

BOARD OF TRANSPORTATION, PETITIONER, VS. HONORABLE JOSE P. CASTRO AND HONORABLE ERNANI CRUZ PAÑO, PRESIDING JUDGE, BR. IV AND EXECUTIVE JUDGE, RESPECTIVELY, OF THE COURT OF FIRS...*G.R. No. 53431. October 27, 1983*

Ponente: GUERRERO, J.

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Petition for mandamus and certiorari praying that the restraining order issued by respondent Judge Ernani Cruz Paño, Executive Judge of the former Court of First Instance of Rizal (Quezon City) in Civil Case No. Q-29194, entitled "Greater Manila Federation of Jeepney Operators and Drivers Association, Inc. vs. Board of Transportation, represented by Hon. Don Ferry as BOT Chairman" enjoining the transfer of the offices of petitioner from the Gutierrez-David Building in Quezon City to the Sandoval Building in Pasig, Metro Manila be dissolved and that the aforesaid civil case be dismissed.

Petitioner's offices were located at Gutierrez-David Building, corner Panay Avenue and Scout Reyes Street, Quezon City. Sometime on December 10, 1979, Minister of Transportation and Communications Jose P. Dans, Jr., in a letter-memorandum to the President of the Philippines, recommended, among others, the transfer of the offices of the Board of Transportation from Quezon City to a two-storey building in Pasig, Metro Manila for the reason that the building where the offices of the BOT are housed is also occupied by other offices, hence, BOT offices are accessible to fixers and unofficial personnel.

Petitioner, upon instruction of its Chairman, began transferring its records. On January 28, 1980, private respondent filed a petition for prohibition and/or injunction with preliminary injunction, seeking to prevent the proposed transfer to Pasig, Metro Manila, on grounds that it is illegal, in grave abuse of discretion, in gross defiance of law and highly inimical not only to the interest of private respondent but to the government and the public as well; that the proposed transfer will cause difficulties to utility operators and drivers in going to, and from Pasig, more especially when the government has imposed a ban against jeepneys cruising along E. de los Santos Avenue; that the inefficient service of Republic Telephone Company which has the exclusive franchise to operate a telephone system in Pasig will make it very difficult to make contact with the new BOT offices.

On the same day, respondent Executive Judge Ernani Paño, pending raffle of the case to a specific branch, issued a temporary restraining order enjoining the Chairman of the BOT from implementing the transfer. The hearing on the application for preliminary injunction was set on February 5, 1980.

On February 12, 1980, petitioner filed a motion to dismiss on grounds that the petition is not sufficient in substance and that it states no cause of action. It was alleged in the motion that under Section 2, Rule 65 of the Rules of Court, petition for certiorari may be filed by a person aggrieved by the proceedings of a tribunal, corporation, board, conducted without jurisdiction, in excess of jurisdiction or with grave abuse of discretion; that the "person aggrieved" means a person whose legal rights had been violated, one who suffers a legal wrong; that

the alleged difficulties and hardships to respondent's members mentioned in their petition are not the wrong or injury contemplated by the Rules of Court; that BOT decided to transfer its offices for the following reasons: (1) Gutierrez-David Building is also occupied by other offices, hence BOT cannot effectively control the activities of fixers; (2) Other offices in the aforesaid building share common entrance and facilities, hence the records of BOT are not secured; (3) The Sandoval Building in Pasig, Metro Manila is new and precisely constructed to fit the needs of BOT; and (4) To be near the Ministry of Transportation of which BOT is a part and thus have easier and better coordination with the Ministry.

On February 19, 1980, the President approved the transfer of the offices of the BOT. On February 20, 1980, BOT filed a manifestation and motion requesting that the temporary restraining order be lifted and the application for preliminary injunction be resolved. On February 25, 1980, BOT filed a supplement to the aforesaid manifestation and motion informing the lower court that (1) the Ministry of General Services has approved the lease agreement over the building in Pasig, Metro Manila for a period of one year; (2) the President has approved the transfer of its offices; (3) that it received a letter from the lessor of Gutierrez-David Building that the same has already been leased to the National Telecommunications Commission effective February 15, 1980.

For failure of respondent Judge Jose P. Castro, to whom the case was assigned, to resolve the motion for the dissolution of the restraining order, the motion for issuance of a writ of preliminary injunction and the motion to dismiss, the present case was instituted before this Court.

The core of petitioner's argument in the present petition is the inaction for an unreasonable length of time of respondent Judge Jose P. Castro on the motion for immediately resolution of the application for a writ of preliminary injunction and on the motion for dissolution of the restraining order. Such inaction, amounting to grave abuse of discretion and tantamount to lack of jurisdiction, practically paralyzed the operations of petitioner to the detriment of public interest considering that some of the records of BOT were already transferred to Sandoval Building while most of the records were already packed and ready to be transferred when the restraining order was issued. Petitioner likewise prays that this Court resolve its motion to dismiss instead of remanding the case to the lower court because the issue raised in said motion is one of law --- whether private respondent has the right to prohibit or enjoin petitioner from transferring its offices.

In the resolution of this Court dated April 11, 1980, respondents were required to file answer to the petition and the case was set for hearing on April 11, 1980 which was reset on April 21, 1980. Private respondent, in its answer dated April 17, 1980, alleges that as taxpayers, its members are legally entitled to bring this suit against the proposed transfer of BOT because the building rental with the owner of Sandoval Building in Pasig has been increased to P33.00 per square meter compared to P13.00 per square meter in Gutierrez-David Building; that under Section 10 of the Public Service Act, the Public Service Commission (now BOT) is mandated "to have its office in the City of Manila or at such other place as may be designated"; that BOT has a correlative obligation to stay in Manila or at its present site, the latter being declared as a National Government Center; that when BOT decided to transfer as it did transfer part of its records to a site in Pasig, the BOT violated the law creating it, at the same time, causing injury or wrong prejudicial to private respondent's primary right to deal with the BOT at its site mandated by law. Furthermore, private respondent claims that under LOI No. 767 before a head of ministry, bureau or agency can enter into a contract, the chief accountant concerned must certify that funds are available from allotments actually released by the Ministry of Budget. However, in the present case, in the contract of lease entered into by and between petitioner and the owner of Sandoval Building, the amount certified to as available by the BOT Chief Accountant is only equivalent to one month rental instead of the rentals for one year as required by the aforesaid LOI No. 767.

On April 21, 1980, this Court, after hearing, issued a temporary restraining order enjoining respondent judges and

their representatives from stopping the transfer of the offices of petitioner BOT from the Gutierrez-David Building in Quezon City to the Sandoval Building in Pasig, Metro Manila. The offices of BOT are now located in Pasig, Metro Manila.

The main issue in this petition is whether or not respondent Judge Jose Castro acted with grave abuse of discretion when he failed to act immediately and without delay on petitioner's motion to lift the restraining order and private respondent's motion for a writ of preliminary injunction.

We find merit in the petition.

Respondent Judge Jose Castro committed grave abuse of discretion in failing to resolve without considerable delay, petitioner's motion for the dissolution of the restraining order and private respondent's motion for the issuance of a writ of preliminary injunction. It must be noted that the present case was filed before the lower court on January 28, 1980 and on the same day respondent Judge Ernani C. Paño issued ex-parte and without bond, the questioned temporary restraining order. The application for the issuance of a preliminary injunction was heard on February 5, 1980 but respondent Judge Jose Castro failed to rule on the motion. During the hearing on February 19, 1980, BOT again vigorously pressed for the resolution of the aforesaid motion and for the lifting of the restraining order but despite repeated plea, the request of BOT went unheeded which prompted it to file this case before this Court on March 21, 1980.

Respondent Judge should have acted on the pending matters before it. At the time the restraining order was issued, some of the records of BOT were already transferred to the Sandoval Building in Pasig, while most of the other records were already packed and ready to be transferred. Due to the restraining order, the operations of BOT were hampered causing prejudice to persons who have transactions with the BOT. It must be remembered that a restraining order is an order to maintain the subject of the contro-versy in status quo until the hearing of an application for a temporary injunction. Unless extended by the court, a restraining order ceases to be operative at the expiration of the time fixed by its terms. In cases where it has been granted ex-parte as in this case, it may be dissolved upon motion before answer.[1] Due to the indiscriminate issuance of ex-parte restraining order, Section 5 of Rule 58 of the Rules of Court was amended on April 16, 1982 by Batas Pambansa Blg. 224 which reads:

"Sec. 5. Preliminary injunction not granted without notice; issuance of restraining order. - No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the judge must cause an order to be served on the defendant requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated."

Under the said provision, a judge may issue a temporary restraining order with a limited life of 20 days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. A temporary restraining order can no longer exist indefinitely for it has become truly temporary.[2]

One of the reasons why the aforesaid amendatory provision was adopted is to prevent and/or correct the deplorable situation, as in the present case, resulting from the inaction of a judge on a motion to lift a restraining

order for an unreasonable length of time. The questioned restraining order was issued on January 28, 1980 but after a lapse of fifty-two (52) days from said date up to the time when the present petition was filed before this Court, no action has been taken on the motion to lift the same despite repeated requests. Respondent Judge Castro overlooked the fact that transportation services are affected by a high degree of public interest, hence, he should have resolved the pending motions expeditiously and without delay.

Instead of remanding this case to the lower court, We deem it wise to rule on the legality of the transfer inasmuch as public interests demand the early disposition of the case. It should be underscored that the transfer of the BOT offices from Gutierrez-David Building to Sandoval Building was approved by the President.[3] The BOT Chairman, in proposing the transfer, and the Minister of Transportation and Communications, in recommending the transfer to the President, must in the very nature of things, be familiar with the facts, circumstances and problems which necessitate the transfer. The reasons cited by BOT in transferring its offices: to curb the activities of fixers, to insure security of its records, to have a work area conducive to efficiency, to be near the Ministry of Transportation of which BOT is a part, are undisputably valid ones which private respondent cannot question for it deals purely with matters of administering the BOT offices.

On the other hand, it admits of no doubt that the President certainly had in his possession the necessary information and data at the time he approved the transfer. Such factual foundation cannot be defeated by private respondent's naked assertions that the transfer is disadvantageous to the government and will cause untold difficulties to the members of the association of private respondent which incidentally is only a segment of the public dealing with the BOT. Furthermore, the determination of whether the location of BOT offices will best serve the interest of the public dealing with it, lies within the discretion of the President. Such discretionary power vested in the President is not subject to contrary judgment or control of others, in the absence of arbitrariness and grave abuse. In general, courts have no supervisory power over the actions of the administrative department of the government like the BOT. This is particularly true with respect to acts involving the exercise of judgment or discretion.

Finally, it is apparent that private respondent, before seeking judicial intervention, should have pursued their plea to the Ministry of Transportation and Communications and eventually to the President, remedies that are plain, speedy and adequate in the ordinary cause of law. Plainly, private respondent did not exhaust this remedy. Settled is the rule that if a litigant goes to court without first pursuing his administrative remedies, his action is premature or he has no cause of action to ventilate in court. His case is not ripe for judicial determination.[4] On this point alone, respondent judge should have dismissed the case.

WHEREFORE, the petition is granted. The questioned Order dated January 28, 1980 of the court a quo is SET ASIDE and REVERSED. Civil Case No. Q-29194 is hereby ordered dismissed. No costs.

SO ORDERED.

Concepcion, Jr., and Escolin, JJ., concur.

Aquino, J., see concurrence.

Abad Santos, J., this is a clear example of judicial officiousness.

Makasiar, (Chairman), no part.

De Castro, J., on leave.

[1] *Anglo-Fil Trading Corporation, et al. vs. Hon. Alfredo Lazaro, et al.*, G.R. No. 54958, and *Philippine Integrated Port Services, Inc. vs. Hon. Alfredo Lazaro, et al.*, G.R. No. 54966, promulgated on September 2, 1983.

[2] Apolonio Dionisio, et al. vs. Court of First Instance of South Cotabato, Branch II, G.R. No. 61048, promulgated on August 17, 1983.

[3] p. 106, Rollo.

[4] Aboitiz and Co., Inc. vs. Collector of Customs, 83 SCRA 271; Allied Brokerage Corporation vs. Commissioner of Customs, 40 SCRA 555.

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CONCURRING OPINION

AQUINO, J.:

I concur. The frivolous and unprecedented action of the jeepney and driver's association should have been dismissed outright for lack of cause of action. If the Court of First Instance could not issue an injunction against the Public Service Commission, then it cannot similarly enjoin the Board of Transportation, a quasi-judicial body which succeeded the PSC (Ambrosio vs. Salvador, L-47651, December 11, 1978, 87 SCRA 217).

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