

THIRD DIVISION

[G.R. NO. 160652, February 13, 2006]

HON. TOMAS N. JOSON III, IN HIS CAPACITY AS GOVERNOR OF THE PROVINCE OF NUEVA ECIJA, AND THE SANGGUNIANG PANLALAWIGAN OF NUEVA ECIJA, PETITIONERS, VS. COURT OF APPEALS AND ELIZABETH R. VARGAS, RESPONDENT.

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari^[1] with a prayer for the issuance of a temporary restraining order or writ of preliminary injunction. The petition seeks to set aside the Resolution dated 13 October 2003 of the Court of Appeals in CA-G.R. SP No. 78247 granting the writ of preliminary injunction enjoining and restraining Governor Tomas N. Joson III ("Governor Joson") and the *Sangguniang Panlalawigan* of Nueva Ecija ("*Sangguniang Panlalawigan*") from conducting proceedings in the administrative case against Mayor Elizabeth R. Vargas and from imposing the order of preventive suspension.

The Facts

On 8 January 2003, eight members of the *Sangguniang Bayan* of Aliaga, Nueva Ecija ("SB Members"), filed with the *Sangguniang Panlalawigan* an administrative complaint against the incumbent Municipal Mayor of Aliaga, Elizabeth R. Vargas ("Mayor Vargas"), for dishonesty, misconduct in office, and abuse of authority. The SB Members alleged that Mayor Vargas submitted to the Provincial Budget Officer two falsified documents, namely, Appropriation Ordinance No. 1, series of 2002 ("Appropriation Ordinance No. 1") and Resolution No. 2, series of 2002, approving the enactment of Appropriation Ordinance No. 1. The administrative case was docketed as ADM. CASE No. 02-S-2003.

On 13 February 2003, Mayor Vargas filed a complaint for annulment of falsified minutes of session and appropriation ordinance with damages against the SB members before the Regional Trial Court of Cabanatuan City ("Cabanatuan RTC"). The case was docketed as Civil Case No. 4442.

On 18 February 2003, Mayor Vargas filed before the *Sangguniang Panlalawigan* a motion to suspend proceedings and/or motion to dismiss due to the pendency of a prejudicial question in Civil Case No. 4442, specifically questioning the genuineness of the documents she allegedly falsified.^[2] Without resolving the motion, the *Sangguniang Panlalawigan* passed Resolution No. 80-S-2003, dated 3 March 2003, recommending to Governor Joson the preventive suspension of Mayor Vargas for 60 days.^[3] On 17 March 2003, the *Sangguniang Panlalawigan* issued Resolution No.

105-S-2003, denying Mayor Vargas' motion to suspend proceedings and/or motion to dismiss.^[4]

Mayor Vargas appealed to the Office of the President praying for the reversal of Resolution No. 105-S-2003 of the *Sangguniang Panlalawigan*. The case was docketed as O.P. Case No. 03-D-164.

In April 2003, Governor Joson issued an order of preventive suspension against Mayor Vargas. Mayor Vargas filed before the Office of the President a very urgent petition to set aside the suspension order.

On 22 April 2003, the Office of the President, through Acting Deputy Executive Secretary Manuel B. Gaité ("Secretary Gaité"), issued an Order, the dispositive portion of which reads:

ACCORDINGLY, the instant motion is GRANTED and the undated Preventive Suspension Order against Mayor Elizabeth R. Vargas of the municipality of Aliaga, Nueva Ecija is hereby lifted and set aside.

Vice Mayor Victorino E. Reyes who may have assumed the position of Acting Municipal Mayor of Aliaga, Nueva Ecija, is hereby directed to cease and desist from performing the duties of and functions of municipal mayor and vacate the same pending final resolution of Administrative Case No. 02-s-2003. Mayor Vargas may now reassume his (sic) position as such.

The Department of the Interior and Local Government is hereby directed to implement this Order immediately.

SO ORDERED.^[5]

On 25 April 2003, Governor Joson filed with the Office of the President a motion for reconsideration. On 8 July 2003, the Office of the President issued a Resolution, the dispositive portion of which reads:

WHEREFORE, the instant motion is hereby GRANTED, and the April 22, 2003 Order subject thereof is hereby recalled and set aside. Accordingly, the Order of Governor Tomas N. Joson III placing Mayor Elizabeth R. Vargas under preventive suspension for a period of sixty (60) days is hereby reinstated.

The Department of Interior and Local Government is directed to implement this resolution immediately.

SO ORDERED.^[6]

On 17 July 2003, Mayor Vargas moved for reconsideration of the Resolution dated 8 July 2003. On 18 July 2003, Mayor Vargas filed before the Office of the President an urgent motion to resolve O.P. Case No. 03-D-164.

On 23 July 2003, Mayor Vargas filed before the Court of Appeals a petition for "Certiorari, Prohibition and Mandamus, with Urgent Prayer for Preliminary Injunction

or Temporary Restraining Order;” docketed as CA-G.R. SP No. 78247.

On 14 August 2003, the Court of Appeals issued a Resolution, the dispositive portion of which reads:

WHEREFORE, in the interest of justice, to the end that undue prejudice and/or injury may be avoided to any and all parties affected by these proceedings, as well as not to render nugatory and ineffectual the resolution of this Court of the issues herein presented, let a TEMPORARY RESTRAINING ORDER be issued, to be effective upon service and for a period of SIXTY (60) days, unless sooner lifted. ACCORDINGLY, respondents Provincial Governor and the SANGGUNIANG PANLALAWIGAN of the Province of Nueva Ecija are hereby commanded to cease and desist from conducting proceedings in ADMINISTRATIVE CASE No. 02-S-2003, and from enforcing the assailed July 8, 2003 Resolution of the Office of the President, through the Executive Secretary, which directed the reinstatement of the order for petitioner’s preventive suspension. Furthermore, in view of the serious issues involved, let the hearing and consideration of the propriety of the issuance of a preliminary injunction be scheduled on September 2, 2003 at 10:30 AM, Paras Hall, Second Floor, Main Building, Court of Appeals, Ma. Orosa St., Ermita, Manila.

In the meantime, without necessarily giving due course to the instant petition for *certiorari*, respondents are directed to file a comment, not a motion to dismiss, within ten (10) days from notice. Petitioner, upon the other hand, has five (5) days from receipt of respondents’ comment, to file her reply.

SO ORDERED. [7]

On 13 October 2003, the Court of Appeals resolved to issue a writ of preliminary injunction to further enjoin and restrain Governor Joson from imposing the order of preventive suspension and the *Sangguniang Panlalawigan* from conducting proceedings in the administrative case against Mayor Vargas.

Hence, this petition.

The Issues

Petitioners contend that:

1. THE COURT OF APPEALS ACTED WITH MANIFEST PARTIALITY, ARBITRARILY, AND IN GRAVE ABUSE OF DISCRETION IN ISSUING THE QUESTIONED ORDER BECAUSE –
 - a. RESPONDENT VARGAS AVAILED OF THE WRONG REMEDY WHEN SHE FILED CA-G.R. SP NO. 78247;
 - b. RESPONDENT VARGAS CLEARLY FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING JUDICIAL RELIEF;
 - c. THE PREVENTIVE SUSPENSION ORDER WAS LEGALLY AND VALIDLY ISSUED.

2. THE COURT OF APPEALS ACTED ARBITRARILY AND IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DIRECTING PETITIONERS "TO CEASE AND DESIST FROM CONDUCTING PROCEEDINGS IN ADMINISTRATIVE CASE NO. 02-S-2003."

3. THE INSTANT CASE PRESENTS A SITUATION WHEREIN A MOTION FOR RECONSIDERATION MAY BE DISPENSED WITH BEFORE THE INSTANT CERTIORARI CASE CAN BE FILED.^[8]

The Ruling of the Court

The petition is without merit.

Petitioners allege that Mayor Vargas should have filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure and not a special civil action for certiorari under Rule 65. Furthermore, Mayor Vargas filed the action for certiorari even while her motion for reconsideration was still pending resolution before the Office of the President. According to petitioners, the Court of Appeals acted with manifest bias and partiality when it issued the writ of preliminary injunction against petitioners despite the filing of a wrong remedy and the non-exhaustion of administrative remedies.

Under Section 1, Rule 65 of the 1997 Rules of Civil Procedure, the writ of certiorari is proper when the following requisites are present:

1. It is directed against any tribunal, board or officer exercising judicial or quasi-judicial functions;
2. Such tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction; and
3. There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

Mayor Vargas filed with the Court of Appeals a special civil action for certiorari under Rule 65 alleging grave abuse of discretion on the part of Secretary Gaite. Thus, in a Resolution dated 14 August 2003, the Court of Appeals stated:

To question the foregoing Resolution of respondent Executive Secretary, petitioner interposed the instant petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, essentially posing the following issues: (1) was it proper for respondent Executive Secretary to have ruled that petitioner is considered in default pursuant to Article 126, Rule XIX of the Rules Implementing the Local Government Code of 1991; (2) can the civil case filed by petitioner before the Cabanatuan RTC for annulment of falsified minutes of session and appropriation ordinance with damages be considered a prejudicial question which warrants the suspension of the proceedings in the administrative case; (3) has the respondent Sanggunian[g] Panlalawigan jurisdiction to hear the administrative case filed against herein petitioner, when the relief sought therein is her removal from office.

At first blush, the assailed resolution having being issued by the

Office of the President, through the Executive Secretary, it would seem that the proper remedy is an appeal *via* a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. A perusal of the instant petition for *certiorari* would, however, reveal that petitioner is alleging that the challenged resolution was issued with grave abuse of discretion and beyond respondents' jurisdiction, hence, the appropriate remedy is *certiorari* under Rule 65. Moreover, assuming *arguendo* that the proper remedy is a petition for review under Rule 43, the Supreme Court has oftentimes ruled that, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, a petition for certiorari may be treated as having been filed under Rule 43, in which case this Court chooses to do so, in view of the gravity and seriousness of the issues involved herein.^[9] (Emphasis supplied)

The Court finds no grave abuse of discretion on the part of the appellate court in assuming jurisdiction over the case. The special civil action of certiorari is proper to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.^[10] All the issues submitted for resolution in the Court of Appeals involve questions of law which are reviewable on certiorari.^[11]

Exception to the Application of Exhaustion of Administrative Remedies

Under the doctrine of exhaustion of administrative remedies, a litigant cannot go to court without first pursuing his administrative remedies, otherwise his action is premature and his case is not ripe for judicial determination.^[12] A litigant should first exhaust the administrative remedies provided by law before seeking judicial intervention in order to give the administrative agency an opportunity to decide correctly the matter and prevent unnecessary and premature resort to the court.^[13]

However, the Court recognizes some exceptions to the rule of exhaustion of administrative remedies. As held in ***Paat v. Court of Appeals***:^[14]

x x x However, we are not amiss to reiterate that the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case