



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

DEPARTMENT OF FINANCE,  
represented by HON. CESAR V.  
PURISIMA in his official capacity  
as SECRETARY, and the  
BUREAU OF CUSTOMS,  
represented by HON. ROZZANO  
RUFINO B. BIAZON, in his  
official capacity as Commissioner  
of Customs,

Petitioners,

G.R. No. 209331

Present:

CARPIO, J., Chairperson,  
PERALTA,\*  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, JJ.

- versus -

HON. MARINO M. DELA CRUZ, JR.,  
in his capacity as Executive Judge,  
Regional Trial Court, Manila,  
HON. FELICITAS O. LARON-CACANINDIN,  
in her capacity as Presiding Judge,  
Regional Trial Court, Manila, Branch 17,  
RONNIE C. SILVESTRE,  
EDWARD P. DELA CUESTA,  
ROGEL C. GATCHALIAN,  
IMELDA D. CRUZ,  
LILIBETH S. SANDAG,  
RAYMOND P. VENTURA,  
MA. LIZA S. TORRES,  
ARNEL C. ALCARAZ,  
MA. LOURDES V. MANGAOANG,  
FRANCIS AGUSTIN Y. ERPE,  
CARLOS T. SO, MARIETTA  
D. ZAMORANOS, CARMELITA  
M. TALUSAN,<sup>1</sup> AREFILES H.  
CARREON,<sup>2</sup> and ROMALINO  
G. VALDEZ,

Respondents.

Promulgated:

24 AUG 2015

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\* Designated acting member per Raffle dated 10 August 2015.

<sup>1</sup> Carmelita M. Talusan withdrew as petitioner in Civil Case No. 13-130820, noted by the trial court in its Order dated 4 October 2013. *Rollo*, p. 58.

<sup>2</sup> Arefiles H. Carreon manifested his intent to withdraw as petitioner in Civil Case No. 13-130820 per letter to counsel dated 16 October 2013. *Id.* at 119.

## DECISION

**CARPIO, J.:**

### The Case

Petitioners assail the Order dated 4 October 2013<sup>3</sup> issued by Judge Felicitas O. Laron-Cacanindin (Judge Laron-Cacanindin) of the Regional Trial Court of Manila, Branch 17 (RTC Branch 17), in Civil Case No. 13-130820. The Order extended the 72-hour Temporary Restraining Order (TRO) issued by Executive Judge Marino M. Dela Cruz, Jr. (Executive Judge Dela Cruz) in favor of respondents Silvestre, et al.<sup>4</sup> to 20 days or until 21 October 2013 without need of posting bond.

### The Antecedent Facts

The case stemmed from the issuance of Executive Order No. 140 (EO 140) on 2 September 2013, which created the Customs Policy Research Office (CPRO) in the Department of Finance (DOF). EO 140 states that the CPRO “shall be responsible for reviewing the customs administration policies, rules and procedures, and thereafter providing sound recommendations for the improvement of the same.” Section 3 of EO 140 provides that “CPRO shall be composed of its organic personnel, as approved by the Department of Budget and Management (DBM) upon recommendation of the DOF Secretary, augmented and reinforced by DOF and BOC personnel as well as those detailed or seconded from other agencies, whether attached to the DOF or not. x x x.” Section 9 of EO 140 states that it shall “take effect immediately upon publication in two (2) newspapers of general circulation.” EO 140 was published in *Manila Bulletin* and *Philippine Star* on 17 September 2013.

On the same day of the publication of EO 140, Bureau of Customs (BOC) Commissioner Rozzano Rufino B. Biazon (Commissioner Biazon) issued Customs Personnel Order No. B-189-2013 (CPO 189-2013) detailing 27 BOC personnel holding the positions of Collector of Customs V and VI, including respondents in this case, to CPRO “effective immediately and valid until sooner revoked.” CPO 189-2013 was approved by DOF Secretary Cesar V. Purisima (Secretary Purisima).

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<sup>3</sup> Id. at 57-63.

<sup>4</sup> Ronnie C. Silvestre, Edward P. Dela Cuesta, Rogel C. Gatchalian, Imelda D. Cruz, Lilibeth S. Sandag, Raymond P. Ventura, Ma. Liza S. Torres, Arnel C. Alacaraz, Ma. Lourdes V. Mangaoang, Francis Agustin Y. Erpe, Carlos T. So, Marietta D. Zamoranos, Carmelita M. Talusan, Arefiles H. Carreon, and Romalino G. Valdez.

On 30 September 2013, respondents filed an action for Declaratory Relief with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction before the Regional Trial Court (RTC) of Manila. On 1 October 2013, Executive Judge Dela Cruz issued a TRO for a period of 72 hours enjoining petitioners or any person acting for and in their behalf from implementing CPO 189-2013. Thereafter, the case was raffled to the sala of Judge Laron-Cacanindin.

In the assailed Order of 4 October 2013, Judge Laron-Cacanindin extended Executive Judge Dela Cruz's 72-hour TRO for 20 days or until 21 October 2013. She then set the hearing for the issuance of a preliminary injunction on 18 October 2013.

On 21 October 2013, petitioners filed a Petition for Certiorari and Prohibition before this Court, with prayer for the issuance of a TRO or a writ of preliminary mandatory injunction. Petitioners alleged that the case involves personnel action affecting public officers which is under the exclusive jurisdiction of the Civil Service Commission (CSC). Petitioners also alleged that respondents failed to exhaust all administrative remedies available to them before filing the petition before the RTC. Petitioners also alleged that CPO 189-2013 is an internal personnel order with application that is limited to and only within BOC and as such, it cannot be the subject of an action for declaratory relief.

In their Comment, respondents alleged that the case involves the validity and constitutionality of CPO 189-2013, and thus, it is beyond the jurisdiction of the CSC. Respondents further alleged that EO 140 violated Article 2 of the Civil Code when it became effective immediately after its publication.

In their Reply, petitioners alleged that respondents only assailed the validity of EO 140 to justify their filing of an action for declaratory relief. As regards its effectivity, petitioners alleged that EO 140 states that it shall "take effect immediately upon publication in two (2) newspapers of general circulation."

In an Order dated 21 October 2013, Judge Laron-Cacanindin denied respondents' application for the issuance of a writ of preliminary injunction.

In an Order dated 5 November 2013, Judge Laron-Cacanindin inhibited herself from further hearing the case.

### **The Issues**

The issues for determination by this Court are the following:

1. Whether the RTC has jurisdiction over the action for declaratory relief filed by respondents;
2. Whether respondents failed to exhaust administrative remedies in filing the action before the RTC;
3. Whether EO 140 violated Article 2 of the Civil Code when it became effective immediately after its publication; and
4. Whether CPO 189-2013 was validly issued.

### **The Ruling of this Court**

#### ***Jurisdiction over the Petition***

The CSC has jurisdiction over all employees of government branches, subdivisions, instrumentalities, and agencies, including government-owned or controlled corporations with original charters.<sup>5</sup> The CSC is the sole arbiter of controversies relating to the civil service.<sup>6</sup> The rule is that disciplinary cases and cases involving personnel actions, including “appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion, and separation,” are within the exclusive jurisdiction of the CSC.<sup>7</sup> This rule is embodied in Section 1, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules) which states:

#### SECTION 1. x x x.

As used in these Rules, any action denoting movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include promotion, transfer, reinstatement, reemployment, detail, secondment, reassignment, demotion and separation. x x x.

Under Section 8, Rule VII of the Omnibus Rules, “[a] detail is the movement of an employee from one department or agency which is temporary in nature, which does not involve a reduction in rank, status or salary and does not require the issuance of another appointment.” CPO 189-2013 is an order detailing personnel from the BOC to CPRO under the DOF.

A reading of the petition filed before the RTC shows that respondents were questioning their mass detail and reassignment to CPRO. According to respondents, their detail was carried out in bad faith and was meant to

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<sup>5</sup> *Corsiga v. Judge Defensor*, 439 Phil. 875 (2002).

<sup>6</sup> *Id.*

<sup>7</sup> *Olanda v. Bugayong*, 459 Phil. 626 (2003).

remove them from their permanent positions in the BOC. The action appears to be a personnel action under the jurisdiction of the CSC.

However, the petition went beyond questioning the detail of respondents. Respondents further assailed the validity and constitutionality of CPO 189-2013. Respondents alleged that CPO 189-2013 was issued even before EO 140, pursuant to which CPO 189-2013 was issued, became effective. Respondents alleged that CPO 189-2013 was issued to beat the deadline of the Commission on Elections' ban on personnel movement from 28 September 2013 to 20 October 2013 due to the scheduled barangay elections. When respondents raised the issue of validity and constitutionality of CPO 189-2013, the issue took the case beyond the scope of the CSC's jurisdiction because the matter is no longer limited to personnel action. Thus, the RTC did not abuse its discretion in taking cognizance of the action.

### ***Failure to Exhaust Administrative Remedies***

Petitioners allege that respondents failed to exhaust their administrative remedies before filing the case with the RTC.

The doctrine of exhaustion of administrative remedies allows administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.<sup>8</sup> The doctrine entails lesser expenses and provides for the speedier resolution of controversies.<sup>9</sup> Therefore, direct recourse to the trial court, when administrative remedies are available, is a ground for dismissal of the action.

The doctrine, however, is not without exceptions. Among the exceptions are: (1) where there is estoppel on the part of the party invoking the doctrine; (2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (3) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (4) where the amount involved is relatively so small as to make the rule impractical and oppressive; (5) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (6) where judicial intervention is urgent; (7) where the application of the doctrine may cause great and irreparable damage; (8) where the controverted acts violate due process; (9) where the issue of non-exhaustion of administrative remedies had been rendered moot; (10) where there is no other plain, speedy and adequate remedy; (11) where strong public interest is involved; and (12) in quo warranto proceedings.<sup>10</sup>

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<sup>8</sup> *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, G.R. No. 175039, 18 April 2012, 670 SCRA 83.

<sup>9</sup> *Id.*

<sup>10</sup> *Vigilar v. Aquino*, 654 Phil. 755 (2011).

In this case, respondents allege that CPO 189-2013 is contrary to law and unconstitutional. Respondents assail CPO 189-2013 as patently illegal, arbitrary, and oppressive. This case clearly falls within the exceptions where exhaustion of administrative remedies need not be resorted to by respondents.

### *Effectivity of EO 140*

Respondents allege that EO 140 took effect only on 2 October 2013, fifteen days after its publication in two newspapers of general circulation. Hence, respondents argue that when CPO 189-2013 was issued, EO 140 was not yet effective.

Article 2 of the Civil Code of the Philippines, as amended by Executive Order No. 200,<sup>11</sup> is clear on this issue. It states:

Art. 2. Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette, or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.

The proviso “unless it is otherwise provided” refers to an effectivity date other than after fifteen days following the completion of the law’s publication.<sup>12</sup> Thus, it is within the discretion of the legislature, or the Executive Department in this case, whether to shorten or extend the fifteen-day period<sup>13</sup> as long as there is compliance with the requirement of publication.

Here, Section 9 of EO 140 provides that the “order shall take effect immediately upon publication in two (2) newspapers of general circulation.” EO 140 was published in *Manila Bulletin* and *Philippine Star* on 17 September 2013. As such, EO 140 took effect on 17 September 2013.

In addition, the Court already ruled that “[i]nterpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published.”<sup>14</sup> EO 140 is an internal regulation that affects primarily the personnel of the DOF and the BOC. It remains valid even without publication.

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<sup>11</sup> Providing for the Publication of Laws Either in the Official Gazette or in a Newspaper of General Circulation in the Philippines as a Requirement for their Effectivity.

<sup>12</sup> *Nagkakaisang Maralita ng Sitio Masigasig, Inc. v. Military Shrine Services-Philippine Veteran Affairs Office, Department of National Defense*, G.R. No. 187587, 5 June 2013, 697 SCRA 359.

<sup>13</sup> *Tañada v. Tuvera*, 230 Phil. 528 (1986), Resolution on Motion for Reconsideration.

<sup>14</sup> *Id.*

### ***Validity of CPO 189-2013***

Respondents assail the validity of CPO 189-2013. Respondents allege that under EO 140, CPRO shall be composed of its organic personnel, as approved by the DBM upon recommendation of the DOF Secretary. The organic personnel was supposed to be augmented and reinforced by DOF and BOC personnel. Respondents allege that they were detailed to CPRO even before its organic personnel could be constituted.

We rule for respondents.

Section 3 of EO 140 provides:

SECTION 3. Personnel and Staffing Complement. The CPRO shall be composed of its organic personnel, as approved by the Department of Budget and Management (DBM) upon recommendation of the DOF Secretary, augmented and reinforced by DOF and BOC personnel as well as those detailed or seconded from other agencies, whether attached to the DOF or not. In addition, the CPRO, upon approval of the DOF Secretary, may hire or engage technical consultants to provide necessary support in the performance of its mandate.

Respondents were supposed to augment and reinforce the existing organic personnel of CPRO. Yet, at the time of respondents' detail, CPRO had not been formally organized. CPRO had no organic personnel that had been approved by the DBM upon recommendation of the DOF Secretary. The DOF Secretary had yet to promulgate rules and regulations and to prescribe procedures and processes to enable CPRO to effectively exercise its powers and duties, as required by Section 4 of EO 140.

In addition, under Section 8, Rule VII of the Omnibus Rules, a detail is temporary in nature. In fact, detail of employees is only allowed for a maximum period for those occupying professional, technical, and scientific positions.<sup>15</sup> Section 8, Rule VII of the Omnibus Rules provides:

SEC. 8. A detail is the movement of an employee from one department or agency to another which is temporary in nature, which does not involve a reduction in rank, status or salary and does not require the issuance of another appointment.

The employee detailed receives his salary only from his mother unit/agency.

Detail shall be allowed only for a maximum period in the case of employees occupying professional, technical and scientific position. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission.

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<sup>15</sup> Section 26(6), Chapter V, Book V, Title I of Executive Order No. 292 provides that the detail shall be allowed "only for a limited period in the case of employees occupying professional, technical and scientific positions."

Section 2 of CSC Resolution No. 021181, dated 13 September 2002,<sup>16</sup> clarified the maximum period of detail of employees. It states:

Section 2. Duration of the detail. The detail shall be allowed only for a maximum period of one year. Details beyond one year may be allowed provided it is with the consent of the detailed employee. The extension or renewal of the period of the detail shall be within the authority of the mother agency.

If the employee believes that there is no justification for the detail, he/she may appeal his/her case to the proper Civil Service Commission Regional Office. Pending appeal, the detail shall be executory unless otherwise ordered by said regional office. Decision of said regional office may be further appealed to the Commission en banc.

In this case, CPO 189-2013 did not provide for the period of respondents' detail. It only provided that the order "shall be effective immediately and valid until sooner revoked," making the detail of respondents indefinite. There was nothing to show that respondents were occupying professional, technical, and scientific positions that would have allowed their detail for the maximum period provided under Section 8, Rule VII of the Omnibus Rules. Further, CSC Resolution No. 021181 did not distinguish between an ordinary employee and an employee occupying professional, technical, and scientific position. Hence, it should have been specified that the maximum period of respondents' detail should not exceed one year.

Petitioners assert, and we quote:

There is a cancer of corruption we must extinguish. The drive to rid the government of graft and corruption deserves the support of everyone.

The principle of good governance cannot, should not, be trivialized nor oversimplified by tenuous whimpering and individualism intended to detract from the urgent need to cleanse the Republic from a mainstream culture of unabated corruption, perpetuated with impunity and sense of self-entitlement. The issue at hand is not about who, but what; it is not about individual loss, but about national gain. Whether from the birth pains of reform, this nation can gain a foothold, nay, a stride into restoring this nation into its prideful place from the clutches of a "*kleptocratic* mafia" that had gained a stranglehold into one of the nation's primary sources of revenue.<sup>17</sup>

Indeed, we commend and support the reforms being undertaken in the different agencies of the government. However, we cannot allow department heads to take shortcuts that will undermine and disregard the basic procedures of the law.

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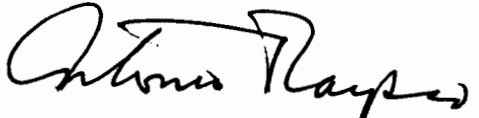
<sup>16</sup> As contained in CSC Memorandum Circular No. 21, Series of 2002.

<sup>17</sup> *Rollo*, p. 10.

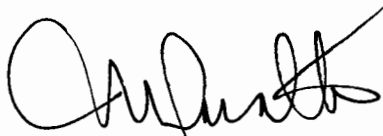


**WHEREFORE**, we **PARTIALLY GRANT** the petition. We sustain the validity of Executive Order No. 140. We rule that the Regional Trial Court has jurisdiction over the action for declaratory relief filed by respondents. We further rule that Customs Personnel Order No. B-189-2013 was not validly issued.

**SO ORDERED.**

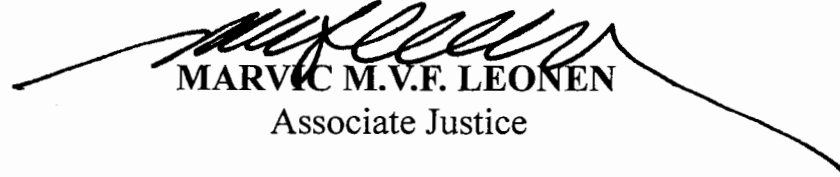
  
**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Associate Justice

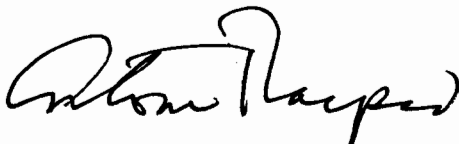
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

*su separate dissenting  
opinion*  
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**ATTESTATION**

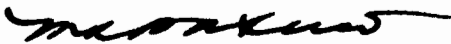
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

**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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice