

SANTIAGO AQUINO, TERCENCIO YUMANG, JR. AND FULGENCIO ICARO, PETITIONERS, VS. HON. GUILLERMO R. LUNTOK, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XXIX, LIBMANAN, CAMARINES SUR...

G.R. NO. 84324. April 05, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

In this special civil action for certiorari, with an application for preliminary injunction and/or restraining order, petitioners seek the annulment of the following orders of respondent judge in Civil Case No. L-361 of the Regional Trial Court of Camarines Sur, entitled "Ludovico B. Peralta vs. Henry B. Rañola, et al.," to wit: (1) Temporary restraining order (TRO, for brevity), dated August 27, 1987, enjoining petitioners herein for a period of twenty (20) days from proceeding or taking action against herein private respondent; (2) Order, dated September 16, 1987, extending the efficacy of said TRO for another period of twenty (20) days; (3) Order, dated October 6, 1987, indirectly extending the efficacy of the TRO for an uncertain period; (4) Order, dated November 4, 1987, granting the application for a writ of preliminary injunction; and (5) Order, dated November 5, 1987, approving the bond filed by private respondent which led to the eventual issuance of the writ on November 11, 1987.

It is of record, however, that the Court of Appeals had previously rendered judgment on May 11, 1988, in CA-G.R. SP No. 13186,[1] likewise an original action for certiorari for the annulment of the aforesaid orders of August 27, 1987, September 16, 1987 and October 6, 1987, wherein it dismissed the petition for being moot since a writ of preliminary injunction had already been issued by respondent judge. We take cognizance of the finality and entry of such judgment,[2] for which reason this Court shall primarily consider only the prayer for the annulment of the orders, dated November 4, 1987 and November 5, 1987, and the writ of November 11, 1987 in the present petition.

Reduced to its essential terms, the present petition raises a question, apparently of first impression, concerning the validity of a writ of preliminary injunction issued beyond the 20-day period of the effectivity of a restraining order and during the extended efficacy of such order. Indeed, in the cases treating on the matter of TROs, it appears that only the propriety of orders extending the efficacy of the initial TRO, or the issuance of another TRO after the first had automatically expired after the twentieth day of its issuance, have been squarely ruled upon, but not the question of the validity of a writ of preliminary injunction issued to restrain the same act complained of after the lapse of the 20-day period of the TRO.

The records show that petitioners, in their capacity as Provincial Auditor of Camarines Sur, State Auditor I of the Provincial Auditor's Office and State Examiner of the Provincial Auditor's Office, respectively, conducted an audit of private respondent's accounts as Municipal Treasurer of Libmanan, Camarines Sur and found a cash shortage of P274,011.17 under his accountability.[3]

Allegedly pursuant to Section 157, Batas Pambansa Blg. 337, petitioners seized private respondent's cash, books, papers and accounts and the latter was suspended from office. As a consequence, private respondent requested reinvestigation by the Commission on Audit.[4] Pending action on the request, private respondent filed a petition dated August 26, 1987 with the trial court, presided over by respondent judge, for prohibition with injunction and with a prayer for a restraining order and damages.[5]

Forthwith, respondent judge issued the TRO of August 27, 1987, enjoining all respondents therein, their agents and/or representatives, for a period of twenty (20) days from date thereof, to desist from proceeding or taking action against private respondent based on petitioner Yumang's report and from exercising such derivative powers and functions.[6]

On September 16, 1987, which was the last day of effectivity of the TRO, respondent judge, on motion filed by private respondent, issued an order extending the efficacy of the TRO for another period of twenty (20) days, or until October 6, 1987.[7]

On September 24, 1987, likewise upon motion of private respondent, respondent judge issued an order directing petitioners to return to private respondent the cash, books and other papers they had seized. Thereupon, petitioner Aquino filed a motion for the reconsideration of said order, to which private respondent filed his opposition. Under date of October 5, 1987, petitioners also filed their answer to the petition, with an opposition to the application for preliminary injunction.[8]

On October 6, 1987, the last day of the extended effectivity of the TRO, private respondent filed another motion for extension of the efficacy of the restraining order. On the same date, respondent judge issued an order directing petitioners to refrain from taking any action against private respondent until the motion is resolved.[9]

In a petition dated October 27, 1987, petitioners instituted in the Court of Appeals an original action for certiorari, with an application for preliminary injunction and/or restraining order, docketed therein as CA-G.R. SP No. 13186 and entitled "Santiago Aquino, et al, vs. Hon. Guillermo Luntok, et al.," precisely putting in issue and assailing the validity of the aforesaid multiple restraining orders dated August 27, 1987, September 16, 1987 and October 6, 1987.[10]

While said petition was pending, respondent judge issued an order, dated November 4, 1987, granting the application of private respondent for a writ of preliminary injunction.[11] A day later, respondent judge issued another order, dated November 5, 1987, approving the bond filed by private respondent.[12] On November 11, 1987, respondent judge issued the corresponding writ of preliminary injunction.[13]

As an offshoot thereof and as herein before noted, the Court of Appeals rendered a decision on May 11, 1988 dismissing the petition for certiorari in CA-G.R. SP No. 13186 on the ground of mootness, since respondent judge had already granted the writ of preliminary injunction, thus:

"Under the factual milieu of this case, no practical effect could be had since the respondent court had already granted a writ of preliminary injunction on November 4, 1987." [14]

As earlier explained, the other orders of respondent judge, dated November 4, 1987 and November 5, 1987, and the validity of the writ issued on November 11, 1987, are now before us for resolution in the present action.

Petitioners asseverate that the questioned writ of preliminary injunction is null and void, it being in reality a fourth restraining order issued beyond the 20-day effectivity of the preceeding TRO.[15] Further, petitioners claim that the injunction was issued in utter disregard of the doctrine of exhaustion of administrative remedies, private respondent having brought the action below pending his request for reinvestigation with the Commission on Audit.[16]

On the charge of non-exhaustion of administrative remedies, although it is well-settled in our jurisdiction that, unless otherwise provided by law or required by public interest, before bringing an action in or resorting to the courts of justice all remedies of administrative character affecting or determinative of the controversy at that level should first be exhausted by the aggrieved party,[17] this doctrine is not a hard and fast rule. In the present case, we are inclined to subscribe to private respondent's invocation of the urgency of judicial intervention, as one of the admitted exceptions to the rule,[18] which likewise would be in keeping with the court's broad discretion in granting injunctions. Whatever circumstances warranted the grant of injunction in the court below would be no different than the circumstances which created the urgency, and there can ordinarily be no better judge to determine the existence thereof than the trial court itself.

Thus, it has been said that the court which is to exercise the discretion of granting an injunction is the court of original jurisdiction and not the appellate court;[19] and a preliminary injunction will usually be granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case. The only limitations to such discretion would be that it must have been exercised upon the grounds and in the manner provided by law,[20] an inquiry into which is precisely part of the subject of our immediately succeeding discussion on the matter of the status of the injunction in controversy.

Contrary to petitioners' position, we are disposed to sustain the validity of the writ of preliminary injunction in question. A temporary restraining order, while being in effect a species of injunction, is in some respects to be distinguished therefrom. It is an interlocutory order or writ issued by the court as a restraint on the defendant until the propriety of granting a preliminary injunction can be determined, thus going no further in its operation than to preserve the status quo until that determination. When such determination is made, the whole force of the order ceases by its own limitations and becomes *functus officio*, having by then served its purpose.[21]

On this basis lies the mootness of the issue on the propriety of the issuance of successive restraining orders upon the approval of the application for a writ of preliminary injunction, as ruled by the Court of Appeals. With the grant of the writ, hearing the petition which sought the annulment of the three antecedent TROs would be inutile as the writ has been substituted for and subserves the purpose of the prior restraining orders.

It is worth noting, nonetheless, that Section 5, Rule 58 of the Rules of Court, as amended by Batas Pambansa Blg. 224 effective April 16, 1982, sets a specific period for the juridical life span of a TRO, thus:

"No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within said twenty-day period, the judge must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated. x x x."

The 20-day period of effectivity of a TRO is non-extendible; the restraining order automatically terminates at the end of such period without the need of any judicial declaration to that effect.[22] Any extension would, therefore, ordinarily, be disallowed. But, when injunction is subsequently granted, as in the case at bar, any defect in the order brought about by the extension of its enforceability is deemed cured.[23]

The status or validity of the writ of preliminary injunction itself, however, remains in question. From a reading of

the above-cited provision, it may appear that the order granting the injunction must issue within the same 20-day period. Be that as it may, we are constrained to enunciate, since the contrary is not expressed or otherwise indicated therein, that the mandatory tenor of the aforesaid provision should not be taken to mean that a writ issued beyond the time frame is an absolute nullity, provided that, aside from the existence of any of the grounds for its issuance the determination of which is largely addressed to the trial court, the other requirements prescribed by the rules are present, namely, hearing and posting of a bond. Instead, the obligatory import of the rule should be considered as a directive for the judge to act with corresponding dispatch on the application for preliminary injunction within the 20-day period if a TRO has been issued, with a proscription against an ex parte proceeding on such application since it would deprive the affected parties of the opportunity to be heard.

Indeed, a look at the history of the provision would reveal that Batas Pambansa Blg. 224 was adopted precisely as a reaction against the indiscriminate issuance of writs of preliminary injunction which, not infrequently, converted the writ from an instrument in furtherance of justice to a shield for injustice.[24] This was made possible not only by unscrupulous lawyers and adventurous litigants but also by idle and corrupt judges who tolerated the improvident and ex parte issuance thereof and, in the case of TRO's, apparently oblivious of or insensitive to the fact that these were not conditioned on the posting of bonds to indemnify the parties against whom they were issued.

In the instant case, we note that the protection of such bond has been required. Also, it is of record that herein petitioners and private respondent were given an opportunity to be heard and, in fact, a hearing was conducted by the trial court before the issuance of the writ of preliminary injunction to determine the existence of a valid ground therefor.[25]

We are constrained to sustain such action of the trial court since, except for the delay in the resolution of the application for and the subsequent issuance of the writ, the other requisites provided by the rules for the grant thereof have been observed. These considerations notwithstanding, we are aware that under the present state of the law which does not nullify a writ of preliminary injunction issued beyond the 20-day period where a TRO has been granted, the courts may thereby be allowed to do by indirection that which should not be done directly. This is a matter, however, which should be remedied by the corresponding amendment of the rule if the intent is to nullify a writ of preliminary injunction thus belatedly issued.

Consequently, there being no other sufficient ground[26] to dissolve the injunction in controversy, the grant of the writ must be upheld but without prejudice to the consequences of the conduct of respondent judge. The circumstances under which the writ was granted after a protracted delay, punctuated by dubious orders issued in the interim, certainly cannot be countenanced lest such conduct be replicated in circumvention of the rules. Specifically, respondent judge failed to observe Rule 3.01 of Canon 3 of the Code of Judicial Conduct, which calls for a judge to be faithful to the law and maintain professional competence, and Rule 3.05 which admonishes all judges to dispose of the court's business promptly and decide cases within the required periods. Definitely, this Court cannot gloss over the challenged actuations of respondent judge which are amply reflected in the records of this case.

IN VIEW OF ALL THE FOREGOING, the present petition is hereby **DISMISSED**. The grant of the writ of preliminary injunction by respondent judge is hereby **SUSTAINED** and the regional Trial Court at Libmanan, Camarines Sur or to which Civil Case No. L-361 is presently assigned is hereby **DIRECTED** to expediently hear and decide the same on the merits within a mandatory period of thirty (30) days from the finality of this judgment. Respondent judge is hereby **REPRIMANDED** with a stern warning that a repetition of the same or any similar action shall be more severely dealt with by the Court. The temporary restraining order issued pursuant to our resolution of August 22, 1988 is hereby **LIFTED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Justice Ricardo J. Francisco, with Justices Jose C. Campos, Jr. and Alfredo L. Benipayo concurring.

[2] Rollo, 112.

[3] Ibid., 4-5.

[4] *ibid.*, 5-6.

[5] Ibid., 21-27.

[6] Ibid., 28.

[7] Ibid., 6.

[8] Ibid., 7.

[9] Ibid., 45.

[10] Ibid., 98-109.

[11] Ibid., 46.

[12] Ibid., 47.

[13] Ibid., 48-49.

[14] Ibid., 111.

[15] Ibid., 14.

[16] Ibid., 15.

[17] *Pestanas, et al. vs. Dyogi, et al.*, 81 SCRA 574 (1978).

[18] *Gonzalez vs. Hechanova, etc., et al.*, 9 SCRA 230 (1963); *Abaya vs. Villegas, et al.*, 18 SCRA 1034 (1966); *Mitra vs. Subido, etc., et al.*, 21 SCRA 127 (1967).

[19] 43 C.J.S. 965.

[20] Ibid., 427.

[21] 28 Am. Jur. 203-204.

[22] *Golden Gate Realty Corporation vs. Intermediate Appellate Court, et al.*, 152 SCRA 684 (1987).

[23] Footnote, *Banque De L' Indochine Et De Suez, et al. vs. Torres, et al.*, G.R. Nos. 82405-06, July 10, 1989.

[24] Francisco, *The Revised Rules of Court in the Philippines*, 1985 (2nd Ed.), 260.

[25] Rollo, 48.

[26] An injunction may be dissolved on any of the following grounds, to wit: (1) the complaint is insufficient; (2) the defendant is permitted to post a counter-bond upon a showing that he will sustain great damages while the

plaintiff can be amply compensated; and/or (3) on other grounds, as where the bond posted by the applicant turned out to be insufficient or defective (Secs. 6 and 8, Rule 58).

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