

PROVINCIAL BOARD MEMBERS EDWIN T. TANAEL, RAFAEL ZUNIEGA, ANGELES V. TABLIZO AND JULIETO R. BARCETA, PLAINTIFFS-APPELLANTS, VS. PROVINCIAL BOARD MEMBERS ALLAN S. DEL VALLE, NATA...

Ponente: DE GUIA-SALVADOR, J.

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DE GUIA-SALVADOR, J.:

The appeal at bench seeks the reversal of the Decision dated July 8, 2003 rendered by the Regional Trial Court of Virac, Catanduanes, Branch 43, in Civil Case No. 2028, dismissing the complaint for declaration of nullity of the resolution and ordinance approving the annual budget of the Province of Catanduanes for Calendar Year 2003, with application for a writ of preliminary injunction and/or temporary restraining order directed against the implementation, enforcement and execution of the same.[1]

The Facts

Alongside appellees Allan del Valle, Natalio Popa, Romeo Tuplano, Pio Tubalinal and Antonette Camano, appellants Edwin Tanael, Rafael Zuniega, Angeles Tablizo and Juliето Barceta are the incumbent members of the Provincial Board of Catanduanes. Completing said provincial legislative body are Fredeswino Gianan, Jr. and Magin Esuela who were, however, absent from the 17th regular session of the assembly in the afternoon of August 29, 2003. The session was presided over by appellee Popa and was attended by then Catanduanes Acting Governor, Cesar Sarmiento.[2]

The record shows that, of the nine provincial board members who were in attendance at said session, appellees del Valle, Tuplano, Tubalinal and Camano voted in favor of the subject provincial annual budget. While appellants Tanael and Barceta voted against the passage of the budgetary measure, it appears that appellants Zuniega and Tablizo altogether abstained from taking any side on the matter.[3] As Presiding Officer, appellee Popa consequently ruled that the provincial budget for calendar year 2003 had been duly passed.[4]

Impleading Catanduanes Provincial Governor Leandro Verceles, Provincial Treasurer Luis Ribano and Provincial Budget Officer Ireneo del Rosario as defendants, appellants commenced the case at bench with the filing of their May 2, 2003 complaint for the declaration of nullity of the resolution and ordinance approving the aforesaid provincial budget. On the strength of paragraph (g), Section 107 of the Rules and Regulations Implementing the Local Government Code of 1991 which required the affirmative vote of all the Sanggunian members for the passage of any ordinance or resolution authorizing or directing the payment of money or creating a liability, appellants argued that the assailed provincial budget required the affirmative vote of seven of the assembly's twelve members. Citing the avoidance by both the Department of Interior and Local Government (DILG) and the Department of Budget and Management (DBM) of the 2002 provincial budget on the same ground, appellants prayed for the issuance of a writ of preliminary injunction and/or temporary restraining order for the purpose of stopping appellees Verceles, Ribano and del Rosario from enforcing and implementing the impugned measure.[5]

Summons having been served upon them,[6] appellees specifically denied the material allegations of the

foregoing complaint in June 6, 2003 answer. In urging the validity thereof, appellees alleged, among other matters, that the passage of the then current provincial budget merely required a simple majority of the members present at the Provincial Board's 17th regular session; and, that under the Internal Rules of Procedure of the Sanggunian, abstentions like those resorted to by appellants Zuniega and Tablizo are not considered for purposes of determining said majority. Calling the trial court's attention to the urgent necessity for the implementation of the assailed provincial budget, appellees prayed for the dismissal of appellants' complaint for sheer lack of merit.[7]

Upon their agreement to submit the case for decision on the basis of the pleadings thus far filed, the trial court directed the parties to submit their memoranda in support of their respective causes[8] and, forthwith, proceeded to render the July 8, 2003 decision[9] which is the subject matter of the appeal at bench. Finding that appellants are not real parties-in-interest insofar as the nullification of the subject provincial budget is concerned, the trial court ordered the dismissal of the complaint by further applying the doctrine of primary jurisdiction, viz:

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"Sec. 326 of Republic Act No. 7160 (The Local Government Code of 1991) provides that the Department of Budget and Management shall review ordinances authorizing the annual or supplemental appropriations, highly urbanized cities, independent component cities, and municipalities within the Metropolitan Manila. There is no showing in the case at bar that, prior to the filing of the case herein, the questioned budget was first reviewed by the Department of Budget and Management.

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of fact are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies 'where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case the judicial process is suspended pending referral of such issues to the administrative body for its view' (United States v. Western Pacific Railroad Co., 325 U.S. 59). The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence (Vidad, et al. vs. RTC, Negros Oriental, Branch 42, et al., G.R. No. 98084)."[10]

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Dissatisfied, appellants perfected the appeal at bench with the filing of their July 18, 2003 Notice of Appeal.[11]

The Issues

Appellants seek the reversal of the appealed Decision on the ground that the trial court reversibly erred in the following wise, to wit:

"I

THE TRIAL COURT GROSSLY ERRED IN RULING THAT THE PLAINTIFFS ACTING EITHER AS MEMBERS OF THE PROVINCIAL BOARD OR AS PRIVATE CITIZENS ARE NOT BOUND BY THE ANNUAL BUDGET HENCE, THEY CANNOT MAINTAIN AN ACTION TO ANNUL THE SAME SINCE THEY WILL NOT BE BENEFITED OR PREJUDICED BY THE JUDGMENT OF THE CASE.

II

THE TRIAL COURT GRAVELY ERRED IN NOT RULING THAT THE AFFIRMATIVE VOTE OF MAJORITY OF ALL THE TWELVE (12) SANGGUNIAN PANLALAWIGAN MEMBERS IS REQUIRED TO VALIDLY PASS AND ENACT THE CY 2003 ANNUAL BUDGET ORDINANCE PURSUANT TO EXISTING LAW.

III

THE TRIAL COURT GROSSLY ERRED IN NOT RULING THAT SINCE THERE ARE NINE (9) MEMBERS OF THE SANGGUNIAN PANLALAWIGAN PRESENT, THE AFFIRMATIVE VOTE OF ONLY FOUR (4) MEMBERS THEREOF COULD NOT VALIDLY PASS AND ENACT THE SAID CY 2003 ANNUAL BUDGET ORDINANCE.

IV

THE TRIAL COURT GROSSLY ERRED IN NOT RULING THAT THE ABSTENTIONS OF TWO (2) MEMBERS SHOULD NOT BE CONSIDERED IN COMPUTING THE MAJORITY NEITHER SHOULD SAID ABSTENTIONS BE DEDUCTED FROM MEMBERS PRESENT.”[12]

The Court’s Ruling

The appeal is impressed with merit.

Legal standing or locus standi is understood to be a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[13] As duly elected members of the Sanggunian Panlalawigan of the province of Catanduanes[14] who are charged with protecting the general welfare of their constituents before said assembly,[15] we find that appellants are possessed of the requisite legal standing to question the subject provincial budget. In *John Hay Peoples Alternative Coalition, et al. vs. Victor Lim, et al.*, [16] the Supreme Court upheld the legal standing of the duly elected councilors of Baguio City to question the declaration of a portion of Camp John Hay as Special Economic Zone on the ground that they were engaged in local governance and were tasked with the duty of deciding said matter for and on behalf of their constituents. In *Zamora vs. Caballero*, [17] the legal standing of a member of the Sanggunian Panlalawigan of Compostela Valley to question the lack of quorum at said assembly’s sessions and to bring a suit to invalidate acts done and resolutions issued in the course thereof was, likewise, recognized. The recent trend on locus standi has, in fact, veered towards liberality such that even a taxpayer is allowed to sue where there is a claim, among others, that public funds are being illegally disbursed.[18]

Contrary to its ruling, we also find that the trial court had jurisdiction over appellants’ action to invalidate the Catanduanes provincial budget for calendar year 2003.[19] The doctrine of primary jurisdiction applies only where an administrative agency is called upon to exercise its quasi-judicial or adjudicatory function or, in case of the DBM, when it is called upon to exercise its expertise, special knowledge, experience and services on technical matters of fact like those provided under Section 326 of the Local Government Code of 1991.[20] Rather than the wisdom or logic thereof, however, our perusal of the record shows that the main issue in this case is whether or not the impugned provincial budget was validly passed by the Sanggunian Panlalawigan of Catanduanes. To our mind, the trial court consequently erred reversibly when it dismissed the case on the ground, among other matters, that appellant should have brought their complaint before the DBM.[21]

However, appellants erroneously argue that the passage of the provincial budget requires the affirmative vote of a majority of all the Sanggunian Panlalawigan members who have been elected and qualified. Although Article 107 (g) of the Rules and Regulations Implementing the Local Government Code of 1991 provides that “(a)ny ordinance or resolution authorizing or directing the payment of money or creating a liability shall require the affirmative vote of a majority of all the sanggunian members for its passage”, it bears emphasizing that Section

468 of the Code itself pertinently provides as follows:

“Section 468. Powers, Duties, Functions and Compensation. — (a) The sangguniang panlalawigan, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code, and shall:

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(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the province as provided for under Section 18 of this Code, with particular attention to agro-industrial development and country-wide growth and progress and relative thereto, shall:

(i) Enact the annual and supplemental appropriations of the provincial government and appropriate funds for specific programs, projects, services and activities of the province, or for other purposes not contrary to law, in order to promote the general welfare of the province and its inhabitants;

(ii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang panlalawigan, enact ordinances levying taxes, fees and charges, prescribing the rates thereof for general and specific purposes, and granting tax exemptions, incentives or reliefs;

(iii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang panlalawigan, authorize the provincial governor to negotiate and contract loans and other forms of indebtedness;

(iv) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang panlalawigan, enact ordinances authorizing the floating of bonds or other instruments of indebtedness, for the purpose of raising funds to finance development projects;

(v) Appropriate funds for the construction and maintenance or the rental of buildings for the use of the province; and upon the majority vote of all the members of the sangguniang panlalawigan, authorize the provincial governor to lease to private parties such public buildings held in a proprietary capacity, subject to existing laws, rules and regulations;

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Unlike the last four items in the foregoing enumeration, appropriate note may be taken of the fact that the majority vote of all the members of the Sangguniang Panlalawigan is not specifically prescribed for the passage of the provincial budget. To our mind, the reiteration of the self same enumeration under Article 99 (2) (i) of the Rules and Regulations Implementing the Local Government Code of 1991 and Section 8, Rule XI of the Internal Rules of Procedure of the Sangguniang Panlalawigan of Catanduanes[22] could only be taken to mean that the vote requirement specified in Article 107 (g) thereof refers to the last four items of said enumerated duties but not the first. In view of the process the annual budget undergoes before its referral to the Sangguniang Panlalawigan, said vote requirement is, significantly, not even provided under Section 319 of the Local Government Code of 1991 which provides as follows:

“Section 319. Legislative authorization of the budget. – On or before the end of the current fiscal year, the sanggunian concerned shall, through an ordinance, enact the annual budget of the Local Government Unit for the ensuing fiscal year on the estimates of income and expenditures submitted by the local chief executive.”

The foregoing interpretation significantly harmonizes the provisions of the Local Government Code, its Implementing Rules and Regulations and the Internal Rules of Procedure of the Sangguniang Panlalawigan of Catanduanes. Section 8, Rule XI of said Internal Rules of Procedure specifies the legislative matters which require

the majority vote of all its members in the following wise:

“Article 8. Majority Vote of all the Members. As provided for under RA 7160 and its Implementing Rules and Regulations, a majority vote of all the members of the Sangguniang Panlalawigan is required in the following circumstances: a. Enactment of ordinance levying taxes, fees or charges prescribing the rates thereof.

b. For general and specific purposes and granting tax exemptions, incentives or reliefs (Sec. 468, RA 7160, par. 2-ii)

c. Adoption of resolution authorizing the Provincial Governor to negotiate and contract loans and other forms of indebtedness. (par. 2-iii, Ibid.)

d. Enactment of ordinance authorizing the floating of bonds or other instruments of indebtedness for the purpose of raising funds to finance development projects (par. 2-iv, Ibid.)

e. Adoption of a resolution authorizing the Provincial Governor to lease to private parties such buildings held in a proprietary capacity, subject to existing laws, rules and regulations (par. 2-v, Ibid.)

g. Concurrence in the appointment of heads of departments and offices by the Provincial Governor, subject to civil service law, rules and regulations. The Sangguniang Panlalawigan shall act on the appointment within fifteen (15) days from the date of its submission otherwise the same shall be deemed confirmed (Sec. 463, RA 7160 par. (d).”

Rather than the majority vote of all the Sanggunian members needed for the passage of any ordinance or resolution authorizing or directing the payment of money or creating liability, we find that the validity of annual budget only requires the approval by a majority of the members present in the regular or special session, provided there is a quorum.[23]

Be that as it may, the Local Government Code provides that a majority of the members of the Sanggunian who have been elected shall constitute a quorum to transact official business.[24] With nine out of the twelve members of the Catanduanes Sangguniang Panlalawigan present thereat, there can be no gainsaying the fact that there was a quorum at said assembly’s April 29, 2003 regular session where the impugned annual budget was tackled.[25] While only appellants Tanael and Barceta voted against the passage of the annual budget, however, the record shows that appellants Zuniega and Tablizo altogether abstained from voting on the measure. With appellee Popa likewise not taking part in the voting as Presiding Officer, the measure was, consequently, supported by the votes of only four members of the Sanggunian, namely appellees del Valle, Tuplano, Tubalinal and Camano.[26]

On the premise that the passage thereof requires the majority vote of the members present at the aforesaid session, we find that appellants correctly question the validity of the annual budget of the province of Catanduanes for calendar year 2003. Granted that the same had, in all likelihood, been already supplanted by the annual budgets in the intervening years, we cannot close our eyes to the fact that the four votes garnered by the measure fell short of the vote requirement therefor. Even Section 9, Rule XI of the Internal Rules of Procedure of said assembly provides as follows:

“Section 9. Majority of the Members Present (Thereby Constituting a Quorum). – Except as provided in Section 8 hereof, all other legislative matters or measures shall require only a majority vote of the members present therein having a ‘quorum’ for its passage, adoption or enactment as the case may be.

In justification of the approval of the annual budget, appellees argue that the abstention of appellants Zuniega and Tablizo cannot be taken into consideration for purposes of determining the majority at the subject August 29, 2003 regular session.[27] The dearth of merit in appellees’ position is, however, evident from Section 12, Rule XI of the assembly’s Internal Rules of Procedure which, in turn, provides as follows:

“Section 12. Abstention. – Indubitably, a member of this Sangguniang Panlalawigan is representing the people and not necessarily his own self and as such he should be required to take a stand, one way or the other, on every issue or measure submitted for decision of this august body. Hence, it is hereby made as a general rule that no member of this Sanggunian shall abstain from voting, except as provided under Section 2, Rule XI of this Internal Rules of Procedure.

Abstention, if ever allowed a member, shall not be considered in computing the majority vote. Since abstention is not a vote, it does not count either way. Mere silence and abstention are not equivalent of affirmative votes nor of negative votes. (Quien vs. Serina)

This rule does not apply in voting for elective positions, if a member is qualified.”

Viewed in the light of the fact that Section 2, Rule XI of the self same Rules allows abstention only in the event of pecuniary interest on the part of the Sanggunian member concerned or any of his relatives within the third degree of consanguinity or affinity,[28] we find that the abstentions made by appellants Zuniega and Tablizo should not have been allowed by appellee Popea.

We are, finally, aware that Section 13, Rule XI, Internal Rules of Procedure of the Sangguniang Panlalawigan of Catanduanes allows for instances where a simple majority will suffice, viz:

Section 13. Simple Majority. – Except as otherwise provided in this Internal Rules of Procedure and existing laws, rules and regulations, a vote by a ‘simple majority’ shall prevail on other measures, motions, propositions, provided there is a quorum. In parliamentary parlance, the term ‘simple majority’ means one-half plus one ($1/2 + 1$) of the total votes cast by the members present there being a quorum. It might be less than the majority of the entire membership.”

In addition to the reasons hereinbefore discussed, however, the legislative magnitude thereof impels us to discount the applicability of the foregoing provision to the assailed provincial budget.

WHEREFORE, the appealed July 8, 2003 Decision is REVERSED and SET ASIDE. In lieu thereof, another is entered declaring the Annual Budget for calendar year 2003 of the Province of Catanduanes NULL and VOID for lack of the vote required for its passage.

SO ORDERED.

Reyes, (Chairman) and Roxas, JJ., concur.

[1] pp. 158-160, Original Record.

[2] p. 119, *ibid*.

[3] pp. 3; 136, *ibid*.

[4] p. 136, *ibid*.

[5] pp. 1-7, *ibid*.

[6] pp. 18-27, *ibid*.

[7] pp. 30-37, *ibid*.

[8] p. 74, *ibid*.

[9] pp. 158-160, *ibid*.

- [10] pp. 159-160, *ibid.*
- [11] pp. 162-163, *ibid.*
- [12] pp. 18-19, Rollo.
- [13] *Disomangcop vs. Datumanong*, G.R. No. 149848, November 25, 2004.
- [14] p.119, *ibid.*
- [15] Article 468, Local Government Code of 1991.
- [16] G.R. No. 119775, October 24, 2003.
- [17] G.R. No. 147767, January 14, 2004.
- [18] G.R. No. 106064, October 13, 2005.
- [19] par. 2 (a), Section 5, Article VIII, 1987 Constitution; Section 19 (1), Batas Pambansa Blg. 129.
- [20] *Smart Communications, Inc vs. National Telecommunications Commission*, 408 SCRA 678, 688-689
- [21] pp. 159-160, Original Record.
- [22] p. 145, *ibid.*
- [23] Article 107 (g), Rules and Regulations Implementing the Local Government Code of 1991.
- [24] Section 53 (a), Local Government Code of 1991.
- [25] p. 119, Original Record.
- [26] pp. 3; 136, *ibid.*
- [27] pp. 45-47, Rollo.
- [28] Section 2, Rule XI, Internal Rules of Procedure of the Sangguniang Panlalawigan of Catanduanes.

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