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THIRD DIVISION

[G.R. No. 188952. September 21, 2016]

PEÑAFRANCIA SHIPPING CORPORATION AND SANTA CLARA SHIPPING CORPORATION, PETITIONERS, VS. 168 SHIPPING LINES, INC., RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

This case questions the propriety of the dismissal by the Court of Appeals (CA) of a Rule 43 petition for review of a decision of the Maritime Industry Authority (MARINA), for failure to appeal the same to the Secretary of the Department of Transportation and Communications (DOTC), and subsequently, to the Office of the President (OP).

Facts

On September 28, 2007, respondent 168 Shipping Lines, Inc. (respondent) filed with the MARINA Regional Office V (MARINA RO V), Legaspi City an application[1] for the issuance of a Certificate of Public Convenience (CPC) to operate M/V Star Ferry I, a roll-on-roll-off vessel, in the route Matnog, Sorsogon to Allen, Northern Samar, and vice versa. The schedule of trips as reflected in the application has 90 departures from the port of Matnog, Sorsogon and 86 departures from the port of Allen, Northern Samar.[2]

Peñafrancia Shipping Corporation and Santa Clara Shipping Corporation (petitioners), existing operators who own and operate ferry boats serving the ports of Allen, Northern Samar and Matnog, Sorsogon, intervened in the proceeding and opposed[3] the application on the following grounds: (1) respondent failed to submit a Certificate of Berthing as required under MARINA Memorandum Circular No. 74-B;[4] (2) the proposed schedule of trips in the original application is physically impossible to perform by the applicant's lone vessel, the M/V Star Ferry I;[5] and (3) there exists an overtonnage in the route applied for by the respondent, thus warranting the intervention of MARINA.[6] Respondent countered that

under Republic Act (R.A.) No. 9295[7] and its Implementing Rules and Regulations (IRR): (1) an application for CPC is not adversarial in character and thus, a motion to intervene and opposition are not allowed; and (2) there is no requirement for the CPC applicant to secure a Certificate of Berthing from the Philippine Ports Authority.[8]

On December 13, 2007, the MARINA RO V required respondent to file an amended CPC application with workable sailing frequencies/schedule of trips.[9] However, instead of complying with the directive, respondent merely submitted a pleading denominated as RE: ADOPTION OF AMENDED SCHEDULE OF TRIPS.[10]

The MARINA RO V, in its Decision[11] dated February 1, 2008, denied due course to respondent's application. Respondent filed its Motion for Reconsideration but this was denied.[12]

Respondent filed a Notice of Appeal on March 26, 2008 before the Office of the MARINA Administrator.[13]

On August 8, 2008, MARINA Administrator Vicente T. Suazo, Jr., joined by Deputy Administrator for Operations Primo V. Rivera, all acting by authority of the Board, reversed the Decision of the MARINA RO V and granted respondent's application for issuance of a CPC.[14] Thus, petitioners sought reconsideration of the MARINA Decision, but their motion was denied through a Resolution[15] signed by the MARINA Officer-in-Charge Maria Elena H. Bautista who was then concurrent Undersecretary for Maritime Transport of the DOTC.

Petitioners appealed to the CA via Rule 43 of the Rules of Court. However, the CA dismissed the petition for failure of the petitioners to exhaust administrative remedies, hence, for lack of cause of action.[16]

The CA dismissed the petition through its Resolution[17] dated March 24, 2009, holding that:

> Contrary to petitioners' stance that the Maritime Industry Authority (MARINA) is an independent agency and that it has the final say in the outcome of its adjudication in any contested matter, this Court finds and holds that MARINA is an entity within the Executive Department. It will be noted that Presidential Decree No. 474 (Maritime Industry' Decree of 1974) organized MARINA under the Office of the President. This was modified on July 23, 1979 by Executive Order No. 546 wherein MARINA was made an attached agency of the then

> Ministry of Transportation and Communications (MOTC) for policy and program coordination. This was confirmed by the Administrative Code of 1987 x x x which explicitly provides that MARINA is an agency attached to the Department of Transportation and Communication (DOTC).
>
> Hence, MARINA is not independent of the executive structural organization and the ruling of the MARINA Administrator is subject to the consecutive reviews of the DOTC Secretary and the Office of the President as its administrative superiors in the Executive Department pursuant to the doctrine of exhaustion of administrative remedies which requires an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. Thus, if a remedy within the administrative machinery can still be had by giving the administrative body concerned the opportunity to decide on,the matter that comes within its jurisdiction, then such remedy should be priorly exhausted before the court's judicial power is invoked.
>
> Petitioners' failure to resort to the DOTC Secretary and then the Office of the President, in case of an adverse decision, and the filing of the herein petition before this Court is a premature invocation of the Court's intervention which renders the instant petition without cause of action, hence, dismissible.[18]
> (Underscoring supplied; citations omitted.)

Petitioners filed a motion for reconsideration but this was denied.[19] Hence, this petition.

Petitioners, relying on the IRR of R.A. No. 9295, argue that: (1) a petition for review under Rule 43 of the Rules of Court is the immediate and direct remedy from the adverse rulings of the MARINA;[20] (2) the proper forum for review of the decision rendered by a quasi-judicial agency is the CA;[21] (3) the decision and resolution subject of the Rule 43 petition were acts of the MARINA Board, and not merely by the Administrator;[22] (4) assuming an appeal to the DOTC Secretary and the Office of the President is necessary, this case is an exception because . an appeal would be a superfluity;[23] (5) the doctrine of qualified political agency applies because the DOTC Secretary, who is the chairman of the MARINA Board, is the alter ego of the President;[24] and (6) it would be impractical to file an appeal with the OP because an individual from the OP is also a member of the MARINA Board.[25]

In its Comment,[26] respondent counters that: (1) the IRR provision on appeal is void and

cannot supplant Section 19, Chapter IV, Book VII of the Administrative Code of 1987 which provides that an appeal from a final decision of the agency may be taken to the Department Head unless otherwise provided by law;[27] (2) the IRR is inapplicable since it did not provide for the mode of appeal of the decisions of the MARINA Board, rather, it provided for appeals from an order, ruling, decision or resolution of the MARINA Administrator;[28] (3) the DOTC is an attached agency under the control of the executive department and the decisions or rulings rendered by the MARINA Board in the exercise of its quasi-judicial functions are subject to the review of the DOTC Secretary and the OP;[29] (4) the MARINA was never taken out of the framework of the executive department;[30] (5) even assuming that the decisions by the MARINA are not reviewable by the DOTC, the Constitution and the Administrative Code of 1987 provide that the President shall have control of all the executive departments, bureaus and offices;[31] and (6) the case is not an exception to the doctrine of exhaustion of administrative remedies.[32]

Respondent moved to dismiss the petition on the ground that petitioners committed a willful act of forum shopping.[33] Petitioners filed a Petition[34] (moratorium petition) dated March 22, 2010 before the MARINA, praying the latter to issue a moratorium in the grant of CPCs for carriage of passengers and cargoes covering the routes Matnog, Sorsogon – Allen, Northern Samar or Matnog; Sorsogon – Dapdap, Allen, Northern Samar or Matnog; Sorsogon — San Isidro, Northern Samar and vice-versa. They contend that the moratorium petition is an attempt by the petitioners to achieve what they sought to achieve in the present case, *i.e.*, to prevent respondent or other entities from operating in the subject routes.[35]

Petitioners, in their Comment (To Respondent's Manifestation/Submission with Leave of Court dated June 1, 2010),[36] maintain that there is no forum shopping since the two cases have different causes of action. In the present case, if the judgment is favorable to petitioners, the effect will be retroactive, *i.e.*, voidance of the CPC already issued by the MARINA to respondent. Meanwhile, if the moratorium petition is granted, the effect of the moratorium will be prospective, *i.e.*, the freezing of new applications for CPC or additional bottoms in the subject route.

Issues

(1) Whether petitioners committed forum shopping when they filed the moratorium petition; and

(2) Whether the decision of the MARINA Board in the exercise of its quasi-judicial function should be appealed first to the DOTC Secretary, and subsequently to the OP, before appeal to the CA.

Our Ruling

We deny the petition.

I. No forum shopping.

There is, no forum shopping. There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[37] The test to determine'the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.[38]

The moratorium petition prays for a relief different from that sought in the main case, from which the present petition arose. In the moratorium petition, the petitioners did not pray for the cancellation, or revocation of the CPC issued to the respondent. What petitioners prayed for was a "moratorium or stoppage in the grant of Certificates of Public Convenience for carriage of passengers and cargoes involving the routes MATNOG, SORSOGON – ALLEN, NORTHERN SAMAR or MATNOG, SORSOGON – DAPDAP, ALLEN, NORTHERN; SAMAR, or MATNOG, SORSOGON – SAN ISIDRO, NORTHERN SAMAR AND VICE VERSA."[39] Thus, any decision of the MARINA on the moratorium petition will not affect the CPC already issued in favor of the respondent and appealed before the CA, the subject matter of the present case.

II. The CA properly dismissed the appeal.

Petitioners justify their direct resort to the CA by invoking the IRR of R.A. No. 9295,[40] which provides for a procedure for appeal of decisions involving CPCs,[41] to wit:

RULE XV
APPEALS

Sec. 1. *Appeal on Decisions Involving the CPC* — Any order, ruling, decision or resolution of the CO/MRO Director/OIC relating to the application for issuance of Entity/Company CPC shall become final and executory fifteen (15) days unless a Motion for Reconsideration is filed within the same period with the CO/MRO Director/OIC concerned after the receipt of a copy thereof by the party affected. The decision of the CO/MRO Director/OIC shall be final and executory unless within the same period an appeal to the MARINA Administrator has been perfected.

The order, ruling decision or resolution of the MARINA Administrator shall be final .and executory within fifteen (15) days unless an administrative appeal is filed with the MARINA Board or petition for judicial review is filed with the Court of Appeals or Supreme Court in accordance with the provisions of the Revised Rules of Court. (Underscoring supplied.)

Petitioners claim that this provision of the IRR shows that "the appropriate remedy against the adverse ruling of;the MARINA Board is a petition for review to the Honorable Court of Appeals under Rule 43 of the Rules of Court."[42] However, as correctly pointed out by the respondent, paragraph 2, Section 1, Rule XV of the IRR applies only to an appeal of the order, ruling, decision or resolution of the MARINA Administrator. There is no procedure for appeal of the decisions of the MARINA Board. Hence, the IRR cannot be the basis for petitioners' appeal. Moreover, no procedure for appeal before the courts is provided by R.A. No. 9295. Rules and regulations issued to implement a law cannot go beyond its terms and provisions.[43]

Rule 43 governs all appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial1 agency in the exercise of quasi-judicial functions. Resort to the CA is authorized by Section 9 of Batas Pambansa Blg. 129[44] which provides that the CA shall have jurisdiction over the decisions or final orders of quasi-judicial agencies. The MARINA is a quasi-judicial agency, and though it is not among the enumerated agencies in Rule 43, the list is not meant to be exclusive.[45]

However, while Rule 43 provides for the appeal procedure from quasi-judicial agencies to

the CA, the aggrieved party must still exhaust administrative remedies prior to recourse to the CA. Thus, Executive Order No. 292 otherwise known as the Administrative Code of 1987 provides for the framework of administrative appeal prior to judicial review:

> BOOK VII – ADMINISTRATIVE PROCEDURE
>
> CHAPTER 4 – ADMINISTRATIVE APPEAL IN CONTESTED CASES
>
> Sec. 19. *Appeal*.—Unless otherwise provided by law or executive order, an appeal from a final decision of the agency may be taken to the Department head.
>
> Sec. 20. *Perfection of Administrative Appeals*.—
>
> (1) Administrative appeals under this Chapter shall be perfected within fifteen (15) days after receipt of a copy of the decision complained of by the party adversely affected, by filing with the agency which adjudicated the case a notice of appeal, serving copies thereof upon trie prevailing party and the appellate agency, and paying the required fees.
>
> (2) If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.
>
> (3) The agency shall, upon perfection of the appeal, transmit the records of the case to the appellate agency.
>
> Sec. 21. *Effect of Appeal*.—The appeal shall stay the decision appealed from unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case.
>
> Sec. 22. *Action on Appeal*.—The appellate agency shall review the records of the proceedings and may, on its own initiative or upon motion, receive additional evidence.
>
> Sec. 23. *Finality of Decision of Appellate Agency*.—In any contested case, the decision of the appellate agency shall become final and executory fifteen (15) days after the receipt by the parties of a copy thereof.

x x x

Sec. 25. *Judicial Review*.—

(1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

(4) Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall show, by stating the specific material dates, that it was filed within the period fixed in this chapter.

(5) The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.

(6) The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

(7) Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

The above procedure notwithstanding, decisions of the various agencies of government have been appealed to the OP, consistent with the President's power of control over all the executive departments, bureaus, and offices.[46] We defined the presidential power of control over the executive branch of government as "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter."[47]

The doctrine of exhaustion of administrative remedies empowers the OP to review any determination or disposition of a department head. The doctrine allows, indeed requires, an

administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review.[48]

The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts—for reasons of law, comity, and convenience—will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[49]

While the doctrine of exhaustion of administrative remedies is flexible and may be disregarded in certain instances,[50] we find, however, that the case does not fall under any of the recognized exceptional circumstances. Petitioners claim that appeal to the DOTC Secretary, who is already the chairman of the MARINA Board, is a needless superfluity, the latter being the alter ego of the President. Moreover, petitioners state that filing an appeal with the Office of the President would be impractical because a member of the MARINA Board also came from the Office of the President. Both arguments fail to convince.

A quick look into the nature and functions of the MARINA is necessary to understand its nature, powers, and relationship to the executive department, and in turn determine the applicability of the doctrine of exhaustion of administrative remedies.

The MARINA was created under Presidential Decree No. 474[51] as an agency under the Office of the President.[52] Under Executive Order No. 546,[53] the MARINA was designated as an attached agency of the Ministry of Transportation and Communications.[54] Under Executive Order No. 1011,[55] the MARINA was granted the quasi-judicial functions formerly exercised by the Board of Transportation pertaining to water transportation.[56] The Administrative Code of 1987 reiterated that the MARINA is an attached agency of the DOTC:

> BOOK IV – THE EXECUTIVE BRANCH
> TITLE XV – TRANSPORTATION AND COMMUNICATIONS
> CHAPTER 6 – ATTACHED AGENCIES

> Sec. 23. Attached Agencies and Corporations.—The following agencies and corporations are attached to the Department: The Philippine National Railways, the Maritime Industry Authority, the Philippine National Lines, the Philippine Aerospace Development Corporation, the Metro Manila Transit Corporation, the Office of Transport Cooperatives, the Philippine Ports Authority, the Philippine Merchant Marine Academy, the Toll Regulatory Board, the Light Rail Transit Authority, the Transport Training Center, the Civil Aeronautics Board, the National Telecommunications Commission and the Manila International Airport Authority.

R.A. No. 9295, which was enacted on May 3, 2004, provides the jurisdiction, power and duties of the MARINA including the power to:

> Section 10. *Jurisdiction; Powers; and Duties of MARINA*.—
>
> x x x
>
> (2) Issue certificates of public convenience or any extensions or amendments thereto, authorizing the operation of all kinds, classes and types of vessels in domestic shipping: Provided, That no such certificate shall be valid for a period of more than twenty-five (25) years;
>
> x x x

The status of the MARINA as an attached agency of the DOTC is crucial to the determination of whether the DOTC has the power to review the decisions of the MARINA Board. Under Section 38, Chapter VII, Book IV of the Administrative Code of 1987,[57] there are three kinds of administrative relationship: (1) supervision and control; (2) administrative supervision; and (3) attachment.

Among the three, the relationship of supervision and control between a department and a subordinate agency is the most stringent since the department has the power to review the decisions of the subordinate agency. This power is not available in administrative supervision as Section 38 expressly states that the department shall have no power to

review the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions. As to the relationship of attachment, while the law is silent on the presence or absence of such power to review by the department, Section 38(3) would indicate that the Legislature did not intend that the decisions of an attached agency be subject to review by the department prior to appealing before the proper court. Section 38(3) indicates the most lenient kind of administrative relationship since the *lateral* relationship is limited to policy and program coordination. Thus, in *Beja v. Court of Appeals*,[58] we distinguished an attached agency from one which is under departmental supervision and control or administrative supervision:

> An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the "lateral relationship" between the Department and the attached agency. The attachment is merely for "policy and program coordination." With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department's administrative supervision is free from Departmental interference with respect to appointments and other personnel actions "in accordance with the decentralization of personnel functions" under the Administrative Code of 1987. **Moreover, the Administrative Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.**[59] (Emphasis supplied; citations omitted.)

Section 39, Chapter VIII, Book IV of the Administrative Code of 1987 expressly states that the chapter on supervision and control shall not apply to chartered institutions or government-owned or controlled corporations attached to the department. Section 39 provides:

> Sec. 39. *Secretary's Authority.*—
>
> (1) The Secretary shall have supervision and control over the bureaus, offices, and agencies under him, subject to the following guidelines:
>
> x x x

(2) This Chapter shall not apply to chartered institutions or government-owned or controlled corporations attached to the department.

Reading Section 39 together with Section 38, the decision of an attached agency such as the MARINA in the exercise of its quasi-judicial function *is not subject to review by the department*. Section 39 makes it clear that the supervision and control exercised by the department over agencies under it with respect to matters including the exercise of discretion (performance of quasi-judicial function) do not apply to attached agencies. Thus, in this respect, petitioners are correct in saying that the decisions of the MARINA are *not subject to the review of the DOTC Secretary*.

This is not to say, however, that decisions of the MARINA are not proper subjects of appeal to the OP.

In *Phillips Seafood (Philippines) Corporation v. Board of Investments*,[60] we recognized that under Administrative Order No. 18,[61] a decision or order issued by a department or agency need not be appealed to the OP when there is a special law that provides for a different mode of appeal.[62] R.A. No. 9295 does not provide for an appeal procedure; thus, the assailed decision and resolution from the MARINA should have been appealed with the OP.

More importantly, contrary to the petitioners' claim, the doctrine of qualified political agency does not apply in this case.

Under the doctrine of qualified political agency, heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This is a recognition of the fact that in our presidential form of government, all executive organizations, are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.[63]

But the doctrine of qualified political agency does not apply to the actions of heads of executive departments in the performance of their duties as *ex officio* members of the various agencies or entities under the executive department.[64]

Ex officio, is defined in *Civil Liberties Union v. Executive Secretary*[65] as:

> x x x The term *ex-officio* means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex-officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An *ex-officio* member of a board is one who is a member by virtue of his title to a certain office, and without further wan-ant or appointment. x x x[66]

In *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*[67] (TIDCORP), we: held that the doctrine of qualified political agency cannot be extended to the acts of the Board of Directors of the TIDCORP, though some of its members are cabinet members. We clarified that even if the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board are members of the cabinet, they sat on the TIDCORP Board by virtue of Presidential Decree No. 1080, as amended by R.A. No. 8494 and by reason of their office or function, or in their *ex officio capacity*, and not because of their direct appointment to the Board by the President. Thus, they were acting as members of the Board, and not as alter egos of the President. We said:

> But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494, the five *ex officio* members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the

> President, that sat them in the Board.
>
> Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.[68]

In this case, the DOTC Secretary and the Executive Secretary are *ex officio* members of the MARINA Board by yirtue of Section 7 of Presidential Decree No. 474, as amended, which provides:

> Sec. 7. *Composition and Organization*.—The Board shall be composed of eight members as follows: The Secretary of Trade, the Secretary of Public Works, ***Transportation and Communications***, the Secretary of National Defense, ***the Executive Secretary***, the Chairman of the Board of Investments, the Chairman of the Development Bank of the Philippines, the Chairman of the Board of Transportation and the Maritime Administrator. The Chairman of the Board shall be appointed by the President of the Philippines from among its members.[69] x x x (Emphasis supplied.)

Following our ruling in *Manalang-Demegillo*, the actions of the DOTC Secretary and the Executive Secretary, as *ex officio* members of the MARINA Board: were made not in their capacity as alter egos of the President. As such, an appeal to the OP is still warranted. If petitioners are still dissatisfied with the decision of the OP, then it would be the proper time to file a petition for review under Rule 43 with the CA.

To summarize, the DOTC Secretary does not have supervision and control over the MARINA, which is an attached agency to the DOTC. Consequently, it cannot review the decisions of the MARINA Board. However, decisions of the MARINA Board are proper subjects of appeal to the OP, having been made by its members in their *ex officio* capacity, and not as his alter egos. Failing to avail of such appeal, petitioners' petition for review with the CA was properly dismissed.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Resolutions dated March 24, 2009 and July. 23, 2009 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, and *Reyes, JJ.*, concur.

October 20, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **September 21, 2016** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 20, 2016 at 1:55 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[1] Docketed as LMRO Case No. 07-027. *Rollo*, pp. 425-434.

[2] *Id.* at 427-429.

[3] *Id.* at 139-152.

[4] *Id.* at 143-147.

[5] *Id.* at 147.

[6] *Id.* at 147-150.

[7] The Domestic Shipping Development Act of 2004.

[8] *Rollo*, pp. 130-138.

[9] *Id.* at 155-156.

[10] *Id.* at 157-158.

[11] *Id.* at 171-183.

[12] *Id.* at 184-187.

[13] Cited in the Appellant's Memorandum filed before the MARINA, *id.* at 198.

[14] *Id.* at 108-121.

[15] *Id.* at 122-127.

[16] *Id.* at 35-36.

[17] *Id.* at 62-64; penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Jose Catral Mendoza (now Member of this Court) and Ramon M. Bato, Jr., concurring.

[18] *Id.* at 62-63.

[19] *Id.* at 67-68.

[20] *Id.* at 37-40, citing *San Pablo v. Sta. Clara Shipping Corporation*, CA-G.R. SP No. 86811, July 31, 2006, *id.* at 704-715.

[21] *Id.* at 38, citing *Republic v. Damayan ng Purok 14, Inc.*, G.R. No. 143135, April 4, 2003, 400 SCRA 664 and *Sy v. Commission on Settlement of Land Problems*, G.R. No. 140903, September 12, 2001 365 SCRA 49.

[22] *Id.* at 42.

[23] *Id.* at 49.

[24] *Id.* at 49-50.

[25] *Id.* at 44-45.

[26] *Id.* at 741-765.

[27] *Id.* at 759-760.

[28] *Id.* at 761.

[29] *Id.* at 751-752.

[30] *Id.* at 746.

[31] *Id.* at 746-747.

[32] *Id.* at 748-755.

[33] See Manifestation/Submission (with Leave of Court) filed on June 7, 2010, *id.* at 774-784.

[34] *Id.* at 785-793.

[35] *Id.* at 774-775.

[36] *Id.* at 796- 807.

[37] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178, citing *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[38] *Id.* at 178-179.

[39] *Rollo*, pp. 790-791.

[40] Rules And Regulations Implementing Republic Act No. 9295, Entitled "An Act Promoting The Development Of Philippine Domestic Shipping, Shipbuilding, And Ship Repair And Ship Breaking, Ordaining Reforms In Government Policies Towards Shipping In' The Philippines, And For Other Purposes" (2004).

[41] *Rollo*, pp. 45-46.

[42] *Id.* at 46.

[43] *China Banking Corporation v. Members of the Board of Trustees, Home Development Mutual Fund*, G.R. No. 131787, May 19, 1999, 307 SCRA 443, 459.

[44] The Judiciary Reorganization Act of 1980.

[45] *Monetary Board v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015, 746 SCRA 508, 517-518.

[46] Section 1, Chapter I, Title I, Book III of the Administrative Code of 1987.

[47] *Carpio v. Executive Secretary*, G.R. No. 96409 February 14, 1992, 206 SCRA 290, 295 citing *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955).

[48] *Land Car, Inc. v. Bachelor Express, Inc.*, G.R. No. 154377, December 8, 2003, 417 SCRA 307, 312.

[49] *University of the Philippines v. Catungal, Jr.*, G.R. No. 121863, May 5, 1997, 272 SCRA 221, 240-241.

[50] The exceptions include:

(1) when there is a violation of due process,
(2) when theissue involved is purely a legal question,
(3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction,
(4) when there is *estoppel* on the part of the administrative agency concerned,
(5) when there is irreparable injury,
(6) when the respondent is a department secretary whose acts as an alter ego of the President bears [*sic*] the implied and assumed approval of the latter,
(7) when to require exhaustion of administrative remedies would be unreasonable,
(8) when it would amount to a nullification of a claim,
(9) when the subject matter is a private land in land case proceedings,
(10) when thesrule does not provide a plain, speedy and adequate remedy,
(11) when there are circumstances indicating the urgency of judicial intervention,
(12) when no administrative review is provided by law,
(13) where the rule of qualified political agency applies, and
(14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

Estrada v. Court of Appeals, G.R. No. 137862, November 11, 2004, 442 SCRA 117, 127-128.

[51] Providing For The Reorganization Of The Maritime Functions. In The Philippines, Creating The Maritime Industry Authority, And For Other Purposes (1974).

[52] Sec. 4, Presidential Decree No. 474.

[53] Creating A Ministry Of Public Works And A Ministry Of Transportation And

Communications (1979).

[54] Sec. 20, Executive Order No. 546.

[55] Establishing The Land Transportation/Commission In The Ministry Of Transportation And Communications, And For Other Purposes (1985).

[56] Sec. 13, Executive Order No. 1011.

[57] Sec. 38. *Definition of Administrative Relationships*.—Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

(1) Supervision and Control.—Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

(2) Administrative Supervision.—

(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses ;and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such *authority shall not, however, extend to:* (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except when appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and *(3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions*; and

Unless a different meaning is explicitly provided in the specific law governing
(c) the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

(3) Attachment—

This refers to the *lateral relationship* between the department or its equivalent and the attached agency or corporation *for purposes of policy and program coordination*. The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting
(a) rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;

Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion or judgment of the executive officer of the agency or corporation. In the event that the Secretary and the head of
(b) the board or the attached agency or corporation strongly disagree on the interpretation and application of policies, and the Secretary is unable to resolve the disagreement, he shall bring the matter to the President for resolution and direction;

Government-owned or controlled corporations attached to a department shall
(c) submit to the Secretary concerned their audited financial statements within sixty (60) days after the close of the fiscal year; and

Pending submission of the required financial statements, the corporation shall continue to operate on the basis of the preceding year's budget until the financial statements shall have been submitted. Should any government-
(d) owned or controlled corporation incur an operation deficit at the close of its fiscal year, it shall be subject to administrative supervision of the department; and the corporation's operating and capital budget shall be subject to the department's examination, review, modification and approval. (Emphasis supplied.)

[58] G.R. No. 97149, March 31, 1992, 207 SCRA 689.

[59] *Id.* at 697.

[60] G.R. No. 175787, February 4, 2009, 578 SCRA 113.

[61] Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines (1987). This has been repealed by Administrative Order No. 22, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines (2011).

[62] Section 1 of Administrative Order No. 18, reads:

Sec. 1. Unless otherwise governed by special laws, an appeal to the Office of the President shall be taken within thirty (30) days from the receipt by the aggrieved party of the decision/resolution/order complained of or appealed from. x x x (Emphasis supplied).

Section 1 of Administrative Order No. 22, reads:

Sec. 1. Period to appeal. Unless otherwise provided by special law, an appeal to the Office of the President shall be taken fifteen (15) days from notice of the aggrieved party of the decision/resolution/order appealed from, or of the denial, in part or in whole, of a motion for reconsideration duly filed in accordance with the governing law of the department or agency concerned.

[63] *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, G.R. No. 168613, March 5, 2013, 692 SCRA 359, 373-374.

[64] *Id.* at 374-375.

[65] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[66] *Id.* at 333.

[67] G.R. No. 168613, March 5, 2013, 692 SCRA 359.

[68] *Id.* at 374-376.

[69] The composition of the MARINA Board has been amended by Section 1, Executive Order No. 783, promulgated on March 16, 1982, to include the Philippine Ports Authority General Manager as member of the MARINA Board. Section 5, R.A. No. 10635, promulgated on March 13, 2014, further amended its composition by including the Commandant of the Philippine Coast Guard in lieu of the Secretary of the National Defense.

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