

**ANDRES MAMA, JR., SANCHE Y. -MEDINA, PAULITA O. ALMENDRAS,
PATRIA BERNADES, GERTRUDES DE LA ROSA, JOSEFINA ONGCOY,
MARIBETH GO, TERESITA PADILLA, MERILIZA SUMINGUIT,
CLARITA LUM...**

G.R. No. 86517. April 30, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This is a review of the decision of respondent Court of Appeals in CA-G.R. SP No. 14230,[1] dated August 30, 1988, which dismissed for lack of merit the petition for mandamus and prohibition, with a prayer for the issuance of a writ of preliminary injunction and the payment of damages, filed by herein petitioners and some other parties therein.

Petitioners, with the exception of Andres Mama, Jr., were either doctors, nurses, midwives or employees of the S.M. Lao Memorial City Emergency Hospital of Ozamiz City[2] which was then engaged in rendering general medical services to the city residents.

On February 2, 1988, respondent Jesus Sanciango, Jr. and his co-respondents herein assumed office as the newly elected local officials of the City of Ozamiz. Jesus Sanciango, Jr. was elected mayor, along with Antonio Caballero as vice-mayor, and Manuel Cortes, Bernardo Roa, Marcelian Tapayan, Olegario Neri, Rodolfo Pactolin and Aniceto Ortega as city councilors.

On March 10, 1988, the city council passed its Resolution No. 61 abolishing the S.M. Lao Memorial City Emergency Hospital of Ozamiz City allegedly due to losses incurred and poor services rendered to the constituents, as explained in the pertinent part thereof:

"WHEREAS, the City is in a state of a very serious financial dilemma when the new city administration took over the reins of the city local government;

WHEREAS, per official records and as reported and confirmed by the City Treasurer, the City is incurring substantial losses annually in the operations of the S.M. Lao Memorial City Emergency Hospital;

WHEREAS, after investigation and hearing, the Committee on Health and Sanitation found out that the said Hospital is rendering unsatisfactory and poor services to the people noting its constant lack of oxygen and medicines, inadequate facilities, and poor administration;

WHEREAS, an urgent but timely measure is necessary to remedy the present plight of the S.M. Lao Emergency Hospital, (sic), the continued operations of which would only endanger, the lives of our people, specially the indigent patients, for whom the said Hospital was established and created;

On motion of Hon. Manuel T. Cortes, seconded by the Members of the Committee on Health and Sanitation, namely: Honorables Olegario A. Neri, Marcelian C. Tapayan, Rodolfo D. Pactolin and Bernardo E. Roa, it was

RESOLVED, by the City Council of Ozamiz City to approve, as it approves to abolish the S.M. Lao Memorial City Emergency Hospital, this city, effective upon approval by His Honor, City Mayor Jesus E. Sanciango, Jr., duly sanctioned by the Honorable Members of the City Council of Ozamiz City due to losses incurred and poor services rendered to the constituents." [3]

The said resolution was duly approved on March 15, 1988 by respondent mayor and vice-mayor. Parenthetically, the city treasurer certified in writing that as of December 31, 1987, the City Government of Ozamiz General Fund had incurred a cash overdraft of P267,141.90 and its Retained Earnings Account reflected a deficit of P3,133,151.91. [4]

On March 21, 1988, petitioners filed before us a petition for mandamus and prohibition, with prayer for a writ of preliminary injunction and damages, docketed as G.R. No. 82364. The aforestated petitory portion is as follows:

"WHEREFORE, it is most respectfully prayed that upon the filing of this petition, the Honorable Supreme Court orders (sic) the issuance of writ of preliminary injunction enjoining the respondents from closing the S.M. Lao Memorial City Emergency Hospital and after hearing making it permanent; that the respondent officials including respondent Treasurer and Auditor be ordered to allow to continue the operations of the said hospital and pay the corresponding salaries of the petitioners and make disbursements for its maintenance and operations as included in the 1988 annual budget approved by the Department of Budget and Management; and that Resolution No. 61 series of 1988 be declared null and void considering the valuable properties which the City of Ozamiz stands to lose and to the serious disadvantage of the indigents of Ozamiz City, and that Honorable Celso Conol or Honorable Vicente Baz, Jr., be ordered to receive evidence on the damage aspect." [5]

In our resolution dated March 24, 1988, we referred said petition to the Court of Appeals for proper disposition. [6] On August 30, 1988, the Court of Appeals, finding that a case of prohibition and mandamus does not lie, dismissed the petition. [7] Petitioner then filed a motion for reconsideration which was denied by respondent court on September 28, 1988, [8] hence the present recourse.

The central issue raised in this petition for review on certiorari is the validity or legality of the abolition of the S.M. Lao Memorial City Emergency Hospital which reportedly resulted in the abolition of the positions held by the employees therein.

The power of the City Council of Ozamiz to abolish the hospital and the different positions therein under the factual ambience of the case is indisputable. The rule is well settled that the power to create an office carries the consequent prerogative to abolish it. [9] Further, the abolition of an office neither means the removal nor separation therefrom of the occupant who is not accordingly covered by the protection of the security of tenure clause of the Constitution. However, in order to be valid, the abolition must be made in good faith. [10]

In the case at bar, petitioners contend that the abolition of the hospital was done in bad faith as shown by the fact that the same hospital was "re-opened" barely a few months from its closure pursuant to Resolution No. 266 adopted by the City Council of Ozamiz on August 4, 1988. [11]

We do not agree.

The opening of the hospital, this time with the avowed purpose of specializing in maternity and children's cases, was dictated by circumstances beyond the control of respondents. The land whereon this hospital is constructed is a donated property. The donation is subject to the condition that once the land is not used for a hospital, the same will revert to the donor or his successors in interest. Hence, in order to prevent the reversion of the property, to the prejudice of the city, the opening of the hospital was imperative and necessary in order to serve the interests of the city residents.

By the subsequent opening of the hospital, it cannot be said that the reasons advanced for its previous abolition were untrue and constituted a mere subterfuge for the removal without cause of herein petitioners. The indubitable fact is that with the opening of the hospital, structural changes were made in order to attain economy, efficiency and prevent further losses, which were the very purposes sought to be attained by its prior abolition. The hospital is no longer rendering general but only limited medical services specializing in maternity and children's cases, and the number of officials and employees therein was reduced from thirty-four (34) to only eleven (11).

By reason of the structural reorganization and changes in the operational objectives, the present hospital cannot be considered as the same hospital that was abolished. Substantial differences now exist between the old and the new hospital, although the name remains the same in honor of the late Dr. Santiago M. Lao, predecessor in interest of the donors, such being a condition of the donation. Hence, its opening alone, without proof that the positions created carried exactly the same functions and duties as those abolished, is not sufficient basis for a finding of bad faith.

The rules laid down in *Urgelio, et al. vs. Osmeña, Jr., et al.*[12] are instructive:

"If the newly created office has substantially new, different or additional functions, duties or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office, it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy, are given to an existing officer or office.

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"x x x If the functions, duties or powers are substantially the same it will be a strong indication that the purpose was to abolish the officer and not the office, but where offices are abolished and new ones set up in a general scheme of reorganization, abolition, merger, rearrangement or consolidation genuinely based on reasons of economy or efficiency, the court, if convinced that the purpose was that, will not interfere even though officers in the affected reorganization evolve with some offices whose functions, duties, or powers are substantially like those which were abolished. It is essentially a matter of good faith. *State ex rel. Hammond vs. Maxfield*, 132 P. 2d 660."

It is within the legal competence of the City Council of Ozamiz, in the exercise of its sound discretion, to create such other offices as may be necessary to carry out the purposes of the city government, or consolidate the functions of any one of such offices with another in the interest of efficiency and economy. It may also create, consolidate, and reorganize city offices and positions wholly supported by local funds.[13] The city council has no obligation to keep a useless office or a position that is neither needed nor in the public interest by reason of, as in this case, financial losses and incapacity to render adequate public services.

The city council may take such course as it may deem necessary, expedient or conducive to the public good. In the exercise of its discretionary functions, good faith is always presumed,[14] and on the party alleging bad faith lies the burden of proof. The failure of herein petitioners to present evidence to prove bad faith on the part of respondents leaves us no alternative but to declare valid the challenged previous abolition of the hospital.

It must likewise not be lost sight of that, unless there is grave abuse of discretion, the courts may not review the discretionary act of a public officer.[15] It is the policy of the courts not to interfere with the actions of the executive branch unless there is a clear showing of capricious and whimsical exercise of judgment or grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

Further, subject to well settled exceptions not present here, certiorari, prohibition and mandamus do not lie against the legislative and executive branches or the members thereof acting in the exercise of their official functions,

basically in consideration of the respect due from the judiciary to said departments of co-equal and coordinate ranks under the principle of separation of powers.

Lastly, on the procedural aspect, prohibition does not lie in this case there being no evidence of usurpation or exercise of a power which respondents do not possess, nor an exercise of power without or in excess of jurisdiction. Of course, neither will mandamus be available there being no showing of a clear legal right of petitioners requiring the performance of a correlative ministerial act by respondents. All these are aside from the consideration that petitioners have adequate remedies in the ordinary course of law, but which legal avenues they have failed to avail of to protect such rights as they profess to have before resorting to the extraordinary remedies of prohibition and mandamus.

Nonetheless, pursuant to Section 76 of Batas Pambansa Blg. 337, the Local Government Code, herein petitioners who may be affected by the abolition of their positions are entitled to be reinstated in other vacant positions without diminution of salary. Should such positions not be available, the official or employee affected shall be granted a separation pay equivalent to one (1) month salary for every year of service over and above the monetary privileges granted to officials and employees under existing law.

WHEREFORE, subject to the foregoing modification, the assailed judgment of respondent Court of Appeals is hereby AFFIRMED, without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.

Sarmiento, J., No part. Mayor Sanciangco had been my client for several years in several cases.

[*] The Court of Appeals was impleaded as respondent in this case pursuant to the resolution of this Court dated February 15, 1989.

[1] Penned by Justice Antonio M. Martinez, with Justices Lorna S. Lombos-de la Fuente and Cecilio L. Pe concurring.

[2] The names of the petitioners in this appeal were submitted by their counsel (Rollo, 74-75) as required by the resolution of the Court dated May 9, 1990. Candelaria Silva, May Francisco, Mauricia Cahoy, Melchorita Acapulco and Epifania Miranda who were petitioners in G.R. No. 82364 (which was referred to and docketed in the Court of Appeals as CA-G.R. SP No. 14230) were not included in the present petition, but one Candelaria Pindo is impleaded herein.

[3] Rollo, 87.

[4] Ibid., 89.

[5] Rollo, CA-G.R. SP No. 14230, 10-11.

[6] Ibid., id., 16.

[7] Rollo, 5-10.

[8] Ibid., 4.

[9] Manalang vs. Quitariano, et al., 94 Phil. 903, (1954); Ulep vs. Carbonell, et al., 4 SCRA 375 (1962); Maza vs. Ochave, 20 SCRA 142 (1967).

[10] Cruz et al. vs. Primicias, Jr., etc., et al., 23 SCRA 998 (1968); City of Basilan vs. Hechanova, etc., et al., 58 SCRA 711 (1964); De la Llana vs. Alba, 112 SCRA 294 (1982).

[11] Rollo, 86.

[12] 9 SCRA 317 (1963).

[13] Secs. 169(3) and 177(cc), B.P. Blg. 337.

[14] Llanto vs. Dimaporo, et al., 16 SCRA 599 (1966).

[15] Insular Motors, Inc. vs. City of Manila, et al. 67 Phil. 201 (1939).

[16] Pajo, etc., et al. vs. Ago and Ortiz, etc., 108 Phil. 905 (1960); Riesgo vs. Court of Appeals, G.R. No. 85786, Resolution, May 3, 1989.

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