NOTES ON RECENT DECISIONS

CONSTITUTIONAL LAW—

In the three months covered by these notes, July, August, and September, the Supreme Court rendered several decisions on constitutional law questions not devoid of significance.[1] *Jover v. Borra*,[2] *Endencia v. David*,[3] and *Feliciano v. Lugay*[4] will be discussed. The first two will be commented on under the heading of *separation of powers* and the last under that of *constitutional rights*.

I. SEPARATION OF POWERS

A. SUPERVISORY POWER OF PRESIDENT OVER LOCAL GOVERNMENTS: JOVER V. BORRA

In the last issue of this *Journal*[5] in noting *Villena v. Roque*,[6] objection was made to

> "the seeming adherence to the discredited theory of broad presidential powers in the earlier *Villena* and *Planas* cases. There the Supreme Court by a liberal interpretation of the powers of the President based on the constitutional provision vesting all executive powers in him, practically ignored the limitation to general supervision as may be provided by law. *Lacson v. Roque* represented a retreat to the Constitution. It is to be deplored that the Supreme Court did not maintain that position."

It is cause for elation then that in *Jover v. Borra*,[7] a July decision, there was a reversion to the desirable trend started by *Lacson v. Roque* [8] of restricting presidential authority over local governments to what the Constitution ordains.

This is a petition for quo warranto to test the legality of the removal of petitioner Jover from the office of the Mayor of the City of Iloilo and the designation of the respondent as acting Mayor of the said City. The facts according to the Court follow:

---

[1] *Jover v. Borra, Endencia v. David,* and *Feliciano v. Lugay* are the cases discussed in this note. In addition, mention should be made of the following cases: *People v. Estoista*, G. R. No. L-5793, prom. August 27, 1953 and *Pendatun v. Aragon et al.*, G. R. No. L-5469, prom. September 25, 1953. Two resolutions of the Supreme Court are likewise worth mentioning. In the first, *Estacio v. Commission on Elections*, G. R. No. L-6710, prom. July 7, 1953, the question dealt with the power of the Commission on Elections not to accept the candidacy of President Elpidio Quirino for the 1953 elections on the ground of lack of eligibility. The second, *Concordia v. Tolentino*, G. R. No. L-6482, prom. July 17, 1953, posed the issue of whether or not a political party could dismiss a member of the Electoral Tribunal and replace him with another. The resolutions dismissed both petitions on the ground of lack of interest, in the latter because petitioner left the minority group, the Nacionalista Party.

[2] G. R. No. L-6782, prom. July 25, 1953.

[3] G. R. Nos. L-6355 and L-6356, prom. August 31, 1953.

[4] G. R. No. L-6756, prom. September 16, 1953.

[5] 28 *Phil. Law Journal*, 610-612.

[6] G. R. No. L-6512, prom. June 19, 1953.

[7] See note 2.

[8] 49 O. G. 93.

"That on 9 February 1953 the petitioner was appointed Mayor of the City of Iloilo and on 26 March 1953 his appointment was confirmed by the Commission on Appointments; that on 28 June 1953 the petitioner was advised by the Secretary to the President by telegram followed by a letter both dated 27 June 1953 that he was relieved from his office as Mayor and that in his place and stead the respondent was designated as acting Mayor; and that on 27 June 1953 the respondent was designated as acting Mayor of the City of Iloilo by the President of the Philippines and took his oath of office."

It is the contention of the petitioner that pursuant to the charter of the City of Iloilo, his tenure of office is six years and for that reason he may be removed only for cause as provided by law. On the other hand the respondent raised the special defense that as the office of Mayor of Iloilo is policy determining and primarily confidential, its incumbent may be removed at the pleasure of the President, any statute depriving the President of the power to remove amounting to an unconstitutional encroachment on his authority.

The Supreme Court in a unanimous decision, the opinion being penned by Justice Padilla, sustained the right of petitioner. According to Justice Padilla:

"Granting that the office of Mayor of the City of Iloilo is policy-determining—a point we need not decide—still we find that the appointment of this class of officers is only an exception to the general rule that it 'shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.' The above-quoted constitutional provision does not say that officers appointed under the exception are removable at pleasure.

" 'The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives.' In the exercise of that power the National Assembly of the Philippines passed Com. Act No. 158 amending Com. Act No. 57."

The above statute, Section 8 of which as amended provides that the Mayor of Iloilo "shall hold office for six years unless removed, * * *" was held valid by the Supreme Court.

As Justice Padilla pointed out:

"The fixing by Congress of a period of time during which the Mayor of the City of Iloilo is to hold office is a valid and constitutional exercise of a legislative power."

Then came that portion of the opinion explaining why under the limited presidential authority over local governments, the definiteness of tenure accorded a city mayor cannot be assailed on constitutional grounds.

"The legislative intent to provide for a fixed period of office tenure for the Mayor of the City of Iloilo and not to make him removable at the pleasure of the appointing authority may be inferred from the fact that

whereas the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act, and those of the Mayors and Vice-Mayors of other cities are at pleasure, that of the Mayor of the City of Iloilo is for a fixed period of time, as provided for in the original charter, and this continued unchanged despite subsequent amendatory acts.

"'The President shall have control of all executive departments, bureaus or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.' The President cannot derive from this constitutional provision the authority to relieve or remove the petitioner from office, because his power is merely one of general supervision over all local governments and such supervision is to be exercised 'as may be provided by law.'"

In the light of the above, the Supreme Court could make the following categorical declaration:

"The legislative department having provided for an office tenure of six years for the Mayor of the City of Iloilo, the President cannot remove the petitioner without cause as provided by law."

With the conclusion that the removal of petitioner is illegal came the corollary:

"The designation of the respondent as acting Mayor is also without authority of law."

It may be to err unduly on the critical side not to be satisfied with the above opinion. It is to be regretted though that the Supreme Court did not take the opportunity to announce definitely and decisively that the power of general supervision as may be provided by law which is all that the Constitution grants the President, cannot justify any statutory power of removal.

In the main opinion in *Lacson v. Roque*,[9] the Supreme Court accepted the premises on which the proposition is based but not the conclusion to which it logically leads. Thus according to the opinion by Justice Tuason—

"There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials. By article VII, section 10, paragraph (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments,' but supervision does not contemplate control. (*People v. Brophy*, 120 P., 2d., 946; 49 Cal. App. 2nd, 15.) Far from implying control or power to remove, the President's supervisory authority over municipal affairs disqualified by the proviso 'as may be provided by law,' a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."

It is clear that the distinction between supervision and control is admitted by the Supreme Court for as correctly pointed out

[9] See note 8.

"supervision does not contemplate control." However, as clearly stated in the above excerpt—

> "Far from implying control or power to remove, the President's supervisory authority over municipal affairs disqualified [*sic*] by the proviso 'as may be provided by law,' a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."

It is supervision then and not control that the Constitution vests in the President in so far as local governments are concerned. Moreover, the Constitution limits it further by explicitly pointing out that what he can exercise is only general *supervision* which further must be given him by statute.

The distinction has been made that:

> "Supervision has been identified with oversight or superintendence of the performance of a thing or work of a person or inspection of the work of others. Control has a broader connotation. It means to direct, regulate or govern."

If under *control* the President clearly may investigate, suspend and remove and under *general supervision* he is likewise empowered to investigate, suspend and remove, then the distinction so carefully and explicitly provided for in the Constitution between *control* over all departments, bureaus or offices and *general supervision* over all local governments vanishes.

In compliance with the above constitutional mandate then limiting the powers of the President to general supervision as may be provided by law, the steps taken by the Supreme Court in *Santos v. Mallari*,[10] namely, of disregarding the statutory provision in conflict with a constitutional mandate, is once again called for.

Once the Supreme Court had the occasion to observe: the supreme mandate of the Constitution should not be loosely brushed aside. No dissent can be made to the above self-evident legal doctrine. Fidelity to it requires that this Honorable Court pronounce as invalid any statutory provision contravening the powers of the President to remove municipal officials.

Thereby the plain intent of the Constitution is given deference and observance. Thereby also the fears expressed by the delegates to the Constitutional Convention who were aware of the abuse to which power over local governments is susceptible especially during election years would not be realized. In that way constitutional process in the Philippines would be assured of more respect and stability.

The question may be asked, however, in the event such presidential power is held invalid, how could erring local government officials be dealt with? The answer is simple. Leave the power to the judiciary. This suggestion has much to recommend it in view of the

[10] 48 O. G. 1787.

record of the judicial branch for scrupulous adherence to fairness and impartiality.

As a matter of fact Justice Padilla, concurring in *Lacson v. Roque*,[11] implied that the competent court could be vested with such power.

> "That power to remove must, of course, be lodged somewhere in the framework of the Government. It could be in a competent court if the mayor should be found guilty of a crime or misdemeanor for which the penalty provided and imposed upon him be temporary or perpetual disqualification or suspension from holding public office. If he should be found to have committed malfeasance or irregularities in the exercise of his powers and performance of his duties as such mayor not amounting to a crime or misdemeanor, the President could remove him."

In certain states of the American Union such as Ohio,[12] Arkansas,[13] and Oklahoma,[14] no question exist as to the power of the courts to remove delinquent municipal officials.

B. NON-IMPOSITION OF INCOME TAX TO SAFEGUARD JUDICIAL INDEPENDENCE: ENDENCIA V. DAVID

In the case of *Perfecto v. Meer*,[15] the Supreme Court upheld the immunity of justices and judges from paying the income tax. It stated that the "undiminishable character of judicial salaries is not a mere privilege of judges— personal and therefore waivable—but a basic limitation upon legislative or executive action imposed in the public interest." Our Supreme Court followed the case of *Evans v. Gore* [16] where the American Supreme Court held that the tax imposed on the salary of the judge of the district court under Revenue Act of 1919 was contrary to the constitutional prohibition and so must be adjudged invalid.

It is to be noted that in the United States, the above case of *Evans v. Gore*, however, no longer controls where a judge is appointed subsequent to the statute imposing an inome tax is enacted. Thus in the case of *O'Malley v. Woodrough*,[17] it was held that the salary is taxable under such income tax statute.

According to our Supreme Court in this case of *Perfecto v. Meer*,[18] "the O'Malley case declarés no more than that Congress *may validly enact a law* taxing the salaries of judges appointed after its

---

[11] See note 8.

[12] *Re Bostwick*, 125 Ohio St. 182 (1932), 180 N. E. 713; *Dorgan v. Columbus*, 12 Ohio Dec. No. P. 121 (1901).

[13] *Speer v. Wood*, 128 Ar. 183 (1917), 193 S. W. 785.

[14] *State ex rel. Short v. Brownlee*, 96 Okla. 250 (1938), 222 P. 232; *Rose v. Arnold*, (1938) Okla. 82 P. (2d) 293.

[15] G. R. No. L-2348, prom. February 27, 1950.

[16] 253 U. S. 409.

[17] 307 U. S. 277.

[18] See note 15.

passage." Here in the Philippines no such law has been approved. It is not relevant to the issue then.

As if taking the cue from that portion of the opinion, Congress enacted the following:

> "No salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is hereby declared not to be a diminution of his compensation fixed by the Constitution or by law."

It is obvious from the above that Congress instead of expressly taxing salaries of justices and judges invaded the judicial field by itself construing a statutory provision. It furnished opportunity to the Supreme Court to annul in *Endencia v. David* [19] the provision thus:

> "By legislative fiat as enunciated in Section 13, Republic Act No. 590, Congress says that taxing the salary of a judicial officer is not a decrease of compensation. This is a clear example of interpretation or ascertainment of the meaning of the phrase "which shall not be diminished during their continuance in office," found in Section 9, Article VIII of the Constitution, referring to the salaries of judicial officers. This act of interpreting the Constitution or any part thereof by the Legislature is an invasion of the well defined and established province and jurisdiction of the Judiciary."

Moreover the Supreme Court through Justice Montemayor took pains to explain how the imposition of an income tax on judicial salary amounts to "an actual and evident diminution thereof."

The Supreme Court reaffirmed the view that the "exemption was not primarily intended to benefit judicial officers, but was grounded on public policy." In support, reliance was placed on *Evans v. Gore.*[20] Thus:

> "The primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations and pervading principles of the Constitution and to the administration of justice without respect to persons and with equal concern for the poor and the rich. Such being its purpose, it is to be construed, not as a private grant, but as a limitation imposed in the public interest; in other words, not restrictively, but in accord with its spirit and the principle on which it proceeds."

The opinion closed with a reiteration of the doctrine in *Perfecto v. Meer.*[21]

---

[19] See note 3.
[20] See note 16.
[21] See note 15.

> "In conclusion we reiterate the doctrine laid down in the case of *Perfecto v. Meer*, * * * to the effect that the collection of income tax on the salary of a judicial officer is a diminution thereof and so violates the Constitution. * * *"

There was a feeling among certain legislators that members of the Supreme Court should not enjoy an exemption and that as citizens out of patriotism and love of country they should pay income tax on their salaries. Such a feeling is understandable. To quote from *O'Malley v. Woodrough*:

> "To suggest that a non-discriminatory income tax makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship by making them bear their aliquot share of the cost of maintaining the government is to trivialize the great historic experience on which the framers based the safeguard of the constitutional provision concerned."

The above argument is not without plausibility. It is not inherently unreasonable. If conditions in the Philippines were otherwise, it ought to apply with undiminished force. But conditions are precisely different. The Executive has not hesitated, as recent decisions indicate, to decide to take action even when his power to do so is very much in doubt. There is even the suspicion that even when there is no doubt as to his lack of authority, he has not been reluctant to make use of a non-existent power. The consitutional commands and prohibitions would then be reduced to a barren form of words if there were no organ that could enforce it. The Supreme Court is such an organ. Its record in striking down excess or usurpation of authority on the part of the Executive is unprecedented. Its very independence therefore, and that of the various judicial agencies as well, is of the utmost importance not in the interest of justices and judges but for the sake of constitutionalism.

If, as the opinion in *Endencia v. David* indicates, the exemption from taxation aids in assuring that continuing independence, the price is well worth it. Moreover, the price is by no means exorbitant.[22]

II. CONSTITUTIONAL RIGHTS

A. ANNULMENT OF REGISTRY OF VOTERS: FELICIANO V. LUGAY

In *Feliciano v. Lugay*,[23] the Supreme Court reviewed a resolution of the Commission on Elections holding that it "has the power to annul fraudulent registry lists of voters notwithstanding the fact that

---

[22] Approximate loss incurred by the government annually on account of the exemption of judges from payment of income tax—₱50,000. (This estimate includes exemption of judges of inferior and superior courts.)

On the basis of the returns filed by eighty-seven judges of inferior courts and courts of first instance for the year 1952, the government stands to lose ₱46,383.

Information furnished the Chairman, Student Editorial Board by Messrs. Sebastian Rattad, Chief Statistician, Bureau of Internal Revenue, and Castor Ayeras, Chief, Income Tax Division, Bureau of Internal Revenue.

[23] See note 4.

they have been used in an election and therefore, hereby order the Secretary of the Commission to furnish the petitioner and respondent copies of this resolution and to summon them to appear before this Commission on June 8, 1935 at 10:00 o'clock in the morning in the Office of this Commission, the petitioner to present whatever evidence he may have in support of his claims in the Bill of Particulars and the oppositor to present his side of the case."

The petition to annul the aforesaid registry lists was filed on November 2, 1951 in the form of a letter, not reduced to proper form until the 7th of the same month. According to law, November 3 was the last day after which the existing list of voters had become permanent and unrenewable until the expiration of twelve years or in 1963.

The Supreme Court sustained the Commission on Elections thus:

> "That the Commission on Elections is authorized to annul illegal registry lists of voters has in effect already been decided by this Court in *Remigio Prudente et al. v. Angel Genuino et al.*, G. R. No. L-5222, Resolution of November 6, 1951. Upon the other hand, the contention that the disputed lists had become permanent is of no moment, because we find that, assuming said lists to have become permanent on November 3, 1951, (according to the very dissenting opinion of Chairman Imperial), the petitioners filed with the Commission as early as November 2, 1951, a petition in the form of a letter, praying for the annulment of the lists in question. Although upon order of the Commission the respondents filed the petition in proper form only on November 7, 1951, we are inclined to rule that, for the purpose of giving to the constitutional powers of the Commission, the petition presented on November 2 was sufficient.
>
> "There is also no merit in the argument that the failure of the Commission to dispose of the proceeding for annulment within fifteen days, as required in section 5 of the Revised Election Code, has resulted in the loss of its jurisdiction, inasmuch as said provision must be considered merely directory, in the same way that similar provisions for the disposition of election contests (sections 177 and 178 of the Revised Election Code) were held directory. (*Querubin v. Court of Appeals et al.*, 46 O. G. 1554, followed in *Cachola v. Cordero*, G. R. No. L-5780, February 28, 1953.) More or less the same considerations control as regards the jurisdiction of the courts over election contests and the authority of the Commission on Elections over matters placed under it by the Constitution."

The above decision merits approval. The importance of the political rights of suffrage in a democracy cannot be overestimated. It is a truism that under this form of government, the people combined represents the sovereign power which is exercised through the ballot of qualified voters.[24] In the words of Justice Laurel,

> "* * * Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the

[24] *Garchitorena v. Crescini*, 39 Phil. 259 (1918).

established authority. He has a voice in his government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. * * *"[25]

The experience in the past elections dating back in 1947 has been on the sad side. Political parties and political leaders in many places of the Philippines have not hesitated through frauds, coercion and terrorism to pad up registry lists. As a result, even now there is the widespread belief that the presidential elections in 1949 did not reflect the choice of the qualified electors.[26] The power thus assumed by the Commission on Elections and sustained by the Supreme Court is an insurance against the continued perpetration of frauds and other anomalies in defeating popular will.

As a matter of fact, the Supreme Court should have gone further. Here, no valid objection could be interposed against the exercise of authority by the Commission on Elections as in the opinion of the Court the petition was filed a day before the list became permanent. The decision does not cover a case where the evidence as to illegal padding of the lists of voters may be available only after said list has become permanent according to law.

That is an open question. To preserve the purity of the electoral process, the writer submits that for the lists of voters to become permanent within the meaning of the Election Code, only those having the qualifications and none of the disqualifications can remain therein. If it could be shown then at any time before the next election that persons not entitled to exercise said rights are registered, then the list should not be considered permanent and the Commission on Elections empowered to rid it of such names in an appropriate proceeding. Only then would the right to suffrage receive its due protection.[27]

ENRIQUE M. FERNANDO *

---

[25] *Moya v. del Fierro*, 69 Phil. 199 (1939).

[26] If the presidential election in 1949 were not vitiated by wholesale fraud, coercion and terrorism, Senator Jose P. Laurel would have been an easy victor.

[27] Two other cases in constitutional rights follow. In the first, *People v. Estoista*, G. R. No. L-5793, the constitutionality of Republic Act No. 4 which provides the penalty of from 5 to 10 years imprisonment and fines for illegal possession of firearms was attacked as cruel and unusual.

The accused Alberto Estoista was found guilty of illegal possession of firearms and sentenced to 1 year imprisonment by the trial court. He was out alone in the field shooting wild roosters with his father's licensed rifle when he accidentally shot one of their laborers. On appeal, he objected to the penalty provided by Republic Act No. 4 as cruel and unusual. Applying the provisions of the law, the Supreme Court instead, increased the penalty to 5 years imprisonment.

In arriving at this conclusion, the Supreme Court taking into consideration the conditions of the times, explained its decision through Justice Tuason, thus,

"* * * confinement from 5 to 10 years for possessing or carrying firearm is not cruel or unusual having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, per-

* The *Estoista* and *Pendatun* cases were briefed by Miss Dolores Garcia.