Supreme Court E-Library

WHEREFORE, the petition is denied for lack of merit. The August 20, 2004 Decision and August 1, 2005 Resolution of the Court of Appeals in CA-G.R. SP Nos. 70001 and 71621 are *AFFIRMED*.

Double costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 175527. December 8, 2008]

HON. GABRIEL LUIS QUISUMBING, HON. ESTRELLA P. YAPHA, HON. VICTORIA G. COROMINAS, HON. RAUL D. BACALTOS (Members of the Sangguniang Panlalawigan of Cebu), *petitioners, vs.* **HON. GWENDOLYN F. GARCIA (In her capacity as Governor of the Province of Cebu), HON. DELFIN P. AGUILAR (in his capacity as Director IV (Cluster Director) of COA), Cluster IV — Visayas Local Government Sector, HON. HELEN S. HILAYO (In her capacity as Regional Cluster Director of COA), and HON. ROY L. URSAL (In his capacity as Regional Legal and Adjudication Director of COA),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE (RA NO. 7160); SEC. 22(C); THAT PRIOR AUTHORIZATION BY THE SANGGUNIAN CONCERNED REQUIRED BEFORE LOCAL CHIEF EXECUTIVE MAY ENTER INTO CONTRACTS ON BEHALF

Supreme Court E-Library

OF THE LOCAL GOVERNMENT UNIT. — Sec. 22(c) of R.A. No. 7160 provides: Sec. 22. *Corporate Powers.* — (a) Every local government unit, as a corporation, shall have the following powers: 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. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or *barangay* hall. As it clearly appears from the foregoing provision, prior authorization by the *sanggunian* concerned is required before the local chief executive may enter into contracts on behalf of the local government unit.

2. ID.; ID.; ID.; SEC. 306 IN CONJUNCTION WITH SEC. 346; THAT LOCAL CHIEF EXECUTIVE AUTHORIZED TO MAKE DISBURSEMENTS OF FUNDS IN ACCORDANCE WITH THE "ORDINANCE" AUTHORIZING THE ANNUAL OR SUPPLEMENTAL APPROPRIATIONS; NOT AN EXCEPTION TO SEC. 22(C). — Sec. 306 of R.A. No. 7160 merely contains a definition of terms. Read in conjunction with Sec. 346, Sec. 306 authorizes the local chief executive to make disbursements of funds in accordance with the ordinance authorizing the annual or supplemental appropriations. The "ordinance" referred to in Sec. 346 pertains to that which enacts the local government unit's budget, for which reason no further authorization from the local council is required, the ordinance functioning, as it does, as the legislative authorization of the budget. To construe Sections 306 and 346 of R.A. No. 7160 as exceptions to Sec. 22 (c) would render the requirement of prior *sanggunian* authorization superfluous, useless and irrelevant. There would be no instance when such prior authorization would be required, as in contracts involving the disbursement of appropriated funds. Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.

Supreme Court E-Library

3. ID.; ID.; ID.; SEC. 323 ON REENACTED BUDGET; THAT ITEMS FOR WHICH DISBURSEMENTS MAY BE MADE UNDER A REENACTED BUDGET ARE EXCLUSIVE; ELUCIDATED. — Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith." It should be observed that, as indicated by the word "only" preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the *sanggunian*.

4. ID.; ID.; ID.; SEC. 22(C) AND SEC. 346 ON "DISBURSEMENT" AND "CONTRACT," HARMONIZED. — We agree that the words "disbursement" and "contract" separately referred to in Sec. 346 and 22 (c) of R.A. No. 7160 should be understood in their common signification. Disbursement is defined as "To pay out, commonly from a fund. To make payment in settlement of a debt or account payable." *Contract*, on the other hand, is defined by our Civil Code as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." And so, to give life to the obvious intendment of the law and to avoid a construction which would render Sec. 22 (c) of R.A. No. 7160 meaningless, disbursement, as used in Sec. 346, should be understood to pertain to payments for statutory and contractual obligations which the *sanggunian* has already authorized thru ordinances enacting the annual budget and are therefore already subsisting obligations of the local government unit. Contracts, as used in Sec. 22(c) on the other hand, are those which bind the local government unit to new obligations, with their corresponding terms and conditions, for which the local chief executive needs prior authority from the *sanggunian.*

5. ID.; ID.; ID.; SEC. 465, ART. 1, CHAPTER. 3 AND SEC. 468, ART. 3; SANGGUNIAN'S AUTHORIZATION IN THE EXECUTION OF CONTRACTS WHICH BIND THE LOCAL

Supreme Court E-Library

GOVERNMENT UNIT TO NEW OBLIGATIONS, CONFIRMED; RE FORM OF AUTHORIZATION. — Sec. 465, Art. 1, Chapter 3 of R.A. No. 7160 states that the provincial governor shall "[r]epresent the province in all its business transactions and **sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlalawigan*** or pursuant to law or ordinances." Sec. 468, Art. 3 of the same chapter also establishes the *sanggunian's* power, as the province's legislative body, to authorize the provincial governor to negotiate and contract loans, lease public buildings held in a proprietary capacity to private parties, among other things. The foregoing inexorably confirms the indispensability of the *sanggunian's* authorization in the execution of contracts which bind the local government unit to new obligations. Note should be taken of the fact that R.A. No. 7160 does not expressly state the form that the authorization by the *sanggunian* has to take. Such authorization may be done by resolution enacted in the same manner prescribed by ordinances, except that the resolution need not go through a third reading for final consideration unless the majority of all the members of the sanggunian decides otherwise.

6. ID.; ID.; GOVERNMENT PROCUREMENT REFORM ACT (RA NO. 9184); SEC. 37 ON LAW AND PROCEDURE FOR PUBLIC PROCUREMENT; APPROVAL OF APPROPRIATE AUTHORITY, THE SANGGUNIAN IN CASE OF LOCAL GOVERNMENT, THE POINT OF REFERENCE FOR NOTICE TO BE ISSUED TO WINNING BIDDER. — As regards the trial court's pronouncement that R.A. No. 9184 does not require the head of the procuring entity to secure a resolution from the *sanggunian* concerned before entering into a contract, attention should be drawn to the very same provision upon which the trial court based its conclusion. Sec. 37 provides: "The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days **from the date of approval of the contract by the appropriate authority x x x**." R.A. No. 9184 establishes the law and procedure for public procurement. Sec. 37 thereof explicitly makes the approval of the appropriate authority which, in the case of local government units, is the *sanggunian*, the point of reference for the notice to proceed to be issued to the winning bidder. This provision, rather than being in conflict with or providing an exception to

Supreme Court E-Library

Sec. 22(c) of R.A. No. 7160, blends seamlessly with the latter and even acknowledges that in the exercise of the local government unit's corporate powers, the chief executive acts merely as an instrumentality of the local council. Read together, the cited provisions mandate the local chief executive to secure the *sanggunian's* approval before entering into procurement contracts and to transmit the notice to proceed to the winning bidder not later than seven (7) calendar days therefrom.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; PROPER BEFORE VIOLATION OF STATUTE TO WHICH IT REFERS; ELUCIDATED. — Gov. Garcia's petition for declaratory relief should have been dismissed because it was instituted after the COA had already found her in violation of Sec. 22(c) of R.A. No. 7160. One of the important requirements for a petition for declaratory relief under Sec. 1, Rule 63 of the Rules of Court is that it be filed before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation. In *Martelino v. National Home Mortgage Finance Corporation*, we held that the purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify, short of a judgment or final order.

8. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE (RA NO. 7160); WHETHER A SANGGUNIAN AUTHORIZATION SEPARATE FROM APPROPRIATION ORDINANCE IS REQUIRED SHOULD BE RESOLVED DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF THE CASE; ELUCIDATED. — The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort

Supreme Court E-Library

to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient. On the other hand, should the appropriation ordinance describe the projects in generic terms such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian.* Specific sanggunian approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses.

APPEARANCES OF COUNSEL

Florido & Lagro Law Office for petitioners.
Roy L. Ursal for D.P. Aguilar, *et al.*

D E C I S I O N

TINGA, *J.*:

Gabriel Luis Quisumbing (Quisumbing), Estrella P. Yapha, Victoria G. Corominas, and Raul D. Bacaltos (Bacaltos), collectively petitioners, assail the Decision[1] of the Regional Trial Court (RTC) of Cebu City, Branch 9, in Civil Case No. CEB-31560, dated July 11, 2006, which declared that under the pertinent provisions of Republic Act No. 7160 (R.A. No. 7160), or the Local Government Code, and Republic Act No. 9184 (R.A. No. 9184), or the Government Procurement Reform

[1] *Rollo,* pp. 32-39.

Supreme Court E-Library

Act, respondent Cebu Provincial Governor Gwendolyn F. Garcia (Gov. Garcia), need not secure the prior authorization of the *Sangguniang Panlalawigan* before entering into contracts committing the province to monetary obligations.

The undisputed facts gathered from the assailed Decision and the pleadings submitted by the parties are as follows:

The Commission on Audit (COA) conducted a financial audit on the Province of Cebu for the period ending December 2004. Its audit team rendered a report, Part II of which states: "Several contracts in the total amount of ₱102,092,841.47 were not supported with a *Sangguniang Panlalawigan* resolution authorizing the Provincial Governor to enter into a contract, as required under Section 22 of R.A. No. 7160."[2] The audit team then recommended that, "Henceforth, the local chief executive must secure a *sanggunian* resolution authorizing the former to enter into a contract as provided under Section 22 of R.A. No. 7160."[3]

Gov. Garcia, in her capacity as the Provincial Governor of Cebu, sought the reconsideration of the findings and recommendation of the COA. However, without waiting for the resolution of the reconsideration sought, she instituted an action for Declaratory Relief before the RTC of Cebu City, Branch 9. Impleaded as respondents were Delfin P. Aguilar, Helen S. Hilayo and Roy L. Ursal in their official capacities as Cluster Director IV, Regional Cluster Director and Regional Legal and Adjudication Director of the COA, respectively. The *Sangguniang Panlalawigan* of the Province of Cebu, represented by Vice-Governor Gregorio Sanchez, Jr., was also impleaded as respondent.

Alleging that the infrastructure contracts[4] subject of the audit report complied with the bidding procedures provided under

---

[2] *Id.* at 32.

[3] *Id*.

[4] *Id.* at 147; the COA claims that the contracts over which it took exception were mostly infrastructure contracts; Answer to the petition for declaratory relief.

Supreme Court E-Library

R.A. No. 9184 and were entered into pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*, Gov. Garcia alleged that a separate authority to enter into such contracts was no longer necessary.

On the basis of the parties' respective memoranda, the trial court rendered the assailed Decision dated July 11, 2006, declaring that Gov. Garcia need not secure prior authorization from the *Sangguniang Panlalawigan* of Cebu before entering into the questioned contracts. The dispositive portion of the Decision provides:

> WHEREFORE, premises considered, this court hereby renders judgment in favor of Petitioner and against the Respondent COA officials and declares that pursuant to Sections 22 paragraph © in relation to Sections 306 and 346 of the Local Government Code and Section 37 of the Government Procurement Reform Act, the Petitioner Governor of Cebu need not secure prior authorization by way of a resolution from the *Sangguniang Panlalawigan* of the Province of Cebu before she enters into a contract involving monetary obligations on the part of the Province of Cebu when there is a prior appropriation ordinance enacted.
>
> Insofar as Respondent *Sangguniang Panlalawigan*, this case is hereby dismissed.[5]

In brief, the trial court declared that the *Sangguniang Panlalawigan* does not have juridical personality nor is it vested by R.A. No. 7160 with authority to sue and be sued. The trial court accordingly dismissed the case against respondent members of the *Sangguniang Panlalawigan*. On the question of the remedy of declaratory relief being improper because a breach had already been committed, the trial court held that the case would ripen into and be treated as an ordinary civil action. The trial court further ruled that it is only when the contract (entered into by the local chief executive) involves obligations which are not backed by prior ordinances that the prior authority of the *sanggunian* concerned is required. In this case, the *Sangguniang Panlalawigan* of Cebu had already given its prior authorization when it passed the appropriation ordinances which authorized the expenditures in the questioned contracts.

---

[5] *Id.* at 39.

Supreme Court E-Library

The trial court denied the motion for reconsideration[6] filed by Quisumbing, Bacaltos, Carmiano Kintanar, Jose Ma. Gastardo, and Agnes Magpale, in their capacities as members of the *Sangguniang Panlalawigan* of Cebu, in an Order[7] dated October 25, 2006.

In the Petition for Review[8] dated November 22, 2006, petitioners insisted that the RTC committed reversible error in granting due course to Gov. Garcia's petition for declaratory relief despite a breach of the law subject of the petition having already been committed. This breach was allegedly already the subject of a pending investigation by the Deputy Ombudsman for the Visayas. Petitioners further maintained that prior authorization from the *Sangguniang Panlalawigan* should be secured before Gov. Garcia could validly enter into contracts involving monetary obligations on the part of the province.

Gov. Garcia, in her Comment[9] dated April 10, 2007, notes that the RTC had already dismissed the case against the members of the *Sangguniang Panlalawigan* of Cebu on the ground that they did not have legal personality to sue and be sued. Since the COA officials also named as respondents in the petition for declaratory relief neither filed a motion for reconsideration nor appealed the RTC Decision, the said Decision became final and executory. Moreover, only two of the members of the *Sangguniang Panlalawigan*, namely, petitioners Quisumbing and Bacaltos, originally named as respondents in the petition for declaratory relief, filed the instant petition before the Court.

Respondent Governor insists that at the time of the filing of the petition for declaratory relief, there was not yet any breach of R.A. No. 7160. She further argues that the questioned contracts were executed after a public bidding in implementation of specific items in the regular or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*. These

---

[6] *Id.* at 40-44.

[7] *Id.* at 46-48.

[8] *Id.* at 4-26.

[9] *Id.* at 100-121.

Supreme Court E-Library

ordinances allegedly serve as the authorization required under R.A. No. 7160, such that the obtention of another authorization becomes not only redundant but also detrimental to the speedy delivery of basic services.

Gov. Garcia also claims that in its Comment to the petition for declaratory relief, the Office of the Solicitor General (OSG) took a stand supportive of the governor's arguments. The OSG's official position allegedly binds the COA.

Expressing gratitude for having been allowed by this Court to file a comment on the petition, respondent COA officials in their Comment[10] dated March 8, 2007, maintain that Sections 306 and 346 of R.A. No. 7160 cannot be considered exceptions to Sec. 22(c) of R.A. No. 7160. Sec. 346 allegedly refers to disbursements which must be made in accordance with an appropriation ordinance without need of approval from the *sanggunian* concerned. Sec. 306, on the other hand, refers to the authorization for the effectivity of the budget and should not be mistaken for the specific authorization by the *Sangguniang Panlalawigan* for the local chief executive to enter into contracts under Sec. 22(c) of R.A. No. 7160.

The question that must be resolved by the Court should allegedly be whether the appropriation ordinance referred to in Sec. 346 in relation to Sec. 306 of R.A. No. 7160 is the same prior authorization required under Sec. 22(c) of the same law. To uphold the assailed Decision would allegedly give the local chief executive unbridled authority to enter into any contract as long as an appropriation ordinance or budget has been passed by the *sanggunian* concerned.

Respondent COA officials also claim that the petition for declaratory relief should have been dismissed for the failure of Gov. Garcia to exhaust administrative remedies, rendering the petition not ripe for judicial determination.

The OSG filed a Comment[11] dated March 12, 2007, pointing out that the instant petition raises factual issues warranting its

---

[10] *Id.* at 123-140.

[11] *Id.* at 229-255.

Supreme Court E-Library

denial. For instance, petitioners, on one hand, claim that there was no appropriation ordinance passed for 2004 but only a reenacted appropriations ordinance and that the unauthorized contracts did not proceed from a public bidding pursuant to R.A. No. 9184. Gov. Garcia, on the other hand, claims that the contracts were entered into in compliance with the bidding procedures in R.A. No. 9184 and pursuant to the general and/or supplemental appropriations ordinances passed by the *Sangguniang Panlalawigan.* She further asserts that there were ordinances allowing the expenditures made.

On the propriety of the action for declaratory relief filed by Gov. Garcia, the OSG states in very general terms that such an action must be brought before any breach or violation of the statute has been committed and may be treated as an ordinary action only if the breach occurs after the filing of the action but before the termination thereof. However, it does not say in this case whether such recourse is proper.

Nonetheless, the OSG goes on to discuss that Sec. 323 of R.A. No. 7160 allows disbursements for salaries and wages of existing positions, statutory and contractual obligations and essential operating expenses authorized in the annual and supplemental budgets of the preceding year (which are deemed reenacted in case the *sanggunian* concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year). Contractual obligations not included in the preceding year's annual and supplemental budgets allegedly require the prior approval or authorization of the local *sanggunian*.

In their Consolidated Reply[12] dated August 8, 2007, petitioners insist that the instant petition raises only questions of law not only because the parties have agreed during the proceedings before the trial court that the case involves purely legal questions, but also because there is no dispute that the Province of Cebu was operating under a reenacted budget in 2004.

---

[12] *Id.* at 258-269.

Supreme Court E-Library

They further defend their standing to bring suit not only as members of the *sanggunian* whose powers Gov. Garcia has allegedly usurped, but also as taxpayers whose taxes have been illegally spent. Petitioners plead leniency in the Court's ruling regarding their legal standing, as this case involves a matter of public policy.

Petitioners finally draw attention to the OSG's seeming change of heart and adoption of their argument that Gov. Garcia has violated R.A. No. 7160.

It should be mentioned at the outset that a reading of the OSG's Comment[13] on the petition for declaratory relief indeed reveals its view that Sec. 22(c) of R.A. No. 7160 admits of exceptions. It maintains, however, that the said law is clear and leaves no room for interpretation, only application. Its Comment on the instant petition does not reflect a change of heart but merely an amplification of its original position.

Although we agree with the OSG that there are factual matters that have yet to be settled in this case, the records disclose enough facts for the Court to be able to make a definitive ruling on the basic legal arguments of the parties.

The trial court's pronouncement that "the parties in this case all agree that the contracts referred to in the above findings are contracts entered into pursuant to the bidding procedures allowed in Republic Act No. 9184 or the 'Government Procurement Reform Act'— *i.e.*, public bidding, and negotiated bid. The biddings were made pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan* of Cebu x x x"[14] is clearly belied by the Answer[15] filed by petitioners herein. Petitioners herein actually argue in their Answer that the contracts subject of the COA's findings did not proceed from a public bidding. Further,

---

[13] *Id.* at 77-82.

[14] *Id.* at 32-33.

[15] *Id.* at 65-69.

Supreme Court E-Library

there was no budget passed in 2004. What was allegedly in force was the reenacted 2003 budget.[16]

Gov. Garcia's contention that the questioned contracts complied with the bidding procedure in R.A. No. 9184 and were entered into pursuant to the general and supplemental appropriation ordinances allowing these expenditures is diametrically at odds with the facts as presented by petitioners in this case. It is notable, however, that while Gov. Garcia insists on the existence of appropriation ordinances which allegedly authorized her to enter into the questioned contracts, she does not squarely deny that these ordinances pertain to the previous year's budget which was reenacted in 2004.

Thus, contrary to the trial court's finding, there was no agreement among the parties with regard to the operative facts under which the case was to be resolved. Nonetheless, we can gather from Gov. Garcia's silence on the matter and the OSG's own discussion on the effect of a reenacted budget on the local chief executive's ability to enter into contracts, that during the year in question, the Province of Cebu was indeed operating under a reenacted budget.

Note should be taken of the fact that Gov. Garcia, both in her petition for declaratory relief and in her Comment on the instant petition, has failed to point out the specific provisions in the general and supplemental appropriation ordinances copiously mentioned in her pleadings which supposedly authorized her to enter into the questioned contracts.

Based on the foregoing discussion, there appear two basic premises from which the Court can proceed to discuss the question of whether prior approval by the *Sangguniang Panlalawigan* was required before Gov. Garcia could have validly entered into the questioned contracts. ***First,*** **the Province of Cebu was operating under a reenacted budget in 2004.** ***Second,*** **Gov. Garcia entered into contracts on behalf of the province while this reenacted budget was in force.**

---

[16] *Id.* at 66.

Supreme Court E-Library

Sec. 22(c) of R.A. No. 7160 provides:

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

xxx xxx xxx

(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. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or *barangay* hall.

As it clearly appears from the foregoing provision, prior authorization by the *sanggunian* concerned is required before the local chief executive may enter into contracts on behalf of the local government unit.

Gov. Garcia posits that Sections 306 and 346 of R.A. No. 7160 are the exceptions to Sec. 22(c) and operate to allow her to enter into contracts on behalf of the Province of Cebu without further authority from the *Sangguniang Panlalawigan* other than that already granted in the appropriation ordinance for 2003 and the supplemental ordinances which, however, she did not care to elucidate on.

The cited provisions state:

> Sec. 306. *Definition of Terms.*—When used in this Title, the term:
>
> (a) "Annual Budget" refers to a financial plan embodying the estimates of income and expenditures for one (1) fiscal year;
>
> (b) "Appropriation" refers to an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes;
>
> (c) "Budget Document" refers to the instrument used by the local chief executive to present a comprehensive financial plan to the *sanggunian* concerned;

Supreme Court E-Library

(d) "Capital Outlays" refers to appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of the local government unit concerned, including investments in public utilities such as public markets and slaughterhouses;

(e) "Continuing Appropriation" refers to an appropriation available to support obligations for a specified purpose or projects, such as those for the construction of physical structures or for the acquisition of real property or equipment, even when these obligations are incurred beyond the budget year;

(f) "Current Operating Expenditures" refers to appropriations for the purchase of goods and services for the conduct of normal government operations within the fiscal year, including goods and services that will be used or consumed during the budget year;

(g) "Expected Results" refers to the services, products, or benefits that will accrue to the public, estimated in terms of performance measures or physical targets;

(h) "Fund" refers to a sum of money, or other assets convertible to cash, set aside for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations, and constitutes an independent fiscal and accounting entity;

(i) "Income" refers to all revenues and receipts collected or received forming the gross accretions of funds of the local government unit;

(j) "Obligations" refers to an amount committed to be paid by the local government unit for any lawful act made by an accountable officer for and in behalf of the local government unit concerned;

(k) "Personal Services" refers to appropriations for the payment of salaries, wages and other compensation of permanent, temporary, contractual, and casual employees of the local government unit;

(l) "Receipts" refers to income realized from operations and activities of the local government or are received by it in

Supreme Court E-Library

the exercise of its corporate functions, consisting of charges for services rendered, conveniences furnished, or the price of a commodity sold, as well as loans, contributions or aids from other entities, except provisional advances for budgetary purposes; and

(m) "Revenue" refers to income derived from the regular system of taxation enforced under authority of law or ordinance and, as such, accrue more or less regularly every year.

xxx xxx xxx

Sec. 346. *Disbursements of Local Funds and Statement of Accounts.*—Disbursements shall be made in accordance with the ordinance authorizing the annual or supplemental appropriations without the prior approval of the *sanggunian* concerned. Within thirty (30) days after the close of each month, the local accountant shall furnish the *sanggunian* with such financial statements as may be prescribed by the COA. In the case of the year-end statement of accounts, the period shall be sixty (60) days after the thirty-first (31st) of December.

Sec. 306 of R.A. No. 7160 merely contains a definition of terms. Read in conjunction with Sec. 346, Sec. 306 authorizes the local chief executive to make disbursements of funds in accordance with the ordinance authorizing the annual or supplemental appropriations. The "ordinance" referred to in Sec. 346 pertains to that which enacts the local government unit's budget, for which reason no further authorization from the local council is required, the ordinance functioning, as it does, as the legislative authorization of the budget.[17]

To construe Sections 306 and 346 of R.A. No. 7160 as exceptions to Sec. 22(c) would render the requirement of prior *sanggunian* authorization superfluous, useless and irrelevant. There would be no instance when such prior authorization would

[17] REPUBLIC ACT No. 7160 (1992), Sec. 319 provides that, "On or before the end of the current fiscal year, the *sanggunian* concerned shall enact, through an ordinance, the annual budget of the local government unit for the ensuing fiscal year on the basis of the estimates of income and expenditures submitted by the local chief executive."

Supreme Court E-Library

be required, as in contracts involving the disbursement of appropriated funds. Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.[18] However, as will be discussed later, the sanggunian authorization may be in the form of an appropriation ordinance passed for the year which specifically covers the project, cost or contract to be entered into by the local government unit.

The fact that the Province of Cebu operated under a reenacted budget in 2004 lent a complexion to this case which the trial court did not apprehend. Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith."[19]

It should be observed that, as indicated by the word "only" preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the *sanggunian*.

We agree with the OSG that the words "disbursement" and "contract" separately referred to in Sec. 346 and 22(c) of R.A.

---

[18] The Sangguniang Panlalawigan is specifically given the mandate to participate in the exercise of the corporate powers of the province as provided for under Sec. 22 of R.A. 7160 and confirmed by Sec. 468 of the same law.

[19] REPUBLIC ACT NO. 7160 (1992), Sec. 323.

Supreme Court E-Library

No. 7160 should be understood in their common signification. Disbursement is defined as "To pay out, commonly from a fund. To make payment in settlement of a debt or account payable."[20] *Contract*, on the other hand, is defined by our Civil Code as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."[21]

And so, to give life to the obvious intendment of the law and to avoid a construction which would render Sec. 22(c) of R.A. No. 7160 meaningless,[22] disbursement, as used in Sec. 346, should be understood to pertain to payments for statutory and contractual obligations which the *sanggunian* has already authorized thru ordinances enacting the annual budget and are therefore already subsisting obligations of the local government unit. Contracts, as used in Sec. 22(c) on the other hand, are those which bind the local government unit to new obligations, with their corresponding terms and conditions, for which the local chief executive needs prior authority from the *sanggunian*.

Elsewhere in R.A. No. 7160 are found provisions which buttress the stand taken by petitioners against Gov. Garcia's seemingly heedless actions. Sec. 465, Art. 1, Chapter 3 of R.A. No. 7160 states that the provincial governor shall "[r]epresent the province in all its business transactions and **sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlalawigan*** or pursuant to law or ordinances." Sec. 468, Art. 3 of the same chapter also establishes the *sanggunian*'s power, as the province's legislative body, to authorize the provincial governor

---

[20] BLACK'S *LAW DICTIONARY, SPECIAL DELUXE* 5th Ed., 1979, p. 416.

[21] Art. 1305.

[22] As a rule of statutory construction, a provision of a statute should be so construed as not to nullify or render nugatory another provision of the same statute. *Interpretate fienda est res valeat quam pereat. People v. Gatchalian*, 104 Phil. 664 (1958).

Supreme Court E-Library

to negotiate and contract loans, lease public buildings held in a proprietary capacity to private parties, among other things.

The foregoing inexorably confirms the indispensability of the *sanggunian*'s authorization in the execution of contracts which bind the local government unit to new obligations. Note should be taken of the fact that R.A. No. 7160 does not expressly state the form that the authorization by the *sanggunian* has to take. Such authorization may be done by resolution enacted in the same manner prescribed by ordinances, except that the resolution need not go through a third reading for final consideration unless the majority of all the members of the *sanggunian* decides otherwise.[23]

As regards the trial court's pronouncement that R.A. No. 9184 does not require the head of the procuring entity to secure a resolution from the *sanggunian* concerned before entering into a contract, attention should be drawn to the very same provision upon which the trial court based its conclusion. Sec. 37 provides: "The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days **from the date of approval of the contract by the appropriate authority x x x.**"

R.A. No. 9184 establishes the law and procedure for public procurement. Sec. 37 thereof explicitly makes the approval of the appropriate authority which, in the case of local government units, is the *sanggunian*, the point of reference for the notice to proceed to be issued to the winning bidder. This provision, rather than being in conflict with or providing an exception to Sec. 22(c) of R.A. No. 7160, blends seamlessly with the latter and even acknowledges that in the exercise of the local government unit's corporate powers, the chief executive acts merely as an instrumentality of the local council. Read together, the cited provisions mandate the local chief executive to secure the *sanggunian*'s approval before entering into procurement

---

[23] RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF 1991 (1992), Art. 107(c).

Supreme Court E-Library

contracts and to transmit the notice to proceed to the winning bidder not later than seven (7) calendar days therefrom.

Parenthetically, Gov. Garcia's petition for declaratory relief should have been dismissed because it was instituted after the COA had already found her in violation of Sec. 22(c) of R.A. No. 7160. One of the important requirements for a petition for declaratory relief under Sec. 1, Rule 63 of the Rules of Court is that it be filed before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation.

In *Martelino v. National Home Mortgage Finance Corporation*,[24] we held that the purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify, short of a judgment or final order.

Thus, the trial court erred in assuming jurisdiction over the action despite the fact that the subject thereof had already been breached by Gov. Garcia prior to the filing of the action. Nonetheless, the conversion of the petition into an ordinary civil action is warranted under Sec. 6, Rule 63[25] of the Rules of Court.

---

[24] G.R. No. 160208, June 30, 2008.

[25] Sec. 6. *Conversion into ordinary action.*—If before the final termination of the case, a breach or violation of an instrument or a statute, executive order or regulation, ordinance, or any other governmental regulation should take place, the action may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper.

Supreme Court E-Library

Erroneously, however, the trial court did not treat the COA report as a breach of the law and proceeded to resolve the issues as it would have in a declaratory relief action. Thus, it ruled that prior authorization is not required if there exist ordinances which authorize the local chief executive to enter into contracts. The problem with this ruling is that it fails to take heed of the incongruent facts presented by the parties. What the trial court should have done, instead of deciding the case based merely on the memoranda submitted by the parties, was to conduct a full-blown trial to thresh out the facts and make an informed and complete decision.

As things stand, the declaration of the trial court to the effect that no prior authorization is required when there is a prior appropriation ordinance enacted does not put the controversy to rest. The question which should have been answered by the trial court, and which it failed to do was whether, during the period in question, there did exist ordinances (authorizing Gov. Garcia to enter into the questioned contracts) which rendered the obtention of another authorization from the *Sangguniang Panlalawigan* superfluous. It should also have determined the character of the questioned contracts, *i.e.*, whether they were, as Gov. Garcia claims, mere disbursements pursuant to the ordinances supposedly passed by the *sanggunian* or, as petitioners claim, new contracts which obligate the province without the provincial board's authority.

It cannot be overemphasized that the paramount consideration in the present controversy is the fact that the Province of Cebu was operating under a re-enacted budget in 2004, resulting in an altogether different set of rules as directed by Sec. 323 of R.A. 7160. This Decision, however, should not be so construed as to proscribe any and all contracts entered into by the local chief executive without formal *sanggunian* authorization. In cases, for instance, where the local government unit operates under an annual as opposed to a re-enacted budget, it should be acknowledged that the appropriation passed by the *sanggunian* may validly serve as the authorization required under Sec. 22(c) of R.A. No. 7160. After all, an appropriation

Supreme Court E-Library

is an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes. The appropriation covers the expenditures which are to be made by the local government unit, such as current operating expenditures[26] and capital outlays.[27]

The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.

On the other hand, should the appropriation ordinance describe the projects in generic terms such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*. Specific *sanggunian* approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed

---

[26] Current operating expenditures refer to appropriations for the purchase of goods and services for current consumption or for benefits expected to terminate within the fiscal year. It is classified into personal services and maintenance and operating expenses. Sec. 155(a), Government Accounting and Auditing Manual (GAAM), Vol. 1.

[27] Capital outlays refer to appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of government, including investments in the capital of government-owned or controlled corporations and their subsidiaries, as well as investments in public utilities such as public markets and slaughterhouses. Sec. 155(b), GAAM, Vol. 1.

Supreme Court E-Library

within the regular personal services and maintenance operating expenses.

In view of the foregoing, the instant case should be treated as an ordinary civil action requiring for its complete adjudication the confluence of all relevant facts. Guided by the framework laid out in this Decision, the trial court should receive further evidence in order to determine the nature of the questioned contracts entered into by Gov. Garcia, and the existence of ordinances authorizing her acts.

WHEREFORE, the petition is *GRANTED* IN PART. The Decision dated July 11, 2006, of the Regional Trial Court of Cebu City, Branch 9, in Civil Case No. CEB-31560, and its Order dated October 25, 2006, are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the court *a quo* for further proceedings in accordance with this Decision. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Nachura, Reyes, and *Brion, JJ.,* concur.

Velasco, Jr., J., in the result.

Quisumbing, J., no part. Close relation to a party.

Leonardo-de Castro, J., on official leave.