

**MAYOR EDGARDO G. FLORES, PETITIONER VS. SANGGUNIAN
PANLALAWIGAN OF PAMPANGA, GOVERNOR MANUEL M. LAPID OF
PAMPANGA, MUNICIPAL COUNCILORS VANZALON F. TIZON,
ROMULO N. MANDAP, EDG...**

G.R. NO. 159022. February 23, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari assailing the Decision[1] of the Court of Appeals dated February 17, 2003, in CA-G.R. SP No. 72958 and its Resolution[2] dated June 27, 2003.

On December 19, 2001, an administrative complaint for dishonesty and gross misconduct against then Mayor Edgardo G. Flores of Minalin, Pampanga, petitioner, was filed with the Sangguniang Panlalawigan of the same province, one of the respondents herein. The complainants were the municipal councilors of Minalin, namely: Vanzalon F. Tizon, Romulo N. Mandap, Edgardo P. Yambao, Jerome M. Tongol, Marciano L. Sacdalan, and Ricky Y. Narciso, now respondents.

The administrative complaint against petitioner alleged that on August 1, 2001, he executed Purchase Request No. 1 for the acquisition of a communication equipment amounting to P293,000.00 without any Resolution or Ordinance enacted by the Sangguniang Bayan of Minalin. The winning bidder was one Kai Electronics. On August 6, 2001, or while the bidding was still being conducted, Kai Electronics delivered the communication equipment to the municipality of Minalin. The Notice of Award of Bid to Kai Electronics states that the bidding took place also on August 1, 2001 when respondent executed the Purchase Request No. 1. The communication equipment delivered by Kai Electronics was overpriced by more than one hundred percent (100%) or in the amount of P129,600.00.

On September 9, 2002, respondent Sangguniang Panlalawigan issued an Order recommending to Governor Manuel M. Lapid of Pampanga, also a respondent, that petitioner be preventively suspended from office for a period of sixty (60) days.

Without seeking a reconsideration of the Order of respondent Sangguniang Panlalawigan, petitioner sent a letter dated September 12, 2002 to respondent Governor Lapid requesting him “to veto” the same.

Also, without waiting for respondent Governor Lapid’s action on his letter, petitioner, on September 24, 2002, filed with the Court of Appeals a petition for certiorari,[3] docketed as CA-G.R. SP No. 72958. He contended that respondent Sangguniang Panlalawigan acted with grave abuse of discretion in issuing the Order of preventive suspension, hence, the same should be nullified.

On February 17, 2003, the Court of Appeals rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, the instant petition is DENIED and DISMISSED for lack of merit. The assailed Order dated

September 9, 2002 issued by respondent Sangguniang Panlalawigan of Pampanga in Administrative Case No. 02-2001 is AFFIRMED.

SO ORDERED.”[4]

In ruling against the petitioner, the Court of Appeals held that he failed to exhaust all administrative remedies before going to court. Moreover, respondent Sangguniang Panlalawigan of Pampanga did not gravely abuse its discretion when it issued the challenged Order considering that the allegation of overpricing is supported by documentary evidence. There is also sufficient evidence to prove that the bidding and the awarding of the contract to Kai Electronics were done under questionable circumstances.

Petitioner then filed a motion for reconsideration, but this was denied by the Appellate Court in its Resolution dated June 27, 2003.

Hence, the instant petition.

The pivotal issue here is whether the Court of Appeals erred in holding that the petition in CA-G.R. SP No. 72958 was prematurely filed as petitioner failed to exhaust first all administrative remedies.

Section 61 of Republic Act No. 7160 (the Local Government Code of 1991) partly provides:

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

x x x;

(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; and

x x x.” (underscoring ours)

The administrative complaint against petitioner was filed with respondent Sangguniang Panlalawigan of Pampanga in accordance with the above provision. After receiving the Order of respondent Sangguniang Panlalawigan preventively suspending him from office, petitioner should have filed a motion for reconsideration in order to give the latter the opportunity to correct itself if there was any error on its part. Such motion is a condition sine qua non before filing a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.[5] Section 1 of the same Rule requires that petitioner must not only show that respondent Sangguniang Panlalawigan, in issuing the questioned Order, “acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction,” but that “there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.”[6] We have held that the “plain” and “adequate remedy” referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed Order or Resolution.[7] Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not.[8] To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so.[9] This, petitioner failed to do. Thus, the Court of Appeals correctly held that petitioner should have first interposed a motion for reconsideration of the questioned Order issued by respondent Sangguniang Panlalawigan.

We must add that petitioner, before filing with the Court of Appeals his petition for certiorari, should have waited for respondent Governor Lapid’s action on the recommendation of respondent Sangguniang Panlalawigan that he be preventively suspended from office; and on his letter requesting the Governor to veto the questioned Order, considering that the latter is the one empowered by law to impose preventive suspension upon him. Section 63 of the Local Government Code of 1991 partly provides:

“SEC 63. Preventive Suspension. –

(a) Preventive suspension may be imposed:

(1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;

(2) By the governor, if the respondent is an elective official of a component city or municipality; or

(3) By the mayor, if the respondent is an elective official of the barangay.

x x x.” (underscoring ours)

Petitioner has not shown any valid and compelling reason why, without waiting for the Governor’s action on the matter, he immediately filed with the Court of Appeals a petition for certiorari. By doing so, petitioner effectively deprived the Governor of his duty to take appropriate action on the controversy.

It is a well-settled rule that where, as here, the petitioner has available remedies within the administrative machinery against the action of an administrative board, body, or officer, the intervention of the courts can be resorted to by him only after having exhausted all such remedies.[10] The rationale of this rule rests upon the presumption that the administrative body, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. The strict application of the doctrine of exhaustion of administrative remedies will also prevent unnecessary and premature resort to the court.[11] We cannot countenance petitioner’s utter disregard of this procedural norm and frustrate its purpose of attaining a just, speedy, inexpensive and orderly judicial proceedings.

We likewise find untenable petitioner’s contention that respondent Sangguniang Panlalawigan “acted capriciously and arbitrarily by reason of passion and personal hostility” when it issued the challenged Order “without constituting itself into a Committee of the Whole, as required by its rules of procedure, x x x and without a Committee Report having been prepared yet x x x.”[12] Suffice it to say that this issue involves an examination of factual matters and could have been properly raised by petitioner in a motion for reconsideration of the questioned Order before the Sangguniang Panlalawigan of Pampanga, the proper forum. But he did not do so. He thus forfeited such an important procedural remedy.

WHEREFORE, the petition is DENIED. The appealed Decision dated February 17, 2003 and Resolution dated June 27, 2003 of the Court of Appeals in CA-G.R. SP No. 72958 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Per Associate Justice Bernardo P. Abesamis (retired) and concurred in by Justices Juan Q. Enriquez, Jr., and Edgardo F. Sundiam; Rollo, 26-35.

[2] Rollo at 38.

[3] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[4] Rollo at 35.

[5] *Yau vs. Manila Banking Corporation*, G.R. No. 126731, July 11, 2002, 384 SCRA 340; *Republic vs. Express Telecommunication Co., Inc.*, G.R. No. 147096, January 15, 2002, 373 SCRA 316; *Lee vs. People*, G.R. No.

137914, December 4, 2002, 393 SCRA 397.

[6] Union of Nestle Workers Cagayan de Oro Factory vs. Nestle Philippines, Inc., G.R. No. 148303, October 17, 2002, 391 SCRA 204.

[7] Metro Transit Organization, Inc. vs. Court of Appeals, G.R. No. 142133, November 19, 2002, 392 SCRA 229.

[8] Id.

[9] Id.

[10] Lopez vs. City of Manila, G.R. No. 127139, February 19, 1999, 303 SCRA 448.

[11] Id., citing Cruz vs. Del Rosario, 9 SCRA 755 (1963); Jao Igco vs. Shuster, 10 Phil. 448 (1908); Lamb vs. Phipps, 22 Phil. 456 (1912); Miguel vs. Reyes, G.R. No. L-4851, July 31, 1953; Arnedo vs. Aldanese, 63 Phil. 768 (1936); Tuan Kay vs. Import Control Commission, G.R. No. L-4427, April 31, 1952; Veloso vs. Board of Accountancy, G.R. No. L-5760, April 20, 1953; Lubugan, et al. vs. Castrillo and Malinay, G.R. No. L-10521, May 29, 1957.

[12] Petition, Rollo at 19.

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