

**VICE MAYOR SIEGFREDO D. OBIAS, KAGAWAD EFREN G. SANTOS,
KAGAWAD FELICISIMO G. DE ASIS, KAGAWAD J. ANTONIO A.
AMPARADO, KAGAWAD HELI D. MIRANDA, KAGAWAD PERFECTO V.
PALACIO, KAGA...**

G.R. No. 69437. May 31, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Certiorari and Prohibition with prayer for a Writ of Preliminary Injunction and/or Restraining Order directed against the Order of respondent Judge, dated December 17, 1984, convicting petitioners of contempt of Court.

Briefly, the facts are as follows: On March 2, 1984, Eddie B. Imperial, private respondent herein, was duly ap-pointed by the President of the Philippines as a member of the Sangguniang Panglungsod of Naga City vice Temporo M. Dy, who died on November 19, 1983, to serve for the unexpired portion of the latter's term. After taking his oath of office before the Provincial Governor, private respondent was prevented from enjoying the rights, privileges, and prerogatives of that office by petitioner Vice-Mayor Siegfredo D. Obias, as Presiding Officer of the Sangguniang Panglungsod, together with nine other members of that body, who are the other petitioners herein.

On April 24, 1984, private respondent, as plaintiff, filed a complaint for Mandamus and Damages with prayer for Preliminary Injunction before the Regional Trial Court of Naga City, Branch XX, presided by respondent Judge, against herein petitioners seeking to compel the latter to recognize him as a duly appointed member of the Sangguniang Panglungsod and to allow him to exercise and enjoy all the rights, prerogatives and emoluments appertaining to that office.

On April 27, 1984, respondent Judge issued a Restraining Order "enjoining petitioner from excluding private respondent from the exercise and enjoyment of his office as a duly appointed member of the Sangguniang Panglungsod of the City of Naga."

On May 9, 1984, petitioners filed their Answer averring that private respondent had failed to present credentials to show that he was the same "Eddie B. Imperial" referred to in the appointment, and even if so, there was no vacancy in the Sangguniang Panglungsod because the City Charter of Naga City[1], which fixed membership at seven (7) was repealed by Section 173(3) of the Local Government code, which authorizes Naga City to have only six members since its present population is less than 100,000.

On July 25, 1984, respondent Judge, after due hearing, issued an Order granting the Writ of Preliminary Injunction, the dispositive portion of which reads:

"WHEREFORE, let a writ of preliminary injunction issue, directing the defendants their agents and all persons representing and acting on their behalf, not to exclude the plaintiff from performing his functions and

exercising his rights, privileges, and emoluments as duly appointed member of the Sangguniang Panglunsod of Naga City, including, but not limited to, attendance to the sessions of said body; and enjoining the defendants from performing any of the acts complained of. For this purpose, the plaintiff is required to post a bond in the amount of P2,000.00."

On August 20, 1984, petitioners elevated the case on Certiorari before the Intermediate Appellate Court (AC-G.R. No. SP-04048) on the ground that the aforesaid Orders of respondent Judge were issued with grave abuse of discretion amounting to lack of jurisdiction. After initially issuing a Restraining Order, the Intermediate Appellate Court eventually denied Certiorari on the procedural grounds that prior hearing is not necessary for the issuance of a Restraining Order, and that the grant of the Writ of Preliminary Injunction was not premature in the sense that the offer of exhibits had already been admitted. Additionally, the IAC upheld the denial by respondent Judge of petitioners' Motion to disqualify him from resolving the case.

Forthwith, petitioners moved for reconsideration and for the reinstatement of the restraining Order earlier issued by the Intermediate Appellate Court (IAC).

In the meantime, in view of the dismissal of the Certiorari Petition by the IAC, private respondent sought to enforce the Writ of Preliminary Injunction issued by respondent Judge by attending the sessions of the Sangguniang Panglunsod on October 10, 17, 24, and 31, 1984. But having been excluded again from participating in the sessions by petitioners, private respondent filed before the trial Court a Motion to cite petitioners in contempt.

After a series of postponements and hearings, respondent Judge adjudged petitioners in contempt, as follows:

"Accordingly, and in view of the foregoing, the Court hereby finds x x x Vice Mayor and Chairman of the Sangguniang Panglunsod, Atty. Siegfredo Obias and Chairman Committee on Rules, Sangguniang Panglunsod, Atty. Efren Santos, both being lawyers and officers of the court and due to the importance of the positions they occupy, GUILTY of contempt of Court and both are hereby sentenced to an imprisonment of seven (7) days in jail and immediate arrest, unless appeal is made, in which case the bail bond in the amount of P500.00 each, is fixed for their temporary release, and to pay a fine of P1,000.00 each, within ten (10) days from notice of this Resolution."

"Kagawads Severino Tacorda, Perfecto Palacio, Jr., Felicisimo de Asis, Heli D. Miranda, J. Antonio Amparado, and Restituta M. Imperial, Benito Olivan, and Roberto Hernandez for their blind and carabao-like sub-servience despite their official oath both to uphold and defend the Constitution and obey orders of the duly constituted authorities, are also found GUILTY of contempt of court and each is hereby sentenced to an imprisonment of one day and immediate arrest, unless appeal is made in which case the bail bond of P200.00 is hereby fixed for their temporary release, and to pay a fine of P500.00 each. x x x "

"All the respondents are hereby further ordered not to exclude petitioner Eddie Imperial as a member of the Sangguniang Panglunsod of Naga City, with all the rights and privileges appertaining thereto, within a period of fifteen (15) days from notice hereof. Upon respondents' failure to so accept and include Eddie Imperial as a member, let an Order issue commanding the arrest of all the respondents, and their confinement in jail until they comply with the terms of the writ of injunction and of this resolution.

Immediately after the foregoing judgment was promulgated, petitioners, except Restituta Imperial and Benito Olivan, who moved for reconsideration instead, filed a Notice of Appeal to the IAC on December 18, 1984, and posted their respective bail bonds for their provisional release.[2]

Apparently abandoning their appeal, on December 28, 1984, petitioners filed before this Tribunal the instant petition for "Certiorari and Prohibition In Lieu of Appeal" to annul the judgment of conviction for Contempt against them and to prohibit respondents from enforcing said judgment by their arrest and confinement in jail. The

questions of law they raise follow:

"1. Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction which, in effect, would preempt the main case for mandamus which has yet to be resolved after trial on the merits?

2. Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction in the face of existing substantial prejudicial questions which have yet to be resolved?

3. Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction directed to the sheriff and not to them?

4.

Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction questioned in the Intermediate Appellate Court which has not yet rendered a final decision in favor of the grant of such writ because reconsideration of its decision is still pending?

5. Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction without allowing them to present evidence only supposedly for the reason that the motion to dismiss filed by them operated as a waiver of their right to present evidence?

6. Whether or not it is lawful for public respondent to try and convict petitioners for indirect con-tempt for their alleged failure to comply with a writ of preliminary injunction where they merely availed of remedies in law so as not to pre-empt or prejudice the main case and in order to protect government funds in their capacity as government officials?"

We issued a Temporary Restraining Order against respondents restraining them from arresting or incarcerating petitioners or in any manner enforcing or implementing the judgment of conviction in the contempt charge until further orders from this Court, and required respondents to file an Answer to the petition.

In the meantime, on February 14, 1985, the IAC denied petitioners' Motion for Reconsideration in AC-G.R. No. SP-04048, thereby terminating the said case.

At the outset, it should be clarified that it is only the Contempt case, which is the subject of the present Petition and that petitioners have abandoned their appeal before the IAC[3], and now rely on this special civil action on the ground that appeal is not a speedy and adequate remedy.

We find petitioners' position tenable and meritorious. Respondent Judge acted with grave abuse of discretion in issuing the Writ of Preliminary Injunction. In effect, he had practically granted the principal relief sought in the Mandamus case, which was to compel petitioner officials to allow private respondent to sit in the Sangguniang Panglungsod and to exercise all the rights, privileges and emoluments due a regular member thereof.

In so doing, respondent Judge overlooked substantial legal questions which still have to be weighed and considered before private respondent can sit as a member of the Sangguniang Panglungsod, namely: (1) whether or not the seventh elective position in the Sangguniang Panglungsod of Naga City is, in fact, vacant considering the provisions of Section 173(3) of the Local Government Code (B. P. Blg. 337); (2) whether or not an appointment that bears an alias name and not the true name of an intended appointee is valid; and (3) the effect of the pendency of Criminal Case No. RTC '84-701 against private respondent charging him with the use of an alias name without judicial authority in violation of Commonwealth Act 142, as amended by R.A. 6085.

Although the regular remedy of appeal was available to petitioners, as private respondent contends, it was not speedy and adequate under the exigencies of the case and specially considering that the conviction for contempt was rendered with grave and patent abuse of discretion by respondent Judge.

It should also be recalled that when private respondent filed the Motion for contempt before the trial Court, the Certiorari proceeding before the IAC was still pending reconsideration, so that it cannot be justifiably argued that the Temporary Restraining Order initially issued by the IAC had already been lifted.

With the foregoing conclusion arrived at, we deem it unnecessary to pass upon the other questions raised.

WHEREFORE, the judgment of conviction for contempt is hereby set aside and the Temporary Restraining Order heretofore issued, enjoining its enforcement as well as petitioners' arrest and incarceration, is hereby made permanent.

SO ORDERED.

Teehankee, (Chairman), Relova, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.

Plana, J., on official leave.

[1] RA No, 35 as amended.

[2] Annex "1" and "1-A" of Answer to the Petition, p.100 and 101 of Rollo.

[3] Annex "F", p. 144, Rollo.

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