

THE EMBROIDERY AND APPAREL CONTROL AND INSPECTION BOARD AND THE SECRETARY OF FINANCE, PETITIONERS, VS. HON. GAUDENCIO CLORIBEL AND CECILIO RAFAEL, RESPONDENTS.

G.R. No. L-20024. June 30, 1967

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

This is an original action for certiorari and prohibition with preliminary injunction, seeking to declare null and void and to prevent the respondent Judge from enforcing, the orders he issued in Civil Case No. 49087 of the Court of First Instance of Manila, as follows:

- (a) the order, dated June 22, 1962, for the issuance of a writ of preliminary injunction pending appeal restrain-ing herein petitioners from enforcing the provisions of Section 2 of Republic Act 3137;
- (b) the writ of preliminary injunction issued on June 27, 1962 pursuant to the order of June 22, 1962; and
- (c) the order, dated June 30, 1962, denying the motion for reconsidera-tion of the order of June 22, 1962.

By virtue of Republic Act No. 3137, which was enacted on June 17, 1961, the Embroidery and Apparel Control and Inspection Board (one of the petitioners herein, and one of the respondents in the court below, hereinafter referred to as the Board) was created and was charged with the control, issuance of entry permits, and inspection of conditionally tax-free raw material importations by local embroidery apparel manufacturers and the corresponding liquidation of re-exportations thereof as Philippine-made embroideries and apparels. Exercising the powers conferred upon it by Republic Act 3137, on August 21, 1961, the Chairman of the Board wrote a letter to respondent Cecilio Rafael (petitioner in the lower court, doing business under the style "El Barato Alce Company"), requesting him to fill the form, attached to the letter, for li-cense application and to remit to the Board the sum of P200.00 chargeable against his company's future as-sessment, pursuant to Section 4, paragraph XVI of said Republic Act 3137. To test the constitutionality of Republic Act No. 3137, on December 23, 1961, respondent Cecilio Rafael filed in the Court of First Instance of Manila a petition for prohibition with preliminary in-junction (Civil Case No. 49087) against the Board, the Secretary of Finance, and the Philippine Association of Embroidery and Apparel Exporters, Inc., praying, among others that Republic Act 3137 be declared unconstitutional and that pending final resolution of the petition a writ of preliminary injunction ex parte, be issued enjoining and restraining the Board, the Secretary of Finance, and the Philippine Association of Embroidery and Apparel Exporters from further enforcing or implementing the provisions of Republic Act 3137. At first the preliminary injunction prayed for was issued by respondent Judge, in his order of January 9, 1962, but upon a motion for reconsideration by herein petitioners said respondent Judge dissolved the writ of preliminary injunction.

After hearing, on March 31, 1962, a decision was rendered by respondent Judge, declaring that Sec-tion 2 of Republic Act 3137 is unconstitutional, that the Board is illegally constituted, and that all acts and orders done and/or issued by said Board are null and void; and perpetually enjoining herein petitioners (respondents below)

from enforcing the provisions of Section 2 of said law. The decision made no mention about the preliminary injunction against the petition-ers in the event of the pendency of an appeal.

On April 24, 1962, the Solicitor General filed a notice of appeal to the Supreme Court from the abovementioned decision of March 31, 1962, stating in the notice that as herein petitioners (Board and the Sec-retary of Finance) were appealing from a decision in a special civil action they did not have to file a re-cord on appeal, and because they were sued, and were appealing in their official capacities, they did not have to file an appeal bond. On April 26, 1962, res-pondent Judge wrote "granted" on petitioners' notice of appeal, and on April 27, 1962 a notice was issued by the clerk of court of the order "granting the notice of appeal filed by the Solicitor General, dated April 24, 1962, praying that they are appealing to the Supreme Court from the decision of this Honorable Court dated March 31, 1962, a copy of which was received on April 16, 1962." [1]

On April 30, 1962, herein respondent Rafael filed two motions before the court a quo, one, for extension of time to perfect his appeal, and, another, for clarification of the decision as to whether the same was immediately executory it being in the nature of an injunction which is not stayed by appeal pursuant to Section 4, Rule 39 of the Rues of Court, or, in the event that the decision is not immediately executory, for the issuance a writ of preliminary injunction pending appeal. Also on April 30, 1962, the lower court issued an order denying respondent's petition for extension of time to perfect his appeal, setting for May 5, 1962 the hearing of respondent Rafael's motion for clarification and/or for issuance of the writ of preliminary in-junction, and holding in abeyance the giving of due course to herein petitioners' appeal.

Herein petitioners filed on May 7, 1962 an op-position to the aforementioned motion for clarification and/or for the issuance of the writ of preliminary in-junction pending appeal upon the ground that the court had no more jurisdiction to entertain the same, much less to issue a writ of preliminary injunction, because herein petitioners had already perfected their appeal from the decision of the court. However, notwithstanding petitioners' opposition, on June 22, 1962, the respondent Judge ordered the issuance of the writ of preliminary injunction pending appeal, restraining herein petitioners from enforcing the provision of Section 2 of Republic Act 3137, upon the filing by herein respondent Rafael of a bond in the sum of P10,000.00. On June 27, 1962. Upon said res-pondent's having posted the required bond, the writ of preliminary injunction pending appeal was issued. Thereafter, or on June 28, 1962, the court a quo gave due course to the appeal of both parties. That appeal is docketed in this Court as G. R. No. L-19978.[2]

On June 29, 1962, petitioners filed an urgent motion for the reconsideration of the order of June 22, 1962 directing the issuance of the writ of preliminary injunction, and for the dissolution of the writ of preliminary injunction issued pursuant thereto. On June 30, 1962, respondent Judge denied the motion for reconsideration and for the dissolution of the writ of preliminary injunction.

On July 11, 1962, respondent Rafael filed with the court below a motion to cite the members of the Board for contempt, alleging that the Board had been enforcing Republic Act No. 3137 by issuing release certificates to embroidery firms in spite of the writ of preliminary injunction. This motion for contempt was set for hearing by counsel for respondent on July 19, 1962.

On July 19, 1962, the Board and the Secretary of Finance, thru the Solicitor General, instituted the present action before this Court for certiorari and prohibition, praying (1) that the order of the respondent Judge on June 22, 1962 directing the issuance of a writ of preliminary injunction, the writ of preliminary injunction pending appeal issued on June 27, 1962, and the order of June 30, 1962 denying the motion for reconsideration, in Civil Case No. 49087 of the Court of First Instance of Manila, be declared null and void; (2) that a writ of prohibition be issued prohibiting the respondent judge from enforcing the questioned orders; and (3) that a writ of preliminary

injunction be issued ex parte restraining the respondent Judge from enforcing the order of June 22, 1962, the writ of preliminary injunction issued pursuant to the order of June 22, 1962, and from proceeding with the motion to cite the members of petitioner Board for contempt. This Court, on July 25, 1962, gave due course to the petition and issued the writ of preliminary injunction prayed for, without bond.

The issue to be resolved in this case is whether the respondent Judge had jurisdiction, or had acted with abuse of discretion, when he issued the questioned orders of June 22 and June 30, 1962 and whether the writ of preliminary injunction issued pursuant to the order of June 22, 1962 is valid and be given force and effect.

We agree with petitioners' contention that respondent Judge had no jurisdiction to entertain the motion of respondent Rafael for the issuance of the writ of preliminary injunction and to order the issuance of said writ pending appeal. It is shown in the record that the petitioners received copy of the lower court's decision of March 31, 1962 on April 16, 1962, and on April 24, 1962, petitioners filed their notice of appeal. Since petitioners were appealing from a decision rendered in a special civil action (prohibition) it was not necessary for them to file a record on appeal, and since they were appealing in their official capacities they did not have to file an appeal bond. Hence, upon the filing of the notice of appeal, which was "granted" by the lower court on April 26, 1962, and a formal notice of the granting of that appeal was issued by the Clerk of Court on April 27, 1962, petitioners' appeal had thereby been perfected and respondent Judge was already divested of jurisdiction to recall the order granting the appeal,[3] much less to act on the motion filed thereafter by respondent Rafael praying for the issuance of a writ of preliminary injunction pending appeal. The "granting" of the notice of appeal by the lower court was not even necessary for the perfection of petitioners' appeal.

In the case of *Alba, etc. v. Evangelista, etc., et al.*, (100 Phil., 683, 687-688) this Court has categorically held that appeal from the decision of the Court of First Instance in quo warranto proceedings is perfected by the mere presentation of the notice of appeal.[4] This Court held:

"As the petition for certiorari was admitted and given due course by this Court and the writ of preliminary injunction prayed for was issued, We shall confine ourselves to the statement that appeal from a decision of the Court of First Instance in quo warranto proceedings is perfected by the mere presentation of the notice of appeal (sections 16 and 17, Rule 41 of the Rules of Court), and from that moment 'the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal (which is not required in cases of quo warranto) to the appellate court' (section 9, Rule 41 of the Rules of Court). Hence, in the case at bar, the trial court had no jurisdiction to provide for the issuance of the writ for the advance execution of its judgment, as it did by order of February 18, 1956 (Annex E). Consequently, We have to declare that said order is null and void and of no force and effect and to make permanent the writ of preliminary injunction We have issued at the instance of the herein petitioner.'

In another case[5], this Court ruled:

"Since the case which would be appealed by herein petitioner is a special civil action, being one for prohibition and mandamus, the latter did not have to file a record on appeal (Sec. 17, Rule 41, Rules of Court), and since the appellant would be the Solicitor General representing the Commissioner of Immigration, there was no need for an appeal bond Rule 131, sec. 1, Rule of Court. Only the notice of appeal, therefore, was necessary for the perfection of the appeal, and as stated by no less than the lower court in its order of March 19, 1962, the appeal was perfected." (Underscoring supplied)

The respondent contends that if it be held that upon the perfection of petitioners' appeal the lower court had lost jurisdiction over the case an anomalous situation would arise in that the lower court could no longer act on his

appeal even if made within the reglementary period. This contention has no merit. Respondent loses sight of the clear provisions of the Rules of Court as construed in the aforecited decisions of this Court. Under Section 9 of Rule 41 of the Rules of Court, even after the perfection of an appeal, the Court of First Instance can still "issue orders for the protection and pre-servation of the rights of the parties which do not involve any matter litigated by the appeal, * * *" The right to appeal from a decision when availed of by a party on time - that is, within the period for appeal as provided in the Rules of Court, is a right that should be protected by the courts, the right to appeal being a matter that is not litigated by the appeal. The court, therefore, may act and give due course to the timely appeal of one party in a case even if the other party had already perfected its appeal. This is in fact what the lower court had done in Civil Case No. 49087 when it gave due course to herein respondent's appeal even after the herein petitioners had already perfected their appeal.

However, as regards the order of June 22, 1962 now in question, which provides for the issuance of the writ of preliminary injunction after petitioners appeal was perfected, that order could not be, and should not have been, issued, because the preliminary injunction prayed for was aimed not to protect or preserve the rights of the parties, or to maintain status quo of things, pending appeal, but it precisely involves the matter litigated in the appeal interposed by herein petitioners through the Solicitor General. The writ of preliminary injunction issued on June 27, 1962, pursuant to the questioned order of June 22, 1962, was actually an advance execution of the judgment in Civil Case No. 49087, because the decision appealed from by petitioners declares Section 2 of Republic Act 3137 unconstitutional, or null and void. The writ of preliminary injunction, in question, restrains the petitioners from enforcing Section 2 of Republic Act 3137. The preliminary injunction ordered by respondent Judge after the perfection of petitioners' appeal, therefore, involves the matter litigated in the appeal.

Respondent Rafael finally argues in his memorandum that while the action he instituted in the lower court was entitled prohibition, it was in fact an action for injunction, and so the lower court has power to issue a writ of preliminary injunction pending appeal. The respondent cites as authority Section 4, Rule 39 of the Rules of Court which provides as follows:

"SEC. 4. Injunction, receivership and accounting not stayed. - Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

We cannot sustain the contention of respondent Rafael. Under Republic Act 3137 the Board exercises both quasi-judicial and discretionary powers, in that, among others, it can promulgate rules and regulations for the control and supervision of the embroidery and apparel industry, exercises all the powers of control, inspection and supervision in the issuance of licenses to import, manufacture and/or export embroidered materials, set up a system to simplify all procedural matters for the convenience of all concerned, and do all such other things and perform such other functions directly or indirectly that are necessary, incidental or conducive to the attainment of the purposes and objectives of the Act. The Act further provides that no other government instrumentality or agency shall be authorized to qualify or question the validity of the license issued by the Board, and the decisions of the Board shall be subject to appeal only to competent courts.[6] The petition of herein respondent Rafael in Civil Case No. 49087 in the court below questions the jurisdiction of the board to require him to comply with certain directives and/or regulations promulgated by said Board and to pay certain fees chargeable against future assessments against him as provided by law. The petition in effect seeks to secure a judgment declaring the Board to be without jurisdiction to act as it had acted, and ordering the Board to desist from further acts that are not

within its jurisdiction to perform. Incidentally, respondent Rafael questions the constitutionality of Republic Act 3137 in his petition. The petition being directed against the exercise of powers which are claimed to be not within the jurisdiction of the Board, it is clear that the action in the court below is one for prohibition as contemplated in Section 2, Rule 65 of the Rules of Court.[7] It follows, therefore, that the provisions of Section 4, Rule 39 of the Rules of Court cannot be invoked to sustain the action of the respondent Judge in ordering the issuance of the writ of preliminary injunction after the petitioners had perfected their appeal in Civil Case No. 49087 in the court below.

WHEREFORE, the writ of certiorari and prohibition prayed for is granted. The orders of respondent Judge, dated June 22 and 30, 1962, and the writ of preliminary injunction issued pursuant to the order of June 22, 1962, in Civil Case No. 49087 in the Court of First Instance of Manila, are hereby declared null and void for having been issued without, or in excess of, jurisdiction, and with grave abuse of discretion. The writ of preliminary injunction issued by this Court in this case is declared permanent. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Sanchez, and Ruiz Castro, JJ., concur.

[1] As quoted from the notice of the order of the lower court.

[2] The case is still pending decision by this Court

[3] Calingo v. Tan, G. R. No. L-10336, May 31, 1957.

[4] Quo warranto, like prohibition, is a special civil action.

[5] Commissioner of Immigration v. Romero, et al., L-19782, January 31, 1964.

[6] Sections 2 and 3, Republic Act 3137.

[7] Go Chiong v. Dinglasan, 79 Phil., 122, 124.

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