

EN BANC

[G.R. No. 186613, August 27, 2013]

**ROSENDO R. CORALES, IN HIS OFFICIAL CAPACITY AS
MUNICIPAL MAYOR OF NAGCARLAN, LAGUNA, AND DR.
RODOLFO R. ANGELES, IN HIS OFFICIAL CAPACITY AS
MUNICIPAL ADMINISTRATOR OF NAGCARLAN, LAGUNA
PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES,
REPRESENTED BY THE COMMISSION ON AUDIT, AS
REPRESENTED BY PROVINCIAL STATE AUDITOR OF LAGUNA
MAXIMO L. ANDAL, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to nullify the Decision^[1] and Resolution^[2] dated 15 September 2008 and 20 February 2009, respectively, of the Court of Appeals in CA-G.R. SP No. 101296 and, in effect, to reinstate the Petition for Prohibition and Mandamus^[3] filed by herein petitioners Rosendo R. Corales (Corales) and Dr. Rodolfo R. Angeles (Dr. Angeles) with the Regional Trial Court (RTC) of San Pablo City, Laguna. The assailed Decision annulled and set aside the Order^[4] dated 17 May 2007 of Branch 32, and the Order^[5] dated 5 September 2007 of Branch 29, both of the RTC of San Pablo City, Laguna in Civil Case No. SP-6370 (07), which respectively denied herein respondent Republic of the Philippines' (Republic) Motion to Dismiss petitioners' Petition for Prohibition and the subsequent Motion for Reconsideration thereof. The Court of Appeals thereby ordered the dismissal of petitioners' Petition for Prohibition with the court *a quo*. The questioned Resolution, on the other hand, denied for lack of merit petitioners' Motion for Reconsideration of the assailed Decision.

The antecedents, as culled from the records, are as follows:

Petitioner Corales was the duly elected Municipal Mayor of Nagcarlan, Laguna for three (3) consecutive terms, i.e., the 1998, 2001 and 2004 elections. In his first term as local chief executive, petitioner Corales appointed petitioner Dr. Angeles to the position of Municipal Administrator, whose appointment was unanimously approved by the *Sangguniang Bayan* of Nagcarlan, Laguna (*Sangguniang Bayan*) per Resolution No. 98-64^[6] dated 22 July 1998. During his second and third terms as municipal mayor, petitioner Corales renewed the appointment of petitioner Dr. Angeles. But, on these times, the *Sangguniang Bayan* per Resolution No. 2001-078^[7] dated 12 July 2001 and 26 subsequent Resolutions, disapproved petitioner Dr. Angeles' appointment on the ground of nepotism, as well as the latter's purported unfitness and unsatisfactory performance. Even so, petitioner Dr. Angeles continued to discharge the functions and duties of a Municipal Administrator for which he received an annual salary of P210,012.00.^[8]

Following an audit on various local disbursements, Maximo Andal (Andal), the Provincial State Auditor of Laguna, issued an Audit Observation Memorandum (AOM) No. 2006-007-100^[9] dated 6 October 2006 addressed to petitioner Corales who was asked to comment/reply. The aforesaid AOM, in sum, states that: 1) petitioner Dr. Angeles' appointment as Municipal Administrator (during the second and third terms of petitioner Corales) was without legal basis for having been repeatedly denied confirmation by the *Sangguniang Bayan*; 2) petitioner Dr. Angeles can be considered, however, as a de facto officer entitled to the emoluments of the office for the actual services rendered; 3) nonetheless, it is not the Municipality of Nagcarlan that should be made liable to pay for petitioner Dr. Angeles' salary; instead, it is petitioner Corales, being the appointing authority, as explicitly provided for in Article 169(I) of the Rules and Regulations Implementing the Local Government Code of 1991,^[10] as well as Section 5, Rule IV of the Omnibus Rules of Appointments and Other Personnel Actions;^[11] 4) a post audit of payrolls pertaining to the payment of salaries, allowances and other incentives of petitioner Dr. Angeles from 15 July 2001 up to 31 May 2006^[12] partially amounted to P1,282,829.99; and 5) in view thereof, it is recommended that an appropriate Notice of Disallowance be issued for the payment of salary expenses incurred without legal basis by the Municipality of Nagcarlan in the aforestated amount.^[13]

Instead of submitting his comment/reply thereon, petitioner Corales, together with petitioner Dr. Angeles, opted to file a Petition for Prohibition and Mandamus against Andal and the then members of the *Sangguniang Bayan* before the RTC of San Pablo City, Laguna, docketed as Civil Case No. SP-6370 (07) and originally raffled to Branch 32. Petitioners sought, by way of prohibition, to require the Office of the Provincial Auditor, through Andal, to recall its AOM and to eventually desist from collecting reimbursement from petitioner Corales for the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator. Petitioners similarly sought, by way of mandamus, to compel the then members of the *Sangguniang Bayan*, as a collegial body, to recall its Resolutions denying confirmation to petitioner Dr. Angeles' appointment as Municipal Administrator and in their stead to confirm the validity and legitimacy of such appointment.^[14]

In its turn, the Office of the Solicitor General (OSG), on Andal's behalf, who was impleaded in his official capacity, filed a Motion to Dismiss petitioners' Petition for Prohibition and Mandamus grounded on lack of cause of action, prematurity and non-exhaustion of administrative remedies. It was specifically contended therein that: (1) the issuance of the AOM was merely an initiatory step in the administrative investigation of the Commission on Audit (COA) to allow petitioner Corales to controvert the findings and conclusions of the *Sangguniang Bayan* in its Resolution No. 2001-078, as well as those of then Secretary Jose D. Lina, Jr. in Department of Interior and Local Government (DILG) Opinion No. 124 s. 2002; (2) it was only after the completion of the said investigation that a resolution will be issued as regards the propriety of the disbursements made by the Municipality of Nagcarlan in the form of salaries paid to petitioner Dr. Angeles during his tenure as Municipal Administrator; and (3) instead of resorting to judicial action, petitioner Corales should have first responded to the AOM and, in the event of an adverse decision against him, elevate the matter for review to a higher authorities in the COA.^[15] With these, petitioners' petition should be dismissed, as petitioner Corales has no

cause of action against Andal - his resort to judicial intervention is premature and he even failed to avail himself of, much less exhaust, the administrative remedies available to him.^[16]

In its Order dated 17 May 2007, the trial court denied the said Motion to Dismiss on the ground that Andal was merely a nominal party.^[17] The subsequent motion for its reconsideration was also denied in another Order dated 5 September 2007.^[18]

Respondent Republic, as represented by COA, as represented by Andal, consequently filed a Petition for *Certiorari* with the Court of Appeals ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in rendering the Orders dated 17 May 2007 and 5 September 2007, as it unjustly denied respondent's right to actively prosecute the case through a mere declaration that it was a nominal party despite a clear showing that the Petition for Prohibition referred to the respondent as a real party in interest.^[19]

On 15 September 2008, the Court of Appeals rendered its now assailed Decision granting respondent's Petition for *Certiorari*, thereby annulling and setting aside the RTC Orders dated 17 May 2007 and 5 September 2007 and, accordingly, dismissing petitioners' Petition for Prohibition with the court *a quo*.^[20] The Court of Appeals justified its decision in the following manner:

x x x We agree with the OSG's contention that **the [herein respondent Republic]**, herein represented by the COA and specifically by Andal in the latter's capacity as Provincial State Auditor of Laguna, is **not merely a nominal party to the petition for prohibition**. x x x. **That the [respondent] naturally has an interest in the disposition/disbursement of said public funds as well as in the recovery thereof should the ongoing investigative audit confirm the illegality thereof cannot be gainsaid. Rather than a mere nominal party, therefore, the [respondent] is an indispensable party to the petition for prohibition and may thus seek its dismissal, given that under the attendant facts there is a yet no actual case or controversy calling for [therein] respondent court's exercise of its judicial power.**

Judicial review cannot be exercised in *vacuo*. Thus, as a condition precedent for the exercise of judicial inquiry, there must be an actual case or controversy, which exists when there is a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing law and jurisprudence. x x x. An actual case or controversy thus means an existing case or controversy that is appropriate or ripe for judicial determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.

[Herein petitioners] x x x have failed to show the existence of an actual case or controversy that would necessitate judicial inquiry through a petition for prohibition. As the OSG aptly observed, the **issuance of the AOM is just an initiatory step in the investigative audit** being then conducted by Andal[,] as Provincial State Auditor of

Laguna **to determine the propriety of the disbursements made by the Municipal Government of Nagcarlan. While Andal may have stated an opinion in the AOM that [herein petitioner] Corales should reimburse the government treasury for the salaries paid to [herein petitioner Dr. Angeles] in light of the repeated disapproval and/or rejection of the latter's appointment by the Sangguniang [Bayan] of Nagcarlan, there is no showing whatsoever of any affirmative action taken by Andal to enforce such audit observation. What Andal did, as the AOM unmistakably shows, was to merely request [petitioner] Corales to submit a reply/comment to the audit observation** and in the process afford the latter an opportunity to controvert not only Andal's opinion on salary reimbursement but the other statements therein expressed by the other members of the audit team.

In the absence moreover of a showing that [petitioners], particularly [petitioner] Corales, sustained actual or imminent injury by reason of the issuance of the AOM, there is no reason to allow the continuance of the petition for prohibition which was, after all, manifestly conjectural or anticipatory, filed for a speculative purpose and upon the hypothetical assumption that [petitioner] Corales would be eventually compelled to reimburse the amounts paid as [petitioner Dr. Angeles'] salaries should the audit investigation confirm the irregularity of such disbursements. This Court will not engage in such speculative guesswork and neither should respondent court x x x.^[21] (Emphasis and italics supplied).

Disgruntled, petitioners moved for its reconsideration but it was denied for lack of merit in a Resolution dated 20 February 2009.

Hence, this petition.

In their Memorandum, petitioners raise the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A PALPABLY ERRONEOUS RESOLUTION OF A SUBSTANTIAL QUESTION OF LAW WHEN IT ORDERED THE DISMISSAL OF PETITIONERS' SUIT FOR PROHIBITION.

II.

WHETHER OR NOT THE COURT OF APPEALS ACTED UNJUSTLY AND INJUDICIOUSLY WHEN IT HELD THAT THE FACTS AND CIRCUMSTANCES SURROUNDING THE SUIT FOR PROHIBITION IS NOT YET RIPE FOR JUDICIAL DETERMINATION.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN THE INTERPRETATION AND RESOLUTION OF A PIVOTAL LEGAL ISSUE WHEN IT CONCLUDED

THAT THERE IS NO ACTUAL DISPUTE OR CONCRETE CONTROVERSY WHICH MAY BE THE PROPER SUBJECT MATTER OF A SUIT FOR PROHIBITION.

IV.

WHETHER OR NOT THE COURT OF APPEALS UNJUSTIFIABLY TRANSGRESSED AND TRAMPLED UPON A CATEGORICAL JURISPRUDENTIAL DOCTRINE WHEN IT TOOK COGNIZANCE OF AND FAVORABLY RESOLVED THE [HEREIN RESPONDENT'S] PETITION FOR *CERTIORARI*, IN BLATANT VIOLATION OF THE RULE LAID DOWN IN THE *APROPOS CASE OF CHINA ROAD AND BRIDGE CORPORATION [V.] COURT OF APPEALS* (348 SCRA 401).

V.

WHETHER OR NOT THE COURT OF APPEALS OVERSTEPPED AND WENT BEYOND THE BOUNDARIES OF ITS LEGITIMATE DISCRETION WHEN IT DEVIATED AND VEERED AWAY FROM THE PRINCIPAL ISSUES OF THE CASE, INSTEAD OF PRONOUNCING THAT PETITIONERS HAVE A VALID, PERFECT AND LEGITIMATE CAUSE OF ACTION FOR PROHIBITION.^[22] (*Italics supplied*).

The Petition is bereft of merit.

The issues will be discussed *in seriatim*.

The first three issues concern the ripeness or prematurity of the Petition for Prohibition assailing the AOM issued by Andal to petitioner Corales. Petitioners argue that from the tenor of the AOM it is clear that petitioner Corales is being adjudged liable and personally accountable to pay or to reimburse, in his private capacity, the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator, as his appointment thereto was considered invalid for lack of necessary confirmation from the *Sangguniang Bayan*. It is further argued that contrary to the claim of respondent Republic that such AOM is a mere initiatory step in the course of an investigative auditing process, the wordings thereof unmistakably reveal that the same is a categorical disposition and enforcement measure requiring petitioner Corales to reimburse the money disbursed by the Municipality of Nagcarlan to pay petitioner Dr. Angeles' salaries as Municipal Administrator. Such AOM is a firm, clear and affirmative official action on the part of the Provincial State Auditor to hold petitioner Corales liable for reimbursement; thus, to require the latter to still comment or controvert the findings thereon is a mere frivolous and useless formality. Since the requirement for petitioner Corales to pay and reimburse the salaries of petitioner Dr. Angeles is actual, direct and forthcoming, the same may be the proper subject of an action for prohibition. Otherwise stated, such imposition of liability for reimbursement against petitioner Corales presents a concrete justiciable controversy and an actual dispute of legal rights.

Petitioners' contention is unavailing.