

JOSE LUIS MARTIN C. GASCON, FAUSTINO BONG; L. LAPIRA, AND SPOUSES ALBERTO AND KARLA LIM, PETITIONERS, VS. THE HON. JOKER T. ARROYO, IN HIS OFFICIAL CAPACITY AS EXECUTIVE SECRET...

G.R. No. 78389. October 16, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for certiorari and prohibition, with prayer for issuance of writ of preliminary injunction or temporary restraining order, petitioners seek to annul and set aside the "Agreement to Arbitrate" entered into by and between the Republic of the Philippines, represented by Executive Secretary Joker T. Arroyo, and ABS-CBN Broad-casting Corporation, represented by its President, Eugenio Lopez, Jr., dated 6 January 1987, to settle the claims of ABS-CBN for the return of radio and television stations (TV Station Channel 4), and to enjoin the Arbitration Committee created under the aforesaid agreement from adjudicating the claims of ABS-CBN.

The record discloses the following facts:

The Lopez family is the owner of two (2) television stations, namely: Channels 2 and 4 which they have operated through the ABS-CBN Broadcasting Corporation.

When martial law was declared on 21 September 1972, TV Channel 4 was closed by the military; thereafter, its facilities were taken over by the Kanlaon Broadcasting System which operated it as a commercial TV station.

In 1978, the said TV station and its facilities were taken over by the National Media Production Center (NMPC), which operated it as the Maharlika Broadcasting System TV 4 (MBS-4).

After the February 1986 EDSA revolution, the Presidential Commission on Good Government (PCGG) sequestered the aforementioned TV Stations, and, thereafter, the Office of Media Affairs took over the operation of TV Channel 4.

On 17 April 1986, the Lopez family, through counsel, ex-Senator Lorenzo Tanada, requested President Aquino to order the return to the Lopez family of TV Stations 2 and 4.[1]

On 13 June 1987, the Lopez family made a written request to the PCGG for the return of TV Station Channel 2. On 18 June 1986, the PCGG approved the return of TV Station Channel 2 to the Lopez family.[2] The return was made on 18 October 1986.

Thereafter, the Lopez family requested for the return of TV Station Channel 4. Acting upon the request, respondent Executive Secretary, by authority of the President, entered into with the ABS-CBN Broadcasting Corporation, represented by its President, Eugenio Lopez, Jr., an "Agreement to Arbitrate", [3] pursuant to which an Arbitration Committee was created, composed of Atty. Catalino Macaraig, Jr., for the Republic of the Philippines, Atty. Pastor del Rosario, for ABS-CBN, and retired Justice Vicente Abad Santos, as Chairman.

Thereupon, petitioners, as taxpayers, filed the instant petition.

Before discussing the issues raised in the present petition, the Court will first resolve the question of whether or not the herein petitioners have the legal personality or standing to file the instant case.

There have been several cases wherein the Court recognized the right of a taxpayer to file an action questioning the validity or constitutionality of a statute or law, on the theory that the expenditure of public funds by an officer of the government for the purpose of administering or implementing an unconstitutional or invalid law, constitutes a misapplication of such funds.[4]

The present case, however, is not an action to question the constitutionality or validity of a statute or law. It is an action to annul and set aside the "Agreement to Arbitrate", which, as between the parties, is contractual in character. Petitioners have not shown that they have a legal interest in TV Station Channel 4 and that they will be adversely affected if and when the said television station is returned to the Lopez family. Petitioners, therefore, have no legal standing to file the present petition.

In addition, the petition is devoid of merit.

Under the Provisional Constitution of the Republic of the Philippines (also known as the Freedom Constitution), which was in force and effect when the "Agreement to Arbitrate" was signed by the parties thereto on 6 January 1987, the President exercised both the legislative and executive powers of the Government. As Chief Executive, the President was (and even now) "assisted by a Cabinet" composed of Ministers (now Secretaries), who were appointed by and accountable to the President.[5] In other words, the Members of the cabinet, as heads of the various departments, are the assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person, or where the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the heads of such departments, performed in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.[6]

Respondent Executive Secretary had, therefore, the power and authority to enter into the "Agreement to Arbitrate" with the ABS-CBN Broadcasting Corporation, as he acted for and in behalf of the President when he signed it; hence, the aforesaid agreement is valid and binding upon the Republic of the Philippines, as a party thereto.

Moreover, the settlement of controversies is not vested in the courts of justice alone to the exclusion of other agencies or bodies. Whenever a controversy arises, either or both parties to the controversy may file the proper action in court. However, the parties may also resort to arbitration under RA 876 which is a much faster way of settling their controversy, compared to how long it would take if they were to go to court. In entering into the "Agreement to Arbitrate", the Executive branch of the government merely opted to avail itself of an alternative mode of settling the claim of the private respondent ABS-CBN Broadcasting Corporation for the return of TV Station Channel 4.

Nor can the immunity of the state from suit be invoked against the claim of the Lopez family for the return of TV Station Channel 4. In *Amigable vs. Cuenca*,[7] the Court held that where the government takes property from a private landowner for public use without going through the legal process of expropriation or negotiated sale, the aggrieved party may properly maintain a suit against the government without thereby violating the doctrine of governmental immunity from suit without its consent. That is, as it should be, for the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen.[8]

Finally, neither the "convening of Congress" nor the "recent declaration of the President that PTV-4 shall remain

as the information arm of the government" can render "ineffective and unenforceable" the "Agreement to Arbitrate" because at the time of the signing of the said agreement, the President was exercising both the legislative and executive powers of the Government, and since the "Agreement to Arbitrate" is valid, it is "enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract".[9]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Paras, Gancayco, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., see separate concurring opinions.

Fernan, C.J., in the result.

Gutierrez, Jr., J., on leave.

[1] Annex "C", Rollo, p. 21

[2] Annex "B", Rollo, p. 20

[3] Annex "A", Rollo, p. 16

[4] Province of Tayabas vs. Perez, 54 Phil. 257; Pascual vs. Secretary of Public Works, et al., 110 Phil. 331; Gonzales vs. Hechanova, etc., et al., L-21897, 22 October 1963, 9 SCRA 230; Philippine Constitution Association, Inc., et al. vs. Gimenez, et al., L-23326, 18 December 1965, 15 SCRA 479; Pelaez vs. Auditor General, L-23825, 24 December 1965, 15 SCRA 569

[5] Sections 1 and 2, Article II, Provisional Constitution

[6] Tecson vs. Salas, G.R. No. L-27524, 31 July 1970, 34 SCRA 275, 280

[7] G.R. No. L-26400, 29 February 1972, 43 SCRA 360

[8] Ministerio vs. CFI, G.R. No. L-31635, 31 August 1971, 40 SCRA 464

[9] Sec. 2, RA 876

Gascon vs Arroyo : 78389 : October 16, 1989 : J. Feliciano : En Banc : Concurring Opinion 6 pt 6 pt 0 3

CONCURRING OPINION

FELICIANO, J.:

I concur in the result reached by the Court, that is, that the Petition for Certiorari and Prohibition with prayer for a writ of preliminary injunction or temporary restraining order should be dismissed. I reach this conclusion on the same ground adduced by my learned colleague, Padilla, J., i.e., that petitioners "have no legal standing to file the present petition." A decision on the merits rendered in a case where the petitioners do not have the necessary legal standing, would in essence be a decision not rendered in a proper, justiciable controversy or case. Such a decision appears to me to be very close to a decision rendered in a petition for declaratory relief or for an advisory opinion. The Court, of course, has no jurisdiction *ratione materiae* over declaratory relief cases or petitions for advisory opinion. It seems to me that disregard of the requirement of legal standing, where such requirement is applicable,

would in effect amount to the Court acting in cases where it has no subject matter jurisdiction.

I believe that is all that is necessary to decide this case. Accordingly, the statements made by the Court in respect of the substantive issue raised -- that is, the validity of the agreement to arbitrate said to have been entered into between the Government of the Republic of the Philippines and the ABS-CBN Broadcasting Corporation -- are, I submit with respect, unnecessary and therefore obiter. That substantive issue is important; it, among other things, would presumably affect the validity and enforceability of any award rendered by the arbitral tribunal. But it should be litigated in a proper case or controversy, between parties who have legal standing to file the case and legal interest in the subject matter of the case if only for the reason that then the Court might hope to have the benefit of thorough analysis by counsel of the substantive issues raised.

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