JOSE S. ANDAYA AND EDGARDO L. INCIONG, PETITIONERS, VS. REGIONAL TRIAL COURT, CEBU CITY, BRANCH 20, AND THE CITY OF CEBU, RESPONDENTS.

G.R. No. 126661. December 03, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari from a decision[1] of the Regional Trial Court, Cebu City, Branch 20, commanding petitioner Jose S. Andaya as Regional Director, Regional Police Command No. 7, to include P/Chief Inspector Andres Sarmiento in the list of five (5) recommendees to be submitted to the mayor from which list the mayor shall select the City Director, Cebu City Police Command (chief of police).

On January 3, 1996, the position of City Director, Cebu City Police Command (chief of police) became vacant after P/Supt. Antonio Enteria was relieved of command.

Sometime in January 1996, petitioner Andaya submitted to the City Mayor, Cebu City a list of five (5) eligibles for the mayor to choose one to be appointed as the chief of police of Cebu City. The mayor did not choose anyone from the list of five (5) recommendees because the name of P/Chief Inspector Andres Sarmiento was not included therein.

However, petitioner Andaya refused to agree to Mayor Alvin B. Garcia's request to include the name of Major Andres Sarmiento in the list of police officers for appointment by the mayor to the position of City Director (chief of police), Cebu City Police Command. Petitioner Andaya's refusal was based on his contention that Major Andres Sarmiento was not qualified for the position of City Director (chief of police), Cebu City Police Command, under NAPOLCOM Memorandum Circular No. 95-04 dated January 12, 1995, particularly Item No. 8, paragraph D thereof, which provides that the minimum qualification standards for Directors of Provincial/City Police Commands, include completion of the Officers Senior Executive Course (OSEC) and the rank of Police Superintendent.

Due to the impasse, on March 22, 1996, the City of Cebu filed with the Regional Trial Court, Branch 20, Cebu City, a complaint for declaratory relief with preliminary prohibitory and mandatory injunction and temporary restraining order against P/Chief Supt. Jose S. Andaya and Edgardo L. Inciong, Regional Director, National Police Commission.[2]

On April 10, 1996, petitioners filed with the trial court their respective answer to the complaint. Petitioners stated that the power to designate the chief of police of Cebu City (City Director, Cebu City Police Command) is vested with the Regional Director, Regional Police Command No. 7. However, the mayor is authorized to choose the chief of police from a list of five (5) eligibles submitted by the Regional Director. In case of conflict between the Regional Director and the mayor, the issue shall be elevated to the Regional Director, National Police Commission, who shall resolve the issue within five (5) working days from receipt and whose decision on the choice of the chief of police shall be final and executory. Thus, petitioners prayed for dismissal of the complaint

for lack of legal basis and failure to exhaust administrative remedies.[3]

On April 18, 1996, the trial court issued a writ of preliminary injunction against petitioner Jose S. Andaya enjoining him from replacing C/Insp. Andres Sarmiento as OIC Director or Chief of Police of the Cebu City Police Command by designating another as OIC Chief of Police or appointing a regular replacement for said officer, and, from submitting to the mayor a list of five (5) eligibles which did not include the name of Major Andres Sarmiento.[4]

On July 12, 1996, the trial court rendered decision in favor of respondent City of Cebu, the dispositive portion of which reads as follows:

> "WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered in favor of plaintiff as against defendants, declaring that P/CInsp. Andres Sarmiento is qualified under RA 6975 to be appointed as Chief Director or Chief of Police of the Cebu City Police Command and whose name must be included in the list of five (5) eligibles recommended as regular replacement to the position of the Chief of Police of said Cebu City Police Command.
>
> "The writ of preliminary prohibitory injunction issued in this case against defendants and their agents, or, representatives or any other persons acting for and in their behalf enjoining and preventing them from replacing P/CInsp. Andres Sarmiento as OIC Chief of Police of Cebu City Police Command by designating anyone from the eligibles recommended in the two (2) lists thereof submitted to Mayor Garcia or from any other list of said eligible recommendees for said position is hereby made permanent.
>
> "Let a permanent writ of preliminary mandatory injunction be issued against defendant Jose S. Andaya or his successor ordering the latter to include Major Andres Sarmiento in the list of five (5) eligible persons recommended for the replacement to the position of Chief of Police of Cebu City Police Command.
>
> "SO ORDERED.
>
> "Cebu City, July 12, 1996.
>
> "(s/t) FERDINAND J. MARCOS
> "Judge"[5]

In due time, petitioners filed with the trial court their joint motion for reconsideration[6] on the ground that the decision is contrary to Section 51 of Republic Act 6975 which only empowers the mayor to choose one (1) from the five (5) eligibles recommended by the Regional Police Director to be named chief of police. The mayor cannot superimpose his will on the recommending authority by insisting that his protégé be included in the list of five eligibles from which the chief of police is to be chosen.

On September 11, 1996, the trial court denied petitioners' motion for reconsideration ruling that no new matters had been raised therein.[7]

Hence, this petition[8] for review on certiorari on pure question of law.[9]

On June 11, 1997, we gave due course to the petition.[10]

At issue is whether or not the Mayor of Cebu City may require the Regional Director, Regional Police Command No. 7, to include the mayor's protégé in the list of five (5) eligibles to be recommended by the Regional Police Director to the mayor from which the mayor shall choose the City Director, City Police Command (chief of police) City of Cebu.

We resolve the issue against the position of the city mayor.

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Republic Act No. 6975, Section 51, gives authority to the mayor of Cebu City[11] to choose the chief of police from a list of five (5) eligibles recommended by the Regional Director, Regional Police Command No. 7.

The National Police Commission has issued Memorandum Circular No. 95-04, dated January 12, 1995, for the implementation of Republic Act No. 6975. It provides that among the qualifications for chief of police of highly urbanized cities are (1) completion of the Officers' Senior Executive Course (OSEC) and (2) holding the rank of Police Superintendent.

The mayor of Cebu City submits that Memorandum Circular No. 95-04 of the National Police Commission prescribing such additional qualifications is not valid as it contravenes the law.

We do not agree. Under Republic Act No. 6975, Section 51, the mayor of Cebu City shall be deputized as representative of the Commission (National Police Commission) in his territorial jurisdiction and as such the mayor shall have authority to choose the chief of police from a list of five (5) eligibles recommended by the Police Regional Director. The City Police Station of Cebu City is under the direct command and control of the PNP Regional Director, Regional Police Command No. 7, and is equivalent to a provincial office.[12] Then, the Regional Director, Regional Police Command No. 7 appoints the officer selected by the mayor as the City Director, City Police Command (chief of police) Cebu City. It is the prerogative of the Regional Police Director to name the five (5) eligibles from a pool of eligible officers screened by the Senior Officers Promotion and Selection Board, Headquarters, Philippine National Police, Camp Crame, Quezon City, without interference from local executives. In case of disagreement between the Regional Police Director and the Mayor, the question shall be elevated to the Regional Director, National Police Commission, who shall resolve the issue within five (5) working days from receipt and whose decision on the choice of the Chief of Police shall be final and executory.[13] As deputy of the Commission, the authority of the mayor is very limited. In reality, he has no power of appointment; he has only the limited power of selecting one from among the list of five eligibles to be named the chief of police. Actually, the power to appoint the chief of police of Cebu City is vested in the Regional Director, Regional Police Command No. 7. Much less may the mayor require the Regional Director, Regional Police Command, to include the name of any officer, no matter how qualified, in the list of five to be submitted to the mayor. The purpose is to enhance police professionalism and to isolate the police service from political domination.

Consequently, we find that the trial court erred in granting preliminary injunction that effectively restrained the Regional Director, Regional Police Command, Region 7, from performing his statutory function. The writ of preliminary injunction issued on April 18, 1996, is contrary to law and thus void. Similarly, the lower court's decision sustaining the City Mayor's position suffers from the same legal infirmity.

WHEREFORE, the Court GRANTS the petition and SETS ASIDE the decision of the Regional Trial Court, Branch 20, Cebu City, dated July 12, 1996, in Civil Case No. CEB-18545. In lieu thereof, the Court renders judgment upholding the sole discretion of the Regional Director, Regional Police Command No. 7, to submit to the mayor of Cebu City a list of five (5) eligibles from which the mayor shall choose the chief of police. In case of the mayor's refusal to make his choice within a given period due to disagreement as to the eligible nominees, the issue shall be submitted to the Regional Director, National Police Commission, whose decision shall be final.

No costs.

SO ORDERED.

Kapunan, and Ynares-Santiago, JJ., concur.
Davide, Jr., C.J., (Chairman), concurs but, like justice Puno on the ground of non-exhaustion of administrative

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remedies.
Puno, J., concurs but on the ground of non-exhaustion of administrative remedies.

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[1] In Civil Case No. CEB-18545, dated July 12, 1996, Judge Ferdinand J. Marcos, presiding, Rollo, pp. 12-20.

[2] Rollo, pp. 22-29.

[3] Rollo, pp. 33-37, 38-44.

[4] Rollo, pp. 45-53.

[5] Rollo, pp. 12-20.

[6] Rollo, pp. 55-56.

[7] Rollo. p. 61.

[8] Petition filed on September 27, 1996, Rollo, pp. 4-10.

[9] Under Circular No. 2-90, dated March 9, 1990.

[10] Rollo, p. 77.

[11] Provided the National Police Commission has deputized him as representative of the Commission.

[12] Napolcom Resolution No. 92-36, dated October 15, 1992, cited in Rollo, p. 36.

[13] Napolcom Memorandum Circular No. 93-013, Section 6.

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