

PRESIDENT JOSEPH EJERCITO ESTRADA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN [SPECIAL DIVISION], HON. MINITA CHICO-NAZARIO, HON. EDILBERTO SANDOVAL, HON. TERESITA LEONARDO-DE ...

G.R. Nos. 159486-88. November 25, 2003

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PER CURIAM:

On 23 September 2003, this Court issued its resolution in the above-numbered case; it read:

"The case for consideration has been brought to this Court via a Petition for Certiorari under Rule 65 of the Rules of Court filed by Joseph Ejercito Estrada, acting through his counsel Attorney Alan F. Pagua, against the Sandiganbayan, et al. The Petition prays -

"1.

That Chief Justice Davide and the rest of the members of the Honorable Court disqualify themselves from hearing and deciding this petition;

"2.

That the assailed resolutions of the Sandiganbayan be vacated and set aside; and

"3.

That Criminal Cases No. 26558, No. 26565 and No. 26905 pending before the Sandiganbayan be dismissed for lack of jurisdiction.

"Attorney Alan F. Pagua, speaking for petitioner, asserts that the inhibition of the members of the Supreme Court from hearing the petition is called for under Rule 5.10 of the Code of Judicial Conduct prohibiting justices or judges from participating in any partisan political activity which proscription, according to him, the justices have violated by attending the 'EDSA 2 Rally' and by authorizing the assumption of Vice-President Gloria Macapagal Arroyo to the Presidency in violation of the 1987 Constitution. Petitioner contends that the justices have thereby prejudged a case that would assail the legality of the act taken by President Arroyo. The subsequent decision of the Court in *Estrada v. Arroyo* (353 SCRA 452 and 356 SCRA 108) is, petitioner states, a patent mockery of justice and due process.

"Attorney Pagua first made his appearance for petitioner when he filed an Omnibus Motion on 19 May 2003, before the Sandiganbayan, asking that 'the appointment of counsels de officio (sic) be declared functus officio' and that, being the now counsel de parte, he be notified of all subsequent proceedings in Criminal Cases No. 26558, No. 26565 and No. 26905 pending therein. Finally, Attorney Pagua asked that all the foregoing criminal cases against his client be dismissed.

"During the hearing of the Omnibus Motion on 30 May 2003, petitioner presented to the court several portions of the book, entitled 'Reforming the Judiciary,' written by Justice Artemio Panganiban, to be part of the evidence for the defense. On 9 June 2003, petitioner filed a motion pleading, among other things, that -

"a) x x x President Estrada be granted the opportunity to prove the `truth' of the statements contained in Justice Artemio Panganiban's book, `REFORMING THE JUDICIARY,' in relation to the prejudgment committed by the Supreme Court justices against President Estrada in the subject case/s of Estrada v. Arroyo, 353 SCRA 452 and 356 SCRA 108; and,

"b) A subpoena ad testificandum and duces tecum be issued to Justice Artemio Panganiban, Justice Antonio Carpio, Justice Renato Corona, Secretary Angelo Reyes of the Department of National Defense, Vice President Gloria Macapagal-Arroyo, Senator Aquilino Pimentel, Jr., and Chief Justice Hilario Davide, Jr. for them to testify and bring whatever supporting documents they may have in relation to their direct and indirect participation in the proclamation of Vice President Gloria Macapagal Arroyo on January 20, 2001, as cited in the book of Justice Panganiban, including the material events that led to that proclamation and the ruling/s in the Estrada vs. Arroyo, supra.' (Rollo, pp. 6-7.)

"a)

x x x President Estrada be granted the opportunity to prove the `truth' of the statements contained in Justice Artemio Panganiban's book, `REFORMING THE JUDICIARY,' in relation to the prejudgment committed by the Supreme Court justices against President Estrada in the subject case/s of Estrada v. Arroyo, 353 SCRA 452 and 356 SCRA 108; and,

"b)

A subpoena ad testificandum and duces tecum be issued to Justice Artemio Panganiban, Justice Antonio Carpio, Justice Renato Corona, Secretary Angelo Reyes of the Department of National Defense, Vice President Gloria Macapagal-Arroyo, Senator Aquilino Pimentel, Jr., and Chief Justice Hilario Davide, Jr. for them to testify and bring whatever supporting documents they may have in relation to their direct and indirect participation in the proclamation of Vice President Gloria Macapagal Arroyo on January 20, 2001, as cited in the book of Justice Panganiban, including the material events that led to that proclamation and the ruling/s in the Estrada vs. Arroyo, supra.' (Rollo, pp. 6-7.)

"The `truth' referred to in paragraph a) of the relief sought in the motion of petitioner pertains to what he claims should have been included in the resolution of the Sandiganbayan; viz:

`The request of the movant is simply for the Court to include in its Joint Resolution the TRUTH of the acts of Chief Justice Davide, et al., last January 20, 2001 in:

`a) going to EDSA 2;

`b) authorizing the proclamation of Vice-President Arroyo as President on the ground of `permanent disability' even without proof of compliance with the corresponding constitutional conditions, e.g., written declaration by either the President or majority of his cabinet; and

`c) actually proclaiming Vice-President Arroyo on that same ground of permanent disability.

`a)

going to EDSA 2;

`b)

authorizing the proclamation of Vice-President Arroyo as President on the ground of `permanent disability' even without proof of compliance with the corresponding constitutional conditions, e.g., written declaration by either the President or majority of his cabinet; and

`c) actually proclaiming Vice-President Arroyo on that same ground of permanent disability.

`It is patently unreasonable for the Court to refuse to include these material facts which are obviously

undeniable. Besides, it is the only defense of President Estrada.' (Petition, Rollo, pp. 13-14.)

"On 2 July 2003, the Sandiganbayan issued an order denying the foregoing motion, as well as the motion to dismiss, filed by petitioner. Forthwith, petitioner filed a 'Mosyong Pangrekonksiderasyon' of the foregoing order. According to Attorney Pagua, during the hearing of his 'Mosyong Pangrekonksiderasyon' on 11 June 2003, the three justices of the Special Division of the Sandiganbayan made manifest their bias and partiality against his client. Thus, he averred, Presiding Justice Minita V. Chico-Nazario supposedly employed foul and disrespectful language when she blurted out, 'Magmumukha naman kaming gago,' (Rollo, p. 13.) and Justice Teresita Leonardo-De Castro characterized the motion as insignificant even before the prosecution could file its comments or opposition thereto, (Rollo, p. 12.) remarking in open court that to grant Estrada's motion would result in chaos and disorder. (Ibid.) Prompted by the alleged 'bias and partial attitude' of the Sandiganbayan justices, Attorney Pagua filed, on 14 July 2003, a motion for their disqualification. On 31 July 2003, petitioner received the two assailed resolutions, i.e., the resolution (Promulgated on 30 July 2003.) of 28 July 2003, denying petitioner's motion for reconsideration of 6 July 2003; viz:

'WHEREFORE, premises considered, accused-movant Joseph Ejercito Estrada's 'Mosyong Pangrekonksiderasyon' (Na tumutukoy sa Joint Resolution ng Hulyo 2, 2003) dated July 6, 2003 is DENIED for lack of merit.' (Rollo, p. 37.)

"and the resolution (Promulgated on 30 July 2003.) of 25 July 2003, denying petitioner's motion for disqualification of 14 July 2003; viz:

'WHEREFORE, prescinding from all the foregoing, the Court, for want of merit, hereby DENIES the Motion for Disqualification.' (Rollo, p. 48.)

"The instant petition assailing the foregoing orders must be DISMISSED for gross insufficiency in substance and for utter lack of merit. The Sandiganbayan committed no grave abuse of discretion, an indispensable requirement to warrant a recourse to the extraordinary relief of petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure. On the one hand, petitioner would disclaim the authority and jurisdiction of the members of this tribunal and, on the other hand, he would elevate the petition now before it to challenge the two resolutions of the Sandiganbayan. He denounces the decision as being a patent mockery of justice and due process. Attorney Pagula went on to state that-

'The act of the public officer, if LAWFUL, is the act of the public office. But the act of the public officer, if UNLAWFUL, is not the act of the public office. Consequently, the act of the justices, if LAWFUL, is the act of the Supreme Court. But the act of the justices, if UNLAWFUL, is not the act of the Supreme Court. It is submitted that the Decision in ESTRADA vs. ARROYO being patently unlawful in view of Rule 5.10 of the CODE OF JUDICIAL CONDUCT, is not the act of the Supreme Court but is merely the wrong or trespass of those individual Justices who falsely spoke and acted in the name of the Supreme Court. (Urbano vs. Chavez, 183 SCRA [347]). Furthermore, it would seem absurd to allow the Justices to use the name of the Supreme Court as a shield for their UNLAWFUL act.' (Petition, Rollo, p. 11.)

"Criticism or comment made in good faith on the correctness or wrongness, soundness or unsoundness, of a decision of the Court would be welcome for, if well-founded, such reaction can enlighten the court and contribute to the correction of an error if committed. (In Re Sotto, 82 Phil 595.)

"The ruling in Estrada v. Arroyo, being a final judgment, has long put to end any question pertaining to the legality of the ascension of Arroyo into the presidency. By reviving the issue on the validity of the assumption of Mme. Gloria Macapagal-Arroyo to the presidency, Attorney Pagua is vainly seeking to breathe life into the carcass of a long dead issue.

"Attorney Pagua has not limited his discussions to the merits of his client's case within the judicial forum; indeed, he has repeated his assault on the Court in both broadcast and print media. Rule 13.02 of the Code of Professional Responsibility prohibits a member of the bar from making such public statements on any pending case tending to arouse public opinion for or against a party. By his acts, Attorney Pagua may have stoked the fires of public dissension and posed a potentially dangerous threat to the administration of justice.

"It is not the first time that Attorney Pagua has exhibited similar conduct towards the Supreme Court. In a letter, dated 30 June 2003, addressed to Chief Justice Hilario G. Davide, Jr., and Associate Justice Artemio V. Panganiban, he has demanded, in a clearly disguised form of forum shopping, for several advisory opinions on matters pending before the Sandiganbayan. In a resolution, dated 08 July 2003, this Court has strongly warned Attorney Alan Pagua, on pain of disciplinary sanction, to desist from further making, directly or indirectly, similar submissions to this Court or to its Members. But, unmindful of the well-meant admonition to him by the Court, Attorney Pagua appears to persist on end.

"WHEREFORE, the instant petition for certiorari is DISMISSED, and the Court hereby orders Attorney Alan Pagua, counsel for petitioner Joseph Ejercito Estrada, to SHOW CAUSE, within ten days from notice hereof, why he should not be sanctioned for conduct unbecoming a lawyer and an officer of the Court."

On 10 October 2003, Atty. Pagua submitted his compliance with the show-cause order. In a three-page pleading, Atty. Pagua, in an obstinate display of defiance, repeated his earlier claim of political partisanship against the members of the Court.

Canon 5.10 of the Code of Judicial Conduct, which Atty. Pagua has tirelessly quoted to give some semblance of validity for his groundless attack on the Court and its members, provides -

"Rule 5.10. A judge is entitled to entertain personal views on political questions. But to avoid suspicion of political partisanship, a judge shall not make political speeches, contribute to party funds, publicly endorse candidates for political office or participate in other partisan political activities."

Section 79(b) of the Omnibus Election Code defines the term "partisan political activities;" the law states:

"The term 'election campaign' or 'partisan political activity' refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

"(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

"(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate.

"(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

"(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

"(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate."

It should be clear that the phrase "partisan political activities," in its statutory context, relates to acts designed to cause the success or the defeat of a particular candidate or candidates who have filed certificates of candidacy to a public office in an election. The taking of an oath of office by any incoming President of the Republic before the Chief Justice of the Philippines is a traditional official function of the Highest Magistrate. The assailed presence of other justices of the Court at such an event could be no different from their appearance in such other official

functions as attending the Annual State of the Nation Address by the President of the Philippines before the Legislative Department.

The Supreme Court does not claim infallibility; it will not denounce criticism made by anyone against the Court for, if well-founded, can truly have constructive effects in the task of the Court, but it will not countenance any wrongdoing nor allow the erosion of our people's faith in the judicial system, let alone, by those who have been privileged by it to practice law in the Philippines.

Canon 11 of the Code of Professional Responsibility mandates that the lawyer should observe and maintain the respect due to the courts and judicial officers and, indeed, should insist on similar conduct by others. In liberally imputing sinister and devious motives and questioning the impartiality, integrity, and authority of the members of the Court, Atty. Pagua has only succeeded in seeking to impede, obstruct and pervert the dispensation of justice.

The attention of Atty. Pagua has also been called to the mandate of Rule 13.02 of the Code of Professional Responsibility prohibiting a member of the bar from making such public statements on a case that may tend to arouse public opinion for or against a party. Regrettably, Atty. Pagua has persisted in ignoring the Court's well-meant admonition.

On the 7th September 2003 issue of the Daily Tribune, Atty. Pagua wrote to say -

"What is the legal effect of that violation of President Estrada's right to due process of law? It renders the decision in Estrada vs. Arroyo unconstitutional and void. The rudiments of fair play were not observed. There was no fair play since it appears that when President Estrada filed his petition, Chief Justice Davide and his fellow justices had already committed to the other party - GMA - with a judgment already made and waiting to be formalized after the litigants shall have undergone the charade of a formal hearing. After the justices had authorized the proclamation of GMA as president, can they be expected to voluntarily admit the unconstitutionality of their own act?"

Unrelentingly, Atty. Pagua has continued to make public statements of like nature.

The Court has already warned Atty. Pagua, on pain of disciplinary sanction, to become mindful of his grave responsibilities as a lawyer and as an officer of the Court. Apparently, he has chosen not to at all take heed.

WHEREFORE, Attorney Alan Pagua is hereby indefinitely suspended from the practice of law, effective upon his receipt hereof, for conduct unbecoming a lawyer and an officer of the Court.

Let copies of this resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and all courts of the land through the Office of the Court Administrator.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Carpio, J., no part.

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