

**NORBERTO ALTRES, EVITA BULINGAN, EVANGELINE SASTINE,
FELIPE SASA, LILIBETH SILLAR, RAMONITO JAYSON, JELO TUCALO,
JUAN BUCA, JR., JUE CHRISTINE CALAMBA, ROMEO PACQUINGAN,
JR., CL...**

G.R. No. 180986. December 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via petition for review on certiorari are the Decision dated February 2, 2007[1] and Order dated October 22, 2007[2] of Branch 3 of the Regional Trial Court (RTC) of Iligan City, which denied petitioners' petition for mandamus praying for a writ commanding the city accountant of Iligan, Camilo G. Empleo (Empleo), or his successor in office, to issue a certification of availability of funds in connection with their appointments, issued by then Iligan City Mayor Franklin M. Quijano (Mayor Quijano), which were pending approval by the Civil Service Commission (CSC).

Sometime in July 2003, Mayor Quijano sent notices of numerous vacant career positions in the city government to the CSC. The city government and the CSC thereupon proceeded to publicly announce the existence of the vacant positions. Petitioners and other applicants submitted their applications for the different positions where they felt qualified.

Toward the end of his term or on May 27, June 1, and June 24, 2004, Mayor Quijano issued appointments to petitioners.

In the meantime, the Sangguniang Panglungsod issued Resolution No. 04-242[3] addressed to the CSC Iligan City Field Office requesting a suspension of action on the processing of appointments to all vacant positions in the plantilla of the city government as of March 19, 2004 until the enactment of a new budget.

The Sangguniang Panglungsod subsequently issued Resolution No. 04-266[4] which, in view of its stated policy against "midnight appointments," directed the officers of the City Human Resource Management Office to hold in abeyance the transmission of all appointments signed or to be signed by the incumbent mayor in order to ascertain whether these had been hurriedly prepared or carefully considered and whether the matters of promotion and/or qualifications had been properly addressed. The same Resolution enjoined all officers of the said Office to put off the transmission of all appointments to the CSC, therein making it clear that non-compliance therewith would be met with administrative action.

Respondent city accountant Empleo did not thus issue a certification as to availability of funds for the payment of salaries and wages of petitioners, as required by Section 1(e)(ii), Rule V of CSC Memorandum Circular No. 40, Series of 1998 reading:

x x x x

e. LGU Appointment. Appointment in local government units for submission to the Commission shall be accompanied, in addition to the common requirements, by the following:

x x x x

ii. Certification by the Municipal/City Provincial Accountant/Budget Officer that funds are available. (Emphasis and underscoring supplied)

And the other respondents did not sign petitioners' position description forms.

The CSC Field Office for Lanao del Norte and Iligan City disapproved the appointments issued to petitioners invariably due to lack of certification of availability of funds.

On appeal by Mayor Quijano, CSC Regional Office No. XII in Cotabato City, by Decision of July 30, 2004,[5] dismissed the appeal, it explaining that its function in approving appointments is only ministerial, hence, if an appointment lacks a requirement prescribed by the civil service law, rules and regulations, it would disapprove it without delving into the reasons why the requirement was not complied with.

Petitioners thus filed with the RTC of Iligan City the above-stated petition for mandamus against respondent Empleo or his successor in office for him to issue a certification of availability of funds for the payment of the salaries and wages of petitioners, and for his co-respondents or their successors in office to sign the position description forms.

As stated early on, Branch 3 of the Iligan RTC denied petitioners' petition for mandamus. It held that, among other things, while it is the ministerial duty of the city accountant to certify as to the availability of budgetary allotment to which expenses and obligations may properly be charged under Section 474(b)(4) of Republic Act No. 7160,[6] otherwise known as the Local Government Code of 1991, the city accountant cannot be compelled to issue a certification as to availability of funds for the payment of salaries and wages of petitioners as this ministerial function pertains to the city treasurer. In so holding, the trial court relied on Section 344 of the Local Government Code of 1991 the pertinent portion of which provides:

Sec. 344. Certification and Approval of Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x x (Underscoring supplied)

Petitioners filed a motion for reconsideration[7] in which they maintained only their prayer for a writ of mandamus for respondent Empleo or his successor in office to issue a certification of availability of funds for the payment of their salaries and wages. The trial court denied the motion by Order of October 22, 2007,[8] hence, the present petition.

By Resolution of January 22, 2008,[9] this Court, without giving due course to the petition, required respondents to comment thereon within ten (10) days from notice, and at the same time required petitioners to comply, within the same period, with the relevant provisions of the 1997 Rules of Civil Procedure.

Petitioners filed a Compliance Report dated February 18, 2008[10] to which they attached 18 copies of (a) a verification and certification, (b) an affidavit of service, and (c) photocopies of counsel's Integrated Bar of the Philippines (IBP) official receipt for the year 2008 and his privilege tax receipt for the same year.

Respondents duly filed their Comment,[11] alleging technical flaws in petitioners' petition, to which Comment petitioners filed their Reply[12] in compliance with the Court's Resolution dated April 1, 2008.[13]

The lone issue in the present petition is whether it is Section 474(b)(4) or Section 344 of the Local Government Code of 1991 which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998. As earlier stated, the trial court ruled that it is Section 344. Petitioners posit, however, that it is Section 474(b)(4) under which it is the ministerial duty of the city accountant to issue the certification, and not Section 344 which pertains to the ministerial function of the city treasurer to issue the therein stated certification.

A discussion first of the technical matters questioned by respondents is in order.

Respondents assail as defective the verification and certification against forum shopping attached to the petition as it bears the signature of only 11 out of the 59 petitioners, and no competent evidence of identity was presented by the signing petitioners. They thus move for the dismissal of the petition, citing Section 5, Rule 7[14] vis a vis Section 5, Rule 45[15] of the 1997 Rules of Civil Procedure and *Docena v. Lapesura*[16] which held that the certification against forum shopping should be signed by all the petitioners or plaintiffs in a case and that the signing by only one of them is insufficient as the attestation requires personal knowledge by the party executing the same.[17]

Petitioners, on the other hand, argue that they have a justifiable cause for their inability to obtain the signatures of the other petitioners as they could no longer be contacted or are no longer interested in pursuing the case.[18] Petitioners plead substantial compliance, citing *Huntington Steel Products, Inc., et al. v. NLRC*[19] which held, among other things, that while the rule is mandatory in nature, substantial compliance under justifiable circumstances is enough.

Petitioners' position is more in accord with recent decisions of this Court.

In *Iglesia ni Cristo v. Ponferrada*,[20] the Court held:

The substantial compliance rule has been applied by this Court in a number of cases: *Cavile v. Heirs of Cavile*, where the Court sustained the validity of the certification signed by only one of petitioners because he is a relative of the other petitioners and co-owner of the properties in dispute; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, where the Court allowed a certification signed by only two petitioners because the case involved a family home in which all the petitioners shared a common interest; *Gudoy v. Guadalquiver*, where the Court considered as valid the certification signed by only four of the nine petitioners because all petitioners filed as co-owners pro indiviso a complaint against respondents for quieting of title and damages, as such, they all have joint interest in the undivided whole; and *DAR v. Alonzo-Legasto*, where the Court sustained the certification signed by only one of the spouses as they were sued jointly involving a property in which they had a common interest.[21] (*Italics in the original, underscoring supplied*)

Very recently, in *Tan, et al. v. Ballena, et al.*,[22] the verification and certification against forum shopping attached to the original petition for certiorari filed with the Court of Appeals was signed by only two out of over 100 petitioners and the same was filed one day beyond the period allowed by the Rules. The appellate court initially resolved to dismiss the original petition precisely for these reasons, but on the therein petitioners' motion for reconsideration, the appellate court ordered the filing of an amended petition in order to include all the original complainants numbering about 240. An amended petition was then filed in compliance with the said order, but only 180 of the 240 original complainants signed the verification and certification against forum shopping. The Court of Appeals granted the motion for reconsideration and resolved to reinstate the petition.

In sustaining the Court of Appeals in *Tan*, the Court held that it is a far better and more prudent course of action to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of

cases while actually resulting in more delay, if not a miscarriage of justice.

The Court further discoursed in Tan:

Under justifiable circumstances, we have already allowed the relaxation of the requirements of verification and certification so that the ends of justice may be better served. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith; while the purpose of the aforesaid certification is to prohibit and penalize the evils of forum shopping.

In *Torres v. Specialized Packaging Development Corporation*, we ruled that the verification requirement had been substantially complied with despite the fact that only two (2) out of the twenty-five (25) petitioners have signed the petition for review and the verification. In that case, we held that the two signatories were unquestionably real parties-in-interest, who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the Petition.

In *Ateneo de Naga University v. Manalo*, we also ruled that there was substantial compliance with the requirement of verification when only one of the petitioners, the President of the University, signed for and on behalf of the institution and its officers.

Similarly, in *Bases Conversion and Development Authority v. Uy*, we allowed the signature of only one of the principal parties in the case despite the absence of a Board Resolution which conferred upon him the authority to represent the petitioner BCDA.

In the present case, the circumstances squarely involve a verification that was not signed by all the petitioners therein. Thus, we see no reason why we should not uphold the ruling of the Court of Appeals in reinstating the petition despite the said formal defect.

On the requirement of a certification of non-forum shopping, the well-settled rule is that all the petitioners must sign the certification of non-forum shopping. The reason for this is that the persons who have signed the certification cannot be presumed to have the personal knowledge of the other non-signing petitioners with respect to the filing or non-filing of any action or claim the same as or similar to the current petition. The rule, however, admits of an exception and that is when the petitioners show reasonable cause for failure to personally sign the certification. The petitioners must be able to convince the court that the outright dismissal of the petition would defeat the administration of justice.

In the case at bar, counsel for the respondents disclosed that most of the respondents who were the original complainants have since sought employment in the neighboring towns of Bulacan, Pampanga and Angeles City. Only the one hundred eighty (180) signatories were then available to sign the amended Petition for Certiorari and the accompanying verification and certification of non-forum shopping.[23]

In the present case, the signing of the verification by only 11 out of the 59 petitioners already sufficiently assures the Court that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation; that the pleading is filed in good faith; and that the signatories are unquestionably real parties-in-interest who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition.

With respect to petitioners' certification against forum shopping, the failure of the other petitioners to sign as they could no longer be contacted or are no longer interested in pursuing the case need not merit the outright dismissal of the petition without defeating the administration of justice. The non-signing petitioners are, however, dropped as parties to the case.

In fact, even *Docena*[24] cited by respondents sustains petitioners' position. In that case, the certification against

forum shopping was signed by only one of the petitioning spouses. The Court held that the certification against forum shopping should be deemed to constitute substantial compliance with the Rules considering, among other things, that the petitioners were husband and wife, and that the subject property was their residence which was alleged in their verified petition to be conjugal.[25]

With respect to petitioners' non-presentation of any identification before the notary public at the time they swore to their verification and certification attached to the petition, suffice it to state that this was cured by petitioners' compliance[26] with the Court's Resolution of January 22, 2008[27] wherein they submitted a notarized verification and certification bearing the details of their community tax certificates. This, too, is substantial compliance. The Court need not belabor its discretion to authorize subsequent compliance with the Rules.

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.[28]
- 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[29]
- 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." [30]
- 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; [31] otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[32]
- 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel.[33] If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney[34] designating his counsel of record to sign on his behalf.

And now, on respondents' argument that petitioners raise questions of fact which are not proper in a petition for review on certiorari as the same must raise only questions of law. They entertain doubt on whether petitioners seek the payment of their salaries, and assert that the question of whether the city accountant can be compelled to issue a certification of availability of funds under the circumstances herein obtaining is a factual issue.[35]

The Court holds that indeed petitioners are raising a question of law.

The Court had repeatedly clarified the distinction between a question of law and a question of fact. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set

of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[36] A question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevance of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[37] When there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law.[38]

In the case at bar, the issue posed for resolution does not call for the reevaluation of the probative value of the evidence presented, but rather the determination of which of the provisions of the Local Government Code of 1991 applies to the Civil Service Memorandum Circular requiring a certificate of availability of funds relative to the approval of petitioners' appointments.

At all events, respondents contend that the case has become moot and academic as the appointments of petitioners had already been disapproved by the CSC. Petitioners maintain otherwise, arguing that the act of respondent Empleo in not issuing the required certification of availability of funds unduly interfered with the power of appointment of then Mayor Quijano; that the Sangguniang Panglungsod Resolutions relied upon by respondent Empleo constituted legislative intervention in the mayor's power to appoint; and that the prohibition against midnight appointments applies only to presidential appointments as affirmed in *De Rama v. Court of Appeals*. [39]

The Court finds that, indeed, the case had been rendered moot and academic by the final disapproval of petitioners' appointments by the CSC.

The mootness of the case notwithstanding, the Court resolved to rule on its merits in order to settle the issue once and for all, given that the contested action is one capable of repetition[40] or susceptible of recurrence.

The pertinent portions of Sections 474(b)(4) and 344 of the Local Government Code of 1991 provide:

Section 474. Qualifications, Powers and Duties. -

x x x x

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(4) certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged. (Emphasis and underscoring supplied)

x x x x

Sec. 344. Certification and Approval of Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x (Emphasis and underscoring supplied)

Petitioners propound the following distinctions between Sections 474(b)(4) and 344 of the Local Government Code of 1991:

(1) Section 474(b)(4) speaks of certification of availability of budgetary allotment, while Section 344 speaks of certification of availability of funds for disbursement;

(2) Under Section 474(b)(4), before a certification is issued, there must be an appropriation, while under

Section 344, before a certification is issued, two requisites must concur: (a) there must be an appropriation legally made for the purpose, and (b) the local accountant has obligated said appropriation;

(3) Under Section 474(b)(4), there is no actual payment involved because the certification is for the purpose of obligating a portion of the appropriation; while under Section 344, the certification is for the purpose of payment after the local accountant had obligated a portion of the appropriation;

(4) Under Section 474(b)(4), the certification is issued if there is an appropriation, let us say, for the salaries of appointees; while under Section 344, the certification is issued if there is an appropriation and the same is obligated, let us say, for the payment of salaries of employees.[41]

Respondents do not squarely address the issue in their Comment.

Section 344 speaks of actual disbursements of money from the local treasury in payment of due and demandable obligations of the local government unit. The disbursements are to be made through the issuance, certification, and approval of vouchers. The full text of Section 344 provides:

Sec. 344. Certification and Approval of Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.

In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor. (*Italics and underscoring supplied*)

"Voucher," in its ordinary meaning, is a document which shows that services have been performed or expenses incurred.[42] When used in connection with disbursement of money, it implies the existence of an instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment.[43]

Section 344 of the Local Government Code of 1991 thus applies only when there is already an obligation to pay on the part of the local government unit, precisely because vouchers are issued only when services have been performed or expenses incurred.

The requirement of certification of availability of funds from the city treasurer under Section 344 of the Local Government Code of 1991 is for the purpose of facilitating the approval of vouchers issued for the payment of services already rendered to, and expenses incurred by, the local government unit.

The trial court thus erred in relying on Section 344 of the Local Government Code of 1991 in ruling that the ministerial function to issue a certification as to availability of funds for the payment of the wages and salaries of petitioners pertains to the city treasurer. For at the time material to the required issuance of the certification, the appointments issued to petitioners were not yet approved by the CSC, hence, there were yet no services performed to speak of. In other words, there was yet no due and demandable obligation of the local government to petitioners.

Section 474, subparagraph (b)(4) of the Local Government Code of 1991, on the other hand, requires the city accountant to "certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged." [44] By necessary implication, it includes the duty to certify to the availability of funds for the payment of salaries and wages of appointees to positions in the plantilla of the local government unit, as required under Section 1(e)(ii), Rule V of CSC Memorandum Circular Number 40, Series of 1998, a requirement before the CSC considers the approval of the appointments.

In fine, whenever a certification as to availability of funds is required for purposes other than actual payment of an obligation which requires disbursement of money, Section 474(b)(4) of the Local Government Code of 1991 applies, and it is the ministerial duty of the city accountant to issue the certification.

WHEREFORE, the Court declares that it is Section 474(b)(4), not Section 344, of the Local Government Code of 1991, which applies to the requirement of certification of availability of funds under Section 1(e)(ii), Rule V of Civil Service Commission Memorandum Circular Number 40, Series of 1998.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.

Leonardo-De Castro, J., on official leave.

Brion, J., on leave.

[1] Rollo, pp. 17-24.

[2] Ibid. at 31-36.

[3] Id. at 37-38.

[4] Id. at 39-40.

[5] Id. at 41-45.

[6] Section 474(b)(4), Republic Act No. 7160 provides:

"Section 474. Qualifications, Powers and Duties. -

x x x x

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(4) certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged."

[7] Rollo, pp. 25-30.

[8] Supra note 2.

[9] Rollo, pp. 52-53.

[10] Ibid. at 54-55.

[11] Id. at 113-127.

[12] Id. at 146-157.

[13] Id. at 145.

[14] Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[15] Section 5, Rule 45 of the Rules of Court provides:

SEC. 5. Dismissal or denial of petition. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[16] 407 Phil. 1007 (2001).

[17] Ibid. at 1017.

[18] Rollo, p. 151.

[19] G.R. No. 158311, November 17, 2004, 442 SCRA 551.

[20] G.R. No. 168943, October 27, 2006, 505 SCRA 828.

[21] Ibid. at 841-842 (citations omitted).

[22] G.R. No. 168111, July 4, 2008.

[23] Ibid., citations omitted.

[24] Supra note 16.

[25] Ibid. at 1017-1021.

[26] Supra note 10.

[27] Supra note 9.

[28] Sari-Sari Group of Companies, Inc. v. Piglas-Kamao, G.R. No. 164624, August 11, 2008.

[29] Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank, G.R. No. 164479, February 13, 2008, 545 SCRA 253.

[30] Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation, G.R. No. 159422, March 28, 2008, 550 SCRA 180.

[31] Juaban v. Espina, G.R. No. 170049, March 14, 2008, 548 SCRA 588.

[32] Pacquing v. Coca-Cola Philippines, Inc., G.R. No. 157966, January 31, 2008, 543 SCRA 344.

[33] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, June 17, 2004, 432 SCRA 360.

[34] Vide Fuentebella v. Castro, G.R. No. 150865, June 30, 2006, 494 SCRA 183; Eslaban, Jr. v. Vda. de Onorio, G.R. No. 146062, June 28, 2001, 360 SCRA 230.

[35] Rollo, p. 121.

[36] Mendoza v. Salinas, G.R. No. 152827, February 6, 2007, 514 SCRA 414, 419; Vide also Philippine National Construction Corporation v. Court of Appeals, G.R. No. 159417, January 25, 2007, 512 SCRA 684.

[37] Ibid.

[38] National Power Corporation v. Purefoods Corporation, et al., G.R. No. 160725, September 12, 2008, citing Gomez v. Sta. Ines, G.R. No. 132537, October 14, 2005, 473 SCRA 25, 37.

[39] 405 Phil. 531, 551 (2001).

[40] In David v. Arroyo, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, seven petitions for certiorari and prohibition were filed assailing the constitutionality of the declaration of a state of national emergency by President Gloria Macapagal-Arroyo. While the declaration of a state of national emergency was already lifted during the pendency of the suits, this Court still resolved the merits of the petitions, considering that the issues involved a grave violation of the Constitution and affected the public interest. The Court also affirmed its duty to formulate guiding and controlling constitutional precepts, doctrines or rules, and recognized that the contested actions were capable of repetition.

In Public Interest Center, Inc. v. Elma, G.R. No. 138965, June 30, 2006, 494 SCRA 53, the petition sought to declare as null and void the concurrent appointments of Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. While Elma ceased to hold the two offices during the pendency of the case, the Court still ruled on the merits thereof, considering that the question of whether the PCGG Chairman could concurrently hold the position of CPLC was one capable of repetition.

In Manalo v. Calderon, G.R. No. 178920, October 15, 2007, 536 SCRA 290, a petition for habeas corpus was filed by the police officers implicated in the burning of an elementary school in Batangas at the height of the May 2007 elections. The Court decided the case on the merits notwithstanding the recall by the Philippine National Police of the restrictive custody orders against petitioners therein. Citing David v. Arroyo, the Court held: "Every bad, unusual incident where police officers figure in generates public interest and people watch what will be done

or not done to them. Lack of disciplinary steps taken against them erodes public confidence in the police institution. As petitioners themselves assert, the restrictive custody of policemen under investigation is an existing practice, hence, the issue is bound to crop up every now and then. The matter is capable of repetition or susceptible of recurrence. It better be resolved now for the education and guidance of all concerned."

[41] Rollo, p. 148.

[42] *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005, 458 SCRA 385, 403.

[43] *Ibid.* at 404, citing *First National Bank of Chicago v. City of Elgin*, 136 Ill. App. 453.

[44] *Supra* note 6.

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