

ATTY. JOSE ALFONSO M. GOMOS, FUND FOR ASSISTANCE TO PRIVATE EDUCATION (FAPE), COMPLAINANTS, VS. JUDGE SANTOS B. ADIONG, REGIONAL TRIAL COURT, BRANCH 8, MARAWI CITY, RESPONDENT.

A.M. No. RTJ-04-1863. October 22, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

In two verified complaints dated March 12, 2001 and March 22, 2001 filed with the Office the Court Administrator (OCA), Sultan Sabdulah Ali Pacasum, in his capacity as President and Chairman of Pacasum College, Inc., Atty. Alfonso M. Gomos and Dr. Roberto T. Borromeo, as counsel and President of the Fund for Assistance to Private Education (FAPE) respectively, charged respondent Judge Santos B. Adiong of RTC, Branch 8, Marawi City with gross ignorance of law, abuse of authority and gross misconduct.

The antecedent facts are as follows:

On February 26, 2001, Saripada Ali Pacasum filed Special Civil Action No. 690-01 for mandamus with application for preliminary mandatory injunction against FAPE. He alleged that FAPE was required by law to pay subsidy to Pacasum College, Inc. under the Educational Service Program of the Department of Education, Culture and Sports (DECS); that although the DECS has already released to FAPE the total amount of P746,000,000.00 for payment to different participating schools, FAPE refused to release to Pacasum College, Inc. the sum of P1,845,040.00 which represented the remaining unpaid collectible of the said institution for the school year 2000-2001; that the continued refusal by FAPE to release the said amount has caused the school to fail in its obligation to pay the salaries of its teachers for 3 months.

On the same day the petition was filed, respondent judge granted^[1] the application for preliminary mandatory injunction upon the posting by the petitioner of a surety or property bond in the amount of P200,000.00.

On February 28, 2001, the respondent judge issued another order directing the president of FAPE, Dr. Roberto T. Borromeo, “to prepare and issue a check for P1,845,040.00 representing the payment to the Pacasum College, Inc. x x x payable to its president and chairman Saripada Ali Pacasum, the petitioner herein.”^[2] On the same day, Sheriff Acmad Alipanto served upon FAPE, through its president, summons and a copy of the petition.

On March 5, 2001, FAPE filed a Petition for Certiorari and Prohibition docketed as CA-G.R. No. 63533^[3] before the Court of Appeals, challenging the Orders, both dated February 26, 2001, issued by the respondent judge. It argued that a pending ownership dispute between Sultan Sabdulah Ali Pacasum and Saripada Ali Pacasum over the shares of the Pacasum College before the Securities and Exchange Commission precludes the release of the remaining balance of the subsidy to Pacasum College under the ESC Program, which requires that any dispute must be settled first before the release could be made. The petition further stated that the RTC of Marawi City has no jurisdiction to enforce the writs of mandamus and preliminary injunction to FAPE, in its principal office in

Makati City, since the place is outside the 12th judicial region where it belongs.[4] FAPE also prayed for the issuance of a TRO against Saripada Ali Pacasum and his agents who have been harrassing its employees with hourly calls and threats of bodily harm.

On March 9, 2001, Sheriff Acmad Alipanto and Saripada Ali Pacasum served an Order dated March 7, 2001, which was allegedly issued on a mere ex-parte motion by Saripada Ali Pacasum, reiterating the Orders of February 26, 2001 with a warning that “failure to comply would be under pain of contempt of court.”[5] On March 13, 2001, Saripada Ali Pacasum together with a Makati policeman served warrant of arrest upon Dr. Borromeo.

On March 14, 2001, the Court of Appeals issued a TRO enjoining the respondent judge from enforcing the orders of February 26, 2001. Despite the TRO, respondent judge ordered the arrest of Dr. Borromeo and certain FAPE employees for failure to comply with his directive. Two of FAPE’s employees, namely: Evangeline Domondon and Nenita Torres, were subsequently arrested and detained.

On March 12, 2001, Sultan Sabdulah Ali Pacasum filed a letter complaint before the OCA charging the respondent judge with gross ignorance of the law and gross misconduct. On March 22, 2001, a similar letter-complaint was filed by Atty. Jose Gomos on the same ground that the respondent judge violated the hearing, notice and jurisdictional requirements of the Rules of Court in issuing the questioned orders of February 26 and 28, 2001.

In his Comment, respondent judge claimed that he took cognizance of Special Civil Action No. 690-10 after it was raffled to his court. He found that the pleadings were in order; that after a careful examination of the pleadings submitted by the petitioner, he saw an extreme necessity to resolve the case expeditiously; and that all the pending incidents has been rendered moot and academic with the dismissal of Special Civil Action No. 690-10.

After evaluation of the records, the OCA found that the respondent judge was liable for gross ignorance of the law, oppression and abuse of authority; that the respondent, as the Presiding Judge of RTC, Marawi City, has no authority to enforce a preliminary injunction in Makati City where the principal office of FAPE was located; that he violated the rights of FAPE employees when he summarily cited them in contempt without regard to the procedure prescribed by the Rules of Court. He abused his authority when he issued a warrant of arrest on May 25, 2001 despite a TRO issued by the Court of Appeals. Accordingly, the OCA made the following recommendations:

- This matter be re-docketed as a regular administrative case against the respondent judge;
- Respondent judge be found guilty of gross ignorance of the law and the rules;
- Respondent judge be meted with the penalty of FINE in the sum of Forty Thousand Pesos (P40,000.00).[6]

Upon being directed by the Court,[7] complainants manifested their willingness to submit the case for decision on the basis of the pleadings submitted.[8] Respondent judge, on the other hand, failed to file his manifestation hence, the Court was constrained to dispense with the filing thereof.

We agree with the recommendations of the OCA, except as to the penalty.

Respondent judge granted Saripada Ali Pacasum’s application for preliminary mandatory injunction on the very same day the Special Civil Action No. 690-01 was filed on February 26, 2001. Sections 4(c) and 5, Rule 58 of the 1997 Rules of Civil Procedure[9] is very explicit that the writ of preliminary injunction may issue only after prior notice and hearing upon the adverse party. In issuing the subject writ on the very same day the application was

filed and considering that the person against whom the same was to be served was located in Makati, summons could not have been served upon them or a hearing conducted in evident disregard of the due process requirements of the Rules of Court.

Respondent judge's failure to comply with procedural due process is aggravated by his total inattention to the parameters of his jurisdiction. As the presiding judge of RTC, Marawi City, he should have known that Makati City was way beyond the boundaries of his territorial jurisdiction insofar as enforcing a writ of preliminary injunction is concerned. Section 21(1) of B.P. Blg. 129, as amended, provides that the RTC shall exercise original jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions. The rationale, as explained in *Embassy Farms, Inc. v. Court of Appeals*,^[10] is "that the trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial jurisdiction."

In the case at bar, the issuance of the writ of preliminary injunction is not a mere deficiency in prudence, or lapse of judgment on the part of respondent judge but a blatant disregard of basic rules constitutive of gross ignorance of the law. The responsibility of judges to keep abreast of the law and changes therein, as well as with the latest decisions of the Supreme Court, is a pressing need. One cannot seek refuge in a mere cursory acquaintance with the statute and procedural rules. Ignorance of the law, which everyone is bound to know, excuses no one – not even judges.^[11]

Respondent judge is likewise guilty of gross ignorance of the law for summarily punishing FAPE's president and employees without any written charge for indirect contempt or giving them any opportunity to explain their refusal to obey the court's order, as mandated by Section 3, Rule 71 of the 1997 Rules of Civil Procedure.^[12] What makes the act more reprehensible was the four FAPE employees cited for contempt, two of whom were arrested and detained with the exception of Dr. Borromeo, were not even impleaded in Special Civil Action No. 690-10. Worse, the arrest of the said employees was made despite the issuance by the Court of Appeals of a TRO enjoining the respondent from enforcing the Order of February 26, 2001.

The contempt power was given to the courts in trust for the public, by tradition and necessity, inasmuch as respect for the courts, which are ordained to administer the laws necessary to the good order of society, is as necessary as respect for the laws themselves. As in all other powers of the court, the contempt power, however plenary it may seem, must be exercised judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties.^[13] The failure of a judge to afford the alleged contemner the opportunity to be heard as a matter of due process of law deserves administrative sanction.

The seeming eagerness and haste with which respondent judge demonstrated in issuing the assailed orders, warrants and writ betray a design to railroad judicial processes to favor a preferred litigant. The act of a judge in citing a person in contempt of court in a manner which displays obvious partiality is deplorable and violative of Rule 2.01 of the Code of Judicial Conduct which requires a judge to behave at all times to promote public confidence in the integrity and impartiality of the judiciary.^[14] A judge is guilty of gross ignorance of the law and grave abuse of judicial authority for having precipitately adjudged guilty of indirect contempt in disregard of the elementary rules of procedure.

The Court recognizes that not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, but only in cases within the parameters of tolerable misjudgment. Where, however, the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law.^[15]

Under Section 8 of A.M. No. 01-8-10-SC, amending Rule 140 of the Rules of Court on the Discipline of Justices

and Judges, gross ignorance of the law is classified as a serious charge which carries with it a penalty of either dismissal from service, suspension for more than 3 months but not exceeding 6 months, or a fine of more than P20,000.00 but not exceeding P40,000.00.

We take judicial notice that the respondent judge had been previously sanctioned in (1) A.M. No. RTJ-98-1407 per Resolution of July 20, 1998, where he was fined in the sum of P20,000.00 for ignorance of the law; and (2) A.M. No. RTJ-00-1581 per Resolution of July 2002, where he was also fined in the sum of P5,000.00 for gross ignorance of the law and grave abuse of discretion.

Obviously, after being chastised twice, respondent judge has remained undeterred in disregarding the law which he has pledged to uphold and the Code which he has promised to live by. He appears undaunted by the previous penalties and warnings he received. If only for this, we are constrained to impose a penalty more severe than a fine, as earlier recommended. Suspension from office for 6 months would be reasonable under the circumstances.

WHEREFORE, respondent Judge Santos B. Adiong, Presiding Judge of Regional Trial Court, Branch 8, Marawi City, is found GUILTY of gross ignorance of the law for issuing a writ of preliminary injunction in violation of Section 21(1) of Batas Pambansa Blg. 129 and Sections 4(c) and 5, Rule 58 of the 1997 Rules of Civil Procedure and for citing FAPE employees in contempt of court in disregard of Section 3, Rule 71 of the 1997 Rules of Civil Procedure. Accordingly, he is SUSPENDED from office without salary and other benefits for SIX (6) MONTHS with WARNING that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, and Carpio, JJ., concur.
Azcuna, J., on leave.

[1] Rollo, p. 12.

[2] Id., p. 13.

[3] Id., p. 15.

[4] Id., p. 37.

[5] Id., p. 122.

[6] Id., p. 326.

[7] In a resolution dated July 7, 2004, the Court required the parties to manifest within 10 days from notice whether they are submitting the case for resolution on the basis of the pleadings filed.

[8] Manifestation dated August 19, 2004.

[9] Section 4(c) Rule 58 states: When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In the event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit or bond, upon the adverse party in the Philippines x x x

Section 5. Preliminary injunction not granted without notice; exception. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from the

facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order x x x.

[10] G.R. No. 80682, 13 August 1990, 188 SCRA 492.

[11] Rivera, et al. v. Judge Mirasol, RTC, Branch 23, Roxas, Isabela, A.M. No. RTJ-04-1885, 14 July 2004.

[12] See: Atty. Saludo v. Judge Fineza, A.M. No. RTJ-03-1813, 21 November 2003.

[13] Sison v. Judge Caoibes, Jr., Presiding Judge, and Alvarez, Sheriff IV, Regional Trial Court, Las Piñas City, Branch 253, A.M. No. RTJ-03-1771, 27 May 2004.

[14] Id.

[15] Judge Mupas v. Judge Español, Regional Trial Court, Branch 90, Dasmariñas, Cavite, A.M. No. RTJ-04-1850, 14 July 2004.

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