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JUL 09 2021
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Republic of the Philippines
Supreme Court
Manila

EN BANC

**JUNE VINCENT MANUEL S. G.R. No. 226935
GAUDAN,**

Petitioner,

- versus -

ROEL R. DEGAMO,

Respondent.

X-----X

OFFICE OF THE OMBUDSMAN, G.R. No. 228238
represented by **OMBUDSMAN**
CONCHITA CARPIO MORALES,
DEPARTMENT OF THE
INTERIOR AND LOCAL
GOVERNMENT, represented by
its Secretary, **HON. SENEN**
SARMIENTO, and **JUNE**
VINCENT MANUEL S. GAUDAN,
Petitioners,

- versus -

ROEL R. DEGAMO,

Respondent.

X-----X

JUNE VINCENT MANUEL S. GAUDAN, **G.R. No. 228325**

Petitioner, Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GISMUNDO,
CARANDANG,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO,
LOPEZ, J., JJ.

- versus -

Promulgated:

ROEL R. DEGAMO,

Respondent.

February 9, 2021

Done by R. Papa-Gonzales

X-----X

DECISION

INTING, J.:

For the Court's consideration are three consolidated Petitions¹ assailing the following issuances of the Court of Appeals (CA) in CA-G.R. SP No. 146151:

¹ Petition for *Certiorari* and Prohibition (under Rule 65) with Urgent Prayer for the Issuance of a Temporary Restraining Order, Writ of Preliminary Injunction and/or Status Quo Ante Order/ Preliminary Mandatory Injunction, *rollo*, Vol. I (G.R. No. 226935), pp. 4-90; Petition for Review on *Certiorari*, *rollo*, Vol. I (G.R. No. 228238), pp. 9-30; and Petition for Review, *rollo*, Vol. I (G.R. No. 228325), pp. 3-69.

R.

- (1) the Resolutions dated June 23, 2016² and August 22, 2016³ which issued *ex parte* a temporary restraining order (TRO) and/or a *status quo ante* order enjoining the implementation of the Joint Resolution⁴ dated January 12, 2016 and the Joint Order⁵ dated May 16, 2016 of the Office of the Ombudsman (Ombudsman) in OMB-V-C-13-0348 and OMB-V-A-13-0331; and
- (2) the Decision⁶ dated August 30, 2016 and the Resolution⁷ dated November 10, 2016, wherein the CA ruled, among others, that the penalty against Roel R. Degamo (Degamo) for Simple Misconduct can no longer be imposed against him by virtue of the *condonation doctrine*.⁸

The Antecedents

In the May 2010 elections, Degamo won a seat as Provincial Board Member of Negros Oriental (the Province). However, due to the sudden deaths of Governor-elect Emillio C. Macias II on June 13, 2010 and Vice Governor-elect Agustin Perdices on January 5, 2011, Degamo, as the Provincial Board Member who garnered the highest number of votes in the last elections, assumed office as Governor of the Province by succession.⁹

As then incumbent Governor, Degamo requested from the Office of the President the release of calamity funds for fiscal year 2012 for the rehabilitation, repair, and reconstruction of damaged infrastructures in

² *Rollo*, Vol. I (G.R. No. 226935), pp. 316-322; penned by Associate Justice Stephen C. Cruz with Associate Justices Samuel H. Gaerlan (now a member of the Court) and Ramon Paul L. Hernando (now a member of the Court), concurring.

³ *Rollo*, Vol. II (G.R. No. 228325), pp. 563-567; penned by Associate Justice Stephen C. Cruz with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of the Court), concurring.

⁴ *Rollo*, Vol. I (G.R. No. 226935), pp. 208-216; penned by Graft Investigation and Prosecution Officer I Laurrie Layne P. Cristobal with the recommending approval of Deputy Ombudsman for the Military and Other Law Enforcement Offices Cyril E. Ramos, and approved by Ombudsman Conchita Carpio-Morales.

⁵ *Id.* at 252-261; penned by Graft Investigation and Prosecution Officer III Anna Francesca M. Limbo, and approved by Ombudsman Conchita Carpio Morales.

⁶ *Rollo*, Vol. I (G.R. No. 228238), pp. 36-54; penned by Associate Justice Stephen C. Cruz, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of the Court), concurring.

⁷ *Id.* at 56-59.

⁸ *Id.* at 53.

⁹ *Rollo*, Vol. I (G.R. No. 226935), p. 10.

the aftermath of Typhoon Sendong and a magnitude 6.9 earthquake which had struck the Province in December 2011 and February 2012, respectively.¹⁰

On June 5, 2012, the Department of Budget and Management (DBM) Regional Office No. VII issued Special Allotment Release Order (SARO) No. ROVII-12-0009202 to the Province in the amount of ₱961,550,000.00, to be drawn from the Calamity Fund under the 2012 General Appropriations Act. Two days later, ₱480,775,000.00, or 50% of the total amount of the SARO, was released and deposited to the bank account of the Provincial Government.¹¹

In a Letter¹² dated June 19, 2012, DBM Undersecretary Mario L. Relampagos (Usec. Relampagos) informed Degamo of the immediate withdrawal of the SARO for noncompliance with the existing guidelines of the Department of Public Works and Highways (DPWH) on large-scale fund releases for infrastructure projects amounting to ₱10,000,000.00 or higher, particularly DPWH Department Order No. 16, Series of 2012.

As a consequence, DBM Regional Office No. VII, through Director Carmela S. Fernan (Director Fernan), issued SARO No. ROVII-12-0012208¹³ (*negative* SARO) withdrawing the release of funds under SARO No. ROVII-12-0009202. Director Fernan also sent a Letter¹⁴ dated July 10, 2012 to Degamo demanding the return of ₱480,775,000.00, or the amount earlier released to the Provincial Government, to the National Treasury.

By reason thereof, Degamo wrote a Letter¹⁵ dated July 16, 2012 addressed to Usec. Relampagos wherein he questioned the validity of the *negative* SARO and adamantly refused to comply with the DBM's directive to return the funds that had already been released to the Province.

¹⁰ *Rollo*, Vol. I (G.R. No. 228238), p. 38.

¹¹ *Id.* at 38-39.

¹² *Rollo*, Vol. I (G.R. No. 226935), pp. 130-131.

¹³ *Id.* at 133.

¹⁴ *Id.* at 134.

¹⁵ *Id.* at 118-120.

In the meantime, the Bids and Awards Committee of the Provincial Government held a special meeting for the conduct of a pre-procurement conference for infrastructure projects to be implemented by the Province out of the Calamity Fund released under SARO No. ROVII-12-0009202. Thereafter, Degamo, through Negotiated Procurement in Emergency Cases, awarded eleven infrastructure project contracts and released the total amount of ₱143,268,441.59, representing 15% of the contract price as advanced payment, to the respective project contractors.¹⁶

On October 9, 2012, the Commission on Audit (COA) issued Audit Observation Memorandum No. NegOr 2012-019¹⁷ questioning these disbursements for lack of the required certificate of availability of funds. After audit, the COA issued Notice of Disallowance Nos. 2012-139-100-(12) to 2012-149-100-(12)¹⁸ dated November 29, 2012, which disallowed the advanced payment made to the project contractors of the above-mentioned infrastructure contracts due to the lack of available funds as a result of the DBM's withdrawal of SARO No. ROVII-12-0009202.

Meanwhile, Degamo ran and won as Governor of the Province in the May 2013 elections.¹⁹

On October 29, 2013, June Vincent Manuel S. Gaudan (Gaudan) filed a Complaint-Affidavit²⁰ with the Ombudsman against Degamo and several others²¹ for: (a) Malversation of Public Funds through Falsification and violation of Section 3(e) of Republic Act No. (RA) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, docketed as OMB-V-C-13-0348; and (b) Grave Misconduct, Dishonesty, and Abuse of Authority docketed as OMB-V-A-13-0331 in connection with their refusal to return the amount of ₱480,775,000.00 to the National Treasury as a consequence of the issuance of the *negative* SARO.

¹⁶ *Id.* at 209-211.

¹⁷ *Id.* at 135-137.

¹⁸ *Id.* at 138-170.

¹⁹ *Id.* at 36. See also Certificate of Candidacy for Provincial Governor, *rollo*, Vol. I (G.R. No. 228325), p. 90.

²⁰ *Rollo*, Vol. I (G.R. No. 226935), pp. 121-129.

²¹ The Complaint-Affidavit also charged Bids and Awards Committee Chairman Danilo C. Mendez and Provincial Treasurer Teodorico G. Reyes for allegedly authorizing the illegal expenditure and falsely certifying that the allotments had been obligated and were supported by complete documents, respectively, *id.* at 121.

Ruling of the Ombudsman

In the Joint Resolution²² dated January 12, 2016, the Ombudsman found probable cause to indict Degamo and his co-respondents for 11 counts of Malversation of Public Funds through Falsification under Article 217, in relation to Articles 171 and 48, of the Revised Penal Code, as amended, and for violation of Section 3(e) of RA 3019. It explained as follows:

x x x Their unilateral act of ignoring DBM's authority is indicative of evident bad faith, manifest partiality and/or gross inexcusable negligence which caused undue injury to the Government in the amount of Php 143,268,441.59, representing the advance payments made to the different contractors, in direct violation of RA 3019, Section 3(e). Moreover, entering into eleven (11) separate infrastructure contracts and disbursing advance payments thereto through the use of certifications that made untruthful statements on the availability of funds constitute the complex crime of Malversation of Public Funds through Falsification, defined and penalized under Article 217, in relation to Articles 171 and 48 of the Revised Penal Code, as amended.²³

As regards the *administrative aspect* of the case, the Ombudsman found Degamo and his co-respondents guilty of Grave Misconduct, and meted out against them the penalty of dismissal from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government. The Ombudsman, however, applied the *condonation doctrine* to Degamo's case and opined that the penalty against him could no longer be imposed "in view of his reelection as Provincial Governor in 2013."²⁴

However, upon Gaudan's Urgent Motion for Reconsideration,²⁵ the Ombudsman, in its Joint Order²⁶ dated May 16, 2016, *amended* its earlier ruling and dismissed Degamo from the service, taking into consideration the *abandonment* of the condonation doctrine in the 2015

²² *Id.* at 208-216.

²³ *Id.* at 214.

²⁴ *Id.* at 215.

²⁵ *Rollo*, Vol. I (G.R. No. 223325), pp. 83-88.

²⁶ *Rollo*, Vol. I (G.R. No. 226935), pp. 252-261.

landmark case of *Ombudsman Carpio Morales v. CA, et al.*²⁷ (*Carpio Morales*), viz.:

In line with the Supreme Court's pronouncement in [*Carpio Morales*], Ombudsman Office Circular No. 17, Series of 2016 was issued which states that from the date of the finality of the Supreme Court Decision on **12 April 2016** and onwards, this Office will no longer apply the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, for so long as the administrative case remains *open* and *pending* as of 12 April 2016 and onwards, the defense of condonation will not be honored.²⁸

The pertinent portion of the *fallo* thus reads:

WHEREFORE, this Office, through the undersigned:

x x x x

- (b) GRANTS complainant-movant June Vincent Manuel S. Gaudan's Urgent Motion for Reconsideration filed on 21 April 2016 and IMPOSES upon respondent-movant Roel R. Degamo, for having committed the administrative offense of Grave Misconduct, the principal penalty of Dismissal from the Service along with corresponding accessory penalties of cancellation of civil service eligibility, perpetual disqualification from holding public office and forfeiture of retirement benefits.

If the penalty of Dismissal can no longer be enforced on respondent-movant Degamo, the same shall be converted into a fine in the amount equivalent to his salary for one year, payable to this Office, and may be deducted from his retirement benefits, accrued leave credits or any receivable due him. The accessory penalties remain imposed.

SO ORDERED.²⁹

²⁷ 772 Phil. 672 (2015).

²⁸ *Rolló*, Vol. I (G.R. No. 226935), p. 258.

²⁹ *Id.* at 260.

The proceedings before the CA

On June 16, 2016, Degamo filed a Petition³⁰ for Review under Rule 43 of the Rules of Court with Prayer for a Writ of Preliminary Prohibitory Injunction and TRO with the CA docketed as CA-G.R. No. SP No. 146151 praying for: (a) the issuance of a TRO and/or writ of preliminary prohibitory injunction to enjoin the implementation of the Ombudsman's Joint Order dated May 16, 2016; and (b) the reversal of the Joint Order.

In essence, Degamo argued that: *first*, he could not be held liable for the disbursements in relation to the Calamity Fund released to the Province as the DBM's withdrawal of SARO No. ROVII-12-0009202 was illegal;³¹ and *second*, given the prospective application of *Carpio Morales*, his reelection in 2013 as Governor of the Province effectively condoned any administrative liability that he incurred for acts allegedly committed in 2012.³²

The assailed CA Resolutions in G.R. No. 226935

In the Resolution³³ dated June 23, 2016, the CA granted Degamo's prayer for the issuance of a TRO given the 'extreme urgency' involved in the case³⁴ and the 'grave and irreparable damage' that will be sustained by Degamo should the Ombudsman's ruling be immediately executed.³⁵

The CA explained that the implementation of the Ombudsman's Joint Order against Degamo would "*undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.*"³⁶ In the same manner, the CA ruled that the injury to Degamo by virtue of his dismissal was not susceptible to any mathematical computation and cannot be adequately compensated in damages because what is involved is his right to assume public office,

³⁰ *Rollo*, Vol. I (G.R. No. 228325), pp. 103-121.

³¹ *Id.* at 113.

³² *Id.* at 117-118.

³³ *Rollo*, Vol. I (G.R. No. 226935), pp. 316-322.

³⁴ *Id.* at 320.

³⁵ *Id.* at 317.

³⁶ *Id.* at 320.

which he acquired through the voice of the electorate during the 2013 elections.³⁷

Gaudan thereafter filed a Motion for Reconsideration³⁸ to question the propriety of the issuance of the TRO, but the CA denied the motion in the Resolution³⁹ dated August 22, 2016. Consequently, Gaudan filed a Petition for *Certiorari* and Prohibition (under Rule 65) with Urgent Prayer for the Issuance of a Temporary Restraining Order, Writ of Preliminary Injunction and/or Status Quo Ante Order/ Preliminary Mandatory Injunction⁴⁰ with this Court, assailing the CA Resolutions dated June 23, 2016 and August 22, 2016. The case was docketed as **G.R. No. 226935**.

*The assailed CA Decision and Resolution
in G.R. Nos. 228238 and 228325*

In the Decision⁴¹ dated August 30, 2016, the CA *reversed and set aside* the Ombudsman's Joint Resolution and Joint Order, but only insofar as the *administrative aspect* of Degamo's case was concerned.⁴² It found Degamo administratively liable for Simple Misconduct instead of Grave Misconduct, *viz.*:

From all the foregoing, We find no reason to charge petitioner Degamo with Grave Misconduct, for the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are clearly and indubitably absent in the present case. Otherwise stated, there is no clear and convincing evidence in the present case to show that [Degamo's] refusal to return the Calamity Fund had been made for personal or selfish ends, nor is there evidence that petitioner acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do injustice to others. At most, therefore, [Degamo] can only be held liable for Simple Misconduct.⁴³

Accordingly, the CA imposed against Degamo the penalty of suspension from office for a period of one (1) month and one (1) day to six (6) months. Nevertheless, it ruled that "*the penalty against him may*

³⁷ *Id.* at 320-321.

³⁸ *Id.* at 323-342.

³⁹ *Rollo*, Vol. II (G.R. No. 228325), pp. 563-567.

⁴⁰ *Rollo*, Vol. I (G.R. No. 226935), pp. 4-90.

⁴¹ *Rollo*, Vol. I (G.R. No. 228238), pp. 36-54.

⁴² *Id.* at 52-53.

⁴³ *Id.* at 49.

no longer be imposed in view of his reelection as Provincial Governor in 2013.”⁴⁴

On this point, the CA ruled that the abandonment of the condonation doctrine in *Carpio Morales* only applied to future cases involving acts committed after the finality of said Decision on April 12, 2016.⁴⁵ Applying the condonation doctrine, the CA concluded that Degamo could no longer be held administratively liable for any misconduct due to acts he committed in 2012 given his subsequent reelection in 2013.⁴⁶

The Ombudsman and the Department of Interior and Local Government (DILG), thru the Office of the Solicitor General (OSG), and Gaudan separately moved for reconsideration,⁴⁷ but the CA denied the motions in the Resolution⁴⁸ dated November 10, 2016. As a consequence, the parties filed their respective Petitions before the Court, docketed as **G.R. Nos. 228238** and **228325**, respectively.

In the Resolution⁴⁹ dated April 4, 2017, the Court resolved, upon the recommendation of the Clerk of Court, to *consolidate* the three Petitions docketed as G.R. Nos. 226935, 228325, and 228238 as these cases involved common questions of facts and law.⁵⁰

The Issues

In their respective Petitions, the parties raised the following issues for the Court’s resolution, to wit:

GR No. 226935:

- (1) Whether the condonation doctrine justified the CA’s issuance of a TRO to enjoin the implementation of

⁴⁴ *Id.* at 53.

⁴⁵ *Id.* at 50.

⁴⁶ *Id.* at 52.

⁴⁷ *Rollo*, Vol. II (G.R. No. 228325), pp. 588-634 and 636-647.

⁴⁸ *Rollo*, Vol. I (G.R. No. 228238), pp. 56-59.

⁴⁹ *Rollo*, Vol. III (G.R. No. 226935), pp. 1119-1120.

⁵⁰ See Memorandum dated March 27, 2017 signed by Clerk of Court Felipa B. Anama, *id.* at 1108, 1115-1116.

the Ombudsman's Joint Order dated May 16, 2016;
and

- (2) Whether the condonation doctrine is applicable to Degamo, who first assumed office as Governor of the Province by succession.

GR No. 228325:

- (1) Whether Degamo is liable only for simple misconduct instead of grave misconduct;
- (2) Whether the Ombudsman's Joint Order, which dismissed Degamo from the service, was immediately executory; and
- (3) Whether the condonation doctrine is unconstitutional since it has no statutory or constitutional basis.

GR No. 228238:

- (1) Whether Degamo is liable only for simple misconduct instead of grave misconduct; and
- (2) Whether the condonation doctrine is applicable to Degamo.

The Court's Ruling

The Petitions are unmeritorious.

Preliminarily, the Court shall resolve the procedural objections raised by Gaudan in relation to Degamo's Petition for Review with the CA which are: (1) the lack of affidavit and proof of service of the Petition to the OSG; (2) the court and agencies had been wrongfully impleaded; (3) the non-exhaustion of administrative remedies given his failure to file a motion for reconsideration before the Ombudsman; and (4) the inclusion of an appeal on the Ombudsman's finding of probable

cause in OMB-V-C-15-0348 which should have resulted in the outright dismissal of the Petition.⁵¹

Under Section 5, Rule 43 of the Rules of Court, an appeal shall be taken by filing a verified petition for review with the CA, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*.

As Degamo aptly pointed out, copies of his Petition for Review were duly served upon Gaudan's counsel, the DILG, and the Ombudsman, in compliance with the required procedure. The inclusion of the Ombudsman as respondent, too, was justified in view of his application for a preliminary injunctive writ to enjoin the implementation of the Ombudsman's Joint Order dated May 16, 2016.⁵²

Moreover, contrary to Gaudan's claim, the records show that Degamo had actually filed a Motion for Reconsideration with Motion to Hold Filing of Information⁵³ with the Ombudsman assailing the Joint Resolution dated March 16, 2016. In other words, the Ombudsman's Joint Order is already a disposition on the parties' respective Motions for Reconsideration, which, in turn, prompted Degamo to elevate the case to the CA *via* a Petition for Review under Rule 43 of the Rules of Court.

Finally, as regards the alleged impropriety of raising the criminal aspect of the case to the CA, it is settled that the CA may entertain an appeal of the Ombudsman's ruling in criminal cases *if it is consolidated* with an administrative case.⁵⁴ Considering that this case involves a consolidation of an administrative and a criminal complaint, Degamo had the option to *either* file a petition for review under Rule 43 with the CA or directly file a *certiorari* petition under Rule 65 of the Rules of Court before the Supreme Court.⁵⁵

Here, Degamo chose to assail the Ombudsman's Joint Resolution and Joint Order *via* a Rule 43 petition with the CA. In taking cognizance

⁵¹ As culled from the Petition for *Certiorari* and Prohibition (under Rule 65) with Urgent Prayer for the Issuance of a Temporary Restraining Order, Writ of Preliminary Injunction and/or Status Quo Ante Order/ Preliminary Mandatory Injunction, *rollo*, Vol. I (G.R. No. 266395), p. 22.

⁵² See Degamo's Comment/Opposition to the Petition, *rollo*, Vol. III (G.R. No. 226935), p. 1189.

⁵³ *Rollo*, Vol. I (G.R. No. 226935), pp. 231-236.

⁵⁴ See *Macadato v. Ombudsman*, G.R. No. 235967 (Notice), March 12, 2018, citing *Cortes v. Office of the Ombudsman (VISA/AS), et al.*, 710 Phil. 699, 703(2013).

⁵⁵ *Cortes v. Office of the Ombudsman (VISAYAS), et al., supra* at 703.

of the case, the CA correctly set aside the challenge to the criminal aspect thereof for lack of jurisdiction and focused its review of the assailed Ombudsman issuances *solely* on Degamo's administrative liabilities instead.⁵⁶

The substantive issues shall now be discussed in *seriatim*:

On the CA's issuance of injunctive relief against the Ombudsman's Joint Order

Gaudan postulates that the CA cannot encroach upon the rule-making powers of the Ombudsman through the issuance of injunctive writs preventing execution pending appeal.⁵⁷ He cited the case of *Ombudsman v. Samaniego*⁵⁸ (*Samaniego*) wherein the Court ruled that the provisions of Section 7,⁵⁹ Rule III of the Rules of Procedure of the Office of the Ombudsman had superseded Section 12,⁶⁰ Rule 43 of the Rules of Court because of the principle *specialis derogat generali* in that, "[w]hen two rules apply to a particular case, that which was specially designed for the said case must prevail over the other."⁶¹

Gaudan further cites the cases of *Office of the Ombudsman v. de Chavez, et al.*,⁶² *Villaseñor, et al. v. Ombudsman, et al.*,⁶³ and *The Office*

⁵⁶ "The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative cases *only*. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases." See *Duyon, et al. v. The Former Special Fourth Division of the Court of Appeals, et al.*, 748 Phil. 375, 385 (2014), citing *Office of the Ombudsman v. Heirs of Margarita Vda. de Ventura*, 620 Phil. 1, 8 (2009).

⁵⁷ *Rollo*, Vol. I (G.R. No. 226935), p. 44.

⁵⁸ 646 Phil. 445 (2010).

⁵⁹ Section 7, Rule III of Ombudsman Administrative Order No. 07 provides:

SECTION 7. *Finality of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

⁶⁰ Section 12, Rule 43 of the Rules of Court provides:

SEC. 12. *Effect of appeal.* — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

⁶¹ *Ombudsman v. Samaniego*, *supra* note 58 at 451, citing *Buencamino v. Court of Appeals*, 549 Phil. 511 (2007).

⁶² 713 Phil. 211 (2013).

⁶³ 735 Phil. 409 (2014).

of the Ombudsman v. Valencerina,⁶⁴ wherein the Court reiterated the doctrine laid down in *Samaniego* stating that decisions of the Ombudsman in administrative cases shall be immediately executory pending appeal, pursuant to Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.⁶⁵

Lastly, Gaudan claims that the Court's ruling in *Carpio Morales* which, among others, declared that injunctive reliefs are available against Ombudsman orders is inapplicable to this case. He explains that the application of *Carpio Morales* is limited to injunctive writs as an ancillary remedy against preventive suspension orders issued by the Ombudsman, and not to cases where the penalty of dismissal from the service has already been imposed, as in the case at hand.⁶⁶

This issue, however, is *not* a novel one. After all, the Court in *Carpio Morales* has unequivocally ruled that the CA has the authority to issue injunctive writs against the Ombudsman's decisions and/or orders. Although the CA, in *Carpio Morales*, did, in fact, issue injunctive relief to enjoin a preventive suspension, it bears stressing that the Court did *not*, in any way, limit the CA's authority to issue a TRO and other provisional injunctive writs against the Ombudsman to such cases.⁶⁷

As the Court explained in *Carpio Morales*, the CA's authority to issue injunctive relief enjoining orders of the Ombudsman is merely ancillary to the exercise of its *certiorari* jurisdiction conferred to it under Section 9(1), Chapter I of Batas Pambansa Blg. 129, or "The Judiciary Reorganization Act of 1980," as amended,⁶⁸ viz.:

SECTION 9. *Jurisdiction.* – The Intermediate Appellate Court shall exercise:

- (1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, **and auxiliary writs or processes**, whether or not in aid of its appellate jurisdiction; (Emphasis supplied.)

⁶⁴ 739 Phil. 11 (2014).

⁶⁵ *Rollo*, Vol. I (G.R. No. 226935), pp. 44-48.

⁶⁶ *Id.* at 49-51.

⁶⁷ See *Morales v. Justice Real-Dimagiba, et al.*, 797 Phil. 97 (2016).

⁶⁸ See *Ombudsman Carpio Morales v. CA, et al.*, *supra* note 27 at 749-750.

In other words, the CA's power to issue provisional injunctive reliefs "*coincides with its inherent power to issue all auxiliary writs, processes, and other means necessary to carry its acquired jurisdiction into effect under Section 6,⁶⁹ Rule 135 of the Rules of Court.*"⁷⁰ To be sure, these ancillary remedies, *i.e.*, a TRO and a writ of preliminary injunction, are mere incidents in the main action and are issued solely to preserve the *status quo* until the merits of the case can be heard.⁷¹ "*In a sense, they are regulatory processes meant to prevent a case from being mooted by the interim acts of the parties.*"⁷²

Here, the CA, in its Resolution dated June 23, 2016, granted Degamo's prayer for the issuance of a TRO to enjoin the implementation of the Ombudsman's Joint Order dated May 16, 2016 which had ordered the dismissal of Degamo from the service. The CA, citing the grounds of *extreme urgency* and *grave and irreparable damage*, ruled that the execution of the Joint Order against Degamo would "*undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.*"⁷³

While it is true that the assailed CA Resolution was issued *after* the abandonment of the condonation doctrine in *Carpio Morales*, the Court finds that the CA did *not* commit an error when it considered the doctrine's application in the case of Degamo as *sufficient basis* to issue provisional injunctive relief in the latter's favor. As will be later discussed at length, the abandonment of the condonation doctrine is applied *prospectively*. This means that the condonation doctrine is still recognized as "good law" prior to its abandonment and Degamo's reliance thereupon *cannot* simply be disregarded.⁷⁴

⁶⁹ Section 6; Rule 135 of the Rules of Court provides:

SEC. 6. *Mean to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

⁷⁰ *Ombudsman Carpio Morales v. CA, et al.*, *supra* note 27 at 738.

⁷¹ *Id.* at 736.

⁷² *Id.*

⁷³ *Rollo*, Vol. I (G.R. No. 225935), p. 320.

⁷⁴ See *Ombudsman Carpio Morales v. CA, et al.*, *supra* note 27 at 775-776.

The Condonation Doctrine

The *condonation doctrine* was immortalized in the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija*⁷⁵ (*Pascual*), wherein the Court, on the basis of American jurisprudence, subscribed to the rule denying the right to remove an elective official from office because of misconduct during a prior term, with the underlying theory that “*each term is separate from other terms, and that the reelection to office operates as a condonation of the officer’s previous misconduct to the extent of cutting off the right to remove him therefor.*”⁷⁶

The Court later reiterated its *Pascual* ruling in the 1992 case of *Aguinaldo v. Hon. Santos*,⁷⁷ but it clarified that the condonation doctrine, or the *Aguinaldo doctrine*, as it was thereafter known, *cannot* be applied to criminal acts which the reelected official may have committed during his or her previous term.⁷⁸ Moreover, in *Atty. Salumbides, Jr., et al. v. Office of the Ombudsman, et al.*,⁷⁹ the Court held that the condonation doctrine would likewise *not* apply to appointive officials, who, unlike elected officials, cannot claim the mandate of the electorate as an exculpatory defense to evade administrative liability.⁸⁰

The Abandonment of the Condonation Doctrine

Through the years, the condonation doctrine has served as a major obstacle against exacting public accountability from a number of elective local officials, whose subsequent reelections effectively rendered the administrative cases against them moot and academic.⁸¹

Then came the Court’s Decision in *Carpio Morales* which, in no uncertain terms, declared the condonation doctrine as *obsolete* and more importantly, *bereft of legal bases* in this jurisdiction.⁸² The Court found the concept of public accountability to be “*plainly inconsistent with the*

⁷⁵ 106 Phil. 466 (1959).

⁷⁶ *Id.* at 471.

⁷⁷ 287 Phil. 851 (1992).

⁷⁸ *Id.* at 857-858.

⁷⁹ 633 Phil. 325 (2010).

⁸⁰ *Id.* at 336-337.

⁸¹ See *Ombudsman Carpio Morales v. CA, et al.*, *supra* note 27 at 778-779.

⁸² *Id.* at 769, 775

idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even to another elective post."⁸³

Stated differently, the Court ruled that the reelection of a public official is *not* a mode of condoning an administrative offense as "*there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term.*"⁸⁴

Corollarily, the Court clarified that the abandonment of the condonation doctrine would not, in any way, deprive the electorate of their right to elect their officers, as *Pascual* postulated. There is simply no legal basis to conclude that reelection automatically implies condonation. Neither is there any existing presumption in any statute or procedural rule that the electorate are assumed to have reelected a local official with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any.⁸⁵

Nevertheless, the Court stressed that the abandonment of the condonation doctrine should only be applied *prospectively*, viz.:

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council*:

Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but

⁸³ *Id.* at 769.

⁸⁴ *Id.*

⁸⁵ *Id.* at 773-774.

also of those duty-bound to enforce obedience to them.

Hence, while the future may ultimately uncover a doctrine's error, it should be, **as a general rule**, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:

[W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

Later, in *Spouses Benzonan v. CA*, it was further elaborated:

[P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.

Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.⁸⁶

The Ombudsman, in its Motion for Clarification/Motion for Partial Reconsideration, had sought guidance as to the "prospective application" of the abandonment of the condonation doctrine in *Carpio Morales*. When the Court denied its motion with finality *via* a Minute Resolution dated April 12, 2016, the Ombudsman issued OMB Office Circular No. 17 dated May 11, 2016 which delineated the prospective application of the *Carpio Morales* ruling in the following perspective:⁸⁷

⁸⁶ *Id.* at 775-776. Citations omitted.

⁸⁷ *Rollo*, Vol. I (G.R. No. 228238), p. 22.

From the date of the finality of the Decision on 12 April 2016 and onwards, the Office of the Ombudsman will no longer give credence to the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, for so long as the administrative case remains open and pending as of 12 April 2016 and onwards, the Office of the Ombudsman shall no longer honor the defense of condonation.⁸⁸

The Court later explained in the 2019 case of *Crebello v. Office of the Ombudsman*⁸⁹ that the prospective application of the abandonment of the condonation doctrine in *Carpio Morales* should be *reckoned from April 12, 2016*, or the date on which the Court had acted upon and denied with finality the Ombudsman's Motion for Clarification/Motion for Partial Reconsideration in said case.

Still, the questions remained: What exactly determines whether the condonation doctrine still applies to an administrative case against an elected official? Is it based on the date of filing of the case? Is the condonation doctrine no longer applicable to all open and pending administrative cases as of April 12, 2016, as the Ombudsman posits?

In the 2020 consolidated cases of *Madreo v. Bayron (Madreo)*,⁹⁰ the Court finally clarified the prospective application of the abandonment of the condonation doctrine in *Carpio Morales* in simple and direct terms, *viz.*:

x x x [T]he Court is of the view that when *Carpio-Morales* ruled that the abandonment of the doctrine of condonation is applied prospectively, it meant that the said doctrine *does not* apply to public officials *reelected after its abandonment*. Stated differently, the doctrine *applies* to those officials who have been *reelected prior to its abandonment*. That is because when a public official has been reelected prior to the promulgation and finality of *Carpio-Morales*, he or she has every right to rely on the old doctrine that his re-election has already served as a condonation of his [or her] previous misconduct, thereby cutting the right to remove him [or her] from office, and a new doctrine decreeing otherwise would not be applicable against him or her. More telling, once reelected, the public

⁸⁸ *Id.*

⁸⁹ G.R. No. 232325, April 10, 2019.

⁹⁰ G.R. No. 237330 & 237579, November 3, 2020.

official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or a new doctrine without violating the Constitution. x x x⁹¹

To reiterate, **the condonation doctrine is no longer an available defense to a public official who is reelected on or after April 12, 2016.** In other words, the reelection of a public official on or after April 12, 2016 would no longer absolve him or her from any administrative liability arising from a previous misconduct that he or she had committed during a prior term.⁹²

Based on these considerations, the Court deems it proper to declare the Ombudsman's Office Circular No. 17 dated May 11, 2016 *null and void*, pursuant to the above-discussed ruling in *Madreo*. As it stands, the condonation doctrine is still considered as "good law" in all administrative cases involving public officials whose *reelections occurred before April 12, 2016*, regardless of the dates of filing of the administrative cases against them or the status of said cases when the *Carpio Morales* ruling attained finality.

*The applicability of the Condonation
Doctrine to the case at bench*

To recall, Degamo won a seat as Provincial Board Member of the Province in the May 2010 elections. He then assumed office as Governor of the Province *by succession* following the sudden deaths of Governor-elect Emillio C. Macias II and Vice Governor-elect Agustin Percides not long after the elections were concluded. Three years later, Degamo ran and won as Governor of the Province in the May 2013 elections.

In line with the *Madreo* ruling, the Court rules that the condonation doctrine is applicable in Degamo's case **by reason of his reelection in 2013**, or *before the Carpio Morales* ruling attained finality on April 12, 2016. Thus, Degamo *cannot* be precluded from relying on said doctrine as a defense against the present administrative charges against him.

⁹¹ *Id.*

⁹² *Id.*



Contrary to Gaudan's assertion, the fact that Degamo was elected as a Provincial Board Member and not as Governor of the Province in the May 2010 elections is of no consequence.

In *Office of the Ombudsman v. Mayor Vergara*⁹³ (*Vergara*), the Court explained that a public official need *not* be reelected to the *same position* in the *immediately succeeding election* for the condonation doctrine to be an available defense for him or her in an administrative proceeding.⁹⁴ Otherwise stated, "*the doctrine can be applied to a public officer who was elected to a different position, provided that it is shown that the body politic electing the person to another office is the same.*"⁹⁵

In this case, Degamo was elected as Governor in 2013 by the *same electorate* that voted for him as Provincial Board Member in 2010. Thus, the CA correctly applied the condonation doctrine in Degamo's case, in accordance with the *Vergara* ruling.

Given the fact of his election as Governor of the Province in 2013, Degamo acquired the *vested right*, by virtue of the condonation doctrine, not to be removed from office on account of his alleged administrative misconduct committed in 2012, notwithstanding the subsequent abandonment of the doctrine in *Carpio Morales*.

Accordingly, the Court dismisses the administrative complaint filed against Degamo with the Ombudsman for being *moot and academic*.⁹⁶ Furthermore, with the dismissal of the administrative complaint, the Court finds it *unnecessary* to pass upon the issue regarding the Degamo's administrative liabilities.

WHEREFORE, the consolidated Petitions are **DENIED**. The Decision dated August 30, 2016 and the Resolution dated November 10, 2016 of the Court of Appeals in CA-G.R. No. SP 146151 are **AFFIRMED**.

⁹³ 822 Phil. 361 (2017).

⁹⁴ *Id.* at 379.

⁹⁵ *Id.*

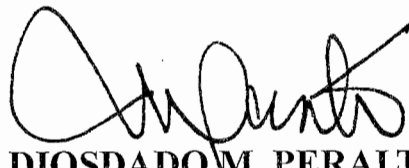
⁹⁶ See *Madreo v. Bayron*, *supra* note 90.

Moreover, Ombudsman Office Circular No. 17, Series of 2016, is hereby declared **NULL** and **VOID**, in accordance with prevailing jurisprudence.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

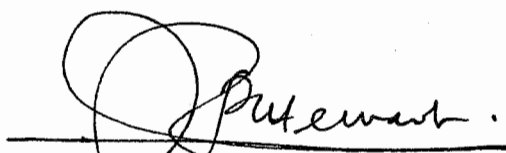

DIOSDADO M. PERALTA
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

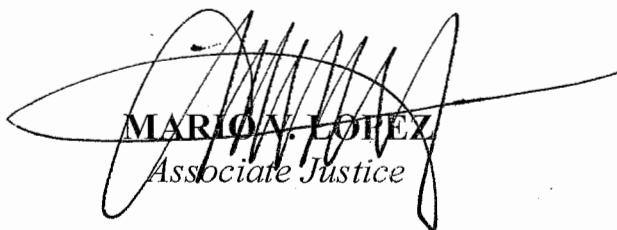

ROSMARI D. CARANDANG
Associate Justice




AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
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MARION LOPEZ
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EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



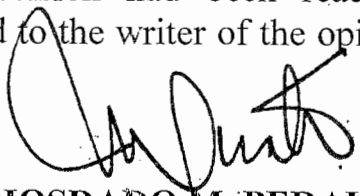
RICARDO R. ROSARIO
Associate Justice



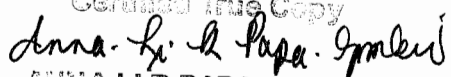
JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

Certified True Copy

ANNA-LI R. PAPA-COMEDIO
 Deputy Clerk of Court En Banc
 CCC En Banc, Supreme Court

