

**GABRIEL DE GUIA, PETITIONER, VS. THE AUDITOR GENERAL &
THE PROVINCIAL AUDITOR OF NORTHERN SAMAR, RESPONDENTS.***G.R. No. L-29824. March 29, 1972*

Ponente: TEEHANKEE, J.

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Appeal from a decision of the Auditor General sustaining the provincial auditor's disallowance in audit of petitioner's claim for payment of his attorney's 15% contingent fee for services rendered to the municipality of Mondragon, Northern Samar.

In a civil action filed on January 30, 1962 in the Court of First instance of Bulacan by G.A. Machineries, Inc. against the municipality of Mondragon, now within the province of Northern Samar,[1] judgment had been rendered dismissing the complaint for recovery of P18,609.09 and instead awarding the defendant-municipality on its counterclaim the sum of P42,000.00 as refund for excess payments made by it plus damages, etc.

Plaintiff firm appealed the adverse judgment to the Court of Appeals.[2] On September 15, 1964, the municipal council passed Resolution No. 63 authorizing the municipal mayor, Olympio L. de Guia, to "hire the services of a counsel to defend the municipality in the above-mentioned case under contingent fee basis the same not to exceed 15%." [3] The mayor and petitioner, Atty. Gabriel de Guia, having in an exchange of letters agreed on the retention of petitioner's services as attorney on a basis of "15% of whatever claim the municipality can get from the plaintiff corporation," [4] the municipal council confirmed the agreement for petitioner's services as per its resolution No. 65 approved on September 30, 1964. [5]

Petitioner prepared and filed the brief on behalf of the municipality as defendant-appellee in the appealed case, and thereafter the appellate court rendered its judgment of June 1, 1965, substantially affirming with minor modification the appealed judgment and sentencing plaintiff corporation to pay the defendant-municipality on its counterclaim "the sum of P42,000.00 with legal interest from the date of the filing of the counterclaim, plus six hundred (P600.00) pesos attorney's fees." [6]

The appellate court's decision having become final and executory, G.A. Machineries, Inc. as judgment debtor paid to the municipality the amount of P51,159.00 in full satisfaction of the judgment. [7] The municipal council, as per its resolution No. 7 dated February 28, 1967 authorized the municipal treasurer to pay 15% thereof or the sum of P7,673.85 as petitioner's contractual contingent fee.

The municipal treasurer prepared the corresponding voucher but respondent provincial auditor suspended redemption thereof "due to the fact that pursuant to Section 1683 of the Revised Administrative Code and Memorandum Circular No. 269, dated April 5, 1955 all litigations entered into by the province or any of its political subdivisions should be handled by the Provincial Fiscal and of the further fact that there is no Municipal Attorney for Mondragon that had been legally appointed under Republic Act No. 2264." [8]

Respondent Auditor-General sustained on October 10, 1967 the provincial auditor's action upon the latter's

request of September 16, 1967 for a ruling, citing the Justice Department's ruling of December 17, 1965 in a similar case, reiterating its consistent opinion that in view of the express provisions of section 1683 of the Revised Administrative Code, a municipality "is not empowered to engage the services of private counsel to represent it in a civil case unless the provincial fiscal, who by law is the legal adviser and counsel, is disqualified to represent the municipality."

Petitioner's request for reconsideration having been denied, he has now filed the present appeal.

The Court finds no error in the appealed ruling.

1. Respondent Auditor-General correctly upheld the disallowance in audit of the voucher for the payment of P7,673.85 to petitioner as his stipulated contingent fee for legal services, since petitioner's services were contracted by the municipal council and mayor without authority of law.

The applicable law, section 1683 of the Revised Administrative Code, expressly provides:

"SEC. 1683. Duty of fiscal to represent provinces and provincial subdivisions in litigation. — The provincial fiscal shall represent the province and any municipality or municipal district thereof in any court, except in cases whereof original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province.

"When the provincial fiscal is disqualified to serve any municipality or other political sub-division of a province, a special attorney may be employed by its council."

It may be seen therefrom that the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal is disqualified to serve, and represent it. The record of this case does not indicate, nor does petitioner make any claim, that the provincial fiscal of Northern Samar was disqualified to handle the municipality's case on appeal, so as to legally justify the municipality's contracting the services of petitioner as private counsel.

2. The Court's ruling in *Enriquez vs. Gimenez*[9] is controlling in the case at bar. The Court therein applied the restrictive provision of section 1683 of the Revised Administrative Code that only when the provincial fiscal "is disqualified to represent the municipality, the municipal council may engage the services of a special attorney." The Court therein expressly enumerated the instances of the provincial fiscal's disqualification thus: "The provincial fiscal is disqualified to represent in court the municipality if and when original jurisdiction of the case involving the municipality is vested in the Supreme Court; when the municipality is a party adverse to the provincial government or to some other municipality in the same province; and when in the case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir, legatee, creditor or otherwise."

The Court went on to state that "the fact that the Provincial Fiscal in the case at bar was of the opinion that Republic Act No. 1383 was valid and constitutional, and therefore, would not be in a position to prosecute the case of the municipality with earnestness and vigor, could not justify the act of the municipal council in engaging the services of a special counsel. Bias or prejudice and animosity or hostility on the part of the fiscal not based on any of the conditions enumerated in the law and the Rules of Court do not constitute a legal and valid excuse for inhibition or disqualification," and that "instead of engaging the services of a special attorney, the municipal council should have requested the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who had declined to handle and prosecute its case in court, pursuant to Section 1679 of the Revised Administrative Code." Accordingly, the Court therein upheld the Auditor-General's ruling that "the [legal] services of the petitioner (were) engaged by the municipal council and mayor without authority of law."

It should be noted that the Court in Enriquez affirmed the disallowance of therein petitioner's contract for legal services notwithstanding the provincial fiscal's refusal to represent the municipality in its litigation against the National Waterworks & Sewerage Authority, holding that the fiscal's adverse views "not based on any of the conditions enumerated in the law and the Rules of Court do not constitute a legal and valid excuse for inhibition or disqualification." Here, there is no showing even that the provincial fiscal's assistance had been sought by the municipality, and the fiscal had therefore no opportunity to express his views on the municipality's case on appeal against G.A. Machineries, Inc. In other words, not even the fiscal's refusal to represent the municipality which was present in Enriquez and which was nonetheless rejected by the Court as a legal justification for engaging the services of private counsel can be invoked by petitioner at bar.

3. The extra-legal considerations invoked by petitioner that he rendered services in good faith to the municipality which engaged him as a private attorney "upon [its] policy of expediency and economy," even if assumed for the nonce, have no relevance in the face of respondents' finding, as herein affirmed by the Court, that petitioner's contract for services was executed without authority of law. Petitioner took the risk in rendering services upon such a dubious contract — which had been previously consistently held to be violative of law — and he cannot now complain, that the illegality of his contract has been reiterated once again.

4. The case of Villegas vs. Auditor General^[10] cited by petitioner does not support his contention that respondents acted beyond their power and authority in disallowing his voucher by virtue of the illegality of his contract with the municipality. What the Court held in Villegas was that the Auditor General could not examine and review the award made by the City of Manila's committee on awards to petitioner company for the purchase of a certain number of refuse collection trucks as "most advantageous" or "wise or reasonable" and in lieu thereof substitute the opinion of his own technical committee as to which bidder should be deemed to have submitted the "most advantageous bid" and given the award. The Court however expressly recognized therein the Auditor General's power and authority to refuse to pass in audit disbursements upon contracts in violation of law, thus:

"The illegality of contract — non-compliance with the mandatory provisions of law and administrative regulations indispensable to the validity of a contract — is here absent. Therefore, the rulings of this Court in *Matute vs. Hernandez*, 66 Phil. 68 and *Vda. de Hijos de C. Zamora vs. Wright and Segado*, 53 Phil. 613 — which upheld the Auditor's power of refusal to pass in audit disbursements upon contracts in violation of law find no application in the case before us.

"We rule that the Auditor General is bereft of authority to revise, revoke or veto the award herein."^[11]

Villegas thus merely expressly reiterated the teaching of *Guevara vs. Gimenez*,^[12] wherein in upholding the authority of the Central Bank to employ private attorneys, the Court likewise reiterated the long-standing doctrine of *Enriquez* supra, that municipalities generally have no authority to employ private counsel, thus:

"The cases of *Angara vs. Gorospe*, L-9230 (April 22, 1957) and *Enriquez vs. Auditor General*, L-2817 (April 29, 1960), cited by respondents are not in point. The first involved a city official, who by law was entitled to be represented by the city attorney, and the second referred to a municipal corporation, which was entitled to be represented by the provincial fiscal. The aforementioned city official and municipal corporation are subject to the provisions of our Revised Administrative Code, whereas the Central Bank is governed by a special charter."

5. Petitioner's last contention that section 1683 of the Revised Administrative Code, supra, "insofar as the same is made applicable to municipal corporations," must be deemed to have been pro tanto impliedly repealed by the Local Autonomy Act^[13] — since it authorizes municipalities to create the position of municipal attorney who shall act as legal counsel of the municipality^[14] — must also be held to be without merit. The Court does not deem it necessary to pass upon this question, for even conceding *gratia argumenti* petitioner's contention, its

logical consequence is that the municipality would thereby be deemed with power under the Local Autonomy Act to create the position of and appoint a full-time municipal attorney who shall act as its legal counsel and handle its court litigations. The municipality did no such thing in this case. Its contracting the legal services of petitioner as a private attorney to handle only and specifically its case on appeal in the Court of Appeals on a 15% contingent fee basis remains nevertheless without authority of law. No error was therefore incurred by respondents in disallowing in audit petitioner's claim for payment thereof.

ACCORDINGLY , the decision under review is hereby affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L, Makalintal, Zaldivar, Castro, Fernando, Barredo, and Villamor, JJ., concur.

Makasiar, J., took no part.

[1] Docketed as Civil Case No. 2498.

[2] Docketed as Case CA-GR No. 33173-R.

[3] Annex A, petition.

The resolution stated that the plaintiff in the pending case in the appellate court was "claiming from the municipality the amount of P18,609.09 plus 25% of said amount as attorney's fees plus costs" but made no mention of the dismissal of the Complaint by the lower court and of the municipality's counterclaim of P42,000.00 as granted by the court.

[4] Mayor's letter of 18 Sept. 1964 to petitioner, petition, pp. 5-6.

[5] Annex B, petition.

[6] Petitioner's brief, p. 5.

[7] Idem.

[8] Record, p. 18.

[9] 107 Phil. 932 (April 29, 1960).

[10] 18 SCRA 877 (1966).

[11] Italics furnished.

[12] 6 SCRA 807 (1962).

[13] Rep. Act No. 2264 enacted on June 19, 1959.

[14] Idem, section 3(a) re powers of municipal councils.

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