

**JUAN C. PAJO, EXECUTIVE SECRETARY, JUAN DE G. RODRIGUEZ,
SECRETARY OF AGRICULTURE & #038; NATURAL RESOURCES,
FELIPE R. AMOS, DIRECTOR OF FORESTRY, VICENTE MARABABOL,
AND GABRIEL DAZA,...**

G.R. No. L-15414. June 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Respondent Pastor Ago was the holder of two ordinary timber licenses covering 3000 hectares and 1000 hectares of forest area in Gibong and Jabonga, respectively, in the province of Agusan. Said licenses have been renewed from year to year, the last renewal being O.T. License No. 760-'56 and O.T. License No. 759-'56, both expiring on June 30, 1956.

The record, which we have examined, does not disclose any application for renewal of those licenses for 1956-57, nor is there any allegation with respect thereto in the petition filed by respondent Ago in the lower court. However, in a letter dated September 6, 1956 (Annex "9" of petitioners' answer in the lower court), reference is made to an application for renewal of O.T. License No. 760-'56 only in which letter respondent Ago was advised to submit a certification of the Municipal Treasurer concerned showing the amount of forest products cut under his license and his pending forestry accounts, if any, with a warning that if nothing was heard from him regarding the matter on or before October 6, 1956, his case would be considered closed.

Upon respondent Ago's failure to answer said letter and inability to submit the required certification within the period stated, petitioner Director of Forestry wrote to him another letter on December 29, 1956, informing him that according to their records, he (Ago) had pending accounts for forestry and reforestation charges, itemized in a list attached, and advising him that action on the renewal of his license was being withheld until receipt of a statement from the municipal or city treasurer showing payment of said pending accounts.

Respondent Ago having ignored even this second letter, the Director of Forestry, on April 11, 1957, ordered the suspension of Ago's logging operations until his licenses shall have been renewed for the fiscal year ending June 30, 1957.

Notwithstanding his failure to comply with the requirements of the Director of Forestry and, consequently, to obtain the renewal of his licenses which had expired on June 30, 1956, respondent Ago instead filed, on June 26, 1957, another application for renewal for the ensuing fiscal year 1957-1958.

On July 16, 1957, petitioner Director of Forestry sent still another letter to respondent Ago calling his attention that in spite of the lapse of more than 6 months from the second letter of December 29, 1956, nothing had been heard from him regarding the payment of his (Ago's) pending forestry accounts, totalling to P12,211.40, and requesting that the matter be looked into without delay, but not later than August 15, 1957, otherwise, his application for renewal would be rejected and the area embraced therein declared vacant and reverted to the mass

of public forest, subject to disposition in accordance with law. and regulations on the matter.

Notwithstanding Ago's continued failure to comply with the repeated requests contained in said 3 letters of petitioner Director of Forestry, the latter still wrote him another letter on November 22, 1957, advising him again that no action could be taken on his (Ago's) application for renewal unless he settle his forestry accounts.

In view of respondent's failure to heed all the letters of the Director of Forestry and satisfy the requirements prerequisite to the renewal of his timber licenses, said official, on March 3, 1958, issued an order rejecting his (Ago's) application for renewal.

Thereafter, on March 19, 1958, petitioner Gabriel Daza, Jr. filed with petitioner Director of Forestry, an application for timber license for the area covered by the expired license of respondent Ago.

On April 2, 1958, respondent Ago filed with petitioner Director of Forestry, a petition for reconsideration of the latter's order of rejection of March 3, 1958. However, before petitioner Director of Forestry could act on said petition, respondent Ago, on April 23, 1958, filed with the former, an urgent motion in which he stated that on April 21, 1958, the Commissioner of Internal Revenue issued a certification in his (Ago's) favor that he had no more pending forest liability.

On April 8, 1958, the officer-in-charge of the Agusan Forest Station, submitted to petitioner Director of Forestry (thru the District Forester of Agusan), a memorandum advising him of the illegal operations of respondent Ago in the area covered by his expired timber license, as well as his refusal to pay forest charges and defiance of forestry rules and regulations. On April 17, 1958, said memorandum was indorsed by the District Forester of Agusan to petitioner Director of Forestry, with the information that in spite of previous instructions to respondent Ago to stop operating inside the area covered by his expired timber licenses, he (Ago) persisted in his illegal operation, and recommended that appropriate steps be taken on the matter.

On April 28, 1958, petitioner Director of Forestry wrote to respondent' Ago, advising him that he (Ago) had already lost his right to the timber area in question, and that he was no longer entitled to a renewal of his timber license.

On May 8, 1958, petitioners Director of Forestry and Secretary of Agriculture and Natural Resources, finding that petitioner Daza's application for a timber license and his offer to assume the unpaid forest obligation of respondent Ago was in order, approved the same and issued to him a license, allowing him to deposit in the Forestry office the amount of P10,000.00 to answer for said obligations of respondent Ago.

On May 14, 1958, respondent Ago filed with petitioner Director of Forestry a notice of appeal from the latter's rejection of his application for renewal, and with petitioner Secretary of Agriculture and Natural Resources, an urgent motion, praying for the approval of his application of renewal, and that if the area in question had already been applied for by any person, to stop the issuance or withhold the release of any license, if one had already been approved.

On May 19, 1958, respondent Ago filed with petitioner Secretary of Agriculture and Natural Resources, an appeal memorandum and a supplement to the urgent motion, praying that the approved timber license in favor of petitioner Daza be cancelled.

In view of respondent Ago's representations in his urgent motion of May 19, 1958, that he had fully paid all his pending forestry liabilities, petitioner Secretary of Agriculture and Natural Resources verified from the Commissioner of Internal Revenue whether the certificate of clearance of forest liabilities issued by the latter on April 21, 1958 was up to date, and whether the records of the City Treasurer of Butuan City (Agusan) were

consulted when said certificate was issued. In reply, the Commissioner of Internal Revenue stated that said certification was confined to respondent Ago's obligations only insofar as the records of the central office were concerned. Further verification from the Office of the District Forester of Agusan and the Office of the City Treasurer of Butuan City disclosed that respondent Ago had unpaid forest charges totalling P27,002.25 as of April 11, 1958 which was reduced to P18,152.83 after crediting his payment of P8,849.42 to the City Treasurer of Manila on April 18, 1958. This balance was still outstanding as of June 10, 1958.

On June 16, 1958, petitioner Secretary of Agriculture and Natural Resources rendered a decision dismissing respondent Ago's appeal, and affirming the order of March 3, 1958 rejecting his (Ago's) application for renewal.

On July 7, 1958, Ago filed a motion for reconsideration of said decision, which was denied by petitioner Secretary of Agriculture and Natural Resources on July 25, 1958. On August 12, 1958, respondent Ago filed an appeal with the Office of the President.

On March 5, 1959, petitioner Executive Secretary, acting for the President, affirmed the orders of petitioners Director of Forestry and Secretary of Agriculture and Natural Resources rejecting Ago's application for renewal. In view thereof, petitioner Director of Forestry released the approved timber license (No. 1714-58) to petitioner Daza, on March 25, 1959.

On March 30, 1959, respondent Ago filed with the Court of First Instance of Agusan, a petition for certiorari, prohibition, and damages, with preliminary injunction, against petitioners herein (Special Civil Case No. 75) alleging, inter alia, that the rejection of his application for renewal by petitioners Director of Forestry and Secretary of Agriculture and Natural Resources and its affirmation by petitioner Executive Secretary, as well as the granting of the timber license in favor of Gabriel Daza, Jr. constituted an abuse of discretion on the part of said officials, and therefore illegal. To this petition, petitioner Daza filed his answer with counterclaim on April 13, 1959. On April 23, 1959, petitioners Director of Forestry, Secretary of Agriculture and Natural Resources, and Executive Secretary, jointly filed their answer.[1]

Thereafter, a preliminary hearing was had on the petition for a writ of preliminary injunction, and after hearing, the court[2] issued an order on April 30, 1959 the dispositive part of which reads as follows:

"WHEREFORE, it is ordered that the respondents, their subordinates, agents, representatives, attorneys, servants, employees, guards, or any person acting in their behalf, are hereby restrained and prohibited from enforcing or giving effect to ordinary Timber License No. 1714-58 of Gabriel Daza, Jr.; that respondent Gabriel Daza, Jr., his agents, representatives, servants, attorneys, guards, laborers, or any person acting in his behalf are hereby restrained and prohibited from entering any portion of the forest area described in paragraph 2 of the petition covered by Ordinary Timber License No. 1450-51 or O.T.L. No. 1714-58 and from cutting, removing or hauling any timber or forest product therein; that the respondents Secretary of Agriculture and Natural Resources and Director of Forestry, their agents, servants, representatives, attorneys, subordinates, and any person acting in their behalf are hereby restrained and prohibited from enforcing the order of the respondent Director suspending petitioner's logging operations in the areas covered by O.T.L. No. 760-'56 and O.T.L. No. 769-'56; that the respondents Secretary of Agriculture and Natural Resources and Director of Forestry, their agents, subordinates, assistants, employees, inspectors, guards, or any person acting in their behalf are hereby commanded to release the logs and other forest products cut, removed or collected by petitioner from the areas covered by O.T.L. No. 760-'56 and O.T.L. No. 759-'56 without requiring petitioner to pay any surcharges for cutting without license. For the issuance of this writ of preliminary injunction, petitioner is required to put up a bond in the sum of P10,000.00 with sufficient sureties to be approved by the Court."

From this order, present petitioners, on May 7, 1959, filed with this Court, a petition for certiorari and prohibition,

praying that pending the determination of the petition on the merits, a writ of preliminary injunction be issued by this Court, restraining respondent Judge from enforcing said order, and enjoining respondent Ago, and his agents, representatives, workers, etc., from entering the forested area in question, and from disturbing the operation of petitioner Daza therein. In due time, we issued the writ prayed for.

The issues to be resolved in this case are

(1) whether petitioners Director of Forestry, Secretary of Agriculture and Natural Resources, and Executive Secretary acted without or in excess of their jurisdiction, or with grave abuse of discretion in refusing to renew the timber licenses of respondent Ago, as to entitle the latter to the remedy prayed for in the lower court, and, consequently, whether the lower court acted also in excess of power or with grave abuse of discretion in restraining the enforcement of said petitioners' orders rejecting the renewal of respondent Ago's timber licenses and suspending the latter's logging operations; and

(2) whether the same administrative officials likewise acted without authority and/or with abuse of discretion in granting petitioner Gabriel Daza, Jr. a timber license over the same forest area, without public bidding, thereby justifying the issuance by the lower court of the writ of injunction restraining petitioner Daza from entering the forest area covered by the timber license awarded to him.

Anent the first issue, there can be no question that petitioner Director of Forestry has jurisdiction over the grant or renewal of respondent Ago's timber license (Sec. 1816, Rev. Adm. Code); that petitioner Secretary of Agriculture and Natural Resources as department head, is empowered by law to affirm, modify, or reject said grant or renewal of respondent Ago's timber license by petitioner Director of Forestry Sec. 79 [C], Rev. Adm. Code); and that petitioner Executive Secretary, acting for and in behalf and by authority of the President has, likewise, jurisdiction to affirm, modify, or reverse the orders regarding the grant or renewal of said timber license by the two aforementioned officials (Art. VII [11] [1], Const.; Sec. 75, Rev. Adm. Code).

Did said petitioners act with grave abuse of discretion in rejecting respondent Ago's application for the renewal of his timber licenses? Under the facts presently before us, we do not think so. In rejecting said application for renewal and dismissing Ago's appeal, the following facts, as succinctly stated by petitioner Executive Secretary, stand out in justification:

"In a letter dated September 6, 1956, the Bureau of Forestry required appellant (herein respondent Ago) to submit a certificate of the municipal treasurer concerned, showing the amount of forest products cut under his licenses and his pending forestry accounts, if any, with the warning that if nothing was heard or received from him on or before October 6, 1956, his applications would be considered closed. Appellant did not submit the required certificate. On December 29, 1956, the Bureau wrote him that, because he had pending unsettled accounts for forest and reforestation fund charges, action on his renewal applications would be withheld pending submission of a statement of the municipal or city treasurer concerned informing the Bureau that his accounts had been paid. Again, appellant failed to submit the required statement.

"On June 28, 1957, appellant filed another set of renewal applications and on July 16, 1957, the Bureau wrote him the following letter:

"With reference to our letter to you, dated December 29, 1956:

"I beg to inform you that in spite of the lapse of more than 6 months nothing has been heard or received from you regarding the payment of your pending accounts of P11,243.69 representing forest charges and P967.71 as reforestation fund charges or a total of P12,211.40. It is therefore to your advantage that you look into this matter as early as possible but not later than August 15, 1957, otherwise your application for renewal will be rejected and the area embraced thereby will be declared vacant and reverted to the mass of public forest subject

for disposition in accordance with the forest laws and regulations.'

"Notwithstanding the foregoing letter, appellant did not settle his forestry accounts. On November 22, 1957, the Bureau wrote him again, urging the payment of his accounts. Appellant having failed to comply with the several demands for payment of his accounts, the Bureau in an order dated March 3, 1958, rejected his renewal applications.

"The records show that your contention that appellant has fully paid all his forestry accounts has no leg to stand on. Of the amount of P12,211.40 demanded of him as early as December 29, 1956, only the sum of P8,849.42 was paid by him on April 18, 1958, or after the Bureau's order rejecting the renewal applications had been issued and while his appeal therefrom with the Department was pending resolution. As a matter of fact the records in the Office of the District Forester of Agusan tend to show that appellant has other forestry accounts in a telegram to the Department dated May 19, 1958, the District Forester disclosed that appellant has a pending account of P47,746.59 representing forest and reforestation charges. And in a certification of the same official dated June 10, 1958, it was stated that appellant was indebted in the sum of P27,002.23 as of April 11, 1958.

"Neither are your three other contentions in support of the appeal worthy of consideration. The fact should not be lost sight of that the Bureau demanded the payment of appellant's forestry accounts in the sum of P12,211.40, representing forest and reforestation fund charges, as early as December 29, 1956. Appellant's failure to comply with this demand, let alone his seemingly wanton disregard, of subsequent demands, was more than enough basis for the Bureau's refusal to give due course to his renewal applications. The law is quite explicit in that the failure to pay reforestation fees including surcharges within 60 days after the same has become due and payable is a sufficient cause for the cancellation of a timber license and the forfeiture of the corresponding bond deposit of the licensee. (Sec. 4, R. A. No. 115, as amended.) Such failure being a sufficient cause for the cancellation of a subsisting license, with more force evidently will it be a ground for refusal to grant a renewal of an expired license."

In the case of *Espinoza et al. vs. Makalintal et al.* (79 Phil., 134; 45 Off. Gaz. 712), we held that the powers granted to the Secretary of Agriculture and Commerce (Natural Resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases, and contracts or approving, rejecting, reinstating, or cancelling applications, or deciding conflicting applications, are all executive and administrative in nature. It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts.[3] In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the Exercise of judgment or discretion, and findings of fact.[4] Findings of fact by an administrative board or officials, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. And we have repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of certiorari only when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 67 Phil., 480; *Tan vs. People*, 88 Phil., 609), as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law (*Tavera-Luna, Inc. vs. Nable*, 67 Phil., 340; *Alafriz vs. Nable*, 72 Phil., 278; *Liwanag vs. Castillo*, 106 Phil., 375; 57 Off. Gaz. [11] 1962). We have, likewise, repeatedly held that the lack of jurisdiction which entitles one to the remedy of certiorari, is that which is from the beginning, or having jurisdiction, the court, board, or officer oversteps it while acting thereon (*Leung Ben vs. O'Brien*, 39 Phil., 182; *Silvestre vs. Torres*, 57 Phil., 885; *Hamoy vs. Secretary*, 106 Phil., 1046). As we see the facts so far adduced,

these circumstances do not in the least appear in the instant case, insofar as the rejection of respondent Ago's petition for renewal of his timber licenses is concerned. Consequently, the lower court erred and abused its discretion in restraining even preliminarily, under the circumstances of the case, the enforcement of said petitioners' orders rejecting the renewal of respondent Ago's timber licenses and suspending the latter logging operations which preliminary injunction, in effect, would permit respondent Ago, during the pendency of this case, to operate without a license and without paying the fees required by law.

In respect of the second issue, it may be stated that respondent Ago's contention that petitioner Director of Forestry abused his discretion in awarding the timber license to petitioner Baza in spite of the absence of a public bidding as required by Forestry Administrative Order No. 11-12, of August 1, 1957, is controverted by the petitioners who claim that there are circumstances that justified the dispensing with the public bidding. The matter, therefore, will have to be determined when the case is heard on the merits. On this score, we are not prepared to say that the lower court committed so grave an abuse of discretion, as to warrant in this certiorari proceeding the setting aside of the preliminary injunction issued by the lower court restraining petitioner Daza from entering the forest area in question.

Respondent contends that petitioners should have filed a motion for reconsideration of the order in question, or asked for the dissolution of the preliminary injunction issued by the trial court, before coming to us.

This is not always so. It is only when the questions are raised for the first time before this Court in a certiorari proceeding that the writ shall not issue unless the lower court had first been given the opportunity to pass upon the same. In fine, when the questions raised before this Court are the same as those which have been squarely raised in and passed upon by, the court below, the filing of a motion for reconsideration in said court before certiorari can be instituted in this Court, is no longer prerequisite. It is to be noted that in the instant proceedings, as in the proceedings before the court below, the question is whether respondent Judge had authority to review the decisions of the Director of Forestry, the Secretary of Agriculture and Natural Resources, and on appeal, that of the President, denying, under the circumstances stated in said decisions, respondent Ago's petition to renew his timber licenses. The facts and the law of the case that are the subject of discussion in this certiorari proceedings were all before respondent Judge, and the only thing this Court is being asked to do is to declare that the order issued by said respondent Judge in passing upon those very facts and that very law is null and void. The doctrine was restated by this Court in the case of *Chavez vs. Ocampo* (66 Phil., 78), as follows:

"* * * Respondent maintains that reconsideration of the order of dismissal not having been sought in the lower court, the petition for mandamus should be dismissed without further proceedings in accordance with the ruling in this jurisdiction to the effect that this court cannot consider any petition for any of the special remedies provided in the Code of Civil Procedure without a showing that petitioner had filed a motion for reconsideration in the lower court of the order whose legality is assailed. The ruling invoked by respondent rests upon the principle that issues which Courts of First Instance are bound to decide should not be summarily taken from them and submitted to this court without first giving them opportunity to dispose of the same with due deliberation. '*Herrera vs. Barretto and Joaquin*, 25 Phil. 245.) For this reason, when a definite question has been properly raised, argued, and submitted to the lower court and has been wholly decided by the latter, a motion for reconsideration of the same question is no longer necessary as a condition precedent to the filing of a petition for certiorari in this court. (*Municipal Council of Masantol vs. Guevara*, 44 Phil.; 580.)" (Italics supplied.)

In the present proceedings, the issues were not taken summarily from respondent Judge, who held a hearing before issuing his order, and who had before him all the same official documents that are now before this Court. Stated differently, a definite question, that of the authority of respondent Judge to review and to repeal decisions of administrative officials (as petitioners herein), including the President, in the implementation of the forestry

law, has been properly raised, argued, and submitted to, and passed upon by, the respondent Judge and, therefore, a motion for reconsideration was not necessary as a condition precedent to the filing of a petition for certiorari in this Court.

As to the failure of petitioners to move for the dissolution of the preliminary injunction issued by the trial court, we agree with petitioners that such a procedure is predicated on the assumption that the plaintiff is entitled to an injunction, which does not apply in the instant case, because, as already stated, there is absolutely no showing either in the complaint, or in the facts proven in the preliminary hearing that petitioners have acted without or in excess of jurisdiction, or with grave abuse of discretion, in the discharge of the functions conferred upon them by law in the matter, in denying the renewal of respondent Ago's timber licenses.

For all the foregoing, the questioned order of the lower court is reversed in so far as it restrains the enforcement of the orders of petitioners Director of Forestry, Secretary of Agriculture and Natural Resources, and Executive Secretary rejecting the renewal applications for timber licenses of respondent Ago, but affirmed in so far as it restrains petitioner Daza from entering the forest area covered by the expired timber licenses of respondent Ago, pending the determination of the case on the merits by the lower court. Modified in consonance with the foregoing, the injunction heretofore issued by us is made permanent. No costs. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.

Padilla, J., took no part.

[1] Represented by the Solicitor General.

[2] Hon. Judge Montano Ortiz, presiding.

[3] Coloso vs. Board of Accountancy, 92 Phil., 938, and cases therein cited.

[4] 54 Am. Jur. 558-559.

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