

**JOSE ESPELETA, PETITIONER, VS. HON. CELSO AVELINO, AS
PRESIDING JUDGE, CFI, CEBU CITY, BRANCH XIII; AND SHELL
PHILIPPINES, INC., “RESPONDENTS.***G.R. No. L-39276. February 24, 1975*

Ponente: FERNANDO, J.

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It is the sad plaint of petitioner in this certiorari proceeding that he was denied procedural due process when respondent Judge in a spirit of unwonted generosity towards private respondent corporation, Shell Philippines, Inc., acceded to its plea that the testimony of a witness deemed by him as vital to his case be ignored and disregarded in its entirety for failure to be present in court on the day set for her cross-examination. There was a motion for postponement, but it did not prosper. The challenged order is self-explanatory: "The oral motion of plaintiffs counsel Rodolfo Bellaflor that the direct testimony of Adelfa Montañó, the last witness for the defendant, not having been finished and she not having been cross-examined due to her failure to appear this morning in spite of the fact that she was duly notified in open court of today's hearing, be considered stricken from the records, and that the plaintiff be allowed to present a rebuttal witness in connection with the testimony of defendant Jose Espeleta, being well taken, is hereby granted. The records show that this is not the first time that the counsel for defendant Manuel Bencdicto had sent a telegram to this Court while he is in Tacloban City, requesting postponement of the hearing of this case after having been duly notified of said hearing, which actuation is tantamount to delaying the administration of justice. Having presented its rebuttal witness, Maximo Villarin, plaintiff closed its case. The defendant is given ten (10) days from receipt hereof within which to offer in writing his documentary evidence, but with regards only to those documents he identified during his testimony, considering that those presented and identified during Montañó's testimony (as well as her testimony) are already considered stricken from the records. Plaintiff Shell Philippines, Inc. is also given the same number of days from receipt of defendant's written offer of documentary evidence within which to submit its manifestation or objection." [1]

If respondent Judge were to be sustained, then clearly evidence which for petitioner was indispensable for his side of the case to be aired would be treated as non-existent. To that extent, he was not heard at all. Nor is it of legal relevance that respondent Judge was provoked to take the step he did just because it was not the first time petitioner had sought continuance, for as pointed out in the petition, private respondent did at one time move to have the hearing postponed on the ground that its first witness would get married on the scheduled date. [2] The crucial point is to ascertain whether in this ruling, respondent Judge had eroded petitioner's right to a day in court. Stated differently, the specific issue then is whether the concept of fairness that is basic to procedural due process would be satisfied if under the circumstances disclosed, the right to be heard of petitioner if not rendered nugatory would thus be emasculated. Not once but twice he moved to reconsider, but respondent Judge did not budge from his stand, now assailed as being vitiated by constitutional infirmity. [3] In view of the decidedly liberal interpretation of the cardinal precept of due process that justice be done to the parties both procedurally and

substantively, consistently adhered to from *United States v. Ling Su Fan*,^[4] a 1908 decision, to *Philippine Maritime Industrial Union v. Court of Industrial Relations*, promulgated of last year, petitioner is entitled to the remedy sought.

We grant certiorari.

1. Why there was an impairment of the right to be heard on a matter rightfully deemed essential was in the petition set forth thus: "This case is for Recovery of Sum of Money filed by private respondents [Shell] alleging that your Petitioner purchased products of [Shell] in the total sum of P264,250.29 and that out of this sum your Petitioner allegedly paid P242,029.04 only leaving a balance of P22,221.25 still unpaid; while your Petitioner in his answer alleged that the unpaid balance was only P14,376.79 and to be deducted from this amount was the sum of P8,711.28 value of the liters of gasoline not actually delivered by private respondent to your Petitioner during the period from January, 1972 to August, 1972, and the amount of P5,994.00 representing the cost of gasoline leakage and wastage caused by the leak of the underground tank plus the usual allowance for evaporation. Your Petitioner therefore, felt it necessary to present Miss [Adelfa Montaño], a Certified Public Accountant to show to the lower court the true figures of the transactions after accounting. It will be noted that (he only witness for the Plaintiff was Mr. Joseph Smith, Sales representative of [Shell] and resident of 286-A Sikatuna St., Cebu City, who was not privy to the bookkeeping and accounting of the accounts of transaction during the entire period. Your Petitioner felt therefore the need of presenting Miss [Adelfa Montaño] a Certified Public Accountant who unfortunately was a new employee in the Office of the Department of Local Government and Community Development at the time she was supposed to continue her testimony on that fateful day of April 4, 1974 and therefore could not disregard the orders of her superiors to make an urgent audit in Baybay, Leyte and instead informed Atty. Manuel Benedicto of her unavailability so that Atty. Benedicto could make the proper representation with the. Honorable lower court for possible deferment.^[6] The two-page answer of private respondent did not even bother to deny the importance for petitioner of the testimony of Miss Montaño stricken from the records. Under the circumstances, the stress on the absence of procedural due process is understandable for as a result of the order of respondent Judge now sought to be set aside, there is more than just a probability that petitioner would be condemned to pay before he had been fully heard, it cannot be truly asserted then that the proceedings satisfied the constitutional standard for a judicious inquiry. To that extent, it would make a mockery of the requirement that the judgment should be only after a trial where the litigants are given full and unimpeded opportunity to sustain their respective claims and to have their evidence duly considered and weighed. Unless, the challenged order then were set aside, petitioner can assert a grievance grounded on the due process guarantee.^[7]

2. Respondent Judge would justify the aforesaid order by characterizing the request for postponement as "tantamount to delaying the administration of justice."^[8] He was not exactly mindful of a 1916 admonition of this Court, through the pen of Justice Carson, in *Lino Luna v. Arcenas*,^[9] when it warned that "a sound discretion in this regard should be exercised by the trial judge, and the highly commendable desire for the dispatch of business should not be permitted to turn the scales of justice rather than accede to a reasonable request for a continuance."^[10] Again, while it is true that it is within a court's discretionary power to act on a motion for continuance,^[11] it is far from unlimited. Due heed must be paid to the procedural due process mandate. So it was decided as far back as 1929, in *Cing Hong So v. Tan Boon Kong*,^[12] with Justice Romualdez as ponente; "In cases like the present where a party-litigant, without malice, fault, or inexcusable neglect, is not prepared for the trial of a case, the court exceeds the discretion conferred upon it by law in denying to said litigant a reasonable opportunity to prepare for the trial and to obtain due process of law and proper protection under the law."^[13] Restated differently, the controlling doctrine is summed up the words of Justice A. Reyes, in *Capitol Subdivision, Inc. v. Province of Negros Occidental*,^[14] promulgated in 1956: "Liberality should be exercised in granting postponements of trial to obtain presence of material evidence and to prevent miscarriage of justice."^[15] This, for

the quite obvious reason: "While the granting or refusal of motions for continuance is discretionary, that discretion must be exercised wisely with a view to substantial justice." [16] So procedural due process requires. In *Luciano v. Tan*,ⁿ the infirmity consisting in a refusal to grant postponement was cured by the Court reopening the case precisely to comply with such a basic precept. That approach ought to have been followed by respondent Judge when he was asked to reconsider not once but twice. He ought to have fixed a date for Miss Montaña to be subjected to cross-examination, thereby complying with the constitutional safeguard of assuring the parties their day in court.

3. One other matter. A reminder to counsel for respondents. Rodolfo M. Bellaflor by name, may not be out of place. His performance in this certiorari proceeding invites attention. When asked to comment, he did so in a one-page pleading. When required to answer, he was not that terse or laconic; he actually was able to make use of two pages. In the memorandum that he prepared for respondents, he appeared to have really extended himself. He had four pages to show for it, although the last sheet of paper contained merely his signature and the notation that copy was furnished opposing counsel. There is something to be said for brevity, but not in this case. It is even more deplorable that there appeared to be a total lack of awareness of the due process implications of the petition. There was the rather unorthodox assertion that a constitutional question was one essentially factual. It was not so much the brevity then of his pleadings but their failure to come to grips with the crucial issue that vitiated whatever persuasive aspect they might have had. Insofar as this particular litigation is concerned then, it may be said that he hardly lived up to the role expected of one called upon to defend his client's cause with zeal and of an officer of the court appearing before this Tribunal.

WHEREFORE, the petition for certiorari is granted and the order of April 4, 1974, issued by respondent Judge is set aside, nullified and considered as totally devoid of any force or effect. The case is remanded to the lower court for further proceedings in accordance with law and in consonance with this decision, more specifically that the testimony of Miss Montaña remains in the records subject to the test of cross-examination, if any, by private respondent. Costs against Shell Philippines, Inc.

Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., in the result. Considering the state of the dockets of our trial courts now, I cannot share the apparently liberal attitude towards postponements discernible in the main opinion, although in the case at bar, I agree that respondent judge should have taken into account the peculiar situation of petitioner's witness, Miss. Montaña.

[1] Order of Respondent Judge dated April 4, 1974.

[2] Petition, par. 5.

[3] *Ibid.*, pars. 13-14.

[4] 10 Phil. 104.

[5] L-37003, October 23, 1974.

[6] Petition, 6-7.

[7] Cf. the following cases after *Ling Su Fan* and before *Philippine Maritime Industrial Union: El Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918); *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919); *Lopez v. Director of Lands*, 47 Phil. 23 (1924); *Macalindog v. de la Rosa*, 72 Phil. 163 (1941); *Esparcigoza v. Tan*, 94 Phil. 749 (1954); *Capitol Subdivision, Inc. v. Provincial Board of Segros Occidental*, 99 Phil. 633 (1956); *Correa v. Pascual*, 99 Phil. 696 (1956); *Sicat v. Reyes*, 100 Phil. 505 (1956); *Cruzcosa v. Concepcion*, 101 Phil.

146 (1957) *Republics v. Villarosa*, 103 Phil. 631 (1958); *Valencia v. Mabilangan*, 105 Phil. 162 (1959); *Philippine National Bank v. Philippine Recording System, Inc.*, 107 Phil. 440 (1960); *Rojas v. Papa*, 107 Phil. 983 (1960); *Brito v. Court of Industrial Relations*, 108 Phil. 609 (1960); *Macabangkil v. Yatco*, L-23174, Sept. 18, 1967, 21 SCRA 150; *Luzon Surety Co., Inc. v. Beson*, L-26865, Jan. 30, 1970, 31 SCRA 3 13; *Bermejo v. Barrios*, L-23614, Feb. 27, 1970, 31 SCRA 764; *Catura v. Court of Industrial Relations*, L-27392, Jan. 30, 1971, 37 SCRA 303; *Central Bank v. Cloribel*, L-26971, April 1 1, 1972, 44 SCRA 307; *Shell Co. of the Phil., Ltd. v. Enage*, L-30111, Feb. 27, 1973, 49 SCRA 416; *Aducayen v. Flores*, L-30370, May 25, 1973, 51 SCRA 78; *Minlay v. Sandoval*, L-28901, Sept. 4, 1973, 53 SCRA 1; *Carandang v. Cabatuando*, L-25384, Oct. 26, 1973, 53 SCRA 383; *Vinzons v. Ardales*, L-35738, March 29, 1974, 56 SCRA 492; *Uy v. Cenato*, L-37399, May 29, 1974, 57 SCRA 123.

[8] Order. Petition. Annex A.

[9] 34 Phil. 80.

[10] *Ibid.*, 99.

[11] Cf. *Salva v. Palacio*, 90 Phil. 731 (1952); *Sarreal v. Tan*, 92 Phil. 689 (1953); *Wack Wack Golf and Country Club, Inc. v. Court of Appeals*, 106 Phil. 501 (1959); *Inocando v. Inocando*, 110 Phil. 266 (1960); *Vaswani v. Tarachand Bros.*, 110 Phil. 521 (1960).

[12] 53 Phil. 437.

[13] *Ibid.*, 441-442.

[14] 99 Phil. 633.

[15] *Ibid.*, 636-637.

[16] *Ibid.*, 637.

[17] 90 Phil. 282 (1951). Cf. *Shell Co. v. Enage*, L-30111-12, February 27, 1973, 49 SCRA 416; *Piedad v. Batuyong*, L-38024, February 28, 1974, 55 SCRA 763.

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