

THE SANGGUNIANG BARANGAY OF BARANGAY DON MARIANO MARCOS, MUNICIPALITY OF BAYOMBONG PROVINCE OF NUEVA VISCAYA represented by BARANGAY KAGAWAD JOSE CENEN SANTOS, MARIO BACUD, WALT...

G.R. No. 170626. March 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Orders dated 20 October 2005[1] and 30 November 2005[2] of the Regional Trial Court (trial court), Branch 27, of Bayombong, Nueva Vizcaya, in Special Civil Action No. 6727. In its assailed Orders, the trial court ruled that the Sangguniang Bayan of Bayombong, Neuva Vizcaya (Sangguniang Bayan), exceeded its jurisdiction when it imposed upon respondent Severino Martinez the administrative penalty of removal from office.

Petitioner Sangguniang Barangay is the legislative body of Barangay Don Mariano Marcos, Bayombong, Nueva Vizcaya, a local government unit created, organized and existing as such under pertinent laws of the Republic of the Philippines. Respondent Martinez is the incumbent Punong Barangay of the said local government unit.[3]

On 5 November 2004, Martinez was administratively charged with Dishonesty and Graft and Corruption by petitioner through the filing of a verified complaint before the Sangguniang Bayan as the disciplining authority over elective barangay officials pursuant to Section 61[4] of Rep. Act No. 7160, otherwise known as the Local Government Code. Petitioner filed with the Sangguniang Bayan an Amended Administrative Complaint against Martinez on 6 December 2004 for Dishonesty, Misconduct in Office and Violation of the Anti-Graft and Corrupt Practices Act.[5] Petitioner alleged that Martinez committed the following acts:

- Failure to submit and fully remit to the Barangay Treasurer the income of their solid waste management project since 2001 particularly the sale of fertilizer derived from composting.
- Failure to submit/remit to the barangay treasurer the sale of recyclable materials taken from garbage collection.
- Using the garbage truck for other purposes like hauling sand and gravel for private persons without monetary benefit to the barangay because no income from this source appears in the year end report even if payments were collected x x x.
- Using/spending barangay funds for repair, gasoline, lubricants, wheels and other spare parts of the garbage truck instead of using the money or income of said truck from the garbage fees collected as income from its Solid Waste Management Project. x x x.
- Unliquidated traveling expenses for Seminar/Lakbay-Aral in 2003 because although a cash advance was made by the respondent for the said purpose, he, however, did not attend said seminar because on the dates when he was supposed to be on seminar they saw him in the barangay. x x x.

- That several attempts to discuss said problem during sessions were all in vain because respondent declined to discuss it and would adjourn the session.x x x.[6]

Upon his failure to file an Answer to the Amended Administrative Complaint dated 6 December 2004, Martinez was declared by the Sangguniang Bayan as in default. Pending the administrative proceedings, Martinez was placed under preventive suspension for 60 days or until 8 August 2005.[7]

On 28 July 2005, the Sangguniang Bayan rendered its Decision which imposed upon Martinez the penalty of removal from office.[8]

The Decision dated 28 July 2005 was conveyed to the Municipal Mayor of Bayombong, Nueva Ecija, Severino Bagasao, for its implementation. On 3 August 2005, Municipal Mayor Bagasao issued a Memorandum, wherein he stated that the Sangguniang Bayan is not empowered to order Martinez's removal from service. However, the Decision remains valid until reversed and must be executed by him. For the meantime, he ordered the indefinite suspension of Martinez since the period of appeal had not yet lapsed.[9] The dispositive portion of the said Memorandum states that:[10]

The FOREGOING considered come AUGUST 8, 2005, respondent SEVERINO D. MARTINEZ is hereby directed NOT to ASSUME and DISCHARGE the functions of the Office of the Punong Barangay of Barangay Don Mariano Marcos, Bayombong, Nueva Vizcaya and for complainant JOSE CENEN SANTOS to CONTINUE assuming and discharging the functions of the said office in ACTING CAPACITY pursuant to the provisions of Sections 67 and 68 of Republic Act No. 7160.

On 26 August 2005, Martinez filed a Special Civil Action for Certiorari with a prayer for Temporary Restraining Order and Preliminary Injunction before the trial court against petitioner, the Sangguniang Bayan and Mayor Bagasao questioning the validity of the Decision dated 28 July 2005 of the Sangguniang Bayan. This case was docketed as Special Civil Action No. 6727, which was initially heard by Branch 28, but later raffled to Branch 27 of the trial court.[11]

On 20 October 2005, the trial court issued an Order declaring the Decision of the Sangguniang Bayan and the Memorandum of Mayor Bagasao void. It maintained that the proper courts, and not the petitioner, are empowered to remove an elective local official from office, in accordance with Section 60 of the Local Government Code. Thus, the Order of the Sangguniang Bayan removing Martinez from service is void. As a consequence, Mayor Bagasao cannot prevent Martinez from assuming his office on the basis of a void order. The trial court further ruled that Martinez properly availed himself of the remedy of Special Civil Action, where the order assailed was a patent nullity.[12]

On 10 November 2005, petitioner filed a Motion for Reconsideration[13] of the trial court's Order dated 10 October 2005. The trial court denied the said motion in another Order dated 30 November 2005.[14]

Hence, the present petition was filed.

Although Martinez's term as Punong Barangay expired upon the holding of the 29 October 2007 Synchronized Barangay and Sangguniang Kabataan elections and, thus, rendering this petition moot and academic, the Court will nevertheless settle a legal question that is capable of repetition yet evading review.[15]

The pivotal issue in this case is whether or not the Sangguniang Bayan may remove Martinez, an elective local official, from office. The pertinent legal provisions and cases decided by this Court firmly establish that the Sangguniang Bayan is not empowered to do so.

Section 60 of the Local Government Code conferred upon the courts the power to remove elective local officials

from office:

Section 60. Grounds for Disciplinary Actions.—An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

x x x x.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court. (Emphasis provided.)

During the deliberations of the Senate on the Local Government Code,[16] the legislative intent to confine to the courts, i.e., regional trial courts, the Sandiganbayan and the appellate courts, jurisdiction over cases involving the removal of elective local officials was evident:

Senator Pimentel. This has been reserved, Mr. President, including the issue of whether or not the Department Secretary or the Office of the President can suspend or remove an elective official.

Senator Saguisag. For as long as that is open for some later disposition, may I just add the following thought: It seems to me that instead of identifying only the proper regional trial court or the Sandiganbayan, and since we know that in the case of a regional trial court, particularly, a case may be appealed or may be the subject of an injunction, in the framing of this later on, I would like to suggest that we consider replacing the phrase “PROPER REGIONAL TRIAL COURT OR THE SANDIGANBAYAN” simply by “COURTS.” Kasi po, maaaring sabihin nila na mali iyong regional trial court o ang Sandiganbayan.

Senator Pimentel. “OR THE PROPER COURT.”

Senator Saguisag. “OR THE PROPER COURT.”

Senator Pimentel. Thank you. We are willing to accept that now, Mr. President.

Senator Saguisag. It is to be incorporated in the phraseology that we will craft to capture the other ideas that have been elevated. (Emphasis provided.)

In *Salalima v. Guingona, Jr.*,[17] the Court en banc categorically ruled that the Office of the President is without any power to remove elected officials, since the power is exclusively vested in the proper courts as expressly provided for in the last paragraph of Section 60 of the Local Government Code. It further invalidated Article 125, Rule XIX of the Rules and Regulations Implementing the Local Government Code of 1991, which provided that:

Article 125. Grounds for Disciplinary Actions. x x x.

x x x x.

(b) An elective local official may be removed from office on the grounds enumerated in paragraph (a) of this Article by order of the proper court or the disciplining authority whichever first acquires jurisdiction to the exclusion of the other.

The Court nullified the aforementioned rule since the Oversight Committee that prepared the Rules and Regulations of the Local Government Code exceeded its authority when it granted to the “disciplining authority” the power to remove elective officials, a power which the law itself granted only to the proper courts. Thus, it is clear that under the law, the Sangguniang Bayan is not vested with the power to remove Martinez.

Petitioner contends that administrative cases involving elective barangay officials may be filed with, heard and decided by the Sangguniang Panlungsod or Sangguniang Bayan concerned, which can, thereafter, impose a penalty of removal from office. It further claims that the courts are merely tasked with issuing the order of removal, after the Sangguniang Panlungsod or Sangguniang Bayan finds that a penalty of removal is

warranted.[18]

The aforementioned position put forward by the petitioner would run counter to the rationale for making the removal of elective officials an exclusive judicial prerogative. In *Pablico v. Villapando*,[19] the court declared that:

It is beyond cavil, therefore, that the power to remove erring elective local officials from service is lodged exclusively with the courts. Hence, Article 124 (sic 125)[20] (b), Rule XIX, of the Rules and Regulations Implementing the Local Government Code, insofar as it vests power on the “disciplining authority” to remove from office erring elective local officials, is void for being repugnant to the last paragraph of Section 60 of the Local Government Code of 1991. The law on suspension or removal of elective public officials must be strictly construed and applied, and the authority in whom such power of suspension or removal is vested must exercise it with utmost good faith, for what is involved is not just an ordinary public official but one chosen by the people through the exercise of their constitutional right of suffrage. Their will must not be put to naught by the caprice or partisanship of the disciplining authority. Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove. (Emphasis supplied.)

The rule which confers to the proper courts the power to remove an elective local official from office is intended as a check against any capriciousness or partisan activity by the disciplining authority. Vesting the local legislative body with the power to decide whether or not a local chief executive may be removed from office, and only relegating to the courts a mandatory duty to implement the decision, would still not free the resolution of the case from the capriciousness or partisanship of the disciplining authority. Thus, the petitioner’s interpretation would defeat the clear intent of the law.

Moreover, such an arrangement clearly demotes the courts to nothing more than an implementing arm of the Sangguniang Panlungsod, or Sangguniang Bayan. This would be an unmistakable breach of the doctrine on separation of powers, thus placing the courts under the orders of the legislative bodies of local governments. The courts would be stripped of their power of review, and their discretion in imposing the extreme penalty of removal from office is thus left to be exercised by political factions which stand to benefit from the removal from office of the local elective official concerned, the very evil which Congress sought to avoid when it enacted Section 60 of the Local Government Code.

Congress clearly meant that the removal of an elective local official be done only after a trial before the appropriate court, where court rules of procedure and evidence can ensure impartiality and fairness and protect against political maneuverings. Elevating the removal of an elective local official from office from an administrative case to a court case may be justified by the fact that such removal not only punishes the official concerned but also, in effect, deprives the electorate of the services of the official for whom they voted.

As the law stands, Section 61 of the Local Government Code provides for the procedure for the filing of an administrative case against an erring elective barangay official before the Sangguniang Panlungsod or Sangguniang Bayan. However, the Sangguniang Panlungsod or Sangguniang Bayan cannot order the removal of an erring elective barangay official from office, as the courts are exclusively vested with this power under Section 60 of the Local Government Code. Thus, if the acts allegedly committed by the barangay official are of a grave nature and, if found guilty, would merit the penalty of removal from office, the case should be filed with the regional trial court. Once the court assumes jurisdiction, it retains jurisdiction over the case even if it would be subsequently apparent during the trial that a penalty less than removal from office is appropriate. On the other hand, the most extreme penalty that the Sangguniang Panlungsod or Sangguniang Bayan may impose on the erring elective barangay official is suspension; if it deems that the removal of the official from service is

warranted, then it can resolve that the proper charges be filed in court.

Petitioner alleged that an interpretation which gives the judiciary the power to remove local elective officials violates the doctrine of separation of powers. This allegation runs contrary to the 1987 Constitution itself, as well as jurisprudence.

The 1987 Constitution is explicit in defining the scope of judicial power. It establishes the authority of the courts to determine in an appropriate action the validity of acts of the political departments. It speaks of judicial prerogative in terms of duty.[21] Paragraph 2, Section 1, Article VIII of the 1987 Constitution, provides that:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis provided.)

The doctrine of separation of powers is not absolute in its application; rather, it should be applied in accordance with the principle of checks and balances. The removal from office of elective officials must not be tainted with partisan politics and used to defeat the will of the voting public. Congress itself saw it fit to vest that power in a more impartial tribunal, the court. Furthermore, the local government units are not deprived of the right to discipline local elective officials; rather, they are prevented from imposing the extreme penalty of dismissal.

Petitioner questions the Decision dated 20 October 2005 of the trial court for allowing the petition filed before it as an exception to the doctrine of exhaustion of administrative remedies. If, indeed, the Sangguniang Bayan had no power to remove Martinez from office, then Martinez should have sought recourse from the Sangguniang Panlalawigan. This Court upholds the ruling of the trial court.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. Non-observance of the doctrine results in lack of a cause of action, which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.[22]

The doctrine of exhaustion of administrative remedies, which is based on sound public policy and practical consideration, is not inflexible. There are instances when it may be dispensed with and judicial action may be validly resorted to immediately. Among these exceptions are: 1) where there is estoppel on the part of the party invoking the doctrine; 2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; 3) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; 4) where the amount involved is relatively small as to make the rule impractical and oppressive; 5) where the question raised is purely legal and will ultimately have to be decided by the courts of justice; 6) where judicial intervention is urgent; 7) where its application may cause great and irreparable damage; 8) where the controverted acts violate due process; 9) when the issue of non-exhaustion of administrative remedies has been rendered moot; 10) where there is no other plain, speedy and adequate remedy; 11) when strong public interest is involved; and 13) in quo warranto proceedings.[23]

As a general rule, no recourse to courts can be had until all administrative remedies have been exhausted. However, this rule is not applicable where the challenged administrative act is patently illegal, amounting to lack of jurisdiction and where the question or questions involved are essentially judicial.

In this case, it is apparent that the Sangguniang Bayan acted beyond its jurisdiction when it issued the assailed Order dated 28 July 2005 removing Martinez from office. Such act was patently illegal and, therefore, Martinez was no longer required to avail himself of an administrative appeal in order to annul the said Order of the

Sangguniang Bayan.[24] Thus, his direct recourse to regular courts of justice was justified.

In addition, this Court in *Castro v. Gloria*[25] declared that where the case involves only legal questions, the litigant need not exhaust all administrative remedies before such judicial relief can be sought. The reason behind providing an exception to the rule on exhaustion of administrative remedies is that issues of law cannot be resolved with finality by the administrative officer. Appeal to the administrative officer would only be an exercise in futility. A legal question is properly addressed to a regular court of justice rather than to an administrative body.[26]

In the present case, Martinez raised before the trial court the sole issue of whether the Sangguniang Bayan has jurisdiction over a case involving the removal of a local elective official from office.[27] In Martinez's petition before the trial court, only a legal question was raised, one that will ultimately be resolved by the courts. Hence, appeal to the administrative officer concerned would only be circuitous and, therefore, should no longer be required before judicial relief can be sought.

IN VIEW OF THE FOREGOING, the instant Petition is DENIED and the assailed Decision of the Bayombong RTC in Special Civil Action No. 6727 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Judge Jose B. Rosales. Rollo, pp. 32-39.

[2] *Id.* at 40-42.

[3] *Id.* at 5-6.

[4] Section 61 of the Local Government Code states that:

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

(a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President;

(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

(c) A complaint against any elective barangay official shall be filed before the sangguniang panglungsod or sangguniang bayan concerned whose decision shall be final and executory.

[5] Rollo, pp. 32-33.

[6] *Id.* at 72.

[7] *Id.* at 33.

[8] *Id.* at 71-77.

[9] *Id.* at 78-79.

[10] *Id.* at 80.

[11] *Id.* at 7-8.

[12] Id. at 34-38.

[13] Id at 48-63.

[14] Id. at 40-42.

[15] Albana v. Commission on Elections, G.R. No. 163302, 23 July 2004, 435 SCRA 98, 105; Brillantes, Jr. v. Commission on Elections, G.R. No. 163193, 15 June 2004, 432 SCRA 269, 286; and Sanlakas v. Executive Secretary Reyes, 466 Phil. 482, 505-506 (2004).

[16] 1 August 1990, pp. 39-40, also cited in Pablico v. Villapando, 434 Phil. 853, 859-860 (2002).

[17] 326 Phil. 847, 904-905 (1996).

[18] Rollo, p. 133.

[19] Supra note 16 at 860, citing Salalima v. Guingona, Jr., supra note 17.

[20] Petitioner alleged that Article 124, and not Article 125, of the Rules and Regulations of the Local Government Code was annulled by the Court in Salalima v. Guingona, Jr. and Pablico v. Villapando. This hardly merits this Court's attention. In Salalima, it was categorically stated that the power granted to the "disciplining authority" in Article 125 was clearly beyond the authority of the Oversight Committee that drafted it. Citing Article 124, instead of Article 125, in Villapando, was clearly a clerical error committed wherein no mention was made of the subject matter of Article 124 and particular portions of Article 125 were quoted therein.

[21] Disomangcop v. Datumanong, G.R. No. 149848, 25 November 2004, 444 SCRA 203, 219.

[22] Castro v. Gloria, G.R. No.132174, 20 August 2001, 363 SCRA 417, 422.

[23] Republic v. Lacap, G.R. No. 158253, 2 March 2007, 517 SCRA 255, 265-266.

[24] Section 67 of the Local Government Code states that:

Section 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; x x x.

[25] Supra note 22.

[26] Municipality of La Trinidad, Benguet v. CFI of Baguio-Benguet, 208 Phil. 78, 83 (1983).

[27] Rollo, p. 67.

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