



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FLORD NICSON CALAWAG,
Petitioner,

G.R. No. 207412

- versus -

**UNIVERSITY OF THE PHILIPPINES
VISAYAS and DEAN CARLOS C.
BAYLON,**

Respondents.

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**MICAH P. ESPIA, JOSE MARIE F.
NASALGA and CHE CHE B.
SALCEPUEDES,**
Petitioners,

G.R. No. 207542

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

- versus -

**DR. CARLOS C. BAYLON, DR.
MINDA J. FORMACION and DR.
EMERLINDA ROMAN (to be
substituted by Alfredo E. Pascual, being
the new UP President), University of the
Philippines Board of Regents,**
Respondents.

Promulgated:

AUG 07 2013

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RESOLUTION

BRION, J.:

This case involves the consolidated petitions of petitioner Flord Nicson Calawag in G.R. No. 207412 and petitioners Micah P. Espia, Jose Marie F. Nasalga and Che Che B. Salcepuedes in G.R. No. 207542

(*hereinafter collectively known as petitioners*), both assailing the decision¹ dated August 9, 2012 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05079. The CA annulled the Order² of the Regional Trial Court (RTC) of Guimbal, Iloilo, Branch 67, granting a writ of preliminary mandatory injunction against respondent Dean Carlos Baylon of the University of the Philippines Visayas (*UP Visayas*).

The petitioners enrolled in the Master of Science in Fisheries Biology at UP Visayas under a scholarship from the Department of Science and Technology-Philippine Council for Aquatic and Marine Research and Development. They finished their first year of study with good grades, and thus were eligible to start their thesis in the first semester of their second year. The petitioners then enrolled in the thesis program, drafted their tentative thesis titles, and obtained the consent of Dr. Rex Baleña to be their thesis adviser, as well as the other faculty members' consent to constitute their respective thesis committees. These details were enclosed in the letters the petitioners sent to Dean Baylon, asking him to approve the composition of their thesis committees. The letter contained the thesis committee members and the thesis adviser's approval of their titles, as well as the approval of Professor Roman Sanares, the director of the Institute of Marine Fisheries and Oceanology.

Upon receipt of the petitioners' letters, Dean Baylon wrote a series of memos addressed to Professor Sanares, questioning the propriety of the thesis topics with the college's graduate degree program. He subsequently disapproved the composition of the petitioners' thesis committees and their tentative thesis topics. According to Dean Baylon, the petitioners' thesis titles connote a historical and social dimension study which is not appropriate for the petitioners' chosen master's degrees. Dean Baylon thereafter ordered the petitioners to submit a two-page proposal containing an outline of their tentative thesis titles, and informed them that he is forming an ad hoc committee that would take over the role of the adviser and of the thesis committees.

The petitioners thus filed a petition for *certiorari* and *mandamus* before the RTC, asking it to order Dean Baylon to approve and constitute the petitioners' thesis committees and approve their thesis titles. They also asked that the RTC issue a writ of preliminary mandatory injunction against Dean Baylon, and order him to perform such acts while the suit was pending.

¹ *Rollo*, G.R. No. 207412, pp. 83-95; penned by Associate Justice Ramon Paul L. Hernando, and concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles.

² *Id.* at 60-62; penned by Judge Domingo D. Diamante.

The RTC granted a writ of preliminary mandatory injunction, which Dean Baylon allegedly refused to follow. UP Visayas eventually assailed this order before the CA through a Rule 65 petition for *certiorari*, with prayer for a temporary restraining order (*TRO*).

The CA's Ruling

The CA issued a TRO against the implementation of the RTC's order, holding that the petitioners had no clear right to compel Dean Baylon to approve the composition of their thesis committees as a matter of course. As the college dean, Dean Baylon exercises supervisory authority in all academic matters affecting the college. According to the CA, the petitioners' reliance on Article 51 of the Graduate Program Manual of UP Visayas is misplaced. Article 51 provides:

Art. 51. The composition of the thesis committee shall be approved by the dean of the college/school upon the recommendation of the chairperson of the major department/division/institute. The GPO shall be informed of the composition of the thesis committee and/or any change thereof.³

Despite the mandatory language provided for composing the thesis committee under Article 51 of the Graduate Program Manual of UP Visayas, the CA construed it to mean that the Dean's approval is necessary prior to the composition of a thesis committee.

Lastly, the CA held that the case presents issues that are purely academic in character, which are outside the court's jurisdiction. It also noted that Dean Baylon has been accommodating of the petitioners, and that the requirements he imposed were meant to assist them to formulate a proper thesis title and graduate on time.

The Petitions for Review on Certiorari

In G.R. No. 207412, Calawag argues that the CA's decision should be set aside for the following reasons:

First, Calawag was entitled to the injunction prayed for, as he has clear rights under the law which were violated by Dean Baylon's actions. These are the right to education, the right to due process, and the right to equal protection under the law. According to Calawag, Dean Baylon violated

³ Id. at 28.

his right to due process when he added to and changed the requirements for the constitution of his thesis committee, without prior publication of the change in rules. Calawag's right to equal protection of the law, on the other hand, was allegedly violated because only students like him, who chose Dr. Baleña for their thesis adviser, were subjected to the additional requirements imposed by the dean, while the other students' thesis committees were formed without these impositions. Hence, Calawag and the three other petitioners in G.R. No. 207542 were unduly discriminated against.

Second, a reading of Executive Order No. 628, s. 1980,⁴ and Republic Act No. 9500⁵ shows that the college dean's functions are merely administrative, and, hence, the CA erred in its construction of Article 51 of the Graduate Program Manual of UP Visayas, as well as its proclamation that the college dean has supervisory authority over academic matters in the college.

On the other hand, in G.R. No. 207542, petitioners Espia, Nasalga and Salcepuedes argue that the CA's decision should be set aside for the following reasons:

First, the Graduate Program Manual of UP Visayas and the Guidelines for the Master of Science in Fisheries Program are clear in providing that Dean Baylon has a formal duty to approve the composition of the petitioners' thesis committees upon the latter's compliance with several requirements. Thus, when the petitioners complied with these requirements and Dean Baylon still refused to approve the composition of their thesis committees, the petitioners had a right to have him compelled to perform his duty.

Second, Dean Baylon cannot arbitrarily change and alter the manual and the guidelines, and cannot use academic freedom as subterfuge for not performing his duties.

Third, the thesis adviser and the thesis committees, in consultations with the students, have the right to choose the thesis topics, and not the dean.

The Court's Ruling

⁴ Creating a University of the Philippines in the Visayas as an Autonomous Member of the University of the Philippines System.

⁵ University of the Philippines Charter of 2008.

Having reviewed the arguments presented by the petitioners and the records they have attached to the petitions, we find that the CA did not commit an error in judgment in setting aside the preliminary mandatory injunction that the RTC issued against Dean Baylon. Thus, there could be no basis for the Court's exercise of its discretionary power to review the CA's decision.

"To be entitled to a writ of preliminary injunction, x x x the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction [presents a fourth requirement: it] is justified only in a clear case, free from doubt or dispute. When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper."⁶

The CA did not err in ruling that the petitioners failed to show a clear and unmistakable right that needs the protection of a preliminary mandatory injunction. We support the CA's conclusion that the dean has the discretion to approve or disapprove the composition of a thesis committee, and, hence, the petitioners had no right for an automatic approval and composition of their thesis committees.

Calawag's citation of Executive Order No. 628, s. 1980 and Republic Act No. 9500 to show that the dean of a college exercises only administrative functions and, hence, has no ascendancy over the college's academic matters, has no legal ground to stand on. Neither law provides or supports such conclusion, as neither specifies the role and responsibilities of a college dean. The functions and duties of a college dean are outlined in the university's Faculty Manual, which details the rules and regulations governing the university's administration. Section 11.8.2, paragraph b of the Faculty Manual enumerates the powers and responsibilities of a college dean, which include the power to approve the composition of a thesis committee, to wit:

11.8.2 Administration

⁶ *China Banking Corporation v. Co*, G.R. No. 174569, September 17, 2008, 565 SCRA 600, 606-607, citing *Gateway Electronics Corporation v. Land Bank of the Philippines*, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462; citations omitted, italics supplied.

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b. Dean/Director of UP System or UP Diliman-based Programs *

The Dean/Director shall be responsible for the planning and implementation of the graduate programs. In particular, the ***Dean/Director shall exercise the following powers*** and responsibilities based on the recommendations forwarded to him/her, through channels:

X X X X

- ***Approve the composition of the Thesis, Dissertation or Special Project** Committees*** and Master's or doctoral examination/oral defense panel for each student[.]⁷ (emphases and italics ours)

By necessary implication,⁸ the dean's power to approve includes the power to disapprove the composition of a thesis committee. Thus, under the UP System's faculty manual, the dean has complete discretion in approving or disapproving the composition of a thesis committee. Harmonizing this provision with the Graduate Program Manual of UP Visayas, and the Guidelines for the Master of Science in Fisheries Program, we agree with the CA's interpretation that the thesis committee's composition needs the approval of the dean after the students have complied with the requisites provided in Article 51 of the Graduate Program Manual and Section IX of the Guidelines for the Master of Science in Fisheries Program.⁹

Anent the petitioners' argument that Dean Baylon acted arbitrarily in imposing additional requirements for the composition of the thesis committee, which according to Calawag violated their right to due process,

⁷ University of the Philippines Faculty Manual, p. 254.

⁸ The Court has, in several instances, used the doctrine of necessary implication to hold that a statutory provision of the power to approve necessarily implies the power to disapprove or revoke the subject matter of that power. See for instance *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, July 5, 2011, 653 SCRA 154; *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005, 458 SCRA 385; *Chua v. Civil Service Commission*, G.R. No. 88979, February 7, 1992, 206 SCRA 65; and *Gordon v. Veridiano II*, No. L-55230, November 8, 1988, 167 SCRA 51.

⁹ IX. THESIS REQUIREMENT

A student shall be allowed to enrol in Fisheries 300 (Masteral Thesis) upon completing the academic course requirements with a GWA of 2.00 or better. The student's thesis committee shall be composed of the thesis adviser who shall act as Chairman of the Committee, and two other members. The Thesis Adviser must have published as a senior author at least one (1) scientific article in a journal listed in Current Contents of the Institute of Scientific Information x x x. The faculty serving as Committee Members may or may not have a publication in a current contents-covered journal. The student shall select from a list of advisers who shall come from the home Institute of the student. At least one (1) of the two (2) other members must also come from the same Institute.

The student can proceed to actual thesis work only after defending his Thesis Proposal in a Preliminary Oral Examination.

we hold that the dean's authority to approve or disapprove the composition of a thesis committee includes this discretion. We also note the CA's finding that these additional requirements were meant to assist the petitioners in formulating a thesis title that is in line with the college's master of fisheries program. Absent any finding of grave abuse of discretion, we cannot interfere with the exercise of the dean's prerogative without encroaching on the college's academic freedom.

Verily, the academic freedom accorded to institutions of higher learning gives them the right to decide for themselves their aims and objectives and how best to attain them.¹⁰ They are given the exclusive discretion to determine who can and cannot study in them, as well as to whom they can confer the honor and distinction of being their graduates.¹¹ This necessarily includes the prerogative to establish requirements for graduation, such as the completion of a thesis, and the manner by which this shall be accomplished by their students. The courts may not interfere with their exercise of discretion unless there is a clear showing that they have arbitrarily and capriciously exercised their judgment.¹²

Lastly, the right to education invoked by Calawag cannot be made the basis for issuing a writ of preliminary mandatory injunction. In *Department of Education, Culture and Sports v. San Diego*,¹³ we held that the right to education is not absolute. Section 5(e), Article XIV of the Constitution provides that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." The thesis requirement and the compliance with the procedures leading to it, are part of the reasonable academic requirements a person desiring to complete a course of study would have to comply with.

WHEREFORE, the Court resolves to **DENY** giving due course to the petitions in G.R. No. 207412 and G.R. No. 207542.

¹⁰ *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 943 (1975).

¹¹ *University of the Philippines Board of Regents v. Court of Appeals*, G.R. No. 134625, August 31, 1999, 313 SCRA 404, 423, citing *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, No. L-40779, November 28, 1975, 68 SCRA 277.

¹² *Morales v. Board of Regents of the University of the Philippines*, G.R. No. 161172, December 13, 2004, 446 SCRA 227, 229, citing *University of San Carlos v. Court of Appeals*, G.R. No. L-79237, October 18, 1988, 166 SCRA 570, 574.

¹³ G.R. No. 89572, December 21, 1989, 180 SCRA 533.


SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice