

**THE MUNICIPALITY OF LA TRINIDAD, PROVINCE OF BENGUET, ET AL., PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF BAGUIO-BENGUET, BRANCH I, HON. PIO R. MARCOS, PRESIDING JUDGE, AND ...**

*G.R. No. L-33899. June 28, 1983*

Ponente: ESCOLIN, J.

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**ESCOLIN, J.:**

This petition seeks to annul and set aside (1) the writ of preliminary mandatory injunction issued by the respondent Court of First Instance of Baguio-Benguet in Special Civil Action No. 2779, ordering petitioner Cipriano Abalos, municipal mayor of La Trinidad, Benguet, to recognize respondent Dorothy Oidi "as the legitimate assistant municipal treasurer of La Trinidad, Benguet, and to approve payment of her salaries from November 6, 1970 to the present and thenceforward," and (2) the order denying petitioners' motion for reconsideration.

It appears that one Mario Damilo wrote Mayor Cipriano Abalos a letter-complaint charging respondent Dorothy Oidi, assistant municipal treasurer of La Trinidad, with "dishonesty and grave misconduct in her business transactions with others and particularly against me." Upon receipt of the complaint, Mayor Abalos issued an order dated November 5, 1970, suspending Oidi from office effective November 6, 1970. Simultaneously, the mayor referred the complaint to petitioner municipal council of La Trinidad for investigation. On December 16, 1970, the municipal council issued a resolution declaring Dorothy Oidi "resigned from office for the good of the service, effective November 6, 1970."

After the resolution was confirmed by Mayor Abalos, respondent Oidi appealed the same to the Hon. Cesar Virata, then Secretary of Finance. The latter indorsed the case to the Civil Service Commission, his indorsement expressing the following views:

"The legal issues involved are extensively discussed in respondent's appeal. She maintains that Section 2201 of the Revised Administrative Code, under her preventive suspension from office was ordered by the Municipal Mayor and the administrative complaint against her was investigated and decided by the Municipal Council of La Trinidad, has already been repealed; that it is the Municipal Treasurer of La Trinidad, with the approval of this Department, and not the Municipal Mayor, who has the power to order preventive suspension from office as a subordinate employee in the Municipal Treasury, pursuant to the provisions of Section 34 of Republic Act No. 2260; and that administrative disciplinary jurisdiction over the respondent is not vested in the Municipal Mayor and/or the Municipal Council of La Trinidad, but in this Department pursuant to the provisions of Section 33 of Republic Act No. 2260, as amended by Section 12 of Republic Act No. 6040.

This Department considers well taken the views expressed in respondent's appeal. Should the same be likewise concurred in by that Commission, this Department will enjoin the Provincial Treasurer of Benguet to reinvestigate the administrative complaint against the respondent in accordance with the instructions contained in Provincial Circular No. 6-70, dated June 15, 1970, of this Department, copy enclosed, which embodies

opinion No. 16, series of 1970, of that Commission on the proper interpretation of the amendatory provisions of Section 12 of Republic Act No. 6040."

In due course, the Civil Service Commission, thru Acting Commissioner Epi Rey Pangramuyen, rendered a decision declaring that—

"... in view of the Opinion (Opinion No. 16) of this Office as embodied in its 2nd indorsement dated April 27, 1970, which was quoted in full in the Provincial Circular No. 6-70 dated June 15, 1970, the proceedings had and the decision rendered in the administrative case against Miss Dorothy Oidi, Assistant Municipal Treasurer of La Trinidad, Benguet, as well as the order for her preventive suspension, by the municipal council and municipal mayor, respectively, were null and void. The administrative case against her is hereby, therefore, remanded to that Department for investigation and decision, pursuant to Section 12 of Republic Act No. 6040, amending Republic Act No. 2260, and to the opinion of this Office aforementioned."

Meanwhile, respondent Oidi instituted a petition for mandamus plus damages, with prayer for a writ of preliminary mandatory injunction, to set aside the November 5, 1970 order of Mayor Abalos as well as the resolution of respondent municipal council dated December 16, 1970. The case was docketed as Special Civil Case No. 2779 of the Court of First Instance of Baguio-Benguet. In their answer, petitioners, the respondents therein, sought the dismissal of the case on ground of want of jurisdiction of the Court for failure of respondent Oidi, the petitioner therein, to exhaust all available administrative remedies.

Respondent court, instead of dismissing the case, conducted a hearing to determine the propriety of the issuance of the writ prayed, and shortly after, it issued the challenged order granting the prayer for a writ of preliminary mandatory injunction upon the filing of a bond in the sum of P2,000.00.

Frustrated in their move to have the said order reconsidered, petitioners instituted the instant petition. They submit that respondent court has no jurisdiction to entertain Special Civil Case No. 2779 for failure of respondent Oidi to exhaust all administrative remedies available to her. We find the contention devoid of merit.

While it is true that no recourse to courts can be had until all administrative remedies have been exhausted, and that special civil actions against administrative officers should not be entertained if superior administrative officers can grant relief,[1] the rule is not absolute.[2] It is subject to certain exceptions. It is not applicable where the questions involved are essentially judicial,[3] where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction,[4] or where the respondent officer acted in utter disregard of due process.[5]

The petition filed by respondent Oidi before respondent court contains allegations which remove the case from the ambit of the general rule. She repeatedly asserted therein the want of authority of Mayor Abalos to order her suspension from office and the similar lack of authority of the members of the municipal council to conduct an administrative investigation against her and to order her dismissal from the service. Said averments indisputably make out a legal question that is properly addressed to a regular court of justice rather than to an administrative body. What is more, her claim that she was denied the right of due process makes the rule of exhaustion of administrative remedies inapplicable.

Considering the fundamental principle that jurisdiction over the subject matter is determined upon the allegations set forth in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon the claims asserted, which must be resolved only after the trial,[6] the jurisdiction of respondent court to try Civil Case No. 2779 must be sustained.

The flaw in petitioners' theory becomes even more apparent when we take into account the settled rule that non-exhaustion of administrative remedies affects the sufficiency of the cause of action and not the jurisdiction of

the court over the subject matter.[7]

In view of the fallacy of petitioners' major premise, the corollary contention that respondent court acted without or in excess of its jurisdiction in granting the writ of preliminary mandatory injunction must fall for lack of a leg to stand on. Otherwise stated, since the respondent court has jurisdiction to take cognizance of Civil Case No. 2779, its authority to issue the writ prayed for, as a mere incident to the main case, must likewise be upheld.

As to the question of whether or not the respondent court acted in excess of its jurisdiction or with grave abuse of discretion in granting the questioned writ, We find the petition absolutely bereft of any factual foundation. For aside from the bare allegation that the writ was issued with grave abuse of discretion, no other reason has been advanced in support of the contention, except that the bond filed by respondent Oidi was erroneously issued in favor of the respondent court, instead of the petitioners. We hold, however, that an injunction should not be dissolved absolutely and unconditionally merely because the bond given is for any reason insufficient or defective. The proper practice in a motion to dissolve is for the court to make an order that within a reasonable time a sufficient bond shall be given by the party in whose favor the writ was issued, or that the injunction shall be dissolved.[8]

In the case at bar, it appears that the Philriters Guaranty Assurance Corporation, Oidi's surety, had filed an amended bond, dated August 24, 1971, which properly bound respondent Oidi and surety in favor of petitioners. Although the order of the court admitting the amended bond came subsequent to the order assailed by petitioners, the former had effectively cured the defect of the original bond, thereby rendering petitioners' objection thereto moot and academic.

WHEREFORE, the instant petition is hereby dismissed. The case is remanded to the respondent court for further proceedings. No costs.

**SO ORDERED.**

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.  
Aquino, J., took no part.

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[1] Gonzales vs. Provincial Auditor of Iloilo, 12 SCRA 711.

[2] Millares vs. Subido, 20 SCRA 954.

[3] Bueno vs. Paterno, 9 SCRA 794.

[4] Azur vs. Provincial Board of Camarines Sur, 27 SCRA 51.

[5] National Development Co. vs. Collector of Customs, 9 SCRA 429.

[6] Cardenas vs. Kamus, 55 SCRA 639; Union Obrera de Tabaco, Inc. vs. Quicho, 40 SCRA 589.

[7] Hughes vs. Municipal Board of Iloilo City, 19 SCRA 28.

**[8] 43 CJS 982.**

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