

ZON SAYDA L. ALINSUG, PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 58, SAN CARLOS CITY, NEGROS OCCIDENTAL, PRESIDED BY HON. ROLINDO D. BELDIA, JR.; ROLANDO P. PONSICA AS MUNICIPA...*G.R. No. 108232. August 23, 1993*

Ponente: VITUG, J.

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The petitioner, Zonsayda L. Alinsug, had been a regular employee of the municipal government of Escalante, Negros Occidental; when she received a permanent appointment as Clerk III in the Office of the Municipal Planning and Development Coordinator of the same municipality. On 10 June 1992, she received an order from the newly proclaimed mayor, Rolando P. Ponsica, detailing her to the Office of the Mayor. In compliance with the order, she reported to said office the following day.

On 19 June 1992, Zonsayda absented herself from work allegedly to attend to family matters. She had asked permission from the personnel officer but not from the mayor. On 23 June 1992, Mayor Ponsica issued Office Order No. 31, suspending Zonsayda for one month and one day commencing on 24 June 1992 for "a simple misconduct x x x which can also be categorized as an act of insubordination." The order also stated that the suspension "carries with it forfeiture of x x x benefits such as x x x salary and PERA and leave credits during the duration of its effectivity."

Forthwith, Zonsayda filed with the Regional Trial Court of Negros Occidental, in San Carlos City, a petition, dated 07 July 1992, for "injunction with damages and prayer for temporary restraining order and preliminary injunction" against Mayor Ponsica and the municipal treasurer.[1] The petitioner alleged that since her family supported Mayor Ponsica's rival in the 11 May 1992 elections, her suspension was an act of "political vendetta". Further alleging that said respondents' acts were "malicious, illegal, unwarranted, wrongful and condemnable", petitioner prayed for the following reliefs:

"WHEREFORE, premises considered, it is respectfully prayed to this Honorable Court -

4.1 That upon the filing of this petition a temporary restraining order be immediately issued directing respondents mayor and municipality to cease and desist from continuing with the suspension, and indefinite detail of petitioner at his office, and, including the respondent treasurer to refrain from forfeiting and not paying her salary for the period from June 24 to July 23, 1992, and in the meantime to return petitioner to her position as Clerk III in the office of the Municipal Planning and Development Coordinator; to restrain respondents mayor and municipality also from persecuting, oppressing, harassing and humiliating petitioner as civil service employee of the municipality under the respondent mayor, and also restraining them from doing acts and things or employing tactics, schemes or maneuvers that would make it hard or effect a difficulty in petitioner's doing of her works and/or in the performance of the official function of her position entitled to the emoluments thereof, until further orders from the Honorable Court; and after notice and hearing to issue the corresponding writ of preliminary injunction;

4.2 After trial on the merit, to render judgment declaring petitioner's detail at respondent's office per Annex 'C'

and suspension per Annex 'D', null and void, and making the injunction permanent; and

4.3 Adjudging the respondents mayor and municipality solidarily to pay petitioner the amount of P30,000.00 for moral damages; P10,000.00 plus P500.00 per court appearance of petitioner's counsel for attorney's fee, and P3,000.00 for litigation expenses, all in concept of actual and compensatory damages; P20,000.00 as exemplary damages; and to pay the costs of this suit.

Further, petitioner respectfully prays for such other proper reliefs and remedies just and appropriate in the premises."^[2]

Mayor Ponsica and the municipal treasurer filed an answer to the petition, through private practitioner Samuel SM Lezama, alleging that the petitioner had not exhausted administrative remedies and that her suspension was in accordance with law. They filed a counterclaim for moral damages in the amount of P200,000.00, exemplary damages for P50,000.00, and attorney's fees of P30,000.00, plus appearance fee of P500.00.

The foregoing elicited a motion from the petitioner, praying that the answer be disregarded and expunged from the record, and that the respondents be all declared in default on the ground that since the respondents were sued in their official capacities, "not including their private capacities," they should have been represented by either the municipal legal officer or the provincial legal officer or prosecutor as provided for by Sec. 481 (b) [i] and [3] of the Local Government Code. It also cited Sec. 1 of Rep. Act No. 10 and Art. 177 of the Revised Penal Code which penalizes usurpation of public authority.

The respondents opposed the motion. Manifesting that the municipality of Escalante has no legal officer, they asserted that both the Local Government Code and the Administrative Code of 1987 do not have any provision "relative to the duty of any provincial legal officer or prosecutor to represent a municipality or its officials in suits filed against them by an employee or a private individual." They contended that it was "unnecessary to provide such a provision because there (exist) administrative and judicial rulings sustaining the validity of the employment of a private counsel by municipal officials." Moreover, since the petitioner prayed for the award of moral damages," on the strength of this Court's ruling in *Albuera v. Torres*,^[3] their hiring of a private counsel was justified.

On 28 August 1992, Assistant Provincial Prosecutor Daniel M. Villaflores entered his appearance as "counsel for Rolando P. Ponsica and Patricio A. Alvarez in their official capacities."

With the filing of said notice of appearance, on 08 September 1992, the lower court issued an Order, denying petitioner's motion to declare the respondents in default and motion to expunge from the record respondents' answer.

Acting on the motion for reconsideration filed by the petitioner, the lower court issued the Order of 16 November 1992, denying said motion on the thesis that since the appointment of a legal officer was optional on the part of the municipal government (Art. 481, third paragraph, Local Government Code) and the municipality of Escalante had not, in fact, designated any such legal officer, petitioner's move to declare respondents in default "for having retained a private counsel" was not thereby legally sustainable.

Hence, the instant petition, which, although called a "petition for review on certiorari" in its first paragraph, shall be treated as a special civil action of certiorari for purposes of resolving the issues of: (a) whether or not a private counsel may represent municipal officials sued in their official capacities, and (b) whether or not respondents had been in default on account of their having filed their answer through a private counsel.

Sec. 443 (b) of the Local Government Code (Republic Act No. 7160), which took effect on 01 January 1992,^[4] provides that, in addition to the officials enumerated in the first paragraph thereof, the mayor may appoint, among

other officials enumerated therein, a municipal legal officer. Section 481, Article 11 of Title V of the Code which provides for the appointment of local officials common to all municipalities, cities and provinces, states that "(t)he appointment of a legal officer shall be mandatory for the provincial and city governments and optional for the municipal government." The same section specifies the functions of the legal officer, and one of them being that he shall:

"(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, that in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;"

Indeed, it appears that the law allows a private counsel to be hired by a municipality only when the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province. This provision has its apparent origin in the ruling in *De Guia v. The Auditor General*[5] where the Court held that the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal would be disqualified to serve and represent it. With Sec. 1683 of the old Administrative Code[6] as legal basis, the Court therein cited *Enriquez, Sr. v. Gimenez*[7] which enumerated instances when the provincial fiscal is disqualified to represent in court a particular municipality: if and when original jurisdiction of 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 a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir legatee, creditor or otherwise.[8]

Thereafter, in *Ramos v. Court of Appeals*,[9] the Court ruled that a municipality may not be represented by a private law firm which had volunteered its services gratis, in collaboration with the municipal attorney and the fiscal, as such representation was violative of Sec. 1683 of the old Administrative Code. This strict coherence to the letter of the law appears to have been dictated by the fact that "the municipality should not be burdened with expenses of hiring a private lawyer" and that "the interests of the municipality would be best protected if a government lawyer handles its litigations."

But would these proscriptions include public officials? Not necessarily. It can happen that a government official, ostensibly acting in his official capacity and sued in that capacity, is later held to have exceeded his authority. On the one hand, his defense would have then been underwritten by the people's money which ordinarily should have been his personal expense. On the other hand, personal liability can attach to him without, however, his having had the benefit of assistance of a counsel of his own choice. In *Correa v. CFI of Bulacan*[10], the Court held that in the discharge of governmental functions, "municipal corporations are responsible for the acts of its officers, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof."

In such instance, this Court has sanctioned the representation by private counsel. In one case, We held that where rigid adherence to the law on representation of local officials in court actions could deprive a party of his right to redress for a valid grievance, the hiring of a private counsel would be proper[11]. And, in *Albuera v. Torres*,[12] this Court also said that a provincial governor sued in his official capacity may engage the services of private counsel when "the complaint contains other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity."

We might also quote the pronouncement of the Court in *Urbano v. Chavez*: [13]

"There is likewise another reason x x x why the Office of the Solicitor General cannot represent an accused in a criminal case. Inasmuch as the State can speak and act only by law, whatever it does say and do must be lawful, and that which is unlawful is not the word or deed of the State, but is the mere wrong or trespass of those individual persons who falsely speak and act in its name. Therefore, the accused public official should not expect the State, through the Office of the Solicitor General, to defend him for a wrongful act which cannot be attributed to the State itself. In the same light, a public official who is sued in a criminal case is actually sued in his personal capacity inasmuch as his principal, the State, can never be the author of a wrongful act, much less commit a crime."

Urbano v. Chavez confronted the issue of whether the Office of the Solicitor General may represent its own Solicitor General in the preliminary investigation of a criminal action, or in a civil action for damages, against him.

The key then to resolving the issue of whether a local government official may secure the services of private counsel, in an action filed against him in his official capacity, lies on the nature of the action and the relief that is sought.

While the petition below was filed against respondents as public officials, its allegations were also aimed at questioning certain acts that can well bring the case beyond the mere confines of official functions; thus -

"2.12 These actuations of the respondent mayor in detailing petitioner to his office and eventually suspending her from work, particularly the latter are no doubt respondent mayor's political vendetta of petitioner, a vengeance unleashed on her for her children's and family's not going with and voting for him in the May 11, 1992 election and instead supporting the candidacy of their relative-candidate (Mr. Barcelona) in said election, who was his greated (sic) worry at that time.

2.13 The aforesaid acts of respondent mayor are clearly, apparently and obviously a political harassment and persecution appreasive (sic), acts of vindictiveness, a grave abuse of executive discretion, despotic, unjust, unwarranted, condemnable and actionable; the indefinite detail order and, especially the suspension, were not done in good faith, not for a valid cause, and done without giving petitioner opportunity to be heard, hence, null and void for being violative of petitioner's legal and constitutional right to due process. x x x." [14]

The petition then went on to claim moral and exemplary damages, as well as litigation expenses, as shown by its prayer.

Moral damages cannot generally be awarded unless they are the proximate result of a wrongful act or omission. Exemplary damages, on the other hand, are not awarded if the defendant had not acted in a wanton, oppressive or malevolent manner nor in the absence of gross or reckless negligence.[15] A public official, who in the performance of his duty acts in such fashion, does so in excess of authority, and his actions would be ultra vires[16] that can thereby result in an incurrence of personal liability.

All the foregoing considered, We hold that the respondents were not improperly represented by a private counsel, whose legal fees shall be for their own account.

ACCORDINGLY, the instant petition is hereby DISMISSED. The lower court is directed to proceed with dispatch in the resolution of Special Civil Action No. RTC-371.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, and Puno, JJ., concur.

[1] Spec. Civil Action No. RTC-371.

[2] Rollo, p. 24.

[3] 102 Phil. 211 (1957).

[4] Sec. 536.

[5] L-29824, March 29, 1979, 44 SCRA 169.

[6] "1683. Duty of fiscal to represent provinces and provincial subdivisions in litigation. - The provincial fiscal shall represent the province and any municipality, township, or settlement thereof in any court, except in cases whereof original jurisdiction is vested in the Supreme Court or in cases where the municipality, townships or settlement in question is a party adverse to the provincial government or to some other municipality, township, or settlement 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."

[7] 107 Phil. 932 (1960).

[8] In *Municipality of Bocaue v. Manotok* (93 Phil. 173 [1953]), the Court, in interpreting par. 2 of Sec. 1683 of the old Administrative Code, held that only when the provincial fiscal is disqualified may the municipal council be authorized to employ a special attorney for the municipality and therefore the private law firm which appeared for the municipality had no standing in court.

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

[10] L-46096, July 30, 1979, 92 SCRA 312 *Pilar v. Sangguniang Bayan of Dasol, Pangasinan*, G.R. NO. 63216, March 12, 1984, 128 SCRA 173).

[11] *Province of Cebu v. Intermediate Appellate Court*, G.R. No. 72841, January 29 1987, 147 SCRA 447.

[12] *Supra*.

[13] G.R. No. 87977, March 19, 1990, 183 SCRA 347, 357-358.

[14] Rollo, pp. 21-22.

[15] *Alim v. Court of Appeals*, G.R. No. 93213, August 9, 1991, 200 SCRA 450, 457-458.

[16] See: *Rama v. Espina*.

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