

## SECOND DIVISION

**[ A.M. No. RTJ-18-2536 (Formerly OCA IPI No. 15-4396-RTJ), October 10, 2018 ]**

**GOV. EDGARDO A. TALLADO, COMPLAINANT, V. HON. WINSTON S. RACOMA, PRESIDING JUDGE, BRANCH 39, REGIONAL TRIAL COURT (RTC), DAET, CAMARINES NORTE, RESPONDENT.**

### DECISION

#### CAGUIOA, J:

Before this Court is a Complaint Affidavit<sup>[1]</sup> filed before the Office of the Court Administrator (OCA) by Complainant Governor Edgardo A. Tallado (Tallado) against Respondent Judge Winston S. Racoma (Judge Racoma), Presiding Judge of the Regional Trial Court (RTC), Branch 39 in Daet, Camarines Norte, for Gross Ignorance of the Law and Procedure and violation of the Code of Judicial Conduct.

#### *The Factual Antecedents*

The instant complaint arose from the Temporary Restraining Order<sup>[2]</sup> (TRO) dated April 23, 2015 issued by Judge Racoma in favor of Mayor Agnes D. Ang (Ang), the respondent, in Civil Case No. 8080, in connection with Administrative Case No. 04-2014 entitled "*Jose T. Segundo vs. Hon. Agnes D. Ang*,"<sup>[3]</sup> for Dishonesty, Misconduct in Office, Grave Abuse of Authority and violation of Republic Act No. (R.A.) 9184<sup>[4]</sup> and its Implementing Rules and Regulations.

On October 15, 2014, Punong Barangay Jose T. Segundo (Segundo), of Barangay Sabang, Vinzons, Camarines Norte, filed before the *Sangguniang Panlalawigan* of Camarines Norte a Verified Complaint<sup>[5]</sup> against Ang, then Municipal Mayor of Vinzons, Camarines Norte, for Dishonesty, Misconduct in Office, Grave Abuse of Authority and violation of R.A. 9184 and its Implementing Rules and Regulations. Segundo accused Ang of implementing the third phase of the rehabilitation of the seawall of Barangay Sula in Vinzons, Camarines Norte, without first complying with the requirements set forth under R.A. No. 9184 and its Implementing Rules and Regulations.

On April 14, 2015, the *Sangguniang Panlalawigan* issued Resolution No. 159-2015,<sup>[6]</sup> "*A Resolution Recommending to Honorable Governor Edgardo A. Tallado to place Mayor Agnes D. Ang under Preventive Suspension for a period not exceeding sixty (60) days from service of the Preventive Suspension Order.*"<sup>[7]</sup>

On the same day, Tallado, upon receipt of a copy of the above mentioned *Sangguniang Panlalawigan* Resolution, issued a Notice of Preventive Suspension<sup>[8]</sup> and directed Acting Provincial Warden Reynaldo N. Pajarillo to serve the same on Ang.<sup>[9]</sup> After the service of the subject Notice of Preventive Suspension on Ang,

then Vice-Mayor Radames Herrera took his oath of office as Municipal Mayor of Vinzons, Camarines Norte.

On April 15, 2015, Ang filed before the RTC a Petition<sup>[10]</sup> for Certiorari and Prohibition under Rule 65, with Prayer for TRO/Preliminary Injunction, entitled, "*Mayor Agnes D. Ang vs. Governor Edgardo A. Tallado, Sangguniang Panlalawigan of Camarines Norte, rep. by Vice Governor Jonah Pimentel, Jose T. Segundo and Vice Mayor Radames F. Herrera*,"<sup>[11]</sup> docketed as Civil Case No. 8080. The case was filed before the Office of the Executive Judge, Hon. Arniel A. Dating (Judge Dating), the Presiding Judge of Branch 41, RTC, Daet, Camarines Norte.

Judge Dating simultaneously issued an Order<sup>[12]</sup> denying Ang's application for a seventy-two (72) hour TRO on the ground that no factual matters were shown to prove that the preventive suspension order issued by Tallado would result in irreparable injury on the part of Ang. Judge Dating then directed that Civil Case No. 8080 be included in the regular raffle of cases.<sup>[13]</sup> Civil Case No. 8080 was thereafter raffled to Judge Racoma, who immediately issued a Notice of Hearing<sup>[14]</sup> setting the hearing on the application for TRO on April 20, 2015.

During the hearing on April 20, 2015, Tallado manifested before Judge Racoma that the respondents in Civil Case No. 8080 already performed what Ang was seeking to enjoin by way of a TRO, to wit: (a) on the part of the *Sangguniang Panlalawigan*, it had already issued Resolution No. 159-2015; (b) on the part of Tallado, the issuance of the Preventive Suspension Order against Ang; and (c) on the part of Herrera, he had already taken his oath of office as Municipal Mayor of Vinzons, Camarines Norte on April 15, 2015 and has been performing his functions as such.

On April 23, 2015, Judge Racoma issued a TRO against the respondents in Civil Case No. 8080. Judge Racoma ruled in this wise:

x x x. Given the gravity of the charges and the complexity of the antecedent events in this case, this Court has taken a stance to maintain the status quo prior to the occurrence of the act sought to be stopped—the preventive suspension—in order to avert possible material injury on the petitioner. This preservation of status quo is deemed essential while the Court is in the process of hearing and examining more closely the issues of the case.

Furthermore, **after taking into consideration the evidence so far presented by the petitioner, the Court is convinced that there exists sufficient showing that said petitioner is bound to suffer grave irreparable injury from the implementation of the assailed preventive suspension.** Section 3 of Rule 58 of the Rules of Court states that injunctive relief may be granted if the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant. **Suspended from office, petitioner Ang is then effectively stripped of her obligation and right to carry out her mandated duty to her constituents as their elective leader, even as basis of the preventive suspension does not rest on firm grounds. What is more, the most imperative factor in this milieu is the constituents themselves.** Thus, as the Supreme Court held in the *Garcia*<sup>[15]</sup> case, "at

this point **we must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office[,] so must this Court be guided by the same consideration in arriving at its conclusion.**<sup>[16]</sup> (Emphasis supplied)

On May 5, 2015, Tallado filed the instant Complaint against Judge Racoma, praying that Judge Racoma be disciplined. Tallado alleged that Judge Racoma violated the Judicial Affidavit Rule when he admitted in evidence the judicial affidavit<sup>[17]</sup> executed by Ang because the subject judicial affidavit did not have the required sworn attestation by the lawyer who assisted Ang in preparing her judicial affidavit.<sup>[18]</sup>

Tallado further averred that Judge Racoma grossly violated Section 4 (d) of Rule 58 of the Rules of Court when the latter did not allow Tallado and his co-respondents in Civil Case No. 8080 to present their evidence, despite the requests of respondents' counsels to allow them to present evidence.<sup>[19]</sup>

In addition, Tallado also claimed that Judge Racoma issued the questioned TRO without discussing the basis of its issuance. Tallado further asserted that the issuance of the subject TRO was tainted with grave abuse of discretion as it was issued capriciously, whimsically, arbitrarily, despotically and by reason of passion and prejudice towards him and the provincial government of Camarines Norte.<sup>[20]</sup>

The OCA issued 1<sup>st</sup> Indorsement<sup>[21]</sup> dated May 19, 2015, directing Judge Racoma to submit a Comment on the Complaint filed by Tallado within ten (10) days from receipt of the subject Indorsement.

On July 29, 2015, Judge Racoma filed a Motion for Extension of Time to file his Comment,<sup>[22]</sup> requesting for an additional period of twenty (20) days within which to file his Comment. The Office of the Court Administrator granted Judge Racoma's subject Motion in a Letter<sup>[23]</sup> dated August 4, 2015.

On October 20, 2015, Tallado filed a Notice of Withdrawal of Complaint<sup>[24]</sup> in view of the conciliatory efforts to bridge and establish good relations with Ang for the benefit of the institutions and constituents they represent.

In a Letter<sup>[25]</sup> dated October 26, 2015, the OCA informed Tallado that his Notice of Withdrawal of Complaint cannot be given due course because "*in administrative complaints, the complainant is not given the option to withdraw once the matter has been raised before this office and/or the Court.*"<sup>[26]</sup> In view of the failure of Judge Racoma to file his Comment despite the lapse of period granted to him, the OCA issued a 1<sup>st</sup> Tracer<sup>[27]</sup> dated January 18, 2016, reiterating its directive for Judge Racoma to file his Comment within ten (10) days from receipt thereof.

As of date, Judge Racoma has yet to file his Comment on the instant Complaint.

#### *DCA Report and Recommendation*

In a Report<sup>[28]</sup> dated November 16, 2017, the OCA recommended that the administrative complaint filed by Tallado against Judge Racoma be dismissed for lack