

**GOVERNOR ENRIQUE T. GARCIA, JR., AURELIO C. ANGELES, JR.,
EMERLINDA S. TALENTO AND RODOLFO H. DE MESA, PETITIONERS,
VS. COURT OF APPEALS 12TH DIVISION, HON. MERCEDITAS
NAVARRO-G...**

G.R. No. 185132. April 24, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioners assail in this Rule 65 petition the November 14, 2008 Resolution[1] of the Court of Appeals (CA) holding in abeyance the resolution of their prayer for the issuance of a restraining order on the implementation of the Office of the Ombudsman's October 28, 2008 Order[2] for their preventive suspension.

Stripped of non-essentials, the controlling facts follow.

Sometime in 2004, the provincial government of Bataan caused the tax delinquency sale of the properties of Sunrise Paper Products Industries, Inc. (Sunrise). Without any other bidder at the public auction, the province acquired the immovables consisting of a paper plant with its machineries and equipment and the parcels of land where it is erected.[3] To annul the auction sale and to prevent the province from consolidating in its name the titles over the properties, Sunrise, on April 21, 2005, filed a petition for injunction docketed as Civil Case No. 8164 in the Regional Trial Court (RTC) of Bataan. Consequently, the other creditors of Sunrise intervened in the proceedings.[4]

During the pendency of the case, the province represented by the governor entered into a compromise agreement with Sunrise on June 14, 2005. On the same date, the Sangguniang Panlalawigan, through a unanimous resolution, approved the same.[5] Subsequently, the parties moved for the dismissal of the civil case, not on account of the settlement, but on the ground that the court did not acquire jurisdiction for failure of any of the parties to comply with Section 267[6] of Republic Act (R.A.) No. 7160, or the Local Government Code (LGC) of 1991.[7] Upon the same ground, the parties no longer sought judicial approval of the compromise agreement.[8]

However, the trial court refused to dismiss the case and, on June 15, 2007, rendered its Decision declaring, among others, that the auction sale was invalid, that the transfer certificates of titles in the name of the province were falsified, and that the compromise agreement executed by the parties was illegal.[9] In G.R. No. 181311, currently pending with this Court, the province questioned, among others, the said decision of the trial court. A status quo order restraining the implementation of the trial court's decision was issued by this Court in that case.[10]

Meanwhile, private respondents Josechito B. Gonzaga, Ruel A. Magsino and Alfredo B. Santos, utilizing the June 15, 2007 Decision of the trial court as basis, filed with the Office of the Ombudsman the January 22, 2008 Complaint-Affidavit[11] administratively and criminally charging, among others,[12] the petitioners with violation of Sections 3(e) and (g)[13] of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act,[14] falsification of public documents, serious illegal detention, malversation of public properties and funds, and

plunder.[15]

On October 28, 2008, the Ombudsman, in the administrative case docketed as OMB-L-A-08-0039-A, issued the Order[16] preventively suspending petitioners for six months. The decretal portion of the Order reads:

UNDER THE FOREGOING PREMISES, the prayer seeking for the preventive suspension of respondent public officials is PARTIALLY GRANTED. Pursuant to Section 24, Republic Act No. 6770, and Section 9, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, Series of 2003, GOVERNOR ENRIQUE T. GARCIA JR., ATTY. AURELIO C. ANGELES JR., EMERLINDA S. TALENTO, and RODOLFO H. DE MESA are hereby placed under PREVENTIVE SUSPENSION until the administrative adjudication on this case is terminated, but not to exceed six (6) months, WITHOUT PAY, except when the delay in the disposition of the case is due to the fault, negligence or petition of the respondents, in which case the period of such delay shall not be counted in computing the period of suspension.

Accordingly, The Secretary, Department of the Interior and Local Government, or his duly authorized representative is directed to implement this Order against GOVERNOR ENRIQUE T. GARCIA JR., ATTY. AURELIO C. ANGELES JR., EMERLINDA S. TALENTO, and RODOLFO H. DE MESA, and to thereafter notify this Office within five (5) days from receipt hereof of their compliance herewith.

All herein respondents are directed to file within the period of ten (10) days from receipt hereof, their counter-affidavits and the affidavit of their witness/es, if any, duly subscribed and sworn to before a notary public or any authorized officer, and such other controverting evidence, copy furnished the complainant.

This Order is immediately executory pursuant to Ombudsman Memorandum Circular No. 01, Series of 2006, in relation to paragraph 1, Section 27 of R.A. 6770, and Section 7, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended, and in accordance with the ruling in Ombudsman v. Court of Appeals.

Let it be known that refusal by any officer without just cause to comply with this Order shall be a ground for disciplinary action against said officer as provided in paragraph 3, Section 15 of R.A. 6770.

SO ORDERED.[17]

Questioning the preventive suspension and wary of the threatening and coercive nature of the Ombudsman's Order, petitioners, on November 10, 2008, filed with the CA the petition, docketed as CA-G.R. SP No. 106026, for certiorari, prohibition and mandamus with an urgent prayer for the issuance of an injunctive relief.[18]

On November 14, 2008, the appellate court issued the assailed Resolution,[19] which pertinently reads:

Without necessarily giving due course to the petition for certiorari, private respondents are hereby DIRECTED to file their COMMENT thereon, and not a motion to dismiss, within ten (10) days from notice hereof. Petitioners are given five (5) days from receipt of said comment within which to file reply.

Action on the injunctive relief prayed for is held in abeyance pending receipt of the pleadings ordered filed or until the period to file the same shall have lapsed.

SO ORDERED.[20]

Alarmed over the impending implementation of the Ombudsman's order and distraught with the apparent inaction of the appellate court, petitioners instituted the instant petition for certiorari, prohibition and mandamus with urgent prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. On November 19, 2008, the Court issued a TRO[21] enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the

Ombudsman until further orders from the Court.

The central question we need to address in this case is the correctness of the appellate court's holding in abeyance or deferment of action on petitioners' urgent prayer for the issuance of an injunctive relief.

It is well to remember that the petition filed with the CA, in which the ancillary remedy is sought, questions the very validity of the issuance of the Order for preventive suspension. The grounds raised by petitioners are of a serious nature, viz: the administrative charges involved acts committed in their previous term of office, the complaint-affidavit was not supported by evidence and was only based on the trial court's ruling which is still being reviewed by this Court, the trial court had no jurisdiction to issue the said ruling, and the issuance of the order was politically motivated. Let it be emphasized at this point that if it were established in the CA that the acts subject of the administrative complaint were indeed committed during petitioner Garcia's prior term, then, following settled jurisprudence, he can no longer be administratively charged. Further, if this Court, in G.R. No. 181311, reverses the trial court's ruling or nullifies it for want of jurisdiction then the complaint-affidavit of the private respondents will no longer have a leg to stand on. It was imperative, therefore, on the part of the appellate court, as soon as it was apprised of the said considerable grounds, to issue an injunctive relief so as not to render moot, nugatory and ineffectual the resolution of the issues in the certiorari petition. An injunctive relief is not intended to determine a controverted right, but is calculated to prevent a further perpetration of wrong or the doing of any act whereby the right in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party.[22]

In this case, for the CA to defer action on petitioners' application for an injunctive relief pending the filing of respondents' comment is to foreclose altogether the very remedy sought by petitioners when they questioned the alleged illegal preventive suspension. This is so, because the Ombudsman's Order is immediately effective and executory,[23] and the filing of the comment by all of the respondents will entail considerable time.

While we do not entirely blame the CA for being too cautious in not granting any injunctive relief without first considering the counter-arguments of the opposing parties, it would have been more prudent for it to have, at the very least, on account of the extreme urgency of the matter and the seriousness of the issues raised in the certiorari petition, issued a TRO while it awaits the respective comments of the respondents and while it judiciously contemplates on whether or not to issue a writ of preliminary injunction.[24] Verily, the basic purpose of the restraining order is to preserve the status quo until the hearing of the application for preliminary injunction.[25] It is a preservative remedy for the protection of substantive rights and interests.[26]

At this point we must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.[27]

Thus, as the appellate court failed dutifully and prudently to exercise its discretion, in violation of fundamental principles of law and the Rules of Court, its action is correctible by a certiorari writ from this Court. Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[28]

We therefore accept as correct petitioners' direct elevation to this Court via the petition for certiorari the CA's November 14, 2008 Resolution even if no motion for reconsideration was filed to afford the appellate court an opportunity to rectify its error. Under the circumstances obtaining in this case, the certiorari petition, and not a motion for reconsideration with the appellate court, is the plain, speedy and adequate remedy. Indeed, had they

not filed the petition, they would have been left with no avenue to protect their rights.[29]

While the general rule is that a motion for reconsideration is an indispensable condition before the filing of a petition for certiorari, the same admits of exceptions, namely: (1) where the order is a patent nullity, as where the court a quo has no jurisdiction; (2) where the questions raised in the certiorari proceedings 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; (3) where there is an urgent necessity for the resolution of the question and any further delay will prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where, under the circumstances, a motion for reconsideration will be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or public interest is involved.[30]

Without further belaboring the point, we find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioners are justified in straightforwardly seeking the intervention of this Court. Again, as we repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.[31]

We hasten to add at this juncture that the petitioners in bringing the matter before this Court as soon as the CA issued the assailed resolution have not violated the proscription on forum shopping. While the parties are the same in this petition and in that in the appellate court, the issues raised and the reliefs prayed for in the two fora are substantially different. To repeat, here, the petitioners question in the main the CA's deferment of action on the application for an injunctive relief. In their petition before the CA, however, they assail the very issuance of the order for their preventive suspension. Further, as well discussed above, this petition is their only remedy. Petitioners' prayer for relief in this petition is, just like in *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*,[32] a necessary consequence of the CA's inaction on their pleas.

We are cognizant that, apart from the propriety of the CA's deferment of action on the application for injunctive relief, there remains the question of the validity of the Ombudsman's order of preventive suspension which is yet to be resolved by the appellate court. The latter clearly involves factual issues. Since we are not a trier of facts, following our disposition in *Benguet Management Corporation v. Court of Appeals*,[33] we should remand this case to the CA for a speedy resolution on the merits.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The November 14, 2008 Resolution of the Court of Appeals insofar as it deferred action on the petitioners' application for injunctive relief should be **REVERSED** and **SET ASIDE**. The **TEMPORARY RESTRAINING ORDER** issued by the Court on November 19, 2008 enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the Ombudsman **STANDS** until further orders from the Court. The instant case is **REMANDED** to the Court of Appeals for determination on the merits.

SO ORDERED.

Ynares-Santiago, (Chairperson), and Chico-Nazario, JJ., concur.
Austria-Martinez, and Peralta, J., pls. see dissenting opinion

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo and Romeo F. Barza concurring, rollo, pp. 44-45

[2] Id. at 440-454.

[3] Id. at 20.

[4] Id. at 313.

[5] Id. at 321-322.

[6] Section 267 of the LGC reads in full:

"Section 267. Action Assailing Validity of Tax Sale.--No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

"Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."

[7] Approved on October 10, 1991 and became effective on January 1, 1992.

[8] Rollo, p. 21.

[9] Id. at 443.

[10] Id. at 21.

[11] Id. at 300-346.

[12] Impleaded as respondents in the complaint-affidavit are Governor Enrique T. Garcia, Jr., Provincial Legal Officer Aurelio C. Angeles, Jr., Provincial Administrator Rodolfo H. De Mesa, Provincial Treasurer Emerlinda S. Talento, Vice Governor Benjamin M. Alonzo, Sangguniang Panlalawigan Members Rodolfo S. Izon, Manuel N. Beltran, Edward C. Roman, Edgardo P. Calimbas, Rodolfo S. Salandanan, Dante R. Manalaysay, Orlando S. Miranda, Fernando C. Austria and Eduardo G. Florendo; Philippine National Police Regional Director Ismael R. Rafanan, Chief of Police Asterio B. Cumigad, Evelyn L. Miranda, Col. Fernando Vinculado (Ret.), Jose M. Carandang, and Eduardo T. Garcia.

[13] Section 3(e) and (g) of R.A. No. 3019 pertinently reads:

"Section 3. Corrupt practices of public officers.--In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

"x x x

"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or

other concessions.

"x x x x

"(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby."

"x x x x."

[14] Approved on August 17, 1960.

[15] Rollo, pp. 340-343.

[16] Supra note 2.

[17] Rollo, pp. 453-454.

[18] Id. at 24.

[19] Supra note 1.

[20] Id.

[21] Id. at 219-221.

[22] Laureta, Commentaries and Jurisprudence on Injunction, 1989 ed., p. 3, citing Kinlock Tel. Co. v. Local Union No. 21 B.E.W, 275 Fed. 241 and Triumph Electric Co. v. Thullen, 209 Fed. 938.

[23] See Gobenciong v. Court of Appeals, G.R. No. 159883, 168059, 173212, March 31, 2008, 550 SCRA 502, 522.

[24] Rule 58, Section 5 of the Rules of Court provides:

"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 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 (72) 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."

[25] *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 448 (2000).

[26] *Yusen Air and Sea Service Philippines, Inc. v. Villamor*, G.R. No. 154060, August 16, 2005, 467 SCRA 167, 171.

[27] *Joson III v. Court of Appeals*, G.R. No. 160652, February 13, 2006, 482 SCRA 360, 374.

[28] *Defensor-Santiago v. Guingona*, 359 Phil. 276, 304 (1998).

[29] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, 647.

[30] *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*, G.R. No. 171820, December 13, 2007, 540 SCRA 194, 210; *Star Paper Corporation v. Espiritu*, G.R. No. 154006, November 2, 2006, 506 SCRA 556, 564-565; *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 373; *Romy's Freight Service v. Castro*, G.R. No. 141637, June 8, 2006, 490 SCRA 160, 164.

[31] *Office of the Ombudsman v. Laja*, G.R. No. 169241, May 2, 2006, 488 SCRA 574, 581.

[32] *Supra* note 29.

[33] 458 Phil. 204 (2003).

DISSENTING OPINION

AUSTRIA-MARTINEZ, J.:

This refers to the Petition for Certiorari, Prohibition and Mandamus with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) assailing the Resolution dated November 14, 2008 of the Court of Appeals requiring respondents to comment and holding in abeyance action on the injunctive relief prayed for pending receipt of the pleadings ordered filed or until the period to file the same shall have elapsed.

In the Resolution dated November 19, 2008, the Court required respondents to file their comment and issued a TRO enjoining and prohibiting public respondents from implementing the questioned Order dated October 28, 2008 of the Office of the Ombudsman (OMB).

The OMB filed its Comment with Urgent Motion to Recall Temporary Restraining Order and Opposition to Petitioners' Application for the Issuance of Preliminary Injunction.

Private respondents likewise filed an Urgent Motion to Lift the Temporary Restraining Order and Comment Ex-Abundante Cautelam which are treated as their comment on the petition. Petitioner filed a Consolidated Opposition to respondents' Motions and Reply to the Comment.

The undersigned dissents from the majority opinion and votes to dismiss the Petition and grant respondents' Motions, on the following grounds:

- Petitioners' failure to file a motion for reconsideration (MR) with the Court of Appeals (CA). The reasons proffered for not filing said MR, i.e., the obviously extreme urgency since the preventive suspension order is immediately executory, and there are special circumstances like public unrest and great risk of violence erupting, are not meritorious. Filing an MR with the CA is the more adequate remedy in the ordinary course of law; and, in effect, herein petition constitutes forum shopping.

- The CA's deferment of action on the prayer for TRO and/or preliminary injunction is not grave abuse of discretion because the Rules of Court provide as a general rule that preliminary injunction shall not issue without hearing. The issuance of a TRO is an exception to the general rule and may issue only if it appears that great or irreparable injury would be suffered by the applicant before the matter can be heard on notice (Sections 4 and 5, Rule 58). Apparently, the CA did not see any great or irreparable injury that petitioners would suffer, considering that preventive suspension is not a penalty;

- Moreover, without preempting the CA resolution on the issuance of a TRO or WPI as well as its decision on petitioners' allegation of "patent illegality" of the Ombudsman's Order for preventive suspension, the arguments of petitioners are not convincing enough.

Petitioners cite Gov. Manuel M. Lapid v. Court of Appeals (G.R. No. 142261, June 29, 2000, 334 SCRA 738), where the Court ordered the immediate reinstatement of Gov. Lapid when the order for his one-year suspension was immediately executed, and ordered the CA to resolve Lapid's case on the merits with dispatch. Petitioners aver that the facts of said case are analogous to the present one, hence, as in Lapid, the Court should also give due course to the present petition.

However, the issue involved in Lapid is totally different from this case. In Lapid, what was being enjoined was the execution of the administrative penalty of one-year suspension. The reason for the Court's order therein to stop the execution of the Ombudsman's Order of suspension was that there is no law stating that the penalty imposed by the Ombudsman was among those listed as final and unappealable. In this case, the suspension is merely preventive and not meant as a penalty, and Section 27 of the Ombudsman Act provides that such provisional order is immediately effective and executory.

- It also appears that facts indicating petitioners' intent to commit fraud, for which they are being charged, only became established when the RTC issued in June 2007 (after petitioner Garcia had been re-elected during the May 2007 elections) the decision in the civil case from which the administrative charges arose; and

- The CA cannot be faulted for deferring action on the prayer for issuance of a TRO. There are many factual issues involved in this case which are vital to the determination of whether there are sufficient grounds for the issuance of a TRO; and whether Garcia v. Mojica (G.R. No. 139043, September 10, 1999, 314 SCRA 207), relied upon by public respondents, is applicable. Thus, in the spirit of fair play, the CA did not commit grave abuse of discretion when it resolved to defer acting on the prayer for the issuance of a TRO.

DISSENTING OPINION

PERALTA, J.:

I beg to differ from the Resolution of the majority.

The issue presented before us is not a novelty that would otherwise require a groundbreaking yet unfamiliar approach. Whether the Court of Appeals' deferment of action on petitioners' prayer for a temporary restraining order (TRO) demonstrates an error so grave as to constitute a capricious and arbitrary abuse of discretion, may be

addressed by applying the most plain and simple principles of procedure.

I begin with my observation that the instant petition is infirm as it exemplifies a deliberate act of forum shopping. While indeed a superficial consideration of this case would reveal that petitioners are seeking to avail different remedies before this Court and the Court of Appeals (CA), a deeper treatment of both petitions discloses that the instant petition is substantially a reiteration of the principal relief sought before the CA. In the petition filed before the CA, petitioners, principally challenging the validity of the preventive suspension order issued by the Ombudsman, had applied for the issuance of a TRO which sought to avert the implementation of the Ombudsman's Order directing petitioners' preventive suspension from office; and, in the petition before us, petitioners, while also applying for the issuance of an injunctive relief against the same Order of the Ombudsman and additionally imputing grave abuse of discretion to the CA in deferring action on the TRO application, nevertheless resonate the same challenge against the validity of the same preventive suspension order of the Ombudsman.

It is then not difficult to see that by successively seeking reliefs against the same Order issued by the Ombudsman first before the CA and, later on, before the Court, petitioners had blatantly exhibited a conscious act of forum shopping. Indeed, this pernicious practice exists where a party institutes multiple actions based on the same essential facts and circumstances which raise identical issues or causes of action and subject matters.[1] It is deemed to be an unethical practice which is why invariably, it warrants as a penalty the summary dismissal of the actions.[2]

But indeed, aside from the fact that they had endeavored to seek a favorable ruling simultaneously from the CA and the Court, petitioners had committed yet another procedural slip by splitting a single proceeding between the CA and this Court. The effect of this practice cannot be taken lightly because it brings about, as it did, a duplicitous procedure and multiplicity of suits and, ultimately, results in unnecessary delay in the disposition of the merits of the case.

No other principle of procedure is more settled than that a Rule 65 petition must be availed of after a motion for reconsideration has been filed in order to enable the tribunal, board, or office concerned to pass upon and correct its mistake independent of the higher court's intervention.[3] In this regard, it bears stressing that if truly petitioners are convinced, as they perhaps are, that the deferment of the action on their TRO application is erroneous, then, under the circumstances, a motion for reconsideration would prove to be the most adequate remedy if only to allow the CA an opportunity to correct the supposed error it has committed. It is thus inescapable to conclude that the petition sought by petitioners to be acted upon by this Court is premature as no prior motion for reconsideration has been filed with the CA and there appears to be no sufficient allegation to bring the case within the recognized exceptions.

The posture of the Resolution in maintaining the present petition with this Court and at the same time, remanding the case to the CA, in effect, runs counter to or may not be in accord with the hierarchy of courts. It thus somehow validates the procedural misstep undertaken by petitioners. Petitioners should have accorded respect to the processes of the CA and awaited a definitive resolution of the matter before availing of another certiorari petition under Rule 65, this time, with this Court.

Moreover, Section 5, Rule 58 of the Rules of Court suggests that a TRO does not issue unless it appears from the narration in the affidavit or the verified application that the applicant would be greatly and irreparably prejudiced before the matter could be heard on notice. The Resolution of the majority justifying that it was imperative for the CA to issue the TRO, posed the situation that the resolution of the issues in the main action would be rendered moot, academic and ineffectual without the sought-for injunctive relief. But the possibility of that situation from

happening is more hypothetical than it is real. Mootness is not a ground for the grant of the ancillary remedies of temporary restraining order and preliminary injunctive relief. And if we admit that ground, alone or in tandem with other existing grounds, to support a favorable order on the TRO application in this case, then it would tend to add to, and at the same time, limit the CA's discretion inasmuch as the Rules of Court require merely that there be an initial finding of great and irreparable injury accruing to the applicant should the relief not be granted. Be that as it may, considering that an injunctive relief is not meant to determine controverted rights but is merely calculated to prevent the further commission of a wrong, then there seems to be no reason why the deferment of action on the application for injunctive relief will bring about the mootness of the issues in the main action.

To be sure, whether or not there is a threat of great and irreparable injury that would accrue to a party is a question that lies entirely in the discretion of the tribunal before which the application is made. That tribunal, in this case, is the CA. The factual predicate, in other words, upon which an injunctive relief rests is properly determinable by the CA. It becomes useful to note that the CA had not taken an affirmative action on the TRO application as it had merely deferred action on the same. Stated otherwise, it had not yet arrived at a definite conclusion as to the merits of the application simply because it could not yet rule on the same, which is why instead it required respondents to submit a comment on the main petition. Thus, no grave abuse of discretion could plainly be attributed to the CA.

What is more to the point is that the deferment of the action is not indefinite as it is conditioned on the filing of the said comment or upon the expiration of the period to file the same. Without unnecessarily questioning the wisdom behind the assailed resolution, it can only be surmised that the CA had simply exercised its prerogative to have a well-informed action on petitioners' application which could not be afforded by the recitals alone in the application itself. Thus, in assailing before this Court the resolution of the CA and in insisting that under the premises the injunctive relief sought must have been issued in the first place, petitioners, in effect, had taken on the duty of determining the merits of their own application--a duty which appropriately belongs to the CA.

We must be reminded, furthermore, that the controversy before us has emanated from a criminal complaint filed against petitioners before the Office of the Ombudsman. The Ombudsman is, by law, mandated to act on all complaints against public officers and employees under the jurisdiction of the Sandiganbayan.[4] As the investigatory and prosecutory arm of the government in this respect,[5] the mechanisms provided by preventive suspension orders become useful as they do guarantee and facilitate an orderly conduct of investigations. It is perhaps on account of this consideration why injunctive writs which have the effect of delaying the investigations conducted by the Ombudsman do not lie, except only where there is a prima facie evidence that the subject matter of investigation is beyond the jurisdiction of the said body.[6] No suggestion to that effect, however, can be derived from this case.

One important point. I respectfully differ from the majority opinion that the petition must be remanded to the CA for determination on the merits. Since the petitions both before us and the CA, as I have already expounded, principally present the same objection relative to the legality of the order issued by the Ombudsman, there seems to be no useful purpose that will be served if the present petition is remanded to the CA for disposition on the merits, instead of dismissing the same. On the contrary, the measure would even complicate an otherwise uncomplicated and simple matter submitted to us for resolution.

I shall explain why.

If I must reiterate, albeit not needlessly, we are faced with two substantially identical petitions. Both of them were brought under Rule 65 of the Rules of Court and, as such, both of them are in the nature of original actions currently pending before two different tribunals and none of them has yet been finally disposed of for obvious

reasons. Thus, under these circumstances, remanding the present petition for further proceedings would open a concrete situation where the two petitions are pending before the CA. This is unprecedented; dangerous even. The question may be asked: What then would happen to the petition pending before the Court of Appeals?

I do acknowledge the need to make the necessary factual findings in this case so as to put an end to the controversy. However, inasmuch as the Court is not a trier of facts, and although it is both inviting and compelling to follow the ordinary course of remanding cases to the CA for factual evaluation, still, a remand will not prove to be the wisest course to take because the end sought to be achieved thereby--that is, the determination of the merits of the case--may likewise be achieved by dismissing the present petition and allowing the CA to proceed with the disposition of the petition filed with it.

Lastly, with due respect, I cannot agree with the disposition of my esteemed colleagues that the case be remanded to the CA and yet still maintain the TRO previously issued by this Court when the purpose of the remand, as stated by the majority, is to hear the case on the merits and determine whether or not an injunctive writ lies to restrain the implementation of the preventive suspension order imposed by the Ombudsman.

I close with the thought that it is our rule that we strive to settle controversies in their entirety in a single proceeding and leave no root or branch to bear the seeds of future litigation.[7] No good will be served if the case or the determination of the issues in the case is remanded to the CA only to have its decision brought from there and, again later on, to this Court.

For these fundamental and consequential reasons, I vote to DISMISS the petition.

[1] Zenaida Polanco, et. al. v. Carmen Cruz, represented by her Attorney-in-Fact, Virgilio Cruz, G.R. No. 182426, February 13, 2009.

[2] New Sampaguita Builders Constructions, Inc. v. The Estate of Canoso, G.R. No. 151447, February 14, 2003, 397 SCRA 456.

[3] See Philippine National Construction Corporation (PNCC) v. National Labor Relations Commission, G.R. No. 112629, July 7, 1995, 245 SCRA 668, 674-675.

[4] Republic Act No. 6670 (otherwise known as "The Ombudsman Act"), Sec.13.

[5] Id., Sec. 15.

[6] Id., Sec. 14.

[7] Golangco v. Court of Appeals, G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501, citing Heirs of Gabriel-Almoradie v. Court of Appeals, 229 SCRA 15 (1994).

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