



Republic of the Philippines
Supreme Court
 Manila

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Mis DDC Batt
MISAEAL DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division

THIRD DIVISION

NOV 13 2019

MELLIEMOORE M. SAYCON,
 Petitioner,

G.R. No. 238822

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

Present:

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PERALTA, J.,
Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, * JJ.

- versus -

**COURT OF APPEALS (Special
 Nineteenth Division) and Roel R.
 Degamo,**

Promulgated:

Respondents.

October 9, 2019

Mis DDC Batt

X-----X

DECISION

REYES, A., JR., J.:

This is a petition for *certiorari*¹ brought under Rule 65 of the Rules of Court, challenging the Resolution² dated January 11, 2018 and the Resolution³ dated March 7, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 11422, which respectively granted the prayer of respondent Roel R. Degamo (Roel) for the issuance of a Temporary Restraining Order (TRO), and a Writ of Preliminary Injunction (WPI). The injunctive reliefs enjoined the implementation of the Decision⁴ dated March 2, 2017 issued by the Office of the Ombudsman (OMB) in OMB-V-A-16-0197, finding Roel guilty of Grave Misconduct and imposed on him the penalty of Dismissal from Service.

* On official business.

¹ *Rollo*, pp. 3-31.

² Penned by Associate Justice Louis P. Acosta, with Associate Justices Marilyn B. Lagura-Yap and Edward B. Contreras concurring; *id.* at 35-41.

³ *Id.* at 83-88.

⁴ Rendered by Graft Investigation and Prosecution Officer II Maria Bernadeth S. Andal-Subaan; *id.* at 109-120.

Reyes

Factual Antecedents

The petitioner, Melliemoore Maicom Saycon (Melliemoore), filed an administrative complaint against Roel and several other public officers in the Province of Negros Oriental. According to Melliemoore, Roel and his co-respondents (*i.e.*, Provincial Budget Officer Marichu A. Alperto, Provincial Accountant Teodorico G. Reyes, and Provincial Treasurer Danilo C. Mendez) caused the release of public funds belonging to the province, without a corresponding appropriation in the budget.⁵

The funds subject of this case came from the proposed budget of Roel, which he submitted to the *Sangguniang Panlalawigan* of Negros Oriental on October 16, 2012 during his first term as governor. The proposed budget included an item for “Intelligence Expenses” in the amount of ₱10,000,000.00.⁶

On January 15, 2013, the appropriation ordinance for Fiscal Year 2013 was approved by the *Sangguniang Panlalawigan*. However, instead of including the proposed item for “Intelligence Expenses,” the amount was appropriated for Gender and Development, one of the programs and activities under the Office of the Provincial Governor.⁷ Roel vetoed the “deletion or non-inclusion” of the item on “Intelligence Expenses.” The *Sangguniang Panlalawigan*, for its part, did not override the veto. Subsequently, on March 22, 2013, the approved Annual Budget for the province was submitted to the Department of Budget and Management (DBM) Regional Office VII for review.⁸

Despite the absence of an appropriation, Roel allegedly proceeded to issue a Memorandum addressed to the Provincial Budget Officer, Provincial Treasurer, and Provincial Accountant, directing the release of the Intelligence Fund without further delay. They complied with the directive, and on April 16, 2013, the amount of ₱10,000,000.00 “for the payment of expenses of different activities related to intelligence operation” was released to the Office of the Provincial Governor.⁹ The Provincial Budget Officer sent a letter on the same day to Roel, registering her objection to the disbursement of the funds, there being no available appropriation for the item.¹⁰ The Provincial Accountant and Treasurer also registered their separate objections to the release of the cash advance for the same reasons.¹¹

⁵ Id. at 110.

⁶ Id.

⁷ Id. at 95-101.

⁸ Id. at 110.

⁹ Id. at 111, 103.

¹⁰ Id. at 102.

¹¹ Id. at 104-105.

Reyes

The DBM Regional Office VII Director, through a letter dated May 17, 2013, informed the *Sangguniang Panlalawigan* that the appropriation of ₱10,000,000.00 for Gender and Development is inoperative because it was vetoed and the veto was not overridden. Furthermore, the DBM Regional Office VII Director stated that Roel's veto on the Intelligence Fund cannot operate to re-enact the item in the appropriations ordinance. The proper subject of a veto is an item of appropriation in the appropriations ordinance. There being no Intelligence Fund item in the province's appropriation ordinance, Roel's veto is void.¹²

The Commission on Audit (COA) Regional Office No. VII agreed with the opinion of the DBM Regional Office VII. It found the disbursement of the Intelligence Fund, in the absence of an appropriation, to be a violation of Section 305(a) of Republic Act (R.A.) No. 7160¹³ and Section 4(1) of Presidential Decree (P.D.) No. 1445.¹⁴

Roel submitted his counter-affidavit to the OMB, where he argued that the expenses for the Intelligence Fund are deemed included in the appropriations ordinance. According to him, the Intelligence Fund is already part of the Annual Investment Program approved by the Local Development Council. He also argued that the *Sangguniang Panlalawigan* acted outside its authority in deciding not to include the item in the appropriations ordinance. As such, the deletion of the item did not have a legal effect.¹⁵

Meanwhile, Roel's co-respondents, who were respectively holding the positions of Provincial Budget Officer, Provincial Accountant, and Provincial Treasurer, denied conspiring with Roel to disburse the subject funds. The alleged conspiracy, they claim, is further negated by their written objections to the release of the funds.¹⁶

Ruling of the OMB

In a Decision¹⁷ promulgated on March 2, 2017, the OMB dismissed the complaint against the co-respondents of Roel. This notwithstanding, the OMB found substantial evidence to hold Roel administratively liable for Grave Misconduct, thus:

¹² Id. at 107-108.

¹³ AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991 (approved on October 10, 1991).

¹⁴ ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES (approved on June 11, 1978); *rollo*, pp. 111-112.

¹⁵ *Rollo*, p. 112.

¹⁶ Id. at 113-114.

¹⁷ Id. at 109-120.

Meyer

WHEREFORE, finding substantial evidence to hold respondent ROEL RAGAY DEGAMO liable for Grave Misconduct, he is hereby meted the penalty of DISMISSAL FROM SERVICE with accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examination.

In the event that the penalty of Dismissal can no longer be enforced due to separation from service of respondent ROEL RAGAY DEGAMO, the penalty shall be converted into a Fine in an amount equivalent to respondents' salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from their office.

Further, the administrative charge for Grave Misconduct against MARICHU ABIERA ALPUERTO, DANILO CUAL MENDEZ and TEODORICO GUEVARA REYES is DISMISSED for lack of substantial evidence.

X X X X

SO ORDERED.¹⁸

Aggrieved, Roel filed a petition for review with the CA, pursuant to Rule 43 of the Rules of Court. His petition also prayed for the issuance of a TRO, arguing that he has a clear and unmistakable right to be protected from the enforcement of an irregular and persecutory decision. He further stated that he would suffer great, irreparable injury, as his dismissal from service would "scandalize government service" in Negros Oriental.¹⁹

Ruling of the CA

In the first assailed Resolution²⁰ dated January 11, 2018, the CA held that Roel successfully established his entitlement to the injunctive relief. The release of the subject funds occurred in 2013, during the first term of Roel as governor. Considering that he was elected for another term during the 2013 elections, the CA held that the condonation doctrine should have been applied.²¹ On this basis, the CA directed the issuance of a TRO, enjoining the OMB from implementing its decision to dismiss Roel from government service:

WHEREFORE, finding the reasons stated therein to be of sufficient urgency, and so as not to render the reliefs prayed for in the Petition moot and academic pending the resolution of petitioner's prayer for the issuance of a Writ of Preliminary Injunction, the application for the issuance of a temporary restraining order by Roel R. Degamo is hereby GRANTED.

¹⁸ Id. at 118-119.

¹⁹ Id. at 36.

²⁰ Id. at 35-41.

²¹ Id. at 40.

Reyes

ACCORDINGLY, the Court resolves to:

- 1) Let a Temporary Restraining Order be issued, effectively immediately (*sic*) and valid for sixty (60) days, enjoining and restraining herein respondents Office of the Ombudsman Visayas and Department of the Interior and Local Government and their representatives from implementing, carrying out, or enforcing the 2 March 2017 Decision of public respondent Ombudsman.

Petitioner is DIRECTED to post a bond in the amount of One Hundred Thousand Pesos (P100,000.00), within five (5) days from notice of this Resolution, failing which, this Order shall automatically be deemed revoked;

- 2) The respondents are directed to file their Comment on the Petition (not a motion to dismiss) within ten (10) days from notice to which petitioner may file a reply within five (5) days from receipt.

In their Comment on the Petition for Review, respondents shall likewise incorporate their Comment on petitioner's prayer for the issuance of a Writ of Preliminary Injunction and to show cause why the preliminary injunction should not be granted; and

- 3) The parties are directed to promptly notify this Court of any pending and/or subsequent filing of any case involving the same parties and issues.

SO ORDERED.²²

Melliemoore then filed a Comment, which likewise sought the reconsideration of the CA Resolution dated January 11, 2018. Melliemoore argued that the OMB did not err in finding substantial evidence against Roel, when he directed the release of public funds without a corresponding appropriation.²³ She also assailed the application of the condonation doctrine since Roel was not elected to the position of Governor, but merely succeeded to the office by operation of law. Melliemoore also disagreed with the CA's resolution granting the TRO.²⁴

The CA, in its second assailed Resolution²⁵ dated March 7, 2018, did not find the comment and motion of Melliemoore meritorious. Thus, the CA issued the WPI through the second assailed resolution, the dispositive portion of which is as follows:

²² Id. at 40-41.

²³ Id. at 53-68.

²⁴ Id. at 68-76.

²⁵ Id. at 83-88.

Meyer

ACCORDINGLY, the Court resolves to:

1. DENY the Motion for Reconsideration of [Melliemoore];
2. GRANT the issuance of a [WPI] effective immediately upon the expiration of the [TRO] issued in this case enjoining the respondents, their officers and agents, and all persons acting under them from enforcing and implementing the Decision dated 2 March 2017 in OMB-V-A-16-097, unless sooner revoked by this Court and/or until the instant petition is resolved, under the same bond previously posted by petitioner in the amount of One Hundred Thousand Pesos (P100,000.00);
3. GRANT [Melliemoore's] Manifestation with Motion for Extension of Time to File Comment, praying for an extension of five (5) days from 25 January 2018 or until 30 January 2018;
4. GRANT [Melliemoore's] Manifestation with Second Manifestation with Motion for Extension of Time to File Comment, praying for a further extension of five (5) days from 30 January 2018 or until 4 February 2018 to file the Comment;
5. NOTE [Melliemoore's] Comment with Manifestation and Motion for Reconsideration (of the Court's Resolution dated January 11, 2018 and Issuance of [TRO]) and/or Motion to Recall [TRO];
6. DENY the Office of the Solicitor General's Motion for Extension of Time to File Comment praying for thirty (30) days from 25 January 2018 or until 24 February 2018 within which to file its Comment; and
7. DIRECT the parties to file their respective Memoranda within thirty (30) days from notice hereof. Failure of which shall deem the Court to submit the instant petition for decision.

SO ORDERED.²⁶

Aggrieved, Melliemoore filed the present petition for *certiorari* with the Court. She alleges that the CA erred in granting the TRO and the WPI enjoining the OMB from implementing its Decision dated March 2, 2017, primarily because the condonation doctrine does not apply to Roel. Since Roel was not "elected" to the governor position in 2011, Melliemoore argues that his subsequent election in the 2013 midterm elections does not count as a re-election that would warrant the application of the condonation doctrine. Furthermore, there being no vested right to a public office, the CA should not have granted the injunctive writs in Roel's favor.²⁷

Roel, on the other hand, disputed the allegations in the petition. He asserts that he has a legal right over the office unless he is removed for cause. Roel also insists that the CA properly applied the condonation doctrine in his favor.²⁸

²⁶ Id. at 87-88.

²⁷ Id. at 17-30.

²⁸ Id. at 134-140.

Meyer

The Court is, therefore, confronted with the issue of whether the CA gravely abused its discretion amounting to lack or excess of jurisdiction in enjoining the OMB from implementing the decision dismissing Roel from government service.

Ruling of the Court

The Court finds the petition meritorious.

The CA gravely abused its discretion in issuing the injunctive relief in favor of Roel, despite the absence of a vested right and urgent necessity to prevent serious damage.

For an injunctive writ to issue, there must be a showing that the applicant is entitled to the relief being demanded.²⁹ This is one of the essential requisites of a writ of preliminary injunction, which was explained in *City Government of Butuan, et al. v. Consolidated Broadcasting System, Inc., et al.*³⁰ as follows:

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. **Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.**³¹ (Emphases ours)

²⁹ RULES OF COURT, Rule 58, Section 3.

³⁰ 651 Phil. 37 (2010).

³¹ Id. at 54-55.

Meys

Thus, in applying for the issuance of a TRO or a WPI, it was incumbent upon Roel to show first that he has a right clearly founded on or granted by law.

The Rules of Procedure of the OMB³² also explicitly state that an appeal shall not stop the decision from being executory. Pursuant to this, the OMB has the duty to implement its decisions as a matter of course. An officer who refuses to comply with the order of the OMB may even be subjected to disciplinary action.³³

The Court has recognized in *Ombudsman v. Samaniego*³⁴ that providing for the immediate execution of OMB decisions in administrative cases is a valid exercise of the OMB's constitutionally-granted rule-making power. As a special rule that specifically applies to the OMB's administrative cases, it supersedes the general procedure under Section 12,³⁵ Rule 43 of the Rules of Court.

In this regard, the Court ruled in *Samaniego* that the issuance of an injunctive writ to stay the implementation of the OMB's decision is an encroachment on the part of the CA on the rule-making power of the OMB.³⁶ Following this ruling, the CA should not have issued the challenged TRO and WPI to enjoin the implementation of Roel's dismissal from service. It should also be emphasized that there can be no vested interest or absolute right to an office. No less than the Constitution dictates that "[p]ublic office is a public trust."³⁷ As such, public service or office cannot be considered a property right.³⁸

More importantly, the enforcement of the OMB's decision would not result in grave and irreparable injury to Roel. Neither is there an urgent necessity for the issuance of an injunctive writ in order to prevent serious damage to Roel as a public officer. **The respondent in an administrative case, who is meted with the penalty of dismissal from the service, is considered under preventive suspension in the event that an appeal is made, and that appeal becomes successful. The respondent official is also entitled to receive the salary and other emoluments not received by reason of the removal.**³⁹

³² OMB Administrative Order No. 07, April 10, 1990, as amended by AO No. 17, September 7, 2003.

³³ Id., Rule III, Section 7.

³⁴ 646 Phil. 445 (2010).

³⁵ Sec. 12. *Effect of appeal*. – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

³⁶ *Ombudsman v. Samaniego*, supra note 34, at 450-451.

³⁷ 1987 CONSTITUTION, Article XI, Section 1.

³⁸ *Dadulo v. Court of Appeals*, 560 Phil. 702, 707-708 (2007).

³⁹ OMB Administrative Order No. 07, April 10, 1990, as amended by AO No. 17, September 7, 2003, Rules of Procedure of the Office of the Ombudsman, Rule III, Section 7.

Meyer

Verily, there is no basis for the issuance of a TRO or a WPI in favor of Roel. He did not have an absolute right to the office of the governor. There was also no urgent necessity or serious, irreparable damage that would result in the immediate implementation of the OMB's decision because Roel is deemed under preventive suspension during the pendency of his appeal with the CA. Should the CA grant his appeal, he would be paid the salary and monetary benefit accruing to his position.⁴⁰

Needless to state, the Court's decision in this case is limited to the question of whether the CA gravely abused its discretion amounting to lack or excess of jurisdiction in the issuance of the challenged resolutions. The findings of the Court pertain only to the impropriety of the injunction against the implementation of the OMB's Decision dated March 2, 2017 in OMB-V-A-16-0197, which found Roel liable for Grave Misconduct and imposed upon him the penalty of Dismissal from the Service. Thus, the Court, through this decision, cannot pre-empt the resolution of the other issues pending before the CA.

WHEREFORE, premises considered, the present petition for *certiorari* is hereby **GRANTED**. The Resolution dated January 11, 2018 and the Resolution dated March 7, 2018 of the Court of Appeals in CA-G.R. SP No. 11422 are **NULLIFIED** and **SET ASIDE**. The temporary restraining order and the writ of preliminary injunction issued pursuant to these resolutions are **DISSOLVED**, and the Court of Appeals is **DIRECTED** to proceed immediately with the resolution of respondent Roel R. Degamo's appeal.

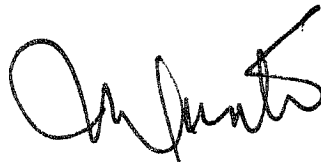
No costs.

SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice

⁴⁰ *Cobarde-Gamallo v. Escandor*, 811 Phil. 378, 386-387 (2017).

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson



MARVIC M.V.F. LEONEN
Associate Justice
RAMON PAUL L. HERNANDO
Associate Justice

(On official business)

HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



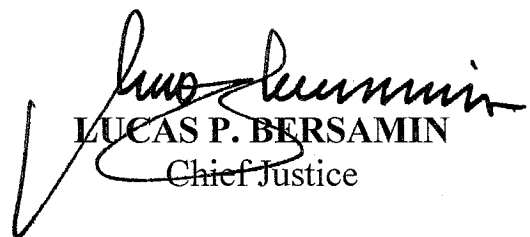
DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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Mis. DC Batt
MISAEEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division


LUCAS P. BERSAMIN
Chief Justice

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