

HON. TOMAS N. JOSON III, IN HIS CAPACITY AS GOVERNOR OF THE PROVINCE OF NUEVA ECIJA, AND THE SANGGUNIAN PANLALAWIGAN OF NUEVA ECIJA, PETITIONERS, VS. COURT OF APPEALS AND ELIZA...

G.R. NO. 160652. February 13, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari^[1] with a prayer for the issuance of a temporary restraining order or writ of preliminary injunction. The petition seeks to set aside the Resolution dated 13 October 2003 of the Court of Appeals in CA-G.R. SP No. 78247 granting the writ of preliminary injunction enjoining and restraining Governor Tomas N. Joson III (“Governor Joson”) and the Sangguniang Panlalawigan of Nueva Ecija (“Sangguniang Panlalawigan”) from conducting proceedings in the administrative case against Mayor Elizabeth R. Vargas and from imposing the order of preventive suspension.

The Facts

On 8 January 2003, eight members of the Sangguniang Bayan of Aliaga, Nueva Ecija (“SB Members”), filed with the Sangguniang Panlalawigan an administrative complaint against the incumbent Municipal Mayor of Aliaga, Elizabeth R. Vargas (“Mayor Vargas”), for dishonesty, misconduct in office, and abuse of authority. The SB Members alleged that Mayor Vargas submitted to the Provincial Budget Officer two falsified documents, namely, Appropriation Ordinance No. 1, series of 2002 (“Appropriation Ordinance No. 1”) and Resolution No. 2, series of 2002, approving the enactment of Appropriation Ordinance No. 1. The administrative case was docketed as ADM. CASE No. 02-S-2003.

On 13 February 2003, Mayor Vargas filed a complaint for annulment of falsified minutes of session and appropriation ordinance with damages against the SB members before the Regional Trial Court of Cabanatuan City (“Cabanatuan RTC”). The case was docketed as Civil Case No. 4442.

On 18 February 2003, Mayor Vargas filed before the Sangguniang Panlalawigan a motion to suspend proceedings and/or motion to dismiss due to the pendency of a prejudicial question in Civil Case No. 4442, specifically questioning the genuineness of the documents she allegedly falsified.^[2] Without resolving the motion, the Sangguniang Panlalawigan passed Resolution No. 80-S-2003, dated 3 March 2003, recommending to Governor Joson the preventive suspension of Mayor Vargas for 60 days.^[3] On 17 March 2003, the Sangguniang Panlalawigan issued Resolution No. 105-S-2003, denying Mayor Vargas’ motion to suspend proceedings and/or motion to dismiss.^[4]

Mayor Vargas appealed to the Office of the President praying for the reversal of Resolution No. 105-S-2003 of the Sangguniang Panlalawigan. The case was docketed as O.P. Case No. 03-D-164.

In April 2003, Governor Joson issued an order of preventive suspension against Mayor Vargas. Mayor Vargas filed before the Office of the President a very urgent petition to set aside the suspension order.

On 22 April 2003, the Office of the President, through Acting Deputy Executive Secretary Manuel B. Gaite (“Secretary Gaite”), issued an Order, the dispositive portion of which reads:

ACCORDINGLY, the instant motion is GRANTED and the undated Preventive Suspension Order against Mayor Elizabeth R. Vargas of the municipality of Aliaga, Nueva Ecija is hereby lifted and set aside.

Vice Mayor Victorino E. Reyes who may have assumed the position of Acting Municipal Mayor of Aliaga, Nueva Ecija, is hereby directed to cease and desist from performing the duties of and functions of municipal mayor and vacate the same pending final resolution of Administrative Case No. 02-s-2003. Mayor Vargas may now reassume his (sic) position as such.

The Department of the Interior and Local Government is hereby directed to implement this Order immediately.

SO ORDERED.[5]

On 25 April 2003, Governor Joson filed with the Office of the President a motion for reconsideration. On 8 July 2003, the Office of the President issued a Resolution, the dispositive portion of which reads:

WHEREFORE, the instant motion is hereby GRANTED, and the April 22, 2003 Order subject thereof is hereby recalled and set aside. Accordingly, the Order of Governor Tomas N. Joson III placing Mayor Elizabeth R. Vargas under preventive suspension for a period of sixty (60) days is hereby reinstated.

The Department of Interior and Local Government is directed to implement this resolution immediately.

SO ORDERED.[6]

On 17 July 2003, Mayor Vargas moved for reconsideration of the Resolution dated 8 July 2003. On 18 July 2003, Mayor Vargas filed before the Office of the President an urgent motion to resolve O.P. Case No. 03-D-164.

On 23 July 2003, Mayor Vargas filed before the Court of Appeals a petition for “Certiorari, Prohibition and Mandamus, with Urgent Prayer for Preliminary Injunction or Temporary Restraining Order,” docketed as CA-G.R. SP No. 78247.

On 14 August 2003, the Court of Appeals issued a Resolution, the dispositive portion of which reads:

WHEREFORE, in the interest of justice, to the end that undue prejudice and/or injury may be avoided to any and all parties affected by these proceedings, as well as not to render nugatory and ineffectual the resolution of this Court of the issues herein presented, let a TEMPORARY RESTRAINING ORDER be issued, to be effective upon service and for a period of SIXTY (60) days, unless sooner lifted. ACCORDINGLY, respondents Provincial Governor and the SANGGUNIANG PANLALAWIGAN of the Province of Nueva Ecija are hereby commanded to cease and desist from conducting proceedings in ADMINISTRATIVE CASE No. 02-S-2003, and from enforcing the assailed July 8, 2003 Resolution of the Office of the President, through the Executive Secretary, which directed the reinstatement of the order for petitioner’s preventive suspension. Furthermore, in view of the serious issues involved, let the hearing and consideration of the propriety of the issuance of a preliminary injunction be scheduled on September 2, 2003 at 10:30 AM, Paras Hall, Second Floor, Main Building, Court of Appeals, Ma. Orosa St., Ermita, Manila.

In the meantime, without necessarily giving due course to the instant petition for certiorari, respondents are directed to file a comment, not a motion to dismiss, within ten (10) days from notice. Petitioner, upon the other hand, has five (5) days from receipt of respondents’ comment, to file her reply.

SO ORDERED.[7]

On 13 October 2003, the Court of Appeals resolved to issue a writ of preliminary injunction to further enjoin and restrain Governor Joson from imposing the order of preventive suspension and the Sangguniang Panlalawigan from conducting proceedings in the administrative case against Mayor Vargas.

Hence, this petition.

The Issues

Petitioners contend that:

- THE COURT OF APPEALS ACTED WITH MANIFEST PARTIALITY, ARBITRARILY, AND IN GRAVE ABUSE OF DISCRETION IN ISSUING THE QUESTIONED ORDER BECAUSE –
- RESPONDENT VARGAS AVAILED OF THE WRONG REMEDY WHEN SHE FILED CA-G.R. SP NO. 78247;
- RESPONDENT VARGAS CLEARLY FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING JUDICIAL RELIEF;
- THE PREVENTIVE SUSPENSION ORDER WAS LEGALLY AND VALIDLY ISSUED.
- THE COURT OF APPEALS ACTED ARBITRARILY AND IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DIRECTING PETITIONERS “TO CEASE AND DESIST FROM CONDUCTING PROCEEDINGS IN ADMINISTRATIVE CASE NO. 02-S-2003.”
- THE INSTANT CASE PRESENTS A SITUATION WHEREIN A MOTION FOR RECONSIDERATION MAY BE DISPENSED WITH BEFORE THE INSTANT CERTIORARI CASE CAN BE FILED.[8]

The Ruling of the Court

The petition is without merit.

Petitioners allege that Mayor Vargas should have filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure and not a special civil action for certiorari under Rule 65. Furthermore, Mayor Vargas filed the action for certiorari even while her motion for reconsideration was still pending resolution before the Office of the President. According to petitioners, the Court of Appeals acted with manifest bias and partiality when it issued the writ of preliminary injunction against petitioners despite the filing of a wrong remedy and the non-exhaustion of administrative remedies.

Under Section 1, Rule 65 of the 1997 Rules of Civil Procedure, the writ of certiorari is proper when the following requisites are present:

- It is directed against any tribunal, board or officer exercising judicial or quasi-judicial functions;
- Such tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction; and
- There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

Mayor Vargas filed with the Court of Appeals a special civil action for certiorari under Rule 65 alleging grave abuse of discretion on the part of Secretary Gaitan. Thus, in a Resolution dated 14 August 2003, the Court of Appeals stated:

To question the foregoing Resolution of respondent Executive Secretary, petitioner interposed the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, essentially posing the following

issues: (1) was it proper for respondent Executive Secretary to have ruled that petitioner is considered in default pursuant to Article 126, Rule XIX of the Rules Implementing the Local Government Code of 1991; (2) can the civil case filed by petitioner before the Cabanatuan RTC for annulment of falsified minutes of session and appropriation ordinance with damages be considered a prejudicial question which warrants the suspension of the proceedings in the administrative case; (3) has the respondent Sanggunian[g] Panlalawigan jurisdiction to hear the administrative case filed against herein petitioner, when the relief sought therein is her removal from office.

At first blush, the assailed resolution having being issued by the Office of the President, through the Executive Secretary, it would seem that the proper remedy is an appeal via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. A perusal of the instant petition for certiorari would, however, reveal that petitioner is alleging that the challenged resolution was issued with grave abuse of discretion and beyond respondents' jurisdiction, hence, the appropriate remedy is certiorari under Rule 65. Moreover, assuming *arguendo* that the proper remedy is a petition for review under Rule 43, the Supreme Court has oftentimes ruled that, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, a petition for certiorari may be treated as having been filed under Rule 43, in which case this Court chooses to do so, in view of the gravity and seriousness of the issues involved herein.[9](Emphasis supplied)

The Court finds no grave abuse of discretion on the part of the appellate court in assuming jurisdiction over the case. The special civil action of certiorari is proper to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[10] All the issues submitted for resolution in the Court of Appeals involve questions of law which are reviewable on certiorari.[11]

Exception to the Application of Exhaustion of Administrative Remedies

Under the doctrine of exhaustion of administrative remedies, a litigant cannot go to court without first pursuing his administrative remedies, otherwise his action is premature and his case is not ripe for judicial determination.[12] A litigant should first exhaust the administrative remedies provided by law before seeking judicial intervention in order to give the administrative agency an opportunity to decide correctly the matter and prevent unnecessary and premature resort to the court.[13]

However, the Court recognizes some exceptions to the rule of exhaustion of administrative remedies. As held in *Paat v. Court of Appeals*:[14]

x x x However, we are not amiss to reiterate that the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention.

The requirement of prior exhaustion of administrative remedies may likewise be dispensed with in the following instances: (1) when the claim involved is small; (2) when strong public interest is involved; and (3) in *quo warranto* proceedings.[15]

In this case, Mayor Vargas filed the petition for certiorari with the Court of Appeals alleging that Secretary Gaité issued the Resolution dated 8 July 2003 with grave abuse of discretion. Mayor Vargas raised the following issues:

(1) whether it was proper for Secretary Gaité to have ruled that Mayor Vargas is considered in default pursuant to Article 126, Rule XIX of the Rules Implementing the Local Government Code of 1991; (2) whether the civil case filed by Mayor Vargas before the Cabanatuan RTC for annulment of falsified minutes of session and appropriation ordinance with damages is a prejudicial question which warrants the suspension of the proceedings in the administrative case; (3) whether the Sangguniang Panlalawigan has jurisdiction to hear the administrative case filed against Mayor Vargas, when the relief sought is her removal from office.[16]

The issues raised are questions of law which involve the interpretation and application of laws. Resolution of such questions constitutes essentially an exercise of judicial power which is exclusively allocated to the Supreme Court and such courts as the Legislature may establish.[17] Since the issues involve purely legal questions which the court may review, exhaustion of administrative remedies may be dispensed with.[18]

Propriety of the Preventive Suspension Order

Under Section 63 of the Local Government Code, preventive suspension may be imposed (a) after the issues are joined; (b) when the evidence of guilt is strong; and (c) given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. Issues are considered joined when the complaint has been answered and there are no longer any substantial preliminary issues that remain to be threshed out.[19]

In its Order dated 22 April 2003, the Office of the President stated that the facts of the case do not warrant a conclusion that issues are deemed joined. Furthermore, the Office of the President found no basis for the issuance of the preventive suspension. The Office of the President explained:

In the administrative case, it appears that petitioner did not file, so far, an answer to the complaint thus the issues could not have been considered joined. What she did was to file a Motion To Suspend Proceedings And/Or Motion To Dismiss which was treated by the sanggunian as her answer. However, nothing in the records can be inferred that the petitioner intended the said motion to be her answer. In fact, when the motion was denied on March 17, 2003 through SP Resolution No. 105-s-2003, she immediately appealed the said Resolution to this Office.

In fine, no inference can be had that the motion filed was considered her answer otherwise, petitioner could have stated so therein.

Finally, even assuming that petitioner's motion was already her answer and therefore, the issues have been joined, it is observed that the grounds cited by the sanggunian in recommending the assailed preventive suspension are general statements – mere verbatim reproduction of the provision of law, unsupported by any factual and substantial evidence. There is no showing that the evidence of guilt is strong, with both parties charging each other with falsification of documents. In fact, that is the subject of Civil Case No. 4442. Moreover, it cannot be said that the continuance in office of respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. The recitals in SP Resolution No. 105 s. 2003 are unconvincing.

ACCORDINGLY, the instant motion is GRANTED and the undated Preventive Suspension Order against Mayor Elizabeth R. Vargas of the municipality of Aliaga, Nueva Ecija is hereby lifted and set aside.[20] (Emphasis supplied)

It would thus appear that the grounds cited by the Sangguniang Panlalawigan for recommending the preventive suspension of Mayor Vargas were just general statements unsupported by any evidence. This is contrary to the requisites for a preventive suspension which require that evidence of guilt must be strong and that given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence

the witnesses or pose a threat to the safety and integrity of the records and other evidence. The haste in issuing the resolution recommending the preventive suspension of Mayor Vargas is unreasonable considering the gravity of the effects of such suspension. Suspension from office of an elective official would deprive the electorate of the services of the person they have voted into office. As held in *Ganzon v. Court of Appeals*:^[21]

The plain truth is that this Court has been ill at ease with suspensions x x x because it is out of the ordinary to have a vacancy in local government. The sole objective of a suspension, as we have held, is simply “to prevent the accused from hampering the normal cause (sic) of the investigation with his influence and authority over possible witnesses” or to keep him off “the records and other evidence.” It is a means, and no more, to assist prosecutors in firming up a case, if any, against an erring local official. Under the Local Government Code, it cannot exceed sixty days, which is to say that it need not be exactly sixty days long if a shorter period is otherwise sufficient, and which is also to say that it ought to be lifted if prosecutors have achieved their purpose in a shorter span.

However, upon motion of Governor Joson, the Office of the President reversed its previous order. Citing the case of *Joson v. Torres*,^[22] the Office of the President held that Mayor Vargas’ failure to file her answer in ADM. CASE No. 02-S-2003 was deemed a waiver of her right to file answer and present evidence. As a consequence, the issues were deemed to have been joined.

In the Joson case, this Court found inexcusable the failure of petitioner there to file an answer despite the grant of three extensions of the period to file an answer. It was only seven months later and after the lapse of all the extensions of time for filing an answer that petitioner there filed a motion to dismiss.

In this case, Mayor Vargas moved for a 15-day extension to file an answer. Before the lapse of the period of extension, Mayor Vargas filed before the Cabanatuan RTC a civil case for annulment of Appropriation Ordinance No. 1 and the Minutes of the Session of 7 February 2002 which were the bases of the administrative charge against her. Four days after the lapse of the period of extension, Mayor Vargas filed a Motion to Suspend Proceedings and/or Motion to Dismiss due to prejudicial question. Without resolving Mayor Vargas’ motion, the Sangguniang Panlalawigan issued a resolution recommending the preventive suspension of Mayor Vargas for a period of 60 days. Unlike the Joson case, there was no unreasonable delay employed by Mayor Vargas in filing an answer. Instead of an answer, Mayor Vargas filed a Motion to Suspend Proceedings and/or Motion to Dismiss because of a civil case which she had earlier filed seeking the annulment of the appropriation ordinance and the minutes of session. The Joson case is therefore inapplicable to this case.

Validity of appellate court’s order for petitioners to cease and desist from conducting proceedings in Administrative Case No. 02-S-2003

In a Resolution dated 13 October 2003, the Court of Appeals issued a preliminary injunction to further enjoin petitioners from conducting proceedings in the administrative case against Mayor Vargas in order to prevent injustice. The Court of Appeals explained:

In a Resolution dated August 14, 2003, in order not to render nugatory the resolution of the present petition by this Court, We issued a temporary restraining order temporarily enjoining the Provincial Governor and the Sangguniang Panlalawigan of the Province of Nueva Ecija from conducting further proceedings in Administrative Case No. 02-S-2003, and from enforcing the assailed resolution of the Office of the President, which directed the reinstatement of the order for petitioner’s preventive suspension.

After taking into account the parties’ arguments for and against the issuance of a writ of preliminary injunction in a hearing conducted on September 2, 2003, as well as respondents’ comment and opposition dated August 25, 2003, and considering that the present petition is still pending resolution before this Court, We deem it wise to issue a preliminary injunction to further enjoin and restrain public respondents Provincial Governor

and the Sangguniang Panlalawigan from conducting proceedings in the administrative case against herein petitioner, particularly in imposing the order of preventive suspension, so as to prevent any injustice and irreparable injury that might inure to herein petitioner if it is adjudged by this Court that a reversal of the assailed resolution is warranted.

WHEREFORE, for the foregoing premises, petitioner's prayer for the issuance of a writ of preliminary injunction is hereby GRANTED. Petitioner is hereby required to post a bond in the amount of FIFTY THOUSAND PESOS (P50,000.00) for the issuance of said writ, as required by Section 4(b), Rule 58 of the 1997 Rules of Civil Procedure.

SO ORDERED.[23]

Petitioners allege that the only issue presented in CA-G.R. SP No. 78247 is the validity of the reinstatement of the preventive suspension order issued against Mayor Vargas as embodied in the Resolution dated 8 July 2003 of the Office of the President. According to petitioners, the Court of Appeals therefore acted arbitrarily and in grave abuse of discretion amounting to lack or excess of jurisdiction in directing the Sangguniang Panlalawigan to cease and desist from conducting proceedings in Administrative Case No. 02-S-2003.

Petitioners' contention is without merit. Two of the issues raised by Mayor Vargas in her petition to the Court of Appeals pertain to the proceedings in Administrative Case No. 02-S-2003, to wit: (1) whether the civil case filed by Mayor Vargas before the Cabanatuan RTC for annulment of falsified minutes of session and appropriation ordinance with damages is a prejudicial question which warrants the suspension of the proceedings in the administrative case, and (2) whether the Sangguniang Panlalawigan has jurisdiction to hear the administrative case filed against Mayor Vargas, when the relief sought is her removal from office.[24]

It is, therefore, apparent that the jurisdiction of the Sangguniang Panlalawigan in the administrative case is an issue in the certiorari case filed in the Court of Appeals. Mayor Vargas is questioning the propriety of the proceedings of the Sangguniang Panlalawigan despite the alleged prejudicial question in the civil case. Likewise, Mayor Vargas alleges that the Sangguniang Panlalawigan is bereft of jurisdiction over the administrative case which seeks her removal from office since under Section 60 of the Local Government Code, only the proper court may order the dismissal from public office of an elective local official.[25]

We find no grave abuse of discretion on the part of the Court of Appeals in issuing the Resolution dated 13 October 2003.

WHEREFORE, we DISMISS the petition for lack of merit, and DENY the prayer for the issuance of a temporary restraining order or writ of preliminary injunction.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales and Tinga, JJ., concur.

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

[2] Rollo, pp. 41-42, 61.

[3] Id., pp. 30-31.

[4] Id., p. 61.

[5] Id., pp. 34-35.

[6] Id., p. 39.

[7] Id., pp. 64-65.

[8] Id., pp. 10-11.

[9] Id., pp. 63-64.

[10] Argel v. Court of Appeals, 374 Phil. 867 (1999).

[11] BF Corporation v. CA, 351 Phil. 507 (1998).

[12] Bordallo v. Professional Regulations Commission, 421 Phil. 281 (2001); Abe-abe v. Manta, No. L-4827, 31 May 1979, 90 SCRA 524; Pestanas v. Dyogi, No. L-25786, 27 February 1978, 81 SCRA 574.

[13] Ambil, Jr. v. Comelec, 398 Phil. 257 (2000); Jariol v. Comelec, 336 Phil. 990 (1997).

[14] G.R. No. 111107, 10 January 1997, 266 SCRA 167, 176-177.

[15] Celestial v. Cachopero, G.R. No. 142595, 15 October 2003, 413 SCRA 469.

[16] Rollo, pp. 63-64.

[17] Philex Mining Corporation v. Zaldivia, et al., 150 Phil. 547 (1972).

[18] See note 14.

[19] A. Pimentel, The Local Government Code of 1991 The Key to National Development 177 (1993).

[20] Rollo, p. 34.

[21] G.R. Nos. 93252, 93746 & 95245, 5 August 1991, 200 SCRA 271, 288.

[22] 352 Phil. 888 (1998).

[23] Rollo, pp. 28-29.

[24] Id., pp. 63-64.

[25] Id., pp. 79-81.

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