

THIRD DIVISION

[G.R. No. 238822, October 09, 2019]

**MELLIEMOORE M. SAYCON, PETITIONER, VS. COURT OF APPEALS
(SPECIAL NINETEENTH DIVISION) AND ROEL R. DEGAMO,
RESPONDENTS.**

DECISION

REYES, A., JR., J.:

This is a petition for *certiorari*^[1] brought under Rule 65 of the Rules of Court, challenging the Resolution^[2] dated January 11, 2018 and the Resolution^[3] dated March 7, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 11422, which respectively granted the prayer of respondent Roel R. Degamo (Roel) for the issuance of a Temporary Restraining Order (TRO), and a Writ of Preliminary injunction (WPI). The injunctive reliefs enjoined the implementation of the Decision^[4] dated March 2, 2017 issued by the Office of the Ombudsman (OMB) in OMB-V-A-16-0197, finding Roel guilty of Grave Misconduct and imposed on him the penalty of Dismissal from Service.

Factual Antecedents

The petitioner, Melliemoore Maicom Saycon (Melliemoore), filed an administrative complaint against Roel and several other public officers in the Province of Negros Oriental. According to Melliemoore, Roel and his co-respondents (*i.e.*, Provincial Budget Officer Marichu A. Alperito, Provincial Accountant Teodorico G. Reyes, and Provincial Treasurer Danilo C. Mendez) caused the release of public funds belonging to the province, without a corresponding appropriation in the budget.^[5]

The funds subject of this case came from the proposed budget of Roel, which he submitted to the *Sangguniang Panlalawigan* of Negros Oriental on October 16, 2012 during his first term as governor. The proposed budget included an item for "Intelligence Expenses" in the amount of P10,000,000.00.^[6]

On January 15, 2013, the appropriation ordinance for Fiscal Year 2013 was approved by the Sangguniang Panlalawigan. However, instead of including the proposed item for "Intelligence Expenses," the amount was appropriated for Gender and Development, one of the programs and activities under the Office of the Provincial Governor.^[7] Roel vetoed the "deletion or non-inclusion" of the item on "Intelligence Expenses." The *Sangguniang Panlalawigan*, for its part, did not override the veto. Subsequently, on March 22, 2013, the approved Annual Budget for the province was submitted to the Department of Budget and Management (DBM) Regional Office VII for review.^[8]

Despite the absence of an appropriation, Roel allegedly proceeded to issue a Memorandum addressed to the Provincial Budget Officer, Provincial Treasurer, and Provincial Accountant, directing the release of the Intelligence Fund without further delay. They complied with the directive, and on April 16, 2013, the amount of P10,000,000.00 "for the payment of expenses of different activities related to intelligence operation" was released to the Office off the Provincial Governor.^[9] The Provincial Budget Officer sent a letter on the same day to Roel, registering her objection to the disbursement of the funds, there being no available appropriation for the item.^[10] The Provincial Accountant and Treasurer also registered their separate objections to the release of the cash advance for the same reasons.^[11]

The DBM Regional Office VII Director, through a letter dated May 17, 2013, informed the *Sangguniang Panlalawigan* that the appropriation of P10,000,000.00 for Gender and Development is inoperative because it was vetoed and the veto was not overridden. Furthermore, the DBM Regional Office VII Director stated that Roel's veto on the Intelligence Fund cannot operate to re-enact the item in the appropriations ordinance. The proper subject of a veto is an item of appropriation in the appropriations ordinance. There being no Intelligence Fund item in the province's appropriation ordinance, Roel's veto is void.^[12]

The Commission on Audit (COA) Regional Office No. VII agreed with the opinion of the DBM Regional Office VII. It found the disbursement of the Intelligence Fund, in the absence of an appropriation, to be a violation of Section 305(a) of Republic Act (R.A.) No. 7160^[13] and Section 4(1) of Presidential Decree (P.D.) No. 1445.^[14]

Roel submitted his counter-affidavit to the OMB, where he argued that the expenses for the Intelligence Fund are deemed included in the appropriations ordinance. According to him, the Intelligence Fund is already part of the Annual Investment Program approved by the Local Development Council. He also argued that the *Sangguniang Panlalawigan* acted outside its authority in deciding not to include the item in the appropriations ordinance. As such, the deletion of the Item did not have a legal effect.^[15]

Meanwhile, Roel's co-respondents, who were respectively holding the positions of Provincial Budget Officer, Provincial Accountant, and Provincial Treasurer, denied conspiring with Roel to disburse the subject funds. The alleged conspiracy, they claim, is further negated by their written objections to the release of the funds.^[16]

Ruling of the OMB

In a Decision^[17] promulgated on March 2, 2017, the OMB dismissed the complaint against the co-respondents of Roel. This notwithstanding, the OMB found substantial evidence to hold Roel administratively liable for Grave Misconduct, thus:

WHEREFORE, finding substantial evidence to hold respondent ROEL RAGAY DEGAMO liable for Grave Misconduct, he is hereby meted the penalty of DISMISSAL FROM SERVICE with accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual

disqualification from holding public office and bar from taking civil service examination.

In the event that the penalty of Dismissal can no longer be enforced due to separation from service of respondent ROEL RAGAY DEGAMO, the penalty shall be converted into a Fine in an amount equivalent to respondents' salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from their office.

Further, the administrative charge for Grave Misconduct against MARICHU ABIERA ALPUERTO, DANILO CUAL MENDEZ and TEODORICO GUEVARA REYES is DISMISSED for lack of substantial evidence.

x x x x

SO ORDERED.^[18]

Aggrieved, Roel filed a petition for review with the CA, pursuant to Rule 43 of the Rules of Court. His petition also prayed for the issuance of a TRO, arguing that he has a clear and unmistakable right to be protected from the enforcement of an irregular and persecutory decision. He further stated that he would suffer great, irreparable injury, as his dismissal from service would "scandalize government service" in Negros Oriental.^[19]

Ruling of the CA

In the first assailed Resolution^[20] dated January 11, 2018, the CA held that Roel successfully established his entitlement to the injunctive relief. The release of the subject funds occurred in 2013, during the first term of Roel as governor. Considering that he was elected for another term during the 2013 elections, the CA held that the condonation doctrine should have been applied.^[21] On this basis, the CA directed the issuance of a TRO, enjoining the OMB from implementing its decision to dismiss Roel from government service:

WHEREFORE, finding the reasons stated therein to be of sufficient urgency, and so as not to render the reliefs prayed for in the Petition moot and academic pending the resolution of petitioner's prayer for the issuance of a Writ of Preliminary Injunction, the application for the issuance of a temporary restraining order by Roel R. Degamo is hereby GRANTED.

ACCORDINGLY, the Court resolves to:

- 1) Let a Temporary Restraining Order be issued, effectively immediately (*sic*) and valid for sixty (60) days, enjoining and restraining herein respondents Office of the Ombudsman Visayas and Department of the Interior and Local Government

and their representatives from implementing, carrying out, or enforcing the 2 March 2017 Decision of public respondent Ombudsman.

Petitioner is DIRECTED to post a bond in the amount of One Hundred Thousand Pesos (P100,000.00), within five (5) days from notice of this Resolution, failing which, this Order shall automatically be deemed revoked;

- 2) The respondents are directed to file their Comment on the Petition (not a motion to dismiss) within ten (10) days from notice to which petitioner may file a reply within five (5) days from receipt.

In their Comment on the Petition for Review, respondents shall likewise incorporate their Comment on petitioner's prayer for the issuance of a Writ of Preliminary Injunction and to show cause why the preliminary injunction should not be granted; and

- 3) The parties are directed to promptly notify this Court of any pending and/or subsequent filing of any case involving the same parties and issues.

SO ORDERED.^[22]

Melliemoore then filed a Comment, which likewise sought the reconsideration of the CA Resolution dated January 11, 2018. Melliemoore argued that the OMB did not err in finding substantial evidence against Roel, when he directed the release of public funds without a corresponding appropriation.^[23] She also assailed the application of the condonation doctrine since Roel was not elected to the position of Governor, but merely succeeded to the office by operation of law. Melliemoore also disagreed with the CA's resolution granting the TRO.^[24]

The CA, in its second assailed Resolution^[25] dated March 7, 2018, did not find the comment and motion of Melliemoore meritorious. Thus, the CA issued the WPI through the second assailed resolution, the dispositive portion of which is as follows:

ACCORDINGLY, the Court resolves to:

1. DENY the Motion for Reconsideration of [Melliemoore];
2. GRANT the issuance of a [WPI] effective immediately upon the expiration of the [TRO] issued in this case enjoining the respondents, their officers and agents, and all persons acting under them from enforcing and implementing the Decision dated 2 March 2017 in OMB-V-A-16-097, unless sooner revoked by this Court and/or until the instant petition is resolved, under the same bond previously posted by petitioner in the amount of One Hundred Thousand Pesos (P100,000.00);

3. GRANT [Melliemoore's] Manifestation with Motion for Extension of Time to File Comment, praying for an extension of five (5) days from 25 January 2018 or until 30 January 2018;

4. GRANT [Melliemoore's] Manifestation with Second Manifestation with Motion for Extension of Time to File Comment, praying for a further extension of five (5) days from 30 January 2018 or until 4 February 2018 to file the Comment;

5. NOTE [Melliemoore's] Comment with Manifestation and Motion for Reconsideration (of the Court's Resolution dated January 11, 2018 and Issuance of [TRO]) and/or Motion to Recall [TRO];

6. DENY the Office of the Solicitor General's Motion for Extension of Time to File Comment praying for thirty (30) days from 25 January 2018 or until 24 February 2018 within which to file its Comment; and

7. DIRECT the parties to file their respective Memoranda within thirty (30) days from notice hereof. Failure of which shall deem the Court to submit the instant petition for decision.

SO ORDERED.^[26]

Aggrieved, Melliemoore filed the present petition for *certiorari* with the Court. She alleges that the CA erred in granting the TRO and the WPI enjoining the OMB from implementing its Decision dated March 2, 2017, primarily because the condonation doctrine does not apply to Roel. Since Roel was not "elected" to the governor position in 2011, Melliemoore argues that his subsequent election in the 2013 midterm elections does not count as a re-election that would warrant the application of the condonation doctrine. Furthermore, there being no vested right to a public office, the CA should not have granted the injunctive writs in Roel's favor.^[27]

Roel, on the other hand, disputed the allegations in the petition. He asserts that he has a legal right over the office unless he is removed for cause. Roel also insists that the CA properly applied the condonation doctrine in his favor.^[28]

The Court is, therefore, confronted with the issue of whether the CA gravely abused its discretion amounting to lack or excess of jurisdiction in enjoining the OMB from implementing the decision dismissing Roel from government service.

Ruling of the Court

The Court finds the petition meritorious.

The CA gravely abused its discretion in issuing the injunctive relief in favor of Roel, despite the absence of