

EN BANC

[G.R. No. 191618, November 23, 2010]

**ATTY. ROMULO B. MACALINTAL, PETITIONER, VS.
PRESIDENTIAL ELECTORAL TRIBUNAL, RESPONDENT.**

DECISION

NACHURA, J.:

Confronting us is an undesignated petition^[1] filed by Atty. Romulo B. Macalintal (Atty. Macalintal), that questions the constitution of the Presidential Electoral Tribunal (PET) as an illegal and unauthorized progeny of Section 4,^[2] Article VII of the Constitution:

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

While petitioner concedes that the Supreme Court is "authorized to promulgate its rules for the purpose," he chafes at the creation of a purportedly "separate tribunal" complemented by a budget allocation, a seal, a set of personnel and confidential employees, to effect the constitutional mandate. Petitioner's averment is supposedly supported by the provisions of the 2005 Rules of the Presidential Electoral Tribunal (2005 PET Rules),^[3] specifically:

(1) Rule 3 which provides for membership of the PET wherein the Chief Justice and the Associate Justices are designated as "Chairman and Members," respectively;

(2) Rule 8(e) which authorizes the Chairman of the PET to appoint employees and confidential employees of every member thereof;

(3) Rule 9 which provides for a separate "Administrative Staff of the Tribunal" with the appointment of a Clerk and a Deputy Clerk of the Tribunal who, at the discretion of the PET, may designate the Clerk of Court (*en banc*) as the Clerk of the Tribunal; and

(4) Rule 11 which provides for a "seal" separate and distinct from the Supreme Court seal.

Grudgingly, petitioner throws us a bone by acknowledging that the invoked constitutional provision does allow the "appointment of additional personnel."

Further, petitioner highlights our decision in *Buac v. COMELEC*^[4] which peripherally

declared that "contests involving the President and the Vice-President fall within the exclusive original jurisdiction of the PET, x x x in the exercise of quasi-judicial power." On this point, petitioner reiterates that the constitution of the PET, with the designation of the Members of the Court as Chairman and Members thereof, contravenes Section 12, Article VIII of the Constitution, which prohibits the designation of Members of the Supreme Court and of other courts established by law to any agency performing quasi-judicial or administrative functions.

The Office of the Solicitor General (OSG), as directed in our Resolution dated April 6, 2010, filed a Comment^[5] thereon. At the outset, the OSG points out that the petition filed by Atty. Macalintal is unspecified and without statutory basis; "the liberal approach in its preparation x x x is a violation of the well known rules of practice and pleading in this jurisdiction."

In all, the OSG crystallizes the following issues for resolution of the Court:

I

WHETHER x x x PETITIONER HAS LOCUS STANDI TO FILE THE INSTANT PETITION.

II

WHETHER x x x THE CREATION OF THE PRESIDENTIAL ELECTORAL TRIBUNAL IS UNCONSTITUTIONAL FOR BEING A VIOLATION OF PARAGRAPH 7, SECTION 4 OF ARTICLE VII OF THE 1987 CONSTITUTION.

III

WHETHER x x x THE DESIGNATION OF MEMBERS OF THE SUPREME COURT AS MEMBERS OF THE PRESIDENTIAL ELECTORAL TRIBUNAL IS UNCONSTITUTIONAL FOR BEING A VIOLATION OF SECTION 12, ARTICLE VIII OF THE 1987 CONSTITUTION.^[6]

In his Reply,^[7] petitioner maintains that:

1. He has legal standing to file the petition given his averment of transcendental importance of the issues raised therein;
2. The creation of the PET, a separate tribunal from the Supreme Court, violates Section 4, Article VII of the Constitution; and
3. The PET, being a separate tribunal, exercises quasi-judicial functions contrary to Section 12, Article VIII of the Constitution.

We winnow the meanderings of petitioner into the singular issue of whether the constitution of the PET, composed of the Members of this Court, is unconstitutional, and violates Section 4, Article VII and Section 12, Article VIII of the Constitution.

But first, we dispose of the procedural issue of whether petitioner has standing to

file the present petition.

The issue of *locus standi* is derived from the following requisites of a judicial inquiry:

1. There must be an actual case or controversy;
2. The question of constitutionality must be raised by the proper party;
3. The constitutional question must be raised at the earliest possible opportunity; and
4. The decision of the constitutional question must be necessary to the determination of the case itself.^[8]

On more than one occasion we have characterized a proper party as one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.^[9] The dust has long settled on the test laid down in *Baker v. Carr*:^[10] "whether the party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions."^[11] Until and unless such actual or threatened injury is established, the complainant is not clothed with legal personality to raise the constitutional question.

Our pronouncements in *David v. Macapagal-Arroyo*^[12] illuminate:

The difficulty of determining *locus standi* arises in **public suits**. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer."

x x x x

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United States Supreme Court laid down the more stringent "**direct injury**" test in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman*. The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the "**direct injury**" test in our jurisdiction. In *People v. Vera*, it held that the person who impugns the validity of a statute must have "**a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result.**" The

Vera doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate, Manila Race Horse Trainers' Association v. De la Fuente, Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix*.

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the **1949 Emergency Powers Cases, Araneta v. Dinglasan**, where the "**transcendental importance**" of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*, this Court resolved to pass upon the issues raised due to the "**far-reaching implications**" of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.

x x x x

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

- (1) cases involve constitutional issues;
- (2) for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- (3) for **voters**, there must be a showing of obvious interest in the validity of the election law in question;
- (4) for **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- (5) for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

Contrary to the well-settled actual and direct injury test, petitioner has simply alleged a generalized interest in the outcome of this case, and succeeds only in muddling the issues. Paragraph 2 of the petition reads:

2. x x x Since the creation and continued operation of the PET involves the use of public funds and the issue raised herein is of transcendental importance, it is petitioner's humble submission that, as a citizen, a taxpayer and a member of the BAR, he has the legal standing to file this petition.

But even if his submission is valid, petitioner's standing is still imperiled by the white elephant in the petition, *i.e.*, his appearance as counsel for former President Gloria Macapagal-Arroyo (Macapagal-Arroyo) in the election protest filed by 2004 presidential candidate Fernando Poe, Jr. before the Presidential Electoral Tribunal,

[13] because judicial inquiry, as mentioned above, requires that the constitutional question be raised at the earliest possible opportunity.[14] Such appearance as counsel before the Tribunal, to our mind, would have been the first opportunity to challenge the constitutionality of the Tribunal's constitution.

Although there are recognized exceptions to this requisite, we find none in this instance. Petitioner is unmistakably estopped from assailing the jurisdiction of the PET before which tribunal he had ubiquitously appeared and had acknowledged its jurisdiction in 2004. His failure to raise a seasonable constitutional challenge at that time, coupled with his unconditional acceptance of the Tribunal's authority over the case he was defending, translates to the clear absence of an indispensable requisite for the proper invocation of this Court's power of judicial review. Even on this score alone, the petition ought to be dismissed outright.

Prior to petitioner's appearance as counsel for then protestee Macapagal-Arroyo, we had occasion to affirm the grant of original jurisdiction to this Court as a Presidential Electoral Tribunal in the auspicious case of *Tecson v. Commission on Elections*. [15] Thus -

Petitioners *Tecson, et al.*, in G.R. No. 161434, and *Velez*, in G.R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:

"The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."

The provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in *Lopez vs. Roxas*, as "not (being) justiciable" controversies or disputes involving contests on the elections, returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, "*An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same*." Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal. **Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.**