

**CLETO ASPREC, PETITIONER-APPELLANT, VS. VICTORIANO ITCHON,
JOSE SUGUITAN, FELIPE P. CRUZ, THE EXECUTIVE SECRETARY,
NICANOR G. JORGE ANTONIO NOBLEJAS, AND JACINTO
HERNANDEZ, RESP...**

G.R. No. L-21685. April 30, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The case on hand had its incipency in an administrative complaint[2] for unprofessional conduct lodged with the Board of Examiners for Surveyors[3] by respondent Jacinto Hernandez against petitioner Cleto Asprec. There, Hernandez charged that petitioner undertook to survey Hernandez' lot in Port Junction, Ragay, Camarines Sur; deliver to him a plan approved by the Director of Lands within three months after completion of the survey, and procure the issuance of a certificate of title to the lot thus surveyed within six months after the plan's approval; and that he (Hernandez) paid the consideration agreed upon but that petitioner did not deliver the agreed plan, the lapse of four years notwithstanding. Petitioner Asprec averred compliance by allegedly executing and delivering plan Psu-148774 (Ap-2419) duly approved. But Hernandez' reply asserted that Psu-148774 is the plan of a survey made by Asprec for one Damian Alhambra; that plan Ap-2419 is merely a certified copy of sheet 2 of said plan Psu-148774; and that petitioner's contractual obligation was to deliver to him the plan of an original survey—not a mere copy. The Board found for Hernandez and declared: that no actual survey of Hernandez' land was made; but that money was paid on his belief that Asprec really surveyed the land for him; that Asprec was guilty of deceit and thus violated the Code of Ethics for surveyors. The Board's unanimous decision of October 27, 1959 revoked, and required surrender of, Asprec's certificate of registration as a private land surveyor. On December 1, 1959, the Assistant Executive Secretary, by authority of the President of the Philippines, approved the Board's decision. On February 12, 1960, the Board's chairman demanded surrender of said certificate in five days. Petitioner's motion to reconsider of March 16, 1960 was denied by the Office of the President on October 31, 1960. Meanwhile, on March 22, 1960, respondent Jorge directed all offices under the Bureau of Lands to return to petitioner Asprec unacted all surveys executed or corrected by the latter on or after October 27, 1959.

Petitioner, charging grave abuse of discretion, came to the Court of First Instance of Camarines Sur—on certiorari to annul the orders revoking his surveyor's certificate of registration; mandamus to compel the Board to conduct a formal hearing of the complaint against him; and prohibition, to stop execution of the orders to surrender said certificate. The preliminary injunction prayed for was rejected below.

Upon a stipulation of facts, the Camarines Sur court rendered judgment on August 14, 1962, dismissing the petition, with costs. We are now asked to review said decision.

We will now discuss seriatim the questions raised.

- Petitioner's trenchant claim is that he was denied his day in court.[4] Resolution of this problem necessitates a considerate examination of the following that transpired before the Board:—

(a) Hearing of March 31, 1958: Petitioner raised the legal point that the complaint was not under oath. The Board directed Hernandez to submit a verified complaint. Hearing was postponed to May 12, 1958.

(b) Hearing of May 12, 1958: Upon the averment that the verified complaint sets forth "new facts", petitioner asked for a 10-day period to answer. On June 5, instead of an answer, petitioner's counsel filed a motion to dismiss.

(c) Hearing on August 18, 1958: Petitioner prayed that hearing be held in abeyance until the board shall have resolved his motion to dismiss. The hearing was reset for March 11, 1959.

(d) Hearing of March 11, 1959: This did not pull through although both parties and their respective attorneys were present, because Asprec's counsel was not feeling well. They all agreed to transfer the hearing to May 11, 1959.

(e) Hearing of May 11, 1959: Hernandez and counsel appeared. But petitioner and counsel were absent. The Board was not apprised by petitioner of the cause of his or his counsel's failure to appear. At this juncture, counsel for Hernandez manifested to the Board that "since all evidence available against the respondent has already been submitted he would now rest his case." He then filed with the Board a motion for judgment on the pleadings.[5]

If the foregoing have any meaning at all, they funnel down to one concrete fact: petitioner has had more than ample opportunity to defend himself before the Board. As he and counsel did not appear at the last and stipulated date of hearing, he cannot look to the law or to a judicial tribunal to whipsaw the Board into giving him a new one. He cannot raise his voice in protest against the act of the Board in proceeding in his and his counsel's absence. And this because without cause or reason, without any excuse at all, counsel and client have chosen to shy away from the trial. Presence of a party at a trial, petitioner concedes, is not always of the essence of due process. Really, all that the law requires to satisfy adherence to this constitutional precept is that the parties be given notice of the trial, an opportunity to be heard. Petitioner had notice of the trial of May 11th. More than this, that date of trial (May 11) had been previously agreed upon by the parties and their counsel. Petitioner cannot now charge that he received less-than-a-fair-treatment. He has forfeited his right to be heard in his defense.[6]

On top of all, petitioner did not as much as bother to inquire as to what happened on May 11. He bestirred himself only on April 16 the following year. Surely enough, this patent inattention-better termed gross negligence-will not carry the day for him. Indeed, no reason exists why the other party should be hard put to realize that he will have to undergo further expense and trouble. After all, due process is merely "the embodiment of the sporting idea of fair play." [7]

- But petitioner insists that the proceedings before the Board are quasi-criminal in nature. From this he proceeds to draw the conclusion that no valid trial could proceed even if he absented himself therefrom. We do not see eye to eye with this view. It is best answered by a reference to the opinion of the court below, thus:

"The rule applies even to quasi-criminal or criminal proceedings. So, where the respondent in a petition for contempt failed to appear on the date set for the hearing, of which he was previously notified, it was held that he was not deprived of his day in court when the judge ordered him arrested unless he pay the support he was adjudged to give, he having been given an opportunity to be heard. *Embate vs. Penolio*, G.R. No. L-4942.[8] Similarly, the defendant's failure to appear with the counsel of his choice at the trial, notwithstanding repeated postponements and the warning that failure to so appear would be deemed a waiver of the right to present evidence in his defense and the case will be submitted for decision on the evidence submitted by the prosecution, was a sufficient justification for the court to proceed and render judgment upon the evidence before it. *P. vs. Angco*, 54 Off. Gaz. 5703."

- Appellant decries the fact that the Board's decision was rendered upon a motion for judgment on the pleadings presented on the date of trial, May 11, 1959. He claims that there was no basis for such decision.

A rule so long respected, because it is buttressed upon reason and authority, is that technical rules of court practice, procedure and evidence are not to be applied with rigidity in administrative proceedings. We should have in mind the nature of administrative bodies, the character of the duties they are required to perform, the purposes for which they are organized, the persons who compose them. Here, we are concerned with members of a board of surveyors-technical men but not necessarily trained law men. In this posture, it is quite reasonable to assume that their proceedings may not be conducted with that degree of exactness or with such scrupulous observance of the complex technical rules expected in a legal battle before a court of justice. Their acts should not be measured by the same yardstick exacted of a judge in a court of law. So much leeway is given an investigating administrative body.[9]

With the foregoing legal tenet as guide, let us now examine the facts of this case. There was indeed a motion for judgment on the pleadings. But not without reason. Petitioner admits that he executed the plan, sent it to complainant. But this plan (Ap-2419) is not the plan of an original survey. Because it was merely copied from another plan. Petitioner received compensation[10] on the basis of a plan drawn from a survey, not from a copy. Besides, the plans-the original and copied plans—were before the Board. So it is, that when counsel for Hernandez manifested at the hearing of May 11, 1959 that all the evidence against petitioner was submitted to the Board and that for that reason he was resting his case, he evidently had in mind the admissions in the pleadings and the plans and decision and report here noted. And, the motion for judgment on the pleadings was a mere follow-up of the manifestation just adverted to. As the trial court well observed, counsel for respondent Hernandez did not present a motion for judgment on the pleadings in the strict sense of the word,[11] but "a motion which for lack of another expression, he called a motion for judgment on the pleadings." Lack of observance of this technicality which does not quarrel with a fair concept of justice should be overlooked.[12] There was evidence before the Board and the Board had acted thereon. The Board's decision was propped up by facts.

- A review of the record fails to elicit any representation on the part of petitioner that if the Board's decision and the decision of the Court below be reversed, a different result may be obtained. He does not advance any fact or circumstance which would constitute a substantial defense. He does not even offer a new matter which would tilt the scales of justice in his favor. The net result is that if error of procedure there was, as he claims, such error is reduced to the level of non-prejudicial. It is because of all of these that we now say that a reversal of the judgment below or a new hearing before the Board would be but an empty ceremony. Courts do not demand or, for that matter, suggest the performance of the unnecessary. If only for this alone, there is no cause or reason why the machinery-administrative or judicial- should be allowed to grind anew.[13]

- Petitioner would want to make a point out of Surveyor's Administrative Order No. 1 dated November 26, 1934 (which implemented Act 3626 as amended by Act No. 3889), section 19 (g) of which provides that "Any surveyor who has been suspended three (3) times shall no longer be authorized to practice surveying in the Philippine Islands". Petitioner now asserts that the Board's decision revoking his license is an illegality. This argument overlooks the express statutory provision contained in Section 10 of Act 3626 as amended by Act 3889 aforesaid, as follows:

"The Board of Examiners may suspend or revoke the license or certificate as practising surveyor granted to any person in case the same has been convicted by any court of a crime involving moral turpitude, if he has been guilty of immoral and dishonest conduct, if he is mentally incapacitated, or for unprofessional conduct. The decision of the Board shall be rendered after an investigation in which the accused shall be heard, and said accused may appeal to the Department head, whose decision shall be final administratively."

This law does not state that the surveyor's license may be revoked, only after the said surveyor has been suspended three times. The plain import of the law is that ample discretion is given the Board-to suspend or

revoke the license. The Board has elected to revoke. It acted within the law. For, a familiar rule is that in a clash between statute and administrative order issued in pursuance thereof, the former prevails.

In the end, we say that the proceedings before the Board were not infused with such unfairness or tainted with so grave an abuse of authority as to call for the exercise by this Court of its corrective powers.

Upon the view we take of this case, the decision is hereby affirmed. Costs against petitioner.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Respondent Itchon is Chairman and respondents Suguitan and Cruz members of the Board of Examiners for Surveyors; respondent Jorge, formerly Chief Surveyor, is Director of Lands; and respondent Noblejas, the Land Registration Commissioner.

[2] Administrative Case No. 86, (Jacinto E. Hernandez, complainant vs. Cleto Asprec, respondent), started December 6, 1956.

[3] Hereinafter referred to as the Board.

[4] Due process is applicable to administrative proceedings. *Cornejo vs. Gabriel*, 41 Phil. 188, 193, citing authorities; 12 Am. Jur. p. 285, citing cases.

[5] Decision of the Board, Record, p. 106.

[6] *Banco Español-Filipino vs. Palanca*, 37 Phil. 921, 937; *Republic vs. Gonzales*, G.R. L-17962, April 30, 1965, citing *Sandejas vs. Robles*, 81 Phil., 421, and *Siojo vs. Tecson*, 88 Phil., 531; 12 Am. Jur. p. 308, citing *Blackmer vs. U.S.*, 284 U.S. 421, 76 L. ed., 375. See also *Collector of Customs vs. Arca, et al.*, G. R. L-21389, July 17, 1964. Surveyor's Administrative Order No. 1 (Section 16, paragraph "g") dated November 26, 1934 also provides that: "The respondent shall be given opportunity to defend himself, to produce witnesses in his own behalf, or to be heard by himself or counsel. However, if upon reasonable notice not exceeding ten days the respondent fails to appear without cause satisfactory to the Board, the hearing shall proceed ex parte."

[7] *Frankfurter*, Mr. Justice Holmes and the Supreme Court, pp. 32-33, cited in Tañada and Fernando, *Constitution of the Philippines*, 4th ed., vol. I, p. 85. See also: *Lisenba vs. California* 314 U.S. 219, 236, 86 L. ed., 166, 180; *Galvan vs. Press*, 347 U.S. 522, 530, 98 L. ed., 911, 921.

[8] *Embate vs. Penolio*, 93 Phil. 782, 784-785, where this Court said: "One contention of the appellant is that the order of the trial court of April 25, 1951 was issued without due process of law, for the reason that the respondent was not given an opportunity to be heard, and the order was issued without any lawful hearing. It is argued that the request of counsel for plaintiff that his motion be heard did not per se authorize the court to hear the case as prayed for. We find no merit in this argument. First, the appellant was given an opportunity to answer, and he did file one. Then the motion to declare him in contempt was set for hearing by the appellee, notice of the same being made in accordance with sections 4, 5 and 6 of Rule 26 of the Rules of Court. It is not necessary that the court itself order the motion to be set for hearing, as a prerequisite therefor, because the notice given by the party was sufficient. As the motion was heard after this notice, and strictly in compliance with the above provisions of the Rules of Court, it can not be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard."

[9] Rule 143, Rules of Court; *I Moran*, *Comments on the Rules of Court*, 1963 ed., pp. 78-79; *Sy Chuan, et al., vs.*

Galang, et al., 104 Phil., 1014.

[10] This was taken by the Board from the decision of Judge Jose P. Narciso in Criminal Case No. 210 of the Justice of the Peace Court of Ragay, Camarines Sur (People vs. Cleto Asprec), which was presented to the Board by counsel for Hernandez, and from the report of Judge Perfecto R. Palacio of the Court of First Instance of Camarines Sur in Adm. Case No. 1, (entitled Leovegildo Cerilla, complainant, vs. Judge Jose P. Narciso, respondent).

[11] Section 10, Rule 35, Old Rules of Court effective July 1, 1940).

[12] Section 2, Rule 1, Rules of Court.

[13] Section 5, Rule 51, Rules of Court; People vs. Francisco, 46 Phil., 403, 404.

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