

ATTY. LUCKY M. DAMASEN, PETITIONER, VS. OSCAR G. TUMAMAO, RESPONDENT.

G.R. No. 173165. February 17, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on Certiorari,[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the June 14, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 90882.

The facts of the case are as follows:

On December 2, 2004, Nelia Tumamao, the Vice-Mayor of San Isidro, Isabela, died.[3] As a result, a permanent vacancy was created in the Office of the Vice-Mayor.

Pursuant to Sec. 44 of Republic Act (RA) No. 7160,[4] Ligaya C. Alonzo (Alonzo) was elevated to the position of Vice-Mayor, she being the highest-ranking member of the Sangguniang Bayan, that is, the one who garnered the highest number of votes for that office.[5] As a result, a permanent vacancy was created in the Sangguniang Bayan.

To fill up the ensuing vacancy in the Sangguniang Bayan, San Isidro Mayor Abraham T. Lim (Mayor Lim) recommended to Governor Maria Gracia Cielo M. Padaca (Governor Padaca), the appointment of respondent Oscar G. Tumamao (Tumamao), a member of the Laban ng Demokratikong Pilipino (LDP), the same political party to which Alonzo belonged.[6]

On April 15, 2005, Tumamao took his oath as a member of the Sangguninang Bayan before Mayor Lim.[7]

On April 26, 2005 and May 3, 2006, Tumamao attended the regular sessions of the Sangguniang Bayan.[8]

On May 5, 2005, petitioner Atty. Lucky Damasen (Damasen) became a member of the LDP after taking his oath of affiliation before the LDP Provincial Chairman, Ms. Ana Benita Balauag (Provincial Chairman Balauag).[9] On even date, Damasen was able to secure from LDP Provincial Chairman Balauag a letter of nomination addressed to Governor Padaca for his appointment to the Sangguniang Bayan.[10]

On May 12, 2005, Damasen was appointed as Sangguniang Bayan member by Governor Padaca.[11]

On May 16, 2005, Damasen took his oath as member of the Sangguniang Bayan before Governor Padaca.[12]

On May 17, 2005, Damasen attended the Sangguniang Bayan session, but with Tumamao present thereat, the former was not duly recognized.[13] Hence, in the afternoon of the same day, Damasen filed with the Regional Trial Court of Santiago City (RTC) a Petition for Quo Warranto with Prayer for the Issuance of a Writ of Preliminary Injunction,[14] seeking to be declared the rightful member of the Sangguniang Bayan, claiming that he had been nominated by LDP Provincial Chairman Balauag and had been appointed thereto by Governor Padaca.[15] The case was docketed as Special Civil Action Case No. 0234.

The RTC issued a Temporary Restraining Order effective for 72 hours. Thereafter, the RTC issued an order extending the Temporary Restraining order to 17 days.

Later, in the hearing to determine the propriety of issuing a Writ of Preliminary Injunction, Damasén testified that he is a member of the LDP and was nominated to the position in question by LDP Provincial Chairman Balauag; that pursuant thereto, he was appointed by Governor Padaca as a member of the Sangguniang Bayan, and that he later took his oath before her; but that during session of the Sangguniang Bayan on May 12, 2005, he was not recognized by a majority of its members.[16]

For his part, Tumamao called to the witness stand his counsel Atty. Ernest Soberano (Soberano), who identified a letter dated June 14, 2005, signed by LDP Provincial Chairman Balauag, which states that the latter was revoking her nomination of Damasén, and that she was confirming Tumamao's nomination made by Mayor Lim.[17] Later, Tumamao presented Provincial Chairman Balauag who affirmed the contents of her letter revoking the nomination of Damasén.[18]

On August 4, 2005, the RTC rendered a Decision[19] ruling in favor of Damasén, the dispositive portion of which reads:

WHEREFORE, after careful evaluation of the evidence presented, the Court resolves the petition declaring petitioner, Atty. Lucky M. Damasén as the rightful person to have the right to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, enjoining, excluding respondent Oscar G. Tumamao from occupying and exercising the function of Sangguniang Bayan member of San Isidro, Isabela, from usurping and unlawfully holding or exercising said office. After determining that herein petitioner is the rightful person to occupy and exercise the functions of Sangguniang Bayan member of San Isidro, Isabela, it follows that he is entitled to the salaries, benefits and other emoluments appurtenant to the position. He is also entitled to recover his costs.

SO ORDERED.[20]

The RTC based its decision on Sec. 45 (b) of RA 7160,[21] which provides for the rule on succession in cases of permanent vacancies in the Sangguninán. The RTC ruled that the evidence submitted by Damasén proved that the requirements to be able to qualify for the position was fully complied with.[22] Moreover, the RTC held that the revocation of the political nomination issued by LDP Provincial Chairman Balauag was done after Governor Padaca had acted on it and had issued the appointment of Damasén.[23] Hence, the RTC declared that it could no longer undo what Governor Padaca had done, absent any showing of grave abuse of discretion.[24]

Tumamao appealed the RTC Decision to the CA. On June 14, 2006, the CA rendered a Decision reversing the appealed Decision, the dispositive portion of which reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, VACATED and SET ASIDE. The Quo Warranto case is hereby DISMISSED for lack of merit. Without special pronouncement as to costs.

SO ORDERED.[25]

The CA held that Damasén was not entitled to assume the vacant position in the Sangguniang Bayan, thus:

While Atty. Damasén might have been appointed by Governor Padaca, this appointment must fly in the face of the categorical and unbending sine qua non requirements of the statute.

Indeed, Atty. Damasén was nominated simply by Ms. Balauag, the Provincial Chairman of the LDP, who obviously is not the highest official of this political party. It cannot escape notice that the quoted provision particularizes: "highest official of the political party concerned" without any additional qualifying or restrictive

words.

According credence to the June 16, 2005 letter of the LDP Deputy Secretary Counsel Demaree Raval, (and we have no reason not to), it should be easy enough to see that Atty. Damasen also was not a member of the LDP, as his application for membership therein was not endorsed to the LDP's National Council for approval.

More importantly, Atty. Damasen's aforesaid nomination was eventually withdrawn, cancelled or revoked by Ms. Balauag, who declared that she was misled into accepting him as member of the LDP (owing to the fact that Atty. Damasen was affiliated with the Lakas CMD-Party and under the banner of this party indeed ran for Mayor of San Isidro against the LDP candidate for Mayor), and in nominating him. That much is clear from Ms. Balauag's letter of June 14, 2005 to Governor Padaca, the contents whereof she affirmed in her testimony, as follows: x x x

Oddly enough, Atty. Damasen helped accentuate Ms. Balauag's thesis by admitting that he was previously a member of the Lakas-CMD, and that he did not resign therefrom when he joined the LDP, and moreover, his joining the LDP was not based on party ideals but because he just wanted to.[26]

Damasen did not file a motion for reconsideration of the CA Decision and instead sought direct relief from this Court via the present petition for review. In his petition, Damasen raised the following issues for this Court's resolution, to wit:

A.

THE COURT OF APPEALS ERRED IN DISMISSING THE QUO WARRANTO ON THE BASIS THAT THE NOMINATION OF THE PETITIONER DID NOT COMPLY WITH THE REQUIREMENTS OF SECTION 45 OF REPUBLIC ACT 7160.

B.

THE COURT OF APPEALS ERRED IN ITS DECISION WHEN IT DID NOT RULE ON THE VALIDITY OF THE ASSUMPTION TO OFFICE OF PRIVATE RESPONDENT AS SANGGUNIAN BAYAN.

C.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL FAILED BY THE PRIVATE RESPONDENT THE LATTER HAVING NO AUTHORITY TO QUESTION THE VALIDITY OF THE APPOINTMENT OF PETITIONER.[27]

The petition is not meritorious.

At the outset, this Court shall address a procedural matter raised by Damasen. Damasen argues that Tumamao was not appointed as Sangguniang Bayan and, therefore, the latter has no right to question his appointment by way of appeal.[28] More specifically, Damasen argues in the wise:

By reason of the appeal, the situation of the parties had been changed since it is now the private respondent who is assailing petitioner's exercise of a public office. Else wise stated, the private respondent is now alleging that the petitioner is a person who usurps, intrudes into, or unlawfully holding the position of Sangguniang Bayan. This being the case, the proper legal remedy should be a separate case of Quo Warranto to be filed against petitioner.[29]

Damasen's contention that Tumamao should have filed a separate case of quo warranto and not an appeal to the CA does not hold water. The determination of who, between Damasen and Tumamao, is entitled to the contested position is the crux of the controversy in the case at bar. Hence, a separate action would only be tantamount to a multiplicity of suits, which is abhorred by law.

It is undisputed that the law applicable to herein petition is Sec. 45(b) of RA 7160, which provides for the rule on succession in cases of permanent vacancies in the Sanggunian, to wit:

Section 45. Permanent Vacancies in the Sanggunian. -

(a) Permanent vacancies in the sanggunian where automatic succession provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the Sangguniang Panlalawigan and the Sangguniang Panlungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the Sangguniang panlungsod of component cities and the Sangguniang Bayan;

(3) The city or municipal mayor, in the case of Sangguniang Barangay, upon recommendation of the Sangguniang Barangay concerned.

(b) Except for the Sangguniang Barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefore.[30]

As can be gleaned from the above provision, the law provides for conditions for the rule of succession to apply: First, the appointee shall come from the same political party as that of the Sanggunian member who caused the vacancy. Second, the appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.

It is the contention of Damasen that he has complied with the requirements of Sec. 45 (b) of RA 7160. Specifically, Damasen's position is predicated on his submission of the following documents:

- Oath of Affiliation with the LDP[31] dated May 5, 2005;
- Certificate of Membership with the LDP[32] dated May 5, 2005;
- Letter of Nomination made by LDP Provincial Chairman Ana Benita G. Balauag[33] dated May 5, 2005;
- Letter of Appointment from Governor Padaca[34] dated May 12, 2005;
- Panunumpa sa Katungkulan as Sangguniang Bayan member[35] dated May 16, 2005.

For his part, Tumamao argued that Damasen has not complied with the requirements of the law. Tumamao argued in the main that Damasen is not a bona-fide member of the LDP and that Provincial Chairman Balauag is not the "highest official" of the LDP as contemplated under Sec. 45 (b) of RA 7160.

In order to resolve the brewing dispute on Damasen's membership in the LDP, this Court shall hereunder discuss and scrutinize two documents which are vital for a just resolution of the petition at bar, the first being the June 14, 2005 letter[36] of LDP Provincial Chairman Balauag to Governor Padaca, and the second being the June 16, 2005 letter[37] of Demaree J.B. Raval, the Deputy Secretary Counsel of the LDP also to Governor Padaca.

Revocation of the nomination given by the LDP Provincial Chairman

On June 14 2005, LDP Provincial Chairman Balauag sent a letter to Governor Padaca revoking the nomination

she issued in favor of Damasen, the text of which in hereunder reproduced in its entirety, to wit:

This refers to the nomination which I issued in favor of Atty. Lucky M. Damasen to fill in the vacancy in the Sangguniang Bayan of San Isidro, Isabela dated May 5, 2005.

When Judge Jose O. Ramos (Ret.) together with Atty. Damasen came to see me at my residence in Quezon City sometime in the month of May, 2005, to request the nomination of Atty. Damasen, he did not inform me that Atty. Damasen was a candidate for Mayor in the May 2004 elections affiliated with the Lakas Party and who ran against our Party's candidate for Mayor in San Isidro. I was given the impression that Atty. Damasen was not affiliated with any political party that is why I signed the documents presented to me and endorsed his nomination. However, I later learned that Atty. Damasen was actually a candidate for Mayor and a member of Lakas so that his joining our Party and his nomination as such to the vacant position of Sanggunian member is not accordance with our Party's principles pursuant to Sec. 2, Art. IV of our By-Laws.

In view of the foregoing, as the Provincial Chairman of LDP-LABAN, I am constrained to withdraw, cancel, and/or revoke the nomination issued to Atty. Lucky M. Damasen dated May 5, 2005 for all legal intents and purposes.[38]

In his defense, Damasen maintains that he did not commit any misrepresentation when he secured his Certificate of Nomination and Membership from LDP Provincial Chairman Balauag. Damasen thus argued in this wise:

According to ANA BENITA BALAUAG when she testified, she claimed that she did not know that petitioner was a candidate for Mayor during the last Local and National Election. This is absurd because Echague, Isabela where ANA BENITA BALAUAG also ran for Mayor is just an adjoining town of San Isidro, Isabela. xxx[39]

In addition, Damasen asserts that in the Philippines, politicians change their political affiliation more often than not.[40] More importantly, Damasen is of the belief that the subsequent revocation of the nomination after he was already appointed by the Governor has no legal effect, to wit:

Respondent is of the view that since the nomination of the petitioner dated May 5, 2005 has been cancelled and/or revoked by LDP Isabela Provincial Chairman ANA BENITA BALAUAG on June 14, 2005, petitioner no longer has a right to be a member of the Sangguniang Bayan. This is wrong. The respondent should open its eyes and must come to realize that the revocation and/or cancellation CAME AFTER the petitioner has been APPOINTED. x x x [41]

It is not the province of this Court to decide if in fact LDP Provincial Chairman Balauag knew or should have known that Damasen was a member of the Lakas-CMD party. However, as can be gleaned from the Transcript of Stenographic Notes dated July 12, 2005, LDP Provincial Chairman Balauag repeatedly denied knowing that Damasen ran for Mayor in San Isidro, Isabela.[42] The same notwithstanding, this Court must take into consideration the fact that Damasen was previously a member of the Lakas-CMD party. Likewise, while the revocation of Damasen's nomination came after the fact of his appointment by Governor Padaca, the same should not serve to bar any contest on said appointment as the primordial issue to be determined is whether or not Damasen has complied with the requirements of Sec. 45 (b) of RA 7160.

Letter from the LDP that Damasen is not a bona fide member

What is damning to the cause of Damasen, is the letter of Demaree J.B. Raval, the Deputy Secretary Counsel of the LDP, addressed to Governor Padaca wherein it is categorically stated that Damasen is not a bona fide member of the LDP, to wit:

x x x x

As regards the claim of Mr. Lucky Magala Damasén, please be informed that pursuant to the LDP Constitution, Mr. Damasén does not appear in our records as a bona fide member of the LDP. While it is true that Mr. Damasén may have been issued a Certificate of Membership dated May 5, 2005 by our Provincial Chairman for Isabela, Mrs. Ana Benita G. Balauag, his membership has not been endorsed (even to date) to the LDP National Council for approval. Besides, the Certificate of Candidacy of Mr. Damasén for the May 10, 2004 elections shows that he was nominated by the "Lakas-CMD Party".[43]

Like the CA, this Court has no reason to doubt the veracity of the letter coming from the LDP leadership. Quite clearly, from the tenor of the letter, it appears that the membership of Damasén still had to be approved by the LDP National Council. Thus, notwithstanding Damasén's procurement of a Certificate of Membership from LDP Provincial Chairman Balauag, to this Court's mind, the same merely started the process of his membership in the LDP, and it did not mean automatic membership thereto. While it may be argued that Damasén was already a member upon receipt of a Certificate of Membership from LDP Provincial Chairman Balauag, this Court cannot impose such view on the LDP. If the LDP leadership says that the membership of Damasén still had to be endorsed to the National Council for approval, then this Court cannot question such requirement in the absence of evidence to the contrary. It is well settled that the discretion of accepting members to a political party is a right and a privilege, a purely internal matter, which this Court cannot meddle in.

In resolving the petition at bar, this Court is guided by *Navarro v. Court of Appeals*[44](*Navarro*), where this Court explained the reason behind the rule of succession under Sec. 45 (b) of RA 7160, to wit:

The reason behind the right given to a political party to nominate a replacement where a permanent vacancy occurs in the Sanggunian is to maintain the party representation as willed by the people in the election.

With the elevation of petitioner Tamayo, who belonged to REFORMA-LM, to the position of Vice-Mayor, a vacancy occurred in the Sanggunian that should be filled up with someone belonging to the political party of petitioner Tamayo. Otherwise, REFORMA-LM's representation in the Sanggunian would be diminished. Xxx. As earlier pointed out, the reason behind Par. (b), Sec. 45 of the Local Government Code is the maintenance of party representation in the Sanggunian in accordance with the will of the electorate.[45]

Since the permanent vacancy in the Sanggunian occurred because of the elevation of LDP member Alonzo to vice-mayor, it follows that the person to succeed her should also belong to the LDP so as to preserve party representation. Thus, this Court cannot countenance Damasén's insistence in clinging to an appointment when he is in fact not a bona fide member of the LDP. While the revocation of the nomination given to Damasén came after the fact of his appointment, this Court cannot rule in his favor, because the very first requirement of Sec. 45 (b) is that the appointee must come from the political party as that of the Sanggunian member who caused the vacancy. To stress, Damasén is not a bona fide member of the LDP.

In addition, appointing Damasén would not serve the will of the electorate. He himself admits that he was previously a member of the Lakas-CMD, and that he ran for the position of Mayor under the said party on the May 2004 Elections. Likewise, he did not resign from the said party when he joined the LDP, and even admitted that his joining the LDP was not because of party ideals, but because he just wanted to.[46] How can the will of the electorate be best served, given the foregoing admissions of Damasén? If this Court were to grant herein petition, it would effectively diminish the party representation of the LDP in the Sanggunian, as Damasén would still be considered a member of the Lakas-CMD, not having resigned therefrom, a scenario that defeats the purpose of the law, and that ultimately runs contrary the ratio of *Navarro*.

Lastly, the records of the case reveal that Tumamao has the nomination[47] of Senator Edgardo J. Angara, the Party Chairman and, therefore, the highest official of the LDP. In addition, he is a member in good standing of the LDP.[48] Thus, given the foregoing, it is this Court's view that Tumamao has complied with the requirements of

law.

WHEREFORE, premises considered, the petition is DENIED. The June 14, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 90882, is AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Mendoza, JJ., concur.

[1] Rollo, pp. 3-34.

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Hakim S. Abdulwahid and Monina Arevalo Zeñarosa, concurring, id. at 39-52.

[3] Rollo, p. 40.

[4] Otherwise known as the Local Government Code of 1991. Section 44 provides:

Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(a) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(b) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(c) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

[5] Rollo, p. 40.

[6] Id.

[7] Rollo, p. 40.

[8] Id.

[9] Id. at 41.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] RTC records, pp. 1-14.

[15] Rollo, p. 41.

[16] Records, pp. 104-108.

[17] TSN, June 15, 2005.

[18] TSN, July 12, 2006.

[19] Rollo, pp. 53-60.

[20] Id.

[21] Otherwise known as the Local Government Code of 1991.

Section 45. Permanent Vacancies in the Sanggunian. -

(a) Permanent vacancies in the sanggunian where automatic succession provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities;

(2) The governor, in the case of the sangguniang panlungsod of component cities and the sangguniang bayan;

(3) The city or municipal mayor, in the case of sangguniang barangay, upon recommendation of the sangguniang barangay concerned.

(b) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefore.

[22] Rollo, p. 58.

[23] Id.

[24] Id. at 60.

[25] Rollo, pp. 51-52.

[26] Id. at 49-50.

[27] Rollo, 20-21.

[28] Id. at 21.

[29]Id. at 21-22.

[30] Emphasis supplied.

[31] Rollo, p. 61.

[32] Id. at 62.

[33] Id. at 63.

[34] Id. at 64.

[35] Rollo, p. 65.

[36] Id. at 145.

[37] Id. at 148.

[38] Id. Emphasis supplied.

[39] Id. at 28.

[40] Id. at 191.

[41] Id. at 212.

[42] Q. Now, Madam Witness, you said a while ago that you did not know me having been a candidate for mayor in San Isidro, Isabelala?

A. Yes, I didn't , Sir.

Q. You didn't know, Madam Witness?

A. No, I didn't know, Sir. (TSN, July 12, 2005, pp. 40-41).

[43] Rollo, p. 148, Emphasis supplied.

[44] G.R. No. 141307, March 28, 2001, 672 SCRA 355.

[45] Id. at. 678.

[46] Rollo, p. 50.

[47] Id. at 144.

[48] See Nomination Letter dated June 21, 2005, id.

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