

## SECOND DIVISION

[ G.R. NO. 160991, February 28, 2005 ]

**PACIFICO C. VELASCO, PETITIONER, VS. THE SANDIGANBAYAN  
(FOURTH DIVISION), AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the Resolution of the Sandiganbayan in *People of the Philippines v. Mayor Pacifico C. Velasco*, Criminal Case No. 27821, denying his Supplemental Motion to Quash the Information in the said case, and the Resolution of the Sandiganbayan denying his motion for reconsideration thereof.

#### The Backdrop

On September 21, 1999, the Civil Service Commission (CSC) issued a Resolution in CSC Case No. 99-2137 ordering the dismissal of Engr. Emmanuel Agonoy, Municipal Engineer of Bacarra, Ilocos Norte, for gross neglect of duty. Agonoy did not file a motion for reconsideration thereof; instead, he filed a petition for review in the Court of Appeals (CA), docketed as CA-G.R. SP No. 55596.

Despite his knowledge of the said CSC resolution, petitioner Mayor Pacifico C. Velasco of Bacarra, Ilocos Norte, allowed Agonoy to report for work as Municipal Engineer. He even issued on October 2, 1999 a Memorandum to the Municipal Treasurer of Bacarra, Lorna S. Dumayag, informing her that she had no reason not to pay the salaries and other benefits of Agonoy in his capacity as Municipal Engineer. She was likewise directed to pay Agonoy's salary and other benefits until the Supreme Court had finally decided the case, to wit:

#### Memorandum

To : Mrs. Lorna S. Dumayag  
Municipal Treasurer  
Bacarra, Ilocos Norte

Subject : TO PAY THE SALARIES AND OTHER BENEFITS OF ENGR.  
EMMANUEL A. AGONUY IN HIS CAPACITY AS MUNICIPAL  
ENGINEER

Date : October 2, 1999

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While it is true that there is a resolution/decision of the Civil Service (CSC Resolution No. 992137), Regional Office No. 1 for the dismissal of Engr. Emmanuel Agonoy dated September 21, 1999, Engr. Agonoy, has still the option to seek or file an appeal to the Court of Appeals based on existing Rules of Court and the Civil Service Commission and thereby you have no reason not to pay his salaries and benefits in his capacity as the Municipal Engineer.

In this regard, you are hereby directed to pay all his salaries and benefits not until there will be a final decision given by the Supreme Court regarding his case.

*For strict compliance.*

(Sgd.) ILLEGIBLE  
PACIFICO C. VELASCO  
Mayor<sup>[1]</sup>

In the meantime, Agonoy continued reporting for duty as municipal engineer from November 11, 1999. On August 18, 2000, the CA denied Agonoy's petition for review. He filed a motion for reconsideration of the decision, which the CA also denied on September 20, 2000.

Undaunted, Agonoy filed a petition for review of the CA decision with this Court. The case was docketed as G.R. No. 145016.

In the meantime, on October 17, 2000, Mayor Velasco issued a Memorandum to the Municipal Treasurer directing her to immediately release Agonoy's salary, Representation and Transportation Allowance (RATA) and other benefits. Mayor Velasco again told the treasurer that she had no right to withhold Agonoy's benefits, viz.:

*Memo No. 2000 - 195*

<i>To</i>	Mrs. Lorna S. Dumayag Municipal Treasurer Bacarra, Ilocos Norte
<i>Subject</i>	TO RELEASE IMMEDIATELY THE SALARY, RATA AND OTHER BENEFITS DUE TO ENGR. EMMANUEL AGONOY
<i>Date</i>	October 17, 2000

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In view of the motion for extension of time to file petition for review on certiorari filed by Engr. Emmanuel Agonoy and his counsel to the Supreme Court dated October 5, 2000, xerox copy is hereto attached, [y]ou are hereby directed to release immediately without delay the salary, RATA and other benefits due to Engr. Emmanuel Agonoy. You have

no right to withhold such benefits for Engr. Agonoy not until the final court of the last recourse which is the Supreme Court will give its final judgment.

For strict compliance.

(Sgd.) ILLEGIBLE  
PACIFICO C. VELASCO  
Mayor<sup>[1]</sup>

Cc: Engr. Emmanuel Agonoy  
Mun. Engineer

Mrs. Filimona S. Acidera  
MBO/HRMO Designate<sup>[2]</sup>

On December 4, 2000, this Court, in G.R. No. 145016, resolved to deny<sup>[3]</sup> the petition for review filed by Agonoy. On February 28, 2001, Agonoy resigned as Municipal Engineer. The Resolution of the Supreme Court dismissing the petition for review of Agonoy became final and executory on May 10, 2001.

On March 18, 2002, Philip Corpus Velasco, the Vice Mayor of Bacarra, filed a Complaint<sup>[4]</sup> before the Office of the Ombudsman against petitioner Mayor Velasco, Agonoy and Municipal Treasurer Dumayag for violation of Republic Act No. 3019. In his Resolution dated April 25, 2003, the Ombudsman found probable cause against petitioner Mayor Velasco for violation of Section 3(e) of Rep. Act No. 3019, and filed an Information with the Sandiganbayan charging him of that crime. The case against Agonoy was dismissed because he had earlier resigned; on the other hand, the Ombudsman absolved the Municipal Treasurer, on the finding that she had merely obeyed the orders of the Mayor. The inculpatory portion of the Information reads:

That on or about September 21, 1999, in Bacarra, Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused PACIFICO VELASCO, a public officer, being then the Mayor of the Municipality of Bacarra, committing the crime charged in relation to and taking advantage of his official functions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits to EMMANUEL AGONoy by allowing the latter to continue his employment as the Municipal Engineer of Bacarra, Ilocos Norte and receive his salaries, RATA and other benefits from November 1, 1999 up to February 28, 2001, in the total amount of THREE HUNDRED SEVENTY-FIVE THOUSAND ONE HUNDRED SIXTY-EIGHT (P375,168.00) PESOS Philippine Currency, despite the fact that he knows fully well that AGONoy has been dismissed from the government service in a Resolution No. 992137 rendered by the Civil Service Commission on September 21, 1999, to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>[5]</sup>

The petitioner filed a Supplemental Motion to Quash the Information on the ground that it did not charge the offense of violation of Section 3(e) of Rep. Act No. 3019. He alleged therein that while he was aware of the CSC resolution dismissing Agonoy from the service, he was not bound by it because he was not a party to CSC Case No. 99-2137. He also alleged therein that he did not receive any directive from the CSC ordering him to implement its resolution. Furthermore, even if the CSC did issue the said directive, he could not prevent Agonoy from reporting for work. He further averred that he permitted Agonoy to report for work, and receive salaries and other benefits from the municipality because the resolution of the CSC dated September 21, 1999 was not immediately executory. It cannot, therefore, be claimed that he gave unwarranted benefits to Agonoy through manifest partiality, evident bad faith, or gross inexcusable negligence.

The petitioner Mayor averred that until the resolution of the Supreme Court denying Agonoy's petition for review had become final and executory, he could not be compelled to implement the September 21, 1999 Resolution of the CSC.

On October 8, 2003, the Sandiganbayan issued a Resolution denying the motion of the petitioner.<sup>[6]</sup> The Court ruled that the Information alleged all the elements of violation of Section 3(e) of Rep. Act No. 3019. The petitioner filed a motion for the reconsideration,<sup>[7]</sup> which the Sandiganbayan likewise denied in a Resolution dated November 24, 2003.

The petitioner then filed the instant petition for certiorari with this Court, contending that -

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AND/OR IN EXCESS OF JURISDICTION IN NOT QUASHING THE INFORMATION IN THE SUBJECT CASE ON THE GROUND THAT THE ALLEGATIONS THEREIN DO NOT CONSTITUTE THE OFFENSE AS CHARGED.<sup>[8]</sup>

The petitioner insists that while the Information alleges that he was aware of the September 21, 1999 Resolution of the CSC dismissing Agonoy from the service, there is no allegation therein that he was served with a copy of the said resolution and was directed to implement the same. He avers that such allegations are essential elements of the offense of violation of Section 3(e) of Rep. Act No. 3019. He reiterates that he was not bound to implement the resolution because he was not a party to the case in the CSC. Hence, he maintains, it cannot be said that in allowing Agonoy to continue reporting for work and ordering the municipal treasurer to give the latter his salary, RATA and other benefits, he (the petitioner) gave unwarranted benefits or undue advantage or preference to Agonoy through manifest partiality, evident bad faith, or gross inexcusable negligence. The petitioner further avers that he could even be charged administratively, civilly, or criminally if he relieved Agonoy from his official duties, and refused to give the latter his salary, RATA and other benefits.

In its comment on the petition, the Office of the Special Prosecutor (OSP) avers that although the petitioner was not a party in CSC Case No. 99-2137, he was bound to enforce the CSC Resolution of September 21, 1999 as Municipal Mayor of Bacarra, and may even be cited for contempt for his refusal to do so. The OSP maintains that the resolution of the CSC was immediately executory, considering that Agonoy did