

## EN BANC

[ G.R. No. 195390, December 10, 2014 ]

**GOV. LUIS RAYMUND F. VILLAFUERTE, JR., AND THE PROVINCE OF CAMARINES SUR, PETITIONERS, VS. HON. JESSE M. ROBREDO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, RESPONDENT.**

### DECISION

**REYES, J.:**

This is a petition for *certiorari* and prohibition<sup>[1]</sup> under Rule 65 of the 1997 Revised Rules of Court filed by former Governor Luis Raymund F. Villafuerte, Jr. (Villafuerte) and the Province of Camarines Sur (petitioners), seeking to annul and set aside the following issuances of the late Honorable Jesse M. Robredo (respondent), in his capacity as then Secretary of the Department of the Interior and Local Government (DILG), to wit:

- (a) Memorandum Circular (MC) No. **2010-83** dated August 31, 2010, pertaining to the full disclosure of local budget and finances, and bids and public offerings;<sup>[2]</sup>
- (b) MC No. **2010-138** dated December 2, 2010, pertaining to the use of the 20% component of the annual internal revenue allotment shares;<sup>[3]</sup> and
- (c) MC No. **2011-08** dated January 13, 2011, pertaining to the strict adherence to Section 90 of Republic Act (R.A.) No. 10147 or the General Appropriations Act of 2011.<sup>[4]</sup>

The petitioners seek the nullification of the foregoing issuances on the ground of unconstitutionality and for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

### The Facts

In 1995, the Commission on Audit (COA) conducted an examination and audit on the manner the local government units (LGUs) utilized their Internal Revenue Allotment (IRA) for the calendar years 1993-1994. The examination yielded an official report, showing that a substantial portion of the 20% development fund of some LGUs was not actually utilized for development projects but was diverted to expenses properly chargeable against the Maintenance and Other Operating Expenses (MOOE), in stark violation of Section 287 of R.A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC). Thus, on December 14, 1995, the DILG issued MC No. 95-216,<sup>[5]</sup> enumerating the policies and guidelines on the

utilization of the development fund component of the IRA. It likewise carried a reminder to LGUs of the strict mandate to ensure that public funds, like the 20% development fund, “shall be spent judiciously and only for the very purpose or purposes for which such funds are intended.”<sup>[6]</sup>

On September 20, 2005, then DILG Secretary Angelo T. Reyes and Department of Budget and Management Secretary Romulo L. Neri issued Joint MC No. 1, series of 2005,<sup>[7]</sup> pertaining to the guidelines on the appropriation and utilization of the 20% of the IRA for development projects, which aims to enhance accountability of the LGUs in undertaking development projects. The said memorandum circular underscored that the 20% of the IRA intended for development projects should be utilized for social development, economic development and environmental management.<sup>[8]</sup>

On August 31, 2010, the respondent, in his capacity as DILG Secretary, issued the assailed MC No. 2010-83,<sup>[9]</sup> entitled “Full Disclosure of Local Budget and Finances, and Bids and Public Offerings,” which aims to promote good governance through enhanced transparency and accountability of LGUs. The pertinent portion of the issuance reads:

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Section 352 of the Local Government Code of 1991 requires the posting within 30 days from the end of each fiscal year in at least three (3) publicly accessible and conspicuous places in the local government unit a summary of all revenues collected and funds received including the appropriations and disbursements of such funds during the preceding fiscal year.

On the other hand, Republic Act No. 9184, known as the Government Procurement Reform Act, calls for the posting of the Invitation to Bid, Notice of Award, Notice to Proceed and Approved Contract in the procuring entity’s premises, in newspapers of general circulation, the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the procuring entity.

The declared policy of the State to promote good local governance also calls for the posting of budgets, expenditures, contracts and loans, and procurement plans of local government units in conspicuous places within public buildings in the locality, in the web, and in print media of community or general circulation.

Furthermore, the President, in his first State of the Nation Address, directed all government agencies and entities to bring to an end luxurious spending and misappropriation of public funds and to expunge mendacious and erroneous projects, and adhere to the zero-based approach budgetary principle.

Responsibility of the Local Chief Executive

All Provincial Governors, City Mayors and Municipal Mayors, are directed to faithfully comply with the abovesited [sic] provisions of laws, and existing national policy, by posting in conspicuous places within public buildings in the locality, or in print media of community or general circulation, and in their websites, the following:

1. CY 2010 Annual Budget, information detail to the level of particulars of personal services, maintenance and other operating expenses and capital outlay per individual offices (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to PS, MOOE and CO. For sample form, please visit [www.naga.gov.ph](http://www.naga.gov.ph));
2. Quarterly Statement of Cash Flows, information detail to the level of particulars of cash flows from operating activities (e.g. cash inflows, total cash inflows, total cash outflows), cash flows from investing activities (e.g. cash outflows), net increase in cash and cash at the beginning of the period (Source Document - Statement of Cash Flows Form);
3. CY 2009 Statement of Receipts and Expenditures, information detail to the level of particulars of beginning cash balance, receipts or income on local sources (e.g., tax revenue, non-tax revenue), external sources, and receipts from loans and borrowings, surplus of prior years, expenditures on general services, economic services, social services and debt services, and total expenditures (Source Document - Local Budget Preparation Form No. 2, titled, Statement of Receipts and Expenditures);
4. CY 2010 Trust Fund (PDAF) Utilization, information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to PDAF Utilization);
5. CY 2010 Special Education Fund Utilization, information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to Special Education Fund);
6. CY 2010 20% Component of the IRA Utilization, information detail to the level of particulars of objects of expenditure on social development, economic development and environmental management (Source Document - Local Budget Preparation Form No. 3, titled, Program Appropriation and Obligation by Object of Expenditure, limited to 20% Component of the Internal Revenue Allotment);
7. CY 2010 Gender and Development Fund Utilization, information detail to the level of particulars of object expenditures (Source Document - Local Budget Preparation Form No. 3, titled, Program

*Appropriation and Obligation by Object of Expenditure, limited to Gender and Development Fund);*

8. CY 2010 Statement of Debt Service, *information detail to the level of name of creditor, purpose of loan, date contracted, term, principal amount, previous payment made on the principal and interest, amount due for the budget year and balance of the principal (Source Document - Local Budget Preparation Form No. 6, titled, Statement of Debt Service);*
9. CY 2010 Annual Procurement Plan or Procurement List, *information detail to the level of name of project, individual item or article and specification or description of goods and services, procurement method, procuring office or fund source, unit price or estimated cost or approved budget for the contract and procurement schedule (Source Document - LGU Form No. 02, Makati City. For sample form, please visit [www.makati.gov.ph](http://www.makati.gov.ph)).[;]*
10. Items to Bid, *information detail to the level of individual Invitation to Bid, containing information as prescribed in Section 21.1 of Republic Act No. 9184, or The Government Procurement Reform Act, to be updated quarterly (Source Document - Invitation to Apply for Eligibility and to Bid, as prescribed in Section 21.1 of R.A. No. 9184. For sample form, please visit [www.naga.gov.ph](http://www.naga.gov.ph));*
11. Bid Results on Civil Works, and Goods and Services, *information detail to the level of project reference number, name and location of project, name (company and proprietor) and address of winning bidder, bid amount, approved budget for the contract, bidding date, and contract duration, to be updated quarterly (Source Document – Infrastructure Projects/Goods and Services Bid-Out (2010), Naga City. For sample form, please visit [www.naga.gov.ph](http://www.naga.gov.ph)); and*
12. Abstract of Bids as Calculated, *information detail to the level of project name, location, implementing office, approved budget for the contract, quantity and items subject for bidding, and bids of competing bidders, to be updated quarterly (Source Document - Standard Form No. SF-GOOD-40, Revised May 24, 2004, Naga City. For sample form, please visit [www.naga.gov.ph](http://www.naga.gov.ph)).*

The foregoing circular also states that non-compliance will be meted sanctions in accordance with pertinent laws, rules and regulations.<sup>[10]</sup>

On December 2, 2010, the respondent issued MC No. 2010-138,<sup>[11]</sup> reiterating that 20% component of the IRA shall be utilized for desirable social, economic and environmental outcomes essential to the attainment of the constitutional objective of a quality of life for all. It also listed the following enumeration of expenses for which the fund must not be utilized, viz:

1. Administrative expenses such as cash gifts, bonuses, food allowance, medical assistance, uniforms, supplies, meetings, communication, water and light, petroleum products, and the like;
2. Salaries, wages or overtime pay;
3. Travelling expenses, whether domestic or foreign;
4. Registration or participation fees in training, seminars, conferences or conventions;
5. Construction, repair or refinishing of administrative offices;
6. Purchase of administrative office furniture, fixtures, equipment or appliances; and
7. Purchase, maintenance or repair of motor vehicles or motorcycles, except ambulances.<sup>[12]</sup>

On January 13, 2011, the respondent issued MC No. 2011-08,<sup>[13]</sup> directing for the strict adherence to Section 90 of R.A. No. 10147 or the General Appropriations Act of 2011. The pertinent portion of the issuance reads as follows:

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• **Section 90 of Republic Act No. 10147 (General Appropriations Act) FY 2011 re "Use and Disbursement of Internal Revenue Allotment of LGUs"**, [sic] stipulates: The amount appropriated for the LGU's share in the Internal Revenue Allotment shall be used in accordance with Sections 17 (g) and 287 of R.A. No 7160. The annual budgets of LGUs shall be prepared in accordance with the forms, procedures, and schedules prescribed by the Department of Budget and Management and those jointly issued with the Commission on Audit. Strict compliance with Sections 288 and 354 of R.A. No. 7160 and DILG Memorandum Circular No. 2010-83, entitled "Full Disclosure of Local Budget and Finances, and Bids and Public offering" is hereby mandated; *PROVIDED, That in addition to the publication or posting requirement under Section 352 of R.A. No. 7160 in three (3) publicly accessible and conspicuous places in the local government unit, the LGUs shall also post the detailed information on the use and disbursement, and status of programs and projects in the LGUS websites. Failure to comply with these requirements shall subject the responsible officials to disciplinary actions in accordance with existing laws.* x x x<sup>[14]</sup>

x x x x

### **Sanctions**

Non-compliance with the foregoing shall be dealt with in accordance with pertinent laws, rules and regulations. In particular, attention is invited to the provision of the Local Government Code of 1991, quoted as follows:

Section 60. Grounds for Disciplinary Actions - An elective local official may be disciplined, suspended, or removed from office on: (c) Dishonesty, oppression, misconduct in office, **gross**