

THIRD DIVISION

[G.R. No. 185369, August 03, 2016]

**J. TOBIAS M. JAVIER AND VINCENT H. PICCIO III,
PETITIONERS, VS. RHODORA J. CADIAO, ALFONSO V. COMBONG,
JR., BENJAMIN E. JUANITAS, CALIXTO G. ZALDIVAR III, DANTE
M. BERIONG, FERNANDO C. CORVERA, HECTOR L. FRANGUE AND
KENNY S. OLANDRES, RESPONDENTS.**

RESOLUTION

REYES, J.:

Should the Vice Governor, as the presiding officer of the *Sangguniang Panlalawigan*, be counted in the determination of what number constitutes as the majority?

Before the Court is the Petition for Review on *Certiorari*^[1] assailing the Order^[2] issued on August 7, 2008 by the Regional Trial Court (RTC) of San Jose, Antique, Branch 12, in Civil Case No. 08-02-3645, which upheld the validity of the passage of Resolution No. 42-2008 by the *Sangguniang Panlalawigan* of Antique (SP). The said resolution sought the reorganization then of the standing committees of the SP.

The Facts

For the years 2007 to 2010, one of the herein respondents, Vice Governor Rhodora J. Cadio (Vice Governor Cadio), was the presiding officer of the SP.

On the first regular session of the SP held on July 5, 2007, the Lakas ng Tao-Christian Muslim Democrats (Lakas-CMD) block was considered as the majority party. Among those who belonged to the said party were J. Tobias M. Javier (Javier), Vincent H. Piccio III (Piccio) (collectively, the petitioners), Vice Governor Cadio and SP member Benjamin E. Juanitas (Juanitas). Piccio was designated as the Majority Floor Leader.^[3]

On the other hand, the Nationalist People's Coalition (NPC) was considered as the minority party with four members, including the herein respondent, Alfonso V. Combong, Jr. (Combong). However, another SP member, who won as an independent candidate, allied with the NPC.^[4]

Additionally, the SP has three *ex-officio* members: the President of the Councilors' League of Antique, the President of the Association of Barangay Captains, and the President of the *Sangguniang Kabataan* Federation.^[5]

Thereafter, for personal reasons, Juanitas left the majority party and joined the NPC, which was then headed by Combong. Vice Governor Cadio followed suit. Subsequently realizing that the NPC had gained superiority in numbers, Combong proposed Resolution No. 42-2008 (Combong Resolution), which sought to reorganize

the standing committees of the SP. The resolution was included as an "urgent matter" in the agenda^[6] of the SP's fifth regular session.^[7]

During the SP's fifth regular session held on February 7, 2008, all the SP members were in attendance. Amidst fiery arguments, the Combong Resolution was approved with seven (7) voting in its favor, and six (6) against it. Consequently, Piccio was replaced by Juanitas as Majority Floor Leader. Some of the Lakas-CMD members were also divested of chairmanship or membership in the SP's standing committees.^[8]

To challenge the legality of the passage of the Conjbong Resolution, the Lakas-CMD block, composed of Javier, Piccio, Rosie A. Dimamay, Errol T. Santillan, Edgar D. Denosta and Carlos M. Pajacios (plaintiffs), filed before the RTC a *Complaint for Injunction with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction*.^[9] They maintained that for having been considered as an "urgent matter," the passage of the Combong Resolution required an affirmative vote of two-thirds (2/3) of all the members present pursuant to Section 62, paragraph (2),^[10] Rule XVI (Urgent Matters), Internal Rules of Procedure (IRP) of the SP. Accordingly, since all 14 members of the SP were present during the deliberations, nine (9) affirmative votes were necessary.^[11]

The Lakas-CMD block also cited Article 107(g)^[12] of the Implementing Rules and Regulations (IRR) of the Local Government Code (LGC) and the legal opinions of the Department of Interior and Local Government (DILG) to argue that at the least, eight (8) affirmative votes, corresponding to a simple majority, were needed to validly pass the Combong Resolution. All fourteen (14) members of the SP, including Vice Governor Cadiao, as the presiding officer, were present during the session. That being the case, the simple majority was half of 14 plus 1.^[13]

Ultimately, the complaint's objective was for the court to order the members of the Lakas-CMD be restored to their chairmanship or membership in the SP committees.

In their Answer, Vice Governor Cadiao, Combong, Juanitas, Calixto G. Zaldivar III, Dante M. Beriong, Fernando C. Corvera, Hector L. Frangue and Kenny S. Olandres (respondents) contended that the RTC lacked jurisdiction over the complaint. Further, an injunctive relief can no longer be issued since the SP's reorganization was already a consummated act. The respondents likewise insisted that the Combong Resolution was legally approved and the Lakas-CMD block had not suffered any grave or irreparable damage consequent to its passage.^[14]

Ruling of the RTC

On August 7, 2008, the RTC issued the herein assailed Order,^[15] upholding the validity of the passage of the Combong Resolution and dismissing the complaint of the Lalcas-CMD block. The *fallo* of the order reads:

PREMISES CONSIDERED, the instant petition of the plaintiffs is hereby **dismissed** for lack of merit.

Costs de oficio.

SO ORDERED.^[16]

The RTC declared that legislative rules, including those observed by the SP in the instant case, were not permanent. Moreover, the courts may not intervene in the legislature's internal affairs. Despite the foregoing pronouncement, the RTC took cognizance of the plaintiffs' complaint on the basis of the allegation that the Combong Resolution was deliberated and passed upon *sans* a majority vote, hence, violative of Article 107(g), IRR of the LGC.^[17]

The RTC explained that in determining the validity of the passage of the Combong Resolution, Section 67, Rule XVIII (Voting), IRP of the SP should be applied.^[18] It states:

Sec. 67. **Manner of Voting.** - The Presiding Officer shall put the question saying "As many as are in favor of (as the question may be)[,] raise your hand[s]," and after the affirmative vote is counted, "as many as are opposed[,] also raised (sic) your hand[s]."

Unless otherwise provided by these Rules, a majority of those voting, there being a quorum, shall decide the issue.

An abstention shall not be counted as a vote, in determining the majority vote, only the number of those who voted shall be considered. Abstentions are excluded. So even if most of the members present abstained, this will not affect the result as the only thing to be determined is which of the affirmative and negative vote has the bigger number.

Only the number voting on each side, and not the names of the members, shall be indicated in the minutes.^[19] (Emphasis ours)

The RTC, thus, opined that the presence of Vice Governor Cadio should not be considered in the determination of what number constitutes as the majority.^[20]

When the Combong Resolution was passed, 14 were present, to wit, 13 SP members and Vice Governor Cadio. The 13 SP members voted, with seven (7) voting for and six (6) against the Combong Resolution. A majority was already obtained; hence, there was no need for Vice Governor Cadio's vote as there was no tie to break. The proceedings took place in accordance with Section 49^[21] of the LGC, Article 102,^[22] IRR of the LGC, and Section 67, IRP of the SP.

The RTC likewise stressed that Sections 11,^[23] 21,^[24] 50(5)^[25] and 54(a)^[26] of the LGC particularly provide the instances where two-thirds (2/3) votes are required from the SP. Nothing is mentioned in the LGC anent "urgent matters." Section 62, paragraph (2), IRP of the SP cannot rise above its source and impose more stringent standards than what the LGC itself necessitates.

The RTC concluded that the plaintiffs suffered no grave or irreparable injury from the passage of the Combong Resolution. Members of the Lakas-CMD were not prevented from performing their duties as SP members. They were even designated

as chairmen or members of some committees.^[27]

The plaintiffs filed a Motion for Reconsideration,^[28] which the RTC denied in its Resolution^[29] dated November 17, 2008.

Issues

The instant petition ascribes errors^[30] upon the RTC in:

- (1) ruling that the required majority in a 14-member SP should be seven (7) pursuant to the provision of Section 67 of the IRP, which in effect contravenes Article 107(g), IRR of the LGC;^[31]
- (2) holding that a Vice Governor, who belongs more to the executive branch of the government, should be excluded from the base number in determining what constitutes as the majority;^[32]
- (3) failing to apply the two-thirds (2/3)-vote requirement for matters considered as "urgent" under Section 62, Rule XVI, IRP of the SP;^[33]
- (4) disregarding pertinent executive pronouncements or opinions of the DILG on the matter at hand;^[34] and
- (5) failing to rule that the Combong Resolution violates Sections 5^[35] and 6(a),^[36] Rule III, IRP of the SP.^[37]

The petitioners point out that Article 107(g), IRR of the LGC refers to "a majority of all the members present, there being a quorum."^[38] Section 67, IRP of the SP, on the other hand, speaks of "a majority of all the members actually voting, there being a quorum."^[39] The petitioners posit that what should prevail is the LGC, which requires a majority of eight votes from the SP with 14 members. That being the rule, the Combong Resolution, was not validly passed.^[40]

Further, Section 467(a) of the LGC partially provides that the SP "shall be composed of the provincial vice governor as presiding officer, the regular *sanggunian* members x x x." Hence, in *Gamboa, Jr. v. Aguirre, Jr.*,^[41] the Court ruled that the Vice Governor is a member of the SP.^[42]

The petitioners also invoke Section 50 of the LGC, which gives the SP "latitude to promulgate its own rules of procedure governing its organization, legislative process, parliamentary procedures, calendar of business, committees and their memberships provided they are not inconsistent with or in violation of the Constitution, the LGC and its [IRR,] and other existing laws and regulations."^[43]

The LGC is silent as to what constitutes as "urgent matters," in relation to which the three-reading rule may be dispensed with. Section 62, IRP of the SP dealt with "urgent matters" and imposed the more stringent two-thirds (2/3) affirmative vote requirement. While admittedly, the LGC has specifically enumerated situations requiring two-thirds (2/3) votes there is nothing in the law suggesting that the list is exclusive.^[44]

Moreover, in DILG Opinion No. 6, series of 2001, dated February 12, 2001, it is clear that if a session is attended by all 14 members, including the Vice Governor, eight

(8) votes constitute a quorum.^[45]

Finally, the petitioners aver that Juanitas, who received the least number of votes among the SP members, cannot be designated as the Majority Floor Leader without violating Sections 5 and 6(a), Rule III (The Majority Floor Leader), IRP of the SP.^[46]

In the respondents' Comment,^[47] they contend that the Vice Governor is the SP's Presiding Officer, but that does not make him a regular member thereof.^[48] Further, the LGC lists instances when a vote of two-thirds (2/3) is required and no mention is made of "urgent matters." Thus, what the law does not include, it excludes. The respondents also reiterate that the person designated as the Majority Floor Leader, cannot permanently hold on to the position. Political affiliations and alliances affect the designations.^[49]

Ruling of the Court

The instant petition fails.

Procedurally, the petition is outrightly dismissible for being moot and academic. The terms of office of the contending parties had already ended in June of 2010. There is no more substantial relief which can be gained by the petitioners, or which would be negated by the dismissal of the case.^[50]

However, by reason of the public interest involved, the Court shall take exception of the case and still address the first, second and fourth issues raised herein for the bench, bar and public's guidance.^[51]

The Vice Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice Governor is excluded. The Vice Governor's right to vote is merely contingent and arises only when there is a tie to break.

The *first, second and fourth issues* raised by the petitioners are interrelated^ hence, shall be resolved jointly. Restated, the issue is whether or not the Vice Governor, as the presiding officer of the SP, shall be counted in the determination of what number constitutes as the majority.

In *La Carlota City, Negros Occidental, et al. v. Atty. Rojo*,^[52] the Court interpreted a provision pertaining to the composition of the *Sangguniang Panlungsod*, viz.:

Section 457. **Composition. (a) The *sangguniang panlungsod*, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members.**

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