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[G.R. No. 191560, March 29, 2011]

HON. LUIS MARIO M. GENERAL, COMMISSIONER, NATIONAL POLICE COMMISSION, PETITIONER, VS. HON. ALEJANDRO S. URRO, IN HIS CAPACITY AS THE NEW APPOINTEE VICE HEREIN PETITIONER HON. LUIS MARIO M. GENERAL, NATIONAL POLICE COMMISSION, RESPONDENT.

HON. LUIS MARIO M. GENERAL, COMMISSIONER, NATIONAL POLICE COMMISSION, PETITIONER, VS. PRESIDENT GLORIA MACAPAGAL-ARROYO, THRU EXECUTIVE SECRETARY LEANDRO MENDOZA, IN HER CAPACITY AS THE APPOINTING POWER, HON. RONALDO V. PUNO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND AS EX-OFFICIO CHAIRMAN OF THE NATIONAL POLICE COMMISSION AND HON. EDUARDO U. ESCUETA, ALEJANDRO S. URRO, AND HON. CONSTANCIA P. DE GUZMAN AS THE MIDNIGHT APPOINTEES, RESPONDENTS.

D E C I S I O N

BRION, J.:

Before the Court are the Consolidated Petitions for *Quo Warranto,*[1] and *Certiorari* and/or Prohibition[2] with urgent prayer for the issuance of a temporary restraining order (*TRO*) and/or preliminary injunction filed by Atty. Luis Mario General (*petitioner*). The petitioner seeks to declare ***unconstitutional*** the appointments of Alejandro S. Urro, Constancia P. de Guzman and Eduardo U. Escueta (collectively*, the respondents*) as Commissioners of the National Police Commission (*NAPOLCOM*), and to prohibit then Executive Secretary Leandro Mendoza and Department of Interior and Local Government (*DILG*) Secretary Ronaldo V. Puno from enforcing the respondents' oath of office. Particularly, the petitioner asks that respondent Urro be ousted as NAPOLCOM Commissioner and he be allowed to continue in office.

THE ANTECEDENTS

On September 20, 2004, then President Gloria Macapagal-Arroyo (*PGMA*) appointed Imelda C. Roces (*Roces*) as acting Commissioner of the NAPOLCOM, representing the civilian sector.[3] On January 25, 2006, PGMA reappointed Roces as acting NAPOLCOM Commissioner.[4] When Roces died in September 2007, PGMA appointed the petitioner on July 21, 2008[5] as *acting* NAPOLCOM Commissioner in place of Roces. On the same date, PGMA appointed Eduardo U. Escueta (*Escueta*) as *acting* NAPOLCOM Commissioner and designated him as NAPOLCOM Vice Chairman.[6]

Later, PGMA appointed Alejandro S. Urro (*Urro*) in place of the petitioner, Constancia

P. de Guzman in place of Celia Leones, and Escueta as *permanent* NAPOLCOM Commissioners. **Urro's appointment paper is *dated* March 5, 2010; while the appointment papers of De Guzman and Escueta are both dated March 8, 2010**.[7] On March 9, 2010, Escueta took his oath of office before Makati Regional Trial Court Judge Alberico Umali.[8]

In a letter **dated March 19, 2010**, DILG Head Executive Assistant/Chief-of-Staff Pascual V. Veron Cruz, Jr. issued separate congratulatory letters to the respondents. The letter uniformly reads.

> You have just been appointed COMMISSIONER xxx National Police Commission. xxx Attached is your appointment paper duly signed by Her Excellency, President Macapagal Arroyo.[9]

After being furnished a copy of the congratulatory letters on March 22, 2010,[10] the petitioner filed the present petition questioning the validity of the respondents' appointments mainly on the ground that it violates the constitutional prohibition against midnight appointments.[11]

On March 25, 2010 and April 27, 2010, respondents Urro and de Guzman took their oath of office as NAPOLCOM Commissioners before DILG Secretary Puno and Sandiganbayan Associate Justice Jose R. Hernandez, respectively.[12]

On July 30, 2010, the newly elected President of the Republic of the Philippines, His Excellency Benigno S. Aquino III, issued Executive Order No. 2 (*E.O. No. 2*) "Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments." The salient portions of E.O. No. 2 read:

> SECTION 1. Midnight Appointments Defined. - The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:
>
> (a) Those made on or after March 11, 2010, including all appointments bearing dates prior to March 11, 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after March 11, 2010, except temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.
>
> (b) Those made prior to March 11, 2010, but to take effect after said date or appointments to office that would be vacant only after March 11, 2010.
>
> (c) Appointments and promotions made during the period of 45 days prior to the May 10, 2010 elections in violation of Section 261 of the

Omnibus Election Code.

SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. **Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked**. The positions covered or otherwise affected are hereby declared vacant. (Emphasis supplied.)

THE PETITION

The petitioner claims that Roces was supposed to serve a full term of six years counted from the date of her appointment in October (should be September) 2004.[13] Since she failed to finish her six-year term, then the petitioner is entitled to serve this unexpired portion or until October (should be September) 2010.[14] The petitioner invokes Republic Act (*R.A.*) No. 6975[15] (otherwise known as the *Department of the Interior and Local Government Act of 1990*) which requires that vacancies in the NAPOLCOM "*shall* be filled up for the unexpired term only."[16] Because of the mandatory word "shall," the petitioner concludes that the appointment issued to him was really a "regular" appointment, *notwithstanding what appears in his appointment paper*. As a regular appointee, the petitioner argues that he cannot be removed from office except for cause.

The petitioner alternatively submits that even if his appointment were temporary, a temporary appointment does not give the President the license to abuse a public official simply because he lacks security of tenure.[17] He asserts that the validity of his termination from office depends on the validity of the appointment of the person intended to replace him. He explains that until a presidential appointment is "officially released," there is no "appointment" to speak of. Since the appointment paper of respondent Urro, while bearing a date prior to the effectivity of the constitutional ban on appointments,[18] was officially released (*per* the congratulatory letter dated March 19, 2010 issued to Urro) when the appointment ban was already in effect, then the petitioner's appointment, though temporary in nature, should remain effective as no new and valid appointment was effectively made.

The petitioner assails the validity of the appointments of respondents De Guzman and Escueta, claiming that they were also made in violation of the constitutional ban on appointments.

THE COMMENTS OF THE RESPONDENTS and THE OFFICE OF THE SOLICITOR GENERAL (*OSG*)

Prefatorily, the respondents characterize Escueta's inclusion in the present petition as an error since his appointment, acceptance and assumption of office all took place before the constitutional ban on appointments started. Thus, there is no "case or controversy" as to Escueta.

The respondents posit that the petitioner is not a real party-in-interest to file a petition for *quo warranto* since he was merely appointed in an acting capacity and could be validly removed from office at anytime.

The respondents likewise counter that what the ban on midnight appointments under Section 15, Article VII of the Constitution prohibits is only the *making* of an appointment by the President sixty (60) days before the next presidential elections and until his term expires; it does not prohibit the *acceptance* by the appointee of his appointment within the same prohibited period.[19] The respondents claim that "appointment" which is a presidential act, must be distinguished from the "acceptance" or "rejection" of the appointment, which is the act of the appointee. Section 15, Article VII of the Constitution is directed only against the President and his act of appointment, and is not concerned with the act/s of the appointee. Since the respondents were *appointed* (*per* the date appearing in their appointment papers) before the constitutional ban took effect, then their appointments are valid.

The respondents assert that their appointments cannot be considered as midnight appointments under the *Dominador R. Aytona v. Andres V. Castillo, et al.*[20] ruling, as restated in *In Re: Appointments dated March 30, 1998 of Hon. Mateo A. Valenzuela, et al.*[21] and *Arturo M. de Castro v. Judicial and Bar Council, et al.*,[22] since the petitioner failed to substantiate his claim that their appointments were made only "for the purpose of influencing the Presidential elections," or for "partisan reasons."[23]

The respondents pray for the issuance of a TRO to stop the implementation of E.O. No. 2, and for the consolidation of this case with the pending cases of *Tamondong v. Executive Secretary*[24] and *De Castro v. Office of the President*[25] which similarly assail the validity of E.O. No. 2.

On the other hand, while the OSG considers the respondents' appointments within the scope of "midnight appointments" as defined by E.O. No. 2, the OSG nonetheless submits that the petitioner is not entitled to the remedy of *quo warranto* in view of the *nature* of his appointment. The OSG claims that since an appointment in an acting capacity cannot exceed one year, the petitioner's appointment *ipso facto* expired on July 21, 2009.[26]

PETITIONER'S REPLY

The petitioner argues in reply that he is the legally subsisting commissioner until another qualified commissioner is validly appointed by the new President to replace him.[27]

The petitioner likewise claims that the respondents appeared to have skirted the element of *issuance* of an appointment in considering whether an appointment is made. The petitioner asserts that to constitute an appointment, the President's act of affixing his signature must be coupled with the physical issuance of the appointment to the appointee - *i.e.*, the appointment paper is officially issued in favor of the appointee through the President's proper Cabinet Secretary. The *making* of an appointment is different from its *issuance* since prior to the official issuance of an appointment, the appointing authority enjoys the prerogative to change his mind. In the present case, the respondents' appointment papers were officially issued and communicated to them only on March 19, 2010, well within the period of the constitutional ban, as shown by the congratulatory letters individually issued to them.

Given this premise, the petitioner claims that he correctly impleaded Escueta in this case since his appointment also violates the Constitution. The petitioner adds that Escueta was appointed on July 21, 2008, although then as *acting* NAPOLCOM Commissioner. By *permanently* appointing him as NAPOLCOM Commissioner, he stands to be in office for more than six years, in violation of R.A. No. 6975.[28]

The petitioner argues that even granting that the President can extend appointments in an acting capacity to NAPOLCOM Commissioners, it may not be done by "successive appointments" in the same capacity without violating R.A. No. 6975, as amended, which provides a fixed and staggered term of office for NAPOLCOM Commissioners.[29]

THE COURT'S RULING

We dismiss the petition for lack of merit.

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[30]

Both parties dwelt lengthily on the *issue of constitutionality* of the respondents' appointments in light of E.O. No. 2 and the subsequent filing before the Court of several petitions questioning this Executive Order. The parties, however, appear to have overlooked the basic principle in constitutional adjudication that enjoins the Court from passing upon a constitutional question, although properly presented, if the case can be disposed of on some other ground.[31] In constitutional law terms, this means that we ought to refrain from resolving any constitutional issue "unless the constitutional question is the *lis mota* of the case."

Lis mota literally means "the cause of the suit or action." This last requisite of judicial review is simply an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government. Ultimately, it is rooted in the principle of separation of powers. Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court.[32]

In the present case, the constitutionality of the respondents' appointments is **not** the *lis mota* of the case. From the submitted pleadings, what is decisive is the determination of whether the petitioner has a cause of action to institute and maintain this present petition - a *quo warranto* against respondent Urro. If the petitioner fails to establish his cause of action for *quo warranto,* a discussion of the constitutionality of the appointments of the respondents is rendered completely unnecessary. The inclusion of the grounds for *certiorari* and/or prohibition does not alter the essential character of the petitioner's action since he does not even allege that he has a personal and substantial interest in raising the constitutional issue insofar as the other respondents are concerned.