

EMERITO M. RAMOS, ET AL., PETITIONERS, VS. CENTRAL BANK OF THE PHILIP-PINES, RESPONDENTS; COMMERCIAL BANK OF MANILA INTERVENOR.*G.R. No. L-29352. July 22, 1985*

Ponente: TEEHANKEE, J.

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Pending final determination is respondent Central Bank's motion for reconsideration dated December 28, 1982 of the Court's Resolution of October 19, 1982 which ruled "applying the Tapia ruling as reaffirmed by the Court in the subsequent cases cited above [OBM vs. Vicente Cordero, 113 SCRA 303 (March 30, 1982), per Escolin, J.; OBM vs. Julian Cordero, 113 SCRA 778 (April 27, 1982), per Barredo, J.] that the bank is not liable for interest on the Central Bank loans and advances during the period of its closure from August 2, 1968 to January 8, 1981."

In the Tapia ruling (105 SCRA 49, June 11, 1981), the Court held that "the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank," and that "for the guidance of those who might be concerned, and so that unnecessary litigations may be avoided from further clogging the dockets of the courts, that in the light of the considerations expounded in the above opinion, the same formula that exempts petitioner from the payment of interest to its depositors during the whole period of factual stoppage of its operations by orders of the Central Bank, modified in effect by the decision as well as the approval of a formula of rehabilitation by this Court, should be, as a matter of consistency, applicable or followed in respect to all other obligations of petitioner which could not be paid during the period of its actual complete closure."

The parties have been extensively heard on the pending incident through their various pleadings and in oral argument on October 23, 1984 as well as in their memoranda in amplification of oral argument.

Respondents have failed to adduce any cogent argument to persuade the Court to reconsider its Resolution at bar that the Tapia ruling as reaffirmed by the aforecited cases is fully applicable to the non-payment of interest, during the period of the bank's forcible closure, on loans and advances made by respondent Central Bank. Respondent Central Bank itself when it was then managing the Overseas Bank of Manila (now Commercial Bank of Manila) under a holding trust agreement, held the same position in *Idelfonso D. Yap vs. OBM and CB* (CA-G.R. No. 48887-R) wherein it argued in its brief that "(I)n a suit against the receiver of a national bank for money loaned to the Bank while it was a going concern, it was error to permit plaintiff to recover interest on the loan after the bank's suspension" (citing *Zollman, Banks and Banking*). In *Pablo R. Roman, et al. vs. Central Bank* (CA-G.R. No. 49144-R, October 18, 1973, per then Court of Appeals Justice Hermogenes Concepcion Jr.), the appellate court by final judgment affirmed the trial court's judgment ordering appellant Central Bank to condone all interests on Central Bank loans to the Republic Bank, as well as penalties imposed on it which would be tantamount "to force the Republic Bank to liquidate as an insolvent." It should be further noted that the respondent Central Bank when called upon to deal with commercial banks and extend to them emergency loans

and advances, deals with them not as an ordinary creditor engaged in business, but as the ultimate monetary authority of government charged with the supervision and preservation of the banking system.

A significant development of the case also is set forth in the manifestation dated October 19, 1984 of Government Corporate Counsel and general counsel of the COMBANK Manuel M. Lazaro confirming inter alia that "(T)he Government Service Insurance System (GSIS) has acquired ownership of 99.93% of the outstanding capital stock of COMBANK," and urging resolution at the earliest time possible of the sole issue raised in respondent Central Bank's motion for reconsideration of the Resolution of October 19, 1982 that "applying the Tapia ruling as reaffirmed by the Court in subsequent cases, COMBANK is not liable for interest on CB loans and advances during the period of its closure from August 2, 1968 to January 8, 1981" (Record, Vol. V, p. 2261). In his earlier petition for early resolution, Government Corporate Counsel Manuel M. Lazaro had likewise urged that "(T)he *raison d'etre* of the Honorable Court's Resolution of October 19, 1982 is but a re-affirmation of the ruling laid down and firmly established in previous decisions that have long become final, notably *OBM vs. Tapia*, 105 SCRA 49 (June 11, 1981), *OBM vs. Vicente Cordero* and Court of Appeals, 113 SCRA 303 (Mar. 30, 1982), and *OBM vs. Court of Appeals and Julian R. Cordero*, 113 SCRA 778 (April 27, 1982)" (*idem*, p. 2242). Government Corporate Counsel Lazaro in his aforecited manifestation removes any and all doubts as to the propriety of the Court having rendered its Resolution of October 19, 1982 pursuant to the bank's motion for a clarificatory ruling in the present case made pursuant to the express agreement between the bank and the respondent Central Bank then under Governor Jaime Laya. As stated in the Resolution itself, "the bank's letter of July 1, 1981 invoking the Tapia ruling was precisely the subject of the Central Bank's reply of November 12, 1981 above quoted, agreeing anew that the Central Bank and the Combank seek a clarificatory ruling from the Supreme Court on the applicability of the Tapia ruling to the case at bar with both parties ultimately agreeing to 'abide by any clarificatory ruling which the Supreme Court may render on the matter'" (Record, Vol. IV, pp. 1993-1994). The COMBANK in its said manifestation makes of record that it has likewise entered into an agreement with its sister government banking institution, the Philippine National Bank, that "both banks have agreed to abide by the final resolution of this Honorable Court on the CB's pending Motion for Reconsideration," and that "COMBANK is represented in the above-captioned case by its General Counsel, the Government Corporate Counsel who is also the legal counsel for the PNB and whose services were recently retained by CB in connection with the controversy involving Banco Filipino and Governor Jose B. Fernandez, Jr." This certainly makes moot any previous doubts raised during the oral argument that then Central Bank Governor Jaime Laya may not have had the authority to enter into such agreement.

The Court's Resolution of October 19, 1982 manifestly redounds to the benefit of another government institution, the GSIS, which has acquired 99.93% of the outstanding capital stock of the COMBANK and to the preservation of the banking system. It is time to write *finis* to this case which had its beginnings long ago when the original judgment of October 4, 1971 was rendered against the Central Bank, as succinctly stated by the now Chief Justice in his "[concurrence] in the result pri-marily on the ground that respondent's arbitrary and improvident exercise of its asserted power in the premises is violative of due process" (*Ramos vs. Central Bank*, 41 SCRA 565).

ACCORDINGLY, the Court Resolved to DENY with finality respondent Central Bank's motion for reconsideration, for lack of necessary votes.

Fernando, C.J., Concepcion, Jr., De la Fuente, and Alampay, JJ., concur.

Aquino, J., see dissent.

Melencio-Herrera, J., see attached dissent.

Plana, J., see dissent.

Relova and Gutierrez, Jr., JJ., join J. Aquino in his dissent.

Abad Santos, J., on official leave.

Makasiar, Escolin, and Cuevas, JJ., no part.

DISSENTING OPINION

AQUINO, J.:

I dissent. The Central Bank, through the Solicitor General, has presented sufficient reasons to justify the setting aside of the resolution of October 19, 1982, waiving the interest of 47 million pesos due from the Overseas Bank of Manila.

This Court HAS NO JURISDICTION in L-29352 to entertain the motion of Atty. Pelaez to pass upon the interest on the advances of the Central Bank to the Overseas Bank. L-29352 should have been ARCHIVED a long time ago. It is a closed case. Atty. Pelaez should have filed a new case regarding the interest.

Hence, this Court has NO JURISDICTION to issue the instant resolution.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I vote to grant reconsideration of the Court's Resolution of October 19, 1982.

I agree with the Solicitor General that loans and advances made by the Central Bank to the then Overseas Bank of Manila (OBM) can not be treated in the same manner as deposits made by ordinary depositors. The Tapia ruling, to my mind, is doctrinal only insofar as it holds that payment of interest on deposits ceases the moment the operation of the bank is completely suspended by the Central Bank, but not when it applies said ruling to interest on loans and advances made by the Central Bank, that point not having been in issue since the Central Bank was not a party therein. As a matter of fact, the paragraph extending its application "to all other obligations of OBM which could not be paid during the period of its complete closure" (p. 62) is prefaced by the term "parenthetically."

Moreover, interest payment on the loans and advances made by the Central Bank was the subject of explicit agreement between the parties at a time when the OBM had already been closed, the rehabilitation plan already agreed upon and, in fact, was one of the terms and conditions for the resumption of normal banking operations of OBM (now COMBANK). Significant-ly, too, as brought out during the hearing, held on October 23, 1984, the interest due has been determined and the moneys therefor held in escrow.

DISSENTING OPINION

PLANA, J.:

In G.R. No. L-29352, the issue was whether the Central Bank acted with grave abuse of discretion in ordering the closure in 1968 of the Overseas Bank of Manila (OBM). By a closely divided vote, the Court said Yes. (41 SCRA 565.)

G.R. No. L-49353 (Overseas Bank of Manila vs. Court of Appeals and Tony Tapia, etc.) was an entirely different case. The issue there was whether OBM, during the actual stoppage of its operations by order of the Central Bank, was liable to pay interest on deposits therein. The Supreme Court (Second Division) held that "it should be deemed read into every contract of deposit with a bank that the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank." (105 SCRA 49.) Going beyond the narrow issue raised by the parties, the Court added —

"Parenthetically, We may add for the guidance of those who might be concerned, and so that unnecessary litigations may be avoided from further clogging the dockets of the courts, that in the light of the considerations expounded in the above opinion, the same formula that exempts petitioner from the payment of interest to its depositors during the whole period of factual stoppage of its operations by orders of the Central Bank, modified in effect by the decision as well as the approval of a formula of rehabilitation by this Court, should be, as a matter of consistency, applicable or followed in respect to all other obligations of petitioner which could not be paid during the period of its actual complete closure." (Ibid., at 62.)

Wanting to adopt practical solutions for the OBM problems, the Central Bank and OBM submitted a Rehabilitation Program which, among others, stipulated the payment by OBM of 6% interest per annum on its obligations to the Central Bank. (These were the CB loans and advances to OBM before the Central Bank closure of OBM, which were used by the latter to meet its liquidity problems.) The Rehabilitation Program was approved by the Supreme Court in its Resolution dated October 23, 1974.

Unfortunately, the Rehabilitation Program did not succeed. And so, the Central Bank called for bidders to recapitalize OBM. It was at this point that the Investment and Underwriting Corporation of the Philippines (IUCP) acquired controlling interest in OBM. IUCP specifically agreed to pay the 6% interest on the aforesaid liabilities to the Central Bank. (These voluntary assumption of contractual liability was subsequently modified, but said modification was later withdrawn upon agreement of the Central Bank and IUCP.)

In 1981, OBM reopened business under its new corporate name, Commercial Bank of Manila (COMBANK). On April 13, 1981, COMBANK paid Central Bank partial interests from August 1, 1968 to January 7, 1981 on the P63 M advances of the Central Bank to OBM. (Annexes "C" and "D" of Motion for Clarificatory Ruling dated July 29, 1982.) However, it refused further payment of interest when the Supreme Court rendered its decision in OBM vs. CA and Tony Tapia, supra, promulgated on June 11, 1981, which held that OBM was not liable for interest on deposits during the time of its actual closure. COMBANK claimed coverage by the said decision, as against the contrary position of the Central Bank.

To solve the impasse, COMBANK and the Central Bank agreed to abide by any clarificatory ruling the Supreme Court may render on the matter.

As noted before, Ramos vs. Central Bank was decided by this Court way back on October 4, 1971 on the issue of the validity of the OBM closure. The case did not involve any question as to the liability of OBM for interest on deposits or any other obligation. Surprisingly, however, on February 17, 1982 — more than 10 years after the entry of judgment in Ramos vs. Central Bank — COMBANK filed a motion to intervene in said case as well as a motion praying for a clarificatory ruling on the liability of OBM to pay interest on Central Bank loans and advances.

In a Minute Resolution dated October 19, 1982, this Court ruled that OBM is not liable to pay interest on Central Bank loans and advances during the period of its closure. The motion of the Central Bank under consideration seeks a reconsideration of that ruling.

With all due respect, I dissent from the main resolution for the following reasons:

1. As noted above, Ramos vs. CB was limited to the issue of the legality of the CB order stopping the

operations of OBM. It did not involve any question as to the liability of OBM to pay interest on deposits or other obligations. The COMBANK motion for clarification regarding OBM liability for interest payment on CB loans and advances was entirely foreign to the case, quite apart from the fact that the said motion was filed on February 17, 1982, i.e., long after the entry of judgment in Ramos vs. CB in 1971, and was not at all related to the execution of the judgment therein. I therefore share the view of Mr. Justice Aquino that this Court has no jurisdiction to resolve in G.R. No. L-29352 the issue of interest liability of COMBANK to the Central Bank, for which reason the Court's resolution dated October 19, 1982 should be reconsidered and set aside.

2. However, brushing aside the issue of jurisdiction, there are cogent reasons why OBM (now COMBANK) should be held liable for the payment of interests on CB loans and advances.

(a) The loans and advances in question were granted by the Central Bank to OBM before the latter's closure in 1968 to enable it to meet its obligations to its depositors whose money (deposits) it had been able to use in the generation of income.

(b) For the period during which OBM stopped banking operations, it collected interests on loans granted by it to its clients. (Actually, the Central Bank closure order was limited only to normal banking operations; it did not prohibit the collection of OBM receivables, including interests due.) If OBM thus collected interests on loans granted by it, why should it not pay interest on loans and advances given to it by the Central Bank to meet its liquidity problems? Is it not enough that OBM has already been exempted from the payment of interests on bank deposits?

(c) Money does not come gratuitously to the Central Bank. It has cost. This is now of common knowledge because the JOBO bills and the high interest rates they carry are familiar to all. But even before the advent of JOBO bills, the Central Bank was borrowing money locally and/or from external sources and paying interests on borrowed funds. By all relevant standards, it is only fair and proper that the Central Bank should be allowed to recover its investment and the cost thereof.

(d) I do not think that the liability or non-liability of the OBM (COMBANK) for interest payment on CB loans and advances would either prejudice or benefit the GSIS, the government instrumentality which owns 99.93% of the outstanding capital stock of COMBANK. When the GSIS bought the controlling interest in COMBANK, the vendor (IUCP/Herdis Group) together with the Emerito Ramos Group placed in escrow with the INTERBANK the amount of P47.2 million to answer for the interest liability of COMBANK in case the Supreme Court rules that the latter is liable therefor. On the other hand, however, should the Supreme Court decide that COMBANK is not liable, the amount held in escrow would be returned to the IUCP/Herdis Group and the Emerito Ramos Group. It is therefore clear that neither the GSIS nor COMBANK will be affected, one way or the other, by any ruling of the Supreme Court on the issue at bar. But certainly, the Central Bank and the Philippine Government stand to lose some P47 million in interests should the Supreme Court hold that COMBANK is not liable to pay interest on CB pre-1968 loans and advances from which OBM has unquestionably benefited.

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