

MELY TANGONAN, PETITIONER, VS. HON. JUDGE ERNANI CRUZ PAÑO, CAPITOL MEDICAL CENTER SCHOOL OF NURSING, THELMA N. CLEMENTE, SENAMAR L. PURA AND ADELAIDA SULIT, RESPONDENTS.

G.R. No. L-45157. June 27, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Alleging that the Hon. respondent Judge[1] acted without or in excess of jurisdiction and/or with grave abuse of discretion in dismissing[2] her petition for mandamus,[3] petitioner comes to Us thru the instant petition for "Certiorari with Preliminary Mandatory Injunction with Damages"[4] raising the following issues —

1. Is his Honor guilty, of grave abuse of discretion when he rendered the questioned decision without any formal hearing?
2. Is the extraordinary remedy of mandamus available to an aggrieved party who was refused enrolment without lawful ground... expelled by private respondents without affording her the opportunity to be heard... and excluded from enrolling, while allowing others similarly situated, to enroll? and
3. Finally, is the decision of the respondents court conformable to law and the evidence?

Hereunder are the pertinent antecedents.

Petitioner Mely Tangonan was temporarily admitted in May 1975 at the Capitol Medical School of Nursing for the school year 1975-1976, as a second year student subject to the submission of a sealed "Honorable Dismissal" and a "Transcript of Records" valid for transfer. Her admission in said school was probationary basis having merely submitted an unsealed "Honorable Dismissal" and a "Transcript of Records" not valid for transfer, on her promise that such records will be immediately replaced with official acceptable records. She enrolled for two (2) semesters. In her second semester, she flunked in Psychiatric Nursing but was allowed to cross-enroll in said subject in Summer 1976 at the De Ocampo Memorial School. Obviously, petitioner had enrolment problems at the De Ocampo Memorial School for she was reported to have attempted to bribe Dean Florencia Pagador of the said school so that her name could be included in the list of Summer 1976 enrolled students. This is confirmed by petitioner's letter of apology which reads as follows —

"May 14, 1976

Mrs. Florencia Pagador
Dean of De Ocampo Memorial
School of Nursing,
Nagtahan St., Sta. Mesa Blvd.
Sampaloc, Manila

Dear Ma'm:

I am awfully sorry for offering you P50.00 just to help me. I hope and pray for your forgiveness. I wish to express my sincere apology. And please allow me to get enrolled officially.

Thank you.

Sincerely yours,

(Sgd) Miss MELY TANGONAN"

On June 14, 1976, petitioner applied for re-enrolment at respondent school (Capitol Medical Center School of Nursing) but was referred to the Guidance Counsellor for the following reasons —

- a. On the replacement of her admission records when she first enrolled in May 1976;
- b. On the results of her cross-enrolment for summer 1976; and
- c. For explanation of a reported charge (supported by a Xerox copy of her apology to Dean Pagador) of attempting to bribe Dean Pagador.

Because of her refusal and/or failure to submit the required explanation, the matter of her re-admission was submitted to the school's Board of Admission. Deliberating on petitioner's case, the Board of Admission, in a Meeting held on June 25, 1976,[5] made the following recommendation —

"RECOMMENDATION:

In view of the foregoing findings, the Board of Admission declared her an undesirable student who should not be readmitted to CMCSN but without prejudice to her being given transfer credentials to another school.

SUBMITTED BY:

(Sgd) Benita Cortez"

Minutes of the Board's deliberation on the matter which brought about said recommendation runs thus —

"AGENDA: Case of Mely Tangonan, nursing student who is seeking readmission to the School of Nursing.

Findings: During the deliberation of the Board, the following findings were discussed:

A. ACADEMIC PERFORMANCE

1. Admitted to the school on probation because of a failing mark in Commu-nicable Disease Nursing at the PCC-Mary Johnston Hospital School of Nursing. (EXHIBIT A)
2. Failed in Psychiatric Nursing during the second semester of School Year 1975-1976. (EXHIBIT B)

B.

CLINICAL PERFORMANCE

1. Average in the clinical performance.
2. Did not complete clinical experience required in summer. Stopped reporting in the clinical area without notifying the clinical instructor or coordinator. (EXHIBIT C)
3. Had frequent absences in the clinical area.

C. ATTITUDES AND BEHAVIORS

1.

Did not seek enrolment or notify school registrar of a desire to enroll during the scheduled registration dates for seniors. Came to enroll during the week after regular classes. (EXHIBIT D)

2. Tried to bribe Mrs. Pagador, Dean, College of Nursing, De Ocampo Memorial School with P50.00 (Fifty Pesos) when she was not yet officially enrolled when it was already the end of summer classes. (EXHIBIT E)

3. Violated rules and regulations of the school. (EXHIBIT F)

4. Refused to write a letter to the Board of Admission requesting for readmission and apologizing for what she did against the Doms and Dean Pagador which has brought embarrassment to CMCSN. She was asked to make this letter to the Principal through a telephone instruction to Mrs. Benita Cortez. Miss Tangonan allegedly stated that she would write the letter only if she is given the assurance by the Principal or by the Chairman of the Board of Trustees that she would be allowed to enroll.

Informed of the said board's decision disallowing her readmission, petitioner lodged a complaint against the school before the Department of Education, Regional Office No. 4. A conference was accordingly conducted between petitioner and respondent school's authorities in the presence of Regional Director Manuel in the course of which, petitioner agreed to transfer to another school. But instead of transferring to another school, petitioner filed a petition for Mandamus[6] before the Court of First Instance of Rizal, Branch XVIII, presided over by respondent Judge, praying that pending adjudication of the case on the merit, an ex-parte order be issued commanding respondents to admit petitioner to enroll and attend classes upon payment of the prescribed fees; and after hearing, judgment be rendered requiring respondents to pay damages and attorney's fees.

On July 27, 1977, the lower court issued the writ prayed for thereby "ordering respondents to admit petitioner on probation basis for the school year 1976-1977 upon payment of the requisite fees and to attend classes" in respondent school.[7]

In their Answer[8] filed on August 5, 1976, respondents alleged among others, by way of special defenses —

"That the then petition states no cause of action because of the following circumstances:

a. Petitioner in the July 2, 1976 meeting at the office of Dr. Manuel already agreed to transfer to another school

and therefore without condition, foreclosed her right to enroll at respondent school;

b. There has been no demand after July 2, 1976 by petitioner directed to respondent school to admit her as required in mandamus action;

c. To the extent allowed by regulations and considering that petitioner was not yet an enrolled student, and hence the school had no jurisdiction yet to conduct any formal investigation and compel her presence therein, petitioner was given all the opportunity as early as June 14, 1976 to explain her side which privilege she however refused to take advantage of, by being adamant in submitting any explanation, oral or in writing to certain offenses made known to her, after having been compelled continuously to do so at several levels by respondents.

That it is within the prerogative of private schools to deny admission of students for scholastic insufficiency, incomplete scholastic records and commission of an offense, like attempt to bribe, violating school regulations."

The issues having been joined, the case was calendared for pre-trial on September 22, 1976. The parties submitted their respective pre-trial briefs.[9] A second pre-trial conference was held on October 7, 1976 on which date, the court a quo issued the following Order[10] —

"This is a second pre-trial conference of this case attended by the parties and their respective counsel.

Considering that this is a petition for mandamus so that the issue is limited to one of law, which is the question of whether respondent school had any legal ground for refusing the petitioner, Mely Tangonan, and therefore there is no factual issue involved, the parties are directed to submit to this Court not later than October 18, 1976, their respective affidavits and other pertinent documents they may wish to submit, in addition to what already appears on record. This is however, without prejudice to the continuous effort of both parties to settle this case. In this connection, the respondents have undertaken to persuade some other nursing schools in Metro Manila to admit the petitioner. If the plaintiff should agree to such admission to some other school, then this Court will dismiss this case if appropriate manifestations are made prior to October 22, 1976, otherwise the Court will decide the case on the merits before October 22, 1976."

On October 8, 1976, respondents submitted a MANIFESTATION[11] stating therein that upon representations of respondent Dra. Thelma Clemente, President and Chairman of the Board of Trustees of respondent school, the College of Nursing of the Ortañez University was willing to accept petitioner for enrolment therein, subject to the approval of the Department of Education and Culture.

On October 18, 1976, petitioner and respondents submitted their respective memoranda.[12]

To the manifestation of respondent Thelma Clemente that Ortañez University was willing to admit petitioner, the latter counter-manifested[13] that "in view of certain policies and requirements of Ortañez University she has no recourse but to demand her admission in Capitol Medical Center School of Nursing".

On October 22, 1976, the lower court rendered its decision[14] dismissing the petition and dissolving the writ of preliminary mandatory injunction earlier issued. Petitioner's motion for reconsideration[15] having been denied,[16] she now comes before Us through the instant petition with the prayers aforesaid.

The petition is devoid of merit.

Petitioner's case in the court below is that of mandamus, to compel respondent to admit petitioner in its School of Nursing. Under Rule 65, Section 3 of the Rules of Court, mandamus lies under any of the following cases: (1) against any tribunal which unlawfully neglects the performance of an act which the law specifically enjoins as a duty; (2) in case any corporation, board or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station; and (3) in case any tribunal, corporation, board or

person unlawfully excludes another from the use and enjoyment of a right or office to which such other is legally entitled; and there is no other plain, speedy and adequate remedy in the ordinary course of law.[17]

mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill contractual obligations or to compel a course of conduct,[18] nor to control or review the exercise of discretion.[19]

On the part of the party petitioner,[20] it is essential to the issuance of a writ of mandamus that he should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely expressed, it must however, be clear. The writ will not issue to compel an official to do anything which it is not his duty to do or to which it is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[21]

In the case at bar, the petitioner has miserably failed to show a clear legal right to be admitted and be enrolled in respondent's School of Nursing. As correctly held by the court a quo —

"Moreover assuming that respondent has a legal duty to enroll petitioner, it does not appear to this Court that this is merely a ministerial duty; it is rather a duty involving the exercise of discretion. Every school has a right to determine who are the students it should accept for enrolment. It has the right to judge the fitness of students. This is particularly true in the case of nursing students who perform essential health services. Over and above its responsibility to petitioner is the responsibility of the school to the general public and the community. This Court take judicial notice that nursing has become a popular course because of the great demand for Filipino Nurses abroad, especially in the United States. It is essential therefore that Nursing graduates who go abroad and become in a sense our own ambassador should be highly qualified to perform their tasks. This is the responsibility of our school and the discharge of this responsibility, they certainly should be given the greatest latitude in formulating their admission policies.

While petitioner questions the findings of respondent school as to her academic competence, the Court cannot find any legal jurisdiction to interfere in the exercise of judgment of the school on this matter. The Court finds it significant that even the Department of Education and Culture refused to intervene in this case although the Court in its Order of July 6, 1976 invited the Department to send its legal officer as earlier mentioned, it is not disputed that petitioner agreed to transfer to another school during a conference held at the Department.

The Court, after weighing all the facts, does not find that the present case is one that calls for the application of Article 26 of the Declaration of Human Rights. She is not being prevented from completing her Nursing course. There are many nursing schools in Metropolitan Manila where she can finish her course. But she must enroll under the term, policies and conditions imposed by the schools, rather than on her own terms. She is moreover free to enroll in any of these schools. Respondent has not prevented her from doing so, and has offered to assist in such transfer."

On the contrary, respondent School appeared perfectly justified in refusing to admit petitioner in its School of Nursing. Its refusal is sanctioned by law Section 107 of the Manual Regulations for Private Schools considers academic delinquency and violation of disciplinary regulations as valid grounds for refusing re-enrolment of a student. It is incontrovertible that petitioner flunked in Psychiatric Nursing and that as of June 14, 1976, no official report of grades for her summer course in the said subject was or could be submitted by her. Likewise, undisputed, (in fact admitted in her letter of apology earlier quoted) is her involvement in an attempt to bribe the dean of the De Ocampo School of Nursing. She was admitted in respondent's school merely on probation because she could not submit a sealed "Honorable Dismissal" and "Transcript of Records" valid for transfer. On top of that she had a failing grade in Communicable Disease Nursing at the PCC-Mary Johnston Hospital School of Nursing.

Her records in respondent's school also show that she did not complete the prescribed clinical experience required in summer. She stopped reporting in the clinical area without notifying the clinical instructor or coordinator.[22]

The foregoing notwithstanding, still petitioner would want Us to compel respondent school to enroll her despite her failure to meet the standard policies and qualifications set by the school. To grant such relief would be doing violence to the academic freedom enjoyed by the respondent school enshrined under Article XV, Section 8, Par. 2 of our Constitution which mandates "that all institutions of higher learning shall enjoy academic freedom". This institutional academic freedom includes not only the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence subject to no control or authority except of rational methods by which truths and conclusions are sought and established in these disciplines, but also the right of the school or college to decide for itself, its aims and objectives, and how best to attain them — the grant being to institutions of higher learning — free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. Said constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose and nullify its intent.[23]

Elaborating further on the subject, this Court speaking thru that Eminent Constitutionalist then Mr. Justice now the Hon. Chief Justice Enrique M. Fernando[24] held —

"Petitioner cannot compel by mandamus, the respondent to admit her into further studies in the Loyola School of Theology. For respondent has no clear duty to admit the petitioner. The Loyola School of Theology is a seminary for the priesthood. Petitioner is admittedly and obviously not studying for the priesthood, she being a lay person and a woman. And even assuming ex gratia argumenti that she is qualified to study for the priesthood, there is still no duty on the part of respondent to admit her to said studies, since the school has clearly the discretion to turn down even qualified applicants due to limitations of space, facilities, professors and optimum classroom size and component considerations. No authorities were cited, respondent apparently being of the view that the law has not reached the stage when the matter of admission to an institution of higher learning rests on the sole and uncontrolled discretion of the applicant. There are standards that must be met. There are policies to be pursued. Discretion appears to be of the essence. In terms of Hohfeld's terminology, what a student in the position of the petitioner possesses is a privilege rather than a right. She cannot therefore satisfy the prime and indispensable requisite of a mandamus proceeding". (Underscoring supplied)

Anent petitioner's submittal that respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in requiring the parties to submit memoranda affidavits, instead of setting the case for a formal hearing on the merits - We find the same to be without merit. The very nature of the petition dictates its expeditious determination. This is implicit from Section 7, Rule 65 of the Rules of Court which provides:

"Section 7. Expediting proceedings, Preliminary Injunction. — The court in which the petition is filed, or a judge thereof, may make orders expediting the proceedings, and may also grant a preliminary injunction for the preservation of the rights of the parties pending such proceedings."

In the case at bar, it was evident that on the basis of the pleadings filed, the case did not call for the formal presentation of evidence for purposes of determining whether or not respondent school could legally be ordered to admit petitioner for the school year 1976-1977. Petitioner's position appeared clearly stated in her basic petition which was further amplified by her verified Position Paper dated July 8, 1976; REPLY to the position paper of respondents dated July 23, 1976, petitioner's Trial Brief dated September 9, 1976 and Memorandum dated October 18, 1976. Upon the other hand, respondents' stance appeared thoroughly spelled out in their position paper dated July 21, 1976, Answer dated August 5, 1976, respondent's Pre-Trial Brief dated September 20, 1976, Manifestation dated October 8, 1976 and Memorandum dated October 18, 1976. Moreover, in the second pre-trial

conference held on October 7, 1976, the lower court declared that "the issue is one of law and that there is no factual issue involved". Hence, the parties were already required to submit their memoranda and the pertinent documents in support of their respective stand. Petitioner did not question the aforesaid order. Instead, she filed her memorandum. Consequently, she is now estopped from asserting that she was denied the chance to present her evidence in a formal hearing.

At any rate, as discussed earlier, petitioner is not legally entitled to the issuance of the writ prayed for.

WHEREFORE, the instant petition is DISMISSED without pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

Aquino, J., concur, the petition should not have been given due course.

Makasiar, J., (Chairman), in the result.

[1] Of the then Court of First Instance of Rizal-Branch XVIII, Quezon City.

[2] Decision dated October 22, 1976; Annex "O", Petition, pages 92-96, Rollo.

[3] Civil Case No. Q-12660; Annex "A", Petition, pages 23-28, Rollo.

[4] Petition, pages 2-22, Rollo.

[5] Annex 5 of Annex "B", Petition.

[6] Civil Case No. Q-21660.

[7] Annex "D", Petition, pp. 43-46, Rollo.

[8] Annex "F", Petition, pp. 48-57, Rollo.

[9] Annexes "H" & "I", Petition, pp. 59-67, Rollo.

[10] Annex "J", Petition, pp. 68-69, Rollo.

[11] Annex "K", Petition, p. 70, Rollo.

[12] Annexes "L" & "N", Petition, pp. 71-89, Rollo.

[13] Annex "N", Petition, pp. 90-91, Rollo.

[14] Annex "O", Petition, pp. 92-96, Rollo.

[15] Annex "P", Petition, pp. 97-99, Rollo.

[16] Order dated November 9, 1976; Annex "R", Petition, p. 103.

[17] Reyes vs. Zamora, 90 SCRA 92; Province of Pangasinan vs. Reparation Commission, 80 SCRA 376.

[18] Tabique vs. Duvall, 16 Phil. 324.

[19] Avenue Arrastre & Stevedoring Corp., Inc. vs. Commission of Customs, 120 SCRA 878.

[20] Canonizado vs. Benitez, 127 SCRA 610; Lozada vs. Commission on Elections, 120 SCRA 337; Taboy vs.

CA, 105 SCRA 758; Ocampo vs. Subido, 72 SCRA 443.

[21] Province of Pangasinan vs. Reparation Commission, Ibid.

[22] Pages 136-137, Rollo.

[23] Garcia vs. The Faculty Admission Committee Loyola School of Theology, 68 SCRA 279-284.

[24] 68 SCRA 277, 282, 283.

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