SUPREME COURT
SECOND DIVISION

HARRY STUART SCOTT,
***Petitioner*,**

-versus-

G.R. No. L-38868
December 29, 1975

HONORABLE AMADO G. INCIONG, CHAIRMAN, NATIONAL LABOR RELATIONS COMMISSION and WHITE EAGLE OVERSEAS OIL CO., INC.,
***Respondents*.**
x----------x

D E C I S I O N

FERNANDO, *J.*:

To lend plausibility to this *Certiorari* and prohibition suit, which challenges an order of Amado G. Inciong, Chairman of the National Labor Relations Commission, requiring a hearing officer of the former National Labor Relations Commission to conduct a hearing on the merits of a case and to prepare a decision within twenty days, it was alleged that it came too late, as there was a valid previous award or decision which had long since become final. It is in that sense then that there was an arbitrary exercise of power fitly characterized as capricious or whimsical and thus constituting a denial of due process. If such indeed were the case, as alleged by petitioner Harry Stuart

Scott, who was awarded the separation, termination and overtime pay sought from private respondent White Eagle Overseas Oil Co., Inc., then a fatal flaw is easily discernible. In the comment of private respondent, later considered as answer, it was pointed out that within the reglementary period, two days after receiving the decision, there was an urgent petition filed by it with the office of Chairman Inciong, one "conveniently omitted by petitioner," seeking the setting aside of the decision of the arbitrator and giving it an opportunity to be heard in the reinvestigation that should be conducted "in a proper, fair and regular manner."[1] There was no denial that no mention was made of such urgent petition in the reply of petitioner, but only that it could not be considered an appeal from the decision which therefore attained the stage of finality. Respondent Inciong was also asked to comment, and in such pleading, likewise considered as answer, submitted by Assistant Solicitor General Reynato S. Puno,[2] it was contended that the decision of the arbitrator was not final when the challenged order was issued and that moreover, the plain, speedy and adequate remedy in the ordinary course of law is to appeal such actuation to the Secretary of Labor and thereafter to the President of the Philippines. Both parties were required to submit memoranda. In the light of the pleadings of record, it cannot be concluded that petitioner has made out a case for certiorari and prohibition. We dismiss.

Petitioner Harry Stuart Scott filed a complaint against private respondent White Eagle Overseas Oil Co., Inc., with the National Labor Relations Commission Unit, Regional Office No. IV, Manila, for the recovery of separation, termination and overtime pay.[3] The case was assigned to Attorney Jose Placido, who after an unsuccessful effort at mediation, acted as arbitrator, with both parties given the opportunity to submit memoranda, private respondent being unable to present its memorandum after its motion for extension allegedly filed late was denied.[4] On March 28, 1974, a decision was handed down by the arbitrator awarding petitioner P462,241.96.[5] A copy thereof was received by private respondent White Eagle Overseas Oil Co., Inc. on April 3, 1974.[6] There it was alleged that on April 23, 1974, it filed what it termed a "Very Urgent Motion" to enjoin or restrain the execution of the decision and that the Commission should hear it on the merits.[7] It was then that respondent Amado G. Inciong, as Chairman, ordered a preliminary hearing on such motion

with a certain Attorney Roy Señares to conduct it.[8] Having previously moved for execution, petitioner objected.[9] On June 17, respondent Inciong, "without waiting [for] for the result of the preliminary hearing being conducted by Hearing Officer Señares made the following order (handwritten): Atty. Señares: Conduct a hearing on the merit[s] of the case. Finish hearing and prepare decision within 20 days from today. Sgd. Amado G. Inciong."[10] It was then contended that such order in effect declaring null and void the decision of the arbitrator Placido, which had become final and executory, amounted to a grave abuse of discretion for being a capricious or whimsical exercise of judgment.[11]

As previously noted in the comment of respondent White Eagle Overseas Oil Co., Inc., later on considered as answer, the allegation that the order had become final was vigorously disputed. As therein pointed out: "The decision and/or award of March 28, 1974, by Jose C. Tal Placido, was timely appealed to respondent Commission and hence did not become final as petitioner would like this Honorable Tribunal to believe. Petitioner maliciously omitted mentioning the filing of herein respondent's Urgent Petition, on April 5, 1974 before respondent Commission and conveniently limited himself to the subsequent Very Urgent Motion filed by herein respondent on April 23, 1974. Obviously, the said omission is a deliberate attempt to mislead this Honorable Tribunal into believing that the award, notwithstanding its alleged receipt by herein respondent on April 3, 1974, was filed before the respondent Commission only on April 3, 1974, was filed before the respondent Commission only on April 23, 1974, This Honorable Tribunal's attention is respectfully invited to the first allegation of respondent's Very Urgent Motion, which reads: 'That on April 5, 1974, herein respondent filed an Urgent Petition for Injunction and/or Restraining Order to enjoin Jose C. Tal Placido, arbitrator in the instant controversy: a. To desist from further proceeding in this case and to declare all proceedings had before him nugatory; or b. To set aside any decision or award, should any be rendered by said arbitrator pending resolution of this petition, on the ground that the proceeding was conducted in a highly irregular manner.' For all intents and purposes, respondent's Urgent Petition filed with the respondent Commission on April 5, 1974 may be considered as an appeal pursuant to Presidential Decree No. 21 because the grounds on which said petition is based are the very

grounds provided for in said Presidential Decree No. 21."[12] It likewise stressed that this petition was equally devoid of merit in view of its being premature, the administrative remedies not having been exhausted. That point was discussed in the comment of respondent Inciong in terms of there being a plain, speedy and adequate remedy in the ordinary course of law. Thus: "One of the requisites for the issuance of the writs of certiorari and prohibition is that there should be no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, available to the petitioner (Section 1 and 2, Rule 65, Rules of Court). In the instant case, the act complained of may be brought to the Secretary of Labor for review within five (5) days from receipt of the NLRC's decision (Sections 1 and 6, NLRC Supplementary Rules and Regulations). The Secretary of Labor is required to decide the case within five (5) days from submission for decision (Section 6, ibid). The decision of the Secretary of Labor may in turn be appealed to the President of the Philippines (Section 22, NLRC Rules and Regulations). Without resorting to the above remedies which are undoubtedly speedy and adequate, petitioner filed the instant petition."[13]

It is thus readily apparent why, as already indicated, this petition lacks merit.

1. There is a threshold procedural question. It raises no difficulty. Private respondent, White Eagle Overseas Oil Co., Inc., would dispute our jurisdiction under the untenable assumption that the only remedy for a party aggrieved by a decision of an arbitrator in a labor dispute "is confined within the realm of the executive department of the government, namely, the National Labor Relations Commission, the Department of Labor, and the Office of the President of the Philippines."[14] Such a contention ignores the corrective power of this Tribunal by a writ of certiorari. While an appeal does not lie, it is available whenever a jurisdictional issue is raised or one of grave abuse of discretion amounting to a lack of excess thereof. More specifically, with reference to the National Labor Relations Commission, that has been the prevailing doctrine since Confederation of Citizens Labor Unions (CCLU) vs. National Labor Relations Commission.[15] This excerpt, from the

opinion of Justice Aquino in San Miguel Corporation vs. Secretary of Labor,[16] is in point: "Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor 'under the principle of separation of powers' and that judicial review is not provided for in Presidential Decree No. 21. That contention is a flagrant error. 'It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute.' 'The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions.' It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications. Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion."[17]

2. Now as to the merits. It is the impress of finality sought to be affixed in the decision of the arbitrator that could conceivably give rise to a due process question. For if it were true that it has reached the executory stage, what was done by respondent Inciong would be tainted by arbitrariness and caprice. Such is not, however, the case. As alleged in the petition itself, the decision was received by private respondent White Eagle Overseas Oil Co., Inc. on April 3, 1974. As pointed out in its comment, when it filed an urgent petition[18] duly verified on April 5, 1974, "a period of barely twenty-four (24) hours had elapsed although under section 2 of said Regulations No. 1, 'an appeal may be brought to the Commission within ten days upon receipt of the award by the aggrieved party.'"[19] How can it be alleged then that it could in law he considered as final and executory?

   As a matter of fact, from the due process angle, it is private respondent White Eagle Overseas Oil Co., Inc. that could conceivably complain. So it was made apparent in its urgent

petition in these words: “There is no better illustration of a deprivation of due process than what transpired in this proceeding. Thus, on March 21, 1974, respondent received a subpoena from arbitrator Jose C. Tal Placido advising of a hearing scheduled for March 23, 1974, at 4:00 p.m., or barely two days from said receipt. A day before the hearing, or on March 22, 1974, undersigned filed [for the very first time] an Urgent Motion requesting for cancellation of the hearing for March 23, 1974, as undersigned will attend a grade school graduation of his son at the De la Salle College. Prior to the preparation of said motion, however, undersigned contacted by telephone the complainant himself requesting for the latter’s conformity to the cancellation of the hearing and complainant graciously acceded to the request. Upon the filing of said Urgent Motion on March 22, 1974, Arbitrator Jose C. Tal Placido advised undersigned’s representative who filed the motion that the hearing is thus reset to March 29, 1974, at 4:00 p.m., notwithstanding that undersigned’s representative called the attention of said arbitrator that undersigned is scheduled to appear in the Court of First Instance of Balayan, Batangas for a hearing previously scheduled and hence, his calendar for said date would be tight. At any rate, said arbitrator insisted for said date stating that he will issue the corresponding subpoena to the parties concerned. In the morning of March 29, 1974, undersigned instructed his representative to verify from the arbitrator whether the scheduled hearing set for March 29, 1974, at 4:00 p.m. would proceed as no subpoena was received by respondent, as earlier stated by the arbitrator. Surprisingly, it was discovered only then that a hearing was supposedly conducted on March 23, 1974, at 4:10 p.m. whereat complainant testified and presented documentary evidence. We dare say that gross irregularity characterized by fraud was committed in this proceeding because: (a) Respondent was misled to believe by the arbitrator that the hearing of March 23, 1974 is to be reset to March 29, 1974, at 4:00 p.m. while on the part of complainant himself, he manifested his conformity to the postponement and that a formal Urgent Motion was filed a day before the hearing, or on March 22, 1974, for the reason mentioned therein; (b) Moreover, the

date chosen by the arbitrator when the supposed hearing was had on March 23, 1974, at 4:10 p.m., is a [Saturday], contrary to Gen. Order No. 40 prescribing a Monday to Thursday work. Notice may be taken of the fact that it was only on April 1st, 1974 when the President announced the resumption of the five-days-a-week work. On top of this, the National Labor Relations Commission released NLRC Memorandum-Circular No. II requiring all compulsory arbitrators to conduct hearings only during office hours, unless the parties themselves agree in writing to hearings outside office hours which agreement shall form part of the records of the case. No such written agreement was in fact entered into by the parties in this case."[20] There was no denial of the above recital on the part of petitioner in his reply to the aforesaid comment of private respondent White Eagle Overseas Oil Co., Inc. All that it stressed was that it could not rightfully be considered an appeal and that it was filed with the Office of the Secretary of Labor. At the most, such an approach is purely technical. The due process guarantee of justice and fairness is not to be whittled down or emasculated. It was a fitting response to its mandate when respondent Inciong issued the challenged order requiring an inquiry into the merits of the controversy. Such an actuation of a public official certainly cannot be stigmatized as the product of arbitrariness or caprice. Precisely, to paraphrase Daniel Webster, no man is to suffer the loss of liberty and property except in accordance with a law that provides for a hearing before condemnation, a regular process for ascertaining the facts of the dispute, prior to a decision or award being rendered.[21]

3. There is merit likewise to the contention of respondent Inciong reinforcing an argument raised by private respondent White Eagle Overseas Oil Co., Inc. that the writs of certiorari and prohibition cannot be granted as there is a plain, speedy and adequate remedy in the ordinary course of law. That remedy is administrative in character, the challenged order of respondent Inciong being susceptible to correction by the Secretary of Labor and, in the final analysis, by the President himself. In the recent case of

Nation Multi Service Labor Union vs. Agcaoili,[22] where an order of the Secretary of Labor affirming a decision of the National Labor Relations Commission created by Presidential Decree No. 21 was challenged, this Court held: "It is also a matter of significance that there was an appeal to the President. So it is explicitly provided by the Decree. That was a remedy both adequate and appropriate. It was in line with the executive determination, after the proclamation of martial law, to leave the solution of labor disputes as much as possible to administrative agencies and correspondingly to limit judicial participation. That was to reflect a trend both here and abroad to expedite the disposition of such cases. Unfortunately, private respondents were of different persuasion. They were not above the employment of a strategem the effect of which would be to countenance evasion. The judiciary must be alert to such tactics. In the more traditional language of the law, there should be an insistence on the exhaustion of administrative remedies. Lastly, from the procedural standpoint, it bears repeating that prohibition is available only if there is no remedy by appeal. Such is not the case here."[23] So should it be in this litigation.

4. In the comment of private respondent White Eagle Overseas Oil Co., Inc., it was alleged that petitioner "maliciously omitted mentioning the filing of herein respondent's Urgent Petition."[24] Such omission was further characterized as "a deliberate attempt to mislead this Honorable Tribunal into believing that the award was filed before the respondent Commission only on April 23, 1974."[25] There is no proof that there was such a condemnable effort on the part of petitioner to misrepresent the facts. At the most, that is an error of judgment by his counsel. It was his view that such urgent petition did not have the effect of preventing the award from reaching the stage of finality. As pointed out previously, that was an erroneous assumption. So the stricture against such failure may be undeserved. Nonetheless, it would be advisable for counsel in petitions of this character to set forth all the pleadings filed with either the lower court or an administrative agency. That way, this

> Tribunal would be in a better position to appraise its merit or deficiency. While the discretion of counsel in the presentation of what he deems relevant documents should not be unduly curtailed, it is still in the best interest of his client and in compliance with a duty owed a court of justice that nothing of consequence be left out. In case of doubt, it should be resolved against non-inclusion. In the final analysis, it is the appraisal of the judiciary, not the conclusion of counsel as to the significance of any pleading, that is decisive.

WHEREFORE, the petition for certiorari and prohibition is dismissed. Costs against petitioner.

Barredo, Antonio, Aquino and Concepcion, Jr., *JJ.*, concur.

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[1] Comment of Private Respondent White Eagle Overseas Oil Co., Inc.
[2] He was assisted by Solicitor Romeo de la Cruz.
[3] Petition, par. 2.
[4] Ibid, pars. 3, 4, 5.
[5] Ibid, par. 6 and Annex B.
[6] Ibid, par. 7.
[7] Ibid, par. 8.
[8] Ibid, par. 9.
[9] Ibid, pars. 10-11.
[10] Ibid, par. 12.
[11] Ibid, par. 13.
[12] Comment of Private Respondent White Eagle Overseas Oil Co., Inc., 5-6.
[13] Comment of Respondent Amado G. Inciong, 4-5.
[14] Comment of Private Respondent White Eagle Overseas Oil Co., Inc., 3.
[15] L-38955, October 31, 1974, 60 SCRA 450.
[16] L-39195, May 16, 1975, 64 SCRA 56.
[17] Ibid, 60. Cf. Firestone Filipinas Employees Association vs. Firestone Tire and Rubber Company of the Phil., L-37952, Dec. 10, 1974, 61 SCRA 339; Ong Tiao Seng vs. National Labor Relations Commission, L-39764, May 28, 1975, 64 SCRA 191; Nation Multi Service Labor Union vs. Agcaoili, L-39741, May 30, 1975, 64 SCRA 274; Antipolo Highway Lines, Inc. vs. Inciong, L-38532, June 27, 1975, 64 SCRA 441; Jacqueline Industries vs. National Labor Relations Commission, L-37034, August 29, 1975.
[18] Annex B to Comment of Private Respondent White Eagle Overseas Oil Co., Inc.
[19] Comment of Private Respondent White Eagle Overseas Oil Co., Inc., 6.

[20] Annex 1 to Comment of Private Respondent White Eagle Overseas Oil Co., Inc., 1-3.
[21] Cf. Lopez vs. Director of Lands, 47 Phil. 23 (1924); Ang Tibay vs. Court, 69 Phil. 635 (1940); Florendo vs. Florendo, L-24982, March 28, 1969, 27 SCRA 432.
[22] L-39741, May 30, 1975, 64 SCRA 274.
[23] Ibid, 281.
[24] Comment of Private Respondent White Eagle Overseas Oil Co., Inc., 5.
[25] Ibid.