

HON. ISIDRO CARINO, SUBSTITUTED BY HON. ARMANDO V. FABELLA, SECRETARY OF EDUCATION, CULTURE AND SPORTS, AND VENANCIO R. NAVA, REGIONAL DIRECTOR, DECS REGION IX, DAVAO CITY, PETI...

G.R. No. 97203. May 26, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari with a prayer for the issuance of a writ of preliminary injunction, to annul and set aside the order of respondent Judge dated 15 November 1990 and the writ of preliminary injunction issued pursuant to the said order, dated 16 November 1990, and to enjoin the respondent Judge from implementing the order of 15 November 1990 and from further conducting proceedings in Special Civil Case No. 90-2917 until further orders from this Court.

As prayed for, this Court issued on 28 February 1991 a temporary restraining order, viz, "effective immediately and continuing until further orders from this Court You, RESPONDENT JUDGE, your agents, representatives, or any person or persons acting in your place or stead are hereby ORDERED to CEASE and DESIST from implementing your Order dated November 15, 1990 and from conducting further proceedings in Special Civil Case No. 90-2917 entitled "AMA Computer College, et. al. vs. Hon. Isidro Carino, et. al."[1]

The antecedents are as follows:

By virtue of a "Contract of Lease with Option to Buy" entered into with Light Bringer School (LBS) on 14 May 1990, AMA Computer College (AMA) took possession of the premises of the former located at Marfori Heights, Davao City. LBS is a duly recognized and licensed elementary school which transferred its operation elsewhere in Davao City.

On 21 May 1990, Regional Director Venancio R. Nava, Region IX-DECS, received AMA's letter of intent to operate as an educational institution in Davao City.[2] Responding to the said letter, Regional Director Venancio R. Nava reminded AMA "of the provisions of the Rules and Regulations of Batas Pambansa Blg. 232, specifically Article E, Section 7, Rule III, Part III that the filing of application shall be at least one (1) year before the opening of classes" and the "provisions of the Private School Law reiterated in the Educational Act of 1992 which prohibits the operation of unauthorized schools or courses." [3]

Nevertheless, AMA proceeded to announce its opening through news and print media, and thereupon, started to enroll students in elementary, secondary and tertiary levels. Taking remedial action, the DECS Regional Director directed AMA to stop enrollment and to desist from operating without prior authorization.[4]

AMA, however, not only continued the enrollment but even started to hold regular classes, and thereafter, on 15 June 1990, filed a formal application to operate. Acknowledging receipt of the said application, the Regional Director reiterated the earlier directive for AMA to stop operation with a warning that further failure to comply

"would constrain the Office to invoke the Memorandum Agreement with the Defense Department to stop unlawful operation of the school." [5] Again, AMA ignored the directive and continued to operate illegally.

On 22 June 1990, a DECS inspection team was sent to the premises of AMA to look into the case. In its report, [6] the inspection team confirmed AMA's defiance of the DECS directives. Hence, military assistance was requested by the Regional Director to effect closure of AMA Computer College, Inc., Davao City. However, in a letter dated 25 June 1990, AMA's Officer-in-Charge requested that the closure be held in abeyance for fifteen (15) days, [7] which the Regional Director denied on the same day. [8]

On even date, i.e. on 25 June 1990, the Regional Director received a letter from AMA asking that the parties await the decision of the Secretary of DECS on its application for a permit to operate before the closure order is effected. [9] On 27 June 1990, the Secretary of DECS denied AMA's application. [10]

On 6 July 1990, AMA filed with the RTC of Manila, Branch 18, a petition for prohibition, certiorari and mandamus against the Hon. Isidro Carino, DEC's Secretary and Atty. Venancio R. Nava, Regional Director, Department of Education, Culture and Sports, Region IX to annul and set aside the closure order and to enjoin the respondents from closing or padlocking AMACC, Davao City. The case was docketed as Civil Case No. 90-53615. [11] On 26 July 1990, the trial court dismissed the petition for lack of merit. Thereafter, AMA filed with the Court of Appeals a petition for certiorari in CA-G.R. SP No. 22357 assailing the 26 July order of the court a quo, but, again, the Court of Appeals peremptorily dismissed the petition [12] and also denied its motion for reconsideration. [13]

Under the cloak of an organization of parents of students styling themselves as AMACC-PARENTS Organization, AMA filed another petition for prohibition and/or mandamus with preliminary injunction with the RTC of Davao City, Branch 8, docketed therein as Civil Case No. 20-230-90, entitled "Freddie Retotal, Ricardo Fuentes, Calixta Holazo, Ursula Reyes, in their own behalf and in behalf of the other members of AMACC Parents' Organization vs. Venancio Nava, in his capacity as Regional Director, Department of Education, Culture and Sports." [14] On 7 August 1990, the court dismissed the petition. [15]

AMA, however, in order to thwart the closure or pad-locking of its school in Davao City, filed with the RTC of Makati, Branch 134, presided over by respondent Judge, another petition for mandamus, with damages, preliminary injunction and/or restraining order against Hon. Isidro Carino, Secretary and Director, Department of Education, Culture and Sports, Region IX to compel the respondents to approve petitioners' application for permit to operate retroactive to the commencement of school year 1990-1991, and to enjoin the closure and/or padlocking of AMA-Davao school, docketed therein as SP Civil Case No. 90-2917. [16]

Petitioners, through the Office of the Solicitor General, moved to dismiss AMA's petition on the ground that (1) AMA is not entitled to the writ of mandamus as petitioners' authority to grant or deny the permit to operate is discretionary and not ministerial; (2) AMA failed to comply with the provisions of the Education Act; (3) AMA is blatantly engaging in forum shopping; (4) AMA failed to exhaust available administrative remedies before resorting to court; and (5) lack of territorial jurisdiction over petitioner Regional Director and AMA-Davao. [17]

On 15 November 1990, the respondent Judge issued an order [18] directing the issuance of a writ of preliminary injunction, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing reasons, let a writ of preliminary injunction be issued, upon filing of petitioners of a bond in the amount of P500,000.00, duly approved by this Court, enjoining and restraining the respondent Hon. Isidro Carino, his agents, representatives and any person acting for and his behalf, from implementing the closing and/or padlocking AMA Computer College, Inc. - Davao City Branch, until further orders from this Court." [19]

and on the following day, i.e., on 16 November 1990, issued the writ of preliminary injunction.[20]

Hence, the petitioners filed the present petition, claiming that respondent Judge acted with grave abuse of discretion amounting to lack or excess of his jurisdiction in issuing the order dated 15 November 1990 and the writ of preliminary injunction dated 16 November 1990, and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law except through the present petition. Acting upon the petition, the Court required the private respondents to comment on the petition.[21]

Instead of filing their comment, the private respondents filed a Manifestation and Motion for the Dismissal of the Petition on the following grounds: (1) A compromise agreement has already been effected between AMA Computer College and the Department of Education completely altering the factual situation in the case at bar; and (2) The grounds relied upon for this petition for certiorari no longer exist.[22]

As required by the Court, the petitioners filed their comment[23] on the aforesaid Manifestation and Motion, while the private respondents filed their reply[24] thereto. As further required by the Court, the petitioners filed a rejoinder[25] to the private respondents' reply, and the private respondents their sur-rejoinder[26] to the petitioners' rejoinder.

On 5 November 1991, the Court denied the private respondents' Manifestation and Motion for the dismissal of the petition, and directed them to file their comment on the main petition as required in the resolution of 14 February 1991.[27]

In their comment[28] on the petition, the private respondents simply reiterated the allegations contained in their Manifestation and Motion for the dismissal of the petition.

Thereafter, "the Court Resolved to (a) CONSIDER the comment as ANSWER to the petition; (b) GIVE DUE COURSE to the petition; and (c) CALENDAR this case for deliberation." [29]

After careful deliberation, the Court holds that the petition is meritorious; hence, the same should be granted.

The respondent Judge committed grave abuse of discretion amounting to lack or excess of his jurisdiction in issuing the order of 15 November 1990 directing the issuance of a writ of preliminary injunction and in issuing the writ on 16 November 1990.

Under Batas Pambansa Blg. 232, otherwise known as the "Education Act of 1982", the establishment and operation of schools are subject to the prior authorization of the government and shall be effected by recognition. And for the implementation of the law, the Ministry (now Department) of Education, Culture and Sports (DECS) is empowered to prescribe the rules and regulations governing recognition.[30]

The Implementing Rules and Regulations of Batas Pambansa Blg. 232 provide, among others, as follows:

"Section 1. Policy -- Pursuant to the Constitution, all educational institutions shall be under the supervision or, and subject to regulation by the State.

Consequently, no school or educational institution shall be established, nor operate any educational program, whether formal or non-formal, except by law or pursuant to law and in accordance with these Rules."

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"Section 4. Establishment of Schools -- The establishment of new schools shall be subject to the following:

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d. The establishment of a new private school, including that of a branch school or extension class, shall be

subject to the prior approval of the Ministry pursuant to Act No. 2706, as amended, the Educational Act of 1982, and other education related or applicable laws x x x."

"Section 5. Recognition of Schools -- In view of the State Policy that education programs and/or operations shall be of good quality, and therefore shall at least satisfy the minimum standards with respect to curricula, teaching staff, physical plant and facilities, and of administrative or management viability, no institution established as a school shall operate without prior government authorization to conduct or undertake education operations. x x x." [31]

The Implementing Rules and Regulations of Batas Pambansa Blg. 232, further provide:

"Section 11. Effects of Non-Recognition. -- Contrariwise, the effects of non-recognition of a school or any of its programs or courses of studies, or specifically the non-issuance by the Ministry (Department) of the permit or certificate of government recognition therefore as provided in Sections 8 and 9 under this Rule, shall be any or all of the following:

a. At the option of the Ministry, either the total closure of the school or its program or courses of studies for lack of authority to operate.

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c. Disqualification of the school to confer any title or degree, or to award any certificate or diploma to any pupil or student enrolled in the non-recognized program or course of studies." [32]

As a rule, a writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interest, and for no other purpose, during the pendency of the principal action. Before a writ of preliminary injunction may be issued, there must be a clear showing by the complainant that there exists a right to be protected and that the acts against which the writ is directed are violative of said right. [33]

In the case at bar, the private respondents' application for a permit to operate AMACC-Davao City as an educational institution was denied by the petitioners. Otherwise stated, the private respondents do not have a permit to operate or a certificate of recognition from the government to undertake educational or school operations. In fine, the private respondents do not have any existing right that needed to be protected during the pendency of their principal action for mandamus. Hence, the "closing" and/or "padlocking" of AMACC--Davao City would not and did not violate any right of the private respondents.

Moreover, it is not the function of the writ of injunction to restrain a public officer from performing a duty imposed by law or to permit the doing of that which is declared unlawful. [34] Under Batas Pambansa Blg. 232 and its Implementing Rules and Regulations, the establishment and operation of schools are subject to the prior authorization of the government. And, as sanctions for operating without government permit, the DECS is authorized either to impose the total closure of the school and/or to disqualify the school from conferring title or degree in the non-recognized program or course of studies. In ordering the total closure of AMACC-Davao City, the petitioners were only performing their duties as public officers; hence, the respondent Judge should not have issued the writ of preliminary injunction. In issuing the writ, he allowed the private respondents to continue the operation of AMACC-Davao City as an educational institution without a permit or certificate of government recognition, thereby sanctioning an act which is unlawful.

In directing the issuance of the writ of preliminary injunction, the respondent Judge reasoned out that the private respondents "need full protection provided for by law against irreparable damage that they may sustain by virtue of the closure order." In this connection, it would suffice to state that the mere "possibility of irreparable damage,

without proof of an actually existing right, is no ground for an injunction, being a mere *damnum absque injuria*." [35]

Finally, the action filed by the private respondents in the court below is a petition for mandamus to compel the petitioners to approve their application to operate AMACC-Davao City as an educational institution. As a rule, mandamus will lie only to compel an officer to perform a ministerial duty but not a discretionary function. [36] A ministerial duty is one which is so clear and specific as to leave no room for the exercise of discretion in its performance. On the other hand, a discretionary duty is that which by its nature requires the exercise of judgment. As explained in the case of *Symaco vs. Aquino*, [37] -?

"A purely ministerial act or duty, in contra-distinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment."

In the present case, the issuance of the permit in question is not a ministerial duty of the petitioners. It is a discretionary duty or function on the part of the petitioners because it had to be exercised in accordance with - and not in violation of - the law and its Implementing Rules and Regulations. Thus, as aptly observed by the Solicitor General in his Motion to Dismiss the petition --

"Establishment or recognition of private schools through government grant of permits is governed by law, specifically Batas Pambansa Blg. 232. The authority to grant permit is vested upon the judgment of the Department of Education, Culture and Sports, which prescribed the rules and regulations governing the recognition on private schools (Section 27, Batas Pambansa Blg. 232).

Whether to grant or not a permit is not a ministerial duty of the Department of Education, Culture and Sports. Rather it is a discretionary duty to be exercised in accordance with the rules and regulations prescribed.

In the case at bar, petitioner has been operating a school without a permit in blatant violation of law. Public respondent has no ministerial duty to issue to petitioner a permit to operate a school in Davao City before petitioner has even filed an application or before his application has been first processed in accordance with the rules and regulations on the matter. Certainly, public respondent is not enjoined by any law to grant such permit or to allow such operation without a permit, without first processing an application. To do so is violation of the Educational Act." [38]

ACCORDINGLY, the petition is GRANTED and the order dated 15 November 1990 and the writ of preliminary injunction dated 16 November 1990 are hereby ANNULLED and SET ASIDE. The petition for mandamus before the respondent court is DISMISSED.

The Temporary Restraining Order heretofore issued by this Court is hereby made PERMANENT.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quason, JJ., concur.

[1] Rollo, pp. 107, 109

[2] Ibid., p. 37

- [3] Ibid., p. 38
- [4] Ibid., p. 39
- [5] Ibid., p. 40
- [6] Ibid., p. 41
- [7] Ibid., p. 43
- [8] Ibid., p. 44
- [9] Ibid., p. 45
- [10] Ibid., p. 48
- [11] Ibid., p. 49
- [12] Ibid., p. 59
- [13] Ibid., p. 63
- [14] Ibid., p. 64
- [15] Ibid., p. 72
- [16] Ibid., p. 74
- [17] Ibid., p. 87
- [18] Ibid., p. 33
- [19] Ibid., p. 34
- [20] Ibid., p. 36
- [21] Ibid., p. 107
- [22] Ibid., p. 123
- [23] Ibid., p. 151
- [24] Ibid., p. 194
- [25] Ibid., p. 205
- [26] Ibid., p. 211
- [27] Ibid., p. 222
- [28] Ibid., p. 225
- [29] Ibid., p. 249
- [30] Sections 25 and 27, Batas Pambansa Blg. 232
- [31] Rollo, p. 18
- [32] Rollo, p. 19
- [33] *GSIS vs. Hon. Florendo, et al.*, G.R. No. L-48603, 20 September 1989, 178 SCRA 76, pp. 83-84

[34] Wong Siu Tong vs. Aquino, 92 Phil. 545, pp. 547-548

[35] Bacolod-Murcia Milling Co., Inc., et al. vs. Capitol Subdivision, Inc., et al., G.R. No. L-25887, 26 July 1966, 17 SCRA 731, 737

[36] Sy Ha vs. Galang, L-18513, 27 April 1963, 7 SCRA 797, 803

[37] 106 Phil. 1130, 1135

[38] Rollo, pp. 88-89

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