

JOSE T. BARBIETO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS; MARY RAWNSLE V. LOPEZ, GRAFT INVESTIGATION AND PROSECUTION OFFICER II; EULOGIO S. CECILIO, DIRECTOR; EMILIO A. ...

G.R. No. 184645. October 30, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Certiorari under Rule 65 of the Revised Rules of Court assails the Resolutions dated 6 August 2008[1] and 22 September 2008[2] of the Court of Appeals in CA-G.R. SP. No. 102874, denying the prayer of petitioner Major General Jose T. Barbieto (Maj. Gen. Barbieto) for a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin his arrest and confinement, and/or lift the preventive suspension order issued by the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices (ODO-MOLEO) and the warrant of arrest and confinement issued by Lieutenant General Alexander B. Yano (Lt. Gen. Yano), Commanding General (CG) of the Philippine Army (PA).

Facts of the Case

Maj. Gen. Barbieto is the Division Commander of the 4th Infantry Division, PA, Camp Edilberto Evangelista, Cagayan de Oro City.

Several Complaint-Affidavits were filed before the ODO-MOLEO by various personnel of the 4th Infantry Division, PA, against Maj. Gen. Barbieto and his alleged bagman Staff Sergeant Roseller A. Echipare (S/Sgt. Echipare), charging the latter two with grave misconduct and violation of Republic Act No. 6713. Maj. Gen. Barbieto and S/Sgt. Echipare, for allegedly committed the following: (a) extortion of amounts ranging from P25,000.00 to P30,000.00 from applicants in order to guarantee their enlistment in the Philippine Army; (b) extortion of money from soldiers seeking reinstatement, in exchange for Maj. Gen. Barbieto's approval of their reinstatement, despite previous disapproval of said soldiers' requests for reinstatement by the 4th Infantry Division Reinstatement Board; and (c) anomalies in the clearing of payroll of the Balik Baril program fund of the Armed Forces of the Philippines (AFP). The administrative case against Maj. Gen. Barbieto and S/Sgt. Echipare was docketed as OMB-P-A-08-0201-B, and the criminal case was docketed as OMB-P-C-08-0204-B.[3]

On 29 February 2008, ODO-MOLEO ordered[4] the preventive suspension of Maj. Gen. Barbieto and S/Sgt. Echipare for six months during the pendency of OMB-P-A-08-0201-B, the administrative case, thus:

WHEREFORE in accordance with Section 24 of Republic Act 6770 and Section 9 Rule III of Administrative Order No. 7 respondents MAJOR GENERAL JOSE T. BARBIETO and SSGT ROSELLER A. ECHEPARE are hereby PREVENTIVELY SUSPENDED during the pendency of this case until its termination, but not to exceed the total period of six (6) months, without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.

In accordance with Section 27, paragraph (1) of Republic Act 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.

The Chief of Staff GENERAL HERMOGENES ESPERON of the Armed Forces of the Philippines is hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

Maj. Gen. Barbieto filed a Motion for Reconsideration[5] of the foregoing Order.

Simultaneous with the proceedings before the ODO-MOLEO, the Army Investigator General (AIG) was also conducting an investigation on the same charges against Maj. Gen. Barbieto and S/Sgt. Echipare. The AIG recommended, and Lt. Gen. Yano, as CG-PA, approved, the indictment of Maj. Gen. Barbieto for violations of Articles 55 (Officer Making Unlawful Enlistment), 96 (Conduct Unbecoming of an Officer and a Gentleman), and 97 (Conduct Prejudicial to Good Order and Military Discipline); and of S/Sgt. Echipare for violations of Articles 96 and 97, all of the Articles of War.[6]

On 20 February 2008, Maj. Gen. Barbieto's 10-day leave of absence took effect to pave the way for an impartial investigation. On even date, S/Sgt. Echipare was arrested and confined at the Intelligence and Security Group Compound, Fort Bonifacio, Taguig City.[7]

Lt. Gen. Yano subsequently issued on 13 March 2008 an Order for the "Arrest and Confinement of Major General Barbieto AFP and SSG Echipare PA," directing the Commander of the Headquarters and Headquarters Support Group (HHSG), PA, "to arrest and take responsibility of Major General Barbieto and SSG Echipare PA x x x and to restrict them to quarters pending investigation with the end view of a General Court Martial Trial." [8] Pursuant to this Order of Arrest, Maj. Gen. Barbieto was arrested and confined to cluster officer housing, while S/Sgt. Echipare was transferred to and detained at the Custodial Management Unit (CMU), HHSG, PA, on 18 March 2008.[9]

On 10 April 2008, the Office of the Army Judge Advocate (OAJA), concurring in the findings of the Pre-Trial Investigation Panel, recommended the immediate trial of Maj. Gen. Barbieto and S/Sgt. Echipare before the General Court Martial and the endorsement of the case to the AFP General Headquarters for the conduct of General Court Martial Proceedings.[10]

Without waiting for the resolution by the ODO-MOLEO of his Motion for Reconsideration of the preventive suspension order issued against him in OMB-P-A-08-0201-B, Maj. Gen. Barbieto filed before the Court of Appeals a Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction,[11] docketed as CA-G.R. SP. No. 102874. Maj. Gen. Barbieto specifically prayed for: (1) the issuance of a TRO enjoining respondents Mary Rawnsle V. Lopez (Lopez), Graft Investigation and Prosecution Officer II; Eulogio S. Cecilio, Director; Emilio A. Gonzalez, Deputy Ombudsman for MOLEO; and Orlando C. Casimiro, Acting Ombudsman, to lift and hold in abeyance the preventive suspension order; and ordering Alexander B. Yano, Lieutenant General, Commanding General of the Philippine Army to nullify the warrant of arrest and confinement of petitioner; (2) the setting of a hearing on the preliminary injunction; and (3) after hearing on the preliminary injunction, the issuance of an order granting the injunction and making the injunction permanent, and such other and further relief as the appellate court may deem just and equitable in the premises.[12]

On 4 April 2008, the Court of Appeals directed respondents to submit, within 10 days, their comment stating the reasons or justifications why the TRO and/or writ of preliminary injunction Maj. Gen. Barbieto prayed for should

not be issued.[13]

After the parties submitted all the required pleadings, the Court of Appeals issued a Resolution on 6 August 2008, denying Maj. Gen. Barbieto's prayer for a TRO and/or writ of preliminary injunction. The appellate court held:

After due consideration of the factual circumstances of the instant case, we find no compelling reason to issue an injunctive writ and/or temporary restraining order.

The surrounding facts underpinning [Maj. Gen. Barbieto]'s plea for the issuance of an injunctive relief are intimately related to and inextricably intertwined with the issues raised in the instant Petition for Certiorari.

Moreover, [Maj. Gen. Barbieto] failed to demonstrate extreme urgency, as well as great or irreparable injury that he may suffer while the instant Petition is pending adjudication. x x x.

x x x x

Here, [Maj. Gen. Barbieto] failed to at least show a clear and unmistakable right entitling him to the issuance of a writ of preliminary injunction and/or temporary restraining order.[14] (Emphasis supplied.)

The dispositive portion of the Resolution reads:

WHEREFORE, [Maj. Gen. Barbieto]'s prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is hereby DENIED.[15]

Maj. Gen. Barbieto moved for reconsideration of the aforementioned Resolution, but the Court of Appeals, in its Resolution[16] dated 22 September 2008, refused to do so. The appellate court stressed that before there could be a question of whether to grant or deny the prayer for a writ of preliminary injunction, Maj. Gen. Barbieto, at the onset, should have established in his pleadings the existence of the grounds enumerated in Section 3, Rule 58 of the Revised Rules of Court. It stood by its pronouncement in the earlier Resolution that Maj. Gen. Barbieto failed to demonstrate urgency, as well as great or irreparable injury that he may suffer while his Petition in CA-G.R. SP No. 102874 is pending adjudication; hence, the necessity of a hearing did not even arise. The Court of Appeals further reasoned that it could properly deny Maj. Gen. Barbieto's prayer for preliminary injunctive relief since, being an ancillary remedy, the grant of the same, which would result in a premature resolution of the case, or will grant the principal objectives of the parties, before the merits could be passed, is proscribed.

The Court of Appeals decreed in its 22 September 2008 Resolution:

In fine, [Maj. Gen. Barbieto]'s Motion for Reconsideration proffers no substantial issue which may warrant reversal of the assailed Resolution.

WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.[17]

Hence, Maj. Gen. Barbieto filed the instant Petition before this Court, raising the following issues:

- THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S PRAYER FOR INJUNCTIVE RELIEF WITHOUT HEARING IN VIOLATION OF HIS RIGHT TO PROCEDURAL DUE PROCESS OF LAW.
- THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER FAILED TO DEMONSTRATE EXTREME URGENCY AS WELL AS GREAT OR IRREPARABLE INJURY THAT HE MAY SUFFER THAT SHOULD MERIT THE GRANT OF INJUNCTIVE RELIEF.
- THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER MAY BE FURTHER DEPRIVED OF THE PRIMORDIAL RIGHT TO LIBERTY GUARANTEED IN THE CONSTITUTION BY A MERE PROCEDURAL CONSIDERATION THAT THE INJUNCTIVE RELIEF IS INEXTRICABLY INTERTWINED WITH THE ISSUES RAISED IN THE PETITION.

During the pendency of the present Petition, an Order,[18] prepared by respondent Lopez on 27 March 2008, but approved by Ombudsman Merceditas N. Gutierrez only on 7 November 2008, denied Maj. Gen. Barbieto's Motion for Reconsideration of the preventive suspension order previously issued against Maj. Gen. Barbieto and S/Sgt. Echipare in OMB-P-A-08-0201-B. The Order cited the power of the Office of the Ombudsman to preventively suspend any public officer under Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, provided that the essential requisites under Section 24 thereof are present. The Order pointed out that this power of the Office of the Ombudsman had long been respected by the Supreme Court.

Maj. Gen. Barbieto's claim that he was denied his constitutional right to due process was rejected in this latest Ombudsman Order, because:

The above-concept [of due process] is not a fixed or static one, as clearly acknowledged. What is due process of the law depends on circumstances, it varies with the subject matter and necessities of the situation (Bernas, Joaquin. *The Constitution of the Republic of the Philippines*, p. 114).

Considering however, that this is an administrative case, the Supreme Court has recognized that there are two (2) types of preventive suspension. Preventive suspension as a preventive measure and suspension as penalty. x x x.

x x x x

In the instant case, it is clear that the suspension issued is a mere preliminary step and not a penalty. Thus, the strict adherence to the rudiments of notice and hearing need not be applied due to the immediate nature of the action.[19]

The same Ombudsman Order rebuffed Maj. Gen. Barbieto's contention that there was forum shopping, given the existence of two similar administrative cases against him: one, OMB-P-A-08-0201-B before the Office of the Ombudsman; and two, before the military tribunal. OMB-P-A-08-0201-B determines Maj. Gen. Barbieto's fitness as a public officer; whereas the pending administrative case before the Provost Marshall General, PA, determines his fitness and efficiency as a military officer.

Therefore, the ultimate ruling in said Ombudsman Order is as follows:

WHEREFORE, premises considered, the Motion for Reconsideration dated 12 March 2008, is hereby DENIED for lack of merit. The Order dated 29 February 2008 is hereby AFFIRMED.[20]

Arguments of the Parties

Maj. Gen. Barbieto avers in the Petition[21] at bar that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his prayer for preliminary injunctive relief without hearing, in violation of his right to procedural due process of law; in finding that he failed to demonstrate extreme urgency, as well as great or irreparable injury that he may suffer from respondents' acts, which would have merited the grant of a TRO and/or writ of preliminary injunction; and in ruling that the preliminary injunctive relief prayed for is inextricably intertwined with the issues raised in his Petition in CA-G.R. SP No. 102874.

Maj. Gen. Barbieto insists that his right to procedural due process was violated by the Court of Appeals when said court denied his prayer for a TRO and/or writ of preliminary injunction without a hearing. Maj. Gen. Barbieto invoked Supreme Court Administrative Circular No. 20-95, which provides that "an application for TRO shall be

acted upon only after all parties are heard in a summary hearing x x x." [22]

Maj. Gen. Barbieto further argues that all elements to warrant the grant of a writ of preliminary injunction are present in this case. His preventive suspension, merely a step in the administrative investigation against him, had already expired on 28 August 2008, and yet, he remains to be under arrest and confinement. Maj. Gen. Barbieto stresses that the urgent need for the issuance of a TRO and/or writ of preliminary injunction by the Court of Appeals is evident from the fact that he is being continuously deprived of his right to liberty.

The Office of the Ombudsman counters that Maj. Gen. Barbieto's reliance on Administrative Circular No. 20-95 is misplaced, for the same applies to trial courts only. Referring to Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals, the Office of the Ombudsman posits that procedural due process has been satisfied by the appellate court when the latter issued a resolution requiring the party, whose act was sought to be enjoined, to file a comment on the application for a TRO. The denial by the Court of Appeals of Maj. Gen. Barbieto's prayer for preliminary injunctive relief was grounded on both legal and logical considerations. The grant of the ancillary remedy of TRO and/or writ of preliminary injunction would have resulted in a premature resolution of the main case of certiorari in CA-G.R. SP No. 102874 before the merits of the latter could be passed upon.

The Office of the Ombudsman contends, likewise, that the expiration of Maj. Gen. Barbieto's six-month preventive suspension on 28 August 2008 renders the issue on the propriety of such suspension moot and academic. There is nothing more that an injunctive relief could seek to enjoin. Maj. Gen. Barbieto's continued confinement is no longer due to the preventive suspension order of the Ombudsman, but pursuant to Lt. Gen. Yano's Order of Arrest.

Lastly, the Office of the Ombudsman maintains that none of the requisites for the issuance of a TRO and/or writ of preliminary injunction exists in the instant case. Maj. Gen. Barbieto's proper recourse is to just await the resolution of his Petition for Certiorari in CA-G.R. SP No. 102874 still pending before the Court of Appeals, which involved the issue of the legality of his continued confinement.

Lt. Gen. Yano substantially joins in and/or adopts the arguments of the Office of the Ombudsman. He additionally asserts that there is no reason to enjoin the enforcement of the Order of Arrest against Maj. Gen. Barbieto, citing his authority as CG-PA to issue the same, pursuant to the Articles of War.

The Ruling of the Court

At the onset, the Court must clarify that Maj. Gen. Barbieto is actually seeking a TRO and/or a writ of preliminary injunction to enjoin the implementation of two distinct orders, issued by two different persons, in two separate proceedings: (1) the preventive suspension order issued by the ODO-MOLEO in OMB-P-A-08-0201-B; and (2) the Order of Arrest issued by Lt. Gen. Yano as CG-PA in view of the impending General Court Martial Trial.

The preventive suspension order issued by the ODO-MOLEO merely suspended Maj. Gen. Barbieto from his office for six months, pending the administrative proceedings against the latter. [23] There is nothing in said preventive suspension order of the ODO-MOLEO that directed Maj. Gen. Barbieto's arrest. His arrest and continued confinement is solely by virtue of Lt. Gen. Yano's Order.

The Court takes note of the undisputed fact that Maj. Gen. Barbieto's six-month suspension, imposed by the ODO-MOLEO in an Order dated 28 February 2008 in OMB-P-A-08-0201-B, already expired on 28 August 2008. Such an event necessarily renders this Petition moot and academic, insofar as the latter pertains to the said preventive suspension order issued by the ODO-MOLEO against Maj. Gen. Barbieto. Any ruling by this Court, whether affirming or reversing the denial by the appellate court of Maj. Gen. Barbieto's prayer for issuance of a TRO and/or writ of preliminary injunction to enjoin the implementation of said preventive suspension order, will

no longer serve any practical purpose, because the act sought to be enjoined has long been consummated.[24]

Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.[25] Where the issue has become moot and academic, there is no actual substantial relief to which Maj. Gen. Barbieto would be entitled and which would be negated by the dismissal of his Petition as regards the preventive suspension order of the ODO-MOLEO.[26]

Similarly, the Court finds the present Petition, insofar as it concerns Lt. Gen. Yano's Order of Arrest against Maj. Gen. Barbieto, dismissible for lack of merit.

Sine dubio, the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[27]

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[28] The Court of Appeals did not gravely abuse its discretion in refusing to issue a TRO and/or writ of preliminary injunction to enjoin the enforcement of Lt. Gen. Yano's Order of Arrest against Maj. Gen. Barbieto.

Maj. Gen. Barbieto cannot rely on Supreme Court Administrative Circular No. 20-95, providing special rules for temporary restraining orders and preliminary injunctions, to support his claim that he was denied due process when the Court of Appeals denied his prayer for the issuance of a TRO and/or writ of preliminary injunction without first conducting a summary hearing.

The whole text of said Administrative Circular is reproduced below:

1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such compliant or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.
2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.
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.
4. With the exception of the provisions which necessarily involve multiple-sala stations, these rules shall apply to single-sala stations especially with regard to immediate notice to all parties of all applications for TRO.

For immediate compliance. (Emphases ours.)

Maj. Gen. Barbieto overlooked that Supreme Court Administrative Circular No. 20-95 pertains to applications for TROs and/or writs of preliminary injunctions filed before trial courts, whether multi-sala or single-sala.

The Court of Appeals has its own Internal Rules.

Section 2, Rule IV of the 2002 Internal Rules of the Court of Appeals provides the following procedure in the case of a petition involving an urgent matter, such as an application for a TRO:

Sec. 2. Action by the Presiding Justice. -When a petition involves an urgent matter, such as an application for writ of habeas corpus or temporary restraining order, and there is no way of convening the Raffle Committee or calling any of its members, the Presiding Justice may conduct the raffle or act on the petition, subject to raffle on the next working day in accordance with Rule III hereof. (Emphasis ours.)

Noticeably, under the aforementioned circumstances, the Presiding Justice of the Court of Appeals may even, by himself, act on an urgent application for a TRO. There is no mention at all of the requirement that the Presiding Justice must hold a summary hearing prior to granting or denying such an application.

As for a preliminary injunction, Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals lays down the following procedure:

Sec. 4. Hearing on Preliminary Injunction.-- The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him to comment on said application within a period of not more than ten (10) days from notice. Said party may attach to his comment documents which may show why the application for preliminary injunction should be denied. The Court may require the party seeking the injunctive relief to file his reply to the comment within five (5) days from receipt of the latter.

If the party sought to be enjoined fails to file his comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes.

The preceding paragraphs, notwithstanding, the Court may, in its sound discretion, set the application for a preliminary injunction for hearing during which the parties may present their respective positions or submit evidence in support thereof. (Emphases ours.)

Based on the foregoing rule, the Court of Appeals clearly satisfied the requirement of a hearing when, in its Resolution dated 4 April 2008 in CA-G.R. SP No. 102874, it directed respondents to submit their comment on Maj. Gen. Barbieto's prayer for the issuance of a TRO and/or writ of preliminary injunction within ten days from notice.[29] While it is true that the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense, the Court has time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due process. What the law proscribes is the lack of opportunity to be heard.[30]

The last paragraph of Section 4, Rule VI of the 2002 Internal Rules of the Court of Appeals also proves false Maj. Gen. Barbieto's contention that the actual conduct of a hearing on an application for preliminary injunction is mandatory. Said rule explicitly states that the setting of a hearing on such an application is left to the sound discretion of the appellate court. Hence, it is not enough for Maj. Gen. Barbieto to show that no hearing on his application for TRO and/or preliminary injunction was conducted by the Court of Appeals, but he must also be able to convince this Court that the appellate court gravely abused its discretion in choosing not to conduct such a hearing. Maj. Gen. Barbieto likewise failed in this regard.

The Court, in *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*,^[31] provided the following elucidation on the general principles in issuing a writ of preliminary injunction:

A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.

At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages;"in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. x x x.

A writ of preliminary injunction may be granted only upon showing by the applicant of a clear and unmistakable right that is a right in esse. Maj. Gen. Barbieto claims that his right in esse that is being violated herein is his right to liberty.

Indeed, Section I, Article III of the 1987 Constitution, guarantees that no person may be deprived of life, liberty, or property without due process of law. Also, the Republic of the Philippines, as a signatory to the Universal Declaration of Human Rights (UDHR), recognizes that everyone has the right to liberty and security of one's person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.^[32]

Nevertheless, the right to liberty is not absolute. It bears to point out that while both the 1987 Constitution and the UDHR affirm the right of every person to liberty, they do concede that there are instances when a person must be deprived thereof for as long as due process of law has been observed.

Thus, Maj. Gen. Barbieto cannot just invoke herein his fundamental right to liberty; upon him also falls the burden of proving that he is being deprived of such right without due process.

To recall, Lt. Gen. Yano ordered Maj. Gen. Barbieto's arrest after the conduct of an investigation by and the recommendation of the AIG that Maj. Gen. Barbieto be charged before a court martial with violations of Articles 55 (Officer Making Unlawful Enlistment), 96 (Conduct Unbecoming of an Officer and Gentleman), and 97 (Conduct Prejudicial to Good Order and Military Discipline) of the Articles of War. Since Maj. Gen. Barbieto is being charged with serious offenses, Lt. Gen. Yano issued the Order of Arrest for the former under Article 70 of the Articles of War:

Art. 70. Arrest or Confinement. - Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article, shall thereby be restricted to his barracks, quarters or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who

escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court martial may direct. (Emphases ours.)

Now, is Lt. Gen. Yano's issuance of the Order of Arrest under the aforescribed circumstances violative of Maj. Gen. Barbieto's right to liberty and due process? The Court accords to Lt. Gen. Yano the presumption of good faith and regularity in the issuance of said Order of Arrest, having done the same in the course of the performance of his official duties. Other than this, the Court cannot make any more pronouncements on the matter. Suffice it to say that the need for a more extensive determination of said question, by itself, already negates Maj. Gen. Barbieto's insistence of a clear and well-established right that warrants the protection of a TRO and/or writ of preliminary injunction. Where the complainant's (or in this case, petitioner's) right is doubtful or disputed, injunction is not proper.[33]

The Court must limit itself in the Petition at bar to the issue on the non-issuance by the Court of Appeals of a TRO and/or writ of preliminary injunction to prevent the enforcement of Maj. Gen. Barbieto's arrest. It must be careful not to preempt the resolution by the Court of Appeals of Maj. Gen. Barbieto's Petition for Certiorari in CA-G.R. SP No. 102874, wherein the propriety of his arrest and continued confinement is one of the central issues.

The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial. Otherwise, there would be a prejudgment of the main case and a reversal of the rule on the burden of proof, since such issuance would assume the proposition that Maj. Gen. Barbieto is inceptively bound to prove.[34]

WHEREFORE, the instant Petition is DISMISSED. The Resolutions dated 6 August 2008 and 22 September 2008 of the Court of Appeals in CA-G.R. SP No. 102874 are AFFIRMED. The Court of Appeals is DIRECTED to resolve petitioner Maj. Gen. Jose T. Barbieto's Petition for Certiorari in CA-G.R. SP No. 102874 with dispatch. Costs against petitioner.

SO ORDERED.

Quisumbing,[*]Carpio, (Chairperson), Peralta, and Abad,**] JJ. concur.

[*] Per Special Order No. 755, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Leonardo A. Quisumbing to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave.

**] Per Special Order No. 753, dated 12 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., concurring; rollo, pp. 30-33.

[2] Rollo, pp. 23-25.

[3] Id. at 185-186.

[4] Id. at 131.

- [5] Id. at 187.
- [6] Id. at 45-75.
- [7] Id.
- [8] Id.
- [9] Id.
- [10] Id.
- [11] Id. at 187.
- [12] CA rollo, pp. 2-20.
- [13] Rollo, p. 182.
- [14] Id. at 32-33.
- [15] Id. at 33.
- [16] Id. at 23-25.
- [17] Id. at 25.
- [18] See Office of the Ombudsman's back-up file.
- [19] Id. at 3-4.
- [20] Id. at 6.
- [21] Rollo, pp. 3-18.
- [22] Paragraph (2) of Supreme Court Administrative Circular No. 20-95.
- [23] The authority of the ODO-MOLEO to suspend Maj. Gen. Barbieto is rooted in Section 24 of Republic Act No. 6770, which reads:
- SEC. 24. Preventive Suspension. -- The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.
- The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.
- [24] *Africa v. Sandiganbayan*, 350 Phil. 846, 857-858 (1998).
- [25] *Engaño v. Court of Appeals*, G.R. No. 156959, 27 June 2006, 493 SCRA 323, 329.
- [26] *Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654, 658 (1997).
- [27] *Cortez-Estrada v. Heirs of Domingo Samut*, 491 Phil. 458, 473-474 (2005).

[28] *Neri v. Senate Committee on Accountability of Public Officers and Investigations, Senate Committee on Trade and Commerce, and Senate Committee on National Defense and Security*, G.R. No. 180643, 25 March 2008, 549 SCRA 77, 131.

[29] *Rollo*, p. 182.

[30] *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305-306.

[31] G.R. No. 145742, 14 July 2005, 463 SCRA 358, 373-374.

[32] See *The Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 49-50.

[33] *Tayag v. Lacson*, G.R. No. 134971, 25 March 2004, 426 SCRA 282, 299.

[34] See *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, G.R. Nos. 147861 & 155252, 18 November 2005, 475 SCRA 426, 441.

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