

THIRD DIVISION

[G.R. No. 213237, September 13, 2017]

CIVIL SERVICE COMMISSION, AND THE MUNICIPALITY OF MASIU, LANA DEL SUR, REPRESENTED BY MAYOR NASSER P. PANGANDAMAN, JR., PETITIONERS, VS. SAMAD M. UNDA, RESPONDENT.

[G.R. No. 213331]

THE MUNICIPALITY OF MASIU, PROVINCE OF LANA DEL SUR, REPRESENTED BY NASSER P. PANGANDAMAN, JR., MUNICIPAL MAYOR, PETITIONER, VS. SAMAD M. UNDA, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

An appointment to a position that is optional under the *Local Government Code* (LGC) but without the corresponding appropriation by the relevant *sanggunian* is ineffectual.

The Case

The petitioners in these consolidated cases assail the decision promulgated on January 23, 2014,^[1] whereby the Court of Appeals (CA) reversed the decision of the Civil Service Commission (CSC) and upheld the appointment of the respondent as Municipal Environmental and Natural Resources Officer (MENRO) for the Municipality of Masiu in the Province of Lanao Del Sur,^[2] disposing thus:

WHEREFORE, premises considered, the assailed Decision date 15 March 2012 and the Resolution dated 16 October 2012 are REVERSED and SET ASIDE. The Orders dated 15 February 2010 and 2 June 2010 of the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM) are hereby AFFIRMED. Petitioner Samad M. Unda's appointment as Municipal Environment and Natural Resources Officer is valid and in accordance with law.

SO ORDERED.^[3]

Antecedents

Outgoing Mayor Aminullah D. Arimao of the Municipality of Masiu, Lanao del Norte had appointed respondent Samad M. Unda as the MENRO for the Municipality of Masiu in the Province of Lanao Del Sur on March 8, 2007. After the 2007 local elections, petitioner Nasser P. Pangandaman, Jr. assumed office as the newly-elected Municipal Mayor of Masiu.^[4] He soon discovered that the local government unit (LGU) had not enacted any annual budget for the years 2006 and 2007, and had operated on the basis of the re-enacted 2005 annual budget; and that nine municipal employees,^[5] including the respondent, had been midnight appointees whose appointments had been based on a non-existing budget. Inasmuch as said appointees were not reporting to work, Mayor Pangandaman ordered their salaries withheld.^[6] Later on, he filed a petition for the annulment of the appointments by the Civil Service Commission (CSC),^[7] and the case was referred to the CSC Regional Office-Autonomous Region in Muslim Mindanao (CSCRO-ARMM).

On February 15, 2010, the CSCRO-ARMM upheld the respondent's appointment for having satisfied the screening of the Personnel Screening Board (PSB) prior to the election ban.^[8]

Dissatisfied, the Municipality of Masiu, represented by Mayor Pangandaman, sought reconsideration, but the motion was denied on June 2, 2010.^[9] Thus, the LGU appealed to the CSC.

Ruling of the CSC

On March 15, 2012, the CSC promulgated its decision reversing the CSCRO-ARMM.^[10] The CSC disapproved the respondent's appointment because the position of MENRO was only newly created under the 2006 annual budget that had not been approved,^[11] and because the respondent had not passed the screening by the PSB.

The LGU and the respondent moved for the partial reconsideration of the decision, but the CSC denied their respective motions on October 16, 2012.^[12]

Aggrieved, the respondent appealed to the CA.

Decision of the CA

On January 23, 2014, the CA promulgated its now assailed decision reversing the CSC and reinstating the decision of the CSCRO-ARMM.^[13] The CA pointed out that Section 443 and Section 484 of the LGC had created the position of the MENRO, and, as such, the appointment of anyone as the MENRO would not be contingent on the resolution by the LGU, to wit:

It is an elementary rule in administrative law and the law on public officers that a public office is either created by the Constitution (fundamental law), by law (statute duly enacted by Congress) or by authority of law.

Here, the creation and establishment of the Municipal Environment and Natural Resources Office was made by law under Sections 443 and 484 of the Local Government Code of 1991, viz:

SEC. 443. Officials of the Municipal Government. - (a) a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, *sangguniang bayan* members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.

(b) In addition thereto, the mayor may appoint a municipal administrator, a municipal legal officer, a municipal agriculturist, a **municipal environment and natural resources officer**, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

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SEC 484. Qualifications, Powers and Duties. - (a) No person shall be appointed **environment and natural resources officer** unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in environment, forestry, agriculture or any related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in environmental and natural resources management, conservation, and utilization, of at least five (5) years in the case of the provincial or city environment and natural resources officer, and three (3) years in the case of the municipal environment and natural resources officer. The appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments.

Notably, this office or position does not only exist in municipalities but also in the cities and provinces. Its creation does not depend on any Resolution issued by a local legislative body such as Resolution No. 29 Series of 2005, but by a law duly enacted by Congress which is the Local Government Code of 1991.^[14]

The CA observed that the prohibition against midnight appointments did not extend to the respondent because his appointment had been made 22 days prior to the start of the election ban on March 30, 2007;^[15] and that the PSB had screened his application for the position in compliance with CSC Memorandum Circular No. 40 (*Revised Rules on Appointments and Other Personnel Actions*) as borne out by the certification to that effect by its chairman.^[16]

On June 20, 2014, the CA denied the motions for reconsideration of the LGU and the CSC.^[17]

Hence, the consolidated appeals.

Issues

In G.R. No. 213331, petitioner LGU submits:

I

THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT THERETOFORE DECIDED BY THE SUPREME COURT, IN HOLDING THAT THE POSITION OF MUNICIPAL AND ENVIRONMENTAL OFFICER OF THE MUNICIPALITY OF MASIU, PROVINCE OF LANA DEL SUR IS VALIDLY CREATED BASED SOLELY ON THE PROVISIONS OF SECTIONS 443 AND 484 OF THE LOCAL GOVERNMENT CODE AND ITS CREATION DOES NOT DEPEND UPON ANY RESOLUTION ISSUED BY A LOCAL LEGISLATIVE BODY SUCH AS RESOLUTION NO. 29, SERIES OF 2005.

II

THE HONORABLE COURT OF APPEALS HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEREBY A STATUTE IS CONSTRUED AS A WHOLE, AND NOT JUST A PARTICULAR PROVISION THEREOF, BY CONSTRUING SECTIONS 443 AND 484 OF THE LOCAL GOVERNMENT CODE AS SUFFICIENT BASIS FOR THE CREATION OF THE POSITION OF MENRO, IN WILLFUL AND DELIBERATE DISREGARD OF OTHER RELEVANT PROVISIONS GOVERNING THE CREATION, ORGANIZATION, COMPENSATION AND OTHER BENEFITS OF THE OFFICIALS AND PERSONNEL OF LOCAL GOVERNMENT UNITS.^[18]

In G.R. No. 213237, petitioner LGU tenders the issue of:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN DECLARING PETITIONER'S APPOINTMENT AS VALID AND IN ACCORDANCE WITH LAW.^[19]

The LGU argues that the appointment to the position of the MENRO could not be based solely on Section 443 and Section 484 of the LGC; that the appointment also required a budget or appropriations ordinance, pursuant to Section 443(e) of the LGC, which provides that elective and appointive municipal officials shall receive compensation, allowances and other emoluments based on a law or ordinance, as well as Section 305(a) of the LGC, which mandates that "*no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law*;"^[20] that the position of the MENRO was optional and not automatically institutionalized in every municipality, and, accordingly, there must still be a positive act by the *sangguniang bayan* to create the position and to provide the necessary appropriation for the position;^[21] that Section 76 of the LGC empowers the LGU to design and implement its own organizational structure and staffing pattern, and to determine the compensations of its local officials and personnel; and that Section 447 grants to the LGU the power to approve the annual and supplemental budgets for its operations.^[22]

On its part, the CSC shares the view of the Municipality of Masiu to the effect that the appointment of the respondent must be supported by the 2006 annual budget. Hence, the CSC contends that the appointment of the respondent was ineffectual considering that the certification of the municipal budget officer, the joint affidavit of the members of the *Sangguniang Bayan* of Masiu, and the certification from the *Sangguniang Panlalawigan* of Lanao del Sur all showed that the Municipality of Masiu had no approved annual budget for 2006.^[23]

Additionally, the CSC points out the lack of concurrence by the majority of the members of the *Sangguniang Bayan* of Masiu as required by Section 443 of the LGC; and that such concurrence of the *Sangguniang Bayan* in relation to the appointment of the "heads of departments and offices" under paragraph (d) of Section 443 of the LGC likewise referred to the officials mentioned in paragraphs (a) and (d) thereof, among them the MENRO.^[24]

In refutation, the respondent counters that the LGC created the position of the MENRO; that the LGC validly enacted and adopted an appropriation ordinance (Resolution No. 29, series of 2005); that the *Sangguniang Bayan* of Masiu confirmed his appointment on February 7, 2007 through Resolution No. 02-24, series of 2007 (entitled *A Resolution Confirming the Appointment of Mr. Samad M. Unda as Municipal Environment and Natural Resources Officer-1*);^[25] that the letter sent by the Provincial Government of Lanao del Sur could not be relied upon for being partial considering that the then incumbent Provincial Governor was the party-mate of the Representative of the First Congressional District of Lanao del Sur who was the brother of Mayor Pangandaman; that the power of the *Sangguniang Panlalawigan* over appropriation ordinances of the Municipality of Masiu was merely supervisory in character; that Resolution No. 29 dated October 24, 2005^[26] could not be collaterally attacked; and that if there was no approved 2006 budget, it would have been improbable to pay the respondent his salaries and benefits for the months of May and June 2007.^[27]

The issues to be considered and resolved may be stated thusly: (1) Was the respondent validly appointed as the MENRO of the Municipality of Masiu?; and (2) Did the appointment of the respondent as the MENRO require a prior resolution by the *Sangguniang Bayan* creating the position, confirming the appointment, and appropriating funds for the salaries and benefits to be given to the appointee?

Ruling of the Court

The Court **GRANTS** the petitions for review on *certiorari*, and **REVERSES** the CA.

I

Municipal governments have the discretion to appoint their MENROs

A public office is created either by the Constitution, by law, or by authority of law.^[28] The legal basis for the appointment of the respondent as the MENRO of the Municipality of Masiu was Section 443 of the LGC, which provides in full:

SECTION 443. Officials of the Municipal Government. -

(a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, *sangguniang bayan* members, a secretary to the sangguniang bayan, municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil engineer.

(b) In addition thereto, **the mayor may appoint** a municipal administrator, a municipal legal officer, a municipal agriculturist, **a municipal environment and natural resources officer**, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

(c) The *sangguniang bayan* may:

- (1) Maintain existing offices not mentioned in subsections (a) and (b) hereof;
- (2) Create such other offices as may be necessary to carry out the purposes of the municipal government; or
- (3) Consolidate the functions of any office with those of another in the interest of efficiency and economy.

(d) Unless otherwise provided herein, **heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations.** The *sangguniang bayan* shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

(e) **Elective and appointive municipal officials shall receive such compensation, allowances and other emoluments as may be determined by law or ordinance, subject to the budgetary limitations on personal services as prescribed in Title Five, Book II of this Code:** *Provided*, That no increase in compensation of the mayor, vice-mayor, and *sangguniang bayan* members shall take effect until after the expiration of the full term of all the elective local officials approving such increase. (Bold underscoring supplied for emphasis)

Pursuant to the foregoing, there ought to be no question that the appointment of the respondent as the MENRO was but optional on the part of the Municipality of Masiu, and that such appointment required the concurrence of the *Sangguniang Bayan*, as well as the adoption of the appropriation ordinance to fund the payment of his salaries and other emoluments.

The CA opined that Section 443 and Section 484 of the LGC institutionalized the position of MENRO in the LGUs; hence, no resolution of the *Sangguniang Bayan* was required to create the office. The CA was correct in light of paragraphs (a) and (b) of Section 443 of the LGC expressly creating and identifying the public offices of the municipalities.

Even so, the Municipality of Masiu was also justified in construing the appointment of the MENRO as optional on its part. This is based on the usage in paragraph (b) of the term *may*, which means that the Municipal Mayor has been given the discretion whether or not to appoint the MENRO and the other officers of the municipality listed in the provision. It is a basic postulate of statutory construction that the word *may* means a merely permissive act, and operates to confer upon a party discretion to do or not to do the act.^[29] Indeed, the second paragraph of Section 484(a) of the LGC expressly states that the appointment of the MENRO is optional on the part of the LGU.^[30]

II

The appointment of the respondent as the MENRO further required the concurrence by the majority of the members of