

EN BANC

[G.R. No. 196425, July 24, 2012]

**PROSPERO A. PICHAY, JR., PETITIONER, VS. OFFICE OF THE
DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS
INVESTIGATIVE AND ADJUDICATORY DIVISION, HON. PAQUITO
N. OCHOA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY,
AND HON. CESAR V. PURISIMA, IN HIS CAPACITY AS
SECRETARY OF FINANCE, AND AS AN *EX OFFICIO* MEMBER OF
THE MONETARY BOARD, RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

The Case

This is a Petition for Certiorari and Prohibition with a prayer for the issuance of a temporary restraining order, seeking to declare as unconstitutional Executive Order No. 13, entitled, "*Abolishing the Presidential Anti-Graft Commission and Transferring Its Investigative, Adjudicatory and Recommendatory Functions to the Office Of The Deputy Executive Secretary For Legal Affairs, Office of the President*",^[1] and to permanently prohibit respondents from administratively proceeding against petitioner on the strength of the assailed executive order.

The Facts

On April 16, 2001, then President Gloria Macapagal-Arroyo issued Executive Order No. 12 (E.O. 12) creating the Presidential Anti-Graft Commission (PAGC) and vesting it with the power to investigate or hear administrative cases or complaints for possible graft and corruption, among others, against presidential appointees and to submit its report and recommendations to the President. Pertinent portions of E.O. 12 provide:

Section 4. *Jurisdiction, Powers and Functions.* –

(a) xxx xxx xxx

(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against all presidential appointees in the government and any of its agencies or instrumentalities xxx

xxx xxx xxx

xxx xxx xxx

Section 8. *Submission of Report and Recommendations.* – After completing its investigation or hearing, the Commission *en banc* shall submit its report and recommendations to the President. The report and recommendations shall state, among others, the factual findings and legal conclusions, as well as the penalty recommend (sic) to be imposed or such other action that may be taken.”

On November 15, 2010, President Benigno Simeon Aquino III issued Executive Order No. 13 (E.O. 13), abolishing the PAGC and transferring its functions to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), more particularly to its newly-established Investigative and Adjudicatory Division (IAD). The full text of the assailed executive order reads:

EXECUTIVE ORDER NO. 13

ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE, ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT

WHEREAS, this administration has a continuing mandate and advocacy to fight and eradicate corruption in the different departments, bureaus, offices and other government agencies and instrumentalities;

WHEREAS, the government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in government;

WHEREAS, Section VII of the 1987 Philippine Constitution provides that the President shall have control of all the executive departments, bureaus and offices;

WHEREAS, Section 31 Chapter 10, Title III, Book III of Executive Order 292 (Administrative Code of 1987) provides for the continuing authority of the President to reorganize the administrative structure of the Office of the President;

WHEREAS, Presidential Decree (PD) No. 1416 (Granting Continuing Authority to the President of the Philippines to Reorganize the National Government), as amended by PD 1722, provides that the President of the Philippines shall have continuing authority to reorganize the administrative structure of the National Government and may, at his discretion, create, abolish, group, consolidate, merge or integrate entities, agencies, instrumentalities and units of the National Government, as well as, expand, amend, change or otherwise modify their powers, functions and authorities;

WHEREAS, Section 78 of the General Provisions of Republic Act No. 9970 (General Appropriations Act of 2010) authorizes the President of the

Philippines to direct changes in the organizational units or key positions in any department or agency;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the following:

SECTION 1. Declaration of Policy. It is the policy of the government to fight and eradicate graft and corruption in the different departments, bureaus, offices and other government agencies and instrumentalities.

The government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in the government.

SECTION 2. Abolition of Presidential Anti-Graft Commission (PAGC). To enable the Office of the President (OP) to directly investigate graft and corrupt cases of Presidential appointees in the Executive Department including heads of government-owned and controlled corporations, the Presidential Anti-Graft Commission (PAGC) is hereby abolished and their vital functions and other powers and functions inherent or incidental thereto, transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), OP in accordance with the provisions of this Executive Order.

SECTION 3. Restructuring of the Office of the Deputy Executive Secretary for Legal Affairs, OP. In addition to the Legal and Legislative Divisions of the ODESLA, the Investigative and Adjudicatory Division shall be created.

The newly created Investigative and Adjudicatory Division shall perform powers, functions and duties mentioned in Section 2 hereof, of PAGC.

The Deputy Executive Secretary for Legal Affairs (DESLA) will be the recommending authority to the President, thru the Executive Secretary, for approval, adoption or modification of the report and recommendations of the Investigative and Adjudicatory Division of ODESLA.

SECTION 4. Personnel Who May Be Affected By the Abolition of PAGC. The personnel who may be affected by the abolition of the PAGC shall be allowed to avail of the benefits provided under existing laws if applicable. The Department of Budget and Management (DBM) is hereby ordered to release the necessary funds for the benefits of the employees.

SECTION 5. Winding Up of the Operation and Disposition of the Functions, Positions, Personnel, Assets and Liabilities of PAGC. The winding up of the operations of PAGC including the final disposition or transfer of their functions, positions, personnel, assets and liabilities as may be necessary, shall be in accordance with the applicable provision(s) of the Rules and Regulations Implementing EO 72 (Rationalizing the Agencies Under or Attached to the Office of the President) dated March 15, 2002. The winding up shall be implemented not later than 31 December 2010.

The Office of the Executive Secretary, with the assistance of the Department of Budget and Management, shall ensure the smooth and efficient implementation of the dispositive actions and winding-up of the activities of PAGC.

SECTION 6. Repealing Clause. All executive orders, rules, regulations and other issuances or parts thereof, which are inconsistent with the provisions of this Executive Order, are hereby revoked or modified accordingly.

SECTION 7. Effectivity. This Executive Order shall take effect immediately after its publication in a newspaper of general circulation.

On April 6, 2011, respondent Finance Secretary Cesar V. Purisima filed before the IAD-ODESLA a complaint affidavit^[2] for grave misconduct against petitioner Prospero A. Pichay, Jr., Chairman of the Board of Trustees of the Local Water Utilities Administration (LWUA), as well as the incumbent members of the LWUA Board of Trustees, namely, Renato Velasco, Susana Dumlao Vargas, Bonifacio Mario M. Pena, Sr. and Daniel Landingin, which arose from the purchase by the LWUA of Four Hundred Forty-Five Thousand Three Hundred Seventy Seven (445,377) shares of stock of Express Savings Bank, Inc.

On April 14, 2011, petitioner received an Order^[3] signed by Executive Secretary Paquito N. Ochoa, Jr. requiring him and his co-respondents to submit their respective written explanations under oath. In compliance therewith, petitioner filed a Motion to Dismiss *Ex Abundante Ad Cautelam* manifesting that a case involving the same transaction and charge of grave misconduct entitled, "*Rustico B. Tutol, et al. v. Prospero Pichay, et al.*", and docketed as OMB-C-A-10-0426-I, is already pending before the Office of the Ombudsman.

Now alleging that no other plain, speedy and adequate remedy is available to him in the ordinary course of law, petitioner has resorted to the instant petition for certiorari and prohibition upon the following grounds:

I. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO CREATE A PUBLIC OFFICE.

II. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO APPROPRIATE FUNDS.

III. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF CONGRESS TO DELEGATE QUASI-JUDICIAL POWERS TO ADMINISTRATIVE AGENCIES.

IV. E.O. 13 IS UNCONSTITUTIONAL FOR ENCROACHING UPON THE POWERS OF THE OMBUDSMAN.

V. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE GUARANTEE OF DUE PROCESS.

VI. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE EQUAL PROTECTION CLAUSE.

Our Ruling

In assailing the constitutionality of E.O. 13, petitioner asseverates that the President is not authorized under any existing law to create the Investigative and Adjudicatory Division, Office of the Deputy Executive Secretary for Legal Affairs (IAD-ODESLA) and that by creating a new, additional and distinct office tasked with quasi-judicial functions, the President has not only usurped the powers of congress to create a public office, appropriate funds and delegate quasi-judicial functions to administrative agencies but has also encroached upon the powers of the Ombudsman.

Petitioner avers that the unconstitutionality of E.O. 13 is also evident when weighed against the due process requirement and equal protection clause under the 1987 Constitution.

The contentions are unavailing.

The President has Continuing Authority to Reorganize the Executive Department under E.O. 292.

Section 31 of Executive Order No. 292 (E.O. 292), otherwise known as the Administrative Code of 1987, vests in the President the continuing authority to reorganize the offices under him in order to achieve simplicity, economy and efficiency. E.O. 292 sanctions the following actions undertaken for such purpose:

- (1) Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, **by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another;**
- (2) Transfer any function under the Office of the President to any other Department or Agency** as well as transfer functions to the Office of the President from other Departments and Agencies; and
- (3) Transfer any agency under the Office of the President to any other Department or Agency** as well as transfer agencies to the Office of the President from other departments or agencies.^[4]

In the case of *Buklod ng Kawaning EIIB v. Zamora the Court*^[5] affirmed that the President's authority to carry out a reorganization in any branch or agency of the executive department is an express grant by the legislature by virtue of E.O. 292, thus: