NOTE:

ANALYTICAL SURVEY OF 1997 AND 1998 SUPREME COURT DECISIONS IN LOCAL GOVERNMENT (*Rulings and Comments*)

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I. 1997 DECISIONS

A. Municipal property

1. *Municipality of San Juan v. Court of Appeals*[1]

Then President Ferdinand Marcos issued on February 17, 1978 Proclamation No. 1716, reserving for municipal government center site purposes certain parcels of land of the public domain located in the Municipality of San Juan, Metro Manila. On October 6, 1987, after Congress had already convened on July 26, 1987, former President Corazon Aquino issued Proclamation No. 164, amending Proclamation No. 1716 by excluding from its operation the parcels of land not being utilized for government center sites purposes, but actually occupied for residential purposes and declaring the land open to disposition.

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[1] G.R. No. 125183, 29 September 1997, 279 SCRA 711.

Ruling

It was held that Proclamation No. 164 is invalid because when Congress convened on July 26, 1987, President Aquino had already lost the legislative power granted her under article II, section 1 of the Freedom Constitution. Proclamation No. 1716 was issued by the late President Marcos in 1978 in the due exercise of legislative power vested upon him by Amendment No. 6 (introduced in 1976) and hence may only be amended by an equally valid act of legislation.

Comment

Ordinarily, a presidential proclamation may be amended by another presidential proclamation. The instant case, however, is unique because Proclamation No. 1716 was issued during the martial law period when the then President was exercising legislative powers, whereas Proclamation No. 164 was not issued pursuant to legislative powers.

B. Police power; general welfare clause

2. *Tano v. Socrates*[2]

Rulings

(a) Ordinance No. 15-92 dated December 15, 1992 of the *Sangguniang Panlungsod* of Puerto Princesa City, Office Order No. 23 of the Acting City Mayor of Puerto Princesa, and Resolution No. 33, Ordinance No. 2, series of 1993, dated February 1993, of the *Sangguniang Panlalawigan* of Palawan, are valid and not unconstitutional.

Ordinance No. 15-92 of *the Sangguniang Panlungsod* of Puerto Princesa banned the shipment of all live fish and lobster outside Puerto Princesa from January 1, 1993 to January 1, 1998. Resolution No. 33 and Ordinance No. 2, series of 1993, of the *Sangguniang Panlalawigan* of Palawan prohibited

[2] G.R. No. 110249, 21 August 1997, 278 SCRA 154.

catching, gathering, possessing, buying, selling and shipping live marine coral dwelling aquatic organisms in and coming from Palawan waters for a period of five years.

(b) There were two sets of petitioners. To the first set belonged those criminally charged with violating the aforesaid ordinances and to the second belonged those claiming to be fishermen along with several maritime merchants. The Court held that the cases they filed were premature and not properly filed with the Supreme Court because they were in the nature of petitions for declaratory relief. Also, the ordinances did not deprive them of due process of law, livelihood, nor unduly restrict them from the practice of their trade.

(c) Petitioners' invocation of article XII, section 2, and article XIII, sections 2 and 7 of the Constitution was misplaced. Section 2 of article XII provides among other things, that Congress may by law allow the small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. Section 7 of article XIII provides, among other things, that the State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore.

The Court held that there was no showing that any of the petitioners qualified as a subsistence or marginal fisherman.

(d) Section 2 of article XII does not primarily aim to bestow any right to subsistence fishermen, but to lay stress on the duty of the State to protect the nation's marine wealth because it principally provides that "[t]he State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."

(e) The only provision of law which speaks of a preferential right of marginal fishermen is section 149 of the Local Government Code,[3] which

[3] Rep. Act No. 7160 (1991).

provides that cooperatives of marginal fishermen shall have the preferential right to such fishery privileges. This case, however, does not involve such right to fishery privileges, which are "to erect corrals, oyster, mussels or other aquatic beds or *bangus* fry areas, within definite zone of the municipal waters."

(f) Section 7 of article XIII speaks not only of the use of communal marine and fishing resources, but of their protection, development and conservation. The ordinances in question are meant precisely to protect and conserve marine resources to the end that their enjoyment may be guaranteed not only for the present generation, but also for the generations to come. The so-called "preferential right" of subsistence or marginal fishermen to the use of marine resources is not at all absolute. In accordance with the Regalian Doctrine, marine resources belong to the State, and pursuant to the first paragraph of article XII, section 2, of the Constitution, their "exploration, development and exploitation... shall be under the full control and supervision of the State." This implies certain restrictions on whatever right of enjoyment there may be in favor of anyone.

(g) Moreover, the State policy regarding the duty of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature[4] is enshrined in the Constitution and reiterated in *Oposa v. Factoran*.[5] The provisions of the Local Government Code merely seek to give flesh and blood to the right of the people to a balanced and healthful ecology. Section 16 or the General Welfare Clause of the Local Government Code mentions this right. Section 5, paragraph (c) of the Local Government Code explicitly mandates that the general welfare clause of the Local Government Code "shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people of the community."

(h) The Local Government Code[6] vests municipalities with the power to grant fishery privileges in municipal waters and impose rentals, fees or

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[4] CONST. art. II, sec. 16.

[5] G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[6] Rep. Act No. 7160 (1991), sec. 149.

charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the *sangguniang bayan*, the *sangguniang panlungsod* and the *sangguniang panlalawigan* are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that "protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing... and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or of ecological imbalance."[7]

(i) The centerpiece of the Local Government Code is the system of decentralization.[8] Indispensable to decentralization is devolution, and the Local Government Code expressly provides that "[a]ny provision on a power of a local government unit shall be liberally interpreted in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government concerned."[9] One of the devolved powers is the enforcement of fishery laws in municipal waters including the conservation of mangroves,[10] which necessarily includes the enactment of ordinances to effectively carry out such fishery laws within the municipal waters.

(j) Additionally, the ordinances in question find full support under Republic Act No. 7611, otherwise known as the Strategic Environmental Plan for Palawan Act.

Comment

The ruling in this case boosts the policy of the State to protect and preserve the environment and promotes local autonomy as provided for in the Constitution and the Local Government Code.

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[7] Rep. Act No. 7160 (1991), sec. 447, par. (a) (1) (vi); sec. 458, par. (a) (1) (vi); sec. 468, par. (a) (1) (vi).

[8] Rep. Act No. 7160 (1991), sec. 2, par. (a).

[9] Rep. Act No. 7160 (1991), sec. 5, par. (a).

[10] Rep. Act No. 7160 (1991), sec. 17, par. (b) (2) (i).

C. Local legislation

3. *Moday v. Court of Appeals*[11]

The main issue in this case is whether a municipality may expropriate private property by virtue of a municipal resolution which was disapproved by the *sangguniang panlalawigan.*

On June 23, 1989, the *Sangguniang Bayan* of the Municipality of Bunawan in Agusan del Sur passed Resolution No. 43-89 authorizing the Municipal Mayor to initiate the petition for expropriation of a one-hectare portion of a lot owned by Percival Moday for the site of Banawan Farmers Center and other government sports facilities. It was disapproved by the *Sangguniang Panlalawigan* of Agusan del Sur because "expropriation is unnecessary considering that there are still available lots in Bunawan for the establishment of the government center." A petition for eminent domain was filed in court.

Rulings

(a) The disapproval by the *Sangguniang Panlalawigan* of Agusan del Sur of Municipal Resolution No. 43-89 of the Municipality of Bunawan, same province, was an infirm action which did not render said resolution null and void. The old Local Government Code[12] grants the *sangguniang panlalawigan* the power to declare municipal resolution invalid on the sole ground that it is beyond the power of the *sangguniang bayan* or the mayor to issue. Absolutely no other ground is recognized by law.[13]

(b) The *sangguniang panlalawigan* was without authority to disapprove the said Municipal Resolution because the Municipality of Bunawan clearly has the power to exercise the right of eminent domain and its *sangguniang bayan* has the capacity to promulgate said resolution, pursuant to section 9 of Batas Pambansa Bilang 337.

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[11] G.R. No. 107916, 20 February 1997, 268 SCRA 586.
[12] B.P.Blg. 337 (1983), sec. 153.
[13] Velazco v. Blas, G.R. No. L-30456, 30 July 1982, 115 SCRA 540.

Comment

Under the Local Government Code of 1991, a similar provision on review by the *sangguniang panlalawigan* of ordinances and resolutions is found in section 56, paragraph (c). The power of eminent domain of local government units is provided for in section 19. Also in the same Code, a similar provision on review by the *sangguniang panlalawigan* of municipal ordinances and resolutions is found in section 56, paragraph (c).

It will be noted that under said section 56, the only ground for the *sangguniang panlalawigan* to declare an ordinance or resolution of the *sangguniang bayan* or *sangguniang panlungsod* invalid is that it is *ultra vires* or beyond the power conferred upon the lower *sanggunians*. On the other hand, there are two grounds provided by law in section 55 for a local chief executive to veto an ordinance of the *sanggunian* concerned, namely, that it is *ultra vires* or prejudicial to the public welfare.

D. Disciplinary actions

4. *Grego v. Comelec*[14]

On October 31, 1981, Humberto Basco was removed as Deputy Sheriff of Manila by the Supreme Court in an administrative case filed against him. He ran for City Councilor in 1988 and won, and was reelected in the 1992 and 1995 elections.

Wilmer Grego sought his disqualification under section 40, paragraph (b) of Republic Act No. 7160, that is, for having been removed from office as a result of an administrative case.

Rulings

(a) Section 40, paragraph (b) of Republic Act No. 7160, which provides

[14] G.R. No. 125955, 19 June 1997, 274 SCRA 481.

that those removed from office as a result of an administrative case are disqualified to run for a local elective position, does not apply retroactively or does not apply to those removed from office before the effectivity of the Local Government Code of 1991 on January 1, 1992.

(b) Councilor Humberto Basco was not subject to any disqualification at all under section 40, paragraph (b) of the Local Government Code, as it could not be retroactively applied to him. There was no necessity to resolve the question of whether his election to office in the 1988, 1992 and 1995 elections wiped away the administrative penalty of dismissal as Deputy Sheriff of Manila. Also, the adverse decision of the Supreme Court in the administrative case did not bar Basco from running for any elective position. Although the decretal portion of the Supreme Court decision in the administrative case stated that his removal was with prejudice to reinstatement to any position in the national or local government, the term "reinstatement" has a technical meaning referring only to an appointive position.

(c) As there were only six slots for district councilors, of which Basco got the last and sixth slot, the seventh placer could not be declared as a winning candidate because Basco was not disqualified. It is now a jurisprudential rule that a second placer (in case only one slot is available to the winner who happens to be disqualified) may not be declared the winning candidate.[15] The exception mentioned in the decided cases did not obtain in this case.

Comment

This particular disqualification under section 40 of Republic Act No. 7160 does not obtain in a situation where the decision in the administrative case removing the respondent from office is not yet final as when there is a pending motion for reconsideration or a timely appeal. On this point, the Supreme Court ruling in *Aguinaldo v. Santos*[16] is illustrative.

[15] Labo v. COMELEC, G.R. No. 105111, 3 July 1992, 211 SCRA 496.
[16] G.R. No. 94115, 21 August 1992, 212 SCRA 768.

5. *Rios v. Sandiganbayan*[17]

An information was filed against petitioner Dindo C. Rios, Mayor of the Municipality of San Fernando, Romblon, for the alleged unauthorized disposition of confiscated lumber, in violation of the Anti-Graft and Corrupt Practices Act.[18] The *Sandiganbayan* granted the motion of the Office of the Special Prosecutor to suspend the accused, *pendente lite*, for a period of 90 days.

Rulings

(a) The act of Mayor Dindo Rios in disposing of confiscated lumber without prior authority from the Department of Environment and Natural Resources and the *Sangguniang Bayan* constituted a violation of section 3, paragraph (e) of the Anti-Graft and Corrupt Practices Act, for causing undue injury to the government.

(b) Pursuant to section 13 of Republic Act No. 3019, the *Sandiganbayan* can preventively suspend from office an accused public officer who has been validly charged with a violation of Republic Act No. 3019, Book II, Title 7 of the Revised Penal Code, or an offense involving fraud upon government or public funds or property. However, in accordance with section 63, paragraph (b) of the Local Government Code, any single preventive suspension of local elective officials shall not extend beyond 60 days. Hence, the 90-day suspension imposed by the *Sandiganbayan* on the petitioner was not proper.

Comment

The ruling in this case in effect modifies that enunciated in the earlier case of *Deloso v. Sandiganbayan*[19] where the Supreme Court fixed a maximum of 90 days preventive suspension on public officers facing criminal cases before the courts. In this case, the maximum duration of such a court-ordered preventive suspension arising from a criminal case was reduced to 60 days. This

[17] G.R. No. 129913, 26 September 1997, 279 SCRA 581.
[18] Rep. Act. No. 3019 (1960).
[19] G.R. Nos. 86899-903, 15 May 1989, 173 SCRA 74.

is now at par with the duration of the preventive suspension of a local elective official who is a respondent in an administrative case.

E. Recall elections

6. *Angobung v. Commission on Elections*[20]

Sometime in September 1996, Atty. Aurora de Alban filed with the Local Election Registrar a petition for recall against Mayor Ricardo Angobung of the Municipality of Tumauini, Isabela. The Comission on Elections *en banc* issued a resolution approving the petition. Mayor Angobung attacked the aforementioned resolution as being unconstitutional on two main grounds: (1) that the resolution approved the petition for recall even if signed by only one person, in violation of the statutory 25% minimum requirement as to the number of signatures supporting any petition for recall; and (2) that the resolution scheduled the recall election within one (1) year from the May 12, 1997 *Barangay* Elections.

Rulings

(a) In light of the Supreme Court pronouncement in the earlier case of *Paras v. Commission on Elections,*[21] the recall election scheduled on December 2, 1996 in the instant case was not barred by the May 12, 1997 *Barangay* Elections. In construing the meaning of the term "regular local election" in section 74, paragraph (b) of the Local Government Code of 1991, which provides that "[n]o recall shall take place within one (1) year... immediately preceding a regular local election," the Court ruled that for the time bar to apply, the approaching regular local election must be one where the position of the official to be recalled is to be actually contested and filled by the electorate. Resolution No. 96-2951 is therefore valid.

(b) Section 70, paragraph (d) of the Local Government Code expressly provides that "[r]ecall of any elective...municipal...official may also be validly initiated upon petition of at least twenty-five percent (25%) of the total

[20] G.R. No. 126576, 5 March 1997, 269 SCRA 245.
[21] G.R. No. 123169, 4 November 1996, 264 SCRA 49.

number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected." The law is plain and unequivocal: only a petition of at least 25% of the total number of registered voters may validly initiate recall proceedings. The Court took careful note of the phrase "petition of at least twenty-five percent (25%)." The law does not state that the petition must be signed by at least 25% of the registered voters; rather, the petition must be of or by at least 25% of the registered voters, *i.e.*, the petition must be filed, not by one person only, but by at least 25% of the total number of registered voters. This is understandable, since the signing of the petition is statutorily required to be undertaken "before the election registrar or his representative, and in the presence of a representative of the official sought to be recalled, and in a public place in the... municipality...." Hence, while the initiatory recall petition may not yet contain the signatures of at least 25% of the total number of registered voters, the petition must contain the names of at least 25% of the total number of registered voters in whose behalf only one person may sign the petition in the meantime.

Comment

The ruling in this case draws support or is basically anchored on the wordings or language of the law.

7. Malonzo v. Commission on Elections[22]

On July 7, 1995, 1,057 *punong barangays* and *sangguniang barangay* members and *sangguniang kabataan* chairmen, constituting a majority of the members of the Preparatory Recall Assembly of Caloocan City, met, and upon deliberation and election, voted for the approval of Preparatory Recall Assembly Resolution No. 01-91, expressing loss of confidence in Mayor Malonzo, and calling for the initiation of recall proceedings against him. The Commission on Elections found the recall proceedings to be in order. Mayor Malonzo assailed the Commission's ruling before the Supreme Court, questioning the validity of the institution and proceedings of the recall, putting to fore the propriety

[22] G.R. No. 127066, March 11, 1997, 269 SCRA 380.

of the service of notices to the members of the Preparatory Recall Assembly, and the proceedings held.

Rulings

(a) The proceedings of the recall of Mayor Reynaldo Malonzo of Caloocan City were found to be valid. The issue of the propriety of the notices sent to the members of the Preparatory Recall Assembly was factual in nature, and the determination of the same a function of the Commission on Elections which the Supreme Court should not disturb in the absence of patent error or serious inconsistencies in the findings. Parenthetically, as observed by the Commission on Elections, the fact that it was the President of the *Liga ng mga Barangay*, Alex David, who sent the notices is of no moment because he was a member of the Preparatory Recall Assembly.

(b) Petitioner's insistence that the initiation of the recall proceedings was infirm since it was convened by the *Liga ng Mga Barangay* is misplaced. Petitioner argued that "respondent *Liga* is an organization of all *barangays*. It is not an organization of *barangay* captains and *kagawads*. The *barangays* are represented in the *Liga* by the *barangay* captains as provided under section 492 of the Local Government Code. It also provides that the *Kagawad* may represent the *barangay* in the absence of the *Barangay* Chairman." The *Liga ng mga Barangay* is undoubtedly an entity distinct from the Preparatory Recall Assembly. It was only circumstantial that the personalities representing the *barangays* in the *Liga* were the very members of the Preparatory Recall Assembly, a majority of whom met on July 7, 1996, and voted in favor of the resolution recalling Mayor Reynaldo Malonzo. Thus, the *punong barangays* and *sangguniang barangay* members were summoned and voted as members of the Preparatory Recall Assembly of the City of Caloocan, and not as members of the *Liga ng mga Barangay*. The recall proceedings were therefore valid.

Comment

A few years ago, a contrary finding was made by the Supreme Court in the case of *Garcia v. Commission on Elections,*[23] wherein the initiation of recall elections against then Governor Enrique Garcia of Bataan through a Preparatory Recall Assembly was held invalid due to procedural defects in sending the required notices to the members of the Preparatory Recall Assembly and in complying with the required majority to pass a resolution for the purpose.

F. *Sangguniang Barangay*

8. *David v. Commission on Elections;*[24] *Liga ng mga Barangay, Quezon City Chapter v. Commission on Elections*[25]

Alex David, in his capacity as *Barangay* Chairman of *Barangay 77*, Zone 7, Kalookan City and as President of the *Liga ng mga Barangay sa Pilipinas*, filed a petition for prohibition in the Supreme Court to prohibit the holding of the *barangay* election scheduled on the second Monday of May 1997. The other petitioner, *Liga ng mga Barangay* Quezon City Chapter, contested the application of section 43, paragraph (c) of Republic Act No. 7160 which provides that the term of office of *barangay* officials and members of the *sangguniang kabataan* shall be for three years, which shall begin after the regular election of *barangay* officials on the second Monday of May 1994.

The question is: how long is the term of office of *barangay* chairmen and other *barangay* officials who were elected to their respective offices on the second Monday of May 1994? Is it three years, as provided in the Local Government Code, or five years, as contained in Republic Act No. 6679? Contending that their term was five years, petitioners asked the Supreme Court to order the cancellation of the scheduled *barangay* election on May 12, 1997 and to reset it to the second Monday of May 1999.

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[23] G.R. No. 111511, 5 October 1993, 227 SCRA 100.
[24] G.R. No. 127116, 8 April 1997, 271 SCRA 90.
[25] G.R. No. 128039, 8 April 1997, 271 SCRA 90.

Rulings

(a) The law that governs the term of office of *barangay* officials is Republic Act No. 7160 and not Republic Act No. 6679. Hence, the term of office of *barangay* officials is three years and not five years. Among the reasons cited by the Court, the most important is that Republic Act No. 7160 was enacted later than Republic Act No. 6679, and that Republic Act No. 7160 governs the term of office of *barangay* officials. Republic Act No. 7160 is a codified set of laws that specifically applies to local government units. It specifically provides in section 43, paragraph (c) that the term of office of *barangay* officials shall be for three years. It is a special provision that applies only to the term of *barangay* officials who were elected on the second Monday of May 1994. In its repealing clause,[26] Republic Act No. 7160 states that "[a]ll general and special laws...which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly." There being a clear repugnance and incompatibility between the two specific provisions, they cannot stand together, and the later law, Republic Act No. 7160, should thus prevail.

(b) The three-year term of office for *barangay* officials is not repugnant to article X, section 8 of the Constitution which provides in part that "[t]he term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years."

(c) The petitioners were estopped from challenging their three-year term of office.

Comment

This ruling has been superseded by Republic Act No. 8524, enacted in 1998, which changed the term of office of *barangay* officials and members of the *sangguniang kabataan* from three (3) years to five (5) years, amending for the purpose section 43 of Republic Act No. 7160. This new law was applied to the incumbent *barangay* officials and members of the *sangguniang kabataan.*

[26]Rep. Act No. 7160 (1991), sec. 534, par. (f).

G. *Katarungang Pambarangay* Law

9. *Corpuz v. Court of Appeals*[27]

Carlito Corpuz filed an unlawful detainer suit before the Metropolitan Trial Court of Manila against Juanito Alvarado. Alvarado raised the issue that the ejectment suit was not referred to the *Lupon Tagapamayapa* as required by Presidential Decree No. 1508, and had to be dismissed.

Ruling

As held in *Diu v. Court of Appeals*,[28] the failure of a party to specifically allege the fact that there was no compliance with the *barangay* conciliation procedure constitutes a waiver of that defense. A perusal of Alvarado's answer reveals that no reason or explanation was given to support his allegation, which was deemed a mere general averment. In any event, the proceeding outlined in Presidential Decree No. 1508 is not a jurisdictional requirement, and non-compliance therewith could not affect the jurisdiction which the lower court had already acquired over the subject matter and the parties.

Comment

Presidential Decree No. 1508 has already been repealed and has been incorporated with slight modifications in the Local Government Code of 1991 as *Katarungang Pambarangay* Law.

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[27] G.R. No. 117005, 19 June 1997, 274 SCRA 275.

[28] G.R. No. 115213, 19 December 1995, 251 SCRA 472.

H. *Sangguniang Kabataan*

10. *Garvida v. Sales Jr.*[29]

Petitioner Lynnette Garvida sought the annulment of the Order of the Commission on Elections *en banc* suspending her proclamation as the duly elected Chairman of the *Sangguniang Kabataan* of *Barangay* San Lorenzo, Municipality of Bangui, Ilocos Norte.

She had previously applied for registration as member and voter of the *Katipunan ng Kabataan* of said *barangay*. The Board of Election Tellers, however, denied her application on the ground that petitioner, who was then 21 years and ten months old, exceeded the age limit for membership in the *Katipunan ng Kabataan* as laid down in section 3, paragraph (b) of Commission on Elections Resolution No. 2824. She then filed her certificate of candidacy for the position of Chairman which the Provincial Election Supervisor disapproved. The Commission on Elections Regional Director, however, set aside those orders and allowed Garvida to run. The Commission on Elections *en banc* issued an order directing the Board of Election Tellers and Board of Canvassers of the *barangay* to suspend the proclamation of petitioner in the event she won in the election. Thereafter the petitioner won.

The two issues were: (1) the jurisdiction of the Commission on Elections *en banc* to act on the petition to deny or cancel petitioner's certificate of candidacy; and (2) the cancellation of her certificate of candidacy on the ground that she had exceeded the age requirement to run as an elective official of the *sangguniang kabataan*.

Rulings

(a) Under section 532, paragraph (a) of the Local Government Code of 1991, the conduct of *sangguniang kabataan* elections is under the supervision of the Commission on Elections. The Commission on Elections Rules of Procedure provide that jurisdiction over a petition to

[29] G.R. No. 124893, 18 April 1997, 271 SCRA 767.

cancel a certificate of candidacy lies with the Commission on Elections sitting in division, not *en banc*.

(b) Under section 424 of the Local Government Code, the maximum age of a member in the *katipunan ng kabataan* is 21 years old. There is no further provision as to when the *member* shall have turned 21 years of age. On the other hand, section 428 of the Code provides that the maximum age of an *elective sangguniang kabataan* official is 21 years old "on the day of his election," which phrase is an additional qualification. The member may be more than 21 years of age on election day or on the day he registers as *member* of the *katipunan ng kabataan*. The *elective* official, however, must not be more than 21 years old on the day of election. The Code itself provides more qualifications for an elective *sangguniang kabataan* official than for a member of the *katipunan ng kabataan*. Section 3, paragraph (b) of Commission on Elections Resolution No. 2824 is therefore *ultra vires* insofar as it sets the age limit of a voter for the *sangguniang kabataan* elections at exactly 21 years on the day of the election.

Comment

It will be noted from the Supreme Court ruling that the maximum age requirement is strictly applied against the *sangguniang kabataan* candidates or the elective *sangguniang kabataan* officials, but liberally applied as to *sangguniang kabataan* members.

11. *Alunan v. Mirasol*[30]

Republic Act No. 7160, or the Local Government Code of 1991, took effect on January 1, 1992. Section 532, paragraph (a) of the said Code provides that the first elections for the *sangguniang kabataan* shall be held 30 days after the next local elections. The first local elections were held on May 11, 1992 while the general elections for the *sangguniang kabataan* were scheduled on December 4, 1992.

[30] G.R. No. 108399, 31 July 1997, 276 SCRA 501.

The Department of Interior and Local Government exempted the City of Manila from holding elections for the *sangguniang kabataan* on December 4, 1992 on the ground that the elections for *kabataang barangay* previously held on May 26, 1990 were to be considered the first under the newly-enacted Local Government Code.

Private respondents, claiming to represent the 24,000 members of the *katipunan ng kabataan*, filed a petition for *certiorari* and *mandamus* in the Regional Trial Court of Manila to set aside the resolution of the Department of Interior and Local Government. The Regional Trial Court ruled that the Department of Interior and Local Government had no power to exempt the City of Manila from holding *sangguniang kabataan* elections on December 4, 1992 because, among other reasons, "under Art. IX, C, §2 (1) of the Constitution the power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall" is vested solely in the Commission on Elections.

Rulings

(a) The exemption order of the Department of Interior and Local Government was correct. Section 532, paragraph (d) of the Local Government Code of 1991 was applied. It provides that:

> All seats reserved for the *pederasyon ng mga sangguniang kabataan* in the different *sanggunians* shall be deemed vacant until such time that the *sangguniang kabataan* chairmen shall have been elected and the respective *pederasyon* presidents have been selected: *Provided, That, elections for the* kabataang barangay *conducted under Batas Pambansa Blg. 337 at any time between January 4, 1988 and January 1, 1992 shall be considered as the first elections provided for in this Code. The term of office of the* kabataang barangay *officials elected within the said period shall be extended correspondingly to coincide with the term of office of those elected under this Code.* (emphasis supplied)

(b) Elections for *sangguniang kabataan* officers are not subject to the supervision of the Commission on Elections in the same way that, as held in

Mercado v. Board of Election Supervisors,[31] contests involving elections of *sangguniang kabataan* officials do not fall within the jurisdiction of the Commission on Elections.

I. *Liga ng mga Barangay*

12. *Viola v. Alunan*[32]

Petitioner Cesar Viola brought an action as *barangay* Chairman of *Barangay* 167, Zone 15, District II, Manila, against the then Secretary of Interior and Local Government Rafael Alunan II, and others, to restrain them from carrying out the elections for the positions of first, second and third vice presidents and for auditors for the National *Liga ng mga Barangay* and its chapters, challenging the validity of article III, sections 1 and 2 of the Revised Implementing Rules and Guidelines for the General Elections of the *Liga ng mga Barangay* Officers.

Ruling

(a) Article III, sections 1 and 2 of the Revised Implementing Rules and Guidelines for General Elections of the *Liga ng mga Barangay* Officers providing for the election of first, second and third vice presidents and auditors for the National *Liga ng mga Barangay* and its chapters, are valid. The petitioner's contention that the positions in question were in excess of those provided in the Local Government Code[33] which mentions as elective positions only those of president, vice president, and five members of the board of directors in each chapter at the municipal, city, provincial, metropolitan political subdivision, and national levels, was found untenable.

The creation of these positions was actually made in the Constitution and by-laws of the *Liga ng mga Barangay*, which was adopted by the First *Barangay* National Assembly on January 11, 1994. The creation of

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[31] G.R. No. 109713, 6 April 1995, 243 SCRA 422.

[32] G.R. No. 115844, 15 August 1997, 277 SCRA 409.

[33] Rep. Act No. 7160 (1991), sec. 493.

these additional positions is authorized by the Local Government Code, particularly in section 493 which provides that "[t]he board shall appoint its secretary and treasurer and create such other positions as it may deem necessary for the management of the chapter." Section 493 of the Local Government Code directing the board of directors of the *liga* to "create such other positions as may be deemed necessary for the management of the chapter[s]," embodies a fairly intelligible standard and there is no undue delegation of power by Congress.

While the board of directors of a local chapter can create additional positions to provide for the needs of the chapter, the board of directors of the *National Liga* must be deemed to have the power not only for its management but also for that of all the chapters at the municipal, city, provincial and metropolitan political subdivision levels. This will promote uniformity in the set of officers.

II. 1998 DECISIONS

A. Eminent domain

1. *Municipality of Parañaque v. V.M. Realty Corporation*[34]

Pursuant to *Sangguniang Bayan* Resolution No. 93-95, series of 1993, the Municipality of Parañaque filed a complaint for expropriation against V.M. Realty Corporation, over two parcels of land "for the purpose of alleviating the living conditions of the underprivileged by providing homes for the homeless through a socialized housing project."

Private respondent filed its answer alleging in the main that:

(1) the complaint failed to state a cause of action because it was filed pursuant to a resolution and not to an ordinance as required by Republic Act No. 7160; and

(2) the cause of action, if any, was barred by a prior judgment or *res judicata*.

Rulings

(a) The first issue was whether or not the resolution of the Parañaque Municipal Council is a substantial compliance with the statutory requirement of section 19, Republic Act No. 7160[35] in the

[34] G.R. No. 127820, 20 July 1998, 292 SCRA 678.

[35] Rep. Act No. 7160 (1991), sec. 19. Eminent Domain.— A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be

exercise of the power of eminent domain by the plaintiff-appellant.

The Supreme Court held that a resolution is different from an ordinance, and that there was no compliance with section 19 of the Code.

The following essential requisites must concur before a local government unit can exercise the power of eminent domain:

(1) An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.

(2) The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.

(3) There is payment of just compensation, as required under article III, section 9 of the Constitution, and other pertinent laws.

(4) A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

In this case, the local chief executive sought to exercise the power of eminent domain pursuant to a resolution of the municipal council. Thus, there was no compliance with the first requisite that the mayor be authorized through an ordinance. Petitioner cited *Camarines Sur v. Court of Appeals*[36] to

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expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

[36] G.R. No. 104639, 14 July 1995, 246 SCRA 281.

show that a resolution may suffice to support the exercise of eminent domain by a local government unit. This case, however, was not in point because the applicable law at that time was Batas Pambansa Bilang 337, the previous Local Government Code, which had provided that a mere resolution would enable a local government unit to exercise eminent domain. In contrast, Republic Act No. 7160, the Local Government Code in force when the Complaint for expropriation was filed, explicitly required an ordinance for this purpose.

The terms "resolution" and "ordinance" are not synonymous. A municipal ordinance is different from a resolution. An *ordinance* is a law, but a *resolution* is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently — a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the *sanggunian* members.

If Congress intended to allow local government units to exercise eminent domain through mere resolutions, it would have simply adopted the language of the previous Local Government Code. Congress did not. In a clear divergence from the previous Local Government Code, section 19 of Republic Act No. 7160 categorically requires that the local chief executive act pursuant to an ordinance.

Petitioner relied on article 36, rule VI of the Implementing Rules, which requires only a resolution to authorize a local government unit to exercise eminent domain. This reliance was clearly misplaced because section 19 of Republic Act No. 7160, the law itself, surely prevails over the rule which merely seeks to implement it.

(b) The second issue was whether or not the complaint in this case states a cause of action.

The Court held in the negative. That there was no cause of action was evident from the face of the complaint for expropriation which was based on a mere resolution. The absence of an ordinance authorizing the same was

equivalent to a lack of cause of action.

(c) The third issue was whether or not the principle of res judicata is applicable to the present case. The Court held that eminent domain is not barred by res judicata.

Although all the requisites for the application of res judicata are present in this case, the principle of res judicata, which finds application in generally all cases and proceedings, cannot bar the right of the State or its agent to expropriate private property. The very nature of eminent domain, as an inherent power of the State, dictates that the right to exercise the power be absolute and unfettered even by a prior judgment or res judicata.

Comment

In a case decided in 1997, *Moday v. Court of Appeals*,[37] the Supreme Court upheld the authority of the Municipality of Bunawan, Agusan del Sur, to expropriate private property through a Resolution only of the *sangguniang bayan*. This is correct because the said *sanggunian* resolution authorizing the Municipal Mayor to initiate the petition for expropriation of a private lot, was passed on June 23, 1989, pursuant to section 9 of Batas Pambansa Bilang 337, or before the effectivity of Republic Act No. 7160 on January 1, 1992.

B. Disciplinary action against local elective officials

2. *Joson v. Ruben Torres*[38]

This case involves the validity of the suspension from office of petitioner Eduardo Nonato Joson as Governor of the Province of Nueva Ecija. The penalty of suspension arose from the letter-complaint filed by the private respondents Oscar Tinio as Vice Governor and some members of the *sangguniang panlalawigan*.

The private respondents charged the petitioner with grave misconduct

[37] G.R. No. 107916, 20 February 1997, 268 SCRA 586.
[38] G.R. No. 131255, 20 May 1998, 290 SCRA 279.

and abuse of authority. They alleged that while they were holding session at the hall of the provincial capitol, the petitioner, accompanied by armed security men, barged into the hall and harassed the private respondents into approving a Php150 million loan from the Philippine National Bank. President Ramos acted on the complaint by instructing Secretary Barbers of the Department of Interior and Local Government to take appropriate measures. Secretary Barbers directed the petitioner to submit his verified answer and not a motion to dismiss.

In spite of a peace agreement entered into between the adverse parties, the private respondents reiterated their complaint.

Petitioner, on the other hand, requested an extension of 30 days to submit his answer three consecutive times. Upon petitioner's failure to submit his answer, he was declared in default and deemed to have waived his right to present evidence. However, in the interest of justice, the order was lifted and petitioner was given anew an extension.

However, petitioner again failed to file an answer and the order of default was reinstated. Petitioner filed a motion to dismiss but it was denied. In the same order of denial, the parties were required to submit position papers within ten days from receipt after which the case would be deemed submitted for resolution. Petitioner was preventively suspended by Executive Secretary Torres. Petitioner moved to lift the order of preventive suspension and followed this by a motion to lift default order and admit answer *ad cautelam*. In his answer *ad cautelam*, petitioner denied the charges. The order of preventive suspension was sustained but the default order was lifted and the answer admitted.

Petitioner subsequently filed a motion to conduct formal investigation but it was denied. The submission of position papers was held to be substantial compliance with the requirement of procedural due process. Secretary Barbers rendered a recommendatory resolution on the case, finding the petitioner guilty of the offense charged. Adopting the findings of Secretary Barbers, Executive Secretary Torres imposed on petitioner the questioned penalty of suspension from office for six months

without pay.

Rulings

The Supreme Court ruled that the order of suspension was null and void because of the failure of the Investigating Committee to conduct a formal investigation on charges against an elective official. In settling the issues raised by the petitioner, the Court held the following:

(a) Firstly, the absence of verification in the letter-complaint was a formal defect. The requirement of verification was deemed waived by the President himself when he acted on the complaint. Verification is a formal and not a jurisdictional requisite.

(b) Secondly, jurisdiction over administrative disciplinary actions against elective local officials is lodged in two authorities, namely the Disciplining Authority and the Investigating Authority. Pursuant to rule 1, sections 2[39] and 3[40] of Administrative Order No. 23 of the Office of the President, the Disciplining Authority is the President of the Philippines, whether acting by himself or through the Executive Secretary. The Secretary of the Interior and Local Government is the Investigating Authority. Also, the power of the President over administrative disciplinary cases against elective local officials is derived from his power of general supervision over local governments.[41] Moreover, the power of the Department of Interior and Local Government to investigate administrative complaints is based on the alter-ego principle or the doctrine of qualified political agency, which is corollary to the control power of the President.

(c) Thirdly, the failure of the Office of the President to observe rule 5,

[39] Adm. Order No. 23 (1992), rule 1, sec. 2. Disciplinary Authority. All Administrative complaints, duly verified, against elective local officials mentioned in the preceding Section shall be acted upon by the President. The President, who may act through the Executive Secretary, shall hereinafter be referred to as the Disciplining Authority.

[40] Adm. Order No. 23 (1992), rule 1, sec. 3. Investigating Authority. The Secretary of the Interior and Local Government is hereby designated as the Investigating Authority. He may constitute an Investigating Committee in the Department of the Interior and Local Government (DILG) for the purpose.

[41] CONST. art. X, sec. 4.

sections 1[42] and 3[43] of Administrative Order No. 23 (referral of complaint and answer to Department of Interior and Local Government as Investigating Authority, and evaluation thereof) is not fatal. The Office of the President should first have required petitioner to file his answer. Thereafter, the complaint and the answer should have been referred to the Investigating Authority for further proceedings. However, this procedural defect is not fatal. The filing of the answer is necessary merely to enable the President to make a preliminary assessment of the case. The judgment of the President on the matter is entitled to respect, in the absence of grave abuse of discretion.

(d) Fourthly, the order of preventive suspension may be imposed by the Disciplining Authority at any time: (1) after the issues are joined; (2) when the evidence of guilt is strong; and (3) given the gravity of the offense, there is great probability that the respondent, who continues to hold office, could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.[44]

(e) Finally, the resolution finding petitioner guilty as charged and imposing upon him the penalty of suspension from office for six months without pay was null and void. The suspension was made without formal investigation pursuant to rule 7, sections 3,[45] 4,[46] and 5[47] of Administrative

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[42] Adm. Order No. 23 (1992), rule 5, sec. 1. Commencement. Within forty-eight (48) hours from receipt of the answer, the Disciplining Authority shall refer the complaint and answer, together with their attachments and other relevant papers, to the Investigating Authority who shall commence the investigation of the case within ten (10) days from receipt of the same.

[43] Adm. Order No. 23 (1992), rule 5, sec. 3. Evaluation. Within twenty (20) days from receipt of the complaint and answer, the Investigating Authority shall determine whether there is a prima facie case to warrant the institution of formal administrative proceedings.

[44] Adm. Order No. 23 (1992), rule 6, sec. 3.

[45] Adm. Order No. 23 (1992), rule 7, sec. 3. Failure to commence formal investigation. Unreasonable failure to commence the formal investigation within the prescribed period in the preliminary conference order by the person or persons assigned to investigate shall be a ground for administrative disciplinary action.

[46] Adm. Order No. 23 (1992), rule 7, sec. 4. Power to take testimony or receive evidence. The Investigating Authority is hereby authorized to take testimony or receive evidence relevant to the administrative proceedings, which authority shall include the power to administer oaths, summon witnesses, and require the production of documents by *subpoena duces tecum* pursuant to Book 1, Chapter 9, Section 37 of the Administrative Code of 1987.

Anyone who, without lawful excuse, fails to appear upon summons issued under authority of the preceding paragraph or who, appearing before the Investigating Authority exercising the power therein

Order No. 23.

The rejection of petitioner's right to a formal investigation denied him procedural due process. Rule 5, section 5 of Administrative Order No. 23 provides that at the preliminary conference, the Investigating Authority shall summon the parties to consider whether they desire a formal investigation. This provision does not give the Investigating Authority the discretion to determine whether a formal investigation would be conducted.

An erring elective local official has rights akin to the constitutional rights of an accused. Petitioner's right to a formal investigation was not satisfied when the complaint against him was decided on the basis of position papers. The jurisprudence cited by the Department of Interior and Local Government in its order denying petitioner's motion for a formal investigation applies to appointive officials and employees. Administrative disciplinary proceedings against elective government officials are not exactly similar to those against appointive officials. The rules on the removal and suspension of elective local officials are more stringent. The procedure of requiring position papers in lieu of a hearing in administrative cases is expressly allowed with respect to appointive officials but not to elective officials.

Comment

This case reiterates the rule which recognizes a distinction between elective and appointive officials for certain purposes.[48] The rules on administrative discipline of elective local officials are more stringent and are to be strictly followed, particularly as regards removal or suspension from office. The reason is that they are elected by the people and are directly responsible to them.

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defined, refuses to take oath, give testimony or produce documents for inspection, when lawfully required, shall be subject to discipline as in case of contempt of court and, upon application by the Investigating Authority, shall be dealt with by the judge of the proper regional trial court in the manner provided for under Book VII, Chapter 3, Section 13, in relation to Chapter 1, Section 2 (1), of the Administrative Code of 1987.

[47] Adm. Order No. 23 (1992), rule 7, sec. 5. Notice of hearing. The parties and their witnesses shall be notified by subpoena of the scheduled hearing at least five (5) days before the date thereof, stating the date, time and place of the hearing.

[48] Nera v. Garcia, 106 Phil. 1031 (1960).

Even in the matter of preventive suspension in administrative disciplinary cases, the rules are liberally construed in favor of elective local officials, as was held in the case of *Ganzon v. Court of Appeals*[49] to the effect that any single preventive suspension of local elective officials shall not extend beyond 60 days, and that in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of the first suspension; and that several preventive suspensions shall be served simultaneously.

3. *Castillo-Co. v. Barbers*[50]

The petitioner, Josie Castillo-Co, Governor of Quirino Province, sought to nullify the order of the Deputy Ombudsman directing her preventive suspension. This order resulted from a complaint filed by Quirino Congressman Junie Cua after the latter, during investigations "in aid of legislation," allegedly uncovered irregularities in the purchase of heavy equipment by the Governor and Provincial Engineer. Because of the accusations hurled at the governor, the Governor and the Provincial Engineer were placed under preventive suspension for six months by the Deputy Ombudsman a week after Cua filed his complaint.

The Governor filed a petition imputing grave abuse of discretion upon the Deputy Ombudsman on the following grounds:

(1) The Deputy Ombudsman was not authorized to sign the order of preventive suspension.

(2) The issuance of the order, being hasty and selective, deprived the Governor of due process.

(3) The conditions required to sustain petitioner's preventive

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[49] G.R. No. 93252, 8 November 1991, 200 SCRA 291.

[50] G.R. No. 29952, 16 June 1998, 290 SCRA 797.

suspension were not met.

(4) The duration thereof was excessive.

Rulings

The Supreme Court threw out the Governor's petition for the following reasons:

(a) Republic Act No. 7975 does not suggest that only the Ombudsman and not the Deputy Ombudsman may sign an order preventively suspending officials occupying positions classified as Grade 27 or above. Furthermore, section 24 of Republic Act No. 6770 provides that "[t]he Ombudsman *or his deputy* may preventively suspend any officer or employee under his authority pending an investigation." (emphasis supplied)

Furthermore, rule III, section 9 of the Office of the Ombudsman's Rules of Procedure provides: "[p]ending investigation, the respondent may be preventively suspended without pay for a period of not more than six months if in the judgment of the Ombudsman *or his proper deputy* the evidence of guilt is strong." (emphasis supplied)

(b) The order was not hastily issued, and did not result in the denial of petitioner's right to due process. A preventive suspension can be decreed on an official under investigation after charges are brought, and even before charges are heard. This can be done because a preventive suspension is not in the nature of a penalty but is merely a preliminary step in an administrative investigation. The immediate issuance of the order is required to prevent the subject of the suspension from committing further irregularities.

(c) The conditions required to sustain an order for preventive suspension were met, namely:

1. evidence of guilt is strong; and

2. any of the following circumstances present:

2.1 the charge against the officer or employee involves dishonesty, oppression or grave misconduct or neglect in performance of duty;

2.2 the charges warrant removal from service; and

2.3 respondent's continued stay in office may prejudice the case filed against him.

The evidence of guilt rests upon the determination of the disciplinary authority. In this case, the said authority belongs to the Office of the Ombudsman. All the circumstances enumerated in the second requirement were present in this case. For instance, the petitioner was charged with fraud against the public treasury and grave misconduct, which constitute grounds for removal based on the Local Government Code.[51]

(d) Finally, the duration of the petitioner's suspension was not excessive since six months is within the limit prescribed by Republic Act No. 6770.[52] The length of suspension is within the discretion of the Ombudsman.

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[51] Rep. Act No. 7160 (1991), sec. 60. Grounds for Disciplinary Actions. — An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

(a) Disloyalty to the Republic of the Philippines;

(b) Culpable violation of the Constitution;

(c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;

(d) Commission of any offense involving moral turpitude or an offense punishable by at least *prision mayor*;

(e) Abuse of authority;

(f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay;

(g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and

(h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

[52] Rep. Act No. 6670 (1988), sec. 24. Preventive Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the

Comment

It must be noted that if preventive suspension is intended to be for the full six months, it is necessary to impose a 6-month suspension at the outset. If the Ombudsman imposed only a 3-month preventive suspension, he cannot issue another order extending the preventive suspension for another three months, even if the aggregate does not exceed six months.

4. *Conducto v. Monzon*[53]

Complainant charged respondent Judge Iluminado C. Monzon of the Municipal Trial Court in Cities, San Pablo City, with ignorance of law, in that he deliberately refused to suspend a *barangay* chairman who was charged before his court with the crime of unlawful appointment under article 244 of the Revised Penal Code. Complaint was filed with the *Sangguniang Panlungsod* of San Pablo City against Benjamin Maghirang, the *Barangay* Chairman of Barangay III-E of San Pablo City, for abuse of authority, serious irregularity and violation of law. It was alleged, among other things, that respondent Maghirang appointed his sister-in-law, Mrs. Florian Maghirang, to the position of *barangay* secretary on 17 May 1989 in violation of section 394 of the Local Government Code.

Complainant filed a complaint for violation of article 244 of the Revised Penal Code with the Office of the City Prosecutor against Maghirang, which was, however, dismissed on the ground that Maghirang's sister-in-law was appointed before the effectivity of the Local Government Code of 1991.[54] The order of dismissal was submitted to the Office of the Deputy Ombudsman for Luzon.

Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

[53] Adm. Matter No. MTJ-98-1147, 2 July 1998.

[54] The Code prohibits a *punong barangay* from appointing a relative within the fourth civil degree of consanguinity or affinity as barangay secretary.

Complainant obtained Opinion No. 246, series of 1993, from Director Jacob Montesa of the Department of Interior and Local Government, which declared that the appointment issued by Maghirang to his sister-in-law violated section 95, paragraph (2)[55] of Batas Pambansa Bilang 337.

With prior leave from the Office of the Deputy Ombudsman for Luzon, the City Prosecutor filed, in Criminal Case No. 26240, a motion for the suspension of accused Maghirang. Respondent judge denied the motion on the ground that the "alleged offense of *unlawful appointment* under article 244 of the Revised Penal Code was committed on 17 May 1989, during [Maghirang's] term of office from 1989 to 1994 and said accused was again re-elected as *Barangay* Chairman during the last *Barangay* Election of 9 May 1994; hence, offenses committed during a previous term is [sic] not a cause for removal;[56] an order of suspension from office relating to a given term may not be the basis of contempt with respect to ones [sic] assumption of the same office under a new term[57] and, the Court should never remove a public officer for acts done prior to his present term of office."

Rulings

(a) The first issue was whether or not a local official who is criminally charged can be preventively suspended only if there is an administrative case filed against him.

The Court ruled in the negative. Section 13 of Republic Act No. 3019 states that:

> *Suspension and loss of benefits* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property

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[55] B.P. Blg. 337 (1983), sec. 95. The *Barangay* Secretary. — (2) No person shall be appointed *barangay* secretary if he is a *sangguniang barangay* member or a relative of the *punong barangay* within the second civil degree of consanguinity or affinity.

[56] Lizares v. Hechanova, G.R. No. L-22059, 17 May 1966, 17 SCRA 58.

[57] Oliveros v. Villaluz, G.R. No. L-34361, 30 July 1971, 40 SCRA 327.

> whether as a simple or as a complex offense and in whatever stage of execution and mode of participation is pending in court, shall be suspended from office.

Section 13 of Republic Act No. 3019 makes it mandatory for the *Sandiganbayan* (or the Court) to suspend any public officer against whom a valid information charging violation of said law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed in court. The court trying a case has neither the discretion nor the duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. All that is required is for the court to make a finding that the accused stands charged under a valid information for any of the above-described crimes for the purpose of granting or denying the sought-for suspension.[58]

In the same case, the Court held that "as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than ninety (90) days only if the case is decided within that period; otherwise, it will continue for ninety (90) days."

Barangay Chairman Benjamin Maghirang was charged with unlawful appointment, punishable under article 244 of the Revised Penal Code. Therefore, it was mandatory on Judge Monzon's part, considering the motion filed, to order the suspension of Maghirang for a maximum period of ninety (90) days. This he failed and refused to do.

(b) The second issue was whether or not Judge Monzon's contention denying complainant's motion for suspension because "offenses committed during the previous term [are] not a cause for removal during the present term" is correct. Again, the High Court held that the Judge's stand is not correct. In the case of *Aguinaldo v. Santos*,[59] the Court held that "the rule is that a public official cannot be removed for administrative misconduct committed during a prior term since his re-election to office operates as a

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[58] Bolastig v. Sandiganbayan, G.R. No. 110503, 4 August 1994, 235 SCRA 103.

[59] G.R. No. 94115, 21 August 1992, 212 SCRA 768.

condonation of the officer's previous misconduct committed during a prior term, to the extent of cutting off the right to remove him therefor. *The foregoing rule, however, finds no application to criminal cases.*" (emphasis supplied)

Clearly, even if the alleged unlawful appointment was committed during Maghirang's first term as barangay chairman and the motion for his suspension was only filed in 1995 during his second term, his re-election was not a bar to his suspension as the suspension sought was in connection with a criminal case. The reelection of a public official extinguishes only the administrative, but not the criminal, liability incurred by him during his previous term of office.

The ruling, therefore, that "when the people have elected a man to his office it must be assumed that they did this with knowledge of his life and character and that they disregarded or forgave his faults or misconduct if he had been guilty of any" refers only to actions for removal from office and does not apply to criminal cases, because a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public officer in the discharge of his duties, and is injurious not only to a person or group of persons but to the State as a whole. This must be the reason why article 89 of the Revised Penal Code, which enumerates the grounds for extinction of criminal liability, does not include reelection to office as one of them, at least insofar as a public officer is concerned. Also, under the Constitution, it is only the President who may grant the pardon of a criminal offense.

Comment

Preventive suspension of public officers may be effected by the appropriate administrative disciplinary authority in administrative cases, as well as by courts of justice in criminal cases against public officers being prosecuted for violations of the Anti-Graft and Corrupt Practices Act, Title 7, Book II of the Revised Penal Code or for any offenses involving fraud upon government or public funds or property. It may be noted then that preventive suspension may be availed of in both administrative and criminal cases

involving public officers. Preventive suspension is not a penalty but is only a preventive measure, and is different from suspension from office which is a penalty.

As to the duration of preventive suspension against elective officials, in the instant case, the Supreme Court, citing *Bolastig v. Sandiganbayan*,[60] ruled that as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than 90 days only if the case is decided within that period; otherwise, it will continue for 90 days.

It may be recalled, however, that in a case just decided last year, *Rios v. Sandiganbayan*,[61] the Supreme Court held that in accordance with section 63, paragraph (b) of the Local Government Code, any single preventive suspension of local elective officials shall not extend beyond 60 days. It ruled that the 90-day preventive suspension imposed by the *Sandiganbayan* on the petitioner therein was not proper.

In a much earlier case, *Deloso v. Sandiganbayan*,[62] the Supreme Court held that 90 days is the maximum duration of preventive suspension for elective local officials facing criminal prosecution in courts of justice.

The High Court appears to be vascillating on this point. There is uncertainty as to how it shall rule on this issue in the future.

The case at bar also reiterates the principle, now well-settled, that the condonation of a misconduct committed during the prior term of an elective local official who was reelected applies only to an administrative liability, and not to a criminal liability.

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[60] G.R. No. 110503, 4 August 1994, 235 SCRA 103.
[61] G.R. No. 129913, 27 September 1997, 279 SCRA 581.
[62] G.R. Nos. 86899-903, 15 May 1989, 173 SCRA 74.

C. Local taxation

5. *Province of Bulacan v. Court of Appeals*[63]

The *Sangguniang Panlalawigan* of Bulacan passed Provincial Ordinance No. 3, section 21 of which "levied and collected a tax of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources... extracted from *public lands* or from beds of seas, lakes, rivers, streams, creeks and other public waters within its territorial jurisdiction." (emphasis supplied) Pursuant thereto, the Provincial Treasurer of Bulacan assessed Republic Cement Corporation the amount of Php2,524,692.13 for extracting limestone, shale and silica from several parcels of *private land* from 1992 to 1993. Republic Cement formally contested the same, but it was rebuffed by the Provincial Treasurer.

After Republic Cement's petition for declaratory relief with the Regional Trial Court of Bulacan was dismissed, it filed a petition for *certiorari* with the Supreme Court, which referred the same to the Court of Appeals.

The Court of Appeals ruled that the Province of Bulacan had no legal authority under section 21 of Provincial Ordinance No. 3 to impose and assess taxes on quarry resources extracted from private lands, and declared the assessment made on Republic Cement void. The motion for reconsideration and supplemental motion for reconsideration of the Province of Bulacan was denied; hence, it appealed to the Supreme Court.

Ruling

The issue is: does a province have the power to impose taxes on sand, gravel and other quarry resources extracted from private lands? The Supreme Court ruled in the negative.

It held that the Court of Appeals erred in ruling that a province can impose only the taxes specifically mentioned under the Local Government

[63] G.R. No. 126232, 27 November 1998.

Code. Section 186[64] allows a province to levy taxes other than those specifically enumerated under the Code, subject to the conditions specified therein. However, the Province of Bulacan is not permitted to impose taxes on stones, sand, gravel, earth and other quarry resources extracted from private lands. The tax imposed by the province is an excise tax, being a tax upon the performance, carrying on, or exercise of an activity.

Section 133[65] of the Local Government Code prohibits the imposition

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[64] Rep. Act No. 7160 (1991), sec. 186. Power To Levy Other Taxes, Fees or Charges. — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

[65] Rep. Act No. 7160 (1991), sec. 133. Common Limitations on the Taxing Powers of Local Government Units — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way or reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as

of an excise tax on articles already taxed by the National Internal Revenue Code. Section 151 of the National Internal Revenue Code provides for the levy, assessment and collection of excise taxes on all quarry resources, regardless of origin, whether extracted from public or private land. The province may not ordinarily impose taxes on stones, sand, gravel, earth and other quarry resources, as the same are already taxed under the National Internal Revenue Code. It may, however, impose a tax on such quarry resources for as long as they were extracted from public land, as the province is expressly empowered to do so under the Local Government Code.

The assessment of taxes on Republic Cement is *ultra vires*, as it traversed the limitations set by the Local Government Code. The Province of Bulacan likewise erred in averring that the Court of Appeals' declaration of nullity of the assessment against Republic Cement was a collateral attack on Provincial Ordinance No. 3. Only the assessment of the taxes, and not the legality of the ordinance was questioned by the appellate court.

Even if section 133 of the Local Government Code were to be disregarded, section 21 of Provincial Ordinance No. 3 clearly applies only to quarry resources extracted from public lands. The Regalian doctrine may not be invoked to extend the coverage of the ordinance to quarry resources extracted from private lands, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, tax statutes being construed *strictissimi juris* against the government.

Comment

The Supreme Court held that a province may impose a tax on quarry resources if the same were extracted from public land because a province is expressly empowered to do so under the Local Government laws. Yet, it is

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otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

observed that under section 141 of the National Internal Revenue Code, excise taxes may be levied, assessed and collected on all quarry resources, regardless of origin, whether extracted from public or private lands, and that a province may not ordinarily impose taxes on such quarry resources as the same are already taxed under the National Internal Revenue Code.

In effect, the ruling has allowed double taxation by both the national government and the local government unit (province) on quarry resources extracted from public land, which is not ordinarily done.

It is also interesting to observe that section 21 of Provincial Ordinance No. 3 is clear in stating that it was only levying and collecting a tax on quarry resources extracted from public land. It was the Provincial Treasurer who failed to properly or correctly apply the ordinance in accordance with its wordings.

6. *First Philippine Industrial Corporation v. Court of Appeals*[66]

Through a petition for review on *certiorari*, the First Philippine Industrial Corporation assailed the Decision of the Court of Appeals dated November 29, 1995, in CA-G.R. SP No. 36801, affirming the decision of the Regional Trial Court of Batangas City, Branch 84, in Civil Case No. 4293, which dismissed petitioner's complaint for a business tax refund imposed by the City of Batangas.

Petitioner was a grantee of a pipeline concession under Republic Act No. 387, as amended, to contract, install, and operate oil pipelines. Petitioner applied for a mayor's permit with the Office of the Mayor of Batangas City. However, before the mayor's permit could be issued, the respondent City Treasurer required petitioner to pay a local tax based on its gross receipts for the fiscal year 1993 pursuant to the Local Government Code. The respondent City Treasurer assessed a business tax on the petitioner amounting to Php956,076.04 payable in four installments based on the gross receipts for products pumped at GPS-1 for the fiscal year 1993 which amounted to Php181,681,151.00. In order not to hamper its operations, petitioner paid the

[66] G.R. No. 125948, 29 December 1998.

tax under protest in the amount of Php239,019.01 for the first quarter of 1993.

Petitioner filed a letter-protest addressed to the respondent City Treasurer. The respondent City Treasurer denied the protest contending that petitioner cannot be considered engaged in transportation business, and cannot claim exemption under section 133, paragraph (j) of the Local Government Code.

Petitioner filed with the Regional Trial Court of Batangas City a complaint for tax refund with prayer for writ of preliminary injunction against respondents City of Batangas and Adoracion Arellano in her capacity as City Treasurer.

In its complaint, petitioner alleged that:

(1) the imposition and collection of the business tax on its gross receipts violates section 133 of the Local Government Code;

(2) the authority of cities to impose and collect a tax on the gross receipts of "contractors and independent contractors" under secs. 141(e) and 151 does not include the authority to collect such taxes on transportation contractors for, as defined under sec. 131 (h), the term "contractors" excludes transportation contractors; and

(3) the City Treasurer illegally and erroneously imposed and collected the said tax, thus meriting the immediate refund of the tax paid.

Respondents argued that petitioner could not be exempt from taxes under section 133, paragraph (j) of the Local Government Code as said exemption applies only to "transportation contractors and persons engaged in the transportation by hire and common carriers by air, land and water." Respondents asserted that pipelines are not included in the term "common carrier" which refers solely to ordinary carriers such as trucks, trains, ships and the like. Respondents further posited that the term "common carrier" under

the said Code pertains to the mode or manner by which a product is delivered to its destination.

Ruling

The issue was whether or not petitioner could be considered a common carrier, and thus exempted from paying taxes under section 133 of the Local Government Code. The Court upheld the petitioner.

A "common carrier" may be defined, broadly, as one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally.

Article 1732 of the Civil Code defines a "common carrier" as "any person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public." The criteria for determining whether a party is a common carrier of goods are:

(1) he must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for person generally as a business and not as a casual occupation;

(2) he must undertake to carry goods of the kind to which his business is confined;

(3) he must undertake to carry by the method by which his business is conducted and over his established roads; and

(4) the transportation must be for hire.

Based on the above definitions and requirements, petitioner was a common carrier. It was engaged in the business of transporting or carrying goods, *i.e.* petroleum products, for hire as a public employment. It undertook to carry for all persons indifferently, that is, to all persons who choose to

employ its services, and transports the goods by land and for compensation. The fact that petitioner has a limited clientele did not exclude it from the definition of a common carrier. Citing *De Guzman v. Court of Appeals*,[67] the Supreme Court ruled that:

> The above article (Art. 1732, Civil Code) makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as a 'sideline'). Article 1732... avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the 'general public,' *i.e.*, the general community or population, and one who offers services or solicits business only from a narrow segment of the general population. We think that Article 1877 deliberately refrained from making such distinctions.

Respondent's argument that the term "common carrier" as used in Section 133, paragraph (j) of the Local Government Code refers only to common carriers transporting goods and passengers through moving vehicles or vessels either by land, sea or water, was erroneous. The definition of "common carriers" in the Civil Code makes no distinction as to the means of transporting, as long as it is by land, water or air. It does not provide that the transportation of the passengers or goods should be by motor vehicle. In fact, in the United States, oil pipeline operators are considered common carriers.

Under the Petroleum Act of the Philippines,[68] petitioner is considered a "common carrier." Thus, article 86 thereof provides that:

> *Pipe line concessionaire as common carrier* — A pipe line shall have the preferential right to utilize installations for the transportation of petroleum owned by him, but is obliged to utilize the remaining transportation capacity *pro rata* for the transportation of such other petroleum as may be offered by others for transport, and to charge without discrimination such rates as may have been approved by the Secretary of Agriculture and Natural Resources.

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[67] G.R. No. L-47822, 22 December 1988, 168 SCRA 617.

[68] Rep. Act No. 387 (1949).

Republic Act No. 387 also regards petroleum operation as a public utility. The pertinent portion of article 7 thereof provides:

> that everything relating to the exploration for and exploitation of petroleum... and everything relating to the manufacture, refining, storage, or transportation by special methods of petroleum, is hereby declared to be a public utility.

The Bureau of Internal Revenue likewise considers the petitioner a "common carrier." In BIR Ruling No. 069-83, it declared:

> since [petitioner] is a pipeline concessionaire that is engaged only in transporting petroleum products, it is considered a common carrier under Republic Act No. 387.... Such being the case, it is not subject to withholding tax prescribed by Revenue Regulations No. 13-78, as amended.

There is therefore no doubt that petitioner was a "common carrier" and, therefore, exempt from the business tax as provided for in section 133, paragraph (j) of the Local Government Code, to wit:

> *Common Limitations on the Taxing Powers of Local Government Units* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> x x x
>
> (j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code. (italics supplied)

It is clear that the legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called "common carrier's tax."

Petitioner was already paying three percent (3%) common carrier's tax

on its gross sales/earnings under the National Internal Revenue Code. To tax petitioner again on its gross receipts in its transportation of petroleum business would defeat the purpose of the Local Government Code.

Comment

As can be seen from the Court's dissertation, "common carrier" is a broad term which includes a pipeline concessionaire to contract, install, and operate oil pipelines. Since local government units are not authorized to collect taxes on transportation contractors under the Local Government Code, and a common carrier includes a transportation contractor, then the petitioner corporation in this case was held to be not subject to the tax being imposed by Batangas City.

D. Appointive local officials

7. Dimaandal v. Commission on Audit[69]

Dimaandal, who occupied the position of Supply Officer III in the provincial government, was designated by Governor Vicente Mayo of Batangas to be the Acting Provincial Treasurer for Administration. Pursuant to his designation as such, petitioner filed a claim for the difference in salary and Representation and Transportation Allowance (RATA) between those received by the Acting Provincial Treasurer and those received by a Supply Officer III. The Commission on Audit directed Dimaandal to refund the salary and RATA differential he had already received from the Provincial Government on the ground that Dimaandal, being merely designated as Assistant Provincial Treasurer for Administration (and designated as such merely in addition to his regular duties) could not receive additional salary or differentials in the RATA. Furthermore, Dimaandal was designated by a person who is not the "duly competent authority" to do so, following section 471 of the Local Government Code.

[69]G.R. No. 122197, 26 June 1998, 291 SCRA 322.

Ruling

The issue in this case was whether or not an employee designated in an acting capacity is entitled to the difference in the salary pertaining to his regular position and that corresponding to the higher position to which he is designated.

The Supreme Court held in the negative. It found the petition to be without merit on the following grounds:

(a) The Governor is not the "duly competent authority" empowered by law to designate an Assistant Treasurer. Two laws do not authorize the Provincial Governor to appoint nor designate a person temporarily in cases of temporary absence or disability or in cases where there is a vacancy in a provincial office. Section 471 paragraph (a) of Republic Act No. 7160 gives that power to the Secretary of Finance, and section 2077 of the Revised Administrative Code gives it to the President of the Philippines. In fact the appointing officer is authorized by law to order the payment of compensation to any government officer or employee designated or appointed to fill in a vacant position as provided under section 2077 of the Revised Administrative Code. Because of this, Dimaandal's designation as Assistant Provincial Treasurer for Administration by Governor Mayo is defective. Furthermore, what Governor Mayo extended to Dimaandal was merely a designation and not an appointment.

(b) Since the right to the salary of the Assistant Provincial Treasurer is based on the assumption that the appointment or designation was made in accordance with law, petitioner, who was designated without color of authority, had no right to the salary or allowance being claimed. The Court brushed away petitioner's reliance on the defense that he is a *de facto* officer and thus entitled to receive compensation for services actually rendered.[70] It clarified that Dimaandal is not a *de facto* officer, since a *de facto* officer is one

[70] Menzon v. Petilla, G.R. No. 90762, 20 May 1991, 197 SCRA 253.

who derives his appointment from one having colorable authority to appoint (if office is appointive) and whose appointment is valid on its face. Since the Governor had no colorable authority to appoint, Dimaandal could not claim to be a *de facto* officer.

Comment

Under section 3, paragraph (c) of the Local Government Code of 1991, local officials and employees paid wholly or mainly from local funds shall be appointed or removed by the appropriate appointing authority. Under section 465, paragraph (a) (l) (v) of the same Code, the provincial governor shall "[a]ppoint all officials and employees whose salaries and wages are wholly or mainly paid out of provincial funds and whose appointment are not otherwise provided for in this Code, as well as those who may be authorized by law to appoint." As an exception to the general rule, provincial treasurers and assistant provincial treasurers are appointees of the Secretary of Finance.[71]

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[71] Rep. Act No. 7160 (1991), sec. 470, par. (a) and sec. 471, par. (a).

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