



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**RAY PETER O. VIVO,**  
Petitioner,

**G.R. No. 187854**

Present:

-versus -

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.

**PHILIPPINE AMUSEMENT  
AND GAMING CORPORATION  
(PAGCOR),**

Respondent.

Promulgated:

NOVEMBER 12, 2013

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**DECISION**

**BERSAMIN, J.:**

By petition for review on *certiorari*, the petitioner seeks the review and reversal of the decision promulgated on February 27, 2009,<sup>1</sup> whereby the Court of Appeals (CA) reversed and set aside the resolutions of the Civil Service Commission (CSC) dated April 11, 2007<sup>2</sup> and August 1, 2007.<sup>3</sup>

<sup>1</sup> *Rollo*, pp. 32-42; penned by Associate Justice Edgardo P. Cruz (retired), and concurred in by Associate Justice Vicente S.E. Veloso, and Associate Justice Ricardo R. Rosario.

<sup>2</sup> *Id.* at 194-203.

<sup>3</sup> *Id.* at 205-210.

Also under review is the denial by the CA of the petitioner's motion for reconsideration through the resolution promulgated May 11, 2009.<sup>4</sup>

### **Antecedents**

The petitioner was employed by respondent Philippine Amusement and Gaming Corporation (PAGCOR) on September 9, 1986, and was PAGCOR's Managing Head of its Gaming Department at the time of his dismissal from office.<sup>5</sup> On February 21, 2002, he received a letter from Teresita S. Ela, the Senior Managing Head of PAGCOR's Human Resources Department, advising that he was being administratively charged with gross misconduct, rumor-mongering, conduct prejudicial to the interest of the company, and loss of trust and confidence;<sup>6</sup> that he should submit a written explanation of the charges; and that he was at the same time being placed under preventive suspension.<sup>7</sup>

On February 26, 2002, the petitioner's counsel, replying to Ela's letter, assailed the propriety of the show-cause memorandum as well as the basis for placing the petitioner under preventive suspension.

On March 14, 2002, the petitioner received the summons for him to attend an administrative inquiry, instructing him to appear before PAGCOR's Corporate Investigation Unit (CIU) on March 15, 2002.<sup>8</sup> At the petitioner's request, however, the inquiry was conducted at his residence on said date. His statement was taken in a question-and-answer format. He was also furnished the memorandum of charges that recited the accusations against him and indicated the acts and omissions constituting his alleged offenses. The memorandum of charges was based on the statements of PAGCOR personnel who had personal knowledge of the accusations against him. However, when his counsel requested to be furnished copies of the statements, PAGCOR rejected the request on the ground that he had already been afforded the sufficient opportunity to confront, hear, and answer the charges against him during the administrative inquiry. The petitioner was then allowed to submit his answer on March 26, 2002.

Thereafter, the CIU tendered its investigation report to PAGCOR's Adjudication Committee.<sup>9</sup>

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<sup>4</sup> Id. at 43.

<sup>5</sup> Id. at 4.

<sup>6</sup> Id. at 32.

<sup>7</sup> Id.

<sup>8</sup> Id. at 33.

<sup>9</sup> Id. at 33-34.

The Adjudication Committee summoned the petitioner to appear before it on May 8, 2002 in order to address questions regarding his case. His counsel moved for the re-scheduling of the meeting because he would not be available on said date, but the Adjudication Committee denied the request upon the reason that the presence of counsel was not necessary in the proceedings. His counsel moved for the reconsideration of the denial of the request.<sup>10</sup>

The petitioner received the letter dated May 15, 2002 from Ela informing him of the resolution of the PAGCOR Board of Directors in its May 14, 2002 meeting to the effect that he was being dismissed from the service.<sup>11</sup>

After the petitioner's motion for reconsideration vis-à-vis the resolution of the PAGCOR Board of Directors dismissing him from the service was denied, he appealed his dismissal to the CSC.

In its resolution dated April 11, 2007, the CSC ruled that PAGCOR had violated the petitioner's right to due process, and accordingly set aside his dismissal from the service, viz:

In fine, the Commission finds that the right of Vivo to due process was violated when he was ousted from his office without the corresponding Board Resolution that should have set out the collegial decision of the PAGCOR Board of Directors.

**WHEREFORE**, foregoing premises considered, the appeal of Ray Peter O. Vivo is hereby **GRANTED**. The letters dated May 15, 2002 and June 5, 2002 issued by Teresita S. Ela, Senior Managing Head, Human Resource Department, Philippine Amusement and Gaming Corporation (PAGCOR), are SET ASIDE.<sup>12</sup>

x x x x

The CSC remanded the case to PAGCOR with the instruction for PAGCOR to complete its reinvestigation within three months from receipt of the resolution.

After the CSC denied its motion for reconsideration, PAGCOR elevated the case to the CA.

On February 27, 2009, the CA promulgated its decision reversing and setting aside the decision of the CSC upon its finding that the petitioner had

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<sup>10</sup> Id. at 34.

<sup>11</sup> Id. at 11.

<sup>12</sup> Id. at 202-203.

been accorded procedural due process. The CA remanded the case to the CSC for the determination of the appeal of the petitioner on the merits, specifically the issue of whether the dismissal had been for cause.<sup>13</sup>

Hence, this appeal.

### Issue

The petitioner raises the following issues, namely:

1. The conclusion of the Court of Appeals that Petitioner's right for (*sic*) due process was not violated transgressed (*sic*) the fundamental rules in administrative due process.
2. The Court of Appeals decision in setting aside CSC Resolutions Nos. 070732, dated 01 April 2007, and 071485, dated 01 August 2007, is contrary to the Uniform Rules on Administrative Cases in the Civil Service and settled jurisprudence.<sup>14</sup>

The petitioner would have the Court hold that PAGCOR's failure to furnish him a copy of the Board Resolutions authorizing his dismissal and denying his motion for reconsideration was a fatal and irreparable defect in the administrative proceedings that ultimately resulted in the illegality of his dismissal from the service. He further argues that he was denied due process by PAGCOR's refusal to re-schedule the Adjudication Committee meeting in order to enable his counsel to attend the meeting with him, because the refusal constituted a violation of his right to be represented by counsel.

### Ruling

The petition for review lacks merit.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>15</sup> Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary,<sup>16</sup> and technical rules of procedure are not strictly applied. *Ledesma v. Court of*

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<sup>13</sup> Id. at 41.

<sup>14</sup> Id. at 12-13.

<sup>15</sup> *Office of the Ombudsman v. Reyes*, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640; citing *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

<sup>16</sup> *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505, cited in *Pat-og, Sr. v. CSC*, G.R. No. 198755, June 5, 2013.

*Appeals*<sup>17</sup> elaborates on the well-established meaning of due process in administrative proceedings in this wise:

x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>18</sup>

The petitioner actively participated in the entire course of the investigation and hearings conducted by PAGCOR. He received the letter from Ela apprising him of his being administratively charged for several offenses, and directing him to submit an explanation in writing. He was later on properly summoned to appear before the CIU, which conducted its proceedings in his own residence upon his request. During the administrative inquiry, the CIU served him a copy of the memorandum of charges, which detailed the accusations against him and specified the acts and omissions constituting his alleged offenses. He was also given the opportunity to appear before the Adjudication Committee to answer clarificatory questions. Lastly, he was informed through a memorandum of the decision of the Board of Directors dismissing him from the service.

In contrast, the petitioner could not dispute the observance of his right to due process by PAGCOR as set forth herein. He made no credible showing of the supposed violation of his right to due process. He was heard through the written statement he submitted in response to the memorandum of the charges against him. He actively participated in the administrative inquiry conducted by the CIU at his own residence. He was afforded the opportunity to clarify his position in the proceedings before the Adjudication Committee. He was also able to appeal the adverse decision to dismiss him from the service to the CSC. There is also no question that PAGCOR complied with the twin-notice requirement prior to the termination of his employment, the first notice being made through Ela's letter dated February 21, 2002 informing him on his being administratively charged for the offenses mentioned, and the second being through the letter dated May 15, 2002 advising him that PAGCOR's Board of Directors had resolved to dismiss him from the service. It is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.<sup>19</sup>

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<sup>17</sup> G.R. No. 166780, December 27, 2007, 541 SCRA 444.

<sup>18</sup> Id. at 451-452.

<sup>19</sup> *Liquid v. Camano, Jr.*, A.M. No. RTJ-99-1509, August 8, 2002, 387 SCRA 1, 10.

The petitioner takes the CA to task for not considering: (1) PAGCOR's failure to furnish him copies of the Board Resolutions referred to by Ela in the memorandum served on him, and (2) the refusal of PAGCOR to have him be represented by counsel.

The petitioner cannot be sustained.

As the CA found, and correctly so, the petitioner's pleadings explicitly admitted that his dismissal had been effected through board resolutions. That he was not furnished copies of the board resolutions did not negate the existence of the resolutions, and did not invalidate the contents of the board resolutions. It is beyond question that he was duly informed of the subject-matter of the board resolutions. Consequently, the CSC's conclusion that his dismissal had been unauthorized was unfounded. In any case, even assuming for the sake of argument that there was no board resolution approving his dismissal, the lapse did not render his dismissal illegal but unauthorized. However, as the CA succinctly put it, an unauthorized act could be the subject of ratification.<sup>20</sup>

As regards the supposed denial of the petitioner's right to counsel, it is underscored that PAGCOR denied his request to re-schedule the conference before the Adjudication Committee because his counsel would not be available on the day fixed for that purpose. In its letter denying the request, the Adjudication Committee asserted that the presence of counsel was not indispensable in the conduct of its proceedings. We find nothing objectionable in the denial of the request. In an administrative proceeding like that conducted against the petitioner, a respondent has the *option* of engaging the services of counsel. As such, the right to counsel is not imperative because administrative investigations are themselves inquiries conducted only to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.<sup>21</sup>

It is noteworthy, however, that the petitioner was actually assisted by his counsel from the outset of the administrative case against him. That counsel, Atty. Cesar B. Jimenea Jr. of the Jimenea and Associates, ensured that the petitioner's every concern reached PAGCOR, and that he was clarified of any matter affecting his rights all throughout the investigation and hearings. As the records indicate, his counsel sent to Ela a letter calling attention to supposedly palpable violations of his client's right to due process, and objecting to Ela's right to place his client under preventive suspension. The same counsel filed in behalf of the petitioner the letter-requests to be furnished certain documents and records of the investigation,<sup>22</sup>

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<sup>20</sup> *Rollo*, p. 40.

<sup>21</sup> *Lumiqued v. Exevea*, G.R. No. 117565, November 18, 1997, 282 SCRA 125, 141.

<sup>22</sup> *Rollo*, p. 89.

his answer to the memorandum of charges,<sup>23</sup> the letter-request for the re-setting of the conference before the Adjudication Committee,<sup>24</sup> the reconsideration of the letter denying the request,<sup>25</sup> and the motion to reconsider the decision of the Board of Directors to dismiss him from the service.<sup>26</sup>

In any event, any procedural defect in the proceedings taken against the petitioner was cured by his filing of the motion for reconsideration and by his appealing the adverse result to the CSC. The Court held in *Gonzales v. Civil Service Commission*<sup>27</sup> that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard. In *Autencio v. Mañara*,<sup>28</sup> the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.

The petitioner was not denied due process of law, for he was afforded the fair and reasonable opportunity to explain his side. That, to us, was sufficient to meet the requirements of due process.<sup>29</sup> In *Casimiro v. Tandog*,<sup>30</sup> the Court pronounced:

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

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<sup>23</sup> Id. at 90-103.

<sup>24</sup> Id. at 105.

<sup>25</sup> Id. at 109-112.

<sup>26</sup> Id. at 126-139.

<sup>27</sup> G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

<sup>28</sup> G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

<sup>29</sup> Id. at 55.

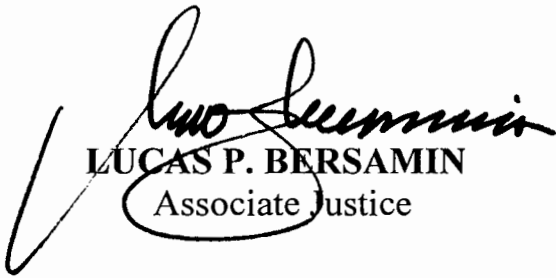
<sup>30</sup> G.R. No. 146137, June 8, 2005, 459 SCRA 624, 631, cited in *Department of Agrarian Reform v. Samson*, G.R. No. 161910, June 17, 2008, 554 SCRA 500, 509.

In fine, the CA committed no reversible error in holding that PAGCOR had properly observed the requirements of due process in its administrative proceedings against the petitioner.

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on February 27, 2009 by the Court of Appeals; **REQUIRES** the Civil Service Commission to determine the petitioner's appeal on the merits, particularly the issue of whether the dismissal was for cause; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.**


**WE CONCUR:**




LUCAS P. BERSAMIN  
Associate Justice



MARIA LOURDES P. A. SERENO  
Chief Justice



ANTONIO T. CARPIO  
Associate Justice



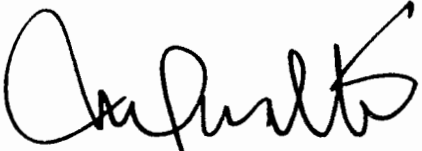
PRESBITERO J. VELASCO, JR.  
Associate Justice



TERESITA J. LEONARDO-DE CASTRO  
Associate Justice



ARTURO D. BRION  
Associate Justice




DIOSDADO M. PERALTA  
Associate Justice

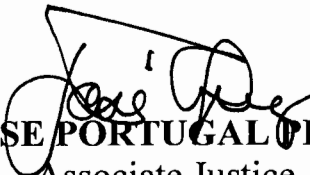


MARIANO C. DEL CASTILLO  
Associate Justice




  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

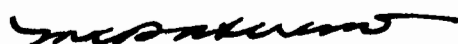
  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

### CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice