent President referred to in the transitory provisions or in the 1976 Amendments. The Solicitor General argued that Amendment No. 6 provided for the contingency that the office would be separated consisting of a ceremonial President and a Prime Minister who will be the executive. Yet, without express constitutional grant the President now assumes a power intended to be that of the Prime Minister. The intent of the 1981 amendments could not be interpreted any other way except that after the amendment it would no longer be proper to exercise those reposed upon the Prime Minister. Powers previously reposed upon the Prime Minister were expressly removed from him and given to the President. Amendment No. 6 is not one of those.

"The proposed amendments under Batasan Res. No. 104 became Question No. 1 in the ballot of April 7, 1981 plebiscite to which the voter was asked (B.P. Blg. 122):

'Do you vote for the approval of an amendment to the Constitution and to Amendment No. 2, as proposed by the Batasang Pambansa in Resolution No. 2, which, in substance, calls for the establishment of a modified parliamentary system, amending for this purpose Articles VII, VIII and IX of the Constitution, with the following principal features: x x x'

Nowhere in feature (1) was it submitted that the President would enjoy conditional or qualified legislative powers as modified parliamentary system.

"The original intent to set out the original act or section as amended is most commonly indicated by a statement in the amendatory act that the original law is amended to 'read as follows.' The new statute is a substitute for the original act or section. Only those provisions of the original act or section repeated in the amendment are retained (Paras vs. Land Registration Commission, July 26, 1960, L-16011).

"That 'The Legislative power shall be vested in the Batasang Pambansa' is an old provision which has been retained. This in essence was Question No. 1 in the April 7 Plebiscite as to who exercise legislative powers and who are to execute. Nowhere in the approved Amendment can it be hinted that the hybrid-type of government also includes a one-man legislature. The intent to repose legislation only upon the Batasan is very apparent. The adoption of the new Constitution repeals and supersedes all the provisions of the older one not continued

in force by the new instrument (16 C.J.S. 88)." (Pp. 30-33, Record.)

After mature study and deliberation and considering the peculiar circumstances that dictated the formulation of Amendment No. 6, the Court's conclusion is that Assemblyman-Petitioner's posture lacks, to say the least, sufficient merit.

Constitutional law is not simply the literal application of the words of the Charter. The ancient and familiar rule of constitutional construction that has consistently maintained its intrinsic and transcendental worth is that the meaning and understanding conveyed by the language, albeit plain, of any of its provisions do not only portray the influence of current events and developments but likewise the inescapable imperative considerations rooted in the historical background and environment at the time of its adoption and thereby caused their being written as part and parcel thereof. As long as this Court adheres closest to this perspective in viewing any attack against any part of the Constitution, to the end of determining what it actually encompasses and how it should be understood, no one can say We have misguided Ourselves. None can reasonably contend We are treading the wrong way.

True enough Article VIII, Sec. 1 of the Philippine Constitution as amended in 1981 explicitly ordains that "(T)he legislative power shall be vested in a Batasang Pambansa". Section 2, however, readily reveals that the Batasang Pambansa contemplated in that Section 1 is the regular assembly (formerly referred to as National Assembly, now as Batasang Pambansa - evidently to indigenize the nomenclature, which, incidentally should have been done also with the Pangulo and Pangunang Ministro), to be elected in May 1984, per Sec. 5 (1) of the same Article. Thus, to begin with, in the instant case, We must keep in mind that at least for the present and until 1984, what can be properly discussed here are only the legislative powers of the interim Batasang Pambansa as such.

Without intending any reflection on any of those responsible for the idea, it may be that it is for non-essential reasons that the current legislative assembly is being referred to generally simply as the Batasang Pambansa. For in legal truth and in actual fact, and as expressly admitted by petitioner, it is inherently no more no less than the same interim Batasang Pambansa created by Amendment No. 2 by virtue of the Referendum-Plebiscite of October 16-17, 1976 and which was proclaimed to be in full force and effect on October 27, 1976. And, in this connection, it may be observed that indubitably, and as a necessary and logical consequence, the amendment of Amendment No. 2 in 1981 carried with it the corresponding appropriate adjustments literal and otherwise of Amendment Nos. 3 and 4, although these latter two were not specifically mentioned in the proposal pursuant to BP-CA Resolution No. 4 of the Batasan, acting as a constituent body nor in the Plebiscite Referendum Act itself, much less in the ballots presented to and used by the voters. This is because it cannot be denied that Amendments 3 and 4 are by their very nature inseparable parts of Amendment No. 2.

But examining closely how the 1981 amendments altered Amendment No. 2, it will be readily seen that the only change consisted of the non-inclusion of the "incumbent President" as member of the assembly in pursuance of the fundamental objective to separate the Presidency from the regular legislative body and thereby establish in our country a modified form of parliamentary government more appropriate for and suitable to the peculiar conditions of our political development and the idiosyncrasies of our people, and at the same time introduce into it features that would strengthen its structure so as to enable the government to cope with emergencies or abnormal situations, not only like those that presently exist but even those that might arise in the future. Thus, it is characterized with a presidency more powerful than the idea of a strong President desired by President Quezon and actually embodied in the 1935 Constitution.

It is, therefore, evident that the reference to Amendment No. 2 in the amendments of 1981 was not intended at all to convert or upgrade the present existing assembly into the regular Batasang Pambansa. To repeat, what we have now is still the interim Batasang Pambansa created in 1976. Importantly, it must be said that had the present

Batasan, acting as a constituent body, ever thought of making itself the regular National Assembly, the very odious spectacle that the people rejected when in the referendum of January 10-15, 1973 they repulsed and repudiated the interim National Assembly provided for in Sections 1 and 2 of Article XVII (Transitory Provisions) of the 1973 Constitution whereby the members of the old Congress of the Philippines made themselves automatically members of the interim assembly would have resuscitated, and we can readily imagine how the reaction of our people would have been exactly the same as in 1973 and for sure the 1981 proposed constitutional amendment affecting the Batasan would again have been denied sanction by our people.

Having arrived at the ineludible conclusion that the present Batasan is still interim, it also ineluctably follows that its legislative authority cannot be more exclusive now after 1981 amendments than when it was originally created in 1976. Thus even as the interim Batasan which came into being "in lieu of the Interim National Assembly" by virtue of Amendment No. 2 consequently acquired "the same powers and its Members - - the same functions, responsibilities, rights and privileges, and disqualifications as the regular National Assembly and the Members thereof", there can be no question that coeval with the creation of the interim Batasan, Amendment No. 6 came into force and effect. And Amendment No. 6 mandates in unequivocal and unambiguous terms the grant of concurrent legislative authority to an official (the President [Prime Minister]) who is not in the Batasan itself.

In brief, the inexorable logic of the events that brought forth the present Batasan leads to no other conclusion than that the legislative authority vested in it by Amendment No. 2, read together with Section 1, Article XVII and Section 1, of Article VIII of the 1973 Constitution, is subject to the external concurrent legislative prerogative that Amendment No. 6 vests on the "President (Prime Minister)".

Actually, the insistence of petitioner that Amendment No. 6 has been repealed by the 1981 amendments springs from another point of view. It is fundamentally based on analysis and ratiocination related to the language and tenor thereof. Petitioner maintains that said amendments vested extraordinary legislative powers on "the President (Prime Minister)" and on nobody else, and since there is no one who is President (Prime Minister) under our present governmental set-up pursuant to 1981 amendments, no one in the existing government can exercise said powers.

The persuasive force of such theory is more apparent than real. As We have said earlier, the Constitution is not merely a literal document to be always read according to the plain and ordinary signification of its words. Beneath and beyond the literal terms of the Charter, like a mine of incalculably immense treasures, are elements and factors radiating from political and economic developments of the situation prevailing at the time of the inclusion of any particular provision thereof or amendment thereto. It is only from the light of the implications of such elements and factors that the real essence and significance of the words of the constitutional provision under scrutiny can be properly and adequately seen and comprehended.

With reference to Amendment No. 6, it is of decisive importance that anyone who would try to decipher its true import should be acquainted with its ration d'tre, i.e., the whys and the wherefores thereof. Contrary to the imputations of petitioner, this amendment is not rooted in the authoritarian, much less dictatorial tendencies or inclinations of anyone. Any tinge or tint of authoritarianism in it is not there for the sake of the ideology of dictatorship or authoritarian itself. Such hue of a one-man authoritarianism it somehow connotes is there only because it is so dictated by paramount considerations that are needed in order to safeguard the very existence and integrity of the nation and all that it stands for. Perhaps the truism-almost a dogma-well recognized by constitutionalists and political scientists of all persuasions as a convenient pragmatic rule for survival of nations, namely, that in an emergency, the best form of government is a dictatorship, might have been in the mind of those who formulated it, but it is quite obvious, as will be explained anon, that other fundamental factors must have been taken into account in order precisely to minimize the rigors and generally feared oppressiveness of a

dictatorship in an unrestricted martial regime, its being dubbed as martial law "Philippine style" notwithstanding.

At this juncture, it must be emphatically made clear that explicitly, the power that Amendment No. 6 vests upon the "President (Prime Minister)" are to be exercised only on two specified occasions, namely, (1) "when in (his judgment) a grave emergency exists or there is a threat or imminence thereof" and (2) "whenever the interim Batasang Pambansa or the regular National Assembly (now regular Batasang Pambansa) fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action." The power is to "issue necessary decrees, orders, or letters of instruction which shall form part of the law of the land." As the tenor of the amendment readily imparts, such power may be exercised even when the Batasan is in session. Obviously, therefore, it is a power that is in the nature of the other powers which the Constitution directly confers upon the President or allows to be delegated to him by the Batasan in times of crises and emergencies.

Indeed, it is but fitting and proper that in framing the fundamental law of the land which sets up a form of government and defines and delimits the powers thereof and its officers, reserving as they must plenary sovereignty to themselves, the people should prudently provide what powers may and should be exercised by the government and/or its officials in times of crises and emergencies that could jeopardize the very life and/or territorial integrity of the country. Even as individual rights and liberties are valued and enshrined as inviolable, the people, as they write their Charter thru a convention or other legitimate means, cannot ignore that in the event of war, insurrection, rebellion or invasion, including any other critical situation, any one of which cannot but affect the regular course of normal constitutional processes and institutions as well as the prerogatives and freedoms of individual citizens of and inhabitants within the country, appropriate protective, defensive and rehabilitative measures must be provided therein and may be made to function or operate.

Accordingly, both in the 1935 Constitution of the Philippines and in that of 1973, the following provisions were precisely intended to operate during such perilous situations:

1. "In times of war or other national emergency, the Batasang Pambansa may by law authorize the President for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Batasang Pambansa, such powers shall cease upon its next adjournment.[1] The 1935 version of this provision differs from it in that what was granted to the President was not the broad authority "to exercise such powers necessary and proper" but only to issue rules and regulations purported to accomplish the same objective.

2. Section 10 (2) of Article VII of the 1935 Constitution provided thus:

"x x x (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under the martial law. x x x."

Under Section 12 of Article IX of the 1973 Constitution, exactly the same powers were conferred on the Prime Minister.

However, what is now Section 9 of Article VIII under the 1981 amendments transferred all said powers to the President.

As can be seen, as authorized by the Commander-in-Chief clause of all our Constitutions, there have been as there still are three other measures that may be resorted to during an emergency, namely:

- (1) Call out such armed forces to prevent or suppress lawless violence, invasion, insurrection or rebellion or imminent danger thereof, when public safety requires it;

- (2) Suspend the privilege of the writ of habeas corpus, and
- (3) Place the Philippines or any part thereof under martial law.

It appears, therefore, that within the four corners of the Constitution itself, whether that of 1935 or that of 1973, there were four constitutionally designed ways of coping with abnormal situations in the country, namely: (1) the so-called emergency powers delegated by the assembly to the President; (2) the calling of the armed forces; (3) the suspension of the privilege of the writ of habeas corpus and (4) the placing of the country or any part thereof under martial law. Understandably, it is to be supposed that these measures are to be resorted to one after the other according to the degree of gravity of the situation.

A backward glance at our past experiences since the implantation of American sovereignty in our country at the turn of the century should remind us that at one time or another all of these four measures have been resorted to, albeit martial law proclamations in the long past were limited in area and duration because of the localized nature of the disturbances they were meant to remedy.

Bearing all the foregoing considerations in mind, the question that naturally arises at this juncture is what need is there for the power contemplated in Amendment No. 6? Why does the country have to have a one-man legislating authority concurrent with the Batasang Pambansa? Are the above-discussed safeguards not enough?

At this point, it must be noted that Amendment No. 6 does not refer only to the interim Batasang Pambansa but also to the regular "National Assembly" (now Batasang Pambansa), a consideration which lends force to the conclusion that the 1981 amendment could not have been intended nor understood to do away with it. What, indeed, is the fundamental ration d'tre of Amendment No. 6?

It is to be recalled that the said amendment was formulated in October 1976, more than fully four years after the whole Philippines was first placed under martial law pursuant to Proclamation 1081 dated September 21, 1972. True, without loss of time, President Marcos made it clear that there was no military take-over of the government, and that much less was there being established a revolutionary government, even as he declared that said martial law was of a double-barrelled type, unfamiliar to traditional constitutionalists and political scientists - for two basic and transcendental objectives were intended by it: (1) the quelling of nation-wide subversive a characteristic not only of a rebellion but of a state of war fanned by a foreign power of a different ideology from ours, and not excluding the stopping effectively of a brewing, if not a strong separatist movement in Mindanao, and (2) the establishment of a New Society by the institution of disciplinary measures designed to eradicate the deep - rooted causes of the rebellion and elevate the standards of living, education and culture of our people, and most of all the social amelioration of the poor and underprivileged in the farms and in the barrios, to the end that hopefully insurgency may not rear its head in this country again.

The immediate reaction of some sectors of the nation was of astonishment and dismay, for even if everyone knew that the gravity of the disorder, lawlessness, social injustice, youth and student activism and other disturbing movements had reached a point of peril, they felt that martial law over the whole country was not yet warranted. Worse, political motivations were ascribed to be behind the proclamation, what with the then constitutionally unextendable term of President Marcos about to expire, and this suspicion became more credible when opposition leaders and outspoken anti-administration media people who did not hesitate to resort even to libel were immediately placed under indefinite detention in military camps and other unusual restrictions were imposed on travel, communication, freedom of speech and of the press, etc. In a word, the martial law regime was anathema to no small portion of the populace. Criticisms or objections thereto were, of course, mostly covert, but there were even instances of open resistance.

Truth to tell, martial law is generally unwelcome anywhere in the world. And when it is prolonged without anyone knowing when it would be lifted, the feeling of discontent grows and spreads. Indeed, it is difficult to describe fully in an opinion like this all that many consider obnoxious in martial law. Suffice it to say that the New Society that came out of it did have its laudatory features appreciated by large segments of the people, but with many cases of abuses of the military marring such receptive attitude, the clamor for the early lifting of martial law became more and more audible.

We can definitely say that no one more than President Marcos was aware of those feelings and sentiments and, in fact, even of the undercurrents of resistance. And as we visualize the situation he found himself in, he was faced with no less than a dilemma. He was convinced of the advantages, not personally to him, but to general welfare of martial law, but at the same time he was also conscious that martial law, in any form - call it Philippine style, smiling, benign or with any other euphemistic adjective - was growing to be more and more distasteful. Even the New Society it was supposed to bring about was slowly losing its splendor. Backsliding was creeping in some ways, discipline was loosening. But over and above all such adverse developments, the perils to national security and public order still remained, if in a slightly lesser degree.

It was in the light of the above circumstances and as a means of solving the dilemma aforementioned that the concept embodied in Amendment No. 6 was born. In brief, the central idea that emerged was that martial law may be earlier lifted, but to safeguard our country and people against any abrupt dangerous situation which would warrant the exercise of some authoritarian powers, the latter must be constitutionally allowed, thereby to obviate the need to proclaim martial law and its concomitants, principally the assertion by the military of prerogatives that made them appear superior to the civilian authorities below the President. In other words, the problem was what may be needed for national survival or the restoration of normalcy in the face of a crisis or an emergency should be reconciled with the popular mentality and attitude of the people against martial law.

We have said earlier that the Constitution has four built-in measures to cope with crises and emergencies. To reiterate, they are: (a) emergency powers expressly delegated by the Batasan; (b) call of the armed forces, who otherwise are supposed to be in the barracks; (c) suspension of the privilege of the writ of habeas corpus; and (d) martial law. Of these four, the people dislike martial law most and would, if possible, do away with it in the Constitution. And the President who first conceived of what is now Amendment No. 6 knew this. Thus, Our understanding of the development of events and attitudes that led to the adoption of Amendment No. 6 is that in addition to the four measures authorized in the body of the charter, this amendment is supposed to be a fifth one purportedly designed to make it practically unnecessary to proclaim martial law, except in instances of actual surface warfare or rebellious activities or very sophisticated subversive actions that cannot be adequately met without martial law itself. Very evidently, the purpose of Amendment No. 6 is that the Philippines be henceforth spared of martial law unless manifest extreme situations should ever demand it.

To recapitulate, the amendments of October 1976 were deliberately designed against martial law. The creation thereby of the interim Batasang Pambansa in lieu of the interim National Assembly which never came into being because of vehement and justified popular repudiation thereof was definitely an indispensable step towards the lifting of martial law. Everyone can understand that martial law could not be lifted without a legislative body to make the laws. The legislative authority could not be left in the hands of the President (Prime Minister). It would have been anachronistic to lift martial law and still leave the lawmaking authority with the President (Prime Minister) alone.

Relatedly but more importantly, the vesting of the legislative authority to the interim Batasang Pambansa, without more or exclusively, would have maintained the safeguards of national security only to the four traditional constitutional measures repeatedly discussed above, including martial law. The framers of the amendment

realized only too well they had to look for a remedy thereto, the dislike of the people, justified or not, of martial law. And so, to make the proclamation of martial law remotest, but nevertheless enable the government to meet emergencies effectively, they conceived the idea of granting to the President (Prime Minister) the power endowed to him by Amendment No. 6.

Skeptics and hardcore critics of the administration there must be who would sarcastically allude to Amendment No. 6 as martial law just the same but only like a dog with merely another collar. A word of explanation is thus called for of the vital differences between one and the other.

The attitude of those who are opposed to Amendment No. 6 must be due to lack of sufficient acquaintance with the real essence of the various constitutionally authorized emergency measures imperatively needed to safeguard the national security and integrity already discussed above. The delegation of legislative power thru the issuance of rules and regulations to carry out a national policy declared by the Batasan has its own virtues as a restrained way of conferring law-making authority to the Executive during an emergency. It is limited, restricted, subject to conditions and temporary. It is obviously the simplest remedy to cope with an abnormal situation resulting in the least violence to revered democratic republican processes constitutionally established.

But being purely a political and legislative remedy, it cannot be adequate when lawless violence becomes generalized and public safety is in jeopardy, hence the need to call out the armed forces. And when such situation still aggravates to the point of requiring the preventive incarceration or detention of certain leaders or over active elements, it becomes inevitable to suspend the privilege of the writ of habeas corpus.

Should matters really go out of hand even after the putting into effect of the measures aforementioned, under the constitution, without Amendment No. 6, the only recourse would be to proclaim martial law. But inasmuch as martial law is an extreme measure that carries with it repressive and restrictive elements unpopular to liberty loving and democratically minded sectors of the country, it is but natural to think of it only as a very last resort.

Well, it is to avoid the necessity of resorting to the proclamation of martial law that Amendment No. 6 was conceived. Paraphrasing President Marcos himself, martial law is the law of the gun, that implies coercion and an active and direct role in the government by the military. Thus, the virtue of Amendment No. 6 is that such undesirable features of martial law do not have to accompany the exercise of the power thereby conferred on the Executive. To be sure, the calling out of the armed forces and the suspension of the privilege of the writ of habeas corpus, which are concomitants of martial law, may be left out or need not be resorted to when the President acts by virtue of such power. It is, therefore, evident that it is grossly erroneous to say that Amendment No. 6 is in reality no less than disguised martial law.

Apparently conceding, at least in gratia argumenti, the truth and the logic of all the foregoing discussion and conclusions, petitioner raises the question of how can Amendment No. 6 fit into the new set up under the 1981 amendments, which abolished the dual position of President Marcos of President-Prime Minister mandated by the 1976 Amendment No. 3. According to petitioner, President Marcos is President now (no longer President-Prime Minister) pursuant to the 1981 amendments and by virtue of his election as such as proclaimed by the Batasan on June 21, 1981. Not without a bit of sarcasm, petitioner even refers to the reference to the status of our government after the inauguration of President Marcos as the Fourth Republic. How then, petitioner asks, can the President of the Fourth Philippine Republic exercise powers granted to the President-Prime Minister of the provisional government established by the Transitory Provisions and conferred upon him only by Amendment No. 6 of October 1976?

If We go solely by the rules of literature, a considerable degree of plausibility, as We have intimated earlier in this opinion, may be conceded to the pose of petitioner. It indeed seems that since the positions of President and Prime

Minister have been separated by the 1981 amendments and the same do not state to whom the power under Amendment No. 6 would appertain, neither the present President nor the present Prime Minister can exercise such power. But again, We hold that petitioner is laboring under a misconception of facts and of the principles of constitutional construction.

Earlier hereinabove, We discoursed on the inevitability of the conclusion that the current Batasan, being merely interim "in lieu of the interim National Assembly" established under Section 1 of the Transitory Provisions, it is subject to the provisions of Amendment No. 6 which was approved and ratified together with the creation of the Batasan. We have also made a rather extensive exposition of the whys and wherefores behind Amendment No. 6. As may be noted, the ultimate thrust of Our discussion is to establish as a legal proposition that behind and beneath the words of the amendment, the literal reference to "the President (Prime Minister)" in Amendment No. 6 was the intention to make such reference descriptive of the person on whom is vested the totality of the executive power under the system of government established thereby. For as a matter of general principle in constitutional law, belonging as he does to the political department of the government, it is only with such official that the high prerogative of policy determination can be shared. And in this connection, it is very important to note that the amendment does not speak of the "incumbent President" only, as in the other amendments, like Nos: 1, 3 and 5, but of the President, meaning to include all future presidents. More, Amendment No. 6 makes mention not only of the interim Batasan but also of the regular one. All these unmistakably imply that the power conferred upon the President thereby was not for President Marcos alone but for whoever might be President of the Philippines in the future.

As to the parenthetical mention therein of the Prime Minister, We are of the considered view that it was necessary to do so because under the governmental system then, which was markedly Prime Ministerial, the substantive executive powers were vested in the Prime Minister, the President being merely the symbolical and ceremonial head of state, and the two positions were being held by one and the same person. In other words, the power was contemplated to be conferred upon whomsoever was vested the executive power, and that is as it should be, for, to reiterate, from the very nature of the power itself, the authority to legislate should be allowed, if at all, to be shared only with one in the political department, directly deriving power from the vote of the people.

Withal, as the Solicitor General aptly posits, it is neither sound nor in consonance with well and long settled principles of constitutional construction to recognize amendments or repeals of constitutional provisions by implications, specially in regard to a transcendental matter as that herein under discussion. Indeed, the fact that Amendment No. 6 was not in any way or sense mentioned in the amendments submitted to the people for ratification in 1981 and there being nothing in the latter intrinsically inconsistent with the former, it is safe to conclude that it would be deceiving the people themselves and depriving them of something they had decided in 1976 to be part of the fundamental law of the land to now eliminate the power conferred by them upon the Executive of sharing legislative authority with the Batasan on appropriate occasions of emergency and urgency.

Anent petitioner's claim that the President may not constitutionally grant the amnesty provided for in P.D. 1840, to Our mind, the following well taken brief answer of the Solicitor General, with whom We fully agree, is more than sufficient to dispose of the same adversely to petitioner's stance:

"Petitioner argues that Presidential Decree 1840 is likewise invalid for it did not enjoy the concurrence of the Batasan. He relies on Article VII, section 11 of the Constitution which provides that –

'The President may, except in cases of impeachment, grant reprieves commutations and pardons, remit fines and forfeitures and with the concurrence of the Batasang Pambansa, grant amnesty.'

"Again, we beg to disagree. Article VII, sec. 11, applies only when the President is exercising his power of

executive clemency. In the case at bar, Presidential Decree 1840 was issued pursuant to his power to legislate under Amendment No. 6. It ought to be indubitable that when the President acts as legislator as in the case at bar, he does not need the concurrence of the Batasan. Rather, he exercises concurrent authority vested by the Constitution."

We cannot close this opinion without underscoring the patent tendency and unrelenting effort of the leadership of the country to make our government and our way of life indigenously Filipino as much as it is possible to make them so. It has, of course, tried its utmost to see what is good in other lands, but it has chosen generally to bring out what is best in our own traditions, usages, customs and systems that have proven efficacious and beneficial during the times of our forebears. The sanggunians and barangays which have inherited from the Filipinos of the past and that have been institutionalized in Constitutional Amendment No. 7 of 1976 have, as everyone can see, proven to be unshakable bedrocks for the foundation of duly constituted governmental authority with firm nationwide mass base. Our present government, if in some ways similar to any foreign one, is in truth a product of our own genius in political science and matters of government. Nowhere else in the world but in the Philippines are martial law decrees and acts subject to the judicial scrutiny of the Supreme Court. Amendment No. 6 is of the same strain. It is our native and indigenous way of coping with crucial situations.

We are Filipinos, so much so that the writer of this opinion has purposely avoided reference to, much less lifted quotations from alien jurisprudence and authorities. If only in this particular case, it is but appropriate to use language and style of our own.

All the above premises taken into account, Our considered conclusion and judgment is that Amendment No. 6 of October 1976 of the Constitution of 1973 has not been in anyway altered or modified, much less repealed by the constitutional amendments of 1981.

WHEREFORE, the petition is dismissed. No costs.

Makasiar, Concepcion, Jr., Guerrero, Plana, Escolin, Vasquez, and Relova, JJ., concur.

Fernando, C.J., concurs and reserves the right to file a brief statement of his views.

Teehankee, J., reserves his vote.

Aquino, J., see concurrence.

Abad Santos, J., see opinion concurring in the result.

De Castro, J., see separate concurring opinion.

Melencio-Herrera, J., in the result.

Gutierrez, Jr., on official leave.

[1] It is not clear what "adjournment" this provision refers to, considering that under Section 6 of Article VIII, the session of the Batasan is continuous throughout the year, but it is not imperative to make any clarification now, considering it is not pivotal in this case. The provision quoted is Section 15 of Article VIII of the 1973 Constitution.

CONCURRING OPINION

ABAD SANTOS, J.:

I concur in the result. I should state that as Secretary of Justice I participated in the drafting of the 1976 Amendments to the Constitution; that Amendment No. 6 was intended to give to the President (Prime Minister) the power to issue decrees, etc. subject to the conditions specified therein even after the lifting of martial law as

shown by the fact that it is not only the interim Batasang Pambansa which is mentioned but also the regular National Assembly; that the words President (Prime Minister) were used in Amendment No. 6 (and also in Amendment No. 4) simply because at that time both positions were occupied by the incumbent President; that the fact that at present one person is President and another person is Prime Minister does not mean the President has lost his power under Amendment No. 6 for that power was intended to be used by the head of government; and that what has to be borne in mind is that the structure of the government at present is essentially that of the presidential type for the President is both head of state and head of government while the Prime Minister, despite his lofty title, is but an alter ego of the President.

SEPARATE OPINION

DE CASTRO, J.:

The only issue raised by petitioner to which I wish to address myself in this separate opinion, being in full concurrence with how the other issues are disposed of in the majority opinion, is whether Amendment No. 6 (1976) is still in force after the 1981 Amendments to the 1973 Constitution. Amendment No. 6 reads:

"Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction, which shall form part of the law of the land."

What should be emphatically pointed out is that the effectiveness of this provision is intended to continue into the future, even beyond the regime of the interim national assembly (Batasan Pambansa), as a wise and permanent feature of Our constitutional system. This is clear from the reference made therein of the regular National Assembly, the life-time of which is without a pre-fixed limit, as is the very existence of the Republic itself. If for this reason alone, its abrogation or elimination from the Constitution of which the original intention was to make it a part and parcel, may be effected only by no less than a clear and express repeal. No such mode of repeal is discoverable from the 1981 amendments of the Constitution. Petitioner would, however, see a repeal by "omission."

I fail to see such kind of repeal. The power granted by Amendment No. 6 is, by its language, to be exercised by the "President (Prime Minister)." These words are interpreted by petitioner as meaning that only when the President is at the same time the Prime Minister, which can only refer to President Ferdinand E. Marcos, may the power granted by Amendment No. 6 be deemed to remain effective. But when, as it happened after the 1981 amendments and the last presidential elections, the two offices had ceased to be combined or unite in the person, of President Marcos, the office of Prime Minister being now held by another official, Prime Minister Cesar Virata, the power conferred by Amendment No. 6 may no longer be exercised by any official and therefore the amendment is deemed erased from the Constitution. This is a most simplistic interpretation that does not do justice to the transcendently important objectives of the amendment.

It is here where I would wish to express my view that in using the words "President (Prime Minister)" in Amendment No. 6, the intent is for the President to exercise the power while he is in possession of the high executive prerogatives, but when there shall be a regular Prime Minister, it is to the latter that the power would pertain, not to the President anymore, because under the Constitution at the time the 1976 Amendments were

adopted it was envisioned that the President would be vested only with essentially ceremonial powers, the highest executive powers to be then exercised by the Prime Minister. The word "Prime Minister" immediately following the word "President", but enclosed in parenthesis was therefore, meant to indicate that when the change will take place whereby the Prime Minister takes over the executive powers from the President, then it is the former, not the latter, who would exercise the power defined in Amendment No. 6, to obviate thereby the need of a new amendment. The word "President" would automatically be replaced by the word "Prime Minister", thus continuing in force the provision of Amendment No. 6.

To my mind, this is the more reasonable interpretation than to say that the aforementioned words were merely descriptive of the actual nature of the position held by the "incumbent President" as, indeed only the incumbent President could possibly combine the two positions in his single personality. If this were the intention, there would have been no need to enclose the word "Prime Minister" in parenthesis. In doing so, the intention is made clear that it is the Prime Minister who automatically takes over the exercise of the power when the President is stripped of real executive power and vested with mainly ceremonial powers, as obtains in most parliamentary governments.

With the intent as above indicated thus so clearly manifested the 1981 amendment, far from repealing Amendment No. 6 by omission as petitioner contends, should be construed as having the effect of vesting the power defined therein in the Chief Executive as now provided in the 1981 amendments. This official is none other than the President to whom were transferred the powers originally intended to be vested in the Prime Minister as the chief executive official in a parliamentary system that the 1973 Constitution, at the beginning, intended to establish for our government. The President would accordingly be the proper official to exercise the power granted by Amendment No. 6 which, by its intrinsic provision, should be maintained in effect by all reasonable intendment rather than deemed repealed only by implication which is never favored.

The view herein expressed would, in my humble opinion, accord more to how the people voted for the amendments of 1981 who, it may be safe to assert, never had the least intent, to erase Amendment No. 6 from the Constitution which in 1976, they solemnly resolved to permanently enshrine as a new but wise and transcendently desirable concept of constitutional power of legislation, dictated by the highest interest of national welfare and security. Much less had they any awareness that by voting for the amendments, they would be voting for the elimination of Amendment No. 6 from the Constitution, for such a result was never given to their conscious understanding. It is fundamental in the interpretation of statutes and Constitutions that what is controlling is the legislative intent, or the intent of those who enact the law or the Constitution, who, in the case of the latter, are mainly the people without whose ratification any amendment proposed by the constituent body would be of no effect. The petitioner himself seems ready to be counted among those who would not question the wisdom and urgent need of Amendment No. 6, reason for which the majority opinion may have been needlessly overburdened with a lengthy discourse over the reasons behind, and justification for, the adoption of Amendment No. 6 which were supposed to have been known by all before the people went to the polls to vote for its ratification. This I say, with apologies to the learned ponente, and hasten to admit that the disquisition is delectably erudite and scholarly. For the petitioner himself said: "Whether the matter or that there was an emergency which required immediate action, let it be conceded that in the judgment of the President such facts do exist." If he now questions the constitutionality of Amendment No. 6, it is more on ground of form rather than of substance, based merely on his feeling of skepticism that it no longer fits into the pattern or format of the 1973 Constitution as amended on April 7, 1981.

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