

CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE CONRADO M. VASQUEZ, JUDGE, COURT OF FIRST INSTANCE OF MANILA, THE SHERIFF OF MANILA, AND BANK OF ASIA, RESPONDENTS.

G.R. No. L-33593. December 13, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In the complaint dated April 22, 1971 filed with respondent court by respondent Bank of Asia as plaintiff against petitioner as defendant, respondent bank prayed for relief, pendente lite and upon the merits, as follows:

"WHEREFORE, it is respectfully prayed of this Honorable Court (1) that pending hearing on the plaintiff's petition for preliminary injunction, a restraining order be issued enjoining and prohibiting the defendant from enforcing its threatened suspension of the plaintiff's foreign exchange operations; (2) that upon notice and hearing, and upon the filing of a bond which may be required by this Honorable Court, a writ of preliminary injunction be is-sued enjoining and prohibiting the defendant from enforc-ing its threatened suspension of the foreign exchange operations of the plaintiff until further orders; and (3) that after hearing on the merits of the case, the defendant's de-mand upon the plaintiff for the surrender of its net foreign exchange holdings as of February 21, 1970 be declared to be without legal basis and that the preliminary injunction be made permanent."[1]

Respondent court, in its order dated May 24, 1971, ordered, upon the filing of a P20,000-bond, the issuance of a writ of preliminary injunction restraining petitioner Central Bank "from enforcing its threatened suspension of the plaintiff's foreign exchange operations." The writ was actually issued on May 26, 1971. Respondent court, noting that "the is-sues in this case are already joined and that said issues are mainly, if not solely, questions of law" set the pre-trial and trial of the case on June 7, 1971.

Upon the filing of the present petition for certiorari and prohibition with preliminary injunction, the Court issued on June 4, 1971 its temporary restraining order enjoining respondent court and its sheriff from carrying out, executing or implementing respondent court's said order and writ of preliminary injunction in the case below.

Per Resolution No. 906 dated June 6, 1971 of the petitioner's Monetary Board, served on respondent bank on June 9, 1971, the said board "directed the suspension of the foreign exchange operations of (respondent) bank, as an authorized agent of the Central Bank."[2]

Following clarification of the issues at bar at the hearing of the case on June 30, 1971, respondent bank formally proposed to deposit with petitioner "(its) uncontroverted exchange profits from its foreign exchange holdings as of February 21, 1970. The deposit is to be made subject to the outcome of the litigation between the parties with the res-pondent bank undertaking to pay any additional amount that may be adjudged against it and on the condition that said deposit will be returned in the event the Court should finally decide that the Central Bank is not entitled to the exchange profits."[3]

After hearing the contrary claim of petitioner, the Court issued its Resolution of August 26, 1971, resolving to lift its temporary restraining order of June 4, 1971 against respondent court's questioned (and now moot) order and writ of preliminary injunction of May 24, and May 26, 1971:

"x x x effective upon respondent bank's depositing with petitioner the uncontroverted amount of P787,088.77 (in cash) and delivering in pledge to petitioner, Central Bank Certificates of Indebtedness only with a total face value of P2,176,987.47 (representing the balance of the entire amount of P2,964,076.24 claimed by petitioner as the revaluation profits realized on respondent bank's foreign exchange holdings as of February 21, 1970, computed on the basis of the guiding rates of August 11, 1971 [per Annex B, petitioner's comment] that would stand as security for the payment of such balance, if it should be finally adjudicated that respondent is liable therefor."

Petitioner Central Bank has now filed its Manifestation and Motion of September 7, 1971, stating:

"1. That the Monetary Board of petitioner Central Bank has duly noted the Resolution of this Honorable Court of August 26, 1971, lifting the temporary restraining order issued by this Court on June 4, 1971, upon depositing by respondent of P787,088.77 in cash and in delivering in pledge to petitioner Certificates of Indebtedness in the total face value of P2,176,987.47; accordingly, the Central Bank has lifted its resolution suspending the foreign exchange operations of the Bank of Asia."

Petitioner submits accordingly that "the lower Court's writ of preliminary injunction dated May 26, 1971 has become functus officio;" and prays of the Court "to set aside the lower court's writ of preliminary injunction dated May 26, 1971, without prejudice to further proceedings on the merits of the case below."

The Court, in its above-quoted Resolution of August 26, 1971 directed respondent court to "proceed to the prompt trial and resolution of the case before it." With petitioner's lifting of its suspension of the respondent bank's foreign exchange operations by virtue of the Court's said Resolution, respondent court is no longer faced with any issue as to the "threatened suspension of plaintiff's foreign exchange operations." Respondent court is now called upon to determine the issue submitted by respondent bank under item 3 of the above-quoted prayer of its complaint, viz, whether petitioner Central Bank's demand for it to surrender its February 21, 1970 net foreign exchange holdings is "without legal basis", more specifically, whether respondent bank is liable for the amount claimed by petitioner as revaluation profits due from respondent bank and if so, the amount of such liability, payment of which is secured by the cash and securities deposited and pledged by respondent with petitioner pursuant to the Court's said Resolution of August 26, 1971.

Respondent Bank of Asia, in its opposition dated September 30, 1971, concedes that

"3. The Bank of Asia has deposited with the Central Bank cash and securities equivalent to the amount claimed by the latter as the revaluation profits to which it is entitled from the respondent bank; its collection of the revaluation profits is assured in the event it is finally decided that it is entitled to such revaluation profits; and it will not be necessary for the Central Bank to resort to suspension of the foreign exchange operations of the respondent bank in order to enforce collection of the alleged revaluation profits;"[4]

but nevertheless opposes petitioner's motion on the implausible ground that "4. There is no need to set aside the writ of preliminary injunction, unless the Central Bank intends to commit the acts enjoined by the writ.

It is quite clear, from the foregoing, that respondent court's questioned writ of preliminary injunction has been set aside for all legal effects and purposes and has become functus officio, since there is no longer any "threatened suspension of plaintiff's foreign exchange operations" to enjoin; and that the present case for annulment of said order and writ of preliminary injunction as having been issued without jurisdiction or with grave abuse of discretion has, therefore, become moot. And the Court is no longer called upon to rule on the validity of

petitioner's Monetary Board resolution suspending respondent bank's foreign exchange operations, (sought to be enjoined by respondent court and permitted by this Court with the issuance of its restraining order of June 4, 1971), since the said board has lifted such suspension, pursuant to the Court's resolution of August 26, 1971.

The suggestion made that this Court should leave the way clear to respondent court to rule on the questioned power of the Central Bank to suspend by resolution of its Monetary Board the foreign exchange operations of respondent bank as an authorized agent of the Central Bank would not be in accord with the well established principle that "courts exist to decide actual controversies, and do not give opinions on abstract propositions and moot cases"[5] and that "it is a rule of almost universal application that courts of justice, constituted to pass upon substantial rights, will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases." [6]

Any judgment on the merits that respondent court may render in the case below on the issue of respondent bank's liability for revaluation profits to petitioner Central Bank and the amount thereof may not be reviewed in the present special civil action but would have to be the subject of a separate appeal taken in due course by the party not satisfied therewith.

ACCORDINGLY, the Court resolved to order the dismissal of the present case.

Zaldivar, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., in the result.

Barredo J., concurs in a separate opinion.

Reyes, Makalintal, Ruiz Castro, and Fernando, JJ., concur in the separate opinion of J. Barredo.

[1] Complaint in Civil Case No. 82955 of the Court of First Instance of Manila, entitled "Bank of Asia, plaintiff vs. Central Bank of the Phil., defendant," Annex P, petition; emphasis furnished.

[2] Rollo, p. 264.

[3] Respondent's memo of July 10, 1971.

[4] Emphasis furnished.

[5] I Moran's Rules of Court, 1970 Ed., p. 4; see *Garron vs. Arca*, 88 Phil. 490.

[6] *In re Estate of Ceballos*, 12 Phil. 271.

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CONCURRING OPINION

BARREDO, J.:

The Bank of Asia has not paid the revaluation profits as demanded by the Central Bank. It has only deposited with the Central Bank enough cash and Central Bank Certificates of Indebtedness sufficient to cover the full amount of the revaluation profits claimed by the Central Bank. To my mind, the lifting of Our restraining order against Judge Vasquez preliminary injunction order and writ which was predicated on his desire to look into the alleged

lack of power of the Central Bank to suspend the foreign exchange operations of the Bank of Asia for failure of the latter to surrender or pay the full amount of the devaluation profits ascertained by the Central Bank does not resolve any of the issues submitted by the parties to said judge, namely, (1) whether or not the amount claimed represents revaluation profits; (2) whether or not it is the Monetary Board and not any other officer of the Central Bank who must make the demand for the surrender of the revaluation profits; (3) whether or not the amount demanded by the Central Bank is the right or correct amount; and (4) whether or not the Central Bank has the power to suspend the foreign exchange operations of the Bank of Asia merely because, of its failure to surrender or pay the amount of evaluation profits demanded by the Central Bank. (See Annex P of Petition)

I can understand that the present case before Us, premised as it is on the theory that Judge Vasquez gravely abused his discretion in issuing the writ of preliminary injunction herein complained of, became moot and academic, after the Central Bank lifted its order of suspension of the foreign exchange operations of the Bank of Asia which it issued under the umbrage of Our restraining order, because the danger that the foreign exchange operations of the Bank of Asia would be suspended, against which the writ of preliminary injunction was directed, no longer exist. I submit, however, that the issue of whether or not the Central Bank can order such a suspension, which is squarely presented to Judge Vasquez has not become moot and academic, because the act of the Bank of Asia of giving security for the payment of the devaluation profits in question cannot be interpreted and, I suppose, was not intended to signify any admission on its part of the legality of the Central Bank's order of suspension. It was made for no other purpose than to enable the Bank of Asia to operate pending the determination of the said issue. I believe it is, in fact, the principal issue that the Bank of Asia would like to be resolved, if only to clear up the questioned power of the Central Bank in the premises and thus avoid, in the future, litigations similar to that before Judge Vasquez now. I am sure the banking community would welcome such resolution.

ACCORDINGLY, while I concur that the present case should be dismissed, not only because of the security given by the Bank of Asia, but more so because, upon consideration of all the attendant circumstances, I cannot see how Judge Vasquez could be held to have gravely abused his discretion in issuing his questioned order and writ, I am of the considered view that respondent judge is not precluded from ruling on, the question of whether or not the Central Bank could issue the impugned order. It is best for all concerned that said point be squarely settled. In the same manner that a counter-bond to lift an injunction or attachment does not preclude the resolution of the question of legality of the said injunction or attachment, the security given by the Bank of Asia in the present case is not a waiver of its right to have the issue it has raised, so vital to its existence and operation, definitely settled by the courts. Otherwise, the only way by which any bank can judicially question an order of suspension of the Central Bank as that herein involved would be to submit to the suspension and run the risk of ruination while the courts are deciding the issue. I am convinced that the putting up of securities as has been done in this case is the more practical procedure for the settlement of the matter.

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