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SECOND DIVISION

[G.R. No. 139043, September 10, 1999]

MAYOR ALVIN B. GARCIA, PETITIONER, VS. HON. ARTURO C. MOJICA, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR THE VISAYAS, VIRGINIA PALANCA-SANTIAGO, IN HIS CAPACITY AS DIRECTOR, OFFICE OF THE OMBUDSMAN (VISAYAS), ALAN FRANCISCO S. GARCIANO, IN HIS CAPACITY AS GRAFT INVESTIGATION OFFICER I, OFFICE OF THE OMBUDSMAN (VISAYAS), AND JESUS RODRIGO T. TAGAAN, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

The present controversy involves the preventive suspension order issued on June 25, 1999, by the Office of the Ombudsman (Visayas) in OMB-VIS-ADM-99-0452, against petitioner Cebu City Mayor Alvin B. Garcia and eight other city officials. Under the said order, petitioner was placed under preventive suspension without pay for the maximum period of six months and told to cease and desist from holding office immediately.

The factual antecedents are as follows:

On May 7, 1998, petitioner, in his capacity as Cebu City mayor, signed a contract with F.E. Zuellig for the supply of asphalt to the city. The contract covers the period 1998-2001, which period was to commence on September 1998 when the first delivery should have been made by F.E. Zuellig.

Sometime in March 1999, news reports came out regarding the alleged anomalous purchase of asphalt by Cebu City, through the contract signed by petitioner. This prompted the Office of the Ombudsman (Visayas) to conduct an inquiry into the matter.[1]

Respondent Jesus Rodrigo T. Tagaan, special prosecution officer of the Office of the Ombudsman, was assigned to conduct the inquiry, docketed as INQ-VIS-99-0132. After his investigation, he recommended that the said inquiry be upgraded to criminal and administrative cases against petitioner and the other city officials involved. Respondent Arturo C. Mojica, Deputy Ombudsman for the Visayas, approved this recommendation.

In a memorandum dated June 22, 1999, respondent Allan Francisco S. Garciano, the graft investigating officer to whom the case was raffled for investigation, recommended the preventive suspension of petitioner and the others. Two days later, or on June 24, 1999, the affidavit-complaint against petitioner was filed. The following day, on June 25, 1999, the Office of the Ombudsman issued the questioned preventive suspension order. On June 29, 1999, petitioner filed a motion

for reconsideration of said order, which motion was denied in an order dated July 5, 1999.

Petitioner is now before this Court assailing the validity of the said order. He pleads for immediate relief through the present petition for certiorari and prohibition with a prayer for temporary restraining order and/or writ of preliminary injunction. Petitioner contends that:

I

THE RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ASSUMING JURISDICTION OVER OMB-VIS-ADM-99-0452 AND ISSUING THE PREVENTIVE SUSPENSION ORDER, THE OFFICE OF THE OMBUDSMAN BEING WITHOUT JURISDICTION OVER THE ADMINISTRATIVE CASE, CONSIDERING THAT THE ALLEGED ACT CONSTITUTING THE CHARGE AGAINST PETITIONER HEREIN WAS COMMITTED DURING HIS PREVIOUS TERM, AND PETITIONER HAVING BEEN REELECTED TO THE SAME POSITION.

II

ASSUMING, *ARGUENDO,* THAT THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION OVER OMB-VIS-ADM-99-0452, THE PREVENTIVE SUSPENSION FOR SIX MONTHS WAS WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AND IN GROSS VIOLATION OF THE PROVISIONS OF SECTION 63 OF THE LOCAL GOVERNMENT CODE WHICH MANDATES THAT THE PREVENTIVE SUSPENSION OF LOCAL ELECTIVE OFFICIALS BE ORDERED ONLY AFTER THE ISSUES HAVE BEEN JOINED, AND ONLY FOR A PERIOD NOT IN EXCESS OF SIXTY (60) DAYS.

III

ASSUMING, *ARGUENDO,* THAT THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION OVER OMB-VIS-ADM-99-0452, THE PREVENTIVE SUSPENSION WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AND IN GROSS VIOLATION OF SECTION 26(2) OF THE OMBUDSMAN LAW.

IV

ASSUMING, *ARGUENDO,* THAT THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION, THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONCLUDING THAT THE EVIDENCE AGAINST PETITIONER WAS "STRONG", THE LITTLE EVIDENCE ON RECORD CONSISTING SOLELY OF A HEARSAY AFFIDAVIT, AND INADMISSIBLE NEWSPAPER REPORTS.

On July 19, 1999, we directed the parties to maintain the *status quo* until further orders from this Court. It appears that on the same day, petitioner issued a memorandum informing employees and officials of the Office of the City Mayor that

he was assuming the post of mayor effective immediately. On July 23, 1999, respondents filed a motion seeking clarification of our *status quo* order. Respondents claimed that the status quo referred to in the order should be that where petitioner is already suspended and vice mayor Renato Osmeña is the acting city mayor.

Petitioner, in reply, argued that the *status quo* refers to "the last actual peaceable uncontested status which preceded the pending controversy."[2] Thus, the *status quo* could not be that where petitioner is preventively suspended since the suspension did not precede the present controversy; it is the controversy.

We agree with petitioner in this regard. As explained by Justice Florenz D. Regalado, an authority on remedial law:

> "There have been instances when the Supreme Court has issued a status quo order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. This was resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order. The *status quo* order was thus issued motu proprio on equitable considerations. Also, unlike a temporary restraining order or a preliminary injunction, a status quo order is more in the nature of a cease and desist order, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a *status quo* order does not require the posting of a bond."[3]

On July 28, 1999, we heard the parties' oral arguments on the following issues:

> 1. What is the effect of the reelection of petitioner on the investigation of acts done before his reelection? Did the Ombudsman for the Visayas gravely abuse his discretion in conducting the investigation of petitioner and ordering his preventive suspension?
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> 2. Assuming that the Ombudsman properly took cognizance of the case, what law should apply to the investigation being conducted by him, the Local Government Code (R.A. 7160) or the Ombudsman Law (R.A. 6770)? Was the procedure in the law properly observed?
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> 3. Assuming further that the Ombudsman has jurisdiction, is the preventive suspension of petitioner based on "strong evidence" as required by law?

We will now address these issues together, for the proper resolution on the merits of the present controversy.

Petitioner contends that, per our ruling in Aguinaldo v. Santos,[4] his reelection has rendered the administrative case filed against him moot and academic. This is because reelection operates as a condonation by the electorate of the misconduct

committed by an elective official during his previous term. Petitioner further cites the ruling of this Court in *Pascual v. Hon. Provincial Board of Nueva Ecija,*[5] that

> ". . . When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people."

Respondents, on the other hand, contend that while the contract in question was signed during the previous term of petitioner, it was to commence or be effective only on September 1998 or during his current term. It is the respondents' submission that petitioner "went beyond the protective confines"[6] of jurisprudence when he "agreed to extend his act to his current term of office."[7] *Aguinaldo* cannot apply, according to respondents, because what is involved in this case is a misconduct committed during a previous term but to be effective during the current term.

Respondents maintain that,

> "...petitioner performed two acts with respect to the contract: he provided for a suspensive period making the supply contract commence or be effective during his succeeding or current term and during his current term of office he acceded to the suspensive period making the contract effective during his current term by causing the implementation of the contract."[8]

Hence, petitioner cannot take refuge in the fact of his reelection, according to respondents.

Further, respondents point out that the contract in question was signed just four days before the date of the 1998 election and so it could not be presumed that when the people of Cebu City voted petitioner to office, they did so with full knowledge of petitioner's character.

On this point, petitioner responds that knowledge of an official's previous acts is presumed and the court need not inquire whether, in reelecting him, the electorate was actually aware of his prior misdeeds.

Petitioner cites our ruling in *Salalima v. Guingona,*[9] wherein we absolved Albay governor Romeo R. Salalima of his administrative liability as regards a retainer agreement he signed in favor of a law firm during his previous term, although disbursements of public funds to cover payments under the agreement were still being done during his subsequent term. Petitioner argues that, following *Salalima,* the doctrine in *Aguinaldo* applies even where the effects of the act complained of are still evident during the subsequent term of the reelected official. The implementation of the contract is a mere incident of its execution. Besides, according to petitioner, the "sole act" for which he has been administratively charged is the signing of the contract with F.E. Zuellig. The charge, in his view, excludes the contract's execution or implementation, or any act subsequent to the perfection of the contract.

In *Salalima,* we recall that the Solicitor General maintained that *Aguinaldo* did not

apply to that case because the administrative case against Governor Rodolfo Aguinaldo of Cagayan was already pending when he filed his certificate of candidacy for his reelection bid. Nevertheless, in Salalima, the Court applied the *Aguinaldo* doctrine, even if the administrative case against Governor *Salalima* was filed after his reelection.

Worth stressing, to resolve the present controversy, we must recall that the authority of the Ombudsman to conduct administrative investigations is mandated by no less than the Constitution. Under Article XI, Section 13[1], the Ombudsman has the power to:

> "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."

R.A. 6770, the Ombudsman Law, further grants the Office of the Ombudsman the statutory power to conduct administrative investigations. Thus, Section 19 of said law provides:

> "SEC. 19. *Administrative Complaints.* – The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:
> (1) Are contrary to law or regulation;
> (2) Are unreasonable, unfair, oppressive or discriminatory;
> (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
> (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
> (5) Are in the exercise of discretionary powers but for an improper purpose; or
> (6) Are otherwise irregular, immoral or devoid of justification."

Section 21 of R.A. 6770 names the officials subject to the Ombudsman's disciplinary authority:

> "SEC. 21. *Officials Subject To Disciplinary Authority; Exceptions.* – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary."(Emphasis supplied.)

Petitioner is an elective local official accused of grave misconduct and dishonesty.[10] That the Office of the Ombudsman may conduct an administrative investigation into the acts complained of, appears clear from the foregoing provisions of R.A. 6770.

However, the question of whether or not the Ombudsman may conduct an investigation over a particular act or omission, is different from the question of whether or not petitioner, after investigation, may be held administratively liable. This distinction ought here to be kept in mind, even as we must also take note that the power to investigate is distinct from the power to suspend preventively an erring public officer.