

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. Nos. 89679-81. September 28, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition raises the issue of whether it is within the corporate powers of the Land Bank of the Philippines (LBP) to waive the penalty charges of P9,636.36 on the loan of the Home Savings Bank and Trust Company (HSBTC). The LBP asserts that, as a banking institution, its Charter authorizes it to condone claims or liabilities. The Commission on Audit, on the other hand, maintains that such power is exclusively vested in the Commission pursuant to Section 36 of Pres. Decree No. 1445, or the Government Auditing Code.

The records indicate that on 22 July 1980, the Board of Directors of the LBP issued Resolution No. 80-222 (Rollo, pp. 4-5, pp. 91-93) fixing the new rates for penalty charges on past due loans/amortizations and other credit accommodations. The Resolution also provided that "in cases of defaults in loan payment and other credit accommodations due to unforeseen, highly justifiable reasons/circumstances beyond the control of the borrower such as damages due to natural calamities, sickness, adverse government rulings or court judgments, duly processed and verified by the lending units, penalty charges may be condoned/reduced by the Loan Executive Committee upon recommendation of the appropriate lending units" (Underscoring supplied).

Pursuant to this Resolution, LBP, through its Loan Executive Committee, waived the penalty charges in the amount of Nine Thousand Six Hundred Thirty Six Pesos and Thirty Six Centavos (P9,636.36) on the loan of HSBTC, a thrift banking institution organized under Philippine laws (Rollo, p. 4).

On 23 September 1986, LBP requested its Corporate Auditor to pass in audit its waiver of the penalty charges. Said official questioned the waiver and opined that the power to condone interests or penalties is vested exclusively in the COA but, in the absence of a categorical ruling on the matter applicable to a government banking institution, referred the LBP request to the COA in a letter dated 20 January 1987.

In COA Decision No. 551, dated 29 June 1988 (Annex "C", Petition, Rollo, p. 29), the COA held that the waiver is unauthorized and should outrightly be disallowed in audit, pursuant to Pres. Decree No. 1445, Section 36, *infra*. Reconsiderations successively sought by LBP met with denial in COA Decision No. 701, dated 13 December 1988 (Annex "F", Petition, Rollo, p. 38), and in COA Decision No. 977, dated 6 June 1989 (Annex "A", *ibid.*, p. 25), both of which Decisions emphasized COA's exclusive prerogative to settle and/or compromise claims.

Thus, this Petition and Amended Petition erroneously brought under Rules 44 and 43 of the Rules of Court, respectively, the proper remedy being that of Certiorari under Rule 65 (Article IX (A), Sec. 7, 1987 Constitution).

The issue for resolution is whether or not LBP is authorized to compromise or release claims or liabilities in whole or in part.

COA maintains that it has the sole prerogative to compromise liabilities to the Government pursuant to Section 36

of Pres. Decree No. 1445, the Government Auditing Code, which provides, inter alia, that:

"Sec. 36. Power to compromise claims. -

(1) When the interest of the government so requires, the Commission may compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.

x x x"

On the other hand, LBP claims that it, too, has the power to condone penalties being a commercial bank clothed with authority to exercise all the general powers mentioned in the Corporation Law and the General Banking Act, as provided in Section 75[12] of its Charter, Rep. Act No. 3844, as amended by Pres. Decree No. 251, among which is the power to write off loans and advances (General Banking Act, Sec. 84, *infra*), which necessarily includes the lesser power to charge off interests and penalties. LBP also submits that its Charter (Rep. Act No. 3844, as amended), being a special law, should prevail over the general grant of authority to COA by Pres. Decree No. 1445 to compromise claims.

We agree with LBP.

LBP was created as a body corporate and government instrumentality to provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform (Rep. Act No. 3844, as amended, Sec. 74). Section 75 of its Charter vests in LBP specific powers normally exercised by banking institutions, such as the authority to grant short, medium and long-term loans and advances against security of real estate and/or other acceptable assets; to guarantee acceptance(s), credits, loans, transactions or obligations; and to borrow from, or rediscount notes, bills of exchange and other commercial papers with the Central Bank. In addition to the enumeration of specific powers granted to LBP, Section 75 of its Charter also authorizes it:

"12. To exercise the general powers mentioned in the Corporation Law and the General Banking Act, as amended, insofar as they are not inconsistent or incompatible with this Decree."

One of the general powers mentioned in the General Banking Act is that provided for in Section 84 thereof, reading:

"x x x

"Writing-off loans and advances with an outstanding amount of one hundred thousand pesos or more shall require the prior approval of the Monetary Board" (As amended by PD 71).

It will thus be seen that LBP is a unique and specialized banking institution, not an ordinary "government agency" within the scope of Section 36 of Pres. Decree No. 1445. As a bank, it is specifically placed under the supervision and regulation of the Central Bank of the Philippines pursuant to its Charter (Sec. 97, Rep. Act No. 3844, as amended by Pres. Decree No. 251). In so far as loans and advances are concerned, therefore, it should be deemed primarily governed by Central Bank Circular No. 958, Series of 1983, which vests the determination of the frequency of writing-off loans in the Board of Directors of a bank provided that the loans written-off do not exceed a certain aggregate amount. The pertinent portion of that Circular reads:

"b. Frequency/ceiling of write-off. The frequency for writing-off loans and advances shall be left to the discretion of the Board of Directors of the bank concerned. Provided, that the aggregate amount of loans and advances which may be written-off during the year, shall in no case exceed 3% of total loans and investments; Provided, further, that charge-offs are made against allowance for possible losses, earnings during the year

and/or retained earnings."

The authority to write-off loans and advances should be construed to include within its scope the waiver of penalty charges on past due loans, which are of a lesser category.

Concededly, the power to write-off is not expressly granted in the LBP Charter. It can be logically implied however, from LBP's authority to exercise the general powers vested in banking institutions as provided in the General Banking Act. The clear intendment of its Charter is for LBP to be clothed not only with the express powers granted to it, but also with those implied, incidental and necessary for the exercise of those express powers. "The test to be applied is whether the act of the corporation is in direct and immediate furtherance of its business, fairly incident to the express powers and reasonably necessary to their exercise. If so, the corporation has the power to do it; otherwise, not" (*Montelibano v. Bacolod-Murcia Milling Co. Inc.*, L-15092, 18 May 1962, 5 SCRA 36).

It bears emphasizing that LBP was created to provide adequate financial support to the agrarian reform program as well as to grant loans to farmers' cooperatives/associations, and to finance and/or guarantee the acquisition of farm lots transferred to tenant-farmers. Its clientele consists primarily of agrarian reform beneficiaries, landowners affected by agrarian reform and Land Bank bond-holders. It should, therefore, be given some measure of flexibility in its operations in order not to hamper it unduly in the fulfillment of its objectives. Moreover, it is only the penalty charges on a past due loan of the HSBTC that are being condoned and not the loan itself. The criteria for waiver are likewise specifically spelled out in LBP Resolution No. 80-222, namely, for "unforeseen, highly justifiable reasons/circumstances beyond the control of the borrower such as damages due to natural calamities, sickness, adverse government ruling or court judgments, duly processed and verified by the appropriate lending units."

But while we rule that LBP is empowered by its corporate charter to waive penalty charges, thereby overruling COA's avowed exclusive prerogative to settle and compromise liabilities to the Government, nevertheless, pursuant to Pres. Decree No. 1445, LBP is still subject to COA's general audit jurisdiction to see to it that the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged (Section 25[1]), and as provided for in its Section 26, reading:

"Section 26. General jurisdiction. - The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts, and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations x x x."

This is but in keeping with the wide sphere of state audit set forth in the fundamental law of the land.

"SEC. 2 (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, x x x" (Article IX [D], Sec. 2[1], 1987 Constitution).

Having arrived at the foregoing conclusions, we find no need to pass upon the other arguments raised.

WHEREFORE, the Decisions of the Commission on Audit sought to be reviewed are hereby SET ASIDE in so

far as they hold that the Commission on Audit, vis-a-vis the Land Bank, has the exclusive prerogative to settle and compromise liabilities to the Government. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Paras, J., on leave.

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