

Emiliano M. Perez, Petitioner-appellant, vs. The City Mayor of Cabanatuan, et al., Respondent-appellees, G.R. No. L-16786, October 31, 1961, De Leon, J.

1. SECRETARY OF HEALTH; SUPERVISION AND CONTROL OF GOVERNMENT HOSPITALS; AND REGULATIONS TO GOVERN HOSPITAL FINANCING.— Section 7 of the Hospital Financing Law (Republic Act No. 1939) vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations, (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing.
2. ID.; FUNDS FOR THE CONSTRUCTION OF PROVINCIAL HOSPITAL; MANDAMUS; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— Circular No. 262, Department of Health, dated July 24, 1958 clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner had taken this step before coming to court.

HELD: There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held untenable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted.

D E C I S I O N

This is an appeal from a decision of the Court of First Instance of Nueva Ecija, dismissing a petition for mandamus seeking to compel the respondents to appropriate the sum of P24,983.12 from the general fund of Cabanatuan City to be paid to the Nueva Ecija Provincial Hospital.

In his petition, the Chief of the Nueva Ecija Provincial Hospital, who claims to be the officer bound by law to administer and protect the interests of said hospital alleged that under section 2(a) of Republic Act No. 1939, otherwise known as the Hospital Financing Law, which took effect on June 22, 1957, the City of Cabanatuan is under obligation to appropriate by ordinance at least 7% of its annual general income as contribution for the support of the hospital; that, accordingly, for the fiscal year 1957-58, the amount of P24,983.12 should have been appropriated by the city council for that purpose because the city then had an annual general income of P555,700.00, but only P10,000.00 of said amount was set aside, leaving a deficiency of P24,983.12. It is this last mentioned amount that is the object of the action for mandamus against the City Mayor, the Municipal Board and the City Treasurer of Cabanatuan.

After the filing of the answer by the respondents, the case was submitted for judgment on the pleadings. Whereupon, the lower court rendered judgment dismissing the petition on the ground that the petitioner is not the real party in interest. Insisting that he has the right to bring the action for mandamus,

the petitioner has appealed directly to this Court.

The appeal cannot prosper.

Section 7 of the Hospital Financing Law vests upon the Secretary of Health the supervision and control over all the government hospitals established and operated under the Act and empowers him to promulgate rules and regulations to implement its provisions. Pursuant to this section, the said Secretary has promulgated rules and regulations (Circular No. 262 of the Department of Health, dated July 24, 1958) to govern hospital financing. It is provided under section 3(c) thereof that:

"(c) In case of failure on the part of the province, city and/or municipality concerned to provide for and remit their respective obligations, as provided for in sections 2(a) and 2 (2) of the Act, the Secretary of Finance, upon recommendation of the Secretary of Health and the Auditor General, shall order the withholding of the amount needed from their respective shares in the Internal Revenue allotments."

The above-quoted rule clearly specifies the proper course and the particular official of the Department of Health who, with the Auditor General, may pursue the said course whenever any province, city and/or municipality fails to provide and remit their respective contributions under the Hospital Financing Law. There is no mention whatsoever that the chief of a provincial hospital may bring any action against the province, city and/or municipality concerned in order that the latter may be made to give their contributions. Under the circumstances of the present case, the most that the herein petitioner could do is to report to his superior official the failure of respondents to set aside the amount that the City of Cabanatuan is obliged to give for the support of the provincial hospital of which he is the chief. The record does not show that petitioner has taken this step before coming to court. There being an appropriate administrative remedy — plain, speedy and adequate — that could have first been availed of by petitioner, his action for mandamus is, therefore, premature. Special civil actions have been held untenable if superior administrative officers could grant relief (Peralta vs. Salcedo, G.R. No. L-10771, April 30, 1957). In other words, no recourse to the courts can be had until all administrative remedies have been exhausted (Peralta vs. Salcedo, G.R. No. L-10771, *supra*; Panti vs. The Provincial Board of Catanduanes, G.R. No. L-14047, January 30, 1960; Booc vs. Osmeña, Jr., G.R. No. L-14810, May 31, 1961; De la Torre vs. Trinidad, G.R. No. L-14907, May 31, 1960).

In view of the foregoing, the decision of the lower court dismissing the petition for mandamus is hereby affirmed, without pronouncement as to costs.

Padilla, Bautista Angelo, Labrador, Concepcion, J.B.L. Reyes, Paredes and Dizon, JJ., concurred.

Barrera, J., took no part.

XII

Board of Liquidators, Petitioner-Appellant, vs. Ezequiel Floro, et al., Oppositors-Appellees, G.R. No. L-15155, Dec. 29, 1960, Reyes, J.B.L., J.

1. BOND; IT STANDS AS GUARANTY FOR A PRINCIPAL OBLIGATION.— A bond merely stands as guaranty for a principal obligation which may exist independently of said bond, the latter being merely an accessory contract.
2. NOVATION; REQUISITES. — Novation is never presumed, it being required that the intent to novate be expressed clearly and unequivocally, or that terms of the new agreement be incompatible with the old contract.
3. ID.; EXTENSION OF PERIOD OF PAYMENT OR PERFORMANCE NOT NOVATION.— A mere extension of the term (period) for payment or performance is not novation.
4. INSOLVENCY; PROCEEDINGS TO SET ASIDE FRAUDULENT TRANSFERS BE BROUGHT BY ASSIGNEE.— Under section 36, No. 8, of the Insolvency Act, all proceedings to set aside fraudulent transfers should be brought and prosecuted by the assignee, who can legally represent all the credit-