

PROFESSIONAL REGULATION COMMISSION (PRC), CHAIRMAN HERMOGENES P. POBRE, ASSOCIATE COMMISSIONER ARMANDO PASCUAL, BOARD OF MEDICINE, CHAIRMAN RODOLFO P. DE GUZMAN, JOSE S. RAMIREZ...

G.R. No. 144681. June 21, 2004

Ponente: TINGA, J.

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TINGA, J.:

This petition for review under Rule 45 of the 1997 Rules of Civil Procedure seeks to nullify the Decision,[1] dated May 16, 2000, of the Court of Appeals in CA-G.R. SP No. 37283. The appellate court affirmed the judgment[2] dated December 19, 1994, of the Regional Trial Court (RTC) of Manila, Branch 52, in Civil Case No. 93-66530. The trial court allowed the respondents to take their physician's oath and to register as duly licensed physicians. Equally challenged is the Resolution[3] promulgated on August 25, 2000 of the Court of Appeals, denying petitioners' Motion for Reconsideration.

The facts of this case are as follows:

The respondents are all graduates of the Fatima College of Medicine, Valenzuela City, Metro Manila. They passed the Physician Licensure Examination conducted in February 1993 by the Board of Medicine (Board). Petitioner Professional Regulation Commission (PRC) then released their names as successful examinees in the medical licensure examination.

Shortly thereafter, the Board observed that the grades of the seventy-nine successful examinees from Fatima College in the two most difficult subjects in the medical licensure exam, Biochemistry (Bio-Chem) and Obstetrics and Gynecology (OB-Gyne), were unusually and exceptionally high. Eleven Fatima examinees scored 100% in Bio-Chem and ten got 100% in OB-Gyne, another eleven got 99% in Bio-Chem, and twenty-one scored 99% in OB-Gyne. The Board also observed that many of those who passed from Fatima got marks of 95% or better in both subjects, and no one got a mark lower than 90%. A comparison of the performances of the candidates from other schools was made. The Board observed that strangely, the unusually high ratings were true only for Fatima College examinees. It was a record-breaking phenomenon in the history of the Physician Licensure Examination.

On June 7, 1993, the Board issued Resolution No. 19, withholding the registration as physicians of all the examinees from the Fatima College of Medicine.[4] The PRC asked the National Bureau of Investigation (NBI) to investigate whether any anomaly or irregularity marred the February 1993 Physician Licensure Examination.

Prior to the NBI investigation, the Board requested Fr. Bienvenido F. Nebres, S.J., an expert mathematician and authority in statistics, and later president of the Ateneo de Manila University, to conduct a statistical analysis of the results in Bio-Chem and Ob-Gyne of the said examination.

On June 10, 1993, Fr. Nebres submitted his report. He reported that a comparison of the scores in Bio-Chem and Ob-Gyne, of the Fatima College examinees with those of examinees from De La Salle University and Perpetual

Help College of Medicine showed that the scores of Fatima College examinees were not only incredibly high but unusually clustered close to each other. He concluded that there must be some unusual reason creating the clustering of scores in the two subjects. It must be a cause “strong enough to eliminate the normal variations that one should expect from the examinees [of Fatima College] in terms of talent, effort, energy, etc.”[5]

For its part, the NBI found that “the questionable passing rate of Fatima examinees in the [1993] Physician Examination leads to the conclusion that the Fatima examinees gained early access to the test questions.”[6]

On July 5, 1993, respondents Arlene V. De Guzman, Violeta V. Meneses, Celerina S. Navarro, Jose Ramoncito P. Navarro, Arnel V. Herrera, and Geraldine Elizabeth M. Pagilagan (Arlene V. De Guzman et al., for brevity) filed a special civil action for mandamus, with prayer for preliminary mandatory injunction docketed as Civil Case No. 93-66530 with the Regional Trial Court (RTC) of Manila, Branch 52. Their petition was adopted by the other respondents as intervenors.

Meanwhile, the Board issued Resolution No. 26, dated July 21, 1993, charging respondents with “immorality, dishonest conduct, fraud, and deceit” in connection with the Bio-Chem and Ob-Gyne examinations. It recommended that the test results of the Fatima examinees be nullified. The case was docketed as Adm. Case No. 1687 by the PRC.

On July 28, 1993, the RTC issued an Order in Civil Case No. 93-66530 granting the preliminary mandatory injunction sought by the respondents. It ordered the petitioners to administer the physician’s oath to Arlene V. De Guzman et al., and enter their names in the rolls of the PRC.

The petitioners then filed a special civil action for certiorari with the Court of Appeals to set aside the mandatory injunctive writ, docketed as CA-G.R. SP No. 31701.

On October 21, 1993, the appellate court decided CA-G.R. SP No. 31701, with the dispositive portion of the Decision ordaining as follows:

WHEREFORE, this petition is GRANTED. Accordingly, the writ of preliminary mandatory injunction issued by the lower court against petitioners is hereby nullified and set aside.

SO ORDERED.[7]

Arlene V. de Guzman, et al., then elevated the foregoing Decision to this Court in G.R. No. 112315. In our Resolution dated May 23, 1994, we denied the petition for failure to show reversible error on the part of the appellate court.

Meanwhile, on November 22, 1993, during the pendency of the instant petition, the pre-trial conference in Civil Case No. 93-66530 was held. Then, the parties, agreed to reduce the testimonies of their respective witnesses to sworn questions-and-answers. This was without prejudice to cross-examination by the opposing counsel.

On December 13, 1993, petitioners’ counsel failed to appear at the trial in the mistaken belief that the trial was set for December 15. The trial court then ruled that petitioners waived their right to cross-examine the witnesses.

On January 27, 1994, counsel for petitioners filed a Manifestation and Motion stating the reasons for her non-appearance and praying that the cross-examination of the witnesses for the opposing parties be reset. The trial court denied the motion for lack of notice to adverse counsel. It also denied the Motion for Reconsideration that followed on the ground that adverse counsel was notified less than three (3) days prior to the hearing.

Meanwhile, to prevent the PRC and the Board from proceeding with Adm. Case No. 1687, the respondents herein moved for the issuance of a restraining order, which the lower court granted in its Order dated April 4, 1994.

The petitioners then filed with this Court a petition for certiorari docketed as G.R. No. 115704, to annul the Orders of the trial court dated November 13, 1993, February 28, 1994, and April 4, 1994. We referred the petition to the Court of Appeals where it was docketed as CA-G.R. SP No. 34506.

On August 31, 1994, the appellate court decided CA-G.R. SP No. 34506 as follows:

WHEREFORE, the present petition for certiorari with prayer for temporary restraining order/preliminary injunction is GRANTED and the Orders of December 13, 1993, February 7, 1994, February 28, 1994, and April 4, 1994 of the RTC-Manila, Branch 52, and all further proceedings taken by it in Special Civil Action No. 93-66530 are hereby DECLARED NULL and VOID. The said RTC-Manila is ordered to allow petitioners' counsel to cross-examine the respondents' witnesses, to allow petitioners to present their evidence in due course of trial, and thereafter to decide the case on the merits on the basis of the evidence of the parties. Costs against respondents.

IT IS SO ORDERED.[8]

The trial was then set and notices were sent to the parties.

A day before the first hearing, on September 22, 1994, the petitioners filed an Urgent Ex-Parte Manifestation and Motion praying for the partial reconsideration of the appellate court's decision in CA-G.R. SP No. 34506, and for the outright dismissal of Civil Case No. 93-66530. The petitioners asked for the suspension of the proceedings.

In its Order dated September 23, 1994, the trial court granted the aforesaid motion, cancelled the scheduled hearing dates, and reset the proceedings to October 21 and 28, 1994.

Meanwhile, on October 25, 1994, the Court of Appeals denied the partial motion for reconsideration in CA-G.R. SP No. 34506. Thus, petitioners filed with the Supreme Court a petition for review docketed as G.R. No. 117817, entitled Professional Regulation Commission, et al. v. Court of Appeals, et al.

On November 11, 1994, counsel for the petitioners failed to appear at the trial of Civil Case No. 93-66530. Upon motion of the respondents herein, the trial court ruled that herein petitioners waived their right to cross-examine the herein respondents. Trial was reset to November 28, 1994.

On November 25, 1994, petitioners' counsel moved for the inhibition of the trial court judge for alleged partiality. On November 28, 1994, the day the Motion to Inhibit was to be heard, petitioners failed to appear. Thus, the trial court denied the Motion to Inhibit and declared Civil Case No. 93-66530 deemed submitted for decision.

On December 19, 1994, the trial court handed down its judgment in Civil Case No. 93-66530, the fallo of which reads:

WHEREFORE, judgment is rendered ordering the respondents to allow the petitioners and intervenors (except those with asterisks and footnotes in pages 1 & 2 of this decision) [sic],[9] to take the physician's oath and to register them as physicians.

It should be made clear that this decision is without prejudice to any administrative disciplinary action which may be taken against any of the petitioners for such causes and in the manner provided by law and consistent with the requirements of the Constitution as any other professionals.

No costs.

SO ORDERED.[10]

As a result of these developments, petitioners filed with this Court a petition for review on certiorari docketed as G.R. No. 118437, entitled Professional Regulation Commission v. Hon. David G. Nitafan, praying inter alia, that

(1) G.R. No. 118437 be consolidated with G.R. No. 117817; (2) the decision of the Court of Appeals dated August 31, 1994 in CA-G.R. SP No. 34506 be nullified for its failure to decree the dismissal of Civil Case No. 93-66530, and in the alternative, to set aside the decision of the trial court in Civil Case No. 93-66530, order the trial court judge to inhibit himself, and Civil Case No. 93-66530 be re-raffled to another branch.

On December 26, 1994, the petitioners herein filed their Notice of Appeal^[11] in Civil Case No. 93-66530, thereby elevating the case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 37283.

In our Resolution of June 7, 1995, G.R. No. 118437 was consolidated with G.R. No. 117817.

On July 9, 1998, we disposed of G.R. Nos. 117817 and 118437 in this wise:

WHEREFORE, the petition in G.R. No. 117817 is DISMISSED for being moot. The petition in G.R. No. 118437 is likewise DISMISSED on the ground that there is a pending appeal before the Court of Appeals. Assistant Solicitor General Amparo M. Cabotaje-Tang is advised to be more circumspect in her dealings with the courts as a repetition of the same or similar acts will be dealt with accordingly.

SO ORDERED.^[12]

While CA-G.R. SP No. 37283 was awaiting disposition by the appellate court, Arnel V. Herrera, one of the original petitioners in Civil Case No. 93-66530, joined by twenty-seven intervenors, to wit: Fernando F. Mandapat, Ophelia C. Hidalgo, Bernadette T. Mendoza, Ruby B. Lantin-Tan, Fernando T. Cruz, Marissa A. Regodon, Ma. Eloisa Q. Mallari-Largoza, Cheryl R. Triguero, Joseph A. Jao, Bernadette H. Cabuhat, Evelyn S. Acosta-Cabanes, Laura M. Santos, Maritel M. Echiverri, Bernadette C. Escusa, Carlosito C. Domingo, Alicia S. Lizano, Elnora R. Raqueno-Rabaino, Saibzur N. Edding, Derileen D. Dorado-Edding, Robert B. Sanchez, Maria Rosario L. Leonor-Lacandula, Geraldine Elizabeth M. Pagilagan-Palma, Margarita Belinda L. Vicencio-Gamilla, Herminigilda E. Conejos, Leuvina P. Chico-Paguio, Elcin C. Arriola-Ocampo, and Jose Ramoncito P. Navarro, manifested that they were no longer interested in proceeding with the case and moved for its dismissal. A similar manifestation and motion was later filed by intervenors Mary Jean I. Yeban-Merlan, Michael L. Serrano, Norma G. Lafavilla, Arnulfo A. Salvador, Belinda C. Rabara, Yolanda P. Unica, Dayminda G. Bontuyan, Clarissa B. Baclig, Ma. Luisa S. Gutierrez, Rhoneil R. Deveraturda, Aleli A. Gollayan, Evelyn C. Cundangan, Frederick D. Francisco, Violeta V. Meneses, Melita J. Cañedo, Clarisa S.J. Nicolas, Federico L. Castillo, Karangalan D. Serrano, Danilo A. Villaver, Grace E. Uy, Lydia C. Chan, and Melvin M. Usita. The Court of Appeals ruled that its decision in CA-G.R. SP No. 37283 would not apply to them.

On May 16, 2000, the Court of Appeals decided CA-G.R. SP No. 37283, with the following fallo, to wit:

WHEREFORE, finding no reversible error in the decision appealed from, We hereby AFFIRM the same and DISMISS the instant appeal.

No pronouncement as to costs.

SO ORDERED.^[13]

In sustaining the trial court's decision, the appellate court ratiocinated that the respondents complied with all the statutory requirements for admission into the licensure examination for physicians in February 1993. They all passed the said examination. Having fulfilled the requirements of Republic Act No. 2382,^[14] they should be allowed to take their oaths as physicians and be registered in the rolls of the PRC.

Hence, this petition raising the following issues:

I

WHETHER OR NOT RESPONDENTS HAVE A VALID CAUSE OF ACTION FOR MANDAMUS AGAINST PETITIONERS IN THE LIGHT OF THE RESOLUTION OF THIS HONORABLE COURT IN G.R. NO. 112315 AFFIRMING THE COURT OF APPEALS' DECISION DECLARING THAT IF EVER THERE IS SOME DOUBT AS TO THE MORAL FITNESS OF EXAMINEES, THE ISSUANCE OF LICENSE TO PRACTICE MEDICINE IS NOT AUTOMATICALLY GRANTED TO THE SUCCESSFUL EXAMINEES.

II

WHETHER OR NOT THE PETITION FOR MANDAMUS COULD PROCEED DESPITE THE PENDENCY OF ADMINISTRATIVE CASE NO. 1687, WHICH WAS PRECISELY LODGED TO DETERMINE THE MORAL FITNESS OF RESPONDENTS TO BECOME DOCTORS.[15]

To our mind, the only issue is: Did the Court of Appeals commit a reversible error of law in sustaining the judgment of the trial court that respondents are entitled to a writ of mandamus?

The petitioners submit that a writ of mandamus will not lie in this case. They point out that for a writ of mandamus to issue, the applicant must have a well-defined, clear and certain legal right to the thing demanded and it is the duty of the respondent to perform the act required. Thus, mandamus may be availed of only when the duty sought to be performed is a ministerial and not a discretionary one. The petitioners argue that the appellate court's decision in CA-G.R. SP No. 37283 upholding the decision of the trial court in Civil Case No. 93-66530 overlooked its own pronouncement in CA-G.R. SP No. 31701. The Court of Appeals held in CA-G.R. SP No. 31701 that the issuance of a license to engage in the practice of medicine becomes discretionary on the PRC if there exists some doubt that the successful examinee has not fully met the requirements of the law. The petitioners stress that this Court's Resolution dated May 24, 1994 in G.R. No. 112315 held that there was no showing "that the Court of Appeals had committed any reversible error in rendering the questioned judgment" in CA-G.R. SP No. 31701. The petitioners point out that our Resolution in G.R. No. 112315 has long become final and executory.

Respondents counter that having passed the 1993 licensure examinations for physicians, the petitioners have the obligation to administer to them the oath as physicians and to issue their certificates of registration as physicians pursuant to Section 20[16] of Rep. Act No. 2382. The Court of Appeals in CA-G.R. SP No. 37283, found that respondents complied with all the requirements of Rep. Act No. 2382. Furthermore, respondents were admitted by the Medical Board to the licensure examinations and had passed the same. Hence, pursuant to Section 20 of Rep. Act No. 2382, the petitioners had the obligation to administer their oaths as physicians and register them.

Mandamus is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.[17] Section 3 of Rule 65[18] of the 1997 Rules of Civil Procedure outlines two situations when a writ of mandamus may issue, when any tribunal, corporation, board, officer or person unlawfully (1) neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) excludes another from the use and enjoyment of a right or office to which the other is entitled.

We shall discuss the issues successively.

1.

On The Existence of a Duty of the Board of Medicine To Issue Certificates of Registration as Physicians under Rep. Act No. 2382.

For mandamus to prosper, there must be a showing that the officer, board, or official concerned, has a clear legal duty, not involving discretion.[19] Moreover, there must be statutory authority for the performance of the act,[20] and the performance of the duty has been refused.[21] Thus, it must be pertinently asked now: Did petitioners have the duty to administer the Hippocratic Oath and register respondents as physicians under the Medical Act of 1959?

As found by the Court of Appeals, on which we agree on the basis of the records:

It bears emphasizing herein that petitioner-appellees and intervenor-appellees have fully complied with all the statutory requirements for admission into the licensure examinations for physicians conducted and administered by the respondent-appellants on February 12, 14, 20 and 21, 1993. Stress, too, must be made of the fact that all of them successfully passed the same examinations.[22]

The crucial query now is whether the Court of Appeals erred in concluding that petitioners should allow the respondents to take their oaths as physicians and register them, steps which would enable respondents to practice the medical profession[23] pursuant to Section 20 of the Medical Act of 1959?

The appellate court relied on a single provision, Section 20 of Rep. Act No. 2382, in concluding that the petitioners had the ministerial obligation to administer the Hippocratic Oath to respondents and register them as physicians. But it is a basic rule in statutory construction that each part of a statute should be construed in connection with every other part to produce a harmonious whole, not confining construction to only one section.[24] The intent or meaning of the statute should be ascertained from the statute taken as a whole, not from an isolated part of the provision. Accordingly, Section 20 of Rep. Act No. 2382, as amended should be read in conjunction with the other provisions of the Act. Thus, to determine whether the petitioners had the ministerial obligation to administer the Hippocratic Oath to respondents and register them as physicians, recourse must be had to the entirety of the Medical Act of 1959.

A careful reading of Section 20 of the Medical Act of 1959 discloses that the law uses the word “shall” with respect to the issuance of certificates of registration. Thus, the petitioners “shall sign and issue certificates of registration to those who have satisfactorily complied with the requirements of the Board.” In statutory construction the term “shall” is a word of command. It is given imperative meaning. Thus, when an examinee satisfies the requirements for the grant of his physician’s license, the Board is obliged to administer to him his oath and register him as a physician, pursuant to Section 20 and par. (1) of Section 22[25] of the Medical Act of 1959.

However, the surrounding circumstances in this case call for serious inquiry concerning the satisfactory compliance with the Board requirements by the respondents. The unusually high scores in the two most difficult subjects was phenomenal, according to Fr. Nebres, the consultant of PRC on the matter, and raised grave doubts about the integrity, if not validity, of the tests. These doubts have to be appropriately resolved.

Under the second paragraph of Section 22, the Board is vested with the power to conduct administrative investigations and “disapprove applications for examination or registration,” pursuant to the objectives of Rep. Act No. 2382 as outlined in Section 1[26] thereof. In this case, after the investigation, the Board filed before the PRC, Adm. Case No. 1687 against the respondents to ascertain their moral and mental fitness to practice medicine, as required by Section 9[27] of Rep. Act No. 2382. In its Decision dated July 1, 1997, the Board ruled:

WHEREFORE, the BOARD hereby CANCELS the respondents['] examination papers in the Physician Licensure Examinations given in February 1993 and further DEBARS them from taking any licensure examination for a period of ONE (1) YEAR from the date of the promulgation of this DECISION. They may, if they so desire, apply for the scheduled examinations for physicians after the lapse of the period imposed by

the BOARD.

SO ORDERED.[28]

Until the moral and mental fitness of the respondents could be ascertained, according to petitioners, the Board has discretion to hold in abeyance the administration of the Hippocratic Oath and the issuance of the certificates to them. The writ of mandamus does not lie to compel performance of an act which is not duly authorized.

The respondents nevertheless argue that under Section 20, the Board shall not issue a certificate of registration only in the following instances: (1) to any candidate who has been convicted by a court of competent jurisdiction of any criminal offense involving moral turpitude; (2) or has been found guilty of immoral or dishonorable conduct after the investigation by the Board; or (3) has been declared to be of unsound mind. They aver that none of these circumstances are present in their case.

Petitioners reject respondents' argument. We are informed that in Board Resolution No. 26,[29] dated July 21, 1993, the Board resolved to file charges against the examinees from Fatima College of Medicine for "immorality, dishonesty, fraud, and deceit in the Obstetrics-Gynecology and Biochemistry examinations." It likewise sought to cancel the examination results obtained by the examinees from the Fatima College.

Section 8[30] of Rep. Act No. 2382 prescribes, among others, that a person who aspires to practice medicine in the Philippines, must have "satisfactorily passed the corresponding Board Examination." Section 22, in turn, provides that the oath may only be administered "to physicians who qualified in the examinations." The operative word here is "satisfactorily," defined as "sufficient to meet a condition or obligation" or "capable of dispelling doubt or ignorance." [31] Gleaned from Board Resolution No. 26, the licensing authority apparently did not find that the respondents "satisfactorily passed" the licensure examinations. The Board instead sought to nullify the examination results obtained by the respondents.

2. On the Right Of The Respondents To Be Registered As Physicians

The function of mandamus is not to establish a right but to enforce one that has been established by law. If no legal right has been violated, there can be no application of a legal remedy, and the writ of mandamus is a legal remedy for a legal right.[32] There must be a well-defined, clear and certain legal right to the thing demanded.[33] It is long established rule that a license to practice medicine is a privilege or franchise granted by the government.[34]

It is true that this Court has upheld the constitutional right[35] of every citizen to select a profession or course of study subject to a fair, reasonable, and equitable admission and academic requirements.[36] But like all rights and freedoms guaranteed by the Charter, their exercise may be so regulated pursuant to the police power of the State to safeguard health, morals, peace, education, order, safety, and general welfare of the people.[37] Thus, persons who desire to engage in the learned professions requiring scientific or technical knowledge may be required to take an examination as a prerequisite to engaging in their chosen careers. This regulation takes particular pertinence in the field of medicine, to protect the public from the potentially deadly effects of incompetence and ignorance among those who would practice medicine. In a previous case, it may be recalled, this Court has ordered the Board of Medical Examiners to annul both its resolution and certificate authorizing a Spanish subject, with the degree of Licentiate in Medicine and Surgery from the University of Barcelona, Spain, to practice medicine in the Philippines, without first passing the examination required by the Philippine Medical Act.[38] In another case worth noting, we upheld the power of the State to upgrade the selection of applicants into medical schools through admission tests.[39]

It must be stressed, nevertheless, that the power to regulate the exercise of a profession or pursuit of an occupation

cannot be exercised by the State or its agents in an arbitrary, despotic, or oppressive manner. A political body that regulates the exercise of a particular privilege has the authority to both forbid and grant such privilege in accordance with certain conditions. Such conditions may not, however, require giving up one's constitutional rights as a condition to acquiring the license.[40] Under the view that the legislature cannot validly bestow an arbitrary power to grant or refuse a license on a public agency or officer, courts will generally strike down license legislation that vests in public officials discretion to grant or refuse a license to carry on some ordinarily lawful business, profession, or activity without prescribing definite rules and conditions for the guidance of said officials in the exercise of their power.[41]

In the present case, the aforementioned guidelines are provided for in Rep. Act No. 2382, as amended, which prescribes the requirements for admission to the practice of medicine, the qualifications of candidates for the board examinations, the scope and conduct of the examinations, the grounds for denying the issuance of a physician's license, or revoking a license that has been issued. Verily, to be granted the privilege to practice medicine, the applicant must show that he possesses all the qualifications and none of the disqualifications. Furthermore, it must appear that he has fully complied with all the conditions and requirements imposed by the law and the licensing authority. Should doubt taint or mar the compliance as being less than satisfactory, then the privilege will not issue. For said privilege is distinguishable from a matter of right, which may be demanded if denied. Thus, without a definite showing that the aforesaid requirements and conditions have been satisfactorily met, the courts may not grant the writ of mandamus to secure said privilege without thwarting the legislative will.

3. On the Ripeness of the Petition for Mandamus

Lastly, the petitioners herein contend that the Court of Appeals should have dismissed the petition for mandamus below for being premature. They argue that the administrative remedies had not been exhausted. The records show that this is not the first time that petitioners have sought the dismissal of Civil Case No. 93-66530. This issue was raised in G.R. No. 115704, which petition we referred to the Court of Appeals, where it was docketed as CA-G.R. SP No. 34506. On motion for reconsideration in CA-G.R. SP No. 34506, the appellate court denied the motion to dismiss on the ground that the prayers for the nullification of the order of the trial court and the dismissal of Civil Case No. 93-66530 were inconsistent reliefs. In G.R. No. 118437, the petitioners sought to nullify the decision of the Court of Appeals in CA-G.R. SP No. 34506 insofar as it did not order the dismissal of Civil Case No. 93-66530. In our consolidated decision, dated July 9, 1998, in G.R. Nos. 117817 & 118437, this Court speaking through Justice Bellosillo opined that:

Indeed, the issue as to whether the Court of Appeals erred in not ordering the dismissal of Civil Case No. 93-66530 sought to be resolved in the instant petition has been rendered meaningless by an event taking place prior to the filing of this petition and denial thereof should follow as a logical consequence.[42] There is no longer any justiciable controversy so that any declaration thereon would be of no practical use or value.[43] It should be recalled that in its decision of 19 December 1994 the trial court granted the writ of mandamus prayed for by private respondents, which decision was received by petitioners on 20 December 1994. Three (3) days after, or on 23 December 1994, petitioners filed the instant petition. By then, the remedy available to them was to appeal the decision to the Court of Appeals, which they in fact did, by filing a notice of appeal on 26 December 1994.[44]

The petitioners have shown no cogent reason for us to reverse the aforesaid ruling. Nor will their reliance upon the doctrine of the exhaustion of administrative remedies in the instant case advance their cause any.

Section 26[45] of the Medical Act of 1959 provides for the administrative and judicial remedies that respondents herein can avail to question Resolution No. 26 of the Board of Medicine, namely: (a) appeal the unfavorable judgment to the PRC; (b) should the PRC ruling still be unfavorable, to elevate the matter on appeal to the Office

of the President; and (c) should they still be unsatisfied, to ask for a review of the case or to bring the case to court via a special civil action of certiorari. Thus, as a rule, mandamus will not lie when administrative remedies are still available.[46] However, the doctrine of exhaustion of administrative remedies does not apply where, as in this case, a pure question of law is raised.[47] On this issue, no reversible error may, thus, be laid at the door of the appellate court in CA-G.R. SP No. 37283, when it refused to dismiss Civil Case No. 93-66530.

As we earlier pointed out, herein respondents Arnel V. Herrera, Fernando F. Mandapat, Ophelia C. Hidalgo, Bernadette T. Mendoza, Ruby B. Lantin-Tan, Fernando T. Cruz, Marissa A. Regodon, Ma. Eloisa Q. Mallari-Largoza, Cheryl R. Triguero, Joseph A. Jao, Bernadette H. Cabuhat, Evelyn S. Acosta-Cabanes, Laura M. Santos, Maritel M. Echiverri, Bernadette C. Escusa, Carlosito C. Domingo, Alicia S. Lizano, Elnora R. Raqueno-Rabaino, Saibzur N. Edding, Derileen D. Dorado-Edding, Robert B. Sanchez, Maria Rosario Leonor-Lacandula, Geraldine Elizabeth M. Pagilagan-Palma, Margarita Belinda L. Vicencio-Gamilla, Herminigilda E. Conejos, Leuvina P. Chico-Paguio, Elcin C. Arriola-Ocampo, and Jose Ramoncito P. Navarro manifested to the Court of Appeals during the pendency of CA-G.R. SP No. 37283, that they were no longer interested in proceeding with the case and moved for its dismissal insofar as they were concerned. A similar manifestation and motion were later filed by intervenors Mary Jean I. Yeban-Merlan, Michael L. Serrano, Norma G. Lafavilla, Arnulfo A. Salvador, Belinda C. Rabarra, Yolanda P. Unica, Dayminda G. Bontuyan, Clarissa B. Baclig, Ma. Luisa S. Gutierrez, Rhoneil R. Deveraturda, Aleli A. Gollayan, Evelyn C. Cundangan, Frederick D. Francisco, Violeta V. Meneses, Melita J. Cañedo, Clarisa SJ. Nicolas, Federico L. Castillo, Karangalan D. Serrano, Danilo A. Villaver, Grace E. Uy, Lydia C. Chan, and Melvin M. Usita. Following these manifestations and motions, the appellate court in CA-G.R. SP No. 37283 decreed that its ruling would not apply to them. Thus, inasmuch as the instant case is a petition for review of the appellate court's ruling in CA-G.R. SP No. 37283, a decision which is inapplicable to the aforementioned respondents will similarly not apply to them.

As to Achilles J. Peralta, Evelyn O. Ramos, Sally B. Bunagan, Rogelio B. Ancheta, Oscar H. Padua, Jr., Evelyn D. Grajo, Valentino P. Arboleda, Carlos M. Bernardo, Jr., Mario D. Cuaresma, Violeta C. Felipe, Percival H. Pangilinan, Corazon M. Cruz and Samuel B. Bangoy, herein decision shall not apply pursuant to the Orders of the trial court in Civil Case No. 93-66530, dropping their names from the suit.

Consequently, this Decision is binding only on the remaining respondents, namely: Arlene V. de Guzman, Celerina S. Navarro, Rafael I. Tolentino, Bernardita B. Sy, Gloria T. Jularbal, Hubert S. Nazareno, Nancy J. Chavez, Ernesto L. Cue, Herminio V. Fernandez, Jr., Maria Victoria M. Lacsamana and Merly D. Sta. Ana, as well as the petitioners.

WHEREFORE, the instant petition is GRANTED. Accordingly, (1) the assailed decision dated May 16, 2000, of the Court of Appeals, in CA-G.R. SP No. 37283, which affirmed the judgment dated December 19, 1994, of the Regional Trial Court of Manila, Branch 52, in Civil Case No. 93-66530, ordering petitioners to administer the physician's oath to herein respondents as well as the resolution dated August 25, 2000, of the appellate court, denying the petitioners' motion for reconsideration, are REVERSED and SET ASIDE; and (2) the writ of mandamus, issued in Civil Case No. 93-66530, and affirmed by the appellate court in CA-G.R. SP No. 37283 is NULLIFIED AND SET ASIDE.

SO ORDERED.

Puno, (Chairman), and Callejo, Sr., JJ., concur.

Quisumbing, J., no part.

Austria-Martinez, J., no part -on leave.

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- [1] Rollo, pp. 44-67. Penned by Associate Justice Cancio C. Garcia, with Associate Justices B.A. Adefuin-De la Cruz, and Renato C. Dacudao concurring.
- [2] CA Rollo, pp. 140-175.
- [3] Supra, note 1 at 408. Penned by Associate Justice Cancio C. Garcia, with Associate Justices B.A. Adefuin-De la Cruz, and Renato C. Dacudao, concurring.
- [4] Id. at 69.
- [5] Id. at 96.
- [6] Id. at 92.
- [7] Id. at 175. Penned by Associate Justice Alfredo L. Benipayo and concurred in by Presiding Justice Santiago M. Kapunan (later a member of the Supreme Court and now retired) and Associate Justice Ma. Alicia Austria-Martinez (now a member of the Second Division of the Supreme Court).
- [8] Rollo, pp. 199-200. Penned by Associate Justice Jaime M. Lantin, with Associate Justices Angelina S. Gutierrez (now a member of the Supreme Court), and Conchita Carpio Morales (likewise a present member of the Supreme Court) concurring.
- [9] Of the intervenors in Civil Case No. 93-66530, Achilles Peralta and Evelyn Ramos were dropped as parties per Order of the trial court dated August 24, 1993. The case was dismissed as to Sally Bunagan, Reogelio Ancheta, Oscar Padua, Evelyn Grajo, Valentino Arboleda, Carlos Bernardo, Jr., Mario Cuaresma, Violeta Felipe, and Percival Pangilinan as per Order dated November 25, 1994. Corazon Cruz and Samuel Bangoy were deemed by the trial court no longer entitled to the avails of the suit for seeking extrajudicial relief from the Board of Medicine, as per its Order dated November 25, 1994. See CA Rollo, pp. 140-141.
- [10] CA Rollo, pp. 174-175.
- [11] Id. at 205.
- [12] G.R. Nos. 117817 and 118437, 9 July 1998, 292 SCRA 155, 167. Penned by Associate Justice Josue N. Bellosillo, with Associate Justices Hilario G. Davide, Jr., Jose C. Vitug, Artemio V. Panganiban, and Leonardo A. Quisumbing concurring.
- [13] Rollo, p. 67.
- [14] The Medical Act of 1959.
- [15] Rollo, pp. 28-29.
- [16] SEC. 20. Issuance of Certificates of Registration, grounds for refusal of [the] same. – The Commissioner of Civil Service (now Professional Regulation Commission) the chairman, the members and the Secretary of the Board of Medical Examiners (now Medical Board) shall sign and issue certificates of registration to those who have satisfactorily complied with the requirements of the Board. They shall not issue a certificate of registration to any candidate who has been convicted by a court of competent jurisdiction of any criminal offense involving moral turpitude, or has been found guilty of immoral or dishonorable conduct after the investigation by the Board of Medical Examiners (now Medical Board), or has been declared to be of unsound mind. (As amended by Rep. Act No. 4224, which took effect June 19, 1965).

[17] See *United States v. Boutwell*, 17 Wall (US) 604, 21 L. Ed 721; *Laizure v. Baker*, 11 P. 2d 560; *State ex rel Lyons v. McDowell*, 57 A. 2d 94; *Rader v. Burton*, 122 N.E. 2d 856; *Board of Managers v. City of Wilmington*, 70 S.E. 2d 833.

[18] SEC. 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[19] See *Potter v. Anderson*, 392 P. 2d 650; *State ex rel Jester v. Paige*, 213 P. 2d 441; *State ex rel. Sharp v. Cross*, 211 P. 2d 760; *St. George v. Hanson, et al.*, 78 S.E. 2d 885; *State ex rel Vander v. Board of County Com'rs. et al.*, 135 N.E. 2d 701.

[20] See *State ex rel Jester v. Paige*, *supra*; *Pedroso v. De Walt, et al.*, 340 S.W. 2d 566.

[21] See *State Board of Barber Examiners v. Walker*, 192 P. 2d 723; *State ex rel Sharp v. Cross*, *supra*; *State ex rel Hacharedi v. Baxter*, 74 N.E. 2d 242, 332 US 827, 92 L. Ed 402, 68 S. Ct 209.

[22] *Rollo*, p. 58.

[23] *Id.* at 59.

[24] *Sotto v. Sotto*, No. 17768, 1 September 1922, 43 Phil. 688, 694. See also *Araneta v. Concepcion and Araneta*, No. L-9667, 31 July 1956, 99 Phil. 709, 712.

[25] SEC. 22. Administrative investigations. – In addition to the functions provided for in the preceding sections, the Board of Medical Examiners (now Medical Board) shall perform the following duties: (1) to administer oath to physicians who qualified in the examinations (stress supplied); (2) to study the conditions affecting the practice of medicine in all parts of the Philippines; (3) to exercise the powers conferred upon it by this article with the view of maintaining the ethical and professional standards of the medical profession; (4) to subpoena or subpoena duces tecum witnesses for all purposes required in the discharge of its duties; and (5) to promulgate, with the approval of the Commissioner of Civil Service (now Professional Regulation Commission), such rules and regulations as it may deem necessary for the performance of its duties in harmony with the provisions of this Act and necessary for the proper practice of medicine in the Philippines.

Administrative investigations shall be conducted by at least two members of the Medical Board with one legal officer sitting during the investigation, otherwise the proceedings shall be considered void. The existing rules of evidence shall be observed during all administrative investigations. The Board may disapprove applications for examination or registration, reprimand erring physicians, or suspend or revoke registration certificates, if the respondents are found guilty after due investigation. (As amended by Rep. Act No. 4224, effective June 19, 1965.)

[26] SEC. 1. Objectives. – This Act provides for and shall govern (a) the standardization and regulation of medical education; (b) the examination for registration of physicians; and (c) the supervision, control, and

regulation of the practice of medicine in the Philippines.

[27] SEC. 9. Candidates for board examinations. – Candidates for Board examinations shall have the following qualifications:

(1)

He shall be a citizen of the Philippines or a citizen of any foreign country who has submitted competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof;

(2)

He shall be of good moral character;

(3)

He shall be of sound mind;

(4)

He shall not have been convicted by a court of competent jurisdiction of any offense involving moral turpitude;

(5)

He shall be a holder of the Degree of Doctor of Medicine or its equivalent conferred by a college of medicine duly recognized by the Government; and

(6)

He must have completed a calendar year of technical training known as internship the nature of which shall be prescribed by the Board of Medical Education undertaken in hospitals and health centers approved by the Board. (As amended by Rep. Act No. 5946, approved June 21, 1969).

[28] Rollo, p. 419.

[29] Id. at 99.

[30] SEC. 8. Prerequisite to the practice of medicine. – No person shall engage in the practice of medicine in the Philippines unless he is at least twenty-one years of age, has satisfactorily passed the corresponding Board Examination, and is a holder of a valid Certificate of Registration duly issued to him by the Board of Medical Examiners (now Medical Board).

[31] WEBSTER'S NEW INTERNATIONAL DICTIONARY 2017 (1993 ed.).

[32] See *Fosdick v. Terry*, 117 So. 2d 397, 398; *Puritan Coal Corp. v. Davis*, 42 S.E. 2d 807, 813.

[33] *Lemi v. Valencia*, No. L-20768, 29 November 1968, 26 SCRA 203, 210; *Ocampo v. Subido*, No. L-28344, 27 August 1976, 72 SCRA 443, 452-453.

[34] See *Morse v. State Board of Medical Examiners*, 122 S.W. 446, 448 (1909).

[35] CONST. ART. XIV, Sec. 5 (3).

[36] *Reyes v. Court of Appeals*, G.R. Nos. 94961 and 96491, 25 February 1991, 194 SCRA 402, 409-410.

[37] *Primicias v. Fugoso*, No. L-1800, 27 January 1948, 80 Phil. 71, 75.

[38] Philippine Medical Association v. Board of Medical Examiners, No. L-25135, 21 September 1968, 25 SCRA 29.

[39] Tablarin v. Judge Angelina S. Gutierrez, No. L-78164, 31 July 1987, 152 SCRA 730, 743.

[40] See Manchester Press Club v. State Liquor Commission, 200 A. 407, 116 ALR 1093.

[41] See Yick Wo v. Hopkins, 118 US 356, 30 L.Ed. 220, 6 S. Ct. 1064; City Council of Montgomery v. West, 42 So. 1000; In Re Porterfield, 168 P. 2d 706, 167 ALR 675; Anderson v. City of Wellington, 19 P. 719; State v. Harris, 6 S.E. 2d 854.

[42] Citing Bautista v. Board of Energy, G.R. No. 75016, 13 January 1989, 169 SCRA 167.

[43] Citing Gancho-on v. Secretary of Labor and Employment, G.R. No. 108033, 14 April 1997, 271 SCRA 204, 208.

[44] Rollo, pp. 340-341.

[45] SEC. 26. Appeal from judgment. – The decision of the Board of Medical Examiners (now Medical Board) shall automatically become final thirty days after the date of its promulgation unless the respondent, during the same period, has appealed to the Commissioner of the Civil Service (now Professional Regulation Commission) and later to the Office of the President of the Philippines. If the final decision is not satisfactory, the respondent may ask for a review of the case, or may file in court a petition for certiorari.

[46] Ang Tuan Kai & Co. v. Import Control Commission, No. L-4427, 21 April 1952, 91 Phil. 143, 145; Peralta v. Salcedo, etc., No. L-10771, 30 April 1957, 101 Phil. 452, 454.

[47] See Madrigal v. Lecaroz, G.R. No. 46218, 23 October 1990, 191 SCRA 20, 26.

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