

MERCHANTS RURAL BANK OF TALAVERA, INC. AND HILARIO F. SORIANO, IN HIS CAPACITY AS MAJORITY STOCKHOLDER IN MERCHANTS RURAL BANK OF TALAVERA, INC., PETITIONERS, VS. MONETARY BOARD...

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Civil Procedure which seeks to nullify the Resolution No. 98,[2] dated January 26, 2006, of the Respondent Monetary Board prohibiting Petitioner Merchants Rural Bank of Talavera, Inc. from doing business in the Philippines and placing it under receivership with Respondent Philippine Deposit Insurance Company.

The facts are as follows:

On March 21, 2005, the Bangko Sentral ng Pilipinas (BSP) extended[3] an emergency loan of P100 Million to Petitioner Merchants Rural Bank of Talavera, Inc. (Bank). Pending the required general examination of the Bank's assets and affairs, the BSP released a portion of the loan amounting to P32.947 Million. The BSP refused[4] to issue the remaining proceeds of the loan until the controlling stockholders have signed the required Deed of Negative Pledge, Surety Agreement and Joint and Several Undertaking.

The Bank's President, Atty. Peralta, thus, requested[5] the BSP to place the Bank under Conservatorship in accordance with Section 29 of RA 7653 (New Central Bank Act) and reiterated their appeal for the release of the remaining proceeds of the loan. The BSP denied said request and held that assigning a Conservator is not proper and suitable considering the Bank's situation.

Subsequently, the BSP concluded its general examination in August 2005 and, on January 3, 2006, found[6] that the Bank's liabilities exceeded its realizable assets by P26.28 Million. Thus, the BSP Supervisor and Examination Department IV recommended that the Bank be placed under Receivership pursuant to Section 30 of R.A. 7653.

Consequently, on January 26, 2006, the Respondent Monetary Board of BSP issued the assailed Resolution which reads:

"ACTION TAKEN

On the basis of the examination findings as of 01 July 2005 as reported by Mrs. Leilani M. Canullas, Director, Supervision and Examination Department IV, in a memorandum dated 18 January 2006, which findings showed that the Merchant Rural Bank of Talavera, Inc. (MRBTI) (a) has insufficient realizable assets to meet its liabilities; (b) is unable to pay its liabilities as they become due in the ordinary course of business; and (c) cannot continue in business without involving probable losses to its depositors and creditors unless fresh capital infusion is made; and considering the failure of the board of directors/management to restore MRBTI's viability despite ample time given, that MRBTI had been accordingly informed and given more than enough time to infuse additional capital to place it in a sound financial condition but no fresh capital infusion was

made, and that MRBTI has been accorded due process, the Board decided as follows:

- To prohibit MRBTI from doing business in the Philippines and to place its assets and affairs under receivership in accordance with Section 30 of Republic Act No. 7653;
- To designate the Philippine Deposit Insurance Corporation as Receiver of MRBTI;

xxx”

Aggrieved, Petitioners filed this Petition raising the sole issue: “Whether or not a (sic) the Monetary Board committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned resolution prohibiting Merchants Rural Bank of Talavera, Inc. from doing business in the Philippines and placing its assets and affairs under the receivership of the Philippine Deposit Insurance Corporation.”

We deny the instant Petition.

Paragraph 2, section 4, Rule 65 of the Rules of Civil Procedure, on the venue for jurisdiction over a petition for certiorari, provides:

“SEC. 4. When and where petition filed. — xxx

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court[7] exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.”

Although the Supreme Court, Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the Petitioners unrestricted freedom of choice of court forum.[8]

This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with the Regional Trial Courts and the Supreme Court. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs.[9] A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is an established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[10]

Thus, this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction.[11]

Petitioners failed to allege, much less prove, that there exists a special and important reason or exceptional and compelling circumstance to justify direct recourse to this Court.[12] The present petition should have been initially filed in the proper Regional Trial Court in strict observance of the doctrine on the hierarchy of courts. Failure to do so is sufficient cause for the dismissal of the petition at bar.[13]

Clearly, Petitioners, in directly filing the instant petition before this Court, violated the established policy of strict observance of the judicial hierarchy of courts.[14]

We likewise deny the instant Petition because Petitioners failed to file the required Motion for Reconsideration.

For the special civil action of certiorari to commence under Rule 65 of the Rules of Court, the Rules[15] require that the petitioner be left with "no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." A motion for reconsideration of an assailed resolution is deemed a plain and adequate remedy provided by law.[16]

The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for certiorari.[17] The law intends to afford the tribunal, board or office, an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had.[18] The rule is well-settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for certiorari, subject to the following exceptions:[19]

- (a) where the order is a patent of nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.[20]

Petitioners had not only failed to justify its failure to file a motion for reconsideration before the Respondent Monetary Board, it has also failed to show sufficient justification for dispensing with the requirement.[21] Petitioners merely alleged that the assailed Resolution would cause them irreparable injury without offering any justifiable argument and basis therefor.

Petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not.[22] Neither is certiorari resorted to as a shield from the adverse consequences of petitioners' own omission to file the required motion for reconsideration.[23] Consequently, for their failure to file a Motion for Reconsideration, Petitioners forfeited such an important procedural remedy[24] and compels Us to dismiss this Petition.

Assuming without admitting that Petitioners are justified in directly filing the petition before this Court, We are, nonetheless, constrained to dismiss the instant Petition in accordance with Section 30 of RA 7653.

Section 30 provides that "actions of the Monetary Board (on proceedings in receivership and liquidation) ... shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari... (which) may only be filed by the stockholders of record representing the majority of the capital stock..."

Indubitably, Petitioner Bank is not the stockholders of record but the corporation itself. Hence, Petitioner Bank does not have the legal capacity to file the instant Petition.

Petitioner Hilario Soriano alleges that he owns 109,985 shares or 54.99% of the authorized capital stock and,

thus, has the capacity to file the instant Petition. Petitioner Soriano presented a Secretary's Certificate,[25] dated February 6, 2006, attesting to said fact.

On the other hand, Respondents Monetary Board and BSP assert that, based on the records submitted by the Bank to BSP as of July 31, 2005, Petitioner Soriano owns only 62,794 shares or 31.397% of the authorized capital stock. Respondents Monetary Board and BSP argue that Petitioner Soriano's Secretary's Certificate was a misrepresentation, if not perjurious.

A careful review of the records show that there was a Certification,[26] dated February 10, 2006, by the Deputy Receiver of the Bank which declared the absence of any record or proof of the assignment or transfer of shares from other stockholders to Petitioner Soriano to support

Petitioner Soriano's claim that he holds the majority shares of the Bank.

Petitioner Soriano, however, argues that the shares of stocks are personal property and can be transferred by mere delivery. Petitioner Soriano maintains that delivery of the shares is enough proof of the transfer of said shares.

However, as correctly argued by Respondents Monetary Board and the BSP, even if there was a proof of transfer of shares in favor of Petitioner Soriano, said transfer and his ownership thereof of more than 40% of the total shares would be void and illegal.

As provided under Section X126.2(c)(1)(b) of the Manual of Regulations for Banks, prior approval of the Monetary Board on any transfer or sale of the bank shares is necessary. It is undisputed that the Monetary Board, not having received any proof or notice of the transfer of the shares to Petitioner Soriano, did not give its prior approval thereto. Consequently, absent the required prior approval by the Monetary Board, the transfer/s of the bank shares in favor of Petitioner Soriano is/are considered ineffective and, therefore, void.

Moreover, as mandated by Section X126.2(a)(1) in the Manual of Regulations for Banks, the alleged sale or transfer of the shares to Petitioner Soriano which increased his shareholdings to more than 40% is illegal.

Section X126.2(a)(1) explicitly prohibits the sale or transfer of voting shares of stock in banks if said sale or transfer "shall result in the ownership by an individual in excess of forty percent (40%) of the voting stocks of the bank." By reason of the alleged transfers, Petitioner Soriano's stockholdings were increased to 54.99%. As the rule only limits ownership of shares to only 40% of the total voting shares, the excess in Petitioner Soriano's stockholdings is deemed illegal. Petitioner Soriano could not validly own more than 40% or the majority stocks necessary to file the instant Petition. Consequently, the instant Petition must fail.

All told, Petitioners should remember that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only on the manner and strictly in accordance with the provision of the law and the rules.[27]

WHEREFORE, the instant Petition is DENIED. The assailed Resolution No. 98, dated January 26, 2006, of the Respondent Monetary Board, is hereby AFFIRMED.

SO ORDERED.

Salazar-Fernando, (Chairperson), and Punzalan Castillo, JJ., concur.

[1] Rollo, pp. 1-16, dated February 5, 2006.

[2] Rollo, p. 19.

[3] Rollo, pp. 215-216, Resolution No. 042.

[4] Rollo, pp. 141-142.

[5] Rollo, pp. 139-140, letter, dated April 12, 2005.

[6] Rollo, pp. 44-45, Supervision and Examination Department IV.

[7] Underscoring Supplied.

[8] *Heirs of Hinog vs. Hon. Melicor*, 455 SCRA 460 (2005).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] “SECTION 1. Petition for Certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file. . . .”

[16] *Association of Integrated Security Force of Bislig vs. Hon. Court of Appeals*, 467 SCRA 483 (2005).

[17] *Metro Transit Organization, Inc. vs. Bantang, Jr.*, 392 SCRA 229 (2002).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Flores vs. Sangguniang Panlalawigan of Pampanga*, 452 SCRA 278 (2005).

[23] *Supra* at Note 17

[24] *Id.*

[25] Rollo, p. 175.

[26] Rollo, p. 223.

[27] *Cervantes vs. Court of Appeals*, 475 SCRA 562 (2005).

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