

ARTURO H. TROCIO, PETITIONER-APPELLANT, VS. JORGE LABAYO, UNDER-SECRETARY OF FINANCE; SIXTO B. TADEO, ASSISTANT PROVINCIAL TREASURER OF MISAMIS ORIENTAL; AND ABELARDO SUBIDO, CO...*G.R. No. L-35701. September 19, 1973*

Ponente: FERNANDO, J.

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The novel question in this case certified to us by the Court of Appeals is whether or not a party is denied his constitutional right to procedural due process if in the notice of the hearing of the suit filed by him, it was not specified that the purpose thereof was for a pre-trial. There is no intrinsic difficulty posed by such a query. The answer would appear to be rather obvious. Such a purely formal objection is hardly impressed with any element indicative of that absence of fairness which is indispensable for an attack on a due process ground to succeed. The failure of the lower court then to use language more explicit in character does not lend itself to such a reproach. The order of dismissal for failure of petitioner Arturo H. Trocio, now appellant, to prosecute, is affirmed.

There is no dispute as to what transpired. On August 11, 1964, petitioner filed in the Court of First Instance of Misamis Oriental a petition for certiorari and prohibition with preliminary injunction against respondents[1] to set aside a decision of respondent Abelardo Subido dismissing him from the position of Municipal Treasurer of Mambajao, Camiguin, which is being enforced by the other respondents on the ground of its nullity. It was his contention that the charges against him for neglect of duty, grave misconduct and oppression in office were not duly proved, there being a denial of a motion for postponement on his part, thus infecting the proceedings with grave infirmity. There was, on August 15, 1964, a written opposition to the issuance of a writ of preliminary injunction, and on August 27, 1964, an answer to such petition wherein it was stressed that petitioner had been granted by the investigating officer six postponements of the hearing of the case to afford him a chance to engage the services of counsel. Then came on September 10, 1964, a notice to the parties that the case had been set for hearing on October 14 of that year, a copy thereof being served on petitioner's counsel. Upon that case being called on that date, there was a motion on the part of petitioner's counsel to set the case for pre-trial. The provincial fiscal who represented the respondents informed the Court that he was ready for the pre-trial but, if no amicable agreement was reached, the trial proper should be conducted, as his witnesses had come all the way from Manila and expenses in the amount of about P400.00 had been incurred by the government. Counsel for petitioner was adamant, however, insisting that the notice of hearing as such was null and void. When the Court inquired as to where the petitioner was, counsel answered that he was in Cebu City, upon his own advice, on the assumption that a hearing on the merits could not be held. From the standpoint of the court, this step taken by petitioner smacked of a dilatory tactic, as evidenced by its being raised only on that morning, notwithstanding the fact that notice was sent as far back as September 10, 1964 and that at any rate, petitioner not being present, a pre-trial could not anyway be held. Moreover, the notification as worded did not preclude a pre-trial, which incidentally was not at all necessary as the question posed was legal. Hence the order of dismissal, based on what

for the lower court, under the circumstances, was a lack of interest to prosecute the case.

The matter was elevated to the Court of Appeals on the ground that there was a denial of procedural due process as the notice of the hearing without the specification that it should be for pre-trial deprived the accused of a procedural right and infected the proceedings with unfairness. As the question raised was purely legal, the case, as noted at the outset, was elevated to us.

There is no legal justification then, as already made clear, for us to give our seal of approval to the contention vigorously pressed by petitioner that there was a denial of procedural due process. In reaching such a conclusion, we were aided considerably by the thorough brief submitted by the then Solicitor General, now Associate Justice, Antonio P. Barredo, and the then Assistant Solicitor General, now Judge, Pacifico de Castro, the persuasive quality of which was enhanced not only by the plausibility of the assertions made with support from authoritative doctrines, but also by the failure of petitioner to file a reply brief.

1. No merit attaches to the contention of petitioner that the notice as to the hearing scheduled for October 14 should specify that it was for a pre-trial. A hearing as known to the law is not confined to a trial but embraces the several stages of a litigation. It does not preclude pre-trial. Outside of the American cases cited[2] by respondents, mention can be made of authorities in this jurisdiction that speak to the same effect. A hearing "does not necessarily mean presentation of evidence." [3] It could cover the determination of whether an accused is entitled to bail[4] or the submission for the court's determination of a motion to dismiss,[5] or any motion for that matter.[6] It does not admit of doubt then, considering furthermore what did transpire, that such a purely technical objection on the part of petitioner raised at the last moment should not be taken too seriously. Much less does it lay any basis for an asserted denial of procedural due process.

2. There is an additional reinforcement to the correctness of the challenged order of dismissal, when the nature of a pre-trial is taken into consideration.[7] As set forth in an opinion penned by Justice Castro, speaking for the Court, in *Permanent Concrete Products, Inc. v. Teodoro*: [8] "'One of the objectives of pre-trial procedure is to take trial of cases out of the realm of surprise and maneuvering.' Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a cause are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privilege or impeaching matter." [9] The lower court therefore acted in accordance with law and sound reason when it noted that the facts being undisputed and the legal issue likewise being clear, pre-trial, under the circumstances, would not be a necessity even on the assumption that the belated insistence of its observance by petitioner was motivated in entire good faith.

The suspicion entertained by the lower court as to its being resorted to as a dilatory tactic by petitioner was not without basis. He had more than a month, from September 9 to October 14, 1966, to seek clarification of the nature of the scheduled hearing. What was even more revealing as to his lack of good faith was his absence on the day of hearing. What was the lower court to make of such tell-tale conduct? Did it not indicate lack of interest to prosecute? There was nothing, then, that did smack of arbitrariness in its ruling as it did. There was no affront to the sense of justice and of fair play which is essential for an assault on any actuation of a governmental agency predicated on a denial of due process to succeed. Instead of this futile insistence on a pre-trial, which would serve no useful purpose, petitioner could have impressed on the court the legal support for his stand that the order of dismissal by respondent Commissioner of Civil Service was devoid of legality. He did nothing of the kind. Under the undeniable facts of record, the lower court certainly could have decreed the dismissal without any legitimate fear that its order suffers from the constitutional infirmity of failure to accord respect to the due process safeguard.[10]

WHEREFORE, the order of the lower court of October 14, 1964 dismissing the petition is affirmed. With costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Antonio, and Esguerra, JJ., concur.

Barredo, J., took no part.

Makasiar, J., on leave.

[1] The respondents, Jorge Labayo, Sixto Tadeo and Abelardo Subido were at the time of the petition, respectively, the Undersecretary of Finance, the Assistant Provincial Treasurer of Misamis Oriental and the Commissioner of Civil Service.

[2] *Keown v. Keown*, 121 NE 153 (1918) and *Wisdom v. Texas Co.*, 27 F Supp. 993 (1939).

[3] *Uriarte v. Teodoro*, 86 Phil. 196, 202-203 (1950).

[4] *Ocampo v. Bernabe*, 77 Phil. 55 (1946).

[5] *Jamora v. Blanco*, 78 Phil. 497 (1947) and *Rural Progress Administration v. de Guzman*, 87 Phil. 176 (1950).

[6] *Federal Films, Inc. v. Judge*, 78 Phil. 472 (1947). Cf. *Philippine Air Lines, Inc. v. Teodoro*, 97 Phil. 461 (1955).

[7] Cf. *Province of Pangasinan v. Palisoc*, L-16519, Oct. 30, 1962, 6 SCRA 299; *Taleon v. Secretary of Public Works and Communications*, L-24281, May 16, 1967, 20 SCRA 69; *American Insurance Co. v. Manila Port Service*, L-27776, Jan. 31, 1968, 22 SCRA 482; *International Harvester Macleod Inc. v. Co Ban Ling and Sons Co.*, L-26863, Oct. 26, 1968, 25 SCRA 612; *Saulog v. Custombuilt Manufacturing Corp.*, L-29612, Nov. 15, 1968, 26 SCRA 1; *Permanent Concrete Products Inc. v. Teodoro*, L-29766, Nov. 29, 1968, 26 SCRA 332; *Philippine National Bank v. Pineda*, L-28505, Aug. 29, 1969, 29 SCRA 290; *Radiowealth Trading Corp. v. Abas-tillas*, L-27022, May 28, 1970, 33 SCRA 93.

[8] L-29766, Nov. 29, 1968, 26 SCRA 332.

[9] *Ibid.*, p. 336.

[10] Cf. *Province of Pangasinan v. Palisoc*, L-16519, Oct. 30, 1962, 6 SCRA 299 and *Saulog v. Custombuilt Manufacturing Corp.*, L-29632, Nov. 15, 1968, 26 SCRA.

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