

EN BANC

[G.R. No. 137718, January 28, 2000]

REYNALDO O. MALONZO, IN HIS CAPACITY AS CITY MAYOR OF CALOOCAN CITY, OSCAR MALAPITAN, IN HIS CAPACITY AS VICE-MAYOR OF CALOOCAN CITY, CHITO ABEL, BENJAMIN MANLAPIG, EDGAR ERICE, DENNIS PADILLA, ZALDY DOLATRE, LUIS TITO VARELA, SUSANA PUNZALAN, HENRY CAMAYO, IN THEIR CAPACITIES AS MEMBERS OF THE SANGGUNIAN PANLUNGSOD OF CALOOCAN CITY, PETITIONERS, VS. HON. RONALDO B. ZAMORA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. RONALDO V. PUNO, IN HIS CAPACITY AS UNDERSECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, AND EDUARDO TIBOR, RESPONDENTS.

RESOLUTION

DE LEON, JR., J.:

On March 15, 1999, the Office of the President (OP) through Executive Secretary Ronaldo Zamora, rendered a Decision^[1] the dispositive portion of which reads, viz.:

"WHEREFORE, herein respondents Mayor Reynaldo Malonzo, Vice-Mayor Oscar G. Malapitan and Councilors Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolatre, Susana Punzalan, Henry Cammayo, and Luis Tito Varela, all of Caloocan city are hereby adjudged guilty of misconduct and each is meted the penalty of SUSPENSION from office for a period of three (3) months without pay to commence upon receipt of this Decision. This Decision is immediately executory.

SO ORDERED."

On March 22, 1999, petitioners Mayor Reynaldo Malonzo, Vice-Mayor Oscar G. Malapitan and councilors Chito Abel, Benjamin Manlapig, Edgar Erice Dennis Padilla, Zaldy Dolatre, Luis Tito Varela, Susana Punzalan, and Henry Cammayo, all of the City of Caloocan, filed a petition assailing the OP decision.

On July 27, 1999, We granted the petition and accordingly annulled and set aside the OP decision for having been rendered with grave abuse of discretion and/or excess of jurisdiction. We held:

"x x x [T]he instant petition has been properly brought before us in the light of the importance of the subject matter and the transcendental nature of the issues raised. Realignment of [items in the annual budget] is a common practice borne of necessity and sanctioned by law. Just how such a common practice may be carried out within the bounds of law, considering the fact that public funds are at stake, is, we believe, an issue that is not only one of first impression, but likewise of considerable

significance as a guide to local governance . x x x

"x x x The OP found petitioners guilty of misconduct on the ground that x x x

"x x x the P39,352,047.75 appropriated in Ordinance 0254 to fund the expropriation of Lot 26 of the Maysilo Estate was merely a portion of the P50 million included and appropriated in the 1998 Annual Budget for expropriation purpose and x x x the judicial action for expropriation x x x is still pending with the court. This being so, the amount allocated for the expropriation cannot be reverted to or be deemed as savings to serve as funds actually available for the supplemental budget. x x x

"We cannot, however, agree x x x.

"The OP's premise, in our opinion, rests upon an erroneous appreciation of facts on record. The OP seems to have been confused as to the figures and amounts actually involved. A meticulous analysis of the records would show that there really is no basis to support the OP's contention that the amount of P39,352,047.75 was appropriated under Ordinance No. 0254, S. 1998, since in truth and in fact, what was appropriated in said ordinance was the amount of P39,343,028.00. The allocation of P39,352,047.75 is to be found in the earlier Ordinance no. 0246,S.1997 which is a separate and distinct ordinance. x x x "x x x

"Section 322 of the Code upon which the OP anchored its opinion that petitioners breached a statutory mandate provides:

"SEC. 322. *Reversion of Unexpended Balances of Appropriations, Continuing Appropriations* – Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the unappropriated surplus of the general funds at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or settled."

"Based on the above provision, the OP reached the determination that Ordinance No. 0254, S. 1998 could not have lawfully realigned the amount of P39,352,047.75 which was previously appropriated for the expropriation of Lot 26 of the Maysilo Estate since such appropriation was in the nature of a capital outlay until fully spent, reverted, or the project for which it is earmarked is completed.

"The question, however, is not whether the appropriation of P39,352,047.75 could fall under the definitions of continuing appropriation and capital outlays, considering that such amount was not the subject of realignment made by Ordinance No. 0254, Series of 1998.

Rather, the issue is whether petitioners are liable for their actions in regard to said ordinance which actually realigned a position of the P50 million which was simply denominated in a general manner as "Expropriation of Properties" and classified under "Current Operating Expenditures" in the 1998 Annual Budget of Caloocan City. Clearly, these are two distinct amounts separate from each other. x x x *[T]he P50 million was NOT appropriated for the purpose of purchasing Lot 26 of the Maysilo Estate but rather for expenses incidental to expropriation such as relocation of squatters, appraisal fee, expenses for publication, mobilization fees and expenses for preliminary studies.* x x x The appropriation of P39,352,047.75 under Ordinance No. 0246, S. 1997 is, we believe, still a subsisting appropriation that has never been lumped together with other funds to arrive at the sum of P50 million allocated in the 1998 budget. To be sure, denomination of the P50 million amount as "Expropriation of Properties left much to be desired and would have been confused with the appropriation for expropriation under Ordinance No. 0246, S. 1997, but had respondents probed deeper into the actual intention for which said amount was allocated then they would have reached an accurate characterization of the P50 million.

Bearing in mind, therefore, the fact that it is the P50 million which is now being realigned, the next logical question to ask is whether such amount is capable of being lawfully realigned. To this we answer in the affirmative.

"x x x [R]espondents x x x argued x x x that realignment shall not be allowed when what is involved are continuing appropriations or capital outlays. But this argument becomes clearly inapplicable in view of our disquisition above x x x. The realignment x x x pertained to the P50 million which was classified as "Current Operating Expenditures" x x x

"x x x [W]hat is being realigned is the P50 million appropriation which is classified, neither as a capital outlay nor a continuing appropriation x x x

As to the alleged violation of Sections 50 and 52 of the Code requiring the adoption of house rules and the organization of the council, we believe that the same hardly merits even cursory consideration. We cannot infer x x x that no other business [like the enactment of the ordinance] may be transacted on the first regular session except to the take up the matter of adopting or updating rules.

"The foregoing explanation leads us to the ineluctable conclusion that, indeed, respondents committed grave abuse of discretion. Not only [is] their reasoning flawed but [it is] likewise lacking in factual and legal support. Misconduct, being a grave administrative offense for which petitioners stood charged, cannot be treated cavalierly. There must be clear and convincing proof on record that petitioners were motivated by wrongful intent, committed unlawful behavior in relation to their offices, or transgressed some established and definite rules of action. But, as we have stressed above, petitioners were acting within legal bounds."

The dispositive portion of Our Decision of March 22, 1999, reads, thus:

"WHEREFORE, the instant petition is hereby GRANTED. The assailed decision of the office of the president in O.P. Case No. 98-H-8520 dated March 15, 1999 is ANNULLED and SET ASIDE for having been rendered with grave abuse of discretion amounting to lack and/or excess of jurisdiction. Consequently, respondents, their subordinates, agents, representatives, and successors-in-interest are permanently enjoined from enforcing or causing the execution in any manner of the aforesaid decision against petitioners."

On August 12, 1999, the Office of the Solicitor General filed a Motion for Reconsideration^[2] contending that:

- I. The OP did not err in its appreciation of facts;
- II. Ordinance No. 0254, Series of 1998 was passed without funds actually available;
- III. Ordinance No. 0254, Series of 1998 was also enacted without sufficient compliance with Section 50, Chapter 3, Title II of the Local Government Code of 1991;
- IV. Petitioners' failure to observe the stricture in the enactment of the Supplemental Budget Ordinance constitutes misconduct; and
- V. Assuming arguendo that the OP did err in its appreciation of the facts on record, still this does not constitute grave abuse of discretion which can be reviewed by this Court through a special civil action for certiorari.

On October 20, 1999, petitioners filed their Comment and/or Opposition to Motion for Reconsideration.^[3]

These issues have already been discussed in Our Decision of July 27, 1999. As respondents persist in their stance, we must also thus restate our position to dispel any and all doubts on the matter.

First. Respondents aver that in their Consolidated Answer which petitioners filed before the OP^[4], petitioners admitted that the sum of P39,352,047.75 under Ordinance No. 0246, Series of 1997 was included in the P50,000,000.00 denominated in a general manner as "Expropriation of Properties" and classified under "Current Operating Expenditures" in the 1998 Budget of Caloocan City. Petitioners however allegedly only took a different position in their pleadings on appeal and during the oral argument before the Court as they clarified that the sum of P39,352,047.75 under Ordinance No. 0246 Series of 1997 is separate and distinct from and not part of the sum of P50,000,000.00 categorized as "Current Operating Expenditures" in the 1998 Budget of Caloocan City. Respondents insist that petitioners may not change their theory for the first time on appeal since their admissions before the OP bind them, and to do so would be offensive to the basic rules of fair play and justice.

We disagree.