

EMETERIO A. BUYCO, IN HIS CAPACITY AS CITY AUDITOR, ELENO B. KABANLIT, IN HIS CAPACITY AS CITY TREASURER, AND HUGO B. DAGUMAN, IN HIS CAPACITY AS ASSISTANT CITY TREASURER OF OZA...*G.R. No. L-25800. August 31, 1970*

Ponente: BARREDO, J.

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Original petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction, filed by the petitioners - City Auditor, City Treasurer and Assistant City Treasurer of the City of Ozamiz - against the respondent Judge Mariano A. Zo-sa of the Court of First Instance of Misamis Occidental, imputing lack and/or excess of jurisdiction or grave abuse of discretion to said respondent in the use against petitioners of His Honor's power to punish for contempt and seeking to prohibit the respondent judge from proceeding with the hearing of the contempt proceedings against said petitioners in the former's court.

The following background facts may be gleaned from the pleadings of the parties: Under Resolution No. 72, dated January 22, 1965, of the City Council of Ozamiz, respondent - presiding judge of Branch III (at Oroquieta) of the Court of First Instance of Misamis Occidental - was granted gasoline allowance at the rate of P100.00 per month for the period from August 1, 1964 to June 30, 1965. The resolution was duly approved by the Mayor of the City of Ozamiz on February 18, 1965. Availing of the privilege granted, respondent sought to collect the gasoline allowance aforesaid by presenting the corresponding vouchers - one for the sum of P1,100.00 covering the period from August, 1964 to June, 1965, and the other for the amount of P600.00 covering the period from July to December, 1965 - to the petitioners City Treasurer and the City Auditor of Ozamiz City for audit and payment. The one for P600.00 was presented on a date not disclosed in the record but evidently earlier than March 2, 1966 because it was on this latter date that, according to the pleadings, the same voucher was presented again together, this time, with the one for P1,100.00.[1] According to the respondent, he was accompanied by councilor Cristino Abasolo, Jr. on the first occasion and the second voucher was presented not by him personally but by a certain Judge Celso Largo and an Atty. Francisco Alfajardo, neither of whom is shown to have any connection with the matter. Assistant City Treasurer Hugo B. Daguman, in his capacity as Acting City Treasurer at the time, refused to pay the said vouchers, the said official pointing out that the same were not accompanied with the requisite approval by the Department of Justice of the said grant to respondent of the privilege to enjoy the gasoline allowance referred to.

To obviate the Acting City Treasurer's objection to the claim, respondent worked for the approval of the Resolution granting the gasoline allowance by the Office of the President, thru the Department of Justice. In the meanwhile, he requested the Assistant City Treasurer in a letter dated June 2, 1965 to obligate the corresponding accumulated funds for his gasoline allowance in the books of account of the city to forestall their impending reversion to the general fund, since, at the time, the fiscal year was about to end. That request was not given any favorable response by the Assistant City Treasurer who justified his action by claiming that at that time, he

was not even certain that there would be enough balances and no overdraft would be incurred by the city at the end of that fiscal year.

On March 2, 1966, respondent presented again his vouchers to the officials of the City of Ozamiz concerned. The said vouchers were then duly accompanied already with the required approval of the Executive Department. According to respondent, his representatives who made the follow-up of his claim with the office of the City Auditor were assured by the said official then that he would pass the vouchers in audit as they were duly supported with the necessary papers. It turned out later, however, that in his letter to the City Treasurer dated March 2, 1966, petitioner City Auditor advised the former that his office offered no objection to the giving of gasoline allowance to Judge Mariano A. Zosa of Branch III of the CFI of Misamis Occidental with station at Oroquieta, same province, only for the period by his tour and for actual services rendered in this jurisdiction as vacation judge or as may be so ordered by the Honorable Secretary of Justice. That letter was transmitted by mail, together with an indorsement to the respondent. It was received at about 10:00 o'clock in the morning of March 7, 1966 by respondent who, at the time of the delivery, was in his sala presiding over the hearing of Criminal Case No. 5918. He read it then and there, after which he showed signs of emotional disturbance. Distressed by what to him appeared to be "a sudden and unexpected turnabout" in the stand of petitioner City Auditor in the merit of his claim for gasoline allowance, and construing the collective actions taken by all the petitioners "a concerted design and plan" of said officials "to humiliate, ridicule and downgrade him and his office" to satisfy their desire to "make him appear as a mendicant", respondent immediately suspended and cancelled the hearing of the case before him and issued an order to the three city officials for them to appear before him for contempt at 8:00 o'clock in the morning of the following day. It developed that the subpoena (by telegram) issued for the purpose was not served to petitioner Assistant City Treasurer Hugo B. Daguman and when only petitioners City Auditor Emeterio A. Buyco and City Treasurer Eleno V. Kabanlit appeared before respondent in the morning of March 8, 1966, the hearing of the contempt charge against them was postponed to the afternoon of that day in order to secure the appearance of petitioner City Auditor. Hearing on the contempt charge was accordingly held at 2:30 in the afternoon. His Honor explained to the three city officials the background of his contempt charge. But before he was through explaining his position, other incidents marred the proceeding. At one point, the petitioner City Auditor must have been either amused or taunted by the way the respondent judge called out his name "Buyco", and when he stood up in response, respondent ordered his arrest on the ground that the City Auditor was sneering or laughing at the court. As an officer of the court was conducting him to jail in pursuance of the respondent judge's order, respondent called back said petitioner and asked him: "Are you laughing?" The latter answered, "No, sir." Respondent repeated the question and the City Auditor reiterated his answer. This must have all the more intensely vexed respondent because according to him it was "not only without respect but defiant to the authority and dignity of the court in session", so he declared petitioner City Auditor guilty of contempt and ordered him incarcerated. Only after the said city official had stayed in jail for about five (5) minutes did respondent reconsider his order of incarceration and had the said petitioner brought back before the court from jail; and only then was respondent judge able to continue, explaining his position in his contempt charge against the three city officials in connection with their previous actions relative to his claim for gasoline allowance, which charge has been docketed in his court as Special Case No. 8. Thereafter, the respondent judge filed with the court the written specification of his charges, to wit:

"SPECIFICATION OF CHARGES

"WHEREAS, without asking for it on January 22, 1965, the Municipal Board of Ozamiz City adopted and passed Resolution No. 72 which resolution is well known to respondents;

"WHEREAS, wishing to avail of the privilege magnanimously granted by the said Resolution, the Presiding

Judge of Branch III of the Court of First Instance of Misamis Occidental, trusted employee sent for pre-audit and payment by the City Auditor and and the City Treasurer a voucher for the payment of the gasoline allowance from August 1, 1964;

"WHEREAS, without much ado and with the least respect to the Presiding Judge, then Acting City Treasurer Hugo Daguman refused payment, and when asked for a written comment regarding his refusal despite repeated requests made by the offended Judge, refused to make his rejection in writing;

"WHEREAS, in order to forestall reversion of the accumulated amount due the offended Judge, a letter was written and sent to then Acting Treasurer Daguman duly receipted by his Office on June 2, 1965 requesting him to have the amount due obligated in the books of account of the City pending receipt of approval by the Executive Department and motivated by hatred and spite did not so obligate as requested;

"WHEREAS, in a letter dated March 2, 1966, Emeterio A. Buyco, in connivance and confabulating with the City Treasurer and the Assistant City Treasurer of the City of Ozamiz, to put in public contempt and ridicule the Presiding Judge of Branch III of this Court, wrote a letter which the respondents well know, in connection with Resolution No. 72 (was) duly approved by the Office of the President, limiting the enjoyment of such allowance 'only during the period covered by his tour of duty and actual services rendered in Ozamiz City as vacation Judge or as may be so ordered by the Honorable Secretary of Justice', as aforesaid contrary to what was granted by Resolution No. 72 and duly approved by the Executive Department purposely to belittle, begrudge and ridicule and expose to public contempt the offended Judge;

"This unprovoked act of the respondents has so humiliated, embarrassed and ridiculed the Court causing emotional stress and untold shame on the Presiding Judge so much so that in the trial of Criminal Case No, 5918, People vs. Procopio Guangco the time the letter of the City Auditor indorsed through the City Treasurer was received, the offended Judge had to suspend and cancel all proceedings as he was so mentally disturbed by the letter of the respondents amounting to grave and actual disturbance of Court proceedings which act constituted as it did constitute not only direct but also constructive contempt of court as it had severely impaired the administration of justice, and has subjected the Court to public contempt and ridicule.

"Oroquieta, Misamis Occ., March 8, 1966.

"(SGD.) MARIANO A. ZOSA

Judge"

Petitioners were furnished a copy each of the specification of charges above-quoted and hearing thereof must have been set for March 12, 1966. City Treasurer Eleno v. Kabanlit filed his own answer[2] while City Auditor Emeterio A. Buyco and Assistant City Treasurer Hugo B. Daguman, represented by Ozamiz City Fiscal Amado F. Gador, filed a motion dated March 11, 1966, praying for an extension of five (5) days from March 12, within which to file their respective answers. On the same date March 11th, the present petition was filed with this Court. In this Court's resolution of March 14, 1966, the respondent Judge was required to answer said petition and restrained from proceeding to conduct the hearing of the contempt charge before him. It turned out later, however, that in the meanwhile, or on March 12, 1966, hearing on the contempt charge was called by the respondent, after which he issued the following order:

"ORDER

"When this case was called for hearing this morning for the trial of the charges, the respondents, City Auditor Emeterio A. Buyco, City Treasurer Eleno V. Kabanlit and Assistant City Treasurer Hugo B. Daguman, appeared through the special representation of Atty. Pedro S. Animas in behalf of Fiscal Gador, and petitions that they be given time to file answer and defer the appearance of the respondents for the hearing of this case.

"The motion being meritorious and so not to be misunderstood that the Court is railroading the whole incident, the Court grants the same.

"The respondents are given up to March 16, 1966 to file their answer to the charges except respondent Eleno V. Kabanlit who has already filed his answer; and, to assure the appearance of the respondents on the day of the hearing, pursuant to Section 5 of Rule 71 of the Rules of Court they, except City Treasurer Eleno V. Kabanlit, are hereby ordered arrested for the trial of this proceedings as scheduled.

"x x x x x."

Pursuant to this order, petitioners City Auditor and Assistant City Treasurer were arrested and lodged in the provincial jail at about 10:00 o'clock that same morning. It was a Saturday and the respondent judge had gone home before counsel for the two incarcerated officials was able to file an urgent motion for reconsideration praying the court to reconsider its order of detention or, in the alternative, to fix the bond for their provisional liberty. It was already 3:00 o'clock in the afternoon when the respondent signed the order for their release upon their filing a cash bond of P500.00 each.

It is the position of petitioners that the respondent judge's vouchers for gasoline allowance, like any ordinary money claim of private persons against the City of Ozamiz, are subject to auditing rules and procedures; that as he disallowance or denial thereof in audit by them (petitioners) should neither constitute violation of an order of His Honor nor expose him to ridicule and public contempt; and, that the act of respondent judge in requiring them to appear before him in order to face the contempt charge aforequoted, even if their denial of the vouchers in question is supported by well-grounded reasons and auditing rules and regulations, constitutes grave abuse of discretion and excess of jurisdiction. Petitioners charge that respondent judge was using the power of his court to punish for contempt as a coercive measure to compel them to pass in audit his claim for gasoline allowance.[3] Respondent judge, on the other hand, denies such imputation and counters that he filed the contempt charge against the herein petitioners not to secure the allowance of his vouchers as he had long waived his right to the gasoline allowance claimed therein, but, that the real basis of his contempt charge against them is the shabby, disrespectful, unmitigated harassment and ridicule and exposure to public contempt he was subjected to by petitioners who made him go back and forth to Ozamiz City looking like a beggar and a mendicant when his above-mentioned vouchers were presented to them for audit and payment, which, according to him, constitute both direct and constructive contempt of court.[4]

Viewed from any angle, the circumstances of this case cannot justify the actuations of respondent judge. Quite the contrary, what appears evident here is that much of the unpleasantness which attended the incidents before Us now could have been avoided if respondent judge had only acted with the sobriety and circumspection expected of him as a judge. It is obvious that the matter he had taken up with petitioners - the processing of the vouchers for his gasoline allowances - was not, in legal contemplation, officially connected with the administration of justice or the functions of his office and so, petitioners were not under strict obligation to render him, in relation thereto, the same degree of obeisance and submission as are due to a court. If some measure of deference were lacking in their attitude, there was not enough ground for him to invoke his power to punish for contempt, specially because petitioner city auditor's objection to the approval of respondent's vouchers to the effect that there was no indication in said vouchers that respondent had used his car "in a tour of duty in the City of Ozamiz" or that he had rendered any service in the said outside his territorial jurisdiction this defined the pertinent administrative order of the Department of Justice cannot be said to be altogether whimsical or capricious. It is highly important for judges to bear in mind at all times that the power of contempt, being drastic and extraordinary in its nature, should not be resorted to unless it is necessary to do so in the interest of justice. In the case at bar, We do not see that respondent judge was so motivated.

Judges of the courts of first instance are national officials whose compensations are paid wholly by the national government. Respondent has not cited any law and none has been found by Us which makes it the obligation of local governments to pay them any additional compensation, remuneration or allowance. By respondent's own assertion, the allowances which gave rise to the incidents herein involved were in the nature of a "privilege magnanimously granted" by the Municipal Board of Ozamis City. Indeed, this Court is aware that respondent has not been the only recipient of such kind of generosity. Similar grants of transportation and gasoline allowances are reported to be a general practice in many, if not all, of the provinces and cities throughout the country. More, even grants for travel abroad, styled as study or inspection tours, involving scores of thousands of pesos have been reportedly accepted and enjoyed by some judges. No less than the President of the Philippines has taken cognizance of such practices and of their undesirable implications. Apprehensive of their adverse effects on the integrity and independence of the judiciary and the faith of the people in its complete impartiality, the President has pointed out in Memorandum Circular No. 191 dated June 10, 1968:

"MEMORANDUM CIRCULAR NO. 191

"PRESCRIBING THE POLICY REGARDING THE GRANT OF TRANSPORTATION AND REPRESENTATION ALLOWANCES, INCLUDING OTHERS OF SIMILAR NATURE, PAYABLE OUT OF LOCAL GOVERNMENT FUNDS, TO JUDGES OF THE COURTS OF FIRST INSTANCE AND COURTS OF EQUIVALENT RANK AND JUDGES OF CITY AND MUNI-CIPAL COURTS, AND OTHER NATIONAL OFFICIALS BELONGING TO THE DEPARTMENT OF JUSTICE.

"Executive Order No. 31, s. 1954, as pointed out by the Auditor General, authorizes the payment of transportation allowance, for the use on official business of privately-owned automobiles, only to provincial and city, officials. Recently, however, it has become the practice of some local governments to grant not only transportation allowances but representation and other allowances, at rates entirely at their discretion, to judges and other national government officials. Strictly speaking, these allowances should be provided by the national government and not by the local governments, since the administration of justice is a matter of national, not local, concern.

"Aside from the lack of uniformity in the rates of these allowances, it bears emphasis that since these are granted in the discretion of the local legislative bodies and executive officials, who may from time to time substantially increase or decrease or entirely withdraw the same at their pleasure, the practice would tend to undermine the people's faith in the impartial administration of justice. While undoubtedly most of the recipients of these allowances would remain true to their oath of office in the discharge of their duties, the receipt of such allowances would nevertheless give cause for litigants to doubt their impartiality especially where local officials who have some say on these allowances appear as counsel for, or appear to be interceding on behalf of, the adverse parties. Needless to add, the independence of the judiciary, which is so vital to the stability of our democratic institutions, should not be placed under such a cloud of suspicion, even if unfounded.

"To establish uniform rates of transportation allowances for judges and said officials, it is hereby declared the policy of the Office of the President to authorize, as it is hereby authorized, the payment of transportation allowances to judges of the courts of first instance, and those of courts of equivalent rank who are not receiving any such allowance from the national government, at a monthly rate not exceeding P200.00; to judges of the city courts of Manila and Quezon City, at the same rate; to other city judges and national government officials belonging to the Department of Justice, at a monthly rate not exceeding P150.00.

"Henceforth, no representation or any other form of allowance, including the so-called travel grant, shall be authorized to be paid out of, or chargeable against, any local government funds appropriated for the said purpose in favor of any of the above-mentioned judges or officials.

"The Secretary of Justice and the Auditor General are hereby directed to implement immediately this circular. To insure strict compliance with the policy herein established, and to guard against unauthorized payments, the Auditor General shall see to it that all claims or vouchers or payrolls for the payment to such judges and officials of any form of allowance payable out of local funds shall be preaudited. The Secretary of Finance shall likewise enjoin all Provincial/City Treasurers not to sign or approve any claim, voucher or payroll for such allowances unless the same is in conformity with this Circular.

"This Circular shall govern the payment of such allowances commencing with the current fiscal year, and any previous authority inconsistent with this Circular is hereby revoked. Payment of such allowances during and for the current fiscal year without the prior approval of this Office shall be adjusted and the excess or unauthorized payments shall be refunded or set off against those becoming due in the future.

(SGD.) FERDINAND E. MARCOS

President of the Philippines"

Accordingly, the said memorandum circular and its amendments, Memorandum Circulars Nos. 296 and 299 of November 3 and 13, 1969, respectively, have set limits to the amounts of the allowances that may be granted by local governments to judges and fiscals who do not receive any allowances from the national government. In other words, if such allowances have to be tolerated, perhaps to enable judges to meet their needs which the national government cannot provide for, the President has deemed it wise and, We believe, rightly, to subject the same to certain limitations, to make sure that the amounts to be appropriated do not exceed what are necessary and reasonable in proportion to the finances of the local governments concerned. As a matter of fact, as We view them, the strictures of the President contained in the above-quoted memorandum circular more than suggest that unless really needed, they should be avoided, if only to erase any possible doubt some people may entertain regarding the justness of decisions of the local courts in cases involving local governments and/or local officials. Withal, acceptance of such allowances necessarily entails periodic representations judges would have to make before probably minor local officials for the payment thereof, and when it is considered that it is not very unusual for such relatively minor officials to be over-conscious of their passing importance, one can easily imagine the indignities and humiliations that judges may have to bear in the process of collecting them. The said allowances not being a matter of right inherent in the positions of the judges, the mere possibility that these judges might have to plead some minor local official or another for the approval of the vouchers therefor or for the payment thereof is in itself disgraceful to the judicial office.

If there be real need for any kind of allowance for judges in order that they may be able to maintain themselves respectably in their stations, it is more in keeping with the dignity and independence of the judiciary that the same be provided by the national government. Withal, in this manner, the inequality and uncertainty attendant to the allowances given by respective local governments cannot exist, or in other words, whether or not a judge will receive any allowance or how much it would be will not have to depend on the whim and caprice of any local council or official.

Salient, therefore, is the point that in making representations for the processing of the papers concerning his transportation and gasoline allowances with petitioners, respondent could not have been in the performance of his official functions as a judge. What he was working for was something which in legal contemplation was purely private and personal. In fact, as observed above, it was something that would have been best to avoid. That respondent was, according to him, accompanied by a local official in the person of Councilor Abasolo Jr., certainly, did not enhance his situation - far from it, for it only served to emphasize how much he had to depend on the benevolence of the local officials for what, indeed, he had no strict legal right to.

From these considerations, it necessarily follows that the facts alleged in the above-quoted "Specification of

Charges" filed by respondent against petitioners cannot make out any case of contempt, whether direct or indirect. Direct contempt as defined by Section 1 of Rule 71 consists of "misbehavior in the presence of or so near a court or judge as to obstruct or interrupt the proceedings before the same, including disrespect toward the court or judge, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required so to do." It is true that according to this provision the misbehavior contemplated includes "disrespect toward the ... judge", but it is evident that the disrespect referred to must be such as would "obstruct or interrupt the proceedings before" the court or judge. By no stretch of the imagination can respondent's presentation to petitioners of his vouchers as well as his request later on, to have the amounts thereof immediately obligated so as to avoid reversion of the corresponding funds at the end of the fiscal year, on the one hand, and the latter's refusal to favorably act on them, on the other, be considered as part of any judicial proceeding, particularly since this happened in the office of the petitioners in Ozamiz City, decades of kilometers away from Oroquieta, the municipality wherein respondent was then holding court.

In this connection, respondent cites as "grave and actual disturbance of Court proceedings which act constituted, as it did constitute, not only direct but also constructive contempt of court, as it had severely impaired the administration of justice and has subjected the Court to public contempt and ridicule", the fact that when the allegedly offensive indorsements of the petitioners City Auditor and City Treasurer reached him, he was in the course of trying a criminal case and he had to suspend and/or cancel all the proceedings therein as a result of "emotional stress", "untold shame", "embarrassment", "ridicule" and "mental disturbance" suffered by him upon receipt thereof. We cannot agree. It is clear to Us that petitioners had nothing to do with the hour when their indorsements would be delivered to and be read by respondent, specially because it does not appear that they personally and purposely took the said indorsements to respondent at that particular time when he was holding court. Neither can We see any reason why respondent, by reacting the way he alleges he did, had to subordinate the due performance of his official functions to the purely personal interest he had in collecting extra-legal allowances which could only compromise his position as a judge.

The best statement respondent could make of his case appears in his answer to the supplemental petition thus:

"Before stating in details the answer of the respondent to the aforesaid Supplementary Petition, respondent respectfully submits that contrary to what the petitioners alleged in their original petition and reiterated in the Supplementary Petition, the contempt proceedings was not instituted on the non-payment of the gasoline allowance. Time and again respondent reiterates that he has waived the privilege and bounty given to him by Resolution No. 72 of Ozamiz City on March 8, 1966 immediately upon citing the petitioners for contempt;

"Respondent insists and re-states that it was the shabby, disrespectful and mocking treatment amounting to ridicule and downgrading the Presiding Judge of the Third Branch of the 16th Judicial District was subjected to by the petitioners, Hugo B. Daguman, Eleno V. Kabalit, and Emeterio A. Buyco, when he followed up his claim under Resolution No. 72 granting him gasoline allowance;"

We have already pointed out that whatever consequence the actuations of the petitioners may have produced upon the respondent, the same cannot be the basis of any contempt charge, for the simple reason that they are not related in any manner to any judicial proceeding being conducted by him. To constitute direct contempt "the misbehavior should be committed either in the presence of or so near a court, while in session, or in the presence of or so near a court even if not in session, in connection with the administration of justice." (Martin, Rules of Court, Vol. 3, 1969 ed., pp. 347-348, citing *Bengzon vs. Tan*, G. R. No. L-12043, May 23, 1958.) If respondent had indeed suffered what he claims, We can only say that he unnecessarily brought them upon himself by readily accepting magnanimity from local officials for the enjoyment of which, he should have foreseen that he would have to cater to the impositions and demands of minor officials, because what was being given to him was only an extra-legal "privilege magnanimously granted." No spectacle, We reiterate, can be more disgusting and more

degrading to the dignity of the judicial office, than that of a judge being made to appear as a mendicant before local officials over whom he might have to exercise jurisdiction.

Neither could petitioners have been held guilty of constructive contempt. Section 3 of Rule 71 defines this offense as follows:

"Sec. 3. Indirect contempt to be punished after charge and hearing. - After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

"(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

"(b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

"(c) Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under Section 1 of this rule;

"(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

"(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

"(f) Failure to obey a subpoena duly served;

"(g) The rescue, or attempted rescue of a person or property in the custody of an officer by virtue of an order or process of a court held by him."

Only sub-paragraph (d) of the above section could have any relevance to the facts of this case. According to said sub-paragraph "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" may be the basis of punishment for indirect contempt after charge and hearing. None of the acts imputed to petitioners could by any means have "impede(d), obstruct(ed) or degrade(d) the administration of justice" or tended to do so, whether directly or indirectly. The way we look at it, it was the respondent's acceptance of the allowances involved here that has to a great extent impaired his usefulness as a judge. After all, it is not the personal and private degrading of a judge that is contumacious; it is the degrading of the administration of justice. Under the facts alleged in the "Specification of Charges", not even remotely could petitioners' unfavorable action on the respondent's vouchers and their alleged intent to put respondent in public contempt and ridicule by such action could constitute indirect contempt, since it is obvious that such matters are unrelated to the exercise by respondent of his judicial functions and authority inasmuch as Ozamiz City was not even within the area over which his territorial jurisdiction ended, as respondent was supposed to have judicial notice of. While the dignity and authority of the courts must be maintained, it is worthwhile emphasizing that "a judge should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard, not for the judges as persons, but for the functions that they exercise." (Austria v. Masaquel, G. R. No. L-22536, August 31, 1967, 20 SCRA 1247, 1260.)

Two incidents also complained of here serve to emphasize the utter confusion in the mind of respondent as to the extent of his powers in the premises. Before the date set for the hearing of the charge against them, petitioners City Auditor and Assistant City Treasurer moved for extension of the period to file their written answers. While,

on the one hand, respondent pretended to be noble to said petitioners by acceding to their prayer for extension, "so that he may not be misunderstood as being vindictive", on the other hand, he exhibited his excessive zeal in trying to assuage his wounded feelings by ordering their immediate arrest.

He now claims that he did so under the authority of Section 5 of Rule 71 which reads:

"Sec. 5. Hearing; release on bail. - If the hearing is not ordered to be had forthwith, the accused may be released from custody upon filing a bond, in an amount fixed by the court, for his appearance to answer the charge. Upon the day set for the hearing, the court shall proceed to investigate the charge and consider such answer or testimony as the accused may make or offer."

He argues that the power to release on bail provided for in this section, presupposes the power to order arrest. To be sure, respondent does not have to indulge in such a deduction not altogether ineludible. The last paragraph of Section 3 of the same Rule which provides that "nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings" sufficiently gives any court authority to have an alleged contemnor arrested. In other words, the power to order arrest undeniable. The point, however, that under the circumstances of this case, it was obviously a grave abuse of discretion on the part of respondent to order the arrest of the said two petitioners, considering that even presiding with the fact that legally there was no contempt in the facts alleged against petitioners, as these Petitioners were rather important officials of the City, there was no risk at all of their non-appearance in the proceedings. That they asked for further time to file their answers, did not indicate at all that they would disappear or that they would defy the court.

In the other incident, respondent issued a memorandum directing the City Fiscal of Ozamiz to aid the Provincial Fiscal of Misamis Occidental in prosecuting the contempt charge here in question. Respondent did this after said City Fiscal had already formally entered his appearance for the petitioners. Whatever impropriety or irregularity may be alleged regarding a fiscal's appearing as defense counsel in a contempt case, albeit in this particular case, respondent's theory that it was the duty of the fiscal to assist him in prosecuting the contempt case does not hold because the fiscal referred to was an assistant city fiscal of Ozamiz which is outside of the situs of the alleged contempt, the memorandum in question smacks not only of an attempt to deprive petitioners of the assistance of counsel which, according to the fiscal, had been given by him upon request of the mayor inasmuch as the charge against petitioners involved the performance of their official duties, but of even giving to the prosecution the very arm he has taken away from the petitioners. Such an attitude of unfairness, can gain nothing but the disapproval of this Court.

Procedurally speaking, petitioners should have awaited until the termination of the contempt proceedings before coming to this Court. It appears, however, that this case has been pending for quite sometime. On the other hand, the importance of the interests of the judiciary and the administration of justice herein involved and which We have discussed above make it imperative that We put earlier finish to this case. Besides, no factual issues have been raised by the parties and herein petition partakes somehow of the nature of one for habeas corpus.

IN VIEW OF THE FOREGOING, the petition for certiorari is granted, the proceedings for contempt in the court below are hereby declared to be in grave abuse of discretion and/or in excess of the jurisdiction of respondent judge and set aside, and the writ of preliminary injunction heretofore issued in this case is hereby made permanent. Without costs.

Let a copy of this decision be served on the Secretary of Justice for his information and guidance.

Reyes, J.B.L., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Concepcion, C.J., and Makalintal, J., in the result.

Makasiar, J., did not take part.

[1] It seems more probable that the voucher for P1,100.00 was the first one submitted since the same covers an earlier period. Moreover, it is to be noted that the voucher for P600.00 does not appear to be covered by Resolution No. 72. On what basis respondent tried to collect the same does not appear, but this point is not raised and We need not pass upon it.

[2] There is no copy of this answer in the records of this case.

[3] Paragraphs 27 and 28, Petition, pp. 13-14, Rollo.

[4] Second and Third paragraphs, Answer, pp. 92-93, Rollo.

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