

**BENITO ROSALES, EMILIA R. ROSALES AND ROMMEL ROSALES
REPRESENTED BY GUARDIAN-AD-LITEM ROMMEL ROSALES,
PETITIONERS, VS. COURT OF APPEALS AND DON BOSCO TECHNICAL
INSTITUTE, FR. AG...**

G.R. No. L-47821. September 15, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking to annul and set aside the decision of the Court of Appeals[*] dated July 26, 1977 in CA-G.R. No. 54674-R entitled "BENITO ROSALES, et al. v. DON BOSCO TECHNICAL INSTITUTE" which affirmed the decision of the court a quo[**] dated September 14, 1973, dismissing petitioners' complaint for damages. The decision of the Court of Appeals reads:

"x x x (It) is clearly evident that plaintiffs were not candid when they maintained that they knew nothing about the School's petition for reconsideration, and that after all there was nothing 'mysterious' about the School's actuations. Further, it is likewise clear from the evidence that plaintiffs did seek the review by the Secretary of Education of the Director's ruling, and that at the time the School filed its motion to dismiss, the matter was still pending resolution with the Secretary of Education. Hence, the court a quo incurred in no error when it found that the decision of the Director of Private Schools dated May 5, 1972 was far from being final and that the administrative remedies availed of by plaintiffs had not yet been exhausted.

"As to the claim that plaintiffs have been denied due process, suffice it to say that the dismissal of the complaint was based on the ground that it was premature, administrative remedies not having been exhausted.

"PREMISES CONSIDERED, decision appealed from is hereby affirmed in toto. No costs." (pp. 26-27, Rollo)

The facts of the case as found by the Court of Appeals, are as follows:

On April 11, 1972, the Don Bosco Technical Institute (School, for short) posted the list of honor students for the graduation of its elementary department which was to take place on April 22, 1972. Rommel Rosales, a student of Grade VI, candidate for graduation and likewise candidate for Valedictorian, reported to his parents that he was not listed as Valedictorian of the class but that it was another boy by the name of Conrado Valerio. The parents of Rommel demanded for a re-computation of the grades of their son who, they averred, should be class valedictorian and filed a formal complaint with the Director of Bureau of Private Schools against the school claiming anomalous ranking of honor pupils for the grade school with a request for a review of the computations made by the school.

On April 20, 1972, the Chief of the Legal Division of the Bureau of Private School sent a copy of the complaint by first indorsement to the Rector of herein respondent school. Said comment was made on April 21, 1972, stating, among others, that the complaint had lost its validity because the same was filed on the eve of the commencement exercises of the school, in violation of the provision of paragraph 176, Section XI of the Manual

of Regulation for Private Schools requiring complaints of the kind to be filed not later than ten (10) days before commencement exercises. However, defendant Rector indicated that he would welcome an investigation in order to erase any doubt as to the selection of the honor students of the grade school concerned.

On May 5, 1972, the Director of Private Schools rendered a decision holding that Rommel Rosales was the rightful valedictorian.

On November 29, 1972, Rosales filed a complaint for damages itemized as follows: P25,000.00 for moral damages; P15,000.00 for correctional damages and P5,000.00 for attorney's fees, in view of the failure of the school to graduate Rommel Rosales as valedictorian of his class.

In its answer, respondent school prayed that the complaint be dismissed on the ground that the Director of Private Schools acting on its motion dated May 11, 1972 reconsidered and set aside his decision of May 5, 1972 and instead "approved and/or confirmed the selection and award of honors to the students concerned for the school year 1971-1972 as effected by the school." (p. 14, Rollo [R.A., p. 31])

Petitioners, in their reply, averred that said motion for reconsideration was mysteriously filed, there being no original copies of the same in the Office of the Director of Private Schools which would show the date of filing thereof and their corresponding receipt of a copy thereof by the petitioners.

Respondent school however, insisted that their motion for reconsideration was regularly filed and the assailed decision was in fact reconsidered as above stated on December 18, 1972. The records show that petitioners filed a motion for reconsideration on January 11, 1973 of said decision of December 18, 1972 but was denied on January 19, 1973. Thus, on February 7, 1973, petitioners appealed both decisions of December 18, 1972 and January 19, 1973 to the Secretary of Education which appeal was still pending at the time of the filing of their complaint in court.

At the pre-trial, plaintiffs (petitioners herein) confirmed their filing of said appeal with the Secretary of Education. For this reason, respondent school moved to dismiss the complaint for lack of cause of action on the ground of plaintiff's (petitioner's) failure to exhaust administrative remedies.

On September 14, 1973, the trial court issued an order which reads:

"Acting on the motion to dismiss dated August 20, 1973 and the opposition thereto filed by the plaintiffs and after hearing the oral argument of the plaintiffs during the hearing of the motion, the Court finds that plaintiffs have not exhausted all administrative remedies against the defendants and that it does not fall within any of the recognized exceptions to the requirement. Since the complaint does not allege exhaustion of said remedies principally on appeal to the Secretary of Education which was available to him, the Court finds that the complaint does not allege facts sufficient to constitute cause of action.

"WHEREFORE, the Motion to Dismiss is granted and the complaint is DISMISSED, without costs." (Rollo, pp. 23-24)

On appeal, the Court of Appeals found that the court a quo incurred no error when it found that the decision of the Director of Private Schools dated May 5, 1972 was far from being final and that the administrative remedies availed of by plaintiffs had not yet been exhausted and affirmed the decision appealed from in toto.

Hence, this petition.

Petitioners raised the following assignment of errors:

I

THE LOWER COURT ERRED IN NOT FINDING THAT THE DECISION OF THE BUREAU OF PRIVATE SCHOOLS DATED MAY 5, 1972 HAS ALREADY BECOME FINAL AND CONCLUSIVE.

II

THE LOWER COURT ERRED IN NOT FINDING THAT THE EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT APPLICABLE IN THIS INSTANT CASE.

III

THE LOWER COURT ERRED IN ACTING AND DISREGARDING THE APPLICATION OF DUE PROCESS OF LAW TO THE PLAINTIFFS-APPELLANTS.

IV

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT OF THE PLAINTIFFS-APPELLANTS. (pp. 10-11, Rollo).

The main issues in this case are:

- Whether or not the decision of the Director of the Bureau of Private Schools dated May 5, 1972 has already become final and conclusive; and
- Whether or not the principle of exhaustion of administrative remedies is applicable in this case.

The first issue involves findings of fact of the Court of Appeals and of the trial court which as a general rule are final and may not be reviewed on appeal to this Court, subject to certain exceptions which have been recognized and accepted by this court at one time or another (*Manlapaz v. Court of Appeals*, 147 SCRA 238-239 [1987]).

Petitioners' position is to the effect that there was no motion for reconsideration of the May 5, 1972 decision of the Director of Private Schools, so that the same has become final and executory.

The Court of Appeals found that although the Record on Appeal does not contain a copy of the alleged motion for reconsideration of the subject decision of May 5, 1972, it was however, mentioned in the letter of the Director of Private Schools dated January 19, 1973 addressed to counsel of plaintiffs (petitioners herein) which reads:

"This has reference to your request in behalf of Mrs. Emilia R. Rosales, for reconsideration of the action taken by this Office as per letter dated December 18, 1972, reconsidering its original stand on the matter of the ranking of honor students at the Don Bosco Technical Institute, Mandaluyong, Rizal, for the school year 1971-72, as contained in a letter dated May 5, 1972.

"After a careful review of the records of the present case, in the light of existing rules and regulations on the matter, this Office finds no valid cause or reason to modify or disturb its action as embodied in a letter dated December 18, 1972.

"Accordingly, please be informed that your request for reconsideration, as per letter dated January 11, 1973, is denied." (p. 14, Rollo [R.A. pp. 28-29]).

Thus, as correctly concluded by the Court of Appeals, the contents of aforesaid letter indubitably establish that there was in fact the questioned motion for reconsideration which was acted upon by the Director of Private Schools on December 18, 1972, reconsidering his stand on May 5, 1972; that petitioners knew about this reconsidered stand otherwise they would not have written said request for reconsideration of the decision of said Director of December 18, 1972, and that the request for reconsideration written by Atty. Rabago in behalf of his clients, the herein petitioners was dated January 11, 1973 which was denied on January 19, 1973.

Subject complaint, Civil Case No. 16998, was filed with the trial court on November 29, 1972, showing beyond dispute that the request for reconsideration judicially admitted to have been filed by the petitioners on February 7, 1973 with the Secretary of Education and Culture had not yet been resolved at the time of the filing of Civil Case No. 16998.

Hence, the said civil case which is an action for damages is premature. The finality of the administrative case which gives life to petitioners' cause of action has not yet been reached. This was still pending as evidenced in the certificate issued by the agency trying the same (Record on Appeal, pp. 53-54; Rollo, p. 14). The court a quo was thus correct in acting upon the motion to dismiss filed by the respondents on the ground that plaintiffs failed to exhaust administrative remedies.

Under the doctrine of exhaustion of administrative remedies, recourse through court action, as a general rule, cannot prosper until all the remedies have been exhausted at the administrative level, (*Pacana vs. Consunji*, 108 SCRA 631 [1981]; *Pestañas et al. v. Dyogi, et al.*, 81 SCRA 574 [1978]; *Antonio v. Tanco*, 65 SCRA 448 [1975]).

Thus, in *Abe-Abe et al. v. Manta* (90 SCRA 524, 531 [1979]) We emphatically declared:

“When an adequate remedy may be had within the Executive Department of the government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect; convenience of the party litigants and respect for a co-equal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to (the) courts.” (citing *Cruz vs. Del Rosario*, 119 Phil. 63, 66).

Petitioners however, claim that they were denied due process, obviously to show that their case falls within one of the exceptions to the doctrine of exhaustion of administrative remedies.

Such contention is however untenable, because in the first place, they were made to avail in the same administrative agency, the opportunity or right to oppose, which in fact they did, when they filed a motion for reconsideration and later when the motion was denied, they appealed to the Secretary of Education and Culture.

Precisely, a motion for reconsideration or appeal is curative in character on the issue of alleged denial of due process (*Sampang vs. Inciong*, 137 SCRA 56 [1985]; *REMERCO Garments v. MOLE*, 135 SCRA 167 [1985]).

WHEREFORE, the instant petition is Dismissed for lack of merit and the decision of the Court of Appeals is Affirmed. No costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

[*] Penned by Justice Lourdes P. San Diego with the concurrence of JJ. Mama D. Busran and Corazon J. Agrava

[**] Hon. Ramon Pamatian, Pasig, Rizal.

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