115 OG No. 25, 6071 (June 24, 2019)

SECOND DIVISION

[G.R. No. 232532, October 01, 2018]

ALFREDO G. GERMAR, PETITIONER, VS. FELICIANO P. LEGASPI, RESPONDENT.

D E C I S I O N

REYES, A., J.:

The Case

Challenged before the Court via this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals, dated September 5, 2016 and June 30, 2017, respectively, in CA-G.R. SP No. 145277. The Decision and Resolution affirmed the Consolidated Resolution[3] of the Office of the Ombudsman in OMB-L-A-15-0054 and OMB-L-A-15-0055.

The Antecedent Facts

After the May 2013 elections, the Municipality of Norzagaray, Province of Bulacan witnessed a change of administration. The petitioner, Alfredo G. Germar (Germar), won the mayoralty position. He replaced the former mayor, respondent Feliciano P. Legaspi (Legaspi).

During Germar's term, he entered into contracts for professional service with six (6) consultants, namely, Mamerto M. Manahan, Danilo S. Leonardo, Edilberto J. Guballa, Rodolfo J. Santos, Epifanio S. Payumo, and Enrique C. Boticario.[4] Respectively, they were to advice the office of the mayor on municipal administration and governance, barangay affairs, business investment and trade, calamity and disaster, and the last two consultants, on security relations.[5]

From the records of the case, it appears that the budget for the salary of the consultants is found in the appropriation ordinance[6] of the municipality for the year 2013. Particularly, it is a line-item called as "Consultancy Services" found under the category "Maintenance and Other Operating Expenses" of the Office of the Mayor. These provisions are found in a detailed list which is annexed to the appropriation ordinance, with the heading, "Programmed Appropriation and Obligation by Object of Expenditure."[7]

On October 28, 2014, a year into Germar's service as the mayor of the municipality, Legaspi filed a complaint against the former, together with the six (6) consultants and the Municipal Human Resources Officer of the municipality, before the Office of the Ombudsman (OMB). The charges, both criminal and administrative, included Grave Misconduct, Gross Dishonesty, Grave Abuse of Authority (docketed as OMB-L-A-15-0054 to 55), Malversation and Violation of Republic Act (R.A.) No 7160, R.A.

No. 6713, R.A. No. 3019 (docketed as OMB-L-C-15-0039 to 40), and R.A. No. 9184.[8]

In the administrative aspect of the complaint, which is the subject matter of this case, Legaspi averred that Germar entered into these contracts of professional service without the prior authorization of the Sangguniang Bayan. This, Legaspi asserted, is a violation of Section 444 of the Local Government Code,[9] which deals with the powers, duties, function, and compensation of the local chief executive.

On November 23, 2015, the OMB promulgated a Consolidated Resolution. On the administrative charges, while the OMB held Germar liable for "Grave Misconduct," it dismissed the case against the six (6) consultants and the Human Resources Officer. The *fallo* of the Consolidated Resolution reads:

> **WHEREFORE**, finding probable cause to indict respondent ALFREDO G. GERMAR for violation of Section 3 (e) of RA No. 3019, let the appropriate information be filed before the *Sandiganbayan*.
>
> **FURTHER**, there being substantial evidence, respondent ALFREDO G. GERMAR is found guilty of Grave Misconduct. He is meted the penalty of **DISMISSAL** from the service as well as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.
>
> The charges against the other respondents SILANGAN RIVAS, MAMERTO MANAHAN, DANILO LEONARDO, EDILBERTO GUBALLA, RODOLFO SANTOS, EPIFANIO PAYUMO and ENRIQUE BOTICARIO are hereby **DISMISSED** for lack of evidence.
>
> SO ORDERED.[10]

Without filing a motion for reconsideration to the OMB Consolidated Resolution, Germar elevated the case to the Court of Appeals. After the submission of the required pleadings, the appellate court rendered a decision, which denied Germar's petition for review. According to the Court of Appeals, while Germar's non-filing of a motion for reconsideration falls within the exception to the doctrine of exhaustion of administrative remedies,[11] he is nonetheless found guilty of grave misconduct for entering into consultancy service contracts without the Sangguniang Bayan's authorization.[12]

The *fallo* of the Court of Appeals Decision reads:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED**. The assailed 23 November 2015 Consolidated Resolution of the Office of the Ombudsman in OMB-L-A-0054 to 55 finding **ALFREDO G. GERMAR GUILTY** of grave misconduct is **AFFIRMED** in toto.
>
> **SO ORDERED.**[13]

Upon the denial of petitioner Germar's motion for reconsideration, he filed the instant petition for review on *certiorari*.

The Issues

In seeking the reversal of the decision of the Court of Appeals, the petitioner raises three issues: (1) whether or not the item of "Consultancy Services" in the appropriation ordinance of the Municipality of Norzagaray is sufficient authorization for the petitioner to sign the contracts of professional service; (2) whether or not Germar's act show good faith such that he is neither guilty of grave misconduct, nor should he be punished with the ultimate penalty of dismissal from service; and (3) whether or not the condonation doctrine finds application herein.[14]

In essence, the issue that the Court is called upon to resolve centers on whether or not Germar is guilty of Grave Misconduct in entering into the six (6) contracts of professional service based solely on the authority of the appropriations ordinance, and no other.

After a careful perusal of the arguments presented and the evidence submitted, the Court finds merit in the petition.

Time and again, the Court has defined misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior.[15]

The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct.[16]

In finding Germar guilty of grave misconduct, the OMB ruled that Germar "x x x is liable for Grave Misconduct for entering into the subject consultancy contracts in violation of the Local Government Code"[17] and that there was *willful intent to violate the law or willful intent to disregard established rules* on the part of Germar.[18] According to the OMB, Germar violated Section 22(c), in relation to Section 444(b)(l)(vi), of the Local Government Code, which requires an authorization from the Sangguinang Bayan before Germar, as the local chief executive, could enter into contracts in behalf of the municipality. The provisions read:

> SECTION 22. Corporate Powers. - (a) Every local government unit, as a corporation, shall have the following powers:
>
> x x x x
>
> (c) Unless otherwise provided in this Code, **no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned**. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.
>
> x x x x (Emphasis supplied)

> 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.
>
> (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
>
> (vi) **Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;**
>
> x x x x (Emphasis supplied)

In explaining the OMB's conclusion, the OMB Consolidated Resolution did not heed Germar's explanation that, as the mayor of the municipality, he was vested by law with authority to appoint the municipality's officials and employees. The OMB further said that "[n]o local ordinance was presented either to reflect that the *Sanggunian* even ratified the contracts." Particularly, the OMB very briefly explained:

> To be sure, respondent Germar could only muster as basis for his action the authority vested in him by law to appoint the municipality's officials and employees. Then again, consultant respondents here were not employees of the local government and this fact was acknowledged in the consultancy contracts. Under the circumstances of the present case, this Office sees the open defiance and disregard by respondent Germar of the law's requirement by continually insisting on an applicable provision of the Local Government Code as his legal basis. No local ordinance was presented either to reflect that the Sanggunian even ratified the contracts.[19]

But in his defense, Germar recognized the clear mandate of Sections 22 and 444(b)(l)(vi). He, however, averred that he has indeed acquired the required "prior authorization" from the Sangguniang Bayan. Germar posited that the appropnatlon ordinance,[20] which clearly provided for funds for "Consultancy Services" is the "prior authorization" required of Sections 22 and 444(b)(l)(vi).

To be sure, this issue is not novel.

In the case of *Quisumbing v. Garcia*,[21] the Court had the occasion to rule on whether a Sangguniang Bayan authorization, which is separate from the appropriation ordinance, is still required if the appropriation ordinance itself already provided for the transactions, bonds, contracts, documents, and other obligations that the local chief executive would enter into in behalf of the municipality.

To answer this query, *Quisumbing* made a general delineation depending on the particular circumstances of the case. According to *Quisumbing*, if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required.

This delineation first enunciated in *Quisumbing* is further elaborated by the Court in the recent case of *Verceles, Jr. v. Commission on Audit*.[22] In *Verceles*, the Court agreed that the prior authorization for the local chief executive to enter into contracts on behalf of the municipality may be in the form of an appropriation ordinance, for as long as the same specifically covers the project, cost, or contract to be entered into by the local government unit.[23] *Verceles* explained:

> If the project or program is identified in the appropriation ordinance in sufficient detail, then there is no more need to obtain a separate or additional authority from the sanggunian. In such case, the project and the cost are already identified and approved by the sanggunian through the appropriation ordinance. To require the local chief executive to secure another authorization for a project that has been specifically identified and approved by the sanggunian is antithetical to a responsive local government envisioned in the Constitution and in the LGC.
>
> On the other hand, the need for a covering contract arises when the project is identified in generic terms. The covering contract must also be approved by the sanggunian.[24] (Citations omitted)

In applying this delineation, *Verceles* examined the difference in the provisions of the Province of Catanduanes's appropriation ordinance for the fiscal years 2001 and 2002 with regard to the province's "tree seedlings production project."

In the 2001 appropriation ordinance, the funds for the "tree seedlings production project" were derived from the province's economic development fund (EDF), which is a lump-sum amount that did not detail the projects that it could fund. Thus, *Verceles* concluded that, since the appropriation ordinance did not list the specific projects in which the EDF could be used, then the Sangguniang Panlalawigan "has not yet determined how the lump-sum EDF would be spent at the time it approved the annual budget."[25] Resultantly, the provision in the 2001 appropriation ordinance, insofar as the EDF is concerned, is a generic term that needed a separate authorization from the Sangguniang Panlalawigan.

In contrast, in the 2002 appropriation ordinance, the EDF from which the funds for the "tree seedlings production project" were also derived specifically stated in Section 3 thereof that the lump-sum EDF may be used for "Tree Seedling Production for Environmental Safeguard-Amount: P3,000,000.00" This, *Verceles* concluded, is sufficient authority because the same "specifically and expressly set aside P3,000,000.00 to fund the tree seedlings production project of the Province."[26]

This thus begs the question in this case: Is the line-item "Consultancy Services" found under the category "Maintenance and Other Operating Expenses" of the budget for the Office of the Mayor which is found in the annex to the appropriations ordinance under the heading, "Programmed Appropriation and Obligation by Object