

THE CENTRAL BANK OF THE PHILIPPINES AND RAMON V. TIAOQUI, PETITIONERS, VS. COURT OF APPEALS AND TRIUMPH SAVINGS BANK, RESPONDENTS.

G.R. No. 76118. March 30, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

May a Monetary Board resolution placing a private bank under receivership be annulled on the ground of lack of prior notice and hearing?

This petition seeks review of the decision of the Court of Appeals in CA G.R. S.P. No. 07867 entitled "The Central Bank of the Philippines and Ramon V. Tiaoqui vs. Hon. Jose C. de Guzman and Triumph Savings Bank," promulgated 26 September 1986, which affirmed the twin orders of the Regional Trial Court of Quezon City issued 11 November 1985[1] denying herein petitioners' motion to dismiss Civil Case No. Q-45139, and directing petitioner Ramon V. Tiaoqui to restore the private management of Triumph Savings Bank (TSB) to its elected board of directors and officers, subject to Central Bank comptrollership.[2]

The antecedent facts: Based on examination reports submitted by the Supervision and Examination Sector (SES), Department II, of the Central Bank (CB) "that the financial condition of TSB is one of insolvency and its continuance in business would involve probable loss to its depositors and creditors,"[3] the Monetary Board (MB) issued on 31 May 1985 Resolution No. 596 ordering the closure of TSB, forbidding it from doing business in the Philippines, placing it under receivership, and appointing Ramon V. Tiaoqui as receiver. Tiaoqui assumed office on 3 June 1985.[4]

On 11 June 1985, TSB filed a complaint with the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-45139, against Central Bank and Ramon V. Tiaoqui to annul MB Resolution No. 596, with prayer for injunction, challenging in the process the constitutionality of Sec. 29 of R.A. 269, otherwise known as "The Central Bank Act," as amended, insofar as it authorizes the Central Bank to take over a banking institution even if it is not charged with violation of any law or regulation, much less found guilty thereof.[5]

On 1 July 1985, the trial court temporarily restrained petitioners from implementing MB Resolution No. 596 "until further orders", thus prompting them to move for the quashal of the restraining order (TRO) on the ground that it did not comply with said Sec. 29, i.e., that TSB failed to show convincing proof of arbitrariness and bad faith on the part of petitioners; and, that TSB failed to post the requisite bond in favor of Central Bank.

On 19 July 1985, acting on the motion to quash the restraining order, the trial court granted the relief sought and denied the application of TSB for injunction. Thereafter, Triumph Savings Bank filed with Us a petition for certiorari under Rule 65 of the Rules of Court[6] dated 25 July 1985 seeking to enjoin the continued implementation of the questioned MB resolution.

Meanwhile, on 9 August 1985, Central Bank and Ramon Tiaoqui filed a motion to dismiss the complaint before

the RTC for failure to state a cause of action, i.e., it did not allege ultimate facts showing that the action was plainly arbitrary and made in bad faith, which are the only grounds for the annulment of Monetary Board resolutions placing a bank under conservatorship, and that TSB was without legal capacity to sue except through its receiver.[7]

On 9 September 1985, TSB filed an urgent motion in the RTC to direct receiver Ramon V. Tiaoqui to restore TSB to its private management. On 11 November 1985, the RTC in separate orders denied petitioners' motion to dismiss and ordered receiver Tiaoqui to restore the management of TSB to its elected board of directors and officers, subject to CB comptrollership.

Since the orders of the trial court rendered moot the petition for certiorari then pending before this Court, Central Bank and Tiaoqui moved on 2 December 1985 for the dismissal of G.R. No. 71465 which We granted on 18 December 1985.[8]

Instead of proceeding to trial, petitioners elevated the twin orders of the RTC to the Court of Appeals on a petition for certiorari and prohibition under Rule 65.[9] On 26 September 1986, the appellate court, upheld the orders of the trial court thus -

"Petitioners' motion to dismiss was premised on two grounds, namely, that the complaint failed to state a cause of action and that the Triumph Savings Bank was without capacity to sue except through its appointed receiver.

"Concerning the first ground, petitioners themselves admit that the Monetary Board resolution placing the Triumph Savings Bank under the receivership of the officials of the Central Bank was done without prior hearing, that is, without first hearing the side of the bank. They further admit that said resolution can be the subject of judicial review and may be set aside should it be found that the same was issued with arbitrariness and in bad faith.

"The charge of lack of due process in the complaint may be taken as constitutive of allegations of arbitrariness and bad faith. This is not of course to be taken as meaning that there must be previous hearing before the Monetary Board may exercise its powers under Section 29 of its Charter. Rather, judicial review of such action not being foreclosed, it would be best should private respondent be given the chance to show and prove arbitrariness and bad faith in the issuance of the questioned resolution, especially so in the light of the statement of private respondent that neither the bank itself nor its officials were even informed of any charge of violating banking laws.

"In regard to lack of capacity to sue on the part of Triumph Savings Bank, we view such argument as being specious, for if we get the drift of petitioners' argument, they mean to convey the impression that only the CB appointed receiver himself may question the CB resolution appointing him as such. This may be asking for the impossible, for it cannot be expected that the master, the CB, will allow the receiver it has appointed to question that very appointment. Should the argument of petitioners be given circulation, then judicial review of actions of the CB would be effectively checked and foreclosed to the very bank officials who may feel, as in the case at bar, that the CB action ousting them from the bank deserves to be set aside.

x x x x

"On the questioned restoration order, this Court must say that it finds nothing whimsical, despotic, capricious, or arbitrary in its issuance, said action only being in line and congruent to the action of the Supreme Court in the Banco Filipino Case (G.R. No. 70054) where management of the bank was restored to its duly elected directors and officers, but subject to the Central Bank comptrollership."[10]

On 15 October 1986, Central Bank and its appointed receiver, Ramon V. Tiaoqui, filed this petition under Rule 45 of the Rules of Court praying that the decision of the Court of Appeals in CA-G.R. SP No. 07867 be set aside, and

that the civil case pending before the RTC of Quezon City, Civil Case No. Q-45139, be dismissed. Petitioners allege that the Court of Appeals erred -

(1) in affirming that an insolvent bank that had been summarily closed by the Monetary Board should be restored to its private management supposedly because such summary closure was "arbitrary and in bad faith" and a denial of "due process";

(2) in holding that the "charge of lack of due process" for "want of prior hearing" in a complaint to annul a Monetary Board receivership resolution under Sec. 29 of R.A. 265 "may be taken as . . . allegations of arbitrariness and bad faith"; and

(3) in holding that the owners and former officers of an insolvent bank may still act or sue in the name and corporate capacity of such bank, even after it had been ordered closed and placed under receivership.[11]

The respondents, on the other hand, allege inter alia that in the *Banco Filipino* case,[12] We held that CB violated the rule on administrative due process laid down in *Ang Tibay vs. CIR* (69 Phil. 635) and *Eastern Telecom Corp. vs. Dans, Jr.* (137 SCRA 628) which requires that prior notice and hearing be afforded to all parties in administrative proceedings. Since MB Resolution No. 596 was adopted without TSB being previously notified and heard, according to respondents, the same is void for want of due process; consequently, the bank's management should be restored to its board of directors and officers.[13]

Petitioners claim that it is the essence of Sec. 29 of R.A. 265 that prior notice and hearing in cases involving bank closures should not be required since in all probability a hearing would not only cause unnecessary delays but also provide bank "insiders" and stockholders the opportunity to further dissipate the bank's resources, create liabilities for the bank up to the insured amount of P40,000.00, and even destroy evidence of fraud or irregularity in the bank's operations to the prejudice of its depositors and creditors.[14] Petitioners further argue that the legislative intent of Sec. 29 is to repose in the Monetary Board exclusive power to determine the existence of statutory grounds for the closure and liquidation of banks, having the required expertise and specialized competence to do so.

The first issue raised before Us is whether absence of prior notice and hearing may be considered acts of arbitrariness and bad faith sufficient to annul a Monetary Board resolution enjoining a bank from doing business and placing it under receivership. Otherwise stated, is absence of prior notice and hearing constitutive of acts of arbitrariness and bad faith?

Under Sec. 29 of R.A. 265,[15] the Central Bank, through the Monetary Board, is vested with exclusive authority to assess, evaluate and determine the condition of any bank, and finding such condition to be one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, forbid the bank or non-bank financial institution to do business in the Philippines; and shall designate an official of the CB or other competent person as receiver to immediately take charge of its assets and liabilities. The fourth paragraph,[16] which was then in effect at the time the action was commenced, allows the filing of a case to set aside the actions of the Monetary Board which are tainted with arbitrariness and bad faith.

Contrary to the notion of private respondent, Sec. 29 does not contemplate prior notice and hearing before a bank may be directed to stop operations and placed under receivership. When par. 4 (now par. 5, as amended by E.O. 289) provides for the filing of a case within ten (10) days after the receiver takes charge of the assets of the bank, it is unmistakable that the assailed actions should precede the filing of the case. Plainly, the legislature could not have intended to authorize "no prior notice and hearing" in the closure of the bank and at the same time allow a suit to annul it on the basis of absence thereof.

In the early case of *Rural Bank of Lucena, Inc. v. Arca* [1965],[17] We held that a previous hearing is nowhere required in Sec. 29 nor does the constitutional requirement of due process demand that the correctness of the Monetary Board's resolution to stop operation and proceed to liquidation be first adjudged before making the resolution effective. It is enough that a subsequent judicial review be provided.

Even in *Banco Filipino*,[18] We reiterated that Sec. 29 of R.A. 265 does not require a previous hearing before the Monetary Board can implement its resolution closing a bank, since its action is subject to judicial scrutiny as provided by law.

It may be emphasized that Sec. 29 does not altogether divest a bank or a non-bank financial institution placed under receivership of the opportunity to be heard and present evidence on arbitrariness and bad faith because within ten (10) days from the date the receiver takes charge of the assets of the bank, resort to judicial review may be had by filing an appropriate pleading with the court. Respondent TSB did in fact avail of this remedy by filing a complaint with the RTC of Quezon City on the 8th day following the takeover by the receiver of the bank's assets on 3 June 1985.

This "close now and hear later" scheme is grounded on practical and legal considerations to prevent unwarranted dissipation of the bank's assets and as a valid exercise of police power to protect the depositors, creditors, stockholders and the general public.

In *Rural Bank of Buhi, Inc. v. Court of Appeals*,[19] We stated that -

"x x x due process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out and disillusionment will run the gamut of the entire banking community."

We stressed in *Central Bank of the Philippines v. Court of Appeals*[20] that -

"xxx the banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state (9 CJS 32). Banks are affected with public interest because they receive funds from the general public in the form of deposits. Due to the nature of their transactions and functions, a fiduciary relationship is created between the banking institutions and their depositors. Therefore, banks are under the obligation to treat with meticulous care and utmost fidelity the accounts of those who have reposed their trust and confidence in them (*Simex International [Manila], Inc., v. Court of Appeals*, 183 SCRA 360 [1990]).

"It is then the Government's responsibility to see to it that the financial interests of those who deal with the banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the Central Bank which, pursuant to its Charter (R.A. 265, as amended), is authorized to administer the monetary, banking and credit system of the Philippines. Under both the 1973 and 1987 Constitutions, the Central Bank is tasked with providing policy direction in the areas of money, banking and credit; corollarily, it shall have supervision over the operations of banks (Sec. 14, Art. XV, 1973 Constitution, and Sec. 20, Art. XII, 1987 Constitution). Under its charter, the CB is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well. This power has been expressly recognized by this Court. In *Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Banks* (189 SCRA 14 [1990], this Court held that:

`x x x x [u]nless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government. The government cannot simply cross its arms while the assets of a bank are being

depleted through mismanagement or irregularities. It is the duty of the Central Bank in such an event to step in and salvage the remaining resources of the bank so that they may not continue to be dissipated or plundered by those entrusted with their management.”

Section 29 of R.A. 265 should be viewed in this light; otherwise, We would be subscribing to a situation where the procedural rights invoked by private respondent would take precedence over the substantive interests of depositors, creditors and stockholders over the assets of the bank.

Admittedly, the mere filing of a case for receivership by the Central Bank can trigger a bank run and drain its assets in days or even hours leading to insolvency even if the bank be actually solvent. The procedure prescribed in Sec. 29 is truly designed to protect the interest of all concerned, i.e., the depositors, creditors and stockholders, the bank itself, and the general public, and the summary closure pales in comparison to the protection afforded public interest. At any rate, the bank is given full opportunity to prove arbitrariness and bad faith in placing the bank under receivership, in which event, the resolution may be properly nullified and the receivership lifted as the trial court may determine.

The heavy reliance of respondents on the Banco Filipino case is misplaced in view of factual circumstances therein which are not attendant in the present case. We ruled in Banco Filipino that the closure of the bank was arbitrary and attendant with grave abuse of discretion, not because of the absence of prior notice and hearing, but that the Monetary Board had no sufficient basis to arrive at a sound conclusion of insolvency to justify the closure. In other words, the arbitrariness, bad faith and abuse of discretion were determined only after the bank was placed under conservatorship and evidence thereon was received by the trial court. As this Court found in that case, the Valenzuela, Aurellano and Tiaoqui Reports contained unfounded assumptions and deductions which did not reflect the true financial condition of the bank. For instance, the subtraction of an uncertain amount as valuation reserve from the assets of the bank, result in its net worth or the unimpaired capital surplus; it did not reflect the total financial position of Banco Filipino.

Furthermore, the same reports showed that the total assets of Banco Filipino far exceeded its total liabilities. Consequently, on the basis thereof, the Monetary Board had no valid reason to liquidate the bank; perhaps it could have merely ordered its reorganization or rehabilitation, if need be. Clearly, there was in that case a manifest arbitrariness, abuse of discretion and bad faith in the closure of Banco Filipino by the Monetary Board. But, this is not the case before Us. For here, what is being raised as arbitrary by private respondent is the denial of prior notice and hearing by the Monetary Board, a matter long settled in this jurisdiction, and not the arbitrariness which the conclusions of the Supervision and Examination Sector (SES), Department II, of the Central Bank were reached.

Once again We refer to *Rural Bank of Buhi, Inc. v. Court of Appeals*,^[21] and reiterate Our pronouncement therein that -

“x x x the law is explicit as to the conditions prerequisite to the action of the Monetary Board to forbid the institution to do business in the Philippines and to appoint a receiver to immediately take charge of the bank's assets and liabilities. They are: (a) an examination made by the examining department of the Central Bank; (b) report by said department to the Monetary Board; and (c) prima facie showing that its continuance in business would involve probable loss to its depositors or creditors.”

In sum, appeal to procedural due process cannot just outweigh the evil sought to be prevented; hence, We rule that Sec. 29 of R.A. 265 is a sound legislation promulgated in accordance with the Constitution in the exercise of police power of the state. Consequently, the absence of notice and hearing is not a valid ground to annul a Monetary Board resolution placing a bank under receivership. The absence of prior notice and hearing cannot be

deemed acts of arbitrariness and bad faith. Thus, an MB resolution placing a bank under receivership, or conservatorship for that matter, may only be annulled after a determination has been made by the trial court that its issuance was tainted with arbitrariness and bad faith. Until such determination is made, the status quo shall be maintained, i.e., the bank shall continue to be under receivership.

As regards the second ground, to rule that only the receiver may bring suit in behalf of the bank is, to echo the respondent appellate court, "asking for the impossible, for it cannot be expected that the master, the CB, will allow the receiver it has appointed to question that very appointment." Consequently, only stockholders of a bank could file an action for annulment of a Monetary Board resolution placing the bank under receivership and prohibiting it from continuing operations.[22] In *Central Bank v. Court of Appeals*,[23] We explained the purpose of the law -

“x x x in requiring that only the stockholders of record representing the majority of the capital stock may bring the action to set aside a resolution to place a bank under conservatorship is to ensure that it be not frustrated or defeated by the incumbent Board of Directors or officers who may immediately resort to court action to prevent its implementation or enforcement. It is presumed that such a resolution is directed principally against acts of said Directors and officers which place the bank in a state of continuing inability to maintain a condition of liquidity adequate to protect the interest of depositors and creditors. Indirectly, it is likewise intended to protect and safeguard the rights and interests of the stockholders. Common sense and public policy dictate then that the authority to decide on whether to contest the resolution should be lodged with the stockholders owning a majority of the shares for they are expected to be more objective in determining whether the resolution is plainly arbitrary and issued in bad faith.”

It is observed that the complaint in this case was filed on 11 June 1985 or two (2) years prior to 25 July 1987 when E.O. 289 was issued, to be effective sixty (60) days after its approval (Sec. 5). The implication is that before E.O. 289, any party in interest could institute court proceedings to question a Monetary Board resolution placing a bank under receivership. Consequently, since the instant complaint was filed by parties representing themselves to be officers of respondent Bank (Officer-in-Charge and Vice President), the case before the trial court should now take its natural course. However, after the effectivity of E.O. 289, the procedure stated therein should be followed and observed.

PREMISES considered, the Decision of the Court of Appeals in CA-G.R. SP No. 07867 is AFFIRMED, except insofar as it upholds the Order of the trial court of 11 November 1985 directing petitioner RAMON V. TIAOQUI to restore the management of TRIUMPH SAVINGS BANK to its elected Board of Directors and Officers, which is hereby SET ASIDE.

Let this case be remanded to the Regional Trial Court of Quezon City for further proceedings to determine whether the issuance of Resolution No. 596 of the Monetary Board was tainted with arbitrariness and bad faith and to decide the case accordingly.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Campos, Jr., and Quason, JJ., concur.

Feliciano, J., no part petitioners represented by my former firm.

Melo, J., no part.

[1] Penned by Judge Jose C. de Guzman, RTC, Br. 93, Quezon City.

[2] Rollo, pp. 29-34.

[3] Id., p. 5; see also Minutes of Meeting of the Monetary Board of 31 May 1985, Annex "D", Petition, CA-G.R. SP No. 07867.

[4] Id., p. 93.

[5] Id., p. 30.

[6] Triumph Savings Bank vs. Hon. Jose de Guzman, G.R. No. 71465.

[7] Rollo, pp. 30-31.

[8] Brief for Petitioners, p. 4; Rollo, p. 70.

[9] Central Bank of the Philippines vs. Hon. Jose de Guzman, CA G.R. SP No. 07867, penned by Melo, J., concurred in by De Pano, Jr., and Chua, JJ.; Rollo pp. 29-34.

[10] Rollo, pp. 31-32, 34.

[11] Id., p. 7-8.

[12] Banco Filipino Savings and Mortgage Bank vs. Monetary Board, Central Bank, G.R. No. 70054, and companion cases, G.R. Nos. 68878, 77255-58, 78766, 78767, 78894, 81303, 81304 and 90473, 11 December 1991; 204 SCRA 767.

[13] Rollo, pp. 54-56.

[14] Rollo, p. 70.

[15] "Sec. 29 Proceedings upon insolvency. - Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and shall designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all powers necessary for this purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions."

[16] "The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section, Section 28-A, and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by the court only if there is convincing proof that the action is plainly arbitrary and made in bad faith: Provided, That the same is raised in an appropriate pleading filed before the proper court within a period of ten (10) days from the date the conservator or receiver takes charge of the assets and liabilities of the bank or non-bank financial intermediary performing quasi-judicial functions or, in case of liquidation, within ten (10) days from receipt of notice by the said bank or non-bank financial intermediary of the order of its liquidation. No restraining order or injunction shall be issued by the court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act, unless there is convincing proof that

the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier's check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this Section shall govern, the issuance and dissolution of the restraining order or injunction contemplated in this Section."

[17] G.R. No. L-21146, 29 September 1965, 15 SCRA 67, 72 and 74, citing Sec. 29, R.A. 265; 12 Am. Jur. 305, Sec. 611; *Bourjois vs. Chapman*, 301 U.S. 183, 81 Law Ed. 1027, 1032; *American Surety Co. vs. Baldwin*, 77 Law Ed. 231, 86 ALR 307; *Wilson vs. Standefer*, 46 Law Ed. 612.

[18] *Banco Filipino Savings and Mortgage Bank v. Monetary Board, Central Bank, and companion cases*, supra, p. 798, citing *Rural Bank of Bato vs. IAC*, G.R. No. 65642, 15 October 1984, *Rural Bank vs. Court of Appeals*, G.R. 61689, 20 June 1988, 162 SCRA 288.

[19] G.R. No. 61689, 20 June 1988, 162 SCRA 288, 302.

[20] G.R. Nos. 88353 and 92943, 8 May 1992, 208 SCRA 652, 684, 685.

[21] G.R. No. 61689, 20 June 1988, 162 SCRA 288, 302.

[22] As amended by E.O. 289, then par. 4, now par. 5, reads: "x x x [T]he actions of the Monetary Board under this Section x x x shall be final and executory, and can be set aside by a court only if there is convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith: Provided, That the same is raised in an appropriate pleading filed by the stockholders of record representing the majority of the capital stock of the institution before the proper court within a period of ten (10) days from the date the receiver takes charge of the assets and liabilities of the bank x x x x"

[23] Op. cit.

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