REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TRANS-ASIA POWER GENERATION CORPORATION, Petitioner,	CTA AC NO. 149
-versus-	Members:
JUDGE CRISOSTOMO J. DANGUILAN in his capacity as the Presiding Judge of the Regional Trial Court of Malolos, Bulacan and MUNICIPALITY OF NORZAGARAY represented by its Mayor ALFREDO DG. GERMAR and its Treasurer FILIPINA DG. DE MESA, Respondents.	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ. Promulgated: MAR 03 2017 3:30 p.m.

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DECISION

FABON-VICTORINO, J.:

This is a Special Civil Action for Certiorari[1] under Rule 65 of the Rules of Court filed by petitioner Trans-Asia Power Generation Corporation praying to set aside and annul the twin Resolutions dated February 26, 2015 and July 8, 2015, both issued by Regional Trial Court (RTC), Branch 21, Malolos City, Bulacan in Civil Case No. 428-M-2014 entitled Trans-Asia Power Generation Corporation v. Municipality of Norzagaray, Bulacan, represented by its Mayor, Alfredo Germar and its Treasurer, Filipina De Mesa.

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[1] Docket, pp. 8-32.

THE FACTS

Petitioner is a domestic corporation with principal office at Level 11, PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City. It is an independent power producer which owns and operates a 52-megawatt power plant located in Barrio Matictic, Norzagaray, Bulacan.[2]

Respondent Judge Crisostomo J. Danguilan is the Presiding Judge of RTC-Branch 21, Malolos City, Bulacan.[3]

Respondent Municipality of Norzagaray is a local government unit with authority to collect business taxes. It is represented by Alfredo DG Germar and Filipina DG De Mesa, its Mayor and treasurer, respectively.[4]

According to petitioner, it filed an application for renewal of its business license and permits for taxable year 2012 with respondent Municipality indicating therein its previous year's gross receipts of Php1,245,067,700.91. Respondent Municipality however classified it as a retailer for business tax purposes and imposed the rate of 1.1%, instead of 41.25% of 1% applicable to a manufacturer[5], resulting to a total tax amount of Php13,695,744.71,

Petitioner paid the imposed amount of local business taxes due for the 1st, 2nd, 3rd and 4th quarters of taxable year 2012 under protest.[6]

For taxable year 2013, respondent again classified petitioner as a retailer not as a manufacturer and imposed the same local business tax rate of 1.1% on its reported gross receipts of Php1,343,475,678.78 resulting to a total tax amount of Php14,778,232.47.[7]

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[2] Par. 13, Petition for Review, docket, p. 12.
[3] Par. 14, *Id.*,
[4] Par. 15, *Id.*
[5] Par. 16, *Id.*, pp. 12-13.
[6] Par. 17, Petition for Review, docket, p. 13.
[7] Par. 18, Petition for Review, docket, p. 13.

As in the previous incident, petitioner paid under protest the local business taxes due for the 1st, 2nd, 3rd and 4th quarters of taxable year 2013.[8]

On July 17, 2014, petitioner filed a written claim for refund with the Municipal Treasurer pursuant to Section 196 of the Local Government Code (LGC)[9]. Petitioner claimed that as a manufacturer, it should have paid only Php5,135,904.27 for 2012, and Php5,541,837.17 for 2013. It therefore overpaid to respondent Municipality the amount of Php8,559,840.45 for 2012, and Php9,236,395.30 for 2013.[10]

On July 21, 2014, petitioner filed a Complaint against respondent Municipality before the RTC in Malolos City, Bulacan[11] docketed as Civil Case No. 428-M-2014, alleging inaction on the part of its Municipal Treasurer on its claim for refund filed on July 17, 2014. As relief, petitioner prayed for the refund or issuance of tax credit in its favor, the excess local business taxes it paid for the 3rd and 4th quarters of taxable year 2012 and for the 1st, 2nd, 3rd and 4th quarters of taxable year 2013 in the aggregate amount of Php13,516,315.52.

On October 10, 2014, petitioner received a copy of respondent Municipality's Answer with Affirmative Defenses (With Entry of Appearance) dated October 8, 2014.[12]

Believing that respondent Municipality had already filed its Answer with the RTC, petitioner moved to set the case for Pre-Trial Conference on October 21, 2014.[13]

In the Order dated October 22, 2014 and received by petitioner on October 31, 2014, the RTC[14] merely noted petitioner's Motion to Set Case for Pre-Trial as the Court was yet to receive respondent Municipality's Answer.

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[8] Par. 19, *Id.*
[9] Par. 21, *Id.*
[10] Par. 20, *Id.*
[11] Annex "C" of the Petition for Review, docket, pp. 50-62.
[12] Par. 23, Petition for Review, docket, p. 6.
[13] Par. 24, *Id.*, p. 14
[14] Par. 25, Petition for Review, docket, p. 14.

On November 17, 2014, petitioner moved to declare respondents in default[15] invoking Section 3 of Rule 9 of the Rules of Court and further prayed for a favorable Decision. Respondent Municipality filed its Objection/Comment to petitioner's motion dated December 1, 2014.[16]

On December 12, 2014, petitioner filed its Comment, incorporating therein a motion to disqualify respondent's counsel Attorney Alejandro D. Fajardo, a private practitioner, hence, had no authority to represent respondent Municipality[17]. Respondent Municipality interposed its objection to the Motion[18] to which petitioner filed a Reply[19].

On February 26, 2015, the RTC issued the assailed Resolution on the pending incident, the dispositive portion of which reads as follows:

> In view thereof and there being an Answer with Affirmative Defenses (With Entry of Appearance) already filed in this case, plaintiff's Motion to Declare Defendant in Default is hereby **DENIED**.
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> On plaintiff's other Motion to Disqualify Counsel for Defendant Municipality of Norzagaray, as well as defendant's Opposition/Comment thereon, it considering and appearing that the grounds relied by the plaintiff are not indubitable, the same is also **DENIED**.
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> **SO ORDERED**.

Unconvinced, petitioner moved for a reconsideration of the foregoing Resolution to which respondent Municipality filed an opposition.[20]

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[15] Annex "G" to the Petition for Review, docket, pp. 122-126.
[16] Par. 26, Petition for Review, docket, p. 14.
[17] Par. 27, *Id.*
[18] Par. 28, *Id.*
[19] Par. 29, *Id.*
[20] Par. 31, Petition for Review, docket, p. 15.

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In the similarly assailed Resolution of July 8, 2015, the RTC denied petitioner's bid for reconsideration, in the following manner:

> In view of the foregoing, plaintiff's Motion for Reconsideration is denied for lack of merit.
>
> Set the case for pre-trial conference on September 17, 2015 at 8:30 o'clock in the morning.
>
> **SO ORDERED.**

On October 29, 2015, petitioner filed the present Petition for Certiorari, incorporating an Application for TRO and/or Writ of Preliminary Injunction, with the following errors allegedly committed by the RTC, to wit:

> A. THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT *KAPASIYAHAN BILANG* 2014-03-49 ISSUED BY THE *SANGGUNIANG BAYAN* OF NORZAGARAY, BULACAN VALIDLY GIVES AUTHORITY ON ATTY. ALEJANDRO D. FAJARDO, A PRIVATE LAWYER, TO REPRESENT THE MUNICIPALITY IN CIVIL CASE NO. 428-M-2014.
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> B. THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADMITTED THE ANSWER OF MUNICIPALITY NOTWITHSTANDING THAT THE SAME WAS FILED ONLY ON 12 JANUARY 2015 (OR AFTER MORE THAN THREE MONTHS FROM THE TIME IT WAS DUE) AND BY A LAWYER WITHOUT THE POWER/AUTHORITY TO REPRESENT THE MUNICIPALITY.

For the first assigned error, petitioner points out that *Kapasihayahan Blg.* 2014-03-49 authorizing respondent Municipality to hire private counsel for its representation was only for the period March 2014 to December 2014. Thus, when the RTC denied its plea to disqualify Attorney Alejandro D. Fajardo as counsel of respondent Municipality on February 25, 2015, *Kapasihayahan Blg.* 2014-03-49 was no longer effective or valid basis of private counsel's authority to represent respondent Municipality.

In addition, the case of Municipality of Tiwi, represented by Hon. Mayor Jaime C. Villanueva and the Sangguniang Bayan v. Antonio B. Betito cited by the RTC in the assailed Resolution of July 8, 2015 actually affirmed petitioner's stance that Attorney Fajardo's representation for and in behalf of respondent Municipality violates the legal provision that a municipality cannot hire a private counsel except when the province is the adverse party and when the provincial attorney/prosecutor is disqualified for that purpose. Thus, *sans* valid representation on the part of respondent Municipality, the assailed twin Resolutions issued by the RTC are null and void.

Anent the second assigned error, petitioner argues that under the rules, the mailing of respondent Municipality's Answer through LBC was not the proper mode of filing the pleading which cannot be justified on the ground of honest mistake. In view of the said infirmities, the Answer should be deemed as not filed and should not have been considered by the RTC. Further, *sans* any authority, all the pleadings filed by Attorney Fajardo should be deemed mere scrap of papers.

Finally, substantial justice is not a valid justification for the admission of the belatedly filed Answer. Per petitioner, equity is available only in the absence of law, not in lieu of the law. By admitting the belatedly filed Answer of respondent Municipality, the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In support of its Application for TRO and/or Writ of Preliminary Injunction, petitioner argues that if the RTC will continue hearing the case before it with Attorney Fajardo as counsel for respondent Municipality in clear violation of the law and jurisprudence, the precious time and resources not only of the parties but of the Court will be put to waste for the entire proceeding will be null and void.

In its Comment[21] posted on December 14, 2015, respondent Municipality argues that there is nothing in Section 481 of the LGC that prohibits it from hiring a private counsel for its representation. Moreover, a corresponding authority for that purpose was issued by the *Sangguniang Bayan*. Also neither the provincial legal officers nor the provincial prosecutors could represent it due to numerous cases they handled leaving it without any option but to hire a private practitioner to protect its rights and interests.

More importantly, respondent Municipality failed to show that it has a clear right for tax refund to warrant the grant of the ancillary remedy sought. Besides, no damage or injury will be sustained by petitioner for in the event that the assessment is declared erroneous, it can apply for tax credit representing the taxes it paid under protest. Lastly, petitioner failed to attach an affidavit of merit to support its prayer for TRO and/or Injunction in violation of Section 4(c), Rule 58 of the Rules of Court.

Respondent Judge Crisostomo J. Danguilan, a nominal party, did not file comment/opposition to the Petition for Certiorari.[22]

On March 30, 2016[23], petitioner filed its Memorandum while respondent Municipality filed its own on April 5, 2016[24], hence, the petition was submitted for decision on April 11, 2016.[25]

RULING OF THE COURT

Under Rule 65 of the Rules of Court, a writ of certiorari may be issued to correct errors of jurisdiction or grave

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[21] Docket, p. 179.
[22] Records Verification Report dated February 4, 2016, docket, p. 240.
[23] Docket, pp. 245-272.
[24] Docket, pp. 273-279.
[25] Docket, p. 296.

abuse of discretion amounting to lack or excess of jurisdiction and only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play.[26] Note however that an act of the court or tribunal may only be considered as committed with grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[27] Mere abuse of discretion is not enough. The Abuse of discretion must be so patent and gross to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[28]

At this point, however, it is primordial to determine whether the Court has jurisdiction to entertain the instant Petition for Certiorari under Rule 65 of the Rules of Court.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. This is evident in Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282, which states:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> (3) Decisions, order or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

Corollary thereto, Section 3(a)(3) of Rule 4 and Section 3(a) of Rule 8 of the 2005 Revised Rules of the CTA state

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[26] Judy Anne L. Santos v. People of the Philippines and Bureau of Internal Revenue, G.R. No. 173176, August 26, 2008.
[27] Beluso v. COMELEC, G.R. No. 180711, June 22, 2012.
[28] Jose Y. Feria and Ma. Concepcion S. Noche, Civil Procedure Annotated p. 463 (2001).

that the CTA has an exclusive appellate jurisdiction to review by appeal, decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by it in the exercise of its original or appellate jurisdiction, thus:

> "RULE 4
> JURISDICTION OF THE COURT
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> xxx xxx xxx
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction."

While the foregoing provisions do not categorically grant the CTA the authority to entertain petition for certiorari under Rule 65 of the Rules of Court involving interlocutory orders of the RTC in local tax cases, the Supreme Court, speaking through Honorable Justice Diosdado M. Peralta, in the case of The City of Manila, represented by Mayor Jose L. Atienza, Jr., et al. v. Hon. Caridad H. Grecia-Cuerdo, et al.,[29] magnified the issue and came out with the ruling declaring that the CTA can take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case falling within its exclusive appellate jurisdiction, *viz*:

> "A perusal of the above provisions would show that, while it is clearly stated that the CTA has exclusive appellate jurisdiction over decisions, orders or resolutions of the RTCs in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, there is no categorical statement under RA 1125 as well as the

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[29] G.R. No. 175723, February 4, 2014.

amendatory RA 9282, which provides that the CTA has jurisdiction over petitions for *certiorari* assailing interlocutory orders issued by the RTC in local tax cases filed before it.

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The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.**

Indeed, in order for any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

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Based on the foregoing disquisitions, it can be reasonably concluded that the authority

> **of the CTA to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.**" *(*Boldfacing supplied*)*

It is abundantly clear that this Court has the competence to entertain the present Special Civil Action for Certiorari impugning the interlocutory Resolutions dated February 26, 2015 and July 8, 2015, issued by the RTC, which action, according to petitioner, was the only remedy available to it under the circumstances.

Touching on the main issue - was there grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC when it issued the twin Resolutions of February 26, 2015 and July 8, 2015?

The present controversy stemmed from respondent Municipality's hiring of private practitioner Attorney Alejandro D. Fajardo to represent it in Civil Case No. 428-M-2014 pending before the RTC which according to petitioner is legally flawed since (1) law and established jurisprudence bar respondent Municipality from the hiring of a private lawyer for its representation in court unless the obtaining circumstances fall under the exception; and that (2) even granting that it was authorized to hire private lawyer by virtue of *Kapasiyahan Blg.* 2014-03-49 issued by the *Sangguniang Bayan* of Norzagaray, such authority was only for the period March 2014 to December 2014. Thus, when the RTC issued the assailed Resolution denying its motion to disqualify respondent Municipality's counsel on February 26, 2015, the efficacy of the authority already lapsed.

Petitioner's claim was allegedly fortified when the RTC admitted the Answer belatedly filed by respondent Municipality through its counsel Attorney Fajardo, who had no legal authority to represent his client.

Respondent, on the other hand claims that since the appointment of a legal officer for municipal government is only optional, per Section 481 of Article XI of the LGC of 1991, it has the option to hire private counsel if funds are available for that purpose. Given that respondent Municipality is a first-class municipality, it has the financial capacity to hire a private counsel to protect its right and interest.

Section 481 of Article XI of the LGC of 1991, cited by respondent Municipality states that the appointment of legal officer shall be mandatory for the provincial and city governments but only optional for the municipal government. It also enumerates the duties and responsibilities of legal officers for the province, city and municipal governments, thus:

"ARTICLE XI
The Legal Officer

SEC. 481. *Qualifications, Term, Powers and Duties.* -

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b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office of legal services and shall:

(1) Formulate measures for the consideration of the sanggunian and **provide legal assistance and support to the governor or mayor, as the case may be, in carrying out the delivery of basic services and provisions of adequate facilities as provided for under Section 17 of this Code;**

(2) xxx xxx xxx;

(3) In addition to the foregoing duties and functions, the legal officer shall:

(i) **Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party**: *Provided*, That, in actions or proceedings where a component city or municipality is a party

> adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;" *(*Boldfacing supplied*)*

Pursuant to the foregoing provision, the legal officer of Norzagaray has the duty to represent respondent Municipality or any of its officials in all civil actions and special proceedings where it is or any of its officials is a party.

Such representation barring the hiring of a private counsel was thoroughly explained by the Supreme Court in the case of Antonio C. Ramos, et. al. v. Court of Appeals, et. al.[30] (Ramos Case), to wit:

> *"First Issue: Who Is Authorized to Represent a Municipality in Its Lawsuits?*
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> In the recent case of Municipality of Pililla, Rizal vs. Court of Appeals, this Court, through Mr. Justice Florenz D. Regalado, set in clear-cut terms the answer to the question of who may legally represent a municipality in a suit for or against it, thus:
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> > '. . . The matter of representation of a municipality by a private attorney has been settled in Ramos vs. Court of Appeals, et al., and reiterated in Province of Cebu vs. Intermediate Appellate Court, et al., where we ruled that private attorneys cannot represent a province or municipality in lawsuits.
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> > Section 1683 of the Revised Administrative Code provides:
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> > > 'Section 1683. *Duty of fiscal to represent provinces and provincial subdivisions in litigation*. – The provincial fiscal shall represent the province and any

[30] G.R. No. 99425, March 3, 1997.

> municipality or municipal district thereof in any court, except in cases whereof (sic) original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province.

When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attorney may be employed by its council.'

Under the above provision, complemented by Section 3, Republic Act No. 2264, the Local Autonomy Law, only the provincial fiscal and the municipal attorney can represent a province or municipality in their lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it.

For the aforementioned exception to apply, the fact that the provincial fiscal was disqualified to handle the municipality's case must appear on record. In the instant case, there is nothing in the records to show that the provincial fiscal is disqualified to act as counsel for the Municipality of Pililla on appeal, hence the appearance of herein private counsel is without authority of law.

The provincial fiscal's functions as legal officer and adviser for the civil cases of a province and corollarily, of the municipalities thereof, were subsequently transferred to the provincial attorney.

The foregoing provisions of law and jurisprudence show that only the provincial fiscal, provincial attorney, and municipal attorney should represent a municipality in its lawsuits. Only in exceptional instances may a private attorney be hired by a municipality to represent it in lawsuits. These exceptions are enumerated in the case of Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental, to wit:

> 'Indeed, *it appears that* ***the law allows a private counsel to be hired by a municipality only when the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province.*** This provision has its apparent origin in the ruling in *De Guia v. The Auditor General* (44 SCRA 169, March 29, 1979) where the Court held that the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal would be disqualified to serve and represent it. With Sec. 1683 of the old Administrative Code as legal basis, the Court therein cited *Enriquez, Sr. v. Gimenez* [107 Phil. 932 (1960)] which enumerated instances when the provincial fiscal is disqualified to represent in court a particular municipality; if and when original jurisdiction of case involving the municipality is vested in the Supreme Court, when the municipality is a party adverse to the provincial government or to some other municipality in the same province, and when, in a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir legatee, creditor or otherwise.
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> Thereafter, in Ramos vs. Court of Appeals, the Court ruled that a municipality may not be represented by a private law firm which had volunteered

its services gratis, in collaboration with the municipal attorney and the fiscal, as such representation was violative of Sec. 1683 of the old Administrative Code. This strict coherence to the letter of the law appears to have been dictated by the fact that 'the municipality should not be burdened with expenses of hiring a private lawyer' and that the 'interests of the municipality would be best protected if a government lawyer handles its litigations.'

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As already stated, **private lawyers may not represent municipalities on their own. Neither may they do so even in collaboration with authorized government lawyers. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers.** *(*Boldfacing supplied*)*

The tenet was amplified in the case of Asean Pacific Planners, App Construction and Development Corporation and Cesar Goco v. City of Urdaneta et. al.[31], to wit:

"**Section 481(a) of the Local Government Code (LGC) of 1991 mandates the appointment of a city legal officer. Under Section 481(b)(3)(i) of the LGC, the city legal officer is supposed to represent the city in all civil actions, as in this case, and special proceedings wherein the city or any of its officials is a party**. In *Ramos v. Court of Appeals*, we cited that under Section 19 of Republic Act No. 5185, city governments may already create the position of city legal officer to whom the function of the city fiscal (now prosecutor) as legal adviser and officer for civil cases of the city shall be transferred. In the case of Urdaneta City, however, the position of city legal officer is still vacant, although its charter was enacted way back in 1998.

Because of such vacancy, the City Prosecutors appearance as counsel of Urdaneta City is

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[31] G.R. No. 162525, September 23, 2008.

> proper. **The City Prosecutor remains as the citys (*sic*) legal adviser and officer for civil cases**, a function that could not yet be transferred to the city legal officer. Under the circumstances, the RTC should not have allowed the entry of appearance of the Lazaro Law Firm *vice* the City Prosecutor. xxxx.
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> Moreover, the appearance of the Lazaro Law Firm as counsel for Urdaneta City is against the law. **Section 481(b)(3)(i) of the LGC provides when a special legal officer may be employed, that is, in actions or proceedings where a component city or municipality is a party adverse to the provincial government**. But this case is not between Urdaneta City and the province of Pangasinan.
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> **And we have consistently held that a local government unit cannot be represented by private counsel as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers. *Pro bono* representation in collaboration with the municipal attorney and prosecutor has not even been allowed.**" (Boldfacing supplied).

The general rule therefore, is that only the provincial fiscal, provincial attorney, and municipal attorney shall represent a municipality in its lawsuits. The exception to this general rule is when (1) the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province, (2) if and when the provincial fiscal is disqualified to represent in court a particular municipality, (3) when original jurisdiction of case involving the municipality is vested in the Supreme Court; (4) when, in a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir, legatee, creditor or otherwise.[32]

Following the foregoing principle, the general rule applies in the present case. In other words, the representation of Atty. Fajardo for respondent Municipality is not valid.

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[32] The Local Government Code Revisited, Aquilino Q. Pimentel, Jr. 2007 Edition, p. 749.

Moreover, respondent Municipality cannot justify the employment of a private counsel on a retainer basis on the ground that it is a first-class municipality and has the financial capacity to have its own private lawyer.

In fact, the Supreme Court has consistently ruled that private lawyers cannot represent municipalities on their own even *pro bono* in collaboration with authorized government lawyers[33] due to the well-entrenched principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers.

Respondent Municipality cannot find refuge on *Kapasiyahan Blg*. 2010-03-49 issued by the *Sangguniang Bayan* for it is contrary to law. While the appointment of legal counsel for a municipality is optional, it does not follow that it may employ or secure the services of private counsel to represent it, unless the obtaining circumstances fall on the exceptions.

Thus, without authority, Attorney Fajardo's representation of respondent Municipality is not valid. Be that as it may and as held in Ramos Case[34], although a municipality may not hire a private lawyer to represent it in litigations, in the interest of substantial justice, it may adopt the work already performed in good faith by the private lawyer, which work is beneficial to it (1) provided that no injustice is thereby heaped on the adverse party, and (2) provided further that no compensation in any guise is paid therefor by the said municipality to the private lawyer. And unless so expressly adopted, the private lawyer's work cannot bind the municipality.

In present case, although it appears that a Retainer's Agreement had been executed between respondent Municipality and Attorney Fajardo, there is no indication that he was actually paid the amounts stated therein for the services he rendered respondent Municipality in Civil Case No. 428-M-2014.

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[33] Asean Pacific Planners, App Construction and Development Corporation, et al. v. City of Urdaneta, G.R. No. 162525, September 23, 2008.
[34] *Supra,* Note 28.

All said, the admission of respondent Municipality's Answer and denial of petitioner's Motion to Declare Defendant in Default, Motion to Disqualify Counsel and its subsequent Motion for Reconsideration, are clear acts committed with grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC.

WHEREFORE, the instant Special Civil Action for Certiorari filed by petitioner Trans-Asia Power Generation Corporation on October 29, 2015 is hereby **GRANTED**. The assailed Resolutions dated February 26, 2015 and July 8, 2015, both issued by RTC Branch 21 of Malolos City, Bulacan in Civil Case No. 428-M-2014 entitled "Trans-Asia Power Generation Corporation v. Municipality of Norzagaray, Bulacan, represented in this case by its Mayor Alfredo Germar and its Treasurer Filipina De Mesa", are **REVERSED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Let the record of Civil Case No. 428-M-2014 be remanded to the trial court for further proceedings.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice