

SECOND DIVISION

[G.R. NO. 170312, June 26, 2009]

**PHILIPPINE BASKETBALL ASSOCIATION, PETITIONER, VS.
HONORABLE MANUEL B. GAITE, IN HIS OFFICIAL CAPACITY AS
DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS OF THE
OFFICE OF THE PRESIDENT, AND THE GAMES AND AMUSEMENT
BOARD, REPRESENTED HEREIN BY ITS CHAIRMAN, EDUARDO R.
VILLANUEVA, RESPONDENTS.**

DECISION

BRION, J.:

Before us is the petition for review on *certiorari* under Rule 45 of the Rules of Court, filed by petitioner Philippine Basketball Association (*PBA*) to reverse the July 28, 2005 Court of Appeals (*CA*) Decision^[1] and the subsequent denial of the motion for reconsideration^[2] in CA-G.R. No. 87289.

FACTUAL ANTECEDENTS

The PBA is an association of various basketball clubs owned by business companies - Airfreight 2100, Inc., Alaska Milk Corporation, Asian Coatings Philippines, Inc.,^[3] Coca-Cola Bottlers Philippines, Inc., Energy Food and Drinks Corporation, Ginebra San Miguel, Inc., Philippine Long Distance Telephone Company, Inc., Purefoods Hormel Company, Inc., San Miguel Corporation, and Sta. Lucia Realty and Development, Inc. It conducts basketball games that the public can watch live upon purchase of admission tickets. The games are also broadcasted over television and radio by a franchisee which pays the PBA franchise fees based on the actual proceeds from advertisements, less airtime costs, production expenses, and sales commissions.

On January 6, 1976, then President Ferdinand E. Marcos enacted Presidential Decree (*PD*) No. 871 placing professional basketball and other professional games under the control and supervision of the Games and Amusement Board (*GAB*), a respondent in this case. Under this PD, the GAB was mandated, among others, to issue permits for the conduct of games and licenses to persons, entities, and associations performing duties connected with professional basketball games or with other professional games. The law also mandated the PBA and other professional game associations to remit 3% of their gross receipts and income from television, radio, and motion pictures, if any, which shall be used to defray expenses of the GAB. Section 8 of PD No. 871 provides:

Sec. 8. Admission receipts and other income. - Any person, entity or association conducting professional basketball games or other professional games shall set aside and **remit to the Board three percent (3%) of the gross receipts and income from television,**

radio and motion pictures, if any, which shall be available to defray expenses of the Board assigned to supervise the games and for such other expenses in other activities of the Board. Provided, however, that all professional basketball games conducted by the Philippine Basketball Association shall only be subject to amusement tax of five percent (5%) of the gross tax receipts from the sale of admission tickets. [Emphasis supplied.]

On December 29, 1999, the PBA and Viva Vintage Sports, Inc. (VVSI) forged a Memorandum of Agreement granting the VVSI exclusive rights to broadcast the PBA games on television and radio for the 2000 to 2002 PBA seasons. Initially, VVSI paid the franchise fees to the PBA, and from these, the latter remitted the required 3% to the GAB.

Starting November 2001, the VVSI began to default in the payment of the franchise fees; it took some time before it could comply with its contractual obligations. At some point in 2002, it again failed to pay the franchise fees. On January 7, 2004, the PBA wrote VVSI a letter demanding payment of the unpaid fees.

The VVSI's failure to pay the fees affected the PBA's own ability to remit the 3% of gross receipts and income required by Section 8 of PD No. 871. The GAB maintained that the PBA, by law, was obligated to remit 3% of its income from television, radio, and motion pictures, regardless of whether these gross receipts were actually received by the PBA. It therefore assessed the PBA the amount of P3,452,233.32 representing its 3% share in the PBA's gross receipts and income from the television/radio broadcast of PBA games for the year 2002.

When they failed to agree on the interpretation of Section 8 of PD No. 871, the PBA and the GAB submitted their dispute to the Office of the President (OP) for adjudication. In the course of their submission, the parties executed a Memorandum of Agreement (PBA-GAB MOA) where the PBA agreed to deposit the assessed amount of P3,452,233.32 in escrow with the Equitable-PCI Bank. The PBA-GAB MOA conditioned the release of the deposited amount on the following terms:

- a. That the legal issue raised by the PBA is resolved by the Office of the President and/or by any court or competent judicial bodies having jurisdiction over the case, requiring PBA to pay assessments of this nature to GAB. In the event that PBA fails to bring the case before the court or any competent judicial bodies within ten (10) days from receipt of the order or resolution of the Office of the President, it is considered that PBA is no longer interested to bring the matter before the court of any judicial bodies, and that the order of the resolution of the Office of the President is considered final and executory.
- b. That in the event the PBA is adjudged to pay the amount in issue, the escrow amount together with interest less the escrow fees charged by the bank, which shall be deducted from the interest less the escrow fees charged by the bank, which shall be deducted from the interest earned, shall be credited to the account of GAB immediately and on the other hand, if it is adjudged that PBA is not legally obligated to pay the GAB, the principal amount together with

the accrued interest earned less the escrow fees charged by the bank, which shall be deducted from the interest charged by the bank which shall be deducted from the interest earned will be returned to the PBA immediately.^[4]

In a letter dated August 17, 2004, the OP, through respondent Manuel B. Gaité (then Deputy Secretary for Legal Affairs), ruled in favor of the GAB on the grounds that PD No. 871 intended the operating association, the PBA, to pay GAB the equivalent of 3% of its gross revenue and income from television and/or radio broadcast once earned; that income is considered earned when one's right to it becomes fixed under the terms of the governing contract; that it does not matter whether PBA has actually received the fee due it from its franchisee, or whether this franchisee has physically transferred the amount to the PBA, because once the PBA's own contractual fees become due and payable, these fees constitute income from which to source and determine the GAB's 3% share; that if the legislature intended the 3% imposition to be based on the PBA's actual receipt of radio/TV coverage earnings, it should have said expressly so, in the same way done with ticket sales; that since the GAB did not have a hand in the selection of the PBA's franchisee for the television and radio coverage and the negotiation and execution of the coverage contract, its right to collect the 3% share should not be affected or made dependent on the ability of the PBA's franchisee to fulfill its financial obligations and the PBA's ability to successfully effect the collection.

On September 15, 2004, the PBA wrote the OP a letter seeking the reconsideration of Gaité's ruling on the grounds of injustice, unjust enrichment, and gross misinterpretation of Section 8 of PD No. 871. The OP, through Gaité, denied the request for reconsideration in a letter dated October 18, 2004.

Thereafter, the GAB sought the release of the fund in escrow with the Equitable-PCI Bank. On November 5, 2004, the PBA filed a petition for *certiorari* (under Rule 65 of the Rules of Court) with the CA to assail the OP decision. The appellate court ruled that the PBA's Rule 65 petition for *certiorari* was not the appropriate remedy to challenge the OP decision. Even assuming it to be the correct remedy, the CA found that the OP committed no grave abuse of discretion in interpreting and implementing PD No. 871. The CA denied the PBA's subsequent motion for reconsideration.

The PBA subsequently filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following -

ISSUES

I.

THE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR IN DECLARING THAT THE REMEDY OF *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT WAS NOT THE PROPER REMEDY UNDER THE CIRCUMSTANCES;

II.

THE COURT OF APPEALS COMMITTED SERIOUS GRAVE ERROR IN RULING THAT THE OFFICE OF THE PRESIDENT THROUGH RESPONDENT