MIGUEL M. LLAMZON, PETITIONER, VS. ALMA FLORENCE LOGRONIO, NESTOR HUN NADAL AND NICANOR OLIVAR CONSTITUTING THE PHILIPPINE ECONOMIC ZONE AUTHORITY CENTRAL BOARD OF INQUIRY, INVE...

G.R. NO. 167745. June 26, 2007

Ponente: TINGA, J.

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TINGA, J.:

The instant petition for review stems from the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 74874

promulgated on 10 June 2004, and 7 April 2005, respectively which annulled and set aside the status quo order of the Regional Trial Court (RTC), Branch 4, Balanga, Bataan,[3] dated 2 December 2002,[4] and affirmed the order dated 11 December 2002[5] denying respondents' motion to dismiss.

The antecedents follow.

Petitioner Miguel M. Llamzon is an Enterprise Service Officer III at the Industrial Relations Unit, Bataan Economic Zone. He was formally charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of service[6] for having billed Edison (Bataan) Cogeneration Corporation overtime fees for unloading of fuel for the dates 28 February 2000 and 20 March 2000, despite knowledge that the Philippine Economic Zone Authority (PEZA) had discontinued billing registered locator/enterprises for overtime fees since 17 December 1999. Petitioner filed his answer denying the charges against him and requested a formal investigation and the transfer of the venue of the case to the Civil Service Commission Regional Office in San Fernando, Pampanga. This request was however denied, and the investigation was conducted by the PEZA Central Board of Inquiry, Investigation and Discipline (PEZA-CBIID).

While investigation was on-going, petitioner requested the PEZA-CBIID to allow the PNP Crime Laboratory to examine the written contents of the billings for overtime fees. The request was denied by PEZA-CBIID considering that the National Bureau of Investigation had already issued a finding that the signatures appearing in the billings are those of the petitioner.

Feeling aggrieved, petitioner filed a complaint on 17 September 2002 for damages against respondents, with a prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction, for allegedly depriving him of his right to present witnesses for himself and to have compulsory process to secure the attendance of witnesses in the administrative investigation. On the same date, Judge Benjamin Vianzon, presiding judge of RTC, Branch 4, Balanga, Bataan, issued a TRO for twenty (20) days "for the maintenance and preservation of the status quo," and scheduled the hearing for preliminary injunction.[7]

Respondents moved to lift the TRO on the ground of non-holding of a summary hearing and failure of petitioner to show extreme urgency for the issuance of said TRO. Respondents' motion was denied by Judge Vianzon.[8]

Respondents filed before the Office of the Court Administrator a complaint for incompetence, gross ignorance of the law, grave abuse of authority, misconduct, and conduct prejudicial to the proper administration of justice against Judge Vianzon. They also filed a motion for his inhibition in Civil Case No. 565-ML which Judge Vianzon granted in his Order dated 21 October 2002.[9]

Respondents moved for the dismissal of Civil Case No. 565-ML but petitioner opposed the motion. In the interim, petitioner filed a motion to maintain the status quo, which Judge Vianzon granted through an Order dated 2 December 2002 (status quo order).[10] Petitioner, on the other hand, filed a motion for reconsideration of the order of inhibition dated 21 October 2002,[11] and a motion to cite petitioner in contempt for resuming the administrative investigation upon the expiration of the TRO.

Confused with the orders of Judge Vianzon, respondents filed a manifestation seeking clarification whether the judge had recalled his earlier order of inhibition. In his Order dated 15 November 2002,[12] Judge Vianzon clarified that he had indeed recalled his order of inhibition and would proceed to try the case, considering that Branch

4 is a single-sala court and the matter of inhibition would have to be referred to the Supreme Court, and it would take months before a new judge is designated.

Meanwhile, respondents' motion to dismiss Civil Case No. 565-ML was denied by Judge Vianzon in his Order dated 11 December 2002.[13]

Respondents brought the matter to the Court of Appeals, imputing grave abuse of discretion on the part of Judge Vianzon in: (i) his conduct of the proceedings before him; (ii) vacating his earlier order of inhibition; (iii) issuing the status quo order dated 28 November 2002; and (iv) issuing the 11 December 2002 Order denying their motion to dismiss.

The Court of Appeals found the petition partly meritorious. It ruled that Judge Vianzon failed to observe Section 5, Rule 58 of the Rules of Civil Procedure concerning applications for preliminary injunction and TRO. According to the appellate court, Judge Vianzon granted a TRO for 20 days instead of only 72 hours, and he did not conduct a summary hearing within 72 hours to determine whether the TRO should be extended.[14] The status quo order was issued also in violation of the aforementioned Rule, specifically the portion which provides that the TRO shall not exceed 20 days and is deemed vacated if the application for preliminary injunction is not resolved within the 20-day period and that no court has the authority to extend or renew the TRO on the same ground for which it was issued.[15]

In addition, the Court of Appeals considered moot the issue of grave abuse of discretion on the part of Judge Vianzon in recalling his order of inhibition. It found that the judge had already inhibited himself from hearing Civil Case No. 565-ML via an Order dated 24 February 2003.[16]

The appellate court also found that respondents were unable to show that the issuance of the 11 December 2002 Order denying their motion to dismiss was tainted with grave abuse of discretion. They likewise failed to file a motion for reconsideration of the said order of denial, and were unable to show that the filing thereof was unnecessary.

In the end, the Court of Appeals annulled and set aside the 2 December 2002 status quo order, but dismissed the petition with respect to the order dated 11 December 2002 denying the motion to dismiss.[17]

Petitioner sought partial reconsideration of the decision, arguing for the propriety of the 20-day TRO and the status quo order of Judge Vianzon, and pointing out alleged defects in respondents' petition. The Court of Appeals

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denied the motion for lack of merit.[18]

Petitioner now proposes that the Court of Appeals erred when it: (i) ruled that the TRO and status quo order were wrongfully issued; and (ii) did not dismiss respondents' petition despite several defects which should have merited the outright dismissal thereof.

According to petitioner, the TRO and status quo order were made in compliance with Sec. 5, Rule 58 of the 1997 Rules of Civil Procedure. In particular, he claims that a 20-day TRO can be issued without prior notice or hearing if it is shown that great or irreparable injury would result to the applicant. On the other hand, he justifies the status quo order by saying that it was issued on a ground different from that for which the earlier TRO was made.[19] He adverts to several infirmities in respondents' petition which the Court of Appeals disregarded when it gave due course to the petition.

As for the alleged defects in respondents' petition before the Court of Appeals, petitioner claims that respondents (i) failed to attach the certified true copies of the assailed Orders; (ii) omitted the

discussion on the denial of the motion to dismiss; (iii) failed to state the date of receipt of the third assailed Order; (iv) questioned the issuance of the 20-day TRO embodied in the 17 September 2002 Order when it was not even among those included in the Orders assailed in their petition; (v) failed to file a motion for reconsideration of all the assailed orders; (vi) filed a defective certificate against forum shopping; (vii) failed to include an affidavit of service; and (viii) are politically motivated when they filed the charges against petitioner.[20]

For their part, respondents, through the Office of the Solicitor General, argue that an ex-parte TRO is issued only in extremis, and has a lifetime of only 72 hours. In the instant case, the trial court issued the TRO ex-parte for a full term of 20 days, and despite there being no clear showing that the applicant had a clear legal right that should be protected by the writ being sought. Furthermore, respondents see the status quo order issued by Judge Vianzon as very much akin to a writ of injunction, forbidding respondents from prosecuting the case against petitioner.[21]

Anent Judge Vianzon's order of inhibition, respondents state that while the matter of inhibition is within the sound discretion of the

judge concerned, that same discretion could not be invoked by the same judge in determining whether or not to recall or vacate his earlier order inhibiting himself. There must be good and valid legal grounds for such recall, otherwise, it becomes grave abuse of discretion and an indication of bias and partiality for a judge to recall his earlier order of recusation.[22]

The petition must be denied.

At the onset, it must be emphasized that the propriety of the 20-day TRO is a non-issue. It was never raised as an issue in the petition before the Court of Appeals, nor squarely ruled upon by the appellate court. Instead, it was discussed in conjunction with the propriety of Judge Vianzon's issuance of the status quo order dated 2 December 2002. But in any case, the Court will delve into the mechanics of issuing TROs, if only to provide the proper perspective to the discussion of the related issue.

Sec. 5, Rule 58 of the Rules of Court[23] proscribes the grant of preliminary injunction without hearing and prior notice to the party or person sought to be enjoined. However, the rule authorizes the court to which an application for preliminary injunction is made to issue a TRO if it should appear from the facts shown by affidavits or by the verified petition that "great or irreparable injury would result to the applicant before the matter can be heard on notice,"[24] but only for a limited 72-hour period.

The second paragraph of Sec. 5, Rule 58 was actually lifted from paragraph 3 of Administrative Circular No.

20-95,[25] which aims to restrict the ex parte issuance of a TRO only to cases of extreme urgency in order to avoid grave injustice and irreparable injury. Such TRO shall be issued only by the executive judge or single-sala station judge and shall take effect only for 72 hours from its issuance.

Furthermore, within the said period, a summary hearing shall be conducted to determine whether the Order can be extended for another period until a hearing on the pending application for preliminary injunction can be conducted.[26]

The rule thus holds that before a TRO may be issued, all parties must be heard in a summary hearing first, after the records are transmitted to the branch selected by raffle. The only instance when a TRO may be issued ex parte is when the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Under such circumstance, the Executive Judge shall issue the TRO effective for 72 hours only. The Executive Judge shall then summon the parties to a conference during which the case should be raffled in their presence. Before the lapse of the 72 hours, the Presiding Judge to whom the case was raffled shall then conduct a summary hearing to determine whether the TRO can be extended for another period until the application for preliminary injunction can be heard, which period shall in no case exceed 20 days including the original 72 hours.[27]

It thus becomes apparent that Judge Vianzon erred in issuing a TRO effective, not for 72 hours as prescribed by law in cases of extreme urgency, but for the maximum of 20 days; and he did so

without conducting beforehand a summary hearing, and without showing that it falls under the exceptional circumstances enumerated by the Administrative Circular No. 20-95 where a TRO may be issued by the Executive Judge before assignment by raffle to a judge without first conducting a summary hearing.

Now on to the real issues of this case.

The status quo order dated 2 December 2002 reads:

> Considering the "[M]otion to Maintain Status Quo" filed by plaintiff, through counsel Atty. Francisco Flaminiano, Jr., and finding the same to be in order, and considering further that the hearing on the propriety on the issuance of the writ of preliminary injunction is still pending hearing and no subsequent order has been issued after the issuance of the court's order dated September 17, 2002, let the existing status quo be maintained restraining and enjoining defendants from continuing with the hearing of Administrative Case No. 2002-01 until further orders from this court.
>
> SO ORDERED. (Emphasis supplied)

The above Order was improperly issued by Judge Vianzon. It was, for all intents and purposes, a mere continuation of the 20-day TRO erroneously issued. Indeed, this Court has ruled that a status quo ante order has "the nature of a temporary restraining order."[28] A TRO shall be effective only for a period of 20 days from notice to the party or person sought to be enjoined. During the 20-day period, the judge must conduct a hearing to consider the propriety of issuing a preliminary injunction. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the TRO would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. In the instant case, no such preliminary injunction was issued; in fact, as stated in the Order, "the hearing on the propriety on the issuance of the writ of preliminary injunction is still pending," hence, the TRO earlier issued, assuming arguendo that it was indeed validly issued, automatically expired under the aforesaid provision of the Rules of Court.

The 2 December 2002 Order which directed that the "existing status quo be maintained restraining and enjoining defendants from continuing with the hearing" was, for all intents and purposes an indefinite extension of the first

TRO, or "a renewed or second temporary restraining order proscribed by the rule and extant jurisprudence."[29]

The status quo order is in fact, worse than a second TRO since unlike an ordinary TRO which has a lifetime of only 20 days, Judge Vianzon directed the maintenance of the status quo for an indefinite period, or "until further order from this court." It was not a writ of preliminary injunction, because as previously mentioned, the hearing on the application for the writ is still pending. Besides, in the event of an injunctive writ, an injunction bond is required, unless exempted by the Court.[30]

Another important factor which militates against the correctness of the issuance of the status quo order is the fact that Judge Vianzon no longer had authority to do so because he had already inhibited himself from hearing the case as early as 21 October 2002, or more than a month before he issued the 2 December 2002 status quo order. It appears that Judge Vianzon did not even forward his order of inhibition to this Court, nor waited for the Court's resolution, but instead immediately recalled his order of inhibition and proceeded to try the case.

Now, to the alleged infirmities of respondents' petition before the Court of Appeals which petitioner claims should have merited its outright dismissal. Most of the alleged defects are connected with Judge Vianzon's 15 November 2002 Order which recalled his earlier order of inhibition. Petitioner submits that respondents did not attach a certified true copy of the said Order, neither did it indicate the date of receipt of the same, nor filed a motion for its reconsideration. The other remaining issues are: (i) the alleged failure to file a motion for reconsideration of, and failure to discuss, the 11 December 2002 Order of denial of respondents' motion to dismiss; (ii) the failure to state in the certificate on non-forum shopping that they filed administrative complaints against Judge Vianzon; and (iii) the failure to attach the affidavit of service to the petition.

As explained by the Court of Appeals, the order of recall of Judge Vianzon's inhibition is already moot and academic, since he had already issued an Order dated 24 February 2003[31] inhibiting himself once again from the proceedings. Besides, a new judge has already been assigned to hear the case.[32] Thus, the fact that only a photocopy of the 15 November 2002 Order was attached to the petition cannot justify the dismissal of the entire petition, especially since respondents attached the certified true copies of the other assailed Orders (2 December 2002 status quo order and 11 December 2002 denial of the motion to dismiss) to the petition. For the same reason, respondents' failure to state the date of receipt of the 15 November 2002 Order will not justify the dismissal of the petition.

Even the purported absence of a discussion on the order denying respondents' motion to dismiss cannot be a ground of the petition's outright dismissal, since the other issues raised therein were sufficiently discussed. As pointed out by the Court of Appeals, it is because of this failure to show that the denial of motion was tainted with grave abuse of discretion, and that respondents failed to file a motion for reconsideration of the denial, that the petition was dismissed for lack of merit insofar as it assailed the validity of the 11 December 2002 Order.

While the general rule is that before certiorari may be availed of, petitioner must have filed a motion for reconsideration of the act or order complained of, the Court has dispensed with this requirement in several instances. Thus, a previous motion for reconsideration before the filing of a petition for certiorari is necessary unless: (i) the issue raised is one purely of law; (ii) public interest is involved; (iii) there is urgency; (iv) a question of jurisdiction is squarely raised before and decided by the lower court; and (v) the order is a patent nullity.[33] In the instant case, respondents stated that they did not file a motion for reconsideration of the status quo order because it would be a useless exercise considering Judge Vianzon's predilection for issuing orders without stating or specifying his basis therefor. In any case, the Court of Appeals found the status quo order to be a nullity, since it was made in violation of the Rules of Court.

Petitioner maintains that respondents submitted a defective certificate against forum shopping when they failed to

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declare the administrative complaints they filed against Judge Vianzon. The Court finds that the omission of the administrative cases against Judge Vianzon is not fatal to respondents' petition. Ultimately, what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and party-litigant by a party who asks different courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the

process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[34] The administrative cases against Judge Vianzon pending before the Office of the Court Administrator will not affect the outcome of the civil case a quo.

Finally, on the alleged failure to attach an affidavit of service, the Court defers to the finding of the Court of Appeals that an affidavit of service was "attached to the petition stating that copies thereof were sent to respondents by registered mail on January 14, 2003, as evidenced by registry receipts nos. 494 and 495."[35]

WHEREFORE, the instant petition is DENIED for lack of merit and the challenged Decision of the Court of Appeals of 10 June 2004 and Resolution of 7 April 2005 in CA-G.R. SP No. 74874 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

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[1]Rollo, pp. 37-46. Penned by Associate Justice Marina L. Buzon, with Associate Justices Amelita G. Tolentino and Vicente E. Veloso, concurring.

[2]Id. at 30-35.

[3]Presided by Judge Benjamin T. Vianzon.

[4]Rollo, p. 144.

[5]CA rollo, p. 50.

[6]Docketed as Administrative Case No. 2002-1.

[7]Rollo, p. 75.

[8]Order dated 30 September 2002.

[9]CA rollo, p. 61.

[10]Id. at 49.

[11]Id. at 61.

[12]Id. at 69.

[13]Id. at 50.

[14]Rollo, p. 44.

[15]Id. at 44.

[16]Id. at 44-45.

[17]Id. at 45-46.

[18]Id. at 30-35. Resolution dated 07 April 2005.

[19]Rollo, pp. 15-18.

[20]Id. at 19-25.

[21]Id. at 126-134.

[22]Id. at 136-138.

[23]Sec. 5. Preliminary injunction not granted without notice; exception.

No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.(Emphasis supplied.)

(The original provision where the term "ex parte" described the nature of a judge's issuance of a 20-day TRO was deleted pursuant to an amendment made by the Court en banc in its Resolution in Bar Matter No. 803 of 17 February 1998, Mendoza v. Ubiadas, 462 Phil. 632, 647 (2003).

[24]Id.

[25]ADMINISTRATIVE CIRCULAR NO. 20-95, September 12, 1995

TO: COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL

COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS, SHARI'A CIRCUIT COURTS AND ALL MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES

x x x x

3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge.

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[26]Merontos Vda. De Sayson v. Judge Zerna, 414 Phil. 705, 712 (2001).

[27]Borja v. Judge Salcedo, 458 Phil. 712, 724 (2003), citing Abundo v. Judge Manio, Jr., A.M. No. RTJ-98-1416, 6 August 1999, 312 SCRA 1.

[28]Dojillo v. Commission on Elections, G.R. No. 166542, 25 July 2006, 496 SCRA 484, 503.

[29]Re: Complaint Against Justice Elvi John S. Asuncion of the Court of Appeals, A.M. No. 06-6-8-CA, Atty. Roberto C. Padilla, Complainant, v. Associate Justice Elvi John S. Asuncion, Court of Appeals, A.M. No. 06-44-CA-J, 20 March 2007.

[30]RULES OF COURT, Rule 58, Sec. 4.

[31]CA rollo, p. 201.

[32]Id. at 208. Judge Remigio M. Escalada, Jr. is the new judge hearing the case.

[33]J. Y. FERIA & M.C. S. NOCHE, 2 CIVIL PROCEDURE ANNOTATED, 473 (2001).

[34]Borromeo v. CA, 325 Phil. 335 (1996).

[35]Rollo, p. 35.

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