

## EN BANC

[ G.R. NO. 161081, May 10, 2005 ]

**RAMON M. ATIENZA, IN HIS CAPACITY AS VICE-GOVERNOR OF THE PROVINCE OF OCCIDENTAL MINDORO, PETITIONER, VS. JOSE T. VILLAROSA, IN HIS CAPACITY AS GOVERNOR OF THE PROVINCE OF OCCIDENTAL MINDORO, RESPONDENT.**

### DECISION

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

Before the Court is the petition for review on certiorari filed by Ramon M. Atienza, in his capacity as Vice-Governor of the Province of Occidental Mindoro, seeking to reverse and set aside the Decision<sup>[1]</sup> dated November 28, 2003 of the Court of Appeals in CA-G.R. SP No. 72069. The assailed decision dismissed the petition for prohibition under Rule 65 of the Rules of Court filed by petitioner Atienza which had sought to enjoin the implementation of the Memoranda dated June 25, 2002 and July 1, 2002 issued by Jose T. Villarosa, Governor of the same province.

The present case arose from the following undisputed facts:

Petitioner Atienza and respondent Villarosa were the Vice-Governor and Governor, respectively, of the Province of Occidental Mindoro. On June 26, 2002, the petitioner Vice-Governor received the Memorandum dated June 25, 2002 issued by the respondent Governor concerning the "AUTHORITY TO SIGN PURCHASE ORDERS OF SUPPLIES, MATERIALS, EQUIPMENT[S], INCLUDING FUEL, REPAIRS AND MAINTENANCE OF THE *SANGGUNANG PANLALAWIGAN*." The said memorandum reads:

For proper coordination and to ensure efficient and effective local government administration particularly on matters pertaining to supply and property management, effective immediately, all Purchase Orders issued in connection with the procurement of supplies, materials and equipment[s] including fuel, repairs and maintenance needed in the transaction of public business or in the pursuit of any undertaking, project or activity of the Sangguniang Panlalawigan, this province, shall be approved by the undersigned in his capacity as the local chief executive of the province.

The provision of DILG Opinion No. 148-1993 which states that the authority to sign Purchase Orders of supplies, materials and equipment[s] of the Sanggunian belongs to the local chief executive, serves as basis of this memorandum.

For strict compliance.<sup>[2]</sup>

In reply to the above memorandum, the petitioner Vice-Governor wrote the respondent Governor stating that:

We are of the opinion that . . . purchase orders for supplies, materials and equipment are included under those as authorized for signature by the Vice-chief executive of the Sanggunian on the basis of the DILG Opinion No. 96-1995 as affirmed by the COA Opinions on June 28, April 11 and February 9, 1994 and coursing it to the Governor for his approval is no longer necessary, the fact that [Secs.] 466 and 468, RA 7160 already provides for the separation of powers between the executive and legislative. Such authority even include everything necessary for the legislative research program of the Sanggunian.<sup>[3]</sup>

Unimpressed, the respondent Governor issued the Memorandum dated July 1, 2002 relating to the "TERMINATION OF CONTRACT OF SERVICES OF CASUAL/JOB ORDER EMPLOYEES AND REAPPOINTMENT OF THE RESPECTIVE RECOMMENDEES." The said memorandum reads:

For faithful and appropriate enforcement and execution of laws and issuances and to promote efficiency in the government service, effective immediately, all existing contract of employment – casual/job order basis and reappointment of the recommendees – entered into by Vice-Governor Ramon M. Atienza are hereby terminated for being unauthorized.

Aside from being signed by the unauthorized signatory, the following facts regarding the appointments were considered:

1. The appointment of 28 clerks – on top of existing permanent employees – is a clear manifestation of an excessive and bloated bureaucracy;
2. The appointment of an X-ray Technician detailed at the Provincial Health Office and some clerks detailed at various offices in the province were not proper to be assigned by the Vice-Governor;
3. The appointment of 30 messengers, utility workers and drivers ran counter to COA Opinion as cited in the letter of the undersigned dated 28 June 2002, addressed to the Vice-Governor.

However, in order to accommodate the Vice-Governor and the members of the Sangguniang Panlalawigan, the undersigned, in his capacity as the local chief executive of the province, will allow four (4) casual/job order employees to be assigned to the Vice-Governor and one (1) casual/job order employee to be assigned to each member of the Sangguniang Panlalawigan.

The Vice-Governor and all the Sanggunian Members are hereby directed to submit immediately the names of their recommendees to the undersigned for immediate approval of their respective appointments.

Please be guided accordingly.<sup>[4]</sup>

On July 3, 2002, the respondent Governor issued another Memorandum regarding the "ENFORCIBILITY (sic) OF PREVIOUS MEMORANDA ISSUED ON JUNE 20, 26 AND JULY 1, 2002." It provides that:

Please be properly advised that the Memoranda dated June 20, 26 and July 1, 2002 issued by the undersigned regarding the issuance of permit to travel and authority to sign Purchase Orders of supplies, materials, equipment, including fuel, repairs and maintenance of the Sangguniang Panlalawigan, is to be strictly adhered to for compliance.

Likewise for strict compliance is the Memorandum dated July 1, 2002 with reference to the *Cancellation of the Appointment of Casual/Job Order Employees of the Sangguniang Panlalawigan Members/Office of the Vice-Governor previously signed by Vice-Governor Ramon M. Atienza.*

Please be guided accordingly.<sup>[5]</sup>

In his Letter dated July 9, 2002, the petitioner Vice-Governor invoked the principle of separation of powers as applied to the local government units, i.e., the respondent, as the Governor, the head of the executive branch, and the petitioner, as the Vice-Governor, the head of the legislative branch, which is the *Sangguniang Panlalawigan*. The petitioner Vice-Governor reiterated his request for the respondent to make a "deeper study" on the matter before implementing his memoranda. The request, however, went unheeded as the respondent Governor insisted on obliging the department heads of the provincial government to comply with the memoranda.

The petitioner Vice-Governor thus filed with the Court of Appeals the petition for prohibition assailing as having been issued with grave abuse of discretion the respondent Governor's Memoranda dated June 25, 2002 and July 1, 2002. The petitioner Vice-Governor claimed that these memoranda excluded him from the use and enjoyment of his office in violation of the pertinent provisions of Republic Act No. 7160, or the Local Government Code of 1991, and its implementing rules and regulations. It was prayed that the respondent Governor be enjoined from implementing the assailed memoranda.

The appellate court, in its Decision dated November 28, 2003, dismissed the petition for prohibition. Citing Section 344<sup>[6]</sup> of Rep. Act No. 7160, the CA upheld the authority of the respondent Governor to issue the Memorandum dated June 25, 2002 as it recognized his authority to approve the purchase orders. The said provision provides in part that "approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed."

The CA explained that Section 466(a)(1)<sup>[7]</sup> of the same Code, relied upon by the petitioner Vice-Governor, speaks of the authority of the Vice-Governor to sign "all warrants drawn on the public treasury for all expenditures appropriated for the operation of the *sangguniang panlalawigan*." In declaring this provision inapplicable, the CA reasoned that the approval of purchase orders is different from the power of the Vice-Governor to sign warrants drawn against the public treasury.

Section 361<sup>[8]</sup> was, likewise, held to be inapplicable ratiocinating, thus:

[R]equisitioning, which is provided under Section 361 of RA 7160, is the act of requiring that something be furnished. In the procurement function, it is the submission of written requests for supplies and materials and the like. It could be inferred that, in the scheme of things, approval of purchase requests is different from approval of purchase orders. Thus, the inapplicability of Section 361.

Anent the Memorandum dated July 1, 2002, the CA ruled that the issue on whether it could be enjoined had already been rendered moot and academic. The CA pointed out that the subject of the said memorandum could no longer be enjoined or restrained as the termination of the employees had already been effected. It opined that where the act sought to be enjoined in the prohibition proceedings had already been performed and there is nothing more to restrain, the case is already moot and academic.

The petitioner Vice-Governor now seeks recourse to this Court alleging that the appellate court committed reversible error in ruling that it is the Governor, and not the Vice-Governor, who has the authority to sign purchase orders of supplies, materials, equipment, including fuel, repairs and maintenance of the *Sangguniang Panlalawigan*. The petitioner Vice-Governor, likewise, takes exception to the holding of the CA that the issue relating to the July 1, 2002 Memorandum had been rendered moot and academic. He points out that the appointment of casual/job order employees is exercised by the appointing authority every six months in the case of casual employees and per job order as to job order employees. Thus, while the July 1, 2002 Memorandum had already been implemented, what is being sought to be enjoined is the respondent Governor's continued usurpation of the petitioner Vice-Governor's authority to appoint the employees of the *Sangguniang Panlalawigan* under the pertinent provisions of Rep. Act No. 7160.

For his part, the respondent Governor maintains that his Memoranda dated June 25, 2002 and July 1, 2002 are valid. He asserts that the approval of purchase orders is different from the power of the Vice-Governor to sign warrants drawn against the provincial treasury under Section 466(a)(1) of Rep. Act No. 7160. Rather, he insists on the application of the last clause in Section 344 which states that the approval of the disbursement by the local chief executive is required whenever local funds are disbursed.

The respondent Governor likewise defends the validity of the Memorandum dated July 1, 2002 stating that it was issued upon finding that the petitioner Vice-Governor appointed, among others, 28 clerks on top of the existing permanent employees resulting in an excessive and bloated bureaucracy. He concedes the appointing power of the Vice-Governor but submits that this is limited to the employees of the *Sangguniang Panlalawigan* and that he is not authorized to appoint officials and employees of the Office of the Vice-Governor.

As correctly presented by the appellate court, the issues for resolution in this case are:

A. Who between the petitioner and the respondent is authorized to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs and maintenance of the Sangguniang Panlalawigan?

B. Does respondent Villarosa, as local chief executive, have the authority to terminate or cancel the appointments of casual/job order employees of the Sangguniang Panlalawigan Members and the Office of the Vice-Governor?<sup>[9]</sup>

Before resolving the foregoing issues, it is noted that petitioner Atienza and respondent Villarosa had ceased to be the Vice-Governor and Governor, respectively, of the Province of Occidental Mindoro effective June 30, 2004 when the newly-elected officials of the province took their oaths of offices. The petitioner Vice-Governor did not run for re-election during the May 2004 elections while the respondent Governor did not succeed in his re-election bid. The expiration of their terms of offices has effectively rendered the case moot. However, even in cases where supervening events had made the cases moot, the Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar and the public.<sup>[10]</sup> In this case, there is compelling reason for the Court to resolve the issues presented in order to clarify the scope of the respective powers of the Governor and Vice-Governor under the pertinent provisions of the Local Government Code of 1991.

To resolve the substantive issues presented in the instant case, it is well to recall that Rep. Act No. 7160 was enacted to give flesh to the constitutional mandate to "provide for a more responsive and accountable local government structure instituted through a *system of decentralization* with effective mechanism of recall, initiative and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, *powers and functions and duties of local officials*, and all matters relating to the organization and operation of the local units."<sup>[11]</sup>

In this connection, the provisions of Rep. Act No. 7160 are anchored on principles that give effect to decentralization. Among these principles are: [t]here shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources; [t]here shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities; [p]rovinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions; and [e]ffective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership.<sup>[12]</sup>

With these guideposts, the Court shall now address the issue on who between the Governor and Vice-Governor is authorized to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs and maintenance of the *Sangguniang Panlalawigan*.

We hold that it is the Vice-Governor who has such authority.

Under Rep. Act No. 7160, local legislative power for the province is exercised by the