

## THIRD DIVISION

[ A.M. No. RTJ-00-1553, November 20, 2000 ]

**ATTYS. ALFREDO BENJAMIN S. CAGUIOA AND RICARDO MA. P.G. ONGKIKO, COMPLAINANTS, VS. JUDGE CELSO D. LAVIÑA, REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 71, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

A judge is presumed to act with regularity and good faith in the performance of judicial functions. However, a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining strict compliance therewith, upends this presumption and subjects the magistrate to administrative sanctions. In the present case, the Writ issued by respondent judge impeded the implementation of a government infrastructure project and thus constituted a palpable transgression of Presidential Decree (PD) 1818 and Supreme Court Circular Nos. 13-93, 68-94 and 07-99.

#### The Case and the Facts

In a sworn letter-complaint dated July 28, 1997,<sup>[1]</sup> filed by Attys. Alfredo Benjamin S. Caguioa and Ricardo Ma. P.G. Ongkiko of Sycip Salazar Hernandez and Gatmaitan Law Office, Judge Celso D. Laviña of the Regional Trial Court of Pasig City (Branch 71) was accused of grave misconduct for maliciously issuing several void Orders relative to Civil Case No. 66060.

Complying with the directive of Court Administrator Alfredo L. Benipayo, respondent filed his Comment<sup>[2]</sup> by way of a "2nd Indorsement" dated October 17, 1997, denying liability for the acts complained of.

In a Report and Recommendation dated March 6, 2000,<sup>[3]</sup> the court administrator related the factual antecedents that gave rise to herein administrative Complaint, which we quote:

"Complainants, who are partners in the law firm of Sycip Salazar Hernandez and Gatmaitan, and counsel for Tokyu Construction Co., Ltd. ("Tokyu" for brevity), a Japanese corporation that is the lead member of a Consortium currently under contract with the Philippine Government for the construction of the new NAIA Terminal 2 building, accuses respondent of alleged malicious issuance of several void orders in connection with Civil Case No. 66060 x x x."

x x x

x x x

x x x

"Sometime in the middle of 1994, the government, through the Manila International Airport Authority ("MIAA") invited prospective contractors to bid for the construction of a new Ninoy Aquino International Airport ("NAIA") terminal building. Four (4) private construction companies, namely Tokyu, BF Corporation ("BF"), Oreta & Co. ("Oreta") and Mitsubishi Corporation ("Mitsubishi"), decided to form a Consortium called the MTOB Consortium (the "Consortium") for purposes of submitting a bid for the Project. To this end, the four companies executed on May 31, 1995 a Consortium Agreement (the "Consortium Agreement") which was only couched in general terms, the specific items of work to be done by each of the Consortium members, as well as its pricing, were not yet agreed upon because the Consortium had yet to win the bid.

"The Consortium won the bid and after the contract was awarded by MIAA to the Consortium, BF and Tokyu met several times to agree on the specific portions of work to be allotted to BF. However, BF and Tokyu were unable to agree not only on the specific items of work that would be allotted to BF, but also on BF's fees especially with respect to the subcontract portion.

"On January 10, 1997, BF filed a complaint against Tokyu, docketed as Civil case No. 66060, for alleged breach of the terms of the Consortium agreement and prayed, in the alternative, for specific performance, rescission and/or damages, and for the issuance of a temporary restraining order and/or writ of preliminary injunction.

"Pursuant to existing Supreme Court Circulars, the Executive Judge of the Regional Trial Court of Pasig City issued on that same day a 72-hour Temporary Restraining Order ("TRO"), and ordered the immediate raffling of BF's complaint. The case was raffled on January 13, 1997 to Branch 71 of the Regional Trial Court of Pasig City, presided by respondent judge who, in turn, directed the parties to appear in Court on January 14 and 15, 1997, to determine whether there existed sufficient grounds to extend to twenty days the 72-hour TRO previously issued.

x x x

x x x

x x x

"On the very same day the BF complaint was raffled to the sala of respondent judge, Tokyu filed an Urgent Verified Opposition, bringing to the attention of respondent Judge the existence of P.D. 1818 as well as Supreme Court Circulars Nos. 13-93 and 68-94 which prohibit the issuance by any court of any injunction that would delay the progress of a government infrastructure project. **In spite of that cautionary notice in the Verified Opposition, the respondent judge on January 21, 1997, issued an order extending the TRO without even mentioning P.D. No. 1818 or the Supreme Court Circulars Nos. 13-93 and 68-94.** (Emphasis supplied)

"On January 24, 1997, Tokyu filed with the Court of Appeals a Petition for Certiorari and Prohibition with Very Urgent Prayer for Issuance of a Writ

of Preliminary Injunction and/or Temporary Restraining Order and Disqualification docketed as C.A. G.R. SP No. 43133, praying for the issuance ex-parte of a restraining order commanding respondent Judge not to act, or in any manner, execute the January 21, 1997 Order, and, after appropriate proceedings, of a writ of preliminary injunction restraining respondent Judge from taking any further action on the case.

x x x

x x x

x x x

"On February 5, 1997, the Court of Appeals issued a TRO enjoining respondent Judge from enforcing the January 21 Order, and from proceeding with the hearing of BF's application for a writ of preliminary injunction, until further orders from the appellate court.

"On May 15, 1997, the Court of Appeals rendered a decision in C.A.-G.R. Sp. No. 43133 allowing respondent Judge to proceed with the suspended hearing on the application for a writ of preliminary injunction in Civil Case No. 66060, to 'be limited only and narrowed down to the issue of whether, PENDENTE LITE, Tokyu x x x should recognize the status of BF as a partner or member of the Consortium x x x and, in the affirmative, the amount that BF should be entitled to share out of the payments made from time to time by MIAA to the Consortium...'

"On June 11, 1997, Tokyu moved for the reconsideration of the May 15, 1997 CA decision, praying that respondent judge be also prohibited from conducting hearing even on the delimited issue. In the meantime, the respondent judge had set for June 13, 1997 a hearing for the cross-examination of a Japanese national as Tokyu's witness, and despite Tokyu's plea to re-set the hearing due to the very limited time available for Tokyu to plane in its witness from Japan, the respondent Judge on June 13, 1997 denied Tokyu's motion to postpone and ordered the affidavit-testimony of the aforementioned witness stricken off the records. Tokyu filed a motion for reconsideration of that June 13, 1997 order striking out the testimony of its Japanese witness which respondent denied in his Order of June 30, 1997 x x x.

"On July 18, 1997, at 4:00P.M., while Tokyu was still preparing its Memorandum which was due for filing on July 31, 1997 yet, Tokyu or its counsel received a Writ of Preliminary Prohibitory and Mandatory Injunction enjoining Tokyu from performing, and to perform, certain specific acts in relation to the project subject matter of Civil Case No. 66060. And at 4:32 P.M. of the same day, Tokyu received through mails the respondent Judge's order dated July 8, 1997 granting the application for preliminary prohibition and mandatory injunction. July 18, 1997 was a Friday, and Tokyu laments that that was chosen as the day to serve it a copy of the writ in order to prevent it (Tokyu) from seeking immediate redress from the appellate courts (the following two days being a Saturday and a Sunday), what with only three (3) days given it to comply with the writ."

As can be gleaned from the foregoing recital of facts, complainants assailed several

Orders of respondent. These were dated January 21, 1997; June 13, 1997; June 30, 1997; and July 8, 1997. Also questioned was the injunctive Writ dated July 18, 1997.

In this regard, it is significant to note that, *except for the January 21, 1997 Order*, the above-mentioned Orders and Writ issued by respondent were likewise questioned in a special civil action for *certiorari* filed with the Court of Appeals (CA), in which it was docketed as CA-GR SP. No. 44729.

In a Decision dated October 20, 1997,<sup>[4]</sup> the CA Seventh Division ruled that "the order dated July 8, 1997 granting the writ of preliminary prohibitory mandatory injunction, and the writ of preliminary mandatory injunction dated July 18, 1997 issued as a consequence of said order, both in Civil Case No. 66060 of the Regional Trial Court, Pasig City, Branch 71 were issued with grave abuse of discretion amounting to lack or excess of jurisdiction."<sup>[5]</sup> However, it did not make a finding on the June 13 and the June 30, 1997 Orders. The CA Decision was subsequently challenged in a Petition for Review, docketed as GR No. 131155, which is still pending before this Court.<sup>[6]</sup>

Complainants and respondent judge, in their respective Manifestations dated June 13, 2000<sup>[7]</sup> and June 7, 2000<sup>[8]</sup>, submitted the case for resolution on the basis of the pleadings and records already filed.

#### **Recommendation of the Court Administrator**

According to the court administrator, respondent's January 21, 1997 Order completely ignored the prohibition on the issuance of injunctive writs as contained in PD 1818 and Supreme Court Circular Nos. 13-93 and 68-94. The said Order had extended the initial 72-hour Temporary Restraining Order (TRO) to the full 20-day period despite complainants' verified opposition. Hence, he recommended that respondent be fined in the amount of five thousand pesos (P5,000).

Further, he submitted that the other Orders which are subjects of GR No. 131155 should be dealt with after said appeal shall have been resolved with finality.

#### **The Court's Ruling**

We agree with the Office of the Court Administrator that respondent should be fined in the amount of five thousand pesos for the issuance of the Order dated January 21, 1997. However, in regard to the other Orders of respondent judge, the Complaint should be dismissed for prematurity.

#### **Preliminary Matters**

The validity and the propriety of the issuance of the Orders dated June 13, June 30 and July 8, 1997, as well as the injunctive Writ dated July 18, 1997, should be threshed out first in the above-mentioned case and considered as *judicial issues* arising from the exercise of respondent's judicial discretion. To rule on these matters in the instant administrative case would be premature.