

**LEYTE ACTING VICE-GOVERNOR AURELIO D. MENZON,
PETITIONER, VS. LEYTE ACTING GOVERNOR, LEOPOLDO E. PETILLA
IN HIS CAPACITY AS CHIEF EXECUTIVE OF THE PROVINCE OF
LEYTE AND HEAD OF ...**

G.R. No. 90762. May 20, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a motion for reconsideration of the resolution of the Court dated August 28, 1990 which initially denied the petition for certiorari and mandamus filed by then Acting Vice-Governor of Leyte, Aurelio D. Menzon. In the August 28 resolution, the Court stated that Mr. Menzon cannot successfully assert the right to be recognized as Acting Vice-Governor and, therefore, his designation was invalid. In this motion, the primary issue is the right to emoluments while actually discharging the duties of the office.

The facts of the case are as follows: On February 16, 1988, by virtue of the fact that no Governor had been proclaimed in the province of Leyte, the Secretary of Local Government Luis Santos designated the Vice-Governor, Leopoldo E. Petilla as Acting Governor of Leyte.

On March 25, 1988 the petitioner Aurelio D. Menzon, a senior member of the Sangguniang Panlalawigan was also designated by Secretary Luis Santos to act as the Vice-Governor for the province of Leyte.

The petitioner took his oath of office before Senator Alberto Romulo on March 29, 1988.

On May 29, 1989, the Provincial Administrator, Tente U. Quintero inquired from the Undersecretary of the Department of Local Government, Jacinto T. Rubillar, Jr., as to the legality of the appointment of the petitioner to act as the Vice-Governor of Leyte.

In his reply letter dated June 22, 1989, Undersecretary Jacinto T. Rubillar, Jr. stated that since B.P. 337 has no provision relating to succession in the Office of the Vice-Governor in case of a temporary vacancy, the appointment of the petitioner as the temporary Vice-Governor is not necessary since the Vice-Governor who is temporarily performing the functions of the Governor, could concurrently assume the functions of both offices.

As a result of the foregoing communications between Tente U. Quintero and Jacinto T. Rubillar, Jr., the Sangguniang Panlalawigan, in a special session held on July 7, 1989, issued Resolution No. 505 where it held invalid the appointment of the petitioner as acting Vice-Governor of Leyte. The pertinent portion of the resolution reads:

"WHEREAS, the circumstances obtaining at present in the Office of the Vice-Governor is that there is no permanent (sic) nor a vacancy in said office. The Honorable Leopoldo E. Petilla assumed the Office of the Vice-Governor after he took his oath of office to said position.

WHEREAS, it is the duty of the members of the Board not only to take cognizance of the aforesaid official

communication of the Undersecretary, Jacinto T. Rubillar, Jr., but also to uphold the law.

WHEREAS, on motion of the Honorable Macario R. Esmas, Jr., duly seconded by the Honorable Rogelio L. Granados and the Honorable Renato M. Rances.

RESOLVED, as it is hereby resolved not to recognize Honorable Aurelio D. Menzon as Acting vice-Governor of Leyte." (Rollo, p. 27)

The petitioner, on July 10, 1989, through the acting LDP Regional Counsel, Atty. Zosimo Alegre, sought clarification from Undersecretary Jacinto T. Rubillar, Jr. regarding the June 22, 1989 opinion.

On July 12, 1989, Undersecretary Jacinto T. Rubillar replied and explained his opinion. The pertinent portion of the letter reads:

"This has reference to your letter dated July 10, 1989, requesting for clarification of our letter to Provincial Administrator Tente U. Quintero dated June 22, 1989, which states in substance, that "there is no succession provided for in case of temporary vacancy in the office of the vice-governor and that the designation of a temporary vice-governor is not necessary.

We hold the view that the designation extended by the Secretary of Local Government in favor of one of the Sangguniang Panlalawigan Members of Leyte to temporarily discharge the powers and duties of the vice-governor during the pendency of the electoral controversy in the Office of the Governor, does not contradict the stand we have on the matter. The fact that the Sangguniang Panlalawigan member was temporarily designated to perform the functions of the vice-governor could not be considered that the Sangguniang Member succeeds to the office of the latter, for it is basic that designation is merely an imposition of additional duties to be performed by the designee in addition to the official functions attached to his office. Furthermore, the necessity of designating an official to temporarily perform the functions of a particular public office, would depend on the discretion of the appointing authority and the prevailing circumstances in a given area and by taking into consideration the best interest of public service.

On the basis of the foregoing and considering that the law is silent in case of temporary vacancy, in the Office of the Vice-Governor, it is our view that the peculiar situation in the Province of Leyte, where the electoral controversy in the Office of the Governor has not yet been settled, calls for the designation of the Sangguniang Member to act as vice-governor temporarily." (Rollo, p. 31)

In view of the clarificatory letter of Undersecretary Rubillar, the Regional Director of the Department of Local Government, Region 8, Resurrection Salvatierra, on July 17, 1989, wrote a letter addressed to the Acting-Governor of Leyte, Leopoldo E. Petilla, requesting the latter that Resolution No. 505 of the Sangguniang Panlalawigan be modified accordingly. The letter states:

"In view thereof, please correct previous actions made by your office and those of the Sangguniang Panlalawigan which may have tended to discredit the validity of Atty. Aurelio Menzon's designation as acting vice-governor, including the payment of his salary as Acting Vice-Governor, if he was deprived of such." (Rollo, p. 32)

On August 3, 1989, the Regional Director wrote another letter to Acting-Governor Petilla, reiterating his earlier request.

Despite these several letters of request, the Acting Governor and the Sangguniang Panlalawigan, refused to correct Resolution No. 505 and correspondingly to pay the petitioner the emoluments attached to the Office of Vice-Governor.

Thus, on November 12, 1989, the petitioner filed before this Court a petition for certiorari and mandamus. The

petition sought the nullification of Resolution No. 505 and for the payment of his salary for his services as the acting Vice-Governor of Leyte.

In the meantime, however, the issue on the governorship of Leyte was settled and Adelina Larrazabal was proclaimed the Governor of the province of Leyte.

During the pendency of the petition, more particularly on May 16, 1990, the provincial treasurer of Leyte, Florencio Luna allowed the payment to the petitioner of his salary as acting Vice-Governor of Leyte in the amount of P17, 710.00, for the actual services rendered by the petitioner as acting Vice-Governor.

On August 28, 1990, this Court dismissed the petition filed by Aurelio D. Menzon.

On September 6, 1990, respondent Leopoldo Petilla, by virtue of the above resolution requested Governor Larrazabal to direct the petitioner to pay back to the province of Leyte all the emoluments and compensation which he received while acting as the Vice-Governor of Leyte.

On September 21, 1990, the petitioner filed a motion for reconsideration of our resolution. The motion prayed that this Court uphold the petitioner's right to receive the salary and emoluments attached to the office of the Vice-Governor while he was acting as such.

The petitioner interposes the following reason for the allowance of the motion for reconsideration:

THAT THE PETITIONER IS ENTITLED TO THE EMOLUMENTS FOR HIS SERVICES RENDERED AS DESIGNATED ACTING VICE-GOVERNOR UNDER THE PRINCIPLES OF GOOD FAITH, SIMPLE JUSTICE AND EQUITY.

The controversy basically revolves around two issues: 1) Whether or not there was a vacancy?; and 2) Whether or not the Secretary of Local Government has the authority to make temporary appointments?

The respondents argue that there exists no vacancy in the Office of the Vice-Governor which requires the appointment of the petitioner. They further allege that if indeed there was a need to appoint an acting Vice-Governor, the power to appoint is not vested in the Secretary of Local Government. Absent any provision in the Local Government Code on the mode of succession in case of a temporary vacancy in the Office of the Vice-Governor, they claim that this constitutes an internal problem of the Sangguniang Panlalawigan and was thus for it solely to resolve.

The arguments are of doubtful validity.

The law on Public Officers is clear on the matter. There is no vacancy whenever the office is occupied by a legally qualified incumbent. A sensu contrario, there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office. (see *Stocking v. State*, 7 Ind. 326, cited in *Mechem*, A Treatise on the Law on Public Offices and Officers, at p. 61)

Applying the definition of vacancy to this case, it can be readily seen that the office of the Vice-Governor was left vacant when the duly elected Vice-Governor Leopoldo Petilla was appointed Acting Governor. In the eyes of the law, the office to which he was elected was left barren of a legally qualified person to exercise the duties of the office of the Vice-Governor.

There is no satisfactory showing that Leopoldo Petilla, notwithstanding his succession to the Office of the Governor, continued to simultaneously exercise the duties of the Vice-Governor. The nature of the duties of a Provincial Governor call for a full-time occupant to discharge them. More so when the vacancy is for an extended period. Precisely, it was Petilla's automatic assumption to the acting Governorship that resulted in the vacancy in

the office of the Vice-Governor. The fact that the Secretary of Local Government was prompted to appoint the petitioner shows the need to fill up the position during the period it was vacant. The Department Secretary had the discretion to ascertain whether or not the Provincial Governor should devote all his time to that particular office. Moreover, it is doubtful if the Provincial Board, unilaterally acting, may revoke an appointment made by a higher authority.

Disposing the issue of vacancy, we come to the second issue of whether or not the Secretary of Local Government had the authority to designate the petitioner.

We hold in the affirmative.

The Local Government Code is silent on the mode of succession in the event of a temporary vacancy in the Office of the Vice-Governor. However, the silence of the law must not be understood to convey that a remedy in law is wanting.

The circumstances of the case reveal that there is indeed a necessity for the appointment of an acting Vice-Governor. For about two years after the gubernatorial elections, there had been no de jure permanent Governor for the province of Leyte. Governor Adelina Larrazabal, at that time, had not yet been proclaimed due to a pending election case before the Commission on Elections.

The two-year interregnum which would result from the respondents' view of the law is disfavored as it would cause disruptions and delays in the delivery of basic services to the people and in the proper management of the affairs of the local government of Leyte. Definitively, it is incomprehensible that to leave the situation without affording any remedy was ever intended by the Local Government Code.

Under the circumstances of this case and considering the silence of the Local Government Code, the Court rules that, in order to obviate the dilemma resulting from an interregnum created by the vacancy, the President, acting through her alter ego, the Secretary of Local Government, may remedy the situation. We declare valid the temporary appointment extended to the petitioner to act as the Vice-Governor. The exigencies of public service demanded nothing less than the immediate appointment of an acting Vice-Governor.

The records show that it was primarily for this contingency that Undersecretary Jacinto Rubillar corrected and reconsidered his previous position and acknowledged the need for an acting Vice-Governor.

It may be noted that under Commonwealth Act No. 588 and the Revised Administrative Code of 1987, the President is empowered to make temporary appointments in certain public offices, in case of any vacancy that may occur. Albeit both laws deal only with the filling of vacancies in appointive positions. However, in the absence of any contrary provision in the Local Government Code and in the best interest of public service, we see no cogent reason why the procedure thus outlined by the two laws may not be similarly applied in the present case. The respondents contend that the provincial board is the correct appointing power. This argument has no merit. As between the President who has supervision over local governments as provided by law and the members of the board who are junior to the vice-governor, we have no problem ruling in favor of the President, until the law provides otherwise.

A vacancy creates an anomalous situation and finds no approbation under the law for it deprives the constituents of their right of representation and governance in their own local government.

In a republican form of government, the majority rules through their chosen few, and if one of them is incapacitated or absent, etc., the management of governmental affairs to that extent, may be hampered. Necessarily, there will be a consequent delay in the delivery of basic services to the people of Leyte if the

Governor or the Vice-Governor is missing.

Whether or not the absence of a Vice-Governor would maim or prejudice the province of Leyte, is for higher officials to decide or, in proper cases, for the judiciary to adjudicate. As shown in this case where for about two years there was only an acting Governor steering the leadership of the province of Leyte, the urgency of filling the vacancy in the Office of the Vice-Governor to free the hands of the acting Governor to handle provincial problems and to serve as the buffer in case something might happen to the acting Governor becomes unquestionable. We do not have to dwell ourselves into the fact that nothing happened to acting Governor Petilla during the two-year period. The contingency of having simultaneous vacancies in both offices cannot just be set aside. It was best for Leyte to have a full-time Governor and an acting Vice-Governor. Service to the public is the primary concern of those in the government. It is a continuous duty unbridled by any political considerations.

The appointment of the petitioner, moreover, is in full accord with the intent behind the Local Government Code. There is no question that Section 49 in connection with Section 52 of the Local Government Code shows clearly the intent to provide for continuity in the performance of the duties of the Vice-Governor.

The Local Government Code provides for the mode of succession in case of a permanent vacancy, viz:

Section 49:

"In case a permanent vacancy arises when a Vice-Governor assumes the Office of the Governor, . . . refuses to assume office, fails to qualify, dies, is removed from office, voluntary resigns or is otherwise permanently incapacitated to discharge the functions of his office, the sangguniang panlalawigan . . . member who obtained the highest number of votes in the election immediately preceding, . . . shall assume the office for the unexpired term of the Vice-Governor...."

By virtue of the surrounding circumstance of this case, the mode of succession provided for permanent vacancies may likewise be observed in case of a temporary vacancy occurring in the same office. In this case, there was a need to fill the vacancy. The petitioner is himself the member of the Sangguniang Panlalawigan who obtained the highest number of votes. The Department Secretary acted correctly in extending the temporary appointment.

In view of the foregoing, the petitioner's right to be paid the salary attached to the Office of the Vice-Governor is indubitable. The compensation, however, to be remunerated to the petitioner, following the example in Commonwealth Act No. 588 and the Revised Administrative Code, and pursuant to the proscription against double compensation must only be such additional compensation as, with his existing salary, shall not exceed the salary authorized by law for the Office of the Vice-Governor.

And finally, even granting that the President, acting through the Secretary of Local Government, possesses no power to appoint the petitioner, at the very least, the petitioner is a de facto officer entitled to compensation.

There is no denying that the petitioner assumed the Office of the Vice-Governor under color of a known appointment. As revealed by the records, the petitioner was appointed by no less than the alter ego of the President, the Secretary of Local Government, after which he took his oath of office before Senator Alberto Romulo in the Office of Department of Local Government Regional Director Res Salvatierra.

Concededly, the appointment has the color of validity. The respondents themselves acknowledged the validity of the petitioner's appointment and dealt with him as such. It was only when the controversial Resolution No. 505 was passed by the same persons who recognized him as the Acting Vice-Governor that the validity of the appointment of the petitioner was made an issue and the recognition withdrawn.

The petitioner, for a long period of time, exercised the duties attached to the Office of the Vice-Governor. He was

acclaimed as such by the people of Leyte. Upon the principle of public policy on which the de facto doctrine is based and basic considerations of justice, it would be highly iniquitous to now deny him the salary due him for the services he actually rendered as the Acting Vice-Governor of the province of Leyte. (See *Cantillo v. Arrieta*, 61 SCRA 55 [1974])

WHEREFORE, the COURT hereby GRANTS the motion for reconsideration. The additional compensation which the petitioner has received, in the amount exceeding the salary authorized by law for the position of Senior Board Member, shall be considered as payment for the actual services rendered as acting Vice-Governor and may be retained by him. SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

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