

ROMULO, MABANTA, BUENAVENTURA, SAYOC & DE LOS ANGELES, PETITIONER, VS. HOME DEVELOPMENT MUTUAL FUND, RESPONDENT.

G.R. No. 131082. June 19, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Once again, this Court is confronted with the issue of the validity of the Amendments to the Rules and Regulations Implementing Republic Act No. 7742, which require the existence of a plan providing for both provident/retirement and housing benefits for exemption from the Pag~IBIG Fund coverage under Presidential Decree No. 1752, as amended.

Pursuant to Section 19[1] of P.D. No. 1752, as amended by R.A. No. 7742, petitioner Romulo, Mabanta, Buenaventura, Sayoc and De Los Angeles (hereafter PETITIONER), a law firm, was exempted for the period 1 January to 31 December 1995 from the Pag~IBIG Fund coverage by respondent Home Development Mutual Fund (hereafter HDMF) because of a superior retirement plan.[2]

On 1 September 1995, the HDMF Board of Trustees, pursuant to Section 5 of Republic Act No. 7742, issued Board Resolution No. 1011, Series of 1995, amending and modifying the Rules and Regulations Implementing R.A. No. 7742. As amended, Section 1 of Rule VII provides that for a company to be entitled to a waiver or suspension of Fund coverage,[3] it must have a plan providing for both provident/ retirement and housing benefits superior to those provided under the Pag~IBIG Fund.

On 16 November 1995, PETITIONER filed with the respondent an application for Waiver or Suspension of Fund Coverage because of its superior retirement plan.[4] In support of said application, PETITIONER submitted to the HDMF a letter explaining that the 1995 Amendments to the Rules are invalid.[5]

In a letter dated 18 March 1996, the President and Chief Executive Officer of HDMF disapproved PETITIONER's application on the ground that the requirement that there should be both a provident retirement fund and a housing plan is clear in the use of the phrase "and/or," and that the Rules Implementing R.A. No. 7742 did not amend nor repeal Section 19 of P.D. No. 1752 but merely implement the law.[6]

PETITIONER's appeal[7] with the HDMF Board of Trustees was denied for having been rendered moot and academic by Board Resolution No. 1208, Series of 1996, removing the availment of waiver of the mandatory coverage of the Pag~IBIG Fund, except for distressed employers.[8]

On 31 March 1997, PETITIONER filed a petition for review[9] before the Court of Appeals. On motion by HDMF, the Court of Appeals dismissed[10] the petition on the ground that the coverage of employers and employees under the Home Development Mutual Fund is mandatory in character as clearly worded in Section 4 of P.D. No. 1752, as amended by R.A. No. 7742. There is no allegation that petitioner is a distressed employer to warrant its exemption from the Fund coverage. As to the amendments to the Rules and Regulations Implementing

R.A. No. 7742, the same are valid. Under P.D. No. 1752 and R.A. No. 7742 the Board of Trustees of the HDMF is authorized to promulgate rules and regulations, as well as amendments thereto, concerning the extension, waiver or suspension of coverage under the Pag-IBIG Fund. And the publication requirement was amply met, since the questioned amendments were published in the 21 October 1995 issue of the Philippine Star, which is a newspaper of general circulation.

PETITIONER's motion for reconsideration[11] was denied.[12] Hence, on 6 November 1997, PETITIONER filed a petition before this Court assailing the 1995 and the 1996 Amendments to the Rules and Regulations Implementing Republic Act No. 7742 for being contrary to law. In support thereof, PETITIONER contends that the subject 1995 Amendments issued by HDMF are inconsistent with the enabling law, P.D. No. 1752, as amended by R.A. No. 7742, which merely requires as a pre-condition for exemption from coverage the existence of either a superior provident/ retirement plan or a superior housing plan, and not the concurrence of both plans. Hence, considering that PETITIONER has a provident plan superior to that offered by the HDMF, it is entitled to exemption from the coverage in accordance with Section 19 of P.D. No. 1752. The 1996 Amendment are also void insofar as they abolished the exemption granted by Section 19 of P.D. 1752, as amended. The repeal of such exemption involves the exercise of legislative power, which cannot be delegated to HDMF.

PETITIONER also cites Section 9 (1), Chapter 2, Book VII of the Administrative Code of 1987, which provides:

SEC. 9. Public Participation ~ (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

Since the Amendments to the Rules and Regulations Implementing Republic Act No. 7742 involve an imposition of an additional burden, a public hearing should have first been conducted to give chance to the employers, like PETITIONER, to be heard before the HDMF adopted the said Amendments. Absent such public hearing, the amendments should be voided.

Finally, PETITIONER contends that HDMF did not comply with Section 3, Chapter 2, Book VII of the Administrative Code of 1987, which provides that "[e]very agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it."

On the other hand, the HDMF contends that in promulgating the amendments to the rules and regulations which require the existence of a plan providing for both provident and housing benefits for exemption from the Fund Coverage, the respondent Board was merely exercising its rule-making power under Section 13 of P.D. No. 1752. It had the option to use "and" only instead of "or" in the rules on waiver in order to effectively implement the Pag-IBIG Fund Law. By choosing "and," the Board has clarified the confusion brought about by the use of "and/or" in Section 19 of P.D. No. 1752, as amended.

As to the public hearing, HDMF maintains that as can be clearly deduced from Section 9(1), Chapter 2, book VII of the Revised Administrative Code of 1987, public hearing is required only when the law so provides, and if not, only if the same is practicable. It follows that public hearing is only optional or discretionary on the part of the agency concerned, except when the same is required by law. P.D. No. 1752 does not require that public hearing be first conducted before the rules and regulations implementing it would become valid and effective. What it requires is the publication of said rules and regulations at least once in a newspaper of general circulation. Having published said 1995 and 1996 Amendments through the Philippine Star on 21 October 1995[13] and 15 November 1996,[14] respectively, HDMF has complied with the publication requirement.

Finally, HDMF claims that as early as 18 October 1996, it had already filed certified true copies of the Amendments to the Rules and Regulations with the University of the Philippines Law Center. This fact is

evidenced by certified true copies of the Certification from the Office of the National Administrative Register of the U.P. Law Center.[15]

We find for the PETITIONER.

The issue of the validity of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742, specifically Section I, Rule VII on Waiver and Suspension, has been squarely resolved in the relatively recent case of *China Banking Corp. v. The Members of the Board of Trustees of the HDMF*.^[16] We held in that case that Section 1 of Rule VII of the Amendments to the Rules and Regulations Implementing R.A. No. 7742, and HDMF Circular No. 124~B prescribing the Revised Guidelines and Procedure for Filing Application for Waiver or Suspension of Fund Coverage under P.D. No. 1752, as amended by R.A. No. 7742, are null and void insofar as they require that an employer should have both a provident/ retirement plan and a housing plan superior to the benefits offered by the Fund in order to qualify for waiver or suspension of the Fund coverage. In arriving at said conclusion, we ruled:

The controversy lies in the legal signification of the words "and/or."

In the instant case, the legal meaning of the words "and/or" should be taken in its ordinary signification, i.e., "either and or; e.g. butter and/or eggs means butter and eggs or butter or eggs.

"The term `and/or' means that the effect shall be given to both the conjunctive "and" and the disjunctive "or"; or that one word or the other may be taken accordingly as one or the other will best effectuate the purpose intended by the legislature as gathered from the whole statute. The term is used to avoid a construction which by the use of the disjunctive "or" alone will exclude the combination of several of the alternatives or by the use of the conjunctive "and" will exclude the efficacy of any one of the alternatives standing alone."

It is accordingly ordinarily held that the intention of the legislature in using the term "and/or" is that the word "and" and the word "or" are to be used interchangeably.

It ... seems to us clear from the language of the enabling law that Section 19 of P.D. No. 1752 intended that an employer with a provident plan or an employee housing plan superior to that of the fund may obtain exemption from coverage. If the law had intended that the employee [sic] should have both a superior provident plan and a housing plan in order to qualify for exemption, it would have used the words "and" instead of "and/or." Notably, paragraph (a) of Section 19 requires for annual certification of waiver or suspension, that the features of the plan or plans are superior to the fund or continue to be so. The law obviously contemplates that the existence of either plan is considered as sufficient basis for the grant of an exemption; needless to state, the concurrence of both plans is more than sufficient. To require the existence of both plans would radically impose a more stringent condition for waiver which was not clearly envisioned by the basic law. By removing the disjunctive word "or" in the implementing rules the respondent Board has exceeded its authority.

It is without doubt that the HDMF Board has rule~making power as provided in Section 5^[17] of R.A. No. 7742 and Section 13^[18] of P.D. No. 1752. However, it is well~settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency.^[19] It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.^[20]

In the present case, when the Board of Trustees of the HDMF required in Section 1, Rule VII of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742 that employers should have both provident/retirement and housing benefits for all its employees in order to qualify for exemption from the Fund, it effectively amended Section 19 of P.D. No. 1752. And when the Board subsequently abolished that exemption

through the 1996 Amendments, it repealed Section 19 of P.D. No. 1752. Such amendment and subsequent repeal of Section 19 are both invalid, as they are not within the delegated power of the Board. The HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.[21] Only Congress can repeal or amend the law.

While it may be conceded that the requirement of having both plans to qualify for an exemption, as well as the abolition of the exemption, would enhance the interest of the working group and further strengthen the Home Development Mutual Fund in its pursuit of promoting public welfare through ample social services as mandated by the Constitution, we are of the opinion that the basic law should prevail. A department zeal may not be permitted to outrun the authority conferred by the statute.[22]

Considering the foregoing conclusions, it is unnecessary to dwell on the other issues raised.

WHEREFORE, the petition is GRANTED. The assailed decision of 31 July 1997 of the Court of Appeals in CA~G.R. No. SP~43668 and its Resolution of 15 October 1997 are hereby REVERSED and SET ASIDE. The disapproval by the Home Development Mutual Fund of the application of the petitioner for waiver or suspension of Fund coverage is SET ASIDE, and the Home Development Mutual Fund is hereby directed to refund to petitioner all sums of money it collected from the latter.

SO ORDERED.

Puno, Kapunan, and Ynares~Santiago, JJ., concur.

Pardo, J., no part. Related to a party.

[1] It reads:

SEC. 19. Existing Provident/Housing Plan - An employer and/or employee~group who, at the time this Decree becomes effective have their own provident and/or employee~housing plans, may register with the Fund, for any of the following purposes:

(a)....For annual certification of waiver or suspension from coverage or participation in the Fund, which shall be granted on the basis of verification that the waiver or suspension does not contravene any effective collective bargaining agreement and that the features of the plan or plans are superior to the Fund or continue to be so; or

(b)....For integration with the Fund, either fully or partially.

The establishment of a separate provident and/or housing plan after the effectivity of this Decree shall not be a ground for waiver of coverage in the Fund; nor shall such coverage bar any employer and/or employee~group from establishing separate provident and/or housing plans.

[2] Rollo, 43.

[3] Id., 187.

[4] Id., 44.

[5] Id., 45-51.

[6] Id., 52-54.

[7] Id., 55-60.

[8] Rollo, 61.

[9] Id., 30-42.

[10] Id., 86-91. Per Tayao-Jaguros, L. J., with Martinez, A. and Brawner, R. JJ., concurring.

[11] Id., 112-126.

[12] Id., 140.

[13] Rollo, 187.

[14] Id., 188.

[15] Id., 189.

[16] G.R. No. 131787, 19 May 1999.

[17] SEC. 5. Promulgation of Rules and Regulations. -- Within sixty (60) days from the approval of this Act, the Board of Trustees of the Home Development Mutual Fund shall promulgate the rules and regulations necessary for the effective implementation of this Act.

[18] SEC. 13. Rule-Making Power. -- The Board of Trustees is hereby authorized to make and change needful rules and regulations, which shall be published in accordance with law or at least once in a newspaper of general circulation in the Philippines, to provide for, but not limited to, the following matters:

(b)...Extension of fund coverage to other working groups, and waiver or suspension of coverage or its enforcement for reasons herein stated;

...

(i) Other matters that, by express or implied provisions of this Act, shall require implementation by appropriate policies, rules and regulations.

[19] Victorias Milling Co., Inc., v. Social Security Commission 114 Phil. 555, 558 (1962), as cited in the case of China Banking Corp. v. The Members of the Board of Trustees, supra note 16.

[20] The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration, 243 SCRA 666, 675 (1995)

[21] Commissioner of Internal Revenue v. Court of Appeals, 240 SCRA 368, 372 (1994)

[22] Radio Communications of the Philippines v. Santiago, 58 SCRA 493, 498 (1974)

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