

**AFAG VETERAN CORPS, INC., PETITIONER AND APPELLANT, VS.
MARIANO G. PINEDA, SECURITIES AND EXCHANGE COMMISSIONER,
ET AL., RESPONDENTS AND APPELLEES.**

G.R. No. L-17159. November 23, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the order of the Court of First Instance of Manila dismissing appellant's petition for injunction against appellees.

Petitioner (Anderson Filipino-American Veteran Corps, Inc., hereinafter referred to as AFAG) is a corporation registered with the Securities and Exchange Commission in 1958. On April 7, 1959, upon complaints from members of the Constabulary, the Army and the National Bureau of Investigation; the Solicitor General filed an administrative case in said Commission against petitioner (S.E.C. Case No. 956), charging it as follows:

- "1. The Officers, thereof, without any lawful authority are using military ranks and titles;
2. The officers, thereof, without any lawful authority are conferring military ranks and titles to its members who thereupon also are unlawfully using said military ranks;
3. The corporation has been representing to the public that the AFAG Veteran Corps, Inc., is a duly recognized organization and for this purpose has been inducing persons in several municipalities and barrios to join as members, who are made to believe that after their enlistment they would receive backpay in such amounts as corresponding to the military ranks they have been unlawfully conferred with, when in fact they are not duly recognized veterans;
4. That the officers and members thereof are using identification cards issued in the name of the corporation and signed by a certain "Manuel M. Galicia" who is using the rank of "general" said cards having the words "Recognized by the U.S.A. Government", which is a gross misrepresentation.
5. That the AFAG Veteran Corps, Inc., has been collecting fees in various amounts from its members depending upon the military ranks unlawfully conferred including a fee of P1.00 for the issuance of said identification cards;
6. That the corporation is in fact acting as a military organization under an overall commander with the rank of general, with several other generals supposedly commanding regiments all of whom are issuing order to their members, and that as a potent military organization, the said members are subjected to military discipline and orders of the officers, and that in some place, the organization has disturbed peace and order and has been engaged in seditious activities."

Acting on the foregoing complaint the Securities and Exchange Commission summoned the parties for investigation on May 21, 1959. On May 23, 1959 AFAG went to the Court of First Instance of Pasay on a petition for injunction to prevent the Securities and Exchange Commissioner and the Commission investigator from

proceeding in the administrative case mainly on the ground of lack of jurisdiction. The petition was docketed as Civil Case No. 1920-P.

On June 8, 1959 respondents moved to dismiss the petition. Pending resolution of that motion petitioner to torn moved for postponement of the hearing in the administrative case, alleging that the issues therein consisted of prejudicial questions which should first be resolved by the Pasay court in Civil Case No. 1920-P. On July 28, 1959 the Securities and Exchange Commission denied the postponement, saying that with the exception of charges Nos. 1 and 2, the matters alleged in the administrative complaint were not in issue in the court case and could properly be investigated by it, citing our decision in "Japanese War Notes Claimants Association of the Philippines, Inc., vs. Securities and Exchange Commission," 101 Phil. 540.

Respondents' motion to dismiss was heard by the Pasay court, which granted it in an order dated November 5, 1959, holding that the Securities and Exchange Commission had authority and power to investigate petitioner for activities in violation of its articles of incorporation; that on the other hand, said Court was not empowered by law to enjoin or prohibit the Commission from performing its lawful functions; and that in any event respondents were outside the territorial jurisdiction of the Court and therefore it could not issue a writ of injunction against them. That order of dismissal was not appealed and became final.

On March 19, 1960 AFAG filed the instant petition for injunction in the Court of First Instance of Manila (Civil case No. 42794), alleging the very same causes of action as those in the previous case in Pasay. Upon respondents' motion the Manila Court dismissed the petition in its order of May 7, 1936. Petitioner received a copy of the order on May 13, 1960, moved to reconsider it on May 30, and upon denial of the motion filed its notice of appeal on the following June 10.

Respondents moved to dismiss the appeal on the ground that the order had already become final, because although the petition was denominated "Injunction with Writ of Preliminary Injunction," it was really a petition for a writ of prohibition and therefore the appeal should have been perfected within fifteen (15) days from notice pursuant to Section 17 of Rule 41. The trial court, while conceding some merit in respondent's contention as to the true nature of the petition, nevertheless denied the motion to dismiss the appeal "in the interest of justice," considering that before the said motion was filed the parties had always treated the action as one for injunction.

In their brief respondents reiterate their argument concerning the untimeliness of the appeal and the finality of the order appealed from. They likewise contend that the petition is barred by prior judgment, that is, by the order of the Court of First Instance of Pasay dismissing a similar petition against the same respondents. This contention was upheld by the court a quo, which said that although the Pasay court had made reference to the fact that respondents were outside its territorial jurisdiction said fact was not the only ground for the order of dismissal, the others being (1) that the Securities and Exchange Commission had the power to conduct the investigation sought to be enjoined and (2) that the Court of First Instance could not enjoin the Commission from doing so, the latter being a semi-judicial body of equal rank.

We do not find it necessary to pass upon all the points in contention, particularly the timeliness of this appeal and the effect of the prior judgment resolved by the Court of First Instance of Pasay. Whether the petition below be for injunction or for prohibition, its purpose was in effect to have the court a quo review the actuation of the Securities and Exchange Commission whereby it assumed jurisdiction over the administrative case before it and set the same for investigation. Such power of review pertains not to the Courts of First Instance but to the Supreme Court exclusively, pursuant to Section 1, Rule 43, and Section 35, Commonwealth Act No. 83, as amended by Republic Act No. 635, which respectively read as follows:

"SEC. 1. Petition for review. - Within thirty days from notice of an order or decision issued by the Public

Service Commission or the Securities and Exchange Commission, any party aggrieved thereby may file, in the Supreme Court, a written petition for the review of such order or decision."

"SEC. 35. Court review of orders. - (a) Any person aggrieved by an order issued by the Commission in any proceeding under this act to which such person is a party or who may be affected thereby may obtain a review of such order in the Supreme Court of the Philippines by filing in such court within thirty days after the entry of such order a written petition praying that the order of the Commission be modified or set aside in whole or part. * * *."

If a petition for review was not speedy or adequate—the questioned order of the Commission (denying postponement of the hearing before it and thus assuming power and authority to investigate the administrative complaint) not being final in character—and a remedy was available at all, it would be a petition for prohibition. This last remedy is provided for when the proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial are without or in excess of jurisdiction, or with grave abuse of discretion. True, a petition for prohibition may be filed in the Court of First Instance, but only if it relates to acts or omissions of an inferior Court (Section 4, Rule 65). Indeed, the same Rule says a petition for certiorari under Rule 43 (against, inter alia, the Securities and Exchange Commission) shall be filed with the Supreme Court; and there is no reason why a different procedure should be observed in respect of a Petition for prohibition.

The order appealed from is affirmed, with costs against petitioner-appellant.

Bengzon, C. J., Bautista Angelo, Concepción, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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