

## SECOND DIVISION

[ G.R. No. 215136, August 28, 2019 ]

**EDWIN D. VELEZ, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**REYES, J. JR., J.:**

Assailed in this Petition for Review on *Certiorari* are the Decision<sup>[1]</sup> dated August 30, 2013 and the Resolution<sup>[2]</sup> dated September 30, 2014 of the Court of Appeals-Cebu City (CA) in CA-G.R. CR No. 01051 affirming in *toto* the Decision<sup>[3]</sup> dated October 4, 2006, of the Regional Trial Court (RTC), Branch 69, Silay City in Criminal Cases Nos. 4430-69, 4431-69 and 4432-69.

In three Informations,<sup>[4]</sup> Edwin D. Velez (petitioner), then Mayor of Silay City, was charged with violation of Section 261(v)(2) of the Omnibus Election Code (OEC) for releasing loan proceeds to three organizations for the implementation of the city's livelihood development program within 45 days before the 1998 elections. Also charged were Eli G. Alminaza (Alminaza), former City Accountant, Arturo J. Siason (Siason), former acting City Treasurer and Salvador G. Ascalon, Jr. (Ascalon), former City Budget Officer.

The facts are as follows:

On April 8, 1998, petitioner entered into separate loan agreements with Hacienda Guinsang-an II Credit Cooperative and Barangay E. Lopez Credit Cooperative involving an amount of P50,000.00 each as part of the city government's livelihood program.<sup>[5]</sup>

On April 22, 1998, petitioner entered again into a memorandum of agreement with Silay City Consolidated Union of Market Vendors Association, Inc. for the purpose of extending a loan to market vendors in the amount of P300,000.00 to market vendors to aid them in their business activities.<sup>[6]</sup>

In these instances, Alminaza, Siason, and Ascalon participated in the release of the funds by certifying the Request of Allotment and the availability of the funds pursuant to the memoranda. Petitioner, meanwhile, initiated the release and disbursement of public funds by entering into several memoranda of agreement with the three organizations and thereafter signing Disbursement Vouchers Nos. 1439 dated April 12, 1998, 1440 dated April 13, 1998 and 1626 dated April 23, 1998 for the release of the loan proceeds in their favor.<sup>[7]</sup>

On April 24, 1998, Hacienda Guinsang-an II Credit Cooperative, Barangay E. Lopez Credit Cooperative, and Silay City Consolidated Union of Market Vendors

Association, Inc. received the loan proceeds as evidenced by the acknowledgement receipts duly signed by their authorized representatives.<sup>[8]</sup>

Petitioner postulated that the release of public funds is exempted from the ban during the election period since the loan proceeds were intended to finance programs already existing prior to the 1998 elections. He stressed that upon his assumption to office as City Mayor in 1992, 20% of the city's development fund had been allotted to various livelihood programs implemented by recognized organizations and cooperatives. He maintained that these livelihood programs are continuing in nature and are, thus, exempted from the coverage of Section 261(v) of the OEC.

On October 4, 2006, the RTC rendered a Decision finding petitioner, Siason, and Ascalon guilty beyond reasonable doubt of violation of Section 261(v) of the OEC. In Criminal Cases Nos. 4430-69 and 4432-69, petitioner Siason and Ascalon were sentenced to suffer the penalty of imprisonment of two years with accessory penalties of perpetual disqualification to hold public office and deprivation of the right to suffrage. In Criminal Case No. 4431-69, petitioner and Ascalon were likewise sentenced to suffer the penalty of imprisonment of two years with accessory penalties of perpetual disqualification to hold public office and deprivation of the right to suffrage while Siason was acquitted of the offense charged. The death of Alminaza prior to the finality of the judgment totally extinguished his criminal liability pursuant to Article 89<sup>[9]</sup> of the Revised Penal Code.

The RTC ratiocinated that the release of loans to cooperatives as part of the city's livelihood program is among the social welfare services undertaken by the local government pursuant to Section 17 of the Local Government Code of the Philippines and is thus explicitly prohibited under Section 261(v). It also noted that while the City Government of Silay requested for exemption from the prohibition, the Commission on Elections did not act on the request. Hence, the release and disbursement of the public funds to the cooperatives was clearly in violation of Section 261(v).

On appeal, the CA affirmed *in toto* the October 4, 2006 RTC Decision. The CA agreed with the court *a quo* that the release of the loan proceeds in favor of the cooperatives was a disbursement of public funds for social services and development and therefore, prohibited under Section 261. It stressed that Section 261 did not make any reference to any continuing project on social services which may be exempted from the 45-day prohibition.

Petitioner moved for reconsideration but the same was denied in a Resolution dated September 30, 2014.

Hence, this petition raising the following issues:

### **FIRST ISSUE**

THE HONORABLE CA COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE SPECIOUS RULING OF THE TRIAL COURT THAT THE LGU OF SILAY CITY AS AMONG THOSE OFFICES OR MINISTRIES PROHIBITED BY SECTION 261 (V)(2) FROM RELEASING, DISBURSING OR EXPENDING

## **SECOND ISSUE**

THE HONORABLE CA COMMITTED ANOTHER REVERSIBLE ERROR WHEN IT AFFIRMED THE SPECIOUS RULING OF THE TRIAL COURT THAT FUND RELEASES BY THE CITY TO THE COOPERATIVES/ASSOCIATIONS AS AN IMPLEMENT OF THE CITY'S LIVELIHOOD DEVELOPMENT PROGRAM WERE COVERED BY THE PROHIBITION IN SECTION 261 (V)(2) OF THE OEC.

Petitioner contends that the prohibition under Section 261(v)(2) applies only to public officials and employees of the Ministry of Social Services and Development (now Department of Social Welfare and Development [DSWD]) and not to public officials of a local government unit (LGU). He posits that the law does not disallow all disbursements intended for social welfare services but only those made by the DSWD and other offices/departments performing similar functions. He states that the fact that a government office, agency, or instrumentality provide social welfare services and projects does not automatically place it within the coverage of the prohibition.

The People, through the Office of the Solicitor General, on the other hand argues that Section 261(v) covers "any public official or employee" and even "barangay officials" and "those of government-owned or controlled corporations." It rejects petitioner's defense of denial and emphasizes that the loan proceeds could not have been released to the cooperatives if petitioner did not sign the memoranda of agreement and approve the vouchers for the loan.

The petition is devoid of merit.

Section 261(v) of the Omnibus Election Code provides:

### **ARTICLE XXII.**

#### **ELECTION OFFENSES**

SEC. 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. - Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six- month period immediately prior to the beginning of the

forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

**(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing.** Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and (Emphasis supplied)

**(3) The Ministry of Human Settlements and any other office in any other**