

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (2ND DIV.), AND JOSE S. RAMISCAL, JR., JULIAN ALZAGA, ATTY. MANUEL SATUITO, ELIZABETH LIANG AND JESUS GARCIA, RESPONDENTS.

G.R. No. 145951. August 12, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Respondents Jose S. Ramiscal, Jr., Julian Alzaga, Manuel Satuito, Elizabeth Liang and Jesus Garcia were all charged with Malversation through Falsification of Public Documents before the Sandiganbayan in Criminal Case No. 25741. The Information alleged that respondents misappropriated and converted for their personal use the amount of P250,318,200.00 from the funds of the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS).[1]

On November 12, 1999, respondent Ramiscal filed with the Sandiganbayan an "Urgent Motion to Declare Nullity of Information and to Defer Issuance of Warrant of Arrest." [2] He argued, inter alia, that the Sandiganbayan had no jurisdiction over the case because the AFP-RSBS is a private entity. The said Urgent Motion was later adopted by respondents Alzaga and Satuito.

The Urgent Motion was denied by the Sandiganbayan in a Resolution promulgated on January 6, 2000.[3] Respondents filed a Motion for Reconsideration. In a Resolution issued on May 12, 2000, the Sandiganbayan sustained respondents' contention that the AFP-RSBS is a private entity. Hence, it reconsidered its earlier Resolution and ordered the dismissal of Criminal Case No. 25741. Upon denial of its Motion for Reconsideration, the prosecution filed the instant special civil action for certiorari anchored on the following grounds:

I

RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE RESOLUTION DATED MAY 9, 2000 INsofar AS IT DISMISSED THE CASE FOR LACK OF JURISDICTION.

II

RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION IN DENYING PROSECUTION'S MOTION FOR RECONSIDERATION DATED JUNE 1, 2000, SUPPLEMENTAL MOTION FOR RECONSIDERATION DATED JULY 10, 2000 AND SECOND SUPPLEMENTAL MOTION FOR RECONSIDERATION DATED MAY 12, 2000.[4]

Considering that the Resolution of the Sandiganbayan which dismissed Criminal Case No. 25741 was a final order which finally disposed of the case, the proper remedy therefrom is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure.[5] Section 1 of said Rule 45 explicitly provides:

Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order

or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Moreover, Section 7 of Presidential Decree No. 1606, as amended by Section 3 of Republic Act No. 7975, states:

Form, Finality and Enforcement of Decisions. -

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Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court.

Basic is the rule that a special civil action for certiorari under Rule 65 of the Rules may be availed of only where there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[6] Certiorari cannot be availed of as a substitute for the lost remedy of an ordinary appeal.[7]

The foregoing rule, however, may be relaxed where the issue raised is one purely of law, where public interest is involved, and in case of urgency. In such cases, certiorari is allowed notwithstanding the existence and availability of the remedy of appeal. Certiorari may also be availed of where an appeal would be slow, inadequate and insufficient.[8] If the strict application of the Rules will tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.[9]

We now come to the substantive issue of whether the AFP-RSBS is a government-owned or controlled corporation or a private corporation and, corollarily, whether its funds are public or private. The Sandiganbayan based its ruling that the AFP-RSBS is a private entity on its findings that the Government does not provide counterpart contribution to the System; that the employees of the AFP-RSBS do not receive any salary from the Government and are not covered by the salary standardization law; that their remittances and contributions were made to the Social Security System and not to the Government Service Insurance System; and that the contribution to the System of the sum of P200,000,000.00 under Presidential Decree 361 can not be deemed as equity of the government in the System but rather, a donation or "seed money" which was never increased thereafter.[10]

Generally, factual findings of the Sandiganbayan are conclusive on us. This rule, however, admits of exceptions, such as where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on a want of evidence and are contradicted by evidence on record.[11]

The AFP-RSBS was created by Presidential Decree No. 361. Its purpose and functions are akin to those of the GSIS and the SSS, as in fact it is the system that manages the retirement and pension funds of those in the military service. Members of the Armed Forces of the Philippines and the Philippine National Police are expressly excluded from the coverage of The GSIS Act of 1997.[12] Therefore, soldiers and military personnel, who are incidentally employees of the Government, rely on the administration of the AFP-RSBS for their retirement, pension and separation benefits. For this purpose, the law provides that the contribution by military officers and enlisted personnel to the System shall be compulsory, thus:

Officers and enlisted personnel in the active service shall contribute to the System an amount equivalent to four per cent (4%) of their monthly base and longevity pay, which contribution shall be deducted from their pay from the Armed Forces of the Philippines and paid to the System: Provided, however, That any officer or enlisted person who is due for compulsory retirement or is optionally retireable and actually elects to retire within one year from the approval of this Act, shall no longer be required to contribute to the System:

Provided, further, That any officer or enlisted person who is separated through no fault of his own and is not eligible for either retirement or separation benefits shall upon his separation, be refunded in one lump sum all his actual contributions to the System plus interest at the rate of four per cent (4%).^[13]

Its enabling law further mandates that the System shall be administered by the Chief of Staff of the Armed Forces of the Philippines through an agency, group, committee or board, which may be created and organized by him and subject to such rules and regulations governing the same as he may, subject to the approval of the Secretary of National Defense, promulgate from time to time. Moreover, the investment of funds of the System shall be decided by the Chief of Staff of the Armed Forces of the Philippines with the approval of the Secretary of National Defense.^[14]

In connection with the Sandiganbayan's finding that the funds of the AFP-RSBS, except for the initial seed money, come entirely from contributions and that no part thereof come from appropriations, Section 2 of P.D. 361 states:

SECTION 2. The System shall be funded as follows:

- (a) Appropriations and contributions;
- (b) Donations, gift, legacies, bequest and others to the System;
- (c) All earnings of the System which shall not be subject to any tax whatsoever.

Indeed, the clear import of the above-quoted provision is that, while it may be true that there have been no appropriations for the contribution of funds to the AFP-RSBS, the Government is not precluded from later on adding to the funds in order to provide additional benefits to the men in uniform.

The above considerations indicate that the character and operations of the AFP-RSBS are imbued with public interest. As such, we hold that the same is a government entity and its funds are in the nature of public funds.

WHEREFORE, in view of the foregoing, the instant petition for certiorari is GRANTED. The assailed Resolution of the Sandiganbayan dated May 12, 2000 is ANNULLED and SET ASIDE. Criminal Case No. 25741 is ordered REINSTATED, and the Sandiganbayan is DIRECTED to resume proceedings thereon with dispatch.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio and Azcuna, JJ., concur.

[1] Rollo, pp. 41-43.

[2] Id., pp. 213-235.

[3] Id., pp. 45-49.

[4] Id., p. 10.

[5] *Africa v. Sandiganbayan*, 350 Phil. 846, 856 [1998].

[6] 1997 Rules of Civil Procedure, Rule 65, Section 1.

[7] *Fortune Guarantee and Insurance Corp. v. Court of Appeals*, G.R. No. 110701, 12 March 2002.

[8] *Republic v. Sandiganbayan*, 336 Phil. 304, 311-312 [1997].

- [9] Coronel v. Desierto, G.R. No. 149022, 8 April 2003.
- [10] Rollo, pp. 37-40.
- [11] Agullo v. Sandiganbayan, G.R. No. 132926, 20 July 2001.
- [12] Republic Act No. 8291, Sec. 3.
- [13] Presidential Decree No. 361, Sec. 4.
- [14] Presidential Decree No. 361, Sec. 6.

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