

REYNALDO O. MALONZO, IN HIS CAPACITY AS CITY MAYOR OF CALOOCAN CITY, OSCAR MALAPITAN, IN HIS CAPACITY AS VICE-MAYOR OF CALOOCAN CITY, CHITO ABEL, BENJAMIN MANLAPIG, EDGAR ERICE,...

G.R. No. 137718. January 28, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

On March 15, 1999, the Office of the President (OP) through Executive Secretary Ronaldo Zamora, rendered a Decision[1] the dispositive portion of which reads, viz.:

"WHEREFORE, herein respondents Mayor Reynaldo Malonzo, Vice-Mayor Oscar G. Malapitan and Councilors Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolatre, Susana Punzalan, Henry Cammayo, and Luis Tito Varela, all of Caloocan city are hereby adjudged guilty of misconduct and each is meted the penalty of SUSPENSION from office for a period of three (3) months without pay to commence upon receipt of this Decision. This Decision is immediately executory.

SO ORDERED."

On March 22, 1999, petitioners Mayor Reynaldo Malonzo, Vice-Mayor Oscar G. Malapitan and councilors Chito Abel, Benjamin Manlapig, Edgar Erice Dennis Padilla, Zaldy Dolatre, Luis Tito Varela, Susana Punzalan, and Henry Cammayo, all of the City of Caloocan, filed a petition assailing the OP decision.

On July 27, 1999, We granted the petition and accordingly annulled and set aside the OP decision for having been rendered with grave abuse of discretion and/or excess of jurisdiction. We held:

"x x x [T]he instant petition has been properly brought before us in the light of the importance of the subject matter and the transcendental nature of the issues raised. Realignment of [items in the annual budget] is a common practice borne of necessity and sanctioned by law. Just how such a common practice may be carried out within the bounds of law, considering the fact that public funds are at stake, is, we believe, an issue that is not only one of first impression, but likewise of considerable significance as a guide to local governance . x x x

"x x x The OP found petitioners guilty of misconduct on the ground that x x x

"x x x the P39,352,047.75 appropriated in Ordinance 0254 to fund the expropriation of Lot 26 of the Maysilo Estate was merely a portion of the P50 million included and appropriated in the 1998 Annual Budget for expropriation purpose and x x x the judicial action for expropriation x x x is still pending with the court. This being so, the amount allocated for the expropriation cannot be reverted to or be deemed as savings to serve as funds actually available for the supplemental budget. x x x

"We cannot, however, agree x x x.

"The OP's premise, in our opinion, rests upon an erroneous appreciation of facts on record. The OP seems to have been confused as to the figures and amounts actually involved. A meticulous analysis of the records

would show that there really is no basis to support the OP's contention that the amount of P39,352,047.75 was appropriated under Ordinance No. 0254, S. 1998, since in truth and in fact, what was appropriated in said ordinance was the amount of P39,343,028.00. The allocation of P39,352,047.75 is to be found in the earlier Ordinance no. 0246,S.1997 which is a separate and distinct ordinance. x x x "x x x

"Section 322 of the Code upon which the OP anchored its opinion that petitioners breached a statutory mandate provides:

"SEC. 322. Reversion of Unexpended Balances of Appropriations, Continuing Appropriations – Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the unappropriated surplus of the general funds at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or settled."

"Based on the above provision, the OP reached the determination that Ordinance No. 0254, S. 1998 could not have lawfully realigned the amount of P39,352,047.75 which was previously appropriated for the expropriation of Lot 26 of the Maysilo Estate since such appropriation was in the nature of a capital outlay until fully spent, reverted, or the project for which it is earmarked is completed.

"The question, however, is not whether the appropriation of P39,352,047.75 could fall under the definitions of continuing appropriation and capital outlays, considering that such amount was not the subject of realignment made by Ordinance No. 0254, Series of 1998. Rather, the issue is whether petitioners are liable for their actions in regard to said ordinance which actually realigned a position of the P50 million which was simply denominated in a general manner as "Expropriation of Properties" and classified under "Current Operating Expenditures" in the 1998 Annual Budget of Caloocan City. Clearly, these are two distinct amounts separate from each other. x x x [T]he P50 million was NOT appropriated for the purpose of purchasing Lot 26 of the Maysilo Estate but rather for expenses incidental to expropriation such as relocation of squatters, appraisal fee, expenses for publication, mobilization fees and expenses for preliminary studies. x x x The appropriation of P39,352,047.75 under Ordinance No. 0246, S. 1997 is, we believe, still a subsisting appropriation that has never been lumped together with other funds to arrive at the sum of P50 million allocated in the 1998 budget. To be sure, denomination of the P50 million amount as "Expropriation of Properties left much to be desired and would have been confused with the appropriation for expropriation under Ordinance No. 0246, S. 1997, but had respondents probed deeper into the actual intention for which said amount was allocated then they would have reached an accurate characterization of the P50 million.

Bearing in mind, therefore, the fact that it is the P50 million which is now being realigned, the next logical question to ask is whether such amount is capable of being lawfully realigned. To this we answer in the affirmative.

"x x x [R]espondents x x x argued x x x that realignment shall not be allowed when what is involved are continuing appropriations or capital outlays. But this argument becomes clearly inapplicable in view of our disquisition above x x x. The realignment x x x pertained to the P50 million which was classified as "Current Operating Expenditures" x x x

"x x x [W]hat is being realigned is the P50 million appropriation which is classified, neither as a capital outlay nor a continuing appropriation x x x

As to the alleged violation of Sections 50 and 52 of the Code requiring the adoption of house rules and the organization of the council, we believe that the same hardly merits even cursory consideration. We cannot infer x x x that no other business [like the enactment of the ordinance] may be transacted on the first regular session except to the take up the matter of adopting or updating rules.

"The foregoing explanation leads us to the ineluctable conclusion that, indeed, respondents committed grave abuse of discretion. Not only [is] their reasoning flawed but [it is] likewise lacking in factual and legal support. Misconduct, being a grave administrative offense for which petitioners stood charged, cannot be treated cavalierly. There must be clear and convincing proof on record that petitioners were motivated by wrongful intent, committed unlawful behavior in relation to their offices, or transgressed some established and definite rules of action. But, as we have stressed above, petitioners were acting within legal bounds."

The dispositive portion of Our Decision of March 22, 1999, reads, thus:

"WHEREFORE, the instant petition is hereby GRANTED. The assailed decision of the office of the president in O.P. Case No. 98-H-8520 dated March 15, 1999 is ANNULLED and SET ASIDE for having been rendered with grave abuse of discretion amounting to lack and/or excess of jurisdiction. Consequently, respondents, their subordinates, agents, representatives, and successors-in-interest are permanently enjoined from enforcing or causing the execution in any manner of the aforesaid decision against petitioners."

On August 12, 1999, the Office of the Solicitor General filed a Motion for Reconsideration[2] contending that:

- The OP did not err in its appreciation of facts;
- Ordinance No. 0254, Series of 1998 was passed without funds actually available;
- Ordinance No. 0254, Series of 1998 was also enacted without sufficient compliance with Section 50, Chapter 3, Title II of the Local Government Code of 1991;
- Petitioners' failure to observe the stricture in the enactment of the Supplemental Budget Ordinance constitutes misconduct; and
- Assuming arguendo that the OP did err in its appreciation of the facts on record, still this does not constitute grave abuse of discretion which can be reviewed by this Court through a special civil action for certiorari.

On October 20, 1999, petitioners filed their Comment and/or Opposition to Motion for Reconsideration.[3]

These issues have already been discussed in Our Decision of July 27, 1999. As respondents persist in their stance, we must also thus restate our position to dispel any and all doubts on the matter.

First. Respondents aver that in their Consolidated Answer which petitioners filed before the OP[4], petitioners admitted that the sum of P39,352,047.75 under Ordinance No. 0246, Series of 1997 was included in the P50,000,000.00 denominated in a general manner as "Expropriation of Properties" and classified under "Current Operating Expenditures" in the 1998 Budget of Caloocan City. Petitioners however allegedly only took a different position in their pleadings on appeal and during the oral argument before the Court as they clarified that the sum of P39,352,047.75 under Ordinance No. 0246 Series of 1997 is separate and distinct from and not part of the sum of P50,000,000.00 categorized as "Current Operating Expenditures" in the 1998 Budget of Caloocan City. Respondents insist that petitioners may not change their theory for the first time on appeal since their admissions before the OP bind them, and to do so would be offensive to the basic rules of fair play and justice.

We disagree.

There is nothing in the records to indicate that the sum of P39,352,047.75 appropriated under Ordinance No. 0246, Series of 1997 is actually part of the P50,000,000.00 allotted for "Expropriation of Properties," under the "Current Operating Expenditures" of the 1998 Annual Budget of Caloocan City.

Ordinance No. 0246, Series of 1997[5] appropriated P39,352,047.75 for the expropriation of Lot 26 of the Maysilo Estate. It is, however, not this but the sum of P39,343,028.00 appropriated under Ordinance No. 0254, Series of 1998[6] which was sourced from the P50,000,000.00 allotted for "Current Operating Expenditures". It

should be noted that the P50,000,000.00 under "Current Operating Expenditures" of the 1998 Annual Budget was denominated as for "Expropriation of Properties" but the particular properties subject of expropriation were not specified. In fact, petitioners, in the same consolidated answer cited by respondents, have unequivocally stated that "as will be noted from the budget, the expropriation of properties does not refer to any particular property." [7] Thus, it can be said that petitioners, as early as when the case was pending before the OP, were already arguing about the character of the P50,000,000.00 as proper subject of realignment.

The source of confusion lies in the denomination of P50,000,000.00 as money for "Expropriation of Properties" under "Current Operating Expenditures". As such, it was to be spent for the expropriation of various properties, including incidental expenses for expropriation. What was exclusively appropriated for the expropriation of the Maysilo Lot was the P39, 352,047.75 under Ordinance No. 0246, Series of 1997. It is significant to note that this is a 1997 ordinance while the P39,343,028.00 which was originally intended for incidental expenses for expropriation of the Maysilo Lot was under a 1998 ordinance.

That what was being realigned was the P50,000,000.00 under "Current Operating Expenditures" to fund the P39,343,028.00 expense under Ordinance No. 0254, Series of 1998, and not the P39,352,047.75 under Ordinance No. 0247, Series of 1997, was further clarified by petitioners during their oral argument before this Court on April 20, 1999. [8]

Second. Respondents insist that Ordinance No. 0254, Series of 1998 was passed without funds actually available. In support of their contention, they cite the dissenting opinion of Justice Kapunan that "there was no "unavoidable discontinuance" or an "abandonment of the work or activity" as contemplated under Section 321 of the Local Government Code since the records do not indicate that the expropriation case before the Regional Trial Court was actually withdrawn, suspended, discontinued or abandoned by the City of Caloocan.

This argument however is wrongfully premised as it presupposes the identity, which does not however exist, between the P39,352,047.75 appropriated under Ordinance No. 0246, Series of 1997, and the P39,343,028.00 appropriated under Ordinance No. 0254, Series of 1998. The former which was a 1997 appropriation was never touched for the expropriation of the Maysilo Lot and did not materialize, while the latter was sourced from the 1998 Annual Budget under "Current Operating Expenditures" by realigning the allocation of P50,000,000.00 therefrom to fund the items in Ordinance No. 0254, Series of 1998. Since the P50,000,000.00 appropriation is classified neither as capital outlay nor as a continuing appropriation [9] but as "Current Operating Expenditures," it could be a valid subject of realignment.

Third. Respondents maintain that Ordinance No. 0254, Series of 1998 was enacted without sufficient compliance with the requirement of Section 50 of the Local Government Code requiring that house rules be adopted or updated.

The records satisfactorily show, however, that the Sanggunian took up the matter of adopting a set of house rules in its general meeting entitled, "Katitikan ng Karaniwang Pulong ng Sangguniang Panlungsod na ginanap noong ika-2 ng Hulyo 1998 sa Bagong Gusali ng Pamahalaang Lungsod ng Caloocan." [10] During said meeting, the Sanggunian created an Ad Hoc Committee composed of seven (7) members to study the existing house rules. Thereafter, it enacted Ordinance No. 0254, Series of 1998.

As we have held in our Decision dated July 27, 1999, such succession of events is legally permissible. The law does not require the completion of the updating or adoption of the internal rules of procedure before the Sanggunian could act on any other matter like the enactment of an ordinance. It simply requires that the matter of adopting or updating the internal rules of procedure be taken up during the first day of session. It would be inequitable to read something more into the requirement of the law and use it as a basis for finding petitioners

guilty of misconduct, especially when the charge is serious enough to warrant a penalty of suspension from office for three (3) months without pay.

Fourth. Respondents maintain that assuming that the Sanggunian can legally take up matters pertaining to the supplemental budget even before the adoption or updating of its existing rules of procedure, the circumstances that preceded the enactment of the supplemental budget were irregular since there was undue haste in conducting the three readings of Ordinance No. 0254, Series of 1998, in one session day.

There is nothing in the law, however, which prohibits that the three readings of a proposed ordinance be held in just one session day. Respondents themselves are aware of this. And it certainly is not the function of this Court to speculate that the councilors were not given ample time for reflection and circumspection before the passage of the proposed ordinance by conducting the three readings in just one day considering that it was a certain Eduardo Tibor, by himself as taxpayer, and not the councilors themselves, who raised such complaint. It might not be amiss to point out that the salaries of the city employees were to be funded by the said ordinance which embodied the supplemental budget for 1998, hence, the urgency for its passage. Even the five (5) councilors^[11] who abstained from voting for the passage of Ordinance 0254, Series of 1998 took advantage of its benefits by submitting to the office of petitioner Malonzo the names of the employees assigned to their respective offices for salary and accounting purposes.^[12]

Finally. Respondents assert that assuming that the OP erred in its appreciation of the facts on record, no grave abuse of discretion correctible by a special civil action for certiorari may be attributed thereto.

But there was grave abuse of discretion on the part of the OP. Its findings are totally devoid of support in the record. Hence, the Decision of respondent Executive Secretary, suspending the petitioners, on the basis of the said findings, constitutes grave abuse of discretion amounting to an act done in excess of jurisdiction.

WHEREFORE, the respondents' motion for reconsideration is DENIED with FINALITY.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and Gonzaga-Reyes, JJ., concur.

Davide, Jr. C.J., no part as he did not take part in the decision.

Kapunan, J., maintained and reiterated his dissenting opinion in the main decision.

Pardo, J., see dissenting opinion.

Ynares-Santiago, J., joins the dissenting opinion of Justice Pardo.

[1] In O.P. Case No. 98-H-8520 entitled "Eduardo Tibor vs. Mayor Reynaldo Malonzo, in his capacity as City Mayor of Caloocan, Oscar G. Malapitan in his capacity as Vice Mayor and Presiding Officer of the Sangguniang Panlungsod of Caloocan City, Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolatre, Susana Punzalan, Henry Camayo and Luis Tito Varela, in their capacities as Councilors of Caloocan City."

[2] Rollo, pp. 507-508.

[3] Rollo, pp. 530-577.

[4] Annex "E" of Petition, Rollo, pp. 75-100.

[5] Entitled "An Ordinance Amending and Supplementing the Provisions of City Ordinance 0168, Series of 1994 and for Other Related Purposes".

[6] Entitled, "An Ordinance Providing Payment for Approved Items in the Supplemental Budget No. 1, Calendar Year 1998 and Appropriating Corresponding Amount Which shall be Taken from the General Fund (Reversion of Appropriation-Expropriation of Properties)".

[7] Rollo, p. 89.

[8] TSN dated April 20, 1999, pp. 24-26.

[9] Defined under Title V, Chapter I, Section 306 (e) of the LGC as "appropriation available to support obligations for a specified purpose or projects, such as those for the construction of physical structures or for the acquisition of real property or equipment, even when these obligations are incurred beyond the budget year.

[10] Rollo, pp. 400-401.

[11] Councilors Macario Asistio III, Eduardo H. Rosca, Benedicto Gonzales, Jr., Isaac Domingo and Eloisa Pandi.

[12] Rollo, pp. 186-191.

DISSENTING

PARDO, J.:

I regret that I must dissent from the resolution on respondents' motion for reconsideration. I reiterate my view joining Justice Kapunan in his dissent on the main decision.

The opinion of the ponente would hold that the respondents' findings of facts were faulty, reason for its substitution with the Court's own findings on the facts. This is not allowed in the present case. We cannot substitute our findings for that of the Executive Secretary on a matter within his jurisdiction. The case before us is for certiorari as a special civil action under Rule 65 of the 1997 Rules of Civil Procedure, as amended. If there be errors in the findings of the Office of the President, review thereof must be via petition for review filed with the Court of Appeals, under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

The question presented is whether the Executive Secretary acted without jurisdiction or with grave abuse of discretion in imposing the penalty of suspension on a finding of misconduct in office. Hence, what we may review are solely errors of jurisdiction or grave abuse of discretion. The petition at bar does not raise a genuine jurisdictional issue. The issue according to the ponencia is whether the realignment of appropriation was permissible under the supplemental ordinance hurriedly enacted by the majority members of the Sangguniang Bayan and approved by the Mayor. This is not an issue of jurisdiction. Any error in resolving the issue is an error of judgment, not reviewable by certiorari.

In the judgment of the Office of the President, the Mayor erred in realigning appropriation for capital outlay--for the expropriation of certain lands--to salaries and wages of personnel in the supplemental budget. Even if we disagree with the Office of the President on the penalty imposed, we have to concede that the latter's decision was not done with grave abuse of discretion. We can not pontificate an error of judgment as a grave abuse of discretion.

Consequently, I vote to grant respondents' motion for reconsideration.

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