

FIRST DIVISION

[G.R. No. 167810, October 04, 2010]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
NATIONAL POWER CORPORATION, PETITIONER, VS. ATTY.
RICHARD B. RAMBUYONG, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This petition for review assails the May 20, 2004 Decision^[1] and April 13, 2005 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 72800, which dismissed the petition before it and denied reconsideration, respectively.

Factual Antecedents

Alfredo Y. Chu (Chu) filed a case for collection of a sum of money and/or damages against the National Power Corporation (NPC) docketed as Civil Case No. 1-197 which was raffled to the Regional Trial Court (RTC) of Ipil, Zamboanga Sibugay, Branch 24. Appearing as counsel for Chu is Atty. Richard B. Rambuyong (Atty. Rambuyong) who was then the incumbent Vice-Mayor of Ipil, Zamboanga Sibugay.

Thereafter, NPC filed a Motion for Inhibition^[3] of Atty. Rambuyong arguing that under Section 90 (b), (1) of Republic Act (RA) No. 7160, otherwise known as the Local Government Code, *sanggunian* members are prohibited "to appear as counsel before any court wherein x x x any office, agency or instrumentality of the government is the adverse party." NPC contended that being a government-owned or controlled corporation, it is embraced within the term "instrumentality."

Ruling of the Regional Trial Court

In an Order^[4] dated January 4, 2002, the RTC ruled that government-owned or controlled corporations are expressly excluded from Section 90 (b), (1) of the Local Government Code. Citing other provisions of the Local Government Code wherein the phrase "including government-owned or controlled corporations" is explicitly included, the trial court held that if it was the intention of the framers of RA 7160 to impose obligations or give rights and privileges to local government units, agencies, instrumentalities or corporate entities, then they would have explicitly stated so. The RTC further held that "to insistently maintain that 'government-owned or controlled corporations' are included in the signification of 'agency and instrumentality of the government' x x x would be leaving behind what is apparent in favor of opening the door to the realm of presumption, baseless conjecture and even absurdity."^[5]

The dispositive portion of the Order reads:

WHEREFORE, upon the foregoing disquisition, the defendant's motion is
DENIED due course, and this Court declares:

1. Sec. 90 of R.A. 7160 does not include government-owned or controlled corporations as among the political units against which lawyer members of the Sanggunian cannot appear as counsel of the adverse party;
2. That Atty. Richard B. Rambuyong, who is the incumbent Vice-Mayor of the Municipality of Ipil, Zamboanga Sibugay, is not disqualified to continue acting as counsel for the plaintiff in this case.

SO ORDERED.^[6]

Petitioner filed a motion for reconsideration but it was denied.^[7]

Hence, petitioner filed a petition for *certiorari* with the CA alleging grave abuse of discretion on the part of the trial judge in ruling that the statutory prohibition pertaining to the private practice of law by *sanggunian* members does not apply to cases where the adverse party is a government-owned or controlled corporation.

Ruling of the Court of Appeals

On May 20, 2004, the CA dismissed the petition for lack of merit. The CA pointed out that for *certiorari* to lie, there must be a capricious, arbitrary and whimsical exercise of power. It held that there was no showing that the trial judge exercised his power of judgment capriciously, arbitrarily and whimsically. Neither did it find proof that the trial judge, in making the rulings, was motivated by passion or personal hostility towards the petitioner.

It ruled that if ever there has been an erroneous interpretation of the law, the same may be attributed to a mere error of judgment which is definitely not the same as "grave abuse of discretion." The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, the instant petition is DISMISSED.

SO ORDERED.^[8]

The motion for reconsideration of NPC was denied. Hence, the present petition.

Issues

Petitioner raises the following arguments:

I

BOTH THE LOCAL GOVERNMENT CODE AND THE 1987 ADMINISTRATIVE [CODE] ESSENTIALLY REQUIRE ATTY. RAMBUYONG TO INHIBIT HIMSELF FROM ACTING AS COUNSEL AGAINST NPC IN THE PROCEEDINGS BELOW.

II

NPC IS INCLUDED IN THE TERM "INSTRUMENTALITY" OF GOVERNMENT.

III

THE PROHIBITION IN SECTION 90(b), (1) OF RA 7160 INTENDS TO PREVENT PUBLIC OFFICIALS FROM REPRESENTING INTEREST ADVERSE TO THE GOVERNMENT.

IV

BACANI CASE IS NO LONGER THE PREVAILING JURISPRUDENCE ON THE REAL MEANING OF GOVERNMENT INSTRUMENTALITIES.

V

ATTY. RICHARD RAMBUYONG IS THE REAL-PARTY-IN-INTEREST IN THE SUBJECT PETITION.^[9]

In the main the issue is whether NPC is an instrumentality of government such that Atty. Rambuyong, as a sanggunian member, should not appear as counsel against it.

Petitioner's Arguments

Petitioner contends that the trial court refused to apply the law, specifically Section 90 (b), (1) of RA 7160, which clearly states that lawyer-*sanggunian* members cannot appear as counsel in any case where the adverse party is a local government unit, office, agency or instrumentality. It argues that courts are not authorized to distinguish where the law makes no distinction.

Petitioner alleges that the RTC gravely abused its discretion when it failed to recognize that the 1987 Administrative Code and the Local Government Code are in *pari materia* in defining the terms used in the latter, such as "office, agency or instrumentality." It argues that the RTC acted beyond the scope of its jurisdiction when it constricted the definition of "instrumentality" in Section 90 (b), (1) of RA 7160 to exclude government-owned and controlled corporations.

Petitioner argues that NPC is an instrumentality of government and that there is no cogent reason to exclude government-owned and controlled corporations from the operation of Section 90 (b), (1) of RA 7160.

Finally, petitioner claims that the government's challenge against Atty. Rambuyong's appearance is directed against him alone to the exclusion of his client whose right to prosecute his claim as party litigant is beyond question.

Respondent's Arguments

On the other hand, respondent contends that the party who would be benefited or injured by the compulsory inhibition of plaintiffs counsel is the plaintiff in Civil Case No. 1-197. Thus, , he insists that the plaintiff is the real party in interest and his (Atty. Rambuyong) inclusion as respondent in the present petition is erroneous.

Our Ruling

The petition has merit.

Instrumentality of the Government

The provisions of law relevant to the present case state:

Sec. 90.^[10] *Practice of Profession.* — (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation, other than the exercise of their functions as local chief executives.