

RENE UY GOLANGCO, COMPLAINANT VS. JUDGE CANDIDO P.VILLANUEVA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENT.

A.M. No. RTJ-96-1355. September 04, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a Complaint-Affidavit subscribed and sworn to on 7 December 1995 before am Ombudsman Graft Investigation Officer, complainant Rene Uy Golangco charges respondent Judge with violation of paragraphs (e) and (f) of Section 3 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.[1] A copy of the complaint was transmitted to the Office of the Court Administrator (OCA) by the Office of the Ombudsman on 7 February 1996.

On 8 January 1996, the complainant filed with the OCA a supporting affidavit of his counsel.

The undisputed facts are as follows:

Sometime in December 1992, the complainant's estranged wife, Mrs. Ma Lucia C. Golangco, filed a petition for annulment of marriage with a prayer for the custody pendente lite of her two minor children. The case was docketed as Civil Case No. 92-3647.

On 21 July 1994, respondent Judge issued an order awarding in favor of Mrs. Golangco the custody pendente lite of the two children, Justin Rene and Stephen Raphael, who were then nine and six years old, respectively. Complainant Rene Golangco was therein given "a right of visitation and reasonable access towards these two children during weekends" and "at least one week custody in a month."

On 26 August 1994, the respondent issued another order reiterating the 21 July 1994 Order.

The complainant challenged both orders before the Court of Appeals by way of a petition for certiorari, which was, however, denied. His petition with this Court questioning the denial was likewise dismissed for failure to show that grave abuse of discretion had been committed by the appellate court.

Mrs. Golangco, on other hand, filed with respondent Judge on 15 August 1995 a motion for the reconsideration of the 21 July 1994 Order with a prayer for a writ of preliminary injunction.

On 16 August 1995, respondent Judge issued a temporary restraining order (TRO) enjoining the complainant from harassing, intimidating, and threatening his minor children, as well as the officials or the schools or institutions where the children were on may be enrolled and other persons who may be looking after the welfare of the said minors.

After the expiration of the TRO, or on 14 September 1995, the respondent, upon motion by Mrs. Golangco, issued another TRO containing the same restraints.

Earlier, or on 5 September 1995, the respondent issued an order designating Dr. Cecilia C. Villegas, a psychiatrist and Chief of the Medical and Dental Services of this Court, to conduct a psychological examination or evaluation of the two children with respect to the pending prayer for a writ of preliminary injunction.

In a letter dated 23 September 1995 and addressed to respondent Judge, Dr. Villegas recommended, among other things, that “the parents must be given equal time associate and enjoy their children before psychological evaluation is done.”

The complainant then filed a motion for the immediate implementation of the said recommendation. This motion was, however, denied for lack of time in view of the impending expiration of the second TRO. The judge forthwith deemed the application for a writ of preliminary injunction submitted for resolution.

On 6 October 1995, the respondent issued a writ of preliminary injunction restraining the complaint, his counsel, representative, or agents from harassing, intimidating, and threatening the minor children, the officials of the International School and International Montessori School, and other persons looking after the welfare of the two children.

The complainant alleges that respondent Judge acted with evident bad faith, manifest bias and partiality, grave abuse of authority, gross inexcusable negligence, or ignorance of the law in

- (1) refusing to implementing his 21 July 1994 Order despite the absence of any restraining order order or injunction from the appellate court;
- (2) failing to act on his several motions to cite Mrs Golangco in contempt of court for her refusal to respect his custodial and visitorial rights over their children.;
- (3) lifting the hold departure order sustained by this Court;
- (4) issuing a second TRO after the first expired;
- (5) decreeing the division between the spouses the excess proceeds of the sale of complainant’s car notwithstanding the absence of a final order of annulment of marriage and liquidation of the conjugal partnership;
- (6) ignoring his motion to implement Dr. Villegas’ recommendation in her 23 September 1995 letter;
- (7) issuing a writ of preliminary injunction even before the termination of the presentation of complainants evidence; and
- (8) failing to implement the 5 September 1995 Order, which allowed Dr. Villegas to conduct a psychological examination on the two minor children.

In his 2 April 1996 letter, the complaint also accuses the respondent of “witness tampering” by dictating the manner his counsel was to present his witnesses.

In refutation, respondent Judge submits that he cannot be faulted for failing to implement the 21 July 1994 and 26 August 1994 Orders and to cite Mrs. Golangco in contempt of court because the said orders were questioned by the complainant before the Court of Appeals and, later, before this Court. Besides, the complainant moved to respondent’s inhibition from the case.

Anent the writ of preliminary injunction, the respondent claims that he issued the same based on the verified allegations of Mrs. Golangco, the testimonies of her 9-year old son and of expert witnesses, and the documentary evidence in support of the application for the said writ. The complainants failed to present any controverting evidence despite opportunities to do so. At any rate, the Court of Appeals dismissed complainant’s petition

assailing the writ.

Respondent Judge denies having neglected to send complainant's children to Dr. Villegas for evaluation. He submits that this issue has even become moot and academic, since Dr. Villegas and the Golangco spouses had already made arrangement for the interview of the children.

On 2 September 1996, we required the parties to manifest whether they are submitting the case for decision on the basis of the pleadings already filed. Only the respondent manifested in the affirmative.

Copy of the resolution of 2 September 1996 sent by registered mail was returned to sender for the reason that is was UNCLAIMED by the addressee. We deemed it served, and considered the complaint to likewise submit this case for decision on the basis of the pleadings already filed. In any event, the pleadings of the parties and annexes thereto provide more than enough basis for a resolution of this case on its merits.

In its evaluation, report, and recommendation, the OCA resolved the issue in this wise:

On the first issue. A pending petition for certiorari alone does not operate to suspend the implementation of the challenged orders in the absence of an injunctive writ or restraining order. Otherwise stated, "to restrain or suspend the enforcement of the orders it is necessary that an injunctive writ must be prayed for. An injunction restrains or prohibits; certiorari does neither, but rather annuls. (14 C.J.S. 125 as cited in Oscar B. Bernardo's *The Law of Certiorari, Prohibition, Mandamus, Restraining Order and Injunction*, p. 5)

On the second issue. Respondent should have resolved or acted one way or the other on the pending motions files before him consistent with the promptings of the Supreme Court for speedy and efficient disposition of the court's business.

On the third issue. Respondent's silence on this issue speaks of the factual veracity of the charge. As stated in this Office's Agenda, the hold departure order having been challenged before and affirmed by the Supreme Court there is no extant reason for setting it aside, the payment of bonds notwithstanding.

On the fourth issue. The issuance of a second restraining order is in violation of Section 5, Rule 58 of the Rules of Court, as amended by BP 224 (*Ubarra vs. Tecson*, 134 SCRA 4)

On the fifth issue. It is noted that respondent failed to comment on this particular issue. Consistent, however, with the time-honored rule that complaints must survive on their own merit and not on the weakness of the defense, this charge should be dismissed for being unsubstantiated by documentary evidence.

On the sixth issue. Respondent is innocent of the charge against him. Relevant documents reveal that the court had not from Adam bound itself to the recommendation of complainant's expert witness. Moreover, respondent was not without consideration of complainant's plight. The latter was given opportunity to confer with his witness to reconsider her recommendation. To remedy his predicament complainant should have moved to present another expert witness or prevailed upon his witness for the latter to give her initial views or preliminary evaluation.

On the seventh issue. This charge is without factual and legal basis. When a motion is deemed ripe for resolution is a mater subject to judicial discretion. In any case, complainant did not seem to have other witness to present, otherwise he should have their appearance to the court when he received notice of the recommendation of his witness. When the case was called, he insisted on presenting as expert witness who required so much time before she could testify. It does not seem fair for the parties to wait for an indefinite time and further delay the proceedings on said account.

On the eight issue. As the matter is still pending before the Court of Appeals on motion for reconsideration filed by complainant it is not yet subject to administrative scrutiny.

The OCA then recommended that respondent judge be censured for (a) malfeasance for issuing two restraining orders and disregarding the hold-departure order sustained by this Court; and (b) gross ignorance of the law for holding that certiorari operates to bar the implementation of the assailed custody pendente lite orders and that pending motions which are not meritorious may be set aside by inaction. It recommended, however, the dismissal of the charges of manifest bias, grave abuse of authority, precipitate hearing of a motion and issuance of the writ of preliminary injunction, and “witness tampering” or undue influence in the presentation of witness.

Upon a careful examination of the pleadings filed by the parties, we agree upon with the findings of the OCA on respondent’s administrative liability for issuing two restraining orders and lifting the hold-departure order.

It is obvious that the restraining order of 16 August and 14 September 1995 were issued by the respondent in connection with the Motion for Reconsideration with Urgent Prayer for a Writ of Preliminary Injunction. Howsoever viewed, the second was but an extension of the first pending resolution of the application for a writ of preliminary injunction.

By the terms of Section 5, Rule 58 of the Rule of Court, as amended by B.P. Blg. 224, a temporary restraining order cannot exist indefinitely; it has a definite lifetime of a nonextendible period of twenty days and automatically expires of the twentieth day. No judicial declaration that it has expired is necessary.[2]

Respondent Judge is expected to be aware of this settled rule on temporary restraining order. It was his duty to apply the said rule. He did not have the privilege of overturning the rule. This court cannot afford the luxury of granting that privilege; otherwise, the Court would be rendered inutile with dire consequences resulting in diminution of its power as the final arbiter of legal issues and impairment of the respect due it, and in judicial instability and chaos.[3] As warned *People vs. Vera*,[4] “[a] becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation.” In sharper terms, *Luzon Stevedoring Corp. vs. Court of Appeals*[5] reiterated the warning; thus:

The spirit of initiative and independence on the part of men of the robe may at times be commendable, but certainly not when this Court, not but once spoken but at least four times, had indicated what the rule should be. We had spoken clearly and unequivocally. There was no ambiguity in what we said. Our meaning was clear and unmistakable. We did not take pains to explain why it must be thus. We were within our powers in doing so. It would not be too much to expect, then, that tribunals in the lower rungs of the judiciary would at the very least, take notice and yield deference.

The disregard then by respondent Judge of this Court’s pronouncement on temporary restraining orders was not just one of the ignorance of the rule but one amounting, in a larger sense, to grave abuse of authority, misconduct, and conduct prejudicial to the proper administration of justice.

The same may be said of respondent Judge’s lifting of the hold-departure order sustained by this Court. He overruled this court.

We do not, however, agree with the OCA in its conclusion that the respondent is administratively liable for “gross ignorance of law for holding that certiorari operates to bar the implementation of assailed custody pendente lite orders and [that] pending motions which are not meritorious may be set aside by inaction.” In his comment, the respondent explained why he did not act on complainant’s motions to implement the orders and to cite *Mrs. Golangco* in contempt. Thus:

2. He also pointed out in his complaint-affidavit that he has repeatedly filed motions for the court to implement those Orders of July 21, 1994 and August 26, 1994 which while awarding custody to the petitioner-mother gave him visitation rights and temporary custody for at least one (1) week in a month and/or motions to cite

petitioner mother for contempt for refusing to share with him temporary custody to their children. However, as I used to point out to Mr. Golangco's counsel, there is a hitch to what he wanted. That while my orders of July 21, 1994 and August 26, 1994 recognized his temporary custody of their children and visitation rights during weekends, however, instead of accepting the orders as they were, he questioned my orders in the Court of Appeals and when the Court of Appeals upheld the validity and propriety of my said two orders, he was not also satisfied with the ruling of the Honorable Court of Appeals and he even brought the matter on a certiorari to the Honorable Supreme Court under G.R. No. 120381 entitled "Rene Uy Golangco vs. Court of Appeals, et. al." Fortunately, the Honorable Supreme Court easily saw the utter lack of merit in his petition. And on July 17, 1995, the Honorable Supreme Court "resolved to DISMISS the petition, as the petitioner (Rene Uy Golangco) failed to show that grave abuse of discretion had been committed by the appellant-respondent."

3. Besides, Mr. Golangco appears to be inconsistent. While he wanted me to implement my Orders of July 21, 1994 and August 26, 1994. At the same time he wanted me not to act on the case by filing a motion for my inhibition entitled "Motion for Recusation". And when I denied it in my Omnibus Order dated March 27, 1995, copy attached as Annex "5", he again elevated the matter of Sp. Civil Action for Certiorari to the Honorable Court of Appeals under CA-G.R. Sp. No. 37608. Fortunately, the Honorable Court of Appeals...dismissed his petition....

The above justifications of respondent Judge show beyond cavil that it was difficult for him to implement the orders in question. Complainant's acts of challenging the orders in the Court of Appeals and at the same time insisting on their enforcement are a paradigm of inconsistency. The complainant cannot have his cake and eat it too.

The penalty of CENSURE recommended by the Office of the Court Administrator is adequate.

WHEREFORE, for grave abuse of authority, misconduct and conduct prejudicial to the proper administration of justice respondent Judge CANDIDO P. VILLANUEVA of Branch 144, Regional Trial Court, Makati City, is hereby CENSURED and warned that the commission in the future of acts similar to that for which he is herein held administratively liable shall be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] The said provisions read:

SEC. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officers and are hereby declared to be unlawful:

...

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence....

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[2] *Dionisio v. CFI of South Cotabato*, 124 SCRA 222, 226 [1983]; *Board of Transportation v. Castro*, 125 SCRA 410, 417 [1983]; *Aquino v. Luntok*, 184 SCRA 177, 184 [1990]; *Prado v. Veridiano*, 204 SCRA 654,

672-673[1991].

[3] See *Shioji v. Harvey*, 43 Phil. 333, 337 [1992].

[4] 65 Phil. 56, 82 [1937].

[5] 34 SCRA 73, 78 [1970].

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