

COUNCILOR RAFAEL A. REYES, PETITIONER, VS. HONORABLE JAIME N. FERRER, SECRETARY OF LOCAL GOVERNMENT, NEMESIO L. RASGO, JR. AND HONORABLE AUGUSTO V. BREVA, PRESIDING JUDGE, RTC 1...*G.R. No. 77801. December 11, 1987*

Ponente: CORTES, J.

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The petitioner, Rafael A. Reyes, Jr. was appointed member of the Sangguniang Panlungsod of Davao City on November 25, 1985 to represent the Kabataang Barangay Federation in Davao City of which he had been elected president (Local Government Code, [B.P. Blg. 337] sec. 173) for a term of three years unless sooner removed for cause as provided by law, permanently incapacitated, dies, or resigns from office. (Sec. 123). The Provisional Constitution of 1986 provides that "all elective and appointive 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".

On February 23, 1987, respondent Jaime N. Ferrer designated Nemesio L. Rasgo, Jr. to replace the petitioner as member of the Sangguniang Panlungsod of Davao City representing the youth sector.

Reyes, alleging that he is entitled to hold office until 1988, filed with the Regional Trial Court of Davao City a petition for declaratory relief, prohibition, quo warranto, and injunction with preliminary injunction and/or restraining order. In considering his prayer for preliminary injunction, the respondent judge required the simultaneous filing of memoranda of the parties and then denied the injunction, virtually disposing of the petition for quo warranto, on the ground that the petitioner had no cause of action. Hence, this special civil action for certiorari with injunction and/or temporary restraining order.

After the parties had filed their pleadings including the Comments of the public and private respondents, the petitioner's Reply and Manifestations, the private respondent's Motions and the Rejoinders of respondents, the Court considered the issues joined and the case submitted for decision.

The petitioner contends that contrary to the ruling of the trial court, the Provisional Constitution (Proclamation No. 3) did not at all "change the complexion or character of the terms of office of all elective and appointive officials and employees under the 1973 Constitution" to that of "hold-over" capacities unless their terms of office already expired. Citing B. P. Blg. 337, petitioner claims that his term of office lasts up to 1988.

The Solicitor General countered that petitioner's replacement on February 23, 1987 was in accordance with the limitation imposed by Article III, Section 2 of the Provisional Constitution - that the appointment or designation of successors be made within a period of one year from February 25, 1986. He states that contrary to the claim of petitioner, his term of office as a member of the Sangguniang Panlungsod had already expired by virtue of the

Omnibus Election Code (B. P. Blg. 881) which provides that "all incumbent officials whose terms of office shall expire on March 28, 1986 shall hold office until June 30, 1986 or until their successors shall have been elected and qualified." The Solicitor General also invokes a memorandum dated August 15, 1986 issued by the then Deputy Executive Secretary Fulgencio Factoran, Jr. that "all operations of Kabataang Barangay shall cease effective August 20, 1986, until further notice."

There is no question that the designation of petitioner's successor on February 23, 1987 was within the one-year limitation set in the Provisional Constitution. On that date, however, the 1987 Constitution was already in effect [Alfredo de Leon, et al. v. Hon. Benjamin Esguerra, et al., G.R. No. 78059, August 31, 1987], Section 27, Article XVIII of which provides:

Sec. 27. - This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions. (Emphasis supplied).

This Court applies by analogy the following ruling in the De Leon case:

The 1987 Constitution was ratified in a plebiscite on February 2, 1987. By that date, therefore, the Provisional Constitution must be deemed to have been superseded. Having become inoperative, respondent OIC Governor could no longer rely on Section 2, Article III, thereof to designate respondents to the elective positions occupied by petitioners.

Thus, from February 2, 1987, all acts of the public respondent must be consistent with the 1987 Constitution which ensures the autonomy of local governments (Art. II, sec. 25 and Art. X, secs. 2, 14, among others); guarantees security of tenure in the civil service (Art. IX-B, sec. 2[3]); and limits the President's power to "general supervision" over local governments (Art. X, sec. 4). It likewise provides that "(A)ll existing laws, decrees, executive orders, proclamations, letters of instruction, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked," one such law being The Local Government Code (Batas Pambansa Blg. 337) which declares as a State Policy the guarantee and promotion of the autonomy of local government units (Sec. 2), and limits Presidential power over local governments to the exercise of general supervision "to ensure that local affairs are administered according to law" (Sec. 14).

It also makes special provision regarding representation of the youth sector by specifying their qualification, term of office, etc., as follows:

Sec. 173. Composition and Compensation. - (1) The 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 katipunang panlungsod ng mga barangay and the kabataang barangay city federation. (Underscoring supplied).

* * *

Even assuming that the replacement of petitioner Reyes could have been made, the appointing power is bound by the said law to observe the qualifications of the appointee to the Sangguniang Panlungsod. In the case at bar, private respondent Rasgo was never the president of the Kabataang Barangay city federation, hence he lacks the eligibility and qualification required by law to be the representative of the youth sector to the Sangguniang Panlungsod of Davao City. Inasmuch as Rasgo's appointment is not valid, the tenure of Reyes could not be terminated. (Ignacio v. Banate, et al., G.R. No. 74720, August 31, 1987).

To support his claim that petitioner's terms of office had already expired, the Solicitor General invokes a memorandum dated August 15, 1986 issued by then Deputy Executive Secretary Fulgencio Factoran to the effect that the Kabataang Barangay had become an "extinct" organization and that therefore, petitioner has no legal basis

to claim title to the seat in the Sangguniang Panlungsod of Davao City for the youth sector.

The Court finds no merit to this claim. The Kabataang Barangay organization is still an existent entity as shown by Memorandum Circular No. 87-18 of the Ministry of Local Government issued by the public respondent on April 27, 1987, which states:

MEMORANDUM CIRCULAR

No. 87-18

TO : All Local Chief Executives, DLG Regional Directors and All Others Concerned

SUBJECT : SUSPENSION OF APPOINTMENT OF MEMBERS OF THE KABATAANG BARANGAY

Pending the final decision of the President on the status of the Kabataang Barangay organization, all Provincial Governors, City and Municipal Mayors are hereby directed to refrain from extending any appointment to a member of the Kabataang Barangay Federation to the sangguniang panlalawigan, sangguniang panlungsod and sangguniang bayan, as the case may be, pursuant to Sections 205(a), 173 and 146, respectively, of the Local Government Code.

* * *

(Rollo, p. 117)

WHEREFORE, the petition is hereby GRANTED. The order of respondent Judge denying the prayer of herein petitioner for a writ of preliminary injunction is SET ASIDE and the respondent Nemesio L. Rasgo, Jr. is ENJOINED from continuing to perform the functions of the office of the member of the Sangguniang Panlungsod representing the youth of Davao City. Petitioner Rafael A. Reyes, Jr. is ordered immediately REINSTATED to such office.

SO ORDERED.

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

Sarmiento, J., in the result.

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