



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE HONORABLE
MONETARY BOARD and
GAIL U. FULE, Director,
Supervision and Examination
Department II, and BANGKO
SENTRAL NG PILIPINAS,
Petitioners,

G.R. No. 189571

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

- versus -

PHILIPPINE
BANK,

VETERANS

Promulgated:

Respondent.

January 21, 2015

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DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision¹ dated June 15, 2009 and Order² dated August 25, 2009 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 07-271.

The factual antecedents follow.

Respondent established a pension loan product for *bona fide* veterans or their surviving spouses, as well as salary loan product for teachers and low-salaried employees pursuant to its mandate under Republic Act (RA) Nos. 3518³ and 7169⁴ to provide financial assistance to veterans and teachers.

¹ Penned by Judge Reynaldo M. Laigo, *rollo*, pp. 53-55.

² *Id.* at 56.

³ AN ACT CREATING THE PHILIPPINE VETERANS BANK, AND FOR OTHER PURPOSES.

As its clientele usually do not have real estate or security to cover their pension or salary loan, other than their continuing good health and/or employment, respondent devised a program by charging a premium in the form of a higher fee known as *Credit Redemption Fund (CRF)* from said borrowers. Resultantly, Special Trust Funds were established by respondent for the pension loans of the veteran-borrowers, salary loans of teachers and low-salaried employees. These trust funds were, in turn, managed by respondent's Trust and Investment Department, with respondent as beneficiary. The fees charged against the borrowers were credited to the respective trust funds, which would be used to fully pay the outstanding obligation of the borrowers in case of death.

On April 30, 2002, an examination was conducted by the Supervision and Examination Department (*SED*) II of the Bangko Sentral ng Pilipinas (*BSP*). It found, among other things, that respondent's collection of premiums from the proceeds of various salary and pension loans of borrowers to guarantee payment of outstanding loans violated Section 54 of RA No. 8791⁵ which states that banks shall not directly engage in insurance business as insurer.

Subsequently, respondent wrote a letter to petitioners justifying the existence of the CRF.

In a letter dated March 17, 2003, the BSP notified respondent about the Insurance Commission's opinion that the CRF is a form of insurance. Thus, respondent was requested to discontinue the collection of said fees.

On February 24, 2004, respondent complied with the BSP's directive and discontinued the collection of fees for CRF.

On September 16, 2005, petitioners issued Monetary Board (*MB*) Resolution No. 1139 directing respondent's Trust and Investment Department to return to the borrowers all the balances of the CRF in the amount of ₱144,713,224.54 as of August 31, 2004, and to preserve the records of borrowers who were deducted CRFs from their loan proceeds pending resolution or ruling of the Office of the General Counsel of the BSP. Thus, respondent requested reconsideration of said MB Resolution. However, the same was denied in a letter dated December 5, 2006.

⁴ AN ACT TO REHABILITATE THE PHILIPPINE VETERANS BANK CREATED UNDER REPUBLIC ACT NO. 3518, PROVIDING THE MECHANISMS THEREFOR, AND FOR OTHER PURPOSES.

⁵ AN ACT PROVIDING FOR THE REGULATION OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES.

Accordingly, respondent filed a Petition for Declaratory Relief with the RTC of Makati City.

In response, petitioners filed a Motion to Dismiss alleging that the petition for declaratory relief cannot prosper due to respondent's prior breach of Section 54 of RA No. 8791.

In an Order⁶ dated September 24, 2007, the RTC dismissed respondent's petition for declaratory relief and held as follows:

Upon a thorough analysis of the allegations of the petition and the documents attached thereto as annexes, the arguments of both parties in support of their respective position on the incident up for resolution, the Court finds that an ordinary civil action or other else but certainly not the present action for declaratory relief, is the proper remedy.

Clearly, as gleaned from the very documents attached to the petition, and as correctly pointed out by the [petitioners], [respondent], as found by the BSP examiners and confirmed by the Monetary Board, violated Section 54 of RA No. 8791, subject matter of the instant case, by engaging in an insurance activity which is prohibited by such law. To be precise, the law so provides thus:

“SEC. 54. Prohibition to Act as Insurer. A bank shall not directly engaged (sic) in the business as the insurer.”

Hence, the issue of whether or not petitioner violated the foregoing law can only be fittingly resolved thru an ordinary action. For which reason, the Court has no recourse but to put an end to this case.

In view of the foregoing, the Court deems it unnecessary to tackle the other grounds relied upon by [petitioners] in their motion to dismiss.

WHEREFORE, for reasons afore-stated, the petition is hereby DISMISSED.

SO ORDERED.

Almost a year later, respondent filed a Motion to Admit its Motion for Reconsideration against said order alleging that it did not receive a copy thereof until September 3, 2008.

Petitioners opposed said motion on the ground that per Certification of the Philippine Postal Office, an official copy of the RTC's Order was duly served and received by respondent on October 17, 2007.

⁶

Rollo, pp. 127-128.

Despite the foregoing, the RTC allowed respondent's motion for reconsideration and required petitioners to file their answer.

In a Decision dated June 15, 2009, the RTC of Makati City granted respondent's petition for declaratory relief disposing as follows:

WHEREFORE, premises considered, it is hereby DECLARED that [respondent], when it collected additional fees known as "Credit Redemption Fund (CRF)" from its loan borrowers was not directly engaged in insurance business as insurer; hence, it did not violate Sec. 54, R.A. 8791, otherwise known as the "General Banking Law of 2000."

The Monetary Board Resolution No. 1139 dated August 26, 2005 is hereby DECLARED null and void.

SO ORDERED.⁷

Petitioners filed a motion for reconsideration against said decision, but the same was denied in an Order dated August 25, 2009.

Hence, the present petition wherein petitioners raise the following grounds to support their petition:

I.

THE COURT A *QUO* GRIEVOUSLY ERRED IN TAKING COGNIZANCE OF THE PETITION FOR DECLARATORY RELIEF DESPITE:

- (i) THE FINALITY OF THE BSP MB RESOLUTION: (a) DECLARING RESPONDENT *VETERANS BANK'S* CRF SCHEME AS VIOLATIVE OF SECTION 54 OF RA 8791; and (b) DIRECTING RESPONDENT TO RETURN THE ILLEGAL PROCEEDS THEREOF TO ITS BORROWERS; and
- (ii) THE BLATANT IMPROPRIETY OF RESORTING TO SUCH PETITION FOR DECLARATORY RELIEF, CONSIDERING RESPONDENT *VETERANS BANK'S* PRIOR BREACH OF THE MONETARY BOARD RESOLUTION SUBJECT THEREOF [ASSUMING ARGUENDO THAT THE SUBJECT BSP RESOLUTION HAS NOT BECOME FINAL];

⁷

Id. at 55.

II.

THE COURT A *QUO*'S ORDER, DISMISSING THE PETITION FOR DECLARATORY RELIEF HAS LONG BECOME FINAL AND EXECUTORY AND MAY NO LONGER BE DISTURBED.

III.

PETITIONERS' FINDING, THAT RESPONDENT *VETERANS BANK* IS ENGAGED IN "INSURANCE BUSINESS," IS IN ACCORD WITH LAW.⁸

In essence, the issue is whether or not the petition for declaratory relief is proper.

We rule in the negative.

Section 1, Rule 63 of the Rules of Court governs petitions for declaratory relief, *viz.*:

SECTION 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute.⁹

Ergo, the Court, in *CJH Development Corporation v. Bureau of Internal Revenue*,¹⁰ held that in the same manner that court decisions cannot be the proper subjects of a petition for declaratory relief, decisions of quasi-judicial agencies cannot be subjects of a petition for declaratory relief for the simple reason that if a party is not agreeable to a decision either on questions of law or of fact, it may avail of the various remedies provided by the Rules of Court.

⁸ *Id.* at 24-25.

⁹ *Province of Camarines Sur v. Court of Appeals*, 616 Phil. 541, 556 (2009).

¹⁰ 595 Phil. 1051, 1058 (2008).

In view of the foregoing, the decision of the BSP Monetary Board cannot be a proper subject matter for a petition for declaratory relief since it was issued by the BSP Monetary Board in the exercise of its quasi-judicial powers or functions.

The authority of the petitioners to issue the questioned MB Resolution emanated from its powers under Section 37¹¹ of RA No. 7653¹² and Section 66¹³ of RA No. 8791¹⁴ to impose, at its discretion, administrative sanctions, upon any bank for violation of any banking law.

¹¹ SECTION 37. *Administrative Sanction on Banks and Quasi-Banks.* – Without prejudice to the criminal sanctions against the culpable persons provided in Section 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission or irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

- (a) Fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;
- (b) Suspension or rediscounting privileges or access to Bangko Sentral credit facilities;
- (c) Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;
- (d) Suspension of interbank clearing privileges; and/or
- (e) Revocation of quasi-banking license.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: *Provided*, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position; *Provided, further*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or directors and/or officers concerned to cease and desist from the indicated practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of the law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.

¹² The New Central Bank Act.

¹³ SECTION 66. *Penalty for Violation of this Act.* – Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36 and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by *quo warranto* proceedings instituted by the Solicitor General.

The nature of the BSP Monetary Board as a quasi-judicial agency, and the character of its determination of whether or not appropriate sanctions may be imposed upon erring banks, as an exercise of quasi-judicial function, have been recognized by this Court in the case of *United Coconut Planters Bank v. E. Ganzon, Inc.*,¹⁵ to wit:

A perusal of Section 9(3) of *Batas Pambansa Blg. 129*, as amended, and Section 1, Rule 43 of the 1997 Rules of Civil Procedure reveals that the BSP Monetary Board is not included among the quasi-judicial agencies explicitly named therein, whose final judgments, orders, resolutions or awards are appealable to the Court of Appeals. Such omission, however, does not necessarily mean that the Court of Appeals has no appellate jurisdiction over the judgments, orders, resolutions, or awards of the BSP Monetary Board.

It bears stressing that Section 9(3) of *Batas Pambansa Blg. 129*, as amended, on the appellate jurisdiction of the Court of Appeals, generally refers to quasi-judicial agencies, instrumentalities, boards or commissions. The use of the word “including” in the said provision, prior to the naming of several quasi-judicial agencies, necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.

Similarly, Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure merely mentions several quasi-judicial agencies without exclusivity in the phraseology. The enumeration of the agencies therein mentioned is not exclusive. The introductory phrase “[a]mong these agencies are” preceding the enumeration of specific quasi-judicial agencies only highlights the fact that the list is not meant to be exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included.

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A “quasi-judicial function” is a term which applies to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

¹⁴ An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-banks, Trust Entities and for other Purposes.

¹⁵ 609 Phil. 104 (2009).

Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking, and credit. It has the power to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason, to administer oaths and compel presentation of books, records and others, needed in its examination, to impose fines and other sanctions and to issue cease and desist order. Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.¹⁶

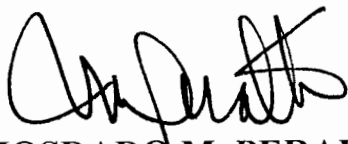
A priori, having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions, then its decision in MB Resolution No. 1139 cannot be the proper subject of declaratory relief.

Lastly, also worth noting is the fact that the court *a quo*'s Order dated September 24, 2007, which dismissed respondent's petition for declaratory relief, had long become final and executory.

To recall, said Order was duly served on and received by respondent on October 17, 2007, as evidenced by the Certification issued by the Philippine Postal Corporation. Almost a year later, however, or on October 15, 2008, respondent moved for reconsideration of the court *a quo*'s Order of dismissal, claiming it received a copy of said Order only on September 3, 2008. Thus, respondent's self-serving claim should not have prevailed over the Certification issued by the Philippine Postal Corporation. It was error for the trial court to entertain it for the second time despite the lapse of almost a year before respondent filed its motion for reconsideration against said Order.

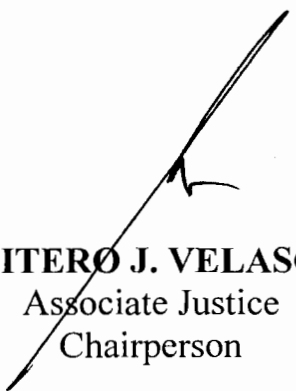
WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Decision dated June 15, 2009 and Order dated August 25, 2009 of the Regional Trial Court of Makati City in Civil Case No. 07-271 are **REVERSED** and **SET ASIDE**. The Order dated September 24, 2007 of the Regional Trial Court of Makati City is hereby **REINSTATED**.

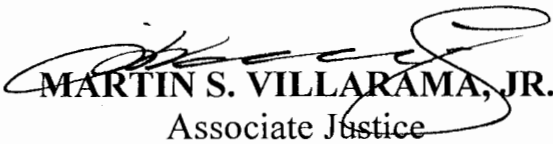
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice


¹⁶ *United Coconut Planters Bank v. E. Ganzon, Inc.*, *supra*, at 121-124. (Emphasis ours).

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ATTESTATION

I attest 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's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.


MARIA LOURDES P. A. SERENO
Chief Justice