

EN BANC

[G.R. No. 138200, February 27, 2002]

SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), PETITIONER, VS. ROBERTO MABALOT, RESPONDENT.

D E C I S I O N

BUENA, J.:

At the core of controversy in the instant Petition for Review on Certiorari is the validity of Memorandum Order No. 96-735, dated 19 February 1996, and Department Order No. 97-1025, dated 29 January 1997, both issued by the Secretary of the Department of Transportation and Communications (DOTC).

The facts are uncontested.

On 19 February 1996, then DOTC Secretary Jesus B. Garcia, Jr., issued **Memorandum Order No. 96-735** addressed to Land Transportation Franchising Regulatory Board (LTFRB) Chairman Dante Lantin, viz:

"In the interest of the service, you are hereby directed to effect the transfer of regional functions of that office to the DOTCCAR Regional Office, pending the creation of a regular Regional Franchising and Regulatory Office thereat, pursuant to Section 7 of Executive Order No. 202.

"Organic personnel of DOTC-CAR shall perform the LTFRB functions on a concurrent capacity subject to the direct supervision and control of LTFRB Central Office."

On 13 March 1996, herein respondent Roberto Mabalot filed a petition for certiorari and prohibition with prayer for preliminary injunction and/or restraining order,^[1] against petitioner and LTFRB Chairman Lantin, before the Regional Trial Court (RTC) of Quezon City, Branch 81,^[2] praying among others that Memorandum Order No. 96-735 be declared "illegal and without effect."

On 20 March 1996, the lower court issued a temporary restraining order enjoining petitioner from implementing Memorandum Order No. 96-735. On 08 April 1996, the lower court, upon filing of a bond by respondent, issued a writ of preliminary injunction. On 25 April 1996, then DOTC Secretary Amado Lagdameo, Jr. filed his answer to the petition.

Thereafter, on 29 January 1997, Secretary Lagdameo issued the assailed **Department Order No. 97-1025**, to wit:

"Pursuant to Administrative Order No. 36, dated September 23, 1987, and for purposes of economy and more effective coordination of the DOTC functions in the Cordillera Administrative Region (CAR), the DOTC-CAR Regional Office, created by virtue of Executive Order No. 220 dated July 15, 1987, is hereby established as the Regional Office of the LTFRB and shall exercise the regional functions of the LTFRB in the CAR subject to the direct supervision and control of LTFRB Central Office.

"The budgetary requirement for this purpose shall come from the Department until such time that its appropriate budget is included in the General Appropriations Act."

After trial, the Office of the Solicitor General (OSG) moved to reopen the hearing in the lower court for the purpose of enabling petitioner to present Department Order No. 97-1025. In an Order dated 18 February 1997, the lower court granted the motion.

On 03 April 1997, respondent filed a Motion for Leave to File Supplemental Petition assailing the validity of Department Order No. 97-1025. On 14 May 1997, the OSG presented Department Order No. 97-1025 after which petitioner filed a formal offer of exhibits.

In an Order dated 09 June 1997, the lower court admitted petitioner's documentary exhibits over the objection of respondent. Likewise, the lower court admitted the supplemental petition filed by respondent to which petitioner filed an answer thereto.

On 31 March 1999, the lower court rendered a decision the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring Memorandum Order Nos. 96-733^[3] dated February 19, 1996 and 97-1025 dated January 27, 1997 of the respondent DOTC Secretary **null and void and without any legal effect** as being violative of the provision of the Constitution against encroachment on the powers of the legislative department and also of the provision enjoining appointive officials from holding any other office or employment in the Government.

"The preliminary injunction issued on May 13, 1996 is hereby made permanent.

"No pronouncement as to costs.

"It is so ordered."

Hence, the instant petition where this Court is tasked in the main to resolve the issue of validity of the subject administrative issuances by the DOTC Secretary.

In his Memorandum^[4], respondent Mabalot principally argues that *"a transfer of the powers and functions of the LTFRB Regional Office to a DOTC Regional Office or the establishment of the latter as an LTFRB Regional Office is unconstitutional" for being*

"an undue exercise of legislative power." To this end, respondent quoted heavily the lower court's rationale on this matter, to wit:

"With the restoration of Congress as the legislative body, the transfer of powers and functions, specially those quasi-judicial (in) nature, could only be effected through legislative fiat. **Not even the President of the Philippines can do so. And much less by the DOTC Secretary who is only a mere extension of the Presidency.** Among the powers of the LTFRB are to issue injunctions, whether prohibitory (or) mandatory, punish for contempt and to issue subpoena and subpoena duces tecum. **These powers devolve by extension on the LTFRB regional offices in the performance of their functions. They cannot be transferred to another agency of government without congressional approval embodied in a duty enacted law.**" (Emphasis ours)

We do not agree. Accordingly, in the absence of any patent or latent constitutional or statutory infirmity attending the issuance of the challenged orders, this Court upholds Memorandum Order No. 96-735 and Department Order No. 97-1025 as legal and valid administrative issuances by the DOTC Secretary. Contrary to the opinion of the lower court, **the President** - through his duly constituted political agent and *alter ego*, the DOTC Secretary in the present case - may legally and validly decree the reorganization of the Department, particularly the establishment of DOTC-CAR as the LTFRB Regional Office at the Cordillera Administrative Region, with the concomitant transfer and performance of public functions and responsibilities appurtenant to a regional office of the LTFRB.

At this point, it is *apropos* to reiterate the elementary rule in administrative law and the law on public officers that a public office may be created through any of the following modes, to wit, either **(1) by the Constitution** (*fundamental law*), **(2) by law** (*statute duly enacted by Congress*), or **(3) by authority of law.**^[5]

Verily, Congress can delegate the power to create positions. This has been settled by decisions of the Court upholding the validity of reorganization statutes authorizing the President to create, abolish or merge offices in the executive department.^[6] Thus, at various times, Congress has vested power in the President to reorganize executive agencies and redistribute functions, and particular transfers under such statutes have been held to be within the authority of the President.^[7]

In the instant case, the creation and establishment of LTFRB-CAR Regional Office was made pursuant to the third mode - **by authority of law**, which could be decreed for instance, through an Executive Order (E.O.) issued by the President or an order of an administrative agency such as the Civil Service Commission^[8] pursuant to Section 17, Book V of E.O. 292, otherwise known as The Administrative Code of 1987. In the case before us, the DOTC Secretary issued the assailed Memorandum and Department Orders pursuant to Administrative Order No. 36 of the President,^[9] dated 23 September 1987, Section 1 of which explicitly provides:

"Section 1. Establishment of Regional Offices in the CAR- The various departments and other agencies of the National Government that are currently authorized to maintain regional offices are hereby **directed to establish forthwith their respective regional offices In the Cordillera Administrative Region** with territorial coverage as defined

under Section 2 of Executive Order No. 220 dated July 15, 1987, with regional headquarters at Baguio City.”

Emphatically the President, through Administrative Order No. 36, did not merely authorize but **directed**, in no uncertain terms, the various departments and agencies of government to immediately undertake the creation and establishment of their regional offices in the CAR. To us, Administrative Order No. 36 is a clear and unequivocal directive and mandate - no less than from the Chief Executive - ordering the heads of government departments and bureaus to effect the establishment of their respective regional offices in the CAR.

By the Chief Executive’s unequivocal act of issuing Administrative Order No. 36 ordering his **alter ego** - the DOTC Secretary in the present case - to effectuate the creation of Regional Offices in the CAR, the President, in effect, deemed it fit and proper under the circumstances to act and exercise his authority, albeit through the various Department Secretaries, so as to put into place the organizational structure and set-up in the CAR and so as not to compromise in any significant way the performance of public functions and delivery of basic government services in the Cordillera Administrative Region.

Simply stated, it is as if the President himself carried out the creation and establishment of LTFRB-CAR Regional Office, when in fact, the DOTC Secretary, **as alter ego of the President**, directly and merely sought to implement the Chief Executive’s Administrative Order.

To this end, Section 17, Article VII of the Constitution mandates:

“The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.”

By definition, control is “the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.”^[10] **It includes the authority to order the doing of an act by a subordinate or to undo such act or to assume a power directly vested in him by law.**^[11]

From the purely legal standpoint, the members of the Cabinet are subject at all times to the disposition of the President since they are merely his *alter ego*.^[12] As this Court enunciated in **Villena vs. Secretary of the Interior**,^[13] “without minimizing the importance of the heads of various departments, their personality is in reality but the projection of that of the President.” Thus, their acts, “performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.”

Applying the foregoing, it is then clear that the lower court’s pronouncement - that the transfer of powers and functions and in effect, the creation and establishment of LTFRB-CAR Regional Office, may not be validly made by the Chief Executive, much less by his mere alter ego and could only be properly effected through a law enacted by Congress -is to say the least, erroneous.

In **Larin vs. Executive Secretary**,^[14] this Court through the ponencia of Mr. Justice Justo Torres, inked an extensive disquisition on the continuing authority of