

RAMON DUTERTE, ETC., ET AL., PETITIONERS-APPELLANTS, VS. FLORENCIO MORENO, ET AL., RESPONDENTS-APPELLEES. SUSANO NEGADO, MANAGER OF THE NATIONAL WATERWORKS AND SEWERAGE AUTHORIT...

G.R. No. L-15142. November 29, 1966

Ponente: REGALA, J.

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REGALA, J.:

The facts of this case, which are not disputed, are stated in the decision appealed from, as follows:

"x x the petitioners, except Hon. Ramon Duterte, who is the incumbent Mayor of the City of Cebu, and petitioners Jorge Duterte, Isidro Godinez, Ricardo Zabala and Artemio Luceno, are officers and employees of the Osmena Waterworks System, Cebu City, who have been theretofore duly appointed as such by the Secretary of Public Works and Communications, receiving their corresponding salaries as authorized under said appointment (Exh. 'I') The twelve last named petitioners, Jorge Duterte, Epifanio Aban, Diosdado Abangan, Julian Antiporta, Bonifacio Cabellon, Catalino Cardiente, Vicente Durano, Isidro Godinez, Artemio Luceno, Maximo Robeles, Aurelio Samson and Ricardo Zabala, became employees of the Osmena Waterworks System only by virtue of the appointments extended to them by Hon. Sergio Osmeña, Jr., then City Mayor of the City of Cebu, sometime in July, 1956, when their co-petitioners, except Mayor Ramon Duterte, were also given new appointments with increase in their salaries, by then Mayor Sergio Osmeña, Jr. Said appointments were allegedly predicated on the provisions of Section 21 of the Charter of the City of Cebu, to supersede the first named 57 petitioners' previous appointments extended to them by the Secretary of Public Works and Communications, duly approved by the Commissioner of Civil Service.

"The appointments of the petitioners made by then Mayor Sergio Osmeña, Jr., were thereafter submitted to the Bureau of Civil Service and the Executive Secretary for approval as required by law, but the same were disapproved (Exh. 'C' and Exh. '15'). The City Mayor of Cebu, in a letter dated October 22, 1957, asked for the reconsideration of the ruling of the Commissioner of Civil Service (Exh. 'D'), and the latter again denied to reconsider his opinion but reiterated his ruling disapproving the appointments extended to the petitioners by the Mayor of the City of Cebu (Exhs. 'E', 'E-1', 'E-2' and '15'). The City Mayor of Cebu then appealed the ruling of the Commissioner of Civil Service to the President of the Philippines who, through the Executive Secretary, disapproved also the said appointments (Exhs. 'F', '15' and '17'), Petitioners admitted having been paid of their salaries up to June 15, 1958, in spite of the order of the Auditor General disallowing said payment. In view of the denial of the Commissioner of Civil Service and the Executive Secretary to reconsider their rulings disapproving the appointments of the petitioners (except Hon. Ramon Duterte), and of the fact that the Auditor General, since November, 1957, ordered the suspension and disallowing to pass in audit the salaries of the petitioners under the appointments extended by then Mayor Sergio Osmeña, Jr., the present action was filed.

The petition prayed for judgment (1) directing the Bureau of Civil Service and the Executive Secretary to approve the appointments extended by the City Mayor of Cebu in their favor; (2) enjoining the Secretary of Public Works

and Communications and the Manager of the National Waterworks and Sewerage Authority from exercising the power of appointment over the personnel of the Osmena Waterworks System; (3) ordering the Auditor General and the City Auditor of Cebu to approve the payment of their salaries and promotions as authorized by the City Mayor of Cebu; (4) condemning the respondents, jointly and severally, to pay to the petitioners P200,000.00 as compensatory, moral and exemplary damages, P25,000.00 as attorney's fees and also the costs of the suit; and (5) such other reliefs as the Court may deem just, proper and equitable, including the issuance of a writ of preliminary mandatory injunction directing the Auditor General and the City Auditor of Cebu to pay the officers and employees of the Osmeña Waterworks System, pending termination of the case, their salaries and promotions for services actually rendered, meaning to approve the payments thereof. Petitioners, however, withdrew in open court their petition for the issuance of a writ of preliminary mandatory injunction.

In their separate answers, the respondents asserted in common that the petition states no valid and sufficient cause of action; that it is in violation of the doctrine of separation of powers in that it asks the court to intervene with the exercise of executive functions by the office of the President; and that the trial court is without jurisdiction to entertain the action it being in effect an appeal from the decision of the respondent Auditor General promulgated more than one month from the date the action was filed.

The lower court, after trial, dismissed the petition, declaring that the power to appoint the officers and employees of the Osmeña Waterworks System is lodged in the Secretary of Public Works and Communications by virtue of section 8 of Act 2009 creating the said system, and as expressly provided in paragraph 2, section 9 of Republic Act 1383 creating the National Waterworks and Sewerage Administration. The court further stated:

"It is urged by the petitioners that, upon humanitarian considerations, the petitioners who have religiously performed their respective tasks and rendered satisfactory service to the inhabitants of the City of Cebu deserve lenient consideration and regard for which reason they should be paid for their services. As a matter of justice and equity, the Court is of the view that the first 55 named petitioners who have been appointed officers and employees of the Osmena Waterworks System by virtue of the appointments made by the Secretary of Public Works and Communications, duly approved, be paid of their salaries according to the rates therein authorized. With respect to the 12 last named petitioners, namely: (1) Jorge Duterte, (2) Epifanio Aban, (3) Diosdado Abangan, (4) Julian Antiporta, (5) Bonifacio Cabellon, (6) Catalino Cardiente, (7) Vicente Durano, (8) Isidro Godinez, (9) Artemio LucenOj (10) Maximo Robles, (11) Aurelio Samson, and (12) Ricardo Zabala, who were appointed by the Mayor of the City of Cebu, they should also be paid by the City of Cebu their services actually rendered on the basis of the Minimum Wage Law up to the time they have been duly advised of the rulings of the Commissioner of Civil Service and the Executive Secretary disapproving their appointments. However, the City of Cebu, not being made a party hereto, cannot be reached by the effect of this pronouncement.

"On the other hand, it is also urged by the respondents upon this Court, in their counter petition, to grant injunctive reliefs: ordering the City Mayor of Cebu and other city officers concerned to turn over without further delay the administration, control and supervision and jurisdiction of the Osmeña Waterworks System to the National Waterworks and Sewerage Authority; to desist from further interfering with the affairs of the said system constituting acts of administration, jurisdiction, supervision and control thereof; prohibiting the Mayor of the City of Cebu from further exercising the power of appointment over the officers and employees of the Osmena Waterworks System, and from further disturbing the civil service status of the officers and employees thereof; and ordering the restoration to the Office of those officers and employees of the Osmeña Waterworks System who were unlawfully ousted, including Mr. Timoteo Y. Omay, Superintendent of the said System. The Court believes, however, that what is substantially asked by the respondents are matters which are incidental to and necessarily involved in that case now on appeal before the Supreme Court, and for that reason, it cannot entertain the same."

Failing in their motion for the reconsideration of the decision, the petitioners have appealed.

The Manager of the NAWASA, one of the respondents, also appealed, but only that portion of the decision where the court refused to entertain respondents' counter-petition for an order to have the administration, control and supervision and jurisdiction of the Osmeña Waterworks System transferred to the NAWASA, while the case *City of Cebu v. The National Waterworks and Sewerage Authority*, G. R. No. L-12892, was pending before this Court. It is needless to pass upon the appeal interposed by the said respondent as the case aforementioned was already decided by us on December 29, 1960. Declaring the Osmena Waterworks System to be a patrimonial property of the City of Cebu, in that decision, we reaffirmed our previous declaration in *City of Baguio v. NAWASA*, G. R. No. L-12032, August 31, 1959, of the unconstitutionality of Republic Act 1383, creating the NAWASA, insofar as it expropriates the waterworks systems in the various cities without providing for an effective payment of just compensation. Our ruling in these cases was clarified in the case of *Municipality of Carlota v. NAWASA*, G. R. No. L-20232, December 29, 1964 where it was held that jurisdiction, supervision and control of waterworks owned by the city may not be vested in the NAWASA without destroying the integrity of the city's right of dominion.

Petitioners' appeal hinges on this lone question: Who is the official vested by law with the power of appointment over the officers and employees of the Osmeña Waterworks System? Petitioner's contention that the Mayor of the City of Cebu possesses the power in question is based on section 1916 of the Revised Administrative Code, which reads, in part:

"In their respective districts, district engineers shall operate and maintain all municipal and provincial waterworks in accordance with the general regulations jointly issued by the Secretary of Interior and the Director of Public Works, and superintendents of waterworks, inspectors, plumbers, pump engineers, and all other employees as may be necessary for the proper operation and maintenance of these systems shall be under his direct supervision. Employees of the systems owned or administered by the province shall be appointed by him with the advice and consent of the provincial board and those of the mayor in accordance with section twenty one hundred and ninety nine as amended of the Administrative Code upon recommendation of the district engineer."

and section 21 of the Charter of the City of Cebu, Commonwealth Act 58, which states that "the Mayor shall appoint all other officers and employees of the city whose appointment is not otherwise provided for by law."

The above contention deserves scant consideration. The cited provision of the administrative code clearly refers to waterworks owned or administered by provinces and municipalities and does not include chartered cities. And the power of the city mayor under section 21 of the Cebu City charter applies only if the appointment is not otherwise provided by law. Section 30, Article IV of the City Charter of Cebu states that the City Engineer shall have the care and custody of the public system of waterworks and sewers, and all sources of water supply. In relation to the duties and functions of City Engineers in all chartered cities, Commonwealth Act 424 states:

"The City engineers of chartered cities shall be under the supervision and control of the Director of Public Works.

"The assistant engineers, superintendents and other employees as are from time to time provided for in appropriation ordinances of the city shall be appointed in accordance with existing laws governing the appointment of civil engineers, assistant civil engineers, and other personnel in the various engineering districts of the Bureau of Public Works in the provinces." (underlining supplied)

In *Enrique Morales v. City Engineer of the City of Cavite*, G. R. No. L-11665, December 29, 1960, where the power to appoint the employees of the Cavite Waterworks System was put at issue, this Court, thru Justice Dizon,

has expressed the opinion that Section 79(d) of the Revised Administrative Code is the provision referred to in the above quotation (underlined portions) governing the appointment of personnel in the engineering districts of the Bureau of Public Works. Said section says:

"The Department Head, upon the recommendation of the Chief of the bureau or office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by law in the President of the Philippines, and may remove or punish them, except as especially provided otherwise, in accordance with the Civil Service Law. x x x

"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."

The conclusion was thus reached in that case that the power to appoint officers and employees of the Cavite Waterworks System is lodged in the Secretary of Public Works and Communications.

Since, by virtue of section 8, Act 2009, the law creating the Osmeña Waterworks System, "the Director of Public Works of the Philippines shall have exclusive charge and control of all work to be done and improvements to be made" under the said Act, and in view of the similarity in the provision of the charters of the cities of Cavite and Cebu regarding their Engineering Departments, We see no reason to deviate from the ruling laid down in the Cavite Waterworks case, *supra*.

It is noteworthy that previous to the questioned appointments made by the Mayor of the City of Cebu to employees of the Osmeña Waterworks System in 1956, the City had recognized and acquiesced to the appointments extended by the Secretary of Public Works and Communications to such employees who were then receiving their salaries as authorized in said appointments.

In conclusion, We declare that it is the Secretary of Public Works and Communication who is empowered to appoint the officers and employees of the Osmeña Waterworks System. In this respect, and the declaration that the petitioners employees of the Osmeña Waterworks are entitled to salaries for services rendered (a) for those appointed by the Secretary of Public Works and Communications, at the rates therein authorized; and (b) for those appointed by the City Mayor, on the basis of the Minimum Wage Law, up to the time they have been duly advised of the disapproval of their appointments, We are affirming the decision of the lower court.

In conformity with the ruling laid down in a line of decisions where payment of back salaries to city employees was ordered although the city had not been made a party therein, We consider the City of Cebu a party in this action and, at this instance, liable for the payment of salaries of the Osmeña Waterworks for services actually rendered.

WHEREFORE, with the only modification that the City of Cebu is thus ordered to pay what is due the employees of the Osmeña Waterworks System, in accordance with the above pronouncement, the decision is hereby affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] See *Mission v. Del Rosario*, 30 O.G. 1571; *Abella v. Rodriguez*, 50 O.G. 3090; *Uy v. Rodriguez*, 50 O.G. 3574; *Briones v. Osmeña*, G.R. L-12536, Sept. 14, 1958; *Covacha v. Amante*, G.R. L-8387, May 25, 1956; *Meneses v. Lacson*, G.R. L-7025, October 31, 1955; and others. In the case of *Mangubat v. Osmeña*, G.R. No. L-12837, April 30, 1959, this Court stated:

"It is our considered opinion, therefore that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleading had been made."

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