

**GOV. ANTONIO CALINGIN, PETITIONER, VS. COURT OF APPEALS,
SPECIAL 17TH DIVISION, EXECUTIVE SECRETARY RENATO S. DE
VILLA, DEPT. OF INTERIOR & LOCAL GOVERNMENT
SECRETARY JOEY LINA,...**

G.R. No. 154616. July 12, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review seeking to annul the Resolution[1] dated May 11, 2001 of the Court of Appeals in CA-G.R. SP No. 64583, which denied petitioner Governor Antonio Calingin's petition for prohibition with prayer for temporary restraining order and/or the issuance of an order of status quo ante, as well as its Resolution[2] dated July 1, 2002, denying the motion for reconsideration.

The antecedent facts, as summarized by the Court of Appeals and borne by the records, are as follows:

The Office of the President issued a Resolution[3] dated March 22, 2001 in OP Case No. 00-1-9220 (DILG ADM. Case No. P-16-99) entitled Vice Governor Danilo P. Lagbas, et al. versus Governor Antonio P. Calingin (Misamis Oriental) suspending Gov. Calingin for 90 days. On April 30, 2001, Undersecretary Eduardo R. Soliman of the Department of the Interior and Local Government (DILG), by authority of Secretary Jose D. Lina, Jr., issued a Memorandum[4] implementing the said Resolution of the Office of the President. On May 3, 2001, Gov. Calingin filed before the Office of the President a Motion for Reconsideration.[5]

The DILG Memorandum bore the authority of the Commission on Elections (COMELEC) which granted an exemption to the election ban in the movement of any public officer in its Resolution No. 3992[6] promulgated on April 24, 2001. This was in pursuance to COMELEC Resolution No. 3401 which provides in part that

Section 1. Prohibited Acts – (a) During the election period from January 2, 2001 until July 13, 2001, no public official shall make or cause any transfer/detail whatsoever of any officer or employee in the civil service, including public school teachers, or suspend elective provincial, city, municipal or barangay official, except upon prior written approval of the Commission.

On May 7, 2001, Gov. Calingin filed a petition for prohibition before the Court of Appeals to prevent the DILG from executing the assailed suspension order. However, on May 11, 2001, the Court of Appeals dismissed the said petition and by resolution issued on July 1, 2002, denied petitioner's motion for reconsideration.

Hence, this appeal by certiorari where petitioner asserts that the Court of Appeals erred in

... FINDING THAT THE EXECUTION OF THE SUSPENSION ORDER OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT DURING THE ELECTION PERIOD IS WITH AUTHORITY FROM THE COMMISSION ON ELECTIONS.

... FINDING THAT THE DECISION OF THE OFFICE OF THE PRESIDENT IS FINAL AND

EXECUTORY AS PROVIDED IN SECTION 67, CHAPTER 4, OF REPUBLIC ACT 7160, THE LOCAL GOVERNMENT CODE OF 1991.[7]

In dispute is the validity of the DILG Memorandum implementing the suspension order issued by the Office of the President. We are asked to resolve in this connection two issues: (1) Was the decision of the Office of the President already final and executory? and (2) Was the exemption from the election ban in the movement of any public officer granted by COMELEC valid?

Petitioner contends that decisions of the Office of the President on cases where it has original jurisdiction become final and executory only after the lapse of 15 days from the receipt thereof and that the filing of a Motion for Reconsideration shall suspend the running of the said period[8] in accordance with Section 15,[9] Chapter 3, Book VII of the Administrative Code of 1987.

Petitioner further contends that Section 67,[10] Chapter 4 of the Local Government Code (Rep. Act 7160), which provides that decisions of the Office of the President shall be final and executory, applies only to decisions of the Office of the President on administrative cases appealed from the sangguniang panlalawigan, sangguniang panlungsod of highly-urbanized cities and independent component cities, and sangguniang bayan of municipalities within the Metro Manila Area. It does not cover decisions on cases where the Office of the President has original jurisdiction such as those involving a Provincial Governor.[11]

In *Lapid v. Court of Appeals*,[12] we held that it is a principle of statutory construction that where there are two statutes that apply to a particular case, that which was specially intended for the said case must prevail. The case on hand involves a disciplinary action against an elective local official. Thus, the Local Government Code is the applicable law and must prevail over the Administrative Code which is of general application.[13] Further, the Local Government Code of 1991 was enacted much later than the Administrative Code of 1987. In statutory construction, all laws or parts thereof which are inconsistent with the later law are repealed or modified accordingly.[14]

Besides, even though appeal to the Court of Appeals is granted under Sec. 1,[15] Rule 43 of the Revised Rules of Court, Sec. 12,[16] Rule 43 of the Revised Rules of Court in relation to Sec. 68[17] of the Local Government Code provides for the immediate execution pending appeal. Under the same case of *Lapid v. Court of Appeals*,[18] we enunciated that the decisions of the Office of the President under the Local Government Code are immediately executory even pending appeal because the pertinent laws under which the decisions were rendered mandated them to be so.

In sum, the decisions of the Office of the President are final and executory. No motion for reconsideration is allowed by law but the parties may appeal the decision to the Court of Appeals. The appeal, however, does not stay the execution of the decision. Thus, the DILG Secretary may validly move for its immediate execution.

As to the validity of the exemption granted by COMELEC in its Resolution No. 3992, petitioner claims that the exemption was invalid for being based on a mere draft resolution. According to him, a draft resolution does not operate as a final resolution of a case until the proper resolution is duly signed and promulgated. Petitioner maintains that a draft cannot produce any legal effect.

A perusal of the records, however, reveals that the Resolution in O.P. Case No. 00-1-9220 was approved and signed on March 22, 2001 by Executive Secretary Renato de Villa by the authority of the President. Hence, the approval was before the promulgation of COMELEC Resolution No. 3992 on April 24, 2001. The record also shows that the request to implement the said suspension order was filed on March 22, 2001 by the Senior Deputy Executive Secretary of the Office of the President pursuant to the requirements stated in the Resolution.

Moreover, COMELEC Resolution No. 3529[19] – which may be applied by analogy and in relation to Sec. 2[20] of COMELEC Resolution No. 3401 – merely requires the request to be in writing indicating the office and place from which the officer is removed, and the reason for said movement, and submitted together with the formal complaint executed under oath and containing the specific charges and the answer to said complaint. The request for the exemption was accompanied with the Affidavit of Complaint, Affidavit of Controversion, Reply and Draft Resolution. The pertinent documents required by the COMELEC to substantiate the request were submitted. There being a proper basis for its grant of exemption, COMELEC Resolution No. 3992 is valid.

WHEREFORE, the instant petition for review on certiorari is DENIED. The assailed Court of Appeals' resolutions dated May 11, 2002 and July 1, 2002 in CA-G.R. SP No. 64583 are hereby AFFIRMED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[*] Also referred to as DILG Sec. Jose D. Lina, Jr.

[1] Rollo, pp. 26-34.

[2] Id. at 36-37.

[3] Id. at 55-58.

[4] Id. at 38-39, 51-52.

[5] Id. at 60-64.

[6] Id. at 67-75.

[7] Id. at 9.

[8] Id. at 17-18.

[9] SEC. 15. Finality of Order. – The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

[10] SEC. 67. Administrative Appeals. – Decisions in administrative cases may, within thirty (30) days from receipt thereof, be appealed to the following:

(a) The sangguniang panlalawigan, in the case of decisions of the sangguniang panlungsod of component cities and the sangguniang bayan; and

(b) The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities.

Decisions of the Office of the President shall be final and executory.

[11] Records, p. 16.

[12] G.R. No. 142261, 29 June 2000, 334 SCRA 738, 754.

[13] *Corona v. Court of Appeals*, G.R. No. 97356, 30 September 1992, 214 SCRA 378, 391-392; See also

Zaldivia v. Reyes, Jr., G.R. No. 102342, 3 July 1992, 211 SCRA 277, 284.

[14] Ruben Agpalo, STATUTORY CONSTRUCTION, Third Edition, p. 321.

[15] SEC. 1. Scope. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, ...Office of the President, ... (Emphasis supplied)

[16] SEC. 12. Effect of appeal. – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

[17] SEC. 68. Execution Pending Appeal. – An appeal shall not prevent a decision from becoming final or executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal.

[18] Supra, note 12 at 752.

[19] Premises considered, the Commission RESOLVED, as it hereby RESOLVES, to approve the addendum to Sec. 2 of Resolution No. 3401, promulgated on 15 December 2000 to read as follows:

SEC. 2....

Any request for authority to suspend an elective city and barangay officer shall be submitted in writing to the commission, together with the formal complaint containing the specific charges, executed under oath and the answer to said complaint.

. . .

[20] SEC. 2. Requests for authority of the Commission. How to file: (1) ...The requests shall indicate the office and place to which the officer or employee is proposed to be transferred/detailed or otherwise moved and the reason for said transfer/detail.

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