

## EN BANC

[ G.R. No. 157013, July 10, 2003 ]

**ATTY. ROMULO B. MACALINTAL, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. ALBERTO ROMULO, IN HIS OFFICIAL CAPACITY AS EXECUTIVE SECRETARY, AND HON. EMILIA T. BONCODIN, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.**

### D E C I S I O N

#### AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for *certiorari* and prohibition filed by Romulo B. Macalintal, a member of the Philippine Bar, seeking a declaration that certain provisions of Republic Act No. 9189 (*The Overseas Absentee Voting Act of 2003*)<sup>[1]</sup> suffer from constitutional infirmity. Claiming that he has actual and material legal interest in the subject matter of this case in seeing to it that public funds are properly and lawfully used and appropriated, petitioner filed the instant petition as a taxpayer and as a lawyer.

The Court upholds the right of petitioner to file the present petition.

R.A. No. 9189, entitled, "*An Act Providing for A System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes,*" appropriates funds under Section 29 thereof which provides that a supplemental budget on the General Appropriations Act of the year of its enactment into law shall provide for the necessary amount to carry out its provisions. Taxpayers, such as herein petitioner, have the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute.<sup>[2]</sup> The Court has held that they may assail the validity of a law appropriating public funds<sup>[3]</sup> because expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds.<sup>[4]</sup>

The challenged provision of law involves a public right that affects a great number of citizens. The Court has adopted the policy of taking jurisdiction over cases whenever the petitioner has seriously and convincingly presented an issue of transcendental significance to the Filipino people. This has been explicitly pronounced in *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan*,<sup>[5]</sup> where the Court held:

Objections to taxpayers' suit for lack of sufficient personality standing, or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits

of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions.<sup>[6]</sup>

Indeed, in this case, the Court may set aside procedural rules as the constitutional right of suffrage of a considerable number of Filipinos is involved.

The question of propriety of the instant petition which may appear to be visited by the vice of prematurity as there are no ongoing proceedings in any tribunal, board or before a government official exercising judicial, quasi-judicial or ministerial functions as required by Rule 65 of the Rules of Court, dims in light of the importance of the constitutional issues raised by the petitioner. In *Tañada vs. Angara*,<sup>[7]</sup> the Court held:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide."

In another case of paramount impact to the Filipino people, it has been expressed that it is illogical to await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution.<sup>[8]</sup> In yet another case, the Court said that:

. . . despite the inhibitions pressing upon the Court when confronted with constitutional issues, it will not hesitate to declare a law or act invalid when it is convinced that this must be done. In arriving at this conclusion, its only criterion will be the Constitution and God as its conscience gives it in the light to probe its meaning and discover its purpose. Personal motives and political considerations are irrelevancies that cannot influence its decisions. Blandishment is as ineffectual as intimidation, for all the awesome power of the Congress and Executive, the Court will not hesitate "to make the hammer fall heavily," where the acts of these departments, or of any official, betray the people's will as expressed in the Constitution . . .<sup>[9]</sup>

The need to consider the constitutional issues raised before the Court is further buttressed by the fact that it is now more than fifteen years since the ratification of the 1987 Constitution requiring Congress to provide a system for absentee voting by qualified Filipinos abroad. Thus, strong reasons of public policy demand that the Court resolves the instant petition<sup>[10]</sup> and determine whether Congress has acted within the limits of the Constitution or if it had gravely abused the discretion entrusted to it.<sup>[11]</sup>

The petitioner raises three principal questions:

A. Does Section 5(d) of Rep. Act No. 9189 allowing the registration of voters who are immigrants or permanent residents in other countries by their mere act of executing an affidavit expressing their intention to return to the Philippines, violate the residency requirement in Section 1 of Article V of the Constitution?

B. Does Section 18.5 of the same law empowering the COMELEC to proclaim the winning candidates for national offices and party list representatives including the President and the Vice-President violate the constitutional mandate under Section 4, Article VII of the Constitution that the winning candidates for President and the Vice-President shall be proclaimed as winners by Congress?

C. May Congress, through the Joint Congressional Oversight Committee created in Section 25 of Rep. Act No. 9189, exercise the power to review, revise, amend, and approve the Implementing Rules and Regulations that the Commission on Elections shall promulgate without violating the independence of the COMELEC under Section 1, Article IX-A of the Constitution?

The Court will resolve the questions in seriatim.

**A. Does Section 5(d) of Rep. Act No. 9189 violate Section 1, Article V of the 1987 Constitution of the Republic of the Philippines?**

Section 5(d) provides:

*Sec. 5. Disqualifications.* — The following shall be disqualified from voting under this Act:

...

...

...

d) An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote *in absentia*.

Petitioner posits that Section 5(d) is unconstitutional because it violates Section 1, Article V of the 1987 Constitution which requires that the voter must be a resident in the Philippines for at least one year and in the place where he proposes to vote for at least six months immediately preceding an election. Petitioner cites the ruling of the Court in *Caasi vs. Court of Appeals*<sup>[12]</sup> to support his claim. In that case, the Court held that a "green card" holder immigrant to the United States is deemed to have abandoned his domicile and residence in the Philippines.

Petitioner further argues that Section 1, Article V of the Constitution does not allow provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise;<sup>[13]</sup> that the legislature should not be allowed to circumvent the requirement of the Constitution on the right of suffrage by providing a condition thereon which in effect amends or alters the aforesaid residence requirement to qualify a Filipino abroad to vote.<sup>[14]</sup> He claims that the right of suffrage should not be granted to anyone who, on the date of the election, does not possess the qualifications provided for by Section 1, Article V of the Constitution.

Respondent COMELEC refrained from commenting on this issue.<sup>[15]</sup>

In compliance with the Resolution of the Court, the Solicitor General filed his comment for all public respondents. He contraposes that the constitutional challenge to Section 5(d) must fail because of the absence of clear and unmistakable showing that said provision of law is repugnant to the Constitution. He stresses: All laws are presumed to be constitutional; by the doctrine of separation of powers, a department of government owes a becoming respect for the acts of the other two departments; all laws are presumed to have adhered to constitutional limitations; the legislature intended to enact a valid, sensible, and just law.

In addition, the Solicitor General points out that Section 1, Article V of the Constitution is a *verbatim* reproduction of those provided for in the 1935 and the 1973 Constitutions. Thus, he cites *Co vs. Electoral Tribunal of the House of Representatives*<sup>[16]</sup> wherein the Court held that the term "residence" has been understood to be synonymous with "domicile" under both Constitutions. He further argues that a person can have only one "domicile" but he can have two residences, one permanent (the domicile) and the other temporary;<sup>[17]</sup> and that the definition and meaning given to the term residence likewise applies to absentee voters. Invoking *Romualdez-Marcos vs. COMELEC*<sup>[18]</sup> which reiterates the Court's ruling in *Faypon vs. Quirino*,<sup>[19]</sup> the Solicitor General maintains that Filipinos who are immigrants or permanent residents abroad may have in fact never abandoned their Philippine domicile.<sup>[20]</sup>

Taking issue with the petitioner's contention that "green card" holders are considered to have abandoned their Philippine domicile, the Solicitor General suggests that the Court may have to discard its ruling in *Caasi vs. Court of Appeals*<sup>[21]</sup> in so far as it relates to immigrants and permanent residents in foreign countries who have executed and submitted their affidavits conformably with Section 5(d) of R.A. No. 9189. He maintains that through the execution of the requisite affidavits, the Congress of the Philippines with the concurrence of the President of the Republic had in fact given these immigrants and permanent residents the opportunity, pursuant to Section 2, Article V of the Constitution, to manifest that they had in fact never abandoned their Philippine domicile; that indubitably, they would have formally and categorically expressed the requisite intentions, i.e., "*animus manendi*" and "*animus revertendi*;" that Filipino immigrants and permanent residents abroad possess the unquestionable right to exercise the right of suffrage under Section 1, Article V of the Constitution upon approval of their registration, conformably with R.A. No. 9189.<sup>[22]</sup>

The seed of the present controversy is the interpretation that is given to the phrase, "qualified citizens of the Philippines abroad" as it appears in R.A. No. 9189, to wit:

SEC. 2. *Declaration of Policy.* — It is the prime duty of the State to provide a system of honest and orderly overseas absentee voting that upholds the secrecy and sanctity of the ballot. Towards this end, the State ensures equal opportunity to all qualified citizens of the Philippines abroad in the exercise of this fundamental right.

SEC. 3. *Definition of Terms.* — For purposes of this Act:

a) "Absentee Voting" refers to the process by which *qualified citizens of the Philippines abroad*, exercise their right to vote;

. . . (Emphasis supplied)

f) "*Overseas Absentee Voter*" refers to a citizen of the Philippines who is qualified to register and vote under this Act, not otherwise disqualified by law, who is abroad on the day of elections. (Emphasis supplied)

SEC. 4. *Coverage.* — All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of elections, may vote for president, vice-president, senators and party-list representatives. (Emphasis supplied)

in relation to Sections 1 and 2, Article V of the Constitution which read:

SEC. 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

SEC. 2. *The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.*

. . . . . (Emphasis supplied)

Section 1, Article V of the Constitution specifically provides that suffrage may be exercised by (1) all citizens of the Philippines, (2) not otherwise disqualified by law, (3) at least eighteen years of age, (4) who are residents in the Philippines for at least one year and in the place where they propose to vote for at least six months immediately preceding the election. Under Section 5(d) of R.A. No. 9189, one of those disqualified from voting is an immigrant or permanent resident who is recognized as such in the host country unless he/she executes an affidavit declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three years from approval of his/her registration under said Act.

Petitioner questions the rightness of the mere act of execution of an affidavit to qualify the Filipinos abroad who are immigrants or permanent residents, to vote. He focuses solely on Section 1, Article V of the Constitution in ascribing constitutional infirmity to Section 5(d) of R.A. No. 9189, totally ignoring the provisions of Section 2 empowering Congress to provide a system for absentee voting by qualified Filipinos abroad.