

GREGORIO T. CRESPO, IN HIS CAPACITY AS MAYOR OF CABIAO, NUEVA ECIJA, PETITIONER, VS. PROVINCIAL BOARD OF NUEVA ECIJA AND PEDRO T. WYCOCO, RESPONDENTS.

G.R. No. L-33237. April 15, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner was the elected Municipal Mayor of Cabiao, Nueva Ecija in the local elections of 1967. On 25 January 1971, an administrative complaint was filed against him by private respondent Pedro T. Wycoco for harassment, abuse of authority and oppression[1]. As required, petitioner filed a written explanation as to why he should not be dealt with administratively, with the Provincial Board of Nueva Ecija, in accordance with Section 5, Republic Act No. 5185[2].

On 15 February 1971, without notifying petitioner or his counsel, public respondent Provincial Board conducted a hearing of the aforesaid administrative case. During the hearing, private respondent Pedro T. Wycoco was allowed to present evidence, testimonial and documentary, ex parte, and on the basis of the evidence presented, the respondent Provincial Board passed Resolution No. 51 preventively suspending petitioner from his office as municipal mayor of Cabiao, Nueva Ecija[3].

In this petition for certiorari, prohibition and injunction with prayer for preliminary injunction, petitioner seeks to annul and set aside Resolution No. 51 of public respondent Provincial Board, preventively suspending him from office and to enjoin public respondent from enforcing and/or implementing the order of preventive suspension and from proceeding further with the administrative case.

According to petitioner, the order of preventive suspension embodied in Resolution No. 51 issued by the Provincial Board is arbitrary, high-handed, atrocious, shocking and grossly violative of Section 5 of Republic Act No. 5185 which requires a hearing and investigation of the truth or falsity of charges before preventive suspension is allowed. In issuing the order of preventive suspension, the respondent Provincial Board, petitioner adds, has grossly violated the fundamental and elementary principles of due process[4].

On 3 May 1971, this Court issued a preliminary injunction[5].

We agree with the petitioner that he was denied due process by respondent Provincial Board.

In *Callanta vs. Carnation Philippines, Inc.*[6] this Court held:

"It is a principle in American jurisprudence which, undoubtedly, is well-recognized in this jurisdiction that one's employment, profession, trade or calling is a "property right", and the wrongful interference therewith is an actionable wrong. The right is considered to be properly within the protection of a constitutional guaranty of due process of law"[7].

Undoubtedly, the order of preventive suspension was issued without giving the petitioner a chance to be heard. To

controvert the claim of petitioner that he was not fully notified of the scheduled hearing, respondent Provincial Board, in its Memorandum, contends that "Atty. Bernardo M. Abesamis, counsel for the petitioner mayor made known by a request in writing, sent to the Secretary of the Provincial Board his desire to be given opportunity to argue the explanation of the said petitioner mayor at the usual time of the respondent Board's meeting, but unfortunately, inspite of the time allowed for the counsel for the petitioner mayor to appear as requested by him, he failed to appear"[8].

The contention of the Provincial Board cannot stand alone in the absence of proof or evidence to support it. Moreover, in the proceedings held on 15 February 1971, nothing therein can be gathered that, in issuing the assailed order, the written explanation submitted by petitioner was taken into account. The assailed order was issued mainly on the basis of the evidence prevented ex parte by respondent Wycoco.

In *Azul vs. Castro*[9], this Court said:

"From the earliest inception of constitutional government in our country, the concepts of notice and hearing have been fundamental. A fair and enlightened system of justice would be impossible without the right to notice and to be heard. The emphasis on substantive due process and other recent ramifications of the due process clause sometimes leads bench and bar to overlook or forget that due process was initially concerned with fair procedure. Every law student early learns in law school definition submitted by counsel Mr. Webster in *Trustees of Dartmouth College v. Woodward* (4 Wheat. 518) that due process is the equivalent of law of the land which means

"The general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial x x x that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society".

A sporting opportunity to be heard and the rendition of judgment only after a lawful hearing by a coldly neutral and impartial judge are essential elements of procedural due process.

We had occasion to emphasize in *Santiago v. Santos* (63 SCRA 392), which, unlike the case before us now, was only a summary action for ejectment that:

In an adversary proceeding, fairness and prudence dictate that a judgment, based only on plaintiff's evidence adduced ex parte and rendered without hearing defendant's evidence, should be avoided as much as possible. In order that bias may not be imputed to the judge, he should have the patience and circumspection to give the opposing party a chance to present his evidence even if he thinks that the oppositor's proof might not be adequate to overthrow the case for the plaintiff. A display of petulance and impatience in the conduct of the trial is a norm of conduct which is inconsistent with the 'cold neutrality of an impartial judge'[10]".

The petition, however, has become moot and academic. Records do not show that in the last local elections held on 18 January 1988, petitioner was elected to any public office.

WHEREFORE, the petition is DISMISSED. The preliminary injunction issued by this Court on 3 May 1971 is LIFTED. No costs.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Annex A, Rollo, pp. 11-12

[2] Annex B, Rollo, pp. 17-19

[3] Annex E, Rollo, pp. 23-32

[4] Petition, pp. 3-5

[5] Rollo, p. 67

[6] 145 SCRA 268

[7] Ibid, pp. 278-279

[8] Memorandum for the Respondent Provincial Board, p. 4

[9] 133 SCRA 271

[10] Ibid., p. 276

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