

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
SANDIGANBAYAN (FOURTH DIVISION) AND ALEJANDRO A.
VILLAPANDO, RESPONDENTS.**

G.R. No. 164185. July 23, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari filed by the Office of the Ombudsman through the Office of the Special Prosecutor assails the May 20, 2004 Decision[1] of the Sandiganbayan, Fourth Division, in Criminal Case No. 27465, granting private respondent Alejandro A. Villapando's Demurrer to Evidence[2] and acquitting him of the crime of unlawful appointment under Article 244[3] of the Revised Penal Code.

The facts culled from the records are as follows:

During the May 11, 1998 elections, Villapando ran for Municipal Mayor of San Vicente, Palawan. Orlando M. Tiape (now deceased), a relative of Villapando's wife, ran for Municipal Mayor of Kitcharao, Agusan del Norte. Villapando won while Tiape lost. Thereafter, on July 1, 1998, Villapando designated Tiape as Municipal Administrator of the Municipality of San Vicente, Palawan.[4] A Contract of Consultancy[5] dated February 8, 1999 was executed between the Municipality of San Vicente, Palawan and Tiape whereby the former employed the services of Tiape as Municipal Administrative and Development Planning Consultant in the Office of the Municipal Mayor for a period of six months from January 1, 1999 to June 30, 1999 for a monthly salary of P26,953.80.

On February 4, 2000, Solomon B. Maagad and Renato M. Fernandez charged Villapando and Tiape for violation of Article 244 of the Revised Penal Code before the Office of the Deputy Ombudsman for Luzon.[6] The complaint was resolved against Villapando and Tiape and the following Information[7] dated March 19, 2002 charging the two with violation of Article 244 of the Revised Penal Code was filed with the Sandiganbayan:

X X X X

That on or about 01 July 1998 or sometime prior or subsequent thereto, in San Vicente, Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALEJANDRO A. VILLAPANDO, a public officer, being then the Municipal Mayor of San Vicente, Palawan, committing the crime herein charged, in relation to and taking advantage of his official functions, conspiring and confederating with accused Orlando M. Tiape, did then and there wilfully, unlawfully and feloniously appoint ORLANDO M. TIAPE as a Municipal Administrator of San Vicente, Palawan, accused Alejandro A. Villapando knowing fully well that Orlando Tiape lacks the qualification as he is a losing mayoralty candidate in the Municipality of Kitcharao, Agusan del Norte during the May 1998 elections, hence is ineligible for appointment to a public office within one year (1) from the date of the elections, to the damage and prejudice of the government and of public interest.

CONTRARY TO LAW.[8]

The Information was docketed as Criminal Case No. 27465 and raffled to the Fourth Division of the Sandiganbayan.

Upon arraignment on September 3, 2002, Villapando pleaded not guilty. Meanwhile, the case against Tiape was dismissed after the prosecution proved his death which occurred on July 26, 2000.[9]

After the prosecution rested its case, Villapando moved for leave to file a demurrer to evidence. The Sandiganbayan, Fourth Division denied his motion but gave him five days within which to inform the court in writing whether he will nonetheless submit his Demurrer to Evidence for resolution without leave of court.[10] Villapando then filed a Manifestation of Intent to File Demurrer to Evidence,[11] and was given 15 days from receipt to file his Demurrer to Evidence. He filed his Demurrer to Evidence[12] on October 28, 2003.

In a Decision dated May 20, 2004, the Sandiganbayan, Fourth Division found Villapando's Demurrer to Evidence meritorious, as follows:

The Court found the "Demurrer to Evidence" impressed with merit.

Article 244 of the Revised Penal Code provides:

Article 244. Unlawful appointments.-Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of arresto mayor and a fine not exceeding 1,000 pesos. (underscoring supplied)

A dissection of the above-cited provision [yields] the following elements, to wit:

- the offender was a public officer;
- accused nominated or appointed a person to a public office;
- such person did not have the legal qualifications [therefor;] and,
- the offender knew that his nominee or appointee did not have the legal qualifications at the time he made the nomination or appointment.

Afore-cited elements are hereunder discussed.

- Mayor Villapando was the duly elected Municipal Mayor of San Vicente, Palawan when the alleged crime was committed.
- Accused appointed Orlando Tiape as Municipal Administrator of the Municipality of San Vicente, Palawan.
- There appears to be a dispute. This Court is now called upon to determine whether Orlando Tiape, at the time of [his] designation as Municipal Administrator, was lacking in legal qualification. Stated differently, does "legal qualification" contemplate the one (1) year prohibition on appointment as provided for in Sec. 6, Art. IX-B of the Constitution and Sec. 94 (b) of the Local Government Code, mandating that a candidate who lost in any election shall not, within one year after such election, be appointed to any office in the Government?

The Court answers in the negative.

In ascertaining the legal qualifications of a particular appointee to a public office, "there must be a law providing for the qualifications of a person to be nominated or appointed" therein. To illuminate further, Justice Rodolfo Palattao succinctly discussed in his book that the qualification of a public officer to hold a particular position in the government is provided for by law, which may refer to educational attainment, civil service eligibility or experience:

As the title suggests, the offender in this article is a public officer who nominates or appoints a person to a

public office. The person nominated or appointed is not qualified and his lack of qualification is known to the party making the nomination or appointment. The qualification of a public officer to hold a particular position in the government is provided by law. The purpose of the law is to ensure that the person appointed is competent to perform the duties of the office, thereby promoting efficiency in rendering public service.

The qualification to hold public office may refer to educational attainment, civil service eligibility or experience. For instance, for one to be appointed as judge, he must be a lawyer. So if the Judicial and Bar Council nominates a person for appointment as judge knowing him to be not a member of the Philippine Bar, such act constitutes a violation of the law under consideration.

In this case, Orlando Tiape was allegedly appointed to the position of Municipal Administrator. As such, the law that provides for the legal qualification for the position of municipal administrator is Section 480, Article X of the Local Government Code, to wit:

"Section 480. Qualifications, Terms, Powers and Duties.-(a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator.

xxx xxx xxx."

It is noteworthy to mention that the prosecution did not allege much less prove that Mayor Villapando's appointee, Orlando Tiape, lacked any of the qualifications imposed by law on the position of Municipal Administrator. Prosecution's argument rested on the assertion that since Tiape lost in the May 11, 1998 election, he necessarily lacked the required legal qualifications.

It bears stressing that temporary prohibition is not synonymous with absence or lack of legal qualification. A person who possessed the required legal qualifications for a position may be temporarily disqualified for appointment to a public position by reason of the one year prohibition imposed on losing candidates. Upon the other hand, one may not be temporarily disqualified for appointment, but could not be appointed as he lacked any or all of the required legal qualifications imposed by law.

- Anent the last element, this Court deems it unnecessary to discuss the same.

WHEREFORE, finding the "Demurrer to Evidence" filed by Mayor Villapando with merit, the same is hereby GRANTED. Mayor Villapando is hereby ACQUITTED of the crime charged.

SO ORDERED.[13]

Thus, this petition by the Office of the Ombudsman, through the Office of the Special Prosecutor, representing the People of the Philippines.

Villapando was required by this Court to file his comment to the petition. Despite several notices, however, he failed to do so and in a Resolution[14] dated June 7, 2006, this Court informed him that he is deemed to have waived the filing of his comment and the case shall be resolved on the basis of the pleadings submitted by the petitioner.

Petitioner raises the following issues:

I.

WHETHER THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN INTERPRETING THAT THE "LEGAL DISQUALIFICATION" IN ARTICLE 244 OF THE REVISED PENAL CODE DOES NOT INCLUDE THE ONE YEAR PROHIBITION IMPOSED ON LOSING CANDIDATES AS ENUNCIATED IN THE CONSTITUTION AND THE LOCAL GOVERNMENT CODE.

II.

WHETHER THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO, AND EVENTUALLY GRANTING, THE DEMURRER TO EVIDENCE.[15]

Simply, the issue is whether or not the Sandiganbayan, Fourth Division, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner argues that the Sandiganbayan, Fourth Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction because its interpretation of Article 244 of the Revised Penal Code does not complement the provision on the one-year prohibition found in the 1987 Constitution and the Local Government Code, particularly Section 6, Article IX of the 1987 Constitution which states no candidate who has lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Section 94(b) of the Local Government Code of 1991, for its part, states that except for losing candidates in barangay elections, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Petitioner argues that the court erred when it ruled that temporary prohibition is not synonymous with the absence of lack of legal qualification.

The Sandiganbayan, Fourth Division held that the qualifications for a position are provided by law and that it may well be that one who possesses the required legal qualification for a position may be temporarily disqualified for appointment to a public position by reason of the one-year prohibition imposed on losing candidates. However, there is no violation of Article 244 of the Revised Penal Code should a person suffering from temporary disqualification be appointed so long as the appointee possesses all the qualifications stated in the law.

There is no basis in law or jurisprudence for this interpretation. On the contrary, legal disqualification in Article 244 of the Revised Penal Code simply means disqualification under the law. Clearly, Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991 prohibits losing candidates within one year after such election to be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

Article 244 of the Revised Penal Code states:

Art. 244. Unlawful appointments. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefore, shall suffer the penalty of arresto mayor and a fine not exceeding 1,000 pesos.

Section 94 of the Local Government Code provides:

SECTION 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in Election. - (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the government or any subdivision, agency or

instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

Section 6, Article IX-B of the 1987 Constitution states:

Section 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any Government-owned or controlled corporations or in any of their subsidiaries.

Villapando's contention and the Sandiganbayan, Fourth Division's interpretation of the term legal disqualification lack cogency. Article 244 of the Revised Penal Code cannot be circumscribed lexically. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991.

Although this Court held in the case of *People v. Sandiganbayan*[16] that once a court grants the demurrer to evidence, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy, this Court held in the same case that such ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion.

Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[17]

In this case, the Sandiganbayan, Fourth Division, in disregarding basic rules of statutory construction, acted with grave abuse of discretion. Its interpretation of the term legal disqualification in Article 244 of the Revised Penal Code defies legal cogency. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under the 1987 Constitution and the Local Government Code of 1991. We reiterate the legal maxim *ubi lex non distinguit nec nos distinguere debemus*. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated.

Further, the Sandiganbayan, Fourth Division denied Villapando's Motion for Leave to File Demurrer to Evidence yet accommodated Villapando by giving him five days within which to inform it in writing whether he will submit his demurrer to evidence for resolution without leave of court.

Notably, a judgment rendered with grave abuse of discretion or without due process is void, does not exist in legal contemplation and, thus, cannot be the source of an acquittal.[18]

The Sandiganbayan, Fourth Division having acted with grave abuse of discretion in disregarding the basic rules of statutory construction resulting in its decision granting Villapando's Demurrer to Evidence and acquitting the latter, we can do no less but declare its decision null and void.

WHEREFORE, the petition is GRANTED. The Decision dated May 20, 2004 of the Sandiganbayan, Fourth Division, in Criminal Case No. 27465, granting private respondent Alejandro A. Villapando's Demurrer to Evidence and acquitting him of the crime of unlawful appointment under Article 244 of the Revised Penal Code is hereby declared NULL and VOID. Let the records of this case be remanded to the Sandiganbayan, Fourth

Division, for further proceedings.

SO ORDERED.

Ynares-Santiago, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

* Additional member in place of Associate Justice Arturo D. Brion who is on leave.

[1] Sandiganbayan rollo, pp. 271-280.

[2]Id. at 246-252.

[3]Art. 244. Unlawful appointments. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of arresto mayor and a fine not exceeding 1,000 pesos.

[4]Sandiganbayan rollo, p. 152.

[5] Id. at 159.

[6] Id. at 143-151.

[7] Id. at 1-3.

[8] Id. at 1-2.

[9] Id. at 192-193.

[10] Id. at 231.

[11] Id. at 235-236.

[12] Id. at 246-252.

[13] Id. at 275-279.

[14] Rollo, p. 97.

[15] Id. at 14.

[16] G.R. No. 140633, February 4, 2002, 376 SCRA 74.

[17] People v. Court of Appeals, G.R. No. 128986, June 21, 1999, 308 SCRA 687, 698.

[18] Id. at 690.

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