

THE HON. ALBERTO ROMULO, SUBSTITUTED BY THE HON. EDUARDO I. ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, THE OFFICE OF THE PRESIDENT, THE HON. LEANDRO MENDOZA, IN HIS CAPACIT...

G.R. NO. 165665. January 31, 2007

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Orders[1] of the Regional Trial Court (RTC), Branch 17, Manila, dated April 16, 2004, June 21, 2004, and September 3, 2004 in Civil Case No. 04-109201, entitled

"PAL Employees Association (PALEA), et al. v. Alberto Romulo, in his capacity as Executive Secretary, et al."

While we could have dismissed this petition outright for violation of the principle of hierarchy of courts,[2] however, we opted to resolve the same in the interest of speedy administration of justice.

On December 3, 2003, President Gloria Macapagal Arroyo issued Executive Order (E.O.) No. 253,[3] providing for an "open skies" policy in the aviation industry. Pursuant to this E.O. the Diosdado Macapagal International Airport at Clark Field, Pampanga and the Subic Bay International Airport at Subic, Zambales were opened to international air cargo transportation providers and foreign airlines.

On February 23, 2004, the PAL Employees Association (PALEA), the National Labor Union (NLU), and the National Federation of Labor Unions (NAFLU), as legitimate labor organizations representing the bulk of workers in the local aviation, industry, herein respondents, filed with the RTC, Branch 17, Manila a petition for certiorari, prohibition, and injunction, assailing the constitutionality of E.O. No. 253. Impleaded therein as respondents were then Executive Secretary Alberto Romulo, substituted subsequently by Executive Secretary Eduardo I. Ermita, the Office of the President, Mr. Leandro Mendoza, in his capacity as Secretary of the Department of Transportation and Communication (DOTC), the DOTC, the Civil Aeronautics Board (CAB), and the CAB Chairman, herein petitioners. The petition, docketed as Civil Case No. 04-109201, alleged that E.O. No. 253 is unconstitutional on the following grounds:

- a) The power and authority to declare an "open skies" policy is a sole prerogative of Congress. By providing for such a policy, the Executive Department usurped the authority of the Legislature in contravention of the fundamental law;
- b) E.O. No. 253 actually amends Republic Act (R.A.) No. 7227,[4] an action beyond the power of the President, for it is only Congress which may amend laws;
- c) E.O. No. 253 also amends and repeals parts of R.A. No. 776 creating the Civil Aeronautics Board; and
- d) E.O. No. 253 allows foreign airlines to operate as common carriers in Philippine territory without complying

with the requirements prescribed by the Constitution.

The Office of the Solicitor General (OSG), representing petitioners, filed a motion to dismiss the petition in Civil Case No. 04-109201 for lack of cause of action.

On April 6, 2004, the OSG served by registered mail a copy of its motion upon Atty. Froilan M. Bacungan, counsel for petitioners in Civil Case No. 04-109201 (now respondent labor unions).

On April 16, 2004, the trial court issued an Order denying the OSG's motion to dismiss, thus:

In the absence of proof of transmittal by registered mail of a copy of the subject Motion to Dismiss dated April 5, 2004, addressed to the petitioner's counsel, pursuant to the second paragraph of Section 4, Rule 15 of the 1997 Rules of Civil Procedure, the subject Motion to Dismiss dated April 5, 2004 from the Office of the Solicitor General is hereby DENIED.

SO ORDERED.

On May 19, 2004, the OSG filed a motion for reconsideration. Attached thereto is a photocopy of registry return receipt No. 4096. But this motion was denied by the trial court in its Order dated June 21, 2004, thus:

In the absence of any indication on the photocopy of the registry return receipt (Annex "A," Motion for Reconsideration dated May 17, 2004) that it was, in fact a copy of the Motion to Dismiss dated April 25, 2004 from the Office of the Solicitor General as supposedly addressed to petitioner's counsel (*Sapida v. Villanueva*, 48 SCRA 19, 23, 27, 29-30 [1972]), the Office of the Solicitor General's Motion for Reconsideration dated May 17, 2004 is hereby DENIED.

SO ORDERED.

On July 28, 2004, the OSG again filed a motion for reconsideration. Attached thereto are the following: (1) a certified photocopy of the OSG's original registry return receipt No. 4096; (2) a certified photocopy of page 374, Official Records Book of the OSG Docket Division; and (3) the affidavit of Josephine S. Masangkay-Bayongan, Records Officer III, OSG Docket Division, stating that the mail matter sent by the OSG to Atty. Bacungan on April 6, 2004 was, in fact, a copy of the motion to dismiss the petition in Civil Case No. 04-109201 dated April 5, 2004.

In its Order dated September 3, 2004, the trial court denied the OSG's second motion for reconsideration, thus:

In view of the judicial admission on the face of the Motion for Reconsideration dated July 23, 2004, particularly paragraph 2 thereof to the effect that a copy of the Motion to Dismiss dated [April 5, 2004] was received by the petitioners' counsel only on April 20, 2004 after the slated hearing thereof on April 16, 2004, consistent with the caveat under Section 4, Rule 15 of the 1997 Rules of Civil Procedure, the Motion for Reconsideration dated July 23, 2004 from the Office of the Solicitor General is hereby DENIED.

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Hence, the instant petition. Petitioners alleged that in denying their motion to dismiss, respondent trial court acted with grave abuse of discretion.

As a general rule, an order denying a motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari, the remedy of the aggrieved party being to file an answer and interpose as a defense the objections raised in his motion and in case of an adverse decision, to appeal in due course.[5] An exception, however, may be made where the denial of the motion to dismiss was made with grave abuse of discretion or without or in excess of jurisdiction.[6]

In the instant case, there is no dispute that Atty. Bacungan, counsel for respondent labor unions, received a copy of the OSG's motion to dismiss dated April 5, 2004 on April 20, 2004, or four (4) days after it was set for hearing. Petitioners insist though that they sent a copy of their motion to him by registered mail on April 6, 2004.

Sections 7, 10 and 13 of Rule 13, of the 1997 Rules of Civil Procedure, as amended, provide:

SEC. 7. Service by mail. - Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 10. Completeness of service. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

SEC. 13. Proof of service. - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place, and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender or in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

It is clear that where service of a pleading is by registered mail, proof of such service consists of the following: (1) an affidavit of the person mailing the pleading containing a full statement of the date, place, and manner of service; and (2) the registry receipt issued by the mailing office.

We recall that in their first motion for reconsideration, petitioners attached thereto only a photocopy of registry return receipt No. 4096. The trial court declared it could not determine on its face whether the registered matter was actually a copy of the motion to dismiss.

In *Cayetano v. Cayetano*,^[7] we held that actual knowledge of a decision cannot be attributed to the addressee of a registered matter where there is no showing that the registry notice itself contains any indication that the registered matter is a copy of the decision or that the registry notice refers to the case being ventilated. Then, in *Sapida v. Villanueva*,^[8] citing *Cayetano*, we ruled that we could not justly attribute to respondents "actual knowledge of the order of denial of their motion for new trial through registered mail... because there is no showing that the registry notice itself or the envelope or the return card for that matter contained any indication or annotation that the registered matter was indeed and in fact a copy of the said order."

Anent the affidavit of Josephine S. Masangkay-Bayongan, she stated that "On April 6, 2004,¹ caused to be served by registered mail a copy of a Motion to Dismiss dated April 5, 2004 in Civil Case No. 04-109021..." Clearly, she merely directed that the motion be served by registered mail. She did not actually post the motion by registered mail. The rule requires that the affidavit must be executed by "the person mailing" the motion.

In sum, registry return receipt No. 4096 does not indicate that what was mailed to Atty. Bacungan, counsel for respondent labor unions, was a copy of petitioners' motion to dismiss; and that Bayongan's affidavit shows she was not the one who mailed such copy. It follows that in dismissing the motion to dismiss on the ground that a copy thereof was not validly served upon private respondents' counsel, respondent judge acted pursuant to the Rules.

There is grave abuse of discretion "where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [9]

Indeed, no grave abuse of discretion can be discerned on the part of respondent court in issuing the assailed Orders denying the OSG's motion to dismiss.

WHEREFORE, we DISMISS the petition and AFFIRM the assailed Orders of the Regional Trial Court, Branch 17, Manila in Civil Case No. 04-109201. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Tinga, Garcia, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 26-30.

[2] This Court's original jurisdiction to issue the extraordinary writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction is not exclusive but is concurrent with the Court of Appeals and the Regional Trial Court (*Liga ng Mga Barangay Motion v. Atienza, Jr.*, G.R. No. 154599, January 21, 2004, 420 SCRA 562)

[3] The Order is entitled "Providing For The Expansion Of Air Services To The Diosdado Macapagal International Airport (DMIA) And Subic Bay International Airport (SBIA).

[4] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

[5] *National Investment and Development Corp. v. Aquino*, G.R. Nos. 34192 & 34213, June 30, 1988, 163SCRA 153, 167-168.

[6] *Newsweek, Inc. v. Intermediate Appellate Court*, G.R. No. 63559, May 30, 1986, 142 SCRA 171, 177; *Mendoza v. Court of Appeals*, G.R. No. 81909, September 5, 1991, 201 SCRA 343, 352.

[7] G.R. No. 18831, January 30, 1965, 13 SCRA 73.

[8] G.R. No. 27673, November 24, 1972, 48 SCRA 19.

[9] *The Hongkong and Shanghai Banking Corporation Employees Union v. NLRC, et al.*, G.R. No. 113541, November 22, 2001, 370 SCRA 193, cited in *Santos v. COMELEC*, G.R. No. 155618, March 26, 2003, 399 SCRA 611.

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