

SECOND DIVISION

[G.R. No. 216871, December 06, 2017]

**OFFICE OF THE OMBUDSMAN, PETITIONER, V. MAYOR JULIUS
CESAR VERGARA, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated April 6, 2015 of petitioner Office of the Ombudsman that seeks to reverse and set aside the Decision^[1] dated May 28, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 125841 rendering the penalty imposed in the Decision^[2] dated February 7, 2006 and Review Order^[3] dated June 29, 2012 of petitioner Office of the Ombudsman against respondent Mayor Julius Cesar Vergara (*Mayor Vergara*) for violation of Section 5 (a) of Republic Act (R.A.) No. 6713 inapplicable due to the doctrine of condonation.

The facts follow.

A complaint was filed by Bonifacio G. Garcia, on June 21, 2005 before petitioner's Office of the Environmental Ombudsman against respondent Mayor Julius Cesar Vergara and then Vice-Mayor Raul Mendoza (*Vice-Mayor Mendoza*). Respondent Mayor Vergara was then serving as Mayor of Cabanatuan City for his third term (2004-2007).

According to the complainant, respondent Vergara and then Vice-Mayor Mendoza maintained for quite a long time an open burning dumpsite located at the boundaries of Barangays San Isidro and Valle Cruz in Cabanatuan City, which has long been overdue for closure and rehabilitation. He claimed that the dumpsite is now a four-storey high mountain of mixed garbage exposing the residents of at least eighty-seven (87) *barangays* of Cabanatuan City to all toxic solid wastes. He further alleged that respondent Mayor Vergara and then Vice-Mayor Mendoza ordered and permitted the littering and dumping of the solid wastes in the said area causing immeasurable havoc to the health of the residents of Cabanatuan and that despite the enactment of R.A. 9003, respondent Mayor Vergara and then Vice-Mayor Mendoza allowed and permitted the collection of non-segregated and unsorted wastes. It was also alleged that respondent Mayor Vergara and then Vice-Mayor Mendoza ignored the complaints from local residents and the letters from the authorities of the Department of Environment and Natural Resources (*DENR*) and from the Commissioner of the National Solid Waste Management ordering them to comply with the provisions of the said law.

In their Joint Counter-Affidavit,^[4] both respondent Mayor Vergara and then Vice-Mayor Mendoza denied that they wilfully and grossly neglected the performance of their duties pursuant to R.A. 9003. They claimed that since 1999, they were already aware about the growing problem of garbage collection in Cabanatuan City. They

also contended that even before the enactment of RA 9003, they have already prepared a master plan for the transfer of the city dumpsite in *Barangay Valle* into an agreement with Lacto Asia Pacific Corporation for the establishment of Materials Recovery Facility at the motorpool compound of Cabanatuan City as a permanent solution to the garbage problem.

Respondent Mayor Vergara was found guilty by Graft Investigation and Prosecution Officer II Ismaela B. Boco for violation of Section 5 (a) of R.A. No. 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees* which provides that:

Section 5. *Duties of Public Officials and Employees.* - In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letter and requests - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

As such, petitioner imposed a penalty on respondent which reads as follows:

x x x Accordingly, he is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.

It is further recommended that both respondents, JULIUS CESAR VERGARA and RAUL P. MENDOZA be administratively liable for NEGLECT OF DUTY for failing to implement RA 9003. Accordingly, each of them is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.^[5]

Respondent filed a motion for reconsideration contending that the assailed decision that meted him the penalty of suspension for six (6) months from government service cannot be implemented or enforced as the same runs counter to the established doctrine of condonation, since he was re-elected as Mayor of Cabanatuan City on May 10, 2010.

The petitioner, in its Review Order dated June 29, 2012, affirmed the Decision dated February 7, 2006 but modified the penalty imposed, thus:

PREMISES CONSIDERED, the Decision dated 7 February 2006 is hereby **AFFIRMED** with modification. The penalty imposed on respondent-movant Julius Cesar V. Vergara for failure to act promptly on letters and requests is reduced from six-month suspension to reprimand in light of the foregoing disquisition.

SO ORDERED.^[6]

Aggrieved, respondent filed a petition for review with the CA.

Respondent then filed a Motion and Manifestation dated May 16, 2013, which the CA noted, alleging that his re-election as Mayor of Cabanatuan City in the May 2010

elections eliminated the break from his service as Mayor and, thus, qualified his case for the application of the doctrine of condonation.

The CA, on May 28, 2014, granted respondent's petition. The CA ruled that there is no reason for it to reverse the findings of the Office of the Ombudsman, however, the appellate court held that respondent may no longer be held administratively liable for misconduct committed during his previous term based on the doctrine of condonation, thus:

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Contrary to the ratiocination of the Office of the Ombudsman, the application of the doctrine does not require that the official must be reelected to the same position in the immediately succeeding election. The Supreme Court's rulings on the matter do not distinguish the precise timing or period when the misconduct was committed, reckoned from the date of the official's reelection, except that it must be prior to said date. Thus, when the law does not distinguish, the courts must not distinguish.

FOR THESE REASONS, the petition is **GRANTED**.

SO ORDERED.^[7]

Petitioner filed a motion for partial reconsideration contending that the re-election referred to in the doctrine of condonation refers to the immediately succeeding election. The CA, in its Resolution dated February 5, 2015, denied the motion for reconsideration.

Hence, the present petition with the following grounds:

I.

THE COURT OF APPEALS ERRED WHEN IT HELD THAT RESPONDENT MAY NO LONGER BE HELD ADMINISTRATIVELY LIABLE FOR MISCONDUCT COMMITTED DURING HIS PREVIOUS TERM OF OFFICE BASED ON THE DOCTRINE OF CONDONATION.

II.

ASSUMING *ARGUENDO* THAT THE DOCTRINE OF CONDONATION IS APPLICABLE TO THE CASE AT BAR, PETITIONER RESPECTFULLY BESEECHES THIS HONORABLE COURT TO REEXAMINE SAID DOCTRINE IN LIGHT OF THE 1987 CONSTITUTION'S MANDATE THAT PUBLIC OFFICE IS A PUBLIC TRUST.^[8]

According to petitioner, the term re-election, as applied in the doctrine of condonation, is used to refer to an election immediately preceding a term of office and it is not used to refer to a subsequent re-election following the three-term limit break considering that it is an incumbent official serving the three-term limit break who is said to be seeking re-election. It further argues that the factual circumstances of respondent do not warrant the application of the doctrine of condonation considering that the same doctrine is applied only to cases where the subject public officials were elected to the same position in the immediately succeeding election. Petitioner, likewise, contends that assuming that the doctrine of

condonation is applicable in this case, such doctrine contradicts the 1987 Constitution and the present public policy.

In his Comment dated September 23, 2015, respondent insists that he did not violate any law and that if he is indeed guilty of violating R.A. 9003, the doctrine of condonation must be applied by virtue of his re-election.

The petition lacks merit.

Basically, this Court is presented with the single issue of whether or not respondent is entitled to the doctrine of condonation.

In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.*,^[9] extensively discussed the doctrine of condonation and ruled that such doctrine has no legal authority in this jurisdiction. As held in the said the decision:

The foundation of our entire legal system is the Constitution. It is the supreme law of the land;^[10] thus, the unbending rule is that every statute should be read in light of the Constitution.^[11] Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.^[12]

As earlier intimated, Pascual was a decision promulgated in 1959. Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust. The provision in the 1935 Constitution that comes closest in dealing with public office is Section 2, Article II which states that "[t]he defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service."^[13] Perhaps owing to the 1935 Constitution's silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the Pascual Court in adopting the condonation doctrine that originated from select US cases existing at that time.

With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "[p]ublic office is a public trust." Accordingly, "[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."

After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."^[14] Learning how unbridled power could corrupt public servants under the

regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. More significantly, the 1987 Constitution strengthened and solidified what has been first proclaimed in the 1973 Constitution by commanding public officers to be accountable to the people at all times:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.

In Belgica, it was explained that:

[t]he aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. The notion of a public trust connotes accountability x x x. ^[15]

The same mandate is found in the Revised Administrative Code under the section of the Civil Service Commission,^[16] and also, in the Code of Conduct and Ethical Standards for Public Officials and Employees.^[17]

For local elective officials like Binay, Jr., the grounds to discipline, suspend or remove an elective local official from office are stated in Section 60 of Republic Act No. 7160,^[18] otherwise known as the "Local Government Code of 1991" (LGC), which was approved on October 10 1991, and took effect on January 1, 1992:

Section 60. Grounds for Disciplinary Action. - An elective local official may be disciplined, suspended, or removed from office on any of the r following grounds:

- (a) Disloyalty to the Republic of the Philippines;
- (b) Culpable violation of the Constitution;
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;
- (e) Abuse of authority;
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sanggunian bayan, and sangguniang barangay;
- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and