

THE SECRETARY OF HEALTH, DR. ORLANDO PUA AND DR. JOSE CABRERA, PETITIONERS, VS. COURT OF APPEALS, HON. ROGER A. DOMAGAS AND FE SIBBALUCA, RESPONDENTS.

G.R. No. 112243. February 23, 1995

Ponente: BIDIN, J.

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BIDIN, J.:

Petitioners seek the reversal of respondent court's decision dated July 21, 1993 dismissing petitioners' petition for certiorari and prohibition in CA--G.R. No. 28361 assailing the decision and orders of respondent Presiding Judge of the Regional Trial Court, Branch 1 of Tuguegarao, Cagayan restraining petitioners from enforcing the order of preventive suspension issued against respondent Fe Sibbaluca, former Administrative Officer of the Provincial Health Office of Cagayan.

The antecedent facts of the case as found by respondent court are as follows:

"This petition for certiorari and prohibition filed by petitioners stemmed from the administrative complaint filed against private respondent Fe Sibbaluca, the Administrative Officer III of the Provincial Health Office of Cagayan, for grave misconduct, dishonesty, etc. The case was docketed as Administrative Case No. 000023 S. 1991 of the Department of Health, Manila.

"As a consequence of the administrative case, private respondent was placed under preventive suspension for ninety (90) days per order dated December 17, 1991, issued by herein petitioner Secretary of Health.

"Private respondent sought the lifting of her suspension thru a motion dated January 8, 1992.

"Pending resolution of her said motion, private respondent instituted an action for prohibition, mandamus, and injunction with a prayer for a temporary restraining order and a writ of preliminary injunction before the Regional Trial Court (RTC) of Tuguegarao (Branch 1), docketed as Civil Case No. 4379 and 4397, seeking the nullification of the order of preventive suspension and of the entire administrative proceedings. Her action is anchored on her contention that when the New Local Government Code took effect on January 1, 1992, the Secretary of Health had lost his disciplinary power and authority over her, considering that such power to discipline the personnel of the Provincial Health Office is now vested in the Provincial Governor.

"Finding merit to the ancillary remedy sought by private respondent, the Regional Trial Court, thru the herein respondent Judge, issued a temporary restraining order on January 15, 1992, restraining the Secretary of Health and his representatives from enforcing the preventive suspension order and from conducting further proceedings in the administrative case against private respondent.

"On February 3, 1992, the Secretary of Health filed an omnibus motion to dismiss private respondent's action and to quash the temporary restraining order, with opposition to the issuance of a preliminary injunction, contending inter alia that private respondent had failed to exhaust administrative remedies and that the New Local Government Code did not divest the Secretary of Health of his disciplinary jurisdiction over the private respondent.

"During the hearing of the omnibus motion as well as the application for a preliminary injunction, the counsel for the Secretary of Health manifested that they are not participating in the proceedings. Thus, private respondent presented her testimony, who was then cross-examined by the counsel for the other two petitioners herein, Dr. Orlando Pua, the Director of the Regional Health Office No. 2, and Dr. Jose Cabrera, the Officer-in-Charge of the Provincial Health Office of Cagayan.

"After the hearing, the parties were directed to submit their respective memoranda.

"In a decision dated March 25, 1992, the respondent Judge rendered judgment in favor of private respondent and against petitioners, the pertinent portion of which reads:

"The Court is aware that ordinarily it should not interfere with in the prosecution of administrative complaint as in the case at bar based on the doctrine of exhaustion of administrative remedies and forum shopping. Considering, however, that with the enactment of the Local Government Code of 1991 which took effect on January 1, 1992, the provincial health board headed by the governor is empowered to create committees which shall advise local health agencies on matters of grievance and complaints, personal discipline, it is clear that the Secretary of Health ceases to have jurisdiction over the person of the petitioner and consequently the power and authority to issue the order of suspension (Sec. 102 of the Local Government Code of 1991).

'WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondents restraining immediately the latter from enforcing the order of preventive suspension dated December 17, 1991 until the administrative case is investigated and resolved by the provincial health board.

'For insufficiency of evidence the contempt charge is hereby dismissed.'

'SO ORDERED

.' (p. 39, Rollo)

"The private respondent, in a motion dated April 3, 1992, sought a clarification of the decision. She also moved for the execution of the same. Acting on the motion, the respondent Judge issued an order dated April 14, 1992, ordering the issuance of a writ of execution 'to implement the decision of the Court dated March 25, 1992.' The order further states: 'On the motion for clarification, considering the finding of this Court that the Secretary of Health ceases to have jurisdiction to discipline the petitioner (now private respondent), necessarily, the order of suspension and all other orders emanating thereafter are null and void and of no further effect' (Annex 'B', Petition; p. 40, Rollo).

"Copies of the decision dated March 25, 1992 and the order dated April 14, 1992 were received by petitioners on April 10, 1992 and April 15, 1992, respectively.

"On April 27, 1992, petitioners filed a motion for reconsideration of the March 25, 1992 decision and of the April 14, 1992 order, insisting that the Secretary of Health has jurisdiction over the administrative case. Petitioners also contended, among other things, that respondent Judge has no jurisdiction to nullify all orders issued by the Secretary of Health, 'they being of equal rank.'

"Petitioners' motion for reconsideration was denied in an order dated May 28, 1992 (Annex 'A', Petition; p. 58, Rollo).

"On the same date of May 28, 1992, the Secretary of Health filed a Notice of Appeal with the court a quo, giving notice that he is appealing the decision dated March 25, 1992 to the Court of Appeals on both questions of fact and law (pp. 13 and 103, Rollo).

"On June 17, 1992, the Secretary of Health filed another motion to stay the execution of the assailed decision.

"Both the notice of appeal and the motion to stay execution were denied upon the ground that the notice of appeal was filed out of time and that the assailed decision had already become final and executory. The denial was contained in a decision dated June 26, 1992 which convicted co-petitioner Dr. Jose Cabrera of indirect contempt of court for refusing to comply with the writ of execution (Annex 'C', Petition; p. 41, Rollo).

"Hence, this petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court, assailing the decision dated March 25, 1992, the order dated April 14, 1992 and the decision dated June 26, 1992." (Rollo, pp. 32-35)

Respondent court dismissed the petition filed by petitioners and ruled that an ordinary appeal by mere notice of appeal is the plain and adequate remedy of petitioners against the three assailed processes of the lower court (Rollo, p. 35). The Motion for Reconsideration filed by petitioners was also denied (Rollo, p. 54).

The petitioners raise the following errors allegedly committed by the Court of Appeals, to wit:

I

"RESPONDENT COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE SPECIAL CIVIL ACTION OF CERTIORARI AND PROHIBITION FILED BY PETITIONERS DOCKETED AS CA-G.R. SP NO. 28361.

II

"RESPONDENT COURT OF APPEALS ERRED IN NOT TOUCHING ON THE MERITS OF THE PETITION." (Rollo, pp. 17-18)

We find merit in this petition.

At the outset, it should be noted that petitioners' notice of appeal was filed out of time. Petitioners then filed a petition for certiorari and prohibition before respondent court.

Respondent court, believing that the said petition was made as a substitute for the lost remedy of appeal, held that where the proper remedy is appeal, the action for certiorari will not be entertained. Thus, the petition for certiorari filed by petitioners was dismissed.

In a long line of cases we held that the special civil action for certiorari under Rule 65 of the Rules of Court will not lie as a substitute for an available or lost appeal (*Sy v. Romero*, 214 SCRA 187 [1992]). Nevertheless, even when appeal is available and is the proper remedy, this Court has allowed a writ of certiorari when the orders of the lower court were issued either in excess of or without jurisdiction (*PNB v. Florendo*, 206 SCRA 582 [1992]).

In the present case, the petition for certiorari filed before respondent court was not filed as a mere substitute for appeal. The facts and circumstances of this case warrant the filing of the petition for certiorari and prohibition. The lower court issued a writ of execution of its March 25, 1992 decision. The motion to stay execution of the said decision filed by petitioner Secretary of Health was denied. Likewise, the notice of appeal filed by the said petitioner was also denied. In the same order, petitioner Dr. Jose Cabrera was found guilty of indirect contempt and a penalty of three months imprisonment was imposed upon him for allegedly refusing to comply with the writ of execution.

Most importantly, petitioners question the jurisdiction of the lower court in enjoining the order issued by the Secretary of Health preventively suspending and subsequently dismissing private respondent and declaring that the said department does not have the jurisdiction to issue the said order.

On the merits, petitioners' main contention is that the court a quo erred in finding that the Secretary of Health has

ceased to have administrative jurisdiction over the person of private respondent in view of the enactment of the Local Government Code of 1991 which took effect on January 1, 1992 (Rollo, p. 19).

The resolution of the main issue raised by the petitioners calls for the determination of the date of effectivity of the Local Government Code of 1991.

The pertinent provision of the Local Government Code of 1991 provides:

"Sec. 536. Effectivity Clause. - This Code shall take effect on January first, nineteen hundred ninety-two, unless otherwise provided herein, after its complete publication in at least one (1) newspaper of general circulation." (Underscoring Supplied)

It is explicit in the abovestated law that the Local Government Code of 1991 shall take effect on January 1, 1992. It is an elementary principle of statutory construction that where the words and phrases of a statute are not obscure and ambiguous, the meaning and intention of the legislature should be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction (*Allarde v. Commission on Audit*, 218 SCRA 227 [1993]).

Furthermore, it is well-settled that jurisdiction is determined by the statute in force at the time of the commencement of the action (*Philippine Singapore Ports Corporation v. NLRC*, 218 SCRA 77 [1993]).

In the case at bar, respondent Fe Sibbaluca was administratively charged before petitioner department in 1991. The case was docketed as Administrative Case No. 000023 S. 1991 and the suspension order was issued by petitioner Secretary of Health on December 17, 1991. At the time of the commencement of the administrative action, the operative laws are the Administrative Code of 1987 and Executive Order No. 119. Under the said laws, the Secretary of Health exercises control, direction and supervision over his subordinates, which include private respondent. Consequently, since jurisdiction has been acquired by the Secretary of Health over the person of private respondent before the effectivity of the Local Government Code on January 1, 1992, it continues until the final disposition of the administrative case.

This Court already ruled in a number of cases that jurisdiction once acquired by a court over a case remains with it until the full termination of the case, unless a law provides the contrary (*Bueno Industrial and Development Corporation v. Enage*, 104 SCRA 600 [1981]).

At this juncture, it bears stressing that private respondent, a civil servant, cannot use the courts of justice as a shield to prevent the implementation of administrative sanctions of executive agencies against erring public servants.

WHEREFORE, respondent court's decision is hereby REVERSED and SET ASIDE. The challenged decision and orders of the Regional Trial Court, Branch I, of Tuguegarao, Cagayan are hereby ANNULLED and SET ASIDE. SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

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