

## **DELFIN MAYORMENTE, PETITIONER, VS. ROBACO CORPORATION AND/OR ITS MANAGER, ET AL., RESPONDENTS.**

*G.R. No. 25337. November 27, 1967*

Ponente: CASTRO, J.

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### **CASTRO, J.:**

This is an original petition for certiorari and prohibition with preliminary injunction filed by Delfin Mayormente, a pauper litigant to set aside an order of the respondent judge Emiliano C. Tabigne of the Court of Industrial Relation (CIR) transferring the hearing of case 182-V-Cebu before him from Cebu City to Butuan City.

The petitioner filed in Cebu City case 182-V against the respondent Robaco Corporation. After the reception of his evidence, the respondent judge set the hearing in Butuan City, the place of business of the company. The petitioner moved for reconsideration, but the respondent judge denied his motion. The petition charges that, in so doing, the respondent judge acted in excess of jurisdiction and with grave abuse of discretion.

The respondents justify the disputed order on the basis of section 1 of Commonwealth Act 103 which gives the CIR juris-diction "over the entire Philippines to consider, investigate, decide and settle all questions, matters, controversies, or disputes arising between, and/or affecting employees or laborers... and regulate the relations between them . . . ." They also claim that the petition is premature because the petitioner did not first elevate the matter to the CIR in banc before bringing it up to this Court.

We shall first dwell on the technical objection raised. The respondents invoke *Broce v. Court of Industrial Relations*[1] in which this Court said:

"Section 1 of said Commonwealth Act No. 103 ex-pressly provides that if any of the parties ag-grieved by a decision or ruling of any of the judges, requests for a reconsideration of said decision, it must be presented to the judges who shall sit together, and that the concur-rence of at least three of the five judges shall be necessary for the pronouncement of a decision, order, or award. This provision has always been followed in cases of appeals to this Court by certiorari. . . . The provision does not authorize an appeal from any decision made by a judge but only from decisions of the court . . . ."

The fallacy of the respondents' argument is that it assumes that the present case is an appeal by certiorari, which it is not. As stated at the outset, this is an ori-ginal petition for certiorari. The distinction between an appeal by certiorari and a special civil action of certiorari is basic. The first is governed by Commonwealth Act 103 in connection with Rule 43 and is a mode of appeal whereby mat-ters of law may be reviewed. The second is a special civil action governed by Rule 65 by which questions of jurisdiction may be determined.

In the case of appeal by certiorari it is plausible to argue that a motion for reconsideration before the CIR in banc is necessary because the statute[2] authorizes an appeal only "from a decision, order, award of the Court of Industrial Relations." A motion for reconsideration is thus in effect an appeal to the CIR in banc as there can be no appealable decision of that court until it shall have acted as a body on the motion for reconsideration.[3]

On the other hand, no such requirement can be read into the statute with respect to a special civil action of certiorari for, as each judge participates in the exercise of the court's jurisdiction,[4] so may his acts be kept within bounds by a resort to the extraordinary remedy of certiorari. As section 1 of Rule 65 indicates, certiorari is available not only against a tribunal or board but also against any "officer exercising judicial functions who has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion." The only condition is that there is no appeal nor any other plain, speedy and adequate remedy in the ordinary course of law open to the petitioner.

That the use of the remedy in this case is particularly appropriate is beyond question, as relief from the injurious effects of the disputed interlocutory order would have to await the rendition of a decision. By the time judgment shall have been rendered it will be useless for the petitioner to contend that the hearings should continue in Cebu City. While, therefore, the proceedings in a given case should normally not be allowed to go on procedural points, especially when interlocutory orders are in issue, the urgency and the peculiar environmental circumstances obtaining in the case at bar and the obvious inadequacy of appeal as a remedy make resort to certiorari fully justified.

And now to the merits of the petition. In justifying the transfer of venue to Butuan City, the respondent judge states in his order of October 20, 1965:

"The Court cannot agree on this proposition because the Court of Industrial Relations has the power to conduct hearings anywhere in the Philippines in order to receive the evidence of the parties, specially in the place of business operations of the employer firm in order to evaluate the circumstances leading to the lay-off of an employee. It is the policy of the law creating this Court in the interest of justice that it may go to any place in the Philippines in order to hear the parties and receive their evidence so that in the resolution of the issue or issues which gave rise to the proceeding may be properly appreciated and considered (sic). In the exercise of its ample power this Court found that the request of counsel for the respondents to transfer the place for the reception of their evidence in its place of business is, to our opinion, in consonance with justice and fair play. The Court believes that there is no abuse of its discretion because it afforded complainant the benefit of the hearing and the reception of his evidence in his place of residence; and if the Court will refuse to concede the same right to the other party, it is, to the mind of the Court, not in consonance with reason, fair play and the social justice policy of Commonwealth Act No. 103, as amended."

The records do not disclose the nature of petitioner's action before the CIR. We can only surmise that it is for separation pay on account of his "lay-off" from the respondent company's employment.[5] But whatever be the nature of his action, we cannot see why it was necessary for the court to transfer the hearings to Butuan City with all the expenses that the transfer would entail to the petitioner.

The respondent judge says that it is as much the right of the company to have the hearing in its place of business as it is the right of the petitioner to have his evidence received in his place of residence. This is palpable error. Republic Act 1171 expressly provides:

"SECTION 1. Any provision of law or the Rules of Court to the contrary notwithstanding, civil actions on claims of employees, laborers and other helpers may be commenced and tried in the court of competent jurisdiction where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." (emphasis supplied)

We think it plain that once laid venue cannot be changed save of course with the consent of the parties or for overriding reasons. It cannot be changed on the ground that the CIR has jurisdiction over the whole country just as the venue of an ordinary civil action cannot be changed from one province to another on the reasoning that Courts of First Instance are courts of general original jurisdiction.[6] Indeed section 1 Republic Act 1171 is no

different from the rule governing ordinary civil actions. Thus, section 2(b) of Rule 4 provides:

"All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

The choice of venue is thus given to a plaintiff employee. The choice would be rendered meaningless were we to hold that, while an employee may initially choose the venue of his action, he may not be heard to complain later against the subsequent transfer of that venue. Nor can the choice be delimited by the fact that the jurisdiction of the CIR covers the entire country. Indeed, much of the difficulty apparent from a reading of the challenged order is due to a confusion of the issue. For the question here is not jurisdiction. It is simply venue.

There is a more compelling reason for insisting in this case that the choice of venue be preserved to the plaintiff employee. It is that he is so poor he cannot even defray the cost of these proceedings. "He who has less in life should have more in law," is more than just a credo of government. It is a principle enshrined in the Constitutional mandate to afford protection to labor.

Had the respondent judge been guided by this principle he would not have felt compelled, by what he deemed to be the demands of justice, to accord to the respondent company the "right" to be heard in its place of business. Nor would he have felt empowered to remove the cause from whence it was first laid. For the discretion of which the respondent judge speaks in his order is not an unfettered one, though this may sound paradoxical. The judge, writes Cardozo, even when he is free, is still not wholly free. "He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains"[7] And we might add that the kind of justice which courts are called upon to dispense is justice according to the precepts of law.

ACCORDINGLY, the order of October 20, 1965 is set aside, and the case is remanded to the Court of Industrial Relations for further proceedings in Cebu City, with costs against the respondent Robaco Corporation.

Dizon, Acting C.J., Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.  
Concepcion, C.J., and Reyes, J., are on official leave.

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[1] L-12367, Oct. 28, 1959.

[2] Commw. Act 103, sec. 15.

[3] Manila Terminal Relief & Mutual Aid Ass'n v. Manila Terminal Co., 88 Phil. 395 (1951) (7-4 decision).

[4] Section 1 of Commonwealth Act 103 provides: "The Judges shall act on such matters as the Presiding Judge may designate and each of them shall have power to preside over the hearing of cases assigned to him and to render decisions thereon."

[5] In all likelihood the action is not for discriminatory discharge, otherwise "ULP" (for cases filed under Rep. Act 875) and not the letter "V" (for cases filed under Commw. Act 103) would have been added to the case number.

[6] Judiciary Act of 1948, sec. 39.

[7] B. Cardozo, The Nature of the Judicial Process 141 (1921).

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