

**JOELBITO-ONON, PETITIONER, VS. HON. JUDGE NELIA YAP
FERNANDEZ, R.T.C. BR. 50 – PUERTO PRINCESA CITY AND
PALAWAN, AND ELEGIO QUEJANO, JR., RESPONDENTS.**

G.R. No. 139813. January 31, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This Petition for Certiorari and Prohibition with prayer for the issuance of a temporary restraining order and writ of injunction seeks the reversal of the Order of the Regional Trial Court of Palawan and Puerto Princesa City,[1] Branch 50 in SPL. PROC. NO. 1056 entitled "Elegio F. Quejano, Jr., petitioner vs. Joel Bito-Onon, et. al., respondents" which denied herein petitioner's motion to dismiss the Petition for Review of the Resolution of the Board of Election Supervisors dated August 25, 1997 in case number L-10-97 filed by herein private respondent with said court.

It appears from the records that the petitioner, Joel Bito-Onon is the duly elected Barangay Chairman of Barangay Tacras, Narra, Palawan and is the Municipal Liga Chapter President for the Municipality of Narra, Palawan. The private respondent, Elegio Quejano, Jr. on the other hand, is the duly elected Barangay Chairman of Barangay Rizal, Magsaysay, Palawan and is the Municipal Liga Chapter President for the Municipality of Magsaysay, Palawan. Both Onon and Quejano were candidates for the position of Executive Vice-President in the August 23, 1997 election for the Liga ng Barangay Provincial Chapter of the province of Palawan. Onon was proclaimed the winning candidate in the said election prompting Quejano to file a post proclamation protest with the Board of Election Supervisors (BES), which was decided against him on August 25, 1997.

Not satisfied with the decision of the BES, Quejano filed a Petition for Review of the decision of the BES with the Regional Trial Court of Palawan and Puerto Princesa City (RTC). On April 26, 1999, Onon filed a motion to dismiss the Petition for Review raising the issue of jurisdiction. Onon claimed that the RTC had no jurisdiction to review the decisions rendered by the BES in any post proclamation electoral protest in connection with the 1997 Liga ng mga Barangay election of officers and directors. In his motion to dismiss, Onon claimed that the Supplemental Guidelines for the 1997 Liga ng mga Barangay election issued by the DILG on August 11, 1997 in its Memorandum Circular No. 97-193, providing for review of decisions or resolutions of the BES by the regular courts of law is an ultra vires act and is void for being issued without or in excess of jurisdiction, as its issuance is not a mere act of supervision but rather an exercise of control over the Liga's internal organization.

On June 22, 1999, the RTC denied Onon's motion to dismiss. In its order, the RTC ratiocinated that the Secretary of the Department of Interior and Local Government[2] is vested with the power "to establish and prescribe rules, regulations and other issuances and implementing laws on the general supervision of local government units and the promotion of local autonomy and monitor compliance thereof by said units." [3] The RTC added that DILG Circular No. 97-193 was issued by the DILG Secretary pursuant to his rule-making power as provided for under Section 7, Chapter II, Book IV of the Administrative Code.[4] Consequently, the RTC ruled that it had

jurisdiction over the petition for review filed by Quejada.[5]

Motion for reconsideration of the aforesaid Order was denied[6] prompting the petitioner to file the present petition wherein the following issues are raised:

A.

WHETHER OR NOT THE QUESTIONED PROVISION IN MEMORANDUM CIRCULAR 97-193 WAS ISSUED BY THE DILG SECRETARY IN EXCESS OF HIS AUTHORITY.

B.

WHETHER OR NOT THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE QUESTIONED ORDERS.[7]

In support of his petition, Onon argues that the "Supplemental Guidelines for the 1997 Synchronized Election of the Provincial and Metropolitan Chapters and for the Election of the National Chapter of the Liga ng mga Barangay" contradicts the "Implementing Rules and Guidelines for the 1997 General Elections of the Liga ng mga Barangay Officers and Directors" and is therefore invalid. Onon alleges that the Liga ng mga Barangay (LIGA) is not a local government unit considering that a local government unit must have its own source of income, a certain number of population, and a specific land area in order to exist or be created as such. Consequently, the DILG only has a limited supervisory authority over the LIGA. Moreover, Onon argues that even if the DILG has supervisory authority over the LIGA, the act of the DILG in issuing Memorandum Circular No. 97-193 or the supplemental rules and guidelines for the conduct of the 1997 LIGA elections had the effect of modifying, altering and nullifying the rules prescribed by the National Liga Board. Onon posits that the issuance of said guidelines allowing an appeal of the decision of the BES to the regular courts rather than to the National Liga Board is no longer an exercise of supervision but an exercise of control.[8]

In his comment to the petition, private respondent Quejano argues that the Secretary of the DILG has competent authority to issue rules and regulations like Memorandum Circular No. 97-893. The Secretary of DILG's rule-making power is conferred by the Administrative Code. Considering that the Memorandum Circular was issued pursuant to his rule making power, Quejano insists that the lower court did not commit any reversible error when it denied Onon's motion to dismiss.[9]

On the other hand, the public respondent represented herein by the Solicitor General, filed a separate Manifestation and Motion in Lieu of Comment agreeing with the position of petitioner Onon. The Solicitor General affirms Onon's claim that in issuing the questioned Memorandum Circular, the Secretary of the DILG effectively amended the rules and guidelines promulgated by National Liga Board. This act was no longer a mere act of supervision but one of control. The Solicitor General submits that the RTC committed grave abuse of discretion in not dismissing the petition for review of the BES decision filed before it for failure of the petitioner to exhaust the rightful remedy which was to appeal to the National Liga Board.[10]

On October 27, 1999, this Court denied petitioner Onon's motion for the issuance of restraining order for lack of merit.

After a careful review of the case, we sustain the position of the petitioner.

The resolution of the present controversy requires an examination of the questioned provision of Memorandum Circular No. 97-193 and the Implementing Rules and Guidelines for the 1997 General Elections of the Liga ng mga Barangay Officers and Directors (GUIDELINES). The memorandum circular reads, insofar as pertinent, as follows:

"Any post-proclamation protest must be filed with the BES within twenty-four (24) hours from the closing of the election. The BES shall decide the same within forty-eight (48) hours from receipt thereof. The decision of the BES shall be final and immediately executory without prejudice to the filing of a Petition for Review with the regular courts of law." [11] (emphasis supplied)

On the other hand, the GUIDELINES provides that the BES shall have the following among its duties:

"To resolve any post-proclamation electoral protest which must be submitted in writing to this Board within twenty-four (24) hours from the close of election; provided said Board shall render its decision within forty-eight (48) hours from receipt hereof; and provided further that the decision must be submitted to the National Liga Headquarters within twenty-four (24) hours from the said decision. The decision of the Board of Election Supervisors in this respect shall be subject to review by the National Liga Board the decision of which shall be final and executory." [12] (emphasis supplied)

Memorandum Circular No. 97-193 was issued by the DILG Secretary pursuant to the power of general supervision of the President over all local government units which was delegated to the DILG Secretary by virtue of Administrative Order No. 267 dated February 18, 1992. [13] The President's power of general supervision over local government units is conferred upon him by the Constitution. [14] The power of supervision is defined as "the power of a superior officer to see to it that lower officers perform their functions in accordance with law." [15] This is distinguished from the power of control or "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter." [16]

On many occasions in the past, this court has had the opportunity to distinguish the power of supervision from the power of control. In *Taule vs. Santos*, [17] we held that the Chief Executive wielded no more authority than that of checking whether a local government or the officers thereof perform their duties as provided by statutory enactments. He cannot interfere with local governments provided that the same or its officers act within the scope of their authority. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. [18] Officers in control lay down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act. [19]

Does the President's power of general supervision extend to the *liga ng mga barangay*, which is not a local government unit? [20]

We rule in the affirmative. In Opinion No. 41, Series of 1995, the Department of Justice ruled that the *liga ng mga barangay* is a government organization, being an association, federation, league or union created by law or by authority of law, whose members are either appointed or elected government officials. The Local Government Code [21] defines the *liga ng mga barangay* as an organization of all barangays for the primary purpose of determining the representation of the *liga* in the *sanggunians*, and for ventilating, articulating and crystallizing issues affecting barangay government administration and securing, through proper and legal means, solutions thereto. [22] The *liga* shall have chapters at the municipal, city, provincial and metropolitan political subdivision levels. The municipal and city chapters of the *liga* shall be composed of the barangay representatives of the municipal and city barangays respectively. The duly elected presidents of the component municipal and city chapters shall constitute the provincial chapter or the metropolitan political subdivision chapter. The duly elected presidents of highly urbanized cities, provincial chapters, the Metropolitan Manila chapter and metropolitan

political subdivision chapters shall constitute the National Liga ng mga Barangay.[23]

The liga at the municipal, city, provincial, metropolitan political subdivision, and national levels directly elect a president, a vice-president and five (5) members of the board of directors. The board shall appoint its secretary and treasurer and create such other positions as it may deem necessary for the management of the chapter.[24]

The ligas are primarily governed by the provisions of the Local Government Code.[25] However, their respective constitution and by-laws shall govern all other matters affecting the internal organization of the liga not otherwise provided for in the Local Government Code provided that the constitution and by-laws shall be supplementary to the provisions of Book III, Title VI of the Local Government Code and shall always conform to the provisions of the Constitution and existing laws.[26]

Having in mind the foregoing principles, we rule that Memorandum Circular No. 97-193 of the DILG insofar as it authorizes the filing a Petition for Review of the decision of the BES with the regular courts in a post proclamation electoral protest is of doubtful constitutionality. We agree with both the petitioner and the Solicitor General that in authorizing the filing of the petition for review of the decision of the BES with the regular courts, the DILG Secretary in effect amended and modified the GUIDELINES promulgated by the National Liga Board and adopted by the LIGA which provides that the decision of the BES shall be subject to review by the National Liga Board. The amendment of the GUIDELINES is more than an exercise of the power of supervision but is an exercise of the power of control, which the President does not have over the LIGA. Although the DILG is given the power to prescribe rules, regulations and other issuances, the Administrative Code limits its authority to merely "monitoring compliance" by local government units of such issuances.[27] To monitor means "to watch, observe or check" and is compatible with the power of supervision of the DILG Secretary over local governments, which is limited to checking whether the local government unit concerned or the officers thereof perform their duties as per statutory enactments.[28] Besides, any doubt as to the power of the DILG Secretary to interfere with local affairs should be resolved in favor of the greater autonomy of the local government.[29]

The public respondent judge therefore committed grave abuse of discretion amounting to lack or excess of jurisdiction in not dismissing the respondent's Petition for Review for failure to exhaust all administrative remedies and for lack of jurisdiction.

WHEREFORE, the instant petition is hereby GRANTED. The Order of the Regional Trial Court dated June 22, 1999 is REVERSED and SET ASIDE. The Petition for Review filed by the private respondent docketed as SPL. PROC. NO. 1056 is DISMISSED.

SO ORDERED.

Melo, (Chairman, Third Division), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Nelia Yap Fernandez.

[2] Secretary Robert Z. Barbers.

[3] RTC Order quoting Book IV, Title XII, Chapter 1, Sec. 3 (2) of the Administrative Code; Rollo, 84.

[4] "(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;"

[5] Rollo, 84-85.

[6] Order dated July 26, 1999; Rollo, 89.

- [7] Memorandum for the Petitioner, 3; Rollo, 155.
- [8] Petition, 7-12; Rollo, 10-15.
- [9] Comment, 4-7; Rollo, 119-121.
- [10] Manifestation and Motion in Lieu of Comment, 3-5; Rollo, 126-128.
- [11] Article II, par. 3.
- [12] § 1, Article VIII, par. 1.2.2.
- [13] See Whereas clauses, Memorandum Circular No. 97-193, August 11, 1997.
- [14] § 4, Article X.
- [15] *Drilon vs. Lim* 335 SCRA 135, 141 [1994].
- [16] *Ibid*, 140-141.

[17] 200 SCRA 512.

- [18] *Ibid*.
- [19] *Drilon vs. Lim Supra*, 142.
- [20] As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators or viability and projected capacity to provide services. These are income, population and land area. See § 7, Local Government Code, Republic Act No. 7160.
- [21] Republic Act No. 7160.
- [22] § 491, Local Government Code.
- [23] § 492, Local Government Code.
- [24] § 493, Local Government Code.
- [25] Book III, Title VI, Local Government Code.
- [26] § 507, Local Government Code.
- [27] *Taule vs. Santos*, 200 SCRA 512, 523 [1991].
- [28] *Ibid*.
- [29] *Ibid*.

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