

**CELSO M. LARGA, PETITIONER, VS. HON. SANTIAGO RANADA, JR.,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF MAKATI, BRANCH
137, ASSISTANT FISCAL EDWIN CONDAYA, PROSECUTING FISCAL OF
BRA...**

G.R. No. 79576. August 03, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is a Petition for Certiorari, Prohibition and Mandamus with Preliminary Injunction seeking to set aside the orders of respondent Judge dated 9 June 1987 and 24 June 1987 denying, respectively, petitioner Larga's Motion to Quash and his Motion for Reconsideration of the order denying his Motion to Quash, in Criminal Case No. 29102.

Petitioner Celso M. Larga, one of the owners and operators of the "Bistcor Diesel Calibration Service." issued in favor of respondent Home Development Mutual Fund ("HDMF") Security Bank & Trust Company Check No. 225466 in the amount of P3,840.00 as payment of the employer-employee contributions to the Pag-ibig Fund pertaining to the period from January to April 1984. That check was, however, dishonored for being stale when it was presented for payment by the drawee bank. Demand was made upon petitioner Larga to replace the dishonored check or otherwise to pay the amount thereof in full, but he failed and refused to comply.

It turns out that petitioner Larga failed to remit to the Pag-ibig Fund considerably more employer-employee contributions than just the P3,840.00. On 23 February 1987, Special Prosecutor Luis B. Pangilinan, Jr. filed an information against petitioner Larga for violation of Section 23 of Presidential Decree No. 1752, known as "The Home Development Mutual Fund Law of 1980," committed as follows:

"The undersigned Special Prosecutor accuses CELSO LARGA AND DIOSCORO LARGA of the crime of violation of Section 23 of P.D. 1752 committed as follows:

That on or about the period from January 1984 up to the present in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being then the owners and operators of BISTCOR DIESEL CALIBRATION SERVICE conspiring and confederating together and both of them mutually helping and aiding one another and with intent to defraud the HDMF, did then and there willfully, unlawfully and feloniously fail and refuse to remit to the HDMF the employer-employee monthly contributions amounting to TWENTY SIX THOUSAND EIGHT HUNDRED EIGHTY (P26,880.00) PESOS, more or less, computed as of April 1986 despite regular deductions made on their monthly salaries.

CONTRARY TO LAW."[1]

On 10 April 1987, petitioner filed a Motion to Quash asserting as ground thereof that the criminal liability for the offense with which he was charged was extinguished with the issuance of Executive Order No. 90 dated 17 December 1986 by the President of the Philippines, since Section 10 thereof had made contributions to the Home Development Mutual Fund ("HDMF") voluntary. Consequently, petitioner argues, the respondent court had lost its jurisdiction to try and sentence the petitioner for the crime charged in the above-quoted information.

On 18 May 1987, private respondent HDMF filed an Opposition to the Motion to Quash, arguing that Section 10 of Executive Order No. 90 had merely amended the portion of Presidential Decree No. 1752 dealing with the nature of contributions to the Pag-ibig Fund by making such contributions voluntary commencing from January 1987, and that non-remittance of contributions accruing before January 1987 was still punishable under Section 23 of Presidential Decree No. 1752.

On 9 June 1987, the Regional Trial Court denied the Motion to Quash.

On 10 June 1987, petitioner filed a Reply to the Opposition to the Motion to Quash, there arguing that Section 10 (b) and (c) Of Executive Order No. 90 and the Implementing Rules operated as an absolute repeal of Section 23 of Presidential Decree No. 1752. Considering that said repeal was favorable to the petitioner, he urged that it should be applied retroactively to cover his case.

The Regional Trial Court treated the Reply to the Opposition as a Motion for Reconsideration of the Court's Order of 9 June 1987, which Motion the Court denied on 27 July 1987.

In the instant Petition, petitioner urges once more that criminal liability for the acts with which he was charged has been extinguished and that the Regional Trial Court has lost its jurisdiction to try and sentence the petitioner.

Most briefly put, Presidential Decree No. 1752 created the HDMF which was funded by savings which covered government and private sector employees contributed for that purpose every month and by the counterpart amounts which employers contributed, based on a graduated percentage of the basic monthly pay of the employees. These percentages were: 1% - in 1981; 2% - in 1982; and 3% - in 1983 and onwards.

Section 4 of P.D. No. 1752 prescribed mandatory coverage in the following terms:

"Section 4. Fund Coverage. - Coverage of the Fund shall be mandatory upon all employees covered by the Social Security System and the Government Service Insurance System, and their respective employers.

Such coverage may be extended to other working groups, with or without employer contributions, as may be determined by the Board of Trustees." (Underscoring supplied)

Section 23 of the same statute established penal sanctions for violations of the statute and of its Implementing Rules and Regulations in the following manner:

"Section 23. Penal Provisions. - Refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of this Decree, as well as the implementing rules and regulations adopted by the Board of Trustees, particularly with respect to registration of employees, collection and remittance of employee savings as well as employer counterparts, or the correct amount due, within the time set in the implementing rules and regulations or specific call or extension made by the Fund Management, shall constitute an offense punishable

by a fine of not less, but not more than twice, the amount involved or imprisonment of not more than six (6) years, or both such fine and imprisonment, in the discretion of the Court, apart from the civil liabilities and/or obligations of the offender or delinquent. When the offender is a corporation, the penalty shall be imposed upon the members of the governing board and the President or General Manager, without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines, and deportation when the offender is a foreigner." (Underscoring supplied)

Executive Order No. 90, which addresses and seeks to implement the National Shelter Program of the Government, defines the roles therein of the various government agencies involved in that Program. Executive Order No. 90 provides, among other things, as follows:

"Section 9. Funding Sources. -- To enable the Social Security System, the Government Service Insurance System and the Home Development Mutual Fund to provide benefits to their members and to generate the necessary long-term funds for housing, a rationalization of all employer and employee contributions for all social insurance and provident fund benefits is hereby directed to include the following:

- a. Raising the Social Security System maximum compensation, inclusive of the Cost of Living Allowance, as basis for contributions from P1,000.00 to P3,000.00;
- b. Making contributions to the Home Development Mutual Fund voluntary on the parts of both employees and employers;
- c. Instituting a single mandatory contribution rate for employees and employers for all social insurance programs.

Sec. 10. Home Development Mutual Fund as Voluntary Fund. - In the implementation of the above rationalization program, the following shall govern the operations of the Home Development Mutual Fund:

- a. All existing contributions together with their accumulated earnings shall be retained in the Home Development Mutual Fund until their maturity in accordance with existing rules and regulations.
- b. Membership in the fund for new private and government employees and their respective employers shall be voluntary after December 31, 1986.
- c. After December 31, 1986, existing members, both employees and employers, shall have the option to continue or discontinue new Fund contributions.

d. To encourage provident fund savings for home acquisition, all government instrumentalities, agencies and corporations shall match the voluntary contributions made by government employees in accordance with existing ratios. Private employers are urged to match the contributions of their employees who opt to continue their membership in the Fund." (Italics supplied)

It should be made clear, in the first place, that Sections 9 and 10 of Executive Order No. 90 had the effect of modifying Section 4 of P.D. No. 1752. That modification consisted in rendering fund coverage voluntary, or non-mandatory, after December 31, 1986. Clearly, Executive Order No. 90 did not by its terms purport to eliminate the obligatory character of fund coverage -- or more precisely, the consequences of obligatory coverage accruing -- prior to 1 January 1987. It follows that employer-employee contributions to the Fund which had accrued on or before December 31, 1986 still had to be remitted to the Fund. Obligations under the statute already accrued as of 1 January 1987 did not lose their positive law obligatory character. More specifically, the obligation to remit to the Fund previously accrued employer-employee contributions continued to exist and be exigible. Put a little differently, Sections 9 and 10 of Executive Order No. 90 amended Section 4 of P.D. No. 1752, not retroactively, but only prospectively. It is perhaps well to stress that there was no constitutional compulsion upon the legislative authority to amend Section 4 of P.D. No. 1752 retroactively. A court, moreover, cannot give retroactive effect to Sections 9 and 10 of Executive Order No. 90, even though favorable to the accused-petitioner, against the express terms of the amending provisions themselves.[2]

It is equally clear that Executive Order No. 90 did not purport to "de-criminalize" all prior violations of P.D. No. 1752 and its Implementing Rules and Regulations, and did not modify or repeal, whether expressly or impliedly, Section 23 of P.D. No. 1752. It is commonplace learning that implied repeals are not favored in law and are not casually to be assumed. The first effort of a court must always be to reconcile or adjust the provisions of one statute with those of another so as to give sensible effect to both provisions.[3] Only where there is clear inconsistency and irreconcilable conflict between the provisions of two (2) statutes, may a court hold that the provisions later in point of time have impliedly repealed the earlier ones.[4] That is not the case here in respect of Sections 9 and 10 of E.O. No. 90 and Section 23 of P.D. No. 1752. It goes without saying that from 1 January 1987 onwards, refusal of an employee or an employer to become or remain a member of the Pag-ibig Fund is no longer a violation of Section 4 of P.D. No. 1752 and by the same token can no longer be the subject of criminal prosecution under Section 23 of P.D. No. 1752. However, failure to remit contributions accruing on or before 31 December 1986 in a timely manner, remains punishable as a violation of P.D. No. 1752 and of the Implementing Rules and Regulations adopted by the HDMF Board of Trustees.[5] In the instant case, petitioner was prosecuted for failure to remit to the HDMF employer-employee contributions which had accrued on or before April 1986. Indeed, it may be useful to note here that failure on the part of an employer to remit the voluntary contributions of its employees accruing after 1 January 1987, in accordance with the Implementing Rules and Regulations of Pag-Ibig Fund, also constitutes a violation punishable under Section 23 of P.D. No 1752.[6]

WHEREFORE, the Court Resolved to DISMISS the Petition for Certiorari, Prohibition and Mandamus with Preliminary Injunction, for lack of merit. Costs against petitioner.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 14, Annex "A" of Petition.

[2] It is, in other words, the intent of the legislative authority in enacting the amendatory statute that must be given effect. Article 22 of the Revised Penal Code which states that "[p]enal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony ---," does not affect the foregoing rule. See e.g., *Pardo de Tavera v. Valdez*, 1 Phil. 468 (1902).

[3] *Jalandoni vs. Endaya*, 55 SCRA 261 (1974); *Villegas vs. Subido*, 41 SCRA 190, 196-197 (1971); *National Power Corporation vs. ARCA*, 25 SCRA 931 (1968); *U.S. vs. Palacios*, 33 Phil. 208 (1916); and *Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano*, 13 SCRA 377 (1965).

[4] *Philippine American Management Co., Inc. vs. Philippine American Management Employees Association*, 49 SCRA 194 (1973); and *Villegas vs. Subido*, 41 SCRA 190 (1971).

[5] Section 10 of Rule IV of the HDMF Implementing Rules and Regulations reads:

"Employee contributions collected by an employer under the mandatory provisions of Presidential Decree No. 1752 as amended which remain unpaid to the Fund must be remitted to the same by the employer together with the employer contributions in accordance with the required contribution rate at the time it was collected without penalty within the time set by Fund Management, failure of which shall render the employer liable to a fine of not less, but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent. When the offender is a corporation, the penalty shall be imposed upon the members of the governing board and the President or General Manager, without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines, and deportation when the offender is a foreigner."

[6] Section 9, Rule IV, HDMF Implementing Rules and Regulations in relation to Section 23, P.D. No. 1752 as amended.

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