

THE POLICE COMMISSION, REPRESENTED BY ITS CHAIRMAN, CRISINO M. DE CASTRO AND JOSE G. LUKBAN, JOLLY BUGARIN, AND VICENTE RAVAL, MEMBERS, PETITIONER, VS. HONORABLE JUDGE ELOY B. ...

G.R. Nos. L-29959-60. January 30, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In this original action of certiorari and prohibition with preliminary injunction, petitioner prays that certain orders of the Court of First Instance of Pangasinan (Branch I) in its Civil Cases Nos. 14718 and 14719 be annulled and that respondent Judge Eloy B. Bello be prohibited permanently from hearing said cases. On December 19, 1968, we issued an order temporarily restraining respondent Judge from enforcing his order of December 14, 1968, requiring the members of petitioner to show cause why they should not be held guilty in contempt, and from further hearing the two aforesaid cases.

On January 20, 1967, a sworn complaint for dishonesty, grave misconduct, serious irregularities in the performance of duty and/or serious neglect of duty and incompetency was filed by certain persons with the Board of Investigators of Binmaley, Pangasinan, against herein respondents Genaro C. Ferrer and Emerano Bonifacio, Chief of Police and Corporal, respectively, of the police force of Binmaley. The said respondents filed a joint answer, after which hearings were conducted. On March 15, 1967, the Board of Investigators made a report of its investigation containing a finding that "the charges imputed against respondents were not committed deliberately or intentionally but, rather, were done through honest mistake," and recommending to the Police Commission that "the case be dropped with the admonition that the respondents x x x should be more careful in the performance of their official duties." After re-viewing the records of the investigation in its Administrative Case No. 26, the Police Commission rendered decision on August 2, 1967, finding the respondents guilty of serious neglect of duty and ordering their dismissal from the service. The respondents filed motions for reconsideration, but the same were denied.

On November 19, 1968, respondents Ferrer and Bonifacio filed with the court below two separate petitions for certiorari with preliminary mandatory injunction (Civil Cases Nos. 14718 and 14719). In their petitions they contended that the Police Commission had no jurisdiction to render a decision in the administrative case on August 2, 1967, because at that time it had not yet even published its Police Manual as required by Section 26 of Republic Act No. 4864 (Police Act of 1966); and that the Police Commission committed grave abuse of discretion in dismissing them from the service. On November 21, 1968, respondent Judge issued in each of the two cases an order requiring the Police Commission to file an answer within ten days, and another order ex parte directing the issuance of a writ of preliminary mandatory injunction. Pursuant to the latter orders, the corresponding writs were issued on November 22, 1968, upon the filing of a bond by each of herein private respondents.

On November 29, 1968, the Police Commission filed a motion to dismiss with a prayer for the dissolution of the writs of preliminary mandatory injunction. On December 9, 1968, respondent Judge issued an order denying the motion to dismiss Civil Case No. 14718 and directing herein petitioner to reinstate respondent Ferrer within twenty-four hours from receipt of the order. On December 10, 1968, a similar order was issued in connection with respondent Bonifacio's petition in Civil Case No. 14719. On December 12, 1968, petitioner filed a motion for re-consideration of the December 9 and 10 orders; but the same was returned to petitioner unacted upon on the ground that the motion was not in accordance with Section 10, Rule 13 of the Revised Rules of Court, the same not being accompanied by a proof of service. On December 14, 1968, respondent Judge, on motion of respondents Ferrer and Bonifacio, issued a joint order in the two cases requiring the members of the Police Commission to appear in person before him on December 21, 1968, to show cause why they should not be held guilty of contempt for their failure to reinstate respondents Ferrer and Bonifacio as ordered in the writs.

On December 19, 1968, the present petition was filed with this Court. Sought to be annulled are the orders of respondent Judge dated November 21, 1968, requiring petitioner to file an answer and directing the issuance of a writ of preliminary mandatory injunction in each of the two cases, the aforesaid writs issued on November 22, 1968, and the December 9 and 10, 1968 orders denying petitioner's motions to dismiss and ordering petitioner to reinstate private respondents. Petitioner, likewise, seeks to prohibit respondent Judge from carrying out and enforcing his order of December 14, 1968, and from proceeding with the hearing of the cases.

In directing issuance of the writs of preliminary mandatory injunction ex parte, respondent Judge stated in his twin orders of November 21, 1968, that there was a prima facie showing in the petitions that the Police Commission had no jurisdiction to render a decision in Administrative Case No. 26; that it is alleged in the petitions that if the petitioners (herein private respondents) are not immediately reinstated, they will suffer irreparable damage and injury; and that if the petitioners in the cases eventually win and are found entitled to reinstatement, it will be difficult for them to secure payment of back salaries, especially if the Municipality of Binmaley will not have sufficient funds for the purpose.

We are of the opinion that the writs in question were improvidently issued, and that, moreover, respondent Judge of the Court of First Instance of Pangasinan had no power to issue such writs against the Police Commission, which holds office in Quezon City.

This Court has already held that it is improper to issue a writ of preliminary injunction prior to a final hearing except "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation." (Manila Electric Railroad and Light Company vs. Del Rosario, etc., et al., 22 Phil., 433.) This doctrine was reiterated in *Subido, etc., et al. vs. Gopengco, etc., et al.*, L-25618, March 28, 1969 (27 SCRA 455), citing not only the Manila Electric Railroad and Light Company case, supra, but also the cases of *Lemi vs. Valencia*, L-20768, February 28, 1963 (7 SCRA 469); *Bautista vs. Barcelona*, 100 Phil., 1078 (1957); *Coronado vs. Tan*, 96 Phil., 729 (1955); and *Villadores vs. Encarnacion*, 95 Phil., 913 (1954). In the *Subido* case, we held:

"As the issuance of a mandatory injunction is the exception rather than the rule, the party applying for it must show a clear legal right the violation of which is so recent as to make its vindication an urgent one."

Did private respondents have a clear legal right to be reinstated to their former positions in the municipal police force of Binmaley? We do not think so. The principal ground on which their petitions in the lower court are predicated is lack of jurisdiction of the Police Commission to render a decision in Administrative Case No. 26,

petitioners contending that the Police Commission had no such jurisdiction because it had not yet published a Police Manual when it rendered its decision on August 2, 1967.

The provision of law invoked is Section 26 of Republic Act No. 4864, otherwise known as the Police Act of 1966, to wit:

"SEC. 26. Saving clause. - All pending administrative cases involving police service and personnel shall be absorbed by the Police Commission one hundred days after the publication of the Police Manual containing rules and regulations relative to such matters."

The Police Manual mentioned in the law, Section 9, Rule XXIII of which provides:

"Section 9. Saving Clause. - All administrative cases involving members of the police force pending before the city or municipal boards, or those with the city or municipal mayors, shall be turned over to the Board of Investigators concerned, and those with the Civil Service Board of Appeals, to the Police Commission within one hundred (100) days after the publication of this Manual,"

was promulgated only on December 30, 1967, or sometime after the rendition of the decision by the Police Commission in its Administrative Case No. 26.

Section 26 of the Police Act of 1966 is, as expressly stated therein, a mere saving clause, and refers solely to administrative cases involving police service and personnel which were pending at the time of the effectivity of the Act. The Police Commission was required to absorb the said pending cases within one hundred days after it shall have published a Police Manual. The said Section 26 may not be interpreted to mean that the Board of Investigators of each city or municipality and the Police Commission could not legally function to carry into effect the purposes of the Act until after the lapse of the said one hundred days, because Section 28 provides that "[t]his Act shall take effect upon its approval." Since the Act was approved on September 8, 1966, it became effective immediately on that date.

Respondents, however, argue that without a Police Manual the Board of Investigators and the Police Commission would have no rules to guide them, so that at the very least the procedure that should have been followed in Administrative Case No. 26 was that provided in Republic Act No. 557, under which charges are preferred by the municipal mayor against members of the municipal police force and investigated by the municipal council, whose decision is appealable to the Commissioner of Civil Service; and since that procedure was not adopted in the present cases, the proceedings had before the Police Commission were null and void. The contention is untenable. In the first place, as held by this Court in *Galeno vs. Ticao*, L-22355, September 30, 1969 (29 SCRA 464), "the new procedure in the matter of preferring charges against police officers and the conduct of the investigation of the charges are now provided in Sections 14 and 15 of the Police Act of 1966," to wit:

"SEC. 14. Removal and suspension of members of the Police Force or Agency. - Members of the local police agency shall not be suspended or removed except upon written complaint filed under oath with the Board of Investigators herein provided for misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularities in the performance of their duties, and violation of law.

"SEC. 15. Board of Investigators. - In every local agency be a Board of Investigators. Charges against any member of the city and/or municipal police agency shall be investigated by a Board of Investigators of three members, composed of the city or municipal treasurer as chairman, a representative of the Provincial Commander, and a councilor, elected by a majority of the city or municipal council concerned, as members.

"Copy of the charges shall be furnished the respondent by the Chairman of the Board of Investigators within five days from the date of filing of said charges, and the respondent shall answer within five days from receipt

thereof. The Board of Investigators shall conduct its investigation in public within five days from receipt of respondent's answer to the charges or from the expiration of respondent's period to answer, whichever is earlier and unless for good cause shown the investigation shall be finished within thirty days thereafter and the Board shall submit the records of the investigation, its findings and recommendations to the Police Commission within thirty days after the termination of the investigation. The decision of the Police Commission shall be final and must be rendered within seventy-five days from the time of receipt of the findings of the Board. Disciplinary jurisdiction of offenses involving suspension of not more than ten days or forfeiture of not more than fifteen days' pay is vested in the chief of the police agency concerned whose decision shall be final.

"The Board of Investigators shall also conduct investigations and decide claims relative to benefits as provided under this Act, subject to appeal to the Police Commission, whose decision shall be final."

The procedure provided above is sufficiently detailed so as to allow the Board of Investigators and the Police Commission to function even without a Police Manual. In the second place, "the procedure provided for in Section 1 of Republic Act 557 has been repealed by Republic Act 4864 known as the Police Act of 1966, which was enacted on September 6, 1966." (*Galeno vs. Ticao*, supra.)

In any event, considering that private respondents voluntarily submitted themselves to the jurisdiction of the Board of investigators, whose decisions are subject to review by the Police Commission, they are now barred under the doctrine of estoppel by laches from questioning the jurisdiction of the said Commission. (Cf. *Tejam, et al. vs. Sibonghanoy, et al.*, L-21450, April 15, 1968 [23 SCRA 29]; *Rodriguez vs. Court of Appeals, et al.*, L-29264, August 29, 1969 [29 SCRA 419].)

The principal ground relied upon in their petitions in the court below, namely, lack of jurisdiction of the Police Commission, being utterly bereft of legal basis, it can hardly be said that private respondents have shown a clear legal right warranting the issuance of the writ or preliminary mandatory injunction.

Moreover, Section 5, Rule 56 of the Revised Rules of Court prohibits the issuance of a writ of preliminary injunction ex parte "unless it shall appear from facts shown by affidavits, or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice." The verified complaints in Civil Cases Nos. 14718 and 14719 do not show the required facts to warrant issuance of the writs of preliminary mandatory injunction before notice and hearing. In *Palanan Lumber & Plywood Co., Inc. vs. Arranz*, L-27106, March 20, 1968 (22 SCRA 1186), we said:

"It is not amiss to recall here that time and again this Court has had occasion to deplore the readiness of some judges to grant and issue injunction ex parte against acts of public functionaries, ignoring the presumption of regularity and validity of official actuations, in disregard of the deference and courtesy due to a co-ordinate branch of the government, and with no other guide than the far from impartial assertions in pleadings of interested parties, which a summary hearing would have shown to be either dubious or unfounded. The result has been that all too often, the public interest has been prejudiced through unnecessary delays. It bears repeating here that preliminary injunctions remain extraordinary remedies that should be dispensed with circumspection, and that both sides should be first heard when-ever possible."

There is another reason why the injunctive writs should not have been issued. The Court of First Instance of Pangasinan has no jurisdiction to issue writs of preliminary mandatory injunction against the Police Commission, which holds office in Quezon City, outside the territorial boundaries of said court. (Cf. *Macailing, et al. vs. Andrada, et al.*, L-21607, January 30, 1970 [31 SCRA 126], citing: *Castaño vs. Lobingier*, 7 Phil., 91; *Acosta vs. Alvendia*, L-14598, October 31, 1960; *Samar Mining Co., Inc. vs. Arnado*, L-17109, June 30, 1961 [2 SCRA 782]; *Hacbang vs. The Leyte Autobus Co., Inc.*, L-17907, May 30, 1963 [8 SCRA 103]; *Alhambra Cigar and*

Cigarette Mfg. Co., Inc. vs. National Administrator of Regional Office No. 2, L-20491, August 31, 1965 [14 SCRA 1019]; People vs. Mencias, L-19633, November 28, 1966 [18 SCRA 807]; Santos vs. Moreno, L-15829, December 4, 1967 [21 SCRA 1141]; Cudiamat vs. Torres, L-24225, February 22, 1968 [22 SCRA 695]; NAWASA vs. Reyes, L-28597, February 29, 1968 [22 SCRA 905]; Gayacao vs. Executive Sec-retary, et al., L-21065 [13 SCRA 753]; Palanan Lumber & Plywood Co., Inc. vs. Arranz, supra.) Respondents insist that since the writs prayed for are to be implemented in Binmaley, Pangasinan, it is the Court of First Instance of Pangasinan, rather than the Court of First Instance of Quezon City, that has jurisdiction to issue them. In De la Cruz vs. Gabor, et al., L-30774, October 31, 1969 (30 SCRA 325), this Court sustained the position of the Court of First Instance of Leyte that it had no jurisdiction to issue a writ of preliminary injunction against the Secretary of Education, the Director of Vocational Education and the Commissioner of Civil Service, all of whom hold office in Manila, because "section 17, paragraph 1, of the Judiciary Act, that defines the jurisdiction of the Supreme Court in concurrence with that of the courts of first instance, in no way enlarges the power of the latter beyond the territorial limits set by Section 44(h)." In said case the petitioner had sought – thru the writ of preliminary mandatory injunction – her immediate reinstatement to the position of classroom teacher in a public school in Leyte.

As stated earlier, private respondents' petitions for certiorari in the lower court are predicated on two grounds, namely, that the Police Commission had no jurisdiction to render a decision in Administrative Case No. 26, and that it acted with grave abuse of discretion in dismissing respondent Ferrer, on the flimsy pretext of command responsibility, and, with respect to both private respondents, in wantonly overruling the findings and hi-deously ignoring the recommendations of the Board of Investigators. The first ground is closely interwoven with the November 21, 1968 orders for the issuance of the writs of preliminary mandatory injunction, and was squarely raised by the parties to the present cases as an issue and ruled upon by this Court.

In connection with the second ground, it is uniformly alleged in the petitions in the court below that without herein private respondents' presence or knowledge, the Board of Investigators met in session on March 2, 1967, and took ex parte the testimony of Pat. Graciano Aquino, upon which the Police Commission subsequently relied in arriving at its conclusions; that "the respondent Police Commission instead of appreciating the valid acts of the Board enunciated in its findings and recommendations, said respondent depressed the valid portions of the proceedings of the Board and then gave bloated significance to the result of that isolated illegal act of the Board, which is the testimony of Pat. Graciano Aquino taken in the absence of, and without due notice to the petitioner;" and that the Police Commission, "basing its conclusion from loosely connected, distorted and insufficient facts, with very apparent prejudice and hostility, ARBITRARILY DISMISSED the petitioner from the service for some highly imagined, or at most, very minor, administrative offense."

While findings of fact of administrative bodies are entitled to great weight and should not generally be disturbed, there is grave abuse of discretion justifying the issuance of the writ of certiorari. Then there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 67 Phil., 480; *Tan vs. People*, 88 Phil., 609; *Pajo, etc., et al. vs. Ago, et al.*, 108 Phil., 905), as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law (*Tavera-Luna, Inc. vs. Nable*, 67 Phil., 340; *Alafriz vs. Nable, etc., et al.*, 72 Phil., 278; *Liwa-nag vs. Castillo*, 106 Phil., 375; *Pajo, etc., et al. vs. Ago, et al.*, supra). Considering the allegations of private respondents, as mentioned above, in their petitions, and considering, further, that the Board of Investigators of Binmaley which heard the witnesses had recommended the dismissal of the case against both respondents, we feel without expressing an opinion on the merits of the cases in relation to the second ground - that for this Court to issue a writ of prohibition permanently prohibiting respondent Judge from proceeding with the cases, as prayed for by

petitioner Police Commission, will be to deprive the private respondents of their day in court; for then they can no longer be in a position to prove their allegation that petitioner committed grave abuse of discretion in dismissing them. While it has been shown that the court below exceeded its jurisdiction in issuing the writs of preliminary mandatory injunction, it has not likewise been shown in the present petition – nor has it been alleged therein – that the entire proceedings in the court below are without or in excess of the lower court's jurisdiction, or with grave abuse of discretion. In passing it must be mentioned that the doctrine in support of the theory of non-jurisdiction is not applicable to this aspect of the proceedings, the power of judicial review not being confined to the court of first instance of the locality where the office of petitioner is maintained, to the exclusion of the court of first instance in the locality where private respondents reside. (Cf. *Gayacao vs. Executive Secretary, et al.*, *supra*.)

PREMISES CONSIDERED, the writ of certiorari is granted, and, accordingly, the orders of respondent Judge in Civil Cases Nos. 14718 and 14719 dated November 21, 1968, insofar as they direct the issuance of the writs of preliminary mandatory injunction, and the orders issued pursuant thereto, are declared null and void; the orders of December 9 and 10, 1968, are likewise declared null and void insofar as they require petitioner to reinstate private respondents; and respondent Judge is permanently prohibited from carrying out and enforcing his order of December 14, 1968. The writ of prohibition prayed for is hereby denied insofar as petitioner seeks to prohibit respondent Judge from proceeding with the cases, and the temporary restraining order issued by this Court in relation to the hearing of the cases is hereby dissolved. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

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