

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLANT, VS. THE PROVINCE OF NUEVA ECIJA, DEFENDANT AND APPELLEE.

G. R. No. 41002. August 29, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila sustaining a demurrer of the defendant and dismissing plaintiff's petition without giving the plaintiff an opportunity to amend.

The plaintiff's petition alleges in substance that it operates a transportation business by means of auto-trucks in the Province of Nueva Ecija; that in the year 1930 the defendant constructed a bridge known as Cabu Bridge which construction was financed not from any loan or bond issue but out of the current revenues of the defendant; that the provincial board of the defendant, by resolution No. 5160 dated September 14, 1931,. declared the said bridge to be a toll bridge and constructed toll gates thereon and collected toll from all vehicles passing over the same, charging forty centavos for each auto-truck; that on January 1, 1932, the total cost of construction of said Cabu Bridge including its operation and maintenance charges were completely covered and paid from the collection of said toll; that on March 7, 1932, the said provincial board passed resolution No. 318 redeclaring the said Cabu Bridge to be a toll bridge and increasing the rate of tolls collected thereon to the rate of sixty-five centavos per truck; that on December 2, 1932, the Legislature passed Act No. 3965 which amended sections 2131 and 2132 of the Revised Administrative Code to read as follows:

"SEC. 2131. Provincial toll roads, bridges and ferries.— When the provincial board of any province shall deem such course to be necessary for the proper maintenance of any provincial road within the province, it may designate such road, or part thereof, or any bridge, or ferry built, or to be built or maintained as part thereof, as a toll road, bridge or ferry, and may fix the toll rates to be paid for the use thereof upon authorization by the Governor-General and the recommendation of the Secretary of Commerce and Communications in the case of roads, and in the case of bridges or ferries upon authorization and approval by the Secretary of Commerce and Communications: Provided, That the rates fixed shall not be subject to revision by the Public Service Commission.

"SEC. 2132. Collection and application of tolls.—In the exercise of the authority hereinabove conferred, the provincial board may erect toll gates or equip ferries and may employ the persons necessary to operate the same. The proceeds derived from such sources shall be applied only to the payment of interest and sinking fund charges in case the toll road or bridge has been financed from loans or bond issues, and to the repair and maintenance of the road, bridge or ferry for which the collections are made: Provided, That the collection of tolls on roads and bridges shall be discontinued when adequate funds have been collected to repay or retire the indebtedness."

Since January 1, 1933, the auto-trucks of the plaintiff passing over said Cabu Bridge were obliged to pay said tolls in violation of the provisions of said Act No. 3965; that the plaintiff has demanded reimbursement of said tolls illegally collected but the defendant has refused to make said reimbursement and continues to demand said illegal

tolls and will continue so to do unless restrained by injunction. The plaintiff prays for a temporary injunction and for a judgment declaring said resolution 313 series of 1932 of the defendant to be null and void; for judgment against the defendant for all tolls illegally collected as aforesaid; and that upon final hearing the injunction be made permanent.

The defendant filed a demurrer alleging that the allegations of the petition do not state a cause of action. On September 22, 1933, the court a quo sustained said demurrer on the ground that said resolution No. 318 series of 1932 of the provincial board of Nueva Ecija is valid because section 2131 of the Administrative Code as amended by Act No. 3965 "expressly permits the defendant to designate any bridge as a toll bridge for the proper maintenance of any provincial road within the province." No reason is given for dismissing the complaint without giving the petitioner the opportunity to amend.

The appellant submits the following assignments of error:

"1. The trial court erred in holding that the complaint does not state facts sufficient to constitute a cause of action.

"2. The lower court erred in dismissing the complaint without giving the plaintiff an opportunity to amend it."

We think the second error assigned is well taken and should be sustained. (See section 101 of the Code of Civil Procedure.) The argument of the appellee that it is impossible for the plaintiff so to amend its petition as to state a cause of action and therefore the opportunity to amend would only result in a useless delay, assumes too much. The basis of the plaintiff's cause of action is the nullity of the said resolution No. 318 of the provincial board of Nueva Ecija. Even if it should be held that said resolution does not contravene Act No. 3965—upon which question we express no opinion on this appeal—the petitioner may have other grounds to establish the nullity of said resolution which it should be permitted to set up by amendment of its petition. Undoubtedly, where it is manifest that a petitioner has stated his whole case in his petition and no amendment thereof could render it proof against a demurrer, the court may dismiss the petition when it sustains a demurrer. If this were not so, the right of amendment might be abused and the resort to fictitious and inconsequential amendments calling for renewed and repeated demurrers would delay the case and convert the proceeding into a travesty. But in the case before us the petition was dismissed on the first demurrer and there is nothing in the decision of the court below nor in the record which indicates any ground for denying the petitioner the opportunity to file an amended petition.

The judgment is reversed with costs against the appellee.

Each province is a political body corporate which, among other powers granted by section 2067 of the Administrative Code, may sue and be sued. Hence it may be held for the costs in a civil action. (Cf. *Palanca vs. City of Manila and Trinidad*, 41 Phil., 125, 133.)

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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