

**AGUSTIN RAMOS, PETITIONER, VS. RAFAEL ALVAREZ,
RESPONDENT.***G.R. No. L-7870. October 31, 1955*

Ponente: REYES, A., J.

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This is a petition for quo warranto.

Juan S. Aritao, a member of the Liberal party, was elected third member of the Provincial Board of Negros Occidental in the general elections of November 13, 1951, but, before serving his full term, resigned his office when, on September 11, 1953, he filed his certificate of candidacy for congressman. To fill the vacancy left by Aritao, the then President of the Philippines, Honorable Elpidio Quirino, acting on the authority of Section 21(6) of the Revised Election Code and during the recess of the Congress, appointed Agustin Ramos, a Liberal, and Ramos assumed office shortly thereafter. In due time Ramos' interim appointment was submitted to the Commission on Appointments for confirmation; but before it could be confirmed, the new President of the Philippines, Hon. Ramon Magsaysay, nominated Rafael Alvarez for the same office, and the nomination was unanimously confirmed by the Commission in its session of May 5, 1954, after that body had rejected Ramos' appointment. Notified of the confirmation of his nomination and advised to qualify, Alvarez assumed office as third member of the Provincial Board of Negros Occidental despite vigorous opposition from Ramos, who thereafter filed the present petition in this Court to have himself declared legally entitled to the office and to have Alvarez ousted therefrom.

Petitioner contends (1) that he is still legally entitled to the office because his appointment was not subject to the consent or disapproval of the Commission on Appointments, and (2) that respondent has no title to the office because his appointment is illegal, being in violation of section 21 (b) of the Revised Election Code for the reason that he has ceased to be a member of the Liberal party and has not been recommended for appointment by its president

Respondent, on his part, contends (1) that petitioner's appointment was subject to the consent of the Commission on Appointments so that, in accordance with paragraph (4) of section 10, Article VII of the Constitution, it ceased to be effective upon disapproval by that body; (2) that respondent was, at the time of his appointment, a member of the Liberal party and was recommended for appointment by the Liberal mayors and the chairman of the local committees of the Liberal party of Negros Occidental and not opposed by the president, national directory or provincial directory of the party or by anyone of its members in the Commission; and (3) that, even assuming that respondent was not recommended by the Liberal party, his appointment would nevertheless be valid, because section 21(b) of the Revised Election Code is unconstitutional in so far as it , makes such recommendation a prerequisite to a presidential appointment, thereby depriving the Chief Executive of his right to choose his appointees.

These opposing contentions raise issues of fact as well as of law. But we find no need for delving into the factual

issues, seeing that the case may be adjudicated on the purely legal question of whether or not an appointment made by the President of the Philippines under section 21 (b) of the Revised Election Code is subject to the consent of the Commission on Appointments. If not subject to such consent, the appointment would not cease to be effective upon its disapproval by the Commission, with the result that petitioner would in that case still have title to the office and the consequent right to have respondent ousted therefrom. On the other hand, if the appointment is subject to the consent of the Commission, then by express provision of the Constitution (Art. VII, sec. 10, clause 4) it would cease to be effective upon its disapproval by that body, and, in that case the petitioner, with himself no longer entitled to the office, would have no right to insist on respondent's ouster

The aforementioned section 21(6) of the Revised Election Code, under which petitioner was appointed, reads:

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor."

Undoubtedly the position of third member of the Provincial Board is among the offices which, in case of vacancy, the President may fill by appointment under this provision. The only question is whether the appointment is among those required by the Constitution to have the consent of the Commission on Appointments.

The pertinent provision of the Constitution reads:

"(3) 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." (Par. (3) of section 10, Article VII.)

Under this constitutional provision, there are four groups of officers that the President shall appoint, namely:

First, the heads of 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;

Second, all other officers of the Government whose appointments are not otherwise provided for in the Constitution;

Third, those whom the President may be authorized by law to appoint; and

Fourth, inferior officers whose appointments the Congress has by law vested in the President alone.

The Constitution is explicit that for officers of the first, second and third groups the appointment made by the President shall be with the consent of the Commission on Appointments. It is only in the case of the fourth group, that is, of inferior officers whose appointment is by law vested "in the President alone" that such consent is not required. Now, does the third member of the provincial board belong to this fourth group?

We may, for the purposes of this question, assume that the third member of the provincial board is an inferior officer whose appointment the Congress may by law vest in the President alone. But the question still remains as to whether the Congress has done just that, that is to say, whether the Congress has vested the authority to appoint in the President alone. Examining the provision of section 21(b) of the Revised Election Code, we find that while it says that the President shall make the appointment, it does not say that the appointment is not to be subject to the consent of the Commission on Appointments, that is, that it is to be made by the President alone. Such being

the case, the President's appointment must be deemed subject to the general requirement that the same is to be with the consent of the Commission on Appointments. In other words, a person appointed by the President under section 21 (b) of the Revised Election Code would fall under the third group of officers mentioned in paragraph (3) of section 10, Article VII of the Constitution, namely "those whom he (the President) may be authorized by law to appoint" and, therefore, subject to the requirement that the appointment shall be with the consent of the Commission on Appointments. Thus, in the United States, under a constitutional provision similar to ours, the general rule is that "when a statute does not specify how an officer is to be appointed, it must be by the President by and with the consent of the Senate. Civil Service Commission-Chief Examiner, 1886, 18 Op. Atty. Gen. (U. S.) 409. See also, Civil Service Bill, 1883, 17 Op. Atty. Gen. (U. S.) 504; Appointment of Assistant Secretary of State, 1853, 6 Op. Atty. Gen. (U. S.) 1" (U. S. C. A. Constitution, Art. 1 to 7, p. 367).

Our attention has been drawn to a passage in Francisco's Revised Election Code, 1947 ed., p. 39, wherein, in giving the history of the enactment of this particular provision of the Election Law, the author narrates that the provision in its present form was the result of an amendment introduced by Senator Imperial intended to do away "with the consent of the Commission on Appointments" in the case of appointments to elective provincial offices so long as the appointee belongs to the political party of the officer whom he is to replace and is recommended by said party. But while that may have been the intention of the proponent of the amendment in the Senate, the intention was not given adequate expression in the text of the amendment, and we cannot assume that his colleagues in the Senate or the members of the House of Representatives approved the amendment with that same intention. As Sutherland says,

"Statements by individual members of the legislature as to the meaning of provisions in a bill subsequently enacted into law, made during the general debate on the bill on the floor of each legislative house following its presentation by a standing committee, are generally held to be inadmissible as an aid in construing the statute. Legislative debates are 'expressive of the views and motives of individual members, and are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body.' '* * * it is impossible to determine with certainty what construction was put upon an act by the members of the legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other * * *.'" (2 Sutherland Statutory Construction, 499-501.)

For one thing, the law is already clear as it is. It is devoid of any ambiguity and gives no room for doubt. The doubt arises only from the attempt to read into it something that is not there. The law in express terms authorizes the President to make appointments to fill vacancies in certain elective local offices under the conditions therein specified, but it does not say that the authority to make such appointments is vested "in the President alone." The appointees, therefore, come squarely under that group of officers whom the President may be authorized by law to appoint, so that their appointment is subject to the consent of the Commission on Appointments. To hold that a statutory provision authorizing the President to appoint certain officers therein specified may be construed as dispensing with the consent of the Commission on Appointments even when the provision does not expressly say that the appointment is vested in the President alone, would practically nullify or write off the constitutional requirement that the President shall, with the consent of the Commission on Appointments, appoint "those whom he may be authorized by law to appoint."

In view of the foregoing, it is our opinion that petitioner's appointment as third member of the provincial board of Occidental Negros was subject to the consent of the Commission on Appointments, so that his right to the office ceased when his appointment was rejected by the Commission. Having no legal title to the office, petitioner has no right to insist on respondent's ouster. For a public office is created by law and its usurpation or unlawful exercise is the concern primarily of the State, so that the latter, as a rule, is the party called upon to bring the

action for such usurpation or unlawful exercise of an office. And while a person claiming to be entitled to the public office usurped or unlawfully exercised by another is by section 6 of Rule 68 of the Rules of Court permitted to bring an action therefor in his own name, still the plaintiff in such case will succeed only when he proves his right to the office in dispute. (Austria vs. Amante, 45 Off. Gaz., No. 7, p. 2809; Nueno et al. vs. Angeles, 42 Off. Gaz., No. 8, p. 1868; Acosta vs. Flor, 5 Phil., 18.)

Wherefore, the writ prayed for is denied. With costs.

Bengzon, Padilla, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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