

RAMIR R. PABLICO, PETITIONER, VS. ALEJANDRO A. VILLAPANDO, RESPONDENT.

G.R. No. 147870. July 31, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

May local legislative bodies and/or the Office of the President, on appeal, validly impose the penalty of dismissal from service on erring elective local officials?

This purely legal issue was posed in connection with a dispute over the mayoralty seat of San Vicente, Palawan. Considering that the term of the contested office expired on June 30, 2001,[1] the present case may be dismissed for having become moot and academic.[2] Nonetheless, we resolved to pass upon the above-stated issue concerning the application of certain provisions of the Local Government Code of 1991.

The undisputed facts are as follows:

On August 5, 1999, Solomon B. Maagad, and Renato M. Fernandez, both members of the Sangguniang Bayan of San Vicente, Palawan, filed with the Sangguniang Panlalawigan of Palawan an administrative complaint against respondent Alejandro A. Villapando, then Mayor of San Vicente, Palawan, for abuse of authority and culpable violation of the Constitution.[3] Complainants alleged that respondent, on behalf of the municipality, entered into a consultancy agreement with Orlando M. Tiape, a defeated mayoralty candidate in the May 1998 elections. They argue that the consultancy agreement amounted to an appointment to a government position within the prohibited one-year period under Article IX-B, Section 6, of the 1987 Constitution.

In his answer, respondent countered that he did not appoint Tiape, rather, he merely hired him. He invoked Opinion No. 106, s. 1992, of the Department of Justice dated August 21, 1992, stating that the appointment of a defeated candidate within one year from the election as a consultant does not constitute an appointment to a government office or position as prohibited by the Constitution.

On February 1, 2000, the Sangguniang Panlalawigan of Palawan found respondent guilty of the administrative charge and imposed on him the penalty of dismissal from service.[4] Respondent appealed to the Office of the President which, on May 29, 2000, affirmed the decision of the Sangguniang Panlalawigan of Palawan.[5]

Pending respondent's motion for reconsideration of the decision of the Office of the President, or on June 16, 2000, petitioner Ramir R. Pablico, then Vice-mayor of San Vicente, Palawan, took his oath of office as Municipal Mayor. Consequently, respondent filed with the Regional Trial Court of Palawan a petition for certiorari and prohibition with preliminary injunction and prayer for a temporary restraining order, docketed as SPL Proc. No. 3462.[6] The petition, seeks to annul, inter alia, the oath administered to petitioner. The Executive Judge granted a Temporary Restraining Order effective for 72 hours, as a result of which petitioner ceased from discharging the functions of mayor. Meanwhile, the case was raffled to Branch 95 which, on June 23, 2000, denied respondent's motion for extension of the 72-hour temporary restraining order.[7] Hence, petitioner resumed his assumption of

the functions of Mayor of San Vicente, Palawan.

On July 4, 2000, respondent instituted a petition for certiorari and prohibition before the Court of Appeals seeking to annul: (1) the May 29, 2000 decision of the Office of the President; (2) the February 1, 2000, decision of the Sangguniang Panlalawigan of Palawan; and (3) the June 23, 2000 order of the Regional Trial Court of Palawan, Branch 95.

On March 16, 2001, the Court of Appeals[8] declared void the assailed decisions of the Office of the President and the Sangguniang Panlalawigan of Palawan, and ordered petitioner to vacate the Office of Mayor of San Vicente, Palawan.[9] A motion for reconsideration was denied on April 23, 2001.[10] Hence, the instant petition for review.

The pertinent portion of Section 60 of the Local Government Code of 1991 provides:

Section 60. Grounds for Disciplinary Actions. – An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

x x x x x x x x

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

(Emphasis supplied)

It is clear from the last paragraph of the aforecited provision that the penalty of dismissal from service upon an erring elective local official may be decreed only by a court of law. Thus, in *Salalima, et al. v. Guingona, et al.*,^[11] we held that “[t]he Office of the President is without any power to remove elected officials, since such power is exclusively vested in the proper courts as expressly provided for in the last paragraph of the aforequoted Section 60.”

Article 124 (b), Rule XIX of the Rules and Regulations Implementing the Local Government Code, however, adds that – “(b) An elective local official may be removed from office on the grounds enumerated in paragraph (a) of this Article [The grounds enumerated in Section 60, Local Government Code of 1991] by order of the proper court or the disciplining authority whichever first acquires jurisdiction to the exclusion of the other.” The disciplining authority referred to pertains to the Sangguniang Panlalawigan/Panlungsod/Bayan and the Office of the President.^[12]

As held in *Salalima*,^[13] this grant to the “disciplining authority” of the power to remove elective local officials is clearly beyond the authority of the Oversight Committee that prepared the Rules and Regulations. No rule or regulation may alter, amend, or contravene a provision of law, such as the Local Government Code. Implementing rules should conform, not clash, with the law that they implement, for a regulation which operates to create a rule out of harmony with the statute is a nullity. Even Senator Aquilino Q. Pimentel, Jr., the principal author of the Local Government Code of 1991, expressed doubt as to the validity of Article 124 (b), Rule XIX of the implementing rules.^[14]

Verily, the clear legislative intent to make the subject power of removal a judicial prerogative is patent from the deliberations in the Senate quoted as follows:

x x x x x x x x

Senator Pimentel. This has been reserved, Mr. President, including the issue of whether or not the Department Secretary or the Office of the President can suspend or remove an elective official.

Senator Saguisag. For as long as that is open for some later disposition, may I just add the following thought: It

seems to me that instead of identifying only the proper regional trial court or the Sandiganbayan, and since we know that in the case of a regional trial court, particularly, a case may be appealed or may be the subject of an injunction, in the framing of this later on, I would like to suggest that we consider replacing the phrase “PROPER REGIONAL TRIAL COURT OR THE SANDIGANBAYAN” simply by “COURTS”. Kasi po, maaaring sabihin nila na mali iyong regional trial court o ang Sandiganbayan.

Senator Pimentel. “OR THE PROPER COURT.”

Senator Saguisag. “OR THE PROPER COURT.”

Senator Pimentel. Thank you. We are willing to accept that now, Mr. President.

Senator Saguisag. It is to be incorporated in the phraseology that will craft to capture the other ideas that have been elevated.

x x x x x x x x.[15]

It is beyond cavil, therefore, that the power to remove erring elective local officials from service is lodged exclusively with the courts. Hence, Article 124 (b), Rule XIX, of the Rules and Regulations Implementing the Local Government Code, insofar as it vests power on the “disciplining authority” to remove from office erring elective local officials, is void for being repugnant to the last paragraph of Section 60 of the Local Government Code of 1991. The law on suspension or removal of elective public officials must be strictly construed and applied, and the authority in whom such power of suspension or removal is vested must exercise it with utmost good faith, for what is involved is not just an ordinary public official but one chosen by the people through the exercise of their constitutional right of suffrage. Their will must not be put to naught by the caprice or partisanship of the disciplining authority. Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove.[16] As explained by the Court in *Lacson v. Roque*:[17]

“...the abridgment of the power to remove or suspend an elective mayor is not without its own justification, and was, we think, deliberately intended by the lawmakers. The evils resulting from a restricted authority to suspend or remove must have been weighed against the injustices and harms to the public interests which would be likely to emerge from an unrestrained discretionary power to suspend and remove.”

WHEREFORE, in view of the foregoing, the instant petition for review is DENIED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] See Rollo, p. 422.

[2] *Malaluan v. Commission on Elections, et al.*, 254 SCRA 397, 403-404 [1996], citing *Atienza v. Commission on Elections*, 239 SCRA 298 [1994]; *Abeja v. Tañada*, 236 SCRA 60 [1994]; *Yorac v. Magalona*, 3 SCRA 76 [1961].

[3] Rollo, p. 74.

[4] Rollo, p. 135.

[5] Rollo, p. 208.

[6]Rollo, p. 212.

[7]CA Rollo, p. 94.

[8]Third Division, composed of Associate Justices Hilarion L. Aquino (ponente); Jose L. Sabio, Jr. (member); and Ma. Alicia Austria-Martinez (chairman).

[9] Rollo, p. 32.

[10]Rollo, p. 55.

[11]257 SCRA 55, 100 [1996].

[12]Section 61. Form and Filing of Administrative Complaints. --- A verified complaint against any erring local elective official shall be prepared as follows:

- A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President;
- A complaint against any elective official of a municipality shall be filed before the sangguniang panlalawigan whose decision may be appealed to the Office of the President; and
- A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory.

[13] Supra, citing Regidor v. Chiongbian, 173 SCRA 507 [1989]; Teoxon v. Members of the Board of Administrators, PVA, 33 SCRA 585 [1970]; Manuel v. General Auditing Office, 42 SCRA 660 [1971].

[14]Aquilino Q. Pimentel, Jr., The Local Government Code of 1991, The Key to National Development, 171 [1993 ed.].

[15]Deliberations of the Senate on the Local Government Code of 1991, August 1, 1990, pp. 39-40.

[16]Salalima v. Guingona, supra.

[17]92 Phil. 456, 464 [1953].

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