CARLITO L. MONTES, PETITIONER, VS. COURT OF APPEALS, SIXTH DIVISION, OFFICE OF THE OMBUDSMAN, DEPARTMENT OF SCIENCE AND TECHNOLOGY, RESPONDENTS.

G.R. NO. 143797. May 04, 2006

Ponente: TINGA, J.

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TINGA, J.

In this Petition for Prohibition with Prayer for Temporary Restraining Order[1] under Rule 65 of the 1997 Rules of Civil Procedure, petitioner Carlito L. Montes (Montes) seeks to prohibit the Honorable Secretary of the Department of Science and Technology (DOST) from implementing the suspension order[2] dated 28 June 2000. The suspension order was issued in relation to the Decision[3] dated 17 January 2000 and Order[4] dated 2 March 2000, both of the Office of the Ombudsman, in "Imelda D. Rodriguez and Elizabeth Fontanilla v. Carlito L. Montes," docketed as OMB-ADM-0-98-0556. The assailed suspension order reads as follows:

> TO: CARLITO L. MONTES
> Chief, Legal Division, DOST
>
> In compliance with the 2nd Indorsement dated 29 March 2000 from the Office of the Ombudsman directing this Office the implementation of the OMB Order dated 02 March 2000, in relation to OMB Decision dated 17 January 2000, wherein you were found guilty of violation of RA 4200 (THE ANTI-WIRE TAPPING LAW) amounting to GROSS MISCONDUCT in OMB-ADM-0-98-0556 entitled "Imelda D. Rodriguez and Elizabeth Fontanilla -versus- Carlito L. Montes," your (sic) are hereby SUSPENDED FROM THE SERVICE FOR ONE YEAR WITHOUT PAY EFFECTIVE JULY 16, 2000.
>
> You are hereby directed to make the necessary turn-over/clearance of property and monetary accountabilities and submit all pending legal work to the Office of the Assistant Secretary for Administrative and Legal Affairs.
>
> AS ORDERED.
>
> Taguig, Metro Manila, June 28, 2000.
>
> (sgd)
>
> DR. FILEMON A. URIARTE, JR.
>
> Secretary[5]

OMB-ADM-0-98-0556 is the administrative complaint filed by complainants therein Imelda D. Rodriguez and Elizabeth Fontanilla against Carlito L. Montes, Chief of the Legal Division of DOST, for grave misconduct and conduct prejudicial to the best interest of service. Rodriguez and Fontanilla alleged that on 15 July 1999, while Montes was in the process of adducing evidence against Rodriguez and the DOST Secretary in the complaint for misconduct he had filed against them before the Presidential Commission Against Graft and Corruption

(PCAGC), Montes produced a tape recording of a private conversation he had had with the DOST Secretary. Montes admitted that he had taped the conversation at the DOST Secretary's Office without the DOST Secretary's knowledge and consent a few days after 28 November 1993. Montes publicly played the illegal tape recording during the hearing and subsequently marked it as Exhibit "VV."[6]

During cross-examination, Montes likewise admitted that he had also recorded a private conversation he had with Fontanilla at the DOST Office in Taguig sometime in November 1997. This was without the knowledge and consent of Fontanilla.[7]

Moreover, in two (2) missives[8] Montes sent Pedro A. del Rosario, Jr., the former mentioned the existence of the tape recordings he had made of his conversations with other people. Sometime in June 1998, Montes even re-played for Eduardo Langara the taped conversations he had with Secretary William G. Padolina and Fontanilla. In addition, PCAGC Prosecutor Mariano C. Quintos, Jr., stated in his affidavit dated 30 April 1998 that Montes submitted to him the tape recordings of Montes' had made of his conversations with Fontanilla.[9]

The Ombudsman found Montes guilty of grave misconduct and suspended him for one (1) year without pay. The Ombudsman held that Montes' taping of his conversations with Fontanilla was prohibited by R.A. 4200, the Anti-Wiretapping Law. Montes did not deny that he made the recording without the Fontanilla's consent.[10]

In an Order[11] dated 2 March 2000, the Ombudsman denied Montes' motion for reconsideration and affirmed the Decision dated 17 January 2000. Hence, Montes filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with prayer for temporary restraining order before the Court of Appeals, docketed as C.A.-G.R. SP No. 58267.

The Court of Appeals dismissed outright Montes' petition in a Resolution[12] dated 4 May 2000 for being procedurally infirm. Specifically, the appellate court noted that Montes failed: a) to state the specific date when he received a copy of the Ombudsman's Decision; b) to attach duplicate originals or certified true copies of the challenged Decision and Order; and c) to provide an explanation why the copy of his petition was not served personally upon therein respondent DOST Secretary.

On motion for reconsideration, however, the appellate court issued a Resolution[13] dated 22 June 2000 requiring the Ombudsman to file his comment. Notably, the appellate court considered Montes' motion for reconsideration abandoned in a Resolution dated 8 August 2000, in view of the commencement of the instant petition.[14]

Meanwhile, on 28 June 2000, the DOST Secretary issued the assailed suspension order.

Montes now argues in his petition before the Court that the implementation of the suspension order is premature considering the pendency of his petition before the appellate court. Citing Lapid v. Court of Appeals,[15] he further states that there is no law or provision in R.A. 6770,[16] the Ombudsman Law, or in Administrative Order No. 7[17] mandating the immediate execution of the Ombudsman's decision in an administrative case where the penalty imposed is suspension for one (1) year. Moreover, he asserts that the administrative complaint, which is for a violation of R.A. 4200, is cognizable by the regular courts considering the imposable penalty. Finally, he complains that he was convicted of the alleged wire-tapping by mere substantial evidence which is short of the quantum of evidence required for conviction of a criminal offense.[18]

In their Comment[19] dated 18 October 2000, the Ombudsman and the DOST, through the Solicitor General, assert that the filing of the instant petition is a violation of the proscription against forum-shopping. Further, they argue that the execution of the suspension order despite the pendency of an appeal is allowed under Section 7 of Administrative Order No. 14-A-00.[20]

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In his Memorandum[21] dated 16 January 2001, Montes reiterates his previous submission that the Ombudsman should not have proceeded to hear the administrative complaint considering that an Information[22] had already been filed against him before the Regional Trial Court of Pasig City, Branch 168.

The Ombudsman and the DOST, on the other hand, restate in their Memorandum[23] dated 19 January 2001 that the filing of the instant petition constitutes forum-shopping. Moreover, Montes failed to raise any valid reason which would warrant the issuance of a temporary restraining order or a writ of prohibition. Finally, they contend that a prohibitory injunction is not proper as the act sought to be restrained is already fait accompli.

The pivotal issue here is whether Montes is entitled to the issuance of a writ of prohibition enjoining the DOST Secretary from enforcing the suspension order.

At the outset, we find that Montes transgressed the proscription against forum shopping.

There is forum shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals. Forum shopping is also the act of one party against another when an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of certiorari; or the institution of two or more acts or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[24]

Forum shopping is an act of malpractice, as the litigants trifle with the courts and abuse their processes. It is improper conduct and degrades the administration of justice. If the act of the party or its counsel clearly constitutes willful and deliberate forum-shopping, the same shall constitute direct contempt, and a cause for administrative sanctions, as well as a ground for the summary dismissal of the case with prejudice.[25]

In the case at bar, when Montes filed the petition for prohibition against the suspension order on 19 July 2000, his motion for reconsideration of the dismissal of his petition for certiorari was still pending before the appellate court. In fact, in a Resolution[26] dated 22 June 2000, the Court of Appeals directed the Ombudsman to file his comment indicating that Montes' motion for reconsideration has not been fully resolved.

Montes' petition for certiorari prayed, among others, that the appellate court issue an order "restraining the Honorable Secretary, Department of Science and Technology from implementing the Order dated 02 March 2000."[27] Montes' motion for reconsideration likewise prayed that "(t)he implementation of the suspension for one year from the service without pay of the herein petitioner be restrained (subject of the assailed OMB Decision and Order). . ."[28] In the present petition, Montes prays that "(a)n order be issued to restrain the Honorable Secretary, DOST from implementing the Suspension Order on the herein petitioner."[29]

Clearly, the relief sought from the appellate court is the same as the relief prayed for in the present petition-that is, that an order be issued restraining the DOST Secretary from implementing the Ombudsman's Order. In filing the instant petition without awaiting the resolution of his pending motion before the appellate court, Montes asked for simultaneous remedies in two different fora. This act is censurable and serves as a ground for the dismissal of the instant case with prejudice.

Moreover, we find that Montes failed to adequately show that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law to warrant the issuance of a writ of prohibition.

For a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion;

and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[30]

A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.[31]

When the DOST issued the assailed suspension order on 28 June 2000, Montes' motion for reconsideration was still pending before the appellate court. Montes thus had the remedy of filing a petition for prohibition before the appellate court as an incident of the petition for certiorari and motion for reconsideration he had previously filed therewith. Had Montes brought the instant petition before the Court of Appeals, the same could, and would, have been consolidated with his petition for certiorari, thereby bringing under the competence of the said court all matters relative to the action, including the incidents thereof.

Evidently too, Montes disregarded the doctrine of judicial hierarchy which we enjoin litigants and lawyers to strictly observe as a judicial policy. For this reason, the instant petition should be dismissed. As we ruled in Vergara, Sr. v. Suelto,[32]to wit:

> The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[33]

The Court's original jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction is not exclusive. It is shared by this Court with the Regional Trial Courts and the Court of Appeals. This concurrence of jurisdiction however should not be taken to mean that the parties have an absolute, unrestrained freedom of choice of the court to which they will file their application or petition. There is an ordained sequence of recourse to courts vested with concurrent jurisdiction, beginning from the lowest, on to the next highest, and ultimately to the highest. This hierarchy is determinative of the venue of appeals, and is likewise determinative of the proper forum for petitions for extraordinary writs. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefore, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent the further clogging of the Court's docket.[34]

In this regard, the Court notes that Montes implicitly confirmed that he committed forum shopping by stating that he had to file the instant petition before this Court in view of the denial of his motion for reconsideration before the appellate court. Montes failed to consider that the same implementation of the suspension order which impelled him to abandon his motion for reconsideration also rendered the instant petition academic.

As the present petition is one for prohibition which is a preventive remedy, worthy of note is the fact, as manifested by the petitioner himself, that the suspension order has already been implemented on 17 July 2000.[35] The act sought to be enjoined having taken place already, there is nothing more to restrain. Thus, the instant petition has been unmade as a mere subject matter of purely theoretical interest. Prohibition, as a rule, does not lie to restrain an act that is already fait accompli.[36]

WHEREFORE, in view of the foregoing, the instant Petition for Prohibition is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 3-10; Filed on 19 July 2000.

[2] Id. at 12.

[3] Id. at 13-19.

[4] Id. at 20-24.

[5]Supra note 2.

[6]Rollo, p. 13.

[7]Id. at 14.

[8]Dated 1 December 1997 and 3 December 1998, id.

[9] Rollo, p. 14.

[10]In a Decision dated 17 January 2000; Rollo, pp. 16-18.

[11] Rollo, pp. 20-24.

[12] Id. at 44-45; Penned by Associate Justice Ma. Alicia Austria-Martinez with the concurrence of Associate Justices Oswaldo D. Agcaoili and Wenceslao I. Agnir, Jr.

[13] Id. at 52; Dated 22 June 2000.

[14]Id. at 88.

[15] G.R. No. 142261, 29 June 2000, 334 SCRA 738.

[16] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes.

[17] Rules of Procedure of the Office of the Ombudsman.

[18] Rollo, pp. 8-9.

[19]Id. at 62-69.

[20] Id. at 68.

[21] Id. at 90-108.

[22]Id. at 29-30; Dated 29 December 1998; Docketed as Criminal Case No. 116118; This was dismissed based on technicality and lack of jurisdiction on 2 February 2001.

[23] Id. at 113-124.

[24]Balite v. Court of Appeals, G.R. No. 140931, 26 November 2004, 444 SCRA 410, 421.

[25] Id. at 422.

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[26] Rollo, p. 52.

[27] Id. at 40.

[28]Id. at 50.

[29] Id. at 9.

[30]Longino v. General, G.R. No. 147956, 16 February 2005, 451 SCRA 423, 436.

[31] Id. at 437.

[32] No. L-74766, 21 December 1987, 156 SCRA 753.

[33] Id. at 766.

[34] Yared v. Ilarde, G.R. No. 114732, 1 August 2000, 337 SCRA 53, 61-62.

[35] Rollo, p. 121; Per Montes' admission in rollo, pp. 83 and 106.

[36] Gonzales v. Narvasa, G.R. No. 140835, 14 August 2000, 337 SCRA 733, 740.

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