

EN BANC

[G.R. No. 116763, April 19, 1996]

**GOVERNOR RODOLFO C. FARINAS AND AL NACINO,
PETITIONERS, VS. MAYOR ANGELO M. ARBA, VICE MAYOR
MANUEL S. HERNANDO, AND EDWARD PALAFOX, RESPONDENTS.**

DECISION

MENDOZA, J.:

The question in this case is: In case of a permanent vacancy in the Sangguniang Bayan caused by the cessation from office of a member who does not belong to any political party, who can appoint the replacement and in accordance with what procedure?

This case arose from the following facts:

Carlito B. Domingo was a member of the Sangguniang Bayan of San Nicolas, Ilocos Norte. On March 24, 1994, he resigned after going without leave to the United States.

To fill the vacancy created by his resignation, the mayor, respondent Angelo M. Barba, recommended to the Governor of the province, petitioner Rodolfo C. Fariñas, the appointment of respondent Edward Palafox.

A similar recommendation for the appointment of Edward Palafox was made by the Sangguniang Bayan of San Nicolas but the recommendation was made to Mayor Barba. The resolution, containing the recommendation, was submitted to the Sangguniang Panlalawigan of Ilocos Norte purportedly in compliance with §56 of the Local Government Code (R.A. No. 7160).^[1]

The Sangguniang Panlalawigan, purporting to act under this provision of the Local Government Code, disapproved the resolution "for the reason that the authority and power to appoint Sangguniang Bayan members are lodged in the Governor, and therefore, the Resolution should be addressed to the Provincial Governor." Accordingly, the Sangguniang Panlalawigan recommended to the Governor the appointment of petitioner Al Nacino, vice Carlito Domingo, as member of the Sangguniang Bayan of San Nicolas. On June 8, 1994, petitioner Governor appointed petitioner Nacino and swore him in office that same day.

On the other hand, respondent Mayor Barba appointed respondent Edward Palafox to the same position on June 8, 1994. The next day, June 9, 1994, respondent Palafox took his oath as member of the Sangguniang Bayan.

On June 14, 1994, petitioners filed with the Regional Trial Court of Ilocos Norte a petition for quo warranto and prohibition, entitled "Governor Rodolfo C. Fariñas and

Al Nacino v. Mayor Angelo M. Barba, Vice Mayor Manuel S. Hernando, Jr. and Edward D. Palafox."

On July 8, 1994 the trial court rendered its decision, upholding the appointment of respondent Palafox by respondent Mayor Barba. It held:

Under the facts and circumstances as shown clearly in the case, there is no doubt the law that is applicable is sub-section "C" of Section 45 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991 which provides:

In case the permanent vacancy is caused by a Sanggunian Member who does not belong to any political party, the Local Chief Executive shall upon the recommendation of the Sanggunian concerned, appoint a qualified person to fill the vacancy.

. . . Inasmuch as the permanent vacancy is in the Sanggunian Bayan of San Nicolas, Ilocos Norte, it is the Sanggunian concerned referred to in the law which recommends the appointment to fill the vacancy. . . . This being so, the Local Chief Executive referred to in sub-section "C" of Section 45 of Republic Act No. 7160 is the Municipal Mayor of San Nicolas, Ilocos Norte.

It cannot be denied that the Governor has the authority to appoint a qualified person to fill the vacancy in the Sanggunian Bayan caused by resignation of a member thereof as that is vested in him or her by the Provision of No. 2, Sec. 45 of Republic Act No. 7160. To the mind of the court that authority is not vested in him or her where the permanent vacancy is caused by a Sanggunian Member who does not belong to any political party as that authority is specifically vested upon the Local Chief Executive upon recommendation of the Sanggunian concerned as per sub-section "C" of Section 45 of the same Republic Act No. 7160. Under No. 2 of Sec. 45 aforementioned the law does not require a recommendation for the appointment of Sanggunian Bayan Member to fill a permanent vacancy either from the Sangguniang Panlalawigan or from the Sanggunian Bayan. . . . As such there can be no other person referred to as the Local Chief Executive having the authority to appoint other than the Municipal Mayor of the Municipality of the Sanggunian Bayan where there is permanent vacancy. This can be clearly inferred from the two (2) provisions of the law (No. 2 and sub-section C of Sec. 45 of Rep. Act No. 7160). While No. 2 of Sec. 45 specifically vests the power to appoint in the Governor, sub-section. C of Sec. 45, specifically vests the power to appoint in the Local Chief Executive. The Local Chief Executive specifically mentioned in said sub-section C of Sec. 45 is not the Governor, for there would have been no need for the law making body to have specifically stated in the law if it had intended that the Governor is that one and the same Local Chief Executive vested with power to appoint.

Petitioners filed a motion for reconsideration, but this was denied by the trial court on August 18, 1994. Hence this petition for review on certiorari.

Petitioners contend that the power to fill a vacancy in the Sangguniang Bayan, which is created as a result of the cessation from office of a member who does not belong to a political party, is vested in the provincial governor upon recommendation of the Sangguniang Panlalawigan.

The statutory provision in question is 45 of the Local Government Code of 1991 (R.A. No. 7160) which reads:

§45. *Permanent Vacancies in the Sanggunian.* (a) Permanent vacancies in the sanggunian where automatic successions provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the sangguniang panlungsod of component cities and the sangguniang bayan;

(3) The city or municipal mayor, in the case of the sangguniang barangay, upon recommendation of the sangguniang barangay concerned.

(b) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor.

(c) In case the permanent vacancy is caused by a sanggunian member who does not belong to any political party, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

(d) In case of vacancy in the representation of the youth and the

barangay in the sanggunian, said vacancy shall be filled automatically by the official next in rank of the organization concerned.

[1] Since the vacancy in this case was created by a Sanggunian member who did not belong to any political party, the specific provision involved is par. (c), to wit:

(c) In case the permanent vacancy is caused by a sanggunian member who does not belong to any political party, the local chief executive shall, upon recommendation of the sanggunian concerned, appoint a qualified person to fill the vacancy.

But who is the "local chief executive" referred? And which is the "sanggunian concerned"? With respect to the first ("local chief executive"), petitioners look to §45(a) for the answer and say that it is the governor, with respect to vacancies in the Sangguniang Panlungsod of component cities and Sangguniang Bayan, or the mayor with respect to vacancies in the sangguniang Barangay.

In support of this view, they cite, first of all, the following provision of the former Local Government Code (B.P. Blg. 337):

§50. Permanent Vacancies in the Local Sanggunians. -In case of permanent vacancy in the *sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, or sangguniang barangay, the President of the Philippines*, upon recommendation of the Minister of Local Government, shall appoint a qualified person to fill the vacancy in the *sangguniang panlalawigan and the sangguniang panlungsod; the governor, in the case of sangguniang bayan members; or the city or municipal mayor, in the case of sangguniang barangay members*. Except for the sangguniang barangay, the appointee shall come from the political party of the sanggunian member who caused the vacancy, and shall serve the unexpired term of the vacant office.

and, second, the following provision of the present Code:

§63. *Preventive Suspension* - (a) Preventive suspension may be imposed:

(1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;

(2) By the governor, if the respondent is an elective official of a component city or municipality; or