

DR. ANTONIO L. AZORES, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION AND PHILIPPINE COLUMBIAN ASSOCIATION, RESPONDENTS.

G.R. No. 112337. January 25, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioner was a member of private respondent Philippine Columbian Association (PCA), a non-stock corporation organized in 1907 under Philippine laws. For valuable consideration, he was issued in 1952 Proprietary Membership Certificate No. 094 and, in 1954, Membership Certificate No. 282.

On June 17, 1956, petitioner wrote the Treasurer of the PCA, requesting change in his membership status from resident to non-resident, in view of the fact that he had transferred residence to San Pablo. The records do not show whether the request was granted, but petitioner claims that the PCA later billed him as a non-resident member.[1]

In 1966 petitioner immigrated to the United States to work as Attorney-Adviser in the U.S. Department of Commerce. Because the position was reserved for American citizens, petitioner obtained American citizenship. Petitioner simply stopped paying membership dues without informing the PCA of his change of residence and citizenship.

After his retirement in 1981, petitioner came back to the Philippines. On June 30, 1981, he inquired from the PCA President, Dr. Jose Villanueva, how he could reactivate his membership and how much he could sell one of his shares. He was told by the Chairman of the Membership Committee, Lino M. Patajo, that he had to pay all dues, which active members had to pay, during the time he was out of the country. With respect to the second question, petitioner was informed that the transfer of share was a matter between buyer and seller.[2]

Petitioner objected to the condition for the reactivation of his membership, alleging that although he was remiss in not informing the PCA of his change of residence in 1966, it was not fair that he should be required to pay the amount due active members since he was out of the country and did not use PCA facilities during his absence. In response, Ramon Casanova, Membership Committee Chairman, informed petitioner that in 1977 all certificates of membership had been recalled for replacement and that certificates not surrendered, including those of petitioner, had been cancelled. As a gesture of goodwill, however, Casanova offered to recommend to the PCA Board of Directors the reactivation of petitioner's membership on condition (1) that only one of his shares would be validated and (2) that petitioner pay one month due for every year of absence from the Philippines.[3]

Petitioner replied that he was willing to accept the second condition but considered the first unfair, "there being no legal justification for the forfeiture of his second share," since he had allegedly paid for the same and the PCA was not bankrupt. Petitioner insisted on the replacement of his two certificates, but the PCA Board of Directors, in a meeting held on July 15, 1983, stood pat on its original proposal.[4] On February 14, 1991 petitioner filed with the Securities and Exchange Commission a complaint, praying for the replacement of his membership certificates

and his reinstatement as an active member upon payment of one month due for every year of absence from the Philippines and for damages.

Petitioner's complaint was referred to a Hearing Officer. After the parties had submitted their pleadings and evidence, Hearing Officer Alberto P. Atas rendered on August 5, 1992 a decision sustaining the PCA.[5] Petitioner moved for a reconsideration, but his motion was denied in an order dated October 15, 1992. On October 20, 1992, he filed a Notice and Memorandum of Appeal with the Hearing Officer. His appeal was, however, dismissed on November 4, 1992 for having been filed out of time. Petitioner filed on November 20, 1992 a motion for reconsideration of the denial of his appeal. As his motion was denied, petitioner filed the present petition for certiorari.

Petitioner contends that the SEC gravely abused its discretion in dismissing his appeal and that, as a consequence, the SEC committed the following errors:

1. The SEC failed to decide the following questions:
 - a. Whether private respondent has the right to deprive complainant of the enjoyment of his membership privileges indefinitely for non-payment of dues without selling the latter's membership certificates at public auction in direct contravention of respondent's own corporate by-laws.
 - b. Whether private respondent is liable to pay damages to complainant for its malicious refusal and failure to bill him as a non-resident member thereby not only depriving him of the right to enjoy membership privileges, but resulting inevitably in moral damages suffered by him.
2. The SEC disregarded material and relevant facts duly established and proved.
3. The SEC sanctioned and approved a condition imposed by the PCA which is against the law, morals, and public policy.
4. The SEC sanctioned and approved a violation of private respondent's own corporate by-laws.
5. The SEC decided the case contrary to the applicable decisions of the Supreme Court.

Petitioner's contention has no merit.

Rule XVI, § 3 of the Revised Rules of Procedure of the SEC provides for a period of 30 days within which appeal may be taken from any decision, order or ruling of a Hearing Officer to the SEC en banc. Petitioner admits that the 30th day for filing his notice of appeal and memorandum on appeal, as required by the aforesaid rule of the SEC, fell on October 17, 1992 but that he did so only on October 20, 1992.[6] He alleges, however, that October 17 was a Saturday, while October 18 was a Sunday and that these days should not be counted in determining the period of appeal. In any event he claims that the delay in filing his appeal was "unintended" because he believed in good faith that October 17 and 18 were nonworking days.

Saturdays are not holidays which may be pretermitted. In *Atlas Cons. Mining and Dev. Corp. v. Factoran*, [7] the appeal was allowed to be filed the following Monday although the last day for appealing fell the previous Saturday because Saturdays were observed as legal holidays in the Office of the President, to which the appeal from the decision of the then Minister of Natural Resources was to be taken. In the case of courts, it was only on January 23, 1993 that the filing of pleadings due on a Saturday was directed to be done the following Monday, if the latter is not a holiday. Hence petitioner's appeal should have been filed on October 17, 1992 as that was the last day for perfecting the appeal. His mere belief in good faith that Saturday was a nonworking day cannot excuse his failure to comply with the rule fixing the period of appeal, which is mandatory.

Be that as it may, there was no reason why petitioner's appeal was not filed on Monday, October 19, 1992. As

already noted, it was filed only on Tuesday, October 20. In *Industrial Timber Corp. v. NLRC*[8] we sustained the denial by the NLRC of a motion for reconsideration even though the delay was only for one day.

The failure of a party to perfect his appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision. For it is more important that a case be settled than that it be settled right. It is only in exceptional cases when we have allowed a relaxation of the rules governing the periods of appeals. As stated in *Bank of America, NT & SA v. Gerochi, Jr.*, [9] typical of these cases are the following:

In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when her counsel of record was already dead. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In *Olacao vs. National Labor Relations Commission*, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.

In this case, none of these justifications is present. To repeat, there was absolutely no reason why petitioner did not perfect his appeal on time.

Nor is there any showing that the SEC en banc committed the errors attributed to it in the petition. In the first place, the alleged errors were not committed by the SEC en banc but, if at all, by the Hearing Officer. What petitioner claims to be errors of the SEC en banc are only the consequence of the dismissal of his appeal. For the fact is that the SEC en banc did not decide his appeal. What is more, as already stated, the dismissal of petitioner's appeal was in accordance with law and not at all a grave abuse of the Hearing Officer's discretion. In the second place, this is a petition for certiorari under Rule 65. As such, even assuming that errors were allegedly committed by the SEC en banc, the errors are not errors of jurisdiction or grave abuse of discretion. It is not disputed that, under the by-laws of the PCA, proprietary membership is open only to Filipino citizens[10] and that failure to pay dues for three successive months result in the automatic termination of membership;[11] that petitioner did not pay his monthly dues from 1966 to 1981 when he worked in the United States; and that he did not inform the PCA that he had obtained American citizenship. There was, therefore, reasonable basis for the decision of the Hearing Officer in dismissing petitioner's complaint.

The alleged errors assigned by petitioner are mere errors of judgment, but since petitioner failed to perfect his appeal to the SEC en banc, he cannot now raise them. Even then further appeal should be taken to the Court of Appeals in accordance with B.P. Blg. 129, § 9 and Circular No. 1-91. In this case for certiorari we are limited to an inquiry into any jurisdictional errors of which we find none.

WHEREFORE, the petition is denied for lack of merit.

SO ORDERED:

Regalado (Chairman), Romero, and Puno, JJ., concur.

[1] Petition, p. 15, Rollo, p. 16.

[2] Petition, p. 4, Rollo, p. 5.

[3] Decision of the Hearing Officer, p. 8, Rollo, p. 38.

[4] Decision, p. 10, Rollo, p. 40.

[5] Decision, p. 13, Rollo, p. 43.

[6] Petitioner received the Decision of the Hearing Officer on August 5, 1992. On the 29th day, September 8, 1992, he filed a motion for reconsideration. On October 16, 1992, he received the order denying his motion.

[7] 154 SCRA 49 (1987).

[8] 233 SCRA 597(1994).

[9] 230 SCRA 9, 15(1994).

[10] Art. II, § 2(a).

[11] Art. VIII, § 5.

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