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THIRD DIVISION

[G.R. No. 252063. February 22, 2023]

MANDAUE CITY COLLEGE, represented by DR. PAULUS MARIAE L. CAÑETE, *Petitioner*, *v.* **COMMISSION ON HIGHER EDUCATION (CHED),** *Respondent*.

R E S O L U T I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 11, 2019 and the Resolution[3] dated January 28, 2020, of the Court of Appeals (CA) in CA-G.R. CV No. 108771. The CA affirmed the Decision[4] dated April 25, 2016 of Branch 216, Regional Trial Court (RTC), Quezon City in Civil Case No. Q-12-71395 which dismissed the petition for nullification of the Closure Order and the Notice to the Public issued by the respondent Commission on Higher Education (CHED) against petitioner Mandaue City College (MCC), represented by Dr. Paulus Mariae L. Cañete (Dr. Cañete).

The Antecedents

MCC was established as a community college through Mandaue City Ordinance No. 10-2005-324A (MCC Ordinance) dated September 27, 2005.[5] Its primary purpose was to provide technical and professional training in the sciences, arts, education,

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1 *Rollo*, pp. 3-23.

2 Id. at 25-49. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Danton Q. Bueser.

3 Id. at 52-56.

4 Id. at 84-90. Penned by Presiding Judge Alfonso C. Ruiz II.

5 Enacted on November 7, 2005 per RTC Decision dated April 25, 2016, id. at 84.

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engineering and technology, and short-term vocational courses on technical education and skills development. Thereafter, Mandaue City's former Mayor, Thadeo Z. Ouano, entered into a one-year contract of services with Dr. Cañete as MCC College Administrator from January 1, 2006 to December 31, 2006.[6]

During Dr. Cañete's tenure, however, there were reports of alleged irregularities in MCC's administration which prompted its Board of Trustees (MCC Board) to issue the following Resolutions on June 18, 2007: (a) Board Resolution No. 10-2007 directing Dr. Cañete to cease and desist from exercising further functions as MCC President until further notice from the MCC Board and (b) Board Resolution No. 12-2007 appointing Dr. Susana Cabahug (Dr. Cabahug) as Caretaker of MCC who shall perform the duties and functions of the President, also until further notice from the MCC Board.[7] (Twin Resolutions).

Despite the foregoing, Dr. Cañete continued to operate MCC in a campus located at Eversely Childs Sanitarium, Jagobiao, Mandaue City (MCC-Cañete), while MCC under the administration of Dr. Cabahug operated at Don Andres Soriano Avenue, Mandaue City (MCC-Cabahug).[8]

Meanwhile, the MCC Ordinance was amended by Mandaue City Ordinance No. 10-2005-419 dated October 24, 2007 (Revised MCC Ordinance) and later, Mandaue City Ordinance No. 12-2010-568 dated October 7, 2010.[9]

CHED then conducted an investigation on the controversy surrounding the two MCCs. In a Report dated May 15, 2009, it found that both schools had no legal mandate to offer higher education programs and recommended their closure. Thus, on September 24, 2009, CHED directed the two MCCs to cease and desist from offering all higher education programs and encouraged

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6 Id. at 27.

7 Id. at 28.

8 Id. at 29.

9 Id. at 27.

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them to apply for an authority to operate in compliance with CHED policies, standards, and guidelines (cease and desist orders).[10]

Only MCC-Cabahug was able to comply with the requirements; hence it was subsequently granted authority to operate four higher educational programs. On the other hand, MCC-Cañete failed to comply with the requirements and rectify the deficiencies found on its programs which prompted CHED to issue a Closure Order against it on December 3, 2010.[11] In response thereto, the City Council of Mandaue passed City Resolution No. 12-604-2010 directing the City Legal Office to take legal action to prevent anyone from using the name of MCC without any authority.[12]

MCC-Cañete, however, still continued to operate as a school. Consequently, CHED, through then Chairperson Patricia B. Licuanan, issued a Notice to the Public dated July 4, 2011 stating, among others, that MCC-Cañete had no legal personality to operate a local college. The notice further informed the public that the degrees offered by MCC-Cañete are considered spurious and illegal and shall not be recognized by CHED.[13]

MCC-Cañete thus filed the petition for nullification of the Closure Order and the Notice to the Public against CHED before the RTC. It averred that: (a) the recognition of programs in all levels of public and private schools is covered by *Batas Pambansa Bilang* (BP) 232, otherwise known as the Education Act of 1982; (b) BP 232 provides for voluntary accreditation of educational institutions; thus, accreditation is not compulsory; (c) CHED had no authority to impose sanctions against MCC-Cañete; (d) it did not need any recognition from CHED because it was established by virtue of an ordinance; thus it was granted an automatic government recognition; (e) CHED had no jurisdiction over it, nor the power to order its closure; (f) under Section 8(e) of Republic Act No. (RA) 7722, or the Higher Education Act of 1994, CHED

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[10] Id. at 29-30.

[11] Id. at 30, 85.

[12] Id. at 31-32.

[13] Id. at 32-33.

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is merely endowed with recommendatory power to terminate programs and to issue closure orders of schools; (g) Section 16 of CHED Memorandum Order No. 32, Series of 2006[14] provides that all existing local higher educational institutions had eight years from effectivity thereof to comply with the requirements set by CHED; (h) Memorandum Order No. 32 was issued in 2006 and the eighth-year period to comply was until 2014; thus, the Closure Order in 2010 was premature; (i) it was already rated with a ninety percent (90%) compliance with all the requirements by the CHED Regional Quality Assurance Team; and (j) CHED refused to finish the inspection despite MCC-Cañete's repeated appeals which deprived the latter of due process.[15]

For its part, CHED maintained that it issued the Closure Order pursuant to RA 7722. Citing the case of *Dr. Camacho v. Hon. Gloria*,[16] it explained that RA 7722 transferred the jurisdiction over tertiary institutions from the Department of Education Culture and Sports (DECS, now Department of Education) to CHED. Thus, CHED had the authority over all public higher educational institutions, including local universities and colleges; MCC-Cañete's insistence that the recognition of educational institutions, programs, and operations is deemed simultaneously granted with their establishment, is no longer applicable.[17] Moreover, CHED posited that its power to close programs or schools is not mere recommendatory, and to accept such theory will create an absurd situation where schools can indiscriminately offer degree programs without government regulation.[18]

CHED further argued that: (1) MCC-Cañete was not the educational institution created by the Mandaue City ordinances; (2) the local government of Mandaue City never recognized or

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[14] "Policies, Standards and Guidelines on the Establishment and Operation of Local Colleges and Universities," signed by CHED Chairman Carlito S. Puno.

[15] *Rollo*, pp. 85-86.

[16] 456 Phil. 399 (2003).

[17] *Rollo*, p. 86.

[18] Id. at 86-87.

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funded its operation; in fact, MCC-Cañete and its administrators even had to file cases before various courts and the Civil Service Commission (CSC) to demand funding of its operations and payment of their salaries, but to no avail; (3) the MCC which was then headed by Dr. Teresita Inot was the only MCC recognized by the City of Mandaue and given the authority by CHED to operate higher education programs (MCC-Inot); and (4) as testified by the City Treasurer of Mandaue, the City only disbursed funds or subsidy to MCC-Inot.[19]

On June 6, 2012, the RTC issued a Temporary Restraining Order[20] (TRO) enjoining CHED from enforcing its closure order dated December 3, 2010. In issuing the TRO, the RTC considered the fact that the Professional Regulation Commission (PRC) refused to allow the graduates of MCC-Cañete to take the licensure examinations for teachers in September 2011; and that another licensure examinations for teachers was scheduled on September 30, 2012. Thus, to avoid grave or irreparable injury on MCC-Cañete and its graduates, and in view of the urgent nature of the application, the RTC issued the TRO in order that the PRC would allow them to take the examinations.[21]

The TRO was followed by the RTC's issuance of a writ of preliminary injunction in an Order[22] dated June 29, 2012.

The Ruling of the RTC

In a Decision[23] dated April 25, 2016, the RTC dismissed MCC-Cañete's petition for lack of merit. It did not agree with the latter's submissions that the implementation of the closure order was beyond CHED's jurisdiction and that the law only granted it the power to recommend the school closure.[24] The RTC explained:

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[19] Id. at 87.

[20] Id. at 80-82. Issued by Presiding Judge Eleuterio L. Bathan.

[21] Id. at 80-81.

[22] Id. at 83. Issued by Presiding Judge Alexander S. Balut.

[23] Id. at 84-90.

[24] Id. at 89.

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Weighing the contrary interpretations of the parties on the subject provision, the court tends to favour the interpretation of [CHED]. It finds that said interpretation is more in consonance with legislative intent. As pointed out by [CHED], the policy of RA 7722 is to ensure the protection and promotion of the right of all citizens to quality education. If the power of CHED is limited to recommendatory in nature as espoused by [MCC-Cañete], then it might create a situation where educational institutions can offer degree programs indiscriminately without the proper government regulation.

Indeed, there is a need to regulate educational institutions and adopt measures to guarantee the highest quality of education in our country.[25]

In so ruling, the RTC considered evidence showing that MCC-Cañete is not the institution created by the MCC Ordinance.[26]

Aggrieved, MCC-Cañete filed an appeal before the CA.

The Ruling of the CA

The CA denied the appeal in the herein assailed Decision[27] dated March 11, 2019. The *fallo* of the CA decision reads:

WHEREFORE, the appeal is hereby DENIED for lack of merit. The Decision dated 25 April 2016 of the Regional Trial Court, Branch 216, National Capital Judicial Region, Quezon City, in Civil Case No. Q-12-71395 is hereby AFFIRMED.

SO ORDERED.[28] (Emphasis omitted)

The CA emphasized that MCC was organized as a local city college under Section 1 of the MCC Ordinance[29] and governed

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[25] Id.

[26] Id.

[27] Id. at 25-49.

[28] Id. at 49.

[29] Id. at 37. Section 1 of the MCC Ordinance No. 10-2005-324A, as culled from the CA Decision, provides:

SECTION 1. *Establishment*. — There is hereby established in the City of Mandaue a city college to be known as the *Mandaue City College*, the same being organized as a corporation under that name.

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by the MCC Board that had the power to discipline erring school officials.[30] Thus, when the MCC Board directed Dr. Cañete to cease and desist from further operating a school under the name of MCC, but he nonetheless continued to operate it in defiance of the MCC Board's Twin Resolutions, it resulted in the operation of a "rogue school" without any authority from the MCC Board.[31] According to the CA, further evidence that MCC-Cañete lacked authority and juridical personality were Mandaue City Resolution No. 12-604-2010 which directed the City Legal Office to take legal action to prevent anyone from using MCC's name, and the CSC Decision which denied Dr. Cañete's claim for the payment of salaries of its employees.[32]

Without recognition by the city government, the CA classified MCC-Cañete as a "rogue school" which was, legally speaking, non-existent.[33] Thus, contrary to its allegation, MCC-Cañete cannot invoke the so-called "automatic recognition" under Section 27 of BP 232 where recognition of educational programs and/or operations are deemed simultaneously granted with their establishment.[34] It cannot even apply for an authority to operate under the same provision because it was not incorporated as a non-stock educational corporation in accordance with the Corporation Code. Thus, CHED did not err in ordering its closure.[35]

With respect to MCC-Cañete's argument that CHED's power to order school closure was merely recommendatory, the CA held that as an independent and separate administrative agency created by law to regulate the programs and operations of higher educational institutions, the courts cannot substitute CHED's judgment when it comes to the exercise of its supervisory powers over said institutions.[36]

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30 Id. at 38-39.

31 Id. at 39.

32 Id.

33 Id. at 40.

34 Id. at 40-41.

35 Id. at 41.

36 Id. at 44.

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Finally, the CA pointed out that MCC-Cañete had no legal or juridical personality in that it operated without any authority from CHED. Thus, it cannot sue as a real party-in-interest pursuant to Sections 1 and 2 of Rule 3 of the Rules of Court.[37]

MCC-Cañete sought reconsideration, but it was denied by the appellate court in the assailed Resolution[38] dated January 28, 2020.

Hence, the present Petition.

Petition for Review on Certiorari

MCC-Cañete argues that Dr. Cañete was not engaged as a College Administrator but as the MCC President. It avers that the Revised MCC Ordinance recognized MCC under the administration of Dr. Cañete, citing Sections 6(a) and 14 thereof which allegedly mooted the appointment of Dr. Cabahug as Caretaker of MCC as it proscribed the MCC Board from appointing a Caretaker/ Officer-in-Charge of the school.[39]

Moreover, MCC-Cañete questions the authority of the Executive Director of CHED to issue the Closure Order by citing Section 27 of BP 232 which allegedly exempts MCC, a government-operated school established by the MCC Ordinance, from compliance with the requirements of CHED for recognition of its educational programs and/or operations. It likewise submits that Section 8 of RA 7722 merely granted recommendatory powers to CHED in case of school closure. Assuming that CHED had the authority, MCC-Cañete disputes the existence of the investigation conducted by CHED which could not purportedly take place within 42 days from the creation of MCC-Cabahug, and laments that it was not even furnished with a copy of the investigation report despite its several requests. Lastly, MCC-Cañete contends that the appointment of Dr. Cabahug as College Administrator was violative of CHED Memorandum Order No. 32, Series of 2006 which states that the administration of a local college shall be vested in a "President".[40]

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[37] Id. at 48.

[38] Id. at 52-56.

[39] Id. at 10-13.

[40] Id. at 14-17.

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In its Comment,[41] CHED, through the Office of the Solicitor General (OSG) prays for the dismissal of the petition for lack of merit. It alludes that CHED decisions and orders, as to whether or not an educational institution meets the norms and standards required for permission to operate and continue operating, are accorded respect; it is not the function of any court to substitute its own judgment, absent any compelling reason.[42] As the administrative agency with the mandate to regulate higher educational institutions, CHED is in a better position to pass judgment thereon based on its special knowledge and expertise.[43] Finally, the OSG agrees with the CA that MCC-Cañete has no juridical and legal personality under the circumstances, hence, it cannot sue.[44]

In its Reply,[45] MCC-Cañete reiterated that CHED should have finished the inspection of its campus to check on its final and full compliance with the requirements set forth by the latter, instead of ordering its outright closure.

The Issues

The issues for resolution of the Court are *first*, whether the CA erred in affirming CHED's authority to issue the school Closure Order; and *second*, whether the CA erred in upholding the Closure Order and Notice to the Public issued by CHED against MCC-Cañete.

Our Ruling

The petition lacks merit.

The creation of CHED pursuant to RA 7722 or the Higher Education Act of 1994 granted it with jurisdiction over both public and private institutions of higher education as well as degree-granting programs in all post-secondary educational institutions,

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41 Id. at 67-79.

42 Id. at 75.

43 Id. at 76.

44 Id. at 76-77.

45 Id. at 103-106.

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public and private.[46] Section 8 of RA 7722 states its powers and functions which include:

> Section 8. *Powers and Functions of the Commission*. — The Commission shall have the following powers and functions:
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> a. formulate and recommend development plans, policies, priorities, and programs on higher education and research;
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> b. formulate and recommend development plans, policies, priorities and programs on research;
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> c. recommend to the executive and legislative branches, priorities and grants on higher education and research;
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> d. set minimum standards for programs and institutions of higher learning recommended by panels of experts in the field and subject to public hearing, and enforce the same;
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> e. monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;
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> x x x x

Moreover, Article 13 of the Implementing Rules and Regulations of RA 7722 further defines the powers and functions of CHED which include school closure, among others:

> (e) Monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, and the downgrading on (*sic*) withdrawal of accreditation, program termination of (*sic*) school closure.
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> x x x x[47]

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[46] Section 3 of RA 7722.

[47] Art. 13(e) of the Rules and Regulations Implementing RA 7722 dated September 14, 1994 available at <https://ched.gov.ph/wp-content/uploads/2017/10/CO-No.-03-Series-of-1994-Rules-and-Regulations-Implementing-RA-7722-as-Amended.pdf> last accessed on February 16, 2023.

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Corollarily, Section 16 of RA 7722 grants CHED with the authority necessary to effectively carry out its powers and functions and to attain its objectives, which would imperatively include the issuance of closure orders against errant higher educational institutions:

> SECTION 16. *Authority*. — The Commission shall exercise such authority as may be deemed necessary within its premises or areas of operation to effectively carry out its powers and functions and to attain its objectives: *Provided*, That the Commission may seek the assistance of other government agencies for the proper implementation of this Act.

Thus, it was well-within the power of CHED to issue the Closure Order against MCC-Cañete.

As to whether the CA erred in upholding the Closure Order and Notice to the Public issued by CHED against MCC-Cañete, the Court traces back the circumstances surrounding the establishment and operation of MCC, including the appointment of Dr. Cañete as an officer thereof.

Mandaue City Ordinance No. 10-2005-324A, or the MCC Ordinance, established MCC as a corporation which shall primarily provide technical and professional training in the sciences, arts, education, engineering and technology, and short-term vocational courses on technical education and skills development.[48] Its governing body shall be the MCC Board of Trustees, with the City Mayor as Chair[person], and the President thereof as Vice-Chair[person], among others, who shall have the power to remove its officials and employees for cause.[49]

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[48] Section 2 of Mandaue City Ordinance No. 10-2005-324A; available at <https://drive.google.com/drive/folders/1It11n5p2kRTFEqXRhEHXsHzMEJzQYyPN> last accessed on February 16, 2023.

[49] Sections 4 and 5(g) of MCC Ordinance No. 10-2005-324A provide:
Section 4. *Board of Trustees*. — The governing Body of the City College shall be vested in a Board of Trustees to be known as the Board of Trustees of the Mandaue City College. It shall be composed of the following:
(a) City Mayor as Chairman
(b) President of the City College as Vice Chairman
x x x x

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MCC started its operation for school year 2006-2007 under the administration of Dr. Cañete. On June 18, 2007, however, the MCC Board issued the Twin Resolutions which, in effect, appointed Dr. Cabahug in place of Dr. Cañete.

Meanwhile, Revised MCC Ordinance dated October 24, 2007 took effect. Section 14 thereof provides:

> SECTION 14. Confirmation/Ratification. — The lawful acts executed by the President and staff and the Board of Trustees of Mandaue City College pursuant to the existing Ordinance No. 10-2005-324A, are hereby adopted, confirmed and ratified.

MCC-Cañete anchors its position on the foregoing provision insisting that with the passage of the Revised MCC Ordinance, the cease and desist orders issued against it by the MCC Board were already mooted as its acts were ratified by the local government.[50] However, contrary to its contention, nowhere in the Revised MCC Ordinance was MCC-Cañete recognized. Neither can it find support under Section 14 thereof as the confirmation/ratification pertained to only *lawful acts* of the MCC officers and staff.

There were no more lawful acts to speak of after the issuance of the cease and desist orders against Dr. Cañete. Without the mandate of the MCC Board, Dr. Cañete had no more authority to continue as an official thereof, whether as its President or as its College Administrator. The MCC Board, in effect, revoked his authority as the MCC President and appointed Dr. Cabahug in his stead. Corollarily, all acts performed by Dr. Cañete as the President

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> Section 5. *Powers of the Board of Trustees*. — The Board of Trustees shall have the following powers:
> x x x x
> (g) to appoint the president, vice-presidents, deans, directors, the secretary of the City College, the registrar, the heads of the departments, professors, instructors, lecturer and other officials and employees of the City College; x x x and to remove them for cause after proper notice and hearing pursuant to Civil Service laws governing disciplinary action[.]

[50] *Rollo*, p. 12.

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of MCC after the issuance of the MCC Board Twin Resolutions could not be deemed as *lawful* or *legitimate*.

Similarly, there is no merit in the argument of petitioner that Section 6(a) of the Revised MCC Ordinance mooted the appointment of Dr. Cabahug as a Caretaker/Officer-in-Charge of the school. The relevant portion thereof provides:

> Section 6. (a) *The President*. x x x
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> x x x x
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> In case of permanent vacancy in the Office of the President by reason of death, resignation, removal for cause or incapacity to perform the functions and duties of the office, the Vice President for Academic Affairs shall act as President of the College until a new President shall have been appointed and qualified. The BOT cannot and shall not appoint any Caretaker/Officer-in-Charge.

While the mentioned provision prohibits the MCC Board from appointing a Caretaker/Officer-in-Charge in case of a permanent vacancy in the MCC Office of the President, it should be noted that Dr. Cabahug's appointment took place on June 18, 2007,[51] particularly months before this proscription was put into place on October 24, 2007.

In other words, no matter how the Revised MCC Ordinance is interpreted, there is nothing therein which grants Dr. Cañete the power or authority to perform duties as MCC President. It is palpable that even the citation mentioned by MCC-Cañete commending and congratulating Dr. Cañete for passing the CHED Regional Quality Assurance Evaluation with flying colors,[52] recognized that MCC under the administration of Dr. Cañete was re-visited to check on the progress of its deficiencies which was then 90% compliant with all the requirements *attained despite the absence of any assistance — financial, moral, or*

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[51] Id. at 28.

[52] Mandaue City Resolution No. 11-878-2008 dated November 4, 2008, available at <https://drive.google.com/drive/folders/1mkUilVIAClhBlBKu9y7rgU2l6zBsSEW6> accessed on November 29, 2020.

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physical — from the City Government.[53] Also more telling are the findings of the CSC which concluded that Dr. Cañete and his group were properly denied their salaries as they are wanting in valid appointments.

Clutching at straws, MCC-Cañete also harps on Section 27 of BP 232[54] or the Education Act of 1982, which purportedly exempts it from the requirements of recognition, *viz.*:

> SECTION 27. *Recognition of Schools*. — The educational operations of schools shall be subject to the prior authorization of the government, and shall be affected by recognition. In the case of government operated schools, whether local, regional, or national, recognition of educational programs and/or operations shall be deemed granted simultaneously with establishment.
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> In all other case the rules and regulations governing recognition shall be prescribed and enforced by the Ministry of Education, Culture and Sports defining therein who are qualified to apply, providing for a permit system, stating the conditions for the grant of recognition and for its cancellation and withdrawal, and providing for related matters.

MCC-Cañete's argument is specious. There is no dispute that MCC is a government-operated school. To put things into perspective, the issue is not MCC. It is the school claiming to be MCC under the administration of Dr. Cañete as its President. Indubitably, MCC-Cañete failed to refute that the MCC Board enjoined Dr. Cañete from further performing his functions as MCC President. Neither was there any evidence presented by MCC-Cañete to categorically establish that the MCC Board already recalled its Twin Resolutions which would thereby allow Dr. Cañete to continue his tenure as the MCC President.

Without a charter of its own, MCC-Cañete is not the MCC created by the MCC Ordinance. It cannot be classified as a government-operated school exempted from the rules and regulations governing recognition prescribed and enforced by

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[53] Id.

[54] Education Act of 1982, BP 232, September 11, 1982.

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then Ministry of Education, Culture and Sports under Section 27 of BP 232. More importantly, the local government of Mandaue City even disowned the MCC operated under the administration of Dr. Cañete.

Thus, the Court is not convinced that the CA erred in upholding the validity of CHED's Closure Order and Notice to the Public. On the contrary, MCC-Cañete did not present sufficient proof that it had complied with the requirements set forth by CHED. It is important to note that, as contained in the questioned Closure Order itself, the MCC under the administration of Dr. Cabahug had successfully complied with CHED's directives, unlike the MCC under the administration of Dr. Cañete. The latter merely questioned the existence of the Fact-Finding Report instead of presenting proof of its compliance with the CHED's directives.

In view of the foregoing, the Court finds no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA.

WHEREFORE, the petition is **DENIED**. The Decision dated March 11, 2019 and Resolution dated January 28, 2020 of the Court of Appeals in CA-G.R. CV No. 108771 are hereby **AFFIRMED**.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, Dimaampao, and *Singh, JJ.*, concur.

APPEARANCES OF COUNSEL

Cabrera Sipalay Mayol Salas Bacalso & Pasaylo Law Office for petitioner.

Office of the Solicitor General for respondent.