

ROBERTO IGNACIO, PETITIONER, VS. LEONCIO BANATE, JR., HON. AQUILINO PIMENTEL, IN HIS CAPACITY AS MINISTER OF LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT AND THE CITY TREASURER O...

G.R. No. 74720. August 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for quo warranto and prohibition with prayer for preliminary injunction and temporary restraining order seeks to nullify the appointment or designation of private respondent Leoncio Banate, Jr., as a member of the Sangguniang Panlungsod of the City of Roxas.

The petitioner was elected Barangay Captain of Barangay Tanza, Roxas City on May 17, 1982, for a term of six years which commenced on June 7, 1982.

Subsequently, he was elected President of the Association of Barangay Councils or Katipunan Panlungsod Ng Mga Barangay in Roxas City, in accordance with the Local Government Code and the implementing rules and regulations of the Katipunan.

By virtue of his being President of the Katipunan Panlungsod Ng Mga Barangay, he was appointed a member of the Sangguniang Panlungsod or City Council of the Roxas City by then President Marcos. As such member, he took his oath of office on June 24, 1982.

On May 9, 1986, respondent Minister Aquilino Pimentel designated Leoncio Banate, Jr., as member of the Sangguniang Panlungsod of Roxas City, to replace the petitioner.

The petitioner contends that respondent Banate is not qualified to be a member of the Sangguniang Panlungsod and to replace him as the representative of the Katipunan Ng Mga Barangay of Roxas City because his membership in the city council as Katipunan President is governed by the Local Government Code (BP Blg. 337), particularly Sec. 173 which provides that:

"Sec. 173. Composition and Compensation. -- (1) sangguniang panlungsod, as the legislative body of the city, shall be composed of the vice-mayor, as presiding officer, the elected sangguniang panlungsod members, and the members who may be appointed by the President of the Philippines consisting of the presidents of the katipunan panlungsod ng mga barangay and the kabataang barangay city federation."

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According to the petitioner, his appointment as member of the Sangguniang Panlungsod was by virtue of his having been elected by the Katipunan Panlungsod Ng Mga Barangay of said city as president thereof in accordance with BP Blg. 337 while respondent Banate is not an officer, much less President of the Katipunan Panlungsod Ng Mga Barangay of Roxas City and has not been duly elected for any of said positions.

The petitioner further argues that the appointment of respondent Banate by Minister Pimentel is invalid considering that under Sec. 173 of the Local Government Code, it is the President of the Philippines and not the Minister of Local Governments who has the power and authority to appoint the President of the Katipunang Panlungsod Ng Mga Barangay as member of the Sangguniang Panlungsod. He claims that this appointment power cannot be delegated to said minister for this is a strictly personal act which the Constitution and the laws specifically ordain to be performed by the President alone.

The Solicitor General countered that under the Local Government Code (BP Blg. 337), the terms of office of local government officials commenced on the first Monday of March 1980 and ended on March 28, 1986. The period was extended to June 30, 1986 by the Omnibus Election Code of 1985 (BP Blg. 881). He states that the petitioner, as an appointive local government official who assumed office under the 1973 Constitution, is covered by the provisions of Section 2, Article III of Proclamation No. 3 issued by President Corazon C. Aquino, which provides that "All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986".

With respect to the argument of the petitioner that the appointing power of the President of the Philippines cannot be delegated to Minister Pimentel, the Solicitor General replied that under the provisions of Section 2, Article III of Proclamation No. 3, dated March 25, 1986, issued by President Corazon C. Aquino, otherwise known as the Provisional Constitution, the power to delegate or appoint officers-in-charge in replacement of local government officials by then Minister Aquilino Pimentel, Jr., as alter ego of the President of the Philippines, has been upheld by this Court in several cases.

We find the petition to be meritorious. It is true that Minister Pimentel, as cabinet member, is the alter ego of the President in appointing a public officer. His authority to designate or appoint local officials in an acting capacity has been upheld by this Court. (*Topacio, Jr., v. Pimentel*, G.R. No. 73770; *Velasco v. Pimentel*, G.R. No. 73811; *Governors of the Philippines v. Pimentel*, G. R. No. 73823; *The Municipal Mayors League of the Philippines, et al., v. Pimentel*, G. R. 73940; and *Solis v. Pimentel, et al.*, G. R. No. 73970; April 10, 1986)

We must stress, however, that the appointee to a Sangguniang Panlungsod who sits there as a representative of the barangays must meet the qualifications required by law for the position. An unqualified person cannot be appointed a member even in an acting capacity.

It must be noted that the petitioner is an elected barangay captain of Barangay Tanza, Roxas City. As barangay captain, he was subsequently elected President of the Association of Barangay Councils of Roxas City. It was by reason of his being the president of the Association of Barangay Councils of Roxas City that the President of the Philippines appointed him as member of the Sangguniang Panlungsod. This was pursuant to Section 3, paragraph 1 of BP Blg. 51 (An Act Providing for the Elective or Appointive Positions in Various Local Governments and for Other Purposes), which provides that:

"Sec. 3. Cities.- There shall be in each city such elective local officials as provided in their respective charters, including the city mayor, the city vice-mayor, and the elective members of the sangguniang panlungsod, all of whom shall be elected by the qualified voters in the city. In addition thereto, there shall be appointive sangguniang panlungsod members consisting of the president of the city association of barangay councils, the president of the city federation of the kabataang barangay, and one representative each from the agricultural and industrial labor sectors who shall be appointed by the president whenever, as determined by the sangguniang panlungsod, said sectors are of sufficient number in the city to warrant representative." (Underscoring supplied).

The aforequoted provision of law is complemented by Section 173 of the Local Government Code (BP Blg. 337)

cited earlier.

The private respondent in this case, not being a barangay captain and never having been elected president of the association of barangay councils, cannot be appointed a member of the sangguniang panlungsod. He lacks the eligibility and qualification required by law. Subject to constitutional restrictions, the Congress or the legislative authority may determine the eligibility and qualification of officers and provide the method for filling them (*People v. Carlos*, 78 Phil., 535). The lawmaker's mandate has not been complied with.

The authority exercised by the respondent Minister of Local Government must be read, however, in the context of the constitutional provision upon which it is based.

Section 2, Article III of the Provisional Constitution of 1986, Proclamation No. 3 of President Corazon C. Aquino provides:

"All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986." (Emphasis supplied).

The petitioner, as one who was appointed under the 1973 Constitution continues in office until the appointment and qualification of his successor. Since the appointment of his successor, respondent Banate, is not valid, the tenure of petitioner Ignacio could not be terminated on that basis alone.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby GRANTED. The appointment/designation of private respondent Banate as member of the Sangguniang Panlungsod of the City of Roxas representing the Katipunang Panlungsod Ng Mga Barangay is DECLARED NULL and VOID. Petitioner ROBERTO IGNACIO is ordered REINSTATED as member of said Sangguniang Panlungsod.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Melencio-Herrera, J., on leave.

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