

MUNICIPALITY OF PILILLA, RIZAL, PETITIONER, VS. HON. COURT OF APPEALS, HON. ARTURO A. MARAVE, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 78, MORONG, RIZAL, AND PHILIPPINE ...

G.R. No. 105909. June 28, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner questions and seeks the nullification of the resolution of respondent Court of Appeals in CA-G.R. SP. No. 27504, dated March 31, 1992, dismissing the petition for having been filed by a private counsel, as well as its succeeding resolution dated June 9, 1992, denying petitioner's motion for reconsideration.[1]

The records show that on March 17, 1989, the Regional Trial Court of Tanay, Rizal, Branch 80, rendered judgment in Civil Case No. 057-T in favor of plaintiff, now herein petitioner Municipality of Pililla, Rizal, against defendant, now herein private respondent Philippine Petroleum Corporation (PPC, for short), ordering therein defendant to pay said plaintiff (1) the amount of P5,301,385.00 representing the tax on business due from the defendant under Section 9(A) of Municipal Tax Ordinance No. 1 of said municipality for the period from 1979 to 1983, inclusive, plus such amount of tax as may accrue until final determination of the case; (2) storage permit fee in the amount of P3,321,730.00 due from the defendant under Section 10, paragraph Z(13) (b-1-c) of the same municipal tax ordinance for the period from 1975 to 1986, inclusive, plus the amount of said fee that may accrue until final determination of the case; (3) mayor's permit fee due from the defendant under Section 10, paragraph (P)(2) of said municipal tax ordinance from 1975 to 1984, inclusive, in the amount of P12,120.00, plus such amount of the same fee as may accrue until final determination of the case; (4) sanitary inspection fee in the amount of P1,010.00 for the period from 1975 to 1984, plus the amount of this fee that may accrue until final determination of the case; and (5) the costs of suit.[2]

On June 3, 1991, in G.R. No. 90776 this Court affirmed the aforesaid judgment, with the modification that business taxes accruing prior to 1976 are not to be paid by PPC because the same have prescribed, and that storage fees are not also to be paid by PPC since the storage tanks are owned by PPC and not by the municipality and, therefore, cannot be the bases of a charge for service by the municipality.[3] This judgment became final and executory on July 13, 1991 and the records were remanded to the trial court for execution.

On October 14, 1991, in connection with the execution of said judgment, Atty. Felix E. Mendiola filed a motion in behalf of plaintiff municipality with the Regional Trial Court, Branch 78, Morong, Rizal* for the examination of defendant corporation's gross sales for the years 1976 to 1978 and 1984 to 1991 for the purpose of computing the tax on business imposed under the Local Tax Code, as amended. On October 21, 1991, defendant corporation filed a manifestation to the effect that on October 18, 1991, Pililla Mayor Nicomedes Patenia received from it the sum of P11,457,907.00 as full satisfaction of the above-mentioned judgment of the Supreme Court, as evidenced by the release and quitclaim documents executed by said mayor. Accordingly, on October 31, 1991 the court

below issued an order denying plaintiff municipality's motion for examination and execution of judgment on the ground that the judgment in question had already been satisfied.[4]

Thereafter, on November 21, 1991 Atty. Mendiola filed a motion for reconsideration of the court's aforesaid order of October 31, 1991, claiming that the total liability of defendant corporation to plaintiff municipality amounted to P24,176,599.00, while the amount involved in the release and quitclaim executed by Mayor Patenia was only P12,718,692; and that the said mayor could not waive the balance which represents the taxes due under the judgment to the municipality and over which judgment the law firm of Atty. Mendiola had registered two liens for alleged consultancy services of 25% and attorneys' fees of 25% which, when quantified and added, amount to more than P12 million. On January 28, 1992, the trial court denied the aforesaid motion for reconsideration.[5]

On February 18, 1992, Atty. Mendiola, again ostensibly in behalf of herein petitioner municipality, filed a petition for certiorari with us, which petition we referred to the Court of Appeals for proper disposition and was docketed therein as CA-G.R. SP No. 27504.[6] On March 2, 1992, respondent PPC filed a motion questioning Atty. Mendiola's authority to represent petitioner municipality.[7] Consequently, on March 31, 1992 respondent Court of Appeals dismissed the petition for having been filed by a private counsel in violation of law and jurisprudence, but without prejudice to the filing of a similar petition by the Municipality of Pililla through the proper provincial or municipal legal officer.[8] Petitioner filed a motion for reconsideration which was denied by the Court of Appeals in its resolution of June 9, 1992.[9]

Petitioner is once again before us with the following assignment of errors:

- “1. It is an error for the Court of Appeals to consider private respondent's new issue raised for the first time on appeal, as it could no longer be considered on appeal, because it was never been (sic) raised in the court below.
2. It is an error for the Court of Appeals in dismissing (sic) the instant petition with alternative remedy of filing similar petition as it is a departure from established juris-prudence.
3. It is an error for the Court of Appeals to rule that the filing of the instant petition by the private counsel is in violation of law and jurisprudence.”[10]

We find the present petition devoid of merit.

The Court of Appeals is correct in holding that Atty. Mendiola has no authority to file a petition in behalf of and in the name of the Municipality of Pililla. The matter of representation of a municipality by a private attorney has been settled in *Ramos vs. Court of Appeals, et al.*, [11] and reiterated in *Province of Cebu vs. Intermediate Appellate Court, et al.*, [12] where we ruled that private attorneys cannot represent a province or municipality in lawsuits.

Section 1683 of the Revised Administrative Code provides:

“Section 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 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 subdivision of a province, a special attorney may be employed by its council.”[13]

Under the above provision, complemented by Section 3, Republic Act No. 2264, the Local Autonomy Law,[14] only the provincial fiscal and the municipal attorney can represent a province or municipality in their lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it.[15]

For the aforementioned exception to apply, the fact that the provincial fiscal was disqualified to handle the municipality's case must appear on record.[16] In the instant case, there is nothing in the records to show that the provincial fiscal is disqualified to act as counsel for the Municipality of Pililla on appeal, hence the appearance of herein private counsel is without authority of law.

The submission of Atty. Mendiola that the exception is broad enough to include situations wherein the provincial fiscal refuses to handle the case cannot be sustained. The fiscal's refusal to represent the municipality is not a legal justification for employing the services of private counsel. Unlike a practising lawyer who has the right to decline employment, a fiscal cannot refuse to perform his functions on grounds not provided for by law without violating his oath of office. Instead of engaging the services of a special attorney, the municipal council should request the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who has declined to handle and prosecute its case in court, pursuant to Section 1679 of the Revised Administrative Code.[17]

It is also significant that the lack of authority of herein counsel, Atty. Mendiola, was even raised by the municipality itself in its comment and opposition to said counsel's motion for execution of his lien, which was filed with the court a quo by the office of the Provincial Prosecutor of Rizal in behalf of said municipality.[18]

The contention of Atty. Mendiola that private respondent cannot raise for the first time on appeal his lack of authority to represent the municipality is untenable. The legality of his representation can be questioned at any stage of the proceedings. In the cases hereinbefore cited,[19] the issue of lack of authority of private counsel to represent a municipality was only raised for the first time in the proceedings for the collection of attorney's fees for services rendered in the particular case, after the decision in that case had become final and executory and/or had been duly executed.

Furthermore, even assuming that the representation of the municipality by Atty. Mendiola was duly authorized, said authority is deemed to have been revoked by the municipality when the latter, through the municipal mayor and without said counsel's participation, entered into a compromise agreement with herein private respondent with regard to the execution of the judgment in its favor and thereafter filed personally with the court below two pleadings entitled and constitutive of a "Satisfaction of Judgment" and a "Release and Quitclaim." [20]

A client, by appearing personally and presenting a motion by himself, is considered to have impliedly dismissed his lawyer. Herein counsel cannot pretend to be authorized to continue representing the municipality since the latter is entitled to dispense with his services at any time. Both at common law and under Section 26, Rule 138 of the Rules of Court, a client may dismiss his lawyer at any time or at any stage of the proceedings, and there is nothing to prevent a litigant from appearing before the court to conduct his own litigation.[21]

The client has also an undoubted right to compromise a suit without the intervention of his lawyer.[22] Even the lawyers' right to fees from their clients may not be invoked by the lawyers themselves as a ground for disapproving or holding in abeyance the approval of a compromise agreement. The lawyers concerned can enforce their rights in the proper court in an appropriate proceeding in accordance with the Rules of Court, but said rights may not be used to prevent the approval of the compromise agreement.[23]

The apprehension of herein counsel that it is impossible that the municipality will file a similar petition,

considering that the mayor who controls its legislative body will not take the initiative, is not only conjectural but without factual basis. Contrary to his pretensions, there is presently a manifestation and motion pending with the trial court filed by the aforesaid municipal mayor for the withdrawal of the “Satisfaction of Judgment” and the “Release and Quitclaim”[24] previously filed in the case therein as earlier mentioned.

WHEREFORE, the petition at bar is DENIED for lack of merit and the judgment of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Penned by Justice Alicia V. Sempio Diy, with Justices Pedro A. Ramirez and Ricardo P. Galvez concurring.

[2] Rollo, CA-G.R. SP. No. 27504, 34.

[3] Ibid., id., 46.

* No presiding judge having been commissioned as of that date for the Regional Trial Court, Branch 80, Tanay, Rizal, the case was referred to this branch presided over by respondent executive judge of the branches therein (Rollo, CA-G.R. SP. No. 27504, 49-50).

[4] Ibid., id., 22.

[5] Ibid., id., 23-24.

[6] Ibid., id., 92.

[7] Ibid., id., 93-94.

[8] Ibid., id., 16-28.

[9] Ibid., id., 29.

[10] Ibid., id., 5.

[11] G.R. No. 53766, October 30, 1981, 108 SCRA 728.

[12] G.R. No. 72841, January 29, 1987, 147 SCRA 447.

[13] The Administrative Code of 1987 (E.O. No. 292) provides:

“SEC. 9. Provincial/City Prosecution Offices. ? The Provincial and City Fiscal’s Office established in each of the provinces and cities pursuant to law, is retained and renamed Provincial/City Prosecution Office. It shall be headed by a Provincial Prosecutor or City Prosecutor, as the case may be, assisted by such number of Assistant Provincial/City Prosecutors as fixed and/or authorized by law. The position titles of Provincial and City Fiscal and of Assistant Provincial and City Fiscal are hereby abolished.

All provincial/city prosecution offices shall continue to discharge their functions under existing law.

All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary.”

[14] This section states that the municipal attorney, as the head of the legal division or office of a municipality, “shall act as legal counsel of the municipality and perform such duties and exercise such powers as may be

assigned to him by the council.”

[15] Municipality of Bocaue, et al. vs. Manotok, 93 Phil. 173 (1953); Enriquez, Sr. vs. Gimenez, etc., 107 Phil. 932 (1960); De Guia vs. The Auditor General, et al., L-29824, 44 SCRA 169.

[16] De Guia vs. The Auditor General, et al., ante.

[17] Enriquez, Sr. vs. Gimenez, etc., supra; De Guia vs. The Auditor General, et al., supra.

[18] Rollo, 41-45.

[19] Enriquez, Sr. vs. Gimenez, etc., supra; De Guia vs. The Auditor General, et al., supra; Province of Cebu vs. Intermediate Appellate Court, et al., supra.

[20] Rollo, CA-G.R. SP. No. 27504, 59-62.

[21] Rustia vs. The Judge of the Court of First Instance of Batangas, et al., 44 Phil. 62 (1922).

[22] Rustia vs. The Judge of the Court of First Instance of Batangas, et al., ante; Aro vs. Nañawa, et al., L-24163, April 28, 1969, 27 SCRA 1090.

[23] Jesalva, et al. vs. Bautista, et al., 105 Phil. 348 (1959); Cabildo, et al. vs. Navarro, et al., L-31865, November 26, 1973, 54 SCRA 26.

[24] Rollo, 57-59.

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