

EN BANC

[G.R. No. 179895, December 18, 2008]

**FERDINAND S. TOPACIO, PETITIONER, VS. ASSOCIATE JUSTICE
OF THE SANDIGANBAYAN GREGORY SANTOS ONG AND THE
OFFICE OF THE SOLICITOR GENERAL, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Ferdinand Topacio (petitioner) via the present petition for certiorari and prohibition seeks, in the main, to prevent Justice Gregory Ong (Ong) from further exercising the powers, duties and responsibilities of a Sandiganbayan Associate Justice.

It will be recalled that in *Kilosbayan Foundation v. Ermita*,^[1] the Court, by Decision of July 3, 2007, enjoined Ong "from accepting an appointment to the position of Associate Justice of the Supreme Court or assuming the position and discharging the functions of that office, until he shall have successfully completed all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship."^[2]

On July 9, 2007, Ong immediately filed with the Regional Trial Court (RTC) of Pasig City a Petition for the "amendment/ correction/ supplementation or annotation of an entry in [his] Certificate of Birth," docketed as S.P. Proc No. 11767-SJ, "*Gregory Santos Ong v. The Civil Registrar of San Juan, Metro Manila, et al.*"^[3]

Meanwhile, petitioner, by verified Letter-Request/Complaint^[4] of September 5, 2007, implored respondent Office of the Solicitor General (OSG) to initiate post-haste a *quo warranto* proceeding against Ong in the latter's capacity as an incumbent Associate Justice of the Sandiganbayan. Invoking paragraph 1, Section 7, Article VIII of the Constitution^[5] in conjunction with the Court's Decision in *Kilosbayan Foundation v. Ermita*,^[6] petitioner points out that natural-born citizenship is also a qualification for appointment as member of the Sandiganbayan and that Ong has failed to meet the citizenship requirement from the time of his appointment as such in October 1998.

The OSG, by letter of September 25, 2007, informed petitioner that it "cannot favorably act on [his] request for the filing of a *quo warranto* petition until the [RTC] case shall have been terminated with finality."^[7] Petitioner assails this position of the OSG as being tainted with grave abuse of discretion, aside from Ong's continuous discharge of judicial functions.

Hence, this petition, positing that:

IN OCTOBER OF 1998, RESPONDENT WAS NOT DULY-QUALIFIED UNDER THE FIRST SENTENCE OF PARAGRAPH 1, SECTION 7, OF THE 1987 CONSTITUTION, TO BE APPOINTED AN ASSOCIATE JUSTICE OF THE SANDIGANBAYAN, MERELY ON THE STRENGTH OF AN IDENTIFICATION CERTIFICATE ISSUED BY THE BUREAU OF IMMIGRATION AND A 1ST INDORSEMENT DATED 22 MAY 1997 ISSUED BY THE SECRETARY OF JUSTICE, BECAUSE, AS OF OCTOBER 1998, RESPONDET'S BIRTH CERTIFICATE INDICATED THAT RESPONDENT IS A CHINESE CITIZEN AND BECAUSE, AS OF OCTOBER 1998, THE RECORDS OF THIS HONORABLE COURT DECLARED THAT RESPONDENT IS A NATURALIZED FILIPINO CITIZEN.^[8] (Underscoring supplied)

Petitioner thus contends that Ong should immediately desist from holding the position of Associate Justice of the Sandiganbayan since he is disqualified on the basis of citizenship, whether gauged from his birth certificate which indicates him to be a Chinese citizen or against his bar records bearing out his status as a naturalized Filipino citizen, as declared in *Kilosbayan Foundation v. Ermita*.

Ong, on the other hand, states that *Kilosbayan Foundation v. Ermita* did not annul or declare null his appointment as Justice of the Supreme Court, but merely enjoined him from accepting his appointment, and that there is no definitive pronouncement therein that he is not a natural-born Filipino. He informs that he, nonetheless, voluntarily relinquished the appointment to the Supreme Court out of judicial statesmanship.^[9]

By Manifestation and Motion to Dismiss of January 3, 2008, Ong informs that the RTC, by Decision of October 24, 2007, already granted his petition and recognized him as a natural-born citizen. The Decision having, to him, become final,^[10] he caused the corresponding annotation thereof on his Certificate of Birth.^[11]

Invoking the curative provisions of the 1987 Constitution, Ong explains that his status as a natural-born citizen inheres from birth and the legal effect of such recognition retroacts to the time of his birth.

Ong thus concludes that in view of the RTC decision, there is no more legal or factual basis for the present petition, or at the very least this petition must await the final disposition of the RTC case which to him involves a prejudicial issue.

The parties to the present petition have exchanged pleadings^[12] that mirror the issues in the pending petitions for certiorari in G.R. No. 180543, "*Kilosbayan Foundation, et al. v. Leoncio M. Janolo, Jr., et al.*," filed with this Court and in CA-G.R. SP No. 102318, "*Ferdinand S. Topacio v. Leoncio M. Janolo, Jr., et al.*,"^[13] filed with the appellate court, both of which assail, *inter alia*, the RTC October 24, 2007 Decision.

First, on the objection concerning the verification of the petition.

The OSG alleges that the petition is defectively verified, being based on petitioner's "personal knowledge and belief and/or authentic records," and having been "acknowledged" before a notary public who happens to be petitioner's father, contrary to the Rules of Court^[14] and the Rules on Notarial Practice of 2004,^[15]

respectively.

This technicality deserves scant consideration where the question at issue, as in this case, is one purely of law and there is no need of delving into the veracity of the allegations in the petition, which are not disputed at all by respondents.^[16]

One factual allegation extant from the petition is the exchange of written communications between petitioner and the OSG, the truthfulness of which the latter does not challenge. Moreover, petitioner also verifies such correspondence on the basis of the thereto attached letters, the authenticity of which he warranted in the same verification-affidavit. Other allegations in the petition are verifiable in a similar fashion, while the rest are posed as citations of law.

The purpose of verification is simply to secure an assurance that the allegations of the petition or complaint have been made in good faith; or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and non-compliance therewith does not necessarily render it fatally defective. Indeed, verification is only a formal, not a jurisdictional requirement.^[17]

In the same vein, the Court brushes aside the defect, insofar as the petition is concerned, of a notarial act performed by one who is disqualified by reason of consanguinity, without prejudice to any administrative complaint that may be filed against the notary public.

Certiorari with respect to the OSG

On the issue of whether the OSG committed grave abuse of discretion in deferring the filing of a petition for *quo warranto*, the Court rules in the negative.

Grave abuse of discretion implies 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 at all in contemplation of law.^[18]

The Court appreciates no abuse of discretion, much less, a grave one, on the part of the OSG in deferring action on the filing of a *quo warranto* case until after the RTC case has been terminated with finality. A decision is not deemed tainted with grave abuse of discretion simply because the affected party disagrees with it.^[19]

The Solicitor General is the counsel of the government, its agencies and instrumentalities, and its officials or agents. In the discharge of its task, the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law.^[20]

The pertinent rules of Rule 66 on *quo warranto* provide:

SECTION 1. Action by Government against individuals. – An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of

the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;

(b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office; or

(c) An association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority so to act.

SEC. 2. *When Solicitor General or public prosecutor must commence action.* “The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action.

SEC. 3. *When Solicitor General or public prosecutor may commence action with permission of court.* “The Solicitor General or a public prosecutor may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action in an amount approved by and to be deposited in the court by the person at whose request and upon whose relation the same is brought. (Italics and emphasis in the original)

In the exercise of sound discretion, the Solicitor General may suspend or turn down the institution of an action for *quo warranto* where there are just and valid reasons.

[21] Thus, in *Gonzales v. Chavez*, [22] the Court ruled:

Like the Attorney-General of the United States who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started, our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party. Abandonment of a case, however, does not mean that the Solicitor General may just drop it without any legal and valid reasons, for the discretion given him is not unlimited. Its exercise must be, not only within the parameters set by law but with the best interest of the State as the ultimate goal. [23]

Upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand. [24]

It appears that after studying the case, the Solicitor General saw the folly of re-litigating the same issue of Ong's citizenship in the *quo warranto* case simultaneously with the RTC case, not to mention the consequent risk of forum-shopping. In any event, the OSG did not totally write *finis* to the issue as it merely advised petitioner to await the outcome of the RTC case.

Certiorari and Prohibition with respect to Ong

By petitioner's admission, what is at issue is Ong's title to the office of Associate Justice of Sandiganbayan.^[25] He claims to have been constrained to file the present petition after the OSG refused to heed his request to institute a suit for *quo warranto*. Averring that Ong is disqualified to be a member of any lower collegiate court, petitioner specifically prays that, after appropriate proceedings, the Court

. . . issue the writs of certiorari and prohibition against Respondent Ong, ordering Respondent Ong to cease and desist from further exercising the powers, duties, and responsibilities of a Justice of the Sandiganbayan due to violation of the first sentence of paragraph 1, Section 7, of the 1987 Constitution; . . . issue the writs of certiorari and prohibition against Respondent Ong and declare that he was disqualified from being appointed to the post of Associate Justice of the Sandiganbayan in October of 1998, considering that, as of October of 1998, the birth certificate of Respondent Ong declared that he is a Chinese citizen, while even the records of this Honorable Court, as of October of 1998, declared that Respondent Ong is a naturalized Filipino; x x x^[26]

While denominated as a petition for certiorari and prohibition, the petition partakes of the nature of a *quo warranto* proceeding with respect to Ong, for it effectively seeks to declare null and void his appointment as an Associate Justice of the Sandiganbayan for being unconstitutional. While the petition professes to be one for certiorari and prohibition, petitioner even adverts to a "*quo warranto*" aspect of the petition.^[27]

Being a collateral attack on a public officer's title, the present petition for certiorari and prohibition must be dismissed.

The title to a public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally,^[28] even through mandamus^[29] or a motion to annul or set aside order.^[30] In *Nacionalista Party v. De Vera*,^[31] the Court ruled that prohibition does not lie to inquire into the validity of the appointment of a public officer.

x x x [T]he writ of prohibition, even when directed against persons acting as judges or other judicial officers, cannot be treated as a substitute for *quo warranto* or be rightfully called upon to perform any of the functions of the writ. If there is a court, judge or officer *de facto*, the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office, the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an improper remedy by which to determine the title to an office.^[32]

Even if the Court treats the case as one for *quo warranto*, the petition is, just the same, dismissible.

A *quo warranto* proceeding is the proper legal remedy to determine the right or title