

NEGROS ORIENTAL II ELECTRIC COOPERATIVE, INC., PATERIO TORRES AND ARTURO UMBAC, PETITIONERS, VS. SANGGUNIANG PANLUNGSOD OF DUMAGUETE, THE AD HOC COMMITTEE OF THE SANGGUNIANG PANL...

G.R. No. 72492. November 05, 1987

Ponente: CORTES, J.

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CORTES, J.:

An attempt by the respondent Ad Hoc Committee of the respondent Sangguniang Panlungsod of Dumaguete to punish non-members for legislative contempt was halted by this special civil action of Certiorari and Prohibition with Preliminary Injunction and/or Restraining Order questioning the very existence of the power in that local legislative body or in any of its committees. On November 7, 1985, this Court issued a Temporary Restraining Order:

. . . enjoining respondents, their agents, representatives, and police and other peace officers acting in their behalf, to refrain from compelling the attendance and testimony of Petitioners Paterio Torres and Arturo Umbac at any and all future investigations to be conducted by aforesaid respondents, and from issuing any contempt order if one has not been issued yet or from executing any such contempt order if one has already been issued.

Assailed is the validity of a subpoena dated October 25, 1985 (Annex "A", Petition) sent by the respondent Committee to the petitioners Paterio Torres and Arturo Umbac, Chairman of the Board of Directors and the General Manager, respectively, of petitioner Negros Oriental II Electric Cooperative (NORECO II), requiring their attendance and testimony at the Committee's investigation on October 29, 1985. Similarly under fire is the Order issued by the same Committee on the latter date, (Annex "D", Petition) directing said petitioners to show cause why they should not be punished for legislative contempt due to their failure to appear at said investigation.

The investigation to be conducted by respondent Committee was "in connection with pending legislation related to the operations of public utilities" (Id.) in the City of Dumaguete where petitioner NORECO II, an electric cooperative, had its principal place of business. Specifically, the inquiry was to focus on the alleged installation and use by the petitioner NORECO II of inefficient power lines in that city (Comment, Rollo, p. 50). Respondent Antonio S. Ramas Uypitching, as Chairman of the Committee on Public Utilities and Franchises and Co-Chairman of the respondent Ad Hoc Committee, signed both the subpoena and the Order complained of. Petitioners moved to quash the subpoena on the following grounds:

- a. The power to investigate, and to order the improvement of, alleged inefficient power lines to conform to standards is lodged exclusively with the National Electrification Administration; and
- b. Neither the Charter of the City of Dumaguete nor the Local Government Code grants (the Sangguniang Panlungsod) any specific power to investigate alleged inefficient power lines of NORECO II.

(Annex "C", Petition)

The motion to quash was denied in the assailed Order of October 29, 1985 directing the petitioners Torres and Umbac to show cause why they should not be punished for contempt. Hence this Petition for Certiorari and Prohibition with Preliminary Injunction and/or Restraining Order.

Petitioners contend that the respondent Sangguniang Panlungsod of Dumaguete is bereft of the power to compel the attendance and testimony of witnesses, nor the power to order the arrest of witnesses who fail to obey its subpoena. It is further argued that assuming the power to compel the attendance and testimony of witnesses to be lodged in said body, it cannot be exercised in the investigation of matters affecting the terms and conditions of the franchise granted to NORECO II which are beyond the jurisdiction of the Sangguniang Panlungsod (Rollo, pp. 7-8).

Respondents, for their part, claim that inherent in the legislative functions performed by the respondent Sangguniang Panlungsod is the power to conduct investigations in aid of legislation and with it, the power to punish for contempt in inquiries on matters within its jurisdiction (Rollo, p. 46). It is also the position of the respondents that the contempt power, if not expressly granted, is necessarily implied from the powers granted the Sangguniang Panlungsod (Rollo, pp. 48-49). Furthermore, the respondents assert that an inquiry into the installation or use of inefficient power lines and its effect on the power consumption cost on the part of Dumaguete residents is well-within the jurisdiction of the Sangguniang Panlungsod and its committees.

1. A line should be drawn between the powers of Congress as the repository of the legislative power under the Constitution, and those that may be exercised by the legislative bodies of local government units, e.g. the Sangguniang Panlungsod of Dumaguete which, as mere creatures of law, possess delegated legislative power. While the Constitution does not expressly vest Congress with the power to punish non-members for legislative contempt, the power has nevertheless been invoked by the legislative body as a means of preserving its authority and dignity (*Arnault v. Nazareno*, 87 Phil. 29 [1950]); *Arnault v. Balagtas*, 97 Phil. 358 [1955]), in the same way that courts wield an inherent power to "enforce their authority, preserve their integrity, maintain their dignity, and ensure the effectiveness of the administration of justice." (*Commissioner v. Cloribel*, 127 Phil. 716, 723 [1967]; *In re Kelly*, 35 Phil. 944, 950 [1916], and other cases). The exercise by Congress of this awesome power was questioned for the first time in the leading case of *Arnault v. Nazareno*, (87 Phil. 29 [1950]) where this Court held that the legislative body indeed possessed the contempt power.

That case arose from the legislative inquiry into the acquisition by the Philippine Government of the Buenavista and Tambobong estates sometime in 1949. Among the witnesses called and examined by the special committee created by a Senate resolution was Jean L. Arnault, a lawyer who delivered a portion of the purchase price to a representative of the vendor. During the Senate investigation, Arnault refused to reveal the identity of said representative, at the same time invoking his constitutional right against self-incrimination. The Senate adopted a resolution committing Arnault to the custody of the Sergeant-at-Arms and imprisoned "until he shall have purged the contempt by revealing to the Senate . . . the name of the person to whom he gave the P440,000, as well as answer other pertinent questions in connection therewith." (*Arnault v. Nazareno*, 87 Phil. 29,43 [1950]). Arnault petitioned for a writ of Habeas Corpus.

In upholding the power of Congress to punish Arnault for contumacy, the Court began with a discussion of the distribution of the three powers of government under the 1935 Constitution. Cognizant of the fact that the Philippines system of government under the 1935 Constitution was patterned after the American system, the Court proceeded to resolve the issue presented, partly by drawing from American precedents, and partly by acknowledging the broader legislative power of the Philippine Congress as compared to the U.S. Federal

Congress which shares legislative power with the legislatures of the different states of the American union (Id.pp.44-45). The Court held:

* * *

. . . (T)he power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information - which is not infrequently true - recourse must be had to others who possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. (McGrain vs. Daugherty, 273 U.S., 135; 71 L. ed., 580; 50 A.L.R.,1) The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt by any person. (Anderson vs. Dunn, 6 Wheaton, 204; 5 L. ed., 242)

But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire. (Kilbourn vs. Thompson, 26 L. ed., 377.)

* * *

The Court proceeded to delve deeper into the essence of the contempt power of the Philippine Congress in a subsequent decision (Arnault v. Balagtas, 97 Phil. 358 [1955]) arising from the same factual antecedents:

The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of the other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity. . . (Arnault. v. Balagtas, L--6749, July 30, 1955; 97 Phil. 358, 370 [1955]).

The aforequoted pronouncements in the two Arnault cases, *supra*, broke ground in what was then an unexplored area of jurisprudence, and succeeded in supplying the *raison d'etre* of this power of Congress even in the absence of express constitutional grant. Whether or not the reasons for upholding the existence of said power in Congress may be applied *mutatis mutandis* to a questioned exercise of the power of contempt by the respondent committee of a city council is the threshold issue in the present controversy.

3. The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vested with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof. The contempt power of the legislature is, therefore, *sui generis*, and local legislative bodies cannot correctly claim to possess it for the same reasons that the national legislature does. The power attaches not to the discharge of legislative functions *per se* but to the character of the legislature as one of the three independent and coordinate branches of government. The same thing cannot be said of local legislative bodies which are creations of law.

4. To begin with, there is no express provision either in the 1973 Constitution or in the Local Government Code (Batas Pambansa Blg. 337) granting local legislative bodies, the power to subpoena witnesses and the power to

punish non-members for contempt. Absent a constitutional or legal provision for the exercise of these powers, the only possible justification for the issuance of a subpoena and for the punishment of non-members for contumacious behaviour would be for said power to be deemed implied in the statutory grant of delegated legislative power. But, the contempt power and the subpoena power partake of a judicial nature. They cannot be implied in the grant of legislative power. Neither can they exist as mere incidents of the performance of legislative functions. To allow local legislative bodies or administrative agencies to exercise these powers without express statutory basis would run afoul of the doctrine of separation of powers.

Thus, the contempt power, as well as the subpoena power, which the framers of the fundamental law did not expressly provide for but which the then Congress has asserted essentially for self-preservation as one of three co-equal branches of the government cannot be deemed implied in the delegation of certain legislative functions to local legislative bodies. These cannot be presumed to exist in favor of the latter and must be considered as an exception to Sec. 4 of B.P. 337 which provides for liberal rules of interpretation in favor of local autonomy. Since the existence of the contempt power in conjunction with the subpoena power in any government body inevitably poses a potential derogation of individual rights, i.e. compulsion of testimony and punishment for refusal to testify, the law cannot be liberally construed to have impliedly granted such powers to local legislative bodies. It cannot be lightly presumed that the sovereign people, the ultimate source of all government powers, have reposed these powers in all government agencies. The intention of the sovereign people, through their representatives in the legislature, to share these unique and awesome powers with the local legislative bodies must therefore clearly appear in pertinent legislation.

There being no provision in the Local Government Code explicitly granting local legislative bodies, the power to issue compulsory process and the power to punish for contempt, the Sanggunian Panlungsod of Dumaguete is devoid of power to punish the petitioners Torres and Umbac for contempt. The Ad-Hoc Committee of said legislative body has even less basis to claim that it can exercise these powers.

5. Even assuming that the respondent Sangguniang Panlungsod and the respondent Ad-Hoc Committee had the power to issue the subpoena and the order complained of, such issuances would still be void for being ultra vires. The contempt power (and the subpoena power) if actually possessed, may only be exercised where the subject matter of the investigation is within the jurisdiction of the legislative body (*Arnault v. Nazareno*, supra., citing *Kilbourn v. Thompson*). As admitted by the respondents in their Comment, the investigation to be conducted by the Ad-Hoc Committee was to look into the use by NORECO II of inefficient power lines "of pre-war vintage" which the latter had acquired from the Visayan Electric Company, and "to hear the side of the petitioners" (Comment, Rollo, p. 50). It becomes evident that the inquiry would touch upon the efficiency of the electric service of NORECO II and, necessarily, its compliance with the franchise. Such inquiry is beyond the jurisdiction of the respondent Sangguniang Panlungsod and the respondent committee.

There is no doubt that a city government has the power to enact ordinances regulating the installation and maintenance of electric power lines or wires within its territorial jurisdiction. The power subsists notwithstanding the creation of the National Electrification Administration (NEA), to which body the franchise powers of local government units were transferred by Presidential Decree No. 269. Section 42 of the Decree states:

SEC. 42. Repeal of Franchise Powers of Municipal, City and Provincial Governments.-- The powers of municipal, city and provincial governments to grant franchises, as provided for in Title 34 of the Philippines Statutes or in any special law, are hereby repealed; Provided, That this section shall not impair or invalidate any franchise heretofore lawfully granted by such a government or repeal any other subsisting power of such governments to require that electric facilities and related properties be so located, constructed and operated and maintained as to be safe to the public and not to unduly interfere with the primary use of streets, roads, alleys and other public ways, buildings and grounds over, upon or under which they may be built. (This Section was

not among those amended by Pres. Dec. Nos. 1370 [May 2, 1978] and 1645 [October 8, 1979]).

This particular power of the city government is included in the enumeration of powers and duties of a Sangguniang Panlungsod in Section 177 of the Local Government Code (Batas Pambansa Blg. 337, February 10, 1983), to wit:

SEC. 177. Powers and Duties. - - The Sangguniang Panlungsod shall:

* * *

(j) . . . regulate the digging and excavation for the laying of gas, water, power, and other pipelines, the building and repair of tunnels, sewers and drains, and all structures thereunder; the placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and the correction, condemnation of the same when dangerous or defective;

* * *

The Sangguniang Panlungsod of Dumaguete may, therefore, enact ordinances to regulate the installation and maintenance of electric power lines, e.g. prohibit the use of inefficient power lines, in order to protect the city residents from the hazards these may pose. In aid of this ordinance-making power, said body or any of its committees may conduct investigations similar to, but not the same as, the legislative investigations conducted by the national legislature. As already discussed, the difference lies in the lack of subpoena power and of the power to punish for contempt on the part of the local legislative bodies. They may only invite resource persons who are willing to supply information which may be relevant to the proposed ordinance. The type of investigation which may be conducted by the Sangguniang Panlungsod does not include within its ambit an inquiry into any suspected violation by an electric cooperative of the conditions of its electric franchise.

The power to inquire into the efficiency of the service supplied by electric cooperatives is within the franchising powers of the NEA under Sec. 43 of Pres. Dec. No. 269, i.e.:

* * *

(2) to repeal and cancel any franchise if the NEA finds that the holder thereof is not then furnishing, and is unable to or unwilling within reasonable time to furnish adequate and dependable service on an area coverage within such area;

* * *

In the exercise of this power, the NEA may conduct hearings and investigations, issue subpoenas and invoke the aid of the courts in case of disobedience to its subpoenas (Sec. 47 & Sec. 54, P.D. 269). Clearly, then, the Sangguniang Panlungsod of Dumaguete cannot look into any suspected failure of NORECO II to comply with the standards of electric service prescribed by law and in its franchise. The proper recourse is to file a complaint with the NEA against NORECO II if there be sufficient basis therefor.

WHEREFORE, the subpoena dated October 25, 1985 requiring the attendance and testimony of the petitioners at an investigation by the respondent Ad-Hoc Committee, and the Order issued by the latter on October 29, 1985 directing herein petitioners to show cause why they should not be punished for legislative contempt for their disobedience of said subpoena, is declared null and void for being ultra vires. The respondent Sangguniang Panlungsod and the respondent Ad-Hoc Committee are without power to punish non-members for contempt. The Temporary Restraining Order issued by this Court on November 7, 1985 enjoining said respondents, their agents and representatives, and the police and other peace officers from enforcing the aforesaid Order of the respondent committee is made permanent. Petition is GRANTED. No Costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin and Sarmiento, JJ., concur.

Feliciano, J., on leave.

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