

**DRIANITA BAGAOISAN, FELY MADRIAGA, SHIRLY TAGABAN,
RICARDO SARANDI, SUSAN IMPERIAL, BENJAMIN DEMDEM,
RODOLFO DAGA, EDGARDO BACLIG, GREGORIO LABAYAN, HILARIO
JEREZ, AND MARIA COR...**

G.R. No. 152845. August 05, 2003

Ponente: VITUG, J.

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VITUG, J.:

President Joseph Estrada issued on 30 September 1998 Executive Order No. 29, entitled "Mandating the Streamlining of the National Tobacco Administration (NTA)," a government agency under the Department of Agriculture. The order was followed by another issuance, on 27 October 1998, by President Estrada of Executive Order No. 36, amending Executive Order No. 29, insofar as the new staffing pattern was concerned, by increasing from four hundred (400) to not exceeding seven hundred fifty (750) the positions affected thereby. In compliance therewith, the NTA prepared and adopted a new Organization Structure and Staffing Pattern (OSSP) which, on 29 October 1998, was submitted to the Office of the President.

On 11 November 1998, the rank and file employees of NTA Batac, among whom included herein petitioners, filed a letter-appeal with the Civil Service Commission and sought its assistance in recalling the OSSP. On 04 December 1998, the OSSP was approved by the Department of Budget and Management (DBM) subject to certain revisions. On even date, the NTA created a placement committee to assist the appointing authority in the selection and placement of permanent personnel in the revised OSSP. The results of the evaluation by the committee on the individual qualifications of applicants to the positions in the new OSSP were then disseminated and posted at the central and provincial offices of the NTA.

On 10 June 1996, petitioners, all occupying different positions at the NTA office in Batac, Ilocos Norte, received individual notices of termination of their employment with the NTA effective thirty (30) days from receipt thereof. Finding themselves without any immediate relief from their dismissal from the service, petitioners filed a petition for certiorari, prohibition and mandamus, with prayer for preliminary mandatory injunction and/or temporary restraining order, with the Regional Trial Court (RTC) of Batac, Ilocos Norte, and prayed -

"1) that a restraining order be immediately issued enjoining the respondents from enforcing the notice of termination addressed individually to the petitioners and/or from committing further acts of dispossession and/or ousting the petitioners from their respective offices;

"2) that a writ of preliminary injunction be issued against the respondents, commanding them to maintain the status quo to protect the rights of the petitioners pending the determination of the validity of the implementation of their dismissal from the service; and

"3) that, after trial on the merits, judgment be rendered declaring the notice of termination of the petitioners illegal and the reorganization null and void and ordering their reinstatement with backwages, if applicable, commanding the respondents to desist from further terminating their services, and making the injunction

permanent."[1]

The RTC, on 09 September 2000, ordered the NTA to appoint petitioners in the new OSSP to positions similar or comparable to their respective former assignments. A motion for reconsideration filed by the NTA was denied by the trial court in its order of 28 February 2001. Thereupon, the NTA filed an appeal with the Court of Appeals, raising the following issues:

"I.

Whether or not respondents submitted evidence as proof that petitioners, individually, were not the 'best qualified and most deserving' among the incumbent applicant-employees.

"II.

Whether or not incumbent permanent employees, including herein petitioners, automatically enjoy a preferential right and the right of first refusal to appointments/reappointments in the new Organization Structure And Staffing Pattern (OSSP) of respondent NTA.

"III.

Whether or not respondent NTA in implementing the mandated reorganization pursuant to E.O. No. 29, as amended by E.O. No. 36, strictly adhere to the implementing rules on reorganization, particularly RA 6656 and of the Civil Service Commission - Rules on Government Reorganization.

"IV.

Whether or not the validity of E.O. Nos. 29 and 36 can be put in issue in the instant case/appeal."[2]

On 20 February 2002, the appellate court rendered a decision reversing and setting aside the assailed orders of the trial court.

Petitioners went to this Court to assail the decision of the Court of Appeals, contending that -

"I.

The Court of Appeals erred in making a finding that went beyond the issues of the case and which are contrary to those of the trial court and that it overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;

"II.

The Court of Appeals erred in upholding Executive Order Nos. 29 and 36 of the Office of the President which are mere administrative issuances which do not have the force and effect of a law to warrant abolition of positions and/or effecting total reorganization;

"III.

The Court of Appeals erred in holding that petitioners' removal from the service is in accordance with law;

"IV.

The Court of Appeals erred in holding that respondent NTA was not guilty of bad faith in the termination of the services of petitioners; (and)

"V.

The Court of Appeals erred in ignoring case law/jurisprudence in the abolition of an office."[3]

In its resolution of 10 July 2002, the Court required the NTA to file its comment on the petition. On 18 November 2002, after the NTA had filed its comment of 23 September 2002, the Court issued its resolution denying the petition for failure of petitioners to sufficiently show any reversible error on the part of the appellate court in its challenged decision so as to warrant the exercise by this Court of its discretionary appellate jurisdiction. A motion for reconsideration filed by petitioners was denied in the Court's resolution of 20 January 2002.

On 21 February 2003, petitioners submitted a "Motion to Admit Petition For En Banc Resolution" of the case allegedly to address a basic question, i.e., "the legal and constitutional issue on whether the NTA may be reorganized by an executive fiat, not by legislative action." [4] In their "Petition for an En Banc Resolution" petitioners would have it that -

"1. The Court of Appeals' decision upholding the reorganization of the National Tobacco Administration sets a dangerous precedent in that:

"a) A mere Executive Order issued by the Office of the President and procured by a government functionary would have the effect of a blanket authority to reorganize a bureau, office or agency attached to the various executive departments;

"b) The President of the Philippines would have the plenary power to reorganize the entire government Bureaucracy through the issuance of an Executive Order, an administrative issuance without the benefit of due deliberation, debate and discussion of members of both chambers of the Congress of the Philippines;

"c) The right to security of tenure to a career position created by law or statute would be defeated by the mere adoption of an Organizational Structure and Staffing Pattern issued pursuant to an Executive Order which is not a law and could thus not abolish an office created by law;

"2. The case law on abolition of an office would be disregarded, ignored and abandoned if the Court of Appeals decision subject matter of this Petition would remain undisturbed and untouched. In other words, previous doctrines and precedents of this Highest Court would in effect be reversed and/or modified with the Court of Appeals judgment, should it remain unchallenged.

"3. Section 4 of Executive Order No. 245 dated July 24, 1987 (Annex 'D,' Petition), issued by the Revolutionary government of former President Corazon Aquino, and the law creating NTA, which provides that the governing body of NTA is the Board of Directors, would be rendered meaningless, ineffective and a dead letter law because the challenged NTA reorganization which was erroneously upheld by the Court of Appeals was adopted and implemented by then NTA Administrator Antonio de Guzman without the corresponding authority from the Board of Directors as mandated therein. In brief, the reorganization is an ultra vires act of the NTA Administrator.

"4. The challenged Executive Order No. 29 issued by former President Joseph Estrada but unsigned by then Executive Secretary Ronaldo Zamora would in effect be erroneously upheld and given legal effect as to supersede, amend and/or modify Executive Order No. 245, a law issued during the Freedom Constitution of President Corazon Aquino. In brief, a mere executive order would amend, supersede and/or render ineffective a law or statute." [5]

In order to allow the parties a full opportunity to ventilate their views on the matter, the Court ultimately resolved to hear the parties in oral argument. Essentially, the core question raised by them is whether or not the President, through the issuance of an executive order, can validly carry out the reorganization of the NTA.

Notwithstanding the apparent procedural lapse on the part of petitioner to implead the Office of the President as party respondent pursuant to Section 7, Rule 3, of the 1997 Revised Rules of Civil Procedure, [6] this Court resolved to rule on the merits of the petition.

Buklod ng Kawaning EIIB vs. Zamora[7] ruled that the President, based on existing laws, had the authority to carry out a reorganization in any branch or agency of the executive department. In said case, Buklod ng Kawaning EIIB challenged the issuance, and sought the nullification, of Executive Order No. 191 (Deactivation of the Economic Intelligence and Investigation Bureau) and Executive Order No. 223 (Supplementary Executive Order No. 191 on the Deactivation of the Economic Intelligence and Investigation Bureau and for Other Matters) on the ground that they were issued by the President with grave abuse of discretion and in violation of their constitutional right to security of tenure. The Court explained:

"The general rule has always been that the power to abolish a public office is lodged with the legislature. This proceeds from the legal precept that the power to create includes the power to destroy. A public office is either created by the Constitution, by statute, or by authority of law. Thus, except where the office was created by the Constitution itself, it may be abolished by the same legislature that brought it into existence.

"The exception, however, is that as far as bureaus, agencies or offices in the executive department are concerned, the President's power of control may justify him to inactivate the functions of a particular office, or certain laws may grant him the broad authority to carry out reorganization measures. The case in point is *Larin v. Executive Secretary* [280 SCRA 713]. In this case, it was argued that there is no law which empowers the President to reorganize the BIR. In decreeing otherwise, this Court sustained the following legal basis, thus:

"Initially, it is argued that there is no law yet which empowers the President to issue E.O. No. 132 or to reorganize the BIR.

`We do not agree.

`x x x x x

`Section 48 of R.A. 7645 provides that:

``Sec. 48. Scaling Down and Phase Out of Activities of Agencies Within the Executive Branch. - The heads of departments, bureaus and offices and agencies are hereby directed to identify their respective activities which are no longer essential in the delivery of public services and which may be scaled down, phased out or abolished, subject to civil service rules and regulations. x x x. Actual scaling down, phasing out or abolition of the activities shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President.'

`Said provision clearly mentions the acts of 'scaling down, phasing out and abolition' of offices only and does not cover the creation of offices or transfer of functions. Nevertheless, the act of creating and decentralizing is included in the subsequent provision of Section 62 which provides that:

``Sec. 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.'

`The foregoing provision evidently shows that the President is authorized to effect organizational changes including the creation of offices in the department or agency concerned.

`x x x x x

`Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:

``Sec. 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.'

`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, letter of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked. So far, there is yet no law amending or repealing said decrees.'

"Now, let us take a look at the assailed executive order.

"In the whereas clause of E.O. No. 191, former President Estrada anchored his authority to deactivate EIIB on Section 77 of Republic Act 8745 (FY 1999 General Appropriations Act), a provision similar to Section 62 of R.A. 7645 quoted in *Larin*, thus:

"`Sec. 77. Organized Changes. - Unless otherwise provided by law or directed by the President of the Philippines, no changes in key positions or organizational units in any department or agency shall be authorized in their respective organizational structures and funded from appropriations provided by this Act.'

"We adhere to the x x x ruling in *Larin* that this provision recognizes the authority of the President to effect organizational changes in the department or agency under the executive structure. Such a ruling further finds support in Section 78 of Republic Act No. 8760. Under this law, the heads of departments, bureaus, offices and agencies and other entities in the Executive Branch are directed (a) to conduct a comprehensive review of this respective mandates, missions, objectives, functions, programs, projects, activities and systems and procedures; (b) identify activities which are no longer essential in the delivery of public services and which may be scaled down, phased-out or abolished; and (c) adopt measures that will result in the streamlined organization and improved overall performance of their respective agencies. Section 78 ends up with the mandate that the actual streamlining and productivity improvement in agency organization and operation shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President. The law has spoken clearly. We are left only with the duty to sustain.

"But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power - that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), 'the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President.' For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In *Canonizado vs. Aguirre* [323 SCRA 312], we ruled that reorganization 'involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.' It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize.

"It having been duly established that the President has the authority to carry out reorganization in any branch or agency of the executive department, what is then left for us to resolve is whether or not the reorganization is valid. In this jurisdiction, reorganizations have been regarded as valid provided they are pursued in good faith. Reorganization is carried out in 'good faith' if it is for the purpose of economy or to make bureaucracy more efficient. Pertinently, Republic Act No. 6656 provides for the circumstances which may be considered as evidence

of bad faith in the removal of civil service employees made as a result of reorganization, to wit: (a) where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; (b) where an office is abolished and another performing substantially the same functions is created; (c) where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit; (d) where there is a classification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices, and (e) where the removal violates the order of separation."^[8]

The Court of Appeals, in its now assailed decision, has found no evidence of bad faith on the part of the NTA; thus -

"In the case at bar, we find no evidence that the respondents committed bad faith in issuing the notices of non-appointment to the petitioners.

"Firstly, the number of positions in the new staffing pattern did not increase. Rather, it decreased from 1,125 positions to 750. It is thus natural that one's position may be lost through the removal or abolition of an office.

"Secondly, the petitioners failed to specifically show which offices were abolished and the new ones that were created performing substantially the same functions.

"Thirdly, the petitioners likewise failed to prove that less qualified employees were appointed to the positions to which they applied.

"x x x x x x x x.

"Fourthly, the preference stated in Section 4 of R.A. 6656, only means that old employees should be considered first, but it does not necessarily follow that they should then automatically be appointed. This is because the law does not preclude the infusion of new blood, younger dynamism, or necessary talents into the government service, provided that the acts of the appointing power are bonafide for the best interest of the public service and the person chosen has the needed qualifications."^[9]

These findings of the appellate court are basically factual which this Court must respect and be held bound.

It is important to emphasize that the questioned Executive Orders No. 29 and No. 36 have not abolished the National Tobacco Administration but merely mandated its reorganization through the streamlining or reduction of its personnel. Article VII, Section 17,^[10] of the Constitution, expressly grants the President control of all executive departments, bureaus, agencies and offices which may justify an executive action to inactivate the functions of a particular office or to carry out reorganization measures under a broad authority of law.^[11] Section 78 of the General Provisions of Republic Act No. 8522 (General Appropriations Act of FY 1998) has decreed that the President may direct changes in the organization and key positions in any department, bureau or agency pursuant to Article VI, Section 25,^[12] of the Constitution, which grants to the Executive Department the authority to recommend the budget necessary for its operation. Evidently, this grant of power includes the authority to evaluate each and every government agency, including the determination of the most economical and efficient staffing pattern, under the Executive Department.

In the recent case of *Rosa Ligaya C. Domingo, et al. vs. Hon. Ronaldo D. Zamora*, in his capacity as the Executive Secretary, et al.,^[13] this Court has had occasion to also delve on the President's power to reorganize the Office of the President under Section 31(2) and (3) of Executive Order No. 292 and the power to reorganize the Office of the President Proper. The Court has there observed:

"x x x. Under Section 31(1) of EO 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast,

under Section 31(2) and (3) of EO 292, the President's power to reorganize offices outside the Office of the President Proper but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and vice versa."

The provisions of Section 31, Book III, Chapter 10, of Executive Order No. 292 (Administrative Code of 1987), above-referred to, reads thusly:

"SEC. 31. Continuing Authority of the President to Reorganize his Office. - The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

"(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

"(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

"(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments and agencies."

The first sentence of the law is an express grant to the President of a continuing authority to reorganize the administrative structure of the Office of the President. The succeeding numbered paragraphs are not in the nature of provisos that unduly limit the aim and scope of the grant to the President of the power to reorganize but are to be viewed in consonance therewith. Section 31(1) of Executive Order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President Proper, by abolishing, consolidating or merging units hereof or transferring functions from one unit to another, while Section 31(2) and (3) concern executive offices outside the Office of the President Proper allowing the President to transfer any function under the Office of the President to any other Department or Agency and vice-versa, and the transfer of any agency under the Office of the President to any other department or agency and vice-versa.[14]

In the present instance, involving neither an abolition nor transfer of offices, the assailed action is a mere reorganization under the general provisions of the law consisting mainly of streamlining the NTA in the interest of simplicity, economy and efficiency. It is an act well within the authority of President motivated and carried out, according to the findings of the appellate court, in good faith, a factual assessment that this Court could only but accept.[15]

In passing, relative to petitioners' "Motion for an En Banc Resolution of the Case," it may be well to remind counsel, that the Court En Banc is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court En Banc itself and a decision of its Division is as authoritative and final as a decision of the Court En Banc. Referrals of cases from a Division to the Court En Banc do not take place as just a matter of routine but only on such specified grounds as the Court in its discretion may allow.[16]

WHEREFORE, the Motion to Admit Petition for En Banc resolution and the Petition for an En Banc Resolution are DENIED for lack of merit. Let entry of judgment be made in due course. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman, First Division), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 49-50.

[2] Rollo, pp. 50-51.

[3] Rollo, p. 14.

[4] Rollo, pp. 50-51.

[5] Rollo, pp. 140-141.

[6] Section 7, Rule 3, 1997 Revised Rules of Civil Procedure provides:

"Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."

[7] G.R. No. 142801-802, 10 July 2001, 360 SCRA 718.

[8] At pp. 726-730.

[9] Rollo, pp. 55-57.

[10] SEC. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[11] *Buklod ng Kawaning EIIB vs. Zamora*, *Ibid*.

[12] Sec. 25. (1) The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

(3) The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

(4) A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein.

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

(7) If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the

ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress.

[13] G.R. No. 142283, 06 February 2003.

[14] Canonizado vs. Aguirre, G. R. No. 133132, 25 January 2000, 323 SCRA 312.

[15] Dario vs. Mison, G. R. Nos. 81954, 81967, 82023, 83737, 85310, 85335 & 86241, 08 August 1989, 176 SCRA 84.

[16] Ortigas and Company Limited Partnership vs. Velasco, G. R. Nos. 109645 & 112564, 04 March 1996, 254 SCRA 234.

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