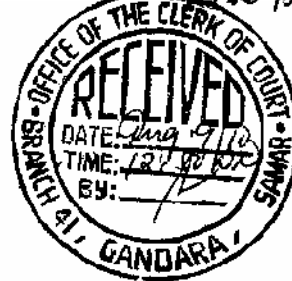


Republic of the Philippines
REGIONAL TRIAL COURT
8th Judicial Region
Branch 41
Gandara, Samar



ROQUE L. LIMSE, LUIS I. PADUL,
RENATO B. BASAL, RUEL C. AYING,
CATALINA M. SAISES, and EVELYN
V. DOMINGO, on their own and
on behalf of all officials and
employees of the PROVINCIAL
GOVERNMENT OF SAMAR,
Petitioners,

Spc. Civil Case No. 36

For:

MANDAMUS

-versus-

GOV. MILAGROSA T. TAN,
PROVINCE OF SAMAR
Respondents.

X-----X

DECISION

Submitted for decision is the petition for the issuance of writ of mandamus against Gov. Milagrosa T. Tan, Province of Samar, directing and commanding her to pay unto the herein petitioners, as well as the other provincial government officials and employees of Samar, the **PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI)** provided and/or mandated in Ordinance No. 12-28, Series of 2010.

Briefly, the petitioners, namely: Roque L. Limse, Luis I. Padul, Renato B. Basal, Ruel C. Ayling, Catalina M. Saises, and Evelyn V. Domingo filed this petition on their own and on behalf of all officials and employees of the Provincial Government of Samar. The subject matter of the case at bar is of common and general interest to the almost one thousand (1,000) employees of the Provincial Government of Samar, thus, so numerous that it is impracticable to join them all as plaintiffs, the herein Petitioners, being sufficient in number and representative as to fully protect the interests of all concerned, are suing herein in a class suit, not only for their own, but also for the benefit of their colleagues in the service of the Province of Samar.

The petitioners, further alleges the following grounds, to wit:

That, on January 7, 2010, the **SANGGUNIANG PANLALAWIGAN** of Samar enacted **ORDINANCE NO. 12-28, Series of 2010** appropriating the amount of Php25 million for the payment of the grant of the **Productivity Enhancement Incentive (PEI)** for the Fiscal

Year 2009 of all provincial government officials and employees of the Province of Samar, at Php25,000.00 each, pursuant to DBM Budget Circular No. 2009-5, dated December 15, 2009.

The subject ORDINANCE NO. 12-28, Series of 2010 was deemed APPROVED pursuant to the provisions of Section 54(b) of RA 7160, otherwise known as the Local Government Code of 1991 as certified to by the Provincial Secretary, MR. ALFREDO C. DELECTOR, considering that the herein respondent Honorable Governor MILAGROSA T. TAN did not either veto it or return it to the Sangguniang Panlalawigan within fifteen (15) days from its submission to her for her approval.

Attached hereto is copy of the subject ORDINANCE NO. 12-28, Series of 2010, marked as Annex "A" and the Certification of Provincial Secretary Delector being sub-marked Annex "A-1", and copy of DBM Budget Circular No. 2009-5, dated December 15, 2009 marked as Annex "B" with sub-markings, forming integral parts hereof;

That ORDINANCE NO. 12-28, Series of 2010 has not been either repealed or revoked by the Sangguniang Panlalawigan nor nullified by any proper court or any government office or agency, thereby its validity and effectivity for all legal intents and purposes are obviously beyond doubts;

That the corresponding funds required needed to implement ORDINANCE NO. 12-28, Series of 2010 is available as certified to by the Provincial Treasurer, Mr. BIENVENIDO Z. SABENECIO, JR., in his CERTIFICATION dated January 7, 2010, copy of which is hereto attached as Annex "C" and forming integral part hereof;

Again, the Provincial Treasurer had directed, signed, and approved, the corresponding vouchers and checks for the release of funds from the LANDBANK Catbalogan Branch for the payment of the PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI) of the provincial officials and employees which vouchers and checks were in the names of his treasury personnel ROSITA T. EREDIA, WENIFREDA A. ESTREMER, and MARILYN E. UY; the facsimiles of these checks have been impressed on the vouchers themselves, copies of which are hereto attached as Annexes "D", "E", and "F", with their respective sub-markings, forming integral parts hereof;

But, when the vouchers and checks adverted to above (Annexes "C", "D", and "E") were presented to herein respondent, GOV. MILAGROSA T. TAN, for her approval thereof so as to implement ORDINANCE NO. 12-28, Series of 2010 and pay the PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI) to the petitioners here and all the

other provincial officials and employees of Samar, the said respondent refused and failed to approve the said payment of the **PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI)** by refusing and failing to sign/approve the subject vouchers and checks, notwithstanding the fact that the payment of the subject PEI benefits authorized under a valid and effective ordinance and funds therefore are available is her **PUBLIC MINISTERIAL** duty under the law;

Likewise, the respondent Provincial Treasurer has also unjustifiably failed to pay the **PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI)**, to the petitioners and the other provincial government officials and employees of Samar;

That, indubitably, the respondent herein have not merely unlawfully neglected and failed the performance of acts enjoined by the law as among the ministerial duties of their offices, but, they have capriciously and whimsically failed and refused to perform the subject ministerial duty;

That, as shown in the foregoing, the petitioners as well as the rest of the provincial government officials and employees of Samar have clear rights to receive the **PRODUCTIVITY ENHANCEMENT INCENTIVE (PEI)** benefits duly authorized under an approved and binding Ordinance No. 12-28, Series of 2010. Similar grant of the subject PEI benefits were already received by officials and employees of other local government units as early as the last week of December, 2009. But, the herein petitioners and their colleagues in the provincial government service of Samar have failed, and still continue to fail, to receive these benefits because of the unjustified, capricious, and whimsical refusal and denial by the herein respondent although the Petitioners have been persistently demanding, and almost begging, for these benefits;

On account thereof, the petitioners have no other plain, speedy, and adequate remedy to demand and receive the PEI benefits as a right which must be enforced, but, the instant petition for mandamus; otherwise, they would be perpetually denied and deprived of substantive rights and left without remedy of the law due to the unlawful neglect and despotic refusal of the respondent to perform an act which the law specifically enjoins as her duty;

On the availability and/or grant of the writ of mandamus herein prayed for, the Honorable Supreme Court has the following rulings, to wit:

- a.) "The policy of the Supreme Court is not to deny the writ if the result would be to deprive a party of his

substantive rights and leave him without remedy." (Centenera vs. Yatco, 106 Phil. 1064, cited in REMEDIAL LAW COMPENDIUM of former Supreme Court Justice Florenz Regalado; underlining supplied);

b.) "Mandamus can be availed of only by the party who has direct legal interest in the right sought to be enforce. However, if the question is one of public right and the object of the mandamus sit is to procure the performance of a public duty, it is sufficient to show that the petitioner is a citizen even if he has no special interest in the result." (Benitez vs. Paredes, et.al., 52 Phil. 113, Tañada, et.al., vs. Tuvera, et.al., G.R. No. 6y3915, April 24, 1985 cited in the same REMEDIAL LAW COMPENDIUM mentioned above);

c.) "Mandamus was available to compel not only the enactment and approval of the necessary appropriations ordinance but also the corresponding payment of Municipal funds therefore." (Lopez Jr. vs. Court of Appeals, 215 SCRA 512 cited in RULES OF COURT ANNOTATED by Sen. Meriam Defensor Santiago; underlining supplied);

d.) "When a municipality fails without justifiable cause to pay a final money judgment against it, the claimant may avail of mandamus to compel the enactment and approval of the necessary appropriation ordinance and the corresponding disbursement of municipal funds therefore." (Municipality of Makati vs. Court of Appeals, 190 SCRA 206 cited in the same RULES OF COURT ANNOTATED by Sen. Meriam Defensor Santiago; underlining supplied)

That respondents' unjustified, capricious, and whimsical refusal and denial to grant the PEI benefits to herein petitioners deliberately done to cause undue damages, have constrained the latter to contract the legal services of their counsel to whom they pledge to pay an acceptance fee P60,000.00.

The respondents thru counsel, Atty. Anastacio D. Yong, Provincial Legal Officer, filed an Answer, dated May 12, 2010, which states:

That respondent Governor qualifiedly admits paragraph 1,2,3,4 and 5 the truth being that -

- a.) While it is true that the Sangguniang Panlalawigan (SP for brevity) enacted Ordinance No. 12-28, Series of 2010, it is however equally true that such enactment is without force and effect being violative of Sec. 323 of R.A. 7160, otherwise known as "The Local Government Code of 1991" as implemented by Article 415 of its Implementing Rules and Regulations;
- b.) Having been enacted in violation of the above-mentioned provision of law, it is inconsequential whether or not it is deemed approved by the Chief Executive for failure on her part to veto the same within the 15-day reglamentary period;
- c.) The respondent Governor did not direct nor authorize the Provincial Treasurer's Office to process the release of the funds or cause the preparation of the check intended for the payment of the Productivity Enhancement Incentive (PEI) and if it was done by the Provincial Treasurer's Office it was because of the mistaken belief that there was legal basis for it;
- d.) That failure of the respondent Governor to sign or approve the cash advance vouchers and the checks was neither capricious or whimsical but dictated by prudence and the law;
- e.) While, it may appear that SP Ordinance No. 12-28, s. of 2010 is valid, it is in reality otherwise because said ordinance is a General Fund Supplemental Budget. And as such it is not authorized as the Province of Samar is operating under a re-enacted budget. There can be no Supplemental Budget that can be enacted without the regular Annual Budget. The provision of the law is clear – *no ordinance authorizing supplemental appropriation shall be passed in place of annual appropriation.*

That paragraph 5 and the remaining allegations in the petition are specifically denied for lack of information or knowledge to form a belief as to the truth thereof;

That, as SPECIAL AND AFFIRMATIVE DEFENSE, alleges that –

- a.) The propriety and legality of SP Ordinance No. 12-28 was already passed upon by the Department of Budget and Management on February 4, 2010 when the General Fund Supplemental Budget which embodied SP Ordinance No. 12-28 was submitted to DBM for review. And the ruling of the DBM states in part –

"It is clear from the above provisions (referring to Sec. 323 of the Local Government Code and Art. 415 (a) par. 4 of its IRR) that there can be no Supplemental Budget that can be enacted without the regular Annual Budget. The law provides that there can be no Supplemental Budget in place of the Annual Budget."

- b.) As a result of the foregoing ruling of the DBM, SP Ordinance No. 12-28, s. 2010 was returned without action. Attached is a certified copy of the review letter of the DBM dated February 4, 2010 consisting of three (3) pages, marked as ANNEX 1;
- c.) An invalid ordinance cannot serve as a basis to compel the respondent Governor to sign/approve the vouchers and checks for the payment of the Productivity Enhancement Incentive (PEI);
- d.) The act of approving a voucher involves the exercise of discretion and judgment. As such it cannot be compelled by mandamus as mandamus does not lie to compel an act which is not ministerial particularly and specially in this case where there is serious doubt as to the legality of the subject ordinance.

On April 29, 2010, the preliminary hearing of the instant petition was held in the presence of the petitioners and their counsel, Atty. Clemente C. Rosales. The respondent Gov. Tan sent his Provincial Legal Officer, Atty. Anastacio D. Yong, who complained that the Governor was not properly furnished a copy of the petition because a certain Ms. Christine Caidic is neither connected with the Office of the Governor nor authorized to receive papers or court processes in behalf of the Governor.

The Court ordered that a copy of the petition shall be furnished in open court, to Atty. Yong being the Legal Representative of the Governor, to which the petitioners complied and subsequently the Governor was given an additional period of fifteen (15) days from receipt of the petition to file her answer.

On June 7, 2010, Atty. Rosales filed a Motion for Summary Judgment. He said that by expressly admitting, though with a qualification, the averments set forth in paragraphs 1 to 5 of the petition, inclusive, respondent Milagrosa T. Tan clearly concedes the milieu of material facts constituting petitioners' cause of action for mandamus.

Her denial of the other averments of said petition, based simply on alleged lack of knowledge or information as to their truth, is sham, contrived and frivolous. It has to be noted that the allegations so denied, specifically those in paragraphs 5a, 6 and 7, merely recount the administrative routine observed in the preparation/processing of the vouchers and checks therein cited. Said procedure is peculiarly within respondent's knowledge OR within her means of knowing things at the Provincial Capitol. As the Provincial Chief Executive, respondent could have just easily called up the Provincial Treasurer, the party concerned, to affirm or disclaim the routine ever took place. In *manufacturer's Bank & Trust Co. vs. Diversified Industries, Inc.*, 173 SCRA 357, the Supreme Court, faced with a similar denial now obtaining in this case, ruled that the factual averments supposed to be denied are deemed admitted, the denial being general in character, sham and pretended.

The special affirmative defense set up in the answer raises a purely legal issue. Contrary to respondent's claim, Ordinance No. 12-28, Series of 2010 is not covered by the prohibition under Section 323 of the Local Government Code of 1991.

Atty. Yong, filed an Opposition, alleging that summary judgment is not proper where not all the material allegations in the petition are admitted in the Answer. He further alleged that the entitlement of the petitioners to the relief prayed for is being contested due to the doubtful legality of Ordinance No. 12-28, s. 2010. There is thus a genuine issue that has to be litigated.

On June 22, 2010, scheduled oral arguments, both parties, thru their counsels, requested that they be given a period of fifteen (15) days to thereafter, file their respective Memorandum and finally the case shall be submitted for resolution.

Clearly, the only issue left to the Court to resolve is the legality of Ordinance No. 12-28, Series of 2010, which serves as the legal basis of the claim, and the respondents' disagreed and cited reasons and jurisprudence to support their allegations.

On the basis of the above-disquisition, this Court finally concluded that Ordinance No. 12-28, Series of 2010 duly enacted by the Sangguniang Panlalawigan of Samar on January 7, 2010 is valid and the relief for the payment of Twenty Five Thousand Pesos (P25, 000.00) bonuses for each of the petitioners and other employees of the Province of Samar is in order, based on the following reasons, to wit:

1. That there was a Certification marked as Annex "A-1", signed by Mr. Alfredo C. Delector, certifying that the said ordinance was deemed approved considering that the herein respondent, Gov. Tan did not either veto it or return it to the Sangguniang Panlalawigan within fifteen (15) days from its submission to her for approval;
2. That there was a Certification of the availability of funds signed by Mr. Bienvenido Z. Sabenecio, Jr. Provincial Treasurer, marked as Annex "C";
3. That the said Ordinance was enacted pursuant to DBM Budget Circular No. 2009-5, dated December 15, 2009;
4. That the arguments of the respondent stating that the Province is operating under re-enacted budget and that the impugned ordinance is doubtful and that there can be no supplemental budget that can be enacted without the regular annual budget is misplaced because the impugned ordinance is not intended or was not pass in place of an annual appropriation.

Clearly, the enactment of the said ordinance is a compliance of an already established public policy to pay government employees their Productivity Enhancement Incentive (PEI), otherwise known as "bonus". So, therefore, borrowing the language of Atty. Yong that the said ordinance is doubtful, the Court, resolve to construe and, thus, construed the doubt in favor of upholding the generally accepted public policy. The relief prayed for by the petitioners becomes already a matter of right and, therefore, the payment by the Provincial Government becomes already a duty or ministerial, otherwise, any unjustifiable condition or circumvention of the law will tantamount to a capricious, and whimsical refusal and denial to grant the PEI benefits to the herein petitioners. Wittingly or unwittingly, they will eventually suffer undue damages. Apparently, there is no available remedy for the petitioners except the cause of action to pray for the issuance of a writ of mandamus in order that the respondent Governor shall be obligated, directed or commanded to comply with her duty as required by law.

WHEREFORE, premises considered, this Court finds the prayer of the petitioners to be in order and, thus, ordered the issuance of a writ of mandamus, directing and commanding the herein respondent Gov. Milagrosa T. Tan, Province of Samar, forthwith, to immediately a) to pay unto the herein petitioners as well as the other provincial

Decision-Spc. Proc. No. 36
Limse et.al. vs. Gov. Tan
August 3, 2010

-9-

government officials and employees of Samar the Productivity Enhancement Incentive (PEI) provided and/or mandated in Ordinance No. 12-28, Series of 2010; and b) to pay the petitioners the amount of Sixty Thousand Pesos (P60, 000.00) as attorney's fees; plus the cost of suit.

SO ORDERED.

IN CHAMBER, Gandara, Samar, August 3, 2010.



SIBANA E. USMAN
Judge