

**MICHELLE I. PINEDA, PETITIONER, VS. COURT OF APPEALS
(FORMER NINTH DIVISION) AND THE DEPARTMENT OF EDUCATION,
REPRESENTED BY ASSISTANT SECRETARY CAMILO MIGUEL M.
MONTESA, RESPON...**

G.R. No. 181643. November 17, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari under Rule 65 filed by petitioner Michelle I. Pineda (Pineda) seeking to annul and set aside the June 15, 2007 Decision of the Court of Appeals[1] (CA), which reversed the March 14, 2005 Order of the Regional Trial Court, Branch 153, Pasig City (RTC) directing the issuance of a Writ of Preliminary Mandatory Injunction enjoining respondent Department of Education (DepEd) from enforcing its decision to cancel a 5-year lease of the school canteen.

It appears from the records that on May 14, 2004, Pineda entered into a Memorandum of Agreement (May-MOA)[2] with Lakandula High School (LHS) represented by its principal, Dr. Alice B. Blas (Dr. Blas), for a five-year lease of the school canteen with a monthly rental of P20,000.00 and an additional P4,000.00 monthly for the school's feeding program as well as medicines for the school clinic. Thereafter, Pineda renovated the canteen and equipped it with new utensils, tables, chairs, and electric fans.[3]

On August 5, 2004, the faculty and personnel of LHS sent a letter to the Division School Superintendent, Dr. Ma. Luisa Quiñones (Dr. Quiñones), questioning the validity of the May-MOA.[4] Dr. Blas sent a letter-reply on September 17, 2004 and an exchange of correspondence followed.[5] Meanwhile, on August 14, 2004, Pineda and Dr. Blas executed another MOA (August-MOA)[6] superseding the May-MOA. This time, the August-MOA followed the standard form under Department Order No. 95, Series of 1998[7] or the "Revised Implementing Guidelines for the Turnover of School Canteens to Teachers Cooperatives."

In this regard, on October 20, 2004, Assistant Schools Division Superintendent Isabelita M. Santos (Ms. Santos) and Administrative Officer Vicente N. Macarubbo (Mr. Macarubbo) wrote a letter to Dr. Quiñones relaying their observations on the controversy and recommending that their findings "be submitted to the DepEd - Central Office for its final word on the matter." [8] Ms. Santos and Mr. Macarubbo were of the view that Dr. Blas did not violate any rule in executing the August-MOA. They even found the lease to Pineda beneficial to the school. Thus, Dr. Quiñones wrote the DepEd seeking its decision on the matter.

On February 11, 2005, respondent DepEd, through Undersecretary Jose Luis Martin C. Gascon (Usec. Gascon), declared the August-MOA "null and void ab initio" and ordered it "cancelled." Pineda was also ordered to "cease and desist" from further managing and operating the canteen. DepEd made clear that the management and operation of the canteen should revert to the Home Economics Department of the School.[9] This prompted Pineda to file a petition for certiorari with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction before the RTC.

On March 14, 2005, the RTC ordered the issuance of a Writ of Preliminary Mandatory Injunction enjoining the enforcement of Usec. Gascon's decision.[10] DepEd, represented by Usec. Gascon, Dr. Quiñones and Ms. Olympiada Camilo (Ms. Camilo), who succeeded Dr. Blas as School Principal, sought the dismissal of Pineda's petition before the RTC on the ground that the latter failed to state a cause of action. On June 7, 2005, the trial court denied its motion.[11] For said reason, DepEd, this time represented by Assistant Secretary Camilo Miguel M. Montesa (Asec. Montesa), filed a petition for certiorari before the CA seeking to set aside the March 14, 2005 and June 7, 2005 orders of the RTC.

The CA affirmed the June 7, 2005 order of the RTC denying DepEd's motion to dismiss but reversed its March 14, 2005 order granting the issuance of the Writ of Preliminary Mandatory Injunction. According to the CA, DepEd's order cancelling the August-MOA had already been partially implemented as Pineda herself recognized such fact in her amended petition before the RTC. In effect, this was the status quo. In addition, the CA held that Pineda appeared to have no clear or unmistakable right to be protected since the MOA that granted her the right to operate the school canteen was, in fact, invalidated by the DepEd for not being sanctioned by its existing rules and regulations. Finally, the CA also held that there was no pressing necessity to avoid injurious consequences which would warrant the issuance of the injunctive writ as the purported damage to Pineda, if she would not able to operate the canteen, was readily quantifiable.[12]

Hence, Pineda filed this petition for certiorari relying on the following

GROUND:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN INSTEAD OF DISMISSING THE PETITION FILED BY RESPONDENT DEPARTMENT OF EDUCATION THROUGH ASSISTANT SECRETARY CAMILO MIGUEL M. MONTESA, IT GAVE DUE COURSE TO IT, NOTWITHSTANDING THE GLARING FACT THAT IT WAS NOT A PARTY AT ALL IN SCA NO. 2797, HENCE, WITH NO LOCUS STANDI.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS OUTRIGHT THE PETITION SINCE NO MOTION FOR RECONSIDERATION WAS FILED FROM THE ORDERS DATED MARCH 14, 2005, GRANTING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER AND THE ORDER DATED JUNE 7, 2005, DENYING RESPONDENTS' (USEC JOSE LUIS MARTIN C. GASCON, SUPT. MA. LUISA QUINONES AND OLYMPIADA CAMILO) MOTION TO DISMISS, IN MANIFEST VIOLATION OF SECTION 4, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.

III

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DISSOLVED THE WRIT OF INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT BRANCH 153, PASIG CITY, IN SCA NO. 2797, THEREBY UNJUSTIFIABLY INTERFERING WITH THE LOWER COURT'S DISCRETION IN ISSUING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER WHO HAS A CLEAR AND UNMISTAKABLE LEGAL RIGHT TO BE AFFORDED THIS REMEDY AND CONSIDERING THAT RESPONDENTS DID NOT FILE A MOTION TO DISSOLVE BOND WITH THE TRIAL COURT OR AT LEAST FILED AFFIDAVITS IN SUPPORT OF THEIR OPPOSITION.[13]

On November 18, 2009, after the parties had filed their respective pleadings, the Court gave due course to the petition and ordered the parties to submit their respective memoranda.[14]

On the first ground, Pineda argues that the CA gravely abused its discretion in entertaining the petition for certiorari of DepEd considering that Asec. Montesa was not the proper party to file the petition. She adds that, even assuming that DepEd had the locus standi to file said petition before the CA, Asec. Montesa was not duly authorized to do so.

The Court cannot accommodate the view of Pineda.

In her petition for certiorari before the RTC, Pineda impleaded Usec. Gascon, Dr. Quiñones and Ms. Camilo in their official capacities as Undersecretary of DepEd, Division Superintendent and Principal of Lakandula High School, respectively. Although the petition mentioned that Usec. Gascon was merely a nominal party, it stated therein that Dr. Quiñones and Ms. Camilo were being sued for "having been tasked to immediately carry out" his order of February 11, 2005. The Court is of the view that DepEd was the proper party and Usec. Gascon, Dr. Quiñones and Ms. Camilo were just its representatives. Thus, they were sued in their official capacities.

A review of Usec. Gascon's order discloses that the cancellation of Pineda's August-MOA was pursuant to DepEd's existing guidelines on the turn over of school canteens to teachers' cooperatives, laid out in Department Order No. 95, series of 1998. He was simply applying a DepEd policy when he ordered the August-MOA cancelled. So, what was actually being assailed by Pineda in her petition before the RTC was the implementation of DepEd's existing guidelines with the nullification of the August-MOA entered into by Dr. Blas, then principal of LHS.[15] As Asec. Montesa merely took over the functions of Usec. Gascon, he is certainly authorized to institute the petition before the CA in order to advance and pursue the policies of his office - DepEd. Applying Rule 3, Section 2 of the Revised Rules of Court, DepEd is the real party in interest for it will surely be affected, favorably or unfavorably, by the final resolution of the case before the RTC.

Thus, it would be absurd not to recognize the legal standing of Asec. Montesa, as representative of DepEd, but consider Dr. Quiñones and Ms. Camilo as the proper parties when they were merely tasked to implement a directive emanating from a superior official (Asec. Montesa) of the DepEd.

On the second ground, Pineda questions DepEd's failure to move for reconsideration before going to the CA on certiorari.

The general rule is that a motion for reconsideration is a condition sine qua non before a petition for certiorari may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.[16] There are, however, recognized exceptions permitting a resort to the special civil action for certiorari without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*,[17] it was written:

The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court a quo had no jurisdiction; where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were ex parte or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is

involved.[18] (underscoring supplied)

As previously discussed, the present case concerns the implementation or application of a DepEd policy which had been enjoined by the RTC. Certainly, there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the government. Moreover, the subject matter of the case involves the operation of the canteen of a public secondary school. This is of public interest for it affects the welfare of the students, thus, justifying the relaxation of the settled rule.

Still on the second ground, Pineda points out that the March 14, 2005 Order of the RTC was received by the DepEd on March 16, 2005 and the latter filed its petition before the CA on June 28, 2005, which was beyond the sixty (60)-day reglementary period. Going over DepEd's petition before the CA, it appears that DepEd reckoned the 60-day period from June 28, 2005, the date of its receipt of the June 7, 2005 Order of the RTC. Pineda's Comment and Memorandum, however, did not raise this procedural lapse as an issue. Instead, Pineda put forth her own arguments in support of the two RTC orders.

The rule in pleadings and practice is that that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[19] Thus, it is too late in the day for Pineda to question the procedural lapse.

At any rate, the Court finds no cogent reason for the reversal and setting aside by the CA of the writ of preliminary mandatory injunction issued by the RTC. The very writ of preliminary injunction set aside by the CA could no longer lie for the acts sought to be enjoined had already been accomplished or consummated.[20] The DepEd already prohibited Pineda from operating the school canteen. As correctly ruled by the CA in its questioned decision, since Pineda had ceased the operation of the school canteen since 2005, the RTC's preliminary writ should be set aside as there was nothing more to enjoin. The Court agrees with the CA when it explained:

A preliminary injunction is a provisional remedy that a party may resort to in order to preserve and protect certain rights and interests during the pendency of an action. Its sole objective is to preserve the status quo until the merits of the case can be heard fully.

Status quo is defined as the last actual, peaceful, and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case. Indubitably, the trial court must not make use of its injunctive relief to alter such status.

In the case at bench, the Decision of Undersecretary Gascon dated February 11, 2005, ordering Pineda to cease and desist from operating and managing the school canteen and to revert the management thereof to the Home Economics Department and to the Principal, has already been partially implemented. This is evident from the allegations of Pineda in her amended petition, to wit:

"Earlier, in the dawn of same date, 22 February 2004 (should be 2005), the guards of Lakandula High School, taking strict orders from respondents Mrs. Camilo and Dr. Quiñones who immediately executed the assailed illegal decision from the respondent undersecretary, prevented the canteen workers from entering the school and the delivery of softdrinks such as Pop Cola to the petitioner. On the same date, more canteens sprouted, in addition to those found in the H.E. and dressmaking rooms, operated by the teachers, under the guise that they were doing service to the students in the meantime that the canteen was closed. x x x." [21]

Finally, while the grant or denial of a preliminary injunction is discretionary on the part of the trial court, grave abuse of discretion is committed when it does not maintain the status quo which is the last actual, peaceable and uncontested status which preceded the actual controversy. If there is such a commission, it is correctible through a writ of certiorari.[22] In this case, the status quo ante litem or the state of affairs existing at the time of the filing

of the case was that Pineda was already prohibited from operating the school canteen. For said reason, the trial court cannot make use of its injunctive power to change said status.[23]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 55-71. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Enrico A. Lanzanas, concurring.

[2] Id. at 125.

[3] Id. at 56.

[4] Id. at 136.

[5] Petition, id. at 10.

[6] Id. at 137.

[7] Id. at 127.

[8] Id. at 143.

[9] Id. at 145.

[10] Id. at 187.

[11] Id. at 191.

[12] Id. at 65-67.

[13] Id. at 28-30.

[14] Id. at 534.

[15] Republic Act No. 6655: "Sec. 7. Nationalization of Public Secondary Schools. - To effectively implement the system, the establishment, renaming, conversion, integration, separation, administration, supervision and control of all public secondary schools and public secondary school teachers and other personnel, including the payment of their salaries, allowances and other fringe benefits as well as those already provided by local governments are hereby vested in the Department of Education, Culture and Sports (now the Department of Education)."

[16] Domdom v. Sandiganbayan, G.R. Nos. 182382-83, February 24, 2010.

[17] Id.

[18] Id.

[19] Toshiba Information Equipment (Phils.), Inc. v. CIR, G.R. No. 157594, March 9, 2010; citing Director of Lands v. CA, 363 Phil 117, 128 (1999).

[20] Caneland Sugar Corporation v. Alon, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 33.

[21] Rollo, p. 65.

[22] Overseas Workers Welfare Administration v. Chavez, G.R. Nos. 169802, June 8, 2007, 524 SCRA 451, 471-472.

[23] Id.

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