

THE CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE GAUDENCIO CLORIBEL AND BANCO FILIPINO, SAVINGS AND MORTGAGE BANK, RESPONDENTS.

G.R. No. L-26971. April 11, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The Central Bank of the Philippines seeks a writ of certiorari and prohibition to annul an order of Hon. Gaudencio Cloribel, as Judge of the Court of First Instance of Manila, dated November 23, 1966, authorizing the issuance of a writ of preliminary injunction to restrain the Petitioner and the Monetary Board, as well as its officials and agents, from enforcing Central Bank Circulars Nos. 185 and 222, dated December 15, 1964, and June 14, 1966, and Monetary Board Resolutions Nos. 805 and 1566, dated May 20 and September 20, 1966, respectively, insofar as they restrict the payment by Banco Filipino of "monthly" interests on savings deposits and "advance" interests on time deposits.

The main facts are not disputed. Respondent Banco Filipino is a savings and mortgage bank duly organized and existing under the laws of the Philippines. It began its operations in July 1964. On December 15 of the same year, Petitioner issued, pursuant to Resolution No. 1769 of the Monetary Board, dated December 11, 1964, Central Bank Circular No. 185, providing that -

" * * * the following regulations shall govern the interest rates on deposits of all banks, except rural banks.

1. Demand deposits No interest shall be paid on these deposits.

2. Savings deposits:

a) Commercial banks . – The maximum rate of interest on savings deposits of commercial banks shall be four per cent (4%) per annum, compounded quarterly.

b) Savings and mortgage banks, development banks (including the Development Bank of the Philippines), cooperative banks and the NACIDA Bank. – The maximum rate of interest on savings deposits of these banks shall be four and one-half per cent (4-1/2%) per annum, compounded quarterly.

3. Time deposits (Including IDC-ICA Special time deposits). –

a) Term . – No time deposits shall be accepted for a term of less than ninety (90) days.

b) Schedule of rates : –

1) Commercial banks. – A maximum rate of five per cent (5%) annual interest on time deposits shall be allowed, in accordance with the following schedule:

(a) 90 days - 4-1/4%

(b) 180 days - 4-1/2%

(c) 270 days - 4-3/4%

(d) 360 days - 5%

2) Savings and mortgage banks, development banks (including the Development Bank of the Philippines), cooperative banks, and the NACIDA Bank. – A maximum of five per cent (5%) annual interest on time deposits shall be allowed, in accordance with the following schedule:

(a) 90 days but not exceeding 180 days 4-3/4%

(b) Exceeding 180 days — 5%

(c) Withdrawal before maturity date. Where a time deposit is permitted to be withdrawn before the maturity date fixed in the certificate of time deposit, the amount withdrawn shall be deemed a savings deposit and shall earn interest at the rate allowed savings deposit."[1]

This circular was modified by Circular No. 222 – issued on June 14, 1966, in pursuance of Resolution No. 805 of the Monetary Board, dated May 20, 1966 – as follows:

"2. Savings deposits. –

Commercial banks, savings and mortgage banks, development banks (including the Development Bank of the Philippines), cooperative banks, rural banks and the NACIDA Bank. – The maximum rate of interest on savings deposits of these banks shall be five and three-fourths per cent (5-3/4%) per annum, compounded quarterly.

3. Time deposits (including the IDC-ICA Special time deposits).

* * * * *

b) Time of payment of interest and withdrawal of deposit before maturity date. – Interest on time deposits shall not be paid in advance, but only at maturity, or upon withdrawal of the deposit. When withdrawn before maturity, a time deposit shall be deemed a savings deposit, and the interest which may be paid thereon shall not exceed the interest applicable to a savings deposit.

c) Schedule of interest rates. – Commercial banks, savings and mortgage banks, development banks (including the Development Bank of the Philippines), cooperative banks, rural banks and the NACIDA Bank. – A maximum annual interest rate of six and one-half per cent (6-1/2%) shall be allowed on time deposits in accordance with the following schedule:

(a) 90 days – 5-3/4%

(b) 180 days – 6%

(c) 270 days – 6-1/4%

(d) 360 days 6-1/2%

(d) Treatment of matured time deposit . – A time deposit, not withdrawn or renewed on its due date of withdrawal shall be deemed a savings deposit and the interest which may be paid thereon from said due date of withdrawal to the date of actual withdrawal or renewal shall not exceed the interest applicable to a savings deposit.

4. No bank or banking institution shall disseminate, advertise, or release any information that it is paying or will pay interest at rates higher than those prescribed herein, or indicate the effective rates resulting from a compounding of the rates.

* * * * *

6. Any provision of existing regulations inconsistent herewith is hereby superseded."[2]

It appears that when Banco Filipino started its operations in July 1964, savings deposits therein made were to earn interest at the rate of four (4) per cent per annum, "compounded quarterly," and its savings passbooks and the rules and regulations, printed on the specimen signature cards of said deposits, contained the following statements, among others:

"Your deposit of P10.00 or more shall earn interest at the rate of 4% per annum, compounded quarterly. Said interest shall be computed once every month on the lowest monthly round peso balance of your deposit and credited to your account every three months, thereby entitling it to earn interest as a deposit. For purposes of interest computation, a month shall start from a date coinciding with the day your account was opened to the same date of the following month.

"Interest. – Unless otherwise agreed upon, the bank will allow on balances of P10.00 or more, interest at the rate of 4% per annum, compounded quarterly. Said interest shall be computed once a month on the lowest monthly round peso balance standing to the depositor's credit. For purposes of interest computation, a month starts from a date coinciding with the date the account was opened to the same date of the following month. Such interest shall be credited to the depositor's account at the end of every three months thereby entitling it to earn interest as a deposit. No interest shall be paid on accounts closed prior to the crediting of interest as hereinbefore mentioned. The rate of interest on savings deposits is subject to change when conditions warrant."[3]

Subsequently, however, within the same year, Banco Filipino changed its policy by compounding and paying the interest on its savings deposits, at the maximum rate fixed by the Monetary Board, from the quarterly to the monthly basis, and by paying, in advance, the maximum rates of interest on time deposits.

On September 20, 1966, the Monetary Board approved Resolution No. 1566, directing the Banco Filipino to comply strictly with Central Bank Circular No. 222. Said Resolution was communicated to the Banco Filipino in a letter dated September 29, 1966. Soon later, or on October 14, 1966, Banco Filipino filed with the Court of First Instance of Manila a petition for prohibition and preliminary injunction which was docketed as Civil Case No. 67181 of said court against Petitioner herein and the Monetary Board, to annul Central Bank Circulars Nos. 185 and 222 and Monetary Board Resolutions Nos. 805 and 1566, "insofar as they restrict the payment of monthly interests on savings deposits and advance interests on time deposits," and praying that a writ of preliminary injunction be issued ex parte to restrain the Petitioner, its officials and/or agents from enforcing the aforementioned circulars and resolutions to the extent that the same imposed said restrictions, or, should the court "require that a hearing be conducted on the petition for a preliminary injunction, that a preliminary restraining order to the same effect be issued pending such hearing."

Thereupon, or on October 15, 1966, Hon. Gaudencio Cloribel, as Judge of said court, issued ex parte the restraining order prayed for and set the application for a writ of preliminary injunction for hearing on October 29, 1966. On October 26, the respondents in said case filed their answer and the next day moved to dissolve the restraining order of October 15. After the aforementioned hearing and the submission by the parties of their respective memoranda, Judge Cloribel granted said application for a writ of preliminary injunction in an order dated November 23, 1966, copy of which was served on Petitioner herein on December 6. Accordingly, the latter instituted the present action to annul the order of November 23 and to meanwhile restrain its enforcement, upon the ground that, in issuing said order, Judge Cloribel had committed a grave abuse of discretion amounting to excess of jurisdiction.

In its answer to the petition herein, Banco Filipino sets up, in effect, the following defenses, to wit: 1) that said petition should be dismissed, because "petitioner has not exhausted all remedies in the Court of First Instance of Manila before coming to this Honorable Court"; 2) that having heard the parties before issuing the contested order, respondent Judge had neither committed a grave abuse of discretion, nor exceeded his jurisdiction, in acting as he did; and 3) that the contested resolutions and circulars are null and void for (a) they were issued without previous notice and hearing, (b) they impair vested rights, and (c) the statutory power of the Monetary Board to "fix the maximum rates of interest which banks may pay on deposits and any other obligations" does "not include the regulation of the manner of computing and paying interest, since this function is not expressly granted petitioner."

It is true that Petitioner herein did not seek a reconsideration of the order complained of, and that, as a general rule, petition for certiorari will not be entertained unless the respondent has had through a motion for reconsideration, a chance to correct the error imputed to him. This rule is subject, however, to exceptions, among which are the following, namely: 1) where the issue raised is one purely of law; 2) where public interest is involved; and 3) in case of urgency.[4] These circumstances are present in the case at bar. Moreover, Petitioner herein had raised – in its answer in the main case and in the rejoinder to the memorandum of the Banco Filipino in support of the latter's application for a writ of preliminary injunction – the very same questions raised in the Petition herein. In other words, Judge Cloribel has already had an opportunity to consider and pass upon those questions, so that a motion for reconsideration of his contested order would have served no practical purpose. The rule requiring exhaustion of remedies does not call for an exercise in futility.[5]

Although promulgated after due hearing and the submission of memoranda by both parties, it does not necessarily follow that Judge Cloribel had not committed a grave abuse of discretion and exceeded his jurisdiction in issuing the order complained of by Petitioner herein. The Rules of Court specify the conditions under which a writ of preliminary injunction may be issued. If such conditions are not present, a writ of certiorari and prohibition may be proper. This particular question will be taken up later.

Then, too, the Central Bank is supposed to gather relevant data and make the necessary study, but has no legal obligation to notify and hear anybody, before exercising its power to fix the maximum rates of interest that banks may pay on deposits or any other obligations. Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. It is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise, and there is no statutory requirement to this effect, insofar as the fixing of maximum rates of interest payable by banks is concerned.

"It is also clear from the authorities that where the function of the administrative body is legislative, notice or hearing is not required by due process of law. See Oppenheimer. Administrative Law, 2 Md, L.R, 185, 204, supra, where it is said. 'If the nature of the administrative agency is essentially legislative, the requirements of notice and hearing are not necessary. The validity of a rule of future action which affects a group, if vested rights of liberty or property are not involved, is not determined according to the same rules which apply in the case of the direct application of a policy to a specific individual.' * * * It is said in 73 C.J.S. Public Administrative Bodies and Procedure, sec. 130, pages 452 and 453: 'Aside from statute, the necessity of notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved. In so far as generalization is possible in view of the great variety of administrative proceedings, it may be stated as a general rule that notice and hearing are not essential to the validity of administrative action

where the administrative body acts in the exercise of executive, administrative, or legislative functions; but where a public administrative body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whose rights or property may be affected by the action is entitled to notice and hearing." [6]

"[17] Procedural due process is not required, however, in the formulation and issuance of general rules and regulations, as distinguished from the rendering of determinations and decisions in adjudicatory proceedings. Nor is procedural due process required where there is no interference with life, liberty, or a vested property right. * * *

"[18] Rule-making is legislation on the administrative level, i.e., legislation within the confines of the granting statute, as required by the constitution and its doctrine of nondelegability and separability of powers. *Willapoint Oysters, Inc. vs. Ewing*, 9 Cir., 174 F. 2d 676, certiorari denied, 338 U.S. 860, 70 S. Ct. 101. It is the function of laying down general regulations as distinguished from orders that apply to named persons or to specific situations, the latter being adjudicatory in nature. *Administrative Rule-Making*, Fuchs, 52 *Harvard Law Review* 263.

"Admitting that problems are encountered in classifying some kinds of procedures as rule-making on the one hand, or judicial or quasi-judicial on the other, no such difficulty is presented in this case. The rules and regulations which may be prescribed under No. 178 are those which relate to classes of persons and situations, as distinguished from specific persons and situations. They are, to use the language of the Administrative Procedure Act, 60 Stat. 237, sec. 2(c), 5 U.S.C.A. sec. 1001(c), agency statements of 'general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy * * *'.

"The due process provisions do not require that there be notice and hearing before the promulgation of such rules and regulations. *Spokane Hotel Co. vs. Younger*, 113 Wash. 359, 194 P. 595; *Bi-Metallic Investment Co. vs. Colorado*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372; *Willapoint Oysters, Inc. vs. Ewing*, supra; *Guisseppi vs. Walling*, 2 Cir. 144 F. 2d 608, 155 A.L.R. 761; *H.F. Wilcox Oil & Gas Co. vs. State*, 162 Okl. 89, 19 P. 2d 347, 86 A.L.R. 421." [7]

What is more, it is presumed that the Monetary Board has exercised its power to fix maximum rates of interest conformably to law, and courts will not interfere with the policy of the Board thereon – unless it acted without or in excess of its jurisdiction or in a manifestly arbitrary or unduly oppressive manner – upon the theory that the Board is, for obvious reasons, in a better position to determine such question.

"It is well settled * * * that findings of fact of administrative bodies will not be interfered with by courts of justice in the absence of a grave abuse of discretion on the part of said bodies or unless the aforementioned findings are not supported by substantial evidence (*La Mallorca and Pampanga Bus Co., Inc. vs. Mercado*, G.R. No. L-19120, November 29, 1965; *Halili vs. Daplas*, G.R. No. L-20282, May 19, 1965; *West Leyte Trans. Co. vs. Salazar*, G.R. No. L-15418, September 30, 1963; *Pangasinan Trans. Co. vs. Feliciano*, G.R. No. L-14401, August 31, 1962; *A.L. Ammen Trans. Co. vs. Desuyo*, G.R. No. L-10372, May 14, 1958; *Guico vs. Buan*, G.R. No. L-9769, August 30, 1957; *Laguna Tayabas Bus Co. vs. Begamore*, G.R. No. L-9445, April 29, 1957; *Pangasinan Trans. Co. vs. De la Cruz*, 95 Phil. 278; *Manila Yellow Taxicab Co. vs. Danon*, 58 Phil. 75)." [8]

In the case at bar, *Banco Filipino* does not impugn either the legality or the wisdom of the maximum rates of interest fixed in the contested resolutions and circulars. It merely assails the authority of the Board to fix or regulate the "manner" of compounding and paying said rates of interest, which is discussed in subsequent pages.

The theory to the effect that the contested resolutions and circulars impair vested rights is obviously unfounded, for the said resolutions and circulars operate prospectively, and affect only deposits made and/or interests accruing subsequently to the promulgation thereof. Indeed, consistently with the third paragraph of section 109 of

the Central Bank Act[9] reading:

"Any modifications in the maximum interest rates permitted for the borrowing or lending operations of the banks shall apply only to future operations and not to those made prior to the date on which the modification becomes effective."

Circular No. 185 issued on December 15, 1964, states: "This Circular shall take effect on January 1, 1965," whereas Circular No. 222, dated June 14, 1966, specifies that it "shall take effect immediately," and, hence, beginning from June 14, 1966, not prior thereto.

Furthermore, all contracts are subject to the police power of the State. Being an inherent attribute of sovereignty, such power is deemed incorporated into the laws of the land, which are part of all contracts, thereby qualifying the obligations arising therefrom.[10]

"Into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise, not out of the literal terms of the contract itself, they are superinduced by the preexisting and higher authority of the laws of nature or nations or of the community to which the parties belong, they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all and need never therefore be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur."[11]

"Statutes in force at the time a contract is made by a municipality enter into and become part of the contract. Its obligation is to be measured, and performance is to be regulated, by the terms and rules which they prescribe."[12]

"Conformably to the well-established rule that the laws which subsist at the time and place of making a contract enter into, and form a part of, it as if they were expressly referred to, or incorporated in, its terms, the obligation of a contract is measured by the standard of the laws in force at the time it was entered into, and its performance is to be regulated by the terms and rules which they prescribe."[13]

In short, all contractual obligations are subject – as an implied reservation therein – to the police power of the State, of which the regulatory authority of the Central Bank may be regarded as a mere extension.[14] Far from being an impairment of contractual obligations, the exercise of that authority constitutes, therefore, a mere enforcement of one of the conditions deemed imposed in all contracts.

The main issue raised in the case at bar and in Case No. 67181 of the Court of First Instance of Manila is whether or not the authority of the Monetary Board to "fix the maximum rates of interest which banks may pay on deposits and on any other obligations" includes the power to determine and fix the manner in which said interests may be compounded and paid. Banco Filipino maintains the negative view, but it is clear to Us that the answer cannot be other than the affirmative. Pertinent parts of Sections 14 and 109 of Republic Act No. 265, read:

"Sec. 14. Exercise of authority. - In order to exercise the authority granted to it under this Act. the Monetary Board shall:

"(a) Prepare and issue such rules and regulations as it considers necessary for the effective discharge of the responsibilities and exercise of the powers assigned to the Monetary Board and to the Central Bank under this Act;

"(b) Direct the management, operations and administration of the Central Bank and prepare such rules and regulations as it may deem necessary or convenient for this purpose;

"* * * * *

"Sec. 109. Interest rates, commissions and charges. - The Monetary Board may fix the maximum rates of interest which banks may pay on deposits and on any other obligations.

The Monetary Board may within the limits prescribed in the Usury Law (Act No. 2655, as amended), fix the maximum rates of interest which banks may charge for different types of loans and for any other credit operations, or may fix the maximum differences which may exist between the interest or rediscount rates of the Central Bank, and the rates which the banks may charge their customers if the respective credit documents are not to lose their eligibility for rediscount or advances in the Central Bank.

"* * * * *

"In order to avoid possible evasion of maximum interest rates set by the Monetary Board, the Board may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or payments of any sort."[15]

It is significant that the law does not merely authorize the Board to "fix the maximum rates of interest which banks may pay on deposits and on any other obligations." It, also, expressly empowers the Board - "(i)n order to avoid possible evasion of maximum interest rates set by the * * * Board" - to fix also "the maximum rates that banks may pay to or collect from their customers in the form of * * * payments of any sort." Indeed, the authority to establish maximum rates of interest carries with it, necessarily, the power to determine the maximum rates payable as interest for given periods of time. In other words, it connotes the right to specify the length of time for which the rates thus fixed shall be computed. Consequently, it cannot but include the prerogative to regulate (a) the manner of computing said rates and (b) the manner or time of payment of interest, insofar as these factors affect the amount of interest to be paid. In fact, the record shows that, since, at least, May 25, 1956, when Central Bank Circular No. 67 (Annex H) was issued, the Monetary Board has consistently regulated the time or manner of payment of interest on bank deposits. What is more, it would seem that the validity of such regulation had never before been contested.

The justification for the inclusion, in the power to fix maximum rates of interest, of the authority to prescribe the time or manner of payment thereof springs, (a) not only from the implied grant of all powers necessary to carry out those expressly conferred,[16] and (b) from the explicit authority of the Monetary Board "to avoid possible evasion of maximum interest rates" fixed by it, by, likewise, fixing maximum rates that banks may pay to their customers in any other "form," but, also, (c) from the reasons underlying the grant of authority to fix said maximum rates of interest that banks may pay for deposits and on any other obligations.

"The banker has a number of methods by which he may seek to attract deposits. He may erect an imposing building whose entrance is flanked by marble pillars, symbols of strength. Where legally permitted he may seek new customers by establishing branches in newly developed shopping centers and in residential areas. He may expand the free services and conveniences available to his customers. He may advertise, in a restrained and dignified manner, on billboards and in newspapers. He may organize a 'new business department' whose function is to make contacts with new customers. He may persuade the stockholders to elect a prominent business executive to the board of directors in order that all or part of the deposits of the executive's firm maybe captured. Finally, he may compete with other bankers for deposits in a more direct way by offering higher rates of interest on deposits. This last form of competition has been especially important. A good many depositors are influenced by the interest payments and respond favorably to offers of higher returns. Therefore, when one bank offers higher interest to depositors, other banks are forced to do likewise. There always seems to be excess capacity in any given bank for absorbing and utilizing additional deposits. Therefore, to some degree, banking is exposed to the danger of cutthroat competition. There exists a powerful temptation to try to attract added deposits by offering higher interest rates. This practice tends to reduce banking profits and encourages the banker to seek increased earnings by making less conservative and more remunerative loans

and investments. If all bankers could be trusted to refuse to make unsafe loans under the stress of competition and profit seeking, unlimited competition for deposits among bankers might have no dire results. What borrowers would pay for well-secured loans and the banker's necessary profit margin would tend to fix the limit on interest payments to depositors.

"In actual practice, however, not all bankers can be trusted to watch competition cut into profits without taking some unwise action to prevent it. There seem always to be some potential borrowers who will promise to pay higher interest on loans in order to finance untried and hazardous ventures. The banker, seeking greater earnings to compensate for high interest paid on deposits, may turn to these more speculative loans and investments. But, because of circumstances or short-sightedness, he is unlikely to increase his earnings margin enough to compensate for the greater risks involved. The evil consequences of such action are concealed during periods of prosperity, but depression reveals them. Experience has repeatedly shown the fatal results of such competition. To guard against excessive competition for deposits, clearinghouse associations have sponsored agreements among their members regulating competitive practices. Particularly, they have attempted to control the charges made by banks for services rendered to customers and the payment of interest on deposits. The Banking Acts of 1933 and 1935 recognized the need for regulation of competitive interest payments by prohibiting all insured banks from payment of interest on demand deposits and by providing for the setting of maximum rates of interest paid on time deposits." [17]

"This legal prohibition of interest on demand deposits and regulation of interest on time and savings deposits are the result of the competition for deposits in which banks engaged in the past. This competition was so fierce at times that it led various clearing house associations to limit interest rates paid by members for the purpose of protecting the members, long before the Federal legislation provided these restrictions. Inordinately high interest rates, would tend to lead to 'overreaching' on yields and returns on loans and investments, leading to lower quality earning assets affording the higher nominal yields but vulnerable to losses and depreciation." [18]

Otherwise stated, the objective of the power to fix maximum rates of interest payable by banks is to establish a uniform ceiling applicable to all banks, in order to avoid that a competition among the same, in the form of higher rates of interest offered to depositors, may ensue and reach such a point that, to offset the resulting reduction in their profits, said institutions might be impelled to increase their earnings, by resorting to risky ventures, or "less conservative and more remunerative loans and investments," which could impair the stability of the banking system and jeopardize the financial condition of the nation. The important thing is the amount paid or to be deposited by the latter and made available for the operations of the bank, within the period for which the rate has been fixed. The manner of computing such rate and the time manner of payment of interest are merely incidental thereto. For this reason, Petitioner says, in its memorandum:

" * * * The Monetary Board does not prohibit Banco Filipino from compounding interest at other than quarterly intervals provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest fixed by the Monetary Board. Banco Filipino may compound daily or even weekly or monthly and the Central Bank will not prevent it from doing so, provided that the maximum effective rate of interest by compounding other than the quarterly method will not be in the aggregate amount exceeding the maximum effective rate of 5.875% per annum, which is the maximum or ceiling effective rate set by the Monetary Board." [19]

Thus, for instance, the maximum interest of 5-3/4% per annum, compounded quarterly, as fixed in Petitioner's Circular No. 222, for savings deposits, in fact represents 5.875%, at the end of the year. When compounded monthly, it is, however, equivalent 5.904% at the close of the year, and, accordingly, exceeds by 0.029% the maximum set in the aforementioned circular.

Negligible as this 0.029% might be, it does not detract from the fact that it exceeds the maximum rate fixed by the

Monetary Board. If such excess were sanctioned, so should 0.03% be. As a consequence, banks could avail of devices whereby, although adhering ostensibly to the maximum rate of 5-3/4% interest per annum, they would, in effect, pay its savings depositors 0.031%, then 0.032%, later 0.033%, etc., in excess of said maximum. In other words, we would thus open the door to the cut-throat competition and other evils sought to be avoided by the maximum rates of interest fixed by the Monetary Board.

Then, too, the benefit that a savings deposit with respondent Bank would derive from the month compounding and payment of the maximum rate of interest is either substantial or not. If it is not, then the aforementioned advertisement of respondent Bank tends to give to the public a different impression and is, accordingly, of dubious ethical propriety; whereas, if the benefit were substantial, the violation of the letter and spirit of the contested resolutions and circulars would be manifest.

It is argued: (1) that the Monetary Board has no authority to regulate the manner or time of collecting interest due to bank depositors because, while expressly vested with the power to fix maximum rates of interest, the law is silent on the "manner or time" of payment thereof, apart from the alleged circumstance that banks have never been restricted by Petitioner herein as to the manner or time of collecting interest from their borrowers; (2) that Petitioner has adopted in this case a posture different from that which it had taken in the court of first instance; (3) that respondent bank merely pays interest monthly, which, contrary to Petitioner's claim, is, allegedly, not compounded, but – if the depositor chooses not to withdraw it – is part of his capital and earns interest as such capital, not as interest; and (4) that the contested circulars and resolutions are arbitrary and discriminatory, as well as deny equal protection of the laws.

As above indicated, however, since, as early as May 25, 1956, or for over 15 years, Petitioner has prescribed the time or manner of payment of the maximum rates of interest fixed by the Monetary Board. Furthermore, the power to fix maximum rates of interest necessarily carries with it the authority to determine, prescribe and regulate the time and manner of computing such rates and collecting the same. Indeed, it would be ridiculous to fix the maximum rate of interest, at say 5%, without stating how it shall be computed and paid, whether monthly, quarterly, annually or otherwise. Again, the purpose of said grant of power is to see to it that banks do not pay its depositors more than what their financial stability and sound banking practices permit. In other words, the time and manner of computation and payment of the maximum rates fixed are essential elements thereof, as well as vital to the attainment of the purpose of the grant. The absence of a similar limitation to the rates of interest collectible by banks will be discussed in connection with the fourth argument.

Petitioner herein has neither abandoned the posture it took in the lower court nor adopted a different one in this case. Private respondent's argument to the contrary is based upon a passage in Petitioner's letter to Banco Filipino, dated June 17, 1965, enjoining the latter "to stop immediately advertisements of the effective rates of interest on savings and time deposits in the newspapers, bank premises or any media of information." Respondent Bank maintains that such position is different from that taken by herein Petitioner in its memorandum before this Court, in which it states:

"* * * * *

"The Monetary Board does not prohibit Banco Filipino from compounding interest at other than quarterly intervals provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest fixed by the Monetary Board." [20]

Taken out of its context, the above quotation from said letter of June 17, 1965 might give the impression that Petitioner had prohibited the monthly payment of interest, whatever its rate may be. Such, however, is not the general import of said letter, which reads:

"June 17, 1965

"Mr. Tomas B. Aguirre
President
Banco Filipino, Savings and Mortgage Bank
Plaza Sta. Cruz, Manila

Dear Sir:

"This has reference to your advertisements in different morning dailies, one of which is in the Manila Times dated June 16, 1965 and in the bank premises regarding the interest rates on savings and time deposits of the Banco Filipino, Savings and Mortgage Bank showing the following rates of interest:

1. On savings deposits, 4.5% p.a. – 4.58% p.a. up to 6.43% p.a., effective rates, interest paid monthly.
2. On time deposits, 5% p.a. – 5.26% p.a. up to 5.50% p.a., effective rates, interest paid in advance.

"The above interest rates being advertised are not in accordance with Central Bank Circular No. 185, as amended, the pertinent provisions of which read thus:

'b) Savings and mortgage banks, * * *. – The maximum rate of interest on savings deposits of these banks shall be four and one-half per cent (4-1/2%) per annum, compounded quarterly.

"* * * * *

'2) Savings and mortgage banks, * * *. – A maximum of five per cent (5%) annual interest on time deposits shall be allowed, in accordance with the following schedule:

- (a) 90 days but not exceeding 180 days – 4-3/4%
- (b) Exceeding 180 days – 5%

"In view of the foregoing, you are hereby enjoined to stop immediately advertisements of the effective rates of interest on savings and time deposits in the newspapers, bank premises or any media of information. The bank may advertise only the rates of interest stated in Central Bank Circular No. 185, as amended, wherein the maximum interest rate is 4-1/2% per annum, compounded quarterly for savings deposits and a maximum interest rate of 5% per annum on time deposits in accordance with the following schedule:

- (a) 90 days but not exceeding 180 days – 4-3/4%
- (b) Exceeding 180 days - 5%

"The bank shall not pay nor advertise that it pays interest on savings deposits monthly; likewise, it shall not pay nor advertise that it pays interest on time deposits in advance.

"Please acknowledge receipt hereof, and advise us within five (5) days of the action taken by the bank to comply therewith.

Very truly yours,
JOSE IGNACIO

Superintendent of Banks"[21]

It should be noted that the prohibition made in this communication is preceded by the phrase "(i)n view of the foregoing," which is the advertisement of the Banco Filipino to the effect that savings and time deposits therein shall earn the following rates of interest:

1. On savings deposits, 4.5% p.a. 4.58% p.a. up to 6.43% p.a. effective rates, interest paid monthly.
2. On time deposits, 5% p.a. - 5.26% p.a. up to 5 50% p.a., effective rates, interest paid in advance.

The letter further points out that these rates "are not in accordance with Central Bank Circular No. 185, as amended." What is more, it says that respondent Bank "may advertise only the rates of interest stated" in the aforementioned circular, as amended. In other words, it can neither pay nor advertise that it shall pay, on savings deposit, 4.5% interest per annum, compounded or paid monthly, but, it can pay and advertise that it shall pay on said deposits any rate of interest, compounded or paid yearly, quarterly, monthly, weekly or daily, provided that the aggregate amount of interest so paid shall not exceed 4.5% a year, compounded quarterly.

The third argument is but an exercise in semantics. It is urged that interest compounded monthly becomes part of the capital and earns interest as such part of the capital, not as interest, and that, in paying monthly interest at the rate of 4.5% per annum, respondent Bank does not, consequently, compound interest monthly. This argument merits no serious consideration. Suffice it to say that the compounding of interest implies precisely that the interest for a given period – one (1) month in the case of respondent Bank – becomes, at the end of said period, part of the capital, and, hence, earns interest. And this, indeed, is the reason why 5-3/4% interest per annum, paid or compounded monthly, exceeds by 0.029% yearly the same rate of interest, when compounded quarterly, under which the interest does not become part of the capital, and, accordingly, does not earn interest, as such part of the capital, until after three (3) months. The all-important thing is that by paying or compounding interest monthly, instead of quarterly, at the rate of 5-3/4% per annum, respondent Bank would pay yearly 0.029% higher than the maximum fixed in the contested circulars and resolutions.

The alleged discrimination, arbitrariness and denial of equal protection is predicated upon the fact that the disputed restrictions to banks as debtors are not applied to banks as creditors. This pretense is untenable, for settled is the rule that the equal protection clause does not imply the same treatment to all; that it applies merely to persons, things or transactions similarly or identically situated; and that it, consequently, permits a classification of the object or subject of the law, provided that the classification is reasonable or based upon real or substantial distinctions, germane to the statutory object or purpose.[22]

As above indicated, the purpose of the resolutions and circulars fixing maximum rates of interest payable by banks on savings deposits and prohibiting the payment in advance of interest on time deposits, is to protect the stability of banking institutions – as vital factors in the national economy – from the danger that may result from cut-throat competition among said institutions. No such danger would result either from the interest that banks may collect in advance from its borrowers or from high rates of interest the former may charge from the latter, aside from the fact that such rates are subject to the limitations imposed by the laws on usury.

Let us now consider the operation of the maximum rate of interest fixed for time deposits, and compare it with the effect of the payment in advance of the interest thereon. As correctly set forth in the petition herein:

"* * * For instance, when the Monetary Board fixes the maximum rate of interest on a one-year time deposit at 6-1/2% (6.5%) per annum, and at the same time stipulates that 'interest on time deposit shall not be paid in advance * * *,' the Monetary Board is in truth fixing the maximum interest that a Bank may pay on time deposits, which means that a deposit of say, P100,000.00 shall earn only P6,500.00 interest at the end of the year. However, if a bank pays interest in advance on time deposits, it is actually paying interest much higher than the maximum rate allowed. To illustrate, if a time deposit of P100,000.00 is paid interest of P6,500.00 in advance, the depositor, in effect, is allowing the bank the use of only P93,500.00 (P100,000.00 less P6,500.00 interest paid in advance). But at the end of one year, the bank will pay back to him the amount of P100,000.00. This means that his actual deposit of P93,500.00 (the amount that was left with the bank after P6,500.00 was returned to him as interest in advance) will earn interest of P6,500.00 after one year. This interest of P6,500.00

on the amount of P93,500.00 means an effective rate of interest of 6.6952% which is 0.452% higher than the maximum rate of 6.5% allowed by the Monetary Board to be paid on time deposits." [23]

It is apparent from the foregoing that – insofar as it compounds monthly the maximum rate of interest fixed for savings deposits and pays in advance the maximum rate of interest prescribed for time deposits – Banco Filipino pays or undertakes to pay to its depositors more than the amount equivalent to the maximum rates of interest fixed in the contested resolutions and circulars. As a consequence, Petitioner herein is legally authorized to demand strict compliance therewith and to restrain and forbid the Banco Filipino from compounding monthly said rate of interest on savings deposits and from paying advance interest on time deposits.

We cannot accept the assertion that the maximum rate of interest set by the Petitioner on savings deposits may be considered as a requirement on banks that the interest stipulated on savings deposits must be deemed due and paid, at least, quarterly. The contested circulars and resolutions do not require the interest to become due and payable quarterly. Petitioner has merely ordained that "the maximum rate of interest on savings deposits * * * shall be four and one-half per cent (4-1/2%) * * *, compounded quarterly." This means that a bank may pay any rate of interest and compute or pay the same at such time and in such manner as it may deem fit, provided that the total sum thus paid does not exceed the maximum rate fixed by the Monetary Board, compounded quarterly.

It is true that, if the maximum rate of interest, as computed and paid by Banco Filipino, were withdrawn by its depositor at the end of each month, the aggregate amount paid to him by said respondent at the end of a year would not exceed the maximum rate of interest fixed by the Monetary Board, computed quarterly. It is no less true, however, that if said depositor withdrew the same amount monthly, and the interest on his deposit were computed and paid quarterly, as ordained by said Board, he would collect, within a year, less than the aggregate sum paid by respondent Bank by compounding or paying interest monthly, at said maximum rate. Indeed, if this rate of interest were compounded quarterly, the aforementioned withdrawals of the depositor, before the end of the quarter, would have to be taken, not from the interest - which would not be due as yet but from his capital or deposit. Whether the depositor makes or not said withdrawals, respondent Bank would pay him, therefore, more than it would if it compounded quarterly the maximum rate of interest fixed by the Board. In short, in either case, said rate would be violated by Banco Filipino.

Banco Filipino argues that Circular No. 149 did not specify that the maximum rates of interest therein fixed were to be compounded quarterly and that, having failed to answer the letters of said respondent seeking a clarification of Circular No. 185 and a chance to be heard on Circular No. 222, Petitioner herein had impliedly consented to the aforementioned practice of Banco Filipino, which is said to have been reflected in its reports to Petitioner herein. We find no merit in this pretense.

Pursuant to Circular No. 149, "(a)ll previously issued circulars * * * which are inconsistent with the foregoing are hereby amended or revoked." In other words, previous circulars were maintained insofar as not inconsistent with Circular No. 149. Said previous circulars – namely, Circulars Nos. 67 (dated May 25, 1956), 71 (dated July 31, 1956), 74 (dated September 2, 1957), 78 (dated October 25, 1957), 103 (dated March 21, 1960), and 112 (dated October 26, 1960) — uniformly provided that the maximum rates of interest therein fixed shall be compounded "quarterly." This provision was not inconsistent with Circular No. 149, which was silent thereon. Consequently, the rates fixed in Circular No. 149 were deemed subject to said limitation.

At any rate, the maximum rates of interest fixed in Circulars Nos. 185 and 222, dated December 15, 1964, and June 14, 1966, for savings deposits, are qualified therein by the phrase "compounded quarterly." Circular No. 222, moreover, provides that "(i)nterest on time deposits shall not be paid in advance, but only at maturity, or upon withdrawal of the deposit." Thus, the practice, adopted by Banco Filipino, of compounding monthly the maximum rates of interest fixed by the Monetary Board for savings deposits, and of paying in advance the maximum rates of

interest allowed for time deposits, runs counter to the clear and explicit provisions of the aforementioned circulars.

It was, therefore, apparent from the pleadings and memoranda in Civil Case No. 67181 of the Court of First Instance of Manila that Banco Filipino had no cause of action against Petitioner herein to restrain the same from demanding strict compliance with said circulars. Pursuant to Section 3 of Rule 58 of the Rules of Court, "(a) preliminary injunction may be granted * * * when it is established." (1) that "the plaintiff is entitled to the relief demanded," which consists in restraining "the commission or continuance of the acts complained of," and (2) that the commission or continuance thereof "would probably work injustice to the plaintiff" or be "in violation of the plaintiff's rights" and tend "to render the judgment ineffectual." Since Banco Filipino was clearly not entitled to the relief sought in said Civil Case No. 67181 and no "injustice" to said institution would, accordingly, result from its compliance with the contested resolutions and circulars, it follows that Respondent Judge had committed a grave abuse of discretion, amounting to excess of jurisdiction, in issuing its aforementioned order of November 23, 1966, in said case.[24]

WHEREFORE, said order and the writ of preliminary injunction issued in pursuant thereof are hereby declared null and void, and the enforcement of both, accordingly, restrained permanently, with costs against respondent Banco Filipino. Writ granted. It is so ordered.

Reyes, J.B.L., Zaldivar, Barredo, Makasiar, and Antonio, JJ., concur.

Makalintal, Castro, Fernando, and Villamor, JJ., concurs in the dissent of Mr. Justice Teehankee.

Teehankee, J., dissents in a separate opinion.

[1] Record, p. 114.

[2] Record, pp. 116 and 187.

[3] *Supra*, p. 185. Italics ours.

[4] *Matutina vs. Buslon*, L-14637, Aug. 24, 1960; *Luzon Surety vs. Marbella*, 109 Phil 734; *Socco vs. Leary*, L-19461, Oct. 31, 1964; *Malayang Manggagawa vs. Esso*, L-24224, July 30, 1965; *Republic vs. Reyes*, L-20602, Dec. 24, 1965; *Vivo vs. Cloribel*, L-23239, Nov. 23, 1966; *Manila Railroad vs. Yatco*, L-23056, May 27, 1968.

[5] *Municipal Council vs. Guevara*, 44 Phil. 580; *de Chavez vs. Ocampo*, 66 Phil. 76; *Pajo vs. Ago*, L-15414, June 30, 1960; *Gonzales vs. Court of Appeals*, L-18255, Nov. 21, 1961; *Fortich-Celdran vs. Celdran*, L-22677, Feb. 28, 1967; *Locsin vs. Climaco*, L-27319, Jan. 31, 1969.

[6] *Albert vs. Public Service Commission*, 120 A. 2d. 346, 350-351. Italics ours.

[7] *Senior Citizens League vs. Department of Social Security*, 228 P. 2d, 478, 492. Italics ours.

[8] *Bachrach Transportation Co. vs. Camunayan*, L-21168, Dec. 16, 1966. See, also, *Commissioner of Customs vs. Valencia*, 100 Phil. 165, 173; *Manabat vs. de la Cruz*, 103 Phil. 1127; *Pindangan Agricultural Co. vs. Dans*, L-14591, April 25, 1962.

[9] Rep. Act No. 265. Italics ours.

[10] *Flores vs. San Pedro*, 102 Phil. 44, 48; *Philamlife vs. Auditor General*, L-19255, Jan. 18, 1968; *Liberation Steamship Co. vs. Court of Industrial Relations*, L-25389-90 June 27, 1968; *Rivera vs. San Miguel Brewery*, L-26197, Aug. 30, 1968.

[11] Willoughby on the Constitution of the U.S., Vol. 2, p. 1239, citing Long Island Water Supply Co. vs. Brooklyn 166 U.S. 685. Italics ours.

[12] Cincinnati vs. Public Utilities Commission, 98 Ohio St. 320, 121 N.E. 688. Italics ours.

[13] 12 Am Jr., p. 14. Italics ours.

[14] As stated in Home Building & Loan Association vs. Blaisdell (78 L. ed. 413, 427):

" * * * Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presuppose the maintenance of a government by virtue of which contractual relations are worth while government which retains adequate authority to secure the peace and good order of society."

[15] Italics ours.

[16] Gomez vs. Palomar, L-23645, Oct. 29, 1968.

[17] Our Modern Banking and Monetary System, by Rollin G. Thomas, 3rd ed., pp. 115-116. Italics ours.

[18] Encyclopedia of Banking and Finance, p. 191. Italics ours.

[19] Record, pp. 192-193. Italics ours.

[20] Italics ours.

[21] Record, pp. 164-165. Italics ours.

[22] People vs. Cayat, 68 Phil. 12 (1939); People vs. Rosenthal, 68 Phil. 328 (1939); Antamok Goldfields vs. Court of Industrial Relations, 70 Phil. 340 (1940); Int'l Hardwood and Veneer Co. vs. Pañgil Fed. of Labor, 70 Phil. 602 (1940); Austria vs. Solicitor General, 71 Phil 288 (1941); Laurel vs. Misa, 76 Phil. 372 (1946); People Carlos, 78 Phil 535 (1947); Manila Electric Co. vs. Public Utilities Employees Assn., 79 Phil. 409 (1947); People vs. Isnain, 85 Phil. 648 (1950); Tolentino vs. Board of Accountancy, 90 Phil. 83 (1951); Suarez vs. Abad Santos, 96 Phil. 302 (1954); Ichong vs. Hernandez 101 Phil. 1155 (1957); People vs. Solon, L-14864, Nov. 23, 1960; People vs. Ventura, L-15079, Jan. 31, 1962; Felwa vs. Salas, L-26511, Oct. 29, 1966; Rafael vs. Embroidery and Apparel Control & Inspection Board, L-19978, Sept. 29, 1967; Imbong vs. Ferrer, L-32432, Sept. 11, 1970. See, also. In re Cunanan, 94 Phil. 534 (1954); Philippine Constitution Assn. vs. Gimenez, L-23326, Dec. 18, 1965.

[23] Record, p. 11. Italics ours.

[24] North Negros Sugar Co vs. Hidalgo, 63 Phil, 664, 671; Climaco vs. Barcelona, L-19597, July 31, 1962; Board of Commissioners vs. Domingo, L-21274, July 31, 1963; Vivo vs. Arca, L-21728, Dec, 27, 1963; Vivo vs. Cloribel, L-23239, Nov. 23, 1966; Commissioner of Customs v. Cloribel, L-20266, Jan. 31, 1967; Ayo vs. Ilao, L-23293, Jan. 16, 1968; San Diego vs. Hernandez, L-23796, July 23, 1968; Angela Estate vs. Court of First Instance, L-27084, July 31, 1968; Sibal vs. Lantin, L-20920, Dec. 18, 1968.

DISSENTING OPINION

TEEHANKEE, J.:

The issue at bar is the validity of petitioner Central Bank Circulars Nos. 185 and 222 dated December 15, 1964 and June 14, 1966, respectively, (Circular No. 222 having been issued by virtue of Monetary Board Resolution No. 805 dated May 20, 1966) and of Monetary Board Resolution No. 1566 dated September 20, 1966 directing respondent bank specifically to comply strictly with said circulars "prescribing the regulations governing rates of interest, on demand, savings and time deposits." Respondent court's writ of preliminary injunction enjoining petitioner Central Bank from enforcing said circulars and resolutions "insofar as they restrict the payment of monthly interest on savings deposits and advance interest in time deposits"[1] by respondent bank is assailed in this action of certiorari and prohibition.

Petitioner's motion for the issuance of a writ of preliminary injunction against the enforcement of respondent court's preliminary injunction writ against it, pending this action, was heard by the Court of January 11, 1967, but the Court did not grant the same.

There is no question that petitioner Central Bank, through the Monetary Board is authorized under section 109 of its Charter (Republic Act No. 265) to "fix the maximum rates of interest which banks may pay on deposits and on any other obligations" as well as the maximum rates of interest which banks may charge their customers "within the limits prescribed in the Usury Law (Act No. 2655, as amended)" and that "(I)n order to avoid possible evasion of maximum interest rates set by the Monetary Board, the Board may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or payments of any sort."

The issue at bar arises from petitioner Central Bank's assertion that its power to fix the maximum rate of interest which banks may pay on deposits under section 109 of the Central Bank Act "carries with it the power to regulate or provide for the manner of paying the interest in order that the maximum rate fixed by it may be maintained" and that "to permit monthly payments of interests on savings deposits and advance payments of interests on time deposits * * * would in truth and in fact give to the depositor a higher rate of interest than what has been fixed by the Monetary Board * * * for after a monthly payment or advance payment of interest is made, the same would in turn be included as part of the principal and earn interest for the following month." [2]

Respondent bank, however, maintains on the contrary that the Central Bank's authority is limited to fixing the maximum rates of interest and does not extend to regulating the manner of paying interest on savings and time deposits and that the challenged circulars "result in unequal protection of the laws in that it places banking institutions in a preferential position over their depositors."

Respondent bank, a savings and mortgage bank commenced its operations since July, 1964. At the time, the Central Bank regulation governing interest rates for savings and time deposits was Circular No. 149 dated March 27, 1963, (as amended by Circular No. 161, dated December 9, 1963), fixing a maximum rate for savings deposits, of 3-1/2% for commercial banks and of 4% for savings banks; and for time deposits, of 4-1/2% for both commercial and savings banks. The circular did not specify that the maximum rates of interest were to be compounded quarterly, although previous circulars so provided. Under such previous circulars, the maximum annual rate of interest on savings deposits was 3% for both savings and commercial banks, and 3-1/2% on time deposits, (Circular No. 74 dated September 2, 1957), increased to 3-1/2% on savings deposits for savings banks (Circular No. 78, dated October 25, 1957), and increased to 4% for time deposits on October 26, 1960 (Circular No. 112).

Respondent bank, at the commencement of its operations, paid its depositors the maximum rate of interest, compounded quarterly, per its rules and regulations printed on its savings passbook, but subsequently in the same

year 1964 changed its policy by compounding and paying the maximum rate of interest on its savings deposits from the quarterly to the monthly basis, and by paying, in advance, the maximum rates of interest on time deposits with it.

Circular No. 185 dated December 15, 1964, expressly superseding all previous circulars, to take effect on January 1, 1965 was subsequently promulgated by petitioner fixing an increased maximum annual rate of interest for savings deposits, of 4% for commercial banks and of 4-1/2% for savings banks, in both cases compounded quarterly. The maximum annual rate of interest for time deposits for both commercial and savings banks was correspondingly increased to 5%.

Circular No. 222 dated June 14, 1966, supplementing Circular No. 185 was later issued, effective immediately, for the first time providing a uniform increased maximum annual rate of 5-3/4%, compounded quarterly, for savings deposits in both commercial and savings banks. The maximum annual rate of interest for time deposits was increased to 6-1/2% and likewise, for the first time, provided additional restrictions that "(I)nterest on time deposits shall not be paid in advance, but only at maturity, or upon withdrawal of the deposit. * * *"[3] and that "(N)o bank or banking institution shall disseminate, advertise or release any information that it is paying or will pay interest at rates higher than those prescribed herein, or indicate the effective rates resulting from a compounding of the rates."[4]

Although not in the record, it may be taken judicial notice of that Circular 222 was amended subsequently by Circular No. 239, dated June 7, 1967, effective July 1, 1967, whereby the maximum annual rate of interest on time deposits of commercial and savings banks was reduced from 6-1/2% to 6% "in order to enable banks to reduce the prime rate on loans for production and projects included in the economic program of the Government"; by Circular No. 272 dated April 14, 1969, effective immediately, whereby the maximum annual rate of interest on savings deposits was increased to 6% and that for time deposits to 7%, with a proviso that no time deposit shall be accepted for a term of less than 180 days or more than 360 days or 1 year; and lastly by Circular No. 292 dated February 20, 1970, effective immediately, whereby the maximum annual rate of interest on time deposits was again further increased to 8% for 540 days.

I

1. On the first question of the Central Bank's authority or power to provide for the manner of payment of interest in implementation of its conceded power to fix the maximum rate of interest, it should be noted that the power specifically granted is to "fix the maximum rates of interest" which banks may pay on deposits or any other obligations as well as collect for their loans and other credit operations. Regulation of interest payments, by concept and by accepted usage, has generally taken the form of fixing the maximum rate of interest payable and does not extend to the manner or time of payment of the stipulated interest, whether on a daily, monthly, quarterly, semi-annual or annual basis. The time and manner of payment of the stipulated interest within the maximum allowable rate is generally left to lender-borrower agreement.

Hence, lender-banks are not restricted as to the manner or time of collecting interest from their borrowers, and generally collect interest in advance upon the loans granted by them, save in overdraft agreements, where interest is computed and charged daily on the basis of the largest balance availed of each day. When the borrower is delinquent, the accrued interest is further compounded, and interest thereon is computed on a daily basis until the principal, as compounded, is paid in full.

Aside from granting petitioner the power to fix the maximum rates of interest, section 109 of the Act for the express purpose of "avoiding possible evasion of maximum interest rates set by the Monetary Board," expressly empowers the Board only to "fix the maximum rates that banks may pay to or collect from their customers in the

form of commissions, discounts, charges, fees or payments of any sort." This express enumeration of rates on payments of any sort payable to or collectible from the bank's customers clearly ruled out regulating the manner or time of payment of the maximum prescribed interest by the banks.

2. Besides the fact that banks in their lending operations have never been restricted by the Central Bank as to the manner or time of collecting interest from their borrowers, as above stated, the principle that regulation of interest payments has generally taken the form of fixing the maximum rate of interest payable, to the point of banning the payment of interest, e.g. on demand deposits, – and does not extend to the manner or time of payment of such interest – is shown by two other factors. First is that no contrary authority has been cited by petitioner Central Bank in support of its position. The very authorities cited by it in its memorandum show that regulation of competitive interest payments by members-banks of the Federal Reserve System is effected "by prohibiting * * * payment of interests on demand deposits and by providing that the maximum rate of interest paid on time deposits should be set by the Board of Governors" (Thomas' "Our Modern Banking and Monetary System") and by "limiting interest rates paid by members for the purpose of protecting the members" (Encyclopaedia of Banking & Finance). Second is the very change in position of petitioner here before this Court in its memorandum that

"(W)hen petitioner fixes the maximum rate of interest on savings deposits at 5-3/4% per annum compounded quarterly, the board is in effect setting, up a maximum effective rate of 5.875% per annum"[5]

and that

"(T)he Monetary Board does not prohibit Banco Filipino from compounding interest at other than quarterly intervals provided that the aggregate amount of such interest so compounded does not exceed the aggregate amount of interest fixed by the Monetary Board."[6]

as contrasted with its posture in the proceedings below, where in its letter of June 17, 1965, it enjoined respondent bank "to stop immediately advertisements of the effective rates of interest on savings and time deposits in the newspapers, bank premises or any media of information,"[7] which it formalized later in the questioned Circular 222 of June 14, 1966 enjoining all banks from "disseminating, advertising or releasing any information * * * indicating the effective rates (of interest) resulting from a compounding of the rates."

3. Petitioner's position now, therefore, is that "Banco Filipino may compound daily or even weekly or monthly and the central Bank will not prevent it from doing so, provided that the maximum effective rate of interest by compounding other than the quarterly method will not be in the aggregate amount exceeding the maximum effective rate of 5.875% per annum, which is the maximum or ceiling effective rate set by the Monetary Board.[8] So, it perforce has abandoned its strictures or restrictions on the manner of payment of the interest, on condition that its maximum effective rate of 5.875% per annum (which seemingly exceeds by 0.125% the maximum rate of 5.75% stated in its own circular) is observed. For this, it has submitted with its memorandum a complicated mathematical formula, with a solution that "(S)o that a bank will not exceed the maximum effective rate of 5.875% per annum, the bank should compound interest monthly at the rate of 5.7227% per annum." This changed position of petitioner in effect abandons or admits to be without valid or justifiable basis that questioned portion of its Circular No. 222 enjoining all banks from "indicating the effective rates resulting from a compounding of the rates."

The fallacy of this changed position and formula of petitioner is that it applies the abstract theory of "effective rate" to only one set of conditions, i.e. where a deposit is made and nothing is withdrawn over a period of one year, whereas the more common occurrence and experience is that the depositor may need and withdraw his deposit before the end of the year or make periodic partial withdrawals as well as deposits, and the "effective rate" of interest would fluctuate and vary accordingly. In practice, none of the banks would ever consider the abstract

maximum "effective rate" of 5.875% set by petitioner only now in its petition at bar, but only the maximum rate set by it in its Circular No. 222. The instances given by respondent bank suffice to bring this out.[9] It has never been banking practice or usage for banks to work out and make use of complicated mathematical formulas so that its compounding or payment of interest on a monthly basis would be at a rate equivalent to the so-called annual maximum "effective rate" prescribed just now in this case by petitioner – for the Central Bank prescribes no such maximum "effective rate" but only the maximum rate as evidenced by its own circulars.

4. The problem arises from the Central Bank dictum providing that the maximum rate of 5.75% p.a. is to be "compounded quarterly," which if the deposit is kept intact for one year results in its so-called maximum "effective rate" of 5.875% p.a. For compounding is "capitalizing the interest due and unpaid, which as added principal, shall earn new interest." [10] Compounded interest is in effect new or added principal which earns new interest and is not to be taken into account in the computation or determination of the interest earned by the original principal. Thus, an express agreement to charge interest on interest, i.e. to compound or capitalize interest, is not to be taken into consideration in determining whether or not the stipulated interest exceeds the limit prescribed by the Usury Law.[11]

If interest at the maximum rate prescribed by the Central Bank Circulars were not compounded or capitalized, but simply paid out, it would not make any difference whether the interest was paid out daily or monthly, rather than quarterly. To illustrate, a P10,000.00 deposit bearing 6% interest p.a.[12] would be paid interest at the rate of P50.00 monthly or a total of P600.00 at the end of the year, while it would be paid interest at the rate of P150.00 quarterly, which would likewise total P600.00 at year's end. The question of a so-called maximum "effective rate" of interest would not come into consideration at all, since interest is simply paid at the official maximum rate set.

5. What then is the concept and significance of the Central Bank's dictum that the maximum rate of interest on savings deposits is 5.75% p.a. "compounded quarterly"? It is true and it may be taken judicial cognizance of that in the matter of savings deposits, petitioner has generally not only prescribed in its circulars the maximum interest rate, but has also added that such maximum interest rate be compounded quarterly. To argue from this that petitioner therefore has the power of fixing the manner and time of payment of the interest would be to beg the very question of whether or not it has such power. Experience-wise, considering that the authority panted the Central Bank as well as the corresponding regulatory agencies in foreign countries is merely to fix the maximum annual rate of interest and not to determine as well the manner or time of paying such interest which generally is collected in advance by banks in their loan transactions, it would appear that the manner or time of paying or collecting interest has not been deemed either by petitioner Central Bank or by the banks to be within the scope of the Central Bank's authority "to fix the maximum rates of interest" payable by the banks on deposits or collectible by the banks on their loans. The Central Bank regulation that the maximum rate of interest set by it on savings deposits is to be "compounded quarterly," in this light, may well be deemed a requirement on banks that the interest stipulated on savings deposits must be deemed due and paid at least quarterly. i.e. at the end of every three months after deposit, and that where it remains unpaid, i.e. is not actually paid out to or withdrawn by the depositor, it must be compounded or capitalized, so that as added principal, it will likewise earn new interest – when there is no agreement as to the time of payment of interest.

If the quarterly interest earned were actually paid to and withdrawn by the depositor at the end of the quarter (or at the end of every month for that matter) and re-deposited by him immediately, there would not be any question of compounding or capitalizing the interest due and earned; the re-deposit made by the depositor is of his own funds as new principal, which together with the original principal, would of course earn and draw the stipulated interest. There would be no question either of a maximum "effective rate" of interest, for in the example given, the original principal as well as the new principal would be earning only the maximum rate of interest set and no more.

6. The Central Bank in the case at bar, rather than construe its proviso of "compounded quarterly" as a requirement on banks to pay interest at least quarterly and to compound or capitalize the interest due and unpaid, would construe it as a limitation that banks must pay interest on savings deposits only on a quarterly basis, or if they pay on a more frequent basis such as a daily or monthly basis, that the interest compounded must not exceed its so-called maximum "effective rate" of 5.875% which it has set only now in its memorandum at bar. As can readily be seen, however, the Central Bank provision of compounding quarterly in its circulars is per se a requirement, i.e. to capitalize the interest due and not a limitation to the banks not to pay the interest oftener than quarterly nor to compound the interest oftener than quarterly should the interest be due and unpaid sooner than quarterly, as would be the case if the depositary bank should undertake to pay the maximum interest prescribed on a monthly basis. The banks may have heretofore construed the Central Bank provision of compounding quarterly as a convenient expedient so as to uniformly pay and/or compound interest quarterly, but now that the authority of the Central Bank to construe and impose the provision as a limitation has been squarely challenged, it must be taken for the minimum requirement that its terms express it to be and in accordance with the statutory grant of authority, based on accepted usage and practical considerations – which is to fix and prescribe the maximum rates of interest payable and collectible by banks, but excluding the power to likewise fix and prescribe the time and manner of payment of such interest. Otherwise, there would be no justification for the imposition of such a limitation solely on savings deposits, and the absolute absence of any such limitation on the manner and time that banks may in turn collect interest on loans extended by them to their borrowers and depositors, which is generally collected in advance and compounded daily after maturity, while paying the prescribed interest on savings deposits on the basis of the lowest balance during a given quarter.

7. Petitioner's contention that respondent bank's compounding monthly of the interest earned on savings deposits (instead of quarterly, which is an "effective rate" of 5.875% p.a. on the prescribed maximum rate of 5.75% p.a.) is equivalent to 5.904% p.a. and exceeds by 0.029% the maximum set is therefore fallacious, in that the new principal represented by the compounded or capitalized interest is taken into account, when actually it should not. The prescribed interest is generally computed on the basis of the original principal, without or regardless of compounding of interest earned which is new or added principal and this is best shown by the illustration (of 6% interest p.a. on a deposit of P10,000.00), supra, that if the interest earned were paid out, it would not make any difference if interest were paid monthly (at P50.00) or quarterly (at P150.00) the prescribed maximum rate of 6% interest could never be deemed to be exceeded by the "effective rate" which would be exactly the same as the prescribed maximum – the total earning under either time of payment at year's end would be the same amount of P600.00.

8. Petitioner commits the same fallacy with regard to its contention on time deposits that payment in advance of the prescribed 6.5% p.a. interest ceiling set by it, as in the illustration of a P100,000.00 time deposit given by it, would mean "an effective rate of 6.952% which is 0.452% higher than the maximum rate of 6.5% allowed by the Monetary Board to be paid on time deposits, contending that "if a time deposit of P100,000.00 is paid interest of P6,500.00 in advance, the depositor, in effect, is allowing the bank the use of only P93,500.00 (P100,000.00 less P6,500.00 interest paid in advance.) But at the end of the year, the bank will pay back to him the amount of P100,000.00. This means that his actual deposit of P93,500.00 * * * will earn interest of P6,500.00 after one year"[13] or an "effective rate" of 6.952% p.a. The fallacy is that just as compounded interest is not taken into account in computing the maximum prescribed rate of interest, the interest paid is likewise never deducted from the principal, as in petitioner's illustration. In the illustration given, the P6,500.00-interest paid by the bank is an interest expense, and it cannot be gainsaid that the principal of the deposit is P100,000.00, and the 6.5% prescribed interest is computed on the basis of this principal of P100,000.00 and not on the lesser amount of P93,500.00 (with the interest expense deducted). If the P6,500.00 interest paid in advance were compounded or

deposited likewise immediately by the depositor, there would be no question that such new or added principal would likewise earn the same prescribed interest of 6.5% or a total of P6,992.50 (P6,500.00 on original of P100,000.00 plus P422.50 on the added principal of P6,500.00). The net amount which the depositor has allowed the bank to use in such case would be the original intact principal of P100,000.00 (less the small amount of P422.50 paid in advance on the new principal of P6,500.00).

9. The fallacy in petitioner's mode of computation of computing the interest rate on the basis of the net amount remaining with the banks after deducting the interest expense paid in advance is made patent, if the same mode of computation is applied to loans by the banks. Banks presently collect in advance – no Central Bank circular enjoins them from, doing so – the maximum interest of 14% p.a allowable under the Usury Law on loans not secured by mortgage on registered real estate[14] and of 12% p.a. on loans so secured.[15] Under petitioner's mode of computation, using the same illustration of a P100,000.-loan, the bank in effect allows the borrower the use of only P86,000.00 in 14% interest loans (P100,000.00 less P14,000.00 paid or deducted in advance) or only P88,000.00 in 12% interest loans (P100,000.00 less P12,000.00 paid or deducted in advance) but at the end of the year the borrower pays back the principal of P100,000.00, and the actual amounts of P86,000.00 and P88,000.00 received by the borrower would earn interest of P14,000.00 and P12,000.00 after one year, or an "effective rate," in apparent violation of the Usury Law ceilings, of 16.28% and 13.636%, respectively. That such transactions are not usurious nor proscribed by petitioner is a fact of common knowledge, since as already stated, the maximum allowable interest is computed on the basis of the principal loan (in deposits, the amount deposited is the principal loaned by the depositor to the bank) and the interest expense is not taken into account nor deducted therefrom. The Usury Law expressly permits the collection and payment of interest in advance for not more than one year.[16] And such interest paid in advance for one year by the borrower is not recoverable, in the absence of express agreement, even should the buyer repay the loan in advance of the one-year expiry period, say, after six months.[17]

II

10. Respondent bank further submits with reason that assuming that the grant of statutory authority to petitioner to fix the maximum rates of interest payable to and by banks may be deemed to include as an incident the power to likewise prescribe the manner or time of paying such interest, the challenged circulars in their pinpointing only of savings deposits (requiring no other mode of payment than compounding quarterly) and time deposits (enjoining any payment of interest in advance) violate due process in that they are manifestly arbitrary and unduly oppressive as well as violate the equal protection clause in that they place banks in a preferential position over their depositors – since no similar restriction or regulation is imposed by petitioner on the time and manner of payment of interest by borrowers of the banks.

On this question, respondent bank contends that:

- the use of the term "compounded quarterly" in Circular 185 finds little bearing to the entire context of the circular since all banks already pay or credit the depositors with their corresponding interest either every month or at least once every quarter and there would, therefore, be no unpaid interest for them to compound quarterly;
- the method of computation and payment prescribed by the Central Bank can lead as it actually leads to a situation where the depositors receive no interest even after they have kept their savings with their depository banks for as long as 5-1/2 months and is, therefore, unjust and inequitable to the depositing public;
- the monthly computation and payment of interest is beneficial to all and harmful to no one;[18]
- it serves the public welfare and economy "by sharing a little more of the bank's earnings with the general public;[19] and

– no similar restriction in contrast is placed on banks which collect the maximum interest rates in advance and compute delinquent interest on a daily basis until the principal is paid.[20]

11. Petitioner contends on the other hand that its power to fix maximum rates of interest, including the asserted power of fixing "the manner of compounding and payment" is based on the guiding principle in section 108 of the Central Bank Act imposing upon it "the duty – to ensure that the cost of money is in accord with the needs of the Philippine economy." [21] But petitioner makes no satisfactory reply to respondent's charge of arbitrariness and discrimination. Respondent points out that assuming that the total savings deposits with all Philippine banks amounted to P1 billion, the difference of 0.029 of 1% interest on the principal – on the basis of monthly compounding used by respondent and which petitioner would proscribe through the circulars – represents a total interest payment of P290,000.00 p.a. on P1 billion deposits (or P29.00 per P100,000.00 of savings deposit) which could not possibly affect the cost of money. Indeed, the effect of such interest payment on the Philippine economy is practically nil. The cost of money would certainly be much more greatly affected in the given illustration by the rates at which the banks lend out the total P1 billion deposit in their lending operations: – the difference of over 6% between the Central Bank's maximum "effective rate" of 5.875% p.a. paid by banks to depositors and the minimum of 12% interest p.a. charged by banks to their borrowers would amount to over P60 million, and if we were to apply the "effective rate" computation of petitioner on interest paid in advance (an "effective rate" of 13.636% less 5.875% a difference of 7.761% supra), the difference would reach the staggering amount of P77,610,000.00.

12. Respondent makes no answer either to the charge of unequal protection of the laws and discrimination in that the restriction of no payment of interest in advance on time deposits of other than on the quarterly compounding basis on savings deposits (and no monthly compounding, as is done by respondent) is directly solely against savings and time deposits of depositors, where the banks are the borrowers of the funds deposited, whereas petitioner makes no such restriction where the banks are the lenders of the very same funds and permits the banks to collect the interest in advance for one year besides charging and compounding delinquent interest on a daily basis.

Indeed, as emphasized by respondent "many other factors are more vital in determining the cost of money such as availability of credit, rediscounting facilities and rates with the Central Bank, inflationary or deflationary condition, nature of credit risks, reserve requirements, duration of the loan," [22] and "while the disputed monthly payment of interest has been enforced since 1964, the Central Bank cannot point out to (sic) a single case of injury to the Philippine economy brought about by this practice." [23] Furthermore, if the challenged restriction were devised to keep down the cost of money in accordance with the needs of the country's economy, the aim is manifestly defeated by petitioner's own actions of periodically increasing the maximum annual interest rates on savings and time deposits from 3% and 4% respectively, in 1957 by 100% to 6% and 8%, respectively, at present (supra).

13. The only justification given by petitioner is "that the Monetary Board, in the exercise of its discretion as the agency entrusted with the duty and responsibility of implementing the provisions of sec. 109, is the sole judge in determining whether or not the maximum interest rates fixed by it is (sic) in accord with the cost of money in relation to our economic needs and the court may not disturb it." [24] Here, petitioner has confused the issue. The maximum interest rates fixed by it are not here questioned at all and are concededly within its statutory authority. What is questioned, here is the arbitrariness and discrimination of its pinpointing only of savings and time deposits on which to impose its restrictions of compounding interest only on quarterly period and proscribing payment of interest in advance, while imposing no similar restriction on the time and manner of payment of interest where the banks are the lenders, and not the borrowers. For restrictions and regulations imposed by a

supervisory agency such as the Central Bank under the authority granted it by the Central Bank Act for the purpose of protecting public interest must not constitute arbitrary interference with the banking business or impose unusual or unnecessary restrictions. The means adopted for protecting public interest, when challenged, must be shown to be reasonably necessary for the accomplishment of the purpose and not unduly oppressive so as to violate due process – which forbids governmental action that is unreasonable or arbitrary. With the case made out by respondent, as discussed above, petitioner has failed to refute it and to show that the challenged imposition on savings and time deposits exclusively is reasonable and necessary to its avowed duty of attuning the cost of money to the needs of the country's economy.

14. The same observations hold true with reference to petitioner's contention that "(T)he objective is to prohibit the use of interest as a competitive device for causing the shifting of bank deposits from one bank to another"[25] and thus, a uniform ceiling of interest payable is applied to all banks to avoid ruinous competition. As already stressed, the maximum interest rate prescribed by petitioner is not questioned at bar, but petitioner's banning an insignificant leeway of 0.029% resulting from respondent bank's monthly compounding of interest rather than quarterly compounding, as imposed by petitioner, amounting to P29.00 a year per P100,000.00 deposit. And this is not exceeding the prescribed interest rate ceiling, for it is actually interest earned not on the original principal, but on interest due and unpaid which becomes added or new principal which properly earns interest on its own. The same could not conceivably cause "ruinous competition" or cause the shifting of bank deposits, since it is a matter of common knowledge and experience that depositors select their depository banks, not merely on the basis of this small margin of "effective rate" of interest, but more on the basis of the bank's known assets, the reputation and integrity of its directors and officers, and the services and facilities offered. If at all, the respondent's "effective rate" inducements to the public to deposit their savings with it have served in their own way to promote the Central Bank's campaign to encourage thrift and to attract "floating money" into the banking system where it may be properly channeled and utilized for productive industrial and agricultural projects redounding to the benefit of the economy – a promotional device that indeed more subdued in tone than the Madison Avenue-style promotional plugs and claims, including jingles, presently made by other banks in the public media, such as the press, radio and television, in this era of modern advertising and marketing, which may not be validly proscribed by petitioner.

ACCORDINGLY, the challenged order of respondent Court and the writ of preliminary injunction issued in pursuance thereof enjoining petitioner from enforcing the questioned circulars, "insofar as they restrict the payment of monthly interest on savings deposits and advance interest on time deposits" should be upheld. I therefore vote for the dismissal of the petition.

[1] Annex "G" petition; italics furnished.

[2] Petition, Annex C, p. 11.

[3] Paragraph 3(b), Petition, Annex R-11.

[4] Paragraph 4, Petition, Annex H-11, italics furnished.

[5] Petitioner's memorandum, p. 10, italics copied.

[6] *Idem*, p. 10, italics copied.

[7] Respondent's memorandum, Annex "D", italics furnished.

[8] Petitioner's memo, p. 11, italics furnished.

[9] "For example, if a deposit is made by Juan de la Cruz on January 1, 1966 of P1,000.00, this money has to remain in the bank up to December 31, 1966 without any movement in order to arrive at the theoretical effective rate of 5.875% per annum. If conditions change, the theoretical effective rate of 5.875% does not exist and is many times exceeded. For instance, if said deposit of P1,000.00 was made on January 10, 1966, under the grace period system observed today this deposit would earn interest from January 1, 1966.

"On March 31, 1966, the deposit, therefore, would earn P14.38 interest or effectively 6.46% per annum;

"On June 30, 1966, the deposit plus the accrued interest would earn P14.58 or effectively 6.13% per annum;

"On September 30, 1966, the principal plus accrued interest would earn P14.79 or 6.05% effective rate;

"On December 31, 1966, the principal plus accrued interest would earn P15.00 or effectively 6.04%.

"This manner of computation could continue theoretically to almost an infinity and the abstract effective rate of 5.875% per annum would continue to be exceeded.

"This practice is accepted as correct by the Central Bank.

"Another illustration -- if on January 1, 1966 a deposit of P1,000.00 is made, this deposit would earn on March 31, 1966, P14.38. Suppose, the depositor withdraws on April 1, 1966 P500.00 this would leave in the bank a balance of P514.38. On June 30, 1966 this amount would earn P7.39 interest or effectively 5.91% per annum on the balance of the principal of P500.00. This is another example of the fact that in practice all over the banks in the Philippines the abstract effective rate of 5.875% is never considered." (Rollo, pp. 148-149)

[10] Art. 1959, Civil Code.

[11] 1 Agbayani's Commercial Laws, 1964 Ed. p. 489; see Govt vs. Conde 61 Phil. 714; Govt. vs. Vaca, 64 Phil. 6.

[12] 6% interest p.a. is taken in the illustration for round figures. At any rate, this is the present maximum rate set by the Central Bank since its Circular No. 272 of April 14, 1969, supra.

[13] Petition, p. 11.

[14] Act No. 2655, as amended, section 3.

[15] Idem, section 2.

[16] "Section 5. In computing the interest on any obligation, promissory note or other instrument or contract, compound interest shall not be reckoned, except by agreement, or, in default thereof, whenever the debt is judicially claimed, in which last case it shall draw six per centum per annum interest. No person or corporation shall require interest to be paid in advance for a period of more than one year."

[17] 1 Agabayan's Commercial Laws, 1964 Ed. pp. 490-491; citing Hodges vs. Salas, 36 O.G., 898; Pando vs. Kette, 52 Phil. 150; Lopez vs. El Hogar Filipino, 47 Phil. 249; Lerma vs. Reyes, 103 Phil. 1027.

[18] Rollo, p. 22.

[19] Idem, p. 153.

[20] Idem, p. 154.

[21] Rollo, p. 152.

[22] Idem, pp. 132-133.

[23] *Idem*, pp. 132-133.

[24] Rollo, pp. 196-197.

[25] Rollo, p. 199.

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