

## EN BANC

[ G.R. No. 190582, April 08, 2010 ]

**ANG LADLAD LGBT PARTY REPRESENTED HEREIN BY ITS CHAIR,  
DANTON REMOTO, PETITIONER, VS. COMMISSION ON  
ELECTIONS, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

... [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

*Justice Robert A. Jackson  
West Virginia State Board of Education v.  
Barnette*<sup>[1]</sup>

One unavoidable consequence of everyone having the freedom to choose is that others may make different choices - choices we would not make for ourselves, choices we may disapprove of, even choices that may shock or offend or anger us. However, choices are not to be legally prohibited merely because they are different, and the right to disagree and debate about important questions of public policy is a core value protected by our Bill of Rights. Indeed, our democracy is built on genuine recognition of, and respect for, diversity and difference in opinion.

Since ancient times, society has grappled with deep disagreements about the definitions and demands of morality. In many cases, where moral convictions are concerned, harmony among those theoretically opposed is an insurmountable goal. Yet herein lies the paradox - philosophical justifications about what is moral are indispensable and yet at the same time powerless to create agreement. This Court recognizes, however, that practical solutions are preferable to ideological stalemates; accommodation is better than intransigence; reason more worthy than rhetoric. This will allow persons of diverse viewpoints to live together, if not harmoniously, then, at least, civilly.

#### ***Factual Background***

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court, with an application for a writ of preliminary mandatory injunction, filed by *Ang Ladlad* LGBT Party (*Ang Ladlad*) against the Resolutions of the Commission on Elections (COMELEC) dated November 11, 2009<sup>[2]</sup> (the First Assailed Resolution) and December 16, 2009<sup>[3]</sup> (the Second Assailed Resolution) in SPP No. 09-228 (PL) (collectively, the Assailed Resolutions). The case has its roots in the COMELEC's refusal to accredit *Ang Ladlad* as a party-list organization under Republic Act (RA)

No. 7941, otherwise known as the Party-List System Act.<sup>[4]</sup>

*Ang Ladlad* is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or trans-gendered individuals (LGBTs). Incorporated in 2003, *Ang Ladlad* first applied for registration with the COMELEC in 2006. The application for accreditation was denied on the ground that the organization had no substantial membership base. On August 17, 2009, *Ang Ladlad* again filed a Petition<sup>[5]</sup> for registration with the COMELEC.

Before the COMELEC, petitioner argued that the LGBT community is a marginalized and under-represented sector that is particularly disadvantaged because of their sexual orientation and gender identity; that LGBTs are victims of exclusion, discrimination, and violence; that because of negative societal attitudes, LGBTs are constrained to hide their sexual orientation; and that *Ang Ladlad* complied with the 8-point guidelines enunciated by this Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.<sup>[6]</sup> *Ang Ladlad* laid out its national membership base consisting of individual members and organizational supporters, and outlined its platform of governance.<sup>[7]</sup>

On November 11, 2009, after admitting the petitioner's evidence, the COMELEC (Second Division) dismissed the Petition on moral grounds, stating that:

x x x This Petition is dismissible on moral grounds. Petitioner defines the Filipino Lesbian, Gay, Bisexual and Transgender (LGBT) Community, thus:

x x x a marginalized and under-represented sector that is particularly disadvantaged because of their sexual orientation and gender identity.

and proceeded to define sexual orientation as that which:

x x x refers to a person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, of the same gender, or more than one gender."

This definition of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs. In Romans 1:26, 27, Paul wrote:

For this cause God gave them up into vile affections, for even their women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet.

In the Koran, the hereunder verses are pertinent:

For ye practice your lusts on men in preference to women "ye are indeed a people transgressing beyond bounds." (7.81)

"And we rained down on them a shower (of brimstone): Then see what was the end of those who indulged in sin and crime!" (7:84) "He said: "O my Lord! Help Thou me against people who do mischief" (29:30).

As correctly pointed out by the Law Department in its Comment dated October 2, 2008:

The ANG LADLAD apparently advocates sexual immorality as indicated in the Petition's par. 6F: 'Consensual partnerships or relationships by gays and lesbians who are already of age'. It is further indicated in par. 24 of the Petition which waves for the record: 'In 2007, Men Having Sex with Men or MSMs in the Philippines were estimated as 670,000 (Genesis 19 is the history of Sodom and Gomorrah).

Laws are deemed incorporated in every contract, permit, license, relationship, or accreditation. Hence, pertinent provisions of the Civil Code and the Revised Penal Code are deemed part of the requirement to be complied with for accreditation.

ANG LADLAD collides with Article 695 of the Civil Code which defines nuisance as 'Any act, omission, establishment, business, condition of property, or anything else which x x x (3) shocks, defies; or disregards decency or morality x x x

It also collides with Article 1306 of the Civil Code: 'The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. Art 1409 of the Civil Code provides that 'Contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy' are inexistent and void from the beginning.

Finally to safeguard the morality of the Filipino community, the Revised Penal Code, as amended, penalizes 'Immoral doctrines, obscene publications and exhibitions and indecent shows' as follows:

Art. 201. Immoral doctrines, obscene publications and exhibitions, and indecent shows. — The penalty of prison mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

(b) Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.

3. Those who shall sell, give away or exhibit films, prints, engravings, sculpture or literature which are offensive to morals.

Petitioner should likewise be denied accreditation not only for advocating immoral doctrines but likewise for not being truthful when it said that it *"or any of its nominees/party-list representatives have not violated or failed to comply with laws, rules, or regulations relating to the elections."*

Furthermore, should this Commission grant the petition, we will be exposing our youth to an environment that does not conform to the teachings of our faith. Lehman Strauss, a famous bible teacher and writer in the U.S.A. said in one article that *"older practicing homosexuals are a threat to the youth."* As an agency of the government, ours too is the State's avowed duty under Section 13, Article II of the Constitution to protect our youth from moral and spiritual degradation.<sup>[8]</sup>

When *Ang Ladlad* sought reconsideration,<sup>[9]</sup> three commissioners voted to overturn the First Assailed Resolution (Commissioners Gregorio Y. Larrazabal, Rene V. Sarmiento, and Armando Velasco), while three commissioners voted to deny *Ang Ladlad's* Motion for Reconsideration (Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle, and Elias R. Yusoph). The COMELEC Chairman, breaking the tie and speaking for the majority in his Separate Opinion, upheld the First Assailed Resolution, stating that:

#### I. The Spirit of Republic Act No. 7941

*Ladlad* is applying for accreditation as a sectoral party in the party-list system. Even assuming that it has properly proven its under-representation and marginalization, it cannot be said that *Ladlad's* expressed sexual orientations *per se* would benefit the nation as a whole.

Section 2 of the party-list law unequivocally states that the purpose of the party-list system of electing congressional representatives is to enable Filipino citizens belonging to marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.

If entry into the party-list system would depend only on the ability of an organization to represent its constituencies, then all representative organizations would have found themselves into the party-list race. But that is not the intention of the framers of the law. The party-list system is not a tool to advocate tolerance and acceptance of misunderstood persons or groups of persons. Rather, **the party-list system is a tool for the realization of aspirations of marginalized individuals whose interests are also the nation's** - only that their interests have not been brought to the attention of the nation because of their under representation. **Until the time comes when *Ladlad* is able to justify that having mixed sexual orientations and transgender identities is beneficial to the nation, its application for accreditation under the party-list system will remain just that.**

## II. No substantial differentiation

In the United States, whose equal protection doctrine pervades Philippine jurisprudence, courts do not recognize lesbians, gays, homosexuals, and bisexuals (LGBT) as a "special class" of individuals. x x x Significantly, it has also been held that homosexuality is not a constitutionally protected fundamental right, and that "nothing in the U.S. Constitution discloses a comparable intent to protect or promote the social or legal equality of homosexual relations," as in the case of race or religion or belief.

x x x x

Thus, even if society's understanding, tolerance, and acceptance of LGBT's is elevated, there can be no denying that *Ladlad* constituencies are still males and females, and **they will remain either male or female protected by the same Bill of Rights that applies to all citizens alike.**

x x x x

## IV. Public Morals

x x x There is no question about not imposing on *Ladlad* Christian or Muslim religious practices. Neither is there any attempt to any particular religious group's moral rules on *Ladlad*. Rather, what are being adopted as moral parameters and precepts are generally accepted public morals. They are possibly religious-based, but **as a society, the Philippines cannot ignore its more than 500 years of Muslim and Christian upbringing, such that some moral precepts espoused by said religions have sipped [sic] into society and these are not publicly accepted moral norms.**

## V. Legal Provisions

But above morality and social norms, they have become part of the law of the land. Article 201 of the Revised Penal Code imposes the penalty of *prision mayor* upon "Those who shall publicly expound or proclaim