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[G.R. No. 192791, April 24, 2012]

DENNIS A. B. FUNA, PETITIONER, VS. THE CHAIRMAN, COMMISSION ON AUDIT, REYNALDO A. VILLAR, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

In this Petition for Certiorari and Prohibition under Rule 65, Dennis A. B. Funa challenges the constitutionality of the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit and accordingly prays that a judgment issue "declaring the unconstitutionality" of the appointment.

The facts of the case are as follows:

On February 15, 2001, President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) appointed Guillermo N. Carague (Carague) as Chairman of the Commission on Audit (COA) for a term of seven (7) years, pursuant to the 1987 Constitution.[1] Carague's term of office started on February 2, 2001 to end on February 2, 2008.

Meanwhile, on February 7, 2004, President Macapagal-Arroyo appointed Reynaldo A. Villar (Villar) as the third member of the COA for a term of seven (7) years starting February 2, 2004 until February 2, 2011.

Following the retirement of Carague on February 2, 2008 and during the fourth year of Villar as COA Commissioner, Villar was designated as Acting Chairman of COA from February 4, 2008 to April 14, 2008. Subsequently, on April 18, 2008, Villar was nominated and appointed as Chairman of the COA. Shortly thereafter, on June 11, 2008, the Commission on Appointments confirmed his appointment. He was to serve as Chairman of COA, as expressly indicated in the appointment papers, until the expiration of the original term of his office as COA Commissioner or on February 2, 2011. Challenged in this recourse, Villar, in an obvious bid to lend color of title to his hold on the chairmanship, insists that his appointment as COA Chairman accorded him a fresh term of seven (7) years which is yet to lapse. He would argue, in fine, that his term of office, as such chairman, is up to **February 2, 2015**, or 7 years reckoned from February 2, 2008 when he was appointed to that position.

Meanwhile, Evelyn R. San Buenaventura (San Buenaventura) was appointed as COA Commissioner to serve the unexpired term of Villar as Commissioner or up to February 2, 2011.

Before the Court could resolve this petition, Villar, via a letter dated February 22, 2011 addressed to President Benigno S. Aquino III, signified his intention to step down from office upon the appointment of his replacement. True to his word, Villar vacated his position when President Benigno Simeon Aquino III named Ma. Gracia

Pulido-Tan (Chairman Tan) COA Chairman. This development has rendered this petition and the main issue tendered therein moot and academic.

A case is considered moot and academic when its purpose has become stale,[2] or when it ceases to present a justiciable controversy owing to the onset of supervening events,[3] so that a resolution of the case or a declaration on the issue would be of no practical value or use.[4] In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which will anyway be negated by the dismissal of the basic petition.[5] As a general rule, it is not within Our charge and function to act upon and decide a moot case. However, in *David v. Macapagal-Arroyo*,[6] We acknowledged and accepted certain exceptions to the issue of mootness, thus:

> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution, second, the exceptional character of the situation and the paramount public interest is involved, third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public, and fourth, the case is capable of repetition yet evading review.

Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in David, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet evading review.[7] The situation presently obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth "guide the bench, the bar and the public" should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*,[8] "Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future."

Both procedural and substantive issues are raised in this proceeding. The procedural aspect comes down to the question of whether or not the following requisites for the exercise of judicial review of an executive act obtain in this petition, viz: (1) there must be an actual case or justiciable controversy before the court; (2) the question before it must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[9]

To Villar, all the requisites have not been met, it being alleged in particular that

petitioner, suing as a taxpayer and citizen, lacks the necessary standing to challenge his appointment.[10] On the other hand, the Office of the Solicitor General (OSG), while recognizing the validity of Villar's appointment for the period ending February 11, 2011, has expressed the view that petitioner should have had filed a petition for declaratory relief or *quo warranto* under Rule 63 or Rule 66, respectively, of the Rules of Court instead of *certiorari* under Rule 65.

Villar's posture on the absence of some of the mandatory requisites for the exercise by the Court of its power of judicial review must fail. As a general rule, a petitioner must have the necessary personality or standing (locus standi) before a court will recognize the issues presented. In *Integrated Bar of the Philippines v. Zamora,* We defined *locus standi* as:

> x x x a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[11]

To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act.[12] However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake.[13] The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of **transcendental import,** has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.[14] In *David*, the Court laid out the bare minimum norm before the so-called "non-traditional suitors" may be extended standing to sue, thusly:

> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

4.) For *legislators,* there must be a claim that the official action complained of infringes their prerogatives as legislators.

This case before Us is of transcendental importance, since it obviously has "far-reaching implications," and there is a need to promulgate rules that will guide the bench, bar, and the public in future analogous cases. We, thus, assume a liberal stance and allow petitioner to institute the instant petition.

Anent the aforestated posture of the OSG, there is no serious disagreement as to the propriety of the availment of certiorari as a medium to inquire on whether the assailed appointment of respondent Villar as COA Chairman infringed the constitution or was infected with grave abuse of discretion. For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of certiorari may be invoked not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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."[15] "Grave abuse of discretion" denotes:

> such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[16]

We find the remedy of certiorari applicable to the instant case in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion.

This brings Us to the pivotal substantive issue of whether or not Villar's appointment as COA Chairman, while sitting in that body and after having served for four (4) years of his seven (7) year term as COA commissioner, is valid in light of the term limitations imposed under, and the circumscribing concepts tucked in, Sec. 1 (2), Art. IX(D) of the Constitution, which reads:

> (2) The **Chairman and Commissioners [on Audit]** shall be **appointed** by the President with the consent of the Commission on Appointments for **a term of seven years without reappointment**. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. **Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor**. In no case shall any member be appointed or designated in a temporary or acting capacity. (Emphasis added.)[17]

And if valid, for how long can he serve?

At once clear from a perusal of the aforequoted provision are the defined restricting features in the matter of the composition of COA and the appointment of its members (commissioners and chairman) designed to safeguard the independence and impartiality of the commission as a body and that of its individual members.[18] These are, *first*, the rotational plan or the staggering term in the commission membership, such that the appointment of commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years; *second*, the maximum but a fixed term-limit of seven (7) years for all commission members whose appointments came about by reason of the expiration of term save the aforementioned first set of appointees and those made to fill up vacancies resulting from certain causes; *third*, the prohibition against reappointment of commission members who served the full term of seven years or of members first appointed under the Constitution who served their respective terms of office; *fourth,* the limitation of the term of a member to the unexpired portion of the term of the predecessor; and *fifth*, the proscription against temporary appointment or designation.

To elucidate on the mechanics of and the adverted limitations on the matter of COA-member appointments with fixed but staggered terms of office, the Court lays down the following postulates deducible from pertinent constitutional provisions, as construed by the Court:

1. The terms of office and appointments of the first set of commissioners, or the seven, five and three-year termers referred to in Sec. 1(2), Art. IX(D) of the Constitution, had already expired. Hence, their respective terms of office find relevancy for the most part only in understanding the operation of the rotational plan. In *Gaminde v. Commission on Audit,*[19] the Court described how the smooth functioning of the rotational system contemplated in said and like provisions covering the two other independent commissions is achieved thru the staggering of terms:

> x x x [T]he terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start *on a common date* [February 02, 1987, when the 1987 Constitution was ratified] *irrespective of the variations in the dates of appointments and qualifications of the appointees* in order that the expiration of the first terms of seven, five and three years should lead to the **regular recurrence of the two-year interval between the expiration of the terms.**
>
> x x x In case of a **belated appointment, the interval between the start of the terms and the actual appointment shall be *counted against the appointee.***[20] (Italization in the original; emphasis added.)

Early on, in *Republic v. Imperial,*[21] the Court wrote of two conditions, "**both indispensable to [the] workability**" of the rotational plan. These conditions may be described as follows: (a) that the terms of the first batch of commissioners should start on a common date; and (b) **that any vacancy due to death, resignation or disability before the expiration of the term should be filled**