

THIRD DIVISION

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

JOSE T. BARBIETO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS; MARY RAWNSLE V. LOPEZ, GRAFT INVESTIGATION AND PROSECUTION OFFICER II; EULOGIO S. CECILIO, DIRECTOR; EMILIO A. GONZALES III, DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES; OMBUDSMAN MERCEDITAS GUTIERREZ; AND LIEUTENANT GENERAL ALEXANDER B. YANO, COMMANDING GENERAL, PHILIPPINE ARMY, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

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

Facts of the Case

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

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

On 29 February 2008, ODO-MOLEO ordered^[4] the preventive suspension of Maj.

Gen. Barbieto and S/Sgt. Echipare for six months during the pendency of OMB-P-A-08-0201-B, the administrative case, thus:

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

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

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

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

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

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

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

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

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

On 4 April 2008, the Court of Appeals directed respondents to submit, within 10 days, their comment stating the reasons or justifications why the TRO and/or writ of preliminary injunction Maj. Gen. Barbieto prayed for should not be issued.^[13]

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

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

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

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

x x x x

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

The dispositive portion of the Resolution reads:

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

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

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

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

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

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

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

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

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

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

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

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

x x x x

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

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