

**GOVERNOR RODOLFO C. FARINAS AND AL NACINO, PETITIONERS,
VS. MAYOR ANGELO M. ARBA, VICE MAYOR MANUEL S. HERNANDO,
AND EDWARD PALAFOX, RESPONDENTS.**

G.R. No. 116763. April 19, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

The question in this case is: In case of a permanent vacancy in the Sangguniang Bayan caused by the cessation from office of a member who does not belong to any political party, who can appoint the replacement and in accordance with what procedure?

This case arose from the following facts:

Carlito B. Domingo was a member of the Sangguniang Bayan of San Nicolas, Ilocos Norte. On March 24, 1994, he resigned after going without leave to the United States.

To fill the vacancy created by his resignation, the mayor, respondent Angelo M. Barba, recommended to the Governor of the province, petitioner Rodolfo C. Fariñas, the appointment of respondent Edward Palafox.

A similar recommendation for the appointment of Edward Palafox was made by the Sangguniang Bayan of San Nicolas but the recommendation was made to Mayor Barba. The resolution, containing the recommendation, was submitted to the Sangguniang Panlalawigan of Ilocos Norte purportedly in compliance with §56 of the Local Government Code (R.A. No. 7160).[1]

The Sangguniang Panlalawigan, purporting to act under this provision of the Local Government Code, disapproved the resolution "for the reason that the authority and power to appoint Sangguniang Bayan members are lodged in the Governor, and therefore, the Resolution should be addressed to the Provincial Governor." Accordingly, the Sangguniang Panlalawigan recommended to the Governor the appointment of petitioner Al Nacino, vice Carlito Domingo, as member of the Sangguniang Bayan of San Nicolas. On June 8, 1994, petitioner Governor appointed petitioner Nacino and swore him in office that same day.

On the other hand, respondent Mayor Barba appointed respondent Edward Palafox to the same position on June 8, 1994. The next day, June 9, 1994, respondent Palafox took his oath as member of the Sangguniang Bayan.

On June 14, 1994, petitioners filed with the Regional Trial Court of Ilocos Norte a petition for quo warranto and prohibition, entitled "Governor Rodolfo C. Fariñas and Al Nacino v. Mayor Angelo M. Barba, Vice Mayor Manuel S. Hernando, Jr. and Edward D. Palafox."

On July 8, 1994 the trial court rendered its decision, upholding the appointment of respondent Palafox by respondent Mayor Barba. It held:

Under the facts and circumstances as shown clearly in the case, there is no doubt the law that is applicable is sub-section "C" of Section 45 of Republic Act No. 7160 otherwise known as the Local Government Code of

1991 which provides:

In case the permanent vacancy is caused by a Sanggunian Member who does not belong to any political party, the Local Chief Executive shall upon the recommendation of the Sanggunian concerned, appoint a qualified person to fill the vacancy.

. . . Inasmuch as the permanent vacancy is in the Sanggunian Bayan of San Nicolas, Ilocos Norte, it is the Sanggunian concerned referred to in the law which recommends the appointment to fill the vacancy. . . . This being so, the Local Chief Executive referred to in sub-section "C" of Section 45 of Republic Act No. 7160 is the Municipal Mayor of San Nicolas, Ilocos Norte.

It cannot be denied that the Governor has the authority to appoint a qualified person to fill the vacancy in the Sanggunian Bayan caused by resignation of a member thereof as that is vested in him or her by the Provision of No. 2, Sec. 45 of Republic Act No. 7160. To the mind of the court that authority is not vested in him or her where the permanent vacancy is caused by a Sanggunian Member who does not belong to any political party as that authority is specifically vested upon the Local Chief Executive upon recommendation of the Sanggunian concerned as per sub-section "C" of Section 45 of the same Republic Act No. 7160. Under No. 2 of Sec. 45 aforementioned the law does not require a recommendation for the appointment of Sanggunian Bayan Member to fill a permanent vacancy either from the Sangguniang Panlalawigan or from the Sanggunian Bayan. . . . As such there can be no other person referred to as the Local Chief Executive having the authority to appoint other than the Municipal Mayor of the Municipality of the Sanggunian Bayan where there is permanent vacancy. This can be clearly inferred from the two (2) provisions of the law (No. 2 and sub-section C of Sec. 45 of Rep. Act No. 7160). While No. 2 of Sec. 45 specifically vests the power to appoint in the Governor, sub-section. C of Sec. 45, specifically vests the power to appoint in the Local Chief Executive. The Local Chief Executive specifically mentioned in said sub-section C of Sec. 45 is not the Governor, for there would have been no need for the law making body to have specifically stated in the law if it had intended that the Governor is that one and the same Local Chief Executive vested with power to appoint.

Petitioners filed a motion for reconsideration, but this was denied by the trial court on August 18, 1994. Hence this petition for review on certiorari.

Petitioners contend that the power to fill a vacancy in the Sangguniang Bayan, which is created as a result of the cessation from office of a member who does not belong to a political party, is vested in the provincial governor upon recommendation of the Sangguniang Panlalawigan.

The statutory provision in question is 45 of the Local Government Code of 1991 (R.A. No. 7160) which reads:

§45. Permanent Vacancies in the Sanggunian. (a) Permanent vacancies in the sanggunian where automatic successions provided above do not apply shall be filled by appointment in the following manner:

- (1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities;
- (2) The governor, in the case of the sangguniang panlungsod of component cities and the sangguniang bayan;
- (3) The city or municipal mayor, in the case of the sangguniang barangay, upon recommendation of the sangguniang barangay concerned.

(b) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired

term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor.

(c) In case the permanent vacancy is caused by a sanggunian member who does not belong to any political party, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

(d) In case of vacancy in the representation of the youth and the barangay in the sanggunian, said vacancy shall be filled automatically by the official next in rank of the organization concerned.

[1] Since the vacancy in this case was created by a Sanggunian member who did not belong to any political party, the specific provision involved is par. (c), to wit:

(c) In case the permanent vacancy is caused by a sanggunian member who does not belong to any political party, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

But who is the "local chief executive" referred? And which is the "sanggunian concerned"? With respect to the first ("local chief executive"), petitioners look to §45(a) for the answer and say that it is the governor, with respect to vacancies in the Sangguniang Panlungsod of component cities and Sangguniang Bayan, or the mayor with respect to vacancies in the sangguniang Barangay.

In support of this view, they cite, first of all, the following provision of the former Local Government Code (B.P. Blg. 337):

§50. Permanent Vacancies in the Local Sanggunians. -In case of permanent vacancy in the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, or sangguniang barangay, the President of the Philippines, upon recommendation of the Minister of Local Government, shall appoint a qualified person to fill the vacancy in the sangguniang panlalawigan and the sangguniang panlungsod; the governor, in the case of sangguniang bayan members; or the city or municipal mayor, in the case of sangguniang barangay members. Except for the sangguniang barangay, the appointee shall come from the political party of the sanggunian member who caused the vacancy, and shall serve the unexpired term of the vacant office.

and, second, the following provision of the present Code:

§63. Preventive Suspension - (a) Preventive suspension may be imposed:

- (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
- (2) By the governor, if the respondent is an elective official of a component city or municipality; or
- (3) By the mayor, if the respondent is an elective official of the barangay. . .

Reference to these provisions is appropriate not for the reason advanced by petitioners, i.e., that the power to appoint implies the power to remove, but because implicit in these provisions is a policy to vest in the President, the governor and the mayor in descending order the exercise of an executive power whether to appoint in order to fill vacancies in local councils or to suspend local officials. These provisions are in pan materia with §45.

To be sure the President of the Philippines can not be referred to as "local chief executive" in §45(c) but it is apparent that the phrase is a misnomer and that the choice of this phrase was simply dictated by the need to avoid,

for stylistic reasons, interminably repeating the officials on whom the power to appoint is conferred. Perhaps "authorities concerned" would have been a more accurate generic phrase to use.

For that matter, to follow private respondents' interpretation would be to run into a similar, if not greater, difficulty. For §45(a)(3) vests the power to fill vacancies in the Sangguniang Barangay in the mayor but the local chief executive of a barangay is not the mayor. It is the punong barangay. Yet "local chief executive" cannot be applied to the punong barangay without rendering §45(a)(3) meaningless. For then there would never be any occasion when the mayor, under this provision, can appoint a replacement for a member of the Sangguniang Bayan who for one reason or another ceases from office for reason other than the expiration of his term. And why should a vacancy in the Sangguniang Panlalawigan be filled by a different authority (the governor, according to this view) simply because the vacancy was created by a member who does not belong to a political party when, according to §45(a)(1), a vacancy created by a member who belongs to a political party must be filled by appointment by the President of the Philippines?

With reference to the phrase "sangguniang concerned" in §45(c), petitioners say it means, with respect to a vacancy in the Sangguniang Bayan, the Sangguniang Panlalawigan. Their reason is that under Sec. 61 of the Code, the power to investigate complaints against elective municipal officials is vested in the Sangguniang Panlalawigan:

§61. Form and Filing of Administrative Complaints -A verified complaint against any erring local elective official shall be prepared as follows:

(a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or a component city shall be filed before the office of the President;

(b) A complaint against any elective official of a municipality shall be filed before the sanggunian panlalawigan whose decision may be appealed to the Office of the President;

(c) A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory.

This interpretation is inconsistent with the fact that in filling vacancies in the Sangguniang Barangay it is the Sangguniang Barangay which under §45(a)(3) recommends the appointee, not the Sangguniang Panlungsod or the Sangguniang Bayan, which would be the case if petitioners' view were to prevail.

We think that the phrase "sanggunian concerned" in §45(c) should more properly be understood as referring to the Sanggunian in which the vacancy is created. This is in keeping with the policy implicit in §45(a)(3).

In other words, with the exception of the Sangguniang Barangay pars. (a) and (b) must be read as providing for the filling of vacancies in the various Sanggunians when these vacancies are created as a result of the cessation from office (other than expiration of term) of members who belong to political parties. On the other hand, §45(c) must be understood as providing for the filling of vacancies created by members who do not belong to any political party. Consequently, §45 must be construed to mean that -

I. Where the Permanent Vacancy is Caused by a Sanggunian Member belonging to a Political Party

A. Sangguniang Panlalawigan and Sangguniang Panlungsod of highly urbanized cities and independent component cities - The President, through the Executive Secretary, upon the nomination and certification of the political party to which the member who caused the vacancy belonged, as provided in §45(b).

B. Sangguniang Panlungsod of component cities and Sangguniang Bayan - The Governor upon the nomination and certification of the political party to which the member who caused the vacancy belonged, as provided in

Sec. 45(b).

II. Where the Vacancy is Caused by a Sanggunian Member Not Belonging to a Political Party

A. Sangguniang Panlalawigan and Sangguniang Panlungsod of highly urbanized and independent component cities - The President, through the Executive Secretary, upon recommendation of the Sangguniang Panlalawigan or Sangguniang Panlungsod as the case may be.

B. Sangguniang Panlungsod of component cities and Sangguniang Bayan - The Governor upon recommendation of the Sangguniang Panlungsod or Sangguniang Bayan as the case may be.

III. Where the Vacancy is Caused by a Member of the Sangguniang Barangay - City or Municipal Mayor upon recommendation of the Sangguniang Barangay.

There is only one rule governing appointments to the Sangguniang Barangay. Any vacancy therein caused by the cessation from office of a member must be made by the mayor upon the recommendation of that Sanggunian. The reason is that members of the Sangguniang Barangay are not allowed to have party affiliations.

Indeed there is no reason for supposing that those who drafted §45 intended to make the manner of filling vacancies in the Sanggunians, created by members who do not belong to any political party, different from the manner of filling such vacancies when created by members who belong to political party or parties. The provision for the first must approximate the provision for the second situation. Any difference in procedure must be limited to the fact that in the case of vacancies caused by those who have political affiliations there is a party which can nominate a replacement while there is none in the case of those who have no political affiliation. Accordingly, where there is no political party to make a nomination, the Sanggunian, where the vacancy occurs, must be considered the appropriate authority for making the recommendation, by analogy to vacancies created in the Sangguniang Barangay whose members are by law prohibited from having any party affiliation.

[2] Having determined that appointments in case of vacancies caused by Sanggunian members who do not belong to any political party must be made in accordance with the "recommendation" of the Sanggunians concerned where the vacancies occur, the next question is: Is the appointing authority limited to the appointment of those "recommended" to him? We think an affirmative answer must be given to the question. The appointing authority is not bound to appoint anyone recommended to him by the Sanggunian concerned. The power of appointment is a discretionary power. On the other hand, neither is the appointing power vested with so large a discretion that he can disregard the recommendation of the Sanggunian concerned. Since the recommendation takes the place of nomination by political party, the recommendation must likewise be considered a condition sine qua non for the validity of the appointment, by analogy to the provision of §45(b).

[3] The upshot of this is that in the case at bar, since neither petitioner Al Nacino nor respondent Edward Palafox was appointed in the manner indicated in the preceding discussion, neither is entitled to the seat in the Sangguniang Bayan of San Nicolas, Ilocos Norte which was vacated by member Carlito B. Domingo. For while petitioner Al Nacino was appointed by the provincial governor, he was not recommended by the Sangguniang Bayan of San Nicolas. On the other hand, respondent Edward Palafox was recommended by the Sangguniang Bayan but it was the mayor and not the provincial governor who appointed him.

WHEREFORE, the decision of the Regional Trial Court of Ilocos Norte, insofar as it dismisses petitioners' action for quo warranto and prohibition, is **AFFIRMED**, but for different reasons from those given by the trial court in its decision.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr.; Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Hermosisima, Jr.,

and Panganiban, JJ., concur.

Torres, Jr., J., took no part.

Francisco, J., on leave.

[1] Actually this provision only authorizes the Sangguniang Panlalawigan to review component city or municipal ordinances of all kinds and resolutions dealing with local development plans and public investment programs formulated by the local development councils. The resolution of the Sangguniang Bayan is obviously not of this nature, so a review of the same by the Sangguniang Panlalawigan was not required.

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