



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 July 2021** which reads as follows:*

“G.R. No. 246397 (Jessie E. Galano v. Hon. Samuel R. Martires, in his capacity as Ombudsman, Sec. Eduardo M. Año, in his capacity as Secretary of the Department of Interior and Local Government, and Dolores M. Clemente). –

Antecedents

In 2013, Jessie E. Galano (petitioner) got elected as Vice Mayor of Paoay, Ilocos Norte, and in 2016, as Mayor of the same town. In 2019, he got re-elected as Mayor.

Meanwhile, on January 18, 2017, petitioner, together with *Sangguniang Bayan* (SB) Member Bruno G. Dumlao (Dumlao), was charged before the Office of the Ombudsman (OMB) with grave abuse of authority, conduct prejudicial to the best interest of the public service, gross neglect of duty, grave misconduct, serious dishonesty, and violations of Republic Act No. 6713 (RA 6713)¹ and Republic Act No. 7160 (RA 7160).² The complaint was hinged on his unauthorized approval of the local travel of Dumlao outside the municipality for a period not exceeding thirty (30) days; and his unauthorized payment of Dumlao’s travel and registration

¹ “An Act Establishing A Code of Conduct And Ethical Standards For Public Officials And Employees, To Uphold The Time-Honored Principle Of Public Office Being A Public Trust, Granting Incentives And Rewards For Exemplary Service, Enumerating Prohibited Acts And Transactions And Providing Penalties For Violations Thereof And For Other Purposes,” approved on February 20, 1989.

² “An Act Providing For A Local Government Code Of 1991,” approved on October 10, 1991.

expenses in 2015, during his incumbency as Vice Mayor, in violation of Section 444(b)(1)(xv) of RA 7160 which provides:

ARTICLE I
The Municipal Mayor

SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* —

x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x

(xv) Authorize official trips outside of the municipality of municipal officials and employees for a period not exceeding thirty (30) days;

x x x x

For his defense, petitioner claimed that he was authorized to issue travel orders of SB members and employees. Based on the Department of Interior and Local Government (DILG) Legal Opinions, it became ministerial on the part of the Municipal Mayor to authorize trips, including the issuance of corresponding travel orders to SB member and employees whenever the Municipal Vice Mayor had already signed the warrant drawn on the municipal treasury chargeable to the SB funds. He also argued that the Commission on Audit (COA) already issued a notice of settlement on Dumlao's account. Further, it was also not shown that he knew of any irregularity committed by Dumlao in preparing the liquidation on his travel expenses. Lastly, petitioner invoked the condonation doctrine on the basis of his re-election as Municipal Mayor in the May 9, 2016 elections.

Ruling of the Office of the Ombudsman (OMB)

By Decision³ dated January 31, 2018, the OMB found petitioner guilty of grave misconduct while Dumlao was found liable for Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Public Service. They were both meted the penalty of dismissal from the service with its accessory penalties.

³ *Rollo*, pp. 147-159.

Meanwhile, the charges of grave abuse of authority and gross neglect of duty were dismissed for lack of substantial evidence.⁴

The OMB ruled that the power to authorize trips of municipal officials outside the municipality for a period not exceeding thirty (30) days is vested with the Municipal Mayor pursuant to Section 444(b)(1)(xv) of RA 7160.⁵ Further, the registration fees and travel expenses here were not charged against the funds of SB over which petitioner had authority but against the Municipality itself. The OMB also emphasized that the condonation doctrine no longer applied to him.

On June 6, 2018, petitioner filed a motion for partial reconsideration, and pending its resolution, also initiated a petition for review with the Court of Appeals against the same OMB Decision and sought exactly the same relief prayed for in aforesaid motion. In both proceedings, he again invoked the condonation doctrine.

⁴ **WHEREFORE**, finding substantial evidence, judgment is hereby rendered finding respondent Jessie E. Galano administratively liable for Grave Misconduct, while respondent Bruno G. Dumlao is found administratively liable for Serious Dishonesty, Grave Misconduct, violation of Section 60(d) of R.A. No. 7160 and Conduct Prejudicial to the Best Interest of the Public Service and are hereby both meted the penalty of **dismissal from service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, bar to take civil service examination and perpetual disqualification for re-employment in the government service**, pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.

In the event that the penalty of dismissal can no longer be enforced against respondents due to their separation from the service, the same shall be converted into fine in the amount equivalent to respondents' respective salaries for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their retirement benefits, accrued leave credits or any receivable from their office.

The Honorable Secretary of the Department of the Interior and Local Government is hereby directed to implement this **DECISION** immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 dated April 11, 2006 and promptly inform this Office of the action taken hereon.

The administrative charges against respondents for Grave Abuse of Authority and Gross Neglect of Duty are hereby **dismissed** for lack of substantial evidence.

SO ORDERED.

⁵ **SECTION 444. The Chief Executive: Powers, Duties, Functions and Compensation.** — (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x

(xv) Authorize official trips outside of the municipality of municipal officials and employees for a period not exceeding thirty (30) days;

x x x x

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Ruling of the Court of Appeals

The Court of Appeals affirmed.⁶ On the procedural aspect, it decreed that petitioner deliberately committed forum shopping when he filed the petition for review without awaiting the resolution of his then pending partial motion for reconsideration with the OMB, notwithstanding that he subsequently withdrew the same. On the merits, it agreed with the OMB that petitioner did violate Section 444(b)(1)(xv) of RA 7160.

Too, it ruled that the condonation doctrine cannot apply to petitioner. Citing *Almario-Templonuevo v. Office of the Ombudsman*,⁷ the Court of Appeals declared that for the condonation doctrine to apply, both the commission of the offense and the re-election/election of the public official must have occurred prior to the finality of *Morales v. Court of Appeals*⁸ where the Court abandoned the doctrine. In the case of petitioner, he could no longer invoke the condonation doctrine because even though he committed the infraction prior to the finality of *Morales*, he was re-elected after the doctrine had already been abandoned with finality.

Petitioner's subsequent motion for reconsideration was denied under Resolution⁹ dated April 5, 2019.

Ruling of the Court

Undaunted, petitioner further sought relief from the Court, reiterating his arguments below.

By Resolution¹⁰ dated June 19, 2019, the Court denied the petition for failure to show that the Court of Appeals committed reversible error in rendering its assailed dispositions as to warrant the exercise of the Court's discretionary appellate jurisdiction.

The Present Motion for Reconsideration

Petitioner now moves to reconsider on ground that the infraction he was found liable for no longer exists. He calls attention to DILG Memorandum Circular (MC) No. 2019-82¹¹ dated May 29, 2019 which now

⁶ Penned by Associate Justice Stephen C. Cruz and concurred in by Presiding Justice Romeo F. Barza and Associate Justice Henri Jean Paul B. Inting (now a member of the Court), *rollo*, pp. 38-53.

⁷ 811 Phil. 686 (2017).

⁸ 772 Phil. 672 (2015).

⁹ Penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justices Ramon R. Garcia, Marlene Gonzales-Sison, and Henri Jean Paul B. Inting (now a member of the Court); Associate Justice Stephen C. Cruz (dissenting), *rollo*, pp. 55-62.

¹⁰ *Id.* at 612.

¹¹ "Guidelines On The Local Travel Of Local Government Officials And Employees Pursuant To The Directive From The Office Of The President."

authorizes the Vice Mayor to approve the local travels of SB employees and sign their disbursement vouchers and even carries a retroactivity clause, which allegedly legitimizes his infraction in 2015.

He also raises anew the alleged applicability to him of the condonation doctrine since his imputed infraction was committed before the aforesaid doctrine got abandoned. Citing *Ombudsman v. Vergara*,¹² he asserts that the condonation doctrine applies to him, regardless of whether he got re-elected before or after the doctrine got abandoned, so long as the offense was committed prior to its abandonment. Too, when the people re-elected him in 2016 and 2019, the act complained of was already deemed condoned.

On the other hand, the Office of the Solicitor General (OSG) counters that the condonation doctrine was already abandoned when petitioner got re-elected in 2019, hence, he can no longer benefit therefrom. When the Court declared its prospective application, it was meant to benefit only those who already relied on the same before it got abandoned but not those who intend to benefit from it like petitioner.

Our Ruling

The motion for reconsideration is utterly devoid of merit.

DILG MC No. 2019-82 does not legitimize petitioner's infraction in 2015.

Petitioner's infraction is governed by Section 444(b)(1)(xv) of RA 7160, which we quote anew, thus:

ARTICLE I *The Municipal Mayor*

SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* —

x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

¹² 822 Phil. 361 (2017).

x x x x

(xv) Authorize official trips outside of the municipality of municipal officials and employees for a period not exceeding thirty (30) days;

x x x x

On March 15, 2019, Executive Order (EO) No. 77¹³ took effect, repealing EO No. 248 (s.1995), EO No. 248-A (s. 1995), EO No. 298 (s. 2004), and EO No. 459 (s. 2005); and modifying EO No. 367 (s. 1989) and MC No. 35 (s. 2017).¹⁴ EO No. 77 prescribes new rates of travel expenses and allowances on official local and foreign travels of government personnel.

Pursuant thereto, the DILG issued DILG MC No. 2019-82 to rationalize and update existing policies and guidelines on local travel of officials and the grant of travel expenses.¹⁵ The DILG MC also provides for the level of approving authorities.¹⁶ In the case of SB members and employees, it states that the City and Municipal Vice Mayors shall approve their official travel orders and expenses, thus:

2.3.4 The official local travels of **Members of the Sangguniang Panglunsod and Bayan, Sangguniang Panglunsod and Bayan employees for less than thirty (30) days and payment of their corresponding travel expense shall be approved by the City and Municipal Vice Mayors, as the case may be.** (Emphasis ours)

Section 6.0 of the DILG MC also provides for its retroactivity, thus:

6.0 This Memorandum Circular takes effect immediately and retroactive [sic] per OP Order dated March 15, 2019.

DILG MC No. 2019-82 is void *ab initio* for being *ultra vires*. For not only does it alter Section 444(b)(1)(xv) of RA 7160, exclusively vesting in the Municipal Mayor the power to authorize official trips outside of the municipality of municipal officials and employees for a period not exceeding thirty (30) days; it also sharply departs from the provisions of EO No. 77 which do not contain any of the provisions found in the said issuance.

¹³ "Prescribing Rules And Regulations And Rates Of Expenses And Allowances For Official And Foreign Travels Of Government Personnel," effective on March 15, 2019.

¹⁴ See Section 28 of EO No. 77.

¹⁵ See Section 1.0 of DILG MC No. 2019-82.

¹⁶ See Section 2.3 of DILG MC No. 2019-82.

As the stream cannot rise higher than its source,¹⁷ so must DILG MC No. 2019-82 not depart from the law it seeks to implement. Citing *Lokin, Jr. v. COMELEC*,¹⁸ *CSC v. Court of Appeals*¹⁹ is instructive.

It is basic that a rule issued by a government agency pursuant to its quasi-legislative power cannot modify, reduce or enlarge the scope of the law which it seeks to implement. The discourse made by the Court in *Lokin, Jr. v. Commission on Elections* is instructive:

The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. **The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes.** The function of promulgating IRRs may be legitimately exercised **only for the purpose of carrying out the provisions of a law.** The power of administrative agencies is confined to implementing the law or putting it into effect. **Corollary to this is that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation.** Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.²⁰ (Emphasis in the original)

Consequently, petitioner's argument regarding the so-called retroactive effect of DILG MC No. 2019-82 on the infraction he committed in 2015 must necessarily fail.

In any event, even assuming that DILG MC No. 2019-82 is not invalid, the same will not negate petitioner's infraction. For although the said issuance bears the word **retroactive**, it is qualified by the phrase "per OP Order dated March 15, 2019." It simply means that although DILG MC No. 2019-82 was officially released and deemed to have taken effect only on May 29, 2019, those travel orders and expense that had already been processed as of the effectivity date of EO No. 77 onward are similarly covered by DILG MC No. 2019-82. The clear purpose is to preclude a void in the processing of these transactions.

In any case, DILG MC No. 2019-82 cannot push further back to those transactions prior to March 15, 2019, the effectivity date of EO No. 77 which it supposedly sought to implement.

¹⁷ See *Government of the Philippine Islands v. Adriano*, 41 Phil. 112, 119 (1920).

¹⁸ 635 Phil. 372 (2010).

¹⁹ 696 Phil. 230 (2012).

²⁰ *Id.* at 269-270.

The condonation doctrine does not apply to petitioner's infraction

Petitioner was the author of the unauthorized approval of travel order and payment of travel expenses of SB Member Dumlao in 2015. On January 18, 2017, the complaint against him for grave abuse of authority, conduct prejudicial to the best interest of the public service, gross neglect of duty, grave misconduct, serious dishonesty, and violations of RAs 6713²¹ and 7160²² was filed. The question is: Does the condonation doctrine apply to him considering his re-election as Mayor in 2019?

In the recent *En Banc* ruling in *Madreo v. Bayron*,²³ the Court clarified that the prospective effect of the condonation doctrine meant that it could no longer be applied to officials who have been re-elected **after** its abandonment lapsed into finality on April 12, 2016, thus:

Taking into account the above preliminary considerations, **when the Court ruled in *Carpio-Morales* that the abandonment of the doctrine of condonation is applied prospectively, it meant that the said doctrine does not anymore apply to public officials re-elected after its abandonment.** Stated differently, the doctrine still *applies* to those officials who have been *re-elected prior to its abandonment*. **That is because when a public official had already been re-elected prior to the promulgation and finality of *Carpio-Morales*, he or she has every right to rely on the old doctrine that his or her re-election had already served as a condonation of his previous misconduct, thereby cutting the right to remove him from office, and a new doctrine decreeing otherwise would not be applicable against him or her.** More telling, once re-elected, the public official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or doctrine without violating the Constitution.

X X X X

In view of the foregoing disquisitions, the Court rules that the doctrine of condonation is applicable to the case of Lucilo by reason of his re-election, as the term is understood in the application of the doctrine, during the recall election on 8 May 2015. It is undisputed that Lucilo's re-election took place prior to the finality of *Carpio-Morales*, which abandoned the condonation doctrine, on 12 April 2016. Considering that the doctrine of condonation is still a good law at the time of his re-election in 2015, Lucilo can certainly use and rely on the said doctrine as a defense against the charges for prior administrative misconduct on the rationale that his re-election effectively obliterates all of his prior administrative misconduct, if any at all. Further, with his re-election on 8 May 2015, Lucilo already had the vested right, by reason of the doctrine of condonation, not to be removed from his office, which may not be deprived from him or be impaired by the subsequent abandonment in *Carpio-Morales* of the

²¹ Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713. Approved on February 20, 1989.

²² Local Government Code of 1991, Republic Act No. 7160, October 10, 1991.

²³ G.R. Nos. 237330 & 237579, November 3, 2020.

aforesaid doctrine, or by any new law, doctrine or Court ruling. Accordingly, his re-election on 8 May 2015 rendered moot and academic the administrative complaint filed against him on 22 November 2013 for misconduct allegedly committed on 1 July 2013, hence, must be dismissed.

The doctrine of condonation, however, cannot be extended to Lucilo's re-election during the May 2016 elections. By then, the doctrine had already been abandoned, and his re-election no longer had the effect of condoning his previous misconduct. (Emphases ours)

X X X X

Here, petitioner's infraction was committed in 2015 and he got charged before the OMB two (2) years later in 2017. By then, the condonation doctrine in *Morales* had already been abandoned with finality on **April 12, 2016**. Meantime, petitioner got elected as Mayor of Paoay, Ilocos Norte in the **May 2016** elections and re-elected to the same position in 2019. But petitioner's election and re-election in 2016 and 2019, respectively, could not have condoned his past infractions. For the prospective application of *Morales*, as explained in *Madreo*, effectively precluded all regular elections beginning May 2016 from condoning prior administrative offenses.

So must it be.

WHEREFORE, the motion for reconsideration is **DENIED with FINALITY**. No further pleadings or motions shall be entertained in this case.

Let entry of judgment be issued immediately.

SO ORDERED." (J. Lopez, J., designated additional member per S. O. No. 2822 dated 7 April 2021).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *Abdo B/n*

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