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(G.R. No. L-24864. November 19, 1985)

FORTUNATO HALILI, doing business under the name and style HALILI TRANSIT (substituted by Emilia de Vera de Halili), *petitioner, vs.* **COURT OF INDUSTRIAL RELATIONS and HALILI BUS DRIVERS AND CONDUCTORS UNION (PTGWO),** *respondents.*

(G.R. No. L-27773. November 19, 1985)

EMILIA DE VERA *VDA. DE* HALILI, *petitioner, vs.* **COURT OF INDUSTRIAL RELATIONS and HALILI BUS DRIVERS AND CONDUCTORS UNION (PTGWO),** *respondents.*

(G.R. No. L-38655. November 19, 1985)

FELICIDAD M. TOLENTINO, et al., *petitioner, vs.* **COURT OF INDUSTRIAL RELATIONS and HALILI BUS DRIVERS AND CONDUCTORS UNION (PTGWO),** *respondents.*

(G.R. No. L-30110. November 19, 1985)

EMILIA DE VERA *VDA. DE* HALILI, *petitioner, vs.* **HALILI BUS DRIVERS AND CONDUCTORS UNION (PTGWO) and COURT OF INDUSTRIAL RELATIONS** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; RATIONALE.—** Contemnor Pineda has miserably failed to comply with Our resolution dated April 30, 1985. For such non-compliance or better still, for not fully performing the act required of him, he cannot as yet purge himself of contumacy. For, it is clear from the provision of Section 7, Rule 71 of the Revised Rules of Court that the rationale behind

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the punishment of the contemnor is for him to make complete restitution to the party injured by the violation of an order. Thus, if the contumacious act consists in the failure to perform an act or obligation which is yet in the power or the contemnor to do, he may be imprisoned indefinitely until full and complete compliance with Our order or resolution.

2. **ID.; ID.; ID.; PENALTY OF INDEFINITE IMPRISONMENT; ESSENCE.—** The essence of the imposition of an indefinite imprisonment on the contemnor is the ultimate and total performance of an obligation required by an order of a superior court. This is why contumacy should be indivisible— it cannot be the subject of piece-meal compliance; otherwise, the very reason for which it is imposed, which is the complete compliance with an order, would be defeated. Court orders and injunctions would be easily defied or ignored by litigants if, every time a contemnor partially satisfies the same, he would be released from the contempt charge. This premature purging of contumacy would not prevent the order party from filing another motion for contempt and this would naturally result in endless litigations. Hence, unless and until our courts show they mean business in exacting full compliance with their orders, the contempt of court might become a futile exercise of judicial power. And eventually, litigants and their counsel might lose respect for our courts.

3. **ID.; ID.; ID.; GOOD FAITH, NOT A GROUND FOR EXONERATION.—** Even as contemnor Atty. Pineda pleads good faith in having committed the contumacious acts and offers contrition, apologies and restitution, such posture is not enough to purge himself of his legal and moral obligations particularly so because he is a counsel for the workers whose interests he is duly bound to protect. Instead, he exploited their ignorance. What really comes to Our minds now is this question: After all that the contemnor has done, could he still be considered a competent, trustworthy and decent member of the Bar? Thus, in the case of *Borromeo vs. Court of Appeals* (L-39253, 87 SCRA 67 [November 24, 1978]), this Court had the candor to say that good faith alone is not a ground for exoneration of the contempt charge.

4. **ID.; ID.; ID.; ACTS OF LABOR ARBITER SHOWS NONFEASANCE AND GROSS NEGLECT OF DUTY.—** It appears that Arbiter Valenzuela failed to observe the degree of prudence expected of him as a government lawyer of 29

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years. When the motions of Atty. Pineda were indorsed to him for proper action, he should have first exhausted all efforts in locating or reconstructing the records upon his discovery that the same were incomplete. He should have informed his superior officer or the one who assigned to him the motions that the records were lacking. He should have initiated a reconstitution of the records by requiring all the lawyers in the case to produce their own records or have sought their assistance in locating the records.

APPEARANCES OF COUNSEL

Ruben C. Asedillo for Manila Bank.
Pedro A. Lopez for Halili Bus Drivers and Conductors Union.

RESOLUTION

MAKASIAR, *C.J.*:

On April 30, 1985, We resolved an urgent motion to cite Atty. Benjamin C. Pineda, Ricardo Capuno and Manila Bank (Cubao Branch) in contempt for their continued failure to comply with this Court's temporary mandatory restraining order issued on September 1, 1983 and with Its resolution dated September 13, 1983 which required compliance with the aforesaid restraining order. WE disposed of the above motion in the following terms:

"WHEREFORE, ATTY. BENJAMIN PINEDA IS HEREBY FOUND GUILTY OF INDIRECT CONTEMPT OF COURT FOR WHICH HE IS HEREBY SENTENCED TO IMPRISONMENT IN THE MANILA CITY JAIL UNTIL THE ORDERS OF THIS COURT DATED SEPTEMBER 1 AND SEPTEMBER 13, 1983 ARE COMPLIED WITH.

"ATTY. BENJAMIN PINEDA IS ALSO DIRECTED TO SHOW CAUSE WHY HE SHOULD NOT BE DISBARRED UNDER RULE 138 OF THE REVISED RULES OF COURT.

"LET COPIES OF THIS RESOLUTION AND THE RESOLUTION OF OCTOBER 18, 1983 BE FURNISHED THE MINISTRY OF LABOR AND THE TANODBAYAN FOR APPROPRIATE ACTION" (p. 424, L-27773 rec.).

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Atty. Benjamin Pineda moved for reconsideration of the aforecited resolution on May 13, 1985, therein stating, among other things, that he could not comply with Our resolution of September 1, 1983 since after withdrawals and disbursements, only ₱2,022.70 remained from his account with the Manila Bank (Cubao Branch); that he admits the wrong he has committed, apologizes for the same promises that he will do his best to make restitution; that as evidence of his act of repentance and restitution, he delivered to the NLRC on May 10, 1985 TCT No. 181023 covering his registered real estate property consisting of 633 square meters and the amount ₱30,000.00 in cash, in partial compliance with this Court's resolution of April 30, 1985; that he helped in facilitating the sale in order to pay the accumulated real estate taxes; and that his retainer's contract was annotated at the back of the title of said property (TCT No. 205785) as attorney's lien. Movant Pineda now prays for a reconsideration of Our April 30, 1985 resolution (p. 426, L-27773 rec.).

On May 21, 1985, movant Pineda filed his supplement to motion for reconsideration therein stating, among other things, that in compliance with this Court's resolution of October 18, 1983, remanding these cases to the NLRC for further proceedings, Labor Arbiter Antonio Tria Tirona conducted a hearing on May 20, 1985 where the union, Atty. Jose C. Espinas, Atty. Pedro Lopez and herein movant appeared; and, that the aforenamed parties agreed on these terms:

1. that movant is still answerable for the uncontested amount of ₱407,424.00 representing the 10% excess attorney's fees in the amount of ₱203,712.00, to be refunded to the Union and the 10% attorney's fees due to Atty. Espinas and Atty. Lopez in the amount of ₱203, 712.00, as per NLRC order dated April 24, 1985. Said order awarded 7% attorney's fees to Atty. Espinas; 3% to Atty. Lopez and 10% to movant Pineda, which apportionment corresponds to the 20% attorney's fees as adjudged in subject resolution.

2. that the real property covered by TCT No. 181023 which movant delivered to the NLRC plus the amount of ₱30,000.00 remitted to the NLRC shall answer for his obligation; and he will sell the said property and deposit the proceeds therefrom to the NLRC, for further proceedings.

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In the aforesaid supplement, movant reiterates his averments that he negotiated the sale of the union property in 1983 under the impression that the NLRC had the authority to allow the questioned transaction and that it was his honest opinion that when the CIR was abolished and replaced by the NLRC, the jurisdiction, power and functions of the former were transferred to the latter agency which, he presumed, had the authority to authorize the purchase. Finally, he claims that his acts were all done in good faith and reiterates his contrition and is making restitution for the same (p. 435, L-27773 rec.).

On May 21, 1985, this Court issued a resolution denying movant's motion for reconsideration of April 30, 1985 for lack of merit (p. 431, L-27773 rec.).

Movant counsel filed on June 6, 1985 his second motion for reconsideration of Our original subject resolution and the aforecited minute resolution dated May 21, 1985 denying his first motion for reconsideration and the supplement thereto for lack of merit. In this motion, movant alleges that his accountability as of June 5, 1985 (date of motion) has been reduced to P377,424.00 and not anymore P710,969.30 as originally computed; that he restates that his accountability to Attys. Jose C. Espinas and Pedro Lopez and the union is ₱407,424.00 only which amount was arrived at and agreed upon by the parties in the proceedings held on May 20, 1985 and which represents the 20% attorney's fees due the three lawyers on record (Pineda, Espinas and Lopez). The aforesaid attorney's fees were awarded in the order of the NLRC issued on April 24, 1985; that per NLRC records, Atty. Espinas has already been paid ₱50,000.00 and Atty. Lopez has already received ₱20,000.00 as partial attorney's fees; that movant's accountability remains at ₱377,424.00 after deducting the amount of ₱30,000.00 (remitted on May 10, 1985) from the above amount of ₱407,424.00; that movant has been doing his best to comply with this Court's order and purge himself of the contempt citation in these cases; and, not being able to produce immediately the amount of ₱407,424.00, he initially remitted the said amount of ₱30,000.00 and delivered to the NLRC the title to his property as aforesaid; that in the hearing before the NLRC on June 3, 1985, movant manifested on record in the presence of Atty. Espinas and the

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union officers that he is selling his other properties to satisfy his remaining obligation and that Atty. Espinas and the union officers gave him reasonable time within which to sell said other properties; and, that in the June 3 hearing at the NLRC, movant submitted a xerox copy of Cashier's Check No. 340573 dated June 23, 1983 of the Manila Bank in the amount of ₱101,856.00 paid by him to the Halili Bus Drivers & Conductors Union, for the account of the payee only. Movant now prays for the necessary correction of his accountability from ₱710,969.30 to the reduced amount of ₱377,424.00 and for a chance to sell his properties, as agreed upon by the parties, to enable him to pay the remaining amount of ₱377,424.00 (p. 444, L-27773, rec.).

On June 19, 1985, Arbiter Raymundo Valenzuela filed his manifestation and/or comment wherein he contends, among other things, that sometime in the second week of August, 1982, the Office of the Executive Labor Arbiter Benigno L. Vivar of the NCR, NLRC endorsed to him a pleading entitled "Motion and/or Manifestation" under caption of "*Halili Bus Drivers and Conductors Union (PTGWO), complainants, versus Fortunato F. Halili, doing business under the name and style 'Halili Transit,*' Respondent, CIR Case No. 1099-V"; and, that said motion was signed under the heading "B.C. Pineda, Counsel for the Complainant, c/o North Harbor Labor Federation-TUCP, 1106-1105 Marcos Road Fronting Pier 6, North Harbor, Tondo, Manila." Also, he claims that the aforecited motion with three attached documents (Notice of Judgment dated May 3, 1976 in G.R. Nos. L-38655 and L-30110; TCT No. 205755 and Order dated February 9, 1983 of herein movant) were the only records endorsed to him for the resolution of Atty. Pineda's motion and that he was verbally informed by the former that the records of CIR Case No. 1099-V could not be located anymore at the NLRC offices. He further alleges that since there were no other records except the aforesaid motion of Atty. Pineda with the three annexes and, for the reasons that Atty. Pineda is a brother in the profession and an officer of the Court and that this case started in 1958 and transferred from the defunct CIR to the NLRC, he had reasonable ground to believe that the records of the case could not be found anymore. Labor Arbiter Valenzuela also claims that as labor arbiter, he has the power, under Article

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300 of the Labor Code, to execute and implement final and executory judgments. Finally, he avers that since the motion of Atty. Pineda filed on December 1, 1982 with this Court praying for authority to dispose of subject property was merely "Noted" by said Court, such action bolstered his belief that his office possesses the jurisdiction to authorize the questioned sale (p. 491, L-27773 rec.).

On June 25, 1985, Atty. Jose C. Espinas submitted his comment on the motions for reconsideration of Atty. B.C. Pineda and on the manifestation and/or comment of Labor Arbiter Valenzuela. On the latter's manifestation and/or comment, Atty. Espinas points to the following inaccuracies in the aforesaid pleading of Labor Arbiter Valenzuela:

1. Labor Arbiter Valenzuela, in citing the inscription at the back of the transfer certificate of title, omitted some words which would show that there are other counsel in these cases. He quotes the accurate notation thus:

"PE-1101/T-205755 — *Attorney's Lien* — This property is subject to attorney's lien *and other counsel in CIR Case No. 1099-B* pursuant to their retainer contracts. (Doc. No. 75, Page No. 16, Book I of the Notary Public of Ruzal, A.G. Gatmaytan)."

2. It is not correct to say that in the "Notice of Judgment" by this Court in Cases Nos. L-38655 and L-30110, the counsel named therein for the union was only Atty. Pineda when the fact is that the decision of this Court in the aforecited cases dated February 27, 1976, acknowledges the representation of other lawyers in these words of its dispositive portion: "*subject to attorney's lien in favor of Atty. B.C. Pineda and other counsel in said case pursuant to their retainer contacts.*" (Italics supplied).

3. It is inaccurate for Labor Arbiter Valenzuela to allege that he did not determine attorney's fees in his orders when it appears that in his order of February 9, 1983, the following was ordered:

"(b) The Attorney's Lien *equivalent to Thirty-Five percent (35%) of the total purchase price* of said parcel of land covered by TCT

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No. 205755, as annotated at the back of said Title per Entry PE-1101/T-205755, in favor of Atty. Benjamin C. Pineda. xxx"

4. While Labor Arbiter Valenzuela manifests that in cases L-38655 and L-30110, Volume 69 of the SCRA which published the decision, carries the name of *Atty. B.C. Pineda as counsel* for the union, he nevertheless avoids pointing out that in L-24864 which was previously published in Volume 22 of the SCRA, *Atty. Jose C. Espinas was named as the lone counsel.*

5. Before Labor Arbiter Valenzuela acted on the motions of Atty. B. C. Pineda, he should have first exerted all efforts to reconstitute the records since he very well knew that the records were not complete. He should have informed the Executive Labor Arbiter, who assigned to him the case, that the records thereof were missing. He committed an act of omission.

6. It is incorrect for Labor Arbiter Valenzuela to state that Atty. J.C. Espinas sought for a reduction of attorney's fees from 35% to 20% when the evidence would have shown, if a hearing on the two motions was conducted, that the contract for services was contingent (20% only for all lawyers of the firm per resolution of the union's general membership) as found by Arbiter Tirona in his decision of April 24, 1985.

Atty. Espinas submits the following comment on Atty. Pineda's motion for reconsideration:

1. Atty. Pineda has never complied with this Court's three resolutions dated September 1, September 13 and October 18, 1983. Except for the check he issued on June 23, 1983 in the amount of ₱2,022.70 in favor of the union, he allegedly spent ₱710,959.30 within a period of 2 months and 7 days (between June 23 and September 1, 1983). The declaration of Atty. Pineda that the temporary mandatory restraining orders have become moot and academic by reason of exhaustion of the funds imply that said orders are unimportant to him.

2. When Atty. Pineda filed his motion requesting for authority to sell the property on August 9, 1982, he attached a xerox copy of the certificate of title thereto. The notation on the said title showed that he was not the only lawyer in this case. Yet,

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he represented before Arbiter Valenzuela that he alone was the counsel and the latter readily believed him.

3. Atty. Pineda's apologetic stance and allegation of good faith are negated by the fact that the additional cash payment of ₱25,000.00 to the union when the property was transferred to them, intended for the payment of taxes, was never accounted for; and, the fact that in alienating subject property which was held in trust by the union, the consent of the members-workers, not only their leaders, is legally required.

4. The reduction of Atty. Pineda's accountability to ₱377,424.00 is premature since the proceedings for the determination of his liability is still pending consideration before Labor Arbiter Tirona. The determination of his liability for ₱101,856.00 given to the union through Domingo Cabading and the legal interests and damages claimed by the union members against him are also pending resolution.

5. In his order dated April 24, 1985, Labor Arbiter Tirona directed Atty. Pineda to deposit 25% of the 35% attorney's fees collected by him (minus ₱2,022.70) previously deposited with the Commission for proper disposition, because Atty. Pineda did not comply with the temporary mandatory restraining order of this Court (p. 538, L-27773 rec.).

The Solicitor General filed on July 28, 1985 his comment on the two motions for reconsideration and the supplement thereto of Atty. B.C. Pineda. The Solicitor General submits that the attorney's fees of ₱203,712.00 is deductible since Atty. Pineda is entitled to said fees as per order of Arbiter Tirona; that the amount of ₱30,000.00 may also be deducted since it corresponds to partial restitution of his liability; and, that the alleged donation of ₱101,856.00 may not be deducted because it amounts to a rebate or a commission as already noted by this Court. He also submits that such donation is a violation of Canon 34 of Legal Ethics. Furthermore, he reports that there was nothing in the hearing of May 20, 1985 which authorizes Atty. Pineda to deduct the above donation and that after deducting all amounts the latter has deposited including the ₱20,000.00 on June 19, 1985, his accountability remains at *₱457,257.30*. The Solicitor General finally submits that contemnor Pineda's repeated protestations

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of good faith have no basis considering that he responded in cavalier fashion to this Court's resolutions by simply stating in effect that since he has already spent the money, the orders should be deemed moot and academic; that he maintained an arrogant attitude towards the proceedings in the NLRC; and that he utterly failed, as union counsel, to protect the rights of the workers when he allowed realty taxes on the lot to accumulate for 8 years, when he did not exert utmost diligence in causing the sale of the lot and when he charged excessive attorney's fees amounting to over half a million pesos and spending the amount in over two months. The Solicitor General thus prays for the denial of the motions for reconsideration for lack of merit (p. 225, L-38655 rec.).

On August 7, 1985, contemnor Atty. B.C. Pineda filed his comment on the comment of Atty. Jose C. Espinas dated. June 25, 1985. He substantially alleges that Atty. Espinas continues harping on the "scheme" allegedly employed by the former in this case; that Atty. Espinas filed his urgent motion of August 25, 1983 when they failed to agree on the "*balato*" or token payment which said lawyer asked of him; that contemnor Atty. Pineda is not running away from his obligations to the parties concerned, which obligation is the reduced amount of ₱355,401.30; and, that he be given time, up to September, 1985, to dispose of his property in Mindoro, to enable him to pay his accountability, aside from his property in Quezon City which is also for sale (p. 237, L-38655, rec.).

The Solicitor General filed its manifestation and motion in lieu of reply on August 30, 1985 in compliance with Our resolution of June 27, 1985. In the above pleading, the Solicitor General submits that reply to the manifestation and/or comment of Arbiter Valenzuela should be referred to the Ministry of Labor and Employment since the said ministry has direct supervision and control over Valenzuela and it possesses the resources with which to conduct an exhaustive investigation on the veracity of his explanations. The Solicitor General further manifests that with respect to the comment of Atty. Jose Espinas on the two motions for reconsideration of Atty. Pineda, he received a copy of such comment as early as July 1, 1985 and hence, he was then able to incorporate some of Atty. Espinas' observations to

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which he concurs in his consolidated comment on the same two motions which was later filed on July 23, 1985. With regard to the comment of Atty. Espinas on the manifestation of Atty. Pineda, he reiterates his submission that the MOLE is in a better position to investigate the veracity of Valenzuela's claims, and also to appreciate the observations and conclusions of Atty. Espinas on such claims.

He therefore prays to be excused from filing a reply (p. 243, L-38655 rec.).

WE will first tackle the two motions for reconsideration of contemnor B.C. Pineda. WE intend to treat separately the manifestation and/or comment of Labor Arbiter Raymundo Valenzuela.

The two motions for reconsideration of Atty. B.C. Pineda and the supplement thereto seeking a reconsideration of Our resolution dated April 30, 1985 and praying for relief from contumacy are without merit.

In the aforecited resolution We have clearly established the continued defiance by contemnor Pineda of Our previous resolutions of September 1 and 13, 1983 and adjudged him guilty of the indirect contempt charge.

WE stand firm on Our pronouncements in the April 30, 1985 resolution which We restate hereunder:

"For civil contempt, Section 7, Rule 71 of the Revised Rules of Court explicitly provides:

> "Sec. 7, Rule 71.— Imprisonment until order obeyed. When the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it.'

"Thus, in the case of *Harden vs. Director of Prisons* (L-2349, 81 Phil. 741 [Oct. 22, 1948]), where petitioner was confined in prison for contempt of court, this Court, in denying the petition and resolving the question of petitioner's indefinite confinement, had the occasion to apply and clarify the aforequoted provision in the following tenor:

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"'The penalty complained of is neither cruel, unjust nor excessive. In *Ex-parte* Kemmler, 136 U.S. 436, the United States Supreme Court said that "punishments are cruel when they involve torture or a lingering death, but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the extinguishment of life.'

"'The punishment meted out to the petitioner is not excessive. It is suitable and adapted to its objective; and it accords with Section 7, Rule 64 of the Rules of Court which provides that "when the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it.

"'If the term of imprisonment in this case is indefinite and might last through the natural life of the petitioner, yet by the terms of the sentence the way is left open for him to avoid serving any part of it by complying with the orders of the court, and in this manner put an end to his incarceration. In these circumstances, the judgment cannot be said to be excessive or unjust (*Davis vs. Murphy* [1947], 188 P. 229-231). As stated in a more recent case (*De Wees* [1948], 210 S.W., 2d, 145-147), "to order that one be imprisoned for an indefinite period in a civil contempt is purely a remedial measure. Its purpose is to coerce the contemner to do an act within his or her power to perform. He must have the means by which he may purge himself of the contempt." The latter decision cites *Staley vs. South Jersey Realty Co.*, 83 N.J. Eq., 300, 90 A., 1042, 1043, in which the theory is expressed in this language:

"'In a "civil contempt" the proceeding is remedial, it is a step in the case the object of which is to coerce one party for the benefit of the other party to do or to refrain from doing some act specified in the order of the court. Hence, if imprisonment be ordered, it is remedial in purpose and coercive in character, and to that end must relate to something to be done by the defendant by the doing of which he may discharge himself. As quaintly expressed, the imprisoned man "carries the keys to his prison in his own pocket"' (pp. 747-748).

"Likewise, American courts had long enunciated these rulings:

"'The commitment of one found in contempt of a court order only until the contemnor shall have purged himself of such

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contempt *by complying with the order is a decisive characteristic of civil contempt. Maggio v. Zeitz*, 333 US 56, 92 L. ed. 476, 68 S Ct 401.

"'Civil or quasi-criminal contempt is contemplated by a statute providing that if any person refused to obey or perform any rule, order, or judgment of court, *such court shall have power to fine and imprison such person until the rule, order, or judgment shall be complied with. Evans v. Evans*, 193 Miss 468, 9 So 2d. 641.' [17 Am. Jur. 2d]" (pp. 418-420, L-27773 rec., emphasis supplied).

This Court takes note of the fact that in compliance with its resolution dated October 18, 1983, Labor Arbiter Antonio Tria Tirona of the NLRC, after due hearing where all the parties concerned were present, issued an order on April 24, 1985 definitely fixing the percentages to which the union and the lawyers should be entitled. The dispositive portion of the said order thus provides:

"Wherefore, based on the records and the participation of all the lawyers in the case, Atty. Espinas is entitled to attorney's fees equal to 7% of the total proceeds of the sale; Atty. Lopez — 3%; and Atty. Pineda — 10%. The excess of 15% fees on the 35% fees charged should be refunded to the union for distribution to its members. Not having complied with the mandatory restraining order of the Supreme Court on September 1, 1983, Atty. Benjamin C. Pineda is directed to deposit 25% out of the 35% collected by him as fees (minus ₱2,022.70 previously deposited by the Manila Bank for his account) with the Commission for proper disposition."

The aforesaid apportionment is fair and reasonable. Atty. Pineda collected the amount of ₱712,992.00 or 35% of the selling price of ₱2,037,120.00.

Since his share in the fees is only ₱203,712.00, which is 10% of ₱2,037,120.00, Atty. Pineda is now accountable for and should return the following amounts to:

1. Atty. Jose Espinas — ₱142,598.40 or 7% of ₱2,037,120.00
2. Atty. Pedro Lopez — ₱61,113.60 or 3% of ₱2,037,120.00
3. Union — ₱305,568.00 or 15% of ₱2,037,120.00.

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The total amount, therefore, which contemnor Pineda should account for is ₱509.280.00 (before any remittance or payments were made). By far he has only paid or remitted thru the NLRC ₱2,022.70 plus ₱50,000.00 (to Atty. Espinas) plus ₱20,000.00 (to Atty. Lopez) as per his allegation in his second motion for reconsideration filed on June 6, 1985, or a total of ₱72,022.70.

Evidently, it appears from the within records that contemnor Pineda is still far from returning the remaining accountability of P437,257.80, exclusive of interests. He has not even satisfied 15% of the original accountability of ₱509,280.00. Deliberately or inadvertently, contemnor failed to include in his accounting (reflected in his second motion for reconsideration) the amount of *₱305,568.00* which corresponds to the 15% fees collected beyond the 20% allowed for attorney's fees. Likewise, the within records bring out the fact that the amount of ₱101,856.00 which contemnor Pineda allegedly donated to the Union was actually taken from the purchase price of ₱2,037,120.00 and not from ₱712,992.00 which he originally collected.

From the foregoing, contemnor Pineda has miserably failed to comply with Our resolution dated April 30, 1985. For such non-compliance or better still, for not fully performing the act required of him, he cannot as yet purge himself of contumacy.

For, it is clear from the provision of Section 7, Rule 17 of the Revised Rules of Court that the rationale behind the punishment of the contemnor is for him to make complete restitution to the party injured by the violation of an order. Thus, if the contumacious act consists in the failure to perform an act or obligation which is yet in the power of the contemnor to do, he may be imprisoned indefinitely until full and complete compliance with Our order or resolution.

The essence of the imposition of an indefinite imprisonment on the contemnor is the ultimate and total performance of an obligation required by an order of a superior court. This is why contumacy should be indivisible — it cannot be the subject of piece-meal compliance: otherwise, the very reason for which it is imposed, which is the complete compliance with an order, would be defeated. Court orders and injunctions would be easily defied or ignored by litigants if, every time a contemnor partially

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satisfies the same, he would be released from the contempt charge. This premature purging of contumacy would not prevent the other party from filing another motion for contempt and this would naturally result in endless litigations. Hence, unless and until our courts show they mean business in exacting full compliance with their orders, the contempt of court might become a futile exercise of judicial power. And eventually, litigants and their counsel might lose respect for our courts.

Significantly, some American courts have the following pronouncements on the matter. Thus:

"Except where the fundamental power of the court to imprison for contempt has been restricted by statute, and subject to constitutional prohibitions, where a contemnor fails or refuses to obey an order of the court for the payment of money he may be imprisoned to compel obedience to such order. [Fla. — *Revell v. Dishong*, 175 So. 905, 129 Fla. 9; Va. — *Branch v. Branch*, 132 S.E. 303; 144 Va. 244]." (17 C.J.S. 287).

xxx xxx xxx

"xxx It has been said that imprisonment for contempt as a means of coercion for civil purpose cannot be resorted to until all other means fail [Mich. — *Atchison, etc. R. Co. v. Jennison*, 27 N.W. 6, 60 Mich. 232], but the court's power to order the contemnor's detention continues so long as the contumacy persists [Ark. — *Lane v. Alexander*, 271 S.W. 710, 168 Ark. 700]" (17 C.J.S. 289).

Even as contemnor Atty. Pineda pleads good faith in having committed the contumacious acts and offers contrition, apologies and restitution, such posture is not enough to purge himself of his legal and moral obligations particularly so because he is a counsel for the workers whose interests he is duty bound to protect. Instead, he exploited their ignorance.

What really comes to Our minds now is this question: After all that the contemnor has done, could he still be considered a competent, trustworthy and decent member of the Bar? Thus, in the case of *Borromeo vs. Court of Appeals* (L-39253, 87 SCRA 67 [November 24, 1978]), this Court had the candor to say that good faith alone is not a ground for exoneration of the contempt charge.

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Nevertheless, We are constrained to point out certain observations on and assessment of the manifestation and/or comment of Arbiter Valenzuela which has been addressed to this Court. Offhand, his allegations therein suffer from flaws and unwarranted assumptions, even misrepresentations.

Thus, when Arbiter Valenzuela quoted the inscription at the back of the Transfer Certificate of Title relative to attorney's lien, he did not put the complete wording which should include the words "*and other counsel in CIR Case No. 1099-B*" after the words "attorney's lien." Without the complete inscription, one would get the impression that there were no other lawyers in the transaction.

Then again, Arbiter Valenzuela did not reveal the fact that in this Court's decision in L-38655 and L-30110 dated February 27, 1976, said Court recognized the presence of other lawyers by stating therein thus: "*subject to attorney's liens in favor of Atty. B.C. Pineda and other counsel in said case pursuant to their retainer contracts*" (please see paragraph *one*, page *6* of manifestation; Italics supplied).

Arbiter Valenzuela also disclaims that he never determined the extent of attorney's fees in his questioned order dated February 9, 1983, when the fact is that in letter (b) of said order's dispositive portion, he specifically fixed the attorney's lien equivalent to 35% of the total purchase price of the parcel of land in favor of Atty. B.C. Pineda.

It is indeed quite revealing for Arbiter Valenzuela to say that "*on the basis of the available records then in the possession of the undersigned Labor Arbiter, and the non-disclosure by Atty. B.C. Pineda that there are other lawyers involved*" he awarded attorney's fees in favor of contemnor Pineda only. This shows that Arbiter Valenzuela issued the two questioned orders on the basis of patently wrong assumptions. He assumed that even without the intervention of the NLRC, as successor of the CIR, the property could be disposed of. He forgot that there are still existing laws which should be considered. Again, he erred in assuming that when the motions of Atty. Pineda with annexes were indorsed to him for resolution in 1983, there were no other records which he could dig up. He wrongly assumed

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that just because Atty. Pineda was a "brother in the profession and an Officer of the Court," the latter's verbal representation that the other records of Case No. 1099-V could not be found, should be accepted readily. Finally, when contemnor Pineda's motion filed on December 1, 1982 before this Court seeking authority to sell the subject property was merely "noted" by said Court, Arbiter Valenzuela likewise wrongly assumed that his Office had the jurisdiction to authorize the sale of the same. As a lawyer, he should have known that the word "noted" did not mean approval or inaction. He should have filed a motion with this Court for the necessary clarification. Instead he acted with precipitate haste.

All the foregoing facts indicate his connivance with Atty. Pineda.

Arbiter Valenzuela now assumes that as such labor arbiter, he is empowered under Article 300 of the Labor Code, as amended, to execute final judgments. But a thorough reading of said article does not show any such provision, which reads thus:

"Art. 300. Disposition of pending cases. —All cases pending before the Court of Industrial Relations and the National Labor Relations Commission established under Presidential Decree No. 21 on the date of effectivity of this Code shall be transferred to and processed by the corresponding labor relations divisions or the National Labor Relations Commission created under this Code having cognizance of the same in accordance with the procedure laid down herein and its implementing rules and regulations. Cases on labor relations on appeal with the Secretary of Labor or the Office of the President of the Philippines as of the date of effectivity of this Code shall remain under their respective jurisdiction and shall be decided in accordance with the rules and regulations in force at the time of appeal.

"All workmen's compensation cases pending before the Workmen's Compensation Units in the regional offices of the Department of Labor and those pending before the Workmen's Compensation Commission as of March 31, 1975, shall be processed and adjudicated in accordance with the law, rules and procedure existing, prior to the effectivity of the Employees' Compensation and State Insurance Fund."

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It is very sad to note that for a lawyer who has served the government for 29 years, Arbiter Valenzuela puts up the defense that when he acted on the two motions of Atty. Pineda, he was primarily guided by his conscience. Then all of a sudden he says that if there was an error, it was an error of the mind and not of the heart.

From the foregoing, it appears that Arbiter Valenzuela failed to observe the degree of prudence expected of him as a government lawyer of 29 years. When the motions of Atty. Pineda were indorsed to him for proper action, he should have first exhausted all efforts in locating or reconstructing the records upon his discovery that the same were incomplete. He should have informed his superior officer or the one who assigned to him the motions that the records were lacking. He should have initiated a reconstitution of the records by requiring all the lawyers in the case to produce their own records or have sought their assistance in locating the records.

It took Atty. Espinas and some workers to locate and produce such records. Arbiter Valenzuela's acts may be treated as nonfeasance and gross neglect of duty.

WHEREFORE, THE MOTIONS FOR RECONSIDERATION OF ATTY. BENJAMIN C. PINEDA ARE HEREBY DENIED FOR LACK OF MERIT. FOR CONTEMPT OF COURT, HE IS ORDERED IMPRISONED IN THE MANILA CITY JAIL UNTIL HE COMPLIES FULLY WITH THE RESOLUTION OF THIS COURT DATED APRIL 30, 1985.

EIGHT (8) MEMBERS OF THE COURT VOTED TO DELETE THE THIRD PARAGRAPH ON PAGE 30 OF THE RESOLUTION OF APRIL 30, 1985, WHICH READS AS FOLLOWS:

"LABOR ARBITER RAYMUNDO VALENZUELA SHOULD BE MADE TO ANSWER FOR HAVING ACTED WITHOUT OR BEYOND HIS AUTHORITY IN PROPER ADMINISTRATIVE CHARGES. HE COULD ALSO BE PROSECUTED BEFORE THE TANODBAYAN UNDER THE PROVISIONS OF THE ANTI-GRAFT LAW. INDEPENDENTLY OF HIS LIABILITIES AS A GOVERNMENT OFFICER, HE COULD BE THE SUBJECT OF DISBARMENT

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PROCEEDINGS UNDER SECTION 27, RULE 138 OF THE REVISED RULES OF COURT."

LET COPIES OF THIS RESOLUTION BE FURNISHED THE MINISTRY OF LABOR AND EMPLOYMENT AND THE TANODBAYAN FOR APPROPRIATE ACTION.

Escolin, J., I concur, but not on the findings as to Labor Arbiter Valenzuela.

Gutierrez, Jr., J., I take no part as regards Atty. Pineda but concur with Justice Alampay insofar as Valenzuela is concerned.

De la Fuente, J., concurring except with respect to the observations as to Arbiter Valenzuela. I share Justice Alampay's thinking thereon.

Cuevas, J., I concur but vote to reconsider that portion adversely affecting Arbiter Valenzuela.

Patajo, J., concurring but with the same reservation requiring Labor Arbiter Valenzuela expressed by J. Alampay.

Alampay, J., I vote to reconsider the portions of our Resolution of April 30, 1985, adversely affecting Labor Arbiter Raymundo Valenzuela. (See Separate Statement).

Concepcion and *Abad Santos, JJ.*, with Justice Alampay.

Teehankee, J., reserves his vote.

Aquino and *Plana, JJ.*, took no part.

Melencio-Herrera and *Relova, JJ.*, on leave.

ALAMPAY, *J.*: SEPARATE STATEMENT

I vote to reconsider the portions of our Resolution of April 30, 1985, adversely affecting Labor Arbiter Raymundo Valenzuela.

In the Manifestation and/or Comment [dated 17 June, 1985] of Labor Arbiter Raymundo F. Valenzuela, he prays that this Court reconsider and set aside that portion of our Resolution promulgated on April 30, 1985 wherein it is stated that "Labor Arbiter Raymundo Valenzuela should be made to answer for having acted without or beyond his authority in proper

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administrative charges. He could also be prosecuted before the Tanodbayan under the provisions of the Anti-Graft Law. Independently of his liabilities as a government officer, he could be the subject of disbarment proceedings under Section 27, Rule 138 of the Revised Rules of Court." (pg. 30, Resolution of April 30, 1985).

The dispositive portion of the aforestated resolution does not carry any mandatory directive that disciplinary action should be formally taken against him. Nevertheless, said Labor Arbiter felt impelled to submit to this Court a "Manifestation and/or Comment" to the said Resolution of April 30, 1985, wherein he endeavored to explain the issuance of his assailed order in Case No. 1099-0 before the NLRC which apparently led to the sale of the property awarded to satisfy or answer for the claims of the Union members in the labor cases involved. Significantly, said Labor Arbiter was not even a party in these cases where these adverse observations against him were made by this Court. I now realize that he was chastised without being even priorly asked to offer his explanations regarding his official actuations.

The crux of the matter would seem to be that Labor Arbiter Valenzuela was considered by this Court as mistaken in considering Atty. B.C. Pineda as the only counsel for Union. Labor Arbiter Valenzuela was misled because in Cases L-38655 and L-30110, 69 SCRA 507, only the name of Atty. B.C. Pineda appears as counsel for the Union and he overlooked the fact that in another case, L-24864, 22 SCRA 785, the name of Atty. Jose C. Espinas, is indicated to be also the same counsel for the Union. It was also stated that Arbiter Valenzuela should have informed the Executive Labor Arbiter who assigned him to the case, that case records were not complete and/or missing. Arbiter Valenzuela was faulted for his supposed inadvertence and mistaken assumptions. Absent however, any indication of personal gain or benefit to said Labor Arbiter or any attendant malice or bad faith on his part and considering the explanations tendered by him, the suggestions of drastic disciplinary actions against him in the Resolution of the Court do not appear to be warranted. The greater harm would arise with a referral of the matter to the stated government entities as our resolution would then be construed as a compelling directive or a forceful suggestion of

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this Court that Arbiter Valenzuela is necessarily accountable and should be punished.

In the Manifestation and/or Comment dated 17 June, 1985, submitted by Arbiter Valenzuela are contained his laborious efforts to explain his side of the matter. I find correct the view taken by the Solicitor General, who after being required by the Court to reply to the Comment and Manifestation of Labor Arbiter Raymundo Valenzuela, significantly submitted a Manifestation and Motion in Lieu of Reply dated August 29, 1985, stating on page 2 thereof, and We quote:

xxx xxx xxx

"4. The manifestation and/or comment of Valenzuela contains explanations of his actuations in this case. In view of the foregoing observations of this Honorable Court, undersigned counsel submits that reply to the manifestation is *better deferred to the Ministry of Labor and Employment for the following reasons*:

"(a) *It has direct supervision and control over Valenzuela*; and

"(b) *It possesses the resources with which to conduct an exhaustive investigation on the veracity of his* (Arbiter Valenzuela's) *explanations*. (Parenthesis and Italics supplied).

In the light of said observations of the Solicitor General's Office, our earlier resolution of April 30, 1985, precipitately ascribing certain faults and necessity of drastic action against said Labor Arbiter would seem to have been rash, unwarranted or, in the very least, premature. As our Court is not sufficiently prepared to assess whether the explanations of Arbiter Valenzuela are adequate and acceptable or not, it would be unfair at this point of time to pronounce said Labor Arbiter at fault and/or that the degree of his alleged negligence warrant any drastic action.

The uncontroverted fact is that there is no showing of any anomalous connivance on the part of said Labor Arbiter with anyone and what is indicated by the records is that he had then determined the proceedings on the basis of the available records endorsed to him. Blame is imputed to him on the premise that

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as a government lawyer for 29 years, he should have first exhausted all efforts in locating or reconstructing the records upon his discovery that the same were incomplete; that he should have informed his superior officer or the one assigned to him the motions that the records were lacking that he should have initiated a reconstruction of the records by requiring all lawyers to produce their own records or have sought their assistance in locating the records. The conclusion was then quickly reached that his acts must be treated as nonfeasance and gross neglect of duty.

I am not prepared to take such a harsh view against a government employee who has devoted continuously twenty-nine (29) years of his life in the service of the government, rising steadily to his present position and possibly nearing his age of retirement. With his uncontradicted assertion that during such long period, his reputation and integrity was unblemised, it seems to me it would be unjustified to pass judgment on such a person and recommended him at once for drastic disciplinary action when the Solicitor General's Office which was asked by the Court to comment on this matter points to the fact that it is the Ministry of Labor and Employment which possess the resources with which to conduct an exhaustive investigation on the veracity of his (Labor Arbiter Valenzuela's) explanations. Consequently, without any such prior and satisfactory investigation by the office which has been pointed to as singularly possessing the resources to ascertain the veracity of the arbiter's explanations, the immediate conclusion in our Resolution of April 30, 1985, suggesting administrative and drastic disciplinary punishment including disbarment proceedings against said Labor Arbiter would be too swift, unjudicious and possibly unfair to said Labor Arbiter.

I, therefore, vote that the portion in the said Resolution of April 30, 1985 (3rd paragraph of page 30 thereof) which states that Labor Arbiter Valenzuela should be made to answer in proper administrative charges, or that he be prosecuted before the Tanodbayan under the provisions of the Anti-Graft Law, or that independently, he should be the subject of disbarment proceeding, be set aside and considered as now deleted therefrom.