

SENATOR ROBERT S. JAWORSKI, PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION AND SPORTS AND GAMES ENTERTAINMENT CORPORATION, RESPONDENTS.

G.R. No. 144463. January 14, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The instant petition for certiorari and prohibition under Rule 65 of the Rules of Court seeks to nullify the “Grant of Authority and Agreement for the Operation of Sports Betting and Internet Gaming,” executed by respondent Philippine Amusement and Gaming Corporation (hereinafter referred to as PAGCOR) in favor of respondent Sports and Games and Entertainment Corporation (also referred to as SAGE).

The facts may be summarized as follows:

PAGCOR is a government owned and controlled corporation existing under Presidential Decree No. 1869 issued on July 11, 1983 by then President Ferdinand Marcos. Pertinent provisions of said enabling law read:

SECTION 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

x x x x x x x x

b) To establish and operate clubs and casinos, for amusement and recreation, including sports, gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: x x x (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.

x x x x x x x x

TITLE IV – GRANT OF FRANCHISE

Sec.10. Nature and term of franchise. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

On March 31, 1998, PAGCOR’s board of directors approved an instrument denominated as “Grant of Authority and Agreement for the Operation of Sports Betting and Internet Gaming”, which granted SAGE the authority to operate and maintain Sports Betting station in PAGCOR’s casino locations, and Internet Gaming facilities to service local and international bettors, provided that to the satisfaction of PAGCOR, appropriate safeguards and procedures are established to ensure the integrity and fairness of the games.

On September 1, 1998, PAGCOR, represented by its Chairperson, Alicia Ll. Reyes, and SAGE, represented by its Chairman of the Board, Henry Sy, Jr., and its President, Antonio D. Lacdao, executed the above-named document.

Pursuant to the authority granted by PAGCOR, SAGE commenced its operations by conducting gambling on the Internet on a trial-run basis, making pre-paid cards and redemption of winnings available at various Bingo Bonanza outlets.

Petitioner, in his capacity as member of the Senate and Chairman of the Senate Committee on Games, Amusement and Sports, files the instant petition, praying that the grant of authority by PAGCOR in favor of SAGE be nullified. He maintains that PAGCOR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it authorized SAGE to operate gambling on the internet. He contends that PAGCOR is not authorized under its legislative franchise, P.D. 1869, to operate gambling on the internet for the simple reason that the said decree could not have possibly contemplated internet gambling since at the time of its enactment on July 11, 1983 the internet was yet inexistent and gambling activities were confined exclusively to real-space. Further, he argues that the internet, being an international network of computers, necessarily transcends the territorial jurisdiction of the Philippines, and the grant to SAGE of authority to operate internet gambling contravenes the limitation in PAGCOR's franchise, under Section 14 of P.D. No. 1869 which provides:

Place. – The Corporation [i.e., PAGCOR] shall conduct gambling activities or games of chance on land or water within the territorial jurisdiction of the Republic of the Philippines. x x x

Moreover, according to petitioner, internet gambling does not fall under any of the categories of the authorized gambling activities enumerated under Section 10 of P.D. No. 1869 which grants PAGCOR the “right, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports gaming pools, within the territorial jurisdiction of the Republic of the Philippines.”[1] He contends that internet gambling could not have been included within the commonly accepted definition of “gambling casinos”, “clubs” or “other recreation or amusement places” as these terms refer to a physical structure in real-space where people who intend to bet or gamble go and play games of chance authorized by law.

The issues raised by petitioner are as follows:

- WHETHER OR NOT RESPONDENT PAGCOR IS AUTHORIZED UNDER P.D. NO. 1869 TO OPERATE GAMBLING ACTIVITIES ON THE INTERNET;
- WHETHER RESPONDENT PAGCOR ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT AUTHORIZED RESPONDENT SAGE TO OPERATE INTERNET GAMBLING ON THE BASIS OF ITS RIGHT “TO OPERATE AND MAINTAIN GAMBLING CASINOS, CLUBS AND OTHER AMUSEMENT PLACES” UNDER SECTION 10 OF P.D. 1869;
- WHETHER RESPONDENT PAGCOR ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED AUTHORITY TO SAGE TO OPERATE GAMBLING ACTIVITIES IN THE INTERNET.

The above-mentioned issues may be summarized into a single pivotal question: Does PAGCOR's legislative franchise include the right to vest another entity, SAGE in this case, with the authority to operate Internet gambling? Otherwise put, does Presidential Decree No. 1869 authorize PAGCOR to contract any part of its franchise to SAGE by authorizing the latter to operate Internet gambling?

Before proceeding with our main discussion, let us first try to hurdle a number of important procedural matters raised by the respondents.

In their separate Comments, respondents PAGCOR and SAGE insist that petitioner has no legal standing to file the instant petition as a concerned citizen or as a member of the Philippine Senate on the ground that he is not a real party-in-interest entitled to the avails of the suit. In this light, they argue that petitioner does not have the requisite personal and substantial interest to impugn the validity of PAGCOR's grant of authority to SAGE.

Objections to the legal standing of a member of the Senate or House of Representative to maintain a suit and assail the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities are not without precedent. Ordinarily, before a member of Congress may properly challenge the validity of an official act of any department of the government there must be an unmistakable showing that the challenged official act affects or impairs his rights and prerogatives as legislator.[2] However in a number of cases,[3] we clarified that where a case involves an issue of utmost importance, or one of overreaching significance to society, the Court, in its discretion, can brush aside procedural technicalities and take cognizance of the petition. Considering that the instant petition involves legal questions that may have serious implications on public interests, we rule that petitioner has the requisite legal standing to file this petition.

Respondents likewise urge the dismissal of the petition for certiorari and prohibition because under Section 1, Rule 65 of the 1997 Rules of Civil Procedure, these remedies should be directed to any tribunal, board, officer or person whether exercising judicial, quasi-judicial, or ministerial functions. They maintain that in exercising its legally-mandated franchise to grant authority to certain entities to operate a gambling or gaming activity, PAGCOR is not performing a judicial or quasi-judicial act. Neither should the act of granting licenses or authority to operate be construed as a purely ministerial act. According to them, in the event that this Court takes cognizance of the instant petition, the same should be dismissed for failure of petitioner to observe the hierarchy of courts.

Practically the same procedural infirmities were raised in *Del Mar v. Philippine Amusement and Gaming Corporation* where an almost identical factual setting obtained. Petitioners therein filed a petition for injunction directly before the Court which sought to enjoin respondent from operating the jai-alai games by itself or in joint venture with another corporate entity allegedly in violation of law and the Constitution. Respondents contended that the Court had no jurisdiction to take original cognizance of a petition for injunction because it was not one of the actions specifically mentioned in Section 1 of Rule 56 of the 1997 Rules of Civil Procedure. Respondents likewise took exception to the alleged failure of petitioners to observe the doctrine on hierarchy of courts. In brushing aside the apparent procedural lapse, we held that "x x x this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction." [4]

In the case at bar, we are not inclined to rule differently. The petition at bar seeks to nullify, via a petition for certiorari and prohibition filed directly before this Court, the "Grant of Authority and Agreement for the Operation of Sports Betting and Internet Gaming" by virtue of which SAGE was vested by PAGCOR with the authority to operate on-line Internet gambling. It is well settled that averments in the complaint, and not the nomenclature given by the parties, determine the nature of the action.[5] Although the petition alleges grave abuse of discretion on the part of respondent PAGCOR, what it primarily seeks to accomplish is to prevent the enforcement of the "Grant of Authority and Agreement for the Operation of Sports Betting and Internet Gaming." Thus, the action may properly be characterized as one for Prohibition under Section 2 of Rule 65, which incidentally, is another remedy resorted to by petitioner.

Granting arguendo that the present action cannot be properly treated as a petition for prohibition, the transcendental importance of the issues involved in this case warrants that we set aside the technical defects and take primary jurisdiction over the petition at bar. One cannot deny that the issues raised herein have potentially pervasive influence on the social and moral well being of this nation, specially the youth; hence, their proper and just determination is an imperative need. This is in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed.[6]

Having disposed of these procedural issues, we now come to the substance of the action.

A legislative franchise is a special privilege granted by the state to corporations. It is a privilege of public concern which cannot be exercised at will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, under such conditions and regulations as the government may impose on them in the interest of the public. It is Congress that prescribes the conditions on which the grant of the franchise may be made. Thus the manner of granting the franchise, to whom it may be granted, the mode of conducting the business, the charter and the quality of the service to be rendered and the duty of the grantee to the public in exercising the franchise are almost always defined in clear and unequivocal language.[7]

After a circumspect consideration of the foregoing discussion and the contending positions of the parties, we hold that PAGCOR has acted beyond the limits of its authority when it passed on or shared its franchise to SAGE.

In the Del Mar case where a similar issue was raised when PAGCOR entered into a joint venture agreement with two other entities in the operation and management of jai alai games, the Court,[8] in an En Banc Resolution dated 24 August 2001, partially granted the motions for clarification filed by respondents therein insofar as it prayed that PAGCOR has a valid franchise, but only by itself (i.e. not in association with any other person or entity), to operate, maintain and/or manage the game of jai-alai.

In the case at bar, PAGCOR executed an agreement with SAGE whereby the former grants the latter the authority to operate and maintain sports betting stations and Internet gaming operations. In essence, the grant of authority gives SAGE the privilege to actively participate, partake and share PAGCOR's franchise to operate a gambling activity. The grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must not perform its activities arbitrarily and whimsically but must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities. A corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether they have been abused.[9]

While PAGCOR is allowed under its charter to enter into operator's and/or management contracts, it is not allowed under the same charter to relinquish or share its franchise, much less grant a veritable franchise to another entity such as SAGE. PAGCOR can not delegate its power in view of the legal principle of delegata potestas delegare non potest, inasmuch as there is nothing in the charter to show that it has been expressly authorized to do so. In *Lim v. Pacquing*,[10] the Court clarified that "since ADC has no franchise from Congress to operate the jai-alai, it may not so operate even if it has a license or permit from the City Mayor to operate the jai-alai in the City of Manila." By the same token, SAGE has to obtain a separate legislative franchise and not "ride on" PAGCOR's franchise if it were to legally operate on-line Internet gambling.

WHEREFORE, in view of all the foregoing, the instant petition is GRANTED. The "Grant of Authority and Agreement to Operate Sports Betting and Internet Gaming" executed by PAGCOR in favor of SAGE is declared

NULL and VOID.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Rollo, p. 18.

[2] Philippine Constitutional Association v. Enriquez, G.R. No. 113888, 19 August 1994, 235 SCRA 506; Bayan (Bagong Alyansang Makabayan) v. Zamora, G.R. No. 138570, 10 October 2000, 342 SCRA 450.

[3] Kilosbayan Inc. v. Guingona, G.R. No. 113375, 5 May 1994, 232 SCRA 110; Lopez, et al. v. Philippine International Air Terminals Co., Inc, et al., G.R. No. 155661, 5 May 2003.

[4] Del Mar v. Philippine Amusement and Gaming Corporation, G.R. No. 138298, 29 November 2000, 346 SCRA 501; citing Fortich, et al. v. Corona, et al., G.R. No. 131457, 24 April 1998, 289 SCRA 624.

[5] Abad v. Court of First Instance of Pangasinan, Br. VIII, G.R. Nos. 58507-08, 26 February 1992, 206 SCRA 567, 579; Solid Homes, Inc. v. Court of Appeals, 337 Phil. 605 (1997).

[6] Serrano v. Galant Maritime Services, et al., G.R. No. 151833, 7 August 2003.

[7] Supra, note 3.

[8] Del Mar v. Philippine Amusement and Gaming Corporation, et al., 416 Phil. 172 (2001).

[9] Bataan Shipyard & Engineering Co., Inc. v. PCGG, G.R. No. No L-75885, 27 May 1987, 150 SCRA 181.

[10] 310 Phil. 722 (1995).

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