

EN BANC

G.R. No. 225301 – THE DEPARTMENT OF TRADE AND INDUSTRY, represented by its SECRETARY, the UNDERSECRETARY OF THE CONSUMER PROTECTION GROUP, MEMBERS OF THE SPECIAL INVESTIGATION COMMITTEE, and the DIRECTOR OF LEGAL SERVICE, *Petitioners*, v. DANILO B. ENRIQUEZ, *Respondent*.

Promulgated:

June 2, 2020

X-----X

SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur in the result. However, I dissent from the *ponencia*'s decision to limit a cabinet secretary's power over a presidentially appointed subordinate to investigation and recommendation. Doing so effectively removes the power to impose penalties from the president's alter-ego.

Presidential control over the executive branch is provided in Article VII, Section 17 of the Constitution, which states: "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

However, the president's numerous and varied functions call for the delegation of his or her powers of control to the cabinet secretaries, who are then deemed to act on the president's behalf under the doctrine of qualified political agency or the alter-ego doctrine.<sup>1</sup>

The doctrine of qualified political agency was introduced in *Villena v. The Secretary of Interior*,<sup>2</sup> where this Court explained:

[A]ll executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the

<sup>1</sup> *Villena v. The Secretary of Interior*, 67 Phil. 451, 463 (1939) [Per J. Laurel, En Banc].

<sup>2</sup> 67 Phil. 451 (1939) [Per J. Laurel, En Banc].

Chief Executive, presumptively the acts of the Chief Executive.<sup>3</sup>  
(Citations omitted)

*Planas v. Gil*<sup>4</sup> then emphasized that the official acts of cabinet secretaries, who are the “authorized assistants and agents in the performance of [the president’s] executive duties,”<sup>5</sup> are presumed to be the president’s own acts.

Nonetheless, the president’s power to delegate authority to cabinet members is not absolute, and there are some powers that only the president may personally wield. In *Spouses Constantino, Jr. v. Cuisia*,<sup>6</sup> this Court clarified:

Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his *ponencia* in *Villena*, makes this clear:

Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of *habeas corpus* and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, idem).

These distinctions hold true to this day. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import.<sup>7</sup> (Citation omitted)

The *ponencia* posits that “[f]or presidential appointees, the power to impose penalties resides with the President pursuant to his [or her] power of

---

<sup>3</sup> Id. at 463.

<sup>4</sup> 67 Phil. 62 (1939) [Per J. Laurel, En Banc].

<sup>5</sup> Id. at 77.

<sup>6</sup> 509 Phil. 486 (2005) [Per J. Tinga, En Banc].

<sup>7</sup> Id. at 518.

control under the Constitution and the Administrative Code.”<sup>8</sup> It stresses that cabinet members can only investigate and recommend penalties on such appointees.<sup>9</sup>

I disagree.

The power to discipline a subordinate is not “of similar gravitas and exceptional import”<sup>10</sup> to declaring martial law and suspending the writ of *habeas corpus*, as exemplified in *Spouses Constantino, Jr.*, both of which understandably require the exclusive exercise of the president’s power. Rather, the power to discipline a subordinate can be validly delegated to cabinet secretaries as part of their supervision and control over their respective departments under the Administrative Code.

Book IV, Chapter 2, Section 7 of the Administrative Code enumerates a cabinet secretary’s powers and functions:

SECTION 7. *Powers and Functions of the Secretary.* — The Secretary shall:

- (1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;
- (2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;
- (3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;
- (4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;
- (5) *Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;*
- (6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, however, that where the Department is regionalized on a department-wide

---

<sup>8</sup> Ponencia, p. 12.

<sup>9</sup> Id. at 13.

<sup>10</sup> *Spouses Constantino, Jr. v. Cuisia*, 509 Phil. 486, 518 (2005) [Per J. Tinga, En Banc].

basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

- (7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;
- (8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and
- (9) Perform such other functions as may be provided by law.  
(Emphasis supplied)

A cabinet secretary's power to discipline a subordinate can be found in Section 7(5), which adds that this power includes investigation and the creation of a committee for such purpose. Section 7(5) does not distinguish between presidential appointees and non-presidential appointees when it comes to the secretary's power to discipline. Neither does Section 7(7), which refers to the power of control, make any distinction. In fact, the distinction only crops up in Section 7(6), which refers to the power to appoint. Hence, in exercising disciplinary and control powers, a cabinet secretary does not need to distinguish between presidential appointees and non-presidential appointees.

In declaring<sup>11</sup> that cabinet secretaries have no disciplinary power over presidential appointees, the *ponencia* relies on Section 38<sup>12</sup> of the Civil Service Decree and Book V, Title I-A, Chapter 7, Section 48<sup>13</sup> of the Administrative Code. However, these provisions, as Justice Amy Lazaro-Javier (Justice Lazaro-Javier) observes, do not provide a statutory basis to the *ponencia*'s declaration. They merely describe the procedure to be followed in administrative complaints against non-presidential appointees; they do not define the jurisdiction of cabinet secretaries over subordinates who are presidential appointees.<sup>14</sup>

In 2001, Executive Order No. 12 created the Presidential Anti-Graft Commission<sup>15</sup> to investigate presidential appointees with Salary Grade 26

<sup>11</sup> Ponencia, pp. 12–14.

<sup>12</sup> Presidential Decree No. 807 (1975), sec. 38(a) provides:

SECTION 38. *Procedure in Administrative Cases Against Non-Presidential Appointees.* — (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, or regional directors, or upon sworn, written complaint of any other persons.

<sup>13</sup> ADM. CODE, Book V, Title I-A, Ch. 7, sec. 48 provides:

SECTION 48. *Procedure in Administrative Cases Against Non-Presidential Appointees.* — (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

<sup>14</sup> J. Lazaro-Javier, Concurring and Dissenting Opinion, pp. 9–10.

<sup>15</sup> Executive Order No. 12 (2001), sec. 1 provides:

SECTION 1. *Creation.* — The Presidential Anti-Graft Commission, hereinafter referred to as the "Commission", is hereby created under the Office of the President, pursuant to Article VII, Section 17 of the Constitution.

and higher, and then to submit a report and recommendation to the president.<sup>16</sup> Later, in 2010, Executive Order No. 13 abolished<sup>17</sup> the Presidential Anti-Graft Commission and transferred its functions to the Office of the Deputy Executive Secretary for Legal Affairs.<sup>18</sup>

In 2017, Executive Order No. 43 created the Presidential Anti-Corruption Commission to hear and investigate administrative cases and complaints,<sup>19</sup> as well as conduct lifestyle checks,<sup>20</sup> against presidential appointees accused of graft and corruption. The investigative and recommendatory functions of the Office of the Deputy Executive Secretary for Legal Affairs were transferred to the Presidential Anti-Corruption Commission.<sup>21</sup>

Nothing in the wordings of Executive Order Nos. 12, 13, or 43 removed the cabinet secretary's delegated authority to investigate and discipline its erring presidentially appointed subordinates. While the executive orders uniformly provided for the repeal of "other issuances, orders, rules and regulations,"<sup>22</sup> they did not expressly repeal any portion of

<sup>16</sup> See Executive Order No. 12 (2001), sec. 4(b) and (e) and sec. 8.

<sup>17</sup> Executive Order No. 13 (2010), sec. 3 provides:

SECTION 2. *Abolition of Presidential Anti-Graft Commission (PAGC).* To enable the Office of the President (OP) to directly investigate graft and corrupt cases of the Presidential appointees in the Executive Department including heads of government-owned and controlled corporations, the Presidential Anti-Graft Commission (PAGC) is hereby abolished and their vital functions, particularly the investigative, adjudicatory and recommendatory functions and other and functions inherent or incidental thereto, transferred to the office of the Deputy Secretary for Legal Affairs (ODESLA), OP in accordance with the provisions of this Executive Order.

<sup>18</sup> Executive Order No. 13 (2010), sec. 3 provides:

SECTION 3. *Restructuring of the Office of the Deputy Executive Secretary for Legal Affairs, OP.* In addition to the Legal and Legislative Divisions of the ODESLA, the Investigative and Adjudicatory Division shall be created.

The newly created Investigative and Adjudicatory Division shall perform the powers, functions and duties mentioned in Section 2 hereof, of PAGC.

The Deputy Executive Secretary for Legal Affairs (DESLA) will be the recommending authority to the President, thru the Executive Secretary, for approval, adoption or modification of the report and recommendations of the Investigative and Adjudicatory Division of ODESLA.

<sup>19</sup> Executive Order No. 43 (2017), sec. 1 provides:

SECTION 1. *Creation.* The Presidential Anti-Corruption Commission, hereinafter referred to as the "Commission," is hereby created under the Office of the President to directly assist the President in investigating an/or hearing administrative cases primarily involving graft and corruption against all presidential appointees, as defined in Section 5 hereof, and to perform such other similar duties as the President may direct.

<sup>20</sup> Executive Order No. 43 (2017), sixth Whereas clause.

<sup>21</sup> Executive Order No. 43 (2017), sec. 12 provides:

SECTION 12. *Transfer of Power, Duties, and Functions.* Consistent with the provisions of this Order, the investigative, recommendatory, and other incidental functions of the defunct Presidential Anti-Graft Commission (PAGC), which were transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) by virtue of EO No. 13 (s. 2010) shall be transferred to the Commission; provided, that the ODESLA shall retain its functions of formulating national anti-corruption plans, policies, and strategies, implementing anti-corruption initiatives of the government, and monitoring compliance therewith, which include, but shall not be limited to: (1) the review and implementation of the Philippines' compliance with the United Nations Convention against Corruption (UNCAC) pursuant to EO No. 171 (s. 2014); (2) the implementation of the Integrity Management Program (IMP) pursuant to EO No. 176 (s. 2014); and (3) coordination with the Inter-Agency Anti-Graft Coordinating Council.

<sup>22</sup> Executive Order No. 12 (2001), sec. 19. See also Executive Order No. 13 (2010), sec. 6 and Executive Order No. 43 (2017), sec. 17.

the Administrative Code. Further, it is canon that an executive order cannot repeal a law.

Thus, as it stands, the power to investigate presidential appointees can either be delegated, as in the case of cabinet secretaries exercising their power of control and supervision over their subordinates, or can be exercised by the president directly through the Presidential Anti-Corruption Commission for complaints involving presidential appointees with a salary grade of 26 or higher.

Contrary to the *ponencia*'s statement that cabinet secretaries have no power to discipline and impose penalties on presidential appointees,<sup>23</sup> they retain the power to discipline *both* presidential appointees and non-presidential appointees. They are, after all, the president's alter-egos, whose acts are presumed to be the president's—unless they are reversed or disapproved by the president. As Justice Lazaro-Javier puts it, it is best to leave the disciplining of a subordinate to the cabinet secretary as "he or she knows better how the presidential appointee has been performing or conducting himself or herself in the public service."<sup>24</sup> Ultimately, though, the final say still belongs with the president, as the cabinet secretary's decision "remains subject to the president's disapproval or reversal."<sup>25</sup>

Additionally, to subscribe to the *ponencia*'s train of thought that only the president may impose penalties, and his or her subordinates are limited to investigating and recommending penalties, would be to deny a respondent the remedy of an appeal. By withholding the power to discipline from cabinet secretaries, the president's disciplinary action will immediately become final without the possibility of an appeal.

The power of control contained in Article VII, Section 17 of the Constitution means that the president can "alter or modify or nullify or set aside"<sup>26</sup> a subordinate officer's action and substitute it with his or her own judgment. It gives the president the opportunity to correct the subordinate's actions.

Nonetheless, the issue raised before this Court is limited to petitioner Adrian Cristobal, Jr., the Department of Trade and Industry Secretary, on his exercise of the power to discipline in connection with an investigation against respondent Danilo B. Enriquez. The issue does not involve the legality of petitioner's exercise of the power to impose penalties against a presidential appointee.

---

<sup>23</sup> Ponencia, p. 14.


<sup>24</sup> J. Lazaro-Javier, Concurring and Dissenting Opinion, p. 13.

<sup>25</sup> *Philippine Institute for Development Studies v. Commission on Audit*, G.R. No. 212022, August 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612>> [Per J. Leonen, En Banc].

<sup>26</sup> *Mondano v. Silvosa*, 97 Phil 143, 148 (1955) [Per J. Padilla, First Division].


Thus, I concur with the *ponencia* that petitioner-secretary, as the President's alter-ego, possessed the power to investigate, create a committee to investigate the complaints and allegations against respondent, and preventively suspend respondent during the course of the investigation.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN  
Associate Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA  
Clerk of Court En Banc  
Supreme Court