

SECOND DIVISION

[G.R. No. 168350, January 31, 2008]

**PERCIVAL A. CENDAÑA, Petitioner, vs. CIRILO A. AVILA,
Respondent.**

R E S O L U T I O N

QUISUMBING, J.:

For review on certiorari is the Resolution^[1] dated June 2, 2005 of the Court of Appeals in CA-G.R. SP No. 89750, which dismissed the petition for certiorari with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction filed by herein petitioner.

The facts are undisputed.

On January 7, 2003, herein respondent, Cirilo A. Avila, joined the Land Transportation Office (LTO) as Director II of its Law Enforcement Service. While in office, Avila was conferred a Certificate of Career Service Executive Eligibility by the Civil Service Commission.

On January 11, 2005, petitioner Percival A. Cendaña was appointed to the same position by President Gloria Macapagal-Arroyo. Cendaña took his oath of office and assumed the duties of Director II of the LTO's Law Enforcement Service. The LTO immediately issued an order directing Avila to formally turn over his post to Cendaña. The LTO likewise issued a memorandum to all LTO officials announcing the new appointment.

Aggrieved, Avila filed in the Regional Trial Court (RTC) of Quezon City, Branch 222 a petition^[2] for quo warranto with a prayer for the issuance of a writ of preliminary injunction. The RTC granted the injunctive relief applied for, thus:

WHEREFORE, premises considered, let a **Writ of Preliminary Injunction** issue directing respondent Percival A. Cendaña, and all persons acting for and his own behalf, to immediately cease and desist from taking over and assuming the functions and/or duties and responsibilities of the Office of the Director II for Law Enforcement Service of the Land Transportation Office or from otherwise exercising any and/or all acts exclusively to petitioner and from further disturbing or interfering with his functions as such until further orders from this Court and/or unless restrained by higher judicial authority, upon the filing of a bond in the amount of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)** executed in favor of the said respondent to answer for all damages to be sustained by the latter by reason of the injunction, should the Court finally determine that the petitioner is not entitled thereto.

Let the writ and a copy of this Order be served on the defendant by Sheriff IV Neri G. Loy of this Branch, at petitioner's expense.

SO ORDERED.^[3]

Cendaña filed in the Court of Appeals a petition for certiorari with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The appellate court dismissed the said petition, to wit:

WHEREFORE, for being procedurally flawed, at the very least, this petition for certiorari, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, must be as it hereby is, **DENIED DUE COURSE** and consequently **DISMISSED**.

Needless to say, since the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is merely an adjunct to the main suit, the same must be pro tanto **DENIED**.

SO ORDERED.^[4]

Undaunted, petitioner Cendaña then filed the instant petition for review on certiorari anchored on the following grounds:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISMISSING THE PETITION BEFORE IT ON THE GROUNDS THAT (1) PETITIONER DID NOT STATE THE "ACTUAL" ADDRESSES OF THE PARTIES; (2) PETITIONER DID NOT MANIFEST HIS WILLINGNESS TO POST BOND IN HIS PRAYER FOR A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION; AND (3) PETITIONER DID NOT FILE A MOTION FOR RECONSIDERATION BEFORE FILING THE PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISMISSING THE PETITION BEFORE IT IN COMPLETE DISREGARD OF THE RULE THAT CASES SHOULD BE DETERMINED ON THE MERITS, NOT ON TECHNICALITIES.^[5]

Petitioner contends there was no need to state his address in the petition for certiorari because notice to his counsel, the Office of the Solicitor General, is notice to him. Petitioner argues, his failure to manifest willingness to post a bond in his prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction should not adversely affect the merits of his petition. Petitioner stresses, immediate recourse to the Court of Appeals through a petition for certiorari is justified because the questioned RTC Order is a patent nullity. Petitioner insists that the appellate court erred in dismissing the petition for certiorari on a technicality instead of ruling on its merits.

Respondent, however, counters that the subject Resolution of the appellate court,

which dismissed the petition for certiorari, cannot be the subject of a petition for review. Respondent maintains the petition for certiorari filed in the Court of Appeals and the instant petition for review are both frivolous and intended merely for delay. Respondent stresses that the addresses of the parties must be stated in initiatory pleadings to determine venue and jurisdiction. Respondent points out that petitioner failed to prove the alleged patent nullity of the RTC Order to justify immediate recourse to a petition for certiorari.

After a thorough consideration of submissions by the parties, we are in agreement that the petition is without merit.

Under Section 3, Rule 46 in relation to Section 1, Rule 65 of the Rules of Court, a petition for certiorari shall contain the actual addresses of all the petitioners and the respondents, thus:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – **The petition shall contain the full names and actual addresses of all the petitioners and respondents,** a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing