

EN BANC

[G.R. NO. 164978, October 13, 2005]

AQUILINO Q. PIMENTEL, JR., EDGARDO J. ANGARA, JUAN PONCE ENRILE, LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, AND SERGIO R. OSMEÑA III, PETITIONERS, VS. EXEC. SECRETARY EDUARDO R. ERMITA, FLORENCIO B. ABAD, AVELINO J. CRUZ, JR., MICHAEL T. DEFENSOR, JOSEPH H. DURANO, RAUL M. GONZALEZ, ALBERTO G. ROMULO, RENE C. VILLA, AND ARTHUR C. YAP, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for *certiorari* and prohibition^[1] with a prayer for the issuance of a writ of preliminary injunction to declare unconstitutional the appointments issued by President Gloria Macapagal-Arroyo ("President Arroyo") through Executive Secretary Eduardo R. Ermita ("Secretary Ermita") to Florencio B. Abad, Avelino J. Cruz, Jr., Michael T. Defensor, Joseph H. Durano, Raul M. Gonzalez, Alberto G. Romulo, Rene C. Villa, and Arthur C. Yap ("respondents") as acting secretaries of their respective departments. The petition also seeks to prohibit respondents from performing the duties of department secretaries.

Antecedent Facts

The Senate and the House of Representatives ("Congress") commenced their regular session on 26 July 2004. The Commission on Appointments, composed of Senators and Representatives, was constituted on 25 August 2004.

Meanwhile, President Arroyo issued appointments^[2] to respondents as acting secretaries of their respective departments.

Appointee	Department	Date of Appointment
Arthur C. Yap	Agriculture	15 August 2004
Alberto G. Romulo	Foreign Affairs	23 August 2004
Raul M. Gonzales	Justice	23 August 2004
Florencio B. Abad	Education	23 August 2004
Avelino J. Cruz, Jr.	National Defense	23 August 2004
Rene C. Villa	Agrarian Reform	23 August 2004
Joseph H. Durano	Tourism	23 August 2004
Michael T. Defensor	Environment and Natural Resources	23 August 2004

The appointment papers are uniformly worded as follows:

Sir:

Pursuant to the provisions of existing laws, you are hereby appointed
ACTING SECRETARY, DEPARTMENT OF (appropriate department) *vice*
(name of person replaced).

By virtue hereof, you may qualify and enter upon the performance of the
duties and functions of the office, furnishing this Office and the Civil
Service Commission with copies of your Oath of Office.

(signed)
Gloria Arroyo

Respondents took their oath of office and assumed duties as acting secretaries.

On 8 September 2004, Aquilino Q. Pimentel, Jr. ("Senator Pimentel"), Edgardo J. Angara ("Senator Angara"), Juan Ponce Enrile ("Senator Enrile"), Luisa P. Ejercito-Estrada ("Senator Ejercito-Estrada"), Jinggoy E. Estrada ("Senator Estrada"), Panfilo M. Lacson ("Senator Lacson"), Alfredo S. Lim ("Senator Lim"), Jamby A.S. Madrigal ("Senator Madrigal"), and Sergio R. Osmeña, III ("Senator Osmeña") ("petitioners") filed the present petition as Senators of the Republic of the Philippines.

Congress adjourned on 22 September 2004. On 23 September 2004, President Arroyo issued *ad interim* appointments^[3] to respondents as secretaries of the departments to which they were previously appointed in an acting capacity. The appointment papers are uniformly worded as follows:

Sir:

Pursuant to the provisions of existing laws, you are hereby appointed
SECRETARY [*AD INTERIM*], DEPARTMENT OF (appropriate department).

By virtue hereof, you may qualify and enter upon the performance of the
duties and functions of the office, furnishing this Office and the Civil
Service Commission with copies of your oath of office.

(signed)
Gloria Arroyo

Issue

The petition questions the constitutionality of President Arroyo's appointment of respondents as acting secretaries without the consent of the Commission on Appointments while Congress is in session.

The Court's Ruling

The petition has no merit.

Preliminary Matters

On the Mootness of the Petition

The Solicitor General argues that the petition is moot because President Arroyo had extended to respondents *ad interim* appointments on 23 September 2004 immediately after the recess of Congress.

As a rule, the writ of prohibition will not lie to enjoin acts already done.^[4] However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.^[5]

In the present case, the mootness of the petition does not bar its resolution. The question of the constitutionality of the President's appointment of department secretaries in an acting capacity while Congress is in session will arise in every such appointment.

On the Nature of the Power to Appoint

The power to appoint is essentially executive in nature, and the legislature may not interfere with the exercise of this executive power except in those instances when the Constitution expressly allows it to interfere.^[6] Limitations on the executive power to appoint are construed strictly against the legislature.^[7] The scope of the legislature's interference in the executive's power to appoint is limited to the power to prescribe the qualifications to an appointive office. Congress cannot appoint a person to an office in the guise of prescribing qualifications to that office. Neither may Congress impose on the President the duty to appoint any particular person to an office.^[8]

However, even if the Commission on Appointments is composed of members of Congress, the exercise of its powers is executive and not legislative. The Commission on Appointments does not legislate when it exercises its power to give or withhold consent to presidential appointments. Thus:

xxx The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress. In fact, the functions of the Commissioner are purely executive in nature. xxx^[9]

On Petitioners' Standing

The Solicitor General states that the present petition is a *quo warranto* proceeding because, with the exception of Secretary Ermita, petitioners effectively seek to oust respondents for unlawfully exercising the powers of department secretaries. The Solicitor General further states that petitioners may not claim standing as Senators because no power of the Commission on Appointments has been "infringed upon or violated by the President. xxx If at all, the Commission on Appointments as a body (rather than individual members of the Congress) may possess standing in this case."^[10]

Petitioners, on the other hand, state that the Court can exercise its *certiorari* jurisdiction over unconstitutional acts of the President.^[11] Petitioners further contend that they possess standing because President Arroyo's appointment of department secretaries in an acting capacity while Congress is in session impairs the powers of Congress. Petitioners cite ***Sanlakas v. Executive Secretary***^[12] as basis, thus:

To the extent that the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.

Considering the independence of the Commission on Appointments from Congress, it is error for petitioners to claim standing in the present case as members of Congress. President Arroyo's issuance of acting appointments while Congress is in session impair no power of Congress. Among the petitioners, only the following are members of the Commission on Appointments of the 13th Congress: Senator Enrile as Minority Floor Leader, Senator Lacson as Assistant Minority Floor Leader, and Senator Angara, Senator Ejercito-Estrada, and Senator Osmeña as members.

Thus, on the impairment of the prerogatives of members of the Commission on Appointments, only Senators Enrile, Lacson, Angara, Ejercito-Estrada, and Osmeña have standing in the present petition. This is in contrast to Senators Pimentel, Estrada, Lim, and Madrigal, who, though vigilant in protecting their perceived prerogatives as members of Congress, possess no standing in the present petition.

The Constitutionality of President Arroyo's Issuance of Appointments to Respondents as Acting Secretaries

Petitioners contend that President Arroyo should not have appointed respondents as acting secretaries because "in case of a vacancy in the Office of a Secretary, it is only an Undersecretary who can be designated as Acting Secretary."^[13] Petitioners base their argument on Section 10, Chapter 2, Book IV of Executive Order No. 292 ("EO 292"),^[14] which enumerates the powers and duties of the undersecretary. Paragraph 5 of Section 10 reads:

SEC. 10. *Powers and Duties of the Undersecretary.* -The Undersecretary shall:

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(5) Temporarily discharge the duties of the Secretary in the latter's absence or inability to discharge his duties for any cause or in case of vacancy of the said office, unless otherwise provided by law. Where there are more than one Undersecretary, the Secretary shall allocate the foregoing powers and duties among them. The President shall likewise make the temporary designation of Acting Secretary from among them;