

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

G.R. No. 138949. June 06, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The mere fact that petitioner, in regard to its banking functions, is already subject to the supervision of the Bangko Sentral ng Pilipinas does not exempt the former from reasonable disclosure regulations issued by the Securities and Exchange Commission (SEC). These regulations -- imposed on petitioner as a banking institution listed in the stock market -- are meant to assure full, fair and accurate information for the protection of investors. Imposing such regulations is a function within the jurisdiction of the SEC.

The Case

Before us is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, challenging the November 16, 1998 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 48002. The dispositive portion of the assailed Decision reads as follows:

"GIVEN THE FOREGOING, the assailed Orders dated November 5, 1997 and April 14, 1998 are hereby AFFIRMED, with the MODIFICATION that petitioner is assessed a single fine of FIFTY THOUSAND (P50,000.00) PESOS plus FIVE HUNDRED (P500.00) PESOS beginning July 21, 1997, for each day of continuing violation."[3]

Likewise assailed is the May 31, 1999 CA Resolution,[4] which denied petitioner's Motion for Reconsideration.

The Facts

The court a quo summarized the antecedents of the case as follows:

"Records show that on April 4, 1997, petitioner, through its General Counsel and Corporate Secretary, sought the opinion of Chairman Perfecto Yasay, Jr. of respondent Commission as to the applicability and coverage of the Full Material Disclosure Rule on banks, contending that said rules, in effect, amend Section 5 (a) (3) of the Revised Securities Act which exempts securities issued or guaranteed by banking institutions from the registration requirement provided by Section 4 of the same Act. (Annex "C", p. 20, Rollo).

"In reply thereto, Chairman Yasay, in a letter dated April 8, 1997, informed petitioner that while the requirements of registration do not apply to securities of banks which are exempt under Section 5(a) (3) of the Revised Securities Act, however, banks with a class of securities listed for trading on the Philippine Stock Exchange, Inc. are covered by certain Revised Securities Act Rules governing the filing of various reports with respondent Commission, i.e., (1) Rule 11(a)-1 requiring the filing of Annual, Quarterly, Current, Predecessor and Successor Reports; (2) Rule 34-(a)-1 requiring submission of Proxy Statements; and (3) Rule 34-(c)-1 requiring submission of Information Statements, among others. (Annex D, P, U, Rollo).

"Not satisfied, petitioner, per letter dated April 30, 1997, informed Chairman Yasay that they will refer the matter to the Philippine Stock Exchange for clarification. (Annex E, p. 22, Rollo)

"On May 9, 1997, respondent Commission, through its Money Market Operations Department Director, wrote petitioner, reiterating its previous position that petitioner is not exempt from the filing of certain reports. The letter further stated that the Revised Securities Act Rule 11(a) requires the submission of reports necessary for full, fair and accurate disclosure to the investing public, and not the registration of its shares. (Annex F, p. 23, Rollo).

"On July 17, 1997, respondent Commission wrote petitioner, enjoining the latter to show cause why it should not be penalized for its failure to submit a Proxy/Information Statement in connection with its annual meeting held on May 23, 1997, in violation of respondent Commission's 'Full Material Disclosure Rule.' (Annex 6, p. 24, Rollo).

"Failing to respond to the aforesaid communication, petitioner was given a '2[nd] Show Cause with Assessment' by respondent Commission on July 21, 1997. Petitioner was then assessed a fine of P50,000.00 plus P500.00 for every day that the report [was] not filed, or a total of P91, 000.00 as of July 21, 1997. Petitioner was likewise advised by respondent Commission to submit the required reports and settle the assessment, or submit the case to a formal hearing. (Annex H, p. 25, Rollo).

"On August 18, 1997, petitioner wrote respondent Commission disputing the assessment. (Annex I, pp. 26-27, Rollo).

"Thus, on November 5, 1997, respondent issued the assailed Order, the dispositive portion of which provides:

"In view of the foregoing, the appeal filed by the Union Bank of the Philippines is hereby denied. The penalty imposed in the amount of P91,000.00 as of July 21, 1997, for failure to file SEC Form 11-A excludes the fine accruing after the cut-off date until the final submission of the report. Further, the amount of P50,000.00 shall be collected for the violation of RSA Rule 34(a)-1 or Rule 34 (c)(1)." (p. 17, Rollo).

"Petitioner sought a reconsideration thereof which was denied by respondent Commission per assailed Order dated April 14, 1998, the dispositive portion of which reads:

"There being no new matters raised in the motion for reconsideration to overcome the denial of the Appeal by the Commission En Banc in its Order of November 5, 1997, and considering that the reasons advanced are [a] mere rehash of its defenses duly addressed in the Appeal, the Motion for Reconsideration is hereby, DENIED. (p. 19, Rollo)."[5]

Petitioner then elevated its case to the Court of Appeals which, as already stated, affirmed the questioned Orders.

The CA Ruling

In its well-written 10-page Decision, the Court of Appeals cited the expertise of Respondent SEC on matters within the ambit of the latter's mandate, as follows:

"To begin with, it is already well-settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. (Nestle Philippines, Inc. v. Court of Appeals, 203 SCRA 504 [1991], at page 510) The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. (Nestle Philippines, Inc. v. Court of Appeals, *ibid.*, at pp. 510-511)

"In this regard, the Supreme Court, in *Philippine Stock Exchange v. Securities and Exchange Commission, et. al.*, G.R. No. 125469, October 27, 1998, already upheld the power of respondent Securities and Exchange

Commission to promulgate rules and regulations, as it may consider appropriate, for the enforcement of the Revised Securities Act and other pertinent laws. Thus, pursuant to their regulatory authority, respondent Securities and Exchange Commission adopted the policy of 'full material disclosure' where all companies, listed or applying for listing, are required to divulge truthfully and accurately, all material information about themselves and the securities they sell, for the protection of the investing public, and under pain of administrative, criminal and civil sanctions. While the employment of the 'full material disclosure' policy is sanctioned and recognized by the laws, nonetheless, the Revised Securities Act sets substantial and procedural standards which a proposed issuer of securities must satisfy.

"Moreover and perhaps most importantly, the construction given by respondent Commission on the scope of application of the 'Full Material Disclosure' policy permits greater opportunity for respondent Commission to implement [its] statutory mandate of protecting the investing public by requiring public issuers of securities to inform the public of the true financial conditions and prospects of the corporation." [6]

The court a quo stressed that Rules 11(a)-1, 34(a)-1, and 34(c)-1 were issued by respondent to implement the Revised Securities Act (RSA). They do not require the registration of petitioner's securities; thus, it cannot be said that the SEC amended Section 5(a)(3) of the said Act.

Hence, this Petition. [7]

Issues

Petitioner submits for our resolution the following issues:

"A. Whether or not petitioner is required to comply with the respondent SEC's full disclosure rules.

"B. Whether or not the SEC's full disclosure rules [are] contrary to and effectively [amend] section 5(a)(3) of the Revised Securities Act.

"C. Whether or not Respondent Court of Appeals gravely erred in holding that petitioner violated three (3) Rules, namely: Rule 11(A)-1, Rule 34(A)-1 and Rule 34(C)-1 of the full disclosure rule.

"D. Whether or not Respondent Court of Appeals erred in affirming with modification the imposition of excessive fines in violation of the Philippine Constitution." [8]

In the main, the Court will determine (1) the applicability of RSA Implementing Rules 11(a)-1, 34(a)-1 and 34(c)-1 to petitioner; and (2) the propriety of the fine imposed upon the latter.

The Court's Ruling

The Petition is not meritorious.

First Issue:

Applicability of the Assailed RSA Implementing Rules

Because its securities are exempt from the registration requirements under Section 5(a)(3) of the Revised Securities Act, petitioner argues that it is not covered by RSA Implementing Rule 11(a)-1, which requires the filing of annual, quarterly, current predecessor and successor reports; Rule 34(a)-1, which mandates the filing of proxy statements and forms of proxy; and Rule 34(c)-1, which obligates the submission of information statements.

We do not agree. Section 5(a)(3) of the said Act reads:

"Sec 5. Exempt Securities. (a) Except as expressly provided, the requirement of registration under subsection (a) of Section four of this Act shall not apply to any of the following classes of securities:

x x x x x x x x

(3) Any security issued or guaranteed by any banking institution authorized to do business in the Philippines, the business of which is substantially confined to banking, or a financial institution licensed to engage in quasi-banking, and is supervised by the Central Bank."

This provision exempts from registration the securities issued by banking or financial institutions mentioned in the law. Nowhere does it state or even imply that petitioner, as a listed corporation, is exempt from complying with the reports required by the assailed RSA Implementing Rules. Worth repeating is the CA's disquisition on the matter, which we quote:

"However, the exemption from the registration requirement enjoyed by petitioner does not necessarily connote that [it is] exempted from the other reportorial requirements. Having confined the exemption enjoyed by petitioner merely to the initial requirement of registration of securities for public offering, and not [to] the subsequent filing of various periodic reports, respondent Commission, as the regulatory agency, is able to exercise its power of supervision and control over corporations and over the securities market as a whole. Otherwise, the objectives of the 'Full Material Disclosure' policy would be defeated since petitioner corporation and its dealings would be totally beyond the reach of respondent Commission and the investing public." [9]

It must be emphasized that petitioner is a commercial banking corporation [10] listed in the stock exchange. Thus, it must adhere not only to banking and other allied special laws, but also to the rules promulgated by Respondent SEC, the government entity tasked not only with the enforcement of the Revised Securities Act, [11] but also with the supervision of all corporations, partnerships or associations which are grantees of government-issued primary franchises and/or licenses or permits to operate in the Philippines. [12]

RSA Rules 11(a)-1, 34(a)-1 and 34(c)-1 require the submission of certain reports to ensure full, fair and accurate disclosure of information for the protection of the investing public. These Rules were issued by respondent pursuant to the authority conferred upon it by Section 3 of the RSA. [13]

The said Rules do not amend Section 5(a)(3) of the Revised Securities Act, because they do not revoke or amend the exemption from registration of the securities enumerated thereunder. They are reasonable regulations imposed upon petitioner as a banking corporation trading its securities in the stock market.

That petitioner is under the supervision of the Bangko Sentral ng Pilipinas (BSP) and the Philippine Stock Exchange (PSE) does not exempt it from complying with the continuing disclosure requirements embodied in the assailed Rules. Petitioner, as a bank, is primarily subject to the control of the BSP; and as a corporation trading its securities in the stock market, it is under the supervision of the SEC. It must be pointed out that even the PSE is under the control and supervision of respondent. [14] There is no over-supervision here. Each regulating authority operates within the sphere of its powers. That stringent requirements are imposed is understandable, considering the paramount importance given to the interests of the investing public.

Otherwise stated, the mere fact that in regard to its banking functions, petitioner is already subject to the supervision of the BSP does not exempt the former from reasonable disclosure regulations issued by the SEC. These regulations are meant to assure full, fair and accurate disclosure of information for the protection of investors in the stock market. Imposing such regulations is a function within the jurisdiction of the SEC. Since petitioner opted to trade its shares in the exchange, then it must abide by the reasonable rules imposed by the SEC.

Second Issue: Propriety of Fine Imposed

Contending that both respondent and the CA erred in imposing an excessive fine upon it, petitioner complains that

it was not given an opportunity to be heard regarding the matter.

It bears stressing that the fine imposed upon petitioner is sanctioned by Section 46(b) of the RSA, which reads as follows:

"Sec. 46. Administrative sanctions. If, after proper notice and hearing, the Commission finds that there is a violation of this Act, its rules, or its orders or that any registrant has, in a registration statement and its supporting papers and other reports required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or refused to permit any lawful examination into its affairs, it shall, in its discretion, impose any or all of the following sanctions:

x x x x x x x x

(b) A fine of no less than two hundred (P200.00) pesos nor more than fifty thousand (P50,000.00) pesos plus not more than five hundred (P500.00) pesos for each day of continuing violation."

Petitioner complied with RSA Rule 11(a)-1 on April 30, 1998. To date, it still has not complied with either RSA Rule 34(a)-1 or Rule 34(c)-1. That there was a failure to submit the required reports on time is evident in the present case. Thus, respondent was justified in imposing a fine upon it.

We reject the contention of petitioner that it was not heard on the matter of the fine imposed. The latter was assessed after the former had failed to respond to the SEC's first show-cause letter dated June 17, 1997.[15] In its August 18, 1997 letter,[16] petitioner sought before the SEC en banc the nullification of the fine. The matter was raised to the appellate court, which then considered it. Clearly then, petitioner satisfied the essence of due process - notice and opportunity to be heard.[17] That it received adverse rulings from both respondent and the CA does not mean that its right to be heard was discarded.

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision of the Court of Appeals AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 11-27.

[2] Ibid., pp. 30-39. Penned by Justice Ramon A. Barcelona with the concurrence of Justices Arturo B. Buena (Division chairman then and now an associate justice of this Court) and Demetrio G. Demetria (member).

[3] Rollo, p. 39.

[4] Ibid., pp. 41-42.

[5] CA Decision; SC rollo, pp. 30-32.

[6] CA Decision, pp. 4-5; rollo, pp. 33-34.

[7] The case was deemed submitted for decision on April 17, 2000, upon receipt by this Court of respondent's Memorandum signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Mariano M. Martinez, and Associate Solicitor Olivia V. Non. Petitioner's Memorandum, signed by Attys. Fe B. Macalino and Venus T. Buado of Macalino and Associates, was received by the Court on January 27, 2000.

[8] Petitioner's Memorandum, pp. 4-5; rollo, pp. 123-124.

[9] CA Decision, p. 8; rollo, p. 37.

[10] Under Section 7 of the General Banking Act (Republic Act No. 337 as amended), domestic banking institutions, except building and loan associations, shall be organized in the form of stock corporations.

[11] Sec. 3, Revised Securities Act.

[12] Section 3, Presidential Decree No. 902-A, which reads:

"SEC 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations who are grantees of primary franchises and/or license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of and to deputize any and all enforcement agencies of the government, civil or military as well as any private institution, corporation, firm, association or person."

[13] This provision reads:

"SEC 3. Administrative Agency. This Act shall be administered by the Commission which shall continue to have the organization, powers and functions provided by Presidential Decrees Numbered 902-A, 1653, 1758 and Executive Order No. 708. The Commission shall, except as otherwise expressly provided, have the power to promulgate such rules and regulations as it may consider for the enforcement of the provisions hereof."

[14] Philippine Stock Exchange, Inc. v. Court of Appeals, 281 SCRA 232, October 27, 1997.

[15] Respondent SEC's July 21, 1997 "2[nd] Show-Cause with Assessment"; rollo, p. 48.

[16] Rollo, pp. 49-50.

[17] Fabella v. Court of Appeals, 282 SCRA 256, November 28, 1997.

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