

MERCURY GROUP OF COMPANIES, INC., PETITIONER, VS. HOME DEVELOPMENT MUTUAL FUND, RESPONDENT.

G.R. No. 171438. December 19, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On challenge via the present petition for review on certiorari are the Court of Appeals August 18, 2005 Decision[1] which granted in part petitioner's petition for certiorari, prohibition and mandamus, and February 9, 2006 Resolution which denied petitioner's motion for reconsideration.[2]

Presidential Decree (P.D.) No. 1752, the "Home Development Mutual Fund Law of 1980" which became effective on December 14, 1980, created the Pag-IBIG Fund System. The law was amended in June 1994 by Republic Act (R.A.) No. 7742.

The Pag-IBIG Fund (the Fund) is a provident savings system for private and government employees which is supported by contributions from their respective employers. Under P.D. No. 1752, coverage of the Fund is mandatory for all employees covered by the Social Security System and the Government Service Insurance System and their employers. The law provides, however, for a waiver or suspension from coverage or participation in the Fund, viz:

SEC. 19. Existing Provident/Housing Plans. – An employer and/or employee-group who, at the time this Decree becomes effective have their own provident and/or employee-housing plans, may register with the Fund, for any of the following purposes;

(a) For annual certification of waiver or suspension from coverage or participation in the Fund, which shall be granted on the basis of verification that the waiver or suspension does not contravene any effective collective bargaining agreement and that the features of the plan or plans are superior to the Fund or continue to be so; or

x x x x (Emphasis and underscoring supplied)

Upon the effectivity of the law in 1980 up to 1995, petitioner and its subsidiaries were, on their application, annually granted waiver from coverage of the Fund because their Retirement or Provident Plan was superior to it.[3]

On September 1, 1995, the Board of Trustees of herein respondent, Home Development Mutual Fund (HDMF), issued Amendment to the Rules and Regulations Implementing R.A. No. 7742 pursuant to which it issued on October 23, 1945 HDMF Circular No. 124-B or the Revised Guidelines and Procedure for filing Applications for Waiver or Suspension of Fund Coverage under P.D. No. 1752. Under the Amendment and the Guidelines, an employer with a provident/retirement and housing plan superior to that provided under the Pag-IBIG Fund is entitled to execution/waiver from Fund coverage[4] (1995 amendment).

On April 20, 1996, petitioner, on its behalf and its subsidiaries, applied for renewal of waiver from Fund coverage for the year 1996. Respondent disapproved petitioner's application, by letter-resolution dated April 26, 1996, on

the ground that:

[petitioner's] retirement/provident housing plan is not superior to Pag-IBIG Fund[‘s]. Further, the amended Implementing Rules and Regulations of R.A. 7742 provides that to qualify for waiver, a company must have retirement/provident and housing plans which are both superior to Pag-IBIG Fund's.[5] (Emphasis and underscoring supplied)

Respondent thus directed petitioner to register its employees with the Fund and to remit their monthly contributions and its share to the Fund starting January 1, 1996.

On the ground that it was granted exemption from Fund coverage for previous years based on its existing retirement plan the features of which are superior to that of the Fund's, petitioner appealed respondent's letter-resolution to respondent's Board of Trustees.

Respondent's Board of Trustees denied petitioner's appeal by Resolution of February 21, 1997, viz:

Pursuant to the amendment to [the Implementing Rules and Regulations of] P.D. [No.] 7742 under Board Resolution No. 1208, series of 1996, removing the availment of waiver from the mandatory coverage of the Pag-IBIG Fund, except for distressed employers, the Board of Trustees finds moot and academic all motions for reconsideration/appeals from the disapproval of the application for waiver.

Attached herewith is a copy of the amendment on the policy to take effect Jan. 1, 1997.[6] (Emphasis and underscoring supplied)

It turned out that respondent had once again amended the Rules and Regulations Implementing P.D. No. 1752, as amended, this time limiting waiver from Fund coverage only to "distressed employers" as defined in Rule III, Section 1[7] (1996 amendment).

Petitioner thus filed a petition for certiorari and prohibition with the Regional Trial Court (RTC) of Quezon City (Q.C.)[8] to declare null and void the 1996 amendment to the Rules and Regulations Implementing P.D. No. 1752, as amended.

By Order of September 30, 1997, Branch 222 of the Q.C. RTC dismissed petitioner's petition for certiorari on the ground that it failed to exhaust administrative remedies, and that respondent's questioned amendment of the implementing rules was made in the exercise of its legislative/administrative, not judicial, function.[9] Petitioner's motion for reconsideration was denied for lack of merit.[10] Petitioner assailed the dismissal of its petition to this Court via petition for review on certiorari, docketed as G.R. No. 132416. This Court Resolved to Deny the petition by Resolution of June 22, 1998[11] "for failure to sufficiently show that the Regional Trial Court, Quezon City, Branch 222 had committed any reversible error in the questioned [order]." The Resolution became final and executory on September 28, 1998.[12]

On May 19, 1999, the Court, in *China Banking Corporation v. Home Development Mutual Fund*,[13] nullified the 1995 Amendment "insofar as [it] require[s] that an employer should have both a provident/retirement plan superior to the retirement/provident benefits offered by the Fund and a housing plan superior to the Pag-IBIG housing loan program in order to qualify for waiver or suspension of fund coverage."

On the strength of the ruling in *China Banking*, petitioner applied anew for a waiver from Fund coverage for the years 1996 up to 2000.[14] By letter of July 5, 2002, respondent required petitioner, however, to register its employees and to remit their contributions starting January 1, 1996[15] in light of the finality of the Court's decision in G.R. No. 132416.

Undaunted, petitioner reiterated its application for waiver, but the same was denied by respondent by letter of

May 22, 2003 in this wise:

x x x x

Applications for exemption from membership contribution are on a yearly basis. In the event of late or no filing thereof, a company is under obligation to make the remittance for the said years.

Our records show that your application for waiver for 1996 was denied and which denial was in effect affirmed by the Supreme Court in its Resolution dated June 22, 1998 [in G.R. No. 132416].

The prescribed forms for application for Waiver for the years 1997 to 2000 were not submitted by your company, though we acknowledge the "letter request" for waiver for said periods, dated November 29, 1999. For 2001-2003, there had absolutely been no applications.

Despite the foregoing, your company has failed to register all Pag-IBIG coverable employees/remit Pag-IBIG contributions due for the periods 1996-to present.

These acts are clear violations of P.D. [No.] 1752, as amended by R.A. [No.] 7742 which holds the employer criminally liable, apart from fines/civil liabilities that may be imposed.[16]

Petitioner thus filed before the Q.C. RTC a petition for certiorari, prohibition, and mandamus,[17] Branch 225 of which dismissed it, by Resolution of October 19, 2004, for lack of jurisdiction, without prejudice to refile the same in the proper court.[18]

Petitioner thus filed on December 10, 2004 an original petition for certiorari, prohibition, and mandamus against respondent before the Court of Appeals, praying for judgment,

. . . declaring that the second amendment [or 1996 amendment] to the Implementing Rules of HDMF is null and void, nullifying the first and second letters in question, and directing respondent HDMF to desist from taking similar action against petitioner, and commanding HDMF to entertain petitioner's application for exemption/waiver of Fund coverage.[19] (Underscoring supplied)

The Court of Appeals granted in part the petition by the assailed Decision of August 18, 2005, disposing as follows:

WHEREFORE, premises considered, the petition is partly GRANTED. Respondent is DIRECTED to entertain petitioner's applications for waiver/exemption from Fund coverage for the years 1997-to present with the concomitant obligation on the part of the latter to register its employees and remit their membership contributions covered by the same periods.[20] (Emphasis and underscoring supplied)

Its motion for reconsideration of the appellate court's Decision having been denied, petitioner filed on March 29, 2006 the present petition for review on certiorari, faulting the Court of Appeals,

- IN DENYING PETITIONER'S PETITION FOR WAIVER/EXEMPTION FOR THE YEAR 1996 IN CONSONANCE WITH THE RULING IN CHINA BANK CASE. LAW OF THE CASE ADMITS OF AN EXCEPTION.

- WHEN IT ALLOWED RESPONDENT HDMF TO ENFORCE AN IMPLEMENTING RULE AND REGULATION WHICH WAS DECLARED BY THE HONORABLE SUPREME COURT IN CHINABANK CASE, AS NULL AND VOID.

- WHEN IT DID NOT DECLARE NULL AND VOID THE SECOND IMPLEMENTING RULES OF RESPONDENT HDMF 'DISTRESSED EMPLOYER' AS THE ONLY GROUND FOR WAIVER/EXEMPTION CONTRARY TO THE CHINA BANK CASE AND THE LAW ON THE RULE MAKING POWER OF ADMINISTRATIVE BODIES.[21] (Underscoring and italics supplied)

Petitioner seeks the nullification of the 1996 amendment. The 2000 case of *Romulo, Mabanta, Buenaventura, Sayoc & de los Angeles, v. Home Development Mutual Fund*[22] has done so, however:

In the present case, when the Board of Trustees of the HDMF required in Section 1, Rule VII of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742 that employers should have both provident/retirement and housing benefits for all its employees in order to qualify for exemption from the Fund, it effectively amended Section 19 of P.D. No. 1752. And when the Board subsequently abolished that exemption through the 1996 Amendments, it repealed Section 19 of P.D. No. 1752. Such amendment and subsequent repeal of Section 19 are both invalid, as they are not within the delegated power of the Board. The HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law. (Emphasis and underscoring supplied)

In affirming respondent's denial of petitioner's request for waiver from Fund coverage for the year 1996, the appellate court harped on the law of the case doctrine. Thus it held:

Undisputedly, petitioner's application anew for waiver/exemption from Fund coverage is anchored on the decision of the Supreme Court in the *China Bank* case which declared as null and void Section 1 of Rule VII of the Amendments to the Rules and Regulations Implementing R.A. [No.] 7742, and HDMF Circular No. 124-B prescribing the Revised Guidelines and Procedure for Filing Applications for Waiver or Suspension of Fund coverage under P.D. [No.] 1752, as amended by R.A. No. 7742. It is in this view that petitioner contends that respondent should have considered its application for waiver/exemption from the coverage of the Fund. On the other hand, respondent invoked the doctrine of the law of the case pursuant to the decision of the Supreme Court in G.R. No. 132416 in denying petitioner's application for waiver/exemption from the Fund coverage.

Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Contrary to respondent's position the law of the case doctrine applies only to the application for waiver/exemption for Fund coverage for the year 1996 and not to the applications for the succeeding years in view of the subsequent ruling of the Supreme Court in the *China Bank* case. The Supreme Court's decision, which attained finality, limited itself only to petitioner's application for waiver/exemption from Fund coverage for the year 1996. Apparently, petitioner applied for waiver/exemption from Fund coverage for the years 1996-2000 by virtue of the decision in the *China Bank* case. Thus, except for year 1996, respondent may still consider the remaining years, as they are not covered by the earlier application that was denied by the respondent and eventually decided by the Supreme Court with finality. Succinctly stated, the decision of the Supreme Court in the earlier case became the law of the case only for petitioner's application for the year 1996. x x x [23] (Emphasis, italics and underscoring supplied)

Expounding on the doctrine of the law of the case, this Court, in *Villa v. Sandiganbayan*,[24] held:

The doctrine has been defined as "that principle under which determination of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is "merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.

In *Jarantilla v. Court of Appeals*, we held:

"Law of the case" has been defined as the opinion delivered on a former appeal. ...It is a rule of general application that the decision of an appellate court in a case is the law to the case on the points presented

throughout all the subsequent proceedings in the case in both the trial and appellate courts and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first question rested and, according to some authorities, provided the decision is on the merits. (Emphasis and underscoring supplied)

The doctrine of the law of the case does not apply to the present case vis a vis the decision of this Court in G.R. No. 132416. The present case is not a subsequent proceeding of the same case – G.R. No. 132416. This is an entirely new one which was commenced by petitioner’s filing of an original petition for certiorari, prohibition, and mandamus before the Court of Appeals against respondent.

Even assuming arguendo that the present proceeding may be considered a subsequent proceeding of G.R. No. 132416, the doctrine of the law of the case just the same does not apply because the said case was not resolved on the merits. The Order of this Court denying petitioner’s petition for review in G.R. No. 132416 found no reversible error in the Order of the Quezon City RTC, Branch 222 dismissing petitioner’s case primarily on a procedural ground – failure to exhaust administrative remedies.

At all events, the doctrine “is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision.”[25] To sustain respondent’s refusal to grant a waiver of Fund coverage to petitioner on the basis of amendments to implementing rules which had priorly been declared null and void by this Court would certainly be unjust.

In fine, the doctrine of the law of the case cannot be made to apply to the case at bar, hence, petitioner’s application for waiver from Fund coverage for the year 1996 must be processed by respondent.

WHEREFORE, the Petition for Review on Certiorari is GRANTED. Respondent is enjoined to process petitioner’s application for waiver from Pag-IBIG Fund coverage for the year 1996.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justice Eliezer R. de los Santos, and Justice Arturo D. Brion, all of the Court of Appeals; CA-G.R. SP No. 87789, rollo, pp. 10-24.

[2] Id. at 26-27.

[3] Id. at 86.

[4] CA rollo, p. 34.

[5] Id. at 40.

[6] Id. at 42.

[7] Id. at 45.

[8] Records (Civil Action No. Q-97-31461), pp. 1-9.

[9] Id. at 116.

[10] Id. at 142.

[11] Id. at 196.

- [12] Id. at 208.
- [13] 366 Phil. 913, 930-931 (1999).
- [14] CA rollo, pp. 60-61.
- [15] Id. at 30.
- [16] Id. at 31-32.
- [17] Civil Case No. Q-03-49907.
- [18] Records (Civil Case No. Q-03-49907), pp. 170-173.
- [19] CA rollo, p. 26.
- [20] Rollo, p. 23.
- [21] Id. at 34.
- [22] 389 Phil. 296, 306 (2000).
- [23] Rollo, pp. 20-21.
- [24] G.R. No. 87186, April 24, 1992, 208 SCRA 283, 295-296.
- [25] Supra.

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