

FRANCISCO LECAROZ, PETITIONER, VS. HON. JAIME N. FERRER, IN HIS CAPACITY AS SECRETARY OF LOCAL GOVERNMENT AND MEYNARDO VERTUCIO, RESPONDENTS.

G.R. No. 77918. July 27, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for certiorari and prohibition with prayer for preliminary injunction and/or temporary restraining order, to restrain the respondents from removing petitioner from his position as municipal mayor of Sta. Cruz, Marinduque.

The Court heard the parties, after which, it issued a temporary restraining order on 10 April 1987, restraining the respondents from proceeding with the takeover of the position by the respondent Meynardo Vertucio.[1]

In his petition filed before the Court on 7 April 1987, Francisco Lecaroz alleged that he was duly elected Municipal Mayor of Sta. Cruz, Marinduque in the 1980 elections for local officials, the functions of which he had assumed and discharged until 26 March 1987, when the respondent Jaime N. Ferrer, in his capacity as Secretary of Local Government, removed him from his office and designated the respondent Meynardo Vertucio, officer-in-charge of the Office of Mayor of Sta. Cruz, Marinduque. The petitioner attributed his removal from office to his failure or refusal to campaign for the Administration's congressional candidate, which petitioner claims to be oppressive, high handed, whimsical, capricious, despotic, and unreasonable. The petitioner further claimed that he is not a mere officer-in-charge of an office, but a duly elected official allowed to continue in office after the February 1986 revolution, so that he may not be summarily removed from office by the mere designation of a successor.

Commenting on the petition, the respondent, Meynardo Vertucio, denied that the petitioner was removed from his position for not supporting the congressional candidate of the Administration. He claimed that the petitioner was dismissed for cause, citing administrative complaints filed against the petitioner with the Department of Local Government. He further claimed that the petitioner's term of office had already expired and his continuance in office is in an acting capacity so that he can be removed at any time, with or without cause; and that the petitioner is disqualified from holding office in view of his conviction by the Sandiganbayan of the crime of Grave Coercion and his being sentenced to suffer the penalty of two (2) months and one (1) day of arresto mayor which carries with it the accessory penalty of suspension of the right to hold office and the right of suffrage during the term of sentence.[2]

The respondent Secretary of Local Government also alleged that the petitioner was the officer-in-charge of the office of mayor of Sta. Cruz, Marinduque until 26 March 1987, when he was replaced by the respondent Meynardo Vertucio by reason of the administrative charges filed against him for negligence, abuse of authority, misconduct in the performance of his functions, misappropriation of the amount of P100,000.00 which was donated by an Arabian prince to the municipality, and conviction by the Sandiganbayan of the crime of Grave Coercion.[3]

We find merit in the petition.

Article III, Section 2 of the Provisional Constitution promulgated by President Corazon C. Aquino on 25 March 1986, 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."

There is no doubt that the petitioner, Francisco M. Lecaroz, was duly elected Municipal Mayor of Sta. Cruz, Marinduque during the 1980 elections for local officials and he is thus an elective official under the 1973 Constitution. As ruled by the Court in *Dano vs. Ferrer*,^[4] he should continue in office pursuant to the provisions of the Provisional Constitution, above-quoted, but should vacate the same upon the occurrence of the events mentioned in the said section. It appearing, however, that the period of one (1) year from 25 February 1986, provided for in the law, had already elapsed, the petitioner cannot be considered removed from office by the mere designation and qualification of a successor. The petitioner can only be removed from office for causes mentioned in Section 60 of the Local Government Code (Batas Pambansa Blg. 337) and after proper proceedings. Said section provides:

"SEC. 60. Suspension and Removal; Grounds. — An elective local official may be suspended or removed from office on any of the following grounds committed while in office:

"(1) Disloyalty to the Republic of the Philippines;

"(2) Culpable violation of the Constitution;

"(3) Dishonesty, oppression, misconduct in office and neglect of duty;

"(4) Commission of any offense involving moral turpitude;

"(5) Abuse of authority;

"(6) Unauthorized absence for three consecutive months."

It is of record in the instant case that when the petitioner was dismissed by the respondent Secretary of Local Government on 26 March 1987, there were several administrative complaints filed against him by the residents of Sta. Cruz, Marinduque before the Department of Local Government and the Tanodbayan for negligence, abuse of authority, misconduct in the performance of his functions, misappropriation of the amount of P100,000.00 donated by an Arabian prince to the municipality of Sta. Cruz, Marinduque, as well as for conviction by the Sandiganbayan of the crime of Grave Coercion. But, as pointed out by the petitioner, while these complaints have already been investigated by the Department of Local Government and the parties duly heard, no decision has been rendered on said complaints by the Department of Local Government as required by Section 65 of the Local Government Code, which provides:

"SEC. 65. Form and Notice of Decision. — (1) Within thirty days after the end of the investigation, the Minister of Local Government, or the provincial, city or municipal sanggunian, as the case may be, shall render a decision in writing stating clearly and distinctly the facts and the reasons for such decision, copies of which shall immediately be furnished the respondent and all interested parties.

(2) The penalty of suspension shall not exceed the unexpired term of the respondent, nor shall the penalty of suspension or removal be a bar to the candidacy of the respondent so suspended or removed from an elective public office as long as he meets the qualifications so required for the office."

What the petitioner received from the respondent Secretary of Local Government when his services were summarily terminated on 26 March 1987, was a letter advising him of the designation of the respondent Meynardo Vertucio as the officer-in-charge of the office of Mayor of Sta. Cruz, Marinduque, and requesting him to turn over said office to the respondent Vertucio. Said letter stated:

"March 26, 1987

Date

"MR. FRANCISCO LECAROS

Sta. Cruz, Marinduque

S i r:

Please be advised that the undersigned has designated DR. MEYNARDO VERTUCIO as Officer-In-Charge of the Office of the MAYOR, STA. CRUZ, MARINDUQUE effective upon assumption.

You are requested to turn-over the said office to Dr. Meynardo Vertucio immediately.

Thank you.

Very truly yours,

(Sgd.) JAIME N. FERRER

Secretary."[5]

The afore-quoted letter cannot be the decision contemplated in Section 65 of the Local Government Code, since it does not "state clearly and distinctly the facts and the reasons for such decision." And even if it were, the dismissal of the petitioner can be effected only after thirty (30) days if no appeal is made from receipt thereof.[6]

The petitioner's conviction by the Sandiganbayan of the crime of Grave Coercion cannot also justify the summary removal of the petitioner from his position. Such a ground for removal should be clearly stated in an appropriate decision of the respondent Secretary of Local Government as required under Section 65 in relation to Section 60 of the Local Government Code. Nothing less can be permitted under a rule of law.

We have to state, however, in fairness to respondent Secretary Ferrer, that we cannot attribute the petitioner's dismissal to his failure or refusal to support the Administration's congressional candidate, in the absence of substantial evidence to support the claim. As pointed out by the Solicitor General, if politics was the reason for petitioner's replacement, then his brother, Aristeo, the officer-in-charge of the Office of Governor of Marinduque and the husband of Aurora who was running against the Administration's candidate, should have also been replaced, but he was not.

ACCORDINGLY, the petition is granted and the Memorandum issued by the respondent Secretary of Local Government on 26 March 1987, designating the respondent Meynardo Vertucio, the officer-in-charge of the Office of Mayor of Sta. Cruz, Marinduque, vice Francisco Lecaroz, and the letter of said Secretary of Local Government, dated 26 March 1987, to the petitioner, requesting the latter to turn over the Office of Mayor of Sta. Cruz, Marinduque to the respondent Meynardo Vertucio are both declared to be of no legal force and effect. The

temporary restraining order, herefore issued, is made permanent. Without costs.

SO ORDERED.

Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Cancayco, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., please see separate concurrence.

Yap, J., concurs and also in concurring opinion of the Chief Justice.

[1] Rollo, p. 17.

[2] Id., p. 25.

[3] Id., p. 105.

[4] G.R. No. 77126, 2 March 1987.

[5] Rollo, p. 82.

[6] Sec. 66, Local Government Code.

TEEHANKEE, C.J., concurring:

The Court's judgment in this case is grounded on the provisions of Article III, Section 2 of the Provisional Constitution of March 25, 1986 that "all elective and appointive officials and employees . . . 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."

Petitioner at bar, Francisco M. Lecaroz, as the elected mayor of Sta. Cruz, Marinduque continued in office and was not replaced within the one-year period which expired on February 25, 1987. The letter of March 26, 1987 of respondent secretary seeking to replace petitioner with respondent Vertucio could not produce any legal force and effect, having been issued beyond the constitutional one-year deadline.

As pointed out in the Court's judgment, respondent secretary's recourse after the said deadline is to state clearly the grounds for petitioner's removal in an appropriate decision on the several charges against him (the investigations of which have already been terminated, including his final conviction for grave coercion) and need only be properly set out in the secretary's decision as required under Section 65 in relation to Section 60 and related provisions of the Local Government Code.

This case is to be distinguished from the case of officers- in-charge so designated to temporarily discharge the functions and duties of vacant elective offices, whose previous occupants' tenure had been terminated within the aforesaid one-year deadline, and whose petitions questioning their replacement by respondent secretary of local governments have been dismissed by the Court. Among them are the cases of Victor de la Serna,[1] Nerio G. Zamora,[2] and Graciano Duquing[3] and others.

The Court's Resolution in De la Serna clearly states the rationale that such designees hold no fixed tenure and may be removed or replaced at will by the appointing authority, thus: "petitioner had been designated merely as officer-in-charge of the Office of Governor, Province of Bohol, and (as) the nature of his designation has always

been regarded as temporary, good until another one is appointed in his place, and the position is one from which he could be removed at will by the appointing authority, with or without cause, and without need of notice or any form of hearing (*Austria vs. Amante*, 79 Phil. 780; *Castro vs. Solidum*, 97 Phil. 278; *Mendez vs. Ganzon*, 101 Phil. 48; *Abano vs. Aguipo*, 122 Phil. 990; *Tupaz vs. Ferrer*, G.R. No. 76719, December 18, 1986 and *Arrieta vs. Ferrer*, G.R. No. 77981, May 7, 1987)."

The authority to issue such temporary designations has been expressly provided for whenever there existed a vacancy or temporary absence, illness or disability of the incumbent^[4] in order to prevent a hiatus in the discharge of public duties. Hence, such temporary incumbents are designated as officers-in-charge, who are removable at the will of the appointing or designating authority or until the return of the regular incumbent, if there be one. The designee or officer-in-charge (OIC) accepts his designation as essentially a temporary one. He can lay no claim to security of tenure, for he has no term. This administrative provision permits the appointing authority to fill the position temporarily while taking time to exercise greater care in the screening and selection of a permanent appointee to the vacant office or awaiting the holding of local elections (which have now been scheduled for next November) to have the electorate make their own choice by popular vote as particles of sovereignty.

Such authority on the part of the Chief Executive to issue temporary designations to fill offices covered by his/her appointing authority and of department secretaries likewise to issue temporary designations within their respective departments has always been recognized as necessary for the proper administration of the affairs of the Government. The return and recognition of local autonomy for local governments and limiting the President to "exercising general supervision over local governments" in the 1987 Constitution^[5] should not be stretched retroactively so as to consider all the local OIC's as having been extended permanent appointments. The 1987 Constitution contains no such provision that could be remotely construed as granting OIC's such permanent appointments en masse.

Neither can it be construed as having nullified or cancelled the long-recognized authority on the part of the Chief Executive to issue temporary designations to fill temporarily public offices that are temporarily vacant due to the incumbents' temporary absence, illness or disability, or pending the appointment of a regular appointee. It should be noted that after the holding of the scheduled local elections next November, this authority will have been rendered *functus officio* insofar as local elective officials are concerned, for vacancies thereafter will be governed by the proper succession law. The authority to issue temporary designations will continue in force, however, as to the temporary filling of national appointive offices, unless otherwise provided by law. It should be further noted that both under the 1935 Constitution^[6] and the 1987 Constitution,^[7] the President, in addition to the appointing authority therein given, likewise was given the power to make recess or *ad interim* appointments which will be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress, but the President's power to issue temporary designations was always recognized under the 1935 Constitution. Similarly, the framers of the 1987 Constitution were well aware of this settled construction and are deemed to have adopted it.

[1] G.R. No. 77938, July 23, 1987.

[2] G.R. No. 78187, June 23, 1987 and July 23, 1987.

[3] G.R. No. 78462, July 16, 1987.

[4] Revised Administrative Code, Act 2657, Section 299; P.D. 1587, June 11, 1978.

[5] Article X, Sections 2-4.

[6] Article VII, Section 10(3) and (4).

[7] Article VII, Sections 16 and 17.

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