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"Services of members of the police agencies who were provisionally appointed on or after September 8, 1966 who do not meet the minimum qualifications under the Police Act should be immediately terminated. They are entitled to all pay and allowances during the period of actual service rendered, unless such pay and allowances were disallowed for cause."

Such administrative or practical construction of the law, by the administrative agency entrusted with its implementation and enforcement must be accorded considerable weight.

WHEREFORE, the decision of the Court of First Instance of December 20, 1968 is hereby affirmed. Without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and *Esguerra, JJ.*, concur.

Makalintal, J., is on leave.

[G.R. No. L-28972. October 31, 1972]

CITY COUNCIL OF CEBU CITY represented by COUNCILORS FLORENCIO S. UROT, EULOGIO E. BORRES, RONALD DUTERTE, RAYMUNDO A. CRYSTAL, BIENVENIDO A. TUDTUD, JOHN H. OSMEÑA and MARIO R. VELOSO, in their capacity as the Majority Members of the City Council of Cebu and as Citizens of the said City, *plaintiffs-appellants, vs.* CARLOS J. CUIZON, Mayor of the City of Cebu, JESUS E. ZABATE, Acting City Treasurer of the City of Cebu, PHILIPPINE NATIONAL BANK and TROPICAL COMMERCIAL COMPANY, INCORPORATED, *defendants-appellees.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSALS; DISMISSAL ORDER ERRONEOUS WHERE REPRESENTATIVE SUIT

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WAS FILED.— The lower court's dismissal order, on the ground of plaintiffs' alleged lack of interest to maintain the case at bar, a complaint to declare null and void the contract for the purchase of road construction equipment, entered into between defendant mayor and Tropical, was erroneous where plaintiffs' complaint was treated as a *personal* suit on their own behalf and the test in such cases that plaintiffs should show *personal* interest as parties who would be benefited or injured by the judgment sought was applied. Plaintiffs' suit is patently *not* a personal suit. Plaintiffs clearly and by express terms of their complaint filed the suit as a *representative* suit on behalf and for the benefit of the city of Cebu.

2. ID.; ID.; PARTIES; ARTICLE 1397 OF THE CIVIL CODE MAY NOT BE INVOKED TO QUESTION PLAINTIFFS' LEGAL CAPACITY TO FILE ACTION IN INSTANT CASE.— Where plaintiffs' suit is clearly *not* one brought by them in their personal capacity for the annulment of a particular contract entered into between two other contracting parties, Article 1397 of the City Code may not be invoked to question their legal capacity or interest to file the action, since they are not in such case in anyway obliged thereby principally or subsidiarily.

3. ID.; ID.; ID.; PLAINTIFFS AS TAXPAYERS HAVE SUFFICIENT INTEREST TO FILE THE ACTION.— As taxpayers, plaintiffs have the right and legal interest to file the suit to declare null and void the contract for the purchase of road construction equipment entered into by the mayor of Cebu city, and seek judicial assistance to prevent what they believe to be an attempt to unlawfully disburse public funds under contracts and commitments with defendants bank and Tropical, which they assert to have been entered into by the mayor without legal authority and against the express prohibition of law.

4. ID.; ID.; ID.; ID.; PLAINTIFFS AS CITY COUNCILORS HAVE SUFFICIENT INTEREST TO FILE THE ACTION.— As city councilors, plaintiffs have the right and legal interest to file the suit, to declare null and void the contract for the purchase of road construction equipment entered into by the mayor of Cebu city, and to prevent what they believe to be unlawful disbursements of city funds by virtue of the questioned contracts and commitments entered into by the defendant city mayor notwithstanding the city council's revocation of his authority with due notice thereof to defendant bank.

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5. **POLITICAL LAW; MUNICIPAL CORPORATIONS; LOCAL OFFICIALS; POWER OF CITY MAYOR UNDER THE CHARTER TO INSTITUTE AND DEFEND ALL SUITS AGAINST THE CITY; NARROW CONSTRUCTION OF THE PROVISION NOT SANCTIONED; EFFECT OF SUCH NARROW CONSTRUCTION.**— To adhere to the lower court's narrow and unrealistic interpretation of the city charter, R.A. 3857 would mean that no action against a city mayor's actuations and contract in the name and on behalf of the city could ever be questioned in court and subjected to judicial action for a declaration of nullity and invalidity, since no mayor would file such an action on behalf of the city to question, much less nullify, contracts executed by him on behalf of the city and which he naturally believes to be valid and within his authority.

6. **ID.; ID.; ID.; ID.; NO APPLICABILITY TO CASE AT BAR.**— Sec. 20 (c) of the city charter, which empowers the city mayor to institute and defend all suits against the city, has no applicability to the present suit, which is *not* one to *recover* properties and funds of the city or a suit *against* the city, but rather a *representative* suit on behalf of and purportedly for the benefit of the city, which the city mayor is however loath to institute.

7. **ID; ID; ID; CITY COUNCILORS MAY PRESENT SUIT ON BEHALF OF THE CITY.**— Plaintiffs as city councilors exclusively empowered by the city charter to "make all appropriations for the expenses of the government of the city" and who were the very source of the authority granted to the city mayor to enter into the questioned transactions which authority was later revoked by them, as per the allegations of the complaint at bar, may be deemed possessed of the necessary authority and interest, if not duty, to file the present suit on behalf of the city and to prevent the disbursement of city funds under contracts impugned by them to have been entered into by the city mayor without lawful authority and in violation of law.

APPEARANCES OF COUNSEL

Nazario R. Pacquiao and *Metudio P. Belarmino* for plaintiffs-appellants.

Ronald R. Duterte in his own behalf.

Jesus E. Zabate in his own behalf.

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Conrado E. Medina, Andres L. Africa, Edgardo M. Magtalas and *Artemio S. Tipon* for defendant-appellee PNB.

Siguion Reyna, Montecillo, Belo & Ongsiako for defendant-appellee Tropical Commercial Co., Inc.

Emilio Benitez for other defendants-appellees.

DECISION

TEEHANKEE, *J.*:

Appeal on pure questions of law from an order of the Court of First Instance of Cebu, dismissing plaintiffs' complaint upon the ground of their lack of legal capacity to institute the action.

The seven above-named plaintiffs-appellants "by themselves and representing the City Council of Cebu, as majority members thereof"[1] filed on May 31, 1966 their complaint in the Court of First Instance of Cebu against defendants-appellees Carlos J. Cuizon, as mayor of Cebu City, Jesus E. Zabate, as acting Cebu City treasurer, Philippine National Bank (hereinafter referred to as the bank) and Tropical Commercial Company, Inc. (hereinafter referred as as Tropical), praying *inter alia* that the contract entered into on February 5, 1966 by and between defendant Mayor Cuizon on behalf of the city for the purchase of road construction equipment from Tropical (for $520,912.00 on a cash basis or $687,767.30 on a deferred payment basis) be declared as null and void *ab initio*. (The contract, as eventually annexed by defendant Tropical with its answer, shows that its total was for $685,767.30 on a five-year deferred payment plan.)[2]

Among the grounds invoked by plaintiffs-appellants for the nullity of said contract and the complementary transactions with the bank arising therefrom such as the corresponding letters of credit opened therefor, were that the same were entered into without the necessary authority and approval of the city council, and that the city treasurer had not certified to the city mayor, as

[1] Complaint, Rec. on Appeal, p. 2.

[2] Rec. on Appeal, pp. 85-106.

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required by Section 607 of the Revised Administrative Code that funds have been duly appropriated for the said contract and that the amount necessary to cover the contract was available for expenditure on account thereof, and that accordingly, the purported contract entered into by the city mayor was "wholly void" under the provisions of Section 608 of the same code, which make "the officer assuming to make such contract....liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties."

As summarized by plaintiffs-appellants, the background facts that led to their filing of their complaint were as follows:

"a) On November 20, 1965, the City Council approved Resolution No. 1648, quoted as follows:

'RESOLUTION NO. 1648

'The City Council, on motion of City Councilor Borres, seconded by City Councilor Tudtud,

'RESOLVED, to authorize His Honor, the City Mayor, for and in behalf of the City of Cebu, to negotiate and to contract for, by public bidding, on deferred payment plan and by lot bid, U.S. or European made road construction equipments for the City of Cebu and authorizing him for this purposes, to sign the corresponding contract and other pertinent papers.

'RESOLVED FURTHER, to request the City Mayor to call soon a public bidding for the early acquisition of said equipments.

'CARRIED UNANIMOUSLY.'

"b) On December 23, 1965, the City Council of Cebu approved Resolution No. 1831, which also reads as follows:

'RESOLUTION NO. 1831

'The City Council, on motion of City Councilor Llanos, seconded by City Councilor Veloso,

'RESOLVED, to authorize the City Mayor, in connection with the authority granted him under Resolution No. 1648, current series, to utilize the Time Deposit of the City of Cebu with the Philippine National Bank, as Bond guarantee in the opening of a

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Letter of Credit in connection with the City of Cebu's application to directly purchase road construction equipments from abroad, to the extent of the amount that the Letter of Credit may require.

'CARRIED UNANIMOUSLY.'

"c) By reason of the fact that the call to bid by the defendant City Mayor Carlos J. Cuizon were for bidders who should be exclusive distributors of the equipments being bidded and the said supplier must have a sales and service outlet in the City of Cebu, the other bidders then became disqualified and the bid was awarded to the only bidder, the defendant Tropical Commercial Co., Inc. Hence, on January 20, 1966, the City Council approved Resolution No. 122, which we quote as follows:

'RESOLUTION NO. 122

'The City Council on motion of City Councilor Borres, seconded by Councilor Osmeña,

'RESOLVED, to request the Award Committee to forward to this Body the pertinent papers in connection with the bidding for two (2) complements of light and heavy equipments to be used by the City Engineering Department for ratification by this Body.

'CARRIED UNANIMOUSLY.'

"d) Notwithstanding the request contained in Resolution No. 122, the defendant City Mayor, Carlos J. Cuizon, without having been duly authorized thru proper resolution of the City Council, and without compliance with Resolution No. 122, signed a contract with the Tropical Commercial Co., Inc. for the acquisition of the heavy equipments on February 5, 1966.[3]

"e) On February 14, 1966, the City Council, without knowledge that the contract had already been signed by defendant City Mayor Carlos J. Cuizon and Tropical Commercial Co., Inc. - since the same was signed in the City of Manila - approved Resolution No. 292, which we quote as follows:

'RESOLUTION NO. 292

'The City Council on motion of City Councilor Osmeña, seconded by City Councilor Tudtud,

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[3] Plaintiffs' complaint alleged that "no copy of this contract was made available to the city council although request to that effect was made by the said body." Rec. on Appeal, p. 11.

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'RESOLVED, to reiterate this City Councilor's request embodied in its Resolution No. 122, current series, addressed to the Award Committee to forward to this body the pertinent papers in connection with the bidding for two (2) complements of light and heavy equipments to be used by the City Engineering Department for ratification by this Body.

'CARRIED UNANIMOUSLY.'

"f) On March 10, 1966, in view of the fact that the defendant City Mayor ignored the requests of the City Council, the said City Council approved Resolution No. 473, which we quote as follows:

'RESOLUTION NO. 473

'The City Council, on motion of City Councilor Crystal, seconded by City Councilor Duterte,

'RESOLVED, To *revoke* Resolution No. 1648 dated November 29, 1965 and Resolution No. 1831, dated December 23, 1965, authorizing His Honor, the City Mayor, to negotiate and to contract for, by public bidding, on deferred payment plan and by lot bid, U.S. or European made road construction equipments for the City of Cebu and authorizing him for this purpose, to sign the *corresponding contract and other pertinent papers and authorizing* the City Mayor to utilize the Time Deposit of the City of Cebu with the Philippine National Bank, as bond guarantee in the opening of a Letter of Credit in connection with the City of Cebu's application to directly purchase road construction equipments from abroad, to the extent of the amount that the Letter of Credit may require, respectively.

'RESOLVED FURTHER, to inform His Honor the City Mayor, that the City Council, after careful deliberation, has decided to *discontinue* with the purchase of road construction equipments.

'RESOLVED FINALLY, to advise all bidders of the action of the City Council and to reject their bids on the basis thereof.

CARRIED BY MAJORITY VOTES.

'Voting in favor: City Councilors Crystal, Duterte, Tudtud, Borres, Osmeña, Veloso and Zamora (Presiding Officer Urot voted in favor)

Voting against: City Councilor — Llanos.' —

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"g) On March 18, 1966, the presiding officer of the City Council, City Councilor Florencio S. Urot, sent a telegram to the Manager of the Philippine National Bank, which we quote as follows:

'TELEGRAM

MANAGER
PHILNABANK
MANILA

BEEN INFORMED BY MANAGER DIKITANAN CEBU BRANCH THAT MAYOR CUIZON CEBU CITY OPENED LETTER OF CREDIT FOR PURCHASE OF HEAVY EQUIPMENT STOP PLEASE BE INFORMED THAT CEBU CITY COUNCIL HAS REVOKED MAYOR'S AUTHORITY ON THIS PARTICULAR MATTER LAST MARCH TEN THEREBY SUSPENDING FURTHER NEGOTIATIONS ON THIS TRANSACTION END.

PRESIDING OFFICER UROT'

"h) On March 18, 1966, the defendant Acting City Treasurer, Jesus E. Zabate, sent a reply to the Assist. Vice-President of the defendant Philippine National Bank in Cebu City *refusing the request of the Philippine National Bank (to withhold P3,000,000.00 from the time deposit of the City of Cebu)* on the ground that *no appropriation* for the purchase of heavy equipments was made by the City Council.

"i) That *notwithstanding the knowledge of the revocation* by Resolution No. 473 of Resolution No. 1648 and Resolution No. 1831, series of 1965 of the City Council of Cebu City, the said City Mayor, Carlos J. Cuizon, continued with the transaction by placing the order with the Equipment Division of the Continental Ore Corporation of New York U.S.A. for the purchase of the said heavy equipments." [4]

Hence, plaintiffs-appellants filed their complaint against defendants-appellees, incorporating the foregoing antecedents and averments, and praying for judgment of the court

"(a) to *declare null and void ab initio the contract entered into by and between the City Mayor,* Carlos J. Cuizon *and the defendant Tropical Commercial Company, Inc.,* for the purchase of the equipments referred to in paragraph VII of this complaint;

[4] Plaintiffs-appellants' brief, pp. 3-9, italics supplied.

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"(b) to *declare null and void ab initio and without any effect the Letters of Credit* opened with the defendant Philippine National Bank by the defendant City Mayor of Cebu, Carlos J. Cuizon;

"(c) to *exempt the City of Cebu* and *to hold the same not liable for any and all obligations to the defendant Philippine National Bank* which may result from the *unauthorized* opening of the Letters of Credit by the defendant City Mayor of Cebu;

"(d) to *exempt and hold not liable the City Government of the City of Cebu from any obligation regarding the contract* specified in paragraph (a) hereof;

"(e) to enjoin and order the defendant City Mayor of Cebu, the defendant City Treasurer of Cebu, the City Auditor, City Engineer and any and all public officials and employees of the City of Cebu not to receive the equipments if they were already ordered and in the event that they will arrive for delivery;

"(f) to grant any and other remedies to which the plaintiffs may be entitled under the law."[5]

Defendants City Mayor and Tropical filed in due course their respective answers to the Complaint, with counterclaims and traversed the allegations of the complaint.

Defendant mayor's counterclaim, contending that the suit was unfounded and intended to harass and embarrass him prayed for judgment against plaintiffs for actual and temperate damages as may be ascertained by the trial court, P1-million moral damages, P50,000.- exemplary damages, P50,000.- attorney's fees and expenses of litigation with costs.[6]

Defendant Tropical's counterclaim, prayed for judgment "in the event that this Honorable Court should hold that the plaintiffs have the capacity or interest to bring this suit in behalf of the City of Cebu,"[7] in the total sum of P242,939.90 with legal interest, representing bank charges in the sums of P86,267.76 and P156,672.14 which it had as seller advanced in cash for two letters

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[5] Rec. on Appeal, pp. 21-22, italics supplied.

[6] Rec. on Appeal, pp. 123-124.

[7] *Idem* at p. 82

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of credit opened by the bank to cover the price of the equipment contracted for by the city mayor on behalf of the city. Defendant Tropical averred that "said advances were actually cash payments made by (it) to the Philippine National Bank upon request of the city mayor and upon the representation of the city mayor that (he) was acting for and in behalf of the City of Cebu."[8]

Defendant acting city treasurer filed his separate answer in effect affirming the nullity *ab initio* of the questioned contract for the reasons and circumstances averred in plaintiffs' complaint. He further set up special defenses averring that the assignment by way of guaranty by the city mayor of P3-million of the city's time deposit with the defendant bank was null and void and done without his consent nor knowledge as the official responsible for said fund, and prayed for the dismissal of the case against him alone.

Defendant bank in its turn filed a motion to dismiss the plaintiffs' complaint on the grounds of plaintiffs' lack of legal capacity to sue and failure of the complaint to state a cause of action against it. The first stated ground of plaintiffs' alleged lack of legal capacity to bring the suit had also been alleged as an affirmative defense by defendants mayor and Tropical in their respective answers, with defendant mayor asking for a preliminary hearing on his affirmative defenses as if a motion to dismiss had been filed.[9]

Plaintiffs on their part filed their responsive pleadings. In their answer to the mayor's counterclaim, they averred that "the present complaint was filed with no other purpose than to secure the annulment of a contract which had been *entered into by defendant mayor in violation of his authority* from the City Council of Cebu City, *to the great prejudice and detriment of the City of Cebu* and accordingly, *well within the concern of the plaintiffs to pursue,* not only as *majority members of the City Council* but also as *individual taxpayers and citizens of this community* which is the City of Cebu." [10]

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[8] *Idem.*

[9] Citing Rule 16, Section 5 of the Rules of Court; Rec. on Appeal, pp. 124-125.

[10] Rec. on Appeal, pp. 135-136; italics supplied.

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In their opposition to the motion to dismiss,[11] plaintiffs asserted *inter alia* their right as city officials and taxpayers to question the validity of the contract entered into by the defendant city mayor and to contest the expenditures of the city's funds therefor beyond the mayor's authority or the disposition thereof in an unlawful or prohibited manner.

Plaintiffs also filed a separate reply to the mayor's affirmative defenses,[12] refuting the mayor's claim of estoppel by citing the principle that estoppel cannot be founded upon an illegal act and submitting therewith the Auditor General's endorsement of June 16, 1966 affirming the city auditor's prior endorsement of nullity *ab initio* of the questioned contract for non-compliance with the requirements of Sections 607 and 608 of the Revised Administrative Code. Pertinent excerpts of Auditor-General Ismael Mathay, Sr.'s endorsement read:

"xxx xxx xxx

"Opinion of this Office is being requested on the validity of the herein contract for the purchase of heavy equipment and machineries entered into by and between Mayor Carlos J. Cuizon of Cebu City for and in behalf of the City Government of Cebu by virtue of Resolution No. 1648, series of 1965, of the City Council, and Tropical Commercial Co., Inc.

"xxx xxx xxx

"It appearing from the within papers that the City Council of Cebu has not appropriated funds for purposes of the contract in question, for which reason the City Treasurer could not have certified, even if he wanted to, as in fact he did not make the certification required under the aforequoted provisions of law, which is a condition precedent to the validity of the contract, this Office concurs in view of the City Auditor in the preceding second endorsement that the said contract is null and void ab initio.

"In view of the nullity of the herein contract, all claims arising therefrom may not be allowed."[13]

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[11] *Idem.*, at pp. 137-144

[12] Rec. on Appeal, pp. 144-149.

[13] *Idem.*, at pp. 150-151.

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Defendant mayor, in turn, in his motion for immediate resolution of pending motion to dismiss dated October 5, 1966,[14] contended that "the General Auditing Office, through the Auditor General, has already withdrawn or recalled its ruling declaring the said contract null and void *ab initio.*"

On October 6, 1966, the lower court issued the order of dismissal appealed from. In ordering the dismissal of plaintiffs' complaint on the ground of their lack of legal capacity to sue and their not being the "real party in interest," the lower court reasoned as follows:

"It is uncontroverted that the contract now sought tobe annulled was signed by the City Mayor in behalf of the contracting party, the City of Cebu, by virtue of the authority granted him by Resolution No. 1648 of the city council. Now, the majority members of this council who have given authority to the City Mayor to execute the contract are filing this complaint and seek to annul the said contract. Their power to file the action either as such councilors or as private citizens is being questioned.

"Article 1397 of the New Civil Code provides that action for annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. In other words, the plaintiffs must have an interest in the contract. In the instant case the plaintiffs, in their capacity as city councilors or tax payers are not parties to the contract executed by the City of Cebu and there is no evidence to show that because of the contract they may be prejudiced or may suffer injury different from that of the public in general. The City of Cebu being the party to the contract, any action brought regarding the said contract must be instituted in the name of the City of Cebu and by the person authorized to do so. Section 20 (c) of the Revised Charter of Cebu City (Republic Act No. 3857) empowers the City Mayor to 'cause to be instituted judicial proceedings to recover properties and funds of the city wherever found and cause to be defended all suits against the City.' There is no provision in the said Charter which authorizes expressly or impliedly the city council or its members to bring an action in behalf of the City.

"Section 2, Rule 3 of the new Rules of Court provides that every action must be prosecuted in the name of the real party-in-interest. 'The real party in interest is the party who would be benefited or injured by

[14] *Idem.*, at pp. 155-158.

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the judgment, or the party entitled to the avails of the suit' (Salonga *vs.* Warner Barnes & Co. Ltd., L-2246, Jan. 1, 1951). As stated above, the plaintiffs acting either as members of the city council or as private citizens are not bound by the contract in question and cannot maintain an action to annul the same since they will not be benefited or prejudiced by the judgment of the case. They have no right to the contract and they will not suffer injuries different from that of the public in general. They are not, therefore, the real party in interest. In the same way as the plaintiffs are not the real party in interest, the defendant Carlos Cuizon may not be bound by the judgment herein and he cannot be sued as party defendant."

Hence this appeal. Plaintiffs-appellants and defendants-appellee Philippine National Bank filed their respective briefs in due course. The other defendants-appellees, the city mayor, the city treasurer and Tropical failed to file their briefs, with Tropical's extended period to do so having expired on January 4, 1969, and the case was deemed submitted for decision on March 17, 1969.

1. It seems clearly self-evident from the foregoing recitation of the undisputed antecedents and factual background that the lower court gravely erred in issuing its dismissal order on the ground of plaintiffs' alleged lack of interest or legal standing as city councilors or as taxpayers to maintain the case at bar. The lower court founded its erroneous conclusion on the equally erroneous premise of citing and applying Article 1397 of the Civil Code that "the action for annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily."[15]

The lower court's fundamental error was in treating plaintiffs' complaint as a *personal* suit on their own behalf and applying the test in such cases that plaintiffs should show *personal* interest as parties who would be benefited or injured by the judgment sought. Plaintiffs' suit is patently *not* a personal suit. Plaintiffs clearly and by the express terms of their complaint filed the suit as a *representative* suit on behalf and for the benefit of the city of Cebu.

Without passing upon or prejudging the merits of the complaint, it is not disputed that taken by themselves without consid-

[15] Word in parenthesis supplied.

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ering the contrary evidence or defenses that might properly be set up by defendants at the trial, the allegations of the complaint state a sufficient cause of action on the basis of which judgment could be validly rendered by the lower court declaring the nullity of the questioned contract and letters of credit and declaring the City of Cebu exempt and free from any and all liability on account thereof, as prayed for by the plaintiffs. Defendant bank in its brief concedes that "we find no ruling that the complaint was dismissed for lack of cause of action against the appellee Philippine National Bank." [16]

The appeal at bar must therefore be granted and the case ordered remanded to the lower court where the parties may be properly given the opportunity at the trial to present evidence in support of their respective contentions for disposition and judgment on the merits.

2. The lower court entirely missed the point that the action filed by plaintiffs-appellants as city councilors (composing practically the entire city council, at that) and as city taxpayers is to *declare null and void* P3-million contract executed by defendant city mayor for the purchase of road construction equipment purportedly on behalf of the city from its co-defendant Tropical and to declare equally null and void the corresponding letters of credit opened with the bank by defendant mayor and to *prevent the disbursement of any city funds therefor* and to *exempt the City of Cebu* and hold it not liable for any obligation arising from such contract and letters of credit specifically and precisely questioned in the complaint filed by plaintiffs *on behalf of the City* as having been *executed without authority and contrary to law.*

Plaintiffs' suit is clearly *not* one brought by them in their personal capacity for the annulment of a particular contract entered into between two other contracting parties, in which situation Article 1397 of the Civil Code may rightfully be invoked to question their legal capacity or interest to file the action, since they are not in such case in anyway obliged thereby principally or subsidiarily.

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[16] Defendant bank's brief at p. 10.

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On the contrary, plaintiffs' suit is one filed *on behalf of the City of Cebu,* instituted by them in pursuance of their prerogative and duty as *city councilors* and *taxpayers,* in order to question and declare null and void a contract which according to their complaint was executed by defendant city mayor purportedly on behalf of the city without valid authority and which had been expressly declared by the Auditor-General to be null and void *ab initio* and therefore could not give rise to any valid or allowable monetary claims against the city.

3. Plaintiffs' right and legal interest as *taxpayers* to file the suit below and seek judicial assistance to prevent what they believe to be an attempt to unlawfully disburse public funds of the city and to contest the expenditure of public funds under contracts and commitments with defendants bank and Tropical which they assert to have been entered into by the mayor without legal authority and against the express prohibition of law have long received the Court's sanction and recognition. In *Gonzales vs. Hechanova,*[17] the Court through the now Chief Justice dismissed the challenge against the sufficiency of therein petitioner's interest to file the action, stating that "since the purchase of said commodity will have to be effected with public funds mainly raised by taxation, and as a rice producer and landowner petitioner must necessarily be a taxpayer, it follows that he has sufficient personality and interest to seek judicial assistance with a view to restraining what he believes to be an attempt to unlawfully disburse said funds."

Even defendant Tropical so understood that plaintiffs' suit was a representative suit *in behalf of the City of Cebu,* hence their counterclaim in their answer, should the lower court uphold plaintiffs' "capacity or interest to bring this suit in behalf of the City of Cebu," for judgment *against the City of Cebu* for the repayment with legal interest of bank charges in the total sum of P242,939.90 which it had advanced on the letters of credit opened by the

[17] 9 SCRA 230, 235 (1963). *See* also Gonzales *vs.* Comelec, 27 SCRA 835, 854 (1969) per Fernando, *J.*, and cases cited, noting that "in this jurisdiction, the rule has been sufficiently relaxed to allow a taxpayer to bring an action to restrain the expenditure of public funds through the enforcement of an invalid or unconstitutional legal measure."

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defendant bank at the mayor's instance in favor of its U.S. supplier, *supra.*[18]

Parenthetically, it may be noted with reference to said letters of credit opened by the bank at the mayor's instance, that the same were caused by the mayor to be established, according to the allegations of the complaint, notwithstanding the mayor's knowledge and notice of the city council having revoked by its Resolution No. 473 of *March 10, 1966* its previous resolutions authorizing him to enter into the transaction, *supra.*[19]

4. Plaintiffs' right and legal interest as *city councilors* to file the suit below and to prevent what they believe to be unlawful disbursements of city funds by virtue of the questioned contracts and commitments entered into by the defendant city mayor notwithstanding the city council's revocation of his authority with due notice thereof to defendant bank must likewise be recognized.

The lower court's narrow construction of the city charter, Republic Act No. 3857, that under Section 20 (c) thereof, it is only the city mayor who is empowered "to cause to be instituted judicial proceedings to recover properties and funds of the city wherever found and cause to be defended all suits against the city," and that plaintiffs' suit must therefore fail since "there is no provision in the said charter which authorizes expressly or impliedly the city council or its members to bring an action in behalf of the city" cannot receive the Court's sanction.

The case at bar shows the manifest untenability of such a narrow construction. Here where the defendant city mayor's acts and contracts purportedly entered into on behalf of the city precisely questioned as unlawful, ultra vires and beyond the scope of his authority, and the city should therefore not be bound thereby nor incur any liability on account thereof, the city mayor would be the last person to file such a suit on behalf of the city, since he

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[18] At page 124 hereof.

[19] At pages 123-124. As per Tropical's answer, a first letter of credit for $43,612.53 was opened on *March 17, 1966* and a second letter of credit for $442,154.77 was opened much later on *April 21, 1966.* Rec. on Appeal, at page 77.

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precisely maintains the contrary position that his acts have been lawful and duly bind the city.

To adhere to the lower court's narrow and unrealistic interpretation would mean that no action against a city mayor's actuations and contract in the name and on behalf of the city could ever be questioned in court and subjected to judicial action for a declaration of nullity and invalidity, since no city mayor would file such an action on behalf of the city to question, much less nullify, contracts executed by him on behalf of the city and which he naturally believes to be valid and within his authority.

5. Section 20 (c) of the city charter invoked by the lower court, however, has no applicability to the present suit, which is *not* one to *recover* properties and funds of the city or a suit *against* the city, but rather a *representative* suit on behalf of and purportedly for the benefit of the city, which the city mayor is however loath to institute.

Under such circumstances, in the same manner that a stockholder of a corporation is permitted to institute derivative or representative suits as nominal party plaintiff for the benefit of the corporation which is the real party in interest,[20] more so may plaintiffs as city councilors exclusively empowered by the city charter to "make all appropriations for the expenses of the government of the city" [21] and who were the very source of the authority granted to the city mayor to enter into the questioned transactions which authority was later revoked by them, as per the allegations of the complaint at bar, be deemed to possess the necessary authority and interest, if not duty, to file the present suit on behalf of the City and to prevent the disbursement of city funds under contracts impugned by them to have been entered into by the city mayor without lawful authority and in violation of law.

ACCORDINGLY, the order appealed from is hereby set aside and the lower court is ordered to proceed with the trial and disposition of the case below on its merits. No costs.

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[20] *See* Evangelista *vs.* Santos, 86 Phil. 387; Republic Bank *vs.* Cuaderno, 19 SCRA 671.

[21] Sections 29 and 31 (2) of Rep. Act No. 3857.

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Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and *Esguerra, JJ.,* concur.

Makalintal, J., is on leave.

[G.R. No. L-30443. October 31, 1972]

FRANCISCO S. MARCELINO, *petitioner, vs.* SEVEN-UP BOTTLING COMPANY OF THE PHILIPPINES and THE WORKMEN'S COMPENSATION COMMISSION, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION ACT; PERMANENT TOTAL DISABILITY; PETITIONER PERMANENTLY AND TOTALLY DISABLED.**— We believe that the Workmen's Compensation Commission is in error when it declared that the petitioner was not entitled to compensation for permanent total disability, simply because the petitioner had not suffered from paralysis or other fatal complication due to his ailment of hypertension. The Workmen's Compensation Commission has overlooked the vital circumstance that after his discharge from the hospital, the petitioner had on many occasions presented himself before the respondent company and requested that he be allowed to return to work in the company, but every time he presented himself he was refused admission to work upon the ground that his illness might recur. This simply shows that as far as respondent company was concerned the petitioner was incapacitated or disabled to perform any substantial amount of labor in the line of work for which he could be assigned.

2. **ID.; ID.; ID.; ID.; COMPENSATION THEREFOR.**— Where, as in this case, petitioner had contracted illness in the course of his employment which rendered him permanently and totally disabled to work, full compensation as provided for in Sections 14 and 15 of the Workmen's Compensation Act should be awarded to him.