

LACSON-MAGALLANES CO., INC., PLAINTIFF-APPELLANT, VS. JOSE PAÑO, HON. JUAN PAJO, IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. JUAN DE G. RODRIGUEZ, IN HIS CAPACITY AS SECRETARY ...

G.R. No. 27811. November 17, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The question - May the Executive Secretary, acting by authority of the President, reverse a decision of the Director of Lands that had been affirmed by the Secretary of Agriculture and Natural Resources - yielded an affirmative answer from the lower court.[1]

Hence, this appeal certified to this Court by the Court of Appeals upon the provisions of Sections 17 and 31 of the Judiciary Act of 1948, as amended.

The undisputed controlling facts are:

In 1932, Jose Magallanes was a permittee and actual occupant of a 1,103-hectare pasture land situated in Tamlangon, Municipality of Bansalan, Province of Davao.

On January 9, 1953, Magallanes ceded his rights and interests to a portion (392.7569 hectares) of the above public land to plaintiff.

On April 13, 1954, the portion Magallanes ceded to plaintiff was officially released from the forest zone as pasture land and declared agricultural land.

On January 26, 1955, Jose Paño and nineteen other claimants[2] applied for the purchase of ninety hectares of the released area.

On March 29, 1955, plaintiff corporation in turn filed its own sales application covering the entire released area. This was protested by Jose Paño and his nineteen companions upon the averment that they are actual occupants of the part thereof covered by their own sales application.

The Director of Lands, following an investigation of the conflict, rendered a decision on July 31, 1956, giving due course to the application of plaintiff corporation, and dismissing the claim of Jose Paño and his companions. A move to reconsider failed.

On July 5, 1957, the Secretary of Agriculture and Natural Resources on appeal by Jose Paño for himself and his companions - held that the appeal was without merit and dismissed the same.

The case was elevated to the President of the Philippines.

On June 25, 1958, Executive Secretary Juan Pajo, "[b]y authority of the President," decided the controversy,

modified the decision of the Director of Lands as affirmed by the Secretary of Agriculture and Natural Resources, and (1) declared that "it would be for the public interest that appellants, who are mostly landless farmers who depend on the land for their very existence, be allocated that portion on which they have made improvements"; and (2) directed that the controverted land (northern portion of Block I, LC Map 1749, Project No. 27, of Bansalan, Davao, with Latian River as the dividing line) "should be subdivided into lots of convenient sizes and allocated to actual occupants, without prejudice to the corporation's right to reimbursement for the cost of surveying this portion." It may be well to state, at this point, that the decision just mentioned, signed by the Executive Secretary, was planted upon the facts as found in said decision.

Plaintiff Corporation took the foregoing decision to the Court of First Instance praying that judgment be rendered declaring: (1) that the decision of the Secretary of Agriculture and Natural Resources has full force and effect; and (2) that the decision of the Executive Secretary is contrary to law and of no legal force and effect.

And now subject of this appeal is the judgment of the court a quo dismissing plaintiff's case.

1. Plaintiff's mainstay is Section 4 of Commonwealth Act 141. The precept there is that decisions of the Director of Lands "as to questions of fact shall be conclusive when approved" by the Secretary of Agriculture and Natural Resources. Plaintiff's trenchant claim is that this statute is controlling not only upon courts but also upon the President.

Plaintiff's position is incorrect. The President's duty to execute the law is of constitutional origin.[3] So, too, is his control of all executive departments.[4] Thus it is, that department heads are men of his confidence. His is the power to appoint them; his, too, is the privilege to dismiss them at pleasure. Naturally, he controls and directs their acts. Implicit then is his authority to go over, confirm, modify or reverse the action taken by his department secretaries. In this context, it may not be said that the President cannot rule on the correctness of a decision of a department secretary.

Particularly in reference to the decisions of the Director of Lands, as affirmed by the Secretary of Agriculture and Natural Resources, the standard practice is to allow appeals from such decisions to the Office of the President.[5] This Court has recognized this practice in several cases. In one, the decision of the Lands Director as approved by the Secretary was considered superseded by that of the President's on appeal.[6] In other cases, failure to pursue or resort to this last remedy of appeal was considered a fatal defect, warranting dismissal of the case, for non-exhaustion of all administrative remedies.[7]

Parenthetically, it may be stated that the right to appeal to the President reposes upon the President's power of control over the executive departments.[8] And control simply means "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." [9]

This unquestionably negates the assertion that the President cannot undo an act of his department secretary.

2. Plaintiff next submits that the decision of the Executive Secretary herein is an undue delegation of power. The Constitution, petitioner asserts, does not contain any provision whereby the presidential power of control may be delegated to the Executive Secretary. It is argued that it is the constitutional duty of the President to act personally upon the matter.

It is correct to say that constitutional powers there are which the President must exercise in person.[10] Not as correct, however, is it to say that the Chief Executive may not delegate to his Executive Secretary acts which the Constitution does not command that he perform in person.[11] Reason is not wanting for this view. The President is not expected to per-form in person all the multifarious executive and administrative functions. The Office of

the Executive Secretary is an auxiliary unit which assists the President. The rule which has thus gained recognition is that "under our constitutional setup the Executive Secretary who acts for and in behalf and by authority of the President has an undisputed jurisdiction to affirm, modify, or even reverse any order" that the Secretary of Agriculture and Natural Resources, including the Director of Lands, may issue.[12]

3. But plaintiff underscores the fact that the Executive Secretary is equal in rank to the other department heads, no higher than anyone of them. From this, plaintiff carves the argument that one department head, on the pretext that he is an alter ego of the President, cannot intrude into the zone of action allocated to another department secretary. This argument betrays lack of appreciation of the fact that where, as in this case, the Executive Secretary acts "[b]y authority of the President", his decision is that of the President's. Such decision is to be given full faith and credit by our courts. The assumed authority of the Executive Secretary is to be accepted. For, only the President may rightfully say that the Executive Secretary is not authorized to do so. Therefore, unless the action taken is "disapproved or reprobated by the Chief Executive", [13] that remains the act of the Chief Executive, and cannot be successfully assailed.[14] No such disapproval or reprobation is even intimated in the record of this case.

For the reasons given, the judgment under review is hereby affirmed.

Costs against plaintiff.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Castro, and Angeles, JJ., concur.
Fernando, J., concurs and submits a separate concurring opinion.

[1] Special Civil Case No. 2792, Court of First Instance of Davao, Branch II.

[2] Julian Balala, Magdalena Balala, Florencio Aguinaldo, Pedro Roguian, Carlos Francisco, Jose Pascua, Agapito Viernes, Ricardo Villanueva, Cezario Butava, Vicente Riya, Pedro Ringor, Jose Bartolome, Benjamine Simon, Carlos Villanueva, Esmio Simon, Gregorio Domingo, Fernando Roguian, Severino Cape, and Sixto de la Cruz.

[3] Section 7, Article VII, Philippine Constitution.

[4] Section 10 (1), Article VII, *id.*

[5] Castillo, *Law on Natural Resources*, 1957 ed., p.118.

[6] Castillo vs. Rodriguez, L-17189, June 22, 1965. See also: Extensive Enterprises vs. Sarbro & Co., Inc., L-22383 & L-22386, May 16, 1966.

[7] Ham vs. Bachrach Motor Co., Inc., L-13677, October 31, 1960; Calo vs. Fuertes, L-16537, June 29, 1962.

[8] Ham vs. Bachrach, *supra*; Suarez vs. Reyes, L-19828, February 28, 1963; Extensive Enterprises vs. Sarbro & Co., *supra*, citing Section 10(1) of Article VII of the Constitution.

[9] Mondano vs. Silvosa, 97 Phil. 143, 148; also quoted in Ham vs. Bachrach, *supra*; Extensive Enterprises vs. Sarbro & Co., *supra*.

[10] Powers to suspend the writ of habeas corpus, to proclaim martial law [Sec. 10 (2), Art. VII, Phil. Constitution] and to grant reprieves, commutations, and pardons, and remit fines and forfeitures [Sec. 10 (6), *idem*] mentioned in Villena vs. Secretary of Interior, 67 Phil. 451, 462-463.

[11] Executive Order 94, October 4, 1947, provides in Sec. 27: that "[t]he Executive Secretary x x x shall exercise such powers, functions, and duties as may be assigned to him by the President from time to time x x x."

[12] *Extensive Enterprises vs. Sarbro & Co.*, supra. See: *Pajo vs. Ago*, L-15414, June 30, 1960, and citations at footnote 8 herein. See also: *Martin*, Revised Administrative Code, 1962 ed., Vol. III, pp. 868-869.

[13] *Villena vs. Secretary of Interior*, supra, at p. 463. Cf. *Ykalina vs. Oricio*, 93 Phil. 1076, 1080.

[14] *Pozon vs. Executive Secretary (C.A.)*, 55 O.G. No. 18, pp. 3302, 3305.

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CONCURRING OPINION

FERNANDO, J.:

The learned opinion of Justice Sanchez possesses merit and inspires assent. A further observation may not be amiss concerning that portion thereof which speaks of "the standard practice" allowing appeals from [decisions of Secretary of Natural Resources affirming the action taken by the Director of Lands] to the Office of the President. That for me is more than a "standard practice." It is sound law. The constitutional grant to the President of the power of control over all executive departments, bureaus and offices yields that implication.[1]

If this were all, there would be no need for an additional expression of my views. I feel constrained to do so however in order to emphasize that the opinion of the Court appears to me to reflect with greater fidelity the constitutional intent as embodied in the above provision vesting the power of control in the Presidency.

The question asked in the opening paragraph of the opinion - "May the Executive Secretary, acting by authority of the President, reverse a decision of the Director of Lands that had been affirmed by the Secretary of Agriculture and Natural Resources [?]" - merits but one answer. It must be in the unqualified affirmative. So the Court holds. That is as it should be. Any other view would be highly unorthodox.

Nonetheless, the thought seems to lurk in the opinion of a respectable number of members of the bar that a provision as that found in the Public Land Act to the effect that decisions of Director of Lands on questions of facts shall be conclusive when approved by the Secretary of Agriculture and Natural Resources[2] constitute a limitation of such power of control. This view might have gained plausibility in the light of *Ang-Angco v. Castillo*,[3] where the procedure set forth in the Civil Service Act in 1959 was held binding in so far as the President is concerned in the case of disciplinary action taken against non-presidential appointees.

The argument that what the then Executive Secretary acting for the President did was justified by the constitutional grant of control elicited no favorable response. The Court apparently was not receptive to a more expansive view of such executive prerogative. This is not to say that what was there decided was entirely lacking in justification. It is merely to suggest that it may contain implications not in conformity with the broad grant of authority constitutionally conferred on the President.

It is well-worth emphasizing that the President unlike any other official in the Executive Department is vested with both "constitutional and legal authority"[4] as Justice Laurel noted. Care is to be taken then lest by a too

narrow interpretation what could reasonably be included in such competence recognized by the Constitution be unduly restricted. If my reading of the opinion of Justice Sanchez is correct, then there is a more hospitable scope accorded such power of control. For me this is more in keeping with the fundamental law. Moreover there would be a greater awareness on the part of all of the broad range of authority the President possesses by virtue of such a provision.

Reference to the words of Justice Laurel, who was him-self one of the leading framers of the Constitution and thereafter, as a member of this Court, one of its most authoritative expounders, in the leading case of *Villena v. Secretary of Interior*,^[5] is not inappropriate. Their rever-berating clang, to paraphrase Justice Cardozo, should drown all weaker sounds. Thus: "After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disap-proved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (*Runkle vs. United States* [1887], 122 U.S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U.S. vs. Eliason* [1839], 16 Pet., 291; 10 Law. ed., 968; *Jones vs. U.S.* [1890], 137 U.S. 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; *Wolsey vs. Chapman* [1880], 101 U.S., 755; 25 Law. ed., 915; *Wilcox vs. Jackson* [1836], 13 Pet., 498; 10 Law. ed., 264.)"

The opinion of Justice Laurel continues: "Fear is expressed by more than one member of this court that the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established, and operated. Familiarity with the essential background of the type of government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With refer-ence to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that 'The executive power shall be vested in a President of the Philippines.' This means that the President of the Philippines is the Executive of the Govern-ment of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, 'should be of the President's bosom confidence' (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, 'each head of a department is, and must be the President's alter ego in the matter of that depart-ment where the President is required by law to exercise authority' (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S., 52 at 133; 71 Law. ed., 160). Secretaries of departments, of course, exercise certain powers under the law but the law cannot impair or in any way affect the consti-tutional power of control and direction of the President. As a matter of executive policy, they may be granted departmental autonomy as to

certain matters but this is by mere concession of the executive, in the absence of valid legislation in the particular field. If the President, then, is the authority in the Executive Department, he assumes the corresponding responsibility. The head of a department is a man of his confidence; he controls and directs his acts; he appoints him and can remove him at pleasure; he is the executive, not any of his secretaries. It is therefore logical that he, the President, should be answerable for the acts of administration of the entire Executive Department before his own conscience no less than before that undefined power of public opinion which, in the language of Daniel Webster, is the last repository of popular government. These are the necessary corollaries of the American presidential type of government, and if there is any defect, it is attributable to the system itself. We cannot modify the system unless we modify the Constitution, and we cannot modify the Constitution by any subtle process of judicial interpretation or construction."

[1] Article VII, Section 10(1) of the Constitution.

[2] Sec. 4, Commonwealth Act No. 941 (1936).

[3] L-17169, November 30, 1963.

[4] *Planas v. Gil* (1939) 69 Phil. 52, at p. 76.

[5] 67 Phil. 451 (1939). As far as presidential power of supervision over local governments is concerned, its authority has been impaired by *Hebron v. Reyes*, 104 Phil. 175 (1958).

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