

MAYOR SOBAIDA T. BALINDONG OF THE MUNICIPALITY OF TAGOLOAN, PROVINCE OF LANAOS DEL NORTE, PETITIONER, VS. VICE GOVERNOR TIMOTEO D. DACALOS, PROVINCIAL BOARD MEMBERS CESAR R. CANO...

G.R. No. 158874. November 10, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari under Rule 45,[1] with an application for the issuance by this Court of a writ of preliminary prohibitory injunction and a prayer for temporary restraining order.[2] The petition assails the Decision of the Court of Appeals[3] in CA-G.R. SP No. 68003 promulgated on 30 June 2003, which held that the mode of appeal taken by the petitioner is erroneous. The dispositive portion of said decision reads:

WHEREFORE, the instant petition for certiorari, prohibition and mandamus is DENIED DUE COURSE and DISMISSED.

The relevant facts are as follows:

Mayor Sobaida Balindong was elected Municipal Mayor of Tagoloan, Lanao Del Norte, in the simultaneous local and national elections in May 2001, and assumed her duties after taking her oath of office on 30 June 2001.[4]

On 10 August 2001, petitioner received a Notice that an administrative case for Dishonesty, Oppression, Grave Misconduct, Abuse of Authority, and Usurpation of Authority, was filed against her by Municipal Treasurer Mia M. Dimaalam before the Sangguniang Panlalawigan of Lanao Del Norte, docketed as Administrative Case No. 01-2001.[5]

On 08 November 2001, a Decision[6] was issued by the Sangguniang Panlalawigan of Lanao Del Norte suspending petitioner for a period of six (6) months, the decretal portion of which states:

WHEREFORE, premises considered, this BODY finds the Respondent guilty by substantial, preponderance and convincing evidence GUILTY of MISCONDUCT IN OFFICE and/or GRAVE ABUSE OF AUTHORITY, and hereby imposes upon her the PENALTY of SUSPENSION for a period of SIX (6) MONTHS as provided for in Sec. 66-b of RA 7160 effective immediately upon receipt of this Decision in accordance with Sec. 68 of RA 7160 which provides, that:

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 the appeal. . . .

On 06 December 2001, petitioner filed a petition under Rule 65[7] for certiorari, prohibition and mandamus, with application for issuance of writ of preliminary injunction or preliminary mandatory injunction and prayer for issuance of temporary restraining order or status quo order before the Court of Appeals, docketed as CA-G.R. SP No. 68003.[8]

The Special First Division of the Court of Appeals issued a temporary restraining order on 18 December 2001.[9] Thereafter, on 13 March 2002, a Resolution[10] was issued by the same body granting petitioner's application for a writ of preliminary prohibitory injunction upon posting of an injunction bond in the amount of One Hundred Thousand Pesos (P100,000). Petitioner complied, and on 26 March 2002, the injunction bond was approved.[11]

On 01 April 2002, the Court of Appeals issued a writ of preliminary prohibitory injunction[12] enjoining respondents Gov. Imelda Dimaporo, Vice Gov. Timoteo Dacalos, the members of the Provincial Board of Lanao Del Norte, and all other persons acting for and in their behalf, from executing or implementing the Order of suspension against petitioner and/or in furtherance thereof, pending termination of the litigation unless sooner lifted by the same Court.

On 30 June 2003, the Court of Appeals[13] promulgated the assailed decision, part of which is quoted hereunder:

But unfortunately, the remedies of appeal and certiorari are mutually exclusive and not alternative or successive (*Obando vs. Court of Appeals*, 366 SCRA 673). More so when the law, that is the Local Government Code, explicitly provides the proper remedy is appeal and the forum to go is the Office of the President.

The rationale of the Court of Appeals in dismissing the petition is quite simple. Petitioner should have appealed the decision of the Sangguniang Panlalawigan of Lanao Del Norte to the Office of the President pursuant to the Local Government Code.

Sections 61(b) and 67(b) of the Local Government Code of 1991 are germane on the matter, to wit:

Sec. 61. Form and Filing of Administrative Complaints. – A verified complaint against any erring local elective official shall be prepared as follows:

...

(b) 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; . . .

...

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

...

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

It is apparent from the foregoing provisions of law that the remedy of appeal to the Office of the President was available to petitioner. Since appeal was available, resort to filing a petition for certiorari, prohibition and mandamus with the Court of Appeals under Rule 65,[14] was inapt.

The essential requisites for a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction; or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[15]

The existence and availability of the right of appeal proscribes a resort to certiorari, because one of the requirements for availment of the latter remedy is precisely that there should be no appeal.[16]

The writ of certiorari dealt with in Rule 65 of the Rules of Court is a prerogative writ, never demandable as a matter of right, “never issued except in the exercise of judicial discretion.”[17] Under the circumstances of this case, petitioner failed to clearly show that an appeal to the Office of the President was not the plain, speedy, and adequate remedy, which would justify judicial intervention.

Well settled is the rule that certiorari will lie only when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[18] As a condition for the filing of a petition for certiorari, Section 1 of Rule 65 of the Rules of Court additionally requires that “no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law” must be available.[19]

It is, thus, clear that the availability of the right of appeal precludes recourse to the special civil action for certiorari.[20]

Lastly, we are not convinced that the exceptions to the rule of exhaustion of administrative remedies apply in this case since the petitioner failed to clearly show that flexibility in its application is warranted.

WHEREFORE, finding no reversible error on the part of the Court of Appeals, the ancillary reliefs prayed for are denied, and the petition is, as it is hereby, DISMISSED. Costs against petitioner.

SO ORDERED.

Austria-Martinez, (Acting Chairman), and Callejo, Sr., JJ., concur.
Puno, (Chairman), J., on official leave.
Tinga, J., on leave.

[1] 1997 Rules of Civil Procedure.

[2] Rollo, p. 9.

[3] Rollo, pp. 60-73, penned by Justice Roberto Barrios, with Justices Bienvenido Reyes and Rebecca De Guia-Salvador, concurring.

[4] Rollo, p. 13.

[5] Rollo, pp. 16, 85-86.

[6] Rollo, pp. 74-80.

[7] 1997 Rules of Civil Procedure.

[8] Rollo, p. 26.

[9] Rollo, p. 26.

[10] Rollo, pp. 212-214.

[11] Rollo, pp. 216-217.

[12] Rollo, pp. 218-219.

[13] Rollo, p. 71.

[14] 1997 Rules of Civil Procedure.

[15] *Rivera v. Espiritu*, G.R. No. 135547, 23 January 2002, 374 SCRA 351.

[16] *Metropolitan Manila Development Authority v. JANCOM Environmental Corp.*, G.R. No. 147465, 30 January 2002, 375 SCRA 320.

[17] *Nunal v. Commission on Audit*, G.R. No. 78648, 24 January 1989, 169 SCRA 356.

[18] Section 1 of Rule 65 of the 1997 Rules of Civil Procedure.

[19] *Oaminal v. Castillo*, G.R. No. 152776, 08 October 2003, 413 SCRA 189, citing *National Steel Corporation v. Court of Appeals*, 381 Phil. 219 (2000); *Province of Bulacan v. Court of Appeals*, 359 Phil. 779 (1998).

[20] *Ibid.*, citing *Ley Construction and Devt. Corp. v. Hyatt Industrial Manufacturing Corp.*, G.R. No. 133145, 29 August 2000, 339 SCRA 223, and *Raymundo v. Court of Appeals*, G.R. No. 137793, 29 September 1999, 315 SCRA 494.

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