

TIRSO Z. OPORTO, PETITIONER, VS. MEMBERS OF THE BOARD OF INQUIRY AND DISCIPLINE OF NATIONAL POWER CORPORATION, NAMELY: WILFREDO J. COLLADO, MELBURGO S. CHIU, JORGE LAGERA, IN TH...

G.R. No. 147423. October 15, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated May 12, 2000 which reversed and set aside the Order[3] of the Regional Trial Court (RTC) of Aurora, Zamboanga del Sur, Branch 30, dated August 3, 1998.

The Facts

Petitioner Tirso Z. Oporto (petitioner), employed with the National Power Corporation (NPC) as Principal Engineer C, Quality Assurance Inspector, Northwestern Mindanao Area, Mindanao Regional Center, together with his other co-employees,[4] was administratively charged on October 30, 1996 for Dishonesty, Grave Misconduct and Gross Neglect of Duty docketed as Adm. Case No. 96-11 entitled "National Power Corporation vs. Matthew Uy, et al.," the pertinent inculpatory portion of which provides, to wit:

That Tirso Z. Oporto, Principal Engineer C, Quality Assurance Inspector, Northern Mindanao Area, Mindanao Regional Center, did on or about 10 November 1994, willfully and unlawfully sign NPC Inspection and Receiving Report No. 002209, dated November 10, 1994, under the phrase "Inspected and Accepted By" thereby making it appear that the woodpoles and crossarms specified therein were completely delivered to the Aurora Sub-Area on 10 November 1994, which was not true, the truth being that no such woodpoles and crossarms were delivered thereto on said date, an act of Dishonesty.

To this charge, petitioner filed an Answer[5] dated December 13, 1996 with the NPC's Board of Inquiry and Discipline (Board) composed of respondents Wilfredo J. Collado, Melburgo S. Chiu[6] and Jorge Lagera.[7] Petitioner claimed that when the Inspection and Receiving Report (IRR) No. 002209 was presented to him for his signature in order to support the supplier's claim for payment after February 15, 1995, he immediately signed the same because all the items specified therein were completely delivered on November 26, 1994 and February 15, 1995. Petitioner averred that the error in the date of inspection appearing in the IRR, i.e., November 10, 1994, was simply an oversight on his part, with no malice or intent of being dishonest in the discharge of his official functions. Petitioner also averred that he relied in good faith on the IRR which had been prepared by the property/supply officer. Thus, he prayed that the said charge be dismissed.

On February 27, 1997, a Pre-Hearing Conference[8] was held. Petitioner's co-respondents Carlos Go, Ricardo Ceniza, Alejo Valdez and Venusto Hamoy, Jr. were represented by their respective counsels. The other respondents[9] therein manifested that they did not intend to avail the services of counsel, but petitioner did not make any manifestation. Thereafter, petitioner and his co-respondents submitted their Joint Position Paper[10] in

support of their defenses, after which the case was submitted for resolution.

After the investigation/hearing, the Board found petitioner guilty of Dishonesty.[11] NPC President respondent Guido Alfredo A. Delgado (NPC President), in a letter-decision[12] dated January 20, 1998, upon recommendation of the Board, meted on petitioner the penalty of suspension of one (1) year without pay. Petitioner filed a motion for reconsideration,[13] but the same was denied by the Board and by the NPC President in their respective letters[14] both dated March 31, 1998. The Board ratiocinated that while it is true that the items contained in the IRR were actually delivered and accepted on November 26, 1994 and February 15, 1995, the fact remains that petitioner committed falsification when he made it appear that he inspected and accepted the said items on November 10, 1994.

In a Memorandum/Appeal Brief[15] dated May 20, 1998, addressed to Department of Energy (DOE) Secretary and NPC Board Chairman Francisco L. Viray (Secretary Viray), petitioner prayed for the reversal of the decision of the Board of Inquiry and the NPC President, and his exoneration from the charge of Dishonesty.

With his appeal to Secretary Viray still to be acted upon, petitioner, on May 28, 1998, filed with the RTC a Petition[16] for Prohibition under Rule 65 of the 1997 Rules of Civil Procedure, with a prayer for the issuance of a Temporary Restraining Order (TRO) against the respondents, praying, inter alia, that an order be issued commanding the respondents to desist from enforcing any suspension order against petitioner. Summons[17] were served on the respondents. On June 3, 1998, the RTC issued a TRO[18] against the respondents.

Instead of filing an answer, respondents, on July 14, 1998, filed a Motion to Dismiss[19] alleging that petitioner failed to exhaust administrative remedies, and that the RTC has no jurisdiction to issue the TRO/writ of prohibition because RTCs can only enforce their writs within their respective territorial jurisdictions.

The RTC's Order

On August 3, 1998, the RTC issued an Order,[20] the relevant portions of which read:

The motion to dismiss and the application for preliminary injunction was (sic) jointly heard on July 29, 1998.

The motion to dismiss was based on non-exhaustion of administrative remedies and lack of jurisdiction.

x x x x

The doctrine on exhaustion of administrative remedies does not preclude herein petitioner from seeking judicial relief. This rule is not a hard and fast one but admits several exceptions. Some of these exceptions like when the issue is pure legal question and when circumstances (sic) warrant urgency for judicial intervention.

It is the contention by petitioner that assuming that he has done something wrong, the act perpetrated by him is such that the penalty of a suspension for One (1) year is not what the law mandates or is arbitrary and whimsical.

Furthermore, the temporary restraining order is about to expire and the order of suspension may be effected anytime and the appeal by the petitioner on the order of suspension to Secretary Viray is not yet acted upon for almost two (2) months and according to counsel for the respondents, Secretary Viray was replaced by another appointee. The question is for how long will that appeal be resolve[d]. The sword of Damocles is hanging over the head of the petitioner and may fall any time. The petitioner is afraid that the order of suspension will be implemented pending the resolution of his appeal.

The Court is in accord with the petitioner that the instant case should be filed in the Municipality of Aurora, Zamboanga del Sur. The rule on venue of actions provides that the action may be filed either at the residence of the plaintiff or the defendant but at the option of the complainant. Since petitioner [chose] to file his case in

his place of residence, then this Court has jurisdiction over the case because it is within its defined territorial jurisdiction by the Supreme Court.

PREMISES CONSIDERED, the motion to dismiss is hereby denied and the application for preliminary injunction is hereby granted.

Further, the petitioner is exempted from putting up a bond considering that the respondents will not suffer any damage by the issuance of the writ because the salary to be receive[d] by the petitioner is not their money but that of the National Power Corporation which is not made a party in the case.

SO ORDERED.

Subsequently, on August 4, 1998, the RTC issued the assailed writ of preliminary injunction,[21] which provides:

IT IS HEREBY ORDERED by the undersigned Judge of the Regional Trial Court, Branch 30, Aurora, Zamboanga del Sur, that, until further orders, you, the said Members of the Board of Inquiry and Discipline of the National Power Corporation Namely: Wilfredo J. Collado, Melburgo S. Chiu, George Lajera in their official capacities, and Guido Alfredo A. Delgado and all your attorneys, representatives, agents and any other persons assisting you to refrain from implementing the order of suspension issued against petitioner Tirso Z. Oporto.

Respondents filed a motion for reconsideration[22] which the RTC denied in its Order[23] dated September 8, 1998. Aggrieved, respondents went to the CA via a petition[24] for certiorari.

In the meantime, on September 3, 1998, petitioner wrote a letter[25] to the new DOE Secretary and Chairman of the NPC, Mario V. Tiaoqui (Secretary Tiaoqui) appealing for the dismissal of his case "so that that the court case can be dispensed with." On September 23, 1998, Secretary Tiaoqui denied petitioner's appeal for want of legal basis, alleging that the decision of the NPC Board of Inquiry and Discipline should have been brought on appeal to the Civil Service Commission (CSC) and not to the Office of the Secretary of the DOE.[26]

The CA's Ruling

On May 12, 2000, the CA ruled in favor of the respondents, declaring in the main that the RTC should have adhered to the Doctrine of Exhaustion of Administrative remedies; that the petitioner was accorded due process by the Board, considering that he was given a chance to file his Answer and Joint Position Paper; and that, for the writ of prohibition to be issued, petitioner must clearly show that the Board acted without or in excess of its jurisdiction, or with grave abuse of discretion. The CA further held:

[I]t was an admitted fact that an appeal had been filed by the private respondent herein with the Department of Energy and National Power Corporation, which appeal was pending when he lodged the petition for prohibition with the respondent court. The filing of such petition smacked of forum shopping a contumacious and deplorable act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes - it is an improper conduct that tends to downgrade the administration of justice x x x.[27]

Thus:

WHEREFORE, premises considered, the petition is GRANTED, hereby annulling and setting aside the assailed order (dated August 3, 1998) and the writ of preliminary injunction (dated August 4, 1998) issued by the respondent court in Special Civil Case No. AZ-98-30,101. The respondent court is likewise ordered to grant petitioners' motion to dismiss. Let the record of the case be remanded back to the court a quo immediately upon the finality hereof.

SO ORDERED.[28]

Petitioner filed a motion for reconsideration[29] which the CA denied in its Resolution[30] dated February 2, 2001.

Hence, the Petition raising the following issues:

I.

WHETHER OR NOT PETITIONER WAS DENIED OF HIS CONSTITUTIONAL AND STATUTORY RIGHTS TO DUE PROCESS OF LAW WHEN HE WAS FOUND BY THE RESPONDENTS GUILTY OF THE CHARGE OF DISHONESTY, DESPITE THE FACT THAT NO EVIDENCE FROM HIS SIDE WAS ADDUCED BEFORE THE RESPONDENT BOARD; AND THAT THE INVESTIGATION AGAINST HIM WAS CONDUCTED WITHOUT ANY HEARING IN VIOLATION OF HIS RIGHT TO BE HEARD, TO PRESENT CONTROVERTING EVIDENCE, AND TO CONFRONT THE WITNESSES AGAINST HIM.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR WHEN (A) IT GRANTED THE RESPONDENTS' PETITION FOR CERTIORARI SEEKING TO REVERSE THE ORDER OF THE REGIONAL TRIAL COURT OF AURORA, ZAMBOANGA DEL SUR, WHICH SUSTAINED AND UPHELD THE PETITIONER IN HIS PETITION FOR PROHIBITION WITH PRELIMINARY INJUNCTION, AND (B) IT ORDERED THE AURORA RTC TO DISMISS THE CASE APPEALED FROM BY PETITIONER THEREIN BEFORE THE AURORA RTC, AND TO GRANT THE MOTION TO DISMISS THE CASE FILED BY RESPONDENTS BEFORE SAID COURT.[31]

At the outset, the instant Petition was erroneously denominated as a Petition for Certiorari under Rule 65. Petitioner's remedy should be based on Rule 45 because he is appealing from a final disposition of the CA. Certiorari under Rule 65 is a remedy narrow in scope and inflexible in character. It only involves a correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. It is not a substitute for an appeal, when the latter remedy is available. Under the circumstances, Rule 45 is the plain, speedy and adequate remedy in the ordinary course of law. However, since the Petition was filed within the 15-day reglementary period, in the interest of justice we have treated it as one for review under Rule 45, and not for certiorari under Rule 65.[32]

This accommodation notwithstanding, the petition must still be denied for lack of merit.

First, the petitioner failed to exhaust administrative remedies.

The doctrine of exhaustion of administrative remedies mandates that whenever there is an available administrative remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted.[33] This rule is based on the practical principle that the administrative agency should be given a chance to correct its error,[34] and that relief first sought from a superior administrative agency could render court action unnecessary.[35]

In this case, petitioner appealed the decision of the NPC President to DOE Secretary and concurrently Chairman of the NPC Board Viray. Obviously, petitioner was under the impression that Secretary Viray had administrative appellate authority over the NPC President's decision. But without waiting for the Secretary's action, petitioner filed with the RTC a petition for prohibition under Rule 65 of the Rules of Court. In so doing, petitioner compounded an earlier error with yet another blunder, namely, forum shopping.

By going to court without awaiting the action of Secretary Viray - whom he recognized as a superior administrative authority - petitioner violated the doctrine of exhaustion of administrative remedies. In *Garcia v. Court of Appeals*,[36] wherein petitioner, who was then the Administrator of the Philippine Coconut

Administration, after having been preventively suspended on the basis of administrative charges filed against him, immediately filed a petition for certiorari, prohibition and mandamus with the RTC, we ruled that resort to the courts was premature and precipitate, because the administrative proceedings were still on-going.

Evidently, even the appeal to Secretary Viray was misplaced. As the DOE Secretary (Mario V. Tiaoqui, who replaced Secretary Viray) eventually decided, petitioner's appeal was without legal basis because the decision of the NPC President, on recommendation of the NPC Board of Inquiry and Discipline, should have been brought on appeal to the CSC.[37]

Second, petitioner committed forum shopping.

In yet another display of flawed logic, petitioner insists that he had been denied due process - an exception to the doctrine of exhaustion - and if, indeed, the DOE Secretary is not the proper forum for an appeal, then the appeal should be deemed as not having been filed at all. Thus, petitioner argues, there would be no incidence of forum shopping.

There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*. [38]

The filing of the petition for prohibition with the RTC while the appeal with the DOE Secretary was yet unresolved is unmistakably a case of forum shopping, as it yielded the full concurrence of all the three elements enumerated above.

We also reject petitioner's argument that because his appeal to the DOE Secretary was palpably erroneous, then it should be considered as not having been filed at all. This would be tantamount to giving a premium for filing a wrong remedy. Worse, it would encourage parties to file multiple suits before various tribunals in the hope that one of them would be the appropriate remedy, because, any way, all the incorrect ones would simply be deemed as not having been filed at all.

Finally, while admittedly violation of due process is an exception to the doctrine of exhaustion of administrative remedies, petitioner was not denied due process of law.

Due process is not a mantra, the mere invocation of which shall warrant a reversal of a decision. Well-settled is the rule that the essence of due process is the opportunity to be heard,[39] or as applied to administrative proceedings, an opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. Our ruling in *Filipino v. Macabuhay*[40] is instructive:

Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.

Petitioner was not deprived of due process in this case as he had in fact filed his Answer and a Joint Position

Paper explaining to the Board the reasons for the discrepancy of the inspection and delivery date as contained in the IRR and of the actual delivery dates. He was, likewise, able to file a Motion for Reconsideration of the NPC President's decision. It bears stressing that petitioner, along with his other co-respondents, was given an opportunity during the Pre-Conference Hearing to manifest whether he would like to avail the services of counsel but he opted to remain quiet. It should also be emphasized that despite the opportunity to do so, petitioner did not present any new substantial defense other than to say that the alleged typographical error on the date of IRR was not his own doing and that his signing the IRR - error and all - was simply a case of oversight.

In sum, we find no reason to disturb the decision of the CA.

WHEREFORE, the instant Petition is DENIED and the assailed Decision of the Court of Appeals dated May 12, 2000 is AFFIRMED. The Regional Trial Court of Aurora, Zamboanga del Sur, Branch 30 is hereby ordered to DISMISS Special Civil Case No. AZ-98-30,101. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Rollo, pp. 4-8. Petitioner erroneously labeled his recourse as one for "certiorari" under "Rule 65." Since he is questioning a decision of the Court of Appeals, the proper remedy is a petition for review under Rule 45. Inasmuch as the herein Petition had actually been filed within the 15-day reglementary period, the Court treated the Petition as one filed under Rule 45. (Tichangco v. Enriquez, G.R. No. 150629, June 30, 2004, 433 SCRA 324, 326.)

[2] Penned by Associate Justice Ramon Mabutas, Jr. (now retired), with Associate Justices Eriberto U. Rosario, Jr. (now retired) and Edgardo P. Cruz, concurring; rollo, pp. 12-22.

[3] CA rollo, pp. 17-19.

[4] Said NPC employees are Mr. Matthew R. Uy, Mr. Alejo P. Valdez, Mr. Pacenciano M. Durias, Mr. Jaime P. Villanueva, Mr. Ruben M. Conti, Mr. Herminio M. Rojo, Mr. Carlos L. Go, Mr. Marlon F. Parot, Mr. Faustino F. Regidor, Mr. Romeo T. Dy, Mr. Felicito S. Taporco, Mr. Venusto D. Hamoy, Jr., Mr. Ricardo E. Ceniza and Ms. Ludivina B. Sagarino.

[5] CA rollo, pp. 89-90.

[6] Also referred to as Melbourgo Chio in other pleadings and documents.

[7] Also referred to as George Lagera and Jorge Lajera in other pleadings and documents.

[8] CA rollo, pp. 110-112.

[9] Said respondents are Mr. Ruben M. Conti, Mr. Herminio M. Rojo, Mr. Marlon F. Parot, Mr. Romeo T. Dy, Mr. Felicito S. Taporco and Ms. Ludivina B. Sagarino.

[10] Filed by petitioner together with co-respondents Herminio M. Rojo and Felicito S. Taporco dated March 5, 1997; CA rollo, pp. 91-96.

[11] Investigator's Report dated January 20, 1998; id. at 162-171.

[12] Id. at 97.

[13] Id. at 98-101.

[14] Id. at 103; 104-105.

[15] Id. at 47-50.

[16] Id. at 24-30.

[17] Id. at 23.

[18] Id. at 65.

[19] Id. at 56-64.

[20] Supra note 3.

[21] CA rollo, pp. 20-21.

[22] Id. at 69-81.

[23] Id. at 22.

[24] Id. at 2-16.

[25] Id. at 202-204.

[26] Id. at 127.

[27] Rollo, p. 20.

[28] Id. at 21-22.

[29] Id. at 27-31.

[30] Id. at 61.

[31] Petitioner's Memorandum dated April 23, 2002; id. at 175-209.

[32] Tichangco v. Enriquez, supra note 1, at 333.

[33] See Aquino v. Mariano, G.R. No. L-30485, May 31, 1984, 129 SCRA 532; National Development Company v. Hervilla, G.R. No. L-65718, June 30, 1987, 151 SCRA 220; Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998, 290 SCRA 198.

[34] Bernardo v. Abalos, 422 Phil. 807, 813 (2001).

[35] Josen III v. Court of Appeals, G.R. No. 160652, February 13, 2006, 482 SCRA 360, 371.

[36] 411 Phil. 25 (2001).

[37] Philippine Civil Service Law, Sec. 37, par. (a); Executive Order No. 292 (The Administrative Code of 1987, Book V, Title I, Chapter 7, Sec. 47.

[38] Domingo v. Rayala, G.R. No. 155831, February 18, 2008, 546 SCRA 90, 109, citing PAL Employees Savings and Loan Association v. Philippine Airlines, 485 SCRA 632 (2006).

[39] Heirs of Cesar Marasigan namely: Luz Regina, Cesar Jr., Benito, Santiago, Renato, Jose, Geraldo, Orlando, Peter, Paul, Mauricio, Rommel, Michael, Gabriel, and Maria Luz, all surnamed Marasigan v. Apolonio, Lilia, Octavio, Jr., Horacio, Benito Jr., and Marissa, all surnamed Marasigan, and the Court of Appeals, G.R. No. 156078, March 14, 2008.

[40] G.R. No. 158960, November 24, 2006, 508 SCRA 50, 58, citing *Samalio v. Court of Appeals*, 454 SCRA 462, 472-473 (2005).

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