

PROFESSIONAL REGULATION COMMISSION (PRC), HERMOGENES POBRE AND ARMANDO PASCUAL, PETITIONERS, VS. COURT OF APPEALS, ARLENE DE GUZMAN, VIOLETA MENESES, CELERINA NAVARRO, JOSE RAMO...

G.R. No. 117817. July 09, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

These are consolidated petitions involving the same parties although dwelling on different issues.

G. R. No. 117817. - On 5 July 1993 private respondents Arlene de Guzman, Violeta Meneses, Celerina Navarro, Jose Ramoncito Navarro, Arnel Herrera and Geraldine Elizabeth Pagilagan filed an amended petition for mandamus before the Regional Trial Court of Manila against petitioners Professional Regulation Commission, Chairman Hermogenes Pobre and Associate Commissioner Armando Pascual. The amended petition, docketed as Civil Case No. 93-66530, alleged that private respondents were graduates of the Fatima College of Medicine who took the examinations for physicians conducted by petitioners on 13, 14, 20 and 21 February 1993; that despite their having passed the examinations petitioners arbitrarily refused to perform the legal duty of administering private respondents' oaths and illegally withheld their licenses to practice medicine; and, that petitioners maliciously singled out respondents for having obtained unusually high ratings especially in Biochemistry, and Obstetrics and Gynecology. Thus private respondents prayed that a preliminary mandatory injunction be issued ordering petitioners to immediately allow them to take their oaths as physicians and thereafter issue their professional license cards.

On 28 July 1993 the trial court[1] granted a writ of preliminary mandatory injunction directing petitioners to administer the oath to the six (6) private respondents and to register them as professional physicians in the rolls of the Professional Regulation Commission.

Petitioners questioned the issuance of the writ before the Court of Appeals. In its decision of 21 October 1993 respondent appellate court nullified the injunctive writ issued by the lower court.[2] It opined that the authority of petitioners to determine who should be admitted to the practice of medicine and regulate the medical profession required the discharge of discretionary, not ministerial, functions.

Private respondents led by Arlene de Guzman sought recourse in this Court through a petition for review on certiorari. In a resolution dated 23 May 1994 the Court denied the petition for failure to sufficiently show that respondent Court of Appeals had committed any reversible error in rendering the questioned judgment setting aside the writ of preliminary mandatory injunction earlier issued in favor of the medical examinees.[3]

Meanwhile, the pre-trial in Civil Case No. 93-66530 was set on 22 November 1993 by the presiding judge of the RTC-Br. 52, Manila. Thereat the parties agreed that private respondents would simply submit the affidavits of their witnesses to constitute their direct examination, subject to cross examination. The next hearing was set on 13

December 1993.

On 13 December 1993 counsel for petitioners did not appear and petitioners were declared to have waived their right to cross examination. On 27 January 1994, petitioners' counsel filed a manifestation and motion stating the reasons for her nonappearance and prayed that she be furnished the 13 December 1993 order and that the case be set anew for cross examination of witnesses. The court did not act on the pleading for lack of proof of service to the adverse counsel.

On 21 February 1994 petitioners proceeded to file a motion for reconsideration which the Branch Clerk of Court refused to accept upon instruction of Judge Nitafan that such motion should be accompanied not by proof of mailing but by proof of personal service. Petitioners complied the following day.

On 28 February 1994 the trial court denied the motion on the ground that the adverse counsel was notified thereof less than three (3) days prior to the hearing.

Meanwhile, pursuant to Board Resolution No. 26 dated 21 July 1993 of petitioners' Board of Medicine, the examinees from Fatima College of Medicine, including private respondents, were charged in Adm. Case No. 1687 with immorality, dishonest conduct, fraud and deceit in connection with the examinations in Biochemistry, and Obstetrics and Gynecology. On 4 March 1994 private respondents moved for a restraining order to prevent petitioners from proceeding with the hearing of Adm. Case No. 1687 which the trial court granted in its order of 4 April 1994.

In a counter move on 20 June 1994 petitioners came to this Court seeking the nullification of the orders of the trial court dated 13 December 1993, 28 February 1994 and 4 April 1994 for allegedly having been issued with grave abuse of discretion.[4] At the same time they sought the dismissal of Civil Case No. 93-66530 in view of the 23 May 1994 resolution of the High Court. We referred the petition to respondent Court of Appeals.[5]

On 31 August 1994 the appellate court declared the questioned orders of the trial court null and void. It ordered said court to allow petitioners' counsel to cross examine the witnesses of private respondents, to allow petitioners to present their evidence in due course of the trial and thereafter decide Civil Case No. 93-66530 on the merits on the basis of the evidence of the parties.[6] Petitioners asked for partial reconsideration insofar as the appellate court did not order the dismissal of the aforesaid civil case.

On 25 October 1994 the appellate court denied the motion for reconsideration on the ground that the prayers for nullification of the orders of the trial court and the dismissal of the mandamus petition were inconsistent reliefs.[7]

On 23 December 1994 the now infamous "Fatima controversy" made a comeback in this Court through the instant petition for review on certiorari assailing the appellate court for its perceived error in not outrightly calling for the dismissal of Civil Case No. 93-66530.

In the meantime, on 19 December 1994 the Manila trial court rendered judgment on the merits in Civil Case No. 93-66530. It ordered petitioners anew to allow private respondents to take the physician's oath and to register them as physicians but without prejudice to any administrative disciplinary action which might be taken against them. The decision was received by petitioners on 20 December 1994. On 26 December 1994 they filed a notice of appeal.[8] Pending appeal private respondents moved for execution of the judgment but the trial court left the incident for the Court of Appeals to resolve.

Claiming apprehension that any execution pending appeal would prejudice public interest as private respondents might be allowed to practice medicine despite serious questions on their moral and mental fitness to practice the

profession, petitioners secured from this Court on 6 January 1995 a temporary restraining order enjoining the implementation of the trial court's decision in Civil Case No. 93-66530.[9]

G. R. No. 118437. - On 25 November 1994 petitioners moved for the inhibition of respondent Judge David G. Nitafan pointing out his proclivity to proceed with the trial of Civil Case No. 93-66530 despite his knowledge of petitioners' intention to assail the appellate court's rulings before this Court. Petitioners moreover alleged that his partiality towards private respondents was evident.

But Judge Nitafan refused to inhibit himself, as shown in his order of 2 December 1994. On 17 January 1995 petitioners went directly to this Court through the present petition for certiorari praying for the consolidation of this case with G. R. No. 117817 and that judgment be rendered nullifying the 31 August 1994 decision of the Court of Appeals insofar as it did not order respondent Judge Nitafan to dismiss Civil Case No. 93-66530; in the alternative, setting aside the decision of respondent Judge dated 19 December 1994 and ordering him to inhibit himself and thereafter to transmit the records of Civil Case No. 93-66530 to the Executive Judge of Manila for raffle to the other judges of the Regional Trial Court of Manila.

On 7 June 1995 the Court granted the consolidation of G. R. No. 118437 with G. R. No. 117817.

Disposing now of these two (2) cases separately, petitioners assert in G. R. No. 117817 that the Court of Appeals should have ordered the dismissal of Civil Case No. 93-66530 as this Court in its resolution of 23 May 1994 had affirmed the appellate court's ruling that the issuance of a license to engage in the practice of medicine was not ministerial on the part of petitioners upon the examinee's passing the board examinations if there was doubt that such examinee did not fully meet the requisites laid down by law.

Respondent examinees, on the other hand, contend that the present petition has become moot since the Manila trial court has already rendered a decision in the mandamus case and petitioners have already filed a notice of appeal.

Indeed, the issue as to whether the Court of Appeals erred in not ordering the dismissal of Civil Case No. 93-66530 sought to be resolved in the instant petition has been rendered meaningless by an event taking place prior to the filing of this petition and denial thereof should follow as a logical consequence.[10] There is no longer any justiciable controversy so that any declaration thereon would be of no practical use or value.[11] It should be recalled that in its decision of 19 December 1994 the trial court granted the writ of mandamus prayed for by private respondents which decision was received by petitioners on 20 December 1994. Three (3) days after, or on 23 December 1994, petitioners filed the instant petition. By then, the remedy available to them was to appeal the decision to the Court of Appeals, which they in fact did, by filing a notice of appeal on 26 December 1994.

Viewing the circumstances from another angle, it may be argued that this petition should not have been filed at all. And so, respondents claim that this petition was filed despite knowledge by petitioners that the trial court had already resolved Civil Case No. 93-66530. To this, petitioners' counsel, then Solicitor (now Assistant Solicitor General) Amparo Cabotaje-Tang counters -

As in any government office, and even private offices for that matter, there are standard operating procedures that have to be observed upon receipt of documents by its docket/receiving section or division. Thus, because of these procedures, there is attendant delay in the routing of these documents.

In this particular case, the Notice of Decision x x x and Decision of respondent judge (were) received by the Docket Division of the OSG on December 20, 1994 as shown in the stamp mark appearing on the face of the Notice x x x x The same was transmitted to the Division of ASG Oswaldo D. Agcaoili on December 21, 1994 as shown in the pertinent page of the record book of the OSG docket division x x x x After ASG Agcaoili initialed

the Notice of Decision x x x he returned it to his secretary, Santa M. Palito, for proper recording. The latter transmitted the same Notice to the undersigned ASG's former secretary, Ma. Zorayda Tejones, on December 23, 1994 as shown in the pertinent page of her (Santa's) record book x x x x In this connection, it is respectfully informed that said Notice was routed to ASG Agcaoili because Special Civil Action No. 93-66530 was assigned to the undersigned ASG during her stint as a Solicitor under his (ASG Agcaoili's) direct supervision.

Considering that it was late in the afternoon of December 23, 1994, a Friday, that the aforesaid Notice was received by the undersigned ASG's secretary and the fact that the OSG employees were allowed to go home at 3:00 o'clock in the afternoon of that same day x x x the latter was not able to route it anymore to the undersigned ASG that same day.

On December 26, 1994, the undersigned ASG's secretary brought the same Notice of Decision to her. Upon seeing it, she immediately instructed her secretary to prepare the Notice of Appeal through a marginal note in a Notice of Decision and thereafter, initialed the same Notice of Appeal and inscribed her date of receipt thereof x x x [12]

Thus, ASG Cabotaje-Tang maintains that at the time of the filing of this petition on 23 December 1994 she was not aware of the decision of the trial court. She further explains that the notice of appeal was filed to preserve their right of appeal and to avert the execution of the lower court's decision.

We find the explanation satisfactory. Although there was an apparent delay in the routing of the decision from the office of Assistant Solicitor General Oswaldo D. Agcaoili (now Associate Justice of the Court of Appeals) to the secretary of ASG Cabotaje-Tang, i.e., the decision remained there from 21 December up to late afternoon of 23 December, ASG Cabotaje-Tang had no control over the action of the secretary of ASG Agcaoili. And even if the secretary of ASG Cabotaje-Tang immediately forwarded the decision to the latter upon receipt at three in the afternoon of 23 December, the filing of this petition was already a fait accompli at 2:13 that same afternoon.[13] We shall reserve the discussion on the effect of petitioners' notice of appeal in the second petition.

Through the petition in G. R. No. 118437 filed on 17 January 1995 against Judge Nitafan and private respondents, petitioners seek to nullify the order of respondent Judge dated 2 December 1994 in Civil Case No. 93-66530 denying petitioners' motion for his inhibition, as well as his decision of 19 December 1994 granting the petition for mandamus in favor of respondent examinees. Petitioners contend that respondent Judge should have recused himself from further acting on Civil Case No. 93-66530 because of his evident partiality towards respondents. Additionally, he should not have decided the mandamus case with amazing speed since G. R. No. 117817 was initiated precisely to review the 31 August 1994 decision of respondent Court of Appeals.

On the other hand, respondents urge the Court to declare petitioners guilty of forum shopping for filing this petition despite the pendency of their appeal before respondent appellate court in CA - G. R. SP No. 37283.

Petitioners counter by reiterating that they filed their notice of appeal to preserve their period of appeal and prevent the execution of the decision. Although the matter of inhibition could be assigned as error in the appeal, they aver that it would not constitute a plain, speedy and adequate remedy; moreover, the decision was issued without jurisdiction and/or with grave abuse of discretion correctible by certiorari. They stress that they never sought a favorable judgment in another forum after receiving an adverse decision from one forum except thru an appeal or a petition for review on certiorari. Neither have they pursued simultaneous remedies in different fora involving similar or identical issues in a case.

We hold that the liability of petitioners for forum shopping has not been established. For forum shopping to exist, both actions must involve the same transactions and same essential facts and circumstances. Furthermore, there

must be identical causes of actions, subject matter and issues.[14] Thus the mere fact that an appeal by petitioners is pending before the Court of Appeals based on the same transactions, essential facts and circumstances and subject matter, does not suffice to conclude that there was forum shopping. There should likewise be identical issues raised. According to petitioners, the issues in their appeal before the Court of Appeals are different from those in this petition. This allegation is not disputed by respondents. It is incumbent upon respondents to substantiate their charge, for instance, by furnishing the Court with petitioners' brief or memorandum filed before the appellate court but they failed to do so.

At this point, we are more concerned with the propriety of petitioners' act of filing this petition despite an earlier perfected appeal before the Court of Appeals.

It is settled that the remedies of an ordinary appeal and certiorari are mutually exclusive, not alternative or successive.[15] But in the case of *Lansang Jr. v. Court of Appeals*[16] we held that appeal and certiorari may not be mutually exclusive in view of attendant circumstances. In *Lansang Jr.*, petitioners were ordered by the trial court to pay a certain amount of damages to respondents. Petitioners moved for reconsideration and to allow them to present evidence on their failure to attend the scheduled hearing and on the excessive award of damages. Their motion was denied, prompting them to file their notice of appeal. The notice was approved and the records of the case were ordered forwarded to the appellate court. Later petitioners filed before the latter court a petition for certiorari directed against the same denial of their motion. They alleged that they had perfected their appeal but it was not an adequate, speedy and plain remedy because of the P250.00 daily penalty mentioned in the award. Their petition was dismissed on the ground that the perfected appeal was inconsistent with certiorari. We overturned this ruling with the ratiocination that-

x x x x After a judgment had been rendered and an appeal therefrom had been perfected, a petition for certiorari relating to certain incidents therein may prosper where the appeal does not appear to be a plain, speedy and adequate remedy x x x x

Indeed, there are instances when this Court relaxed the application of Rule 65 on certiorari and allowed the writ to issue even while appeal was available in the interest of justice, or due to the dictates of public welfare and for the advancement of public policy.

In this case, after judgment was rendered, petitioners filed a motion for reconsideration x x x x The failure of counsel and petitioners to appear on November 8, 1985 in order to present (their) evidence was duly explained and which may be considered excusable. The courts are called upon to be liberal in the assessment of the non-appearance of counsel for the party if only to promote the greater interest of justice.

While it appears that the vehicle of petitioners hit the car of private respondent while parked, it is contended by petitioners that it was parked in a prohibited zone. Assuming the petitioners to be at fault, they contend the additional damage of P250.00 per day is unconscionable in addition to the actual damage to the car of P19,500.00 and P10,000.00 fees and expenses of litigation. They estimate the damage awarded can run up to the amount of P600,000.00.

These circumstances justify the grant to petitioners of another day in court x x x [17]

Yet we cannot apply the *Lansang Jr.* case to the present petition because recourse to certiorari is no longer warranted. There is no showing of a need to promptly extricate petitioners from the unfavorable judgment of the trial court.[18] Rather we find that their perfected appeal can adequately grant the relief they seek. We therefore apply the settled rule mentioned earlier that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.

Furthermore we note that while petitioners claim that their appeal "would not constitute a plain, speedy and

adequate remedy," they did not see fit to withdraw or abandon it after filing the instant petition. In fact, their appeal is still pending resolution in the appellate court. As it is, respondent court and this Court are reviewing the same decision of the trial court at the same time. There is thus the distinct possibility that the appellate court may reverse the lower court. In such event, its action could collide with a ruling finding no merit in petitioners' arguments before this Court. Such a situation would lead to absurdity and confusion in the ultimate disposition of the case. This possibility must be avoided at all costs.[19] A party is not allowed to pursue simultaneous remedies in two (2) different fora because such practice works havoc on orderly judicial procedure.

Indeed, the conduct of ASG Cabotaje-Tang in filing the petition in G.R. No. 118437 borders on the censurable as she trifled with the courts, abused their processes and added to the already heavily burdened dockets. While counsel may owe entire devotion to the interest of her client, her privilege to practice law carries with it certain correlative duties to the court one of which is to assist in the speedy and efficient administration of justice and not saddle the court with multiple actions arising from the same cause. A lawyer who performs her duty with diligence and candor not only protects the interest of her client, she also serves the ends of justice, does honor to the bar and helps maintain the respect of the community to the legal profession.[20]

WHEREFORE, the petition in G.R. No. 117817 is DISMISSED for being moot. The petition in G.R. No. 118437 is likewise DISMISSED on the ground that there is a pending appeal before the Court of Appeals. Assistant Solicitor General Amparo M. Cabotaje-Tang is advised to be more circumspect in her dealings with the courts as a repetition of the same or similar acts will be dealt with accordingly.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] RTC-Br. 52, Manila, presided over by the late Judge David G. Nitafan.

[2] CA - G. R. SP No. 31701; see Rollo of G. R. No. 112315, "Arlene de Guzman et al. v. CA et al.," pp. 46-61.

[3] G. R. No. 112315; Rollo, p. 462.

[4] G. R. No. 115704.

[5] CA - G. R. SP No. 34506.

[6] Penned by Justice Jaime M. Lantin with the concurrence of Justices Angelina S. Gutierrez and Conchita Carpio Morales; Rollo, pp. 63-64.

[7] Id., p. 66.

[8] Id., p. 320.

[9] Id., pp. 83-84.

[10] See *Bautista v. Board of Energy*, G. R. No. 75016, 13 January 1989, 169 SCRA 167.

[11] *Gancho-on v. Secretary of Labor and Employment*, G. R. No. 108033, 14 April 1997, 271 SCRA 204.

[12] Rollo, p. 420.

[13] Id., p. 10.

[14] *International Container Terminal Services, Inc. v. Court of Appeals*, G. R. No. 116910, 18 October 1995, 249 SCRA 389; Supreme Court Adm. Circ. No. 04-94, effective 1 April 1994.

[15] *Oriental Media, Inc. v. Court of Appeals*, G. R. No. 80127, 6 December 1995, 250 SCRA 647.

[16] G. R. No. 76028, 6 April 1990, 184 SCRA 230.

[17] *Id.*, pp. 234-235.

[18] *Provident International Resources Corp. v. Court of Appeals*, G. R. No. 119328, 26 July 1996, 259 SCRA 510.

[19] See *Manuel v. Alfeche, Jr.*, G. R. No. 225683, 26 July 1996, 259 SCRA 475.

[20] *Santiago v. Fojas*, Adm. Case No. 4103, 7 September 1995, 248 SCRA 68.

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