

**ELENO T. REGIDOR, JR. ANICETO T. SIETE, CAMILO B. ZAPATOS
& RODULFO ENRIQUEZ, PETITIONERS, VS. GOV. WILLIAM
CHIONGBIAN, VICE GOV. FLORENCIO GARCIA, SANGGUNIAN
PANLALAWIGAN, MEM...**

G.R. No. 85815. May 19, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition for prohibition with a prayer for the issuance of temporary restraining order or writ of preliminary injunction was filed by the petitioners who are the duly elected city officials of Tangub City in Misamis Occidental. Eleno T. Regidor was elected City Mayor of Tangub City, the other petitioners, Aniceto T. Siete, Camilo B. Zapatos and Rodulfo Enriquez, are respectively the Vice-Mayor and members of the Sangguniang Panglunsod of Tangub City, who were elected in the January 18, 1988 local elections, were proclaimed in due course, and assumed office.

On November 3, 1988, respondents William Chiongbian and Florencio Garcia, Marivic Sagrado, Morpheus Agot, Constancio Balais, Alegria Cariño, Ernesto Ira, Pacita Yap, and Julio Tiu, who are respectively the Provincial Governor, the Vice-Governor, and members of the Sangguniang Panlalawigan, approved Resolution No. 340-88 recommending the suspension of the petitioners who failed to appear on November 18, 1988 at the hearing of a complaint for unspecified misconduct which respondent Robert O. Taclob filed against them in the office of the Governor and the Sangguniang Panlalawigan.

Pursuant to that resolution, Governor William Chiongbian issued on November 24, 1988 an Order of Preventive Suspension, suspending the petitioners "from their elective positions as City Mayor, City Vice-Mayor and Sangguniang Panglunsod members of Tangub City for a period of 60 days effective November 25, 1988" and ordering them to "cease and desist from performing the functions and duties" of their respective offices (Annex D, p. 10, Rollo).

On the same day, Governor Chiongbian appointed Taclob, a member of the Sangguniang Panglunsod of Tangub City, as Officer-in-Charge of Tangub City in lieu of Mayor Eleno T. Regidor (Annex E, p. 11, Rollo). Taclob belongs to the governor's political faction while Regidor and the other petitioner's belong to the rival faction of Alfonso Tan, the defeated opponent of respondent Chiongbian for the governorship of Misamis Occidental.

The petition alleges that respondents Governor Chiongbian and the Sangguniang Panlalawigan acted without authority, and contrary to law, in issuing the Order of Preventive Suspension against the petitioners because under Section 63 of the Local Government Code, a provincial or city official may be preventively suspended by the Minister of Local Government, not by the Provincial Governor.

Upon receipt of the petition, this Court issued a temporary restraining order commanding the respondents to "cease and desist from implementing or enforcing Resolution No. 340-88 dated November 23, 1988 and

Preventive Suspension Order dated November 24, 1988, and enjoining respondent Robert O. Taclob from assuming the position of OIC Mayor of Tangub City" (pp. 14-16, Rollo).

In their comment on the petition, the respondents justified the suspension of the petitioners as a valid exercise of the Provincial Governor's power of general supervision over a component city (Par. 6.4, Section 1, Rule 4 of the Implementing Rules & Regulations of the Local Government Code), and that it was done "in pursuance to (sic) the provisions of the Local Government Code and the Rules & Regulations implementing said law." (p. 25, Rollo.)

However, the pertinent provisions of the Local Government Code and the Implementing Rules and Regulations thereof do not sustain the respondents' contention in this case.

Section 61 of the Local Government Code provides that complaints against elective provincial or city officials should be verified and should be filed before the Minister of Local Government.

Section 63 provides that the Minister of Local Government may impose a preventive suspension against the accused elective provincial or city official, thus:

"Sec. 63. Preventive Suspension. - (1) Preventive suspension may be imposed by the Minister of Local Government if the respondent is a provincial or city official, by the provincial governor if the respondent is an elective municipal official, or by the city or municipal mayor if the respondent is an elective barangay official.

"(2) Preventive suspension may be imposed at any time after the issues are joined, when there is reasonable ground to believe that the respondent has committed the act or acts complained of, when the evidence of culpability is strong, when the gravity of the offense so warrants, when the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. In all cases, preventive suspension shall not extend beyond sixty days after the start of said suspension.

"(3) At the expiration of sixty days, the suspended official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him until its termination. However, if the delay in the proceedings of the case is due to his fault, neglect or request, the time of the delay shall not be counted in computing the time of suspension."

Section 7 of the Implementing Rules & Regulations reads as follows:

"Sec. 7. Preventive Suspension. - If from the answer of the respondent, and the complaint filed, the Minister/Sanggunian concerned find and determine that there is reasonable ground to believe that he has committed the act or acts complained of, when the evidence of guilt is strong, when, the gravity of the offense so warrants, or the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidences, the Minister of Local Government, provincial governor, or municipal mayor as the case may be, may preventively suspend an elective provincial, City, municipal or barangay official, respectively; Provided, That the preventive suspension shall not exceed sixty (60) days after the start of said suspension."

There is no merit in the respondents' contention that the order of preventive suspension issued by Governor Chiongbian was within the authority granted in Section 7, Rule 18 of the Implementing Rules & Regulations to "the Minister of Local Government, provincial governor, or municipal mayor, as the case may be," to "preventively suspend an elective provincial, city, municipal or barangay official, respectively."

Respondents misread and misconstrued Section 7, Rule 18 of the Implementing Rules & Regulations of the Local Government Code. The rule should be read in juxtaposition with Section 63 of the Code which provides that "preventive suspension may be imposed by the Minister of Local Government if the respondent is a provincial or

city official, by the provincial governor if the respondent is an elective municipal official, or by the city or municipal mayor if the respondent is an elective barangay official." In light of Section 63 of the Code, Section 7 of Rule 18 of the Implementing Rules & Regulations should be interpreted to mean that the Minister of Local Government may preventively suspend an elective provincial or city official, the Provincial Governor may preventively suspend an elective municipal official, and the city or municipal mayor may preventively suspend an elective barangay official. This is as it should be for complaints against provincial or city officials are supposed to be filed with the Minister (now Secretary) of Local Government, hence, it is he (not the provincial governor) who would know whether or not the charges are serious enough to warrant the suspension of the accused elective provincial or city official.

No rule or regulation issued by the Secretary of Local Government may alter, amend, or contravene a provision of the Local Government Code. The implementing rules should conform, not clash, with the law that they implement, for a regulation which operates to create a rule out of harmony with the statute is a nullity (*Commissioner of Internal Revenue vs. Vda. de Prieto*, L-13912, September 30, 1950). A rule or regulation that was issued to implement a law may not go beyond the terms and provisions of the law (*People vs. Lim*, 108 Phil. 1091).

In this case, the implementing rule (Sec. 7, Rule 18) does not in fact clash with the law (Sec. 63, Local Government Code) - the draftsmanship is not perfect but the use of the phrase "as the case may be" and the term "respectively" indicates a delineation of the power to suspend.

As the complaint or complaints against the petitioners were filed with the Office of the Provincial Governor, not with the Minister of Local Government as required in Section 61 of the Local Government Code, and, as the preventive suspension of the petitioners was ordered by the Provincial Governor, not by the Minister of Local Government; the notice of hearing, subpoena, and order of preventive suspension issued by the respondents governor and members of the Sangguniang Panlalawigan against the petitioners are hereby declared null and void. (Local Government Code [BP 337], Title Two, Chapter 4, Sec. 63 [1].) The respondents are without authority to investigate the petitioners, and the latter may not be compelled to attend the hearings. Their refusal to answer the charges against them was justified.

WHEREFORE, the petition for certiorari is granted. The Resolution No. 340-88 of the Sangguniang Panglunsod, and the order of preventive suspension issued by respondent Governor William Chiongbian, the appointment of Robert O. Taclob as OIC Mayor of Tangub City, the notices of hearing and subpoenas issued to the petitioners by the respondents are all annulled and set aside. The temporary restraining order which We issued on December 7, 1988, is hereby made permanent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Cortes, Medialdea, and Regalado, JJ., concur.

Gancayco and Sarmiento, JJ., on leave.

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