

JOHNNY D. SUPANGAN, JR., PETITIONER, VS. HON. LUIS T. SANTOS, SECRETARY OF THE DEPARTMENT OF LOCAL GOVERNMENT, AND MARISSA DOMANTAY, RESPONDENTS.*G.R. No. 84663. August 24, 1990*

Ponente: PARAS, J.

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The validity and legality of the designations/appointments made by the Secretary of the Department of Local Government (DLG) of members/sectoral representatives to the local legislative bodies is the main issue presented in these cases which were ordered consolidated by the Court. To fully understand the facts from which this controversy arose, hereunder is a separate statement of facts for each of these cases.

G.R. NO. 84663

Petitioner Johnny D. Supangan, Jr., is a member of the Kabataang Barangay (KB) of Mabini, Pangasinan. In 1985, he was elected KB Chairman of the said municipality. In that same year he was elected KB Provincial Federation President of the province of Pangasinan.

On November 25, 1985, petitioner was appointed by then President Marcos as member of the Sangguniang Panlalawigan of the province of Pangasinan representing the youth sector. He accordingly assumed office, discharged his functions and participated in the deliberations of the said body.

However on August 8, 1988 at the session hall of the Sangguniang Panlalawigan, respondent Marissa Domantay presented to the Presiding Officer a letter dated August 3, 1988 written by respondent Secretary Luis T. Santos advising the Sangguniang Panlalawigan that respondent "Marissa Domantay has been named as member thereof to replace Johnny D. Supangan, Jr." (Annex 'D', p. 15, Rollo). She took her oath of office on August 25, 1988 and began attending the sessions of the said body.

Claiming that Sec. Santos has no legal authority to designate private respondent Marissa Domantay as member of the Sangguniang Panlalawigan representing the youth sector because (a) respondent Marissa Domantay has never been elected as KB Provincial Federation President of Pangasinan, a basic qualification for appointment as member representing the youth sector, and (b) respondent Secretary has no legal authority in issuing his letter dated August 3, 1988 because the term of office of petitioner Johnny D. Supangan, Jr. has not yet expired nor his successor, if any, been elected/appointed and qualified, petitioner instituted the present quo warranto and injunction proceedings.

G.R. NO. 85012

On July 1, 1988, private respondent Domingo R. de Guzman was designated member of the Sangguniang Bayan of the Municipality of Taguig, Metro Manila, by Secretary Luis T. Santos. He was sworn into office on July 1, 1988. That same day, at 7:37 o'clock in the evening, de Guzman attended the Third Regular Session of the

Sangguniang Bayan and tried to assume his position as a member of that legislative body. He was prevented from so doing by some members thereof.

During the Fifth Regular Session of the Sangguniang Bayan on July 18, 1988, the Presiding Officer - Vice Mayor (then Acting Mayor) Pacifico S. Santos announced the acceptance of de Guzman's papers as the ABC representative, Councilors Rufino Mamonong, Castillo and Agapito Cruz, Jr. objected thereto.

On September 8, 1988, Acting Mayor Santos and De Guzman filed a complaint against Castillo, Cruz and Mamonong, with the Department of Local Government, for having unlawfully conspired and confederated with each other to prevent de Guzman from attending and participating in the sessions of the Sangguniang Bayan to deprive de Guzman of his rights and privileges that attach to his office and to delete his name from the records of that body despite the Sangguniang's verification of the authenticity of de Guzman's appointment. The case was docketed as Administrative Case No. M-1035-88.

On September 26, 1988, Castillo, Mamonong and Cruz filed the present petition for Prohibition and Injunction, to annul the designation of respondent de Guzman and pending the outcome thereof, to issue a writ of preliminary injunction against respondent Teodoro Agati from proceeding with the investigation of Administrative Case No. M-1035-88.

Petitioners claim that the appointment of De Guzman is illegal for the reasons that:

- (a) There is no law prescribing the appointment of sectoral representatives;
- (b) Only the President of the Philippines can appoint sectoral representatives and such act cannot be delegated to the Secretary of the Department of Local Government;
- (c) Memorandum Order No. 188, signed by the President of the Philippines on August 16, 1988 delegating such power to the Secretary of the Department of Local Government took effect only after the questioned appointment was made;
- (d) In any case, the act delegated therein is the power to fill permanent vacancies in the Sangguniang Bayan but at the time of de Guzman's designation, no such vacancy existed because all ten (10) seats therein, set by Republic Act No. 6636 (which rescheduled local election from November 9, 1987 to January 18, 1988) were all filled up by its ten (10) incumbent members after the January 18, 1988 elections.

G.R. NO. 86393

Public respondent Hon. Luis T. Santos issued two (2) Memoranda dated November 17, 1988 and December 9, 1988, designated private respondents Romeo P. Bularan and Rafael Cortez as members of the Sangguniang Bayan of Valenzuela, Metro Manila, representing the Agricultural and Industrial Labor sectors.

Assailing such designation, petitioners came to this Court for judicial review on the sole issue of whether or not the Secretary of the Department of Local Government has the power and authority to appoint or designate sectoral representatives to the local legislative bodies.

Petitioners argue that the designation made by respondent Secretary is unlawful and unconstitutional in the light of Article X Section 9 of the 1987 Constitution.

G.R. NO. 87601

On September 20, 1984, the Sangguniang Panlungsod (City Council) of Ozamis City adopted a Resolution requesting the President to fill up the two (2) slots allotted to represent the Agricultural and Industrial Labor sectors in said legislative body, pursuant to par. 5, Section 173 of Batas Pambansa Blg. 337, otherwise known as the Local Government Code. The said Resolution was recalled by the Resolution of February 28, 1985, but was subsequently revived by the Resolution dated January 2, 1986. (Annexes "A" to "C" of Petition, pp. 8-10, Rollo).

Pursuant thereto, the Mayor of Ozamis City recommended on January 23, 1989 the appointment of petitioners Pacifico Go and Arturo del Pozo, as members of the Sangguniang Panlungsod of Ozamis City representing the Industrial Labor Sector and Agricultural Sector respectively. That same day petitioners took their oath of office before the Speaker of the House of Representatives, the Hon. Ramon V. Mitra, Jr.

Forthwith, the petitioners by a letter dated February 10, 1989 informed the Mayor of Ozamis City, thru the Sangguniang Panlungsod of said city of their designations, enclosing therewith copies of their appointments and oaths of office.

The Sangguniang Panlungsod of Ozamis City adopted on March 2, 1989 Resolution No. 70 declining to recognize the designations of petitioners on the ground that such designations have not complied with the conditions precedent prescribed by the Local Government Code (BP Blg. 337) and its Implementing Rules and Regulations. (Rule XVI, Sec. 4, par. C)

And, when the City Mayor of Ozamis City vetoed the aforesaid Resolution, the Sangguniang Panlungsod unanimously approved on March 13, 1989 Resolution No. 92 to override the Mayor's veto.

Meantime, the petitioners sought the intervention of the Secretary of the Department of Local Government who in his 1st Indorsement dated March 10, 1989 referred to the Presiding Officer of the Sangguniang Panlungsod petitioners' letter of even date and directing that unless there are legal reasons to the contrary, to allow them to participate in the deliberations of that body as duly appointed members thereof.

But the Presiding Officers of the Sangguniang Panlungsod, in his 2nd Indorsement dated March 27, 1989 informed the Secretary of the Department of Local Government that while Resolution No. 70 remains in effect, he is powerless to recognize petitioners' designations.

The Secretary in his letter of April 12, 1989 reiterated compliance with his instruction contained in his 1st Indorsement but the Presiding Officer stood firm on his position.

Hence, the filing of the instant petition for Mandamus to compel respondents Presiding Officer and Members of the Sangguniang Panlungsod of Ozamis City to recognize petitioners' appointments.

G.R. NO. 87602

On January 31, 1989, the Secretary of the Department of Local Government issued a Memorandum designating Antonio B. Gomez member of the Sangguniang Panlungsod (representing the Agricultural Sector) of Angeles City. On the same day, Gomez took his oath of office.

On February 14, 1989, the City Council of Angeles City approved, by a majority vote, Resolution No. 33, S-89 affirming the sufficiency of members of the agricultural sector in the city that warrants the appointment of a representative.

The City Council having already determined the necessity of a representative, Mayor Antonio Abad Santos in his letter dated February 15, 1989 to the Presiding Officer and Members of the City Council, introduced for

recognition Mr. Antonio B. Gomez.

Petitioners objected to the designation on the ground that Gomez was a defeated candidate for councilor in the last election in Angeles City and is publicly known as engaged in the trade of repairing air-conditioning units and refrigerators but never has he been engaged in farming or in livestock raising or in agricultural work or trade involving agriculture and the like, nor has he been known or identified to work for the interest or plight of agricultural workers, therefore, he is not competent and qualified to represent the agricultural sector.

To forestall the assumption of office of said Antonio Gomez, herein petitioners filed with the Regional Trial Court of Angeles City, a complaint for "Injunction with prayer for a restraining order."

Respondents moved to dismiss the complaint on two (2) grounds, namely: that the complaint states no cause of action and that petitioners failed to exhaust administrative remedies.

Acting on the said motion, the trial court dismissed the case "solely on the ground of non-exhaustion of administrative remedies." (p. 53 Rollo)

Hence, the instant petition for review with prayer for a restraining order.

On April 11, 1989, the Court issued a temporary restraining order "effective immediately and continuing until further orders from this Court, enjoining the respondent Vice Mayor Hon. Edgardo D. Pamintuan and the respondent member of the Sangguniang Panlungsod of Angeles City from recognizing and admitting Mr. Antonio B. Gomez as member of said Sangguniang Panlungsod of Angeles City." (p. 56, Rollo)

G.R. NO. 87792

Petitioners are appointees of Hon. Sec. Luis T. Santos of the Department of Local Government as members of the City Council of the City of Manila representing the following sectors: Juan Baluyot for Industrial Labor, Tagumpay Eusebio for Association of Barangay Councils (ABC), Daniel O. Castillo as Kabataang Barangay Federation representative and Jonathan Mangaya representing the Agricultural Labor Sector.

Petitioners Baluyot, Castillo and Mangaya took their oaths of office on February 9, 1989 while Eusebio took his on November 29, 1988. Also on February 9, 1989, the Department of Local Government Secretary informed Mayor Gemiliano Lopez, Jr. and Vice-Mayor Danilo Lacuna of the appointments of petitioners except that of Tagumpay Eusebio who was not mentioned in the letter.

Notwithstanding the advice, the Council did not readily accept and recognize their appointments.

On March 21, 1989, the Council debated and voted on whether to recognize and accept the appointments of petitioners. Out of thirty (30) members present, eighteen (18) voted against while twelve (12) were in favor. In view of this result, the Council refused to recognize and accept petitioners' appointments and barred their entry into the session hall.

Hence, the present petition for Prohibition and Mandamus under Sections 2 and 3 respectively of Rule 65 of the Revised Rules of Court. Petitioners seek the enjoinder and performance of the following acts, to wit:

"(a) To enjoin respondents from debating and deliberating on the legality and validity of the appointment of petitioners as sectoral representatives to the City Council of Manila;

"(b) To compel respondents to recognize petitioners as the duly appointed sectoral representatives to the City Council of Manila and to allow them to participate in the deliberations of the council in such capacity."

Petitioners maintain that their appointments are legal and valid since they conform to Section 9, Art. X of the

Constitution which provides for sectoral representation in legislative bodies of local governments. Further, petitioners assert that Section 7, Act, XVIII of the Constitution empowers the President of the Philippines to "fill by appointment from a list of nominees by the respective sectors the seats reserved for sectoral representation in par. (2) Section 5 of Art. VI . . ." And since the Secretary of the Department of Local Government is duly authorized to issue appointments under Executive Order No. 342 dated November 18, 1988, then, perforce petitioners' appointments which were issued under such lawful authority are legal, valid and binding. Petitioners, therefore, conclude that it is ministerial on the part of respondents to recognize and accept their appointments.

G.R. NO. 87935

On March 15, 1989, the Sangguniang Bayan of Urdaneta, Pangasinan presided over by respondent Mayor Amadeo R. Perez, Jr. passed a resolution over the vigorous objection of petitioners appropriating the amount of P94,464.00 as per diems of respondents Soriano and Costales for sessions to be actually attended by them in the said body.

On March 29, 1989, said Soriano and Costales were extended appointments as members of the Sangguniang Bayan of Urdaneta, Pangasinan representing the industrial and agricultural sectors respectively. On the same date, they took their oaths of office.

Questioning the validity and legality of their appointments, petitioners filed a petition for "Injunction and/or Declaratory Relief" before the Regional Trial Court, First Judicial Region, Branch 47, Urdaneta, Pangasinan.

On April 25, 1989, the lower court dismissed the petition for lack of merit. Hence, this petition for "Certiorari and Prohibition with writ of preliminary injunction/restraining order."

Petitioners contend that the appointment of Soriano and Costales is unconstitutional for being violative of Sec. 9, Art. X of the 1987 Constitution and that respondents are not qualified for the positions to which they were appointed.

G.R. NO. 89072

On July 1, 1989, respondents Heracleo Dumadag, Jr. and Felix Tiukinhoy were designated by Sec. Santos as representatives of the industrial and agricultural sectors, respectively, of the Sangguniang Panlungsod of the City of Surigao. They took their oaths of office on July 10, 1989 and July 12, 1989. During the Sangguniang Panlungsod's session, they presented their credentials as such designated representatives but were refused recognition by the council. Because respondents insist on the validity of their appointments, petitioners who are the incumbent Vice-Mayor and City Councilors of the City of Surigao had to file the present petition for "Prohibition with Injunction and Restraining Order."

Petitioners contend that the designation of respondents is illegal because -

(a) Before the President could extend appointment/designation to sectoral representatives, the Sangguniang Panlungsod must first pass a resolution certifying to the effect that the sectors concerned are of sufficient number as to warrant representation.

In the instant case, the Sangguniang Panlungsod of Surigao City had not yet submitted a resolution containing the names of the recommendees. Absent such resolution, the Hon. Luis Santos cannot appoint much less designate a sectoral representative.

(b) Respondents are not qualified for the positions to which they were appointed.

Respondent Dumadag is not a resident of Surigao City but of Marga, Tubod, Surigao del Norte. In fact, he was a candidate for Mayor in Tubod, Surigao del Norte in the last local election.

Respondent Tiukinhoy on the other hand, is not a farmer. He devoted all his life to government service and is now a retiree having retired as Land Transportation Registrar of the Land Transportation Office, Surigao City.

G.R. NO. 90205

In a petition for Injunction filed before the Regional Trial Court, Branch 49, Urdaneta, Pangasinan the petitioners seek to enjoin the respondents Mayor Ramon R. Guico, Kagawads Isaiah C. Asunsion, Jr., Rolando S. Calderon, Jaime A. Terrado, Paul C. Ramos, Estanislao T. Hortaleza and Marilyn O. Valenzuela, from recognizing respondents Tambo and Sison as members of the Municipal Council and to prohibit the Municipal Treasurer, respondent Valenzuela from paying or releasing per diems for the said two respondents.

It appears that the Municipal Council of Binalonan, passed a resolution recommending the appointment of respondents Arcadio Tambo and Pablo Sison as sectoral representatives. Pursuant to said recommendation, Sec. Luis T. Santos of the Department of Local Government issued a Memorandum on August 8, 1989 appointing the aforementioned respondents (who thereafter took their oath of office) as sectoral representatives of the Sangguniang Bayan of Binalonan to represent the agricultural and industrial labor sectors, respectively. At its session on August 6, 1989, respondents Tambo and Sison presented their appointments to the Municipal Council of Binalonan. Petitioners impugned the subject appointments for not having been signed by the President of the Philippines.

The lower court dismissed the petition. Hence, the present recourse.

ISSUES RAISED

The petitioners, in the aforementioned cases, although pursuing different remedies, center their attack on the authority of the Secretary of Local Government to designate/appoint members/sectoral representatives to the local legislative bodies.

Thus, petitioners argue that:

(1) The designations/appointments made by respondent Secretary is unlawful and unconstitutional in the light of Article X, Section 9 of the 1987 Constitution which provides -

"Legislative bodies of local government shall have sectoral representation as may be prescribed by law."

since there is as yet no enabling law to implement the constitutional provision.

(2) The power to appoint belongs to the President and cannot be delegated to the Secretary of the Department of Local Government.

(3) Assuming that the Secretary of the Department of Local Government is possessed with the power and authority to designate/appoint such member/sectoral representatives, the designations/appointments made by respondent Secretary are null and void ab initio as they were not made in the manner required by the same law.

(4) That the appointees are not qualified.

DISCUSSION

Section 9 Article X of the 1973 Constitution mandates that legislative bodies of local governments shall have sectoral representation as may be prescribed by law.

Under the Local Government Code (BP 337), the power to appoint sectoral representatives is conferred upon the President of the Philippines.

But the Secretary of Local Government may, by authority of the President inform the sectoral representatives of their appointments. Otherwise stated, it is actually the President who has made the appointments in the cases involved herein, and the Secretary of Local Government is only the transmitter or communicator of said appointments.

The composition of the local legislative body for the cities is governed by Section 3, paragraph 1 of Batas Pambansa Blg. 51 (An Act Providing for the Elective or Appointive Positions in various Local Governments and for other Purposes) –

"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, wherever, as determined by the sangguniang panlungsod, said sectors are of sufficient number in the city to warrant representation."

The aforequoted provision of law is complemented by Section 173 of the Local Government Code (B.P. Blg. 337) which provides that:

"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."

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"(5) In addition thereto, there shall be one representative each from the agricultural and industrial labor sectors who shall be appointed by the President of the Philippines, whenever as determined by the sangguniang panlungsod, said sectors are of sufficient number in the city to warrant representation, after consultation with associations and persons belonging to the sector concerned."

On the other hand, the local legislative body for the municipalities is provided for in Section 146 of B.P. Blg. 337, as follows:

"Section 146. Composition - (1) The Sangguniang Bayan shall be the legislative body of the municipality and shall be composed of the municipal mayor, who shall be the presiding judge pro tempore, eight members elected at large, and the members appointed by the President consisting of the president of the katipunang bayan and the president of the kabataang barangay municipal federation.

"(2) In addition thereto, there shall be one representative each from the agricultural and industrial labor sectors who shall be appointed by the President of the Philippines whenever, as determined by the Sangguniang Bayan, said sectors are of sufficient number in the municipality to warrant representation, after consultation with associations and persons belonging to the sector concerned."

But can the President or the Secretary of the Department of Local Government make the designation/appointment

without any enabling law pursuant to Section 9, Article X of the 1973 Constitution? The petitioners argue that this cannot be done.

This argument is untenable. Contrary to petitioners' theory, the phrase "as may be prescribed by law" is not prospective in character. Section 9 commands that all legislative bodies of local governments must have sectoral representatives among its members, and the appointment or designation of individuals thereto must be done in accordance with provisions of law, whether that law exists or has still to be passed. But in this case that law already exists in B.P. Blg. 337 particularly Sections 146 and 173 quoted earlier.

It is well-settled that the word "may" is an auxiliary verb showing, among others, opportunity or possibility. Under ordinary circumstances, the phrase "may be" implies the possible existence of something. (*Capati v. Ocampo*, 113 SCRA 794, 796) In this case, the "something" is a law governing sectoral representation. The phrase in question should, therefore, be understood to mean as prescribed by such law that governs the matter at the time this Constitution is ratified or that could be enacted thereafter. The phrase does not and cannot, by its very wording, restrict itself to the uncertainty of future legislation. This interpretation would defeat the very purpose of immediately including sectoral representatives in the law-making bodies of local governments. Otherwise, in the interim, from the ratification of the Constitution until the passage of the appropriate statute, a large and important segment of the municipalities, the barangays, the youth sectors, the industrial and agricultural labor sectors would have no voice in the formulation of legislation that would directly affect their individual members.

In any event B.P. Blg. 337 is still operative, even after the ratification of the 1987 Constitution, because the Transitory Provisions (Article XVIII) provides for the continued operation of all existing laws, etc. not inconsistent with it -

"Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."

B.P. Blg. 337 is not inconsistent with the 1987 Constitution. Neither has it been expressly or impliedly amended, repealed or revoked. Clearly, therefore, it is still in effect. (*Reyes v. Ferrer*, 156 SCRA 314, 318)

The other argument of petitioners is - assuming the Secretary of the Department of Local Government has the power to designate/appoint such sectoral representatives, still the designations made by respondent Secretary for members to represent the Industrial and Labor Sectors are null and void ab initio as they were not made in the manner required by the same law.

This argument is meritorious.

B.P. Blg. 337 explicitly requires that before the President (or the Secretary of the Department of Local Government) may appoint members of the local legislative bodies to represent the Industrial and Agricultural Labor Sectors, there must be a determination to be made by the Sanggunian itself that said sectors are of sufficient number in the city or municipality to warrant representation after consultation with associations and persons belonging to the sector concerned.

For that matter, the Implementing Rules and Regulations of the Local Government Code even prescribe the time and manner by which such determination is to be conducted by the Sanggunian. Thus, Section 4(c), Rule XVI of said Rules provides that:

"Unless otherwise provided by law, the election/appointment of representatives of the agricultural and industrial labor sectors of the sangguniang panlungsod or sangguniang bayan, shall be in accordance with the following guidelines issued by the Ministry (now Secretary) of Local Government.

"1) Within thirty (30) days after the first regular session of the sanggunian following the election of the members, the sangguniang panlungsod or sangguniang bayan shall determine if any or both agricultural and industrial labor sectors exist and, if so, whether they are sufficient in number as to warrant representation in the sanggunian. If representation is warranted, the sangguniang concerned shall, within a reasonable time thereafter, call the members of the sectors for consultation which shall be held not earlier than ten (10) days after written notice thereof has been made to the members, either in the form of individual service or proper posting in the city/municipal hall, in the public market and in at least three (3) conspicuous places in the locality which are usually frequented by and/or accessible to residents. On the date and time set in the notice, the members of said sectors shall be convened and they shall choose among themselves by consensus three (3) recommendees of each sector. If representation is not warranted, the sanggunian concerned shall, in a resolution inform the Minister (now Secretary) of Local Government to that effect."

Consequently, in cases where the Sanggunian concerned has not yet determined that the Industrial and Agricultural Labor Sectors in their particular city or municipality are of sufficient number to warrant representation, there will absolutely be no basis for the designations/ appointments.

Significantly, in this regard, the Office of the Solicitor General in a Manifestation and Motion dated November 23, 1989 took the view that as a general rule, such prior determination by the Sangguniang itself is a condition sine qua non to a valid appointment.

On the question of qualification of the appointee, We ruled in the cases of *Ignacio v. Banate, Jr.* and *Reyes v. Ferrer* (supra) that the appointee to the Sanggunian who sits there as a representative must meet the qualifications required by law for the position.

The Constitution does not prescribe the qualifications for the position of sectoral representatives (for the Industrial and Agricultural Sectors) to the local legislative bodies. However, the use of the term "sectoral representation" implies that the person to be appointed must possess the necessary qualifications to represent that particular sector. At the very least, the appointee must actually belong to the sector which he purports to represent, otherwise there can be no true representation.

That the appointee must belong to the sector which he seeks to represent is further made clear in Sections 146 and 173 of B.P. Blg. 337 which require a determination by the sanggunian that the agricultural and industrial labor sectors are of sufficient number to warrant representation. And in the process of such inquiry the sanggunian is enjoined by law to consult with associations and persons belonging to the sector concerned. Consultation with the sector concerned is made a prerequisite considering that those who belong to said sector are the ones primarily interested in being represented in the sanggunian. It is, therefore, quite obvious that the person appointed as such representative must actually belong to the sector which he seeks to represent and whose interest and welfare he is duty bound to protect.

As to representatives of the youth sector, Association of Barangay Councils and Kabataang Barangay Federation, Sec. 3 par. 1 of B.P. Blg. 51 and Sec. 173 par. 1 of B.P. Blg. 337 (both earlier quoted) require that they must have been presidents or officers of said sector or barangay.

RULINGS

G.R. NO. 84663

Private respondent Marissa Domantay has never been elected as Kabataang Barangay Provincial Federation President of Pangasinan, a basic qualification for appointment as member of the Sangguniang Panlalawigan representing the youth sector. (Section 132 of B.P. Blg. 337)

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."

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 Marissa Domantay, is not valid, the tenure of petitioner Johnny Supangan, Jr. can not be terminated on that basis alone.

G.R. NO. 85012

The president of the local barangay association, or katipunang bayan is made a member of the Sangguniang Bayan under Section 146 (1) of B.P. Blg. 337, earlier quoted. Private respondent de Guzman as the ABC president is therefore qualified.

G.R. NO. 86393

There is no certification from the Sangguniang Bayan of Valenzuela that the sectors concerned are of sufficient number to warrant representation and there was no consultation whatsoever with the associations and persons belonging to the Industrial and Agricultural Labor sectors. Therefore, the appointment of private respondents Romeo F. Bularan and Rafael Cortez are null and void.

G.R. NO. 87601

Petitioners' appointments as representatives for the Agricultural and Industrial Labor sectors are null and void there being no prior determination by the Sanggunian that these sectors are of sufficient number to warrant representation. Likewise, there was no consultation with the members of the sectors concerned. Therefore, the petition for mandamus filed by petitioners should be dismissed.

G.R. NO. 87602

The appointment of Antonio Gomez is null and void, first he is not qualified to represent the agricultural sector -- he was a defeated candidate for councilor in the last election in Angeles City and is publicly known as engaged in the trade of repairing air conditioning units and refrigerators but never has he been engaged in farming or in agricultural work and the like; second, there was no prior determination of the sufficiency in number of the agricultural sector to warrant representation and third, there was no consultation with the members or associations of the sector concerned.

G.R. NO. 87792

The appointments of petitioners are null and void, first, there was no prior determination of the sufficiency in number of the sector concerned and consultation with such members, and second, the appointees are not qualified.

(a) Tagumpay Eusebio was appointed to represent the association of barangay councils (ABC representative). But he was not the president of the Katipunan Panlungsod ng mga Barangay at the time of his appointment. Neither is he the incumbent president of such association.

(b) With respect to petitioner Daniel O. Castillo, he was appointed on February 8, 1989 as a member of respondent council representing the Kabataang Barangay Federation of the City of Manila. As in the case of

Eusebio, Mr. Castillo is not the president of the Kabataang Barangay Federation in Manila.

(c) In the case of petitioner Baluyot who was appointed to represent the Industrial Labor sector, he is a politician, not a labor leader as in fact he had in the past been a member of the City Council of Manila. Just recently, he applied for the position of assistant secretary to respondent council but met some objections. He is not a leader of any labor federation or experienced in matters of labor.

(d) Petitioner Jonathan Mangaya was appointed member of respondent council to represent the Agricultural Labor sector. Like Mr. Baluyot, petitioner Mangaya is not a farmer, an agriculturist or head of any farmer's group -- he is a politician. He ran in the last local election for the position of city councilor of Manila but lost.

This petition for mandamus is therefore without any legal and factual basis and should be dismissed.

G.R. NO. 87935

The private respondents, Soriano and Costales are not qualified to represent the industrial and agricultural sectors, respectively. They are politicians as in fact they ran and lost in the last local election. Besides, the appointments were made without prior determination and consultation as required by B.P. Blg. 337.

G.R. NO. 89072

The appointments of respondents Heracleo Dumadag, Jr. and Felix Tiukinhoy as sectoral representatives are null and void, there being no prior certification from the Sangguniang Panlungsod that the sectors concerned are of sufficient number as to warrant representation. Besides, said respondents are not qualified.

Respondent Tiukinhoy who was appointed to represent the agricultural sector is not a farmer. He devoted all his life to government service. In fact, he is a government retiree having retired as Land Transportation Registrar of the Land Transportation Office, Surigao City.

On the other hand, respondent Dumadag who was to represent the industrial labor sector of the Sangguniang Panlungsod of Surigao City is not from Surigao City but of Marga, Tubod, Surigao del Norte. In the last local elections, he was a candidate for mayor in the Municipality of Tubod, Surigao del Norte and lost.

G.R. NO. 90205

As admitted by petitioners, the Sangguniang Bayan of Binalonan, Pangasinan passed a resolution recommending the appointments of respondents Tambo and Sison as members of the said body representing the agricultural and industrial labor sectors respectively. And long before the aforesaid resolution was passed, there was actually consultation made with the sectors involved and the barangay officials and the names of respondents Tambo and Sison came out as possible sectoral representatives. Petitioners also do not question the qualifications of respondents. Therefore, their appointments must be held legal and valid.

Finally, anent the contention of some of the petitioners that there was failure to exhaust administrative remedies, suffice it to state that the doctrine of exhaustion of administrative remedies is not an inflexible rule. In fact, it yields to many accepted exceptions. Exhaustion is not necessary where inter alia there is estoppel on the part of the party invoking the doctrine; where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; where the amount involved is relatively small so as to make the rule impractical and oppressive; and where the question involved is purely legal and will ultimately have to be decided anyway by the courts of law. (Rocamora v. RTC - Cebu, Branch VIII, 167 SCRA 615-623) The doctrine of non-exhaustion of administrative

remedies is also not applicable to a case of a department secretary whose acts as an alter ego of the President bear the implied or assumed approval of the latter. (*Bertulata v. Peralta*, Jr. 59 SCRA 7)

The cases at bar fall within the exception. As can be gleaned from the above discussions, the other questions involved in these cases are purely legal and will ultimately have to be decided by this Court. But most importantly, what is being questioned is the power and authority delegated to the Secretary of the Department of Local Government by the President. Surely then, an appeal and/or review to the executive head, in this case, the Office of the President will definitely be impractical, not feasible and a mere exercise in futility.

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered -

A. GRANTING

1. G.R. No. 84663. The appointment of respondent Marissa Domantay as member of the Sangguniang Panlalawigan of Pangasinan representing the youth sector is declared null and void, and petitioner Johnny Supangan, Jr. is ordered reinstated.
2. G.R. No. 86393. The appointments of private respondents Romeo Bularan and Rafael Cortez to the Sangguniang Bayan of Valenzuela, Metro Manila as representatives of the Industrial and Agricultural Labor sectors are declared null and void.
3. G.R. No. 87602. The appointment of Antonio B. Gomez as member of the Sangguniang Panlungsod of Angeles City representing the agricultural labor sector is declared null and void.
4. G.R. No. 87935. The appointments of Felix D. Soriano and Carlito S. Costales to the Sangguniang Bayan of Urdaneta, Pangasinan representing the industrial and agricultural sectors, respectively are declared null and void.
5. G.R. No. 89072. The appointments of respondents Heracleo Dumadag, Jr. and Felix Tiukinhoy as representatives of the industrial and agricultural sectors, respectively, of the Sangguniang Panlungsod of the City of Surigao, are declared null and void.

B. DISMISSING:

1. G.R. No. 85012. Consequently, the appointment of respondent Domingo R. de Guzman to the Sangguniang Bayan of Taguig, Metro Manila as barangay representative is declared legal and valid.
2. G.R. No. 87601. The appointments of petitioners, Pacifico Go and Arturo del Pozo to the Sangguniang Panlungsod of Ozamis City, representing the agricultural and industrial labor sectors are declared null and void. Therefore, their petition for mandamus has no legal and factual basis.
3. G.R. No. 87792. The appointments of petitioners Juan Baluyot for Industrial Labor, Tagumpay Eusebio for Association of Barangay Councils, Daniel Castillo as Kabataang Barangay Federation representative and Jonathan Mangaya representing the Agricultural labor sector to the City Council of Manila, are declared null and void. Consequently, mandamus will not lie to compel respondents to recognize them as such representatives.
4. G.R. No. 90205. The appointments of respondents Arcadio Tambo and Pablo Sison to the Sangguniang Bayan of Binalonan, Pangasinan representing the agricultural and industrial sectors, respectively, are declared legal and valid.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, Padilla, Bidin, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., in the results, disagrees with the dictum that a “politician” cannot be a labor leader, farmer, industrialist, etc. at the same time.

Sarmiento, J., on leave.

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