335 Phil. 259

EN BANC

[G.R. No. 119322, February 06, 1997]

COMMISSIONER OF INTERNAL REVENUE, ET AL., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS. DAGUPAN COMBINED COMMODITIES, INC., ET AL., RESPONDENTS-INTERVENORS.
R E S O L U T I O N

PER CURIAM:

After deliberating on petitioners' motion to disqualify Mr. Justice Santiago M. Kapunan from this case, petitioners' motion for reconsideration of the Court's (First Division) decision dated 4 June 1996 as well as all pleadings filed by the parties subsequent thereto, the Court Resolved to DENY said motion to disqualify for the following reasons:

> In response to the motion for his inhibition, Justice Kapunan has formally submitted his Resolution, which was included in the Court's Agenda of 21 January 1997 for deliberation. He explained that there are no grounds whatsoever to warrant his inhibition. He bewailed that the motion to disqualify him dated 26 April 1996 was so belatedly filed, just after the First Division voted 3 to 2 on 24 April 1996 to dismiss the petition filed by petitioners, when the petition had been pending before the First Division since 29 March 1995, or for more than a year, thus, the effect of the motion for disqualification was to nullify a valid vote.[1]

Justice Kapunan's Resolution is quoted in full:

RESOLUTION

> This refers to the motion of Office of the Solicitor General for my inhibition from the above-entitled case citing my alleged close association with Atty. Estelito Mendoza, counsel for private respondents who was supposedly instrumental in my appointment to the Court of Appeals. and that Atty. Mendoza and I or our wives, together with former Court of Appeals Justice Racela, established Cafe Faura located at Padre Faura Street, Manila where "Justice Kapunan and Atty. Mendoza are often seen meeting and socializing."
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> It is adverted in the motion for inhibition that "the magistrates who will render judgment are men of good reason, and proven adherence to the rule of law" and that "it is not enough for this Court just to do right, but it is also necessary that it gives the appearance that it will always do right," considering that this Court -
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> "is now in the apex of public esteem and regard because of its

transcendental decisions in cases imbued with national interest, such as the cases involving the sale of PETRON-ARAMCO shares, the LRT III, the Lotto, the Jai-Alai, the EVAT, and several others. These cases show that this Honorable Court is above personalities and non-legal considerations in formulating decision."

For the foregoing reasons, the Office of the Solicitor General would want me to inhibit from the case.

Let me state the following in answer to the Solicitor General's allegations:

1. G.R. No. 119322 was assigned in March 1995 to the First division of which I am a member. From that time up to April 24, 1996, when the Division deliberated on the case and voted on whether or not to grant or dismiss the petition, several pleadings had been filed and interlocutory orders issued in connection therewith. Yet, it was only on April 26, 1996, or two days after three members of the Division (the majority) voted to grant the petition when the Solicitor General raised the matter of my inhibition. Strangely, for a period of almost a year before our voting on the petition, the Solicitor General did not find my alleged "close association with Atty. Estelito Mendoza" sufficient to inhibit me from the case. Neither did a thought cross his mind to move for my disqualification in the EVAT cases and certain PCGG cases involving Eduardo Cojuangco wherein Atty. Mendoza was counsel for the parties opposing the stand of the Government and in which I voted in favor of the Government. Had I voted in a different way in G.R. No. 119322 would the Solicitor General have sought my inhibition?

2. The motion to inhibit me from the case coming after a vote had been taken on the petition was in effect intended to nullify a valid vote already made. The rule is that a petition to disqualify a judge must be filed before rendition of judgment by the judge. The rationale for this rule is that a litigant cannot be permitted to speculate upon the action of the court and to raise an opposition after a decision unfavorable to him had been rendered.

3. It may be pertinent to state that when the member of the First Division to whom the case was assigned for study and report submitted his draft opinion sometime in March, 1996, the other four (4) members of the Division, realizing the delicate nature of the case because of allegations of massive tax evasion and in view of the voluminous records, proposed that the case be elevated to the Court En Banc, or, at least set for oral argument. However, the ponente who was, and still is, the Chairman of the Division was not amenable to the idea, saying that the issues involved are simple, so the case need not be referred to the Court En Banc. The four (4) other members did not press their proposal in deference to the wishes of their Chairman. It was only right after the closed-door voting on April 24, 1996 - the results of which could not have been known except by the members of the First Division before the decision was promulgated on June 4, 1996 - when, surprisingly, the Solicitor General sought my inhibition and moved for the elevation of the case to the Court En Banc. And it was only last December 1996 that the

OSG belatedly moved to set the case for oral argument. It is not fair to change the rules at the middle of the game. But it is worse when rules are changed when the game is over. What I am saying is that, on my part, I have always comported myself with utmost circumspection and impartiality in my actuations. I have no personal interests whatsoever in the case.

4. It is gratuitous for the Solicitor General to state that this Court has achieved the apex of public esteem and high public regard simply because of the decisions of this Court upholding the stand of the Office of the Solicitor General in Petron-Aramco, the LRT, the Lotto, the Jai-Alai and EVAT, among several other cases (There, I voted consistently in favor of the OSG). The implication of the Solicitor General's stance is most disturbing. He would want to convey the idea that it is only when the Supreme Court consistently sustains his position in major cases that it automatically merits high public esteem and regard, but when the Court decides against the Government, it loses its good public image. I certainly do not share the Solicitor General's concept of the nature and essence of the duties of the Supreme Court as a just, fair and impartial legal arbiter. As mandated in Sec. 1, Art. VII of the Constitution:

[J]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In other words, in the discharge of its duty of adjudicating controversies or of determining whether or not there has been grave abuse of discretion, the Supreme Court considers the Constitution, the law and the evidence before it and what it perceives to be right and just. The Court does not cease to do what is right and just simply because its decision does not coincide with the stand of the Government. It is the fundamental duty of the Court to accord everyone the protective mantle of the Constitution against abuse of power.

5. The fact that Atty. Mendoza was once my superior at the Office of the Solicitor General and assuming that he recommended me to the Court of Appeals cannot by any stretch of imagination be a ground for my inhibition. I would like to believe that I was appointed to the Court of Appeals and afterwards to the Supreme Court because I deserved the appointment. If I was recommended by Atty. Mendoza who was then the Solicitor General, it was a matter of his responsibility as chief of office to attract competent lawyers to the Office of the Solicitor General and to inspire them to dedicate themselves to the public service. Atty. Mendoza did not do it as a personal favor to me, in the same way that every appointment to the public office should not be considered as a personal favor to the appointee, because a public office is a public trust and the public official should discharge his duties for the public good. Moreover, if the Solicitor General's argument is followed to its logical conclusion, then all the members of this Court who have been appointed by the President should inhibit themselves in the cases where the Government is a party.