

MAYOR FELIPE K. CONSTANTINO, PETITIONER, VS. HON. OMBUDSMAN ANIANO DESIERTO, MARGARITO P. GERVACIO, JR., JAIME L. MADRIDANO, PRIMITIVIA L. ESPINOSA, RAFAEL J. SUSON, SR., PABLO ...

G.R. No. 127457. April 13, 1998

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

In the special civil action of certiorari at bar Mayor Felipe K. Constantino of Malungon, Sarangani Province, seeks invalidation of the Resolution of the Ombudsman dated October 22, 1996, finding him guilty of grave misconduct prejudicial to the best interest of the service, and/or gross neglect of duty, and on that account dismissing him from the service.

On February 22, 1996, the Sangguniang Bayan of Malungon, Sarangani Province, adopted and issued Resolution No. 21[1] which -- after declaring in its "Whereas" clauses inter alia that --

- 1) it was the intention of the ** Government of Malungon to "lease/purchase one (1) fleet of heavy equipment"[2] composed of seven (7) specifically described units;
- 2) due to the failure of two public biddings, the Municipal Mayor would be authorized "to enter into a negotiated contract (for said lease/purchase) ** in behalf of the Municipal Government **;"
- 3) the lessor/seller should assure that the heavy equipment is "free from defects in workmanship within the specified warranty period under normal use," with obligation to "repair or replace any defective parts free of charge subject to the terms and conditions stipulated in the contract;"
- 4) the contract "must be clear and explicit, acceptable to both parties. and be concurred by the Sangguniang Bayan of ** Malungon ** before implementation;" and
- 5) the heavy equipment shall, before delivery, be inspected and tested by a special committee chosen by the Mayor --

authorized Mayor Constatino "to enter into a negotiated contract representing the Municipality ** (with) any company dealing with heavy equipment," said contract to be "signed by PBAC members." The resolution, however, contained no parameters as to rate of rental, period of lease, purchase price. The Sangguniang Bayan Members who voted for the resolution were : Vice-Mayor Primitiva L. Espinosa, and Councilors Rafael J. Suson, Sr. (Presiding Officer), Benjamin M. Guilley, Nemesio P. Liray, Nonito V. Nunez, Leo G. Ingay, Cesar B. Nallus, Jr., Benjamin C. Asgapo, and Jannette S. Constatino.

Accordingly, on February 28, 1996 in Davao City, Mayor Constantino entered into an agreement with a firm called the Norlovanian Corporation,[3] for the lease by the municipality from the latter of seven (7) units of heavy equipment of the types specified in the aforesaid Resolution, to wit:[4]

- (a) one (1) unit payloader;
- (b) one (1) unit grader;
- (c) one (1) unit road roller;
- (d) two (2) units six-wheeler dump trucks; and
- (e) two (2) units ten-wheeler dump trucks.

At the same time, and with the Mayor's "conforme," the corporation executed a deed of "Undertaking" binding itself to convey ownership of the heavy equipment under lease "unto the Lessee at the end of the term of said agreement after the Lessee has faithfully complied with the terms and conditions thereof," and to execute "the necessary documents to transfer the ownership ** (thereof)."[5] The Lease Agreement was a printed pre-prepared one, the names of the parties and the notarial acknowledgment having merely been typed in additionally. Nothing was stated in the signed contract about the term of the lease or the amount of the rental. Neither did the second document, the "Undertaking," set forth the term of the lease, the rental rate of the equipment, or the value thereof.

Delivery of all the seven (7) pieces of heavy equipment was made to the municipality on March 4, 1996, at which time a document of "Delivery and Acceptance"[6] was executed over the signatures of Mayor Constantino and the President of the lessor company. The instrument contained:

- (a) a list of the equipment,
- (b) an averment that the "LESSEE" (the town of Malungon) had inspected and accepted the same which had "been found to be in good condition in accordance with the terms and conditions of the Lease Agreement," and
- (c) an attestation -- reading "EQUIPMENT INSPECTED BY" -- signed by four (4) Municipal Kagawads: Benjamin M. Guilley, Nonito V. Nunez, Ceasar B. Nallos and Nemesio P. Liray, as well as by the Municipal Engineer and the Municipal Treasurer.

Thereafter, and on the strength of another resolution (No. 38) "unanimously approved" on April 18, 1996 by the Sangguniang Bayan of Malungon -- "requesting the Honorable Municipal Mayor, Felipe K. Constantino, to operate the newly acquired heavily equipment of the Municipality of Malungon leased/purchased from the Norlovanian Corporation"[7] -- the mayor directed that the heavy equipment be operated and used in various projects. The Sangguniang Bayan Members who voted for the resolution were: Vice-Mayor Primitiva L. Espinosa, and Councilors Rafael J. Suson, Sr., Benjamin M. Guilley, Nemesio P. Liray, Pablo V. Octavio, Nonito V. Nuñez, Leo G. Ingay, Cesar B. Nallos, Jr., Benjamin C. Asgapo, and Wilfredo P. Espinosa, ABC.

However, operation of the equipment came to a halt barely two months later; and this, because of a third resolution (No. 47) of the Sangguniang Bayan adopted on June 6, 1996,[8] "stopping all forms of unauthorized payment/expenditures relative to the illegally acquired pool of heavy equipment by the Municipality of Malungon, Sarangani Province." The Resolution was grounded on the following stated premises:

- 1) a 1995 Resolution "adopting Appropriation Ordinance No. 11 approving General Budget of 1996;" MPC Resolution No. 2 series of 1995 in relation to SB Resolution No. 198, series of 1995 "provided the amount of TWO MILLION TWO HUNDRED THOUSAND PESOS (P2,200,00000) for the loan amortization of the purchase of heavy equipment for five (5) years" but had "not been realigned ** re-programmed and appropriated for lease;" and
- 2) the "pool of heavy equipment ** acquired was inefficient and inoperative per ocular inspection, investigation and survey conducted by the Committee on Infrastructure of the Sangguniang Bayan of

Malungon and there is no authorized rental payment/expenditures and approved budget by the Sangguniang Bayan intended for lease of such heavy equipment.”

The minutes of the Sangguniang Bayan of Malungon of the Session of June 6, 1996 show that of the nine (9) Sanggunian members present, four (4) voted “for the passage of said resolution, namely Councilors Octavio, Espinosa, Asgapo and Ingay, and three abstain(ed:) namely Councilor Guilley, Nollon, nunez **; (and) Councilor Liray ** (was) not around during the votation ** (being) on privilege motion which was recognized by the Chair” (sic). Vice-Mayor Primitiva L. Espinosa, identified as “Acting Mayor,” was recorded as “ABSENT”[9]

It appears that earlier -- on April 23, 1996, five (5) days after Mayor Constantino was requested by the Sangguniang Bayan to start using the heavy equipment as above stated -- there were filed with the Deputy Ombudsman for Mindanao in Davao City,[10] a “Letter-Complaint”[11] and a “Joint Affidavit,”[12] accusing the Mayor and the President of the Lessor company, Norberto Lindong,[13] of a “Violation of Section 3 [e] and [g] of R.A. No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act” -- docketed as Case No. OMB-MIN-ADM-96-0179 -- and of “Grave Misconduct; Conduct Prejudicial to the Interest of the Service; and Gross Neglect of Duty” -- docketed as Case No. OMB-min-ADM-96-060. The letter-complaint was signed by Vice-Mayor Primitiva L. Espinosa, and to it was appended a CERTIFICATION signed by Vice-Mayor and three (3) of the Sangguniang Bayan Members who, together with the Vice-Mayor, had approved the first two (2) Resolutions above mentioned, namely: Councilors Rafael j. Suson, Sr., Leo G. Ingay, and Benjamin C. Agaspo. Two other councilors, Wilfredo P. Espinosa, Pablo V. Octavio, who had approved the Resolution of April 18, 1996 – requesting Mayor Constantino to put into operation the heavy equipment delivered by Norlovanian Corporation – also signed the Certification.

The Joint Affidavit alleged that:

- 1) Resolution No. 21 authorized Mayor Constantino “to purchase and acquire for the Municipality of Malungon heavy equipments to be paid within five (5) years at the yearly amortization of P2.2 million and for the ownership thereof to be consolidated and vested upon the municipality at the end of fifth year;”
- 2) the resolution also “provided that the Sangguniang Bayan shall concur in the contract to purchase that shall be entered into **;”
- 3) contrary to the resolution, Mayor Constantino entered into “lease agreement with the Norlovanian Corporation” over specific heavy equipment which stipulated a term of “six (6) years,” rental at the rate of P257,111.11 per month;” and “20% Guaranty Deposit of P1,780,000.00” to be made by the Municipality;”
- 4) the lease agreement contained no “Purchase Option” in favor of the Municipality, and required the property to be returned to the lessor at the end of the lease;
- 5) pursuant to the agreement, the Municipality had already paid to the Norlovanian Corporation “the total sum of P2,177,070.91 for:

a) 20% Guaranty Deposit P1,780,000.00

b) Rental from March 5 - April 5, 1996 257,111.11

c) partial rental covering April 5 to

May 6, 1996 162,888.89

Withholding Tax ____

22,909.00

TOTAL P2,177,070.91;

6) Mayor Constantino had thus entered into the agreement without authority and thereby “caused and inflicted undue injury to the Municipality **.”

The charges were traversed by His Honor in a “Counter - Affidavit”[14] filed by him on requirement of the Deputy Ombudsman.[15] He asserted that:

1) under authority of Resolution No.21, he had indeed negotiated with Norberto Lindong of the Norlovanian Corporation for the lease and ultimate purchase of the subject heavy equipment;

2) the agreement finally reached was (a) “Total cost of equipment is P8,900,000.00;” (b) Norlovanian “will charge interest at 18% per annum on a diminishing balance, over a 6 year pay-period;” and (c) “on the first year, the monthly amortization will be P257,111.11 but starting on the second year the amortization will decrease and ** progressively decrease every year;”

3) a Committee created by the Mayor inspected and accepted the units and issued a certification attesting to the “worthiness” thereof,[16] after which Lindong drew up the “lease Agreement” on his company’s “standard (printed) form,” and an “Undertaking” to eventually transfer ownership of the equipment to the Municipality;

4) both instruments were signed not only by the Mayor and Lindong but also by the Members of the PBAC;

5) on February 29, 1996, the Mayor and Lindong appeared before the Sangguniang Bayan and explained the terms of the agreements; present were all the Members of the Sanggunian except Vice-Mayor Primitiva Espinosa and her spouse, Councilor Wilfredo Espinosa;

6) the equipment was delivered four (4) days afterwards after which it was inspected by a representative of the Commission on Audit who found the same to be in good order;

7) the Mayor subsequently ordered the equipment to be put into operation in compliance with Resolution No. 38.

On May 31, 1996, respondent Deputy Ombudsman Gervacio handed down an Order placing Mayor Constantino under preventive suspension for six (6) months without pay effective June 14, 1996. This order was not enforced, however, because enjoined by orders[17] promulgated by the Regional Trial Court[18] in Special Civil Case No. 9368 instituted by the Mayor.

On July 22, 1996, Mayor Constantino and Norberto Lindong filed a motion for the inhibition of Deputy Ombudsman Gervacio, alleging that by “the issuance of the ‘Order of preventive Suspension’ on May 31, 1996 ** without any due process of law and in utter disregard of the provisions of Sec. 23 of RA 6770, the Honorable Deputy Ombudsman ** had clearly shown his prejudice against respondent Mayor **.”[19] The motion was however denied in an Order issued by Graft Investigation Officer Marco Anacleto P. Buena on July 24, 1996.[20]

On July 26, 1996, Constantino and Lindong filed a “Notice of Appeal” -- as regards the rejection of the motion for inhibition[21] -- and a “Motion to Reset Hearing” (after the resolution of their appeal on the issue of recusal).[22] The latter motion was denied for lack of merit by the Area Office on July 29, 1996. Said denial was sustained, and Mayor Constantino’s appeal dismissed, by Order of Investigation Officer Buena, dated September 10, 1996,[23] approved by Ombudsman Aniano Desierto on October 4, 1996.[24]

Meanwhile, an information for Violation of the Anti-Graft and Corrupt Practices Act against both Mayor Constantino and Norberto Lindong, was filed before the Sandiganbayan on August 8, 1996, also with due approval of Ombudsman Desierto.[25]

Under date of October 22, 1996, Graft Investigation Officer Buena handed down a Resolution finding the

petitioner “GUILTY of grave misconduct, prejudicial to the best interest of the service, and gross neglect of duty,” and ordering his dismissal from the service.[26] That Resolution was, on recommendation of Deputy Ombudsman for Mindanao Margarito P. Gervacio, Jr. (dated October, 25, 1996), approved by Ombudsman Desierto on December 16, 1996.[27]

The Resolution of October 22, 1996 adverted to

1) “various dubious legal maneuvers set off by the respondent (Mayor) in an effort to stay the implementation of the order of preventive suspension” including the filing of a motion for reconsideration of the suspension order, the withdrawal of counsel, the filing of a motion for inhibition of the investigator and to reset hearings;[28]

2) what was considered (a) a strangeness of “why the respondent (Mayor) and Mr. Lindong went through all the trouble to prepare and execute two separate agreements when they could have immediately executed the lease-purchase agreement itself,”[29] (b) a doubt as to the “validity of the Undertaking **, it being a unilateral contract as well as an ancillary one, as opposed to the principal contract which is the lease agreement,” in addition to not being “supported by a consideration;”[30] and (c) the omission of the assent of the Sangguniang Bayan to the contract before its implementation.[31]

On the basis thereof, DILG Regional Director Jaime L. Madridano of Region XI based in Davao City, sent a Memorandum Order dated December 27, 1996 to Governor Priscilla L. Chiongbian of Sarangani Province, directing her to enforce the directive for Mayor Constantino’s dismissal and to install the Vice Mayor in his place.[32] he also issued a “Memorandum” to Mayor Constantino directing him “to turn over the functions of (his) office to the vice-mayor (Primitiva L. Espinosa) pursuant to Sec. 44 of RA 7160 **.”[33] However, this resolution of dismissal has not been implemented because, as Mayor Constantino himself states,[34] after DILG Director Madridano was advised of the institution of the action at bar in this Court, he “did not insist anymore on the execution of the ‘Resolution’ (of dismissal) in question.”

Mayor Constantino has appealed the Resolution approved by Ombudsman Desierto on December 16, 1996 -- removing him from his position as Municipal Mayor -- by filing the petition for certiorari at bar.[35] He has impleaded as respondents the Ombudsman, Deputy Ombudsman Gervacio, Jr., and the complainants in the administrative case: Vice-Mayor Espinosa, and Councilors Madridano, Octavio, Ingay, Asgapo, Espinosa and Suson, Sr. And he cites the following as special and important reasons to justify a review and nullification of the Resolution issued by respondents Desierto and Gervacio, to wit:

(1) Petitioner was denied his constitutional right to due process of law when his “Motion for Inhibition”, “Notice of Appeal” and Motion to Reset Hearing” were denied outright by respondent Gervacio (or graft Investigation Officer Buena) and not reviewed by respondent Ombudsman Desierto; and

(2) Respondents Desierto and Gervacio gravely abused their discretion when they pointedly ignored or disregarded the fact that petitioner merely acted in accordance with Res. No. 21, Series of 1996 and Res. no. 38, Series of 1996 of the Municipal Council of Malungon, Sarangani, and that he did not exceed his authority with respect to the transaction and the use of the seven (7) units of heavy equipment acquired by the town.

Private respondents Primitiva Espinosa, Rafael Suson, Pablo Octavio, Leo Ingay, Benjamin Asgapo and Wilfredo Espinosa filed a “Motion to Dismiss,” dated February 3, 1997, which this Court resolved on February 25, 1997, to consider as their comment on the petition. Regional Director Jaime L. Madridano submitted his comment on the petition, dated February 21, 1997. The Solicitor General filed a comment in behalf of public respondents, dated April 2, 1997. Mayor Constantino then presented a Reply, dated June 21, 1997, to private respondents’ Motion to Dismiss, to which private respondents submitted a Rejoinder dated July 2, 1997.

The first contention of Mayor Constantino -- that it was error for his motions for inhibition and to reset hearing “not (to be) reviewed by respondent Ombudsman Desierto” -- is unmeritorious, and is quickly disposed of by reference to the terms of Section 28 of Republic Act No. 6770, viz.:^[36]

“SEC 28. Investigation in Municipalities, Cities and Provinces. --The Office of the Ombudsman may establish offices in municipalities, cities and province outside Metropolitan Manila, under the immediate supervision of the Deputies for Luzon, Visayas and Mindanao, where necessary as determined by the Ombudsman. The investigation of complaints may be assigned to the regional or sectoral deputy concerned or to special investigator who shall proceed in accordance with the rules or special investigator who shall proceed in accordance with the rules or to a special instructions or directives of the Office of the Ombudsman. Pending investigation, the deputy or investigator may issue orders and provisional remedies which are immediately executory subject to review by the Ombudsman. Within three (3) days after concluding the investigation, the deputy or investigator shall transmit, together with the entire records of the case, his report and conclusions to the Office of the Ombudsman. Within five (5) days after receipt of said report, the Ombudsman shall render the appropriate order, directive or decision.”

The authority of the investigator (Buena) to issue the challenged order. Pending investigation of the administrative case against Mayor Constantino, cannot thus be gainsaid being specifically conferred by the provision just quoted. Indeed, any such order is, according to said provision, “immediately executory,” subject only to review by the Ombudsman

Prescinding therefrom, the fact is, as already stated, that the impugned order was actually reviewed by a superior officer, Director Antonio E. Valenzuela (September 13, 1996), then recommended for approval by Deputy Ombudsman Gervacio, and ultimately approved by Ombudsman Desierto on October 4, 1996.^[37] The Mayor’s motions therefore received due attention and consideration although resolved adversely to him. There is no occasion to speak of a denial of due process.

More persuasive is the Mayor’s second contention that no liability, whether criminal or administrative, may be imputed to him since he merely complied with the mandate of Resolution No. 21, series of 1996 and Resolution No. 38, series of 1996, of the Municipal Council; and that the charges leveled against him are politically motivated. A thorough examination of the records convinces this Court that the evidence against him is inadequate to warrant his dismissal from the service on the specified grounds of grave misconduct, conduct prejudicial to the best interest of the service and gross neglect of duty.

The explicit terms of Resolution No. 21, Series of 1996 clearly authorized Mayor Constantino to “lease/purchase one (1) fleet of heavy equipment” composed of seven (7) generally described units, through a “negotiated contract.”^[38] That resolution, as observed at the outset, contained no parameters as to rate of rental, period of lease, purchase price. Pursuant thereto, Mayor Constantino, representing the Municipality of Malungon, and Norbeto Lindong, representing the Norlovanian Corporation, executed two written instruments of the same date and occasion, viz.:

One -- an agreement (on a standard printed form) dated February 28, 1996 for the lease by the corporation to the municipality of heavy equipment of the number and description required by Resolution no. 21, and

Two -- an undertaking for the subsequent conveyance and transfer of ownership of the equipment to the municipality at the end of the term of the lease.

That the Members of the Sangguniang Bayan knew of this “lease/purchase” is evident from Resolution No. 38, Series of 1996 unanimously enacted by them shortly after delivery of the equipment.^[39] In that resolution they (1) declared that “the Municipal Government ** has just acquired its fleet of heavy equipment leased/purchased from the Norlovanian Corporation,” and (2) requested Mayor Constantino “to operate the newly acquired heavy

equipment ** leased/purchased from the Norlovanian Corporation.” The Resolution is consistent with the allegations of Mayor Constantino -- which in any event are not denied by the Councilors or Vice-Mayor Espinosa -- that:

- 1) the equipment was delivered to the Municipality by Norlovanian Corporation on February 28, 1996 and duly inspected by Councilors Guilley, Runez, Nolloos and Liray, as well as the Municipal Engineer and the Municipal Treasurer;
- 2) prior to the delivery of the units, the Vice Mayor and other Members of the Sangguniang Bayan had opportunity to read the “Lease Agreement” as well as the “Undertaking” but then raised no objections thereto;
- 3) neither did they raise any objections (a) at the session of the Municipal Council on February 29, 1996, when Norberto Lindong explained the terms of the “negotiated contract” of “lease/purchase,” or (b) at the time that the units were delivered and inspected by designated municipal officials.

Now, it is germane to advert to the deplorable inaccuracies in the Joint Affidavit of private respondents (P.L. Espinosa, Suson, Sr., Ingay, W. P. Espinosa, Octavio, Asgapo)[40] submitted as part of their complaint in the Ombudsman’s Office. The affidavit contains a clearly distorted version of Resolution No. 21 of February 22, 1996. In that document the affiants described Resolution No. 21 as authorizing Mayor Constantino “to purchase and acquire ** heavy equipments (sic) to be paid within five (5) years at the yearly amortization of P2.2 million **.” This is a misleading reading of Resolution No. 21. As the most cursory perusal of that resolution at once discloses, what the Mayor was thereby empowered to do was “to enter into a negotiated contract” in the Municipality’s behalf with “interested parties,” in line with the expressed wish of the Municipality to “lease/purchase one (1) fleet of heavy equipment ***” -- not simply to “purchase and acquire” said equipment (as complainant Councilors aver). Neither does Resolution No. 21 state (contrary to complainant’s description of it) that the price shall be “paid within five (5) years at the yearly amortization of P2.2 million **,” indeed. as already above stressed, the resolution is completely silent as regards any terms and conditions of the “negotiated contract” that the Mayor was assigned to execute in the town’s behalf. Such obvious distortions cannot but erode the complainant councilors’ credibility and bona fides.

It is also relevant to draw attention to the flagrantly inaccurate statements and inferences about the Mayor’s “negotiated contract” regarding the heavy equipment, contained in Resolution No. 47 approved only by four (4) Members of the Municipal Council at its session of June 6, 1996 (the four (4) being Councilors Octavio, Espinosa, Asgapo and Ingay).[41] That Resolution No. 47, it will be recalled, stopped all “rental payment/expenditures relative to the pool of heavy equipment of the Norlovanian Company.” The stoppage was based on prior resolutions of the Council -- allegedly setting down the terms under which the heavy equipment should be acquired, and which terms were supposedly violated by the Mayor. but -- unaccountably and gain indicative of bad faith, if not malice, on the part of private respondents -- Resolution No. 47 made absolutely no reference to the two (2) resolution which on their face justify the Mayor’s contract with Norlovanian Corporation, to wit: (1) Resolution No. 21 which, having been enacted after the cited resolutions, must be deemed to have superseded them, and which, to repeat, motivated and constitutes the justification for the lease-purchase agreement entered into by the Mayor and Norlovanian Corporation, and (2) Resolution No. 38 in which the Councilors not only expressly acknowledged that “the municipal government ** (had) just acquired its fleet of heavy equipment leased/purchased from the Norlovanian Corporation,” but also “requested ** (the) Mayor ** to operate the newly acquired heavy equipment of the municipality leased/purchased from the Norlovanian Corporation.”[42]

In light of the foregoing facts, which appear to the Court to be quite apparent on the record, it is difficult to perceive how the Office of the Ombudsman could have arrived at a conclusion of any wrongdoing by the Mayor

in relation to the transaction in question. It is difficult to see how the transaction between the Mayor and Norlovanian Corporation -- entered into pursuant to Resolution No. 21 -- and tacitly accepted and approved by the town Council through its Resolution No. 38 -- could be deemed an infringement of the same Resolution No. 21. In truth, an examination of the pertinent writings (the resolutions, the two (2) instruments constituting the negotiated contract, and the certificate of delivery) unavoidably confirms their integrity and congruity. It is, in fine, difficult to see how those pertinent written instruments," could establish a prima facie case to warrant the preventive suspension of Mayor Constantino. A person with the most elementary grasp of the English language would, from merely scanning those material documents, at once realize that the Mayor had done nothing but carry out the expressed wishes of the Sangguniang Bayan.

It would appear that Graft Investigator Buena, who drew up the Resolution (eventually approved by the Ombudsman) -- finding Mayor Constantino guilty of grave misconduct or gross neglect of duty -- might have been carried away by his disapproval of what he thought to be "various dubious maneuvers to delay the early and expedient disposition of ** (the) case" resorted to by the Mayor "through his various counsels." How those "maneuvers" (assuming their description as dilatory to be correct) could affect the intrinsic character of the evidence submitted by the parties is, however, quite beyond the Court.

The investigator also opined that Resolution No. 21 should be interpreted in light of other official documents, executed a year earlier. He does not explain why he did not adopt the more obvious construction of Resolution No. 21 indicated by the elementary doctrine that it is within the power and prerogative of the town council to repeal its prior acts, either expressly, or by the passage of essentially inconsistent resolutions. When the town council passed Resolution No. 21 without any mention whatever of those prior official documents respecting the acquisition to heavy equipment, the evident intention was to supersede them and to have such acquisition governed solely by Resolution No. 21. This conclusion is strongly supported by the fact that the Sanggunian expressly admitted -- in the Second Whereas Clause of its Resolution No. 21 -- that there had been a "failure of bidders to submit bids despite of two biddings ... public announcement" (sic) -- the two biddings being obviously related to said earlier official acts of the town council. The conclusion is further bolstered by the fact that the Council, with full awareness of said "negotiated contract," and of the delivery of equipment thereunder, had requested the Mayor to put the equipment into operation for the town projects. The Court is thus satisfied that it was in fact the Council's intention, which it expressed in clear language, to confer on the Mayor ample discretion to execute a "negotiated contract" with any interested party, without regard to any official acts of the Council prior to Resolution No. 21.

It is also difficult to see why the patent inaccuracies in the affidavit-complaint and Resolution No. 47[43] were ignored -- as difficult to understand how the execution of two writings to embody one contract of "lease/purchase" could be regarded as fatally defective, and even indicative of a criminal conspiracy, or why said two writing should be interpreted in such a way as to magnify their seeming inconsistencies. the fundamental and familiar legal principle -- which the Office of the Ombudsman ignored -- is that it is perfectly legitimate for a bilateral contract to be embodied in Two or more separate writings, and that in such an event the writings should be read and interpreted together in such a way as to eliminate seeming inconsistencies and render the parties' intention effectual.

The statement in the appealed Resolution -- as to the absence of prior consent of the Council to the "negotiated contract" executed by Mayor Constantino and Norlovanian Corporation -- flies in the teeth of the evidence; there is un rebutted proof that the heavy equipment delivered to the Municipality pursuant to the contract, was inspected by designated councilors and municipal officers; that shortly thereafter, the negotiated contract -- composed of two documents -- was explained and discussed at the session of the town Council of February 29, 1996; and that

afterwards the Council requested mayor Constantino to put the equipment into operation.

The Court thus considers the ratiocinations and conclusion in the challenged resolution to be so gravely and egregiously in error as to make necessary said issuances' invalidation by the extraordinary writ of certiorari.

The private respondents' amazing turn-about is patent upon the record, and is branded by Mayor Constantino as a cunning and treacherous political maneuver -- an attempted coup to oust him from his position as Mayor otherwise than through the normal process of election. Be this as it may, the Court cannot and will not allow itself to be made an instrument of politics, nor be privy to any attempt at the perpetration of injustice.

In view of all the foregoing, the assailed Resolution of the respondent ombudsman dated October 22, 1996 dismissing petitioner from the service, as well as the Order of preventive suspension dated May 31, 1996, are REVERSED and SET ASIDE and petitioner is EXONERATED from the administrative charges against him in CASE NO. OMB-MIN-ADM-96-060.

SO ORDERED.

Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Annex F, Petition.

[2] Emphasis supplied.

[3] Represented by its President and Chairman of the Board, Norberto N. Lindong.

[4] Rollo, p.77.

[5] Annex H, Petition; Rollo, p.76.

[6] Annex I, Petition; Rollo, p.77.

[7] No. 38, Series of 1996: Annex J, petition, Rollo, pp. 78-79; emphasis supplied.

[8] No. 47, Series of 1996, Annex K, Petition; Rollo, pp. 80-81.

[9] Annex K, Petition, Rollo, pp. 80,81.

[10] Margarito P. Gervacio, Jr.

[11] Annex C, Petition; Rollo, pp. 54-56.

[12] Annex D, Petition; Rollo, p. 57-60.

[13] SEE footnote No. 3, supra.

[14] Annex E, Petition.

[15] Resolution dated May 14, 1996.

[16] p. 59, Record of OMB-MIN-ADM-96-060.

[17] Issued on June 27, 1996, July 1, 1996, and July 16, 1996: Rollo, pp. 226-227.

[18] Presided by Hon. Judge Jaime I. Infante of the Regional trial Court, Branch 38, Alabel, Sarangani.

[19] Annex L, petition: Rollo pp. 82-83; underscoring in original text.

[20] Annex M, Petition: Rollo, pp. 84-86.

[21] Annex N, Petition: Rollo, p. 86.

[22] Annex O, Petition, Rollo, p.88.

[23] Annex P, Petition; Rollo, pp. 89-91.

[24] Rollo, p. 91.

[25] Rollo, p. 46.

[26] Annex A, Petition; Rollo pp. 39-52.

[27] Rollo, p. 52.

[28] Id., pp. 42-45.

[29] Id., pp.48-49.

[30] Id., p.49.

[31] Id, p. 49.

[32] Id., p. 256.

[33] Annex b, Petition; Rollo, p.53.

[34] “ CONSOLIDATED REPLY” dated August 11, 1997, pp. 4-5.

[35] Sec. 27 of R.A. 6770 (“an Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes,” otherwise known as “The Ombudsman Act of 1989”) inter alia provides that “In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.”

[36] Emphasis supplied.

[37] SEE footnotes Nos. 23, 24, supra.

[38] SEE Annex 1 and related text, supra.

[39] SEE footnote No. 7, supra.

[40] SEE footnote No. 12, supra.

[41] SEE footnote No. 8, supra.

[42] SEE footnote Nos. 7, 39, supra.

[43] SEE pages 11-12 of this opinion, supra.

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