

## EN BANC

[ G.R. No. 175352, July 15, 2009 ]

**DANTE V. LIBAN, REYNALDO M. BERNARDO, AND SALVADOR M. VIARI, PETITIONERS, VS. RICHARD J. GORDON, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition to declare Senator Richard J. Gordon (respondent) as having forfeited his seat in the Senate.

#### The Facts

Petitioners Dante V. Liban, Reynaldo M. Bernardo, and Salvador M. Viari (petitioners) filed with this Court a *Petition to Declare Richard J. Gordon as Having Forfeited His Seat in the Senate*. Petitioners are officers of the Board of Directors of the Quezon City Red Cross Chapter while respondent is Chairman of the Philippine National Red Cross (PNRC) Board of Governors.

During respondent's incumbency as a member of the Senate of the Philippines,<sup>[1]</sup> he was elected Chairman of the PNRC during the 23 February 2006 meeting of the PNRC Board of Governors. Petitioners allege that by accepting the chairmanship of the PNRC Board of Governors, respondent has ceased to be a member of the Senate as provided in Section 13, Article VI of the Constitution, which reads:

SEC. 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

Petitioners cite *Camporedondo v. NLRC*,<sup>[2]</sup> which held that the PNRC is a government-owned or controlled corporation. Petitioners claim that in accepting and holding the position of Chairman of the PNRC Board of Governors, respondent has automatically forfeited his seat in the Senate, pursuant to *Flores v. Drilon*,<sup>[3]</sup> which held that incumbent national legislators lose their elective posts upon their appointment to another government office.

In his Comment, respondent asserts that petitioners have no standing to file this petition which appears to be an action for quo warranto, since the petition alleges that respondent committed an act which, by provision of law, constitutes a ground for forfeiture of his public office. Petitioners do not claim to be entitled to the Senate office of respondent. Under Section 5, Rule 66 of the Rules of Civil Procedure, only a person claiming to be entitled to a public office usurped or unlawfully held by another may bring an action for quo warranto in his own name. If the petition is one for quo warranto, it is already barred by prescription since under Section 11, Rule 66 of the Rules of Civil Procedure, the action should be commenced within one year after the cause of the public officer's forfeiture of office. In this case, respondent has been working as a Red Cross volunteer for the past 40 years. Respondent was already Chairman of the PNRC Board of Governors when he was elected Senator in May 2004, having been elected Chairman in 2003 and re-elected in 2005.

Respondent contends that even if the present petition is treated as a taxpayer's suit, petitioners cannot be allowed to raise a constitutional question in the absence of any claim that they suffered some actual damage or threatened injury as a result of the allegedly illegal act of respondent. Furthermore, taxpayers are allowed to sue only when there is a claim of illegal disbursement of public funds, or that public money is being diverted to any improper purpose, or where petitioners seek to restrain respondent from enforcing an invalid law that results in wastage of public funds.

Respondent also maintains that if the petition is treated as one for declaratory relief, this Court would have no jurisdiction since original jurisdiction for declaratory relief lies with the Regional Trial Court.

Respondent further insists that the PNRC is not a government-owned or controlled corporation and that the prohibition under Section 13, Article VI of the Constitution does not apply in the present case since volunteer service to the PNRC is neither an office nor an employment.

In their Reply, petitioners claim that their petition is neither an action for quo warranto nor an action for declaratory relief. Petitioners maintain that the present petition is a taxpayer's suit questioning the unlawful disbursement of funds, considering that respondent has been drawing his salaries and other compensation as a Senator even if he is no longer entitled to his office. Petitioners point out that this Court has jurisdiction over this petition since it involves a legal or constitutional issue which is of transcendental importance.

### **The Issues**

Petitioners raise the following issues:

1. Whether the Philippine National Red Cross (PNRC) is a government-owned or controlled corporation;
2. Whether Section 13, Article VI of the Philippine Constitution applies to the case of respondent who is Chairman of the PNRC and at the

same time a Member of the Senate;

3. Whether respondent should be automatically removed as a Senator pursuant to Section 13, Article VI of the Philippine Constitution; and
4. Whether petitioners may legally institute this petition against respondent.<sup>[4]</sup>

The substantial issue boils down to whether the office of the PNRC Chairman is a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the Constitution.

### **The Court's Ruling**

We find the petition without merit.

#### ***Petitioners Have No Standing to File this Petition***

A careful reading of the petition reveals that it is an action for quo warranto. Section 1, Rule 66 of the Rules of Court provides:

Section 1. Action by Government against individuals. - **An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines against:**

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) **A public officer who does or suffers an act which by provision of law, constitutes a ground for the forfeiture of his office;** or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act. (Emphasis supplied)

Petitioners allege in their petition that:

4. Respondent became the Chairman of the PNRC when he was elected as such during the First Regular Luncheon-Meeting of the Board of Governors of the PNRC held on February 23, 2006, the minutes of which is hereto attached and made integral part hereof as Annex "A."

5. Respondent was elected as Chairman of the PNRC Board of Governors, during his incumbency as a Member of the House of Senate of the Congress of the Philippines, having been elected as such during the national elections last May 2004.

6. Since his election as Chairman of the PNRC Board of Governors, which position he duly accepted, respondent has been exercising the powers and discharging the functions and duties of said office, despite the fact that he is still a senator.

7. It is the respectful submission of the petitioner[s] that **by accepting the chairmanship of the Board of Governors of the PNRC, respondent has ceased to be a Member of the House of Senate as provided in Section 13, Article VI of the Philippine Constitution,** x x x

x x x x

10. It is respectfully submitted that **in accepting the position of Chairman of the Board of Governors of the PNRC on February 23, 2006, respondent has automatically forfeited his seat in the House of Senate and, therefore, has long ceased to be a Senator,** pursuant to the ruling of this Honorable Court in the case of FLORES, ET AL. VS. DRILON AND GORDON, G.R. No. 104732, x x x

11. Despite the fact that he is no longer a senator, respondent continues to act as such and still performs the powers, functions and duties of a senator, contrary to the constitution, law and jurisprudence.

12. Unless restrained, therefore, respondent will continue to falsely act and represent himself as a senator or member of the House of Senate, collecting the salaries, emoluments and other compensations, benefits and privileges appertaining and due only to the legitimate senators, to the damage, great and irreparable injury of the Government and the Filipino people.<sup>[5]</sup> (Emphasis supplied)

Thus, petitioners are alleging that by accepting the position of Chairman of the PNRC Board of Governors, respondent has automatically forfeited his seat in the Senate. In short, petitioners filed an action for usurpation of public office against respondent, a public officer who allegedly committed an act which constitutes a ground for the forfeiture of his public office. Clearly, such an action is for quo warranto, specifically under Section 1(b), Rule 66 of the Rules of Court.

Quo warranto is generally commenced by the Government as the proper party plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such an action if he claims to be entitled to the public office allegedly usurped by another, in which case he can bring the action in his own name. The person instituting quo warranto proceedings in his own behalf must claim and be able to show that he is entitled to the office in dispute, otherwise the action may be dismissed at any stage.<sup>[6]</sup> In the present case, petitioners do not claim to be entitled to the Senate office of respondent. Clearly, petitioners have no standing to file the present petition.

Even if the Court disregards the infirmities of the petition and treats it as a taxpayer's suit, the petition would still fail on the merits.

## ***PNRC is a Private Organization Performing Public Functions***

On 22 March 1947, President Manuel A. Roxas signed Republic Act No. 95,<sup>[7]</sup> otherwise known as the PNRC Charter. The PNRC is a non-profit, donor-funded, voluntary, humanitarian organization, whose mission is to bring timely, effective, and compassionate humanitarian assistance for the most vulnerable without consideration of nationality, race, religion, gender, social status, or political affiliation.<sup>[8]</sup> The PNRC provides six major services: Blood Services, Disaster Management, Safety Services, Community Health and Nursing, Social Services and Voluntary Service.<sup>[9]</sup>

The Republic of the Philippines, adhering to the Geneva Conventions, established the PNRC as a voluntary organization for the purpose contemplated in the Geneva Convention of 27 July 1929.<sup>[10]</sup> The Whereas clauses of the PNRC Charter read:

WHEREAS, there was developed at Geneva, Switzerland, on August 22, 1864, a convention by which the nations of the world were invited to join together in diminishing, so far lies within their power, the evils inherent in war;

WHEREAS, more than sixty nations of the world have ratified or adhered to the subsequent revision of said convention, namely the "Convention of Geneva of July 29 [sic], 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field" (referred to in this Charter as the Geneva Red Cross Convention);

**WHEREAS, the Geneva Red Cross Convention envisages the establishment in each country of a voluntary organization to assist in caring for the wounded and sick of the armed forces and to furnish supplies for that purpose;**

**WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946 and proclaimed its adherence to the Geneva Red Cross Convention on February 14, 1947, and by that action indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Red Cross Convention;**

WHEREAS, there existed in the Philippines since 1917 a Charter of the American National Red Cross which must be terminated in view of the independence of the Philippines; and

WHEREAS, the volunteer organizations established in the other countries which have ratified or adhered to the Geneva Red Cross Convention assist in promoting the health and welfare of their people in peace and in war, and through their mutual assistance and cooperation directly and through their international organizations promote better understanding and sympathy among the peoples of the world. (Emphasis supplied)