PHILLIPS SEAFOOD (PHILIPPINES) CORPORATION, PETITIONER, VS. THE BOARD OF INVESTMENTS, RESPONDENT.

G.R. No. 175787. February 04, 2009

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing two related resolutions of the Court of Appeals in CA-G.R. SP No. 89327. The Resolution[2] dated 24 May 2006 dismissed petitioner's petition for review under Rule 43 and its omnibus motion seeking to amend the petition and to suspend the period for filing a reply. The Resolution[3] dated 24 November 2006 denied petitioner's motion for reconsideration of the earlier resolution.

The following factual antecedents are matters of record.

Petitioner Phillips Seafood (Philippines) Corporation is a domestic corporation engaged in the export of processed crabmeat and other seafood products. Petitioner was incorporated on 20 October 1992 and registered under its previous corporate name of Phillips Seafood Masbate, Inc.

On 08 January 1993, petitioner registered with respondent Bureau of Investments (BOI) as an existing and expansion producer of soft shell crabs and other seafood products, on a non-pioneer status under Certificate of Registration No. EP 93-219.[4] Petitioner's plant was situated in Piña, Masbate, while its administrative office was then located in Cebu City before it was subsequently relocated to Calong-Calong, Airport Subdivision, Bacolod City.

Petitioner was granted an Income Tax Holiday (ITH) for six (6) years beginning July 1993 to July 1999,[5] for locating in a less-developed area in accordance with Article 40[6] of Executive Order (E.O.) No. 226, otherwise known as The Omnibus Investments Code of 1987.

Petitioner used to supply semi-processed raw materials to Phillips Seafood (Phils.), Inc. (PSPI), an affiliate corporation also engaged in the export of seafood products, before the latter's closure due to financial difficulties. On 21 July 1997, petitioner acquired the right to use the canning facility of PSPI in Bacolod City during the temporary suspension of PSPI's operations. Unable to recover from its financial reverses, PSPI eventually stopped operations.

On 14 December 1998, petitioner acquired the title to the plant, facilities, equipment and other assets belonging to PSPI, including its picking facilities in Cebu City.[7] In October 1999, petitioner relocated its plant and office in Bacolod City to Barangay Banica, Roxas City. Petitioner informed respondent BOI of said transfer.[8] Petitioner also filed with respondent BOI an application for registration of its new plant having an expanded capacity of 155,205 kilograms a year.

In a letter dated 18 November 1999, respondent BOI informed petitioner that the latter's ITH under Certificate of Registration No. EP 93-219 would be extended until 12 August 2000, pursuant to Article 39 (a) (1) (ii)[9] of

Executive Order No. 226.[10]

On 06 January 2000, respondent BOI granted petitioner's application for registration of its new plant in Roxas City under Certificate of Registration No. VI EP 2000-002. Petitioner's registration was categorized as a new producer on a non-pioneer status with an ITH for four years beginning January 2000.[11]

On 22 June 2000, respondent BOI approved the registration of petitioner as a "New Producer of Processed Fish" under another Certificate of Registration No. XI EP 2000-74 with an ITH for four years beginning April 2000.[12]

On 04 May 2000, petitioner filed with respondent BOI an application for an ITH for taxable year 1999 under Certificate of Registration No. EP 93-219. It filed another application for an ITH for the year 2000 under Certificate of Registration No. VI EP 2000-002 covering its crabmeat products and under Certificate of Registration No. XI EP 20000-74 covering its processed fish products.

Petitioner changed its corporate name from PS-Masbate to its current name of Phillips Seafood (Philippines) Corporation, which was approved by respondent BOI on 16 February 2001.[13]

In a letter dated 25 September 2003, respondent BOI informed petitioner that the ITH previously granted would be applicable only to the period from 13 August 1999 to 21 October 1999 or before petitioner's transfer to a "not less-developed area."[14] Petitioner wrote respondent BOI requesting for a reconsideration of its decision.[15]

On 03 May 2004, petitioner received by fax BOI's letter denying its motion for reconsideration.[16] Petitioner elevated the matter to the Office of the President, which dismissed petitioner's appeal on the ground of lack of jurisdiction in a Decision dated 22 September 2004.[17] The Office of the President likewise denied petitioner's motion for reconsideration in an Order dated 14 March 2005.[18] Petitioner received a copy of the order on 01 April 2005.

On 05 April 2005, petitioner filed a petition for review before the Court of Appeals, questioning the dismissal of its appeal before the Office of the President. The petition argued that the executive power of control over the acts of officials under the Office of the President is superior to the appellate jurisdiction of the Court of Appeals over decisions of quasi-judicial agencies under the 1997 Rules of Civil Procedure.[19]

After respondent BOI filed its comment on the petition, petitioner filed an omnibus motion asking for leave to file an amended petition to counter the issues raised in the comment for the first time and to suspend the period for filing a reply.[20]

On 24 May 2006, the Court of Appeals rendered the first assailed resolution denying petitioner's omnibus motion and dismissing its petition for review. The appellate court denied petitioner's omnibus motion on the ground that the same was filed with intent to delay the case. Simultaneously, the appellate court dismissed the petition for review for having been filed out of time as petitioner opted to appeal to the Office of the President instead of filing a Rule 43 petition to the Court of Appeals within the reglementary period. On 24 November 2006, the Court of Appeals issued the second assailed resolution denying petitioner's motion for reconsideration.

Hence, the instant petition anchored on the following arguments: (1) petitioner's omnibus motion asking for the amendment of its petition for review was filed to avoid the multiplicity of suits; (2) the executive power of control over the acts of department secretaries must not be rendered illusory by rules of procedure; and (3) petitioner is entitled to the ITH.

In the main, petitioner argues that the review by the Office of the President of the decisions of respondent BOI must be allowed; otherwise, the President's constitutional power to review the decisions of department secretaries

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will be rendered illusory if said decisions may be reviewed only by the Court of Appeals.

The right to appeal is not a constitutional, natural or inherent right - it is a statutory privilege and of statutory origin and, therefore, available only if granted or provided by statute. It may be exercised only in the manner prescribed by, and in accordance with, the provisions of the law.[21] Thus, in determining the appellate procedure governing administrative agencies exercising quasi-judicial or regulatory functions such as respondent BOI, a perusal of the legislative enactments creating them is imperative.

The BOI was created by virtue of E.O. No. 226 at the time when then President Corazon Aquino was exercising legislative powers under the Freedom Constitution Executive Order (E.O.) No. 226, otherwise known as the Omnibus Investments Acts of 1987, laid down the powers and duties of respondent both as a policy-making body and a regulatory agency tasked with facilitating the growth of investment in the country. Article 7, E.O. No. 226 directs respondent to act as a collegial body when exercising its duties and powers. In addition to its administrative or policy-making and regulatory functions, the BOI is also empowered to promulgate rules and regulations to implement the provisions of E.O. No. 226.[22]

As a policy-making body, the BOI is charged with the duties, among others, of preparing an annual investment priorities plan that gives incentives to specific activities,[23] of recommending to the Bureau of Immigration the entry of foreign nationals for employment purposes,[24] and of inspecting registered enterprises for compliance purposes.[25]

Among the regulatory functions of the BOI are the processing of applications for registration,[26] the cancellation of registration or suspension of the enjoyment of certain incentives under E.O. No. 226,[27] and the resolution of controversies arising from the implementation of E.O. No. 226.[28] There is no doubt that the resolution of petitioner's claim that it is entitled to the ITH in the instant case calls for the exercise of the BOI's regulatory functions.

E.O. No. 226 also provides for various remedies from the action or decision of the BOI, depending on the nature of the controversy. These remedies, which are interspersed among the provisions of E.O. No. 226, are as follows:

> Art. 7. Powers and Duties of the Board. -- The Board shall be responsible for the regulation and promotion of investments in the Philippines. x x x The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:
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> (4) After due hearing, decide controversies concerning the implementation of the relevant books of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: Provided, That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President;
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> x x x
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> Art. 36. Appeal from Board's Decision. -- Any order or decision of the Board shall be final and executory after thirty (30) days from its promulgation. Within the said period of thirty (30) days, said order or decision may be appealed to the Office of the President. Where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.
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> x x x
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> Art. 50. Cause for Cancellation of Certificate of Authority or Payment of Fine. -- A violation of any of the requirements set forth in Article 49 of the terms and conditions which the Board may impose shall be sufficient cause to cancel the certificate of authority issued pursuant to this Book and/or subject firms to the payment of

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> fines in accordance with the rules and regulations issued by the Board: x x x Provided, further, That where the issuance of said license has been irregular or contrary to law, any person adversely affected thereby may file an action with the Regional Trial Court where said alien or foreign business organization resides or has its principal office to cancel said license. In such cases, no injunction shall issue without notice and hearing; and appeals and other proceedings for review shall be filed directly with the Supreme Court.
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> x x x
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> Art. 82. Judicial Relief. -- All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision: Provided, That all appeals shall be filed directly with the Supreme Court within thirty (30) days from receipt of the order or decision. [Emphasis supplied]

E.O. No. 226 apparently allows two avenues of appeal from an action or decision of the BOI, depending on the nature of the controversy. One mode is to elevate an appeal to the Office of the President when the action or decision pertains to either of these two instances: first, in the decisions of the BOI over controversies concerning the implementation of the relevant provisions of E.O No. 226 that may arise between registered enterprises or investors and government agencies under Article 7;[29] and second, in an action of the BOI over applications for registration under the investment priorities plan under Article 36.[30]

Another mode of review is to elevate the matter directly to judicial tribunals. For instance, under Article 50, E.O. No. 226, a party adversely affected by the issuance of a license to do business in favor of an alien or a foreign firm may file with the proper Regional Trial Court an action to cancel said license. Then, there is Article 82, E.O. No. 226, which, in its broad phraseology, authorizes the direct appeal to the Supreme Court from any order or decision of respondent BOI "involving the provisions of E.O. No. 226."

E.O. No. 226 contains no provision specifically governing the remedy of a party whose application for an ITH has been denied by the BOI in the same manner that Articles 7 and 36 thereof allow recourse to the Office of the President in certain instances. Nevertheless, Article 82 of E.O. No. 22 is the catch-all provision allowing the appeal to the courts from all other decisions of respondent BOI involving the other provisions of E.O. No. 226. The intendment of the law is undoubtedly to afford immediate judicial relief from the decision of respondent BOI, save in cases mentioned under Articles 7 and 36.

In relation to Article 82, E.O. No. 226, Section 1 of Rule 43 of the 1997 Rules of Civil Procedure expressly includes respondent BOI as one of the quasi-judicial agencies whose judgments or final orders are appealable to the Court of Appeals via a verified petition for review. Appeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[31]

Thus, petitioner should have immediately elevated to the Court of Appeals the denial by respondent BOI of its application for an ITH. From the letter dated 09 October 2003 of respondent BOI, which informed petitioner that its ITH would be extended only from 13 August 1999 to 21 October 1999, petitioner appealed to the Office of the President, a recourse that is not sanctioned by either the Rules of Civil Procedure or by the Omnibus Investments Code of 1987.

Petitioner cannot invoke Article 36 of E.O. No. 226 to justify its appeal to the Office of the President. Article 36, along with Article 7, which allows recourse to the Office of the President, applies to specific instances, namely, controversies between a registered enterprise and a government agency and decisions concerning the registration of an enterprise, respectively. Expresio unius est exclusio alterius. This enumeration is exclusive so that other

controversies outside of its purview, including petitioner's entitlement to an ITH, can invoke only the appellate judicial relief provided under Article 82. In the instant case, the denial of petitioner's application for an ITH is not within the cases where the law expressly provides for appellate recourse to the Office of the President. That being the case, petitioner should have elevated its appeal to the Court of Appeals under Rule 43.

Petitioner further contends that from the decision of respondent BOI, appeal to the Office of the President should be allowed; otherwise, the constitutional power of the President to review acts of department secretaries will be rendered illusory by mere rules of procedure.

The executive power of control over the acts of department secretaries is laid down in Section 17, Article VII[32] of the 1987 Constitution. The power of control has been defined as the "power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

Such "executive control" is not absolute. The definition of the structure of the executive branch of government, and the corresponding degrees of administrative control and supervision is not the exclusive preserve of the executive. It may be effectively limited by the Constitution, by law, or by judicial decisions.[33] All the more in the matter of appellate procedure as in the instant case. Appeals are remedial in nature; hence, constitutionally subject to this Court's rule-making power. The Rules of Procedure was issued by the Court pursuant to

Section 5, Article VIII[34] of the Constitution, which expressly empowers the Supreme Court to promulgate rules concerning the procedure in all courts.

Parenthetically, Administrative Order (A.O.) No. 18[35] expressly recognizes an exception to the remedy of appeal to the Office of the President from the decisions of executive departments and agencies. Under Section 1[36] thereof, a decision or order issued by a department or agency need not be appealed to the Office of the President when there is a special law that provides for a different mode of appeal. In the instant case, the enabling law of respondent BOI, E.O. No. 226, explicitly allows for immediate judicial relief from the decision of respondent BOI involving petitioner's application for an ITH. E.O. No. 226 is a law of special nature and should prevail over A.O. No. 18.

WHEREFORE, the instant petition for review on certiorari is DENIED and the resolutions of the Court of Appeals dated 24 May 2006 and 24 November 2006 in CA-G.R. SP No. 89327 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., Concur.

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[1] Rollo, pp. 10-55.

[2]Id. at 57-59. Penned by J. Arcangelita M. Romilla-Lontok and concurred in by JJ. Marina L. Buzon, Chairperson of the Special Sixth Division, and Aurora Santiago-Lagman.

[3] Id. at 61-62.

[4]Id. at 70.

[5] Id. at 72.

[6] Art. 40. A registered enterprise regardless of nationality located in a less-developed-area included in the list

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prepared by the Board of Investments after consultation with the National Economic Development Authority and other appropriate government agencies, taking into consideration the following criteria: low per capita gross domestic product; low level of investments; high rate of unemployment and/or underemployment; and low level of infrastructure development including its accessibility to developed urban centers, shall be entitled to the following incentives in addition to those provided in the preceding article:

(a) Pioneer Incentives. -- An enterprise in a less-developed-area registered with the Board under Book I of this Code, whether proposed, or an expansion of an existing venture, shall be entitled to the incentives provided for a pioneer registered enterprise under its law of registration.

[7] Rollo, pp. 85-86.

[8] Id. at 92.

[9] Art. 39. Incentives to Registered Enterprises. -- All registered enterprises shall be granted in the following incentives to the extent engaged in a preferred area of investment:

(a) Income Tax Holiday. -

(1) For six (6) years from commercial operation for pioneer firms and four (4) years non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases: x x x

(ii) utilization of indigenous raw materials at rates set by the Board; xxx

[10] Rollo, p. 93.

[11] Id. at 95.

[12] Id. at 99.

[13] Id. at 103.

[14] Id. at 114.

[15] Id. at 115.

[16] Id. at 121.

[17] Id. at 217-218.

[18] Id. at 219-220.

[19]Id. at 194-216.

[20]Id. at 262.-268.

[21] De La Cruz v. Ramiscal, G.R. No. 137882, 04 February 2005, 450 SCRA 449, 457.

[22] Executive Order No. 226 (1987), Art. 7, par. 2.

[23] Executive Order No. 226 (1987), Art. 7, par. 1.

[24] Executive Order No. 226 (1987), Art. 7, par. 5.

[25] Executive Order No. 226 (1987), Art. 7, pars. 6, 7.

[26] Executive Order No. 226 (1987), Art. 7, par. 3.

[27] Executive Order No. 226 (1987), Art. 7, par. 8.

[28] Executive Order No. 226 (1987), Art. 7, par. 4.

[29] Executive Order No. 226 (1987), Art. 7, par. 4

[30] Executive Order No. 226 (1987), Art. 36.

[31] Namuhe v. The Ombudsman, 358 Phil. 782, 788-789 (1998).

[32] SEC. 17. The President shall have control of all executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[33]Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines, G.R. No. 158540, 03 August 2005, 465 SCRA 532.

[34] SEC. 5. The Supreme Court shall have the following powers: x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[35]Entitled "Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines;" Issued on 12 February 1987.

[36]SECTION 1. Unless otherwise governed by special laws, an appeal to the Office of the President shall be taken within thirty (30) days from the receipt by the aggrieved party of the decision/resolution/order complained of or appealed from. Said appeal shall be filed with the Office of the President, or with the Ministry/agency concerned, with copies furnished to the affected parties and, if the appeal is filed with the Office of the President, to the Ministry/agency concerned. If the appeal is directly filed with the Ministry/agency concerned, such Ministry/agency shall, within five (5) days from receipt thereof, transmit the appeal to the Office of the President, together with the records of the case.[Emphasis supplied]

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