

REYNALDO R. SAN JUAN, PETITIONER, VS. CIVIL SERVICE COMMISSION, DEPARTMENT OF BUDGET AND MANAGEMENT AND CECILIA ALMAJOSE, RESPONDENTS.

G.R. No. 92299, April 19, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for certiorari pursuant to Section 7, Article IX (A) of the present Constitution, the petitioner Governor of the Province of Rizal, prays for the nullification of Resolution No. 89-868 of the Civil Service Commission (CSC) dated November 21, 1989 and its Resolution No. 90-150 dated February 9, 1990.

The dispositive portion of the questioned Resolution reads:

"WHEREFORE, foregoing premises considered, the Commission resolved to dismiss, as it hereby dismisses the appeal of Governor Reynaldo San Juan of Rizal. Accordingly, the approved appointment of Ms. Cecilia Almajose as Provincial Budget Officer of Rizal, is upheld." (Rollo, p. 32)

The subsequent Resolution No. 90-150 reiterates CSC's position upholding the private respondent's appointment by denying the petitioner's motion for reconsideration for lack of merit.

The antecedent facts of the case are as follows:

On March 22, 1988, the position of Provincial Budget Officer (PBO) for the province of Rizal was left vacant by its former holder, a certain Henedima del Rosario.

In a letter dated April 18, 1988, the petitioner informed Director Reynaldo Abella of the Department of Budget and Management (DBM) Region IV that Ms. Dalisay Santos assumed office as Acting PBO since March 22, 1988 pursuant to a Memorandum issued by the petitioner who further requested Director Abella to endorse the appointment of the said Ms. Dalisay Santos to the contested position of PBO of Rizal. Ms. Dalisay Santos was then Municipal Budget Officer of Taytay, Rizal before she discharged the functions of acting PBO.

In a Memorandum dated July 26, 1988 addressed to the DBM Secretary, then Director Abella of Region IV recommended the appointment of the private respondent as PBO of Rizal on the basis of a comparative study of all Municipal Budget Officers of the said province which included three nominees of the petitioner. According to Abella, the private respondent was the most qualified since she was the only Certified Public Accountant among the contenders.

On August 1, 1988, DBM Undersecretary Nazario S. Cabuquit, Jr. signed the appointment papers of the private respondent as PBO of Rizal upon the aforesaid recommendation of Abella.

In a letter dated August 3, 1988 addressed to Secretary Carague, the petitioner reiterated his request for the appointment of Dalisay Santos to the contested position unaware of the earlier appointment made by Undersecretary Cabuquit.

On August 31, 1988, DBM Regional Director Agripino G. Galvez wrote the petitioner that Dalisay Santos and his other recommendees did not meet the minimum requirements under Local Budget Circular No. 31 for the position of a local budget officer. Director Galvez whether or not through oversight further required the petitioner to submit at least three other qualified nominees who are qualified for the position of PBO of Rizal for evaluation and processing.

On November 2, 1988, the petitioner after having been informed of the private respondent's appointment wrote Secretary Carague protesting against the said appointment on the grounds that Cabuquit as DBM Undersecretary is not legally authorized to appoint the PBO; that the private respondent lacks the required three years work experience as provided in Local Budget Circular No. 31; and that under Executive Order No. 112, it is the Provincial Governor, not the Regional Director or a Congressman, who has the power to recommend nominees for the position of PBO.

On January 9, 1989 respondent DBM, through its Director of the Bureau of Legal & Legislative Affairs (BLLA) Virgilio A. Afurung, issued a Memorandum ruling that the petitioner's letter-protest is not meritorious considering that public respondent DBM validly exercised its prerogative in filling-up the contested position since none of the petitioner's nominees met the prescribed requirements.

On January 27, 1989, the petitioner moved for a reconsideration of the BLLA ruling.

On February 28, 1989, the DBM Secretary denied the petitioner's motion for reconsideration.

On March 27, 1989, the petitioner wrote public respondent CSC protesting against the appointment of the private respondent and reiterating his position regarding the matter.

Subsequently, public respondent CSC issued the questioned resolutions which prompted the petitioner to submit before us the following assignment of errors:

"A. THE CSC ERRED IN UPHOLDING THE APPOINTMENT BY DBM ASSISTANT SECRETARY CABUQUIT OF CECILIA ALMAJOSE AS PBO OF RIZAL.

B. THE CSC ERRED IN HOLDING THAT CECILIA ALMAJOSE POSSESSES ALL THE REQUIRED QUALIFICATIONS.

C. THE CSC ERRED IN DECLARING THAT PETITIONER'S NOMINEES ARE NOT QUALIFIED TO THE SUBJECT POSITION.

D. THE CSC AND THE DBM GRAVELY ABUSED THEIR DISCRETION IN NOT ALLOWING PETITIONER TO SUBMIT NEW NOMINEES WHO COULD MEET THE REQUIRED QUALIFICATIONS." (Petition, pp. 7-8, Rollo, pp. 15-16)

All the assigned errors relate to the issue of whether or not the private respondent is lawfully entitled to discharge the functions of PBO of Rizal pursuant to the appointment made by public respondent DBM's Undersecretary upon the recommendation of then Director Abella of DBM Region IV.

The petitioner's arguments rest on his contention that he has the sole right and privilege to recommend the nominees to the position of PBO and that the appointee should come only from his nominees. In support thereof, he invokes Section 1 of Executive Order No. 112 which provides that:

"SECTION 1. All budget officers of provinces, cities and municipalities shall be appointed henceforth by the Minister of Budget and Management upon recommendation of the local chief executive concerned, subject to civil service law, rules and regulations, and they shall be placed under the administrative control and technical supervision of the Ministry of Budget and Management."

The petitioner maintains that the appointment of the private respondent to the contested position was made in derogation of the provision so that both the public respondents committed grave abuse of discretion in upholding Almajose's appointment.

There is no question that under Section 1 of Executive Order No. 112 the petitioner's power to recommend is subject to the qualifications prescribed by existing laws for the position of PBO. Consequently, in the event that the recommendations made by the petitioner fall short of the required standards, the appointing authority, the Minister (now Secretary) of public respondent DBM is expected to reject the same.

In the event that the Governor recommends an unqualified person, is the Department Head free to appoint anyone he fancies? This is the issue before us.

Before the promulgation of Executive Order No. 112 on December 24, 1986, Batas Pambansa Blg. 337, otherwise known as the Local Government Code vested upon the Governor, subject to civil service rules and regulations, the power to appoint the PBO (Sec. 216, subparagraph (1), BP 337). The Code further enumerated the qualifications for the position of PBO. Thus, Section 216, subparagraph (2) of the same code states that:

"(2) No person shall be appointed provincial budget officer unless he is a citizen of the Philippines, of good moral character, a holder of a degree preferably in law, commerce, public administration or any related course from a recognized college or university, a first grade civil service eligibility or its equivalent, and has acquired at least five years experience in budgeting or in any related field."

The petitioner contends that since the appointing authority with respect to the Provincial Budget Officer of Rizal was vested in him before, then, the real intent behind Executive Order No. 112 in empowering him to recommend nominees to the position of Provincial Budget Officer is to make his recommendation part and parcel of the appointment process. He states that the phrase "upon recommendation of the local chief executive concerned" must be given mandatory application in consonance with the state policy of local autonomy as guaranteed by the 1987 Constitution under Art. II, Sec. 25 and Art. X, Sec. 2 thereof. He further argues that his power to recommend cannot validly be defeated by a mere administrative issuance of public respondent DBM reserving to itself the right to fill-up any existing vacancy in case the petitioner's nominees do not meet the qualification requirements as embodied in public respondent DBM's Local Budget Circular No. 31 dated February 9, 1988.

The questioned ruling is justified by the public respondent CSC as follows:

"As required by said E.O. No 112, the DBM Secretary may choose from among the recommendees of the Provincial Governor who are thus qualified and eligible for appointment to the position of the PBO of Rizal. Notwithstanding, the recommendation of the local chief executive is merely directory and not a condition sine qua non to the exercise by the Secretary of DBM of his appointing prerogative. To rule otherwise would in effect give the law or E.O. No. 112 a different interpretation or construction not intended therein, taking into consideration that said officer has been nationalized and is directly under the control and supervision of the DBM Secretary or through his duly authorized representative. It cannot be gainsaid that said national officer has a similar role in the local government unit, only on another area or concern, to that of a Commission on Audit resident auditor. Hence, to preserve and maintain the independence of said officer from the local government unit, he must be primarily the choice of the national appointing official, and the exercise thereof must not be unduly hampered or interfered with, provided the appointee finally selected meets the requirements for the position in accordance with prescribed Civil Service Law, Rules and Regulations. In other

words, the appointing official is not restricted or circumscribed to the list submitted or recommended by the local chief executive in the final selection of an appointee for the position. He may consider other nominees for the position vis a vis the nominees of the local chief executive." (CSC Resolution No. 89-868, p. 2; Rollo, p. 31)

The issue before the Court is not limited to the validity of the appointment of one Provincial Budget Officer. The tug of war between the Secretary of Budget and Management and the Governor of the premier province of Rizal over a seemingly innocuous position involves the application of a most important constitutional policy and principle, that of local autonomy. We have to obey the clear mandate on local autonomy. Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

The exercise by local governments of meaningful power has been a national goal since the turn of the century. And yet, inspite of constitutional provisions and, as in this case, legislation mandating greater autonomy for local officials, national officers cannot seem to let go of centralized powers. They deny or water down what little grants of autonomy have so far been given to municipal corporations.

President McKinley's Instructions dated April 7, 1900 to the Second Philippine Commission ordered the new Government "to devote their attention in the first instance to the establishment of municipal governments in which natives of the Islands, both in the cities and rural communities, shall be afforded the opportunity to manage their own local officers to the fullest extent of which they are capable and subject to the least degree of supervision and control which a careful study of their capacities and observation of the workings of native control show to be consistent with the maintenance of law, order and loyalty."

In this initial organic act for the Philippines, the Commission which combined both executive and legislative powers was directed to give top priority to making local autonomy effective.

The 1935 Constitution had no specific article on local autonomy. However, in distinguishing between presidential control and supervision as follows:

"The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed." (Sec. 11, Article VII, 1935 Constitution)

the Constitution clearly limited the executive power over local governments to "general supervision xxx as may be provided by law." The President controls the executive departments. He has no such power over local governments. He has only supervision and that supervision is both general and circumscribed by statute.

In *Tecson v. Salas*, 34 SCRA 275, 282 (1970), this Court stated:

"xxx *Hebron v. Reyes*, (104 Phil. 175 [1958]) with the then Justice, now Chief Justice, Concepcion as the ponente, clarified matters. As was pointed out, the presidential competence is not even supervision in general, but general supervision as may be provided by law. He could not thus go beyond the applicable statutory provisions, which bind and fetter his discretion on the matter. Moreover, as had been earlier ruled in an opinion penned by Justice Padilla in *Mondano v. Silvosa*, (97 Phil. 143 [1955]) referred to by the present Chief Justice in his opinion in the *Hebron* case, supervision goes no further than 'overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties.' (Ibid, pp. 147-148) Control, on the other hand, 'means the power of an officer to alter or modify or nullify or set aside what a subordinate had done in the performance of their duties and to substitute the judgment of the former for that of the latter.' It would follow then, according to the present Chief Justice, to go back to the *Hebron* opinion, that the President had to abide by the then provisions of the Revised Administrative Code on suspension and

removal of municipal officials, there being no power of control that he could rightfully exercise, the law clearly specifying the procedure by which such disciplinary action would be taken."

Pursuant to this principle under the 1935 Constitution, legislation implementing local autonomy was enacted. In 1959, Republic Act No. 2264, "An Act Amending the Law Governing Local Governments by Increasing Their Autonomy and Reorganizing Local Governments" was passed. It was followed in 1967 when Republic Act No. 5185, the Decentralization Law was enacted, giving "further autonomous powers to local governments."

The provisions of the 1973 Constitution moved the country further, at least insofar as legal provisions are concerned, towards greater autonomy. It provided under Article II as a basic principle of government:

"SEC. 10. The State shall guarantee and promote the autonomy of local government units, especially the barangay to ensure their fullest development as self-reliant communities."

An entire article on Local Government was incorporated into the Constitution. It called for a local government code defining more responsive and accountable local government structures. Any creation, merger, abolition, or substantial boundary alteration cannot be done except in accordance with the local government code and upon approval by a plebiscite. The power to create sources of revenue and to levy taxes was specifically settled upon local governments.

The exercise of greater local autonomy is even more marked in the present Constitution.

Article II, Section 25 on State Policies provides:

"SEC. 25. The State shall ensure the autonomy of local governments."

The 14 sections in Article X on Local Government not only reiterate earlier doctrines but give in greater detail the provisions making local autonomy more meaningful.

Thus, Sections 2 and 3 of Article X provide:

"SEC. 2. The territorial and political subdivisions shall enjoy local autonomy.

SEC. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

When the Civil Service Commission interpreted the recommending power of the Provincial Governor as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. If the DBM Secretary jealously hoards the entirety of budgetary powers and ignores the right of local governments to develop self-reliance and resoluteness in the handling of their own funds, the goal of meaningful local autonomy is frustrated and set back.

The right given by Local Budget Circular No. 31 which states:

"SEC 6.0 - The DBM reserves the right to fill up any existing vacancy where none of the nominees of the local chief executive meet the prescribed requirements."

is ultra vires and is, accordingly, set aside. The DBM may appoint only from the list of qualified recommendees nominated by the Governor. If none is qualified, he must return the list of nominees to the Governor explaining why no one meets the legal requirements and ask for new recommendees who have the necessary eligibilities and

qualifications.

The PBO is expected to synchronize his work with DBM. More important, however, is the proper administration of fiscal affairs at the local level. Provincial and municipal budgets are prepared at the local level and after completion are forwarded to the national officials for review. They are prepared by the local officials who must work within the constraints of those budgets. They are not formulated in the inner sanctums of an all-knowing DBM and unilaterally imposed on local governments whether or not they are relevant to local needs and resources. It is for this reason that there should be a genuine interplay, a balancing of viewpoints, and a harmonization of proposals from both the local and national officials. It is for this reason that the nomination and appointment process involves a sharing of power between the two levels of government.

It may not be amiss to give by way of analogy the procedure followed in the appointments of Justices and Judges. Under Article VIII of the Constitution, nominations for judicial positions are made by the Judicial and Bar Council. The President makes the appointments from the list of nominees submitted to her by the Council. She cannot apply the DBM procedure, reject all the Council nominees, and appoint another person whom she feels is better qualified. There can be no reservation of the right to fill up a position with a person of the appointing power's personal choice.

The public respondent's grave abuse of discretion is aggravated by the fact that Director Galvez required the Provincial Governor to submit at least three other names of nominees better qualified than his earlier recommendation. It was a meaningless exercise. The appointment of the private respondent was formalized before the Governor was extended the courtesy of being informed that his nominee had been rejected. The complete disregard of the local government's prerogative and the smug belief that the DBM has absolute wisdom, authority, and discretion are manifest.

In his classic work "Philippine Political Law", Dean Vicente G. Sinco stated that the value of local governments as institutions of democracy is measured by the degree of autonomy that they enjoy. Citing Tocqueville, he stated that "local assemblies of citizens constitute the strength of free nations.xxx A people may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty." (Sinco, Philippine Political Law, Eleventh Edition, pp. 705-706).

Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit of liberty upon which these provisions are based.

WHEREFORE, the petition is hereby GRANTED. The questioned resolutions of the Civil Service Commission are SET ASIDE. The appointment of respondent Cecilia Almajose is nullified. The Department of Budget and Management is ordered to appoint the Provincial Budget Officer of Rizal from among qualified nominees submitted by the Provincial Governor.

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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