

ABS-CBN BROADCASTING CORPORATION, Petitioner, vs. WORLD INTERACTIVE NETWORK SYSTEMS (WINS) JAPAN CO., LTD., Respondent.

G.R. No. 169332. February 11, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to set aside the February 16, 2005 decision[1] and August 16, 2005 resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 81940.

On September 27, 1999, petitioner ABS-CBN Broadcasting Corporation entered into a licensing agreement with respondent World Interactive Network Systems (WINS) Japan Co., Ltd., a foreign corporation licensed under the laws of Japan. Under the agreement, respondent was granted the exclusive license to distribute and sublicense the distribution of the television service known as “The Filipino Channel” (TFC) in Japan. By virtue thereof, petitioner undertook to transmit the TFC programming signals to respondent which the latter received through its decoders and distributed to its subscribers.

A dispute arose between the parties when petitioner accused respondent of inserting nine episodes of WINS WEEKLY, a weekly 35-minute community news program for Filipinos in Japan, into the TFC programming from March to May 2002.[3] Petitioner claimed that these were “unauthorized insertions” constituting a material breach of their agreement. Consequently, on May 9, 2002,[4] petitioner notified respondent of its intention to terminate the agreement effective June 10, 2002.

Thereafter, respondent filed an arbitration suit pursuant to the arbitration clause of its agreement with petitioner. It contended that the airing of WINS WEEKLY was made with petitioner's prior approval. It also alleged that petitioner only threatened to terminate their agreement because it wanted to renegotiate the terms thereof to allow it to demand higher fees. Respondent also prayed for damages for petitioner's alleged grant of an exclusive distribution license to another entity, NHK (Japan Broadcasting Corporation).[5]

The parties appointed Professor Alfredo F. Tadiar to act as sole arbitrator. They stipulated on the following issues in their terms of reference (TOR)[6]:

- Was the broadcast of WINS WEEKLY by the claimant duly authorized by the respondent [herein petitioner]?
- Did such broadcast constitute a material breach of the agreement that is a ground for termination of the agreement in accordance with Section 13 (a) thereof?
- If so, was the breach seasonably cured under the same contractual provision of Section 13 (a)?
- Which party is entitled to the payment of damages they claim and to the other reliefs prayed for?

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The arbitrator found in favor of respondent.[7] He held that petitioner gave its approval to respondent for the airing of WINS WEEKLY as shown by a series of written exchanges between the parties. He also ruled that, had there really been a material breach of the agreement, petitioner should have terminated the same instead of sending a mere notice to terminate said agreement. The arbitrator found that petitioner threatened to terminate the agreement due to its desire to compel respondent to re-negotiate the terms thereof for higher fees. He further stated that even if respondent committed a breach of the agreement, the same was seasonably cured. He then allowed respondent to recover temperate damages, attorney's fees and one-half of the amount it paid as arbitrator's fee.

Petitioner filed in the CA a petition for review under Rule 43 of the Rules of Court or, in the alternative, a petition for certiorari under Rule 65 of the same Rules, with application for temporary restraining order and writ of preliminary injunction. It was docketed as CA-G.R. SP No. 81940. It alleged serious errors of fact and law and/or grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the arbitrator.

Respondent, on the other hand, filed a petition for confirmation of arbitral award before the Regional Trial Court (RTC) of Quezon City, Branch 93, docketed as Civil Case No. Q-04-51822.

Consequently, petitioner filed a supplemental petition in the CA seeking to enjoin the RTC of Quezon City from further proceeding with the hearing of respondent's petition for confirmation of arbitral award. After the petition was admitted by the appellate court, the RTC of Quezon City issued an order holding in abeyance any further action on respondent's petition as the assailed decision of the arbitrator had already become the subject of an appeal in the CA. Respondent filed a motion for reconsideration but no resolution has been issued by the lower court to date.[8]

On February 16, 2005, the CA rendered the assailed decision dismissing ABS-CBN's petition for lack of jurisdiction. It stated that as the TOR itself provided that the arbitrator's decision shall be final and unappealable and that no motion for reconsideration shall be filed, then the petition for review must fail. It ruled that it is the RTC which has jurisdiction over questions relating to arbitration. It held that the only instance it can exercise jurisdiction over an arbitral award is an appeal from the trial court's decision confirming, vacating or modifying the arbitral award. It further stated that a petition for certiorari under Rule 65 of the Rules of Court is proper in arbitration cases only if the courts refuse or neglect to inquire into the facts of an arbitrator's award. The dispositive portion of the CA decision read:

WHEREFORE, the instant petition is hereby DISMISSED for lack of jurisdiction. The application for a writ of injunction and temporary restraining order is likewise DENIED. The Regional Trial Court of Quezon City Branch 93 is directed to proceed with the trial for the Petition for Confirmation of Arbitral Award.

SO ORDERED.

Petitioner moved for reconsideration. The same was denied. Hence, this petition.

Petitioner contends that the CA, in effect, ruled that: (a) it should have first filed a petition to vacate the award in the RTC and only in case of denial could it elevate the matter to the CA via a petition for review under Rule 43 and (b) the assailed decision implied that an aggrieved party to an arbitral award does not have the option of directly filing a petition for review under Rule 43 or a petition for certiorari under Rule 65 with the CA even if the issues raised pertain to errors of fact and law or grave abuse of discretion, as the case may be, and not dependent upon such grounds as enumerated under Section 24 (petition to vacate an arbitral award) of RA 876 (the Arbitration Law). Petitioner alleged serious error on the part of the CA.

The issue before us is whether or not an aggrieved party in a voluntary arbitration dispute may avail of, directly in

the CA, a petition for review under Rule 43 or a petition for certiorari under Rule 65 of the Rules of Court, instead of filing a petition to vacate the award in the RTC when the grounds invoked to overturn the arbitrator's decision are other than those for a petition to vacate an arbitral award enumerated under RA 876.

RA 876 itself mandates that it is the Court of First Instance, now the RTC, which has jurisdiction over questions relating to arbitration,[9] such as a petition to vacate an arbitral award.

Section 24 of RA 876 provides for the specific grounds for a petition to vacate an award made by an arbitrator:

Sec. 24. Grounds for vacating award. - In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

- (a) The award was procured by corruption, fraud, or other undue means; or
- (b) That there was evident partiality or corruption in the arbitrators or any of them; or
- (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
- (d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Based on the foregoing provisions, the law itself clearly provides that the RTC must issue an order vacating an arbitral award only "in any one of the . . . cases" enumerated therein. Under the legal maxim in statutory construction *expressio unius est exclusio alterius*, the explicit mention of one thing in a statute means the elimination of others not specifically mentioned. As RA 876 did not expressly provide for errors of fact and/or law and grave abuse of discretion (proper grounds for a petition for review under Rule 43 and a petition for certiorari under Rule 65, respectively) as grounds for maintaining a petition to vacate an arbitral award in the RTC, it necessarily follows that a party may not avail of the latter remedy on the grounds of errors of fact and/or law or grave abuse of discretion to overturn an arbitral award.

Adamson v. Court of Appeals[10] gave ample warning that a petition to vacate filed in the RTC which is not based on the grounds enumerated in Section 24 of RA 876 should be dismissed. In that case, the trial court vacated the arbitral award seemingly based on grounds included in Section 24 of RA 876 but a closer reading thereof revealed otherwise. On appeal, the CA reversed the decision of the trial court and affirmed the arbitral award. In affirming the CA, we held:

The Court of Appeals, in reversing the trial court's decision held that the nullification of the decision of the Arbitration Committee was not based on the grounds provided by the Arbitration Law and that xxx private respondents (petitioners herein) have failed to substantiate with any evidence their claim of partiality. Significantly, even as respondent judge ruled against the arbitrator's award, he could not find fault with their impartiality and integrity. Evidently, the nullification of the award rendered at the case at bar was not made on the basis of any of the grounds provided by law.

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It is clear, therefore, that the award was vacated not because of evident partiality of the arbitrators but because the latter interpreted the contract in a way which was not favorable to herein petitioners and because it considered that herein private respondents, by submitting the controversy to arbitration, was seeking to renege

on its obligations under the contract.

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It is clear then that the Court of Appeals reversed the trial court not because the latter reviewed the arbitration award involved herein, but because the respondent appellate court found that the trial court had no legal basis for vacating the award. (Emphasis supplied).

In cases not falling under any of the aforementioned grounds to vacate an award, the Court has already made several pronouncements that a petition for review under Rule 43 or a petition for certiorari under Rule 65 may be availed of in the CA. Which one would depend on the grounds relied upon by petitioner.

In *Luzon Development Bank v. Association of Luzon Development Bank Employees*,^[11] the Court held that a voluntary arbitrator is properly classified as a “quasi-judicial instrumentality” and is, thus, within the ambit of Section 9 (3) of the Judiciary Reorganization Act, as amended. Under this section, the Court of Appeals shall exercise:

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(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees’ Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948. (Emphasis supplied)

As such, decisions handed down by voluntary arbitrators fall within the exclusive appellate jurisdiction of the CA. This decision was taken into consideration in approving Section 1 of Rule 43 of the Rules of Court.^[12] Thus:

SECTION 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act Number 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied)

This rule was cited in *Sevilla Trading Company v. Semana*,^[13] *Manila Midtown Hotel v. Borromeo*,^[14] and *Nippon Paint Employees Union-Olalia v. Court of Appeals*.^[15] These cases held that the proper remedy from the adverse decision of a voluntary arbitrator, if errors of fact and/or law are raised, is a petition for review under Rule 43 of the Rules of Court. Thus, petitioner's contention that it may avail of a petition for review under Rule 43 under the circumstances of this case is correct.

As to petitioner's arguments that a petition for certiorari under Rule 65 may also be resorted to, we hold the same to be in accordance with the Constitution and jurisprudence.

Section 1 of Article VIII of the 1987 Constitution provides that:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be

established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

As may be gleaned from the above stated provision, it is well within the power and jurisdiction of the Court to inquire whether any instrumentality of the Government, such as a voluntary arbitrator, has gravely abused its discretion in the exercise of its functions and prerogatives. Any agreement stipulating that “the decision of the arbitrator shall be final and unappealable” and “that no further judicial recourse if either party disagrees with the whole or any part of the arbitrator’s award may be availed of” cannot be held to preclude in proper cases the power of judicial review which is inherent in courts.[16] We will not hesitate to review a voluntary arbitrator’s award where there is a showing of grave abuse of authority or discretion and such is properly raised in a petition for certiorari[17] and there is no appeal, nor any plain, speedy remedy in the course of law.[18]

Significantly, *Insular Savings Bank v. Far East Bank and Trust Company*[19] definitively outlined several judicial remedies an aggrieved party to an arbitral award may undertake:

(1)

a petition in the proper RTC to issue an order to vacate the award on the grounds provided for in Section 24 of RA 876;

(2)

a petition for review in the CA under Rule 43 of the Rules of Court on questions of fact, of law, or mixed questions of fact and law; and

(3)

a petition for certiorari under Rule 65 of the Rules of Court should the arbitrator have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Nevertheless, although petitioner’s position on the judicial remedies available to it was correct, we sustain the dismissal of its petition by the CA. The remedy petitioner availed of, entitled “alternative petition for review under Rule 43 or petition for certiorari under Rule 65,” was wrong.

Time and again, we have ruled that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[20]

Proper issues that may be raised in a petition for review under Rule 43 pertain to errors of fact, law or mixed questions of fact and law.[21] While a petition for certiorari under Rule 65 should only limit itself to errors of jurisdiction, that is, grave abuse of discretion amounting to a lack or excess of jurisdiction.[22] Moreover, it cannot be availed of where appeal is the proper remedy or as a substitute for a lapsed appeal.[23]

In the case at bar, the questions raised by petitioner in its alternative petition before the CA were the following:

A. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT THE BROADCAST OF “WINS WEEKLY” WAS DULY AUTHORIZED BY ABS-CBN.

B. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT THE UNAUTHORIZED BROADCAST DID NOT CONSTITUTE

MATERIAL BREACH OF THE AGREEMENT.

C. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT WINS SEASONABLY CURED THE BREACH.

D. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT TEMPERATE DAMAGES IN THE AMOUNT OF P1,166,955.00 MAY BE AWARDED TO WINS.

E. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN AWARDING ATTORNEY'S FEES IN THE UNREASONABLE AMOUNT AND UNCONSCIONABLE AMOUNT OF P850,000.00.

F. THE ERROR COMMITTED BY THE SOLE ARBITRATOR IS NOT A SIMPLE ERROR OF JUDGMENT OR ABUSE OF DISCRETION. IT IS GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION.

A careful reading of the assigned errors reveals that the real issues calling for the CA's resolution were less the alleged grave abuse of discretion exercised by the arbitrator and more about the arbitrator's appreciation of the issues and evidence presented by the parties. Therefore, the issues clearly fall under the classification of errors of fact and law — questions which may be passed upon by the CA via a petition for review under Rule 43. Petitioner cleverly crafted its assignment of errors in such a way as to straddle both judicial remedies, that is, by alleging serious errors of fact and law (in which case a petition for review under Rule 43 would be proper) and grave abuse of discretion (because of which a petition for certiorari under Rule 65 would be permissible).

It must be emphasized that every lawyer should be familiar with the distinctions between the two remedies for it is not the duty of the courts to determine under which rule the petition should fall.[24] Petitioner's ploy was fatal to its cause. An appeal taken either to this Court or the CA by the wrong or inappropriate mode shall be dismissed.[25] Thus, the alternative petition filed in the CA, being an inappropriate mode of appeal, should have been dismissed outright by the CA.

WHEREFORE, the petition is hereby DENIED. The February 16, 2005 decision and August 16, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 81940 directing the Regional Trial Court of Quezon City, Branch 93 to proceed with the trial of the petition for confirmation of arbitral award is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Godardo A. Jacinto (retired) and Rosalinda Asuncion-Vicente of the Second Division of the Court of Appeals. Rollo, pp. 59-71.

[2] *Id.*, pp. 73-74.

[3] The CA erroneously stated that the “unauthorized insertions” took place only sometime in May 2002.

[4] The CA erroneously indicated the date as May 9, 2000.

[5] Not a party to this case.

[6] In arbitration proceedings, the TOR functions like a Pre-Trial Order in judicial proceedings, i.e. it controls the

course of the trial, unless it is corrected for manifest and palpable errors.

[7] Decision dated January 9, 2004. Rollo, pp. 108-142.

[8] Per petition for review on certiorari, *id.*, p. 18; and petitioner's memorandum filed with this Court, p. 343.

[9] Section 4 of RA 876 provides:

Sec. 4. Form of arbitration agreement. –

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The making of a contract or submission for arbitration of any controversy, shall be deemed a consent of the parties to the jurisdiction of the Court of First Instance of the province or city where any of the parties resides, to enforce such contract or submission.

[10] G.R. No. 106879, 27 May 1994, 232 SCRA 602.

[11] G.R. No. 120319, 6 October 1995, 249 SCRA 162, 168-169.

[12] *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, 19 November 2004, 443 SCRA 286, 290.

[13] G.R. No. 152456, 28 April 2004, 428 SCRA 239, 243-244.

[14] G.R. No. 138305, 22 September 2004, 438 SCRA 653, 656-657.

[15] *Supra* at 290-291.

[16] *Chung Fu Industries (Phils.) v. Court of Appeals*, G.R. No. 96283, 25 February 1992, 206 SCRA 545, 552-555.

[17] *Id.*, p. 556, citing *Oceanic Bic Division (FFW) v. Romero*, No. L-43890, 16 July 1984, 130 SCRA 392. See also *Maranaw Hotels and Resorts Corp. v. Court of Appeals*, G.R. No. 103215, 6 November 1992, 215 SCRA 501, where we sustained the CA decision dismissing the petition for certiorari filed before it as the voluntary arbitrator did not gravely abuse his discretion in deciding the arbitral case before him. We emphasized therein that decisions of voluntary arbitrators are final and unappealable except when there is want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law.

[18] *Asset Privatization Trust v. Court of Appeals*, G.R. No. 121171, 29 December 1998, 300 SCRA 579, 600-601.

[19] G.R. No. 141818, 22 June 2006, 492 SCRA 145, 156.

[20] *Sebastian v. Morales*, G.R. No. 141116, 17 February 2003, 397 SCRA 549, 561; *Oriental Media, Inc. v. Court of Appeals*, G.R. No. 80127, 6 December 1995, 250 SCRA 647, 653; *Hipolito v. Court of Appeals*, G.R. Nos. 108478-79, 21 February 1994, 230 SCRA 191, 204; *Federation of Free Workers v. Inciong*, G.R. No. 49983, 20 April 1992, 208 SCRA 157, 164; and *Manila Electric Company v. Court of Appeals*, G.R. No. 88396, 4 July 1990, 187 SCRA 200, 205.

[21] RULES OF COURT, Rule 43, Sec. 3.

[22] RULES OF COURT, Rule 65, Sec. 1.

[23] *Oriental Media, Inc. v. Court of Appeals*, *Hipolito v. Court of Appeals*, *Federation of Free Workers v. Inciong*, and *Manila Electric Company v. Court of Appeals*, *supra*.

[24] *Chua v. Santos*, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 372-373, citing paragraph 4 (e) of Supreme Court Circular No. 2-90 dated March 9, 1990, Guidelines to be Observed in Appeals to the Court of Appeals and the Supreme Court, to wit:

e) Duty of counsel. - It is, therefore, incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

[25] *Ybañez v. Court of Appeals*, G.R. No. 117499, 9 February 1996, 253 SCRA 540, 547, citing paragraph 4 of Supreme Court Circular No. 2-90 dated March 9, 1990, Guidelines to be Observed in Appeals to the Court of Appeals and the Supreme Court. Thus:

4. Erroneous Appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

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