

PLACIDO O. URBANES, JR., PETITIONER, VS. THE HON. COURT OF APPEALS AND NATIONAL POWER CORPORATION, RESPONDENTS.

G.R. No. 112884. August 30, 1994

Ponente: VITUG, J.

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VITUG, J.:

This petition for review on certiorari, assails the decision of the Court of Appeals in CA G.R. CV No. 34524 for, among other things, having been penned by Justice Eduardo G. Montenegro who, it is averred, should have disqualified himself from sitting and participating in said case pursuant to Rule 137 of the Rules of Court. Justice Montenegro, prior to his appointment to the Court of Appeals, was the Acting Solicitor General who, in that capacity, had represented herein respondent National Power Corporation ("NPC") in the case.

Civil Case No. 47216 was filed, on 18 February 1986, by petitioner Placido Urbanes, Jr., against respondent NPC for injunction and damages. Urbanes had contracts of security services for NPC's various installations. His two contracts expired on 01 January and 16 February 1985, respectively, but, according to Urbanes, he was asked by NPC to stay on until he would have been properly relieved.

On 24 January 1986, Urbanes was finally advised by NPC's management of the termination of his contracts. In his complaint for injunction and damages, with a prayer for preliminary injunction, Urbanes asserted that, there having been no timely action from either of the contracting parties to terminate the contracts, the same were deemed "automatically renewed" in accordance with the pertinent provisions of the two agreements. He also contended that NPC's management lacked authority to end his security services on the ground that only NPC's Board of Directors had the sole prerogative to terminate the contracts.

On 10 March 1986, the lower court issued an order granting the application of Urbanes for a writ of preliminary injunction enjoining the parties to observe status quo ante. NPC's motion for reconsideration was denied.

On 23 April 1986, NPC filed with the Court of Appeals a petition for certiorari and prohibition seeking to annul and set aside the 10th March 1986 order of the court a quo. In a resolution penned by Justice Ricardo P. Tensuan, promulgated on 19 December 1986, the petition was dismissed by the Court of Appeals.

On 24 August 1987, NPC filed with the court a quo an "Urgent Motion to Dissolve Preliminary Injunction and/or Motion to Dismiss."

On 22 September 1987, Urbanes filed a "Motion for Leave to File an Amended Supplemental Complaint," claiming that the action of the NPC Board banning Urbanes from participating in future public biddings for security service requirements of NPC was unjust and illegal, and he, again, thus prayed for a writ of preliminary mandatory injunction.

On 14 December 1987, the trial court denied NPC's urgent motion to dissolve the preliminary injunction and deferred resolution on its motion to dismiss the case until after trial on the merit. The court admitted the amended and supplemental complaint of Urbanes.

On 13 January 1988, NPC filed its answer to the amended and supplemental complaint.

On 22 January 1988, the trial court granted the application of Urbanes (in his amended/supplemental complaint) for a writ of preliminary prohibitory injunction and, accordingly, ordered NPC to cease and desist from implementing the order of the Board of Directors banning Urbanes from participating in future biddings for any security service contract with NPC.

On 18 April 1988, the trial court, on motion of NPC, dissolved the writ of preliminary injunction of 10 March 1986 upon the filing by NPC of a counterbond in the sum of P100,000.00 but denied the motion for reconsideration of the order admitting the amended supplemental complaint and granting the writ of preliminary prohibitory injunction therein prayed for. NPC filed a petition for certiorari, mandamus and prohibition with the Supreme Court which it referred to the Court of Appeals. The petition questioned, among other things, the trial court's order, dated 14 December 1987, denying NPC's motion to dissolve the writ of preliminary injunction and admitting the amended and supplemental complaint of Urbanes, as well as the lower court's order, dated 22 January 1988, granting his application for preliminary prohibitory injunction.

On 18 May 1989, the Court of Appeals dismissed the petition, holding that the court a quo did not abuse its discretion in issuing its questioned orders. The decision was elevated to the Supreme Court via a petition for certiorari. In a resolution, dated 06 November 1989, this Court denied the petition for lack of merit.

On 29 June 1991, the trial court finally issued its decision in Civil Case No. 47216 upholding the complaint against NPC, making permanent the writ of injunction and awarding damages to Urbanes.

From the above decision, NPC appealed to the Court of Appeals.

On 30 September 1993, the Court of Appeals[1] issued its decision, penned by Justice Eduardo G. Montenegro, modifying the decision of the trial court thusly:

"WHEREFORE, all the foregoing considered, the decision appealed from is MODIFIED. Paragraph 1 of the dispositive portion making permanent the writ of preliminary injunction issued March 19, 1986 per Order dated March 10, 1986 enjoining defendant NPC from implementing the letters of defendant dated January 24, 1986 terminating plaintiff's security service contracts and paragraph 2 of the same dispositive portion ordering NPC to pay plaintiff-appellee the sum of P500,000.00 as moral, actual and exemplary damages and P200,000.00 as attorney's fees are REVERSED and SET ASIDE. Paragraph 2 of the dispositive portion reinstating and making permanent the writ of preliminary prohibitory injunction dated February 11, 1988 issued pursuant to the order dated January 22, 1988, directing defendant NPC to cease and desist from implementing the Order of the Board of Directors banning plaintiff and his related companies from participating in future biddings for any security service contracts with NPC is AFFIRMED. There is no pronouncement as to costs.

"SO ORDERED."

Urbanes filed a motion for reconsideration, which the appellate court denied. On 09 November 1993, he filed a motion for the inhibition of Justice Montenegro on the ground that before he became an Associate Justice of the Court of Appeals, he had acted as counsel for NPC in his then capacity as Acting Solicitor General. On 17 December 1993, Justice Montenegro inhibited himself from the case and forthwith caused to be set aside the resolution denying the motion for reconsideration.

On 07 January 1994, the Court of Appeals, through Justice Minerva P. Gonzaga-Reyes,[2] ultimately denied the motion for reconsideration.

Hence, the instant petition for review on certiorari, which raises, among other issues, the following assignment of

error:

"The Hon. Court of Appeals erred in promulgating a decision in this case with the participation of Justice Eduardo G. Montenegro who is disqualified under the rules to participate in deciding this case."

We agree with petitioner on the above submission. The Rules of Court (Disqualification of Judges) has truly called for the total inhibition of Justice Montenegro from the case. Section 1 of Rule 137 provides:

"SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

The intendment of the above provision of the Rules of Court is not difficult to find. Its rationale is predicated in the long standing precept that no judge should handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and partiality. His judgment must not be tainted by even the slightest suspicion of improbity or preconceived interest. The rule is aimed at preserving at all times the faith and confidence in courts of justice by any party to the litigation (see *Gutierrez vs. Santos*, 112 Phil. 184; *Geotina vs. Gonzalez*, 41 SCRA 66; *Umale vs. Villaluz*, 51 SCRA 84; *Pimentel vs. Salanga*, 21 SCRA 160).

Considering that Justice Montenegro had so represented the National Power Corporation in CA G.R. CV No. 34524 in his then capacity as the Acting Solicitor General, he should have really begged off from any participation in the decision process by, indeed from being the ponente for, the appellate court. In all fairness to Justice Montenegro, however, he explained such failure to promptly inhibit himself as one of mere inadvertence and oversight on his part, and when reminded that he, in fact, had acted as counsel for respondent NPC as the then Acting Solicitor General, he then forthwith disengaged himself from further involvement in the disposition of the case.

With the required inhibition of Justice Montenegro from taking part in the disposition of C.A. G.R. CV No. 34524, the presence of the two remaining Justices of the appellate court's First Division neither would be enough to constitute a quorum for its due deliberation on the case nor would allow a judgment to be promulgated thereon. The pertinent provision of Section 4 of the Revised Internal Rules of the Court of Appeals, as amended, provides:

"SEC. 4. Quorum and Affirmative Vote. -- x x x

"a. The presence of all members of a Division shall constitute a quorum and their unanimous vote shall be necessary for the pronouncement of a decision or resolution, otherwise the Chairman shall ask the Raffle Committee to designate by raffle two additional members of the Court to constitute a special division of five members."

WHEREFORE, CA G.R. CV No. 34524 is hereby REMANDED to the Court of Appeals for appropriate action conformably with the foregoing opinion. No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] First Division, P. J. Santiago M. Kapunan, J. Minerva P. Gonzaga-Reyes and J. Eduardo G. Montenegro (Ponente)

[2] Also of the First Division.

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