ADMINISTRATIVE LAW

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While administrative law in its comprehensive sense covers the law governing the whole area of governmental action embracing the executive, legislative and judicial functions,[1] it can be properly limited, as suggested by one writer in distinguishing it from the law on public administration, to the law governing the "relation between the administrative organs of the government and the public or private parties."[2] And, while administrative law emphasizes governmental power and the corresponding duties of citizens, it is to administrative law that a redress of violated rights is addressed.[3] The violation of individual rights by administrative agencies being thus the main problem of administrative law, 1965 cases decided by the Supreme Court in this field invariably sought the limits of powers and duties of administrative agencies, checked the denial of due process in administrative procedure and outlined the proper steps for judicial review of their decisions.

JURISDICTION

Jurisdiction is the power and authority of a court or body to hear, try and decide a case.[4] Undoubtedly, a principal feature in the nomenclature of administrative agencies is that they are vested with functions that properly belong to the executive, legislative and judicial departments.[5] Thus, they are clothed with rule-making and adjudicative powers. In the exercise of these powers, the question of jurisdiction and the limits of its exercise inevitably comes up.

A. COURT OF INDUSTRIAL RELATIONS

CIR has no jurisdiction to check-off union dues

It is an established doctrine in this jurisdiction that in order for the Court of Industrial Relations to acquire jurisdiction over a controversy in the light of the Industrial Peace Act (R.A. No. 875), the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship, or the

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1 CORTES, PHILIPPINE ADMINISTRATIVE LAW (1963), 1.

2 SINCO, PHILIPPINE LAW OF PUBLIC ADMINISTRATION AND CIVIL SERVICE (1955), 6.

3 COMPARATIVE ADMINISTRATIVE LAW, quoted in Cortes, *supra*, note 1, page 2.

4 Herrera v. Barreto, 25 Phil. 245 (1913).

5 CORTES, *supra*, 12.

claimant must seek reinstatement; and (b) the controversy must relate to a case certified by the President to the Court of Industrial Relations as one involving national interest or must have a bearing on an unfair labor practice charge, or must arise either from the Eight-Hour Labor Law or the Minimum Wage Law.[6] In the case of *Oriental Tin Cans Workers Union v. CIR,*[7] petitioning union brought a case before the CIR to enforce a check-off agreement entered into by the employees and the employer which the latter, in spite of the union's request, refused to enforce. The CIR dismissed the case upon the ground that it has no jurisdiction over the subject matter. Upholding the Industrial Court's decision, the Supreme Court reiterated its ruling in the earlier case of *Campos, et al. v. Manila Railroad Company*[8] regarding the cases circumscribed as falling under the jurisdiction of the CIR and to which enumeration the present case does not belong. Petitioner, however, argued that the case comes under the Minimum Wage Law (R.A. 602), Section 10 of which provides that it is a statutory duty of the employer to check-off union dues when employees so authorize the same in writing. The Court found this unmeritorious saying that "with the effectivity of R.A. 875, not every case that arises under the Minimum Wage Law falls within the CIR jurisdiction." Citing the pertinent portions of the law,[9] the Court declared that in *only* two cases under the Minimum Wage Law does the CIR have jurisdiction and these are (a) when the wage claimed is above the applicable statutory minimum or (b) when the demand of minimum wage therein made involves an actual strike.

A certification election is within CIR's jurisdiction

In spite of the definite pronouncement of the Court in the case of *PAFLU v. Tan*[10] limiting the jurisdiction of the Court of Industrial Relations to only four cases enumerated therein and that in all cases, even if they grow out of a labor dispute, said Court *does not* have jurisdiction, the Supreme Court, in the case of *Cromwell Commercial Employees and Laborers Union v. CIR,*[11] ruled that under the provisions of R.A. No. 875, matters pertaining to certification election involving two or more unions are addressed to the jurisdiction of the CIR. And to escape the definitive enumeration of the PAFLU case, the Court made the qualification that although in *PAFLU v. Tan,* the Court enumerated cases when the Court of Industrial Relations can exercise jurisdiction, it does not follow

[6] Campos, et al. v. Manila Railroad Company, G.R. No. L-17905, May 25, 1962; Mercado v. Elizalde and Company, Inc., G.R. No. L-189, December 23, 1964.
[7] G.R. No. L-17695, 1965.
[8] Note 6, *supra.*
[9] Section 16, subsections (b) and (c), C.A. No. 602.
[10] 52 O.G., No. 13, 5836 (1956).
[11] G.R. No. L-19776, February 26, 1965.

that it is "bereft of jurisdiction" as in the certification case above.

CIR has no jurisdiction over agricultural workers of haciendas

In the case of *Elizalde v. Allied Workers Association of the Philippines*,[12] the Supreme Court ruled that the Court of Industrial Relations cannot claim jurisdiction over agricultural workers of haciendas because, citing Section 1 of R.A. No. 1267,[13] the Court of Agrarian Relations is the proper body to take cognizance of the case since it was created "for the enforcement of all laws and regulations governing the relation of capital and labor on all agricultural lands under any system of cultivation."

Grounds upon which CIR may reopen a case

An award, order or decision of the Industrial Court shall be valid and effective during the time therein specified. In the absence of such specification, any party or both parties to a controversy may terminate the effectiveness of an award, order or decision after three years have elapsed from the date of such award, order or decision by giving notice to that effect to the Court.[14] In the case of *PLASLU v. CEPOC*,[15] petitioners after the enactment of the Forty Hour A Week Law (R.A. No. 1880), filed a case with the CIR to direct respondent to pay them overtime pay for work performed as security guards on Saturdays. The CIR decided that petitioners were not entitled to overtime pay pursuant to the opinions of the Civil Service Commissioner and Executive Secretary.

A petition to reopen the case was filed by the petitioners with the CIR under the proviso of Section 17 of C.A. No. 103 permitting such petition to reopen. This was denied by the Industrial Court, relying upon the principle of *res adjudicata* and the Supreme Court ruling in *Pepsi-Cola Bottling Company v. Philippine Labor Organization*.[16] In this case it was held that a proceeding may be reopened only (a) upon grounds coming into existence after the order rendered by the CIR and (b) upon grounds not already litigated and not available to the parties at the former proceeding. The Supreme Court held that the CIR erred in denying the petition because the ground upon which it was based, namely, "that new rulings of the Office of the President and the GAO extending the benefits of the Forty Hour A Week Law to security guards came after the CIR decision," was not available to the petitioners at the time of the former proceedings. Therefore there was a valid ground to reopen the case.

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[12] G.R. No. L-20792, May 31, 1965.
[13] The law that established the Court of Agrarian Relations.
[14] Section 17, C.A. No. 103.
[15] G.R. No. L-20987, June 23, 1965.
[16] G.R. No. L-3506, January 31, 1951.

Basis of determining the jurisdiction of the CIR

Decidedly, the jurisdiction of a court is determined by the allegations in the complaint or petition.[17] Earlier, the Court ruled, however, that in case the petition contains allegations *conferring* jurisdiction on the Industrial Court, the question of jurisdiction depends ultimately "upon the facts of the case as proved at the trial and not merely upon the allegations in the complaint."[18] But when the allegations in the petition do not confer jurisdiction but rather assail the Court's jurisdiction, in a motion to dismiss, such motion must be resolved without waiting for trial. This was the burden of the Court's decision in the case of *Edward Nell Company v. Cubacub*[19] where it held that "it is a settled rule that the jurisdiction of a court over subject matter is determined by the allegations in the complaint; and when a motion to dismiss is filed for lack of jurisdiction, those allegations are deemed admitted for purposes of such motion so that it may be resolved without waiting for trial."[20] Thus, upon the filing of a motion to dismiss, it is error for the Industrial Court to defer the resolution of such motion until such time when developments may perhaps confer it jurisdiction.

In the same case, the Supreme Court reiterated the circumstances[21] which must be present before the CIR may take cognizance of a controversy. One of these is the presence of an employer-employee relationship which must exist at the time the case is filed with the CIR. Subsequent absence of such relationship may not affect the jurisdiction of the Industrial Court. Thus, in upholding the jurisdiction of the CIR in the other case of *NASSCO v. CIR*,[22] the Court held: "At the time this case was decided by the CIR, the three respondents . . . were actually employees of the petitioner although at the time of the filing of the motion for the continuation of overtime, they ceased to be such."

B. PUBLIC SERVICE COMMISSION

In the case of *Meralco v. PSC*,[23] the question as to whether or not the Public Service Commission has discretion to suspend the effectivity of its orders continuing existing service or prescribing rates was presented squarely before the Court. The Supreme Court

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[17] Administrator of Luisita Estate v. Alberto, G.R. No. L-12133, October 31, 1958; Suanes v. Almeda Lopez, 73 Phil. 573 (1942).

[18] Manila Electric Company v. Ortañez, et al., G.R. No. L-19557, March 31, 1964.

[19] G.R. No. L-20842, June 23, 1965.

[20] Citing the cases of Campos Rueda Corporation v. Bautista, G.R. No. L-18453, September 29, 1962; Abo v. Philame Employees and Workers Union, PTGWO, G.R. No. L-19912, January 30, 1965.

[21] Note 6, *supra*.

[22] G.R. No. L-20838, July 30, 1965.

[23] G.R. No. L-24406, June 29, 1965.

ruled in that case that the PSC has no such discretion, citing Section 33 of the Public Service Act (C.A. No. 146, as amended) which provides that "all orders of the Commission to continue an existing service or prescribing rates to be charged shall be immediately operative; all other orders shall become effective upon the dates specified therein." This case concerns the new rates asked by the Meralco which the PSC approved. Subsequently, however, the Commission deferred the effectivity of the new rates which prompted Meralco to file the above petition. Upholding the contention of Meralco, the Court ruled that the Public Service Law does not confer discretion on the Commission to suspend the effectivity of prescribed rates. If such was the intention of the legislative body, it should have made it clear in the law itself.

As a corollary to the main issue in the aforementioned case, the Court also rejected the contention of the PSC that one commissioner may hear and decide a motion for reconsideration. Although a commissioner may decide a case alone (uncontested cases except those pertaining to the fixing of rates) or in divisions (contested cases and all cases involving the fixing of rates) the law provides[24] that "any motion for reconsideration of a decision or non-interlocutory order of any commissioner or division shall be heard directly by the Commission *en banc* . . ." In which case, a commissioner is bereft of authority to decide the motion alone.

C. WORKMEN'S COMPENSATION COMMISSION

WCC has jurisdiction over claim for disability even if filed beyond statutory period

Fundamentally, a seasonable filing of a disability claim under the Workmen's Compensation Act is a requisite before a compensation proceeding shall prosper.[25] However, even if such claim is filed beyond the statutory period, failure on the part of the employer to controvert the claim within the period provided by law[26] bars all defenses on the part of the latter. In other words, in modern jurisprudence, an employer's defense of notice and claim may be waived. Thus, in the case of *Manila Railroad Company v. Manalang, et. al.*,[27] the Court ruled that the WCC had jurisdiction to give due course to a disability claim filed beyond the statutory two-month period because the petitioner (employer) failed to controvert

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[24] Section 3, C.A. No. 146, as amended.
[25] Section 24, Act No. 3428, as amended.
[26] On or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident (Section 45, Act No. 3428).
[27] G.R. No. L-20845, November 29, 1965.

the claim within the period provided by law. The Court, in dismissing the contention that the two-month period is an unwaivable jurisdictional requisite, held: "Conformably to the recent trend in jurisprudence, this court has in fact ruled that timeliness of notice or claim under Section 24 of the Act is not jurisdictional."[28] Hence, failure on the part of the employer to controvert a claim filed out of time is tantamount to a waiver of employer's defense of notice and claim.

Similarly, in *NDC v. WCC*,[29] the Court ruled that the WCC had jurisdiction over a disability claim even if filed beyond the two-month period if the employer has correspondingly failed to controvert such claim on time. And furthermore, the Court declared that the obligation of the employer to file the notice of controversion under paragraph 2, Section 45 of the Workmen's Compensation Act is *independent* of the filing by the employee of the notice of injury and the claim under Section 24.

C. BUREAU OF IMMIGRATION

Immigration Commissioner has jurisdiction to order aliens' departure

Petitioners in the case *Kwok Kam Lien v. Vivo*,[30] contended that the Immigration Commissioner acted with grave abuse of discretion amounting to a lack of jusidiction when said Commissioner promulgated Immigration Circular No. 101 providing that "authorized stay of all bonded alien temporary visitors who arrived in the Philippines in 1961 and prior years are hereby terminated and requests for extension of such periods will not be entertained." Upon the expiration of the authorized stay of petitioners, they were ordered to leave the country on the basis of the circular. Petitioners claimed that since the President of the Philippines invited investments of foreign capital in the country, their status as temporary visitors has been automatically changed to that of special non-immigrants covered by Section 47(a) (2) of the Immigration Act. The Court however rejected this argument and ruled that the Commissioner had jurisdiction to order the departure of aliens upon the termination of their authorized stay and that if the intention of the President had been to change the status of petitioners from temporary visitors to special non-imigrants, his directive should have said so — which it did not in the case at bar.

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[28] Century Insurance Company v. Fuentes, G.R. No. L-16039, August 31, 1961.

[29] G.R. No. L-20504, March 31, 1965.

[30] G.R. No. L-22354, March 31, 1965.

But in the case of *See Guan v. Commissioner*,[31] a different ground was interposed by petitioner to extend the stay of his wife and children, namely: that this petition for naturalization as a Filipino citizen having been approved, his wife and children are entitled to stay with him and therefore their stay must be extended. Analyzing the nature of the Immigration Commissioner's functions, the Court denied the contention of petitioner and ruled that "since the Commissioner of Immigration has no ministerial duty to grant ... petition for an extension of time, it is clear that a mandamus does not lie to compel him to do so." The decision granting Guan's petition for naturalization, the Court added, did not have the effect of imposing upon the Commissioner the duty to extend the stay of Guan's visitors. As a matter of fact, Guan was still an alien at the time of the petition for his oath-taking has been deferred until he shall have fulfilled other requisites imperative for his naturalization.

ADMINISTRATIVE PROCEDURE

It is almost trite to say that in the performance of adjudicative functions, administrative agencies are not bound by the technical rules of evidence observed by courts of justice.[32] Often, statutes specify the rules of procedure to be followed by these agencies. As a matter of fact, some agencies have been conferred the power to adopt their own rules.[33] But in most cases, administrative decisions have been reversed by the Supreme Court insofar as due process has been denied to the parties concerned although in one case[34] the Supreme Court declared that hearing — which has been traditionally held as an imperative requisite of due process — is not always necessary.

A. DUE PROCESS

1. Court of Industrial Relations

Appropriate hearing includes cross-examination

The fundamental question as to whether or not a rival union has the right to cross-examine a witness of the opposing union in a hearing to determine which union was to represent the laborers in collective bargaining with the employer, was raised in the case of *FEWA v. CIR*.[35] In this case, upon petition of the employer, the Industrial Court conducted trial to determine the union which will represent the laborers in collective bargaining. A motion to

[31] G.R. No. L-21811, November 29, 1965.
[32] CORTES, *supra*, 237.
[33] Section 20, C.A. No. 103, as amended (CIR); section 4, R.A. No. 180 (COMELEC); section 5, R.A. No. 1161 (SSC); section 11, C.A. No. 146 (PSC).
[34] Suntay v. People, 54 O.G. No. 6, 1796 (1957).
[35] G.R. No. L-20862, July 30, 1965.

cross-examine the sole witness of the rival union was granted to petitioner. Because of the witness' repeated absence however, a motion to strike off his testimony was filed. This motion was not acted upon and subsequently, without deciding the motion, the CIR decided the case on the merits thus depriving petitioner of its reserved right to cross-examine the witness of the rival union. The Supreme Court held that it was error for the CIR to do so because "the fairness that lies at the roots of due process therefore, exacts that the party moving to strike out the testimony be apprised of the Court's ruling before the case is submitted for decision."

In dismissing as untenable the Industrial Court's contention that cross-examination may be dispensed with, the Court said that while proceedings in cases of representation controversies are investigative in nature, they become of the adversary type when two rival unions claim representation and have to be decided according to "lawful evidence." And citing Section 12(b) of the Industrial Peace Act which provides for a speedy and *appropriate hearing* in such case, the Court interpreted this to mean that the intervening parties must be given opportunity not only to present their witnesses but also to cross-examine those of the adversary.

Opposition to certification hearing may be filed later

The sole issue in the case of *BCI Employees and Workers Unions v. Mountain Province Workers Union*[36] was whether or not petitioner was denied the right to oppose the request of the rival union for a certification election when at the hearing only the requesting union was present. The Supreme Court ruled that petitioner's oposition was not entirely ignored because said union filed its opposition four days thereafter and was taken into consideration by the Industrial Court.

2. COURT OF AGRARIAN RELATIONS

Parties to amicable settlement must sign it

In the case of *Cruz v. CAR*,[37] an alleged amicable settlement was entered into in open court by the parties concerned. However, the written agreement was not signed by the parties and upon the ground that some stipulations were excluded in the agreement, petitioner filed a motion to reconsider the Agrarian Court's decision based on the agreement. This was denied. The Supreme Court held that pursuant to Section 2 of Rule 9 of the Rules of the Court of Agrarian Relations, such amicable agreement, reduced to writing in the presence of the Court, should be signed by the parties.

[36] G.R. No. L-23813, December 29, 1965.
[37] G.R. Nos. L-22131-33, December 29, 1965.

Failure on the part of the parties to sign is error on the part of the Agrarian Court to make the agreement the basis of its decision.

3. PUBLIC SERVICE COMMISSION

Publication and notice to parties of PSC hearing must be complied with

Under Section 33 of the Public Service Act (C.A. No. 146, as amended), it is required that "every order made by the Commission shall be served upon the person or public service affected thereby, within ten days from the time said order is filed by personal delivery or by ordinary mail, upon the attorney of record, or in case there be no attorney of record, upon the party interested." In the case of *Olongapo Jeepney Operators Association v. PSC*,[38] petitioner claims that it has been deprived of its day in court when the Commission failed to notify it, as an interested party, of the hearing for the granting of a certificate of public convenience to another party within the period set forth in Section 33 of the Public Service Act. It appears that although there was publication of the notice of hearing, no affidavit attesting to the fact that mailing was made at least ten days before the date of hearing was presented. Failing to receive notice, petitioner failed to attend the hearing as a result of which the other party's application for a certificate of public convenience was granted. The Supreme Court found for the petitioner and in rejecting the Commission's contention that "publication is notice to the whole world," the Court ruled that the PSC order required, *in addition to publication*, individual notice to the operators affected by the application. This is not *alternative* but *conjunctive* and must both be complied with. Therefore, inadequate notification to interested parties resulted in oppositor's failure to be present at the hearing. Consequently, the PSC decision is void.

No denial of due process if PSC is not furnished motion for postponement

It is fundamental that a party should not speculate on the outcome of a case or in the success of the action he may take. If his failure to observe the proper procedure subsequently results in a decision adverse to his interest, he may not later complain that he has been denied due process.

Thus, the absence of petitioner in the trial in the case of *Dangwa Transportation Company v. PSC*[39] did not deprive it of its day in court because, as observed by the Supreme Court, the petitioner itself "was remiss in its duty concerning its motion for postponement of the trial scheduled first, in not furnishing copy of said

[38] G.R. No. L-20699, February 26, 1965.
[39] G.R. Nos. L-16899 & L-17026, October 20, 1965.

motion to respondent with notice of hearing thereof pursuant to Rule 26, Section 4; and second, in assuming that the postponement would be granted by not appearing at the trial."

4. WORKMEN'S COMPENSATION COMMISSION

When award may be made without notice and hearing

In the case of *Aboitiz Shipping Corporation v. Oqueria*,[40] the petitioner, as employer, failed to file the Employer's Report of Accident within the reglamentary period, resulting in the renunciation of its right to controvert the compensation claim of its laborer[41] nor did it bother to explain why it did not file the report within the required period. Because of this failure, the Court ruled that "an award can be made without previous notice and hearing" to the employer. Ordinarily also, notice of hearings should be sent to counsel. In this case notice was sent to petitioner itself. This was considered proper by the Court taking into account the fact that at the time of the award, petitioner's counsels had not, as yet, entered his appearance in the case.

5. DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

Due process complied with when party is given time to answer

In a case in which the question presented was a determination as to who has a better right to a disputed public land, the party who lost in *Jamisola v. Ballesteros*[41] alleged that he was deprived of due process by the Secretary of Agriculture and Natural Resources and that the Director of Lands acted with grave abuse of discretion in appraising the evidence and awarding the land to the other claimant. It appears however that petitioner was given thirty days within which to deny the other party's claim that petitioner should not have preferential right over the land on the basis of the "land for the landless" policy since petitioner owned landed property. The Supreme Court ruled that since petitioner was given sufficient time to answer, "it cannot be said that the procedure adopted by the Secretary for the expeditious resolution of the cases before his department, was so lacking in the fundamentals of fair play, that it infringed on appellants' right to due process of law."

The Court also held as unmeritorious the charge of grave abuse of discretion because it was not proved that the Director of Lands acted in a "capricious, whimsical exercise of judgment as is equivalent to lack of jurisdiction, as where the power is exercised in an

[40] G.R. No. L-20998, August 31, 1965.
[41] G.R. No. L-17466, September 18, 1965.

arbitrary or despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."[42]

6. COURT OF TAX APPEALS

Affidavits may be admitted as evidence

Claiming that the affidavits admitted by the Tax Court as evidence was hearsay, petitioner in the case of *Purakan Plantation Company v. Domingo*[43] was rebuffed by the Supreme Court when it ruled that: "It should be observed that R.A. No. 1125, creating the Court of Tax Appeals expressly provides that the Court shall not be governed strictly by technical rules of evidence (Sec. 8). Therefore, if the said Court believes that the affidavits in question should be admitted, a part of the testimony of the Internal Revenue agent, then it is substantially in conformity with the provisions of Section 8 of R.A. No. 1125."

B. PROCEDURE ON APPEAL

1. PUBLIC SERVICE COMMISSION

Proper motion for reconsideration may suspend period for appeal

In the case of *Caseñas v. Cabiguen*,[44] the errors alleged by petitioner delved mainly on a finding of fact of the PSC which was whether or not there was need for the granting of service applied for. However, the Court observed that in the original hearing of the case, petitioner's motion for reconsideration did not suspend the period for appeal to the Supreme Court. Impliedly, if the requisites for a motion for reconsideration have been followed, appeal to the Supreme Court would have been proper as such seasonable and proper motion for reconsideration would have suspended the period for appeal. Observed the Court: "The second motion for reconsideration therefore, did not suspend the period within which to appeal to this Court. First, because no leave to file a second motion had been asked and/or granted by the Commission. Second, because the said second motion is *pro forma*. On this score alone, the instant petition should be dismissed . . ." Having been filed out of time, the PSC ruling could not be appealed anymore to the High Court.

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[42] Citing the cases of Suarez v. Reyes, G.R. No. L-19828, February 28, 1963; People v. Marave, G.R. No. L-19023, July 31, 1964.

[43] G.R. No. L-18571, October 29, 1965.

[44] G.R. No. L-19807, August 10, 1965.

2. WORKMEN'S COMPENSATION COMMISSION

Respondents in the case of *Batangas Transportation Company v. Velando*[45] filed a claim for compensation with the Workmen's Compensation Commission. This was denied but subsequently, three motions for reconsideration were filed by respondents and finally the Commission held the employer liable to the respondents. The first motion was filed beyond the 15-day period required from the promulgation of the decision; the second motion was also filed beyond the reglamentary period and the last motion was filed more than a year from the promulgation of the decision. On appeal to the Supreme Court, it was held that the Commission acted with grave abuse of discretion bordering on lack of jurisdiction when it gave due course to the last motion because by that time, its decision had become final. The Court observed quite pointedly that although under the rules adopted by the Commission the Rules of Court shall be suppletory and the Commission shall not be bound by the technical rules of procedure, "this liberal spirit cannot be extended to a point where the Commission can no longer act for failure of the interested party to assert his right within the periods allowed for the perfection of the appeal."

3. COURT OF TAX APPEALS

Period for appeal counted from decision not from order of destraint

A petition to review a ruling of the Commissioner of Internal Revenue should be counted from the date of denial of a motion to set aside the Commissioner's assessment of tax liability. In the case of *Tuason & Legarda Ltd. v. Commissioner*,[46] it was shown that petitioner's request to set aside a tax assessment in the form of a request to destroy the merchandise subject to the tax was denied by the Commissioner. Subsequently, an order of destraint and levy was issued. Prior to this, a motion for reconsideration with the request to destroy the merchandise was denied by the Commissioner. A petition to review the Commissioner's ruling was denied by the Tax Court on the ground that it was filed beyond the 30-day period. It was contended by the taxpayer that the period to appeal the Commissioner's decision must be counted from the order of destraint and levy. This was rejected by the Supreme Court which affirmed the dismissal by the Tax Court. The Court ruled that the 30-day period must be counted from the denial of the second motion for reconsideration. Since more than three months had elapsed from the denial up to the time the case was brought to the Court

[45] G.R. No. L-20675, June 23, 1965.
[46] G.R. No. Y-18552, September 30, 1965

of Tax Appeals, the dismissal was proper. The Court also observed that the last request of petitioner to destroy the merchandise subject to tax *did not suspend* the running of the period for appeal "because it was a mere reiteration of two previous petitions already denied by respondent."

4. DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

Motion for reconsideration suspends the period for appeal

A dismissal by a lower court of an action to enjoin enforcement of an administrative decision on the ground that it was filed out of time (without appreciating the suspension of the period for appeal with the filing of a motion for reconsideration) was a reversible error according to the Supreme Court in the case of *Recto v. Bardos*.[47] In this case, petitioner filed with the Secretary of Public Works within the statutory period of thirty days, a motion to review an adverse order of the Undersecretary. Within thirty (30) days also from denial of his petition by the Secretary, he filed the action with the lower court. Obviously, the lower court failed to take into account the effect of petitioner's motion to review the Undersecretary's decision for it counted the period for appeal from the time of the decision. The Supreme Court ruled that the action was filed on time because "the law (Sec. 4, Act 2152) does not prevent an aggrieved party from moving for reconsideration. Such motion is standard procedure, especially where exhaustion of administrative remedies is required. It is only logical that where a motion for reconsideration is filed, as in this case, the period for appeal is deemed suspended."

5. COMMISSIONER OF CUSTOMS

"Adversely affected" parties may appeal Commissioner's decision

In the case of *Philippine International Surety Compan, Inc. v. Commissioner*,[48] petitioner's appeal from a decision of the Commissioner of Customs was dismissed upon the ground that it was not a party "adversely affected" by his decision. The Court of Tax Appeals, in arriving at this decision, took into consideration the fact that petitioner was only the surety of goods subject to seizure for want of Central Bank release certificate and that the proper party should have been the consignee. The Supreme Court however did not agree with the Tax Court. On the contrary, it held that under the law,[49] "any person, association or corporation ad-

[47] G.R. No. L-19459, October 21, 1965.
[48] G.R. No. L-20980, November 29, 1965.
[49] Section 11, R.A. No. 1125.

versely affected by a decision or ruling of the...Collector of Customs...may file an appeal in the Court of Tax Appeals..." The Court observed that when the Collector of Customs ordered the seizure and forfeiture of the importation, it was the bonds, "not the cotton textiles" which were ordered confiscated. And, since appellant is the bondsman, he is just as adversely affected as the claimant/consignee. Therefore, it was error to deny him the right to appeal.

The Court distinguished the above case from a previous one[50] where for failure to appeal from the decision of the Collector of Customs and said decision having become final and executory, the petitioner there could not be allowed to appeal from a decision of the Commissioner of Customs to the Court of Tax Appeals.

6. SECURITIES AND EXCHANGE COMMISSION

Injunction against SEC must be filed with the Supreme Court

In the case of *AFAG v. Pineda,*[51] a petition for injunction was filed by petitioner with the Court of First Instance to prevent the Securities and Exchange Commission from proceeding with a complaint filed against the AFAG corporation charging it with activities in violation of its articles of incorporation. The petition was denied as well as a motion filed with the SEC to postpone the hearing of the complaint. The query posed in this case was whether or not the CFI could review an order or decision of the SEC. It should be noted however that the SEC order denying postponement was not final and that the petition for injunction was actually a petition for prohibition. The Supreme Court ruled that "true, a petition for prohibition may be filed in the CFI but only if it relates to acts or omissions of an inferior court (Section 4, Rule 65)." Thus, a final order of the SEC may be reviewed only by the Supreme Court for the same rule says "that a petition for certiorari under Rule 43 (against *inter alia,* the Securities and Exchange Commission) shall be filed with the Supreme Court; and there is no reason why a different procedure should be observed in respect of a petition for prohibition."

JUDICIAL REVIEW

It is observed[25] that statutes often specifically provide for a judicial review of administrative rulings. Failure to provide for judicial review however does not mean that such is not available.[53]

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[50] Philippine International Surety Company, Inc. v. Commissioner, G.R. No. L-18291, January 31, 1964.
[51] G.R. No. L-17159, November 23, 1965.
[52] Statutes creating the CIR, PSC, Patent Office and others.
[53] CORTES, *supra,* 255.

Because of the need to determine the finality of administrative rulings by considering varied factors, it is said that it is hard to make a definitive pronouncement as to when judicial review of administrative rulings may or may not be available.[54]

A. EXHAUSTION OF ADMINISTRATIVE REMEDIES

It is a fundamental principle in the discussion of judicial review that before it is resorted to, there must first be an exhaustion of administrative remedies.[55] As a matter of fact, even when judicial review is *available,* a party must have made use of all means of administrative remedies before he can seek redress in the courts of justice.[56] The Supreme Court has made exception as in cases where no administrative remedy is provided.[57] But insofar as a remedy is still available other than resorting to courts of justice, this remedy must be sought first.[58]

1. RICE AND CORN ADMINISTRATION

RCA Board decision appealable to Civil Service Commissioner

Petitioner in the case of *Pañgilinan v. RCA*[59] filed an action with the Court of First Instance alleging that the resolution of the NARIC (predecessor of RCA) Board of Directors finding him guilty of administrative charges filed against him has no legal and factual basis. Before going to the court however, a motion of petitioner to reconsider said resolution was denied by the RCA Board of Administrators when it took over the NARIC. In answer to petitioner's court action, RCA filed a motion to dismiss on the ground of non-exhaustion of administrative remedies. Finding merit in the position of RCA, the lower court dismissed the action. In affirming the decision of the lower court, the Supreme Court ruled that although the RCA Board of Administrators has the power to discipline its employees, such disciplinary action must be subject "to the Civil Service Law." Therefore, petitioner can still appeal an adverse ruling of the RCA Board to the Civil Service Commissioner who under Section 16 of the Civil Service Law (R.A. No. 2260) has the power and duty "to hear and determine appeals instituted by any person believing himself aggrieved by an action or determination of any appointing authority contrary to the provisions of

[54] Switchmen's Union v. National Mediation Board, 320 U.C. 297 cited in CORTES, *supra,* 255.

[55] Pineda v. CFI of Davao, et al., G.R. No. L-12602, April 25, 1961.

[56] CORTES, *supra,* 265.

[57] See Pascual v. Provincial Board of Nueva Ecija, G.R. No. L-11959, October 31, 1959, quoting from 73 C.J.S., 354; and Alzate v. Aldana, G.R. No. L-14407, February 29, 1960.

[58] Montes v. The Civil Service Board of Appeals, 54 O.G. No. 7, 2174 (1957) citing 42 Am. Jur. 580-581.

[59] G.R. No. L-22012, February 27, 1965.

the Civil Service." The procedural infirmity of non-exhaustion can not be cured by petitioner's allegation that the "patent illegality" of the resolution finding him guilty of the administrative charges does not require exhaustion of administrative remedies. In this case, petitioner did not show such "patent illegality" but on the contrary, the resolution was arrived at after proper investigation.

2. THE NATIONAL TREASURER

National Treasurer's ruling appealable to proper department

Through a letter, respondent in *Maloga v. Gella*[60] required petitioner to answer why he should not be administratively charged for violation of office regulations, neglect of duty and grave abuse of discretion. Not satisfied with the explanation, respondent charged petitioner with grave misconduct in office, relieved him of his position and thereafter ordered an administrative investigation. Petitioner elevated his case immediately to the Supreme Court where his petition for certiorari was dismissed on the ground of non-exhaustion of administrative remedies because from the ruling of the National Treasurer, petitioner could appeal to the proper Department Head.

At this point, it is well to report the Court's pronouncement in the same case—that "a complaint is not a pre-requisite to an administrative investigation"[61] and that, contrary to petitioner's contention, when it is the head or chief of bureau concerned who files the charges, the written charges need not be sworn to as the official is deemed to act in his legal and official capacity.

B. FINDINGS OF FACT AND FINALITY

1. COURT OF INDUSTRIAL RELATIONS

CIR's findings of fact conclusive if supported by substantial evidence

The Court of Industrial Relations's findings of fact in the case of *Manila Pencil Company, Inc. v. CIR*[62] as to whether or not petitioner Company was guilty of unfair labor practice were challenged by said petitioners. The Court however leaned on the well-entrenched rule that facts found by the Court of Industrial Relations are conclusive if they are supported by substantial evidence. As to whether the Company was guilty of unfair labor practice, the Court found that the CIR's conclusion "is supported by substantial evidence, that is, relevant evidence which a reasonable mind would accept as ade-

[60] G.R. No. L-20281, November 29, 1965.
[61] Bautista v. Negado, G.R. No. L-14233, May 26, 1960.
[62] G.R. No. L-16903, August 31, 1965.

quate to support such conclusion."[63] As a general rule then, appeal to the Supreme Court is confined to questions of law (Section 6, R.A. No. 875).

2. PUBLIC SERVICE COMMISSION

Reasonable conclusions of fact binding on Court

The ruling of the Supreme Court in the case of *Halili v. Daplas*[64] reiterated its previous ruling[65] that the findings of fact of the Public Service Commission, if supported by substantial evidence, are conclusive upon the Court and that the Court is not authorized "to modify or ignore" said findings except when there is no evidence to *support reasonably* such conclusion. In the same vein, the Court held in *Mallorca v. Mercado*[66] that "while the PSC is a quasi-administrative and quasi-judicial body, it is particularly a fact-finding body..." and that "where the Commission has reached a conclusion of fact after weighing the conflicting evidence, that conclusion must be respected..."

Non-final conviction of alleged violation is not ground to revoke certificate of convenience

In the case of *Escaño v. Lim*,[67] the question as to whether the non-final conviction of petitioner for alleged violation of his TPU and AC certificates of public convenience can be made the basis for revocation of his certificate to operate taxicabs (an entirely different certificate from the TPU and AC certificates which he is alleged to have violated) was raised before the Supreme Court. It appears that a motion to reconsider the PSC finding that petitioner violated his TPU and AC certificates has not been acted upon and that in spite of the non-finality of his conviction (because of the pending motion to reconsider) the PSC decided to use it as a basis in revoking his provisional certificate to operate taxicab units. The Court ruled that it was abuse of discretion for the majority of the Commission to penalize petitioner with the revocation of his taxicab permit on the basis of a non-final conviction and that "not being final, said conviction could not constitute a reasonable basis for revoking a totally distinct certificate..."

3. BUREAU OF PATENTS

Who has prior use of trademark is a question of fact

A determination as to who among different claimants had prior

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[63] Citing Ang Tibay v. CIR. 69 Phil. 635 (1940).
[64] G.R. No. L-20282, May 19, 1965.
[65] Raymundo Transportation Company v. Cervo, G.R. No. L-3899, May 21, 1962.
[66] G.R. No. L-19120, November 29, 1965.
[67] G.R. No. L-20737, May 31, 1965.

use and adoption of a common trademark or trade name is definitely a question of fact. This was the ruling of the Court in *Bagano v. Director*[68] where it held: "that in cases of the nature as the one at bar, only questions of law are to be raised in order that this Court could exercise its appellate jurisdiction and review the decision... When the Director of Patents found that respondent... had priority of adoption and use, which is fully supported by the evidence, documentary and testimonial, such was a conclusion of fact to which this Court is bound." A similar ruling was rendered in the case of *Chua Che v. Philippines Patent Office.*[69]

4. DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

Failure to appeal decision of Executive Secretary makes it final

In the case of *Castillo v. Rodriguez,*[70] a decision of the District Land Officer of Cebu denying petitioner's claim to a disputed land and awarding it to the other claimant was sustained successively by the Director of Lands, the Secretary of Agriculture and Natural Resources and finally by the Executive Secretary. Unfortunately for the petitioner, through ignorance of procedure, he filed a petition for certiorari against the Director of Lands and Agriculture Secretary without including the Executive Secretary. In the meantime, for failure to assail the latter's decision, said decision had lapsed into finality. The Supreme Court ruled that denial of the petition for certiorari in the court below was proper because the decision of the Executive Secretary, being the last binding and operative decision having lapsed into finality, the Court cannot review it anymore. Neither had the Supreme Court nor the lower court acquired jurisdiction over the Executive Secretary since he was not made a party to the case.

And besides, the Court found that the finding of the respondents has not been shown to be wanting in reasonable evidentiary bases hence, "the decision of the Director of Lands, affirmed by the Secretary of Agriculture and Natural Resources on a factual matter should be binding on the Court."[71]

Concerning the finality of the decisions of the Land Tenure Administration, the Court ruled in *Manaloto v. Santos*[72] that failure to appeal an adverse decision of the LTA to the Office of the President within thirty days from receipt of the decision renders the same final and no longer reviewable by the courts.

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[68] G.R. No. L-20170, August 10, 1965.
[69] G.R. No. L-18337, January 30, 1965.
[70] G.R. No. L-17189, June 22, 1965.
[71] Citing Julian v. Apostol, 52 Phil. 422 (1928).
[72] G.R. No. L-21262, December 31, 1965.