

## SECOND DIVISION

[ G.R. No. 131255, May 20, 1998 ]

**HON. EDUARDO NONATO JOSON, IN HIS CAPACITY AS THE GOVERNOR OF THE PROVINCE OF NUEVA ECIJA, PETITIONER, VS. EXECUTIVE SECRETARY RUBEN D. TORRES, THE DEPARTMENT OF THE INTERIOR & LOCAL GOVERNMENTS, REPRESENTED BY SECRETARY ROBERT Z. BARBERS AND UNDERSECRETARY MANUEL R. SANCHEZ, MR. OSCAR C. TINIO, IN HIS CAPACITY AS PROVINCIAL VICE-GOVERNOR OF NUEVA ECIJA, AND MR. LORETO P. PANGILINAN, MR. CRISPULO S. ESGUERRA, MS. SOLITA C. SANTOS, MR. VICENTE C. PALILIO, AND MR. NAPOLEON G. INTERIOR, IN THEIR CAPACITY AS PROVINCIAL BOARD MEMBERS OF NUEVA ECIJA, RESPONDENTS.**

### DECISION

**PUNO, J.:**

The case at bar involves the validity of the suspension from office of petitioner Eduardo Nonato Joson as Governor of the province of Nueva Ecija. Private respondent Oscar C. Tinio is the Vice-Governor of said province while private respondents Loreto P. Pangilinan, Crispulo S. Esguerra, Solita C. Santos, Vicente C. Palilio and Napoleon G. Interior are members of the Sangguniang Panlalawigan.

On September 17, 1996, private respondents filed with the Office of the President a letter-complaint dated September 13, 1997 charging petitioner with grave misconduct and abuse of authority. Private respondents alleged that in the morning of September 12, 1996, they were at the session hall of the provincial capitol for a scheduled session of the Sangguniang Panlalawigan when petitioner belligerently barged into the Hall; petitioner angrily kicked the door and chairs in the Hall and uttered threatening words at them; close behind petitioner were several men with long and short firearms who encircled the area. Private respondents claim that this incident was an offshoot of their resistance to a pending legislative measure supported by petitioner that the province of Nueva Ecija obtain a loan of P150 million from the Philippine National Bank; that petitioner's acts were intended to harass them into approving this loan; that fortunately, no session of the Sangguniang Panlalawigan was held that day for lack of quorum and the proposed legislative measure was not considered; that private respondents opposed the loan because the province of Nueva Ecija had an unliquidated obligation of more than P70 million incurred without prior authorization from the Sangguniang Panlalawigan; that the provincial budget officer and treasurer had earlier disclosed that the province could not afford to contract another obligation; that petitioner's act of barging in and intimidating private respondents was a serious insult to the integrity and independence of the Sangguniang Panlalawigan; and that the presence of his private army posed grave danger to private respondents' lives and safety. Private respondents prayed for the suspension or removal of petitioner; for an emergency

audit of the provincial treasury of Nueva Ecija; and for the review of the proposed loan in light of the financial condition of the province, to wit:

"In this regard, we respectfully request for the following assistance from your good office:

1. To immediately suspend Governor N. [sic] Joson considering the actual dangers that we are facing now, and provide adequate police security detail for the Sangguniang Panlalawigan of Nueva Ecija. Should the evidence warrant after investigation, to order his removal from office.
2. To conduct an emergency audit of the provincial treasury of Nueva Ecija by the auditors from the Commission on Audit Central Office with adequate police security assistance. Should the evidence so warrant, to file necessary charges against responsible and accountable officers.
3. To advise the Philippine National Bank to review the capability of the province of Nueva Ecija to secure more loans and the feasibility of the same in the light of the present financial condition of the province. Or if said loan will be contrary to sound banking practice, recommend its disapproval."<sup>[1]</sup>

The letter-complaint was submitted with the joint affidavit of Elnora Escombien and Jacqueline Jane Perez, two (2) employees of the Sangguniang Panlalawigan who witnessed the incident. The letter was endorsed by Congressmen Eleuterio Violago and Pacifico Fajardo of the Second and Third Districts of Nueva Ecija, former Congressman Victorio Lorenzo of the Fourth District, and Mayor Placido Calma, President of the Mayors' League of said province.<sup>[2]</sup>

The President acted on the complaint by writing on its margin the following:

"17 Sep 96

To: SILG info Exec. Sec. and Sec. of Justice:

1. Noted. There appears no justification for the use of force, intimidation or armed followers in the situation of 12 Sep at the Session Hall. 2. Take appropriate preemptive and investigative actions. 3. BREAK NOT the PEACE.

FIDEL V. RAMOS  
(Signed)."<sup>[3]</sup>

President Ramos noted that the situation of "12 Sep at the Session Hall," i.e., the refusal of the members of the Sangguniang Panlalawigan to approve the proposed loan, did not appear to justify "the use of force, intimidation or armed followers." He thus instructed the then Secretary of the Interior and Local Governments (SILG) Robert Barbers to "[t]ake appropriate preemptive and investigative actions," but to "[b]reak not the peace."

The letter-complaint together with the President's marginal notes were sent to Secretary Robert Z. Barbers on September 20, 1996. Acting upon the instructions of the President, Secretary Barbers notified petitioner of the case against him<sup>[4]</sup> and attached to the notice a copy of the complaint and its annexes. In the same notice,

Secretary Barbers directed petitioner "to submit [his] verified/sworn answer thereto, not a motion to dismiss, together with such documentary evidence that [he] has in support thereof, within fifteen (15) days from receipt."<sup>[5]</sup>

Immediately thereafter, Secretary Barbers proceeded to Nueva Ecija and summoned petitioner and private respondents to a conference to settle the controversy. The parties entered into an agreement whereby petitioner promised to maintain peace and order in the province while private respondents promised to refrain from filing cases that would adversely affect their peaceful co-existence.<sup>[6]</sup>

The peace agreement was not respected by the parties and the private respondents reiterated their letter-complaint. Petitioner was again ordered to file his answer to the letter-complaint within fifteen days from receipt. Petitioner received a copy of this order on November 13, 1996. On the same day, petitioner requested for an extension of thirty (30) days to submit his answer because he was "trying to secure the services of legal counsel experienced in administrative law practice."<sup>[7]</sup> The Department of the Interior and Local Government (DILG), acting through Director Almario de los Santos, Officer-In-Charge of the Legal Service, granted the motion, with the thirty-day extension to be reckoned, however, from November 13, 1996, i.e., the day petitioner received the order to answer.<sup>[8]</sup>

In a letter dated December 9, 1996, petitioner moved for another extension of thirty (30) days to file his answer. He stated that he had already sent letters to various law firms in Metro Manila but that he had not yet contracted their services; that the advent of the Christmas season kept him busy with "numerous and inevitable official engagements."<sup>[9]</sup> The DILG granted the request for extension "for the last time up to January 13 only."<sup>[10]</sup>

On January 7, 1997, petitioner requested for another extension of thirty (30) days to file his answer. According to him, the Christmas season kept him very busy and preoccupied with his numerous official engagements; that the law firms he invited to handle his case have favorably replied but that he needed time to confer with them personally; and that during this period, he, with the help of his friends, was exploring the possibility of an amicable settlement of the case.<sup>[11]</sup> The DILG granted petitioner's request "for the last time" but gave him an extension of only ten (10) days from January 13, 1997 to January 23, 1997. The DILG also informed him that his "failure to submit answer will be considered a waiver and that the plaintiff [shall] be allowed to present his evidence ex-parte."<sup>[12]</sup>

Petitioner moved for reconsideration of the order. He reiterated his prayer for an extension of thirty (30) days on the following grounds: (a) that he was still in the process of choosing competent and experienced counsel; (b) that some law firms refused to accept his case because it was perceived to be politically motivated; and (c) the multifarious activities, appointments and official functions of his office hindered his efforts to secure counsel of choice.<sup>[13]</sup>

Three months later, on April 22, 1997, Undersecretary Manuel Sanchez, then Acting Secretary of the DILG, issued an order declaring petitioner in default and to have waived his right to present evidence. Private respondents were ordered to present their evidence ex-parte. The order reads as follows:

## **"ORDER**

It appearing that respondent failed to submit his answer to the complaint despite the grant to him of three (3) extensions, such unreasonable failure is deemed a waiver of his right to present evidence in his behalf pursuant to Section 4, Rule 4 of Administrative Order No. 23 dated December 17, 1992, as amended.

Respondent is hereby declared in default, meanwhile, complainants are directed to present their evidence ex-parte. However, considering the prohibition on the conduct of administrative investigation due to the forthcoming barangay elections, complainants will be notified on the date after the barangay election for them to present their evidence.

SO ORDERED."<sup>[14]</sup>

Two days later, on April 24, 1997, the law firm of Padilla, Jimenez, Kintanar & Asuncion, representing petitioner, filed with the DILG an "Entry of Appearance with Motion for Time to File Answer Ad Cautelam."

Petitioner received a copy of the order of default on May 2, 1997. Through counsel, he moved for reconsideration. On May 19, 1997, Undersecretary Sanchez reconsidered the order of default in the interest of justice. He noted the appearance of petitioner's counsel and gave petitioner "for the last time" fifteen (15) days from receipt to file his answer.<sup>[15]</sup>

On June 23, 1997, Undersecretary Sanchez issued an order stating that petitioner's counsel, whose office is in Manila, should have received a copy of the May 19, 1997 order ten days after mailing on May 27, 1997. Since petitioner still failed to file his answer, he was deemed to have waived his right to present evidence in his behalf. Undersecretary Sanchez reinstated the order of default and directed private respondents to present their evidence ex-parte on July 15, 1997.<sup>[16]</sup>

The following day, June 24, 1997, petitioner, through counsel, filed a "Motion to Dismiss." Petitioner alleged that the letter-complaint was not verified on the day it was filed with the Office of the President; and that the DILG had no jurisdiction over the case and no authority to require him to answer the complaint.

On July 4, 1997, petitioner filed an "Urgent Ex-Parte Motion for Reconsideration" of the order of June 23, 1997 reinstating the order of default. Petitioner also prayed that the hearing on the merits of the case be held in abeyance until after the "Motion to Dismiss" shall have been resolved. On July 11, 1997, on recommendation of Secretary Barbers, Executive Secretary Ruben Torres issued an order, by authority of the President, placing petitioner under preventive suspension for sixty (60) days pending investigation of the charges against him.<sup>[17]</sup>

Secretary Barbers directed the Philippine National Police to assist in the implementation of the order of preventive suspension. In petitioner's stead, Secretary Barbers designated Vice-Governor Oscar Tinio as Acting Governor until such time as petitioner's temporary legal incapacity shall have ceased to exist.<sup>[18]</sup>

Forthwith, petitioner filed a petition for certiorari and prohibition with the Court of Appeals challenging the order of preventive suspension and the order of default.<sup>[19]</sup>

Meanwhile, the proceedings before the DILG continued. On August 20, 1997, Undersecretary Sanchez issued an order denying petitioner's "Motion to Dismiss" and "Urgent Ex-Parte Motion for Reconsideration." In the same order, he required the parties to submit their position papers within an inextendible period of ten days from receipt after which the case shall be deemed submitted for resolution, to wit:

"WHEREFORE, for lack of merit, both motions are denied. However, for this office to have a better appreciation of the issues raised in the instant case, the parties, through their respective counsels are hereby directed to submit their position papers within a period of ten (10) days from receipt hereof, which period is inextendible, after which the case is deemed submitted for resolution."<sup>[20]</sup>

On August 27, 1997, petitioner filed with the DILG a "Motion to Lift Order of Preventive Suspension." On September 10, 1997, petitioner followed this with a "Motion to Lift Default Order and Admit Answer Ad Cautelam."<sup>[21]</sup> Attached to the motion was the "Answer Ad Cautelam"<sup>[22]</sup> and sworn statements of his witnesses. On the other hand, complainants (private respondents herein) manifested that they were submitting the case for decision based on the records, the complaint and affidavits of their witnesses.<sup>[23]</sup>

In his Answer Ad Cautelam, petitioner alleged that in the morning of September 12, 1996, while he was at his district office in the town of Munoz, he received a phone call from Sangguniang Panlalawigan member Jose del Mundo. Del Mundo, who belonged to petitioner's political party, informed him that Vice-Governor Tinio was enraged at the members of the Sangguniang Panlalawigan who were in petitioner's party because they refused to place on the agenda the ratification of the proposed P150 million loan of the province. Petitioner repaired to the provincial capitol to advise his party-mates on their problem and at the same time attend to his official functions. Upon arrival, he went to the Session Hall and asked the members present where Vice-Governor Tinio was. However, without waiting for their reply, he left the Hall and proceeded to his office.

Petitioner claimed that there was nothing in his conduct that threatened the members of the Sangguniang Panlalawigan or caused alarm to the employees. He said that like Vice-Governor Tinio, he was always accompanied by his official security escorts whenever he reported for work. He also alleged that the joint affidavit of Elnora Escombien and Jacqueline Jane Perez was false. Escombien was purportedly not inside the session hall during the incident but was at her desk at the office and could not in any way have seen petitioner in the hall. To attest to the truth of his allegations, petitioner submitted three (3) joint affidavits -- two (2) affidavits executed by six (6) and ten (10) employees, respectively, of the provincial government, and a third by four members of the Sangguniang Panlalawigan.<sup>[24]</sup>

On September 11, 1997, petitioner filed an "Urgent Motion for Reconsideration" of the order of August 20, 1997 denying his motion to dismiss. The "Urgent Motion for Reconsideration" was rejected by Undersecretary Sanchez on October 8, 1997. **Undersecretary Sanchez, however, granted the "Motion to Lift Default Order and to Admit Answer Ad Cautelam" and admitted the "Answer Ad Cautelam" as petitioner's position paper pursuant to the order of August 20, 1997.**<sup>[25]</sup>