

**PHILIPPINE BASKETBALL ASSOCIATION, PETITIONER, VS.
HONORABLE MANUEL B. GAITE, IN HIS OFFICIAL CAPACITY AS
DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS OF THE
OFFICE OF THE PRESI...**

G.R. No. 170312. June 26, 2009

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for review on certiorari under Rule 45 of the Rules of Court, filed by petitioner Philippine Basketball Association (PBA) to reverse the July 28, 2005 Court of Appeals (CA) Decision[1] and the subsequent denial of the motion for reconsideration[2] in CA-G.R. No. 87289.

FACTUAL ANTECEDENTS

The PBA is an association of various basketball clubs owned by business companies - Airfreight 2100, Inc., Alaska Milk Corporation, Asian Coatings Philippines, Inc.,[3] Coca-Cola Bottlers Philippines, Inc., Energy Food and Drinks Corporation, Ginebra San Miguel, Inc., Philippine Long Distance Telephone Company, Inc., Purefoods Hormel Company, Inc., San Miguel Corporation, and Sta. Lucia Realty and Development, Inc. It conducts basketball games that the public can watch live upon purchase of admission tickets. The games are also broadcasted over television and radio by a franchisee which pays the PBA franchise fees based on the actual proceeds from advertisements, less airtime costs, production expenses, and sales commissions.

On January 6, 1976, then President Ferdinand E. Marcos enacted Presidential Decree (PD) No. 871 placing professional basketball and other professional games under the control and supervision of the Games and Amusement Board (GAB), a respondent in this case. Under this PD, the GAB was mandated, among others, to issue permits for the conduct of games and licenses to persons, entities, and associations performing duties connected with professional basketball games or with other professional games. The law also mandated the PBA and other professional game associations to remit 3% of their gross receipts and income from television, radio, and motion pictures, if any, which shall be used to defray expenses of the GAB. Section 8 of PD No. 871 provides:

Sec. 8. Admission receipts and other income. - Any person, entity or association conducting professional basketball games or other professional games shall set aside and remit to the Board three percent (3%) of the gross receipts and income from television, radio and motion pictures, if any, which shall be available to defray expenses of the Board assigned to supervise the games and for such other expenses in other activities of the Board. Provided, however, that all professional basketball games conducted by the Philippine Basketball Association shall only be subject to amusement tax of five percent (5%) of the gross tax receipts from the sale of admission tickets. [Emphasis supplied.]

On December 29, 1999, the PBA and Viva Vintage Sports, Inc. (VVSI) forged a Memorandum of Agreement

granting the VVSI exclusive rights to broadcast the PBA games on television and radio for the 2000 to 2002 PBA seasons. Initially, VVSI paid the franchise fees to the PBA, and from these, the latter remitted the required 3% to the GAB.

Starting November 2001, the VVSI began to default in the payment of the franchise fees; it took some time before it could comply with its contractual obligations. At some point in 2002, it again failed to pay the franchise fees. On January 7, 2004, the PBA wrote VVSI a letter demanding payment of the unpaid fees.

The VVSI's failure to pay the fees affected the PBA's own ability to remit the 3% of gross receipts and income required by Section 8 of PD No. 871. The GAB maintained that the PBA, by law, was obligated to remit 3% of its income from television, radio, and motion pictures, regardless of whether these gross receipts were actually received by the PBA. It therefore assessed the PBA the amount of P3,452,233.32 representing its 3% share in the PBA's gross receipts and income from the television/radio broadcast of PBA games for the year 2002.

When they failed to agree on the interpretation of Section 8 of PD No. 871, the PBA and the GAB submitted their dispute to the Office of the President (OP) for adjudication. In the course of their submission, the parties executed a Memorandum of Agreement (PBA-GAB MOA) where the PBA agreed to deposit the assessed amount of P3,452,233.32 in escrow with the Equitable-PCI Bank. The PBA-GAB MOA conditioned the release of the deposited amount on the following terms:

- That the legal issue raised by the PBA is resolved by the Office of the President and/or by any court or competent judicial bodies having jurisdiction over the case, requiring PBA to pay assessments of this nature to GAB. In the event that PBA fails to bring the case before the court or any competent judicial bodies within ten (10) days from receipt of the order or resolution of the Office of the President, it is considered that PBA is no longer interested to bring the matter before the court of any judicial bodies, and that the order of the resolution of the Office of the President is considered final and executory.
- That in the event the PBA is adjudged to pay the amount in issue, the escrow amount together with interest less the escrow fees charged by the bank, which shall be deducted from the interest less the escrow fees charged by the bank, which shall be deducted from the interest earned, shall be credited to the account of GAB immediately and on the other hand, if it is adjudged that PBA is not legally obligated to pay the GAB, the principal amount together with the accrued interest earned less the escrow fees charged by the bank, which shall be deducted from the interest charged by the bank which shall be deducted from the interest earned will be returned to the PBA immediately.[4]

In a letter dated August 17, 2004, the OP, through respondent Manuel B. Gaité (then Deputy Secretary for Legal Affairs), ruled in favor of the GAB on the grounds that PD No. 871 intended the operating association, the PBA, to pay GAB the equivalent of 3% of its gross revenue and income from television and/or radio broadcast once earned; that income is considered earned when one's right to it becomes fixed under the terms of the governing contract; that it does not matter whether PBA has actually received the fee due it from its franchisee, or whether this franchisee has physically transferred the amount to the PBA, because once the PBA's own contractual fees become due and payable, these fees constitute income from which to source and determine the GAB's 3% share; that if the legislature intended the 3% imposition to be based on the PBA's actual receipt of radio/TV coverage earnings, it should have said expressly so, in the same way done with ticket sales; that since the GAB did not have a hand in the selection of the PBA's franchisee for the television and radio coverage and the negotiation and execution of the coverage contract, its right to collect the 3% share should not be affected or made dependent on the ability of the PBA's franchisee to fulfill its financial obligations and the PBA's ability to successfully effect the collection.

On September 15, 2004, the PBA wrote the OP a letter seeking the reconsideration of Gaité's ruling on the

grounds of injustice, unjust enrichment, and gross misinterpretation of Section 8 of PD No. 871. The OP, through Gaite, denied the request for reconsideration in a letter dated October 18, 2004.

Thereafter, the GAB sought the release of the fund in escrow with the Equitable-PCI Bank. On November 5, 2004, the PBA filed a petition for certiorari (under Rule 65 of the Rules of Court) with the CA to assail the OP decision. The appellate court ruled that the PBA's Rule 65 petition for certiorari was not the appropriate remedy to challenge the OP decision. Even assuming it to be the correct remedy, the CA found that the OP committed no grave abuse of discretion in interpreting and implementing PD No. 871. The CA denied the PBA's subsequent motion for reconsideration.

The PBA subsequently filed the present petition for review on certiorari under Rule 45 of the Rules of Court raising the following -

ISSUES

I.

THE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR IN DECLARING THAT THE REMEDY OF CERTIORARI UNDER RULE 65 OF THE RULES OF COURT WAS NOT THE PROPER REMEDY UNDER THE CIRCUMSTANCES;

II.

THE COURT OF APPEALS COMMITTED SERIOUS GRAVE ERROR IN RULING THAT THE OFFICE OF THE PRESIDENT THROUGH RESPONDENT DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS MANUEL B. GAITE: 1) DID NOT EXERCISE A QUASI-JUDICIAL FUNCTION WHEN IT INTERPRETED PD 871; AND 2) DID NOT COMMIT GRAVE ABUSE OF DISCRETION;

III.

THE COURT OF APPEALS FAILED TO RESOLVE THE LEGAL ISSUE AS TO THE PROPER INTERPRETATION OF SECTION 8, PD NO. 871.

OUR RULING

The threshold issue is whether the CA erred in dismissing the PBA's petition for certiorari for being an improper remedy. We rule that the CA correctly dismissed the petition.

The PBA argued that it chose to file a petition for certiorari under Rule 65 of the Rules of Court because the GAB was trying to secure the release of the escrow deposit, and no other plain, speedy, or adequate remedy was available to stop the GAB. The PBA emphasized that it deliberately chose not to pursue the remedy of appeal since the issues presented by the case were urgent. It pointed out that at the time the petition for certiorari was filed, the period for appeal had not yet lapsed; thus, it was not merely substituting the extraordinary remedy of certiorari for a lost appeal. The PBA lastly argued that assuming that the use of a petition for certiorari as a remedy was erroneous, the technical rules of procedure may be relaxed in the interest of substantial justice and the merits of the case.

The respondents, through the Office of the Solicitor General (OSG), defended the CA Decision by pointing out that the proper remedy from a decision of the OP is a petition for review under Rule 43 of the Rules of Court.

We find the OSG's position to be well taken.

The GAB was created by Executive Order (EO) No. 392, series of 1951, which amended EO No. 120, series of 1948. Subsequent issuances broadened the scope of the GAB's supervisory authority from its initial mandate over

Jai Alai, Boxing and Wrestling, and Racing. PD No. 871 charged the GAB with the supervision and regulation of the professional basketball association and other professional sports. The thrust of the law is to promote professionalism; to prevent illegal game practices; to supervise and regulate the operation and conduct of professional basketball games, other professional games, and their participants; and to ensure integrity and provide ample protection to all concerned at all times.[5]

Section 10, PD No. 871 directs that the decisions, orders, and rulings of the GAB may be appealed directly to the OP. This appellate procedure is provided as follows:

Sec. 10. Appeals, orders, rulings and decisions of the Board. Orders, rulings and decisions of the Board on matters connected with or arising out of basketball may be appealed to the Office of the President, whose decision shall be final, within seventy-two (72) hours from receipt of the order, ruling or decision appealed from.

The parties may file a motion for reconsideration of the order, ruling, or decision of the OP. Since the OP is essentially an administrative agency exercising quasi-judicial functions, its decisions or resolutions may be appealed to the CA through a petition for review under Rule 43 of the Rules of Court. Sections 1 and 3 of this Rule state:

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 No. 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.

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Sec. 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. [Emphasis supplied.]

Under these clear and unambiguous terms, the PBA should have appealed the ruling of respondent Gaitanero of the OP to the CA within 15 days from notice,[6] and its failure to comply with the prescribed process is a ground for the dismissal of the petition.[7] Rule 65 - the legal basis for the present petition - itself bars its use as a mode of review when an appeal or any other remedy at law is available.[8] While jurisprudence has recognized exceptions to this rule, the exceptions - like any other exception - must be strictly, rather than liberally, applied. [9] In other words, a petitioner wrongly filing a Rule 65 petition must show a clear entitlement to the jurisprudentially-recognized exceptions. These exceptions are: when public welfare and the advancement of public policy dictates; when the interests of substantial justice so require; and when the questioned order amounts to an oppressive exercise of judicial authority.[10] In applying these exceptions, the words of this Court in *Lapid v. Laureta*[11] are worth repeating and remembering:

Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy

of liberal construction. [Emphasis supplied.]

Unfortunately, the PBA failed to show that its case falls under any of the exceptions.

The element of public interest is clearly with the GAB in issues that would affect its viability and operations. The purposes of PD No. 871 and the justification for the creation of the GAB are clear in their public interest objectives. Self-evident as well is the purpose of the 3% collection from gross revenue and income that the PD has recognized in the GAB's favor. Thus, the PBA has a gigantic stumbling block to hurdle in claiming public interest as a compelling reason for us to recognize its present petition as one of the exceptions. As earlier stated, it failed in this regard. It cannot simply cite public interest as basis for its claimed exception, and hope that these words will operate as magic incantations that would open the restrictive doors of Rule 65.

Nor can the PBA cite the interest of substantial justice or oppressive exercise of judicial authority as reasons. The CA did not act without legal reason in dismissing the PBA's petition for certiorari. In fact, by law and established jurisprudence, the CA would have acted oppressively and in excess of its jurisdiction if it had disregarded Rules 43 and 65 without sufficient justification. The CA could not recognize any exceptional application of Rule 65 as a substitute for a Rule 43 review, since the PBA failed to cite any viable basis to justify the application of any of the jurisprudentially-provided exceptions.

As a pure statement of fact and without any pejorative meaning intended, the remedy the PBA used appears to us to be an error of counsel that the PBA - the client - wholly bears. It is absolutely incorrect to claim that Rule 43 does not allow an immediate remedy if that had been the result desired. Section 12 of Rule 43 expressly allows the CA to order a stay of execution upon such terms as are just. Separately from Section 12, Rule 43 is Rule 58 on injunction as a provisional remedy that could have been used, with proper supporting justification, to stay the implementation of the OP decision. Running counter, of course, to any move to prevent the release of the fund in escrow is the PBA-GAB MOA before the OP, where the parties expressly agreed on the disposition of the funds after a decision shall have been rendered.[12]

For these reasons, we fully sustain the CA's ruling that the PBA used a wrong mode of review, and that its petition should be dismissed. In the absence of any attendant grave abuse of discretion, we see no reason to disturb the CA decision or to further discuss the other issues raised in this petition.

WHEREFORE, we DENY the Philippine Basketball Association's petition for review on certiorari for lack of merit, and fully AFFIRM the Court of Appeals' Decision of July 28, 2005, and the denial of the motion for reconsideration that followed.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago[*], Chico-Nazario[**], and Leonardo-De Castro[***], JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2002.

[***] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Edgardo P. Cruz and Magdangal M. De Leon, concurring; rollo, pp. 31-36.

[2] Id. , pp. 37-38.

[3] Formerly Pilipinas Shell Petroleum Corporation.

[4] Rollo, pp. 57-58.

[5] PD No. 871, Whereas clauses.

[6] RULES OF COURT, Rule 43, Section 4.

[7] Nippon Paint Employees Union-Olalia v. CA, G.R. No. 159010, November 19, 2004, 443 SCRA 286.

[8] Lapid v. Laurea, G.R. No. 139607, October 28, 2002, 391 SCRA 277.

[9] Commissioner of Internal Revenue v. CA, G.R. No. 107135, February 23, 1999, 303 SCRA 508; Tagle v. Equitable-PCI Bank, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[10] O. Herrera, Remedial Law (Vol. II), pp. 675-676; Hanjin Engineering and Construction Co., Ltd. v. CA, G.R. No. 165910, April 10, 2006, 487 SCRA 78.

[11] Supra note 8.

[12] Quoted in part on pages 3 and 4 hereof.

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