

MARIO BENGZON AND PROTACIO CLARIN, PETITIONERS, VS. THE AUDITOR GENERAL AND THE COMMISSIONER OF CIVIL SERVICE, RESPONDENTS.

G.R. No. 46650. September 23, 1939

Ponente: MORAN, J.

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MORAN, J.:

A petition for mandamus.

Petitioner Mario Bengzon seeks to compel the Auditor-General and the Commissioner of Civil Service to pay to him the gratuity belonging to ex-Justice of the Peace Protacio Clarin, who was retired under the provisions of Commonwealth Act No. 331. The petition rests upon a special power-of-attorney executed in favor of the petitioner by said Protacio Clarin, wherein the former was authorized to receive from the proper authorities the gratuity to which the latter was entitled under the law.

This Court, by resolution of April 26, 1939, ordered that Protacio Clarin be included in this action as petitioner, he being an indispensable party, and on April 29, 1939, an amended petition was filed, wherein Protacio Clarin and Mario Bengzon appeared to be the petitioners, represented by the latter as attorney.

It appearing from the exhibits filed by the respondents that Protacio Clarin has given no authority to attorney Mario Bengzon to file this action against the respondents, and it appearing further that Protacio Clarin had, on two subsequent occasions, repudiated the special power-of-attorney relied upon by Mario Bengzon, we hold that the respondents, Auditor General and Commissioner of Civil Service, cannot be said to have neglected to perform the duties enjoined to them by law in refusing to pay to the petitioner, Mario Bengzon, the gratuity in question.

Petition is denied, and writ of preliminary injunction dissolved, with costs against petitioner.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

RESOLUTION

January 11, 1940

MORAN, J.:

Petitioner Mario Bengzon moves for the reconsideration of the decision of this Court in G. R. No. 46650, promulgated September 23, 1939, on the ground that he has not been accorded an opportunity to be heard.

The record discloses, and the petitioner so admits, that on May 19, 1939, he was advised of the resolution of this Court of May 18, 1939 wherein it was ordered that the case "be included in the next court calendar." The rules of this Court, of which the petitioner must necessarily be charged notice, specify the date when the calendars shall be

called and cases assigned for hearing. (Rule 30, Supreme Court.) Not having appeared at the date specified in said rules, petitioner is deemed to have waived his right to hearing and to have submitted the case for decision without argument.

Petitioner urges certain matters obviously foreign to the issue involved in his petition for mandamus. This Court denied the petition upon the sole ground that, in the light of the circumstances under which the respondents Auditor General General and Commissioner of Civil Service have acted, they cannot be said to have neglected to perform the duties enjoined to them by law in refusing to pay said petitioner the gratuity in question. Nothing has been said with respect to the validity and enforceability of the power of attorney, it being a matter proper to be determined, not in an action for mandamus against the Auditor General and Commissioner of Civil Service, but in an ordinary action in courts of general jurisdiction, wherein both parties may introduce evidence thereon. Pronouncements have been cautiously avoided Which might in any way be construed to close the doors to the petitioner and Protacio Clarin in the vindication of their respective claims against one another in the proper action or proceeding. The rights to which the conflicting claimants are entitled are in no wise foreclosed by the decision of this court.

Petitioner alleges that this Court has not made a careful study of the pleadings and all the issues involved in the case. In every litigation, courts have to decide no more than the real issues of the case and are not bound to follow every collateral matter that parties may choose to urge. It should be observed that remarks of this nature certainly are not only unwarranted, but may constitute a sufficient ground for disciplinary action. No such action, however, need be taken in this respect under the circumstances except to make the admonition that, while attorneys may tolerably conduct their case with utmost zeal and earnestness, they should, however, always guard against such excesses of passion as would render them oblivious of their duties of respect and loyalty to the Court of which they are officers.

Motion for reconsideration is denied.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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