

## FIRST DIVISION

[ G.R. No. 142283, February 06, 2003 ]

**ROSA LIGAYA C. DOMINGO, ROMEO M. FERNANDEZ, VICTORIA S. ESTRADA, JULIETA C. FAJARDO, ADELAIDA B. GAWIRAN, MARCIANO M. SERVO, VICTORIA S. DAOANG, FELICIANO N. TOLEDO III, JAYNELYN D. FLORES, MA. LIZA B. LLOREN, ROMELIA A. CONTAPAY, MARIVIC B. TOLITOL, PAZ LEVITA G. VILLANUEVA, EDITHA C. HERNANDEZ, JOSE HERNANDEZ, JR., VERONICA C. BELLES, AMELITA S. BUCE, MERCELITA C. MARANAN, CRISTITUTO C. LLOREN, HERNANDO M. EVANGELISTA, AND CARLOS BACAY, JR., PETITIONERS, VS. HON. RONALDO D. ZAMORA, IN HIS CAPACITY AS THE EXECUTIVE SECRETARY, HON. ANDREW B. GONZALES, IN HIS CAPACITY AS THE SECRETARY OF EDUCATION, AND HON. CARLOS D. TUASON, IN HIS CAPACITY AS THE CHAIRMAN OF THE PHILIPPINE SPORTS COMMISSION, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for certiorari and prohibition<sup>[1]</sup> with prayer for temporary restraining order seeking to nullify Executive Order No. 81 and Memoranda Nos. 01592 and 01594.<sup>[2]</sup> The assailed executive order transferred the sports development programs and activities of the Department of Education, Culture and Sports ("DECS" for brevity) to the Philippine Sports Commission ("PSC" for brevity). The questioned memoranda ("DECS Memoranda" for brevity), on the other hand, reassigned all Bureau of Physical Education and School Sports ("BPSS" for brevity) personnel named in the DECS Memoranda to various offices within the DECS.

#### The Facts

On March 5, 1999, former President Joseph E. Estrada issued Executive Order No. 81<sup>[3]</sup> ("EO 81" for brevity) entitled "Transferring the Sports Programs and Activities of the Department of Education, Culture and Sports to the Philippine Sports Commission and Defining the Role of DECS in School-Based Sports."

EO 81 provided thus:

"Section 1. Transferring the Sports Program and Activities to the PSC. All the functions, programs and activities of DECS related to sports development as provided for in Sec. 16 of EO 117 (s. 1987) are hereby transferred to PSC.

Section 2. Defining the Role of DECS in School-Based Sports. The DECS shall have jurisdiction and function over the enhancement of Physical Education (P.E.) curriculum and its application in whatever form inside schools.

Section 3. The Role of PSC. As the primary agency tasked to formulate policies and oversee the national sports development program, the management and implementation of all school-based sports competitions among schools at the district, provincial, regional, national and international levels, in coordination with concerned public and private entities shall be transferred to the PSC."

Pursuant to EO 81, former DECS Secretary Andrew B. Gonzales ("Secretary Gonzales" for brevity) issued Memorandum No. 01592 on January 10, 2000. Memorandum No. 01592 temporarily reassigned, in the exigency of the service, all remaining BPES Staff to other divisions or bureaus of the DECS effective March 15, 2000.

On January 21, 2000, Secretary Gonzales issued Memorandum No. 01594 reassigning the BPES staff named in the Memorandum to various offices within the DECS effective March 15, 2000. Petitioners were among the BPES personnel affected by Memorandum No. 01594. Dissatisfied with their reassignment, petitioners filed the instant petition.

In their Petition, petitioners argue that EO 81 is void and unconstitutional for being an undue legislation by President Estrada. Petitioners maintain that the President's issuance of EO 81 violated the principle of separation of powers. Petitioners also challenge the DECS Memoranda for violating their right to security of tenure.

Petitioners seek to nullify EO 81 and the DECS Memoranda. Petitioners pray that this Court prohibit the PSC from performing functions related to school sports development. Petitioners further pray that, upon filing of the petition, this Court issue a temporary restraining order against respondents to desist from implementing EO 81.

During the pendency of the case, Republic Act No. 9155 ("RA 9155" for brevity), otherwise known as the "Governance of Basic Education Act of 2001", was enacted on August 11, 2001. RA 9155 expressly abolished the BPES and transferred the functions, programs and activities of the DECS relating to sports competition to the PSC. The pertinent provision thereof reads:

"SEC. 9. Abolition of BPES. – All functions, programs and activities of the Department of Education related to sports competition shall be transferred to the Philippine Sports Commission (PSC). The Program for school sports and physical fitness shall remain part of the basic education curriculum.

The Bureau of Physical Education and School Sports (BPES) is hereby abolished. The personnel of the BPES, presently detailed with the PSC, are hereby transferred to the PSC without loss of rank, including the plantilla positions they occupy. All other BPES personnel shall be retained by the Department."