

EN BANC

[G.R. No. 140835, August 14, 2000]

RAMON A. GONZALES, PETITIONER, VS. HON. ANDRES R. NARVASA, AS CHAIRMAN, PREPARATORY COMMISSION ON CONSTITUTIONAL REFORMS; HON. RONALDO B. ZAMORA, AS EXECUTIVE SECRETARY; COMMISSION ON AUDIT; ROBERTO AVENTAJADO, AS PRESIDENTIAL CONSULTANT ON COUNCIL OF ECONOMIC ADVISERS/ECONOMIC AFFAIRS; ANGELITO C. BANAYO, AS PRESIDENTIAL ADVISER FOR/ON POLITICAL AFFAIRS; VERONICA IGNACIO-JONES, AS PRESIDENTIAL ASSISTANT/ APPOINTMENT SECRETARY (IN CHARGE OF APPOINTMENTS), RESPONDENTS.

DECISION

GONZAGA-REYES, J.:

In this petition for prohibition and mandamus filed on December 9, 1999, petitioner Ramon A. Gonzales, in his capacity as a citizen and taxpayer, assails the constitutionality of the creation of the Preparatory Commission on Constitutional Reform (PCCR) and of the positions of presidential consultants, advisers and assistants. Petitioner asks this Court to enjoin the PCCR and the presidential consultants, advisers and assistants from acting as such, and to enjoin Executive Secretary Ronaldo B. Zamora from enforcing their advice and recommendations. In addition, petitioner seeks to enjoin the Commission on Audit from passing in audit expenditures for the PCCR and the presidential consultants, advisers and assistants. Finally, petitioner prays for an order compelling respondent Zamora to furnish petitioner with information on certain matters.

On January 28, 2000, respondent Hon. Andres R. Narvasa, impleaded in his capacity as Chairman of the PCCR, filed his Comment to the Petition. The rest of the respondents, who are being represented in this case by the Solicitor General, filed their Comment with this Court on March 7, 2000. Petitioner then filed a Consolidated Reply on April 24, 2000, whereupon this case was considered submitted for decision.

I. Preparatory Commission on Constitutional Reform

The Preparatory Commission on Constitutional Reform (PCCR) was created by President Estrada on November 26, 1998 by virtue of Executive Order No. 43 (E.O. No. 43) in order "to study and recommend proposed amendments and/or revisions to the 1987 Constitution, and the manner of implementing the same."^[1] Petitioner disputes the constitutionality of the PCCR on two grounds. First, he contends that it is a public office which only the legislature can create by way of a law.^[2] Secondly, petitioner asserts that by creating such a body the President is intervening in a process from which he is totally excluded by the Constitution – the amendment of the fundamental charter.^[3]

It is alleged by respondents that, with respect to the PCCR, this case has become moot and academic. We agree.

An action is considered “moot” when it no longer presents a justiciable controversy because the issues involved have become academic or dead.^[4] Under E.O. No. 43, the PCCR was instructed to complete its task on or before June 30, 1999.^[5] However, on February 19, 1999, the President issued Executive Order No. 70 (E.O. No. 70), which extended the time frame for the completion of the commission’s work, viz –

SECTION 6. Section 8 is hereby amended to read as follows:

Time Frame. The Commission shall commence its work on 01 January 1999 and complete the same on or before 31 December 1999. The Commission shall submit its report and recommendations to the President within fifteen (15) working days from 31 December 1999.

The PCCR submitted its recommendations to the President on December 20, 1999 and was dissolved by the President on the same day. It had likewise spent the funds allotted to it.^[6] Thus, the PCCR has ceased to exist, having lost its *raison d’être*. Subsequent events have overtaken the petition and the Court has nothing left to resolve.

The staleness of the issue before us is made more manifest by the impossibility of granting the relief prayed for by petitioner. Basically, petitioner asks this Court to enjoin the PCCR from acting as such.^[7] Clearly, prohibition is an inappropriate remedy since the body sought to be enjoined no longer exists. It is well established that prohibition is a preventive remedy and does not lie to restrain an act that is already *fait accompli*.^[8] At this point, any ruling regarding the PCCR would simply be in the nature of an advisory opinion, which is definitely beyond the permissible scope of judicial power.

In addition to the mootness of the issue, petitioner’s lack of standing constitutes another obstacle to the successful invocation of judicial power insofar as the PCCR is concerned.

The question in standing is whether a party has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”^[9] In assailing the constitutionality of E.O. Nos. 43 and 70, petitioner asserts his interest as a citizen and taxpayer.^[10] A citizen acquires standing only if he can establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.^[11] In *Kilosbayan, Incorporated v. Morato*,^[12] we denied standing to petitioners who were assailing a lease agreement between the Philippine Charity Sweepstakes Office and the Philippine Gaming Management Corporation, stating that,

... in *Valmonte v. Philippine Charity Sweepstakes Office*, G.R. No. 78716, Sept. 22, 1987, standing was denied to a petitioner who sought to

declare a form of lottery known as Instant Sweepstakes invalid because, as the Court held,

Valmonte brings the suit as a citizen, lawyer, taxpayer and father of three (3) minor children. But nowhere in his petition does petitioner claim that his rights and privileges as a lawyer or citizen have been directly and personally injured by the operation of the Instant Sweepstakes. The interest of the person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law is invalid, but also that he has sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.

We apprehend no difference between the petitioner in Valmonte and the present petitioners. Petitioners do not in fact show what particularized interest they have for bringing this suit. It does not detract from the high regard for petitioners as civic leaders to say that their interest falls short of that required to maintain an action under Rule 3, d 2.

Coming now to the instant case, petitioner has not shown that he has sustained or is in danger of sustaining any personal injury attributable to the creation of the PCCR. If at all, it is only Congress, not petitioner, which can claim any "injury" in this case since, according to petitioner, the President has encroached upon the legislature's powers to create a public office and to propose amendments to the Charter by forming the PCCR. Petitioner has sustained no direct, or even any indirect, injury. Neither does he claim that his rights or privileges have been or are in danger of being violated, nor that he shall be subjected to any penalties or burdens as a result of the PCCR's activities. Clearly, petitioner has failed to establish his *locus standi* so as to enable him to seek judicial redress as a citizen.

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds have been disbursed in alleged contravention of the law or the Constitution.^[13] Thus payer's action is properly brought only when there is an exercise by Congress of its taxing or spending power.^[14] This was our ruling in a recent case wherein petitioners Telecommunications and Broadcast Attorneys of the Philippines (TELEBAP) and GMA Network, Inc. questioned the validity of section 92 of B.P. No. 881 (otherwise known as the "Omnibus Election Code") requiring radio and television stations to give free air time to the Commission on Elections during the campaign period.^[15] The Court held that petitioner TELEBAP did not have any interest as a taxpayer since the assailed law did not involve the taxing or spending power of Congress.^[16]

Many other rulings have premised the grant or denial of standing to taxpayers upon whether or not the case involved a disbursement of public funds by the legislature. In *Sanidad v. Commission on Elections*,^[17] the petitioners therein were allowed to bring a taxpayers' suit to question several presidential decrees promulgated by then

President Marcos in his legislative capacity calling for a national referendum, with the Court explaining that –

...[i]t is now an ancient rule that the valid source of a statute – Presidential Decrees are of such nature – may be contested by one who will sustain a direct injury as a result of its enforcement. At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds. The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes. Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions. The interest of the aforementioned petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds. ...

In still another case, the Court held that petitioners – the Philippine Constitution Association, Inc., a non-profit civic organization – had standing as taxpayers to question the constitutionality of Republic Act No. 3836 insofar as it provides for retirement gratuity and commutation of vacation and sick leaves to Senators and Representatives and to the elective officials of both houses of Congress.^[18] And in *Pascual v. Secretary of Public Works*,^[19] the Court allowed petitioner to maintain a taxpayer's suit assailing the constitutional soundness of Republic Act No. 920 appropriating P85,000 for the construction, repair and improvement of feeder roads within private property. All these cases involved the disbursement of public funds by means of a law.

Meanwhile, in *Bugnay Construction and Development Corporation v. Laron*,^[20] the Court declared that the trial court was wrong in allowing respondent Ravanzo to bring an action for injunction in his capacity as a taxpayer in order to question the legality of the contract of lease covering the public market entered into between the City of Dagupan and petitioner. The Court declared that Ravanzo did not possess the requisite standing to bring such taxpayer's suit since "[o]n its face, and there is no evidence to the contrary, the lease contract entered into between petitioner and the City shows that no public funds have been or will be used in the construction of the market building."

Coming now to the instant case, it is readily apparent that there is no exercise by Congress of its taxing or spending power. The PCCR was created by the President by virtue of E.O. No. 43, as amended by E.O. No. 70. Under section 7 of E.O. No. 43, the amount of P3 million is "appropriated" for its operational expenses "to be sourced from the funds of the Office of the President." The relevant provision states

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Appropriations. The initial amount of Three Million Pesos (P3,000,000.00) is hereby appropriated for the operational expenses of the Commission to be sourced from funds of the Office of the President, subject to the usual accounting and auditing rules and regulations. Additional amounts shall be released to the Commission upon submission of requirements for expenditures.