

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
NOV 22 2019
BY: ka
TIME: 8:21



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

EDWIN D. VELEZ,

Petitioner,

G.R. No. 215136

Present:

CARPIO, *J.*, Chairperson,
CAGUIOA,
REYES, J. JR.,
LAZARO-JAVIER, and
ZALAMEDA, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

28 AUG 2019

x ----- *HM Cabalagha* ----- x

DECISION

REYES, J. JR., J.:

Assailed in this Petition for Review on *Certiorari* are the Decision¹ dated August 30, 2013 and the Resolution² dated September 30, 2014 of the Court of Appeals-Cebu City (CA) in CA-G.R. CR No. 01051 affirming in *toto* the Decision³ dated October 4, 2006, of the Regional Trial Court (RTC), Branch 69, Silay City in Criminal Cases Nos. 4430-69, 4431-69 and 4432-69.

¹ Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Ma. Luisa C. Quijano-Padilla, concurring; *rollo*, pp. 101-113.

² Id. at 137-139.

³ Id. at 33-51.

Y

In three Informations,⁴ Edwin D. Velez (petitioner), then Mayor of Silay City, was charged with violation of Section 261(v)(2) of the Omnibus Election Code (OEC) for releasing loan proceeds to three organizations for the implementation of the city's livelihood development program within 45 days before the 1998 elections. Also charged were Eli G. Alminaza (Alminaza), former City Accountant, Arturo J. Siason (Siason), former acting City Treasurer and Salvador G. Ascalon, Jr. (Ascalon), former City Budget Officer.

The facts are as follows:

On April 8, 1998, petitioner entered into separate loan agreements with Hacienda Guinsang-an II Credit Cooperative and Barangay E. Lopez Credit Cooperative involving an amount of ₱50,000.00 each as part of the city government's livelihood program.⁵

On April 22, 1998, petitioner entered again into a memorandum of agreement with Silay City Consolidated Union of Market Vendors Association, Inc. for the purpose of extending a loan to market vendors in the amount of ₱300,000.00 to market vendors to aid them in their business activities.⁶

In these instances, Alminaza, Siason, and Ascalon participated in the release of the funds by certifying the Request of Allotment and the availability of the funds pursuant to the memoranda. Petitioner, meanwhile, initiated the release and disbursement of public funds by entering into several memoranda of agreement with the three organizations and thereafter signing Disbursement Vouchers Nos. 1439 dated April 12, 1998, 1440 dated April 13, 1998 and 1626 dated April 23, 1998 for the release of the loan proceeds in their favor.⁷

On April 24, 1998, Hacienda Guinsang-an II Credit Cooperative, Barangay E. Lopez Credit Cooperative, and Silay City Consolidated Union of Market Vendors Association, Inc. received the loan proceeds as evidenced by the acknowledgement receipts duly signed by their authorized representatives.⁸

Petitioner postulated that the release of public funds is exempted from the ban during the election period since the loan proceeds were intended to finance programs already existing prior to the 1998 elections. He stressed that upon his assumption to office as City Mayor in 1992, 20% of the city's development fund had been allotted to various livelihood programs implemented by recognized organizations and cooperatives. He maintained

⁴ Id. at 34-35.

⁵ Id. at 40-41.

⁶ Id.

⁷ Id. at 43-44.

⁸ Id.

that these livelihood programs are continuing in nature and are, thus, exempted from the coverage of Section 261(v) of the OEC.

On October 4, 2006, the RTC rendered a Decision finding petitioner, Siason, and Ascalon guilty beyond reasonable doubt of violation of Section 261(v) of the OEC. In Criminal Cases Nos. 4430-69 and 4432-69, petitioner, Siason and Ascalon were sentenced to suffer the penalty of imprisonment of two years with accessory penalties of perpetual disqualification to hold public office and deprivation of the right to suffrage. In Criminal Case No. 4431-69, petitioner and Ascalon were likewise sentenced to suffer the penalty of imprisonment of two years with accessory penalties of perpetual disqualification to hold public office and deprivation of the right to suffrage while Siason was acquitted of the offense charged. The death of Alminaza prior to the finality of the judgment totally extinguished his criminal liability pursuant to Article 89⁹ of the Revised Penal Code.

The RTC ratiocinated that the release of loans to cooperatives as part of the city's livelihood program is among the social welfare services undertaken by the local government pursuant to Section 17 of the Local Government Code of the Philippines and is thus explicitly prohibited under Section 261(v). It also noted that while the City Government of Silay requested for exemption from the prohibition, the Commission on Elections did not act on the request. Hence, the release and disbursement of the public funds to the cooperatives was clearly in violation of Section 261(v).

On appeal, the CA affirmed *in toto* the October 4, 2006 RTC Decision. The CA agreed with the court *a quo* that the release of the loan proceeds in favor of the cooperatives was a disbursement of public funds for social services and development and therefore, prohibited under Section 261. It stressed that Section 261 did not make any reference to any continuing project on social services which may be exempted from the 45-day prohibition.

Petitioner moved for reconsideration but the same was denied in a Resolution dated September 30, 2014.

Hence, this petition raising the following issues:

⁹ **ART. 89.** *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

FIRST ISSUE

THE HONORABLE CA COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE SPECIOUS RULING OF THE TRIAL COURT THAT THE LGU OF SILAY CITY AS AMONG THOSE OFFICES OR MINISTRIES PROHIBITED BY SECTION 261 (V)(2) FROM RELEASING, DISBURSING OR EXPENDING PUBLIC FUNDS DURING THE PROHIBITED PERIOD.

SECOND ISSUE

THE HONORABLE CA COMMITTED ANOTHER REVERSIBLE ERROR WHEN IT AFFIRMED THE SPECIOUS RULING OF THE TRIAL COURT THAT FUND RELEASES BY THE CITY TO THE COOPERATIVES/ASSOCIATIONS AS AN IMPLEMENT OF THE CITY'S LIVELIHOOD DEVELOPMENT PROGRAM WERE COVERED BY THE PROHIBITION IN SECTION 261 (V)(2) OF THE OEC.

Petitioner contends that the prohibition under Section 261(v)(2) applies only to public officials and employees of the Ministry of Social Services and Development (now Department of Social Welfare and Development [DSWD]) and not to public officials of a local government unit (LGU). He posits that the law does not disallow all disbursements intended for social welfare services but only those made by the DSWD and other offices/departments performing similar functions. He states that the fact that a government office, agency, or instrumentality provide social welfare services and projects does not automatically place it within the coverage of the prohibition.

The People, through the Office of the Solicitor General, on the other hand argues that Section 261(v) covers "any public official or employee" and even "barangay officials" and "those of government-owned or controlled corporations." It rejects petitioner's defense of denial and emphasizes that the loan proceeds could not have been released to the cooperatives if petitioner did not sign the memoranda of agreement and approve the vouchers for the loan.

The petition is devoid of merit.

Section 261(v) of the Omnibus Election Code provides:

ARTICLE XXII.**ELECTION OFFENSES**

SEC. 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. - Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and

✓

for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and (Emphasis supplied)

(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

x x x x

As the above provision clearly states, the OEC penalizes as an election offense the act of releasing, disbursing, or expending public funds:

- 1) by a public official or employee;
- 2) within 45 days before a regular election or 30 days before a special election; and
- 3) for the following activities:
 - a. Infrastructure projects or any and all kinds of public works subject to the exceptions set forth in Section 261 (v) (1) subparagraphs (a), (b), (c), and (d) including ongoing public works projects commenced before the campaign period or similar projects under foreign agreements (*Section 261 [v][1]*);
 - b. Social development projects undertaken by the DSWD and other agencies performing similar functions except salaries of personnel, routine and normal expenses and such other expenses as may be authorized by the COMELEC after due notice and hearing (*Section 261 [v][2]*); and
 - c. Housing-related projects undertaken by the National Housing Authority and other government agencies performing similar functions except salaries of personnel, administrative expenses, and such other expenses as may be authorized by the COMELEC after due notice and hearing (*Section 261 [v][3]*).

It is undisputed that petitioner, in his capacity as Mayor of Silay City, entered into memoranda of agreement on April 8, 1998, and April 22, 1998, with the authorized representatives of Hacienda Guinsang-an II Credit Cooperative, Barangay E. Lopez Credit Cooperative, and Silay City Consolidated Union of Market Vendors Association, Inc., for the grant of loans to be used for the implementation of the city's livelihood projects. Thereafter, he signed the disbursement vouchers on April 12, 1998 (29 days before the May 11, 1998 elections), April 13, 1998 (28 days before said elections), and April 23, 1998 (18 days before the elections), to process the release of the loan in the amounts of ₱50,000.00 each to the two credit cooperatives and ₱300,000.00 to the market vendors' association. Petitioner's approval and signature are vital to the release and disbursement of government funds without which the loan proceeds could not have been issued. Clearly, petitioner facilitated the release and disbursement of public funds as livelihood loan assistance to Hacienda Guinsang-an II Credit Cooperative, Barangay E. Lopez Credit Cooperative, and Silay City Consolidated Union of Market Vendors Association, Inc., during the 45-day election ban period.

Petitioner, however, insists that the LGUs are not barred from releasing, disbursing and expending public funds because the proscription under Section 261(v)(2) applies only to the "Ministry of Social Services and Development and any other ministries of the government performing functions similar to said ministry." He claims that what the law prohibits is the release, disbursement and expenditure of public funds by the DSWD and other government agencies that also provide social welfare services.

The Court disagrees.

The law imposes the prohibition against the release, disbursement and expenditure of public funds to prevent public officials and employees from utilizing government resources to influence the voters in their choice of candidates for the forthcoming elections. It ensures that public funds and properties are insulated from political partisan activities and that government works shall not be used for electioneering purposes. It also seeks to prevent incumbent public officials from enjoying undue advantage of government resources over which they have easy and convenient access to bolster their campaign. Thus, it would be more in keeping with the object and purpose of the prohibition to disallow the release, disbursement and expenditure of public funds for all social welfare and development projects and activities regardless of whether the activity is undertaken by the DSWD itself or the LGU concerned.

It also bears stressing that while the DSWD is the lead national government agency mandated to provide comprehensive social welfare programs, the LGUs act as its frontline service providers pursuant to the

devolution of powers under Section 17 of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991. It states:

SEC. 17. *Basic Services and Facilities.* —

(a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. **They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code.** Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, the following:

(1) For a barangay:

x x x x

(ii) **Health and social welfare services** which include maintenance of barangay health center and day-care center;

x x x x

(2) For a Municipality:

x x x x

(iv) **Social welfare services** which include programs and projects on child and youth welfare, family and community welfare, women's welfare, welfare of the elderly and disabled persons; community-based rehabilitation programs for vagrants, beggars, street children, scavengers, juvenile delinquents, and victims of drug abuse; **livelihood and other pro-poor projects;** nutrition services; and family planning services;

x x x x

(3) For a Province:

x x x x

(v) **Social welfare services** which include programs and projects on rebel returnees and evacuees; relief operations; and population development services;

x x x x

(4) For a City:

All the services and facilities of the municipality and province[.] x x x (Emphases supplied)

R.A. No. 7160 defines devolution as the act by which the national government confers power and authority upon LGUs to perform specific functions and responsibilities.¹⁰ It includes the transfer to LGUs of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions, and responsibilities.¹¹

Indubitably, social welfare and development projects, which include the grant of loan assistance as part of a livelihood program, undertaken by the LGUs are covered by the prohibition against the release, disbursement and expenditure of public funds during the election ban period.

The Court cannot even concede to petitioner's unfounded assertion that the loan assistance is exempted from the prohibition since it is a "continuing" livelihood project. Nowhere in the law does it state that ongoing social development projects are excluded from the prohibition. As aptly held by the CA, the exemption from the prohibition as regards continuing programs/projects only applies to public works as expressly declared in the last paragraph of Section 261(v)(1) but not to social services and development.

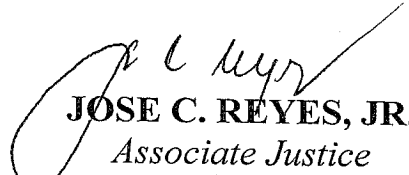
Finally, it does not escape the attention of the Court that petitioner signed a letter dated April 29, 1998 requesting Atty. Vicente Zaragoza, the Election Officer of Silay City, to allow them to continue with the implementation of the city's livelihood program. This fact implies that, at the very outset, petitioner knew that its loan assistance project was among the prohibited activities enumerated in Section 261(v), hence the need for a request for exemption. It is likewise interesting to note that when the defense presented the letter-request before the court, the RTC found that the letter-request was not acted upon by the election officers authorized to grant the exemption. Certainly, the inaction of the authorized election officers to grant the letter-request for exemption cannot be considered as their tacit consent or approval to the release and disbursement of government funds for the said loan assistance. Petitioner, however, proceeded with the approval and signing of the disbursement vouchers despite knowledge that the loan transactions were covered by the election ban. For these reasons, the Court finds no compelling reason to warrant the reversal of the August 30, 2013 CA Decision convicting petitioner of violation of Section 261(v)(2) of the OEC.

¹⁰ Section 17(e) of the Local Government Code of 1991.


¹¹ Section 17(i) of the Local Government Code of 1991.


WHEREFORE, the petition is **DENIED**. The August 30, 2013 Decision and the September 30, 2014 Resolution of the Court of Appeals-Cebu City in CA-GR. CR No. 01051 are **AFFIRMED**.

SO ORDERED.

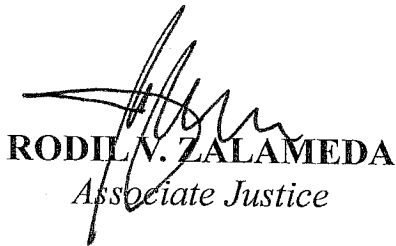

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

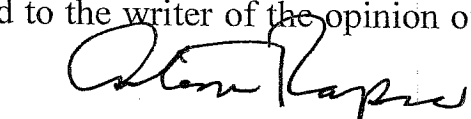

ALFREDO BENJAMINS S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


RODIL N. ZALAMEDA
Associate Justice

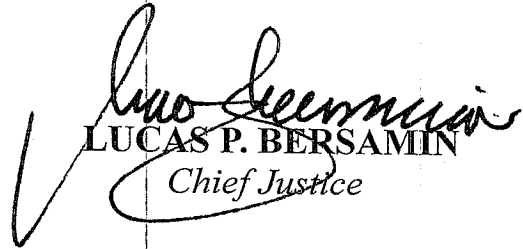
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

✓