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[G.R. No. 166620, April 20, 2010]

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D E C I S I O N

LEONARDO-DE CASTRO, J.:

The present controversy arose from a Petition for *Certiorari* and prohibition challenging the constitutionality of Executive Order No. 378 dated October 25, 2004, issued by President Gloria Macapagal Arroyo (President Arroyo). Petitioners characterize their action as a class suit filed on their own behalf and on behalf of all their co-employees at the National Printing Office (NPO).

The NPO was formed on July 25, 1987, during the term of former President Corazon C. Aquino (President Aquino), by virtue of Executive Order No. 285[1] which provided, among others, the creation of the NPO from the merger of the Government Printing Office and the relevant printing units of the Philippine

Information Agency (PIA). Section 6 of Executive Order No. 285 reads:

> **SECTION 6. Creation of the National Printing Office. -** There is hereby created a National Printing Office out of the merger of the Government Printing Office and the relevant printing units of the Philippine Information Agency. The Office shall have exclusive printing jurisdiction over the following:
>
> a. Printing, binding and distribution of all standard and accountable forms of national, provincial, city and municipal governments, including government corporations;
>
> b. Printing of officials ballots;
>
> c. Printing of public documents such as the Official Gazette, General Appropriations Act, Philippine Reports, and development information materials of the Philippine Information Agency.
>
> The Office may also accept other government printing jobs, including government publications, aside from those enumerated above, but not in an exclusive basis.
>
> The details of the organization, powers, functions, authorities, and related management aspects of the Office shall be provided in the implementing details which shall be prepared and promulgated in accordance with Section II of this Executive Order.
>
> The Office shall be attached to the Philippine Information Agency.

On October 25, 2004, President Arroyo issued the herein assailed Executive Order No. 378, amending Section 6 of Executive Order No. 285 by, *inter alia*, removing the exclusive jurisdiction of the NPO over the printing services requirements of government agencies and instrumentalities. The pertinent portions of Executive Order No. 378, in turn, provide:

> **SECTION 1**. The NPO **shall continue to provide printing services to government agencies and instrumentalities as mandated by law. However, it shall no longer enjoy exclusive jurisdiction over the printing services requirements of the government over standard and accountable forms**. **It shall have to compete with the private sector, except in the printing of election paraphernalia** which could be shared with the Bangko Sentral ng Pilipinas, upon the discretion of the Commission on Elections consistent with the provisions of the Election Code of 1987.
>
> **SECTION 2.** Government agencies/instrumentalities may source printing services outside NPO provided that:

2.1 The printing services to be provided by the private sector is superior in quality and at a lower cost than what is offered by the NPO; and

2.2 The private printing provider is flexible in terms of meeting the target completion time of the government agency.

SECTION 3. In the exercise of its functions, the amount to be appropriated for the programs, projects and activities of the NPO in the General Appropriations Act (GAA) shall be limited to its income without additional financial support from the government. (Emphases and underscoring supplied.)

Pursuant to Executive Order No. 378**,** government agencies and instrumentalities are allowed to source their printing services from the private sector through competitive bidding, subject to the condition that the services offered by the private supplier be of superior quality and lower in cost compared to what was offered by the NPO. Executive Order No. 378 also limited NPO's appropriation in the General Appropriations Act to its income.

Perceiving Executive Order No. 378 as a threat to their security of tenure as employees of the NPO, petitioners now challenge its constitutionality, contending that: (1) it is beyond the executive powers of President Arroyo to amend or repeal Executive Order No. 285 issued by former President Aquino when the latter still exercised legislative powers; and (2) Executive Order No. 378 violates petitioners' security of tenure, because it paves the way for the gradual abolition of the NPO.

We dismiss the petition.

Before proceeding to resolve the substantive issues, the Court must first delve into a procedural matter. Since petitioners instituted this case as a class suit, the Court, thus, must first determine if the petition indeed qualifies as one. In *Board of Optometry v. Colet*,[2] we held that "[c]ourts must exercise utmost caution before allowing a class suit, which is the exception to the requirement of joinder of all indispensable parties. For while no difficulty may arise if the decision secured is favorable to the plaintiffs, a quandary would result if the decision were otherwise as those who were deemed impleaded by their self-appointed representatives would certainly claim denial of due process."

Section 12, Rule 3 of the Rules of Court defines a class suit, as follows:

Sec. 12. *Class suit*. - When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

From the foregoing definition, the requisites of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

In *Mathay v. The Consolidated Bank and Trust Company*,[3] the Court held that:

> An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attending facts, and **the complaint, or other pleading initiating the class action should allege** the existence of the necessary facts, to wit, the existence of a subject matter of common interest, and the existence of a class and **the number of persons in the alleged class,** in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest. (Emphases ours.)

Here, the petition failed to state the number of NPO employees who would be affected by the assailed Executive Order and who were allegedly represented by petitioners. It was the Solicitor General, as counsel for respondents, who pointed out that there were about 549 employees in the NPO.[4] The 67 petitioners undeniably comprised a small fraction of the NPO employees whom they claimed to represent. Subsequently, 32 of the original petitioners executed an Affidavit of Desistance, while one signed a letter denying ever signing the petition,[5] ostensibly reducing the number of petitioners to 34. We note that counsel for the petitioners challenged the validity of the desistance or withdrawal of some of the petitioners and insinuated that such desistance was due to pressure from people "close to the seat of power."[6] Still, even if we were to disregard the affidavit of desistance filed by some of the petitioners, it is highly doubtful that a sufficient, representative number of NPO employees have instituted this purported class suit. A perusal of the petition itself would show that of the 67 petitioners who signed the Verification/Certification of Non-Forum Shopping, only 20 petitioners were in fact mentioned in the *jurat* as having duly subscribed the petition before the notary public. In other words, only 20 petitioners effectively instituted the present case.

Indeed, in *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*,[7] we observed that an element of a class suit or representative suit is the **adequacy of representation**. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those made a party, as it so bears, to the total membership of the class; and (c) any other factor bearing on the ability of the named party to speak for the rest of the class.

Previously, we held in *Ibañes v. Roman Catholic Church*[8] that where the interests of the plaintiffs and the other members of the class they seek to represent are diametrically opposed, the class suit will not prosper.

It is worth mentioning that a Manifestation of Desistance,[9] to which the previously mentioned Affidavit of Desistance[10] was attached, was filed by the President of the National Printing Office Workers Association (NAPOWA). The said manifestation expressed NAPOWA's opposition to the filing of the instant petition in any court. Even if we take into account the contention of petitioners' counsel that the NAPOWA President had no legal standing to file such manifestation, the said pleading is a clear indication that there is a divergence of opinions and views among the members of the class sought to be represented, and not all are in favor of filing the present suit. There is here an apparent conflict between petitioners' interests and those of the persons whom they claim to represent. Since it cannot be said that petitioners sufficiently represent the interests of the entire class, the instant case cannot be properly treated as a class suit.

As to the merits of the case, the petition raises two main grounds to assail the constitutionality of Executive Order No. 378:

First, it is contended that President Arroyo cannot amend or repeal Executive Order No. 285 by the mere issuance of another executive order (Executive Order No. 378). Petitioners maintain that former President Aquino's Executive Order No. 285 is a legislative enactment, as the same was issued while President Aquino still had legislative powers under the Freedom Constitution;[11] thus, only Congress through legislation can validly amend Executive Order No. 285.

Second, petitioners maintain that the issuance of Executive Order No. 378 would lead to the eventual abolition of the NPO and would violate the security of tenure of NPO employees.

Anent the first ground raised in the petition, we find the same patently without merit.

It is a well-settled principle in jurisprudence that the President has the power to reorganize the offices and agencies in the executive department in line with the President's constitutionally granted power of control over executive offices and by virtue of previous delegation of the legislative power to reorganize executive offices under existing statutes.

In *Buklod ng Kawaning EIIB v. Zamora*,[12] the Court pointed out that Executive Order No. 292 or the Administrative Code of 1987 gives the President continuing authority to reorganize and redefine the functions of the Office of the President. Section 31, Chapter 10, Title III, Book III of the said Code, is explicit:

> Sec. 31. Continuing Authority of the President to Reorganize his Office. - The President**, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President**. For this purpose, he may take any of the