

EN BANC

[G.R. No. 125350, December 03, 2002]

HON. RTC JUDGES MERCEDES G. DADOLE (EXECUTIVE JUDGE, BRANCH 28), ULRIC R. CAÑETE (PRESIDING JUDGE, BRANCH 25), AGUSTINE R. VESTIL (PRESIDING JUDGE, BRANCH 56), HON. MTC JUDGES TEMISTOCLES M. BOHOLST (PRESIDING JUDGE, BRANCH 1), VICENTE C. FANILAG (JUDGE DESIGNATE, BRANCH 2), AND WILFREDO A. DAGATAN (PRESIDING JUDGE, BRANCH 3), ALL OF MANDAUE CITY, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

CORONA, J.:

Before us is a petition for *certiorari* under Rule 64 to annul the decision^[1] and resolution^[2], dated September 21, 1995 and May 28, 1996, respectively, of the respondent Commission on Audit (COA) affirming the notices of the Mandaue City Auditor which diminished the monthly additional allowances received by the petitioner judges of the Regional Trial Court (RTC) and Municipal Trial Court (MTC) stationed in Mandaue City.

The undisputed facts are as follows:

In 1986, the RTC and MTC judges of Mandaue City started receiving monthly allowances of P1,260 each through the yearly appropriation ordinance enacted by the Sangguniang Panlungsod of the said city. In 1991, Mandaue City increased the amount to P1,500 for each judge.

On March 15, 1994, the Department of Budget and Management (DBM) issued the disputed Local Budget Circular No. 55 (LBC 55) which provided that:

"xxx xxx xxx

2.3.2. In the light of the authority granted to the local government units under the Local Government Code to provide for additional allowances and other benefits to national government officials and employees assigned in their locality, *such additional allowances in the form of honorarium at rates not exceeding P1,000.00 in provinces and cities and P700.00 in municipalities may be granted* subject to the following conditions:

- a) That the grant is not mandatory on the part of the LGUs;
- b) That all contractual and statutory obligations of the LGU including the implementation of R.A. 6758 shall have been fully provided in the budget;

c) That the budgetary requirements/limitations under Section 324 and 325 of R.A. 7160 should be satisfied and/or complied with; and

d) That the LGU has fully implemented the devolution of functions/personnel in accordance with R.A. 7160.^[3]” (italics supplied)

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The said circular likewise provided for its immediate effectivity without need of publication:

“5.0 EFFECTIVITY

This Circular shall take effect immediately.”

Acting on the DBM directive, the Mandaue City Auditor issued notices of disallowance to herein petitioners, namely, Honorable RTC Judges Mercedes G. Dadole, Ulric R. Cañete, Agustin R. Vestil, Honorable MTC Judges Temistocles M. Boholst, Vicente C. Fanilag and Wilfredo A. Dagatan, in excess of the amount authorized by LBC 55. Beginning October, 1994, the additional monthly allowances of the petitioner judges were reduced to P1,000 each. They were also asked to reimburse the amount they received in excess of P1,000 from April to September, 1994.

The petitioner judges filed with the Office of the City Auditor a protest against the notices of disallowance. But the City Auditor treated the protest as a motion for reconsideration and indorsed the same to the COA Regional Office No. 7. In turn, the COA Regional Office referred the motion to the head office with a recommendation that the same be denied.

On September 21, 1995, respondent COA rendered a decision denying petitioners’ motion for reconsideration. The COA held that:

The issue to be resolved in the instant appeal is whether or not the City Ordinance of Mandaue which provides a higher rate of allowances to the appellant judges may prevail over that fixed by the DBM under Local Budget Circular No. 55 dated March 15, 1994.

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Applying the foregoing doctrine, appropriation ordinance of local government units is subject to the organizational, budgetary and compensation policies of budgetary authorities (COA 5th Ind., dated March 17, 1994 re: Province of Antique; COA letter dated May 17, 1994 re: Request of Hon. Renato Leviste, Cong. 1st Dist. Oriental Mindoro). In this regard, attention is invited to Administrative Order No. 42 issued on March 3, 1993 by the President of the Philippines clarifying the role of DBM in the compensation and classification of local government positions under RA No. 7160 vis-avis the provisions of RA No. 6758 in view of the abolition of the JCLGPA. Section 1 of said Administrative Order provides that:

"Section 1. The Department of Budget and Management as the lead administrator of RA No. 6758 shall, through its Compensation and Position Classification Bureau, continue to have the following responsibilities in connection with the implementation of the Local Government Code of 1991:

a) Provide *guidelines* on the classification of local government positions and *on the specific rates of pay therefore*;

b) *Provide criteria and guidelines for the grant of all allowances and additional forms of compensation to local government employees; xxx.*" (underscoring supplied)

To operationalize the aforecited presidential directive, DBM issued LBC No. 55, dated March 15, 1994, whose effectivity clause provides that:

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"5.0 EFFECTIVITY

This Circular shall take effect immediately."

It is a well-settled rule that implementing rules and regulations promulgated by administrative or executive officer in accordance with, and as authorized by law, has the force and effect of law or partake the nature of a statute (Victorias Milling Co., Inc., vs. Social Security Commission, 114 Phil. 555, cited in Agpalo's Statutory Construction, 2nd Ed. P. 16; Justice Cruz's Phil. Political Law, 1984 Ed., p. 103; Espanol vs. Phil Veterans Administration, 137 SCRA 314; Antique Sawmills Inc. vs. Tayco, 17 SCRA 316).

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There being no statutory basis to grant additional allowance to judges in excess of P1,000.00 chargeable against the local government units where they are stationed, this Commission finds no substantial grounds or cogent reason to disturb the decision of the City Auditor, Mandaue City, disallowing in audit the allowances in question. Accordingly, the above-captioned appeal of the MTC and RTC Judges of Mandaue City, insofar as the same is not covered by Circular Letter No. 91-7, is hereby dismissed for lack of merit.

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On November 27, 1995, Executive Judge Mercedes Gozo-Dadole, for and in behalf of the petitioner judges, filed a motion for reconsideration of the decision of the COA. In a resolution dated May 28, 1996, the COA denied the motion.

Hence, this petition for *certiorari* by the petitioner judges, submitting the following questions for resolution:

I

HAS THE CITY OF MANDAUE STATUTORY AND CONSTITUTIONAL BASIS TO PROVIDE ADDITIONAL ALLOWANCES AND OTHER BENEFITS TO JUDGES STATIONED IN AND ASSIGNED TO THE CITY?

II

CAN AN ADMINISTRATIVE CIRCULAR OR GUIDELINE SUCH AS LOCAL BUDGET CIRCULAR NO. 55 RENDER INOPERATIVE THE POWER OF THE LEGISLATIVE BODY OF A CITY BY SETTING A LIMIT TO THE EXTENT OF THE EXERCISE OF SUCH POWER?

III

HAS THE COMMISSION ON AUDIT CORRECTLY INTERPRETED LOCAL BUDGET CIRCULAR NO. 55 TO INCLUDE MEMBERS OF THE JUDICIARY IN FIXING THE CEILING OF ADDITIONAL ALLOWANCES AND BENEFITS TO BE PROVIDED TO JUDGES STATIONED IN AND ASSIGNED TO MANDAUE CITY BY THE CITY GOVERNMENT AT P1,000.00 PER MONTH NOTWITHSTANDING THAT THEY HAVE BEEN RECEIVING ALLOWANCES OF P1,500.00 MONTHLY FOR THE PAST FIVE YEARS?

IV

IS LOCAL BUDGET CIRCULAR NO. 55 DATED MARCH 15, 1994 ISSUED BY THE DEPARTMENT OF BUDGET AND MANAGEMENT VALID AND ENFORCEABLE CONSIDERING THAT IT WAS NOT DULY PUBLISHED IN ACCODANCE WITH LAW?^[5]

Petitioner judges argue that LBC 55 is void for infringing on the local autonomy of Mandaue City by dictating a uniform amount that a local government unit can disburse as additional allowances to judges stationed therein. They maintain that said circular is not supported by any law and therefore goes beyond the supervisory powers of the President. They further allege that said circular is void for lack of publication.

On the other hand, the yearly appropriation ordinance providing for additional allowances to judges is allowed by Section 458, par. (a)(1)[xi], of RA 7160, otherwise known as the Local Government Code of 1991, which provides that:

Sec. 458. Powers, Duties, Functions and Compensation. – (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:

(xi) *When the finances of the city government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the city; (italics supplied)*

Instead of filing a comment on behalf of respondent COA, the Solicitor General filed a manifestation supporting the position of the petitioner judges. The Solicitor General argues that (1) DBM only enjoys the power to review and determine whether the disbursements of funds were made in accordance with the ordinance passed by a local government unit while (2) the COA has no more than auditorial visitation powers over local government units pursuant to Section 348 of RA 7160 which provides for the power to inspect at any time the financial accounts of local government units.

Moreover, the Solicitor General opines that "the DBM and the respondent are only authorized under RA 7160 to promulgate a Budget Operations Manual for local government units, to improve and systematize methods, techniques and procedures employed in budget preparation, authorization, execution and accountability" pursuant to Section 354 of RA 7160. The Solicitor General points out that LBC 55 was not exercised under any of the aforementioned provisions.

Respondent COA, on the other hand, insists that the constitutional and statutory authority of a city government to provide allowances to judges stationed therein is not absolute. Congress may set limitations on the exercise of autonomy. It is for the President, through the DBM, to check whether these legislative limitations are being followed by the local government units.

One such law imposing a limitation on a local government unit's autonomy is Section 458, par. (a) (1) [xi], of RA 7160, which authorizes the disbursement of additional allowances and other benefits to judges *subject to the condition that the finances of the city government should allow the same*. Thus, DBM is merely enforcing the condition of the law when it sets a uniform maximum amount for the additional allowances that a city government can release to judges stationed therein.

Assuming *arguendo* that LBC 55 is void, respondent COA maintains that the provisions of the yearly approved ordinance granting additional allowances to judges are still prohibited by the appropriation laws passed by Congress every year. COA argues that Mandaue City gets the funds for the said additional allowances of judges from the Internal Revenue Allotment (IRA). But the General Appropriations Acts of 1994 and 1995 do not mention the disbursement of additional allowances to judges as one of the allowable uses of the IRA. Hence, the provisions of said ordinance granting additional allowances, taken from the IRA, to herein petitioner judges are void for being contrary to law.

To resolve the instant petition, there are two issues that we must address: (1) whether LBC 55 of the DBM is void for going beyond the supervisory powers of the President and for not having been published and (2) whether the yearly appropriation ordinance enacted by the City of Mandaue that provides for additional allowances to judges contravenes the annual appropriation laws enacted by Congress.