

## THIRD DIVISION

[ G.R. No. 185132, April 24, 2009 ]

**GOVERNOR ENRIQUE T. GARCIA, JR., AURELIO C. ANGELES, JR.,  
EMERLINDA S. TALENTO AND RODOLFO H. DE MESA,  
PETITIONERS, VS. COURT OF APPEALS 12<sup>TH</sup> DIVISION, HON.  
MERCEDITAS NAVARRO-GUTIERREZ, IN HER CAPACITY AS  
OMBUDSMAN, HON. ORLANDO S. CASIMIRO, IN HIS CAPACITY  
AS OVERALL DEPUTY OMBUDSMAN, HON. RONALDO D. PUNO, IN  
HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF THE  
INTERIOR AND LOCAL GOVERNMENT, JOSECHITO B. GONZAGA,  
RUEL A. MASINO AND ALFREDO B. SANTOS, RESPONDENTS.**

### RESOLUTION

**NACHURA, J.:**

Petitioners assail in this Rule 65 petition the November 14, 2008 Resolution<sup>[1]</sup> of the Court of Appeals (CA) holding in abeyance the resolution of their prayer for the issuance of a restraining order on the implementation of the Office of the Ombudsman's October 28, 2008 Order<sup>[2]</sup> for their preventive suspension.

Stripped of non-essentials, the controlling facts follow.

Sometime in 2004, the provincial government of Bataan caused the tax delinquency sale of the properties of Sunrise Paper Products Industries, Inc. (Sunrise). Without any other bidder at the public auction, the province acquired the immovables consisting of a paper plant with its machineries and equipment and the parcels of land where it is erected.<sup>[3]</sup> To annul the auction sale and to prevent the province from consolidating in its name the titles over the properties, Sunrise, on April 21, 2005, filed a petition for injunction docketed as Civil Case No. 8164 in the Regional Trial Court (RTC) of Bataan. Consequently, the other creditors of Sunrise intervened in the proceedings.<sup>[4]</sup>

During the pendency of the case, the province represented by the governor entered into a compromise agreement with Sunrise on June 14, 2005. On the same date, the *Sangguniang Panlalawigan*, through a unanimous resolution, approved the same.<sup>[5]</sup> Subsequently, the parties moved for the dismissal of the civil case, not on account of the settlement, but on the ground that the court did not acquire jurisdiction for failure of any of the parties to comply with Section 267<sup>[6]</sup> of Republic Act (R.A.) No. 7160, or the Local Government Code (LGC) of 1991.<sup>[7]</sup> Upon the same ground, the parties no longer sought judicial approval of the compromise agreement.<sup>[8]</sup>

However, the trial court refused to dismiss the case and, on June 15, 2007,

rendered its Decision declaring, among others, that the auction sale was invalid, that the transfer certificates of titles in the name of the province were falsified, and that the compromise agreement executed by the parties was illegal.<sup>[9]</sup> In G.R. No. 181311, currently pending with this Court, the province questioned, among others, the said decision of the trial court. A *status quo* order restraining the implementation of the trial court's decision was issued by this Court in that case.<sup>[10]</sup>

Meanwhile, private respondents Josechito B. Gonzaga, Ruel A. Magsino and Alfredo B. Santos, utilizing the June 15, 2007 Decision of the trial court as basis, filed with the Office of the Ombudsman the January 22, 2008 Complaint-Affidavit<sup>[11]</sup> administratively and criminally charging, among others,<sup>[12]</sup> the petitioners with violation of Sections 3(e) and (g)<sup>[13]</sup> of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act,<sup>[14]</sup> falsification of public documents, serious illegal detention, malversation of public properties and funds, and plunder.<sup>[15]</sup>

On October 28, 2008, the Ombudsman, in the administrative case docketed as OMB-L-A-08-0039-A, issued the Order<sup>[16]</sup> preventively suspending petitioners for six months. The decretal portion of the Order reads:

**UNDER THE FOREGOING PREMISES**, the prayer seeking for the preventive suspension of respondent public officials is **PARTIALLY GRANTED**. Pursuant to Section 24, Republic Act No. 6770, and Section 9, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, Series of 2003, **GOVERNOR ENRIQUE T. GARCIA JR., ATTY. AURELIO C. ANGELES JR., EMERLINDA S. TALENTO**, and **RODOLFO H. DE MESA** are hereby placed under **PREVENTIVE SUSPENSION** until the administrative adjudication on this case is terminated, but not to exceed six (6) months, **WITHOUT PAY**, except when the delay in the disposition of the case is due to the fault, negligence or petition of the respondents, in which case the period of such delay shall not be counted in computing the period of suspension.

Accordingly, The Secretary, Department of the Interior and Local Government, or his duly authorized representative is directed to implement this Order against **GOVERNOR ENRIQUE T. GARCIA JR., ATTY. AURELIO C. ANGELES JR., EMERLINDA S. TALENTO**, and **RODOLFO H. DE MESA**, and to thereafter notify this Office within five (5) days from receipt hereof of their compliance herewith.

All herein respondents are directed to file within the period of ten (10) days from receipt hereof, their counter-affidavits and the affidavit of their witness/es, if any, duly subscribed and sworn to before a notary public or any authorized officer, and such other controverting evidence, copy furnished the complainant.

This Order is **immediately executory** pursuant to Ombudsman Memorandum Circular No. 01, Series of 2006, in relation to paragraph 1, Section 27 of R.A. 6770, and Section 7, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, *as amended*,

and in accordance with the ruling in **Ombudsman v. Court of Appeals**.

Let it be known that refusal by any officer without just cause to comply with this Order shall be a ground for disciplinary action against said officer as provided in paragraph 3, Section 15 of R.A. 6770.

**SO ORDERED.**<sup>[17]</sup>

Questioning the preventive suspension and wary of the threatening and coercive nature of the Ombudsman's Order, petitioners, on November 10, 2008, filed with the CA the petition, docketed as CA-G.R. SP No. 106026, for *certiorari*, prohibition and mandamus with an urgent prayer for the issuance of an injunctive relief.<sup>[18]</sup>

On November 14, 2008, the appellate court issued the assailed Resolution,<sup>[19]</sup> which pertinently reads:

Without necessarily giving due course to the petition for *certiorari*, private respondents are hereby **DIRECTED** to file their **COMMENT** thereon, and not a motion to dismiss, within ten (10) days from notice hereof. Petitioners are given five (5) days from receipt of said comment within which to file reply.

Action on the injunctive relief prayed for is **held in abeyance** pending receipt of the pleadings ordered filed or until the period to file the same shall have lapsed.

**SO ORDERED.**<sup>[20]</sup>

Alarmed over the impending implementation of the Ombudsman's order and distraught with the apparent inaction of the appellate court, petitioners instituted the instant petition for *certiorari*, prohibition and mandamus with urgent prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. On November 19, 2008, the Court issued a TRO<sup>[21]</sup> enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the Ombudsman until further orders from the Court.

The central question we need to address in this case is the correctness of the appellate court's holding in abeyance or deferment of action on petitioners' urgent prayer for the issuance of an injunctive relief.

It is well to remember that the petition filed with the CA, in which the ancillary remedy is sought, questions the very validity of the issuance of the Order for preventive suspension. The grounds raised by petitioners are of a serious nature, *viz*: the administrative charges involved acts committed in their previous term of office, the complaint-affidavit was not supported by evidence and was only based on the trial court's ruling which is still being reviewed by this Court, the trial court had no jurisdiction to issue the said ruling, and the issuance of the order was politically motivated. Let it be emphasized at this point that if it were established in the CA that the acts subject of the administrative complaint were indeed committed during petitioner Garcia's prior term, then, following settled jurisprudence, he can no longer be administratively charged. Further, if this Court, in G.R. No. 181311,

reverses the trial court's ruling or nullifies it for want of jurisdiction then the complaint-affidavit of the private respondents will no longer have a leg to stand on. It was imperative, therefore, on the part of the appellate court, as soon as it was apprised of the said considerable grounds, to issue an injunctive relief so as not to render moot, nugatory and ineffectual the resolution of the issues in the *certiorari* petition. An injunctive relief is not intended to determine a controverted right, but is calculated to prevent a further perpetration of wrong or the doing of any act whereby the right in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party.<sup>[22]</sup>

In this case, for the CA to defer action on petitioners' application for an injunctive relief pending the filing of respondents' comment is to foreclose altogether the very remedy sought by petitioners when they questioned the alleged illegal preventive suspension. This is so, because the Ombudsman's Order is immediately effective and executory,<sup>[23]</sup> and the filing of the comment by all of the respondents will entail considerable time.

While we do not entirely blame the CA for being too cautious in not granting any injunctive relief without first considering the counter-arguments of the opposing parties, it would have been more prudent for it to have, at the very least, on account of the extreme urgency of the matter and the seriousness of the issues raised in the *certiorari* petition, issued a TRO while it awaits the respective comments of the respondents and while it judiciously contemplates on whether or not to issue a writ of preliminary injunction.<sup>[24]</sup> Verily, the basic purpose of the restraining order is to preserve the *status quo* until the hearing of the application for preliminary injunction.<sup>[25]</sup> It is a preservative remedy for the protection of substantive rights and interests.<sup>[26]</sup>

At this point we must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.<sup>[27]</sup>

Thus, as the appellate court failed dutifully and prudently to exercise its discretion, in violation of fundamental principles of law and the Rules of Court, its action is correctible by a *certiorari* writ from this Court. Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a 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 hostility.<sup>[28]</sup>

We therefore accept as correct petitioners' direct elevation to this Court via the petition for *certiorari* the CA's November 14, 2008 Resolution even if no motion for reconsideration was filed to afford the appellate court an opportunity to rectify its error. Under the circumstances obtaining in this case, the *certiorari* petition, and not a motion for reconsideration with the appellate court, is the plain, speedy and adequate remedy. Indeed, had they not filed the petition, they would have been left with no avenue to protect their rights.<sup>[29]</sup>

While the general rule is that a motion for reconsideration is an indispensable condition before the filing of a petition for *certiorari*, the same admits of exceptions, namely: (1) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question and any further delay will prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where, under the circumstances, a motion for reconsideration will be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or public interest is involved.<sup>[30]</sup>

Without further belaboring the point, we find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioners are justified in straightforwardly seeking the intervention of this Court. Again, as we repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.<sup>[31]</sup>

We hasten to add at this juncture that the petitioners in bringing the matter before this Court as soon as the CA issued the assailed resolution have not violated the proscription on forum shopping. While the parties are the same in this petition and in that in the appellate court, the issues raised and the reliefs prayed for in the two fora are substantially different. To repeat, here, the petitioners question in the main the CA's deferment of action on the application for an injunctive relief. In their petition before the CA, however, they assail the very issuance of the order for their preventive suspension. Further, as well discussed above, this petition is their only remedy. Petitioners' prayer for relief in this petition is, just like in *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*,<sup>[32]</sup> a necessary consequence of the CA's inaction on their pleas.

We are cognizant that, apart from the propriety of the CA's deferment of action on the application for injunctive relief, there remains the question of the validity of the Ombudsman's order of preventive suspension which is yet to be resolved by the appellate court. The latter clearly involves factual issues. Since we are not a trier of facts, following our disposition in *Benguet Management Corporation v. Court of Appeals*,<sup>[33]</sup> we should remand this case to the CA for a speedy resolution on the merits.

**WHEREFORE**, premises considered, the petition is **PARTIALLY GRANTED**. The November 14, 2008 Resolution of the Court of Appeals insofar as it deferred action on the petitioners' application for injunctive relief should be **REVERSED** and **SET ASIDE**. The **TEMPORARY RESTRAINING ORDER** issued by the Court on November 19, 2008 enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the Ombudsman **STANDS** until further orders from the Court. The instant case is **REMANDED** to the Court of Appeals for determination on the