CAGAYAN DE ORO CITY

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 05224-MIN, August 11, 2014]

COMMISSION ON HIGHER EDUCATION, PETITIONER, VS. HON. JUDGE EVALYN M. ARELLANO-MORALES, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF DAVAO CITY, BRANCH 17, AND MINDANAO MEDICAL FOUNDATION COLLEGE INCORPORATED, RESPONDENTS.

D E C I S I O N

INTING, J.:

Before Us is a petition for certiorari under Rule 65 of the Rules of Court seeking to reverse and set aside the May 22, 2012 Order[1] of the Regional Trial Court Branch 17, Davao City granting the private respondent's prayer for a preliminary injunction against herein petitioner, and the September 11, 2012 Order[2] denying the latter's motion for reconsideration.

The facts of the case are as follows:

Private respondent Mindanao Medical Foundation College, Inc. operates a collegiate degree program for Bachelor of Science in Nursing per Government Recognition No. 23 issued on July 12, 1993. For less than two (2) decades since the 1990s, the institution has been producing medical-related professionals. In April of 2009, the Commission on Higher Education, pursuant to its mandate under RA 7722 to set minimum standards for programs and institutions of higher learning, to enforce those standards, and to monitor and evaluate the performance of programs and institutions of higher learning as well as the imposition of sanctions, formulated CHED Memorandum No. 14, series of 2009 (CMO 14-2009) setting the policies and standards for the B.S. Nursing programs. It provided for the gradual phase out of the nursing program of institutions wherein the passing rate in the Nursing Licensure Exam is less than 30% for at least three (3) successive board examinations. The transitory provisions granted the Higher Education Institutions three (3) years for the effectivity of the CMO to fully comply with the requirements. Its implementation shall be from school years 2010 to 2013 with the phase out to be carried out in 2013.[3]

Thereafter, private respondent undertook several projects and improvements in its institution to comply with the requirements under CMO 14-2009 including monetary investments and upgrading of required facilities and equipment.[4]

However, due to the disturbing decline in the national passing percentage adversely reflecting the quality of the nursing education being received by the nursing students, CHED necessitated to revisit the CMO 14-2009 sanctions. On July 29, 2011, CMO 18-2011 was issued and it introduced new guidelines in the implementation of the sanctions. Per CMO 18-2011, effective 2011, nursing

programs of HEIs whose average passing rate in the NLE is 30% and below for three (3) consecutive examination years starting from 2008 and thereafter shall be immediately phased out.[5]

Meanwhile, private respondent's passing percentage for the years 2008 until 2010 were below the required 30% rate. On January 30, 2012, CHED sent a letter to the private respondent asking for a confirmation or correction of the data taken from the PRC which showed that for the past three (3) consecutive years the institution has been performing below the required standard, otherwise, the information shall be presumed correct. The private respondent allegedly failed to reply. On February 28, 2012, CHED advised the private respondent to submit a report on the decision as to how its closure shall be effected either by voluntary closure through phase-out process, or voluntary but outright closure or involuntary closure on or before March 1, 2012.

On April 30, 2012, private respondents filed an action for prohibition and injunction with prayer for TRO or writ of preliminary injunction before the RTC against CHED alleging that the modification of the CMO 14-2009 in the middle of the three (3) year period for its supposed compliance is arbitrary and akin to an ex-post facto law because the institution is being penalized for a past performance; and that the immediate phasing out of those whose passing is below 30% for the years starting 2008 and onwards violates due process and is an invalid exercise of police power. Further, the private respondent maintains that grave injustice and irreparable injury will befall on it once its nursing program is closed as it will lose an entire department which is the bulk of its student population with about nearly 100 employees and staff; and the closure will deny it the opportunity to reap the improvements on the performance of its graduates.

A temporary restraining order was issued in the private respondent's favor.

CHED filed its opposition to the private respondent's prayer for preliminary injunction asseverating that the latter is not entitled to an injunction because of its failure to show the existence of a right. All licenses may be revoked or rescinded because it is not a contract, property or property right protected by the due process clause of the constitution. Thus, the private respondent's permit to operate its nursing program may be revoked at any time by respondent if so warranted. CHED notes that the private respondent's 2011 passing rate is the lowest recorded since 2006 raising a serious doubt on its capacity to produce competent graduates. Further, an injunction is resorted to when there is no other adequate remedy. CHED avers that the private respondent should have filed an appeal before the Office of the President before coming to the court.

The RTC rendered the assailed May 22, 2012 Order granting the private respondent's prayer for the issuance of a preliminary injunction. The RTC held that while the license or permit is not a property right protected by the due process clause, its revocation is an act of police power which must be exercised in a reasonable and not arbitrary manner; that the CMO 18-2011 failed to consider the detrimental effect of an immediate phase out of the nursing program not only to the private respondent's employees but also the students who will be displaced with no assurance that they will be accepted in other nursing schools; that the end of the CMO is noble but the means employed is unreasonable and arbitrary; that even if the private respondent failed to exhaust administrative remedies, the instant case

falls under the exception; and that the immediate closure of the private respondent's nursing program during pendency of the litigation would work injustice to the applicant.

CHED's motion for reconsideration[6] was denied. Hence, this petition alleging that the court a *quo* abused its discretion amounting to lack or excess of jurisdiction in issuing the writ of preliminary injunction despite private respondent's utter failure to prove the requirements for its issuance. Petitioner argues that private respondent has no clear and unmistakable right to be protected because like any other schools, it operates by virtue of a permit which contains a proviso for revocation if the required standards are not met. Thus, being a mere privilege, the private respondent's government recognition did not vest in it a right that it may assert against the authority which granted it. Further, CHED maintains that there was yet no invasion of a right because the letter sent to the private respondent is not a closure order but only a confirmation or correction of the data. CHED also counters the private respondent's claim of irreparable injury since it is based on its estimated income which is capable of mathematical computation and is easily quantifiable. Moreover, the private respondent can still file a motion for reconsideration of the phase-out order hence, there was failure for them to exhaust administrative remedies.

Our Ruling

The petition is with merit.

It is worthy to stress that the issue before the court a *quo* is not on the main action of prohibition but rather on the provisional remedy of preliminary injunction which sole aim is to preserve the status *quo* until the merits of the case can be heard fully.[7] The grant of a preliminary injunction is addressed to the sound discretion of the trial court, conditioned on the existence of a clear and positive right of the applicant which should be protected.[8] Extreme caution must be observed in the exercise of such discretion.[9] It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[10] The rule requires that in order for a writ of preliminary injunction to issue, the application should clearly allege facts and circumstances showing the existence of the requisites. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.[11]

In *Thunder Security and Investigation Agency v. NFA*,[12] the Supreme Court enumerates the following requisites which must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:

(1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to

prevent the infliction of irreparable injury.

The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action.[13]

In the case of *Philippine Merchant Marine School, Inc. v. CA*,[14] the Supreme Court profoundly discussed the concept regarding the establishment of schools and We quote:

> "The educational operation of schools is subject to prior authorization of the government and is effected by recognition. In the case of government-operated schools, whether local, regional or national, recognition of educational programs and/or operations is deemed granted simultaneously with establishment. In all other cases the rules and regulations governing recognition are prescribed and enforced by the DECS, defining therein who are qualified to apply, providing for a permit system, stating the conditions for the grant of recognition and for its cancellation and withdrawal, and providing for related matters. The requirement on prior government authorization is pursuant to the State policy that educational programs and/or operations shall be of good quality and therefore shall at least satisfy minimum standards with respect to curricula, teaching staff, physical plant and facilities and of administrative or management viability." (Underscoring ours)

On May 18, 1994, Congress approved R.A. No. 7722[15] which paved the way for the creation of the Commission on Higher Education which shall be independent from DECS and attached to the Office of the President for administrative purposes only. Its coverage shall be both public and private institutions of higher education as well as degree-granting programs in post-secondary educational institutions, public and private. Its powers and functions include monitoring and evaluating the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination and school closure. By virtue thereof, the authority and supervision over all public and private institutions of higher education, as well as degree-granting programs in all post-secondary educational institutions, public and private, belong to the CHED.[16] Section 2, Article II of CMO 14- 2009 provides that all private higher education institutions intending to offer B.S. Nursing programs must first secure proper authority from the Commission.

From the foregoing, it is clear that the private respondent's operation of its nursing program was never its right from the very beginning. It is only a privilege founded on certain criterions and conditions in which the institution's failure to abide would cause its revocation. This is explicit in the government recognition issued by the DECS which pertinently states in substance that the authority granted shall be