

**PROVINCE OF PANGASINAN, PETITIONER, VS. HONORABLE
SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS,
COMMISSIONER OF PUBLIC HIGHWAYS, DIVISION ENGINEER
DESIDERIO ANOLIN, AND HIGHWAY ...**

G.R. No. L-27861. October 31, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action for prohibition with preliminary injunction, instituted by the Province of Pangasinan, against the Secretary of Public Works and Communications, the Commissioner of Public Highways, and Desiderio Anolin, as well as Oscar Data, as Division Engineer of the Second Engineering Division, Bureau of Public Highways, and Highway District Engineer of Pangasinan, respectively, to annul Department Order No. 145 of the Secretary of Public Works and Communications, dated July 5, 1967, and to prohibit said respondents from giving force and effect thereto. Petitioner, likewise, prayed that a writ of preliminary injunction be issued to restrain the respondents from implementing said department order during the pendency of this case. Upon the filing of the petition therein, We issued the temporary restraining order prayed for and required respondents to answer said petition. Subsequently, respondents filed their answer, admitting the formal allegations of the petition, denying the other allegations thereof and setting up special and affirmative defenses.

The main facts are not disputed. On July 5, 1967, the Secretary of Public Works and Communications issued Executive Order No. 145, dividing the Province of Pangasinan into three (3) highway engineering districts. Said Order reads:

"Pursuant to the provisions of Sections 79(d) and 1909 of the Revised Administrative Code, the Province of Pangasinan is hereby divided into three (3) engineering districts, to wit:

"Section 1. The First Highway Engineering District shall comprise the following municipalities:

x x x

"The headquarters of this district shall be in LINGAYEN.

"Section 2. The Second Highway Engineering District shall comprise the following municipalities:

x x x

"The headquarters of this district shall be in STA. BARBARA.

"Section 3. The Third Highway Engineering District shall comprise the following municipalities:

x x x

"The headquarters of this district shall be in ROSALES.

"Section 4. The Commissioner of Public Highways shall recommend the organization structure for each district of personnel including clerical forces to complement the respective offices herein created.

"Section 5. The present personnel including office furniture and equipment under the present District Engineer's office, shall be divided between the three engineering districts.

"Section 6. The present highway maintenance equipment shall likewise be distributed in accordance with the needs of each engineering district as may be determined by the Commissioner of Public Highways.

"Section 7. Except as herein provided, functions, duties and responsibilities of the heads of the engineering districts shall be as those provided for in Section 16 of Administrative Order No. 2, series of 1954.

"Section 8. The funds allotted under Republic Act No. 917 and accruing to the maintenance, construction and improvement of public highways thereat shall be apportioned to the engineering districts in a manner as the apportionment to the province and municipality is made in accordance with the said Act.

"Section 9. Unless otherwise provided for in this Department Order, the provisions of Administrative Order No. 2, series of 1954, shall apply.

"Section 10. This Department Order shall take effect upon the implementation of Section 4 hereof.

"Done in the City of Manila, Republic of the Philippines, this 5th day of July, 1967." [1]

On July 7, 1967, the Commissioner of Public Highways directed the Division Engineer of the Second Engineering Division, of which Pangasinan is a part, to supervise the implementation of section 5 of said Department Order No. 145 and "see to it that the personnel are equitably distributed to the three engineering districts." Six (6) days later, Oscar Data, as Highway District Engineer of Pangasinan, informed the employees concerned of said Department Order No. 145 and of the aforementioned communication of the Commissioner of Public Highways and bade them to be ready for a possible "transfer to two other engineering districts."

Soon thereafter, or on July 19, 1967, the Officer-in-Charge of the Department of Public Works asked the Budget Commissioner to authorize the release of funds for salaries of the district engineers to be assigned to the newly created engineering districts in Pangasinan, said funds "to be taken from the balance of the 3% Administrative Portion of the Excess Income of the Highway Special Fund, R.A. 917, as amended, x x x."

Presently, or on July 24, 1967, the municipal mayors of Calasiao, Mangaldan, San Jacinto and Binmaley, as well as the vice-mayor of Mangatarem and a former vice-mayor of Urbiz-tondo, all of the Province of Pangasinan, filed, with the Court of First Instance of Pangasinan, Civil Case No. D-2059 thereof, against respondents herein, for a declaration of nullity of said Department Order No. 145, and a writ of preliminary injunction and/or restraining order. The restraining order was, on the same date, issued by Honorable Jose S. dela Cruz, as Judge of said court. A week later, on August 1, 1967, the Province of Pangasinan commenced the present action, directly in the Supreme Court, for the purpose stated at the beginning of this decision.

The validity of the Department Order No. 145 is assailed by petitioner herein mainly upon the ground that, in issuing said order, respondent Secretary had acted without or in excess of jurisdiction; that the power to divide the Philippines into Engineering Districts is vested, by Section 1909 of the Revised Administrative Code, in the Director of Public Works, not in said respondent Secretary; that the three (3) engineering districts sought to be established by the contested Order would entail "the expenditure or disbursement of funds not legally, and specifically appropriated" therefor, as well as have "the effect of arbitrarily and illegally imposing additional burden on the petitioner"; and that "the creation of additional districts in any province is only possible through the enactment of the appropriate law."

Petitioner's contention is untenable.

1. It is true that the power to create engineering districts is vested, by Section 1909 of the Revised Administrative Code, in the Director of Public Works with the approval of the Department Head, the Secretary of Public Works and Communications. It is, also, true, however, that, pursuant to Section 79(C) of the same Code:

"SEC. 79 (C). Power of direction and supervision. - The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the chief of said bureaus or offices when advisable in the public interest.

"x x x."

The general power of control thus vested in department heads is reiterated in section 550 of said Code, which provides that "(t)he Director or other chief official of each Bureau or Of-fice" shall perform his duties "under the immediate executive control, direction, and supervision of the proper Department Head x x x." Then, again, it is well-settled that said power of control of department heads includes the authority to "modify, nullify or set aside" the acts of their subordinate officials, and to substitute the judgment or discretion of the former for that of the latter, as well as the right to act in lieu of the aforementioned subordinate officials.[1] Indeed, Section 37 of Act No. 4007 explicitly ordains that:

"The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service."

and, pursuant to the second paragraph of Section 79 (D) of the Revised Administrative Code:

"SEC. 79 (D). xxx xxx xxx

"The Department Head also may, from time to time, in the interest of the service, change the distribution among the several Bureaus and offices of his Department of the employees or subordinates authorized by law."

2. Petitioner's objection to the effect that the contested order would entail "the expenditure of or disbursement of funds not legally and specifically appropriated" therefor is devoid of factual and legal foundation, inasmuch as: (a) section 5 of said order provides that "the present personnel, including furniture and equipment of the present District Engineer's Office, shall be divided between the three engineering districts"; and (b) such additional expenditure, as may be necessary therefor, shall be taken "from the balance of the 3% of the Administrative Portion of the Excess Income of the Highway Special Fund" provided for in Republic Act No. 917. Section 3 of Republic Act No. 2264,[1] upon which petitioner relies, refers to "public works projects financed by the provincial, city and municipal funds or any other fund borrowed from or advanced by private third parties," and has no application to the management and operation of engineer-ing districts which are concerned with national roads and highways.

3. The fact that petitioner will have to provide for two additional quarters for the new engineering districts does not de-tract from the authority of respondent Secretary to create engineer-ing district, which, at any rate, petitioner recognizes in the Director of Public Works, although the latter's authority, in con-nection with public highways, has been transferred, since the creation of the Bureau of Public Highways[2] to the Commissioner of Public Highways.

4. It is urged that, although an engineering district may include more than one province, a province may not

constitute more than one engineering district, pursuant to sections 1909, 1911 and 1915 of the Revised Administrative Code, reading:

"SEC. 1909. Engineering districts. - With the approval of the Department Head, the Director of Public Works shall divide the Philippines into such number of engineering districts as shall from time to time be deemed advisable. The several engineering districts shall, as far as practicable, be coextensive with the territorial limits of the re-spective provinces."

"SEC. 1911. Functions of district engineer. - The district engineer shall have general supervision over the construction, maintenance, and repair of provincial public works of the district to which he is assigned and over all contracts connected with such works.

"Upon request of any provincial board in his district, the district engineer shall make investigations and surveys of proposed construction or re-pair of public works, and shall submit to said provincial board reports and estimates of the cost of construction or repair of such proposed works with his recommendations, and he shall, subject to the regulations of the Bureau of Public Works, prepare plans and specifications for such public works as may be required by the provincial board.

"It shall be the duty of the district engineer to prepare a comprehensive scheme of roads for all of the provinces and municipalities in his district, which shall be submitted, with his recommendations, to the provincial and municipal governments interest-ed."

"SEC. 1915. Special assignment of engineer to superintend provincial construction work. - Upon the request of the provincial board of any province to which a district engineer is not assigned, the Director of Public Works shall, with the approval of the Department Head, assign from the engineering force under his control an engineer to prepare plans and estimates for engineering work desired by such provincial board, or to supervise the construction of engineering work which has been duly authorized. In case of such assignment the provisions of the next preceding section with regard to payment of the expense of such service shall apply to the interested province, municipality or municipal district."

Sections 1911 and 1915 refer to provincial public or construction works, not to national highways which are within the jurisdiction of highway engineering districts. Upon the other hand, nothing contained in Section 1909 negates the power to create several engineering districts within a province. What is more, several engineering districts have, in fact, been established by Department Orders of respondent Secretary in various provinces of the Philippines, and this is the first time his authority therefor has been contested. Again, the approval of a number of acts of Congress establishing more than one engineering district in given provinces indicates precisely that the general legislative policy is not against splitting a province into several engineering districts, although, presumably, especial congressional action may have been deemed convenient in specific cases, when the purpose sought could not be attained through administrative action of the executive branch, owing to the latter's unwillingness or reluctance to do so.

5. Petitioner brands the contested order as impractical, not productive of any material benefit and a political gimmick. Suffice it to say that these objections tend to impugn the wisdom of the measure, which is beyond our province to pass upon, and on which We cannot, consistently with the principle of separation of powers, encroach, the exercise of judicial power, in relation thereto, being limited to an inquiry into the authority to issue said order, and which We find to be within the competence of respondent Secretary. Moreover, it appears that the first engineering district comprises the first congressional district, consisting of 14 municipalities; the second engineering district, the second and third congressional districts, composed altogether of 12 municipalities; and the third engineering district, the fourth and fifth congressional districts, with 19 municipalities. Considering that Pangasinan is a big province, with a total of 45 municipalities, We cannot say that the aforementioned division thereof into three engineering districts constitutes a grave abuse of discretion amounting to excess of jurisdiction.

WHEREFORE, the petition in this case should be, as it is hereby dismissed, and the restraining order issued by this Court set aside, with costs against petitioner, the Province of Pangasinan.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Barredo, J., did not take part.

[1] Annex A., p. 16, Record.

[1] Rodriguez v. Montinola, 94 Phil. 964, 972-973; Mon-dano v. Silvosa, 97 Phil. 143, 148; Dominguez v. Pascual, 101 Phil. 31, 34-35; Araneta v. Gatmaitan, 101 Phil. 328, 345-346; Hebron v. Reyes, 104 Phil. 175; Porras v. Abellana, 105 Phil. 1147; Miclat v. Ganaden, L-14459, May 30, 1960; Mascariñas v. Porras, L-17595, Aug. 30, 1962; Uichanco v. Sec. of Agri-culture, L-17328, March 30, 1963; Amado Jaro v. Hon. Elpidio Valencia, L-18352, Aug. 30, 1963; Ang-angco v. Castillo, L--17169, Nov. 30, 1963; Yarcia v. Castrillo, L-19066, May 31, 1966.

[1] Section 3, Republic Act No. 2264.

"Authority to execute provincial, city and municipal public works projects. -- The provinces, cities and municipalities are hereby authorized to undertake and carry out any public works projects, financed by the provincial, city and municipal funds or any other fund borrowed from or advanced by private third parties under the supervision of the District Engineer in the case of pro-vinces and municipalities, and of the City Engineer in the case of cities, without the intervention of the Department of Public Works and Communications. The approval of plans and specifications thereof by the Provincial Governor and the District Engineer in the case of provinces and municipalities, and by the City Mayor and the City Engineer in the case of cities, respectively, with the favorable recommendation of the provincial board, city or municipal council shall constitute sufficient warrant for the under-taking and execution of said projects. Provinces, cities and mu-nicipalities, however, may consult if they so desire the Depart-ment of Public Works and Communications in connection with the preparation of plans and specifications for provincial, city or municipal public works projects. Provinces, cities and munici-palities are likewise authorized to execute provincial, city or municipal public works projects either by administration or by contracts under the usual bidding procedure of the government: PROVIDED, That in the case where expenditure of public funds is not involved, public bidding may be dispensed with."

[2] By Republic Act No. 1192.

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