

BUKLOD NG KAWANING EIIB, CESAR POSADA, REMEDIOS G. PRINCESA, BENJAMIN KHO, BENIGNO MANGA, LULU MENDOZA, PETITIONERS, VS. HON. EXECUTIVE SECRETARY RONALDO B. ZAMORA, HON. SECRETA...

G.R. Nos. 142801-802. July 10, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

In this petition for certiorari, prohibition and mandamus, petitioners Buklod Ng Kawaning EIIB, Cesar Posada, Remedios Princesa, Benjamin Kho, Benigno Manga and Lulu Mendoza, for themselves and in behalf of others with whom they share a common or general interest, seek the nullification of Executive Order No. 191[1] and Executive Order No. 223[2] on the ground that they were issued by the Office of the President with grave abuse of discretion and in violation of their constitutional right to security of tenure.

The facts are undisputed:

On June 30, 1987, former President Corazon C. Aquino, issued Executive Order No. 127[3] establishing the Economic Intelligence and Investigation Bureau (EIIB) as part of the structural organization of the Ministry of Finance.[4] The EIIB was designated to perform the following functions:

"(a) Receive, gather and evaluate intelligence reports and information and evidence on the nature, modes and extent of illegal activities affecting the national economy, such as, but not limited to, economic sabotage, smuggling, tax evasion, and dollar-salting, investigate the same and aid in the prosecution of cases;

(b) Coordinate with external agencies in monitoring the financial and economic activities of persons or entities, whether domestic or foreign, which may adversely affect national financial interest with the goal of regulating, controlling or preventing said activities;

(c) Provide all intelligence units of operating Bureaus or Offices under the Ministry with the general framework and guidelines in the conduct of intelligence and investigating works;

(d) Supervise, monitor and coordinate all the intelligence and investigation operations of the operating Bureaus and Offices under the Ministry;

(e) Investigate, hear and file, upon clearance by the Minister, anti-graft and corruption cases against personnel of the Ministry and its constituents units;

(f) Perform such other appropriate functions as may be assigned by the Minister or his deputies."[5]

In a desire to achieve harmony of efforts and to prevent possible conflicts among agencies in the course of their anti-smuggling operations, President Aquino issued Memorandum Order No. 225 on March 17, 1989, providing, among others, that the EIIB "shall be the agency of primary responsibility for anti-smuggling operations in all land areas and inland waters and waterways outside the areas of sole jurisdiction of the Bureau of Customs."[6]

Eleven years after, or on January 7, 2000, President Joseph Estrada issued Executive Order No. 191 entitled "Deactivation of the Economic Intelligence and Investigation Bureau." [7] Motivated by the fact that "the designated functions of the EIIB are also being performed by the other existing agencies of the government" and that "there is a need to constantly monitor the overlapping of functions" among these agencies, former President Estrada ordered the deactivation of EIIB and the transfer of its functions to the Bureau of Customs and the National Bureau of Investigation.

Meanwhile, President Estrada issued Executive Order No. 196 [8] creating the Presidential Anti-Smuggling Task Force "Aduana." [9]

Then the day feared by the EIIB employees came. On March 29, 2000, President Estrada issued Executive Order No. 223 [10] providing that all EIIB personnel occupying positions specified therein shall be deemed separated from the service effective April 30, 2000, pursuant to a bona fide reorganization resulting to abolition, redundancy, merger, division, or consolidation of positions. [11]

Agonizing over the loss of their employment, petitioners now come before this Court invoking our power of judicial review of Executive Order Nos. 191 and 223. They anchor their petition on the following arguments:

"A

Executive Order Nos. 191 and 223 should be annulled as they are unconstitutional for being violative of Section 2(3), Article IX-B of the Philippine Constitution and/or for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

B.

The abolition of the EIIB is a hoax. Similarly, if Executive Order Nos. 191 and 223 are considered to effect a reorganization of the EIIB, such reorganization was made in bad faith.

C.

The President has no authority to abolish the EIIB."

Petitioners contend that the issuance of the afore-mentioned executive orders is: (a) a violation of their right to security of tenure; (b) tainted with bad faith as they were not actually intended to make the bureaucracy more efficient but to give way to Task Force "Aduana," the functions of which are essentially and substantially the same as that of EIIB; and (c) a usurpation of the power of Congress to decide whether or not to abolish the EIIB.

Arguing in behalf of respondents, the Solicitor General maintains that: (a) the President enjoys the totality of the executive power provided under Sections 1 and 7, Article VII of the Constitution, thus, he has the authority to issue Executive Order Nos. 191 and 223; (b) the said executive orders were issued in the interest of national economy, to avoid duplicity of work and to streamline the functions of the bureaucracy; and (c) the EIIB was not "abolished," it was only "deactivated."

The petition is bereft of merit.

Despite the presence of some procedural flaws in the instant petition, such as, petitioners' disregard of the hierarchy of courts and the non-exhaustion of administrative remedies, we deem it necessary to address the issues. It is in the interest of the State that questions relating to the status and existence of a public office be settled without delay. We are not without precedent. In *Dario v. Mison*, [12] we liberally decreed:

"The Court disregards the questions raised as to procedure, failure to exhaust administrative remedies, the standing of certain parties to sue, for two reasons, '[b]ecause of the demands of public interest, including the

need for stability in the public service,' and because of the serious implications of these cases on the administration of the Philippine civil service and the rights of public servants."

At first glance, it seems that the resolution of this case hinges on the question - Does the "deactivation" of EIIB constitute "abolition" of an office? However, after coming to terms with the prevailing law and jurisprudence, we are certain that the ultimate queries should be - a) Does the President have the authority to reorganize the executive department? and, b) How should the reorganization be carried out?

Surely, there exists a distinction between the words "deactivate" and "abolish." To "deactivate" means to render inactive or ineffective or to break up by discharging or reassigning personnel,[13] while to "abolish" means to do away with, to annul, abrogate or destroy completely.[14] In essence, abolition denotes an intention to do away with the office wholly and permanently.[15] Thus, while in abolition, the office ceases to exist, the same is not true in deactivation where the office continues to exist, albeit remaining dormant or inoperative. Be that as it may, deactivation and abolition are both reorganization measures.

The Solicitor General only invokes the above distinctions on the mistaken assumption that the President has no power to abolish an office.

The general rule has always been that the power to abolish a public office is lodged with the legislature.[16] This proceeds from the legal precept that the power to create includes the power to destroy. A public office is either created by the Constitution, by statute, or by authority of law.[17] Thus, except where the office was created by the Constitution itself, it may be abolished by the same legislature that brought it into existence.[18]

The exception, however, is that as far as bureaus, agencies or offices in the executive department are concerned, the President's power of control may justify him to inactivate the functions of a particular office,[19] or certain laws may grant him the broad authority to carry out reorganization measures.[20] The case in point is *Larin v. Executive Secretary*. [21] In this case, it was argued that there is no law which empowers the President to reorganize the BIR. In decreeing otherwise, this Court sustained the following legal basis, thus:

"Initially, it is argued that there is no law yet which empowers the President to issue E.O. No. 132 or to reorganize the BIR.

We do not agree.

x x x x x

Section 48 of R.A. 7645 provides that:

`Sec. 48. Scaling Down and Phase Out of Activities of Agencies Within the Executive Branch. - The heads of departments, bureaus and offices and agencies are hereby directed to identify their respective activities which are no longer essential in the delivery of public services and which may be scaled down, phased out or abolished, subject to civil service rules and regulations. X x x. Actual scaling down, phasing out or abolition of the activities shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President.'

Said provision clearly mentions the acts of "scaling down, phasing out and abolition" of offices only and does not cover the creation of offices or transfer of functions. Nevertheless, the act of creating and decentralizing is included in the subsequent provision of Section 62 which provides that:

`Sec. 62. Unauthorized organizational charges.- Unless otherwise created by law or directed by the President of the Philippines, no organizational unit or changes in key positions in any department or agency shall be authorized in their respective organization structures and be funded from appropriations by this Act.' (italics ours)

The foregoing provision evidently shows that the President is authorized to effect organizational changes including the creation of offices in the department or agency concerned.

x x x x x

Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:

'Sec. 20. Residual Powers. - Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above or which are not delegated by the President in accordance with law.' (italic ours)

This provision speaks of such other powers vested in the President under the law. What law then gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that "all 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. So far, there is yet no law amending or repealing said decrees." (Emphasis supplied)

Now, let us take a look at the assailed executive order.

In the whereas clause of E.O. No. 191, former President Estrada anchored his authority to deactivate EIIB on Section 77 of Republic Act 8745 (FY 1999 General Appropriations Act), a provision similar to Section 62 of R.A. 7645 quoted in *Larin*, thus;

"Sec. 77. Organized Changes. Unless otherwise provided by law or directed by the President of the Philippines, no changes in key positions or organizational units in any department or agency shall be authorized in their respective organizational structures and funded from appropriations provided by this Act."

We adhere to the precedent or ruling in *Larin* that this provision recognizes the authority of the President to effect organizational changes in the department or agency under the executive structure. Such a ruling further finds support in Section 78 of Republic Act No. 8760.[22] Under this law, the heads of departments, bureaus, offices and agencies and other entities in the Executive Branch are directed (a) to conduct a comprehensive review of their respective mandates, missions, objectives, functions, programs, projects, activities and systems and procedures; (b) identify activities which are no longer essential in the delivery of public services and which may be scaled down, phased-out or abolished; and (c) adopt measures that will result in the streamlined organization and improved overall performance of their respective agencies.[23] Section 78 ends up with the mandate that the actual streamlining and productivity improvement in agency organization and operation shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President.[24] The law has spoken clearly. We are left only with the duty to sustain.

But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power - that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In *Canonizado v. Aguirre*,[25] we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of

functions." It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. The EIIB is a bureau attached to the Department of Finance.[26] It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize.

It having been duly established that the President has the authority to carry out reorganization in any branch or agency of the executive department, what is then left for us to resolve is whether or not the reorganization is valid. In this jurisdiction, reorganizations have been regarded as valid provided they are pursued in good faith. Reorganization is carried out in 'good faith' if it is for the purpose of economy or to make bureaucracy more efficient.[27] Pertinently, Republic Act No. 6656[28] provides for the circumstances which may be considered as evidence of bad faith in the removal of civil service employees made as a result of reorganization, to wit: (a) where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; (b) where an office is abolished and another performing substantially the same functions is created; (c) where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit; (d) where there is a classification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices, and (e) where the removal violates the order of separation.[29]

Petitioners claim that the deactivation of EIIB was done in bad faith because four days after its deactivation, President Estrada created the Task Force Aduana.

We are not convinced.

An examination of the pertinent Executive Orders[30] shows that the deactivation of EIIB and the creation of Task Force Aduana were done in good faith. It was not for the purpose of removing the EIIB employees, but to achieve the ultimate purpose of E.O. No. 191, which is economy. While Task Force Aduana was created to take the place of EIIB, its creation does not entail expense to the government.

Firstly, there is no employment of new personnel to man the Task Force. E.O. No. 196 provides that the technical, administrative and special staffs of EIIB are to be composed of people who are already in the public service, they being employees of other existing agencies. Their tenure with the Task Force would only be temporary, i.e., only when the agency where they belong is called upon to assist the Task Force. Since their employment with the Task force is only by way of detail or assignment, they retain their employment with the existing agencies. And should the need for them cease, they would be sent back to the agency concerned.

Secondly, the thrust of E.O. No. 196 is to have a small group of military men under the direct control and supervision of the President as base of the government's anti-smuggling campaign. Such a smaller base has the necessary powers 1) to enlist the assistance of any department, bureau, or office and to use their respective personnel, facilities and resources; and 2) "to select and recruit personnel from within the PSG and ISAFP for assignment to the Task Force." Obviously, the idea is to encourage the utilization of personnel, facilities and resources of the already existing departments, agencies, bureaus, etc., instead of maintaining an independent office with a whole set of personnel and facilities. The EIIB had proven itself burdensome for the government because it maintained separate offices in every region in the Philippines.

And thirdly, it is evident from the yearly budget appropriation of the government that the creation of the Task Force Aduana was especially intended to lessen EIIB's expenses. Tracing from the yearly General Appropriations Act, it appears that the allotted amount for the EIIB's general administration, support, and operations for the year 1995, was P128,031,000;[31] for 1996, P182,156,000;[32] for 1998, P219,889,000;[33] and, for 1999, P238,743,000.[34] These amounts were far above the P50,000,000[35] allocation to the Task Force Aduana for

the year 2000.

While basically, the functions of the EIIB have devolved upon the Task Force Aduana, we find the latter to have additional new powers. The Task Force Aduana, being composed of elements from the Presidential Security Group (PSG) and Intelligence Service Armed Forces of the Philippines (ISAFP),^[36] has the essential power to effect searches, seizures and arrests. The EIIB did not have this power. The Task Force Aduana has the power to enlist the assistance of any department, bureau, office, or instrumentality of the government, including government-owned or controlled corporations; and to use their personnel, facilities and resources. Again, the EIIB did not have this power. And, the Task Force Aduana has the additional authority to conduct investigation of cases involving ill-gotten wealth. This was not expressly granted to the EIIB.

Consequently, it cannot be said that there is a feigned reorganization. In *Blaquera v. Civil Service Commission*,^[37] we ruled that a reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation.

Lastly, we hold that petitioners' right to security of tenure is not violated. Nothing is better settled in our law than that the abolition of an office within the competence of a legitimate body if done in good faith suffers from no infirmity. Valid abolition of offices is neither removal nor separation of the incumbents.^[38] In the instructive words laid down by this Court in *Dario v. Mison*,^[39] through Justice Abraham F. Sarmiento:

Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the 'abolition,' which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, otherwise not in good faith, no valid 'abolition' takes and whatever 'abolition' is done, is void ab initio. There is an invalid 'abolition' as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds.

Indeed, there is no such thing as an absolute right to hold office. Except constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary.^[40]

While we cast a commiserating look upon the plight of all the EIIB employees whose lives perhaps are now torn with uncertainties, we cannot ignore the unfortunate reality that our government is also battling the impact of a plummeting economy. Unless the government is given the chance to recuperate by instituting economy and efficiency in its system, the EIIB will not be the last agency to suffer the impact. We cannot frustrate valid measures which are designed to rebuild the executive department.

WHEREFORE, the petition is hereby DENIED. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Panganiban, and Quisumbing, JJ., in the result.

Gonzaga-Reyes, J., on leave.

[1] "Deactivation of the Economic Intelligence and Investigation Bureau"

[2] "Supplementing Executive Order No. 191 on the Deactivation of the Economic Intelligence and Investigation Bureau and for Other Matters"

[3] "Reorganizing the Ministry of Finance" Approved on January 30, 1987.

[4] "SEC. 7. Structural Organization. The Ministry, aside from the Ministry Proper comprising the Office of the Minister, the Offices of the Deputy and Assistant Ministers, the Economic Intelligence and Investigation Bureau and the Services, shall consist of the Operation Groups and their constituent units, and Regional Office."

NOTE: The precursor of EIIB was the Anti-Smuggling Action Center (ASAC) created by former President Marcos on February 24, 1966 through E.O. No. 11. By virtue of E.O. No. 220 (March 1, 1970), the ASAC was transferred from the Office of the President to the Department of National Defense. On March 16, 1971, ASAC was placed under the direct control and supervision of the Secretary of Finance by E.O. No. 303. On June 11, 1978, President Marcos issued Presidential Decree No. 1458 creating the Finance Department Intelligence and Investigation Bureau.

[5] Section 26 of E.O. No. 127.

[6] Section 2 of Memorandum No. 225.

[7] Done on January 7, 2000;

"Section 1. Deactivation of the Economic Intelligence and Investigation Bureau. The Economic Intelligence and Investigation Bureau (EIIB) under the Department of Finance is hereby deactivated."

[8] Done on January 12, 2000. "Creating the Presidential Anti-Smuggling Task Force "Aduana" to Investigate and Prosecute Crimes Involving Large-Scale Smuggling and Other Frauds Upon Customs, Other Economic Crimes and Providing Measures to Expedite Seizure Proceedings."

[9] "SECTION 1. Creation of Task Force.- There is hereby created a Presidential Anti-Smuggling Task Force hereinafter called "Task Force Aduana," under the control and supervision of the Office of the President principally to combat smuggling, unlawful importations and other frauds upon customs committed in large scale or by organized and syndicated groups."

x x x x x

"SEC. 3. Powers and Functions. - The Task force shall have the following powers and functions:

- To prepare and implement appropriate and effective measures to prevent and suppress large-scale smuggling and other prohibited and unlawful importations;
- To effect searches, seizures and arrests, and for the Task Force Commander to file administrative and criminal cases conformably with the provisions of the Tariff and Customs Code of the Philippines, as amended, pertinent provisions of the Revised Penal Code, as amended and the Rules of Criminal Procedure;
- To conduct intelligence and counter-intelligence on smuggling and other unlawful importations, including the monitoring of situations, circumstances, activities of individual, groups and entities who are involved in smuggling activities;
- To select and recruit personnel from within the PSG and ISAFP for assignment to the Task Force with the conformity of the office or agency concerned;
- To enlist the assistance of any department, bureau, office or agency or instrumentality of the government, including government-owned or controlled corporations to carry out its functions, including the use of their

respective personnel, facilities and resources;

- To conduct investigation of ill-gotten wealth of all persons including government officials involved in smuggling activities, in coordination with other government agencies.
- To conduct verification with the Bureau of Customs of all documents pertaining to payment of duties and taxes of all imported articles.
- To suppress and prevent all other economic frauds as may be directed by the President.
- To perform such functions and carry out such activities as may be directed by the President."

[10] "Supplementing Executive Order No. 191 on the Deactivation of the Economic Intelligence and Investigation Bureau and for Other Matters."

[11] Section 3 of E.O. No. 223.

[12] 176 SCRA 84 (1989)

[13] Webster's Third New International Dictionary, 1986 ed. p. 579.

[14] Moreno, Philippine Law Dictionary, 3[rd] ed., p. 5

[15] Rivera, Law of Public Administration, First Edition, p. 634; Guerrero v. Arizabal, 186 SCRA 108 (1990)

[16] In Eugenio v. Civil Service Commission, 243 SCRA 196 (1995), the Court ruled:

"Except for such offices as are created by the Constitution, the creation of a public offices is primarily a legislative function. In so far as the legislative power in this respect is not restricted by constitutional provisions, it is supreme, and the legislature may decide for itself what offices are suitable, necessary, or convenient. When in the exigencies of government it is necessary to create and define duties, the legislative department has the discretion to determine whether additional offices shall be created, or whether these duties shall be attached to and become ex-officio duties of existing offices. An office created by the legislature is wholly within the power of that body, and it may prescribe the mode of filling the office and the powers and duties of the incumbent, and, if it sees fit, abolish the office."

Mendoza v. Quisumbing 186 SCRA 108 (1990); Cruz v. Primicias, 23 SCRA 998 (1968) De Leon, Administrative Law: Text and Cases, 1998 Ed., p. 24

[17] Cruz, The Law of Public Officers, 1999 Ed., p. 4.

[18] Ibid., p. 199

[19] Martin, Philippine Political Law, p. 276

[20] Larin v. Executive Secretary, 280 SCRA 713 (1997)

[21] *ibid.*

[22] General Appropriation Act FY 2000, signed into law on February 16, 2000.

[23] Section 78 of Republic Act No. 8760.

Section 16, Article XVIII, 1987 Constitution provides:

"Sec. 16. Career civil service employees from the separated from the service not for cause but as a result of the

reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of this Constitution shall be entitled to appropriate separation pay and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation. In lieu thereof, at the option of the employees, they may be considered for employment in the Government or in any of its subdivision, instrumentalities, or agencies, including government owned or controlled corporations and their subsidiaries. This provision also applies to career officers whose resignation, tendered in line with the existing policy, had been accepted."

[24] Ibid.

[25] 323 SCRA 312 (2000).

[26] Section 17, Title II, Book IV, E.O. No. 292.

[27] Department of Trade and Industry v. Chairman and Commissioners of the Civil Service Commission 227 SCRA 198 (1993); Dario v. Mison, supra.; Mendoza v. Quisumbing, supra.

[28] "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization"-Approved on June 10, 1988" (84 Official Gazette No. 24, p. S-1)

[29] Section 2 of Republic Act No. 6656.

[30] E.O. No. 196; Section 17, Chapter 4, Title II, Book IV, E.O. No. 292, and Section 7 and Section 26, E.O. No. 127.

[31] R.A. No. 7845, 1995 General Appropriation Act

[32] R.A. No. 8174, 1996 General Appropriation Act

[33] R.A. No. 8522, 1998 General Appropriation Act

[34] R.A. No. 8745, 1999 General Appropriation Act

[35] Section 10, E.O. No. 196.

[36] Section 2 of E.O. No. 196.

[37] 226 SCRA 278 (1993).

[38] Mendoza v. Quisumbing, supra. De la Llana v. Alba, supra.

[39] supra.

[40] National Land Titles and Deeds Registration Administration v. Civil Service Commission, supra.

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