

## SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), PETITIONER, VS. ROBERTO MABALOT, RESPONDENT.

*G.R. No. 138200. February 27, 2002*

Ponente: BUENA, J.

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### **BUENA, J.:**

At the core of controversy in the instant Petition for Review on Certiorari is the validity of Memorandum Order No. 96-735, dated 19 February 1996, and Department Order No. 97-1025, dated 29 January 1997, both issued by the Secretary of the Department of Transportation and Communications (DOTC).

The facts are uncontested.

On 19 February 1996, then DOTC Secretary Jesus B. Garcia, Jr., issued Memorandum Order No. 96-735 addressed to Land Transportation Franchising Regulatory Board (LTFRB) Chairman Dante Lantin, viz:

“In the interest of the service, you are hereby directed to effect the transfer of regional functions of that office to the DOTCCAR Regional Office, pending the creation of a regular Regional Franchising and Regulatory Office thereat, pursuant to Section 7 of Executive Order No. 202.

“Organic personnel of DOTC-CAR shall perform the LTFRB functions on a concurrent capacity subject to the direct supervision and control of LTFRB Central Office.”

On 13 March 1996, herein respondent Roberto Mabalot filed a petition for certiorari and prohibition with prayer for preliminary injunction and/or restraining order,[1] against petitioner and LTFRB Chairman Lantin, before the Regional Trial Court (RTC) of Quezon City, Branch 81,[2] praying among others that Memorandum Order No. 96-735 be declared “illegal and without effect.”

On 20 March 1996, the lower court issued a temporary restraining order enjoining petitioner from implementing Memorandum Order No. 96-735. On 08 April 1996, the lower court, upon filing of a bond by respondent, issued a writ of preliminary injunction. On 25 April 1996, then DOTC Secretary Amado Lagdameo, Jr. filed his answer to the petition.

Thereafter, on 29 January 1997, Secretary Lagdameo issued the assailed Department Order No. 97-1025, to wit:

“Pursuant to Administrative Order No. 36, dated September 23, 1987, and for purposes of economy and more effective coordination of the DOTC functions in the Cordillera Administrative Region (CAR), the DOTC-CAR Regional Office, created by virtue of Executive Order No. 220 dated July 15, 1987, is hereby established as the Regional Office of the LTFRB and shall exercise the regional functions of the LTFRB in the CAR subject to the direct supervision and control of LTFRB Central Office.

“The budgetary requirement for this purpose shall come from the Department until such time that its appropriate budget is included in the General Appropriations Act.”

After trial, the Office of the Solicitor General (OSG) moved to reopen the hearing in the lower court for the purpose of enabling petitioner to present Department Order No. 97-1025. In an Order dated 18 February 1997, the lower court granted the motion.

On 03 April 1997, respondent filed a Motion for Leave to File Supplemental Petition assailing the validity of Department Order No. 97-1025. On 14 May 1997, the OSG presented Department Order No. 97-1025 after which petitioner filed a formal offer of exhibits.

In an Order dated 09 June 1997, the lower court admitted petitioner's documentary exhibits over the objection of respondent. Likewise, the lower court admitted the supplemental petition filed by respondent to which petitioner filed an answer thereto.

On 31 March 1999, the lower court rendered a decision the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring Memorandum Order Nos. 96-733[3] dated February 19, 1996 and 97-1025 dated January 27, 1997 of the respondent DOTC Secretary null and void and without any legal effect as being violative of the provision of the Constitution against encroachment on the powers of the legislative department and also of the provision enjoining appointive officials from holding any other office or employment in the Government.

"The preliminary injunction issued on May 13, 1996 is hereby made permanent.

"No pronouncement as to costs.

"It is so ordered."

Hence, the instant petition where this Court is tasked in the main to resolve the issue of validity of the subject administrative issuances by the DOTC Secretary.

In his Memorandum[4], respondent Mabalot principally argues that "a transfer of the powers and functions of the LTFRB Regional Office to a DOTC Regional Office or the establishment of the latter as an LTFRB Regional Office is unconstitutional" for being "an undue exercise of legislative power." To this end, respondent quoted heavily the lower court's rationale on this matter, to wit:

"With the restoration of Congress as the legislative body, the transfer of powers and functions, specially those quasi-judicial (in) nature, could only be effected through legislative fiat. Not even the President of the Philippines can do so. And much less by the DOTC Secretary who is only a mere extension of the Presidency. Among the powers of the LTFRB are to issue injunctions, whether prohibitory (or) mandatory, punish for contempt and to issue subpoena and subpoena duces tecum. These powers devolve by extension on the LTFRB regional offices in the performance of their functions. They cannot be transferred to another agency of government without congressional approval embodied in a duly enacted law." (Emphasis ours)

We do not agree. Accordingly, in the absence of any patent or latent constitutional or statutory infirmity attending the issuance of the challenged orders, this Court upholds Memorandum Order No. 96-735 and Department Order No. 97-1025 as legal and valid administrative issuances by the DOTC Secretary. Contrary to the opinion of the lower court, the President - through his duly constituted political agent and alter ego, the DOTC Secretary in the present case - may legally and validly decree the reorganization of the Department, particularly the establishment of DOTC-CAR as the LTFRB Regional Office at the Cordillera Administrative Region, with the concomitant transfer and performance of public functions and responsibilities appurtenant to a regional office of the LTFRB.

At this point, it is apropos to reiterate the elementary rule in administrative law and the law on public officers that a public office may be created through any of the following modes, to wit, either (1) by the Constitution (fundamental law), (2) by law (statute duly enacted by Congress), or (3) by authority of law.[5]

Verily, Congress can delegate the power to create positions. This has been settled by decisions of the Court upholding the validity of reorganization statutes authorizing the President to create, abolish or merge offices in the executive department.[6] Thus, at various times, Congress has vested power in the President to reorganize executive agencies and redistribute functions, and particular transfers under such statutes have been held to be within the authority of the President.[7]

In the instant case, the creation and establishment of LTFRB-CAR Regional Office was made pursuant to the third mode - by authority of law, which could be decreed for instance, through an Executive Order (E.O.) issued by the President or an order of an administrative agency such as the Civil Service Commission[8] pursuant to Section 17, Book V of E.O. 292, otherwise known as The Administrative Code of 1987. In the case before us, the DOTC Secretary issued the assailed Memorandum and Department Orders pursuant to Administrative Order No. 36 of the President,[9] dated 23 September 1987, Section 1 of which explicitly provides:

“Section 1. Establishment of Regional Offices in the CAR- The various departments and other agencies of the National Government that are currently authorized to maintain regional offices are hereby directed to establish forthwith their respective regional offices In the Cordillera Administrative Region with territorial coverage as defined under Section 2 of Executive Order No. 220 dated July 15, 1987, with regional headquarters at Baguio City.”

Emphatically the President, through Administrative Order No. 36, did not merely authorize but directed, in no uncertain terms, the various departments and agencies of government to immediately undertake the creation and establishment of their regional offices in the CAR. To us, Administrative Order No. 36 is a clear and unequivocal directive and mandate - no less than from the Chief Executive - ordering the heads of government departments and bureaus to effect the establishment of their respective regional offices in the CAR.

By the Chief Executive's unequivocal act of issuing Administrative Order No. 36 ordering his alter ego - the DOTC Secretary in the present case - to effectuate the creation of Regional Offices in the CAR, the President, in effect, deemed it fit and proper under the circumstances to act and exercise his authority, albeit through the various Department Secretaries, so as to put into place the organizational structure and set-up in the CAR and so as not to compromise in any significant way the performance of public functions and delivery of basic government services in the Cordillera Administrative Region.

Simply stated, it is as if the President himself carried out the creation and establishment of LTFRB-CAR Regional Office, when in fact, the DOTC Secretary, as alter ego of the President, directly and merely sought to implement the Chief Executive's Administrative Order.

To this end, Section 17, Article VII of the Constitution mandates:

“The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.”

By definition, control is “the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.”[10] It includes the authority to order the doing of an act by a subordinate or to undo such act or to assume a power directly vested in him by law.[11]

From the purely legal standpoint, the members of the Cabinet are subject at all times to the disposition of the President since they are merely his alter ego.[12] As this Court enunciated in Villena vs. Secretary of the Interior,[13] “without minimizing the importance of the heads of various departments, their personality is in reality but the projection of that of the President.” Thus, their acts, “performed and promulgated in the regular

course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.”

Applying the foregoing, it is then clear that the lower court’s pronouncement - that the transfer of powers and functions and in effect, the creation and establishment of LTFRB-CAR Regional Office, may not be validly made by the Chief Executive, much less by his mere alter ego and could only be properly effected through a law enacted by Congress -is to say the least, erroneous.

In *Larin vs. Executive Secretary*,<sup>[14]</sup> this Court through the ponencia of Mr. Justice Justo Torres, inked an extensive disquisition on the continuing authority of the President to reorganize the National Government, which power includes the creation, alteration or abolition of public offices. Thus in *Larin*, we held that Section 62 of Republic Act 7645 (General Appropriations Act [G.A.A.] for FY 1993) “evidently shows that the President is authorized to effect organizational changes including the creation of offices in the department or agency concerned”:

“Section 62. Unauthorized organizational changes.- Unless otherwise created by law or directed by the President of the Philippines, no organizational unit or changes in key positions in any department or agency shall be authorized in their respective organization structures and be funded from appropriations by this act.”

Petitioner’s contention in *Larin* that Sections 48 and 62 of R.A. 7645 were riders, deserved scant consideration from the Court, Well settled is the rule that every law has in its favor the presumption of constitutionality. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.<sup>[15]</sup>

Worthy to note is that R.A. 8174 (G.A.A for FY 1996) contains similar provisions as embodied in Section 72 (General Provisions) of said law entitled “Organizational Changes” and Section 73 (General Provisions) thereof entitled “Implementation of Reorganization.” Likewise, R.A. 8250 (G.A.A. for FY 1997) has Section 76 (General Provisions) entitled “Organizational Changes” and Section 77 (General Provisions) entitled “ Implementation of Reorganization.”

In the same vein, Section 20, Book III of E.O. No. 292, otherwise known as the Administrative Code of 1987, provides a strong legal basis for the Chief Executive’s authority to reorganize the National Government, viz:

“Section 20. Residual Powers. - Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above or which are not delegated by the President in accordance with law.” (Emphasis ours)

This Court, in *Larin*, had occasion to rule that:

This provision speaks of such other powers vested in the President under the law. What law then gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that “all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked.”<sup>[16]</sup> So far, there is yet no law amending or repealing said decrees.”

The pertinent provisions of Presidential Decree No. 1416, as amended by Presidential Decree No. 1772, reads:

“1. The President of the Philippines shall have continuing authority to reorganize the National Government. In exercising this authority, the President shall be guided by generally acceptable principles of good government and responsive national development, including but not limited to the following guidelines for a more efficient, effective, economical and development-oriented governmental framework:

“xxx

“b) Abolish departments, offices, agencies or functions which may not be necessary, or create those which are necessary, for the efficient conduct of government functions, services and activities;

“c) Transfer functions, appropriations, equipment, properties, records and personnel from one department, bureau, office, agency or instrumentality to another;

“d) Create, classify, combine, split, and abolish positions;

“e) Standardize salaries, materials, and equipment;

“f) Create, abolish, group, consolidate, merge or integrate entities, agencies, instrumentalities, and units of the National Government, as well as expand, amend, change, or otherwise modify their powers, functions, and authorities, including, with respect to government-owned or controlled corporations, their corporate life, capitalization, and other relevant aspects of their charters. (As added by P.D. 1772)

“g) Take such other related actions as may be necessary to carry out the purposes and objectives of this decree. (As added by P.D. 1772) (Emphasis supplied.)

In fine, the “designation”[17] and subsequent establishment[18] of DOTC-CAR as the Regional Office of LTFRB in the Cordillera Administrative Region and the concomitant exercise and performance of functions by the former as the LTFRB-CAR Regional Office, fall within the scope of the continuing authority of the President to effectively reorganize the Department of Transportation and Communications.

Beyond this, it must be emphasized that the reorganization in the instant case was decreed “in the interest of the service”[19] and “for purposes of economy and more effective coordination of the DOTC functions in the Cordillera Administrative Region.”[20] In this jurisdiction, reorganization is regarded as valid provided it is pursued in good faith. As a general rule, a reorganization is carried out in good faith if it is for the purpose of economy or to make bureaucracy more efficient.[21] To our mind, the reorganization pursued in the case at bar bears the earmark of good faith. As petitioner points out,[22] “tapping the DOTC-CAR pending the eventual creation of the LTFRB Regional Office is economical in terms of manpower and resource requirements, thus, reducing expenses from the limited resources of the government.”

Furthermore, under Section 18, Chapter 5, Title XV, Book IV of E.O. 292[23] and Section 4 of E.O. 202,[24] the Secretary of Transportation and Communications, through his duly designated Undersecretary, shall exercise administrative supervision and control[25] over the Land Transportation Franchising and Regulatory Board (Board).

Worthy of mention too is that by express provision of Department Order No. 97-1025, the LTFRB-CAR Regional Office is subject to the direct supervision and control of LTFRB Central Office. Under the law,[26] the decisions, orders or resolutions of the Regional Franchising and Regulatory Offices shall be appealable to the Board within thirty (30) days from receipt of the decision; the decision, order or resolution of the Board shall be appealable to the DOTC Secretary. With this appellate set-up and mode of appeal clearly established and in place, no conflict or absurd circumstance would arise in such manner that a decision of the LTFRB-CAR Regional Office is subject to review by the DOTC-CAR Regional Office.

As to the issue regarding Sections 7 and 8, Article IX-B of the Constitution, we hold that the assailed Orders of the DOTC Secretary do not violate the aforementioned constitutional provisions considering that in the case of Memorandum Order No. 96-735, the organic personnel of the DOTC-CAR were, in effect, merely designated to perform the additional duties and functions of an LTFRB Regional Office subject to the direct supervision and control of LTFRB Central Office, pending the creation of a regular LTFRB Regional Office.

As held in *Triste vs. Leyte State College Board of Trustees*:<sup>[27]</sup>

“To designate a public officer to another position may mean to vest him with additional duties while he performs the functions of his permanent office. Or in some cases, a public officer may be designated to a position in an acting capacity as when an undersecretary is designated to discharge the functions of a Secretary pending the appointment of a permanent Secretary.”

Assuming arguendo that the appointive officials and employees of DOTC-CAR shall be holding more than one office or employment at the same time as a result of the establishment of such agency as the LTFRB-CAR pursuant to Department Order No. 97-1025, this Court is of the firm view that such fact still does not constitute a breach or violation of Section 7, Article IX-B of the Constitution. On this matter, it must be stressed that under the aforementioned constitutional provision, an office or employment held in the exercise of the primary functions of one's principal office is an exception to, or not within the contemplation, of the prohibition embodied in Section 7, Article IX-B.

Equally significant is that no evidence was adduced and presented to clearly establish that the appointive officials and employees of DOTC-CAR shall receive any additional, double or indirect compensation, in violation of Section 8, Article IX-B of the Constitution. In the absence of any clear and convincing evidence to show any breach or violation of said constitutional prohibitions, this Court finds no cogent reason to declare the invalidity of the challenged orders.

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. ACCORDINGLY, the decision dated 31 March 1999 of the Regional Trial Court of Quezon City-Branch 81 in Special Civil Action Case No. Q-96-26868 is REVERSED and SET ASIDE.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Vitug, J., in the result.

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[1] Docketed as Special Civil Action Case No. Q-96-26868 and entitled “Roberto R. Mabalot versus Hon. Dante M. Lantin and Hon. Jesus B. Garcia, Jr. and/or Hon. Amado Lagdameo.”

[2] Then presided by Judge Wenceslao I. Agnir, Jr., now Court of Appeals Justice.

[3] Should be Memorandum Order No. 96-735.

[4] Rollo, pp. 112-123.

[5] Cruz, Carlo L., “The Law of Public Officers, 1997 Ed., p.4”, cited in *Buklod ng Kawaning EIIB, et. al vs. Hon. Executive Secretary, et. al*, G.R. No. 142801-802, July 10, 2001.

[6] *De Leon and De Leon, Jr.*, “Administrative Law: Text and Cases, Fourth Ed., 2001, p. 22.”, citing *Viola vs. Alunan III*, 277 SCRA 409(1997) and *Larin vs. Executive Secretary*, 280 SCRA 713 (1997).

[7] Ibid., pp.21-22.

[8] As held in *Rubenecia vs. Civil Service Commission*, 244 SCRA 640 [1995].

[9] Provides for “the Establishment of Regional Offices in the Cordillera Administrative Region.”

[10] *Mondano vs. Silvosa*, 97 Phil. 143 [1955].

[11] Cruz, Isagani, “Philippine Political Law, 1998 Ed., p.212.”

[12] Ibid., p. 213.

[13] 67 Phil. 451 [1939].

**[14] 280 SCRA 713 [1997].**

[15] *Larin vs. Executive Secretary*, 280 SCRA 713 [1997].

[16] Section 3, Article XVIII of the Constitution.

[17] Pursuant to DOTC Memorandum Order No. 96-735.

[18] Pursuant to DOTC Department Order No. 97-1025.

[19] Memorandum Order No. 96-735, dated 19 February 1996.

[20] Department Order No. 97-1025, dated 29 January 1997.

[21] *Dario vs. Mison*, 176 SCRA 84 [1989].

[22] *Rollo*, pp. 18-19.

[23] The Administrative Code of 1987.

[24] Executive Order No. 202, dated 19 June 1987, creating the Land Transportation Franchising and Regulatory Board in the Department of Transportation and Communications.

[25] Supervision and Control is defined in Section 38 par. (1), Chapter 7 (Administrative Relationships), Book IV of E.O. 292.

[26] Sections 20 and 22, Chapter 5, Title XV, Book IV of E.O. 292; Sections 6 and 8, E.O. 202.

**[27] 192 SCRA 326 [1990].**

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