

FIDEL V. ANACTA, JR., PETITIONER, VS. SANDIGANBAYAN (FIFTH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 219352. November 14, 2018

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 7 April 2015 Decision[2] and the 23 June 2015 Resolution[3] of the Sandiganbayan in SB-07-CRM-0012. The Sandiganbayan found Fidel V. Anacta, Jr. (petitioner) guilty of the crime of unlawful appointments, defined and penalized under Article 244 of the Revised Penal Code (RPC).

The Facts

On 10 January 2005, petitioner, who was then the Municipal Mayor of Borongan, Eastern Samar, appointed Atty. Reynaldo A. Alconaba (Alconaba) as a member of the Board of Directors of the Borongan Water District, representing the professional sector. When the appointment was referred to the Local Water Utilities Administration (LWUA) for confirmation, LWUA declared Alconaba's appointment as void. LWUA declared that Alconaba's appointment is prohibited by law since it was made within one year from the 2004 May elections in which Alconaba had lost in his bid for the position of municipal councilor.

Petitioner was charged with violating Article 244 of the RPC, in relation to Section 6, Article IX-B of the Constitution and Section 94 of Republic Act (R.A.) No. 7160.[4] The Information reads:

That on or about January 10, 2005 at the Municipality of Borongan, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being a Municipal Mayor of Borongan, Eastern Samar, and as such, has the power and authority to appoint officials and employees of the Local Water District of Borongan, Eastern Samar, in such capacity and committing the offense in relation to office, with deliberate intent, did then and there willfully, unlawfully and feloniously appoint Arty. Reynaldo A. Alconaba, as Director of the Borongan Water District, Eastern Samar despite the fact that there was a prohibition for his appointment as said Atty. Reynaldo A. Alconaba, was a candidate for the Sangguniang Bayan of Borongan, Eastern Samar during the May 2004 election[s] and lost, and said appointment was made within one-year from the said election[s], thus in utter disregard of the one-year prohibition under Sec. 94 of RA 7160 in relation to Sec, 6, Art. IX-B of the Philippine Constitution and Article 244 of the Revised Penal Code, to the detriment of public interest.

CONTRARY TO LAW.[5]

During his arraignment on 5 August 2008, petitioner pleaded not guilty to the charge.

The Ruling of the Sandiganbayan

The Sandiganbayan found petitioner guilty of the crime of unlawful appointments defined and penalized under Article 244 of the RPC, and sentenced him to suffer the penalty of imprisonment of arresto mayor in its medium

period, that is 2 months and 1 day to 4 months, and a fine of P1,000.

The Sandiganbayan found that petitioner, when he was the Municipal Mayor of Borongan, Eastern Samar, appointed Alconaba as member of the Board of Directors of the Borongan Water District on 10 January 2005. The Borongan Water District is a government-owned and controlled corporation. Thus, the appointment of the members of the Board of Directors is subject to the one-year prohibition under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160.

Alconaba lost in the 14 May 2004 elections when he ran for a seat as member of the Sangguniang Bayan of Borongan. Under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160, Alconaba, who lost in the May 2004 elections, could not be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries, within one year from such elections.

Having run for public office several times, petitioner admitted in his testimony that he was aware of the one-year prohibition against the appointment of losing candidates to any government position. Petitioner likewise admitted that he knew that Alconaba ran for public office during the May 2004 elections and yet he still appointed him as a member of the Board of Directors of the Borongan Water District on 10 January 2005. The Sandiganbayan held that since the power to appoint is discretionary on the part of petitioner as mayor, petitioner's defense that he merely relied on the recommendation of the Integrated Bar of the Philippines (IBP) – Eastern Samar Chapter in appointing Alconaba as director of the Borongan Water District deserves scant consideration. As the appointing authority, petitioner had the discretion to accept or reject the recommendation of the IBP since the power of the mayor to appoint a director of the water district is not merely ministerial in nature.

The Issue

Petitioner contends that the Sandiganbayan erred in finding him guilty of the crime of unlawful appointments.

The Court's Ruling

We find the petition without merit.

Petitioner is charged with violating Article 244 of the RPC, in relation to Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160. The pertinent provisions read:

RPC, Article 244

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.

Constitution, Section 6, Article IX-B

Sec. 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.

R.A. No. 7160

Sec. 94. Appointment of Elective and Appointive Local Officials: Candidates Who Lost in an 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.

The elements of the crime of unlawful appointments under Article 244 of the RPC are:

(1)

The offender is a public officer;

(2)

He or she nominates or appoints a person to a public office;

(3)

Such person lacks the legal qualifications therefor; and

(4)

The offender knows that his or her nominee or appointee lacks the qualifications at the time he or she made the nomination or appointment.[6]

Petitioner maintains he should be acquitted of the crime charged since the fourth element of the crime is absent in this case. Petitioner asserts that he merely relied in good faith on the recommendation of the IBP–Eastern Samar Chapter in appointing Alconaba as director of the Borongan Water District, and it was not proven that he knew about Alconaba's lack of qualification at the time he made the appointment.

Petitioner cannot feign ignorance of Alconaba's ineligibility when he appointed him as director of the Borongan Water District. That he knew of Alconaba's disqualification for appointment to any public office is established by petitioner's own testimony:

ATTY. ESCOTO

Q

What prompted you to appoint Atty. Reynaldo Alconaba?

A

Because I relied on the recommendation from the IBP and Atty. Reynaldo Alconaba was frequently going to my office and he told me, "Mayor you appoint me as Director, I am willing to serve as Director of the Borongan Water District."

Q

After you received the letter from LWUA informing you that the appointment of Atty. Reynaldo Alconaba was invalid, what did you do, if any?

A

I immediately told my utility clerk to inform Atty. Reynaldo Alconaba to go to my office so that I could tell him that he was disqualified for the position of Director of Borongan Water District.

ATTY. ESCOTO

That will be all, Your Honor.

JUSTICE GESMUNDO

Q

How soon after you were informed that the appointment of Atty. Reynaldo Alconaba was invalid that you tried to contact Atty. Alconaba?

A

Immediately, Your Honor.

Q

How many days?

A

That same day that I received the letter.

Q

When did you make the appointment?

A

I cannot recall, Your Honor.

Q

How soon after the appointment was made were you informed by LWUA that the appointment was invalid?

A

More than six (6) months, I think, Your Honor.

Q

Which LWUA Office informed you that the appointment is invalid?

A

The Central Office, Your Honor.

Q

Why, was his appointment transmitted to the Central Office?

A

Yes, Your Honor.

JUSTICE GESMUNDO

Q

You were saying earlier that there was a process undertaken with regard to the appointment of Atty. Reynaldo Alconaba, is that correct?

A

Yes, Your Honor.

Q

Do you have a document to show that it was the IBP who nominated Atty. Reynaldo Alconaba?

ATTY. ESCOTO

Your Honor, we intend to produce the document when we present Atty. ... who was the one who made the recommendation.

JUSTICE GESMUNDO

Q

How about the letter, you mentioned about a letter, is that correct?

A

Yes, Your Honor, the letter from the national LWUA, we have it.

JUSTICE GESMUNDO

Q

Did you inform Atty. Alconaba in writing or formally that you were recalling his appointment?

A

No, Your Honor, verbal only.

Q

Why did you not put that in writing to make it official?

A

I only talked to him.

Q

Did Atty. Alconaba stop performing the functions as Director of the Local Water District?

A

Yes, Your Honor he stopped performing his functions.

Q

What about the other Directors of the Borongan Water District, were you also the one who appointed them?

A

Yes, Your Honor, I was the one who appointed them.

Q

How many Directors are there?

A

Five (5), Your Honor.

JUSTICE GESMUNDO

Q

You appointed them all?

A

Yes, Your Honor.

Q

All at the same time?

A

No. Not at the same time because their office[s] are different.

Q

Did Atty. Reynaldo Alconaba run for public office?

A

Yes, Your Honor.

Q

Which ticket did he join?

A

In my ticket, Your Honor.

x x x x

PROS. ZALES

Q

Mr. Witness, how long have you been running for public office?

ATTY. ESCOTO

Objection, Your Honor, I think it is immaterial.

JUSTICE GESMUNDO

Witness may answer.

WITNESS

A

I have been a Vice Mayor in 1998 for one term. In 2001, I ran for Mayor. I have been a Mayor for three (3) consecutive terms and now I am the incumbent Vice Mayor.

Q

Having run for several times for public office, can you confirm that you are aware that if you run for public office, you are disqualified to be appointed in any government position for one (1) year from the time that you r[a]n?

ATTY. ESCOTO

Objection, Your Honor ...

JUSTICE GESMUNDO

Answer, if he knows.

WITNESS

A

Yes.

PROS. ZALES

Q

So you are aware that when you appointed Atty. Reynaldo Alconaba in January 2005 after he ran for Councilor of Borongan in May 2004, he was not qualified to be appointed as Director of the Borongan Water District?

A

I am not aware because I relied on the recommendation of the Integrated Bar of the Philippines.

Q

But you are aware that he ran in May 2004 election[s]?

A

Yes, ma'am.

Q

And you appointed him in January 2005?

WITNESS

A

Yes, ma'am.[[7]] (Emphasis supplied)

Petitioner evidently knew that Alconaba was ineligible for appointment to any public office since Alconaba lost in the May 2004 elections when he ran as councilor of Borongan under petitioner's ticket. Petitioner knew that the one-year prohibition imposed on losing candidates as provided under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160 applied to Alconaba.

In *People v. Sandiganbayan* (Fourth Division),^[8] the Court held that legal disqualification under Article 244 of the RPC includes temporary disqualification such as the one-year prohibition provided under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160. The Court declared:

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 prohibit 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.

x x x x

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.[9] (Emphasis supplied)

It is undisputed that petitioner appointed Alconaba in January 2005 as director of the Borongan Water District. At the time of his appointment, Alconaba, who ran and lost in the May 2004 elections, was not eligible for appointment to any office in the government or government-owned or controlled corporation by virtue of the one-year prohibition under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160. The Borongan Water District is a government-owned or controlled corporation, created under Presidential Decree (P.D.) No. 198.[10] In *Davao City Water District v. CSC*,^[11] the Court categorically ruled that local water districts are government-owned or controlled corporations with original charter. Under Section 3(b)[12] of P.D. No. 198, petitioner, as the Municipal Mayor of Borongan in 2005, was the appointing authority or the person empowered to appoint the members of the Board of Directors of the Borongan Water District. Petitioner knew that when he appointed Alconaba, who ran and lost under his ticket in the May 2004 elections, the latter was covered by the one-year prohibition and thus not qualified for appointment to any public office. Clearly, the Sandiganbayan did not err in finding petitioner guilty of the crime of unlawful appointments defined and penalized under Article 244 of the RPC.

WHEREFORE, we DENY the petition. We AFFIRM the 7 April 2015 Decision and the 23 June 2015 Resolution of the Sandiganbayan in SB-07-CRM-0012.

SO ORDERED.

Perlas-Bernabe, Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 22-53. Penned by Presiding Justice Amparo M. Cabotaje-Tang, with Associate Justices Roland B. Jurado and Alexander G. Gesmundo (now a member of this Court) concurring.

[3] *Id.* at 54-57.

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

[5] Sandiganbayan records, Volume I, pp. 1-2.

[6] II L. Reyes, *THE REVISED PENAL CODE* 501 (19[th] ed. 2017).

[7] TSN, 14 June 2012, pp. 13-20.

[8] 581 Phil. 419 (2008).

[9] Id. at 427-428.

[10] Otherwise known as the "Provincial Water Utilities Act of 1973."

[11] 278 Phil. 605 (1991).

[12] Section 3(b). Appointing authority. The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population makeup of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists. (Emphasis supplied)

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