

**BEAUTIFONT, INC. AND AURA LABORATORIES, INC., PETITIONERS,
VS. COURT OF APPEALS, RUSTAN MARKETING CORP., AND HOLIDAY
COSMETICS, INC., RESPONDENTS.***G.R. No. 50141. January 29, 1988*

Ponente: NARVASA, J.

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Nothing but the correctness of the denial by the Manila Court of First Instance (regional trial court) of a preliminary injunction --and of the issuance by the Court of Appeals of a temporary restraining order -- sought by private respondents to restrain the issuance and/or enforcement of a certificate of authority by the Board of Investments in the petitioners' favor, is at issue in the proceedings at bar.[1] Enforcement of the Appellate Court's temporary restraining order was in turn inhibited by a temporary restraining order issued by this Court pursuant to its Resolution dated March 16, 1979.[2]

The petitioners, Aura Laboratories, Inc. and Beautifont, Inc. are domestic corporations engaged, respectively, in the manufacture of cosmetic products, and the marketing and distribution thereof. In March, 1978 they both applied with the Board of Investments for authority to accept permissible investments of two American-owned firms, Avon Products, Inc. and Manila Manufacturing Co., Inc.[3] The applications were filed in accordance with Republic Act No. 5455, otherwise known as the "Permissible Investments Law," which requires the approval by said Board of investments of a foreign national in a local corporation which would exceed 30% of its outstanding capital.

Their applications set out the following essential data: (1) they, Aura and Beautifont, were in the cosmetics manufacture and distribution business, respectively; (2) the businesses in which the investments would be made were existing; (3) before investment, the enterprises were Filipino, with a total subscribed capital of P3,500,000.00 and P5,700,000.00, respectively, or "100% equity participation"; (4) after investment the enterprises would be non-Filipino, with the same total subscribed capital; (5) the investments would be the result of transfers of stocks from Philippine nationals to foreign investors; (6) that the value of shares to be purchased from Philippine nationals or otherwise retired as regards Aura is P10,495,000.00, and as regards Beautifont, P27,985,000.00; and (7) the investors in Aura and Beautifont were, respectively, Manila Manufacturing Company and Avon Products, Inc., American corporations based in New York, USA, their investments being in the amount of US\$1,418,244.00 and US\$3,781,756.00.

Notice of the applications was prepared by the Board of Investments (hereafter, simply BOI). The notice followed the standard form used in respect to other applications.[4] It was published in the Official Gazette and newspapers of general circulation.[5] The notice, dated April 5, 1978,[6] read as follows:

"Notice is hereby given that pursuant to Section 4 of Republic Act No. 5455, BEAUTIFONT, INC. and AURA LABORATORIES, INC., both existing domestic corporations, with office address at c/o Atienza, Tabora, Del Rosario & Castillo, Antonino Building, T.M. Kalaw, Ermita, Manila, have filed with the Board of Investments

applications for authority to accept the permissible investments of Avon Products, Inc. and Manila Manufacturing Co. in the total amount of US\$3,781,756 or P27,985,000 and US\$1,418,244.0 or P10,495,000.00, respectively. The business of Beautifont, Inc. is capitalized at P5,700,000.00 while the business of Aura Laboratories, Inc. is capitalized at P3,500,000.00, Philippine currency.

If after fifteen (15) days from the last date of publication, no valid objection/opposition thereto is filed within the same period, or the same is not revoked or withheld sooner by the Board, and upon submission of proofs of publication of this notice and compliance with the other requirements of Republic Act No. 5455 and its implementing rules and regulations, the Board shall consider the applications for formal approval. This is, further, subject to * * (certain specific) conditions: * *.

For failure to undertake the publication of these applications as prescribed under Section 7 of Republic Act No. 5455, as amended, the same shall be considered abandoned without prejudice, however, to their refiling later."

To these applications an opposition was presented on May 4, 1978 by Rustan Marketing Corporation and Holiday Cosmetics, Inc., hereafter respectively referred to simply as Rustan and Holiday.[7] They contended that the investments should be disallowed because they (1) would conflict with the Retail Trade Nationalization Act; (2) would pose a clear and present danger of a monopoly in the cosmetics industry; (3) would be made in an enterprise already adequately exploited by Philippine nationals; (4) were inconsistent with the Government's Investment Priorities Plans as well as declared national policies; and (5) would not contribute to a sound and balanced development of the national economy.

The BOI set the applications for public hearing on June 27, 1978. The notice of hearing was not only directly served on the parties -- as well as the presidents of the Philippine Chamber of Cosmetics Industry, the Philippine Chamber of Industries, the Philippine Chamber of Commerce and Industry, and the National Economic Practitioners Association (NEPA);[8] it was also published in the "Daily Express." [9] The published notice contained a general invitation to all interested parties of the following tenor: "All representatives of firms engaged in the manufacture and distribution of cosmetics and other interested parties are invited to attend." The hearing of June 27, 1978 was however postponed to July 11, 1978 at the instance of Rustan and Holiday through their counsel, Atty. D.R. Santiago.[10]

At the July 11 hearing, the oppositors Rustan and Holiday inter alia drew attention to what they regarded as a fatal jurisdictional defect in the proceedings. That defect, according to them, consisted in the violation by the BOI of Section 7 of RA 5455 in that instead of requiring and causing publication of the applications themselves -- which is what in their view the cited provision directs -- only notice thereof had actually been published and posted.[11] An officer of the Philippine Chamber of Commerce and Industry also appeared to oppose the applications.[12] The hearing was terminated after the BOI had granted the parties a period within which to file memoranda in substantiation of their declared positions. The memoranda were in due course filed by the parties. That of the oppositors dealt with the question of absence of jurisdiction on the part of the BOI resulting from the omission to publish the applications themselves, as well as the merits of the applications, expatiating on the grounds set out in their formal opposition dated May 4, 1978, supra.[13]

Thereafter, the BOI approved the applications for permissible investments of Beautifont and Aura.[14] The approval was given at its meeting on July 27, 1978. At that meeting, the BOI also resolved that "the applicants need not be subjected to another publication requirement since additional conditions which are more restrictive are being imposed on them." [15] At its next meeting on August 3, 1978, the BOI approved and confirmed the minutes of the meeting of July 27, 1978.[16] On that same day, August 3, 1978, the BOI advised Atty. Santiago, the oppositors' counsel, of the overruling of the opposition of Rustan and Holiday, as well as the reasons therefor.[17] And on August 8, 1978, the BOI issued the Certificate of Authority for the acceptance by Beautifont

and Aura of the permissible investments of Avon Products, Inc. and Manila Manufacturing Co., Inc., respectively.[18]

Pursuant to the certificate of authority, Beautifont and Aura accepted the foreign equity investments, and the corresponding transfers of stock were made.

Rustan and Holiday went to court. They filed with the Manila Court of First Instance a petition for certiorari on August 10, 1978, praying for the invalidation of the proceedings before the BOI.[19] Their petition was accompanied by an application for preliminary injunction to restrain the issuance of a certificate of authority to Beautifont and Aura. The petition was later amended to pray instead that the BOI resolution granting the certificate of authority be annulled and that the BOI be prohibited to approve the applications.[20] The petition was founded principally on the theory -- which they could not get the BOI to accept -- that the BOI had never acquired jurisdiction over the case because of its failure to publish and post the applications themselves, as provided by Section 7 of RA 5455, only the notice of their filing having been so published and posted.

Beautifont and Aura, and the BOI, were required to and did promptly file answers to the petition.[21] An extensive hearing was had on the application for preliminary injunction on August 21, 1978 at which the Solicitor General appeared. Memoranda on the issue were thereafter submitted by the parties.[22] On September 18, 1978, the Court promulgated an Order denying the motion for injunction. Rustan and Holiday moved for reconsideration. The motion was opposed by Beautifont and Aura, and by the BOI. The Court set the motion for reconsideration for hearing on November 15, 1978, but on the movants' request, the hearing was postponed to December 12, 1978, and again to January 15, 1979. The hearing was finally reset on January 31, 1979 upon agreement of the parties.[23] On that day the movants appeared, but only to ask that they be given ten (10) days to file a memorandum in support of their motion for reconsideration; this, the Court granted. Subsequently, however, they filed a manifestation dated February 20, 1979 stating that they were submitting their motion for reconsideration on the arguments and the evidence already on record.[24]

But Rustan and Holiday did not wait for the resolution of their motion for reconsideration. They proceeded to apply for relief directly with the Court of Appeals, about two weeks after filing their manifestation on February 20, 1979. They filed with that Court on March 8, 1979, a petition for certiorari with prayer for preliminary injunction upon substantially the same allegations and arguments set forth by them in their petition with the Court of First Instance[25]

On March 9, 1979, the Court of Appeals issued a temporary restraining order, enjoining the enforcement of the Certificate of Authority issued by the BOI on August 8, 1978, and prohibiting Beautifont and Aura to allow intervention by Avon Products, Inc. and Manila Manufacturing, Inc. in the management and operation of their business, and to sell, advertise, promote or appoint dealers or representatives of Avon products, goods or merchandise.[26]

Beautifont and Aura, for their part, lost no time in coming to this Court, to seek abrogation of the restraining order of the Court of Appeals. They filed with this Court a petition for certiorari against the Appellate Court, Rustan and Holiday, as well as a motion for a preliminary injunction.[27] By Resolution dated March 16, 1979, this Court (1) required the respondents (a) to file their comments on the petition and application for injunction not later than March 22, 1979, and (b) to appear at the hearing set on March 23, 1979, at 3 o'clock in the afternoon and argue on the merits of the petition and the injunction application; and, as already stated in this opinion's opening paragraph, (2) directed the issuance of a temporary restraining order, stopping the enforcement of the Order of the Court of Appeals dated March 9, 1979 until further orders.[28] This resolution was followed by another, dated March 19, 1979, directing that the BOI be impleaded and that the Solicitor General comment, appear and argue, at the same

time as the respondents.[29] The comments were submitted,[30] and the hearing held in due course. The hearing culminated in the agreement of the parties to present memoranda, after which the case would be deemed submitted for decision.[31] All the parties' memoranda have long since been filed, as also various other pleadings, motions, manifestations and documents.

Among the many pleadings and motions filed in this case was a "manifestation and motion" by respondents Rustan and Holiday advising that administrative cognizance had been taken by the "Office of the President/Prime Minister" of the petitioners' applications for authority to accept permissible investments, and praying that because of this development, the proceedings be suspended.[32] Suspension of the proceedings in fact consequently ensued for a time, despite the petitioners' objections, which suspension was twice extended upon subsequent motions by the respondents.[33]

In the meantime, through its counsel's letter dated April 30, 1981, Avon sought approval from the Office of the President of its proposal "to find a Filipino buyer and sell 30% of its equity in Beautifont ** and Aura ** to said buyer," so that "the BOI decision in the Avon case be affirmed." [34] Approval was given, and was communicated through a letter dated September 4, 1981 sent by Minister J. Capiendo Tuvera to Atty. R. J. Romulo, in which it was further stated that that approval "confirms the BOI decision on the Avon case." [35]

Rustan and Holiday were quick to assail Minister Tuvera's statement -? that the approval thus given "confirms the BOI decision on the Avon case" -? as a "gratuitous conclusion." They pointed out that the President was still awaiting the recommendation of the NEDA based on public hearings on the matter.[36] Furthermore, they argued, the reduction of Avon's holdings to 70% did not resolve the economic issues posed by its entry into the local market.

As should by now be apparent, the case turns mainly upon the sufficiency of the BOI's compliance with the provisions of Section 7 of the Permissible Investments Law, RA 5455.

"SEC. 7. Publication and Posting of Notices. - Immediately after the filing of any application under this Act, the Secretary of the Board of Investments shall publish the same at the expense of the applicant once a week for three consecutive weeks in the Official Gazette and in one of the newspapers of general circulation in the province or city where the applicant has its principal office and post copies of said application in conspicuous places, in the office of the Board of Investments or in the building where said office is located, setting forth in such copies the name of the applicant, the business in which it is engaged or proposes to engage or invest, and such other data and information as may be required by the Board of Investments. No approval or certificate shall be valid without the publication and posting of notices as herein provided."

It is the respondents' theory, to repeat, that this provision requires the publication and posting of the application itself, rather than simply of a notice thereof. The theory cannot be sustained. While there is some imprecision in the provision, which does create the impression that it is indeed the application that should be published -- it says, the "Secretary of the Board of Investments shall publish the same," the antecedent being "any application under this Act" -- other parts of the section make clear that it is the notice of the application that is meant to be so published and posted. To begin with, the sub-head or title unmistakably refers to the notice; it reads, "Publication and Posting of Notices." The last sentence also speaks of notices; it says that "No approval or certificate shall be valid without the publication and posting of notices as herein provided." Finally, describing the matter to be so published and posted, the provision declares that what shall be set forth are "the name of the applicant, the business in which it is engaged or proposes to engage or invest, and such other data and information as may be required by the Board of Investments" -- an unmistakable indication that it is not the application itself that is contemplated, but an abstract or summary thereof, comprehending the items mentioned. There would be no need to itemize these few particulars if it were the application itself that was meant to be published and posted; and the

phrase, "such other data and information as may be required by the Board," would in that case be clearly a superfluity, obviously without relevance to an application already filed. The proceedings before the Board of Investments cannot therefore be declared void merely by reason of the publication and posting of a notice of the petitioners' applications for authority to accept permissible investments, instead of the applications themselves.

Now, the notice published and posted by the Board with reference to the applications of Bautifont and Aura, sets out their names and addresses; the fact that they are both "existing domestic corporations;" the amount at which their businesses are respectively capitalized; the foreign corporations proposing to invest in their businesses and the amounts of said investments, expressed in both American and Philippine currencies. It does not however state the business in which they are engaged, which is a detail mentioned in Section 7 of the law above quoted. Be this as it may, the omission cannot be deemed of so serious a character as to negate the notice altogether and prevent the Board's acquisition of jurisdiction over the applications. The notice was drawn up by people whose business it was to draw it up, Government officers in fact charged with preparing such notices and who presumably had the requisite familiarity with the relevant legal provisions and procedures, acting under the authority of a body vested by law with discretion and power precisely to prescribe the data and information to be contained in such notices. It was patterned after a standard form, used in other similar cases.[37] There is no showing, withal, that any significant prejudice was caused to any person whatsoever by the omission of that detail; it was a detail that could have been most easily and quickly ascertained by anyone reading the published or posted notice. It was, in fine, an innocent, innocuous omission, if not indeed a deliberate one; and it cannot be taken against the petitioners who have not been shown to have had any participation in the drafting of the notice by the Secretary of the Board and/or his staff. An omission of this sort, even if characterized as a mistake, cannot in any sense be accounted as an error so grievous as to frustrate the acquisition of jurisdiction by the Board of Investments over the case, specially where, as here, the Court has not been cited to any prejudice whatever that has thereby been caused to any one. If error it was, it was a harmless error, a procedural one, and not affecting the substantial rights of the parties. It may and should be disregarded.[38]

No grave abuse of discretion or reversible error may therefore be ascribed to the Board of Investments in overruling the objections of Rustan and Holiday to its assumption of jurisdiction grounded on the supposedly defective publication and posting only of a notice of the applications rather than the applications themselves.

Neither may grave abuse of discretion be attributed to the Board of Investments in making an adjudgment that, contrary to respondents' views, the investments in question (1) would not constitute an infringement of the Retail Trade Nationalization Act, (2) would not pose a clear and present danger of a monopoly in the cosmetics industry, (3) would not be made in an enterprise already adequately exploited by Philippine nationals, (4) were not inconsistent with the Government's Investment Priorities Plans as well as declared national policies; and (5) would contribute to a sound and balanced development of the national economy. That adjudgment was made after due notice and hearing, on the basis of the facts of record, inclusive of the evidence adduced by the parties, and after due assessment thereof in relation to the relevant legal provisions; and it does not appear incorrect.

There is moreover so strong a presumption respecting the correctness of the acts and determinations of administrative agencies like the BOI, that the policy has been adopted for courts not to interfere therewith unless there be a clear showing of arbitrary action or palpable and serious error. The legal presumption is that official duty has been duly performed;[39] and it is "particularly strong as regards administrative agencies * * * vested with powers said to be quasi-judicial in nature, in connection with the enforcement of laws affecting particular fields of activity, the proper regulations and/or promotion of which requires a technical or special training, aside from a good knowledge and grasp of the overall conditions, relevant to said field, obtaining in the nation (Pangasinan Transportation vs. Public Utility Commission, 70 Phil. 221). The consequent policy and practice underlying our

Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial (Heacock vs. NLU, 95 Phil. 553)."[40] Hence, "(c)ourts of justice will not generally interfere with purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess or lack of jurisdiction."[41]

The claim may be made, not entirely without plausibility, that the Court of Appeals did not in truth gravely abuse its discretion in granting a temporary restraining order "until ** (it shall) have considered and acted on whether to give due course to the petition." [42] It acted on the basis of the application for injunction embodied in the petition, both of which on their faces might concededly appear to have merit, prima facie, at least; and it acted at a time when all the relevant facts had not yet been laid before it. But all those relevant facts are now before this Court. And those facts dictate the rendition of a verdict in the petitioners' favor. There is therefore no point in referring the case back to the Court of Appeals. The facts and the legal propositions involved will not change, nor should the ultimate judgment. Considerable time has already elapsed and, to serve the ends of justice, it is time that the controversy is finally laid to rest.[43] "Sound practice seeks to accommodate the theory which avoids waste of time, effort and expense, both to the parties and the government, not to speak of delay in the disposal of the case (cf. Fernandez v. Garcia, 92 Phil. 592, 597). A marked characteristic of our judicial set-up is that where the dictates of justice so demand * * the Supreme Court should act, and act with finality." [44] In this case, the dictates of justice do demand that this Court act, and act with finality.

WHEREFORE, the temporary restraining order issued by the Court of Appeals on March 9, 1979 in CA-G.R. No. 09005-SP is nullified and set aside; and the decision of the Board of Investments on July 27, 1978 approving the petitioners' applications for permissible investments under Republic Act No. 5455, and the Certificate of Authority issued on August 8, 1978 for the acceptance by petitioners Beautifont and Aura of the permissible investments of Avon Products, Inc. and Manila Manufacturing Co., Inc. are confirmed as being in accord with the facts and the law. Costs against private respondents.

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Rollo, pp. 20, 170, 203, 343

[2] Id., pp. 159-160

[3] Id., pp. 26-33

[4] Exhs. Q, Q-1 and Q-2

[5] Rollo, pp. 34-35

[6] Id., p. 34

[7] Id., pp. 404-405

[8] Rollo, pp. 311 et seq

[9] Id., p. 310

[10] Id., p. 36

- [11] Id., p. 176
- [12] Id., p. 10
- [13] Id., pp. 389-401
- [14] Id., pp. 39
- [15] Id., p. 40
- [16] Ibid.
- [17] Rollo, pp. 41-42
- [18] Id., p. 43
- [19] Docketed as Civil Case No. 117387
- [20] Id., pp. 45-57
- [21] Id., pp. 58-63
- [22] Id., p. 64-78 (for Rustan and Holiday); pp. 79-88 (for Beautifont and Aura)
- [23] Id., pp. 89-94
- [24] Id., pp. 95 et seq
- [25] Docketed as CA-G.R. No. 09005-SP, Rollo, pp. 130-156
- [26] Id., pp. 24-25
- [27] Id., pp. 2-21
- [28] Id., pp. 159-160
- [29] Id., p. 161
- [30] Id., pp. 162 et seq
- [31] Id., p. 281
- [32] Id., pp. 464-466
- [33] Rollo, pp. 497-A, 611-A and 663-A
- [34] Id., p. 702
- [35] Id., p. 678
- [36] SEE footnote 8 at page 5, and related text, supra
- [37] SEE footnote 1 at page 3, and related text, supra
- [38] Sec. 5, Rule 51, Rules of Court; SEE J.M. Tuason & Co., Inc., v. de la Rosa, 124 Phil. 1146, 1149-1150, citing J. M. Tuason & Co., Inc. v. Magdangal, 114 Phil. 42, 46 and Joson v. Nable, 87 Phil. 337, 340, holding that where error committed by the trial court is merely procedural and not jurisdictional, the error is harmless, and it is not a reversible error that would taint the proceedings with nullity; SEE, also, Tanda v. Aldaya, 89 Phil. 497, 500-501

[39] Sec. 5, m, Rule 131, Rules of Court

[40] PAL v. Civil Aeronautics Board, 23 SCRA 992, 996

[41] Ganitano v. Secretary of Agriculture, etc., 16 SCRA 543, citing Pajo v. Ago, G.R. No. L-15414, June 30, 1960; see also, Central Bank v. Cloribel, 44 SCRA 307, 317; Macatangay v. Sec. of Public Works, 17 SCRA 31 citing Lovina v. Moreno, L-17821, Nov. 29, 1963; Bachrach Transportation v. Camunayan, 18 SCRA 920 citing cases; Santos v. Sec. of Public Works, 19 SCRA; Atlas Development Corp. v. Gozon, 20 SCRA 886; Gravador v. Mamigo, 20 SCRA 742; Rio y Cia. v. WCC, 20 SCRA 1196

[42] See footnote 1, p. 1 and related text, *supra*

[43] See Sotto v. Samson, 5 SCRA 733; Republic v. Paredes, 108 Phil. 57; Lianga Lumber Co. v. Lianga Timber Co., Inc., 76 SCRA 197; Erico v. Heirs of Chigas, 98 SCRA 575; Francisco v. City of Davao, 12 SCRA 628, Valencia v. Mabilangan, 105 Phil. 162

[44] Li Siu Liat v. Republic, 21 SCRA 1039, 1046, citing Samal v. CA, 99 Phil. 230 and U.S. v. Gimenez, 34 Phil. 74

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