

## EN BANC

[ G.R. No. 142801-802, July 10, 2001 ]

**BUKLOD NG KAWANING EIIB, CESAR POSADA, REMEDIOS G. PRINCESA, BENJAMIN KHO, BENIGNO MANGA, LULU MENDOZA, PETITIONERS, VS. HON. EXECUTIVE SECRETARY RONALDO B. ZAMORA, HON. SECRETARY JOSE PARDO, DEPARTMENT OF FINANCE, HON. SECRETARY BENJAMIN DIOKNO, DEPARTMENT OF BUDGET AND MANAGEMENT, HON. SECRETARY ARTEMIO TUQUERO, DEPARTMENT OF JUSTICE, RESPONDENTS.**

### D E C I S I O N

#### **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**<sup>[1]</sup> and **Executive Order No. 223**<sup>[2]</sup> 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<sup>[3]</sup> establishing the Economic Intelligence and Investigation Bureau (EIIB) as part of the structural organization of the Ministry of Finance.<sup>[4]</sup> 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."<sup>[5]</sup>

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.*"<sup>[6]</sup>

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.*"<sup>[7]</sup> 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<sup>[8]</sup> creating the Presidential Anti-Smuggling Task Force "*Aduana.*"<sup>[9]</sup>

Then the day feared by the EIIB employees came. On March 29, 2000, President Estrada issued Executive Order No. 223<sup>[10]</sup> 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.<sup>[11]</sup>

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*,<sup>[12]</sup> 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,<sup>[13]</sup> while to "*abolish*" means to do away with, to annul, abrogate or destroy completely.<sup>[14]</sup> In essence, abolition denotes an intention to do away with the office *wholly* and *permanently*.<sup>[15]</sup> 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.<sup>[16]</sup> 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.<sup>[17]</sup> Thus, except where the office was created by the Constitution itself, it may be abolished by the same legislature that brought it into existence.<sup>[18]</sup>

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,<sup>[19]</sup> or certain laws may grant him the broad authority to carry out reorganization measures.<sup>[20]</sup> The case in point is *Larin v. Executive Secretary*.<sup>[21]</sup> 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 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 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.<sup>[22]</sup> 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.<sup>[23]</sup> 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***