

ANSBERTO P. PAREDES, PETITIONER, VS. ROSALIND B. ANTILLON, RESPONDENT.*G.R. No. L-19168. December 22, 1961*

Ponente: DIZON, J.

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Petition for prohibition, with preliminary injunction, filed by petitioner Ansberto P. Paredes against respondent Rosalind B. Antillon. In view of the facts alleged in the petition and the main relief prayed for therein, namely, "to declare petitioner legally and exclusively entitled to the Office of City Mayor, while Mayor Pablo Cuneta is absent and temporarily disabled to discharge his office, and to make the injunction permanent", this action is, in effect, one of Quo Warranto, and it shall be so considered.

It is not disputed that on November 20, 1961, Pablo Cuneta, the duly elected and incumbent Mayor of Pasay City, left the Philippines for Japan. On the same date and after Mayor Cuneta's departure, petitioner, the duly elected and incumbent Vice-Mayor of the same city, assumed the powers, duties, functions and prerogatives of the Mayor of Pasay City and caused to be served a circular upon all Department Heads of the Pasay City Government notifying them of that fact. Thereafter, however, petitioner was informed that, before leaving for Japan, Mayor Cuneta had issued under date of November 16, 1961, his own memorandum and had caused it to be served on all Department Heads of the Pasay City Government, designating respondent as "Acting Secretary to the Mayor and Office Caretaker of the Office of the Mayor" effective November 20 of the same year. The memorandum provided that all official and business transactions requiring action from Mayor Cuneta should be coursed through said Acting Secretary to the Mayor, who shall act thereon according to the Mayor's instructions. Under this memorandum, respondent claimed the right to exercise the powers, duties and prerogatives of the Office of the Mayor of Pasay City and to act—as in fact she did in some instances—on official and business transactions of said office, according to previous instructions received from Mayor Cuneta.

The question before us, therefore, is whether under the facts above stated and existing laws applicable to Pasay City, petitioner was entitled to assume the office of, and act as Mayor of Pasay City during the absence of Mayor Cuneta, or the latter had legal authority to appoint respondent not only as Acting Secretary to the Mayor but as "Office Caretaker of the Office of the Mayor of Pasay City" for the duration of his official trip abroad, with authority to act on official and business matters submitted to the Mayor's office, according to previous instructions.

The pertinent legal provisions are the following:

(1) Article II, Section 8 of Republic Act No. 183, otherwise known as the Charter of Pasay City:

"* * * shall act as Mayor and perform the duties and exercise the powers of the Mayor, in the event of sickness, absence, or other permanent or temporary incapacity of the Mayor and he shall, when occupying the position of Mayor, be entitled to the salary and allowance of the Mayor. * * *."

(2) Section 3, paragraph 2 of Republic Act No. 2259, known as the Omnibus Law:

"The Vice-Mayor shall perform the duties and exercise the powers of the Mayor in the event of the latter's inability to discharge the powers and duties of his office."

(3) Section 7, paragraph 3 of Republic Act No. 2264, known as the Local Autonomy Law:

"In the event of temporary incapacity of the Mayor to perform the duties of his office on account of absence on leave, sickness or any temporary incapacity, the Vice-Mayor shall perform the duties and exercise the powers of the Mayor, except the power to appoint, suspend or dismiss employees."

Respondent claims that the above provisions of Republic Act No. 183 had been repealed by those of Republic Act No. 2264 above-quoted, and attempts to make a distinction between the two legal provisions by stating that while the former provided that the Vice-Mayor of Pasay City shall act as Mayor etc. etc. in the event of "sickness, absence, or other permanent or temporary incapacity of the Mayor", the latter Act provides that the Vice-Mayor may do so only in the event of "temporary incapacity of the mayor to perform the duties of his office on account of absence on leave, sickness or any other temporary incapacity, * * *". From this respondent further draws the conclusion that the "temporary incapacity" mentioned in the law "should be related to, caused by and on account of absence on leave, sickness * * *".

We do not deem it necessary to decide for the present the question of the alleged repeal of the provisions of Article II, Section 8 of Republic Act No. 183 by those of Section 7, paragraph 3 of Republic Act No. 2264 for the reason that, in our opinion, whether we decide the question at issue in the light of the provisions of either Act or in those of Republic Act No. 2259, the Vice-Mayor of Pasay City is entitled to assume the powers, duties and prerogatives of the Office of the Mayor of said city if the Mayor is "effectively absent".

It must be admitted that the word "absence" used in the pertinent legal provisions is a fair example of words which may have one meaning in their ordinary employment and a materially different or modified one in their legal sense. It is indeed a difficult if not an impossible task to lay down a rule that could apply to all cases, defining the meaning of "absence", but the weight of authority seems to be that under the legal provisions authorizing a Municipal or City Vice-Mayor to discharge the duties of the Mayor in the "absence" of the latter, said term must be reasonably construed, and so construed means "effective" absence. (*Gelinas vs. Fugere*, 180 A. 346, 351, 55 R. I. 225; *Watkins vs. Mooney*, 71 S. W. 622, 624, 114 Ky 646 quoted with approval in *Grapilon vs. Municipal Council of Carigara, Leyte*, 112 Phil., 24). By "effective" absence is meant one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office.

Considering that Mayor Cuneta left the territorial jurisdiction of the Philippines on November 20, 1961 for Japan to remain there at least for a number of days, one cannot but conclude that, during the period of absence, he was "effectively" absent, for it would be preposterous to claim that any municipal or city official of the Philippines may lawfully continue to exercise or discharge the powers, duties and prerogatives of his office even while in a foreign country. That he was there on official business or with the approval of a superior officer is quite immaterial.

That Mayor Cuneta considered himself disabled to act on official and business transactions of his office during his absence is clearly inferable from the fact that, before he left for Japan, he designated respondent as "Caretaker" of his office to act on such matters in accordance with previous instructions given to her. This setup or arrangement—a sort of government by remote control—is not authorized by any law applicable to Pasay City.

In passing, it must be stated that our decision in *Grapilon vs. Municipality of Carigara, Leyte* (Supra) does not apply to the present case for the reason that while the incumbent Mayor in the former never left the Philippines, but left Carigara exclusively to transact official business in the City of Manila, which was the seat of the national government, it is admitted in the present case that Mayor Cuneta left the Philippines for Japan.

Wherefore, judgment is hereby rendered declaring petitioner to be legally and exclusively entitled to assume the office of City Mayor, Pasay City, during the absence of Mayor Pablo Cuneta and for the period of his stay outside the Philippines. With costs against respondent.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and De Leon, JJ., concur.

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