

RODULFO C. NIERE, PETITIONER, VS. HONORABLE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH II, JOSE K. QUIAMBAO, AND JAIME PARROCO, CITY TREASUR-ER OF LA CARLOTA CITY, RES...

G.R. No. L-30324. November 29, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner Rodulfo C. Niere files this petition for review on certiorari seeking the reversal of the decision dated December 28, 1968 of the respondent Court.

It is undisputed that La Carlota City was created by Republic Act No. 4585 enacted on June 19, 1965. Petitioner Rodulfo C. Niere is a Civil Service eligible, having passed the Board Examinations for Civil Engineers in August, 1960 with a rating of 71.98%. He entered the government service on October 3, 1960 as a civil engineer aide in the District Engineer's Office at Bacolod City at P4.00 a day until he was given a permanent appointment as such on December 1, 1961 at P2544.00 per annum. He was promoted on November 16, 1962 as junior civil engineer; on September 9, 1963, as associate civil engineer; and on October 28, 1964 as civil engineer. On January 3, 1966, he was appointed city engineer of La Carlota City by then City Mayor Jaime Marino pursuant to the provisions of Section 21 of Republic Act No. 4585, which appointment was endorsed to the Commissioner of Civil Service, who approved the same on January 10, 1966. Petitioner thereafter assumed office as such city engineer of La Carlota City.

After the enactment on July 17, 1967 of the Decentralization Act, otherwise known as Republic Act No. 5185, private respondent Jose K. Quiambao was appointed on May 14, 1968 by the President of the Philippines as city engineer of La Carlota City, upon recommendation of the Commissioner of Public Highways, who, on June 17, 1968, officially informed herein petitioner of said appointment of private respondent Quiambao, which appointment was duly confirmed by the Commission on Appointments, and directed petitioner to turn over the office to respondent Quiambao, who likewise on the same day, June 17, 1968, advised petitioner that he was assuming as city engineer of La Carlota City.

In reply to petitioner's motion for reconsideration of the confirmation of respondent Quiambao, the Secretary of the Commission on Appointments, in a letter dated June 21, 1968, informed the petitioner that his said motion was filed beyond the reglementary period and that his sole remedy is to file quo warranto proceedings in court.

Private respondent Quiambao graduated cum laude from the Silliman University in 1957 with a degree of Bachelor of Science in Civil Engineering and passed the Board Examinations the same year with a rating of 82.4%. He entered the government service in 1957 while he was not yet a registered engineer in the City Engineer's Office of Dumaguete City, then as associate engineer in 1965 in the same office, from which he was promoted, upon recommendation of the Commissioner of Public Highways as heretofore intimated, to the position of City Engineer of La Carlota City effective May 14, 1968.

Petitioner claims that he was legally appointed by the City Mayor of La Carlota City under Section 21 of Republic Act No. 4585.

On the other hand, respondents maintain that the position of city engineer, created in the Charter of La Carlota City (Secs. 19 & 29, R.A. No. 4585) which was enacted on June 19, 1965 and therefore already existing at the time of the appointment of petitioner on January 3, 1966, can be filled up only by appointment of the President of the Philippines with the confirmation of the Commission on Appointments under Section 4 of Republic Act No. 5185, which expressly excepts the city engineer from the appointing authority of the city mayor.

Section 21 of Republic Act No. 4585 provides thus:

"Appointment and removal of officials and employees. -- The mayor shall appoint the city treasurer, the city health officer, the chief of police and fire department, and other heads and other employees of such city department as may be created. Said officers shall not be suspended nor removed except in the manner and for causes provided by law: Provided, That appointments of heads and other employees of the city shall be limited to civil service eligibles as may from time to time be certified as such by the Commissioner of Civil Service."

Section 4 of Republic Act No. 5185 reads thus:

"The City Assessor, City Agriculturist, City Chief of Police and City Chief of Fire Department and other heads of offices entirely paid out of city funds and their respective assistants or deputies shall, subject to civil service law, rules and regulations, be appointed by the City Mayor; Provided, however, that this section shall not apply to Judges, Auditors, Fiscals, City Superintendents of Schools, Supervisors, Principals, City Treasurers, City Health officers and City Engineers."

Section 10(3) of Article VII of the 1935 Constitution states:

"The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments."

The petition should be dismissed and the decision of the court a quo must be affirmed.

I

House Bill No. 9711, which became Republic Act No. 4585, originally expressly included the city engineer as one of those whom the city mayor can appoint under Section 21 of Republic Act No. 4585, but during the period of amendment in the Senate, the position of said engineer was deleted in the final draft of Section 21. This fact clearly indicates that the intention of the Legislature was to exclude from the appointing power of the mayor the position of the city engineer. This is not an amendment purely on a matter of form; because nothing could be more substantial than the vesting of a power to appoint such an important city official as the city engineer. Petitioner's assertion that Senator Tolentino stated that this amendment is merely one of form is not accurate; because the records of the Senate session during the period of amendments, as quoted by petitioner himself, show that:

"THE PRESIDENT PRO TEMPORE. We are in the period of amendments.

"SENATOR TOLENTINO. There are committed amendments, Mr. President, embodied in the committee Report. Some of them are matters of form. The other refers to the allotment of collection of taxes. I move that these committee amendments be approved.

"THE PRESIDENT PRO TEMPORE. Is there any objection? (Silence) The Chair hears none. The motion is approved." (P. 20 of Petition; p. 30, rec.; p. 42, petitioner's brief).

The Committee amendments included:

"3. Page 33, line 6

"Delete the following:

'the city engineer,

the city attorney.'"

(P. 21 of Petition; p. 31, rec.; p. 43, petitioner's brief).

As aforequoted, Senator Tolentino was careful or deliberate in stating that some, not all, of the amend-ments were matters of form. Neither did he refer expressly to the deletion of the words city engineer from Section 21 of the Charter of La Carlota City as purely a formal amend-ment. If Congress wanted to authorize the city mayor to appoint all heads and employees of city department, it could have easily re-phrased Section 21 of the City Charter to that effect. That this is a material modification is underscored by the fact that the City Charters of Toledo, Cotabato, Kanlaon, Dapitan, San Carlos, Gingoog, Davao, Tacloban, Silahis, Bago, Bacolod, Cebu, Legaspi and Roxas or Republic Acts Nos. 2688, 2364, 3445, 3811, 2643, 2668, 3028, 3068, 4382, 3857, 2234 and 603 expressly vest the power to appoint the city department heads, including the city engineer, in the President of the Philippines, who is the repository of the appointing power by express constitutional conferment (Sec. 10(3), Art. VII, 1935 Constitution; see also Sec. 13, Art. IX, 1973 Constitution).

II

The clear legislative intendment in excepting the engineer from the appointing authority of the city mayor under Section 21 of the Charter of La Carlota City is evident from the phraseology of the same. Said section expressly limits the appointing authority of the mayor to "the city treasurer, the city health officer, the chief of police and fire department, xx x" among the heads of the then duly created and existing departments, like the city engineer, of the city government of La Carlota City. The following phrase in said Section 21 "and other heads and other employees of the city departments as may be created," whom the mayor can appoint, refers to heads of city departments that may be created after the enact-ment of Republic Act No. 4585. Otherwise, as emphasized by respondents, the first conjunction "and" before "fire department" in the preceding clause of that same sentence of Section 21 would be a superfluity, and would have no meaning at all. As evident from the construction of the first sentence in said Section 21, the terminal phrase "as may be created" modifies the last clause "and other heads and other employees of such department," by all the principles of logic and syntax.

III

Since the city mayor under Section 21 is without authority to appoint the city engineer, this prerogative can only be exercised by the President of the Philippines, who, under Section 10(3) of Article VII of the 1935 Con-stitution, shall nominate with the consent of the Commis-sion on Appointments "all other officers of the government whose appointments are not herein otherwise provided for"; because We ruled in *Ramos vs. Alvarez* (97 Phil. 844, 849) that when a statute does not specify how an officer is to be appointed, the appointment must be made by the Presi-dent with the consent of the Commission on Appointments.

The appointing power is essentially the exclusive prerogative of the President. Consequently, any diminution in its scope must be clear and unequivocal. This test is not met by Section 21 of Republic Act No. 4585 so as to remove the power to appoint the city engineer of La Carlota City from the residual power of appointment vested in the President by Section 10(3) of Article VII of the 1935 Constitution.

Hence, the appointment of petitioner as city engineer by then city mayor of La Carlota City is illegal and therefore null and void. However, as conceded by respondents, petitioner was a de facto city engineer during the period of time that he performed the functions of the position until he was displaced by respondent Quiambao who was validly nominated by the President of the Philippines and confirmed by the Commission on Appointments (Cordilla vs. Martinez, 110 Phil. 24, 25; Rodriguez vs. Tan, 91 Phil. 724, 728; Luna vs. Rodriguez, 37 Phil. 866).

WHEREFORE, THE APPEALED DECISION IS HEREBY AFFIRMED, WITH COSTS AGAINST PETITIONER.

Makalintal, C.J., Ruiz Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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