

EN BANC

[G.R. No. 175527, December 08, 2008]

HON. GABRIEL LUIS QUISUMBING, HON. ESTRELLA P. YAPHA, HON. VICTORIA G. COROMINAS, HON. RAUL D. BACALTOS (MEMBERS OF THE SANGGUNIANG PANLALAWIGAN OF CEBU), PETITIONERS, VS. HON. GWENDOLYN F. GARCIA (IN HER CAPACITY AS GOVERNOR OF THE PROVINCE OF CEBU), HON. DELFIN P. AGUILAR (IN HIS CAPACITY AS DIRECTOR IV (CLUSTER DIRECTOR) OF COA), CLUSTER IV - VISAYAS LOCAL GOVERNMENT SECTOR, HON. HELEN S. HILAYO (IN HER CAPACITY AS REGIONAL CLUSTER DIRECTOR OF COA), AND HON. ROY L. URSAL (IN HIS CAPACITY AS REGIONAL LEGAL AND ADJUDICATION DIRECTOR OF COA), RESPONDENTS.

DECISION

TINGA, J.:

Gabriel Luis Quisumbing (Quisumbing), Estrella P. Yapha, Victoria G. Corominas, and Raul D. Bacaltos (Bacaltos), collectively petitioners, assail the Decision^[1] of the Regional Trial Court (RTC) of Cebu City, Branch 9, in Civil Case No. CEB-31560, dated July 11, 2006, which declared that under the pertinent provisions of Republic Act No. 7160 (R.A. No. 7160), or the Local Government Code, and Republic Act No. 9184 (R.A. No. 9184), or the Government Procurement Reform Act, respondent Cebu Provincial Governor Gwendolyn F. Garcia (Gov. Garcia), need not secure the prior authorization of the *Sangguniang Panlalawigan* before entering into contracts committing the province to monetary obligations.

The undisputed facts gathered from the assailed Decision and the pleadings submitted by the parties are as follows:

The Commission on Audit (COA) conducted a financial audit on the Province of Cebu for the period ending December 2004. Its audit team rendered a report, Part II of which states: "Several contracts in the total amount of P102,092,841.47 were not supported with a *Sangguniang Panlalawigan* resolution authorizing

the Provincial Governor to enter into a contract, as required under Section 22 of R.A. No. 7160."^[2] The audit team then recommended that, "Henceforth, the local chief executive must secure a *sanggunian* resolution authorizing the former to enter into a contract as provided under Section 22 of R.A. No. 7160."^[3]

Gov. Garcia, in her capacity as the Provincial Governor of Cebu, sought the reconsideration of the findings and recommendation of the COA. However, without waiting for the resolution of the reconsideration sought, she instituted an action for Declaratory Relief before the RTC of Cebu City, Branch 9. Impleaded as respondents were Delfin P. Aguilar, Helen S. Hilayo and Roy L. Ursal in their official capacities as

Cluster Director IV, Regional Cluster Director and Regional Legal and Adjudication Director of the COA, respectively. The *Sangguniang Panlalawigan* of the Province of Cebu, represented by Vice-Governor Gregorio Sanchez, Jr., was also impleaded as respondent.

Alleging that the infrastructure contracts^[4] subject of the audit report complied with the bidding procedures provided under R.A. No. 9184 and were entered into pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*, Gov. Garcia alleged that a separate authority to enter into such contracts was no longer necessary.

On the basis of the parties' respective memoranda, the trial court rendered the assailed Decision dated July 11, 2006, declaring that Gov. Garcia need not secure prior authorization from the *Sangguniang Panlalawigan* of Cebu before entering into the questioned contracts. The dispositive portion of the Decision provides:

WHEREFORE, premises considered, this court hereby renders judgment in favor of Petitioner and against the Respondent COA officials and declares that pursuant to Sections 22 paragraph © in relation to Sections 306 and 346 of the Local Government Code and Section 37 of the Government Procurement Reform Act, the Petitioner Governor of Cebu need not secure prior authorization by way of a resolution from the *Sangguniang Panlalawigan* of the Province of Cebu before she enters into a contract involving monetary obligations on the part of the Province of Cebu when there is a prior appropriation ordinance enacted.

Insofar as Respondent *Sangguniang Panlalawigan*, this case is hereby dismissed.^[5]

In brief, the trial court declared that the *Sangguniang Panlalawigan* does not have juridical personality nor is it vested by R.A. No. 7160 with authority to sue and be sued. The trial court accordingly dismissed the case against respondent members of the *Sangguniang Panlalawigan*. On the question of the remedy of declaratory relief being improper because a breach had already been committed, the trial court held that the case would ripen into and be treated as an ordinary civil action. The trial court further ruled that it is only when the contract (entered into by the local chief executive) involves obligations which are not backed by prior ordinances that the prior authority of the *sanggunian* concerned is required. In this case, the *Sangguniang Panlalawigan* of Cebu had already given its prior authorization when it passed the appropriation ordinances which authorized the expenditures in the questioned contracts.

The trial court denied the motion for reconsideration^[6] filed by Quisumbing, Bacaltos, Carmiano Kintanar, Jose Ma. Gastardo, and Agnes Magpale, in their capacities as members of the *Sangguniang Panlalawigan* of Cebu, in an Order^[7] dated October 25, 2006.

In the Petition for Review^[8] dated November 22, 2006, petitioners insisted that the RTC committed reversible error in granting due course to Gov. Garcia's petition for declaratory relief despite a breach of the law subject of the petition having already been committed. This breach was allegedly already the subject of a pending

investigation by the Deputy Ombudsman for the Visayas. Petitioners further maintained that prior authorization from the *Sangguniang Panlalawigan* should be secured before Gov. Garcia could validly enter into contracts involving monetary obligations on the part of the province.

Gov. Garcia, in her Comment^[9] dated April 10, 2007, notes that the RTC had already dismissed the case against the members of the *Sangguniang Panlalawigan* of Cebu on the ground that they did not have legal personality to sue and be sued. Since the COA officials also named as respondents in the petition for declaratory relief neither filed a motion for reconsideration nor appealed the RTC Decision, the said Decision became final and executory. Moreover, only two of the members of the *Sangguniang Panlalawigan*, namely, petitioners Quisumbing and Bacaltos, originally named as respondents in the petition for declaratory relief, filed the instant petition before the Court.

Respondent Governor insists that at the time of the filing of the petition for declaratory relief, there was not yet any breach of R.A. No. 7160. She further argues that the questioned contracts were executed after a public bidding in implementation of specific items in the regular or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*. These ordinances allegedly serve as the authorization required under R.A. No. 7160, such that the obtention of another authorization becomes not only redundant but also detrimental to the speedy delivery of basic services.

Gov. Garcia also claims that in its Comment to the petition for declaratory relief, the Office of the Solicitor General (OSG) took a stand supportive of the governor's arguments. The OSG's official position allegedly binds the COA.

Expressing gratitude for having been allowed by this Court to file a comment on the petition, respondent COA officials in their Comment^[10] dated March 8, 2007, maintain that Sections 306 and 346 of R.A. No. 7160 cannot be considered exceptions to Sec. 22(c) of R.A. No. 7160. Sec. 346 allegedly refers to disbursements which must be made in accordance with an appropriation ordinance without need of approval from the *sanggunian* concerned. Sec. 306, on the other hand, refers to the authorization for the effectivity of the budget and should not be mistaken for the specific authorization by the *Sangguniang Panlalawigan* for the local chief executive to enter into contracts under Sec. 22(c) of R.A. No. 7160.

The question that must be resolved by the Court should allegedly be whether the appropriation ordinance referred to in Sec. 346 in relation to Sec. 306 of R.A. No. 7160 is the same prior authorization required under Sec. 22(c) of the same law. To uphold the assailed Decision would allegedly give the local chief executive unbridled authority to enter into any contract as long as an appropriation ordinance or budget has been passed by the *sanggunian* concerned.

Respondent COA officials also claim that the petition for declaratory relief should have been dismissed for the failure of Gov. Garcia to exhaust administrative remedies, rendering the petition not ripe for judicial determination.

The OSG filed a Comment^[11] dated March 12, 2007, pointing out that the instant petition raises factual issues warranting its denial. For instance, petitioners, on one

hand, claim that there was no appropriation ordinance passed for 2004 but only a reenacted appropriations ordinance and that the unauthorized contracts did not proceed from a public bidding pursuant to R.A. No. 9184. Gov. Garcia, on the other hand, claims that the contracts were entered into in compliance with the bidding procedures in R.A. No. 9184 and pursuant to the general and/or supplemental appropriations ordinances passed by the *Sangguniang Panlalawigan*. She further asserts that there were ordinances allowing the expenditures made.

On the propriety of the action for declaratory relief filed by Gov. Garcia, the OSG states in very general terms that such an action must be brought before any breach or violation of the statute has been committed and may be treated as an ordinary action only if the breach occurs after the filing of the action but before the termination thereof. However, it does not say in this case whether such recourse is proper.

Nonetheless, the OSG goes on to discuss that Sec. 323 of R.A. No. 7160 allows disbursements for salaries and wages of existing positions, statutory and contractual obligations and essential operating expenses authorized in the annual and supplemental budgets of the preceding year (which are deemed reenacted in case the *sanggunian* concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year). Contractual obligations not included in the preceding year's annual and supplemental budgets allegedly require the prior approval or authorization of the local *sanggunian*.

In their Consolidated Reply^[12] dated August 8, 2007, petitioners insist that the instant petition raises only questions of law not only because the parties have agreed during the proceedings before the trial court that the case involves purely legal questions, but also because there is no dispute that the Province of Cebu was operating under a reenacted budget in 2004.

They further defend their standing to bring suit not only as members of the *sanggunian* whose powers Gov. Garcia has allegedly usurped, but also as taxpayers whose taxes have been illegally spent. Petitioners plead leniency in the Court's ruling regarding their legal standing, as this case involves a matter of public policy.

Petitioners finally draw attention to the OSG's seeming change of heart and adoption of their argument that Gov. Garcia has violated R.A. No. 7160.

It should be mentioned at the outset that a reading of the OSG's Comment^[13] on the petition for declaratory relief indeed reveals its view that Sec. 22(c) of R.A. No. 7160 admits of exceptions. It maintains, however, that the said law is clear and leaves no room for interpretation, only application. Its Comment on the instant petition does not reflect a change of heart but merely an amplification of its original position.

Although we agree with the OSG that there are factual matters that have yet to be settled in this case, the records disclose enough facts for the Court to be able to make a definitive ruling on the basic legal arguments of the parties.

The trial court's pronouncement that "the parties in this case all agree that the contracts referred to in the above findings are contracts entered into pursuant to

the bidding procedures allowed in Republic Act No. 9184 or the 'Government Procurement Reform Act'--i.e., public bidding, and negotiated bid. The biddings were made pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan* of Cebu x x x"[14] is clearly belied by the Answer[15] filed by petitioners herein. Petitioners herein actually argue in their Answer that the contracts subject of the COA's findings did not proceed from a public bidding. Further, there was no budget passed in 2004. What was allegedly in force was the reenacted 2003 budget.[16]

Gov. Garcia's contention that the questioned contracts complied with the bidding procedure in R.A. No. 9184 and were entered into pursuant to the general and supplemental appropriation ordinances allowing these expenditures is diametrically at odds with the facts as presented by petitioners in this case. It is notable, however, that while Gov. Garcia insists on the existence of appropriation ordinances which allegedly authorized her to enter into the questioned contracts, she does not squarely deny that these ordinances pertain to the previous year's budget which was reenacted in 2004.

Thus, contrary to the trial court's finding, there was no agreement among the parties with regard to the operative facts under which the case was to be resolved. Nonetheless, we can gather from Gov. Garcia's silence on the matter and the OSG's own discussion on the effect of a reenacted budget on the local chief executive's ability to enter into contracts, that during the year in question, the Province of Cebu was indeed operating under a reenacted budget.

Note should be taken of the fact that Gov. Garcia, both in her petition for declaratory relief and in her Comment on the instant petition, has failed to point out the specific provisions in the general and supplemental appropriation ordinances copiously mentioned in her pleadings which supposedly authorized her to enter into the questioned contracts.

Based on the foregoing discussion, there appear two basic premises from which the Court can proceed to discuss the question of whether prior approval by the *Sangguniang Panlalawigan* was required before Gov. Garcia could have validly entered into the questioned contracts. **First, the Province of Cebu was operating under a reenacted budget in 2004. Second, Gov. Garcia entered into contracts on behalf of the province while this reenacted budget was in force.**

Sec. 22(c) of R.A. No. 7160 provides:

Sec. 22. *Corporate Powers.*—(a) Every local government unit, as a corporation, shall have the following powers:

x x x

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.