

EN BANC

[G.R. No. 169752, September 25, 2007]

PHILIPPINE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, PETITIONERS, VS. COMMISSION ON AUDIT, DIR. RODULFO J. ARIESGA (IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE COMMISSION ON AUDIT), MS. MERLE M. VALENTIN AND MS. SUSAN GUARDIAN (IN THEIR OFFICIAL CAPACITIES AS TEAM LEADER AND TEAM MEMBER, RESPECTIVELY, OF THE AUDIT TEAM OF THE COMMISSION ON AUDIT), RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a special civil action for *Certiorari* and Prohibition under Rule 65 of the Rules of Court, in relation to Section 2 of Rule 64, filed by the petitioner assailing Office Order No. 2005-021^[1] dated September 14, 2005 issued by the respondents which constituted the audit team, as well as its September 23, 2005 Letter^[2] informing the petitioner that respondents' audit team shall conduct an audit survey on the petitioner for a detailed audit of its accounts, operations, and financial transactions. No temporary restraining order was issued.

The petitioner was incorporated as a juridical entity over one hundred years ago by virtue of Act No. 1285, enacted on January 19, 1905, by the Philippine Commission. The petitioner, at the time it was created, was composed of animal aficionados and animal propagandists. The objects of the petitioner, as stated in Section 2 of its charter, shall be to enforce laws relating to cruelty inflicted upon animals or the protection of animals in the Philippine Islands, and generally, to do and perform all things which may tend in any way to alleviate the suffering of animals and promote their welfare.^[3]

At the time of the enactment of Act No. 1285, the original Corporation Law, Act No. 1459, was not yet in existence. Act No. 1285 antedated both the Corporation Law and the constitution of the Securities and Exchange Commission. Important to note is that the nature of the petitioner as a corporate entity is distinguished from the *sociedad anonimas* under the Spanish Code of Commerce.

For the purpose of enhancing its powers in promoting animal welfare and enforcing laws for the protection of animals, the petitioner was initially imbued under its charter with the power to apprehend violators of animal welfare laws. In addition, the petitioner was to share one-half (1/2) of the fines imposed and collected through its efforts for violations of the laws related thereto. As originally worded, Sections 4 and 5 of Act No. 1285 provide:

SEC. 4. The said society is *authorized to appoint* not to exceed five agents in the City of Manila, and not to exceed two in each of the

provinces of the Philippine Islands *who shall have all the power and authority of a police officer to make arrests for violation of the laws enacted for the prevention of cruelty to animals and the protection of animals, and to serve any process in connection with the execution of such laws; and in addition thereto, all the police force of the Philippine Islands, wherever organized, shall, as occasion requires, assist said society, its members or agents, in the enforcement of all such laws.*

SEC. 5. *One-half of all the fines imposed and collected through the efforts of said society, its members or its agents, for violations of the laws enacted for the prevention of cruelty to animals and for their protection, shall belong to said society and shall be used to promote its objects.*

(emphasis supplied)

Subsequently, however, the power to make arrests as well as the privilege to retain a portion of the fines collected for violation of animal-related laws were recalled by virtue of Commonwealth Act (C.A.) No. 148,^[4] which reads, in its entirety, thus:

Be it enacted by the National Assembly of the Philippines:

Section 1. Section four of Act Numbered Twelve hundred and eighty-five as amended by Act Numbered Thirty five hundred and forty-eight, is hereby further amended so as to read as follows:

Sec. 4. The said society is authorized to appoint not to exceed ten agents in the City of Manila, and not to exceed one in each municipality of the Philippines *who shall have the authority to denounce to regular peace officers any violation of the laws enacted for the prevention of cruelty to animals and the protection of animals and to cooperate with said peace officers in the prosecution of transgressors of such laws.*

Sec. 2. *The full amount of the fines collected for violation of the laws against cruelty to animals and for the protection of animals, shall accrue to the general fund of the Municipality where the offense was committed.*

Sec. 3. This Act shall take effect upon its approval.

Approved, November 8, 1936. (Emphasis supplied)

Immediately thereafter, then President Manuel L. Quezon issued Executive Order (E.O.) No. 63 dated November 12, 1936, portions of which provide:

Whereas, during the first regular session of the National Assembly, Commonwealth Act Numbered One Hundred Forty Eight was *enacted depriving the agents of the Society for the Prevention of Cruelty to Animals of their power to arrest persons who have violated the laws prohibiting cruelty to animals thereby correcting a serious defect in one of the laws existing in our statute books.*

x x x x

Whereas, the cruel treatment of animals is an offense against the State, penalized under our statutes, which the Government is duty bound to enforce;

Now, therefore, I, Manuel L. Quezon, President of the Philippines, pursuant to the authority conferred upon me by the Constitution, hereby decree, order, and direct the Commissioner of Public Safety, the Provost Marshal General as head of the Constabulary Division of the Philippine Army, every Mayor of a chartered city, and every municipal president to *detail and organize special members of the police force, local, national, and the Constabulary to watch, capture, and prosecute offenders against the laws enacted to prevent cruelty to animals.* (Emphasis supplied)

On December 1, 2003, an audit team from respondent Commission on Audit (COA) visited the office of the petitioner to conduct an audit survey pursuant to COA Office Order No. 2003-051 dated November 18, 2003^[5] addressed to the petitioner. The petitioner demurred on the ground that it was a private entity not under the jurisdiction of COA, citing Section 2(1) of Article IX of the Constitution which specifies the general jurisdiction of the COA, viz:

Section 1. *General Jurisdiction.* 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, and on a post-audit basis: (a) constitutional bodies, commissions and officers that have been granted fiscal autonomy under the Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.* However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government, and for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Emphasis supplied)

Petitioner explained thus:

- a. Although the petitioner was created by special legislation, this necessarily came about because in January 1905 there was as yet neither a Corporation Law or any other general law under which it may be organized and incorporated, nor a Securities and Exchange Commission which would have passed upon its organization and incorporation.
- b. That Executive Order No. 63, issued during the Commonwealth period, effectively deprived the petitioner of its power to make

arrests, and that the petitioner lost its operational funding, underscore the fact that it exercises no governmental function. In fine, the government itself, by its overt acts, confirmed petitioner's status as a private juridical entity.

The COA General Counsel issued a Memorandum^[6] dated May 6, 2004, asserting that the petitioner was subject to its audit authority. In a letter dated May 17, 2004,^[7] respondent COA informed the petitioner of the result of the evaluation, furnishing it with a copy of said Memorandum dated May 6, 2004 of the General Counsel.

Petitioner thereafter filed with the respondent COA a Request for Re-evaluation dated May 19, 2004,^[8] insisting that it was a private domestic corporation.

Acting on the said request, the General Counsel of respondent COA, in a Memorandum dated July 13, 2004,^[9] affirmed her earlier opinion that the petitioner was a government entity that was subject to the audit jurisdiction of respondent COA. In a letter dated September 14, 2004, the respondent COA informed the petitioner of the result of the re-evaluation, maintaining its position that the petitioner was subject to its audit jurisdiction, and requested an initial conference with the respondents.

In a Memorandum dated September 16, 2004, Director Delfin Aguilar reported to COA Assistant Commissioner Juanito Espino, Corporate Government Sector, that the audit survey was not conducted due to the refusal of the petitioner because the latter maintained that it was a private corporation.

Petitioner received on September 27, 2005 the subject COA Office Order 2005-021 dated September 14, 2005 and the COA Letter dated September 23, 2005.

Hence, herein Petition on the following grounds:

A.

RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER IS SUBJECT TO ITS AUDIT AUTHORITY.

B.

PETITIONER IS ENTITLED TO THE RELIEF SOUGHT, THERE BEING NO APPEAL, NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO IT.^[10]

The essential question before this Court is whether the petitioner qualifies as a government agency that may be subject to audit by respondent COA.

Petitioner argues: *first*, even though it was created by special legislation in 1905 as there was no general law then existing under which it may be organized or incorporated, it exercises no governmental functions because these have been revoked by C.A. No. 148 and E.O. No. 63; *second*, nowhere in its charter is it indicated that it is a public corporation, unlike, for instance, C.A. No. 111 which

created the Boy Scouts of the Philippines, defined its powers and purposes, and specifically stated that it was "An Act to Create a Public Corporation" in which, even as amended by Presidential Decree No. 460, the law still adverted to the Boy Scouts of the Philippines as a "public corporation," all of which are not obtaining in the charter of the petitioner; *third*, if it were a government body, there would have been no need for the State to grant it tax exemptions under Republic Act No. 1178, and the fact that it was so exempted strengthens its position that it is a private institution; *fourth*, the employees of the petitioner are registered and covered by the Social Security System at the latter's initiative and not through the Government Service Insurance System, which should have been the case had the employees been considered government employees; *fifth*, the petitioner does not receive any form of financial assistance from the government, since C.A. No. 148, amending Section 5 of Act No. 1285, states that the "full amount of the fines, collected for violation of the laws against cruelty to animals and for the protection of animals, shall accrue to the general fund of the Municipality where the offense was committed"; *sixth*, C.A. No. 148 effectively deprived the petitioner of its powers to make arrests and serve processes as these functions were placed in the hands of the police force; *seventh*, no government appointee or representative sits on the board of trustees of the petitioner; *eighth*, a reading of the provisions of its charter (Act No. 1285) fails to show that any act or decision of the petitioner is subject to the approval of or control by any government agency, except to the extent that it is governed by the law on private corporations in general; and finally, *ninth*, the Committee on Animal Welfare, under the Animal Welfare Act of 1998, includes members from both the private and the public sectors.

The respondents contend that since the petitioner is a "body politic" created by virtue of a special legislation and endowed with a governmental purpose, then, indubitably, the COA may audit the financial activities of the latter. Respondents in effect divide their contentions into six strains: *first*, the test to determine whether an entity is a government corporation lies in the manner of its creation, and, since the petitioner was created by virtue of a special charter, it is thus a government corporation subject to respondents' auditing power; *second*, the petitioner exercises "sovereign powers," that is, it is tasked to enforce the laws for the protection and welfare of animals which "ultimately redound to the public good and welfare," and, therefore, it is deemed to be a government "instrumentality" as defined under the Administrative Code of 1987, the purpose of which is connected with the administration of government, as purportedly affirmed by American jurisprudence; *third*, by virtue of Section 23,^[11] Title II, Book III of the same Code, the Office of the President exercises supervision or control over the petitioner; *fourth*, under the same Code, the requirement under its special charter for the petitioner to render a report to the Civil Governor, whose functions have been inherited by the Office of the President, clearly reflects the nature of the petitioner as a government instrumentality; *fifth*, despite the passage of the Corporation Code, the law creating the petitioner had not been abolished, nor had it been re-incorporated under any general corporation law; and finally, *sixth*, Republic Act No. 8485, otherwise known as the "Animal Welfare Act of 1998," designates the petitioner as a member of its Committee on Animal Welfare which is attached to the Department of Agriculture.

In view of the phrase "*One-half of all the fines imposed and collected through the efforts of said society*," the Court, in a Resolution dated January 30, 2007, required the Office of the Solicitor General (OSG) and the parties to comment on: a) petitioner's authority to impose fines and the validity of the provisions of Act No.