

EN BANC

[G. R. No. 175352, January 18, 2011]

DANTE V. LIBAN, REYNALDO M. BERNARDO AND SALVADOR M. VIARI, PETITIONERS, VS. RICHARD J. GORDON, RESPONDENT.

PHILIPPINE NATIONAL RED CROSS, INTERVENOR.

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

This resolves the **Motion for Clarification and/or for Reconsideration**^[1] filed on August 10, 2009 by respondent **Richard J. Gordon** (respondent) of the **Decision** promulgated by this Court on July 15, 2009 (the Decision), the **Motion for Partial Reconsideration**^[2] filed on August 27, 2009 by movant-intervenor **Philippine National Red Cross (PNRC)**, and the latter's **Manifestation and Motion to Admit Attached Position Paper**^[3] filed on December 23, 2009.

In the Decision,^[4] the Court held that respondent did not forfeit his seat in the Senate when he accepted the chairmanship of the PNRC Board of Governors, as "the office of the PNRC Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution."^[5] The Decision, however, further declared void the PNRC Charter "insofar as it creates the PNRC as a private corporation" and consequently ruled that "the PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation."^[6] The dispositive portion of the Decision reads as follows:

WHEREFORE, we declare that the office of the Chairman of the Philippine National Red Cross is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI of the 1987 Constitution. We also declare that Sections 1, 2, 3, 4(a), 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Charter of the Philippine National Red Cross, or Republic Act No. 95, as amended by Presidential Decree Nos. 1264 and 1643, are VOID because they create the PNRC as a private corporation or grant it corporate powers.^[7]

In his **Motion for Clarification and/or for Reconsideration**, respondent raises the following grounds: (1) as the issue of constitutionality of Republic Act (R.A.) No. 95 was not raised by the parties, the Court went beyond the case in deciding such issue; and (2) as the Court decided that Petitioners did not have standing to file the

instant Petition, the pronouncement of the Court on the validity of R.A. No. 95 should be considered ***obiter***.^[8]

Respondent argues that the validity of R.A. No. 95 was a non-issue; therefore, it was unnecessary for the Court to decide on that question. Respondent cites *Laurel v. Garcia*,^[9] wherein the Court said that it "will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground" and goes on to claim that since this Court, in the Decision, disposed of the petition on some other ground, *i.e.*, lack of standing of petitioners, there was no need for it to delve into the validity of R.A. No. 95, and the rest of the judgment should be deemed *obiter*.

In its **Motion for Partial Reconsideration**, PNRC prays that the Court sustain the constitutionality of its Charter on the following grounds:

A. THE ASSAILED DECISION DECLARING UNCONSTITUTIONAL REPUBLIC ACT NO. 95 AS AMENDED DEPRIVED INTERVENOR PNRC OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.

1. INTERVENOR PNRC WAS NEVER A PARTY TO THE INSTANT CONTROVERSY.

2. THE CONSTITUTIONALITY OF REPUBLIC ACT NO. 95, AS AMENDED WAS NEVER AN ISSUE IN THIS CASE.

B. THE CURRENT CHARTER OF PNRC IS PRESIDENTIAL DECREE NO. 1264 AND NOT REPUBLIC ACT NO. 95. PRESIDENTIAL DECREE NO. 1264 WAS NOT A CREATION OF CONGRESS.

C. PNRC'S STRUCTURE IS *SUI GENERIS*; IT IS A CLASS OF ITS OWN. WHILE IT IS PERFORMING HUMANITARIAN FUNCTIONS AS AN AUXILIARY TO GOVERNMENT, IT IS A NEUTRAL ENTITY SEPARATE AND INDEPENDENT OF GOVERNMENT CONTROL, YET IT DOES NOT QUALIFY AS STRICTLY PRIVATE IN CHARACTER.

In his **Comment and Manifestation**^[10] filed on November 9, 2009, respondent manifests: (1) that he agrees with the position taken by the PNRC in its Motion for Partial Reconsideration dated August 27, 2009; and (2) as of the writing of said Comment and Manifestation, there was pending before the Congress of the Philippines a proposed bill entitled "An Act Recognizing the PNRC as an Independent, Autonomous, Non-Governmental Organization Auxiliary to the Authorities of the Republic of the Philippines in the Humanitarian Field, to be Known as The Philippine Red Cross."^[11]

After a thorough study of the arguments and points raised by the respondent as well as those of movant-intervenor in their respective motions, we have reconsidered our pronouncements in our Decision dated July 15, 2009 with regard to the nature of the PNRC and the constitutionality of some provisions of the PNRC Charter, R.A. No. 95, as amended.

As correctly pointed out in respondent's Motion, the issue of constitutionality of R.A.

No. 95 was not raised by the parties, and was not among the issues defined in the body of the Decision; thus, it was not the very *lis mota* of the case. We have reiterated the rule as to when the Court will consider the issue of constitutionality in *Alvarez v. PICOP Resources, Inc.*,^[12] thus:

This Court will not touch the issue of unconstitutionality unless it is the very *lis mota*. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may [rest] its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable.^[13]

Under the rule quoted above, therefore, this Court **should not** have declared void certain sections of R.A. No. 95, as amended by Presidential Decree (P.D.) Nos. 1264 and 1643, the PNRC Charter. Instead, the Court should have exercised judicial restraint on this matter, especially since there was some other ground upon which the Court could have based its judgment. Furthermore, the PNRC, the entity most adversely affected by this declaration of unconstitutionality, which was not even originally a party to this case, was being compelled, as a consequence of the Decision, to suddenly reorganize and incorporate under the Corporation Code, **after more than sixty (60) years of existence in this country.**

Its existence as a chartered corporation remained unchallenged on ground of unconstitutionality notwithstanding that R.A. No. 95 was enacted on March 22, 1947 during the effectivity of the 1935 Constitution, which provided for a proscription against the creation of private corporations by special law, to wit:

SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned and controlled by the Government or any subdivision or instrumentality thereof. (Art. XIV, 1935 Constitution.)

Similar provisions are found in Article XIV, Section 4 of the 1973 Constitution and Article XII, Section 16 of the 1987 Constitution. The latter reads:

SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Since its enactment, the PNRC Charter was amended several times, particularly on June 11, 1953, August 16, 1971, December 15, 1977, and October 1, 1979, by virtue of R.A. No. 855, R.A. No. 6373, P.D. No. 1264, and P.D. No. 1643, respectively. The passage of several laws relating to the PNRC's corporate existence

notwithstanding the effectivity of the constitutional proscription on the creation of private corporations by law, is a recognition that the PNRC is not strictly in the nature of a private corporation contemplated by the aforesaid constitutional ban.

A closer look at the nature of the PNRC would show that there is none like it not just in terms of structure, but also in terms of history, public service and official status accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is *sui generis*.

The PNRC succeeded the chapter of the American Red Cross which was in existence in the Philippines since 1917. It was created by an Act of Congress after the Republic of the Philippines became an independent nation on July 6, 1946 and proclaimed on February 14, 1947 its adherence to the Convention of Geneva of July 29, 1929 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (the "Geneva Red Cross Convention"). By that action the Philippines indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose and like other volunteer organizations established in other countries which have ratified the Geneva Conventions, to promote the health and welfare of the people in peace and in war.^[14]

The provisions of R.A. No. 95, as amended by R.A. Nos. 855 and 6373, and further amended by P.D. Nos. 1264 and 1643, show the historical background and legal basis of the creation of the PNRC by legislative fiat, as a voluntary organization impressed with public interest. Pertinently R.A. No. 95, as amended by P.D. 1264, provides:

WHEREAS, during the meeting in Geneva, Switzerland, on 22 August 1894, the nations of the world unanimously agreed to diminish within their power the evils inherent in war;

WHEREAS, more than one hundred forty nations of the world have ratified or adhered to the Geneva Conventions of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the Field and at Sea, The Prisoners of War, and The Civilian Population in Time of War referred to in this Charter as the Geneva Conventions;

WHEREAS, the Republic of the Philippines became an independent nation on July 4, 1946, and proclaimed on February 14, 1947 its adherence to the Geneva Conventions of 1929, and by the action, indicated its desire to participate with the nations of the world in mitigating the suffering caused by war and to establish in the Philippines a voluntary organization for that purpose as contemplated by the Geneva Conventions;

WHEREAS, there existed in the Philippines since 1917 a chapter of the American National Red Cross which was terminated in view of the independence of the Philippines; and

WHEREAS, the volunteer organizations established in other countries which have ratified or adhered to the Geneva Conventions **assist in**

promoting the health and welfare of their people in peace and in war, and through their mutual assistance and cooperation directly and through their international organizations promote better understanding and sympathy among the people of the world;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby decree and order that Republic Act No. 95, Charter of the Philippine National Red Cross (PNRC) as amended by Republic Acts No. 855 and 6373, be further amended as follows:

Section 1. There is hereby created in the Republic of the Philippines a body corporate and politic to be the voluntary organization officially designated to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Conventions and to perform such other duties as are inherent upon a national Red Cross Society. The national headquarters of this Corporation shall be located in Metropolitan Manila. (Emphasis supplied.)

The significant public service rendered by the PNRC can be gleaned from Section 3 of its Charter, which provides:

Section 3. That the purposes of this Corporation shall be as follows:

(a) To provide volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Conventions to which the Republic of the Philippines proclaimed its adherence;

(b) For the purposes mentioned in the preceding sub-section, to perform all duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;

(c) To act in matters of voluntary relief and in accordance with the authorities of the armed forces as a medium of communication between people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Governments and people and the Armed Forces of the Republic of the Philippines;

(d) To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting and emergency needs caused by typhoons, flood, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;