

THIRD DIVISION

[G.R. No. 116850, April 11, 2002]

**DR. LAMPA I. PANDI AND DR. JARMILA B. MACACUA,
PETITIONERS, VS. THE COURT OF APPEALS, AND DR. AMER A.
SABER, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the decision of the Court of Appeals dated April 15, 1994^[1] and its resolution dated August 16, 1994.^[2] The Court of Appeals granted the Petition for a Writ of *Quo Warranto*^[3] filed against petitioners Dr. Lampa I. Pandi and Dr. Jarmila B. Macacua ("Pandi" and "Macacua", respectively, for brevity) in favor of respondent

Dr. Amer A. Saber ("Saber" for brevity). The Court of Appeals declared Saber entitled to the position of Officer-in-Charge of the Integrated Provincial Health Office-Amai Pakpak General Hospital ("IPHO-APGH" for brevity), Lanao del Sur.

The Facts

On August 9, 1993, Macacua, in her capacity as Regional Director^[4] and as Secretary^[5] of the Department of Health of the Autonomous Region in Muslim Mindanao ("DOH" and "ARMM", respectively, for brevity), issued a Memorandum designating Pandi, who was then DOH-ARMM Assistant Regional Secretary, as Officer-in-Charge of the IPHO-APGH, Lanao del Sur. In the same Memorandum, Macacua detailed Dr. Mamasao Sani ("Sani" for brevity), then the provincial health officer of the IPHO-APGH, Lanao del Sur, to the DOH-ARMM Regional Office in Cotabato City.

On September 15, 1993, Lanao del Sur Provincial Governor Mahid M. Mutilan issued Office Order No. 07 designating Saber also as Officer-in-Charge of the IPHO-APGH, Lanao del Sur.

On August 12, 1993, Sani filed a complaint^[6] with the Regional Trial Court of Lanao del Sur, Branch 10, Marawi City challenging the August 9, 1993 Memorandum transferring him to the DOH-ARMM Regional Office in Cotabato City, alleging that he is the holder of a permanent appointment as provincial health officer of the IPHO-APGH, Lanao del Sur.

On October 5, 1993, Saber filed with the Court of Appeals a petition for *quo*

warranto with prayer for preliminary injunction, claiming that he is the lawfully designated Officer-in-Charge of the IPHO-APGH, Lanao del Sur. On October 14, 1993, the Court of Appeals issued a temporary restraining order enjoining Pandi from further discharging the functions and duties as Officer-in-Charge of the IPHO-APGH, Lanao del Sur. On October 25, 1993, Pandi and Macacua filed their comment on the petition and opposition to the application for writ of preliminary injunction.

On October 29, 1993, then President Fidel V. Ramos issued Executive Order No. 133 transferring the powers and functions of the Department of Health in the region to the Regional Government of the ARMM. On November 6, 1993, Macacua, again in her capacity as DOH-ARMM Secretary-Designate, issued a Memorandum reiterating Pandi's designation as Officer-in-Charge of the IPHO-APGH, Lanao del Sur, as well as Sani's detail to the Regional Office of the DOH-ARMM in Cotabato City.

On November 19, 1993, the Court of Appeals issued a writ of preliminary injunction upon the filing by Saber of a P100,000.00 bond. On November 24, 1993, Pandi and Macacua filed a motion for reconsideration or recall of the writ of preliminary injunction. With an offer of a P200,000.00 counter-bond, Pandi and Macacua moved on December 13, 1993 to dissolve the writ of preliminary injunction. The Court of Appeals denied both motions.

On December 8, 1993, Sani filed with the Court of Appeals a motion for intervention accompanied by a complaint in intervention. Pandi, Macacua and Saber opposed the same.

On March 21, 1994, Pandi and Macacua filed a motion seeking the dismissal of Saber's petition, on the ground that the issues therein had become moot and academic. Pandi and Macacua cited as reason the enactment by the ARMM Regional Assembly of the Muslim Mindanao Autonomy Act No. 25, otherwise known as the ARMM Local Government Code ("ARMM Local Code" for brevity), as well as the execution of the Memorandum of Agreement dated March 14, 1994 between the DOH of the National Government and the ARMM Regional Government.^[7]

On April 15, 1994, the Court of Appeals rendered the assailed decision.^[8] In a resolution dated August 16, 1994, the Court of Appeals denied Pandi and Macacua's motion for reconsideration and supplemental motion for reconsideration of the decision.^[9]

The Ruling of the Court of Appeals

The Court of Appeals held that Saber is the lawfully designated Officer-in-Charge of the IPHO-APGH, Lanao del Sur. The Court of Appeals ruled that Lanao del Sur Governor Mahid Mutilan has the power and authority to appoint the provincial health officer under Section 478^[10] of the Local Government Code of 1991 (R.A. No. 7160, the "1991 LGU Code" for brevity). The Court of Appeals declared:

"xxx. Accordingly, health services including hospitals, which used to be under the central authority of the Department of Health were devolved to the local government units (Art. 25, Implementing Rules and Regulations of the Local Government Code of 1991; Sec. 17, RA 7160). **Pertinently, Sec. 478 of RA No. 7160 makes mandatory for provincial**

governments "the appointment of a health officer" and under Article 115 of the Implementing Rules and Regulations, it is specifically provided that the "Provincial Health Officer" is one of the "mandatory appointive provincial officials." There is thus, no doubt in the mind of the Court that the authority and power to appoint the Provincial Health Officer is vested by law in the Provincial Governor."^[11] (Emphasis supplied)

The Court of Appeals likewise ruled that the issuance of Executive Order No. 133, and the Memorandum of Agreement entered between the DOH of the National Government and the ARMM pursuant to Executive Order No. 133, did not render moot and academic the issues raised in the proceedings before it. The Court of Appeals explained:

"xxx. Mere devolution of the powers and functions of the DOH to the ARMM does not authorize Dr. Macacua as Secretary of the DOH-ARMM to make the questioned designation. Sections 2, 3, 4, 5 and 7 of Executive Order 133 which provide for the transfer of certain powers and functions of the DOH to the ARMM, speak of administrative supervision and control and other functions which do not in any manner relate to the power of appointment and designation of the Provincial Health Officer, which under the law is clearly vested in the provincial chief executive."^[12]

Neither did the Court of Appeals give credence to Pandi and Macacua's argument that the passage of the ARMM Local Code puts to rest the issues in the instant case. The Court of Appeals stated:

"While Section 457 (b) and (d) of MMA Act No. 25 state that:

"(b) In addition thereto, the governor may appoint a provincial natural resources and environment officer, a provincial cooperative officer, a provincial architect and a provincial information officer.

"Provided, that the governor shall submit a list of at least three (3) qualified recommendees to the autonomous regional government for appointment, according to Civil Service Law to the positions of a Provincial Health Officer, a Provincial Social Welfare and Development Officer, a Provincial Agriculturist, a Provincial Natural Resources and Environment Officer, and a Provincial Tourism Officer, to be paid by regional funds.

x-x-x

x-x-x

x-x-x

"(d) Unless otherwise provided herein, heads of the departments and offices shall be appointed by the governor with the concurrence of the majority of all the sangguniang panlalawigan members, subject to civil service law, rules and regulations. x x x"

it is opined that the above provisions should be interpreted to conform to or should otherwise be not contrary to the Organic Act (RA 6734) for the

Autonomous Region in Muslim Mindanao.”^[13]

The Court of Appeals maintained that the Organic Act of 1989 and the ARMM Local Code could not prevail over the 1991 LGU Code. The Court of Appeals interpreted Section 457 (b) and (d) of the ARMM Local Code to mean that it is the ARMM Regional Governor, and not the Provincial Governor, who exercises a recommendatory prerogative in the appointment of the provincial health officer. The Court of Appeals declared:

“Section 1 of Article V (on “Powers of Government”) of Republic Act 6734 provides:

“SECTION 1. The Regional Government shall exercise powers and functions for the proper governance and development of all the constituent units within the Autonomous Region consistent with the constitutional policy on regional and local autonomy and decentralization: Provided, That nothing herein shall authorize the diminution of the powers and functions already enjoyed by the local government units.”

Also, Section 18, Article VIII of the same Organic Act states:

“SECTION 18. Subject to the exceptions provided for in this Organic Act, the regional Governor shall have control of all the regional executive commissions, boards, bureaus, and offices. He shall ensure that the laws be faithfully executed. The Regional Governor shall exercise general supervision over the local government units within the Autonomous Region: Provided, however, That nothing herein shall authorize the diminution of the powers and functions already enjoyed by local government units.”

From the above-cited provisions of the Organic Act for ARMM, it is clear that nothing therein should be construed to authorize and empower the Regional Government and the Regional Governor for that matter to diminish, much less, render nugatory the powers and functions already enjoyed by the local government units. Inasmuch as the local chief executive of the province already enjoys the mandatory power to appoint the Provincial Health Officer under Republic Act 7160, it is believed that Section 457 (b) and (d) of MMA Act 25 was not intended to diminish the power of the Provincial Governor to appoint/designate the Provincial Health Officer for his province. Accordingly, Section 457 (b) merely grants to the Regional Governor recommendatory prerogative over appointments for the position of Provincial Health Officer.”^[14]

The Court of Appeals likewise ruled that there is nothing in Section 18,^[15] Chapter 5, Title IX, Book IV of the Revised Administrative Code of 1987 which explicitly or even impliedly vests in Macacua, as DOH-ARMM Secretary, the power to make such an appointment or designation.

The Court of Appeals further ruled that Article 465^[16] of the 1991 LGU Code, which limits the appointing power of the Provincial Governor to provincial officials and employees paid mainly from provincial funds, refers to employees whose

appointments are not otherwise provided in the Code. Since the provincial health officer is a mandatory appointive provincial officer under Section 478 of the 1991 LGU Code, the limitation in Article 465 cannot apply to the appointment or designation of a provincial health officer even if his salary is paid from national or regional funds.

The Court of Appeals also found that Sani's permanent appointment is that of "Provincial Health Officer (R-05 5th Step) in the Office of the Regional Health Director, Regional Health Office No. XII, Cotabato City x x x." Sani was merely on detail to the position of provincial health officer of the IPHO-APGH, Lanao del Sur. Sani could not claim a vested right or entitlement to permanence in that office. Moreover, the incumbent Provincial Governor of Lanao del Sur, as the appointing authority for all positions made mandatory in the organizational structure of the provincial government, did not appoint or designate Sani to the position of provincial health officer. Accordingly, for lack of merit, the Court of Appeals denied Sani's motion to intervene.

The dispositive portion of the assailed decision of the Court of Appeals declared that:

"WHEREFORE, the Writ of *Quo Warranto* is GRANTED and petitioner, Dr. Amer A. Saber, is hereby declared entitled to the position of Officer-in-Charge of the Integrated Provincial Health Office. The preliminary injunction heretofore issued is hereby made permanent.

SO ORDERED."^[17]

Hence, this petition.

The Issues

The petitioners raise the following issues:

1. WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT SABER IS THE LEGALLY DESIGNATED OFFICER-IN-CHARGE OF THE IPHO-APGH, LANA DEL SUR, PURSUANT TO SECTION 478 OF THE 1991 LGU CODE MAKING MANDATORY FOR PROVINCIAL GOVERNMENTS THE APPOINTMENT OF A HEALTH OFFICER, AND VESTING IN GOVERNOR MAHID MUTILAN OF LANA DEL SUR THE POWER AND AUTHORITY TO APPOINT THE PROVINCIAL HEALTH OFFICER;
2. WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT EXECUTIVE ORDER NO. 133 DATED OCTOBER 29, 1993, THE ARMM LOCAL CODE, AND THE MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE DEPARTMENT OF HEALTH (NATIONAL) AND THE ARMM, DID NOT RENDER MOOT AND ACADEMIC THE ISSUES RAISED IN THE PETITION;
3. WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE REGIONAL GOVERNOR OF THE ARMM HAS ONLY A RECOMMENDATORY PREROGATIVE IN THE APPOINTMENT OF