

RAMON A. GONZALES, PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, SPORTS AND GAMES ENTERTAINMENT CORPORATION, BEST WORLD GAMING AND ENTERTAINMENT CORPORATION, BELLE...

G.R. No. 144891. May 27, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

At bar is a special civil action for prohibition assailing the constitutionality of the creation of the Philippine Amusement and Gaming Corporation (PAGCOR) as well as the “grant of franchises” by PAGCOR to 1) Sports and Games Entertainment Corporation (SAGE) to engage in internet gambling, 2) Best World Gaming and Entertainment Corporation (BEST WORLD) to engage in computerized bingo gaming, and 3) Belle Jai-alai Corporation (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) to engage in jai-alai operations.

Ramon A. Gonzales, as a citizen, taxpayer and member of the Philippine Bar, filed on September 28, 2000 the instant Petition[1] as a class suit under Section 12, Rule 3 of the Rules of Court[2] seeking to restrain PAGCOR from continuing its operations and prohibit it and its co-respondents from enforcing: (1) the “Grant of an Authority and Agreement for the Operation of Sports Betting and Internet Gambling”[3] executed between PAGCOR and SAGE; (2) the “Grant of Authority to Operate Computerized Bingo Games”[4] between PAGCOR and BEST WORLD; and (3) the “Agreement”[5] among PAGCOR, BELLE and FILGAME to conduct jai-alai operations.

In compliance with this Court’s Resolution of October 18, 2000, respondents filed their respective comments on the petition, to which petitioner filed corresponding replies.

In *Del Mar v. Phil. Amusement and Gaming Corp., et al.*, [6] this Court, by Decision of November 29, 2000, enjoined PAGCOR, BELLE, and FILGAME from managing, maintaining and operating jai-alai games, and from enforcing the agreement entered into by them for that purpose. [7]

Their motions for reconsideration of said decision in *Del Mar* having been denied, [8] PAGCOR, BELLE and FILGAME filed motions for clarification which this Court, by Resolution of August 24, 2001, resolved in this wise:

WHEREFORE, . . . the Court resolves (a) to partially GRANT the motions for clarification insofar as it is prayed that Philippine Amusement and Gaming Corporation (PAGCOR) has a valid franchise to, but only by itself (i.e., not in association with any other person or entity) operate, maintain and/or manage the game of jai-alai, and (b) to DENY the motions insofar as respondents would also seek a reconsideration of the Court’s decision of 29 November 2000 that has, since then, (i) enjoined the continued operation, maintenance, and/or management of jai-alai games by PAGCOR in association with its co-respondents Belle Jai-Alai Corporation and/or Filipinas Gaming Entertainment Totalizator Corporation and (ii) held to be without force and effect the

agreement of 17 June 1999 among said respondents.

SO ORDERED.[9] (Emphasis supplied)

Respondents BELLE and FILGAME thus filed on December 6, 2001 a Manifestation stating that:

- Respondents [BELLE] and FILGAME were impleaded in the instant petition by reason of the “Agreement”, dated 17 June 1999, which they executed with Philippine Amusement and Gaming Corporation (“PAGCOR”).
- However, the said “Agreement” was already declared invalid by the Supreme Court (en banc) in the consolidated cases of Del Mar vs. PAGCOR, et al. [G.R. No. 138298] and Sandoval vs. PAGCOR, et al. [G.R. No. 138982] through its “Resolution” dated 16 August 2001, which has already become final and executory.

[3]. Considering that there is no more privity of contract between PAGCOR, [BELLE] and FILGAME, it is respectfully submitted that the participation of respondents [BELLE] and FILGAME is no longer warranted. Thus, there is no more necessity for respondents [BELLE] and FILGAME to file a memorandum in the instant case.[10] (Emphasis supplied)

In its Comment on the petition at bar filed on March 29, 2001, BEST WORLD stated that it had “been unable to operate its bingo terminals and bingo games since its closure and shut down by PAGCOR and DILG” pursuant to a Memorandum dated October 19, 2000 issued by then President Joseph Ejercito Estrada.[11] A copy of said Memorandum addressed to the Chairman of PAGCOR, which was attached to BEST WORLD’s Comment, reads:

MEMORANDUM FROM THE PRESIDENT

TO

:

The Chairman

Philippine Amusements and Gaming Corporation (PAGCOR)

SUBJECT

:

CLOSURE OF CERTAIN PAGCOR FACILITIES AND OUTLETS

DATE

:

19 October 2000

You are hereby directed to take immediate steps to close down all PAGCOR facilities and outlets in Jai-alai, on-line bingo and internet casino gaming.

For this purpose, you are authorized to secure the support of the Philippine National Police and all concerned local government units.

I expect an initial report on the implementation of this directive, through the Executive Secretary, within 48 hours from receipt hereof.

For direct and immediate compliance.

(SGD. Joseph E. Estrada)[12] (Emphasis supplied)

This Court, by Resolution of August 13, 2001, granted the motion of Attys. Jose Salvador M. Rivera, E. Hans S. Santos and Agnes H. Maranan of Rivera Santos and Maranan to withdraw as counsel for BEST WORLD “for the reason that despite diligent effort on its part, counsel has been unable to get in touch or communicate with its principal client.”[13]

The petition having been given due course by Resolution of September 19, 2001, the parties were required to submit their respective Memoranda. Only respondents PAGCOR and SAGE submitted their Memoranda, on December 6, 2001[14] and January 24, 2002,[15] respectively.

Gonzales having failed to file his Memorandum within the prescribed period, this Court which, in the meantime, was informed of the alleged demise of Gonzales, required by Resolution of July 29, 2002 1) respondents to confirm the death of Gonzales, and 2) the parties to manifest whether they were still interested in prosecuting the petition, or whether supervening events had rendered it moot and academic.[16]

On September 10, 2002, Attys. Manuel B. Imbong and Jo Aurea M. Imbong filed a Motion for Substitution stating, among other things, that (1) Gonzales died on January 17, 2002; (2) his heirs are not interested to pursue and prosecute the present special civil action or be substituted as petitioners herein; and (3) the petition was instituted by Gonzales as a class suit in behalf of “all Filipino citizens, taxpayers and members of the Philippine Bar” and, as such, survives his death. They thus pray that as they are among the “Filipino citizens, taxpayers and members of the Philippine Bar” for whom the herein class suit was instituted and are both capable of prosecuting the instant case, they be substituted as petitioners in lieu of Gonzales and that they be given thirty days from notice within which to file their memorandum.[17]

By Resolution of December 9, 2002, this Court required respondents to file their Comments on the Motion for Substitution filed by Attys. Imbong and Imbong.

In their separate Comments,[18] respondents PAGCOR and SAGE both argue that, among others things, movants Attys. Imbong and Imbong may not be substituted for Gonzales as the former are neither legal representatives nor heirs of the latter within the purview of Section 16, Rule 3 of the Rules of Court which reads:

Sec. 16. Death of party, duty of counsel. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (16a, 17a) (Emphasis supplied)

Respondents PAGCOR and SAGE further argue that neither Gonzales nor movants have substantiated the allegation that the instant case is a class suit as defined under Section 12, Rule 3 of the Rules of Court. Hence, so said respondents argue, the petition should be considered a personal action which was extinguished with the death

of Gonzales.

The criteria for determining whether an action survives the death of a plaintiff or petitioner was elucidated upon in *Bonilla v. Barcena*[19] as follows:

x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. If the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person the property and rights of property affected being incidental. x x x[20] (Emphasis supplied)

In claiming standing to bring the instant suit, Gonzales necessarily asserted “a personal and substantial interest in the case” such that he “has sustained or will sustain direct injury as a result of the governmental act that is being challenged.”[21] A reading of the allegations in the petition readily shows that Gonzales’ alleged interest does not involve any claim to money or property which he could have assigned to another or transmitted to his heirs. Rather, he claimed to be vindicating his rights as a citizen, taxpayer and member of the bar. Being personal and non-transferable in nature, any interest that he might have had in the outcome of this case cannot be deemed to have survived his death.

Movants argue, however, that “unless the herein substitution is allowed, the citizens and taxpayers represented by Gonzales in this class suit will be denied due process.”[22] From this argument as well as their averment that they are “among the ‘Filipino citizens and taxpayers and member[s] of the Philippine Bar’ for whom the herein class suit was instituted and are interested to pursue this case,”[23] it is evident that movants are not asserting any right or interest transmitted to them by the death of Gonzales, but are seeking to protect their own individual interests as members of the classes alleged to have been represented by Gonzales.

As such, the more proper procedure would have been for them to file a Motion for Intervention as expressly provided for in Section 12, Rule 3 of the Rules of Court, and not a Motion for Substitution under Section 17 of the same rule. Ideally, such a Motion for Intervention should be filed before the possibility of abatement is raised by the death of the named/representative party (or parties) to the class suit; or where such is not possible, within a reasonable time from the death of the named or representative party.

Considering that movants, as former law partners of Gonzales, could not have been unaware of the latter’s death on January 17, 2002, respondents rightly question the timeliness of the Motion for Substitution, it having been filed almost eight months thereafter, or only on September 10, 2002.

But even if this Court were to consider the Motion for Substitution as a seasonably filed Motion for Intervention, still the instant petition would have to be dismissed for being moot and academic.

The Petition in essence raises two substantive issues. First, whether Presidential Decree (P.D.) 1869, as amended (the PAGCOR Charter), is unconstitutional for having been issued pursuant to an unlawful exercise of legislative power by then President Ferdinand E. Marcos. Second, whether the contracts entered into by PAGCOR with its co-respondents are void for being undue delegations by PAGCOR of its franchise[24] to operate and maintain gambling casinos, sports, gaming pools and the like.

The second issue has already been raised in the *Del Mar* cases,[25] this Court ruling that PAGCOR “has a valid franchise to, but only by itself (i.e., not in association with any other person or entity) operate, maintain and/or manage the game of jai-alai,” and that, consequently, the Agreement of June 17, 1999 among PAGCOR, BELLE and FILGAME was without force and effect. This ruling was recently reiterated in *Jaworski v. Phil. Amusement and Gaming Corp.*[26] where this Court held:

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.

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*, 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.[27] (Emphasis supplied; citations omitted)

The first issue has likewise been rendered moot and academic.

In assailing the constitutionality of P.D. 1869, petitioner does not point to any inconsistency between it and the present Constitution. Instead, it questions its issuance as an illegal exercise of legislative powers by then President Marcos.

Thus, petitioner argues that: (1) P.D. 1416, which gives the President continuing authority to reorganize the national government and is the basis of P.D. 1869, is an undue delegation to the President of the legislative power to create public offices; (2) P.D. 1869 is an undue delegation of legislative power to the President to create PAGCOR, a public corporation, and empowering it to grant franchises; (3) Proclamation 1081 declaring martial law and authorizing the President to issue decrees is unconstitutional, hence P.D. 1416 and P.D. 1869 issued pursuant thereto are likewise unconstitutional; and (4) the 1973 Constitution was not validly ratified, hence it could not have legitimized Proclamation 1081.

Petitioner's arguments come almost thirty years too late. As he himself was aware, the issues surrounding the effectivity of Proclamation 1081, the force and effectivity of the 1973 Constitution, and the former President's legislative powers under Martial Law and the 1973 Constitution were settled in the cases of *Javellana v. Executive Secretary*,^[28] *Aquino, Jr. v. Enrile*,^[29] *Aquino, Jr. v. Commission on Elections*,^[30] and *Legaspi v. Minister of Finance*.^[31] While legal scholars may continue to debate the wisdom and reasoning of these decisions, their objective existence and historical impact on the Philippine legal system cannot seriously be questioned.

Indeed, while petitioner made several poignant observations regarding the jurisprudence in the foregoing cases, this Court is unable to accept his invitation to re-examine said cases for the simple reason that the power conferred on it by the Constitution is limited to the adjudication of actual controversies and the determination of whether a branch or instrumentality of the government has acted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[32] Even with its expanded jurisdiction, it is beyond the powers of this Court to re-write

history.

To be sure, the People Power Revolution of 1986 put an end to both the dictatorship of Mr. Marcos and the 1973 Constitution. At the same time, the ratification of the 1987 Constitution and the convening of the first Congress on July 27, 1987 have restored the separation of legislative and executive powers.[33] There is, therefore, no longer any occasion for this Court to pass upon the validity of the late dictator's exercise of lawmaking powers.

Furthermore, Section 3, Article XVIII of the Constitution expressly provides:

Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked.
(Emphasis supplied)

Since petitioner did not endeavor to show that P.D. 1869 itself is inconsistent with the Constitution, his prayer that PAGCOR be enjoined from continuing its operations and doing acts in furtherance of its existence must necessarily be denied.

Movants may derive some satisfaction in the knowledge that Gonzales' prayer that respondents be enjoined from enforcing the "Agreement" among PAGCOR, BELLE and FILGAME to conduct jai-alai operations and the "Grant of an Authority and Agreement for the Operation of Sports Betting and Internet Gambling" between PAGCOR and SAGE had been granted, albeit in the separate aforementioned cases of Del Mar and Jaworski.

WHEREFORE, the instant Petition is hereby DISMISSED.

SO ORDERED.

Vitug, (Chairman and Acting Chief Justice), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 3-104.

[2] Sec. 12. Class suit – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest. (12a)

[3] Rollo at 71-78.

[4] Id. at 86-90.

[5] Id. at 79-85.

[6] 346 SCRA 485 (2000).

[7] Id. At 530-531.

[8] Del Mar v. Phil. Amusement and Gaming Corp., et al., 358 SCRA 768 (2001).

[9] Del Mar v. Phil. Amusement and Gaming Corp., et al., 363 SCRA 681, 683-684 (2001).

[10] Rollo at 451-452.

[11] Id. at 341-342.

[12] Id. at 353.

[13] Id. at 387, 390.

[14] Id. at 422-449.

[15] Id. at 461-470.

[16] Id. at 482.

[17] Id. at 488-500.

[18] Id. at 509-514; 525-530.

[19] 71 SCRA 491 (1976).

[20] Id. at 495-496; citations omitted.

[21] Vide *Joya v. Presidential Commission on Good Government*, 225 SCRA 568, 576 (1993)

[22] *Rollo* at 493.

[23] Id. at 489.

[24] Sections 10 and 11 of P.D. 1869 provide as follows:

TITLE IV — GRANT OF FRANCHISE

SECTION 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, privilege 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.

SECTION 11. Scope of Franchise. — In addition to the rights and privileges granted it under the preceding Section, this Franchise shall entitle the Corporation to do and undertake the following:

- (1) Enter into operating and/or management contracts with any registered and accredited company possessing the knowledge, skill, expertise and facilities to insure the efficient operation of gambling casinos; provided, that the service fees of such management and/or operator companies whose services may be retained by the Corporation shall not in the aggregate exceed ten (10%) percent of the gross income;
- (2) Purchase foreign exchange that may be required for the importation of equipment, facilities and other gambling paraphernalia indispensably needed or useful to insure the successful operation of gambling casinos;
- (3) Acquire the right of way or access to or thru public land, public waters or harbors, including the Manila Bay Area; such right shall include but not be limited to the right to lease and/or purchase public lands, government reclaimed lands, as well as lands of private ownership or those leased from the Government. This right shall carry with it the privilege of the Corporation to utilize piers, quays, boat landings, and such other pertinent and related facilities within these specified areas for use as landing, anchoring or berthing sites in connection with its authorized casino operations;
- (4) Build or construct structures, buildings, castways, piers, decks, as well as any other form of landing and boarding facilities for its floating casinos; and
- (5) To do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees.

[25] *Supra*.

[26] G.R. No. 144463. January 14, 2004.

[27] Per this Court's Resolution of March 30, 2004 in *Jaworski*, respondent SAGE filed a Motion for Reconsideration with the Court en banc. SAGE was required to Reply to the petitioner's Opposition/Comments to SAGE's Motion for Reconsideration. The Order requiring a Reply was mailed to counsel for SAGE on April 23, 2004.

[28] 50 SCRA 30 (1973).

[29] 59 SCRA 183 (1974).

[30] 62 SCRA 275 (1975).

[31] 115 SCRA 418 (1982).

[32] Const., art. VIII, sec. 1.

[33] Const., art. XVIII, sec. 6; vide: *Municipality of San Juan, Metro Manila*, 279 SCRA 711 (1997).

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