

# FIRST DIVISION

[ G.R. No. 203471, September 14, 2020 ]

**VIRGILIO A. BOTE, PETITIONER, VS. SAN PEDRO CINEPLEX PROPERTIES, INC., RESPONDENT.**

## DECISION

**CAGUIOA, J:**

Through the instant Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court, petitioner Virgilio A. Bote (Bote) assails the Decision<sup>[1]</sup> dated April 30, 2012 and Resolution<sup>[2]</sup> dated September 7, 2012 rendered by the Court of Appeals, Tenth Division (CA), in CA-G.R. SP No. 120472, which modified the Decision<sup>[3]</sup> dated March 22, 2010 of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in Case No. OMB-L-A-09-0561-J, and held that Bote is guilty of culpable violation of the Constitution punishable with the penalty of suspension from office without pay for a period of two months.

### The Facts of the Case

This Petition stemmed from an administrative complaint filed by Rolando C. Salonga on behalf of respondent San Pedro Cineplex Properties, Inc. (SPCPI) against Bote, then incumbent mayor of General Tinio, Nueva Ecija, for violation of Section 444(b) (2)(iv) of Republic Act No. (R. A.) 7160,<sup>[4]</sup> abuse of authority, and culpable violation of the Constitution.

Bote and SPCPI had a legal dispute over a real property located in Landayan, San Pedro, Laguna.<sup>[5]</sup> Bote is the representative of the heirs of Manuel Humada Enano (Enano), who claimed to be the rightful owners of the disputed property. On September 8, 2009, the trial court, in a quieting of title case, rendered a decision in favor of the heirs of Enano.<sup>[6]</sup>

SPCPI alleged that on September 12, 2009, before it even learned of the decision of the trial court, Bote went to the disputed property and brought along with him a group of armed men to harass the security guards hired by the SPCPI to secure the premises.<sup>[7]</sup> The armed men allegedly destroyed the fence and tried to enter the premises.<sup>[8]</sup> When the security guards hired by SPCPI from Defense Specialist Corporation (DSC) tried to stop the armed men, the latter started firing at them.<sup>[9]</sup> As a result, the DSC security guards filed criminal charges for attempted murder against Bote and the armed men. The criminal charges against Bote were later on dismissed.<sup>[10]</sup>

SPCPI also filed the instant administrative case against Bote. SPCPI averred that Bote: (a) violated Section 444(b)(2)(iv) of R.A. 7160 when he brought his firearm to

the location of the disputed property which is outside his territorial jurisdiction as a mayor;<sup>[11]</sup> (b) abused his position as mayor of General Tinio, Nueva Ecija, when in order to obtain the assistance of the Philippine National Police (PNP), he sent PSSupt. Manolito Labrador (PSSupt. Labrador) a letter containing the following: *"I believe that this extension [of donated land] being an incumbent Municipal Mayor will help a quick police action to our citizenry in Region IV-A;"*<sup>[12]</sup> and (c) committed illegal and oppressive acts amounting to culpable violation of the Constitution.

Bote denied the accusations against him and interposed that it was the other way around. According to Bote, he hired Spy Eagle Security Agency (SSA) to guard the disputed property. On or about 11:30 p.m. of September 12, 2009, a group of armed men suddenly fired upon the SSA security guards, forcing the latter to seek cover.<sup>[13]</sup> When the firing ceased, two of the armed men introduced themselves as members of DSC and gave them five days to vacate the premises.<sup>[14]</sup> This incident prompted Bote to build a wall around the property.<sup>[15]</sup>

On September 17, 2009, while Bote's workers were constructing a wall on the perimeter of the premises, two men from DSC arrived together with armed men.<sup>[16]</sup> This time, they also harassed the workers. Because of the threats, Bote averred that he was forced to seek the assistance of the local police to prevent any untoward incident from happening.<sup>[17]</sup>

Bote belied the accusations against him and claimed that he did not have any firearm registered under his name, and that he was not even present in any of the incidents.<sup>[18]</sup> Thus, he could not have violated Section 444(b)(2)(iv) of R.A. 7160. On the charge of abuse of authority, Bote argued that he wrote a letter to PSSupt. Labrador, not to secure the property, but the community.<sup>[19]</sup> He further stressed that he never intended to use his influence as a mayor for which reason he used the letterhead of Agua Tierra Oro Mina (ATOM) Development Corporation in seeking police assistance.<sup>[20]</sup>

### **Ruling of the Ombudsman**

In a Decision dated March 22, 2010, the Ombudsman dismissed the administrative complaint for lack of substantial evidence.<sup>[21]</sup> The Ombudsman held that SPCPI failed to present proof that Bote held a firearm during the incident, and that Bote used his position as municipal mayor in obtaining the assistance of the local police. The Ombudsman, however, did not rule on the charge for culpable violation of the Constitution.

SPCPI sought reconsideration of the decision, but the same was denied in an Order<sup>[22]</sup> dated May 18, 2011. Anent the charge of culpable violation of the Constitution, the Ombudsman held that SPCPI failed to specify which Constitutional provision was actually violated. Nonetheless, the illegal and oppressive actions allegedly committed by Bote fall squarely within the definition of misconduct. The Ombudsman further held that the imposition of administrative charge against Bote has been rendered moot and academic by his re-election as mayor.

Aggrieved, SPCPI filed a petition for *certiorari*<sup>[23]</sup> with the CA.

### **Ruling of the Court of Appeals**

In a Decision<sup>[24]</sup> dated April 30, 2012, the CA modified the Ombudsman Decision. The CA affirmed the dismissal of the administrative charges for violation of Section 444(b)(2)(iv) of R.A. 7160 and abuse of authority on the basis of his re-election, but held petitioner guilty of committing illegal and oppressive acts amounting to culpable violation of the Constitution. According to the CA, the illegal and oppressive acts of Bote did not bear a direct relation to his office as municipal mayor and were committed by him in his private capacity. As such, said acts, which did not amount to "misconduct," were not condoned by reason of his re-election.

Bote sought reconsideration of the CA Decision, but the same was denied in a Resolution<sup>[25]</sup> dated September 7, 2012.

Hence, this Petition.<sup>[26]</sup>

### **Issue**

Whether the CA erred in modifying the Ombudsman Decision and in holding Bote guilty of culpable violation of the Constitution.

### **The Court's Ruling**

Bote argues that the CA erred in holding him guilty of committing illegal and oppressive acts since he was only exercising his right to exclude respondent from the disputed property following the favorable decision of the trial court.<sup>[27]</sup> He also claims that the question on whether his acts amounted to a culpable violation of the Constitution is still premature considering that the issue on the ownership over the property has not yet been resolved with finality.<sup>[28]</sup> Finally, Bote asserts that, contrary to the findings of the CA, the charges against him only consist of one continuous act taken as a whole which are all deemed condoned by his re-election.<sup>[29]</sup>

In its Comment,<sup>[30]</sup> SPCPI seeks the dismissal of the Petition on the ground that it raises questions of fact which are inappropriate in a petition for review on *certiorari* under Rule 45. SPCPI further contends that the acts of petitioner amounting to culpable violation of the Constitution were directed at persons so far outside his jurisdiction as municipal mayor such that his constituents cannot be expected or presumed to be aware of such.<sup>[31]</sup> Thus, the latter cannot condone what they do not even know.<sup>[32]</sup> In turn, Bote fortifies his arguments in his Reply.<sup>[33]</sup>

The Petition has merit.

Bote was charged with three distinct offenses: (1) violation of Section 444(b)(2)(iv) of R.A. 7160; (2) abuse of authority; and (3) culpable violation of the Constitution—all of which are grounds to remove or discipline an elective local official under Section 60 of R.A. 7160, viz.:

**Section 60. Grounds for Disciplinary Actions.** - An elective local official may be disciplined, suspended, or removed from office on any of the 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 *prision 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, sangguniang bayan, and sangguniang barangay*;
- g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- h) Such other grounds as may be provided in this Code and other laws.**

An elective local official may be removed from office on the grounds enumerated above by order of the proper court. (Emphasis supplied.)

The Ombudsman, in an Order dated May 18, 2011, applied the doctrine of condonation to bar all the foregoing administrative charges against petitioner. According to the Ombudsman, re-election to office serves to condone whatever misconduct a public officer may have committed during his previous term, thus:

Finally, as regards the incomplete resolution of the complainant's grievance, we submit that the discussion on the charge of misconduct is broad enough to cover the other accusations against respondent. Further, while the complainant insists on charging the respondent with culpable violation of the constitution, he failed to specify which provision was actually violated. To elucidate, illegal and oppressive actions allegedly committed by the respondent fall squarely within the definition of misconduct which covers a wide latitude of infractions. This Office did not actually disregard the last charge but incorporated it with the offense of Misconduct.

More importantly, the imposition of the administrative charge against the [petitioner] has been rendered moot and academic by the reelection of the [petitioner] Mayor. As held in the case of *Aguinaldo vs. Santos, et al.*, re-election to office serves to condone whatever misconduct a public officer may have committed during his previous term in office.<sup>[34]</sup> (Citation omitted.)

On the other hand, the CA held that the doctrine of condonation only applies to administrative liability arising from "misconduct" or acts committed in relation to public office. The CA found that the illegal and oppressive acts, the acts alleged to constitute culpable violation of the Constitution, were committed by Bote in his private capacity, and therefore not subject to condonation. The CA held thus:

WE are cognizant of the rule that "a re[-]elected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the electorate put him back into the office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still re-elects him, then such re-election is considered a condonation of his past misdeeds."

The question now that comes to fore is: What is the kind of "misconduct" that is condoned in case of the public official's re-election?

In the old case of *Lacson vs. Roque*, misconduct in an administrative case has been defined in this wise —

"Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as only affects his character as a private individual. In such cases, it has been said all times, it is necessary to separate the character of the man from the character of the officer. (Mechem, supra, section 457.) "It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office [x x x]" (43, Am. Jur., 39, 40)."

In another case, misconduct means an improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.

Guided by the foregoing standard on what constitutes misconduct, for the doctrine of condonation to apply, the malfeasance, misfeasance or non-feasance committed by the elective official should have a direct relation to his official function or have adversely affected the performance of his official duties.

x x x x

This brings Us now to the charge for illegal and oppressive acts amounting to culpable violation of the Constitution where [petitioner] intruded into [respondent's] property and physically dispossessed it of its physical possession by fencing it and putting equipment, container vans and bulldozers and deploying his security guards therein. It should be noted that said acts cannot be linked with his office as a municipal mayor