

**LUZON SURETY CO., INC., PETITIONER, VS. LEOVEGILDA, BONIFACIA AND JOVITA, ALL SURNAMED BESON, CONCEPCION BESON DE GUTIERREZ, PASTOR QUEBRAR, THE MANILA SURETY &#038; FIDELITY CO., IN...**

*G.R. Nos. L-26865-66. January 30, 1970*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

Petitioner Luzon Surety Co., Inc., far from reconciled with the prospect of having to comply with the writ of execution dated September 27, 1966 issued by the clerk of court of respondent Judge Eduardo D. Enriquez of the Court of First Instance of Negros Occidental, for the satisfaction of the amount of P8,732.23, a liability allegedly imposed on it without its right to procedural due process having been respected, filed this special civil action for certiorari with a writ of preliminary injunction on November 22, 1966. More specifically, it would seek to nullify such a writ as it was not in accordance with a previous order of respondent Judge on which it was presumably based, allegedly issued without petitioner having been heard, a matter of more than ordinary significance as there was a previous order cancelling the two bonds executed by it for respondent executor Pastor Quebrar, handed down as early as October 20, 1962. The movants, Leovegilda, Bonifacia and Jovita Beson as well as Cocepcion Beson de Gutierrez, herein after referred to as Bosons, were also named respondents. Another surety firm, the Manila Surety & Fidelity Co., Inc. was likewise included as one of the respondents, having, on November 11, 1965, subscribed to an executor's bond with respondent Pastor Quebrar for exactly the above amount of P 3,732.23. The question to which we thus address ourselves is whether, on the facts as above summarized, to be hereafter set forth in detail, petitioner is entitled to the writ prayed for.

The order of August 6, 1966 of respondent Judge, on which the assailed writ of execution is made to rest, had its origin in a motion, filed on July 18, 1966 by the Besons, for the confiscation of the executor's bond, wherein it was alleged that in a previous order of June 25, 1966 respondent Judge directed the executor to reimburse the two estates, the proceedings for the settlement of which were held jointly, the amount of P8,732.23 within ten days from receipt thereof, otherwise the bond would be confiscated and that though more than fifteen days had since elapsed, such an order was not complied with.[1] To such a motion, there was an opposition filed by respondent Manila Surety & Fidelity Co., Inc., dated July 25, 1966, to the effect that as of the time of the approval of such accountability, the executor of the estate was bonded by the petitioner in the sum of P15,000.00, that upon motion of the executor, there was indeed an order of October 20, 1962 cancelling such bond although as of that time its liability had already attached, and that respondent Manila Surety & Fidelity Co., Inc., without any knowledge of such existing and previous accountability of the executor, did execute the new bond in the aforesaid amount, but only subject to the conditions therein stated. It therefore prayed for the denial of the motion for the confiscation of its bond on the ground that it had only a prospective effect, its conditions not expressly or impliedly covering the liability of the executor previously incurred.[2]

There was, on September 14, 1966, a motion filed again by respondents, the Besons, for the specification of the

particular surety company which should reimburse the aforesaid estates such amount of P8,732.23. This time, though, a copy of such motion apparently was sent the same day to petitioner's office in Bacolod City, although there was no proof that it was indeed received.[3] Respondent Judge thus had the opportunity to assure that petitioner was duly heard, but failed to do so.[4] Then on September 24, 1966, the Besons filed an ex parte motion for the issuance of a writ of execution.[5] Without the matter having gained the required precision, there being no clarification as to which surety firm should be made to respond, came the writ of execution, herein challenged, dated September 27, 1966, made to rest on the previous order of August 6, 1966, worded in this wise: "Como se pide por el abogado de los opositores, Sr. Raymundo M. Lozada, Jr., en su mocion de fecha 18 de Julio de 1966, y por las razones alegadas en ella, por el presente se declara confiscada la fianza presentada por el albacea a para responder del pago de la suma de P8,732.23 debiendo hacerse efectiva dicha cantidad por la compania aseguradora que era al tiempo en que se dicto la sentencia dictada por la Corte de Apelaciones confirmando la decision de este Juzgado en que se le ha dicho responsable al albacea de la mencionada cantidad."[6]

Not only did it fail to specify which surety firm was liable, but also, it added to such uncertainty by the nebulous reference to "la compania aseguradora que era al tiempo en que se dicto la sentencia dictada por la Corte de Apelaciones." As already mentioned, in the very opposition of respondent Manila Surety & Fidelity Co., Inc., the appellate court affirmed the lower court order only on October 8, 1964.[7] It is to be remembered that as early as October 20, 1962, respondent Judge, acting on a motion of respondent executor, for the cancellation or reduction of his bond and praying in the alternative for the filing of a new bond in the amount of P8,732.23, did issue this order: "Acting upon the Motion for cancellation and/or reduction of Executor's bond, dated October 17, 1962, filed by counsel for the Executor, the Court hereby orders the cancellation of the executor's bond and the filing of a new bond in the amount of P8,732.23, in lieu thereof to be presented to this court for approval.[8] It would thus appear on the face of the petition that as far back as October 20, 1962, there was a cancellation of the bond executed by petitioner and that a new bond for such amount of P8,732.23 was not filed until November 11, 1965 and by another surety firm, respondent Manila Surety & Fidelity Co., Inc.

Petitioner did file a motion to quash such writ of execution and a motion for reconsideration upon its denial but to no avail.[9] Its motion for reconsideration stressed that it had ceased to be a party to the proceedings upon the cancellation of its bond as far back as October 20, 1962 and that moreover it "was not given an opportunity to be heard. "Hence its contention that the writ of execution amounted to a "deprivation of property without due process of law." [10] Respondent Judge summarily denied the above motion on the ground of "no encontrando bien fundadas las razones en apoyo de la misma, \* \* \*." [11]

The petition on its face, impressed with more than its share of plausibility, this Court, on November 28, 1966, required respondents to answer, a writ of preliminary injunction likewise being issued upon petitioner posting a bond of P1,000.00. Two answers were filed, one by respondent Manila Surety & Fidelity Co. Inc. on December 10, 1966 and the other by respondents, the Besons, on December 23, 1966. Necessarily, the answer of the former was not as explicit as that of the Besons in view of its being involved much later in the proceedings before respondent Judge. There was an explicit admission, except for the insistence that the challenged writ of execution of September 27, 1966 was issued pursuant to the order of respondent Judge of August 6, 1966, in the answer of the Besons of the allegations of the petition.

Petitioner, on the above facts, must prevail. It is entitled to the writ prayed for. The denial of procedural due process was quite manifest. The motion for the confiscation of the bond filed by the Besons evidently was not aimed at petitioner. The amount sought was precisely that assumed in the bond of re-spondent Manila Surety & Fidelity Co., Inc., which moreover did feel alluded to as it filed an opposition. It is true that the Besons must have had a second thought and would ascertain from the lower court in a later pleading whether petitioner could

likewise be a party still subject to liability. Respondent Judge, without being too clear in his order, must have entertained such belief, as attested by the writ of execution now assailed. If such indeed were his state of mind, he should have, at the very least, granted petitioner the opportunity to be heard. There was the more reason for such indispensable step as he apparently was no longer aware of a previous order canceling petitioner's bond issued as far back as four years previously. When his attention was subsequently called to the grave defect in the procedure adopted by him, both in a motion to quash the writ of execution and a motion to reconsider filed by petitioner, he was not even sufficiently impressed to devote some degree of attention on the matter. He satisfied himself with a curt order of denial in both cases.

It thus appears indisputable that the lower court was quite insensible to the demands of procedural due process. Under the circumstances then, the writ of execution cannot survive the attack launched against it by petitioner. The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern. It is a constitutional safeguard of the highest order. It is a response to man's innate sense of justice. It demands that governmental acts, more specially so in the case of the judiciary, be not infected with arbitrariness. It cannot be satisfied unless the elementary requirements of fairness are met. More specifically, when as in this case, the imposition of a pecuniary liability was far from clear, with petitioner apparently not lacking in defenses that, to say the least, could not just be summarily brushed aside, it certainly was entitled to be heard.[12]

Nor is this a novel thought. A surety, as pointed out by us in a recent decision, must be given "an opportunity \* \* \* "to be heard. Otherwise, in the categorical language of Justice Dizon, who penned the opinion, "the writ of execution issued thereunder [is] void. "[13] This is a doctrine that goes back to a 1926 decision, *Gamay v. Gutierrez David*. [14] Considering, moreover, that even when execution is proper, the party against whom it may be directed could show facts that had developed subsequently that would make it unjust or inequitable, the indispensable character of a hearing before such writ could issue becomes even more undeniable.[15]

WHEREFORE, the writ of certiorari prayed for is granted and the preliminary injunction issued by us in accordance with our resolution of November 28, 1966 made permanent. The matter is remanded to the sala of respondent Judge, or whoever may now be acting in his place, for appropriate disposition conformably to law and to this opinion. With costs against private respondents.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.

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[1] Petition, Annex F.

[2] Ibid, Annex G.

[3] Ibid, Annex H.

[4] Ibid, par. 15.

[5] Ibid, par. 16.

[6] Ibid, Annex I.

[7] Ibid, Annex G, par. 2.

[8] Petition, par. 4.

[9] Ibid, pars. 20 and 21.

[10] Ibid, Annex K.

[11] Ibid, Annex L.

[12] Ermita-Malate Hotel and Motel Operators Asso., Inc. v. City Mayor of Manila, 20 SCRA 849 (1967); Macabingkil v. Yatco, 21 SCRA 150 (1967); Caltex (Phil.), Inc. v. Castillo, 21 SCRA 1071 (1967); Morfe v. Mutuc, 22 SCRA 424 (1968); Batangas Laguna Tayabas Bus Co. v. Cadiao, 22 SCRA 987 (1968); Santiago v. Alikpala, 25 SCRA 356 (1968); Manila Pest Control, Inc. v. Workmen's Compensation Comm., 25 SCRA 700 (1968); Florendo v. Florendo, 27 SCRA 432 (1969); Victorias Milling Co., v. Workmen's Compensation Comm., 28 SCRA 285 (1969); Garcia v. Reyes, L-27419, Oct. 31, 1969.

[13] Luzon Surety Company, Inc. v. Guerrero, 17 SCRA 400 (1966).

[14] 48 Phil. 768. The Gamay decision was cited with approval in Monte-verde v. Jaranilla, 60 Phil. 294 (1934).

[15] Calvo v. De Gutierrez, 4 Phil. 203 (1905); Lee v. Mapa, 51 Phil. 624 (1928); Li Kim Tho v. Sanchez, 82 Phil. 776 (1949); Pascual v. Tan, 85 Phil. 164 (1949); City of Butuan v. Oitiz, 3 SCRA 659 (1961); Candelario v. Cañizares, 4 SCRA 738 (1962); Vda. de Albar v. Carangdang, 6 SCRA 211 (1962); Robles v. Timario, 6 SCRA 380 (1962); Abellana v. Dosdos, 13 SCRA 244 (1965).

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