

EN BANC

[G.R. No. 168613, March 05, 2013]

**ATTY. MA. ROSARIO MANALANG-DEMIGILLO, PETITIONER, VS.
TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE
PHILIPPINES (TIDCORP), AND ITS BOARD OF DIRECTORS,
RESPONDENTS.**

[G.R. NO. 185571]

**TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE
PHILIPPINES, PETITIONER, VS. MA. ROSARIO S. MANALANG-
DEMIGILLO, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

A reorganization undertaken pursuant to a specific statutory authority by the Board of Directors of a government-owned and government-controlled corporation is valid.

Antecedents

On February 12, 1998, the Philippine Export and Foreign Loan Guarantee was renamed Trade and Investment Development Corporation of the Philippines (TIDCORP) pursuant to Republic Act No. 8494 entitled *An Act Further Amending Presidential Decree No. 1080, As Amended, by Reorganizing And Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purpose, and for Other Purposes*.

Republic Act No. 8494 reorganized the structure of TIDCORP. The issuance of appointments in accordance with the reorganization ensued. Petitioner Rosario Manalang-Demigillo (Demigillo) was appointed as Senior Vice President (PG 15) with permanent status, and was assigned to the Legal and Corporate Services Department (LCSD) of TIDCORP.

In 2002, TIDCORP President Joel C. Valdes sought an opinion from the Office of the Government Corporate Counsel (OGCC) relative to TIDCORP's authority to undertake a reorganization under the law, whose Section 7 and Section 8 provide as follows:

Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer,

assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding. x x x

Section 8. All incumbent personnel of the Philippine Export and Foreign Loan Guarantee Corporation shall continue to exercise their duties and functions as personnel of the TIDCORP until reorganization is fully implemented but not to exceed one (1) year from the approval of this Act. The Board of Directors is authorized to provide for separation benefits for those who cannot be accommodated in the new structure. All those who shall retire or are separated from the service on account of the reorganization under the preceding Section shall be entitled to such incentives, as are authorized by the Corporation, which shall be in addition to all gratuities and benefits to which they may be entitled under existing laws.

In Opinion No. 221 dated September 13, 2002,^[1] then Government Corporate Counsel Amado D. Valdez opined as follows:

There is no question on the power of the PhilEXIM (also known as TIDCORP) Board of Directors to undertake a reorganization of the corporation's present organizational set-up. In fact, the authority to provide for the corporation's organizational structure is among the express powers granted to PhilEXIM through its Board.

As to the one-year period to implement a reorganization mentioned in Section 8 of RA 8494, it is our considered opinion that the same provision refers to the initial reorganization to effect transition from the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) to what is now known as the Trade and Investment Corporation of the Philippines (TIDCORP). The one-year period does not, however, operate as a limitation that any subsequent changes in the organizational set-up pursuant to the authority of the Board to determine the corporation's organizational structure under Section 7 of RA 8494, which is designed to make the corporation more attuned to the needs of the people or, in this case, the sector of the Philippine economy that it serves, can only be made during the same one-year period.

On the basis of OGCC Opinion No. 221, the Board of Directors passed Resolution No. 1365, Series of 2002, on October 22, 2002 to approve a so-called *Organizational Refinement/Restructuring Plan* to implement a new organizational structure and staffing pattern, a position classification system, and a new set of qualification standards.

During the implementation of the *Organizational Refinement/Restructuring Plan*, the LCSD was abolished. According to the List of Appointed Employees under the New Organizational Structure of TIDCORP as of November 1, 2002, Demigillo, albeit retaining her position as a Senior Vice President, was assigned to head the Remedial and Credit Management Support Sector (RCMSS). On the same date, President Valdes issued her appointment as head of RCMSS, such appointment being in nature

a reappointment under the reorganization plan.

On December 13, 2002, President Valdes issued a memorandum informing all officers and employees of TIDCORP that the Board of Directors had approved on December 11, 2002 the appointments issued pursuant to the newly approved positions under the *Organizational Refinement/Restructuring Plan*.

In her letter dated December 23, 2002 that she sent to TIDCORP Chairman Jose Isidro Camacho, however, Demigillo challenged before the Board of Directors the validity of Resolution No. 1365 and of her assignment to the RCMSS. She averred that she had been thereby illegally removed from her position of Senior Vice President in the LCSD to which she had been previously assigned during the reorganization of July 1998. She insisted that contrary to OGCC Opinion No. 221 dated September 13, 2002 the Board of Directors had not been authorized to undertake the reorganization and corporate restructuring.

On January 31, 2003, pending determination of her challenge by the Board of Directors, Demigillo appealed to the Civil Service Commission (CSC), raising the same issues.

TIDCORP assailed the propriety of Demigillo's appeal to the CSC, alleging that her elevation of the case to the CSC without the Board of Directors having yet decided her challenge had been improper and a clear case of forum-shopping.

Later on, however, TIDCORP furnished to the CSC a copy of Board Decision No. 03-002 dismissing Demigillo's appeal for its lack of merit, thereby rendering the question about the propriety of Demigillo's appeal moot and academic. Board Decision No. 03-002 pertinently reads as follows:

Atty. Demigillo failed to show to the Board that she was prejudiced in the implementation of the TIDCORP organizational refinements/restructuring. She was reappointed to the same position she was holding before the reorganization. She was not demoted in terms of salary, rank and status. There was a (sic) substantial compliance with the requirements of RA 6656, particularly on transparency. More importantly, the said organizational refinements done and adoption of a new compensation structure were made in accordance with what is mandated under the Charter of the Corporation.

WHEREFORE, foregoing premises considered, the Board decided as it hereby decides to **DISMISS** the appeal of Atty. Ma Rosario Demigillo for lack of merit.^[2]

In the meanwhile, by letter dated April 14, 2003, President Valdes informed Demigillo of her *poor performance* rating for the period from January 1, 2002 to December 31, 2002, to wit:

After a thorough evaluation/assessment of your job performance for the rating period January 1 to December 21, 2002, it appears that your over-

all performance is 'Poor'.

Records show that you consistently behaved as an obstructionist in the implementation of the Corporate Business Plan. You failed to demonstrate cooperation, respect and concern towards authority and other members of the company. You also failed to abide by Civil Service and company policies, rules and regulation. You miserably failed to adapt and respond to changes. You were very resentful to new approaches as shown by your vehement objection to new improved policies and programs. Instead of helping raise the morale of subordinate at high levels (sic) and promote career and professional growth of subordinates, you tried to block such efforts towards this end.

In view of the foregoing and your failure to prove that you have effectively and efficiently performed the duties, functions and responsibility (sic) of your position, I am constrained to give you a rating of "Poor" for your 2002 performance.^[3]

On April 28, 2003, Demigillo formally communicated to Atty. Florencio P. Gabriel Jr., Executive Vice President of the Operations Group, appealing the "poor rating" given her by President Valdes.

In a memorandum dated May 6, 2003, Atty. Gabriel informed Demigillo that he could not act on her appeal because of her *"failure to state facts and arguments constituting the grounds for the appeal and submit any evidence to support the same."*^[4]

On May 6, 2003, President Valdes issued a memorandum to Demigillo stating that he found no justification to change the poor rating given to her for the year 2002.

On August 12, 2003, Demigillo received a memorandum from President Valdes stating that her performance rating for the period from January 1, 2003 to June 2003 "needs improvement," attaching the pertinent Performance Evaluation Report Form that she was instructed to return "within 24 hours from receipt."^[5]

Not in conformity with the performance rating, Demigillo scribbled on the right corner of the memorandum the following comments: *"I do not agree and accept. I am questioning the same. This is pure harassment."*

She then appealed the *poor performance* rating on August 14, 2003, calling the rating a part of Valdes' *"unremitting harassment and oppression on her."*^[6]

On August 19, 2003, Demigillo reported for work upon the expiration of the 90-day preventive suspension imposed by the Board of Directors in a separate administrative case for grave misconduct, conduct prejudicial to the best interest of the service, insubordination and gross discourtesy. In her memorandum of that date, she informed Atty. Gabriel Jr. of her readiness to resume her duties and responsibilities, but requested to be allowed to reproduce documents in connection with the appeal of her performance rating. She further requested that the relevant grievance process should commence.

It appears that the Board of Directors rendered Decision No. 03-003 dated August 15, 2003 unanimously dropping Demigillo from the rolls.^[7] Demigillo received the copy of Decision No. 03-003 on August 25, 2003.

Decision of the CSC

On October 14, 2004, the CSC ruled through Resolution No. 041092^[8] that the 2002 *Organizational Refinements or Restructuring Plan* of TIDCORP had been valid for being authorized by Republic Act No. 6656; that Section 7 of Republic Act No. 8498 granted a continuing power to TIDCORP's Board of Directors to prescribe the agency's organizational structure, staffing pattern and compensation packages; and that such grant continued until declared invalid by a court of competent jurisdiction or revoked by Congress.

The CSC held, however, that TIDCORP's implementation of its reorganization did not comply with Section 6 of Republic Act No. 6656;^[9] that although there was no diminution in Demigillo's rank, salary and status, there was nonetheless a demotion in her functions and authority, considering that the 2002 reorganization reduced her authority and functions from being the highest ranking legal officer in charge of all the legal and corporate affairs of TIDCORP to being the head of the RCMSS reporting to the Executive Vice President and having only two departments under her supervision; and that the functions of Demigillo's office were in fact transferred to the Operations Group.

The CSC further held that the dropping from the rolls of Demigillo did not comply with the mandatory requirement under Section 2, particularly 2.2 Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions Memorandum Circular No. 40, Series of 1998.

Subsequently, TIDCORP reinstated Demigillo to the position of Senior Vice President in RCMSS, a position she accepted without prejudice to her right to appeal the decision of the CSC.

Ruling of the CA

Both Demigillo and TIDCORP appealed the decision of the CSC to the Court of Appeals (CA). Demigillo's appeal was docketed as CA-G.R. SP No. 87285. On the other hand, TIDCORP's appeal was docketed as CA-G.R. SP No. 87295.

In CA-G.R. SP No. 87285, Demigillo partially assailed the CSC's decision, claiming that the CSC erred: (1) in holding that Section 7 of Republic Act No. 8494 granted the Board of Directors of TIDCORP a continuing power to reorganize; (2) in holding that the 2002 TIDCORP reorganization had been authorized by law; and (3) in not holding that the 2002 TIDCORP reorganization was void *ab initio* because it was not authorized by law and because the reorganization did not comply with Republic Act No. 6656.^[10]

In CA-G.R. SP No. 87295, TIDCORP contended that the CSC erred: (1) in ruling that Demigillo had been demoted as a result of the 2002 TIDCORP reorganization; and (2) in ruling that TIDCORP had failed to observe the provisions of Section 2,