



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 28 April 2021 which reads as follows:

“G.R. No. 250344 (*Melquiades I. Gaité v. Dante O. Bismonte and Office of the Ombudsman*). – The Court resolves to:

1. **NOTE** the letter dated 18 November 2020 of Casilda B. Bismonte, spouse of respondent Dante O. Bismonte, acknowledging receipt of the Resolution dated 15 July 2020 on 17 November 2020, and informing the Court that her husband passed away on 5 October 2020 per the attached photocopy of his death certificate; and

2. **GRANT** the motion of the Office of the Ombudsman for extension of thirty (30) days from 16 November 2020 within which to file comment on the petition, and **NOTE** aforesaid comment dated 16 December 2020.

This petition for review on *certiorari*¹ seeks to set aside the Amended Decision² dated March 21, 2019 and Resolution³ dated November 4, 2019 of the Court of Appeals in CA-G.R. SP No. 153329 finding petitioner Melquiades Gaité administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.

¹ Under Rule 45 of the Rules of Court.

² Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez (both current members of the Court), *rollo*, pp. 33-38.

³ *Id.* at 41-42.

Antecedents

Private respondent Dante Bismonte, a member of the Sangguniang Bayan of Baao, Camarines Sur, charged petitioner Melquiades Gaité, Mayor of Baao, Camarines Sur, with grave misconduct and conduct prejudicial to the best interest of the service before the Office of the Ombudsman.

In his complaint, private respondent averred that on November 7, 2012, the Sangguniang Bayan of Baao enacted Municipal Ordinance No. 3, Series of 2012 otherwise known as The Revised Market Code of the Municipality of Baao. Under the ordinance, once an application for a market stall has been approved, the stallholder is required to pay goodwill money of at least Twenty-Five Thousand Pesos (₱25,000.00) for the first ten (10) square meters (sq.m.), and an additional One Thousand Pesos (₱1,000.00) per sq.m. in excess thereof. The duration of the lease with the qualified stallholder was also fixed for a period not exceeding five (5) years, subject to reformation during its effectivity and renewal after its expiration.

The same ordinance likewise created a Market Awards and Regulation Committee (MARC) to oversee a review of all applications for stall occupancy. Acting on its mandate, the MARC passed Resolution Nos. 2014-002 and 2014-002-A providing for guidelines for the award and execution of contract over the market stalls subject to public bidding.⁴

On May 21, 2014, petitioner, on behalf of the municipality of Baao, Camarines Sur entered into a lease contract with Lamvert Consolidated Complex Development Corporation, Inc. (LCC) over the Public Market Building with a total area of 1,704.4 square meters for a period of twenty-five (25) years. The said contract was beyond petitioner's authority since under Municipal Ordinance No. 3, a lease contract should not exceed five (5) years. Also, the contract gave unwarranted benefits to LCC because petitioner did not require it to pay goodwill money.

⁴ *Id.* at 142. Resolution No. 2014-002-A provides:

x x x x

WHEREAS, the MARC in the conduct of public bidding of the portion of the ground floor with an area of Two Hundred Four and Four Tenths (204.4) square meters and the second floor with an area of One Thousand Five Hundred (1,500) square meters of the Baao Public Market adopted the following guidelines, systems, and procedures, to wit:

SECTION 1. – EXECUTION OF CONTRACT OF LEASE. The contract of lease shall be executed between the Highest Bidder and the Local Chief Executive over Portions of the Ground and Second Floors of the Baao Public Market subject for Lease which has a total area of 1,704.4 sq.m. declared under Ordinance No. 3;

SECTION 2. – RENTAL. - The bid for the monthly rental shall be less than the rate provided for class A and class B stalls computed as a whole;

SECTION 3. – DURATION OF LEASE. – The term of lease shall be that which is agreed upon by the contracting parties which may be more than five (5) years as provided in the Ordinance for individual stalls taking into consideration the large amount of investment that will be made by the prospective investor and its current business practices in the construction of a Community Mall similarly situated and existing in the neighboring towns with additional opportunities for local employment; x x x

For his part, petitioner countered that the lease contract he entered into with LCC was in accord with the guidelines approved by the MARC; the contract had resulted in the improvement of the public market and yielded profits which redounded to the benefit of the municipality; and, he gave no unwarranted benefit to LCC since the requirement of goodwill money only applied to natural persons, not to juridical entities such as LCC.

Ruling of the Office of the Ombudsman

By Decision⁵ dated January 4, 2016, the Office of the Ombudsman found petitioner guilty of grave misconduct and conduct prejudicial to the best interest of the service, *viz.*:

WHEREFORE, judgment is hereby rendered finding respondent **MELQUIADES I. GAITE administratively liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service**. He is hereby meted the penalty of **dismissal from the service with cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualifications from holding public office and bar from taking civil service examination** pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.

In the event however, that the penalty of Dismissal can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his office.

X X X X

SO ORDERED.⁶

It ruled that petitioner entered into a lease contract with LCC sans prior authorization from the Sangguniang Bayan. He cannot rely on the resolution issued by the MARC authorizing the Mayor to enter into lease contracts because the law requires authorization from the sanggunian, not from a committee or a body created by it. The spring cannot rise higher than its source. Thus, the MARC resolution must conform to the provisions of Municipal Ordinance No. 3, including the five (5)-year limit in the duration of lease contracts.

Petitioner also admitted that he did not enforce the requirement of goodwill money because no individual or corporation would in its right mind invest millions of pesos on a five (5)-year contract. Based on the foregoing, petitioner was guilty of grave misconduct. He was likewise

⁵ *Id.* at 146-155.

⁶ *Id.* at 153.

found liable for conduct prejudicial to the best interest of the service because he tarnished the integrity and image of the public office he holds.

Meantime, petitioner got re-elected as Mayor of Baao, Camarines Sur during the May 9, 2016 elections. Petitioner, thus, filed a motion for reconsideration praying for the dismissal of the administrative case against him in view of his re-election.

Under Joint Order⁷ dated August 7, 2017, petitioner's motion for reconsideration was denied.

Proceedings Before the Court of Appeals

On petition for review, the Court of Appeals initially reversed. It affirmed the factual findings and legal conclusion of the Office of the Ombudsman that petitioner was guilty of grave misconduct and conduct prejudicial to the best interest of the service. Nevertheless, the Court of Appeals held that the penalty therefore cannot be applied to petitioner based on the condonation doctrine. Petitioner's re-election in the May 9, 2016 elections effectively served as a pardon of his misconduct committed during a prior term.

The Office of the Ombudsman filed a motion for intervention with motion for reconsideration. It argued that pursuant to its mandate as disciplining authority of the government, it has standing to seek a reconsideration of the decision of the Court of Appeals. The condonation doctrine does not apply to petitioner since his re-election took place on May 9, 2016, after the said doctrine had already been abandoned by the Court in *Carpio Morales v. Court of Appeals* on November 10, 2015.

Private respondent also filed a motion for reconsideration and posited that ever since petitioner got re-elected, the latter had persistently attempted to have the lease contract with LCC ratified by the Sangguniang Bayan; petitioner's manifest display of his continued corruption was undeserving of condonation; and, the Court of Appeals should not apply the condonation doctrine since it would allow guilty public officials to enjoy the benefits of their misconduct.

Ruling of the Court of Appeals

In its assailed Amended Decision⁸ dated March 21, 2019, the Court of Appeals modified. According to the Court of Appeals, for the prospective

⁷ *Id.* at 193-196.

⁸ *Id.* at 33-38.

WHEREFORE, the Omnibus Motion for Leave to Intervene dated 24 September 2018, filed by the Office of the Ombudsman, is **GRANTED**.

application of the condonation doctrine, the following elements must be complied with: 1) the misconduct by the public official was done on a prior term, and 2) the public official was re-elected by the same body politic before November 10, 2015.

Here, since petitioner was only re-elected in the May 9, 2016 elections, or after the Supreme Court had laid down its decision in *Carpio Morales*, the same no longer produced the effect of absolving him of administrative misconduct.

Petitioner's motion for reconsideration was denied under Resolution dated November 4, 2019.

The Present Petition

Petitioner now invokes this Court's discretionary appellate jurisdiction for affirmative relief *via* Rule 45 of the Revised Rules of Court. He basically argues:

His alleged illegal acts were committed in 2014 or prior to the finality of the Court's decision in *Carpio Morales*. His re-election as Mayor of Baao, Camarines Sur in the 2016 elections, therefore, already exonerated him from the charges under the condonation doctrine.

Nonetheless, he was not guilty of grave misconduct nor conduct prejudicial to the best interest of the service because Municipal Ordinance No. 3 expressly states "the Municipal Mayor shall represent the Local Government of Baao in the Contract of Lease" and "the Contract of Lease shall be signed by the Municipal Mayor in behalf of the LGU." He was, thus, duly authorized when he entered into a lease contract with LCC and no separate authorization from the Sangguniang Bayan was required.

The five (5)-year period for a lease contract is not fixed and in fact, may be extended as the *proviso* is qualified by the phrase "subject to reformation during its effectivity and renewal after its expiration, unless disqualified for just cause or causes provided under this Ordinance." Too, the required goodwill money applies only to small individual market stalls, not to corporations such as LCC.

Public respondent *ripostes*:

The Motion for Reconsideration-in-Intervention dated 24 September 2018, filed by the Office of the Ombudsman, as well as the Motion for Reconsideration dated 24 September 2018, filed by the private respondent are **NOTED** and **GRANTED**.

The Decision dated 17 August 2018 is **AMENDED**, insofar as it reversed and set aside the Decision dated 04 January 2016 and the Joint Order dated 07 August 2017 of the Office of the Ombudsman in OMB-L-A-15-0350.

Accordingly, the petition is **DENIED**, for lack of merit.
IT IS SO ORDERED.

Petitioner could no longer invoke and avail of the condonation doctrine as a defense because he got re-elected on May 9, 2016, way beyond the April 12, 2016 reckoning date and within the prospective application of *Carpio Morales*.

Petitioner's authority to represent the municipality and sign the contract on its behalf cannot be interpreted to mean that he could do so without prior authorization from the Sangguniang Bayan.

The subject Municipal Ordinance No. 3 is clear that a contract cannot exceed five (5) years and applicants are required to pay goodwill money. When the provisions of the law are clear and unambiguous, its literal meaning should be applied. Petitioner cannot rely on MARC Resolution 2014-002-A in entering into a twenty-five (25)-year lease contract with LCC. For the MARC is a mere creation of the Sangguniang Bayan. The MARC cannot contravene the law from which its rule-making authority has emanated.

Core Issues

- 1) Does petitioner's re-election as Municipal Mayor in the 2016 elections operate as condonation of his misconduct committed in 2014?
- 2) If in the negative, is petitioner liable for grave misconduct and conduct prejudicial to the best interest of the service?

Ruling

Petitioner is not entitled to the condonation doctrine

The condonation doctrine was first enunciated on October 31, 1959 in *Pascual v. Provincial Board of Nueva Ecija* which states:

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elect[e]d a man to 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. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.⁹

⁹ 106 Phil. 466, 472 (1959).

The condonation doctrine had been considered as good law since then until November 10, 2015 when the Court promulgated *Carpio Morales*.¹⁰ In that case, the Court abandoned the condonation doctrine declaring there was no legal authority to sustain the same in this jurisdiction, and for being contrary to the present Constitution's mandate of holding all public officials and employees accountable to the people at all times. The Court, however, clarified that the abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.

In *Madreo v. Bayron*¹¹ citing *Crebello v. Office of the Ombudsman*,¹² the Court further elucidated that the prospective application of *Carpio Morales* should be reckoned from April 12, 2016 because that was the date on which the Court had acted upon and denied with finality the motion for clarification/motion for partial reconsideration thereon. Thus, with the abandonment of the condonation doctrine in *Carpio Morales*, any re-elections of public officials from April 12, 2016, when *Carpio Morales* became final and executory onward no longer have the effect of condoning the previous misconduct of the re-elected official.

Verily, petitioner here can no longer avail of the condonation doctrine because although the complaint below was instituted on May 19, 2015, he got re-elected only on May 9, 2016, well within the prospective application of *Carpio Morales*.

**The Office of the Ombudsman's
factual findings are supported by
substantial evidence**

Sections 22 and 444 of the Local Government Code (LGC) provide:

Section 22. Corporate Powers. – (a) Every local government unit, as a corporation, shall have the following powers:

x x x x

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned. x x x

x x x x (Underscoring supplied).

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation. –

x x x x

¹⁰ 772 Phil. 672 (2015).

¹¹ G.R. No. 237330 & G.R. No. 237579, November 3, 2020.

¹² G.R. No. 232325, April 10, 2019.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x

(vi) Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

x x x x (Underscoring supplied)

Here, petitioner argues that he was duly authorized by Municipal Ordinance No. 3 to enter into a lease contract with LCC. He further insists that in any case, according to *Quisumbing v. Garcia*, the authorization from the sanggunian may already be contained in the ordinance if there is a provision therein which specifically covers the contract to be entered into. Hence, no further authorization is required as the same sufficiently complies with the LGC.

Petitioner's argument must fail.

First, in *Quisumbing*, the Court pronounced that if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required.¹³

Here, Municipal Ordinance No. 3 was not an appropriation ordinance, thus, it cannot be the basis of claiming exemption from the required authorization from the sanggunian.

Second, there is nothing in the provisions of subject Municipal Ordinance No. 3 which expressly authorized petitioner to enter into a lease contract. To be sure, petitioner's authority to represent the municipality and sign the contract on its behalf does not mean he could do so without prior authorization from the Sangguniang Bayan as required by Section 22 and 444 of the LGC.

Finally, Municipal Ordinance No. 3 provides:

Section 4. Assignment of Stalls to Qualified Vendor Applicant or Occupant

x x x x

¹³ See *Germar v. Legaspi*, G.R. No. 232532, October 1, 2018.

4.2 Upon approval but before the award of stall shall be made, the stall applicant shall pay a “Goodwill money” to the Municipal Treasurer with the minimum amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS for the first 10 square meters and an additional of ONE THOUSAND (P1,000.00) PESOS per square meter in excess of ten square meters.

x x x x

Section 12. Duration of Contract –

12.1 Every contract to occupy and/or lease a market stall shall continue to be valid and effective from the time it has been signed by the parties concerned, in this case the Municipal Mayor in behalf of the LGU and the qualified stallholder, for a given period of time but not to exceed FIVE (5) YEARS, subject to reformation during its effectivity and renewal after its expiration, unless disqualified for just cause or causes as provided under this Ordinance; Provided, that in the subsequent execution of the contract, the rate of rental for the occupancy of the stall shall be subject to final negotiation between the contracting parties.

x x x x¹⁴

Based thereon, every contract to occupy and/or lease a market stall shall only be valid for a period not exceeding five (5) years and the applicant is required to pay goodwill money to the municipality. Nothing there authorizes petitioner to enter into a lease contract with LCC for a period of twenty-five (25) years or otherwise exempt any applicant from paying the required goodwill money. Indeed, when the law is clear and unambiguous, there is no alternative but to apply the same according to its clear language.¹⁵

Petitioner’s insistence that under the MARC’s Resolution No. 2014-002-A, a contract may extend beyond five (5) years is misplaced. As the Court of Appeals correctly held, the LGC requires prior authorization from the sanggunian concerned, not from a mere committee created by it. Verily, it is beyond the power and function of the MARC to extend the five (5)-year limit prescribed by Municipal Circular No. 3 insofar as the contract here is concerned.

Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption or willful intent to violate the law or to disregard established rules. On the other hand, conduct prejudicial to the best interest of service refers to a public officer’s demeanor of a public officer which tarnished the image and integrity of his/her public office.¹⁶

¹⁴ *Rollo*, pp. 128, 133.

¹⁵ See *H. Villarica Pawnshop, Inc. v. Social Security Commission*, 824 Phil. 613, 628 (2018).

¹⁶ See *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).

Petitioner clearly committed grave misconduct when he entered into a lease contract with LCC contrary to the express provisions of the LGC and the Municipal Ordinance No. 3. Further, petitioner is guilty of conduct prejudicial to the best interest of the service considering that his questioned act tainted the image and integrity of his office as Mayor.

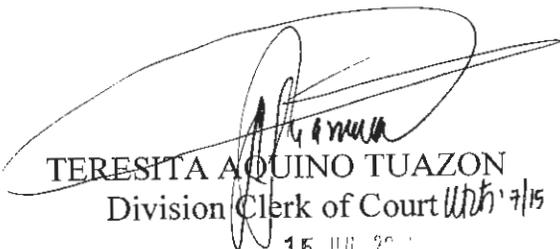
Under Section 50¹⁷ of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances. Likewise, under Section 49¹⁸ of the same Rules, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

Grave misconduct is classified as a grave offense for which the penalty of dismissal is meted even for first time offenders. On the other hand, conduct prejudicial to the best interest of the service is a grave offense, which carries the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. Since grave misconduct is the more serious charge and in the absence of any mitigating circumstance, the penalty of dismissal and its accessory penalties should be imposed on petitioner.¹⁹

ACCORDINGLY, the petition is **DENIED**, and the assailed Amended Decision dated March 21, 2019 and Resolution dated November 4, 2019 of the Court of Appeals in CA-G.R. SP No. 153329, **AFFIRMED**.

SO ORDERED." (Rosario, *J.* and M. Lopez, *J.*, no part due to prior participation in the Court of Appeals; Carandang, *J.*, designated additional member per Raffle dated 6 July 2020; Hernando, *J.*, designated additional member per Raffle dated 17 February 2021)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *Wdt* 7/15
15 JUL 2021

¹⁷ **Section 50. Penalty for the Most Serious Offense.** - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

¹⁸ **Section 49. Manner of Imposition.** - When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

x x x x

¹⁹ *Herrera v. Mago*, G.R. No. 231120, January 15, 2020.

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