



The Noble Wolf

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SC Rules: Gordon Can Be Senator And Red Cross Chair!

WASHINGTON, D.C., July 16 (PinoyGlobal) - Following the release of the last abducted International Committee of the Red Cross worker, Philippine National Red Cross (PNRC) chair Richard Gordon was given another good news after the Supreme Court (SC) ruled that he can retain his Senate seat.

The SC en banc, in a vote of 7-5-1, declared that Gordon did not relinquish his post as senator despite having been elected and accepted the post of PNRC Board of Governors chairman.

The 25-page decision, penned Justice Antonio T. Carpio, found the petition filed by three members of the Quezon City Red Cross chapter--former Quezon City Rep. Dante Liban, Reynaldo Bernardo and Salvador Viari--to be lacking in merit.

The petitioners alleged that Gordon forfeited his seat in the Senate after he was elected and accepted the top post in the PNRC.

Contrary to the claim by the petitioners however, the SC said the PNRC is a "private organization merely performing public functions", and that the "PNRC Chairman is not a government official or employee."

The decision said the PNRC chairmanship may be held by any individual, including a senator or member of the lower House, since it is not a government office.

Not part of gov't

The SC also said that the PNRC is "autonomous, neutral and independent" of the government. It said it is a

voluntary organization that "does not have government assets and does not receive any appropriation from the Philippine Congress". It said the PNRC is not a part of any of the government branches.

The decision said that based on the PNRC charter, "only six of the thirty members of the PNRC Board of Governors shall be appointed by the President of the Philippines." The PNRC chair, meanwhile, is elected by the Board of Governors, majority of whom are from the private sector.

"The President has no control in the decisions nor actions of the PNRC Chairman," said the SC decision. It said "the PNRC Chairman is not an official or employee of the Executive Branch or any of the remaining branches of the government."

The SC decision also effectively reversed its 1999 ruling in *Camporeondo v. NLRC* (370 Phil 901) which declared PNRC as a government-owned or controlled corporation (GOCC).

The SC clarified that the earlier ruling "failed to take into consideration the 1987 Administrative Code, which provides that a GOCC must be owned by the government."

The high court said that "the government does not own nor control PNRC." Thus, "the PNRC Chairmanship is not a government office or an office in a GOCC for purposes of the prohibition in the 1987 Constitution."

The Court also said that the PNRC is a member of the National Society of the International Red Cross and Red Crescent Movement, which is composed of the International

Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, which are guided by seven principles, including “impartiality, neutrality and independence.”

The high court said that to ensure its impartiality, the PNRC cannot be owned or controlled by the government.

With the ruling, Gordon can continue to serve as PNRC chair without giving up his senatorial position.

Procedural grounds

The high court also dismissed the petition on procedural grounds as it found the petitioners do not have the proper standing to file the case.

It said that the petitioners are private individuals who “do not claim to be entitled to the Senate office” of Gordon. The high court said that an individual may file this kind of petition only “if he claims to be entitled to the public office allegedly usurped by another.”

Concurring with Carpio were Chief Justice Reynato S. Puno, Associate Justices Leonardo A. Quisumbing, Conchita Carpio Morales, Minita V. Chico–Nazario, Presbitero J. Velasco Jr., and Teresita J. Leonardo-de Castro.

Dissenting in the decision were Associate Justices Antonio Eduardo B. Nachura, Consuelo Ynares-Santiago, Arturo D. Brion, Diosdado M. Peralta, and Lucas P. Bersamin. Justice Renato C. Corona took no part in the deliberations.

Nachura, who wrote a dissenting opinion, said that the PNRC is a GOCC, “if not a government instrumentality” and is “officially designated to assist the Republic of the Philippines” in the “performance of the government’s public functions.”

He said that considering that PNRC is “a GOCC or a government instrumentality, then its charter does not violate the constitutional provision that Congress cannot, except by a general law, provide for the formation” of private corporations. He said Gordon holds two incompatible offices in violation of the Constitution.

Null and void

The SC also declared null and void Sections 1 to 13 of the PNRC charter. It said the provisions violate Section 7, Article XIV of the Constitution, which prohibits Congress from creating private corporations except by general law.

“In creating the PNRC as a corporate entity, Congress was in fact creating a private corporation. However, the constitutional prohibition against the creation of private corporations by special charters provides no exception even for non-profit or charitable corporations,” the SC said.

The high court said “The PNRC should incorporate under the Corporation Code and register with the Securities and Exchange Commission if it wants to be a private corporation.”

<http://www.abs-cbnnews.com/nation/07/15/09/sc-gordon-can-be-senator-and-red-cross-chair>