

COMMISSIONER OF IMMIGRATION AND BOARD OF IMMIGRATION COMMISSIONERS, PETITIONERS, VS. HON. LUIS B. REYES, AS EXECUTIVE JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, HON. GAUDEN...

G.R. No. 23838. December 28, 1964

Ponente: BENGZON, J. P., J.

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BENGZON, J. P., J.:

Among the new provisions in the Rules of Court effective January 1, 1964 is Section 7 of Rule 22:

"SEC. 7. Assignment of cases.-In the assignment of cases to the different branches of a Court of First Instance, or their transfer from one branch to another whether by raffle or otherwise, the parties or their counsel shall be given written notice sufficiently in advance so that they may be present therein if they so desire."

The petition before this Court would invoke the above provision.

On October 10, 1964 a petition for certiorari with preliminary injunction was filed in the Court of First Instance of Manila. The petition was docketed as Civil Case No. 58624. As petitioners it had Mercedes Tobiano Co and six others: Susana, Jose, Juan, Julio, Justo and Pablo, all surnamed Tobiano. The respondents were Martiniano P. Vivo, as Acting Commissioner of Immigration; the Board of Immigration Commissioners; and the Deportation Officer.[*]

Petitioners in Civil Case No. 58624 filed at the same time an ex parte petition to assign the case to Branch VI. The reason stated was: ". . . before the said Branch VI there are now pending two cases, entitled Vicente Caoile, et al., vs. Martiniano P. Vivo, et al., Civil Case No. 57271 and Jose Caoile vs. Martiniano P. Vivo, et al., Civil Case No. 57280, the nature and facts of which are identical to those involved in the instant case and where the parties respondents are the same."

On the same day the Executive Judge of the court granted this ex parte petition.

On October 26, 1964 a petition for habeas corpus was Mad in the Court of First Instance of Manila on behalf of Jose Tobiano and Justo Tobiano by Mercedes Tobiano Co, their mother. This petition was docketed as Civil Case No. 58782. Named as respondents were Martiniano P. Vivo, as Acting Commissioner of Immigration; the Deportation Officer; and "John Doe".

An ex parte petition was also filed by Mercedes Tobiano Co, seeking assignment of Civil Case No. 58782 to Branch VI. On October 27, 1964 said ex parte petition was granted by the Executive Judge. Thereupon the Presiding Judge of Branch VI issued an order commanding that on October 31, 1964 at 8:30 a.m. the persons of Jose Tobiano and Justo Tobiano be brought before his sala.

The Commissioner of Immigration and the Board of Immigration Commissioners, upon learning that Civil Case Nos. 58624 and 58782 had been assigned to Branch VI, filed ex parte motions for reconsideration dated October

29, and 30 praying that said cases be recalled from Branch VI and assigned by raffle. Furthermore, they filed an "urgent motion for postponement" in the habeas corpus case.

The Executive Judge set the motions for reconsideration for hearing. The Presiding Judge of Branch VI postponed the habeas corpus proceedings "until after resolution of the question of the assignment."

After the filing of an opposition to the motions for reconsideration, and a reply thereto, the hearing was held. Thereafter, the Executive Judge issued an order dated November 18, 1964 denying the motions for reconsideration.

On November 19, 1964 the Commissioner of immigration and the Board of Immigration Commissioners filed the petition at bar for certiorari, prohibition and mandamus with preliminary injunction. As prayed for, We ordered preliminary injunction issued without bond to enjoin action on the cases involved.

Petitioners would contend that the assignment of the afore-stated cases to Branch VI without raffle and previous notice ran counter to the mandatory provisions of Section 7, Rule 22 of the Rules of Court and derived them of a day in court.

Section 7 of Rule 22 does not require that assignment of cases be exclusively through raffle. It provides, merely, that parties be notified in writing, sufficiently in advance to enable them to be present, in the assignment of cases to the different branches of a Court of First Instance. The assignment thereunder may be "by raffle or otherwise".

Notice under Section 7, is required to afford the parties a chance to be heard in the assignment of their cases. This has been sufficiently accomplished herein. After the cases were assigned to Branch VI, herein petitioners filed motions for reconsideration of the assignment; their motions were set for hearing and action on the cases was postponed; the parties were fully heard on the question of the assignment; thereafter, the assignment was affirmed. A "day in court" has thus been given to the parties.

The practice in the Court of First Instance of Manila has been to assign cases by raffle. But, the Judges of said court at a meeting on October 11, 1957 agreed on a policy whereby "in cases involving new and the same fundamental questions, the branch to which was assigned the first case shall be the one to try all cases subsequently filed".

When the petitions in Civil Case Nos. 58624 and 58782 were filed, two cases involving the same new and fundamental questions raised therein were pending before Branch VI. Petitioners, while admitting this, contend that the afore-stated policy does not apply where the parties are different. Nowhere in their agreement did the Judges of the Court of First Instance of Manila require that the parties be the same. The Judge who opened the meeting of October 11, 1957 said: "This meeting was called for the purpose of initiating a policy in cases involving maybe different parties but the same fundamental questions." (*Italics supplied.*)

Petitioners would also contend that the first cases involving the same questions were not assigned to Branch VI. Suffice it to state that as of the filing of Civil Case Nos. 58624 and 58782, the pending cases involving the same questions were before Branch VI; Civil Case No. 57271, "Vicente Caoile vs. Martiniano P. Vivo, et al." and Civil Case No. 57280, "Jose Caoile vs. Martiniano P. Vivo, et al." Petitioners refer to cases antedating the foregoing: Civil Case No. 51534, "Tong Siok Sy vs. Martiniano P. Vivo, et al.," and Civil Case No. 51581, "Jose C. Mesina, et al. vs. Martiniano P. Vivo, et al." But they also admit that said earlier cases were then no longer pending before the Court of First Instance of Manila. Thus, the reason for the afore-stated policy, as herein petitioners put it, "the need for consolidation to avoid duplicity in the calling of witnesses and presentation of evidence," left no alternative but to assign Civil Case Nos. 58624 and 58782 to Branch VI. We may add that by long-standing provision of law, from Section 167-A of the Revised Administrative Code to Section 61 of the Judiciary Act, the

Court of First Instance of Manila has "administrative control of all matters affecting the internal operations of the court." No justifiable reason exists for Us to interfere with the internal policy of the court in the assignment of its cases.

Petitioners also state that the Presiding Judge of Branch VI has shown bias against them and, in support of this, mention previous decisions of said Judge reversed by this Court. We trust, however, that respondent Presiding Judge will follow the rulings of this Court, not insist upon his own, in the instances where his decisions had been reversed.

WHEREFORE, We hereby deny the petition and dissolve the preliminary injunction heretofore issued, without costs.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

[*] The petition in Civil Case No. 58624 alleged inter alia that therein petitioners entered the Philippines in September 1961; that on October 3, 1961 Board of Special Inquiry No. 2 in its decision, ordered them admitted "under documentation as Filipino citizens"; that the Board of Immigration Commissioners affirmed said decision; that the present Board of Immigration Commissioners reviewed its predecessor's action *motu proprio* and without hearing; that in its decision of September 27, 1962 said Board decreed petitioners' exclusions "as aliens not properly documented"; that said petitioners are about to be arrested, detained and deported; that, in fact, Jose Tobiano and Justo Tobiano have been arrested and detained. (Annex A, Petition.)

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