

JEJOMAR ERWIN S. BINAY, JR. PETITIONER, VS. HON. CONCHITA CARPIO-MORALES, IN HER CAPACITY AS THE OMBUDSMAN AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before the Court is a “Petition for Certiorari [With Extremely Urgent Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction]” filed^[1] by Jejomar Erwin S. Binay (petitioner) assailing the Joint Order dated March 10, 2015 of the Office of the Ombudsman (Ombudsman) ordering Binay's preventive suspension for six months.

According to the petitioner, the Joint Order was issued by the Ombudsman with grave abuse of discretion, amounting to lack or in excess of jurisdiction because:

“(i) Assuming, without conceding that the alleged transactions occurred, the same were done either during his previous term in office, i.e., prior to 2013 or even before he became mayor. While any and all acts done during his current term of office, i.e., after 2013 are merely ministerial acts in the implementation of the original acts/transactions. Therefore, the Aquinaldo^[2], Salalima,^[3] and Garcia^[4] doctrines are applicable, which prohibits the Ombudsman from suspending the Petitioner even preventively.

(ii) Assuming arguendo that the foregoing doctrines are not applicable, the preventive suspension of the Petition is still illegal because Republic Act No. 6770 expressly requires that the “evidence of guilt is strong” before the Ombudsman can preventively suspend an elective official. As discussed hereunder, there is no evidence or factual basis that would sustain the charges against the Petitioner.” (Rollo, p. 8).

Petitioner then raises the following issues/arguments in support of his petition for certiorari:

“ A.

THE JOINT ORDER IS PATENTLY ILLEGAL AND ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION BECAUSE IT CONTRAVENES WELL-SETTLED JURISPRUDENCE.

B.

THE RESPONDENT OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN ISSUING THE JOINT ORDER DESPITE THE FACT THAT EVIDENCE OF GUILT IS NOT STRONG, IN VIOLATION OF REPUBLIC ACT NO. 6770.” (Rollo, pp. 11-12).

In support of his application for the issuance of TRO and/or Writ of Preliminary Injunction, petitioner asserts, that:

“7.4. The assailed Joint Order expressly states that the preventive suspension of the Petitioner shall be 'immediately executory' and the same is in the process of implementation to the damage and prejudice of the Petitioner.

- In the absence of a restraining order, the issues raised herein shall be rendered moot and academic.

- There is no other ordinary, speedy, and adequate remedy that exists to prevent the infliction of irreparable injury against the Petitioner.

7.5. The Petitioner is entitled to injunctive relief since he has a clear and unmistakable right to hold public office, having validly won by a landslide vote in the 2010 and 2013 local elections and assumed the position of Mayor in the City of Makati.

7.6. The issuance of the order of preventive suspension necessarily violated Petitioner's rights since it seeks to suspend him for allegations, which assuming without conceding to be true, can no longer hold him administratively liable considering the doctrines laid down in the cases of *Aguinaldo v. Santos*, *Garcia v. Mojica*, *Salalima v. Guingona, Jr.* (Citations omitted)

7. Moreover, the assailed Joint Order clearly violates Republic Act No. 6770 that requires that evidence of guilt must be strong before a preventive suspension order can be issued. In this case, however, it is evident that the evidence of guilt is not strong because there is no evidence or factual basis that would sustain the charges against the Petitioner...

7.8. With such violation of Petitioner's clear and unmistakable rights, the issuance of a Temporary Restraining Order is of urgent and paramount necessity in order to prevent serious damage not only to the Petitioner, but also to his constituents.” (Rollo, pp. 26-27).

We resolve to GRANT the application for TRO.

Section 1, Rule 58 of the Rules of Court provides:

“Section 1. Preliminary injunction defined; classes. — A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. x x x”

It is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. (*The Incorporators of Mindanao Institute Inc. v The United Church of Christ in the Philippines*, March 21, 2012, G.R. No. 171765). Its purpose is to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action so as not to render useless the outcome of litigation. (*Barbieto v. Court of Appeals*, G.R. No. 184645, October 30, 2009)

Section 3, Rule 58 of the Rules of Court, provides that a preliminary injunction may be granted when it is established:

“(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or

suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.”

Case law has further held that the following requisites must be proved before a writ of preliminary injunction will issue, that:

- (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.

In *Garcia v. Court of Appeals* (GR No. 185132, April 24, 2009),^[5] the Supreme Court held that 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.

The Supreme Court in said case likewise found serious and urgent the question, among other matters, of whether the alleged acts were committed in the previous term of office of petitioner therein. This is because if it were established that the acts subject of the administrative complaint were indeed committed during petitioner’s prior term, then following settled jurisprudence, he can no longer be administratively charged. It further declared imperative on the part of the appellate court, as soon as it was apprised of the said considerable grounds, to issue an injunctive writ so as not to render moot, nugatory and ineffectual the resolution of the issues in the certiorari petition. (*Garcia, supra*)

The Supreme Court also declared that it would have been more prudent on the part of the CA, on account of the extreme urgency of the matter and the seriousness of the issues raised in the certiorari petition, to issue 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. It pointed out that the basic purpose of a restraining order is to preserve the status quo until the hearing of the application for preliminary injunction. That, it is a preservative remedy for the protection of substantive rights and interests. (*Garcia, supra*).

In view of the seriousness of the issues raised in the Petition for Certiorari and the possible repercussions on the electorate who will unquestionably be affected by suspension of their elective official, the Court resolves to grant petitioner’s prayer for a Temporary Restraining Order for a period of sixty (60) days from notice hereof, conditioned upon the posting by petitioner of a bond in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00).^[6]

Meanwhile, let the hearing of the application for issuance of a writ of preliminary injunction^[7] be set on March 30, 2015 and March 31, 2015 all at 2:00 o’clock on the afternoon, and the Respondents, Hon. Conchita Carpio-Morales, in her capacity as the Ombudsman, and the Department of Interior and Local Government, are hereby ORDERED to file their Comment on the Petition for Certiorari filed by herein petitioner within an inextendible period of ten (10) days from receipt of a copy hereof.

SO ORDERED.

Acosta, F.P., and Peralta, Jr., E.B., JJ., concur.

^[1] The Petition was filed with the Court of Appeals on March 12, 2015 at 2:58 p.m. p.m. and raffled off to the herein Ponente on March 13, 2015 around 11:00 in the morning. Deliberations were conducted among the members of the Sixth Division on March 13, 2015 at 3 p.m. and on March 16, 2015 at 8:30 a.m..

^[2] G.R. No. 94115, August 21, 1992.

^[3] G.R. No. 1175899-92, May 22, 1996.

^[4] G.R. No. 139043, September 10, 1999.

^[5] Cf. Ombudsman vs Evangelista, et al., G.R. No. 177211, March 13, 2009; Mayor Garcia vs. Hon. Mojica, et al., G.R. No. 139043, September 10, 1999, and; Aguinaldo vs. Hon. Santos, et al., G.R. No. 94115, August 21, 1992.

^[6] Section 4 (b), Rule 58, 1997 Rules of Civil Procedure.

^[7] Section 5, Rule 58, 1997 Rules of Civil Procedure.

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