

RODOLFO D. LLAMAS, PETITIONER, VS. EXECUTIVE SECRETARY OSCAR ORBOS AND MARIANO UN OCAMPO III, RESPONDENTS.*G.R. No. 99031. October 15, 1991*

Ponente: PARAS, J.

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The case before Us calls for a determination of whether or not the President of the Philippines has the power to grant executive clemency in administrative cases. In connection therewith, two important questions are also put in issue, namely, whether or not the grant of executive clemency and the reason therefor, are political questions beyond judicial review, and whether or not the questioned act was characterized by grave abuse of discretion amounting to lack of jurisdiction.

Petitioner Rodolfo D. Llamas is the incumbent Vice-Governor of the Province of Tarlac and, on March 1, 1991 he assumed, by virtue of a decision of the Office of the President, the governorship (p. 1, Petition). Private respondent Mariano Un Ocampo III is the incumbent Governor of the Province of Tarlac and was suspended from office for a period of 90 days. Public respondent Oscar Orbos was the Executive Secretary at the time of the filing of this petition and is being impleaded herein in that official capacity for having issued, by authority of the President, the assailed Resolution granting executive clemency to respondent governor.

Sometime in 1989, petitioner, together with Tarlac Board Members Marcelino Aganon, Jr. and Arnaldo P. Dizon, filed on June 13, 1989 a verified complaint dated June 7, 1989 against respondent governor before the then Department of Local Government (DLG, for short), charging him with alleged violation of Sections 203(2) (f), and 203(2) (p), and 208(e), 208(f), and 208(w), of Batas Pambansa (B.P.) Blg. 337, otherwise known as the Local Government Code, and other appropriate laws, among them, the Anti-Graft and Corrupt Practices Act. Prior to that, petitioner filed with the Office of the Ombudsman a verified complaint dated November 10, 1988 against respondent governor for the latter's alleged violation of Section 3-G of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The complaint before the DLG, docketed as Administrative Case 10459, was subsequently tried, where both petitioner and respondent governor presented their respective evidence.

Petitioner maintains that sometime in August, 1988, respondent governor, in his official capacity as Provincial Governor of Tarlac, entered into and executed a Loan Agreement with the Lingkod Tarlac Foundation, Inc., a non-stock and non-profit organization headed by the governor himself as chairman and controlled by his brother-in-law as executive director, trustee, and secretary; that the said Loan Agreement was never authorized and approved by the Provincial Board, in direct contravention of the provisions of the Local Government Code; that the said Agreement is wholly one-sided in favor of the Foundation and grossly inimical to the interest of the Provincial Government (because it did not provide for interest or for any type of security and it did not provide for suretyship and comptrollership or audit to control the safe disbursement of said loans); that a total amount of P20,000,000.00 was disbursed to the aforesaid Foundation; that the transactions constitute a fraudulent scheme to

defraud the Provincial Government; and that the said Agreement is wholly unconstitutional, illegal, and immoral. (Annex "A", Petition)

On the other hand, it is the contention of respondent governor that "the funds were intended to generate livelihood projects among the residents of Tarlac and the use of the Lingkod Tarlac Foundation, Inc. was authorized by law and considered the best alternative as a matter of judgment." (pp. 12-13, Appeal Memorandum); that he resigned from the said Foundation in order to forestall any suspicion that he would influence it; that it is not true that the Loan Agreement did not provide for continuing audit by the Provincial Government because the Memorandum of Agreement provides otherwise; and that the Agreement is not manifestly and grossly disadvantageous to the Provincial Government and respondent governor did not and would not profit thereby because it provided sufficient safeguards for repayment. (Annex "A", Petition)

After trial, the Secretary of the then Department of Local Government rendered a decision dated September 21, 1990, the dispositive portion of which reads:

"WHEREFORE, Governor Mariano Un Ocampo III is, as he is, hereby found guilty of having violated Section 3(g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which act amounts to serious neglect of duty and/or abuse of authority, for which the penalty of suspension from office for a period of ninety (90) days, effective upon the finality of this Decision, is hereby imposed upon him." (p. 3, Petition)

Parenthetically, be it noted that the Resolution imposed not a preventive suspension but a penalty of suspension.

Respondent governor moved for a reconsideration of the above-quoted decision but the same was denied on October 19, 1990. Aggrieved, he appealed the DLG decision dated September 21, 1990 and the order of denial dated October 19, 1990 to the Office of the President (O.P. Case No. 4480).

On February 26, 1991, herein public respondent Executive Secretary issued a Resolution dismissing respondent governor's appeal and affirming the September 21, 1990 DLG decision.

Subsequently, and pursuant to Sec. 66, Chapter 4 of B.P. Blg. 337, to the effect that the decision of the Office of the President in administrative suspension of local officials shall be immediately executory without prejudice to appeal to appropriate courts, petitioner, on March 1, 1991, took his oath of office as acting governor. Under the administrative suspension order, petitioner had up to May 31, 1991 as acting governor. On the same date (March 1, 1991), respondent governor moved for a reconsideration of the Executive Secretary's Resolution, to which petitioner filed an opposition. From the allegations of the petitioner in his petition, respondent governor accepted his suspension and turned over his office to petitioner.

To the surprise of petitioner, however, respondent governor on March 19, 1991, issued an "administrative order" dated March 8, 1991, in which the latter signified his intention to "continue, as I am bound to exercise my functions as governor and shall hold office at my residence," in the belief that "the pendency of my Motion for Reconsideration precludes the coming into finality as executory the DLG decision." (Annex. "E," Petition; p. 10, Comment). And, as categorically stated in the petition, the reassumption ceremony by respondent governor was held on May 21, 1991 (p. 8, Petition).

Without ruling on respondent governor's Motion for Reconsideration, public respondent issued a Resolution dated May 15, 1991, in O.P. Case No. 4480, which reads:

"This refers to the petition of Gov. Mariano Un Ocampo III of Tarlac for executive clemency, interposed in connection with the decision of the Secretary of then Department of Local Government (DLG) dated 21 September 1990, as affirmed in a Resolution of this Office dated 26 February 1991, suspending petitioner from

office for a period of ninety (90) days upon the finality of said decision.

As will be recalled, the DLG Secretary imposed the penalty of suspension upon his finding that petitioner was guilty of serious neglect of duty and/or abuse of authority for entering into a loan contract — with the Lingkod Tarlac Foundation, Inc. (LTFI) — grossly/manifestly disadvantageous to Tarlac Province. In his letter-petition of 10 May 1991, thereby pleading for a thirty (30)-day reduction of his suspension, petitioner invited attention to the DLG Secretary's decision clearing him of having personally benefitted from the questioned transaction. In the same letter, petitioner manifests serving more than sixty (60) days of the ninety-day suspension. Previously, petitioner submitted documents and letters from his constituents tending to show the relative success of his livelihood loan program pursued under the aegis of the LTFI and/or the Foundation's credible loan repayment record. To cite some:

- Certification of the Chairman, Tarlac Integrated Livelihood Cooperative, Inc., attesting to the full payment of its loan (P15.05 M) plus interest with LTFI;
- Certification of the Manager, Rural Bank of Gerona (Tarlac), Inc., attesting to the gradual liquidation of the loan granted to family-borrowers out of funds provided by LTFI;
- Letter of Jover's Phil., expressing gratitude for the loan assistance extended for its export activities by LTFI;
- Letter of the Tarlac Provincial Agricultural Officer informing that the proceeds of the loan from LTFI have been utilized in hybrid corn production; and
- Letter of the President of the Federation of Tobacco Leaf Producers of Tarlac, Inc., informing of the payment of 76% of the amount (P203,966.00) loaned to the Federation for tobacco production.

Petitioner's act, vis-a-vis the loan to LTFI, may have been prompted by an over eagerness to accelerate the delivery of livelihood services to his provincemates. As the truism goes, however, the end does not always justify the means. Be that as it may, but without belaboring the impropriety of the loan agreement aforementioned, some measure of leniency may be accorded petitioner as the purpose of his suspension may have made its mark.

WHEREFORE, Governor Mariano Un Ocampo III is hereby granted executive clemency in the sense that his ninety-day suspension is hereby reduced to the period already served.

SO ORDERED."

(Annex "F", Petition; pp. 25-26, Rollo)

By virtue of the aforequoted Resolution, respondent governor reassumed the governorship of the province, allegedly without any notification made to the petitioner.

Petitioner posits that the issuance by public respondent of the May 15, 1991 Resolution was "whimsical, capricious and despotic, and constituted grave abuse of discretion amounting to lack of jurisdiction," (p. 6, petition) basically on the ground that executive clemency could be granted by the President only in criminal cases as there is nothing in the statute books or even in the Constitution which allows the grant thereof in administrative cases. Petitioner also contends that since respondent governor refused to recognize his suspension (having reassumed the governorship in gross defiance of the suspension order), executive clemency cannot apply to him; that his rights to due process were violated because the grant of executive clemency was so sudden that he was not even notified thereof; and that despite a finding by public respondent of impropriety in the loan transaction entered into by respondent governor, the former failed to justify the reduction of the penalty of suspension on the latter. Petitioner further alleges that the executive clemency granted by public respondent was "the product of a hocus-pocus strategy" (p. 1, Manifestation with Motion, etc.) because there was allegedly no real petition for the

grant of executive clemency filed by respondent governor.

Batas Pambansa Blg. 337 provides:

"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, . . .

"(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, or 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 ..." (Italics supplied)

It is admitted by petitioner that since March 1, 1991, he has assumed the governorship. A portion of the petition is hereunder quoted as follows:

"7. [On February 28, 1991], and in accordance with the provisions of the Local Government Code (Sec. 66, Chapter 4, Batas Pambansa Blg. 337), to the effect that the decision of the Office of the President in an administrative suspension of local officials shall be immediately executory without prejudice to appeal to appropriate courts, Petitioner Llamas took his oath of office as acting governor. Under the administrative suspension order, Llamas had up to May 31, [sic 29] 1991 as acting governor;

"8. A copy of this oath of office is attached and made a part hereof as Annex B;

"9. Significantly, this oath of office was sworn to by Petitioner Llamas before Secretary Santos of the newly created Department of Interior and Local Government, as shown by the lower portion of Annex B, and by a picture of the oath-taking itself, attached and made a part hereof as Annex B--1;

"10. Subsequently, Petitioner Llamas and Respondent Ocampo met, where Ocampo was shown Llamas' oath of office. During this meeting, held in the presence of all department heads at the provincial capitol and in the presence of various local government officials and representatives of the media, Ocampo agreed to turn over the reins of the provincial government to Petitioner;

"11. In fact, Ocampo had asked the department heads and all other officials of the provincial government of Tarlac to extend their cooperation to Llamas, during the ninety days that the latter would assume the governorship;

"12. And, as if this was not enough, Ocampo even made announcements in the media that he was allowing Petitioner Llamas to perform his functions as acting governor at the Office of the Governor at the Capitol where he (Ocampo) used to hold office (true enough, Ocampo has subsequently allowed Llamas to hold office at the Office of the Governor, with Ocampo even escorting the acting governor therein last March 4, 1991);

"13. An account of Ocampo's acceptance of his suspension and of his having turned over his office to Petitioner Llamas was even published, front page, in the March 5, 1991 issue of the Manila Bulletin. A copy of this news account is attached and made a part hereof as Annex C);

"14. Furthermore, various other officials, President Aquino and Rep. Jose Cojuangco included, have extended recognition to Petitioner Llamas' assumption of the governorship. Llamas met with President Aquino and Rep. Cojuangco and, during this meeting, the two highest officials of the land have asked Llamas to discharge his

duties as acting governor;

"15. Secretary Santos, for that matter, has issued a designation to Tarlac Senior Board Member Aganon, dated March 18, 1991, appointing him as acting vice governor of the province, 'in view of the suspension of Gov. Mariano Un Ocampo III, and the assumption of Vice Governor Rodolfo Llamas as acting governor.' A copy of this designation is attached and made a part hereof as Annex D;

"x x x x x x x x

"30. ... [T]he reassumption ceremony by [Governor] Ocampo was held [in the] morning of May 21, 1991. . ."

(pp. 2-4 & 7, Petition; pp. 3-5 & 8, Rollo)

It is prayed in the instant petition dated May 21, 1991 that:

"b. In the meantime that this action is pending, and immediately upon the filing hereof, a temporary restraining order be issued stopping the Respondents from enforcing, in any manner, the aforesaid contested resolution, and Respondent Ocampo, from continuing with his reassumption of the governorship. IN THE ALTERNATIVE, that a cease and desist order be issued against Respondent Ocampo stopping him from continuing with his reassumption of the governorship."

Let us first deal with the issue on jurisdiction. Respondent governor avers that since under the Constitution full discretionary authority is granted to the President on the exercise of executive clemency, the same constitutes a political question which is beyond judicial review.

Such a rule does not hold true in the case at bar. While it is true that courts cannot inquire into the manner in which the President's discretionary powers are exercised or into the wisdom for its exercise, it is also a settled rule that when the issue involved concerns the validity of such discretionary powers or whether said powers are within the limits prescribed by the Constitution, We will not decline to exercise our power of judicial review. And such review does not constitute a modification or correction of the act of the President, nor does it constitute interference with the functions of the President. In this connection, the case of *Tanada and Macapagal vs. Cuenco, et al.*, 103 Phil. 1051, is very enlightening, and We quote:

"Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon the policy of legislative or executive action. Where, therefore, discretionary powers are granted by the Constitution or by statute, the manner in which those powers are exercised is not subject to judicial review. The courts, therefore, concern themselves only with the question as to the existence and extent of these discretionary powers.

"As distinguished from the judicial, the legislative and executive departments are spoken of as the political departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by the Constitution or by statute, but, within these limits, they do permit the departments, separately or together, to recognize that a certain set of facts exists or that a given status exists, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts." (*Willoughby on the Constitution of the United States*, Vol. 3, p. 1326).

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"What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. See *State vs. Cunningham*, 81 Wis. 497, 51 L.R.A. 561; *In Re Gunn*, 50 Kan. 155; 32 Pac. 470, 948, 19 L.R.A. 519; *Green*

vs. Mills, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; Fletcher vs. Tuttle, 151 Ill. 41, 37 N.E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. Thus the Legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve political question, but because they are matters which the people have by the Constitution delegated to the Legislature. The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. But every officer under a constitutional government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, to 'the end that the government may be one of laws and not men' - words which Webster said were the greatest contained in any written constitutional document."

Besides, under the 1987 Constitution, the Supreme Court has been conferred an "expanded jurisdiction" to review the decisions of the other branches and agencies of the government to determine whether or not they have acted within the bounds of the Constitution (See Art. VIII, Sec. 1, Constitution). "Yet, in the exercise thereof, the Court is to merely check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it erred or has a different view" (Co vs. Electoral Tribunal of the House of Representatives & Ong, G.R. Nos. 92191-92 and Balanquit vs. Electoral Tribunal of the House of Representatives & Ong, G.R. Nos. 92202-03, July 30, 1991).

In the case at bar, the nature of the question for determination is not purely political. Here, we are called upon to decide whether under the Constitution the President may grant executive clemency in administrative cases. We must not overlook the fact that the exercise by the President of her power of executive clemency is subject to constitutional limitations. We will merely check whether the particular measure in question has been in accordance with law. In so doing, We will not concern ourselves with the reasons or motives which actuated the President as such is clearly beyond our power of judicial review.

Petitioner's main argument is that the President may grant executive clemency only in criminal cases, based on Article VII, Section 19 of the Constitution which reads:

"Sec. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

"He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the Congress." (Italics supplied)

According to the petitioner, the qualifying phrase "after conviction by final judgment" applies solely to criminal cases, and no other law allows the grant of executive clemency or pardon to anyone who has been "convicted in an administrative case," allegedly because the word "conviction" refers only to criminal cases (par. 22-b, c, d, Petition). Petitioner, however, describes, in his very own words, respondent governor as one who has been "convicted in an administrative case" (par. 22-a, petition). Thus, petitioner concedes that the word "conviction" may be used either in a criminal case or in an administrative case. In Layno, Sr. vs. Sandiganbayan, 136 SCRA 536, We ruled:

"For misfeasance or malfeasance ... any [elective official] could ... be proceeded against administratively or ... criminally. In either case, his culpability must be established ..."

It is also important to note that respondent governor's Motion for Reconsideration filed on March 1, 1991 was withdrawn in his petition for the grant of executive clemency, which fact rendered the Resolution dated February 26, 1991 affirming the DLG Decision (which found respondent governor guilty of neglect of duty and/or abuse of authority and which suspended him for ninety (90) days) final.

Moreover, applying the doctrine "Ubi lex non distinguit, nec nos distinguere debemos," We cannot sustain petitioner's view. In other words, if the law does not distinguish, so We must not distinguish. The Constitution does not distinguish between which cases executive clemency may be exercised by the President, with the sole exclusion of impeachment cases. By the same token, if executive clemency may be exercised only in criminal cases, it would indeed be unnecessary to provide for the exclusion of impeachment cases from the coverage of Article VII, Section 19 of the Constitution. Following petitioner's proposed interpretation, cases of impeachment are automatically excluded inasmuch as the same do not necessarily involve criminal offenses.

In the same vein, We do not clearly see any valid and convincing reason why the President cannot grant executive clemency in administrative cases. It is Our considered view that if the President can grant reprieves, commutations and pardons, and remit fines and forfeitures in criminal cases, with much more reason can she grant executive clemency in administrative cases, which are clearly less serious than criminal offenses.

A number of laws impliedly or expressly recognize or support the exercise of executive clemency in administrative cases.

Under Sec. 43 of P.D. 807, "In meritorious cases, . . . , the President may commute or remove administrative penalties or disabilities issued upon officers and employees, in disciplinary cases, subject to such terms and conditions as he may impose in the interest of the service."

During the deliberations of the Constitutional Commission, a subject of deliberations was the proposed amendment to Art. VII, Sec. 19 which reads as follows: "However, the power to grant executive clemency for violation of corrupt practices laws may be limited by legislation." The Constitutional Commission, however, voted to remove the amendment, since it was in derogation of the powers of the President. As Mr. Natividad stated:

"I am also against this provision which will again chip more powers from the President. In case of other criminals convicted in our society we extend probation to them while in this case, they have already been convicted and we offer mercy. The only way we can offer mercy to them is through this executive clemency extended to them by the President. If we still close this avenue to them, they would be prejudiced even worse than the murderers and the more vicious killers in our society"

The proposal was primarily intended to prevent the President from protecting his cronies. Manifestly, however, the Commission preferred to trust in the discretion of Presidents and refrained from putting additional limitations on his clemency powers. (II RECORD of the Constitutional Commission, 392, 418-419, 524-525)

It is evident from the intent of the Constitutional Commission, therefore, that the President's executive clemency powers may not be limited in terms of coverage, except as already provided in the Constitution, that is, "no pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules and regulations shall be granted by the President without the favorable recommendation of the COMELEC" (Article IX, C, Section 5, Constitution). If those already adjudged guilty criminally in court may be pardoned, those adjudged guilty administratively should likewise be extended the same benefit.

In criminal cases, the quantum of evidence required to convict an individual is proof beyond reasonable doubt, but the Constitution grants to the President the power to pardon the act done by the proved criminal and in the process

exempts him from punishment therefor. On the other hand, in administrative cases, the quantum of evidence required is mere substantial evidence to support a decision, not to mention that as to the admissibility of evidence, administrative bodies are not bound by the technical and rigid rules of admissibility prescribed in criminal cases. It will therefore be unjust and unfair for those found guilty administratively of some charge if the same effects of pardon or executive clemency cannot be extended to them, even in the sense of modifying a decision to subserve the interest of the public. (p. 34, Comment of public respondent)

Of equal importance are the following provisions of Executive Order No. 292, otherwise known as the Administrative Code of 1987, Section I, Book III of which provides:

"SECTION 1. Power of Control. — The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

"SECTION 38. Definition of Administrative Relationships. — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

"(1) Supervision and Control. — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies the word "control" shall encompass supervision and control as defined in this paragraph. . . ." (*italics supplied*)

The disciplinary authority to investigate, suspend, and remove provincial or city officials devolves at the first instance on the Department of Interior and Local Government (Secs. 61 and 65, B.P. Blg. 337) and ultimately on the President (Sec. 66). Implicit in this authority, however, is the "supervision and control" power of the President to reduce, if circumstances so warrant, the imposable penalty or to modify the suspension or removal order, even "in the sense" of granting executive clemency. "Control," within the meaning of the Constitution, is the power to substitute one's own judgment for that of a subordinate. Under the doctrine of Qualified Political Agency, the different executive departments are mere adjuncts of the President. Their acts are presumptively the acts of the President until countermanded or reprobated by her (*Villena v. Secretary*, 67 Phil. 451; *Free Telephone Workers Union vs. Minister of Labor and Employment*, 108 SCRA 757 [1981]). Relying upon this view, it is urged by the Solicitor General that in the present case, the President, in the exercise of her power of supervision and control over all executive departments, may substitute her decision for that of her subordinate, most especially where the basis therefor would be to serve the greater public interest. It is clearly within the power of the President not only to grant "executive clemency" but also to reverse or modify a ruling issued by a subordinate against an erring public official, where a reconsideration of the facts alleged would support the same. It is in this sense that the alleged executive clemency was granted, after adducing reasons that subserve the public interest. — "the relative success of . . . livelihood loan program." (pp. 39-40, Comment of public respondent)

We wish to stress however that when we say the President can grant executive clemency in administrative cases, We refer only to all administrative cases in the Executive branch, not in the Judicial or Legislative branches of the government.

Noteworthy is the fact that on March 1, 1991, respondent governor filed a motion for reconsideration and the same may be regarded as implicitly resolved, not only because of its withdrawal but also because of the executive clemency which in effect reduced the penalty, conformably with the power of "control."

On petitioner's argument that private respondent's motion for reconsideration has abated the running of the

reglementary period for finality of judgment in O.P. Case No. 4480 (that is, there being no final judgment to speak of, the pardon granted was premature and of no effect), We reiterate the doctrine that upon acceptance of a presidential pardon, the grantee is deemed to have waived any appeal which he may have filed. Thus, it was held that:

"The commutation of the penalty is impressed with legal significance. That is an exercise of executive clemency embraced in the pardoning power. According to the Constitution: 'The President may except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures and, with the concurrence of the Batasang Pambansa, grant amnesty.' Once granted, it is binding and effective. It serves to put an end to this appeal." (Mansanto v. Factoran, Jr., G.R. No. 78239, 170 SCRA 190, 196). (See also Peo v. Crisola, 129 SCRA 13)

Consequently, respondent governor's acceptance of the presidential pardon "serves to put an end" to the motion for reconsideration and renders the subject decision final, that of the period already served.

Finally, petitioner's argument that his constitutional rights to due process were violated is unmeritorious. Pardon has been defined as "the private, though official, act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. xxx." (Bernas, The Constitution of the Philippines, Vol. II, First Ed. 1988, pp. 239-240, citing U.S. v. Wilson, 7 Pet. 150 [U.S. 1833]). Thus, assuming that petitioner was not notified of the subject pardon, it is only because said notice is unnecessary. Besides, petitioner's claim that respondent governor has not begun to serve sentence is belied by his very own factual allegations in his petition, more particularly that he served as Acting Governor of Tarlac effective from the date he took his Oath of Office on February 28, 1991 up to the time respondent governor re-assumed the governorship of Tarlac on May 21, 1991 (par. 30, petition). It is, therefore, error to say that private respondent did not serve any portion of the 90-day suspension meted upon him.

We fail to see any grave abuse of discretion amounting to lack or in excess of jurisdiction committed by public respondent.

WHEREFORE, judgment is hereby rendered: (1) DECLARING that the President did not act arbitrarily or with abuse, much less grave abuse of discretion in issuing the May 15, 1991 Resolution granting on the grounds mentioned therein, executive clemency to respondent governor and that, accordingly, the same is not unconstitutional (without prejudice to criminal proceedings which have been filed or may be filed against respondent governor), and (2) DENYING the rest of the prayers in the the petition for being unmeritorious, moot and academic. No costs.

SO ORDERED.

Fernan, C.J., Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Narvasa, Gutierrez, Jr., JJ., I join Justice Cruz in his separate opinion.

Cruz J., see separate opinion.

Feliciano, J., I join the separate opinion of Cruz, J.

Melencio-Herrera, J., on leave

Padilla, J., see dissenting opinion.

Sarmiento, J., retired on October 8, 1991.

SEPARATE OPINION

CRUZ, J.:

I concur in the result and would sustain the challenged resolution of May 18, 1991, on the basis only of the President's control power. I think the discussion of the pardoning power is unnecessary and may even be misleading as the ponencia itself says that it was not by virtue thereof that the private respondent's penalty was reduced. The correct approach, if I may respectfully suggest it, is to uphold the resolution solely on the strength of the President's power of "control of all the executive departments, bureaus and offices" under Article VII, Section 17, of the Constitution.

We have held in many cases that a Cabinet member is an alter ego of the President whose acts may be affirmed, modified or reversed by the latter in his discretion. (*Villena v. Sec. of the Interior*, 67 Phil. 451; *Lacson-Magallanes v. Paño*, 21 SCRA 895; *Gascon v. Arroyo*, 178 SCRA 582; *De Leon v. Carpio*, 178 SCRA 457). What happened in this case was that President Aquino saw fit to amend the decision rendered by the Secretary of Local Government on September 21, 1990, by reducing the 90-day suspension imposed on Gov. Ocampo. The President had the authority to do this, and she could exercise it through the Executive Secretary. His act, not having been "reprobated or disauthorized" by her, is presumed to be the act of the President herself.

The Court is not concerned with the wisdom of that act, only its legality. I believe the act is legal but reserve judgment on its wisdom.

DISSENTING OPINION

PADILLA, J.:

I vote to grant the petition which seeks to annul the 15 May 1991 resolution of the Office of the President, for the reason that the respondent Executive Secretary, presumably acting on behalf of the President, had acted in excess of his jurisdiction in granting executive clemency to private respondent Ocampo III, by reducing the ninety-day suspension imposed upon him to the period he had already served.

Under the Local Government Code (BP 337), — the law in force at the time material to this case, the authority of the President over local governments is one of general supervision only, to ensure that local affairs are administered according to law. General supervision over local governments includes the authority to order an investigation of the conduct of local officials whenever necessary.[1] The 1987 Constitution as well as the Administrative Code of 1987 also grants to the President the power of general supervision over local governments.[2]

In taking disciplinary action against local elective officials, the President has no inherent power to suspend or remove them unless authorized by law and on grounds set forth by the latter.[3] Section 60 of the Local Government Code[4] enumerates the acts for which an elective local official may be suspended or removed. The Secretary of Interior and Local Government is given the authority to try complaints filed against any elective city or provincial official.[5] The decision of removal or suspension by the Secretary of Interior and Local Government is appealable to the Office of the President.[6] The appellate jurisdiction of the President to review, reverse or modify the decision of the Secretary of Interior and Local Government does not carry with it the power to grant executive clemency. Neither does the Local Government Code expressly vest upon the President the power to commute or lift the administrative sanctions imposed upon erring, local elective officials after the decision has become final.

The suspension of private respondent Ocampo III for ninety (90) days was imposed after investigation and hearing of the complaint against him. The decision of suspension was rendered after a finding by the Secretary of Interior and Local Government that private respondent had committed an act which was manifestly and grossly disadvantageous to the Provincial Government of Tarlac. Thus, the suspension meted out to private respondent is

entirely distinct and separate from a preventive suspension imposed on local elective officials prior to the final determination of the complaint filed against them, and which is limited to only sixty (60) days under the Local Government Code. A preventive suspension may be imposed after the issues have been joined and before the termination of the case, when there is reasonable ground to believe that respondent had committed the act complained of and the evidence of culpability is strong, when the gravity of the offense warrants such preventive suspension; or 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.[7]

In contrast, the administrative sanction of suspension imposed after the case has been heard is subject to the limitation that it must not exceed the unexpired term of the respondent, nor bar the respondent from an elective public office for as long as he meets the qualifications required by law.[8] Considering that private respondent's suspension was not a preventive one but a punitive sanction, the limitation of sixty (60) days does not apply.

At the time the questioned grant of executive clemency was issued by respondent Secretary to private respondent, a motion for reconsideration by private respondent Ocampo III was pending. Assuming (without admitting) that the constitutional power of the President to grant executive clemency extends to administrative sanctions imposed in an administrative proceeding, such reduction of the period of suspension of private respondent was premature under the circumstances. Had respondent Secretary, acting for the President, really believed that the original 90-day period of suspension imposed upon private respondent was too harsh, the President could have modified the imposed penalty by reducing the same or entirely lifting such suspension in resolving the pending motion for reconsideration. Furthermore, private respondent had already served eighty one (81) days out of the 90-day suspension when the executive clemency was extended. With only nine (9) days left unserved of the suspension imposed, the reason behind the grant of such executive clemency to private respondent appears dubious, if not entirely whimsical.

It is the contention of private respondent that the reduction of his suspension was granted in accordance with the Constitution. I disagree. It is my opinion that the constitutional grant of power to the President to accord executive clemency, does not extend to administrative sanctions imposed, in an administrative proceeding. Sec. 19, Art. VII of the 1987 Constitution clearly provides that —

"Section 19.

"Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress." (*Italics supplied*)

The philosophy behind the grant of power to the President to grant executive clemency is founded on the recognition that human institutions are imperfect and that there are infirmities, deficiencies or flaws in the administration of justice. The power exists as an instrument or means for correcting these infirmities and also for mitigating whatever harshness might be generated by a too strict an application of the law.[9] This principle applies to all criminal offenses committed against the state.

Pardon is an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is a voluntary act of the sovereign, granting outright remission of guilt and declaring of record that a particular individual is to be relieved of the legal consequences of a particular crime.[10] Amnesty commonly denotes a general pardon to rebels for their treason or other high political offenses, or the forgiveness which one sovereign grants to the subjects of another, who have offended by some breach the law of nations.[11]

A commutation of sentence is the reduction of penalty imposed,[12] while reprieve is defined as the temporary suspension of the execution of a sentence, especially of a sentence of death.[13] The object of commutation of sentence is the rehabilitation of the criminal offender.[14] The law of respite or reprieve appears to apply only to capital sentences.[15]

From the foregoing definitions of the different forms by which the President may exercise the power to grant executive clemency, it is plainly evident that the intention of the Constitution is to empower and enable the President to afford relief from enforcement of the criminal law which imposes a penalty and which appears unduly harsh. However, the President's pardoning power cannot be used to release or destroy the civil rights or remedies of private individuals,[16] or to relieve against private obligations, civil penalties and forfeitures, or an order or judgment in a civil action or proceeding, or an administrative proceeding.[17]

In order that the President may be able to exercise the power to commute or remove administrative penalties or disabilities in an administrative proceeding for violation of the Local Government Code, such power must be expressly provided for by law. It may not just be inferred from the President's authority to exercise general supervision over local governments nor from the President's power of control over the acts of the Secretary of Interior and Local Government.

In the case at bar, private respondent entered into and executed a loan agreement with a non-stock and non-profit organization known as Lingkod Tarlac Foundation, Inc. without instituting adequate safeguards in the loan document, without a time frame for repayments, reasonable repayment schedule and security or surety for the amount of the loan. Such act of private respondent was found by the Secretary of Interior and Local Government as manifestly and grossly disadvantageous to the Provincial Government of Tarlac, amounting to serious neglect of duty and/or abuse of authority, punishable by suspension or removal under Sec. 60 of the Local Government Code.

The administrative sanction of suspension imposed upon private respondent does not affect the criminal complaint also filed against him before the Office of the Ombudsman for violation of the Anti-Graft Law (Rep. Act 3019). The administrative finding of the Secretary of Interior and Local Government, as affirmed by the Office of the President, that private respondent had committed neglect of duty and/or abuse of authority while in office, was not by virtue of a criminal proceeding. Thus, it cannot be said that there was a criminal conviction of the private respondent by final judgment. Nor can it be said that the disciplinary action suspending private respondent is an execution and/or enforcement of the criminal laws of the land. Therefore, the President's power to grant executive clemency is not applicable or even relevant in the case at bar.

From the deliberations of the Constitutional Commission which drafted the 1987 Constitution, it is clear that the intention of the framers of the fundamental law was to extend to the President the power to grant pardons, reprieves, or commutations in cases involving criminal offenses, which include violations of the Anti-Graft Law. There is no indication at all that such power to grant executive clemency by the President may be extended to administrative sanctions imposed in an administrative proceeding. In this connection, it is timely to once more re-state that in a constitutional republic, such as ours, sovereignty resides in the people and all government authority emanates from them. The people, through the Constitution, have delegated to the President and other institutions of government certain powers and those not delegated remain with the people. The President, in the Constitution, has been delegated the power to grant reprieves, commutations and pardons "after conviction by final judgment". This power can not be stretched even by fiction or imagination to include the authority to grant similar reprieves, commutations or pardons over sanctions in administrative proceedings.

ACCORDINGLY, I vote to annul the resolution of the respondent Executive Secretary dated 15 May 1991, as

having been issued clearly in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

[1] Local Government Code (BP 337), Sec. 14, par. (1)

[2] 1987 Constitution, Art. X, Sec. 4; 1987 Administrative Code, Book III, Title I, Chapter 6, Section 18

[3] *Lacson vs. Roque*, 92 Phil. 452

[4] Sec. 60. Suspension and Removal; Grounds. — An elective local official may be suspended or removed from office on any of the following grounds committed while in office:

"(1) Disloyalty to the Republic of the Philippines;

(2) Culpable violation of the Constitution;

(3) Dishonesty, oppression, misconduct in office and neglect of duty;

(4) Commission of any offense involving moral turpitude;

(5) Abuse of authority;

(6) Unauthorized absence for three consecutive months."

[5] Local Government Code, Section 61

[6] *Ibid*, Section 66

[7] Local Government Code, Sec. 63

[8] *Ibid.*, Sec. 65

[9] Comment by Joaquin G. Bernas, S.J. on the Revised 1973 Philippine Constitution, p. 228, Part 1, 1983 Edition

[10] 67A C.J.S. Pardon and Parole S 3

[11] *Villa vs. Allen*, 2 Phil. 436

[12] *Cabantay vs. Wolfe*, 6 Phil. 276

[13] Philippine Law Dictionary by Moreno, p. 534. Second Edition

[14] 67A C.J.S., Pardon and Parole S 3

[15] *Director of Prisons vs. Judge of First Instance*, 29 Phil. 292

[16] 67A C.J.S. S 10, citing *In re Nevitt*, Mo. 117 F. 448, 117 Federal Reporter 448

[17] *Ibid*, citing *Theodoro vs. Department of Liquor Control*, 527 S.W. 2d 350

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