

ANTONIO J. VILLEGAS, IN HIS CAPACITY AS CITY MAYOR OF MANILA, PETITIONER, VS. JUAN PONCE ENRILE, JOSE L. GAMBOA, ABELARDO SUBIDO, HUGODINO COSIN LIM, AND HERMOGENES DIEGO, IN TH...*G.R. No. L-29827. March 31, 1973*

Ponente: FERNANDO, J.

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In this certiorari and prohibition proceeding, petitioner Antonio J. Villegas, the then Mayor of the City of Manila, alert to the possibilities in the broader scope of authority granted him by the Decentralization Act,[1] would question the power of the Secretary of Justice[2] to appoint subordinates in the Office of the City Fiscal[3] in accordance with the Charter of the City of Manila.[4] It is the contention of petitioner that if the purpose of Section 4[5] of the Decentralization Act be given effect, then such competence is no longer lodged in respondent Secretary of Justice but in him as Mayor of the City of Manila. Unfortunately for him, the view thus advanced has been rejected in a recent decision, Villegas vs. Subido,[6] the principle of which certainly is controlling. The petition must fail.

The relevant facts as noted in the petition follow: "Pursuant to the provisions of Section 4 of the Decentralization Act quoted above, [Mayor Villegas] by letter dated January 10, 1968, requested respondent City Fiscal to furnish him a plantilla of all appointive employees of the City Fiscal's Office along with their individual service records. Petitioner made this request so that he can properly exercise the power of appointment over such subordinate personnel of said office as are paid entirely from city funds. * * *.[7] Respondent City Fiscal under letter dated January 31, 1968, * * * informed Petitioner Mayor that he could not accommodate Petitioner's request. According to Respondent City Fiscal, [the cited] provisions of the Decentralization Act * * * do not vest in the Petitioner the power of appointing personnel in his office even those paid entirely out of city funds." Respondent City Fiscal, so it was alleged, predicated his denial on an opinion of respondent Secretary of Justice.[8] Then came this paragraph: "Respondent Justice Secretary extended appointments to several persons to positions in the City Fiscal's Office, Manila, after January 1, 1968 contrary to and in violation of the provisions of the Decentralization Act." [9] It was next asserted that respondent Civil Service Commissioner approved such appointments.[10] After which, mention was made of this fact: "The services of the above-named appointees, and others not named, were paid and are being paid on vouchers and payrolls approved by Respondent Acting City Fiscal, certified as to the availability of funds by Respondent City Treasurer and allowed in audit by Re-spondent City Auditor." [11]

It is not surprising that in the answer of respondent Secretary of Justice as well as that of respondent City Fiscal after an admission of the relevant facts, the main special defense relied upon was the continuing effectivity of the provision of the Charter of the City of Manila, which negates such an assumption of authority on the part of petitioner. For them, the cited provision in the Decentralization Act does not change matters. In the language of the answer of respondent City Fiscal as well as respondent employees: "Answering respondents need only reiterate the opinion rendered by the Secretary of Justice dated January 22, 1968 * * * which holds the view that

the power to appoint subordinate personnel of the Office of the City Fiscal lies with the Secretary of Justice and not with the City Mayor. Contemporaneous construction placed upon the statute by the executive officers charged with its execution deserves great weight in the courts. * * * It must be pointed out that in exempting city fiscals from the enacting clause of Section 4 of the Decentralization Act which now empowers the Mayor in appointing certain heads, assistant heads of local offices and subordinates, the legislature chose to maintain the status quo and retain the power of appointments of fiscals and subordinate employees in the President and the Secretary of Justice, respectively. This must be so if the power of supervision and control of the Secretary of Justice over the Office of the City Fiscal is to be maintained * * *. For how else can the Secretary of Justice exercise supervision and control over the subordinate employees of the Office of the City Fiscal if the appointment of said subordinates were to be vested in or transferred to the mayor? Moreover, it could not have been the intention of Congress to dislocate the administrative machinery of government which has been placed on a unifunctional basis * * * wherein the department secretary is made the supervisory and policy-making official for bureaus and offices composing the different departments * * *." [12]

In the perspective thus supplied, even without the controlling authority of *Villegas vs. Subido*, it would clearly appear that the position taken by petitioner is not legally sound. With the authoritative character of such a decision, however, no doubt need be entertained as to its lack of merit. As noted at the outset, the petition must be dismissed.

- Before the enactment in 1967 of the Decentralization Act, there is no question in accordance with *Sangalang vs. Vergara* [13] that under the Charter of the City of Manila, the appointment of personnel in the Office of the City Fiscal is vested in the Secretary of Justice. As was therein stated in the opinion of Justice Barrera: "This being the case, the appointments of clerks in the Office of the City Fiscal come under Section 79(D) of the Revised Administrative Code which provides: 'Power to appoint and remove. — The Department Head, upon 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, * * *.'" [14] It is the contention of the petitioner as City Mayor that the above decision is no longer good law in view of Section 4 of the Decentralization Act. He ignored that such provision merely specifies that the City Assessor, City Agriculturist, City Chief of Police and the City Chief of Fire Department and other heads of offices entirely paid out of city funds and their respective assistants, or deputies shall be appointed by the City Mayor. Petitioner ignores that a proviso thereof explicitly excludes the City Fiscal. [15] The very provision of the law cited therefor hardly lends support for the pretension of petitioner. Even if a more expansive construction is warranted, petitioner has not made out a case unless the dictum of implied repeal be considered as calling for application. Precisely, however, *Villegas vs. Subido* [16] speaks to the contrary. It rejects such a view. As was therein set forth: "Much less is reversal of the lower court decision justified on the plea that the aforesaid provision in the Decentralization Act had the effect of repealing what is specifically ordained in the city charter. It has been the constant holding of this Court that repeals by implication are not favored and will not be so declared unless it be manifest that the legislature so intended. Such a doctrine goes as far back as *United States vs. Reyes*, a 1908 decision. It is necessary then before such a repeal is deemed to exist, that it be shown that the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnancy clear and convincing in character. The language used in the latter statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice. What is needed is a manifest indication of the legislative purpose to repeal." [17] As we decided then, so we do now.

- Petitioner perhaps would have been more hesitant to institute a proceeding of this nature and assert for himself a power for which no clear statutory authority exists had the decision in *Estrella vs. Orendain*, [18] which was promulgated only on February 27, 1971, already seen the light of day. It would be unfair then to

expect him to have anticipated such a view when he presented his petition before this Court on November 22, 1968. Nonetheless, the Estrella decision, the opinion being penned by Justice Barredo, makes manifest why the Office of the City Fiscal should be under the control of respondent Secretary of Justice. As a matter of fact, the ultimate basis of such competence is the constitutional power of the President vesting in him the control of all executive departments, bureaus or offices, as well as his duty to take care that the laws be faithfully executed. So Justice Barredo's opinion makes clear: "Importantly, it must be borne in mind that while it is true that a fiscal in exercising his discretion as to whether or not to prosecute somebody for an offense performs a quasi-judicial act, the functions that he discharges as an officer of the government are basically executive. He belongs to the executive department rather than to the judiciary. If indeed, in some instances, his salary is paid by the corresponding local governments, he does not thereby become a part thereof, for he is always within the ambit of the national authority when it comes to the supervision and control of his office, powers and functions. As a matter of fact, Section 83 of the Revised Administrative Code places him under the 'general supervision and control' of the Department of Justice together with other prosecuting officers and under Section 74 of the same Code, the Secretary of Justice as 'Department Secretary shall assume the burden and responsibility of all activities of the Government under his control and supervision.'* * * Consequently, the constitutional power of the President of control of all executive departments, bureaus or offices (Sec. 10, Art. VII, Constitution of the Philippines) should be considered as embracing his office. Withal, the prosecution of crimes is part of the President's duty to 'take care that the laws he faithfully executed' * * * and the Secretary of Justice is, by the nature of his office, the principal alter ego of the President in the performance of such duty, * * * whereas the working arms of the Secretary in this respect are the fiscals and other prosecuting officers. On the other hand, Section 79(c) of the Revised Administrative Code defines the extent of a department secretary's powers in the premises this wise: 'Section 76(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.'[19] Further there is this equally relevant portion: "Needless to say, any legislative attempt to impair or detract from the Secretary's authority, as herein-above defined, over city and provincial fiscals by confining the same to 'general administrative supervision' or otherwise by means of any description of similar import, cannot stand as it would be vulnerable to the attack of invalidity, since such limitation would of necessity have the effect of downgrading the President's constitutional prerogative of control, exercised thru the Secretary of Justice as already defined and delineated in emphatic terms by this Court in the precedent cases above cited. Indeed, why should any fiscal have the same degree of independence from the Executive as the judges who belong to another department of the government?"[20] What other conclusion then can possibly emerge in the light of the foregoing except that what is sought by petitioner is devoid of support in law.

WHEREFORE, this petition for certiorari and prohibition is dismissed. Without pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Barredo, Antonio, and Esguerra, JJ., concur.

Teehankee and Makasiar, JJ., took no part.

[1] Republic Act No. 5185 (1967).

[2] The department head at the time the petition was filed was Secretary Claudio Teehankee, now Associate Justice. Subsequently, in his place was appointed respondent Juan Ponce Enrile, who was sub-stituted as respondent and still designated in the caption, although the present occupant is Secretary Vicente Abad Santos.

[3] Thus City Fiscal Jose L. Gamboa was likewise named as respondent. The then Commissioner of Civil Service, Abelardo Subido was also included. The other respondents named are Hugodino Cosin Lim, Hermogenes Diego, Patrocinia C. Gaspar, Brigida B. Vergara, Conrado Azarraga, Emilia Queri, Manuel L. Asis and Gloria Alcaide.

[4] Republic Act No. 409 (1949) as interpreted in *Sangalang vs. Vergara*, L-16174, Oct. 30, 1962, 6 SCRA 295.

[5] The particular paragraph of Section 4 of the Decentralization Act reads as follows: "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 Mayors: [Provided, however,] That this section shall not apply to Judges, Auditors, Fiscals, City Superintendents of Schools, Supervisors, Principals, City Health Officers and City Engineers."

[6] L-31711, Sept. 30, 1971, 41 SCRA 190.

[7] Petition, pars. 4-5.

[8] *Ibid*, par. 6.

[9] *Ibid*, par. 7. Among such appointments according to Petitioner are those of Gloria L. Alcaide, Laborer, January 29, 1968; Patrocinia C. Gaspar, Supervising Budget Clerk, March 1, 1968; Brigida B. Vergara, Senior Clerk, March 1, 1968; Emilia Queri, Clerk II, March 1, 1968; Conrado Azarraga, Clerk II, March 1, 1968 and Manuel L. Asis, Clerk II, April 16, 1968.

[10] *Ibid*, par. 8.

[11] *Ibid*, par. 9.

[12] Answer, 3-4.

[13] L-16174, Oct. 30, 1962, 6 SCRA 295.

[14] *Ibid*, 298-299.

[15] Section 4, Republic Act No. 5185.

[16] L-31711, Sept. 30, 1971, 41 SCRA 190.

[17] *Ibid*, 196-197. Twenty-five cases were cited in support of the above excerpt starting from *United States vs. Palacio*, 33 Phil. 208 (1916) to *National Power Corporation vs. Area*, L-23309, Oct. 31, 1968, 25 SCRA 931.

[18] L-19611, 37 SCRA 640.

[19] *Ibid*, 650-651.

[20] *Ibid*, 655.

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