

CHINA BANKING CORPORATION AND CBC PROPERTIES AND COMPUTER CENTER, INC., PETITIONERS, VS. THE MEMBERS OF THE BOARD OF TRUSTEES, HOME DEVELOPMENT MUTUAL FUND (HDMF); HDMF PRESIDEN...

G.R. No. 131787. May 19, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure "on pure questions of law" from the Order of the Regional Trial Court of Makati, Branch 59 dated October 10, 1997 and from the Order of the same court dated December 19, 1997 denying petitioners' motion for reconsideration.

Briefly, petitioners China Banking Corporation (CBC) and CBC Properties and Computer Center Inc. (CBC-PCCI) are both employers who were granted by the Home Development Mutual Fund (HDMF) certificates of waiver dated July 7, 1995 and January 19, 1996 (covering respectively the periods of July 1, 1995 to June 30, 1996 for CBC and January 1 to December 31, 1995 for CBC-PCCI) for the identical reason of "Superior Retirement Plan" pursuant to Section 19 of P. D. 1752 otherwise known as the Home Development Mutual Fund Law of 1980 whereunder employers who have their own existing provident and/or employees-housing plans may register for annual certification for waiver or suspension from coverage or participation in the Home Development Mutual Fund created under said law.

It appears that in June 1994, Republic Act No. 7742, amending P. D. 1752 was approved.[1] On September 1, 1995, respondent HDMF Board issued an Amendment to the Rules and Regulations Implementing R.A. 7742 ("The Amendment") and pursuant to said Amendment, the said Board issued on October 23, 1995 HDMF Circular No. 124-B or the Revised Guidelines and Procedure for filing Application for Waiver or Suspension of Fund Coverage under P.D. 1752 ("Guidelines"). Under the Amendment and the Guidelines, a company must have a provident/retirement and housing plan superior to that provided under the Pag-IBIG Fund to be entitled to exemption/waiver from fund coverage.

CBC and CBC-PCCI applied for renewal of waiver of coverage from the fund for the year 1996, but the applications were disapproved for the identical reason that:

"Our evaluation of your company's application indicates that your retirement plan is not superior to Pag-IBIG Fund. Further, the amended Implementing Rules and Regulations of R. A. 7742 provides that to qualify for waiver, a company must have retirement/provident and housing plans which are both superior to Pag-IBIG Funds."

Petitioners thus filed a petition for certiorari and prohibition before the Regional Trial Court of Makati seeking to annul and declare void the Amendment and the Guidelines for having been issued in excess of jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction alleging that in requiring the employer to have both a retirement/provident plan and an employee housing plan in order to be entitled to a certificate of waiver or

suspension of coverage from the HDMF, the HDMF Board exceeded its rule-making power.

Respondent Board filed a Motion to Dismiss and the court a quo, in its first challenged order dated October 10, 1997 granted the same. The Court dismissed the petition for certiorari on the grounds (1) that the denial or grant of an application for waiver/coverage is within the power and authority of the HDMF Board, and the said Board did not exceed its jurisdiction or act with grave abuse of discretion in denying the applications; and (2) the petitioners have lost their right to appeal by failure to appeal within the periods provided in the Rules for appealing from the order of denial to the HDMF Board of Trustees, and thereafter, to the Court of Appeals. The Court stated that certiorari will not lie as a substitute for a lost remedy of appeal.

Motion for reconsideration of the above-Order having been denied in the Order of December 19, 1997, this petition for review was filed under Rule 45 alleging that:

"1. The court a quo erred in the appreciation of the issue, as it mistakenly noted that petitioner is contesting the authority of respondent to issue rules pursuant to its rule-making power;

2. The court a quo erred in observing that the matter being assailed by the petitioners were the denial of their application for waiver (Annexes "H" and "I"), and therefore, appeal is the proper remedy."

Essentially, petitioners contend that it does not question the power of respondent HDMF, as an administrative agency, to issue rules and regulations to implement P.D. 1752 and Section 5 of R.A. 7742; however, the subject Amendment and Guidelines issued by it should be set aside and declared null and void for being irrevocably inconsistent with the enabling law, P.D. 1752, as amended by R.A. 7742, which merely requires as a pre-condition for exemption for coverage, the existence of either a superior provident (retirement) plan or a superior housing plan, and not the concurrence of both plans.

Petitioners claim that certiorari is the proper remedy as what are being questioned are not the orders denying petitioners' application for renewal of waiver for coverage which were admittedly issued in the exercise of a quasi-judicial function, but rather the validity of the subject Amendment and Guidelines, which are a "patent nullity"; hence the doctrine of exhaustion of administrative remedies does not apply.

In their comment, respondents contend that there is no question of law involved. The interpretation of the phrase "and/or" is not purely a legal question and it is susceptible of administrative determination. In denying petitioners' application for waiver of coverage under Republic Act No. 7742 the respondent Board was exercising its quasi-judicial function and its findings are generally accorded not only respect but even finality. Moreover, the Amendment and the Guidelines are consistent with the enabling law, which is a piece of social legislation intended to provide both a savings generation and a house building program.

We find merit in the petition.

The core issue posed in the court below and in this Court is whether the respondents acted in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing the Amendment to the Rules and Regulations Implementing R.A. 7742 and HDMF Circular No. 124-B on the Revised Guidelines and Procedure for Filing Application for Waiver or Suspension of Fund Coverage under P.D. 1752, as amended by R.A. 7742, insofar as said Amendment and Guidelines impose as a requirement for exemption from coverage or participation in the Home Development Mutual Fund the existence of both a superior housing plan and a provident plan.

The procedural issue raised in the petition as to the propriety of certiorari in lieu of appeal has not been traversed by the respondents. Suffice it to note that the petitioners sought to annul or declare null and void the questioned Amendment and Guidelines and not merely the denial by the respondent Board of petitioners' application for waiver or exemption from coverage of the fund. As noted by the court a quo, the petition below squarely raised in

issue the validity of the Amendment to the Rules and Regulations and of HDMF Circular No. 124-B insofar as these require the existence of both provident/retirement and housing plans for the grant of waiver/suspension by the Board and prayed that the same be declared void for want of jurisdiction.

We hold that it was an error for the court a quo to rule that the petitioners should have exhausted its remedy of appeal from the orders denying their application for waiver/suspension to the Board of Trustees and thereafter to the Court of Appeals pursuant to the Rules. Certiorari is an appropriate remedy to question the validity of the challenged issuances of the HDMF which are alleged to have been issued with grave abuse of discretion amounting to lack of jurisdiction.[2]

Moreover, among the accepted exceptions to the rule on exhaustion of administrative remedies are: (1) where the question in dispute is purely a legal one; and (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction.[3] Moreover, while certiorari as a remedy may not be used as a substitute for an appeal, especially for a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious.[4] It has been said that where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.[5]

We vote to give the petition due course. The assailed Amendment to the Rules and Regulations and the Revised Guidelines suffer from a legal infirmity and should be set aside.

The law pertinent to the Home Development Mutual Fund, otherwise known as the Pag-IBIG Fund, should be revisited.

The Human Development Mutual Funds were created by Presidential Decree No. 1530, promulgated on June 11, 1978. The said funds, one for government employees and another for private employees, were to be established and maintained from contributions by the employees and counterpart contributions by their employers. P.D. No. 1752, enacted on December 13, 1980, amended P. D. 1530 to make the Home Development Mutual Fund a body corporate and to make its coverage mandatory upon all employers covered by the Social Security System and the Government Service Insurance System. Section 19 of P.D. No. 1752 provides for waiver or suspension from coverage or participation in the fund, thus:

"Section 19. Existing Provident/Housing Plans. - 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." (underscoring ours)

On June 17, 1994, Republic Act No. 7742, amending certain sections of P.D. 1752 was approved. Section 5 of the said statute provides "that within sixty (60) days from the approval of the 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."

Pursuant to the above authority the Home Development Mutual Fund Board of Trustees promulgated The

Implementing Rules and Regulations of Republic Act 7742 amending Presidential Decree No. 1752, Executive Order Nos. 35 and 90, which was published on August 1, 1994. Rule VII thereof reads:

"RULE VII

WAIVER OR SUSPENSION

SECTION 1. Waiver or Suspension-Existing Provident or Retirement Plan.

An employer and/or employee group who has an existing provident or retirement plan as of the effectivity of Republic Act No. 7742, qualified under Republic Act No. 4917 and actuarially determined to be sound and reasonable by an independent actuary duly accredited by the Insurance Commission, may apply with the Fund for waiver or suspension of coverage. Such waiver or suspension may be granted by the President of the Fund on the basis of verification that the waiver or suspension does not contravene any effective collective bargaining or other existing agreement and that the features of the plan or plans are superior to the Fund and continue to be so. The certificate of waiver or suspension of coverage issued herein shall only be for a period of one (1) year but the same may be renewed for another year upon the filing of a proper application within a period of sixty (60) days prior to the expiration of the existing waiver or suspension.

SECTION 2. Waiver or Suspension-Existing Housing Plan.

An employer and/or employee group who has an existing housing plan as of the effectivity of Republic Act No. 7742 may apply with the fund for waiver or suspension of coverage. Such waiver or suspension of coverage may be granted by the President of the Fund on the basis of verification that the waiver or suspension of coverage does not contravene any effective collective bargaining or other existing agreement and that the features of the plan or plans are superior to the Fund and continue to be so. The certificate of waiver or suspension of coverage issued herein shall only be for a period of one (1) year but the same may be renewed for another year upon the filing of a proper application within a period of sixty (60) days prior to the expiration of the existing waiver or suspension."

Subsequently, the HDMF Board adopted in its Special Board Meeting held on September 1, 1995, Amendments to the Rules and Regulations Implementing Republic Act 7742. As amended, Rule VII on "Waiver or Suspension" now reads:

"RULE VII

WAIVER OF SUSPENSION

SECTION 1. Waiver or Suspension Because of Existing Provident/Retirement and Housing Plan.

Any employer with a plan providing both for a provident/retirement and housing benefits for all his employees and existing as of December 14, 1980, the effectivity date of Presidential Decree No. 1752, may apply with the Fund for waiver or suspension of coverage. The provident/retirement aspect of the plan must be qualified under R.A. 4917 and actuarially determined to be sound and reasonable by an independent, actuary duly accredited by the Insurance Commission. The provident/retirement and housing benefits as provided for under the plan must be superior to the provident/retirement and housing benefits offered by the Fund.

Such waiver or suspension may be granted by the Fund on the basis of actual verification that the waiver or suspension does not contravene any collective bargaining agreement, any other existing agreement or clearly spelled out management policy and that the features of the plan or plans are superior to the Fund and continue to be so.

Provided further that the application must be endorsed by the labor union representing a majority of the

employees or in the absence thereof by at least a majority vote of all the employees in the said establishment in a meeting specifically called for the purpose. Provided, furthermore that such a meeting be held or be conducted under the supervision of an authorized representative from the Fund.

The certificate of waiver or suspension of coverage issued herein shall only be for a period of one (1) year effective upon issuance thereof. No certificate of waiver issued by the President of the Fund shall have retroactive effect. Application for renewal must be filled within sixty (60) days prior to the expiration of the existing waiver or suspension and such application for renewal shall only be granted based on the same conditions and requirements under which the original application was approved. Pending the approval of the application for waiver or suspension of coverage or the application for renewal, the employer and his covered employees shall continue to be mandatorily covered by the Fund as provided for under R.A. 7742." (underscoring ours)

On October 23, 1995, HDMF Circular No. 124-B entitled "Revised Guidelines and Procedure for Filing Applications for Waiver or Suspension of Fund Coverage" under P.D. No. 1752, as amended by Republic Act No. 7742, was promulgated. The Circular pertinently provides:

"I. GROUNDS FOR WAIVER OR SUSPENSION OF FUND COVERAGE

A. SUPERIOR PROVIDENT/RETIREMENT PLAN AND HOUSING PLAN

ANY EMPLOYER WHO HAS A PROVIDENT, RETIREMENT, GRATUITY OR PENSION PLAN AND A HOUSING PLAN, EXISTING AS OF DECEMBER 14, 1980, THE EFFECTIVITY OF P.D. NO. 1752, may file an application for waiver or suspension from Fund coverage, provided, that - -

1. The retirement/provident plan is qualified as such under Republic Act No. 4917 (An Act Providing That Retirement Benefits of Employees of Private Firms Shall Not Be Subject to Attachment, Levy, or Execution or Any Tax Whatsoever), as certified by the Bureau of Internal Revenue;

2. The retirement/provident plan is actuarially determined to be financially sound and reasonable by an independent actuary duly accredited by the Insurance Commission;

3. The retirement/provident plan is superior to the retirement /provident benefits offered by the Fund in terms of:

- vesting features

-full and immediate crediting of employer's contribution to the employee's account, the TAV of which the employee carries with him in the event he transfers to another employer; or he becomes self-employed or unemployed;

-employer's contribution (* For provident plans)

-must be equal to or higher than two percent (2%) of employee's monthly compensation, defined in the HDMF Implementing Rules and Regulations as the employee's basic monthly salary plus Cost of Living Allowance;

-retirement age and years of service required to avail of plan benefits

-85 or lower

-10 years of service or less

-amount of benefits extended to EEs (* For retirement plans)

-at least fifty (50%) of monthly compensation, as defined in the HDMF IRR, for every year of service.

4. The housing plan must be superior to the PAG-IBIG Housing Loan Program in terms of:

- residency requirement as employee of the company or member of the plan to avail of housing loan under the plan
- six (6) months or less;
- interest rates
- equal to or lower than the prescribed rates under the PAG-IBIG Expanded Housing Loan Program (EHLP);
- repayment period
- 25 years or more;
- loanable amount
- equal to or greater than the maximum loan amount under the PAG-IBIG Expanded Housing Loan Program; and
- percentage of covered EEs benefitted by the Housing Plan
- EEs who have availed of the Housing Plan benefits as of date of waiver application must be no less than five (5%) of the total.

5. The application for waiver or suspension, based on actual verification of the Fund, does not contravene any effective collective bargaining or any other agreement existing between the employer and his employees.

6. The application must be endorsed by the labor union representing a majority of the employees, or, in the absence thereof, at least a majority vote of all company employees in a meeting specifically called for the purpose and conducted under the supervision of an authorized representative of the Fund."

As above stated, when petitioners CBC and CBC-PCCI applied for the renewal of waiver of Fund coverage for the year 1996, the applications were disapproved on identical grounds namely, that the retirement plan is not superior to Pag-IBIG Fund and that the amended Implementing Rules and Regulations of R.A. 7742 provides that to qualify for waiver, a company must have retirement/provident and housing plan which are both superior to Pag-IBIG Funds.

Petitioner contends that respondent, in the exercise of its rule making power has "overstepped the bounds and exceeded its limit.". The law provides as a condition for exemption from coverage, the existence of either a superior provident (retirement) plan, and/or a superior housing plan, and not the existence of both plans.

On the other hand, respondents claim that the use of the words "and/or" in Section 19 of P.D. No. 1752, which words are "diametrically opposed in meaning", can only be used interchangeably and not together, and the option of making it either both or any one belongs to the Board of Trustees of HDMF, which has the power and authority to issue rules and regulations for the effective implementation of the Pag-IBIG Fund Law, and the guidelines for the grant of waiver or suspension of coverage.

There is no question that the HDMF Board has rule-making powers. Section 5 of R.A. No. 7742 states that the said Board shall promulgate the rules and regulations necessary for the effective implementation of said Act. Its rule- making power is also provided in Section 13 of P.D. No. 1752 which states insofar as pertinent that the Board is authorized to make and change needful rules and regulations to provide for, among others,

- "a. the effective administration, custody, development, utilization and disposition of the Fund or parts thereof including payment of amounts credited to members or to their beneficiaries or estates;
- b. Extension of Fund coverage to other working groups and waiver or suspension of coverage or its

enforcement for reasons therein stated.

xxx xxx xxx

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

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.[6]

"The term "and/or" means that 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." [7]

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.[8]

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 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 well settled that the rules and regulations which are the product of a delegated power to create new or 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.[9] "Department zeal may not be permitted to outrun the authority conferred by statute." [10] As aptly observed in *People vs. Maceren* [11]:

"Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. *U.S. vs. Tupasi Molina*, supra). An administrative agency cannot amend an act of Congress (*Santos vs. Estenzo*, 109 Phil. 419 422; *Teoxon vs. Members of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585; *Manuel vs. General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660; *Deluao vs. Casteel*, L-21906, August 29, 1969 SCRA 350).

The rule making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (*University of Santo Tomas vs. Board of Tax Appeals*, 93 Phil. 376, 382, citing 12 C. J. 845-46. As to invalid regulations, see *Collector of Internal Revenue vs. Villaflor*, 69 Phil. 319; *Wise & Co. vs. Meer*, 78 Phil. 655, 676; *Del Mar vs. Phil. Veterans Administration*, L-27299, June 27, 1973, 51 SCRA 340, 349). "

While it may be conceded that the requirement of the concurrence of both plans to qualify for exemption would

strengthen the Home Development Mutual Fund and make it more effective both as a savings generation and a house building program, the basic law should prevail as the embodiment of the legislative purpose, and the rules and regulations issued to implement said law cannot go beyond its terms and provisions.

We accordingly find merit in petitioner's contention that Section 1, Rule VII of the Rules and Regulations Implementing R.A. 7742, and HDMF Circular No. 124-B and the Revised Guidelines and Procedure for Filing Application for Waiver or Suspension of Fund Coverage under P.D. 1752, as amended by R.A. 7742, should be declared invalid insofar as they require that an employer must have both a superior retirement/provident plan and a superior employee housing plan in order to be entitled to a certificate of waiver and suspension of coverage from the HDMF.

WHEREFORE, the petition is given due course and the assailed Orders of the court a quo dated October 10, 1997 and December 19, 1997 are hereby set aside. Section 1 of Rule VII of the Amendments to the Rules and Regulations Implementing R.A. 7742, and HDMF Circular No. 124-B prescribing the Revised Guidelines and Procedure for Filing Applications for Waiver or Suspension of Fund Coverage under P.D. 1752, as amended by R.A. No. 7742, insofar as they require that an employer should have both a provident/retirement plan superior to the retirement/provident benefits offered by the Fund and a housing plan superior to the Pag-IBIG housing loan program in order to qualify for waiver or suspension of fund coverage, are hereby declared null and void.

SO ORDERED.

Romero, (Chairman), Vitug, and Panganiban, JJ., concur.

Purisima, J., took no part in the deliberation.

[1] The law was published on June 22, 1994 and went into effect on July 8, 1994.

[2] Tañada vs. Angara, 272 SCRA 18; People vs. Vera, 65 Phil. 56.

[3] Alindao vs. Josen, 264 SCRA 211; Gonzales vs. Hechanova, 9 SCRA 230; Madrigal vs. Lecaroz, 191 SCRA 20.

[4] De la Paz vs. Panis, 245 SCRA 242; Vasquez vs. Hobilla-Alinio, 271 SCRA 67.

[5] Nerves vs. Civil Service Commission, 276 SCRA 610.

[6] 3 Words and Phrases at p. 640.

[7] Agpalo, Statutory Construction, 1990 ed., p. 148.

[8] 73 Am Jur 2nd Sec. 242.

[9] Davis-Administrative Law, pp. 194-197, cited in Victoria Milling Co., Inc. vs. Social Security Commission (114 Phil. 555).

[10] Radio Communication of the Philippines vs. Santiago, 58 SCRA 493.

[11] 79 SCRA 450 at p. 458.

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