

PHILIPPINE SURETY AND INSURANCE CO., INC., PETITIONER, VS. S. JACALA, D. TIBURCIO, E. CAPULONG, H. TEJADA, G. TEJADA, D. GABITANAN, M. GABITANAN, J. DELUMPA, A. JAVIER, E. VILLA...

G.R. No. L-12766. May 25, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a special civil action for a writ of certiorari to annul the decision of the Court of Industrial Relations, dated March 2, 1954, in Case No. 529-V thereof, and an alias writ of execution of said decision, dated August 7, 1957. Petitioner herein, Philippine Surety and Insurance Company, Inc., likewise, prayed for, and, upon the filing of the requisite bond, we issued, a writ of preliminary injunction, enjoining respondent Sheriff of Manila from complying with said writ of execution and from selling certain properties of said petitioner herein.

On March 20, 1950, herein petitioner, hereinafter referred to as the surety, executed two (2) performance bonds, in favor of the Republic of the Philippines—one for P103,343.00, and another for P15,927.00—to guarantee the faithful discharge, by the International Construction and Engineering Company, Inc., hereinafter referred to as the contractor, of its obligations under two (2) contracts, one for the construction of the Bugallon Bridge, province of Pangasinan, and another for the construction of the Concepcion Bridge, province of Tarlac, pursuant to the provisions of Act No. 3688. On or about December 4, 1950, S. Jacala and thirty-four (34) other persons, hereafter referred to as laborers, who claim to have worked in said construction, as laborers and/or employees of the contractor, and to have been illegally dismissed by the latter, instituted Case No. 529-V of the Court of Industrial Relations against said contractor, the surety, and Manuel Padilla and Leon Patlach, president and vice-president, as well as general manager, respectively of the contractor, for alleged unpaid wages and one (1) month separation pay. On February 16, 1954, said Court of Industrial Relations rendered a decision the dispositive part of which reads, as follows:

"In view of the foregoing considerations, respondents International Construction & Engineering Co., Inc. and Philippine Surety and Insurance Co., Inc. should be, as they are hereby, directed to pay jointly and severally all the employees and in the amount appearing on the payrolls (Exhibit 'C' and 'D') submitted by the Director of Public Works, minus whatever amounts in 'value' or advances and/or value of material or materials taken by any of them; that respondent International Construction & Engineering Co., Inc. is hereby further directed to pay one month separation pay to each of the petitioners; and that, insofar as Manuel L. Padilla and Leon Patlach are concerned, the petition herein is hereby DISMISSED."

No appeal having been taken from this decision, the same became final and executory. On motion of the laborers, the Court of Industrial Relations issued on August 26, 1957, an alias writ of execution of said decision and, in pursuance of said alias writ, respondent Sheriff of Manila caused the office equipment and other properties of the surety to be distrained and levied upon and threatened to sell said properties, at public auction, on September 4, 1957, "for the recovery of the sum of P33,000.00, etc., with interest costs", which is seemingly the balance still due under the decision aforementioned. To suspend this auction sale and annul said decision, the surety instituted

the present special civil action, against the laborers, the clerk of court of the Court of First Instance of Manila, as ex officio Sheriff of the City of Manila, and the Court of Industrial Relations, for the purposes stated above, upon the theory that the aforementioned decision of the Court of Industrial Relations and the alias writ of execution thereof are null and void because:

- The Court of Industrial Relations had no jurisdiction to take cognizance of and decide said case No. 529-V, for, pursuant to Act No. 3688, actions upon performance bonds, such as those executed by the surety, shall be brought, (a) either by the Government or by the persons who furnished labor or construction materials, but in the name of the Government of the Philippine Islands, (b) after the complete performance of the respective construction contracts and final settlement thereof, (c) in the court of first instance of the district in which said construction contracts are to be performed and executed, in the case at bar, in Pangasinan and Tarlac, and the Bugallon Bridge, as well as the Concepcion Bridge were still incomplete when the aforementioned Case No. 529-V was instituted;

- The Supreme Court held in *Cristitu Bautista vs. Auditor General*, 97 Phil., 244; 53 Off. Gaz. [13] 4098, that the Government had to spend P530,806.41, in excess of the price stipulated with the contractor, in order to complete the construction of the Bugallon Bridge, which had been abandoned by said contractor, and, pursuant to Act No. 3688, the claim of the Government for said sum of P530,806.41, which far exceeds the P103,343 performance bond of the surety, enjoys priority over other claims, and that, there being no amount due the contractor from the Government upon which the money claim of the petitioners in said case could be drawn, it followed that the denial by the Auditor General of the claim filed by said petitioners therein is in accordance with law, so that the laborers in the case at bar "did not have * * * any right of action to proceed and sue against the bonds for their unpaid wages and salaries," which "is an exclusive liability of the contractor", according to said decision.

In compliance with an order of this Court, the surety included the Government of the Philippines, represented by the Director of Public Works, as one of the defendants in the case at bar. This defendant filed an answer alleging, inter alia, that the contractor failed to construct the Bugallon Bridge thereby becoming liable to the Government of the Philippines in the sum of P530,806.41; that said contractor, likewise, failed to construct the Concepcion Bridge, and, in consequence thereof, was sentenced, in Civil Case No. 14952 of the Court of First Instance of Manila, to pay P15,927.00 to the Government; and that, under the law, the claim of the Government for these two (2) amounts, enjoys priority over all other claims.

The petition herein is clearly untenable, for the following reasons:

- A writ of certiorari may be applied for only when there is "no appeal nor any plain, speedy and adequate remedy in the ordinary course of law." As one of the defendants in said Case No. 529-V of the Court of Industrial Relations, the surety could have appealed from its decision therein, and such appeal would have afforded the surety a "plain, speedy and adequate remedy in the ordinary course of law." Yet, the surety did not appeal from said decision. It did not merely fail to take any step to have it reviewed from March 2, 1954, when it was rendered, to August 26, 1957, when the aforementioned alias writ of execution was issued, or for over three (3) years and five (5) months. It even satisfied part of its obligations under said decision, by making several payments, aggregating approximately P9,000.00. The writ of certiorari may not be availed of in these circumstances (*Claudio vs. Zanduetta*, 64 Phil., 812; *Haw Pia vs. San Jose*, 77 Phil., 238; *Dans vs. Court of Appeals*, 93 Phil., 564; 49 Off. Gaz. 2753; *Santos vs. Court of Appeals*, 95 Phil., 360; *David vs. Miranda*, L-6215 [promulgated September 28, 1954]), specially considering that the surety had not made use of its right to appeal through its own negligence (*Government of U. S. vs. Judge of First Instance of Pampanga*, 50 Phil., 975; *Profeta, et al., vs. Gutierrez, et al.*, 71 Phil., 582), if not intentionally. Indeed, there is reason to believe that the decisions of this Court in *Cristitu Bautista vs. Auditor General*, supra, (promulgated on June 29, 1955) is what impelled the

surety to question the legality of the decision of the Court of Industrial Relations in said Case No. 529-V after having begun to satisfy the same, as pointed out above.

- The provisions of Act No. 3688, relative to the place where actions on performance bonds should be brought regulate venue, which is a procedural, not a jurisdictional matter. Although the surety claims to have raised the question of venue in the Court of Industrial Relations, its failure to appeal from the decision thereof implies an abandonment of its right to press said question, which may be waived (*Manila Railroad Co. vs. Attorney General*, 20 Phil., 523; *Samson vs. Carvatala*, 50 Phil., 647; *Katigbak vs. Tai Hing Co.*, 52 Phil., 622; *De la Rosa vs. De Borja*, 53 Phil., 990; *Abuton vs. Paler*, 54 Phil., 519; *Marquez Lim Cay vs. Del Rosario*, 55 Phil., 692; *Central Azucarera de Tarlac vs. De Leon*, 56 Phil., 169; *Navarro vs. Aguila*, 66 Phil., 604).

Needless to say, in case of inconsistency, the provisions of said Act No. 3688 must be deemed repealed by those of Commonwealth Act No. 103, insofar as the settlement of "all questions, matters, controversies or disputes arising between and or affecting employers and employees or laborers * * *." (Sec. 1, C. A. No. 103). It may not be amiss to note, also, that Case No. 529-V was instituted in March 1950, or long before the approval of the Industrial Peace Act, on June 17, 1953, pursuant to which all cases then pending before the Court of Industrial Relations—such as said Case No. 529-V—"shall be processed by the Court according to Commonwealth Act Numbered One hundred three, as amended * * *." (R. A. No. 875 Sec. 27).

- The provisions of Act No. 3688, to the effect that actions upon said bonds must be brought, either by the Government or by those who supplied labor or materials, suing in the name of the Government, merely affect the cause of action, not the jurisdiction to hear the case and render therein a valid decision. A decision rendered in favor of laborers who failed to comply with such provisions would, at best, be erroneous, therefore, but, once final, it would conclusively establish their right to the remedy granted in said decision. In the language of former Chief Justice Moran:

" * * * 'jurisdiction' should be distinguished from 'exercise of jurisdiction'. Jurisdiction is the authority to hear and determine a cause—the right to act in a case. Since it is the power to hear and determine, its existence does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decision made. The authority to decide a cause, if at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction over the person and the subject-matter, the decision on all other questions arising in the case, is but an exercise of that jurisdiction.

"The errors which the court may commit in the exercise of such jurisdiction are merely errors of judgment. Here, it becomes necessary to distinguish errors of jurisdiction from errors of judgment. The first may be reviewed in a certiorari proceeding; the second, by appeal. Errors of jurisdiction render an order or judgment void or voidable. But errors of judgment or of procedure are not necessarily a ground for reversal. They shall have such effect only if it be shown that prejudice has been caused by them. * * *." (Moran's Comments on the Rules of Court, Vol. 2, 1957 ed., pp. 156-157.)

- The question of the amount or extent of the liability of the surety in favor of the laborers, under the performance bonds given by the former, affects the wisdom or legal soundness of the decision in said Case No. 529-V, not the jurisdiction of the Court of Industrial Relations to render said decision or its validity, and, consequently, is beyond the province of this special civil action for certiorari.

- Similarly, the alleged right of the Government to collect from the surety, in preference to the claim of the laborers for unpaid wages and separation pay, does not impair or affect the validity of the said decision in favor of the laborers and against the surety, or give the latter a cause of action to question, upon such ground, the legality of the alias writ for the execution of the decision aforementioned.

- The case of *Cristitu Bautista, et al. vs. Auditor General* (supra), is not controlling in the case at bar. To begin with, it does not appear that the laborers involved in the latter case and in said Case No. 529-V were parties in the Bautista case. Neither was the surety a party therein. Secondly, the issue in the Bautista case is different from the one raised in the present case and in Case No. 529-V. The Bautista case involved a claim against the Government. The issue therein was whether the latter (not the surety, which was not a party therein) was liable for the unpaid wages of a number of persons who furnished labor in the construction of the Bugallon Bridge. The right of these persons to sue and demand payment from the surety was not in issue in said case. In short, neither the parties, nor the cause of action in the two (2) sets of cases, are identical (*San Diego vs. Cardona*, 70 Phil., 281; *Ocampo vs. Jenkins*, 14 Phil., 681; *Donato vs. Mendoza*, 25 Phil., 57; *Isaac vs. Padilla*, 31 Phil., 469; *Roman Catholic Archbishop vs. Director of Lands*, 35 Phil., 339; *Aquino vs. Director of Lands*, 39 Phil., 850; *De Santos vs. Bank of P. I.*, 58 Phil., 784; *De Leon Vda. de Lontok vs. Padua*, 75 Phil., 548; *Sandejas vs. Robles*, 81 Phil., 421).

Before this case was submitted for decision on the merits, but after the filing of its answer to the petition of the surety, respondent Court of Industrial Relations filed a "motion to dismiss appeal", upon the theory that this is a petition for review by certiorari, under Rule 58, section 4, of the Rules of Court and that the surety had failed to take the steps therein required within the reglementary period. By resolution of this Court, we deferred action upon said motion "until the date when this case is considered upon the merits." Said "motion to dismiss appeal" is hereby denied, it being apparent from the allegations of the petition herein; and the amendments thereof, that the surety is seeking relief under Rule 67 of said Rules of Court, and that the movant and the other respondents herein have so understood said petition.

Wherefore, the petition of the Philippine Surety and Insurance Company, Inc. is dismissed, and the writ of preliminary injunction heretofore issued hereby dissolved, with costs against said petitioner. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

Gutierrez David, J., concurs in the result.

Reyes, J.B.L., J., took no part.

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