

THIRD DIVISION

[G.R. NO. 143797, May 04, 2006]

**CARLITO L. MONTES, PETITIONER, VS. COURT OF APPEALS,
SIXTH DIVISION, OFFICE OF THE OMBUDSMAN, DEPARTMENT
OF SCIENCE AND TECHNOLOGY, RESPONDENTS.**

R E S O L U T I O N

TINGA, J.

In this Petition for Prohibition with Prayer for Temporary Restraining Order^[1] under Rule 65 of the 1997 Rules of Civil Procedure, petitioner Carlito L. Montes (Montes) seeks to prohibit the Honorable Secretary of the Department of Science and Technology (DOST) from implementing the suspension order^[2] dated 28 June 2000. The suspension order was issued in relation to the Decision^[3] dated 17 January 2000 and Order^[4] dated 2 March 2000, both of the Office of the Ombudsman, in "*Imelda D. Rodriguez and Elizabeth Fontanilla v. Carlito L. Montes*," docketed as OMB-ADM-0-98-0556. The assailed suspension order reads as follows:

TO: **CARLITO L. MONTES**
Chief, Legal Division, DOST

In compliance with the 2nd Indorsement dated 29 March 2000 from the Office of the Ombudsman directing this Office the implementation of the OMB Order dated 02 March 2000, in relation to OMB Decision dated 17 January 2000, wherein you were found guilty of violation of RA 4200 (THE ANTI-WIRE TAPPING LAW) amounting to GROSS MISCONDUCT in OMB-ADM-0-98-0556 entitled "*Imelda D. Rodriguez and Elizabeth Fontanilla -versus- Carlito L. Montes*," your (sic) are hereby **SUSPENDED FROM THE SERVICE FOR ONE YEAR WITHOUT PAY EFFECTIVE JULY 16, 2000.**

You are hereby directed to make the necessary turn-over/clearance of property and monetary accountabilities and submit all pending legal work to the Office of the Assistant Secretary for Administrative and Legal Affairs.

AS ORDERED.

Taguig, Metro Manila, June 28, 2000.

(sgd)
DR. FILEMON A. URIARTE, JR.
Secretary^[5]

OMB-ADM-0-98-0556 is the administrative complaint filed by complainants therein Imelda D. Rodriguez and Elizabeth Fontanilla against Carlito L. Montes, Chief of the Legal Division of DOST, for grave misconduct and conduct prejudicial to the best interest of service. Rodriguez and Fontanilla alleged that on 15 July 1999, while Montes was in the process of adducing evidence against Rodriguez and the DOST Secretary in the complaint for misconduct he had filed against them before the Presidential Commission Against Graft and Corruption (PCAGC), Montes produced a tape recording of a private conversation he had had with the DOST Secretary. Montes admitted that he had taped the conversation at the DOST Secretary's Office without the DOST Secretary's knowledge and consent a few days after 28 November 1993. Montes publicly played the illegal tape recording during the hearing and subsequently marked it as Exhibit "VV."^[6]

During cross-examination, Montes likewise admitted that he had also recorded a private conversation he had with Fontanilla at the DOST Office in Taguig sometime in November 1997. This was without the knowledge and consent of Fontanilla.^[7]

Moreover, in two (2) missives^[8] Montes sent Pedro A. del Rosario, Jr., the former mentioned the existence of the tape recordings he had made of his conversations with other people. Sometime in June 1998, Montes even re-played for Eduardo Langara the taped conversations he had with Secretary William G. Padolina and Fontanilla. In addition, PCAGC Prosecutor Mariano C. Quintos, Jr., stated in his affidavit dated 30 April 1998 that Montes submitted to him the tape recordings of Montes' had made of his conversations with Fontanilla.^[9]

The Ombudsman found Montes guilty of grave misconduct and suspended him for one (1) year without pay. The Ombudsman held that Montes' taping of his conversations with Fontanilla was prohibited by R.A. 4200, the Anti-Wiretapping Law. Montes did not deny that he made the recording without the Fontanilla's consent.^[10]

In an Order^[11] dated 2 March 2000, the Ombudsman denied Montes' motion for reconsideration and affirmed the Decision dated 17 January 2000. Hence, Montes filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with prayer for temporary restraining order before the Court of Appeals, docketed as C.A.-G.R. SP No. 58267.

The Court of Appeals dismissed outright Montes' petition in a Resolution^[12] dated 4 May 2000 for being procedurally infirm. Specifically, the appellate court noted that Montes failed: a) to state the specific date when he received a copy of the Ombudsman's Decision; b) to attach duplicate originals or certified true copies of the challenged Decision and Order; and c) to provide an explanation why the copy of his petition was not served personally upon therein respondent DOST Secretary.

On motion for reconsideration, however, the appellate court issued a Resolution^[13] dated 22 June 2000 requiring the Ombudsman to file his comment. Notably, the appellate court considered Montes' motion for reconsideration abandoned in a Resolution dated 8 August 2000, in view of the commencement of the instant petition.^[14]

Meanwhile, on 28 June 2000, the DOST Secretary issued the assailed suspension order.

Montes now argues in his petition before the Court that the implementation of the suspension order is premature considering the pendency of his petition before the appellate court. Citing *Lapid v. Court of Appeals*,^[15] he further states that there is no law or provision in R.A. 6770,^[16] the Ombudsman Law, or in Administrative Order No. 7^[17] mandating the immediate execution of the Ombudsman's decision in an administrative case where the penalty imposed is suspension for one (1) year. Moreover, he asserts that the administrative complaint, which is for a violation of R.A. 4200, is cognizable by the regular courts considering the imposable penalty. Finally, he complains that he was convicted of the alleged wire-tapping by mere substantial evidence which is short of the quantum of evidence required for conviction of a criminal offense.^[18]

In their Comment^[19] dated 18 October 2000, the Ombudsman and the DOST, through the Solicitor General, assert that the filing of the instant petition is a violation of the proscription against forum-shopping. Further, they argue that the execution of the suspension order despite the pendency of an appeal is allowed under Section 7 of Administrative Order No. 14-A-00.^[20]

In his Memorandum^[21] dated 16 January 2001, Montes reiterates his previous submission that the Ombudsman should not have proceeded to hear the administrative complaint considering that an Information^[22] had already been filed against him before the Regional Trial Court of Pasig City, Branch 168.

The Ombudsman and the DOST, on the other hand, restate in their Memorandum^[23] dated 19 January 2001 that the filing of the instant petition constitutes forum-shopping. Moreover, Montes failed to raise any valid reason which would warrant the issuance of a temporary restraining order or a writ of prohibition. Finally, they contend that a prohibitory injunction is not proper as the act sought to be restrained is already *fait accompli*.

The pivotal issue here is whether Montes is entitled to the issuance of a writ of prohibition enjoining the DOST Secretary from enforcing the suspension order.

At the outset, we find that Montes transgressed the proscription against forum shopping.

There is forum shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals. Forum shopping is also the act of one party against another when an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of certiorari; or the institution of two or more acts or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.^[24]

Forum shopping is an act of malpractice, as the litigants trifle with the courts and abuse their processes. It is improper conduct and degrades the administration of