

**MANILA RAILROAD COMPANY, PETITIONER, VS. NICASIO YATCO,
JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON CITY,
BRANCH V, SEBASTIAN L. ROSALES AND CANUTO GERONIMO,
RESPONDENTS.**

G.R. No. L-23056. May 27, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The events which spawned the present proceedings are these.

Suit was filed in the Court of First Instance of Rizal, Quezon City Branch,[1] to compel petitioner Manila Railroad Company to deliver to plaintiff the following:

"One (1) lot of structural steel junks (I-beams,
T-beams, channel and angle irons),
with an estimated weight of 250 metric
tons, more or less, computed at
P172.00 per metric ton. ----- P43,000.00
"Three (3) units of junk equipment consisting
of one (1) unit Crane 'General', $\frac{3}{4}$
cu. yd., one (1) unit Crane 'Lorain',
and one (1) unit Rock Crusher. ----- P17,200.00
Total ----- P60,200.00"

upon payment of the balance of the purchase price thereof in the sum of P43,000.00 covering the lot of structural steel junk.

Decision was, on March 18, 1964, rendered by the respondent judge approving the compromise agreement entered into by the parties and directing them to comply with the terms and conditions thereof. That compromise agreement stipulated:

"1. That the defendant MRRCO. shall deliver unto the plaintiff within ten (10) days from the date hereof without need of demand at the MRRCO. Caloocan Compound all the three (3) units of junk equipment consisting of one (1) unit Crane 'General' $\frac{3}{4}$ cu. yd., one (1) unit Crane 'Lorain' and one (1) unit Rock Crusher, subject of the First Cause of Action of the plaintiff's complaint, all of which units of equipment had been fully paid for;

2. That after the defendant MRRCO. shall have delivered unto the plaintiff at the MRRCO. Caloocan Compound the three (3) units of equipment referred to in the immediately preceding paragraph hereof, the plaintiff shall, within ten (10) days thereafter, pay unto the defendant MRRCO. the sum of P21,500.00 representing 50% of the purchase price of the lot a structural steel junks subject matter of the above-entitled case, and upon such payment, the defendant shall immediately deliver to the plaintiff the one hundred twenty-five (125) metric tons of the aforesaid lot of structural steel corresponding to said payment. The balance of P21,500.00 shall be paid by the plaintiff to the defendant MRRCO. after the former shall have taken complete delivery of the 125 metric ions referred to above, provided that in no case shall such payment be made beyond sixty (60) days from the date of the first payment of P21,500. The obligation of the defendant MRRCO. to deliver to the plaintiff the second half of the lot of structural steel subject matter of this case, said second half consisting a one hundred twenty-five (125) metric tons also, shall commence upon the payment of the said balance of P21,500.00;

3. That in consideration of the foregoing, the plaintiff waives the damages and claims under the Second and the Third and the Fourth Causes of Action of the plaintiff's complaint, as well as the costs of the suit;

4. That in case of default or any other breach by the defendant MRRCO. of the provisions of paragraphs (1) and (2) hereof, the plaintiff may, at his option, require either specific performance or payment by the defendant MRRCO. of the value of the defaulted or breached obligation; in either case, the defendant MRRCO. shall, in addition, pay a sum equivalent to twenty-five percent (25%) of the defaulted or breached obligation as attorney's fees;

5. Furthermore, that in case of default or any other breach by the, defendant MRR Co. of the provisions of paragraphs (1) and (2) hereof, the plaintiff may, on ex-parte motion, ask for immediate execution."

Copy of the foregoing judgment was personally served on petitioner on March 18, 1964 and another copy sent by registered mail and received by it on March 30, 1964.

On March 23, 1964, respondent Rosales filed an urgent ex-parte motion alleging therein that the one unit Crane "Lorain" and the one unit Rock Crusher, subject of the action, had not been delivered to him, because of the refusal of petitioner's chief engineer Juan de Castro and petitioner's acting foreman Julian Salvador. Be prayed for a court order directing a special sheriff to take immediate possession of the said equipments and to deliver the same to plaintiff.

On the same day, March 23, 1964; respondent judge ordered a special sheriff, respondent Patrolman Canuto Geronimo, to take immediate possession and deliver to plaintiff said equipment "and to use reasonable force, if necessary, to carry out the instant order; and the Chief of Police of Caloocan City or his deputies are directed to assist the Special Sheriff in the enforcement a the instant order." Further, the court directed that the Chief of Police of Caloocan City place into custody Juan de Castro and Julian Salvador immediately and have them brought before the court, to show cause why they should not be held for contempt of court. In consequence of this order, Julian Salvador was incarcerated and detained from 4:00 o'clock in the afternoon of March 23 to 9:00 o'clock the following morning.

On March 31, 1964, acting upon another ex-parte motion of respondent Rosales tiled an the same day, respondent judge appointed respondent Canuto Geronimo and a certain Quezon City policeman named Soliman Dizon special sheriffs "to take immediate possession of the 125 Metric tons of structural steel subject matter of the action," and instructed the Caloocan City Police Department, "in cooperation with the Special Sheriffs x x x to place into custody any and all persons concerned who may, in one way or the other, obstruct and interfere enforcement of this order, which is merely a compliance with the decision of the Court based upon a compromise agreement."

By virtue of the foregoing order, respondent Rosales, assisted by Special Sheriff Geronimo, members of the

Caloocan City Police Department and Philippine Constabulary soldiers allegedly with the use of force and violence and intimidation (this was denied by respondents), was able to secure from petitioner company's Caloocan compound 125 metric tons of structural steel claimed to be brand-new and valued at about P150,000.00.

On May 29, 1964, respondent Rosales registered a motion alleging therein that despite his tender and offer to pay the sum of P21,500.00 in payment of the second half of the 125 metric tons of structural steel, subject of the instant case, petitioner's treasurer refused to accept payment. He there prayed that an order issue for the acceptance of the consignment of P21,500.00 and directing a special sheriff "to take immediate possession of and to deliver to the plaintiff the 125 metric tons of structural steel, subject matter of the instant action."

On May 29, 1964, on the same day the motion was filed, the court granted the same, and instructed respondent Canuto Geronimo "to take immediate possession of and to deliver to plaintiff the second half of the lot of structural steel consisting of 125 metric tons, subject matter of the action and mentioned in the compromise agreement," and directed Dominador de Asis, General Manager, Magtanggol Santos, Chief of the Stores Department, and Juan de Castro, Chief Engineer, all of petitioner company, "collectively and individually, x x x to comply strictly with this order and to see to it themselves that these 125 metric tons of structural steel are delivered to the Special Sheriff for delivery to the plaintiff." The special sheriff and the Caloocan Police Department were there ordered "to place in their custody any and all of those who may, either directly or indirectly, impede, obstruct or prevent the Special Sheriff from taking immediate possession of the structural steel in question, and for the said Caloocan Police Department to bring the persons they placed in their custody to this Court."

On June 2, 1964, respondent sheriff made an effort to take possession of and deliver to respondent Rosales the second half of the lot of 125 metric tons of structural steel, allegedly brand-new, which, according to petitioner, is valued at P1,800.00 to P2,300.00 per metric ton, or a total of P225,000.00 to P287,500.00. The sheriff was thwarted due to the refusal of and, physical obstruction made by the officers and employees of petitioner.

On June 3, 1964, petitioner filed an urgent motion declaring therein that "[i]nstead of taking delivery of structural steel junks" as mentioned in the compromise agreement, respondent Rosales, assisted by respondent Geronimo and members of the Caloocan and Quezon City Police Departments, through the use of force, threats and intimidation, and over the objection and protest of the agents of petitioner, forcibly took from petitioner's Caloocan yard upon the March 31, 1964 order, brand-new structural steel purposely purchased by petitioner "for use in its maintenance repairs and construction," and therefore not included in the compromise agreement. The motion complained of the orders of March 31 and May 29, 1964 in that members of the Quezon City and Caloocan City Police Departments used said orders as instruments of coercion, oppression and harassment in forcing petitioner and its agents "to part with brand new structural steels not covered by the Compromise Agreement"; and that, on the basis of these orders, several agents of petitioner have been committed to jail by the special sheriff and members of the Caloocan City and Quezon City Police Departments ranging from 14 to 16 hours per detention without any legal basis and in violation of Article 124 of the Revised Penal Code. Petitioner there sought: (1) the nullification of the orders of March 31 and May 29, 1964 "insofar as the officers named therein are authorized to place into custody any and all persons who may, either directly or indirectly impede, obstruct or prevent them from taking possession of structural steel so that such persons may be properly cited for contempt and given a chance to be 'heard by this Hon. Court on their refusal to submit to said officers"; (2) a restraining order enjoining plaintiff and the special sheriff from taking possession of any structural steel belonging to petitioner; (3) return of the structural steel taken from the company's Caloocan compound; and (4) for plaintiff to desist from taking possession of brand-new structural steel not covered by the compromise agreement. This motion was set for hearing on June 5 following.

On June 4, 1964, respondents Rosales and Geronirno tried to take delivery at petitioner's Caloocan compound of the second half consisting of 125 metric tons of structural steel, subject of the order of May 29. Government Corporate Counsel Tomas Matic, Jr. and Attorney Heroico M. Aguiluz of the Office of the Government Corporate Counsel, then and there intervened and blocked delivery.

But the next day, June 5, 1964 - without hearing, obviously because of a misunderstanding between petitioner's counsel and the judge as to the date thereof[2] respondent judge issued an order, which reads:

"The decision rendered in this case having become final and executory, the portion of the Urgent Motion filed by the defendants praying for a restraining order is hereby DENIED.

The Court hereby instructs the Special Sheriff appointed by the court to enforce strictly the order of the Court dated May 29, 1964."

On the same day, June 5, 1964, promptly after learning that petitioner's motion of June 3 was, on that day, denied, respondent Geronimo served copies of the June 5 order on petitioner and counsel and proceeded to petitioner's Caloocan compound to take immediate possession and deliver to plaintiff "the structural steel" mentioned in the order of May 29. He was then accompanied by one Sgt. Conrado Aguilar and two PC rangers, all in uniform, and by respondent Rosales. Attorneys Tomas Matic, Jr. and Heroico M. Aguiluz of petitioner stood on the structural steel and prevented the officers from loading them in the trucks of plaintiff. The last two claim that the structural steel the officers of the law were attempting to take were brand-new, not the junks covered by the compromise agreement.

A hearing was nevertheless had on June 6, 1964 on petitioner's motion of June 3. Respondent judge there declared that there was nothing to be heard since that motion had already been denied; that because the judgment was based on a compromise agreement, said court had no more jurisdiction to entertain said motion. And this, in spite of representations of petitioner's counsel that respondent special Sheriff executed the decision in excess of his authority for insisting in taking brand-new structural steel, instead of structural steel junks as specified in the compromise agreement. Nonetheless, respondent judge ordered petitioner to file a new motion and to serve copy thereof on respondent Rosales on Monday, June 8, setting the hearing of said motion on Wednesday, June 10.[3] Petitioner did file another urgent motion on June 8. This motion prayed for a reconsideration, of the June 5 order. It reiterated the prayer that the special sheriff be directed to desist from taking possession of brand-new structural steel and to limit execution of the judgment to taking structural steel junks as specified in the compromise agreement, and to return the brand-new structural steel already taken. It challenged the orders of March 31 and May 29, 1964 as illegal and arbitrary because they authorized the taking into custody of persons who obstruct the enforcement of said orders, and because upon those orders respondent Rosales sought delivery of brand-new structural steel. It averred that said orders were being used as instruments of harassment in the hands of respondents special sheriff Geronimo and Rosales, and violate personal liberties.

Hearing was held on June 10, 1964. Counsel for respondent Rosales objected to the presentation of evidence "[x x x to substantiate - the allegation of the Petitioner that the structural steel subject matter of the Compromise Agreement (Annex 'B' of the Petition) is not 'junk' as termed in the said Compromise Agreement, but 'brand new'] on the ground that such evidence is superfluous and immaterial and that petitioner is, estopped to present such evidence." [4] Respondent judge did not allow petitioner to present evidence in support of the motion, ruled that he no longer had jurisdiction to entertain the same, considered the incident in question as submitted for resolution.

On June 13, 1964, without awaiting the resolution of the respondent judge, petitioner came to this Court on certiorari, prohibition and mandamus, with a prayer for a writ of preliminary injunction. Petitioner here charges grave abuse of discretion: (1) in the issuance of the orders of March 23, March 31 and May 29, 1964, all of which

authorize the taking into custody of persons who obstruct or interfere with the enforcement thereof, and in summarily denying petitioner's June 3, 1964 urgent motion; (2) in respondent judge's refusal to allow petitioner to present evidence in support of its allegation that respondent special sheriff Canuto Geronimo was enforcing the order in a despotic, arbitrary and illegal manner. Petitioner also charges respondents Rosales and Geronimo with having attempted on June 5, 1964 to take possession of another batch of 125 metric tons of brand-new structural steel. Averment is made that should these respondents succeed in taking possession of said structural steel and in the event of the disposal thereof, it would be impossible for petitioner to recover these materials later on. Petitioner prays: (1) that the March 23, March 31, May 29 and June 5, 1964 orders be annulled; (2) that petitioner be allowed to present, evidence on its June 5 and 8 motions; (3) that respondent Rosales be ordered to return the structural steel taken by him in pursuance of the order of March 31; and (4) that a writ of preliminary injunction issue.

This Court, on June 13, 1964, first issued a temporary restraining order effective immediately up to June 25, 1964, upon petitioner's filing of a P25,000.00-bond "to prevent respondents Sebastian Rosales and Canuto Geronimo, their agents, and any other peace officer acting under orders of the respondent court from further taking any structural steel from petitioner's premises." The bond was accordingly posted. After hearing on the petitioner's prayer for preliminary injunction, this Court, on July 2, 1964, resolved to grant the same upon a new P25,000-bond. Such bond having been filed, the writ was issued on July, 3, 1964 enjoining respondents "from, further taking any structural steel from herein petitioner's premises and from selling or otherwise disposing of the brand new structural steel taken by Rosales from the premises of the petitioner on March 31, April 1, 2, 3, 6, 7, 8 and 10, 1964."

1. Respondents would want to have the present petition overturned. Their ground is that with the pendency of the resolution of the court below on petitioner's motion of June 8, 1964, the petition is premature.

It would be a sufficient answer to this argument to say that to seek redress in the lower court would appear to be futile.

On the one hand, there is the persistent effort on the part of respondent Rosales to procure delivery of brand-new - not junk - structural steel. He succeeded in getting the first half consisting of 125 metric tons which petitioner vehemently claims were not junk. He was in a hurry to take possession of the rest - but insisted in brand-new structural steel. He wanted to confront petitioner with a full fait accompli. Thus, even as the motion of June 3 - praying that Rosales "be directed to desist from taking possession of brand new structural steel" - was still pending resolution of the court, Rosales attempted to procure delivery of the remainder. It was only the adamant attitude of petitioner's agents that prevented respondent from taking delivery of what petitioner claims to be new - not structural steel junks, which precisely were ordered delivered in the final decision of the lower court. It may not be gainsaid that with the authority given respondent sheriff to summon the aid of the Quezon City and the Caloocan City Police Departments and the Constabulary, and the fact that a number of employees of petitioner have already been jailed because of their refusal to obey the orders of March 23 and 31, 1964, possession might be effected pending resolution by the lower court. For, nothing in the record suggests that respondent judge had issued a formal directive to the sheriff enjoining the latter from enforcing the orders.

And then, there is the fact that the court below has closed all avenues for petitioner to prove that what respondent Rosales already obtained and what he sought to be delivered to him was new structural steel and not structural steel junks. The great difference in value between the two classes is reason enough for petitioner's agents to block enforcement of the orders. Efforts on petitioner's part to procure from the court a hearing on what should be the quality of the structural steel to be delivered to respondent Rosales have been in vain. By petitioner's motions of June 3 and June 8, said petitioner made it abundantly clear to the court that there is a question of fact not

appearing on the record, involved in the case: whether the structural steel taken and sought to be taken under the judgment was brand-new or junk. But concededly 'respondent judge did not give petitioner opportunity to present its evidence in support of this allegation. Precisely, respondent judge in his, answer to the petition before this Court stated that on June 5, 1964, when petitioner's counsel personally went to see respondent judge, the latter made no promise to counsel to receive evidence on the motion of June 3, 1964, and added that "[i]t is inconceivable that herein respondent Judge would verbally agree to receive evidence on a motion which has previously been denied" in his order of the same day.

In this factual backdrop, the instant petition cannot be labeled as premature. Given the inflexible posture of respondent judge in refusing to receive evidence, and the submission for resolution of petitioner's last motion without the hearing it considered indispensable in the determination thereof, petitioner cannot certainly be blamed for believing in "the futility of waiting for another order." Couple this with the fear entertained by petitioner that it would suffer grave and irreparable injury because of the great probability that pending resolution, delivery of brand-new structural steel may be forced upon it before the respondent judge could act on the motion, and the picture is complete. Petitioner was right in seeking redress from this Court, when it did.

At any rate, it would not be in keeping with our sense of justice if this case were to be remanded to the Court of First Instance. For, "to give it opportunity to decide the motion for reconsideration, as the rules demand, considerable time and expense will be wasted to no avail on the part of the petitioners and of the respondents and of the courts." [5] The same reasons may be advanced here to compel us to probe into the merits of the case.

2. Petitioner's major attack is levelled on the lower court's refusal to hear evidence on whether the first unit of 125 metric tons of structural steel allegedly forcibly taken from petitioner was brand-new or junk. As we look in retrospect at the facts, we find that both in respondent Rosales' complaint below and in the compromise agreement approved by the court in its, decision, what petitioner sold to said respondent was a "lot of structural steel junks" - not brand-new structural steel. Parties and courts are bound by the description of the property sold - structural steel junks. For, indeed, the decision calls for the delivery of structural steel junks, the subject matter of the case. Not only that. There is the insistence on respondent Rosales' part to take delivery of the remaining 125 metric tons of brand-new, structural steel, which is bitterly opposed by petitioner. To determine whether or not the structural steel taken and that respondent Rosales wanted to take are new, or junk as decreed in the judgment of the court, evidence must necessarily be presented. And the court determines the merits of the respective contentions of the parties' upon the proof so presented. [6]

The necessity of evidence becomes more apparent when we take stock of the wording of the orders of March 31 and May 29. Where the judgment speaks of "structural steel junks subject matter of the above-entitled case," the order of March 31, 1964 directs immediate possession of the 125 metric tons of structural steel, subject matter of the action, and that of May 29, 1964 commands immediate possession of and delivery to plaintiff of "the second of the lot of structural steel consisting of 125 metric tons, subject matter of the action and mentioned in the compromise agreement." To be noted in the two orders is that nothing in either directs the sheriff and the other peace officers specifically to take delivery and deliver possession to respondent Rosales of structural steel junks. These officers are naturally in a quandary. Since the orders do not speak of junks, it is not unnatural that they should insist on brand-new structural steel. And this, inspite of the opposition of petitioner's agents.

But the final judgment below does not license the court issue an order for the delivery of structural steel without mentioning therein that such steel is junk. An accurate reading of the decision will not permit the delivery of brand-new structural steel. And yet, the orders of March 31 and May 29 imply a wide area of judgment for the sheriff to exercise; they give him the impermissible liberty to take any kind of steel. By those orders, the court crosses the authority granted in the decision and treads on prohibited grounds. For, no allowable area of court's discretion is granted by the decision. The mischief that stems from the unfettered exercise granted the sheriff in

those orders cannot be minimized. For then, petitioner's right to deliver structural steel junk would be a nullity; and they would leave the decision to be satisfied only in the discretion of the buyer. To approve of those orders which give respondents Rosales and the sheriff leeway in taking new for junk would be to wink at a subtle form of wrongdoing.

In the circumstances, the necessity of taking evidence becomes imperative. No amount of judicial legerdemain would bring about a conclusion that those orders may be enforced without clarification, without direct instruction to the sheriff and his aides as to what kind of structural steel they should take away from petitioner.

We rule that refusal to admit evidence on the quality of structural steel taken and sought to be taken under the judgment is a grave abuse of discretion. And certiorari will lie.

3. Petitioner assails as illegal and arbitrary the orders of the respondent judge of March 23, March 31, and May 29, 1964 insofar as they allegedly in effect allow punishment and detention of employ-ees of petitioner for obstructing enforcement of the said orders.

Little need be said about the orders of March 23 and March 31. That certain employees of petitioner have been detained, for their refusal to comply with those two orders is now of no consequence. Those events have already happened. Remedy for the aggrieved parties is not here. Nothing more could be enjoined, because nothing more could be done with reference to these two orders. In this respect, those orders have become *functus officio*.^[7]

But the May 29, 1964 order stands on a different footing. This order has reference to the second half of the lot of structural steel (without mentioning whether they are new or junk) consisting of 125 metric tons. That order of May 29 carries a directive to respondent special sheriff and the Caloocan City Police Department "to place in their custody any and all of those who may, either directly or indirectly impede, obstruct or prevent the Special Sheriff from taking immediately possession of the structural steel in question, and for the said Caloocan Police Department to bring the persons they placed in their custody to this Court."

The problem posited by petitioner is whether respondent judge has authority to make this particular order of May 29, 1964 upon the precept contained in Section 3, Rule 71 of the Rules of Court, particularly:

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

x x x

(b) Disobedience of or resistance to a lawful x x x order, x x x or command of a court, x x x;

x x x

But 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 hold him in custody pending such proceedings."

Respondents travel on the issue that the last portion of Section 3, Rule 71, just cited, grants authority to the court to order the arrest of and to hold in custody any person who disobeys the court's order pending contempt proceedings against such person "even before he found guilty of contempt."

Contempt proceedings are commonly treated as criminal in nature even when the acts complained of are but incidents of a civil case.^[8] A high regard for human dignity is the hallmark of our institutions.

Here, the broad sweep of the order does not specify any particular person (in the language of the law - the accused party) who had actually disobeyed the court. There is no particular accused. Really, the court is not in a position

to know at the time of issuing the orders what reason, good or bad, could be advanced by any of the persons from whom possession of the structural steel is to be taken. A man's liberty is precious. Ordering a man to be taken into custody is not to be lightly taken. Here, we have a case of indirect contempt. The contemnners should first commit a contemptuous act. And then, the charge against them should be filed. In this case, no contemptuous act had as yet been done. No party had as yet been accused. Due process which is but the embodiment of the sporting idea of fair play^[9] exacts that a person be heard before he is condemned. The past experience of those employees of petitioner who have been jailed should have deterred the lower court from taking such a drastic action as placing in custody those who would not deliver the structural steel. And this is especially so in this case where, on pain of being taken into custody, petitioner's employees could be coerced into delivering what is called for in the order - but not in the decision.

Instructive in this respect is *Esparagoza vs. Tan*, 94 Phil, 749, 753. The pertinent facts of the case are as follows: Petitioners therein, upon an ex-parte petition for contempt, were ordered to appeal and show cause why they should not be punished for contempt for disobeying a court order allegedly directing them to pay the sum of P595.41. One of the petitioners requested the court that said order be held in abeyance until after they shall have been served with copy of the petition for contempt as required by the Rules. Taking it as a sign of defiance, the lower court, instead of acceding to such request, ordered the arrest of the petitioner. On certiorari, this Court ruled:

"Section 3, Rule 64 [now Section 3, Rule 71] of the Rules of Court provides:

'SEC. 3. Contempt 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:

* * *

'(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;

'But 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.'

As may be seen, a contempt proceeding as a rule is initiated by filing a charge in writing with the court, and after the charge is filed, an opportunity should be given the accused to be heard, by himself or counsel, before action could be taken against him. Here, it is true, a written charge was filed against petitioners, but no copy thereof has been served on them, nor have they been given an opportunity to be heard. The petitioners asked for this opportunity, but it was denied them. Instead, their arrest was immediately ordered. It is true that, Under the same rule, 'nothing * * * 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', but such drastic step can only be taken if good reasons exist justifying it. Apparently, this reason does not exist, Petitioners not having received copy, of the written charge, they asked that they be given one. They also asked that they be given an opportunity to answer said charge before action is taken against them. Both pleas were disregarded. Such action, in our opinion, is tantamount to a denial of due process, which may be considered as a grave abuse of discretion. As this court has aptly said: 'Courts should be slow in jailing people for non-compliance - with their orders. Only in cases of, clear and contumacious refusal to obey should the power be exercised. A bona fide misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings.' (*Gamboa vs. Teodoro*, 91 Phil. 270)."

We hold that good reasons are wanting in the drastic measure adopted in the order of May 29, 1964. On the contrary, good reasons exist why the May 29, 1964 order should be blocked. For, if it were true that respondents

Rosales and Geronimo, using said order as their license, had taken and attempted to take brand-new structural steel, upon a directive not contemplated by the judgment, then petitioner and its agents have every right to disregard the same order to protect petitioner's property rights.

4. The contention that respondent judge had lost jurisdiction over the case is without merit. True, there is a judgment which is final and executory. But this does not mean that the court has lost any and all power regarding the case. By the finality of the judgment, what the lower court lost is its jurisdiction to amend, modify, or alter the same. It, however, retains its jurisdiction to enforce, said judgment "even after the judgment has become final for the purpose of execution and enforcement of the judgment." [10] Petitioner's June 3 motion does not seek to amend, alter or modify the judgment. It merely asks for the lower court's assistance because its officers, the special sheriff and other law enforcing agencies, have been enforcing the judgment in a way not in accord with its terms. And certainly, the court possesses the power [t]o control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto," [11] and [t]o amend and control its process and orders so as to make them conformable to law and justice. [12] Thus, it has been commented:

"To deprive a court of power to execute its judgments is to impair its jurisdiction, and the general rule is that every court having jurisdiction to render a particular judgment has inherent power and authority to enforce it, and to exercise equitable control over such enforcement. The court has authority to inquire whether its judgment has been executed, and will remove obstructions to the enforcement thereof. Such authority extends not only to such orders and such writs as may be necessary to carry the judgment into effect and render it binding and operative, but also to such orders as be necessary to prevent an improper enforcement of the judgment. If a judgment is sought to be perverted and made the medium of consummating a wrong, the court on proper application can prevent it. Moreover, upon enforcement of the judgment, money collected thereunder is also under the general superintending power of the court. In this connection, it has been declared that no court having adequate authority as to the enforcement of a judgment can be justified in turning its suitors over to another tribunal to obtain justice. It does not follow that a court will always exercise equitable control over the enforcement of its judgments; it will generally refrain from doing so when it cannot do as complete justice as could a court of equity. In any event, the control of a court over the enforcement of a judgment may not be exercised in such a way as to violate constitutional inhibitions." [13]

We rule that it is the lower court's duty to inquire into petitioner's averment that the 125 metric tons of structural steel already delivered were brand-new - not junk.

For the reasons given -

- (1) The petition for certiorari, prohibition, and mandamus is hereby granted;
- (2) The order of respondent judge of March 31, 1964, insofar as it directs the taking into possession of 125 metric tons of structural steel, subject of the action, without mentioning that the structural steel to be taken is junk as decreed in the judgment, is hereby declared null and void;
- (3) The order of respondent judge of May 29, 1964 is likewise hereby declared null and void;
- (4) The Court of First Instance of Rizal, Quezon City, Branch V, is hereby directed to hear evidence on the question of whether or not first half of the one lot consisting of 125 metric tons of structural steel, heretofore taken by respondent Sebastian Rosales pursuant to the order of the lower court of March 31, 1964 and the second half thereof consisting also of 125 metric tons of structural steel sought to be taken by respondent Rosales, conform to the judgment of March 18, 1964, and, thereafter, to act accordingly; and
- (5) The preliminary injunction heretofore issued herein shall continue to remain in full force and effect, until further orders from the court below, but the P25,000-bond posted by petitioner by virtue of said preliminary

injunction is hereby discharged from any and all liability.

Costs against private respondent Sebastian L. Rosales.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, and Angeles, JJ., concur.

[1] Civil Case Q-7712, Court of First Instance of Rizal, Quezon City, Branch V, entitled "Sebastian L. Rosales, Plaintiff, vs. Manila Railroad Company (MRRCO.), et al., Defendants."

[2] Petitioner avers that respondent judge, on June 4, 1964, informed its counsel that he (the judge) does not hear Motions on Fridays and with hear the motion on June 6, 1964, a Saturday. However, respondent judge denies setting the motion for hearing on June 6, 1964. He claims that "Atty. Aguiluz did not insist on the motion being heard on June 5, 1964 but asked the herein respondent judge for time to confer with Atty. Tomas P. Matic, Government Corporate Counsel, and his chief, whether to withdraw the said motion or not, as such a motion would lead to the embarrassment of the petitioner as well as the Office of the Government [Corporate] Counsel, a representative of said, office, having signed the compromise agreement." And, so respondent judge states, when Atty. Aguiluz did not come back, he issued the order of June 5, 1964. Rollo, p. 135.

[3] According to respondent judge, "there was actually no formal hearing on 6 June, 1964 as no pleading has been filed and set on said date" but as "counsel for both parties were in court" he "advised petition counsel to make a pleading so that the court may act on the same." Respondent Judge's Answer, Rollo, p. 136.

[4] Rollo, p. 77.

[5] Plaza vs, Mencias, L-18253, October 31, 1962; emphasis supplied

[6] "SEC. 7. Evidence on motion. - When a Motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." Rule 133, Rules of Court.

[7] Villaseñor vs. Abañó 1967C Phild. 882, 885, and cases cited.

[8] Benedicto vs. Cañada, 1967D Phild. 552, 556.

[9] Asprec vs. Itchon, 16 Supreme Court Reports Arm, 921, 925, citing 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.

[10] Santos vs. Acuña, 100 Phil. 230, 236, citing Miranda vs. Tiangco, 96 Phil. 526.

[11] Section 5(d), Rule 135, Rules of Court.

[12] Section 5(g), id.

[13] 31 Am. Jur., pp. 363-364; emphasis supplied.

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