

EN BANC

[G.R. No. 215548, April 05, 2016]

UNDERSECRETARY AUSTERE A. PANADERO AND REGIONAL DIRECTOR RENE K. BURDEOS, BOTH OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

[G.R. NO. 215726]

UNDERSECRETARY AUSTERE A. PANADERO AND REGIONAL DIRECTOR RENE K. BURDEOS, BOTH OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), PETITIONERS, VS. COMMISSION ON ELECTIONS AND MOHAMMAD EXCHAN GABRIEL LIMBONA, RESPONDENTS.

[G.R. NO. 216158]

MANGONDAYA ASUM TAGO, PETITIONER, VS. COMELEC AND MOHAMMAD EXCHAN GABRIEL LIMBONA, RESPONDENTS.

D E C I S I O N

REYES, J.:

Before the Court are consolidated petitions for *certiorari* docketed as G.R. No. 215548,^[1] G.R. No. 215726^[2] and G.R. No. 216158,^[3] which assail the Resolutions dated November 17, 2014^[4] and January 5, 2015^[5] of the Commission on Elections (COMELEC) en bane, in EM. No. 14-005, citing Department of Interior and Local Government (DILG) Undersecretary Austere A. Panadero (Usec. Panadero), DILG Regional Director Rene K. Burdeos (RD Burdeos) and Mangondaya Asum Tago (Tago) (petitioners) in indirect contempt and providing penalties therefor, following the DILG's implementation of the Decision^[6] dated September 30, 2009 of the Office of Ombudsman (Ombudsman) in OMB-L-A-08-0530-H, against Mohammad Exchan Gabriel Limbona (Limbona).

The Antecedents

In the Decision rendered by the Office of the Deputy Ombudsman for Luzon on September 30, 2009 and approved by then Ombudsman Ma. Merceditas N. Gutierrez on October 23, 2009,^[7] Limbona was among the persons^[8] found to be guilty of grave misconduct, oppression and conduct prejudicial to the best interest of the service, which he committed while he was still the Chairman of Barangay Kalanganan Lower, Pantar, Lanao del Norte, and in relation to the killing of Hadji Abdul Rasid Onos, the former Municipal Vice Mayor of Pantar. Limbona was meted the penalty of dismissal from public service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual

disqualification from re-employment in the government service. In the dispositive portion of the decision, the DILG Secretary was directed to immediately implement the ruling against Limbona, pursuant to Section 7, Rule III of Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006. Limbona moved for reconsideration, but this was denied by the Ombudsman in a Joint Order^[9] dated March 22, 2010.

On November 15, 2013, the Ombudsman issued an Order^[10] forwarding to the DILG Secretary a copy of its Decision against Limbona for implementation, as it had become final and executory in 2011. The order indicated that Limbona had been elected as Municipal Mayor of Pantar. Acting on the order, Usec. Panadero issued, on April 3, 2014, a Memorandum^[11] directing RD Burdeos, as the RD of the DILG Region X Office, to cause the immediate implementation of the Ombudsman decision insofar as Limbona was concerned.

On April 21, 2014, however, RD Burdeos reported that he received from Limbona's counsel a copy of the Resolution^[12] dated June 6, 2013 issued by the COMELEC First Division, dismissing the petition for disqualification filed against Limbona. The petition, entitled *Malik T. Alingan v. Mohammad Limbona*, docketed as SPA No. 13-252 (DC), questioned Limbona's eligibility to run for public office in the 2013 elections after the Ombudsman found him guilty in 2009 in OMB-L-A-08-0530-H. In the COMELEC resolution, Limbona was declared to still be qualified to run for public office, citing the case of *Aguinaldo v. Santos*^[13] (*Aguinaldo* doctrine), holding that "a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."^[14] Thus, the resolution reads in part:

In other words, misconduct committed by [Limbona] in 2008 have been condoned by the people of Pantar, Lanao del Norte[,] when they elected him as their Mayor in 2010. Hence, such fact cannot serve as ground for his disqualification for purposes of the 2013 elections.

WHEREFORE, premises considered, the instant Petition is hereby **DISMISSED**. [Limbona] is **QUALIFIED** to run for Municipal Mayor of Pantar, Lanao del Norte.

SO ORDERED.^[15]

On April 30, 2014, Usec. Panadero then sought clarification from Ombudsman Conchita Carpio-Morales on the applicability of the *Aguinaldo* doctrine in Limbona's case in light of the COMELEC First Division's resolution.^[16] Pending receipt of the Ombudsman's reply, Usec. Panadero also issued on even date a Memorandum,^[17] addressed to RD Burdeos, directing him to proceed with the implementation of the Ombudsman's decision. He explained that:

Pending such clarification, you are hereby directed to proceed with the implementation of the Ombudsman Decision and Joint Order dated 30

September 2009 and 22 March 2010, respectively, pursuant to Ombudsman Memorandum Circular No. 01, series of 2006 in relation to the case of *Office of the Ombudsman vs. De Chavez, et al.* that the decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.

For compliance.^[18] (Citation omitted)

Limbona, on the other hand, sought the Office of the President's (OP) revocation and/or recall of the DILG Memoranda dated April 3, 2014 and April 30, 2014, relative to the implementation of the Ombudsman's decision against him.^[19]

On May 5, 2014, the DILG served the dismissal order of Limbona, which led to his removal from office and the assumption to the mayoralty of then Vice Mayor Tago.^[20] Displeased by the DILG's actions, Limbona filed with the COMELEC a petition^[21] to cite the petitioners for indirect contempt. In his petition, he also sought the COMELEC's issuance of an injunctive writ that would enjoin the performance of any act that would directly or indirectly contravene the tenor and substance of the COMELEC First Division's resolution.

Meanwhile, Usec. Panadero followed up from the Ombudsman its reply to the clarification sought by the DILG on Limbona's case.^[22] The DILG later received from the Ombudsman an Indorsement^[23] dated June 23, 2014 still referring to the DILG the said Ombudsman decision "for implementation, with the information that [therein] respondents' petitions filed with-the [CA] and Supreme Court had all been dismissed."^[24]

In their Comment^[25] on the petition for indirect contempt, Usec. Panadero and RD Burdeos contended, among other arguments, that: *first*, the petition was premature because the COMELEC First Division's resolution was not yet final, as it remained pending with the COMELEC *en banc*; *second*, the COMELEC had no jurisdiction over the petitioners and the decision of the Ombudsman; and *third*, the petitioners were not in bad faith but were merely implementing a final and executory decision of the Ombudsman.

In the meantime, the motion for reconsideration filed by Malik Alingan against the COMELEC First Division's Resolution dated June 6, 2013 was later resolved by the COMELEC *en banc*. On August 8, 2014, the DILG received a copy of the COMELEC *en banc*'s Resolution^[26] dated July 8, 2014, which affirmed with modification its division's Resolution. The COMELEC *en banc* disagreed with the First Division's application of the *Aguinaldo* doctrine. It said that the doctrine on condonation could not apply in Limbona's case because he was elected as Mayor for the term 2010-2013, which was different from his position as Barangay Chairman in 2007-2010 when his administrative case was filed. The COMELEC *en banc*, nonetheless, declared that Limbona was qualified to run for public office because he was not removed from his post as Barangay Chairman, and was able to finish his term prior to the finality of the Ombudsman's decision. Section 40(b) of the Local Government Code (LGC) disqualifies from running for any elective local position "those removed

from office as a result of an administrative case."^[27]

On August 5, 2014, the COMELEC issued a Certificate of Finality^[28] covering COMELEC Resolutions dated June 6, 2013 and July 8, 2014. These COMELEC resolutions were assailed in a petition docketed as G.R. No. 213291, which was dismissed *via* this Court's Resolutions dated March 24, 2015^[29] and June 16, 2015.^[30] Meanwhile, Limbona's petition with the OP for the revocation and/or recall of the DILG's Memoranda dated April 3, 2014 and April 30, 2014 was dismissed in a Decision^[31] dated December 5, 2014.

Ruling of the COMELEC

On November 17, 2014, the COMELEC *en banc* issued its Resolution^[32] citing the petitioners in indirect contempt. It explained:

The violation of the final and executory resolution of the Comelec constitutes contempt. The [COMELEC] already ruled that the Ombudsman Decision cannot be the cause of the disqualification or ouster of [Limbona]. The [petitioners] completely disregarded the ruling despite their knowledge and receipt of the Entry of Judgment thereof. The fact that the DILG is not a party to the case cannot be used to circumvent the Resolution of [COMELEC]. They themselves admit of the receipt of the same. It behooves the [COMELEC] the motivation of the [petitioners] to blatantly disobey the Resolutions of [COMELEC].

All told, the [COMELEC] finds the [petitioners] [to have] disobeyed the legal order/resolution of [COMELEC].^[33]

No penalty for the contempt was provided in the aforequoted COMELEC resolution, the dispositive portion of which reads:

WHEREFORE, premises considered, petition is hereby **GRANTED**. The [COMELEC] (En Banc) hereby **RESOLVES** to **CITE [THE PETITIONERS] in CONTEMPT**.

SO ORDERED.^[34]

Among the petitioners, only Tago filed a motion for reconsideration before the COMELEC *en banc*, assailing the abovequoted resolution.

The Present Petitions

G.R. No. 215548

The foregoing prompted the filing on December 17, 2014 by Usec. Panadero and RD Burdeos, through the Office of the Solicitor General (OSG), the Petition for *Certiorari* (under Rule 64 of the Rules of Court)^[35] docketed as G.R. No. 215548, contending

that: (1) the COMELEC had no jurisdiction over the acts of the Ombudsman; (2) there was no basis to hold the parties in contempt; and (3) the *Aguinaldo* doctrine does not apply to the case of Limbona. They, thus, asked the Court to set aside the COMELEC resolution citing them in contempt.

G.R. No. 215726

On January 5, 2015, after the petition in G.R. No. 215548 had been filed, the COMELEC *en banc* issued a Resolution^[36] resolving Tago's motion for reconsideration of the COMELEC *en banc*'s Resolution dated November 17, 2014. The COMELEC *en banc* denied Tago's motion, imposed penalties upon the petitioners for indirect contempt, and ordered their arrest. The dispositive portion of the new resolution reads:

WHEREFORE, premises considered, the instant Motion for Reconsideration is DENIED. The Resolution of [COMELEC] dated November 17, 2014 is AFFIRMED *in toto*.

Accordingly, a fine of One thousand pesos (Phpl,000.00) and a penalty of imprisonment for six (6) months is imposed against [the petitioners].

Let a warrant of arrest be issued against [the petitioners].

SO ORDERED.^[37]

Aggrieved, Usec. Panadero and RD Burdeos filed with the Court another Petition for *Certiorari* With a Very Urgent Application for a Writ of Preliminary Injunction and/or Temporary Restraining Order^[38] (TRO) docketed as G.R. No. 215726, which sought to set aside the COMELEC *en banc*'s Resolutions dated November 17, 2014 and January 5, 2015. They argued that the COMELEC cannot *motu proprio* amend its decision by imposing upon them the penalties of fine and imprisonment. They further reiterated their argument that the COMELEC did not have jurisdiction over the petitioners and the acts of the Ombudsman.

Acting on the application for a TRO against the issuance of warrants of arrest pending determination of the merits of the petition, the Court issued, on January 8, 2015, a TRO to enjoin the COMELEC, its agents, representatives, or persons acting in its place and stead, from implementing the COMELEC Resolution dated January 5, 2015 effective immediately until further orders from the Court.^[39]

G.R. No. 216158

On February 5, 2015, Tago filed his own Petition for *Certiorari* with Motion to Adopt,^[40] docketed as G.R. No. 216158, against the COMELEC and Limbona. Tago argued, among several grounds, that the petitioners did not commit acts constituting indirect contempt as defined by law. His assumption to office, in particular, was supported by legal bases given the issuances of the Ombudsman and the DILG, in light of pertinent provisions on succession under the LGC. Tago further adopted the