

**REP. LUIS R. VILLAFUERTE, PROSPERO A. PICHAY, CHRISTIAN TAN,
WILSON YOUNG, TERESITA ABUNDO, TONY FABICO, BONIFACIO
ALENTAJAN, RIZALITO DELMORO, GODOFREDO E. GALLEGA,
MANNY A. GA...**

G.R. No. 186566. October 02, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this Petition for Review on Certiorari is the November 18, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 105368, which reversed and set aside the September 3, 2008 Decision of the Regional Trial Court (RTC) of Manila, Branch 24, in Civil Case No. 08-119546 and dismissed the petition for declaration of nullity of elections. Also assailed is the February 18, 2009 Resolution[2] denying the Motion for Reconsideration.

The facts as found by the Court of Appeals are as follows:

On 28 August 2006, at the sideline of the 18th FIBA World Congress held at Tokyo, Japan, a Joint Communique ("Tokyo Communique") was entered into by the feuding Basketball Association of the Philippines ("BAP") and the newly formed Pilipinas Basketbol ("PB"), through their then incumbent Presidents, Jose D. Lina, Jr. and Bernardo Gabriel L. Atienza, respectively, and as witnessed not only by their other representatives but also by the representative of the Philippine Olympic Committee ("POC") and the FIBA Secretary General Patrick Baumann. The main objectives of the Tokyo Communique are (1) to unify said rival basketball associations and (2) to facilitate the lifting of the suspension imposed by the Federation Internationale de Basketball ("FIBA"), which prevented the country from participating in any international basketball competitions.

Specifically, the Tokyo Communique provides for the merger of the BAP and the PB resulting to a single united basketball organization that will seek membership with the POC and will eventually take over the membership of BAP in the FIBA, subject to the appropriate FIBA regulations on membership. It also provides for the creation of a three-man panel composed of the incumbent presidents of the BAP and the PB and a third member to be agreed upon by both presidents, which will undertake the tasks of (1) writing and finalizing the organization's constitution and by-laws; (2) reviewing, verifying and validating the list of members as submitted by BAP and PB to the FIBA Central Board Special Commission based on agreed set of criteria for membership as formulated by the panel; and (3) convening the National Congress of the united organization and to oversee the election of officers.

Pursuant to the provisions of the Tokyo Communique relative to the creation of a three-man panel, petitioner Manuel V. Pangilinan ("Petitioner Pangilinan") was named as its third member and was even chosen as its Chairman. Also, the BAP and PB submitted to FIBA their respective lists of members-associations in compliance with the provisions thereof.

On 17 September 2006, in keeping with the merger and unification efforts as embodied in the Tokyo Communique, the Samahang Basketbol ng Pilipinas, Inc. ("SBP") was established and its constitutive

documents consisting of the Articles of Incorporation were signed by the five (5) incorporators, which include petitioner Pangilinan. On the same day, the incorporators likewise passed and signed its by-laws.[3]

On 4 February 2007, the three-man panel met in Bangkok, Thailand where it forged and executed a Memorandum of Agreement ("Bangkok Agreement") integrating therein the final terms and conditions of the unity and merger of BAP and PB. In said agreement, the BAP and PB amended the corporate name of SBP from "Samahang Basketbol ng Pilipinas, Inc." to "BAP-Samahang Basketbol ng Pilipinas, Inc." ("BAP-SBP"). It also stipulated the following: (1) the amendment of the SBP by-laws with regard to the voting requirement for the removal of officers; (2) the admission of all the bona fide members of BAP and PB as appearing in the lists submitted to FIBA as "members" instead of "probationary members" of SBP; (3) the respective rights of BAP and PB to nominate for corporate positions; (4) the lists of officers to be elected by the BAP and PB at the Unity Congress that will serve during the transitory period as provided in the by-laws; (5) the composition of and the respective right to nominate the members of the different committees of the BAP-SBP; and (6) the binding effect of the right to nominate, which shall be valid only during the aforesaid transitory period.

On 5 February 2007, as contemplated by and pursuant to the Bangkok Agreement, the First Trustees of the SBP attended a Unity Congress wherein the nomination and election of its transitory officers for the years 2007-2008 had taken place, the results of which had led to the proclamation of respondent Villafuerte as Chairman, Victorico P. Vargas, as Vice-Chairman, petitioner Pangilinan, as President, petitioner Marievic Añonuevo ("Petitioner Añonuevo"), as secretary, respondent Christian Tan ("Respondent Tan"), as treasurer, and respondent Bonifacio Alentajan, ("Respondent Alentajan"), as legal counsel.

Consequently however, contrary to the *raison d'être* of the Tokyo Communique, Bangkok Agreement and the convened Unity Congress, enmity and contest among the different personalities involved in Philippine basketball have prevailed leading to the formation of two (2) factions, the petitioners, on one hand, and the respondent, on the other. As can be gleaned from the records, said dispute evolved from the resolve of petitioner Pangilinan not to recognize the election of respondent Villafuerte as Chairman of BAP-SBP on account of the alleged failure of the latter to qualify for the said position.

On 14 May 2008, petitioner Pangilinan released a Press Statement announcing the validation of four (4) more organizations, in addition to the fifteen (15) organizations earlier validated, as active members of the SBP, the postponement of the scheduled 31 May 2008 National Congress and its resetting to 12 June 2008. This Press Statement prompted respondents Villafuerte, Alentajan and Tan to write to the FIBA Secretary General to report the alleged refusal of petitioner Pangilinan to follow the terms and conditions as stated in the Bangkok Agreement, as well as to inform FIBA of the convening of the National Congress of SBP on 4 June 2008.

On 17 May 2008, respondents Villafuerte, Alentajan and Tan along with a majority of the members of BAP-SBP approved and jointly issued a Notice of National Elections to be held on 4 June 2008, the agenda of which included the election of officers, organization of standing committees, accreditation of new applicants for membership, financial report, report on program for Nationwide Development of Basketball and other matters.

On 4 June 2008, respondents and the BAP-SBP members sympathetic to their faction attended the National Congress, wherein the regular trustees and the executive officers of SBP were elected. Respondent Villafuerte and Alentajan retained their previous positions while respondent Tan assumed the position of Executive Director. On the other hand, respondent Prospero A. Pichay, Jr. ("Respondent Pichay") replaced petitioner Pangilinan as president, respondent Wilson Young ("Respondent Young") replaced Victorico P. Vargas as Vice-Chairman and Teresita D. Abundo replaced petitioner Añonuevo as secretary.

Meanwhile, petitioner Añonuevo issued a Notice of National Congress to be held on 12 June 2008 for purposes of (1) hearing the reports of the President and the Executive Director, (2) recognizing the validated members of BAP-SBP, (3) conferring of the appropriate membership status to these members, (4) electing the members of the Board of Trustees, (5) overseeing the conduct of the organizational meetings of the board, (6) amending the

Articles of Incorporation and By-Laws and (7) transacting any other matters of business.

On 12 June 2008, seventeen (17) of the nineteen (19) active members of BAP-SBP attended the National Congress that had been called by petitioner Añonuevo. The members of the Board of Trustees were then elected for the term of 2008 to 2012 and until their successors shall have been duly elected and qualified. Thereafter, the newly elected trustees held their Organizational Meeting and proceeded to elect the officers of BAP-SBP. Petitioners Pangilinan, Vargas and Añonuevo retained their respective positions while petitioners Oscar S. Moreno and Jose Emmanuel Eala were elected as Chairman and Executive Director, respectively. Replacing respondent Tan, Ernesto Jay Adalem was designated as treasurer of the organization.[4]

On June 27, 2008, petitioners filed before the Regional Trial Court of Manila a petition[5] for declaration of nullity of the election of respondents as members of the Board of Trustees and Officers of BAP-SBP. The case was docketed as Civil Case No. 08-119546. Petitioners alleged that the June 12, 2008 election was a sham, illegal, and void. They also claimed to be the rightful and legally elected trustees and officers of the BAP-SBP and thus prayed that the corporate reins of BAP-SBP be turned over to them.

By way of answer, respondents argued that petitioners have no cause of action; that Villafuerte never assumed the position of Chairman of the BAP-SBP because he failed to qualify for the same; that before Villafuerte could legally assume the Chairmanship of BAP-SBP, he must first be elected a member of the Board of Trustees; that petitioners' June 4, 2008 National Congress had no quorum because the attendees thereof were either mere associates and non-voting members or actually non-members; and that only six of the attendees were active and voting members.

On September 3, 2008, the trial court rendered its Decision[6] declaring the convening of the National Congress on June 12, 2008 and the election of respondents null and without legal effect. The dispositive portion of the Decision, reads:

ACCORDINGLY, finding merit in the petition, the same is hereby granted.

The National Congress convened by the respondents is hereby declared null and void. Consequently, the election of officers at said meeting is similarly declared to be without force and effect.

Respondents are further directed to cease and desist from further acting as officers of the SBP and to turn over the affairs of the organization to the petitioners.

SO ORDERED.[7]

The trial court found that at the time the opposing parties convened their respective National Congress, BAP-SBP was still at its transition period; that pursuant to Section 2 of the Transitory Provisions, only those members of the BAP and PB included in the lists submitted to the FIBA shall be recognized as members of BAP-SBP with full rights and privileges, including the right to elect the regular board of trustees; that Villafuerte was validly elected as Chairman of SBP; and that the National Congress convened by petitioners was validly called. Consequently, it declared as null and void the National Congress convened on June 12, 2008 by the respondents, as well as the election of the trustees and officers conducted thereat.

Aggrieved, respondents filed before the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court. On November 18, 2008, the Court of Appeals rendered the herein assailed Decision reversing and setting aside the Decision of the trial court and dismissing the petition for declaration of nullity of elections.

The appellate court noted that the crux of the controversy hinges on the interpretation of the terms and conditions of the Tokyo Communique, the Bangkok Agreement, the BAP-SBP Articles of Incorporation and its by-laws vis-a vis the determination of which members are entitled to vote and be voted upon as trustees and officers of

said organization. The Court of Appeals held that the Bangkok Agreement merely provided for the recognition of those included in the lists submitted to FIBA as probationary members; that the Bangkok Agreement should not be exploited as to clothe petitioners with the authority to convene the National Congress and conduct themselves as trustees and officers of the BAP-SBP because the attendees of said June 4, 2008 National Congress did not constitute a quorum; that only six of the attendees were active and voting members, while the rest were associates, or non-voting members, or even non-members.

The appellate court likewise held that to be considered as members of BAP-SBP with full rights and privileges, including the right to elect the regular board of trustees, the association should be included in the lists submitted to FIBA and validated by the three-man panel. The validation by the three-man panel is a condition sine qua non for a basketball association to be considered as an active and voting member of BAP-SBP.

Finally, the Court of Appeals found Villafuerte not qualified to hold the position of Chairman of BAP-SBP. It held that the organization's By-laws require that the Chairman of the Board of Trustees must first be a trustee. Since Villafuerte was not yet named as a trustee of the BAP-SBP when the National Congress was held, therefore he was unqualified to hold the position of Chairman.

Petitioners filed a motion for reconsideration but it was denied, hence, this petition on the following grounds:

I

THIS COURT OF APPEALS GRIEVOUSLY MISCONSTRUED THE TOKYO COMMUNIQUE, THE BANGKOK AGREEMENT, AND THE ARTICLES OF INCORPORATION AND THE BY-LAWS OF THE SAMAHANG BASKETBALL NG PILIPINAS, INC.

II

PETITIONERS WERE DULY ELECTED DURING THE NATIONAL CONGRESS OF BAP-SBP ON JUNE 4, 2008, WHICH WAS ATTENDED BY MAJORITY OF THE MEMBERS OF BAP-SBP.

III

PETITIONER LUIS R. VILLAFUERTE WAS DULY ELECTED AS CHAIRMAN OF BAP-SBP AT THE UNITY CONGRESS IN FEBRUARY 2007.

The petition lacks merit.

Reduced to its simplest, the only issue for resolution is: Which members of the BAP-SBP are entitled to vote and be voted upon as trustees and officers of said organization based on the terms and conditions of the Tokyo Communique, the Bangkok Agreement and the Articles of Incorporation and By-Laws of the organization.

Petitioners insist that the provision in the Bangkok Agreement that "all bona fide members appearing in the lists submitted by BAP and PB to FIBA pursuant to the Tokyo Communique shall be admitted as 'members' instead of 'probationary members' of SBP," is equivalent to the requisite validation by the three-man panel. They insist that all the bona fide members of BAP and PB included in the lists submitted to the FIBA Central Board Special Commission automatically became voting members of BAP-SBP.

Petitioners also argue that the need to classify members of BAP-SBP into different categories, i.e., active members, associates or affiliates, is not relevant for purposes of the first election of the regular Board of Trustees of BAP-SBP because this becomes necessary only after the conduct of the first regular election. They contend that before and during the First National Congress of BAP-SBP, all its members as submitted to FIBA were entitled to vote and elect the trustees and officers of BAP-SBP.

We are not persuaded.

We find that the Court of Appeals correctly held that Clause 3 of the Bangkok Agreement merely intended to recognize the associations affiliated with BAP and PB as "members" as against being labeled as just "probationary members" of the BAP-SBP. However, said recognition does not dispense with the need to classify said members in accordance with the provisions of BAP-SBP's Articles of Incorporation and By-Laws, and the Tokyo Communique. Had the intention been otherwise, the parties would have expressed this by means of the appropriate provisions repealing or amending the contradictory provisions in said documents as what they did to a provision in the Bangkok Agreement with respect to the removal of officers.

Moreover, Clause 3 of the Bangkok Agreement must be read not in isolation but in conjunction with the Tokyo Communique and the BAP-SBP's Article of Incorporation and By-Laws. The Court of Appeal's historical account as to how all subject documents came into being is enlightening, thus:

Pertinently, the Tokyo Communique purposely created a three-man panel 'to review, verify, and validate the list of members as submitted by PB and BAP to the FIBA Central Board Special Commission created to hear the Philippine case based on agreed set of criteria for membership formulated by three-man panel.' Pursuant to the stipulations of the Tokyo Communique, the SBP was created leading to the execution and adoption of its Articles of Incorporation and by-laws, which laid down, among others, the criteria for membership of the SBP. Subsequent thereto, the three-man panel again convened and executed the said Bangkok Agreement, in which the admission of all the bona fide members of BAP and PB as appearing in the lists submitted to FIBA as 'members' instead of 'probationary members' of SBP was agreed upon.[8]

To reiterate, the Tokyo Communique's directive to the three-man panel is for it to review, verify, and validate the list of members as submitted by PB and BAP to the FIBA Central Board Special Commission created to hear the Philippine Case based on an agreed set of criteria for membership as formulated by said three-man panel. In other words, there is a given process for validation of membership rather than the automatic grant of voting or active membership status being insisted upon by petitioners. Besides, had it intended all bona fide members to be admitted as "accredited members" or "first members" or "active members", the three-man panel would have specifically used such term since its members were all aware that the SBP's Articles of Incorporation and by-laws were already in existence at the time and also provided for three classes or categories of "members."

We agree with respondents that the term "probationary" was deleted to remove the suggestion that members of that sort only had temporary membership status. While the organizations submitted by BAP and PB for BAP-SBP membership are no longer to be considered as probationary, such consideration does not intend to do away with the validation or accreditation process to determine which of these would qualify as active or voting members of SBP and which ones would be classified as associate and affiliate members. While all three classes are considered as regular members, not all could be granted the right to vote.

There can be no gainsaying the necessity for such qualification. Section 2 of the Transitory Provisions of the By-Laws[9] states in no uncertain terms that:

Section 2. Accredited Members. All bona fide members in good standing of the Basketball Association of the Philippines (BAP) and Pilipinas Basketball (PB) at the time of the incorporation of the Corporation and as submitted to FIBA by BAP and PB and validated by the three-man panel organized pursuant to the August 28, 2006 joint communiqué signed in Tokyo, Japan by and among representatives from FIBA, POC, BAP and PB, which joint communiqué is incorporated herein by reference, shall be recognized as the first members of the Corporation (the "First Members") with full rights and privileges, including the right to elect the regular board of trustees that will replace the First Board of Trustees named in Article Eighth of the Articles of Incorporation (the "First Trustees"), unless suspended or expelled in accordance with appropriate rules and regulations. For this purpose, the three-man panel shall formulate the rules and procedures for validation and, when necessary, form a committee that will assist the panel in the validation process.

Indeed, the three-man panel is mandated to review, verify and validate the lists of members submitted by BAP and PB to FIBA based on an agreed set of criteria for membership formulated by the three-man panel.[10] In this connection, there is no question that the three-man panel had not yet formulated a set of criteria prior to or as of the time of signing of the Bangkok Agreement. If only for this, it stands to reason that the three-man panel could not have, by any stretch of the imagination, possibly validated all organizations proposed by the BAP and PB for BAP-SBP membership as "active" or "voting" members on a wholesale basis. It could not have done so since there was still no set of criteria by which to embark on such an endeavor. The rules and procedures for validation were formulated by the three-man panel only after the execution of the Bangkok Agreement. In fact, several of the petitioners actively participated in the membership validation process which was done after the execution of the Bangkok Agreement.

The membership validation resulted in the conferment of active membership status upon 19 BAP-SBP members, 17 of which participated in the June 12, 2008 meeting. Petitioners even constituted the majority of the Committee that undertook the task; they actively participated in the formulation of the validation rules based on the by-laws providing for this; some of them actively participated in the validation of the membership list and even voted along with other members of the Committee for the grant of active membership status to the 19 regular members. Thus, as correctly held by the Court of Appeals, petitioners are now estopped from assailing the validity and mandatory nature of the BAP-SBP's validation process as a prerequisite to a member's acquisition of active (voting) membership status.

Verily, petitioners' bare denial deserves short shrift in light of the documentary evidence attesting to their active participation during BAP-SBP's validation of its members' credentials leading to the confirmation of active membership status to 19 members. Hence, respondents, who were elected by 17 of the 19 active and voting members of the BAP-SBP during the meeting held on June 12, 2008, are the legitimate officers of the organization, their election in accordance with the applicable rules on the said exercise.

Anent the chairmanship of the Board of Trustees of the BAP-SBP, the Court of Appeals correctly held that petitioner Villafuerte's nomination must of necessity be understood as being subject to or in accordance with the qualifications set forth in the By-Laws of the BAP-SBP. Since the said by-laws require the Chairman of the Board of Trustees to be a trustee himself, petitioner Villafuerte was not qualified since he had neither been elected nor appointed as one of the trustees of BAP-SBP. In other words, petitioner Villafuerte never validly assumed the position of Chairman because he failed in the first place to qualify therefor.

WHEREFORE, the petition is DENIED. The assailed Decision dated November 18, 2008 of the Court of Appeals in CA-G.R. SP No. 105368 which reversed and set aside the Decision of the Regional Trial Court of Manila, Branch 24, in Civil Case No. 08-119546 and dismissed the petition for declaration of nullity of elections, and the February 18, 2009 Resolution denying reconsideration, are AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Peralta, and Bersamin[*], JJ., concur.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated May 20, 2009.

[1] Rollo, pp. 100-115. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia.

[2] Id. at 117-120.

[3] Id. at 262-283.

[4] Id. at 102-106.

[5] Id. at 301-328.

[6] Id. at 212-232. Penned by Judge Antonio M. Eugenio, Jr.

[7] Id. at 231-232.

[8] Id. at 110.

[9] Article XVII, Section 2.

[10] Rollo, p. 40.

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