

OSCAR BERMUDEZ, ARTURO A. LLOBRERA AND CLAUDIO L. DAYAON, PETITIONERS, VS. EXECUTIVE SECRETARY RUBEN TORRES, BUDGET SECRETARY SALVADOR ENRIQUEZ, JR., JUSTICE SECRETARY TEOFISTO ...

G.R. No. 131429. August 04, 1999

Ponente: VITUG, J.

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VITUG, J.:

The validity and legality of the appointment of respondent Conrado Quiaoit to the post of Provincial Prosecutor of Tarlac by then President Fidel V. Ramos is assailed in this petition for review on certiorari on a pure question of law which prays for the reversal of the Order,[1] dated 20 October 1997, of the Regional Trial Court (Branch 63) of Tarlac, Tarlac, dismissing the petition for prohibition and/or injunction and mandamus, with a prayer for the issuance of a writ of injunction/temporary restraining order, instituted by herein petitioners.

The occurrence of a vacancy in the Office of the Provincial Prosecutor of Tarlac impelled the main contestants in this case, petitioner Oscar Bermudez and respondent Conrado Quiaoit, to take contrasting views on the proper interpretation of a provision in the 1987 Revised Administrative Code. Bermudez, the First Assistant Provincial Prosecutor of Tarlac and Officer-In-Charge of the Office of the Provincial Prosecutor, was a recommendee[2] of then Justice Secretary Teofisto Guingona, Jr., for the position of Provincial Prosecutor. Quiaoit, on the other hand, would appear to have had the support of then Representative Jose Yap of the Second Legislative District of Tarlac.[3] On 30 June 1997, Quiaoit emerged the victor when he was appointed by President Ramos to the coveted office. Quiaoit received a certified xerox copy of his appointment and, on 21 July 1997, took his oath of office before Executive Judge Angel Parazo of the Regional Trial Court (Branch 65) of Tarlac, Tarlac. On 23 July 1997, Quiaoit assumed office and immediately informed the President, as well as the Secretary of Justice and the Civil Service Commission, of that assumption. Bermudez refused to vacate the Office of Provincial Prosecutor claiming that the original copy of Quiaoit's appointment had not yet been released by the Secretary of Justice.[4] Quiaoit, nonetheless, performed the functions and duties of the Office of Provincial Prosecutor by issuing office orders and memoranda, signing resolutions on preliminary investigations, and filing several informations before the courts. Quiaoit had since been regularly receiving the salary, RATA and other emoluments of the office.

On 17 September 1997, Bermudez and Quiaoit were summoned to Manila by Justice Secretary Guingona. The three met at the Department of Justice and, following the conference, Bermudez was ordered to wind up his cases until 15 October 1997 and to turn-over the contested office to Quiaoit the next day.

In his First Indorsement, dated 22 September 1997, for the Chief State prosecutor, Assistant Chief State Prosecutor Nilo Mariano transmitted the original copy of Quiaoit's appointment to the Regional State Prosecutor Carlos de Leon, Region III, at San Fernando, Pampanga. In turn, in his Second Indorsement, dated 02 October 1997, Regional State Prosecutor de Leon forwarded to Quiaoit said original copy of his appointment. On the basis of the transmittal letter of Regional State Prosecutor de Leon, Quiaoit, as directed, again so assumed office on 16

October 1997. On even date, Bermudez was detailed at the Office of the Regional State Prosecutor, Region III, in San Fernando, Pampanga.

In the meantime, on 10 October 1997, Bermudez together with his co-petitioners Arturo Llobrera and Claudio Dayaon, the Second Assistant Provincial Prosecutor and the Fourth Assistant Provincial Prosecutor of Tarlac, respectively, filed with the Regional Trial Court of Tarlac, a petition for prohibition and/or injunction, and mandamus, with a prayer for the issuance of a writ of injunction/temporary restraining order, against herein respondents, challenging the appointment of Quiaoit primarily on the ground that the appointment lacks the recommendation of the Secretary of Justice prescribed under the Revised Administrative Code of 1987. After hearing, the trial court considered the petition submitted for resolution and, in due time, issued its now assailed order dismissing the petition. The subsequent move by petitioners to have the order reconsidered met with a denial.

Hence, the instant recourse.

The core issue for consideration is whether or not the absence of a recommendation of the Secretary of Justice to the President can be held fatal to the appointment of respondent Conrado Quiaoit. This question would, in turn, pivot on the proper understanding of the provision of the Revised Administrative Code of 1987 (Book IV, Title III, Chapter II, Section 9) to the effect that-

"All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary."

Petitioners contend that an appointment of a provincial prosecutor mandatorily requires a prior recommendation of the Secretary of Justice endorsing the intended appointment citing, by analogy, the case of *San Juan vs. CSC*[5] where the Court held:

"x x x The DBM may appoint only from the list of qualified recommendees nominated by the Governor. If none is qualified, he must return the list of nominees to the Governor explaining why no one meets the legal requirements and ask for new recommendees who have the necessary eligibilities and qualifications.

The Provincial Budget Officer (PBO) is expected to synchronize his work with DBM."[6] (Emphasis supplied.)

Insisting on the application of *San Juan*, petitioners call attention to the tenor of Executive Order No. 112[7] -

"Section 1. All budget officers of provinces, cities and municipalities shall be appointed henceforth by the Minister of Budget and Management upon recommendation of the local chief executive concerned x x x." -

that, they claim, can be likened to the aforequoted provision of the Revised Administrative Code of 1987. Respondents argue differently.

The legislative intent is, of course, primordial. There is no hard-and-fast rule in ascertaining whether the language in a statute should be considered mandatory or directory, and the application of a ruling in one particular instance may not necessarily be apt in another[8] for each must be determined on the basis of the specific law in issue and the peculiar circumstances attendant to it. More often than not, the problem, in the final analysis, is firmed up and addressed on a case-to-case basis. The nature, structure and aim of the law itself is often resorted to in looking at the legislative intent. Generally, it is said that if no consequential rights or liabilities depend on it and no injury can result from ignoring it, and that the purpose of the legislature can be accomplished in a manner other than that prescribed when substantially the same results can be obtained, then the statute should be regarded merely as directory, rather than as mandatory, in character.[9]

An "appointment" to a public office is the unequivocal act of designating or selecting by one having the authority therefor of an individual to discharge and perform the duties and functions of an office or trust.[10] The appointment is deemed complete once the last act required of the appointing authority has been complied with and its acceptance thereafter by the appointee in order to render it effective.[11] Appointment necessarily calls for an exercise of discretion on the part of the appointing authority.[12] In *Pamantasan ng Lungsod ng Maynila vs. Intermediate Appellate Court*,[13] reiterated in *Flores vs. Drilon*,[14] this Court has held:

"The power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. It is a prerogative of the appointing power x x x"[15]

Indeed, it may rightly be said that the right of choice is the heart of the power to appoint.[16] In the exercise of the power of appointment, discretion is an integral part thereof.

When the Constitution[17] or the law[18] clothes the President with the power to appoint a subordinate officer, such conferment must be understood as necessarily carrying with it an ample discretion of whom to appoint. It should be here pertinent to state that the President is the head of government whose authority includes the power of control over all "executive departments, bureaus and offices." Control means the authority of an empowered officer to alter or modify, or even nullify or set aside, what a subordinate officer has done in the performance of his duties, as well as to substitute the judgment of the latter,[19] as and when the former deems it to be appropriate. Expressed in another way, the President has the power to assume directly the functions of an executive department, bureau and office.[20] It can accordingly be inferred therefrom that the President can interfere in the exercise of discretion of officials under him or altogether ignore their recommendations.[21]

It is the considered view of the Court, given the above disquisition, that the phrase "upon recommendation of the Secretary," found in Section 9, Chapter II, Title III, Book IV, of the Revised Administrative Code, should be interpreted, as it is normally so understood, to be a mere advise, exhortation or indorsement, which is essentially persuasive in character and not binding or obligatory upon the party to whom it is made.[22] The recommendation is here nothing really more than advisory in nature.[23] The President, being the head of the Executive Department, could very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority, and in so opting, he cannot be said as having acted beyond the scope of his authority.

The doctrine in *San Juan*, relied upon by petitioners, is tangential. While the tenor of the legal provision in Executive Order No. 112 has some similarity with the provision in the 1987 Administrative Code in question, it is to be pointed out, however, that *San Juan*,[24] in construing the law, has distinctively given stress to the constitutional mandate on local autonomy; thus:

"The issue before the Court is not limited to the validity of the appointment of one Provincial Budget Officer. The tug of war between the Secretary of Budget and Management and the Governor of the premier province of Rizal over a seemingly innocuous position involves the application of a most important constitutional policy and principle, that of local autonomy. We have to obey the clear mandate on local autonomy. Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

"x x x x x x x x x

"When the Civil Service Commission interpreted the recommending power of the Provincial Governor as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. If the DBM Secretary jealously hoards the entirety of budgetary powers and ignores the right of local governments to develop self-reliance and resoluteness in the handling of their own funds, the goal of meaningful local

autonomy is frustrated and set back." [25]

The Court there has explained that the President merely exercises general supervision over local government units and local officials; [26] hence, in the appointment of a Provincial Budget Officer, the executive department, through the Secretary of Budget and Management, indeed had to share the questioned power with the local government.

In the instant case, the recommendation of the Secretary of Justice and the appointment of the President are acts of the Executive Department itself, and there is no sharing of power to speak of, the latter being deemed for all intents and purposes as being merely an extension of the personality of the President.

WHEREFORE, the petition is DENIED. No costs.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Per Judge Arsenio P. Adriano.

[2] Annex "D," Petition, Rollo, p. 40.

[3] Memorandum of Appeal for Petitioners-Appellants, pp. 14-15.

[4] Prior to the release of the original copy of Quiaoit's appointment, then Justice Secretary Guingona wrote a letter addressed to then President Ramos which reads:

"Dear Mr. President:

"This has reference to the appointment of Atty. Conrado T. Quiaoit as Prosecutor III (Provincial Prosecutor) of the Provincial Prosecution Office of Tarlac, Region III.

"It has been the practice in the appointment of prosecutors for the Office of the President to consult this Department on the most qualified candidate for the position on the basis of performance, length of service and rank. When the position of the Provincial Prosecutor of Tarlac became vacant, we have expressly recommended Prosecutor Oscar V. Bermudez to the position being the most qualified candidate based on the foregoing criteria. We are greatly concerned and disturbed therefore when that Office has appointed Atty. Quiaoit, without our comment or recommendation.

"We would like also to convey to the Office of the President the adverse sentiments from the Office of the Provincial Prosecution Office of Tarlac generated by the appointment of Atty. Quiaoit in a position paper a copy of which is enclosed herewith." (Rollo, p. 13.)

[5] 196 SCRA 69.

[6] At p. 79.

[7] Entitled, "Placing All Budget Officers of Provinces, Cities and Municipalities under the Administrative Control and Technical Supervision of the Ministry of Budget and Management"

[8] Sutherland Statutory Construction, Vol. 3, 5th ed., p. 8.

[9] Ruben Agpalo, Statutory Construction, 2nd ed., p. 238, citing *Miller vs. Lakewood Housing Co.*, 180 NE 700, 81 ALR 1239.

[10] See Isagani A. Cruz, Philippine Political Law, 1993 edition, p. 187; Philippine Law Dictionary By F.B. Moreno, Third Edition, p. 67; Black's Law Dictionary, 6th edition, p. 99, citing *In re Nicholson's Estate*, 104 Colo. 561, 93 P. 2d 880, 884 citing *Board of Education of Boyle County vs. McChesney*, 235 Ky. 692, 32 S.W. 2d 26, 27.

[11] See *Aparri vs. Court of Appeals*, 127 SCRA 231.

[12] In the words of Justice Malcolm an "(a)ppointment to office is intrinsically an executive act involving the exercise of discretion." (*Concepcion vs. Paredes*, 42 Phil. 599.)

[13] 140 SCRA 22.

[14] 223 SCRA 568.

[15] At p. 579.

[16] *Ibid.*, p. 579.

[17] Sec. 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress. (Phil. Constitution, Article VII.)

[18] SEC. 9. Provincial/City Prosecution Offices. - The Provincial and City Fiscal's Office established in each of the provinces and cities pursuant to law, is retained and renamed Provincial/City Prosecution Office. It shall be headed by a Provincial Prosecutor or City Prosecutor, as the case may be, assisted by such number of Assistant Provincial/City Prosecutors as fixed and/or authorized by law. The position titles of Provincial and City Fiscal and of Assistant Provincial and City Fiscal are hereby abolished.

All provincial/city prosecution offices shall continue to discharge their functions under existing law.

All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary. (Administrative Code of 1987, Book IV, Title III, Chapter 2.)

[19] *Mondano vs. Silvosa, et al.*, 97 Phil. 143; *Echeche vs. CA*, 198 SCRA 577 citing *Oliveros-Torre vs. Bayot*, 58 SCRA 272 and *Ang-Angco vs. Castillo*, 118 Phil. 1468.

[20] *Pelaez vs. Auditor-General*, 15 SCRA 569.

[21] *Lacson-Magallanes Co., Inc. vs. Pano*, 21 SCRA 895.

[22] *Cuyegkeng vs. Cruz*, 108 Phil. 1147.

[23] See Black's Law Dictionary, 6th edition, p. 1272.

[24] *San Juan vs. CSC*, 196 SCRA 69.

[25] At pp. 75-78.

[26] Section 4, Article X of the Constitution provides: "The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions."

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