

## EN BANC

[ G.R. NO. 141735, June 08, 2005 ]

**SAPPARI K. SAWADJAAN, PETITIONER, VS. THE HONORABLE  
COURT OF APPEALS, THE CIVIL SERVICE COMMISSION AND AL-  
AMANAH INVESTMENT BANK OF THE PHILIPPINES,  
RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court of the Decision<sup>[1]</sup> of the Court of Appeals of 30 March 1999 affirming Resolutions No. 94-4483 and No. 95-2754 of the Civil Service Commission (CSC) dated 11 August 1994 and 11 April 1995, respectively, which in turn affirmed Resolution No. 2309 of the Board of Directors of the Al-Amanah Islamic Investment Bank of the Philippines (AIIBP) dated 13 December 1993, finding petitioner guilty of Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and dismissing him from the service, and its Resolution<sup>[2]</sup> of 15 December 1999 dismissing petitioner's Motion for Reconsideration.

The records show that petitioner Sappari K. Sawadjaan was among the first employees of the Philippine Amanah Bank (PAB) when it was created by virtue of Presidential Decree No. 264 on 02 August 1973. He rose through the ranks, working his way up from his initial designation as security guard, to settling clerk, bookkeeper, credit investigator, project analyst, appraiser/ inspector, and eventually, loans analyst.<sup>[3]</sup>

In February 1988, while still designated as appraiser/investigator, Sawadjaan was assigned to inspect the properties offered as collaterals by Compressed Air Machineries and Equipment Corporation (CAMEC) for a credit line of Five Million Pesos (P5,000,000.00). The properties consisted of two parcels of land covered by Transfer Certificates of Title (TCTs) No. N-130671 and No. C-52576. On the basis of his Inspection and Appraisal Report,<sup>[4]</sup> the PAB granted the loan application. When the loan matured on 17 May 1989, CAMEC requested an extension of 180 days, but was granted only 120 days to repay the loan.<sup>[5]</sup>

In the meantime, Sawadjaan was promoted to Loans Analyst I on 01 July 1989.<sup>[6]</sup>

In January 1990, Congress passed Republic Act 6848 creating the AIIBP and repealing P.D. No. 264 (which created the PAB). All assets, liabilities and capital accounts of the PAB were transferred to the AIIBP,<sup>[7]</sup> and the existing personnel of the PAB were to continue to discharge their functions unless discharged.<sup>[8]</sup> In the ensuing reorganization, Sawadjaan was among the personnel retained by the AIIBP.

When CAMEC failed to pay despite the given extension, the bank, now referred to as the AIIBP, discovered that TCT No. N-130671 was spurious, the property described therein non-existent, and that the property covered by TCT No. C-52576 had a prior existing mortgage in favor of one Divina Publico.

On 08 June 1993, the Board of Directors of the AIIBP created an Investigating Committee to look into the CAMEC transaction, which had cost the bank Six Million Pesos (P6,000,000.00) in losses.<sup>[9]</sup> The subsequent events, as found and decided upon by the Court of Appeals,<sup>[10]</sup> are as follows:

On 18 June 1993, petitioner received a memorandum from Islamic Bank [AIIBP] Chairman Roberto F. De Ocampo charging him with Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and preventively suspending him.

In his memorandum dated 8 September 1993, petitioner informed the Investigating Committee that he could not submit himself to the jurisdiction of the Committee because of its alleged partiality. For his failure to appear before the hearing set on 17 September 1993, after the hearing of 13 September 1993 was postponed due to the Manifestation of even date filed by petitioner, the Investigating Committee declared petitioner in default and the prosecution was allowed to present its evidence *ex parte*.

On 08 December 1993, the Investigating Committee rendered a decision, the pertinent portions of which reads as follows:

In view of respondent SAWADJAAN'S abject failure to perform his duties and assigned tasks as appraiser/inspector, which resulted to the prejudice and substantial damage to the Bank, respondent should be held liable therefore. At this juncture, however, the Investigating Committee is of the considered opinion that he could not be held liable for the administrative offense of dishonesty considering the fact that no evidence was adduced to show that he profited or benefited from being remiss in the performance of his duties. The record is bereft of any evidence which would show that he received any amount in consideration for his non-performance of his official duties.

This notwithstanding, respondent cannot escape liability. As adverted to earlier, his failure to perform his official duties resulted to the prejudice and substantial damage to the Islamic Bank for which he should be held liable for the administrative offense of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.

Premises considered, the Investigating Committee recommends that respondent SAPPARI SAWADJAAN be meted the penalty of SIX (6) MONTHS and ONE (1) DAY SUSPENSION from office in accordance with the Civil Service Commission's Memorandum Circular No. 30, Series of 1989.

On 13 December 1993, the Board of Directors of the Islamic Bank [AIIBP] adopted Resolution No. 2309 finding petitioner guilty of Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of Dismissal from the Service.

On reconsideration, the Board of Directors of the Islamic Bank [AIIBP] adopted the Resolution No. 2332 on 20 February 1994 reducing the penalty imposed on petitioner from dismissal to suspension for a period of six (6) months and one (1) day.

On 29 March 1994, petitioner filed a notice of appeal to the Merit System Protection Board (MSPB).

On 11 August 1994, the CSC adopted Resolution No. 94-4483 dismissing the appeal for lack of merit and affirming Resolution No. 2309 dated 13 December 1993 of the Board of Directors of Islamic Bank.

On 11 April 1995, the CSC adopted Resolution No. 95-2574 denying petitioner's Motion for Reconsideration.

On 16 June 1995, the instant petition was filed with the Honorable Supreme Court on the following assignment of errors:

- I. Public respondent Al-Amanah Islamic Investment Bank of the Philippines has committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it initiated and conducted administrative investigation without a validly promulgated rules of procedure in the adjudication of administrative cases at the Islamic Bank.
- II. Public respondent Civil Service Commission has committed a grave abuse of discretion amounting to lack of jurisdiction when it prematurely and falsely assumed jurisdiction of the case not appealed to it, but to the Merit System Protection Board.
- III. Both the Islamic Bank and the Civil Service Commission erred in finding petitioner Sawadjaan of having deliberately reporting false information and therefore guilty of Dishonesty and Conduct Prejudicial to the Best Interest of the Service and penalized with dismissal from the service.

On 04 July 1995, the Honorable Supreme Court *En Banc* referred this petition to this Honorable Court pursuant to Revised Administrative Circular No. 1-95, which took effect on 01 June 1995.

We do not find merit [in] the petition.

Anent the first assignment of error, a reading of the records would reveal

that petitioner raises for the first time the alleged failure of the Islamic Bank [AIIBP] to promulgate rules of procedure governing the adjudication and disposition of administrative cases involving its personnel. It is a rule that issues not properly brought and ventilated below may not be raised for the first time on appeal, save in exceptional circumstances (*Casolita, Sr. v. Court of Appeals*, 275 SCRA 257) none of which, however, obtain in this case. Granting *arguendo* that the issue is of such exceptional character that the Court may take cognizance of the same, still, it must fail. Section 26 of Republic Act No. 6848 (1990) provides:

Section 26. Powers of the Board. The Board of Directors shall have the *broadest powers to manage the Islamic Bank*, x x x The Board shall adopt policy guidelines necessary to carry out effectively the provisions of this Charter as well as *internal rules and regulations necessary for the conduct of its Islamic banking business and all matters related to personnel organization, office functions and salary administration*. (Italics ours)

On the other hand, Item No. 2 of Executive Order No. 26 (1992) entitled "Prescribing Procedure and Sanctions to Ensure Speedy Disposition of Administrative Cases" directs, "all administrative agencies" to "adopt and include in their respective Rules of Procedure" provisions designed to abbreviate administrative proceedings.

The above two (2) provisions relied upon by petitioner does not require the Islamic Bank [AIIBP] to promulgate rules of procedure before administrative discipline may be imposed upon its employees. The internal rules of procedures ordained to be adopted by the Board refers to that necessary for the conduct of its Islamic banking business and all matters related to "personnel organization, office functions and salary administration." On the contrary, Section 26 of RA 6848 gives the Board of Directors of the Islamic Bank the "broadest powers to manage the Islamic Bank." This grant of broad powers would be an idle ceremony if it would be powerless to discipline its employees.

The second assignment of error must likewise fail. The issue is raised for the first time *via* this petition for *certiorari*. Petitioner submitted himself to the jurisdiction of the CSC. Although he could have raised the alleged lack of jurisdiction in his Motion for Reconsideration of Resolution No. 94-4483 of the CSC, he did not do so. By filing the Motion for Reconsideration, he is estopped from denying the CSC's jurisdiction over him, as it is settled rule that a party who asks for an affirmative relief cannot later on impugn the action of the tribunal as without jurisdiction after an adverse result was meted to him. Although jurisdiction over the subject matter of a case may be objected to at any stage of the proceedings even on appeal, this particular rule, however, means that jurisdictional issues in a case can be raised only during the proceedings in said case and during the appeal of said case (*Aragon v. Court of Appeals*, 270 SCRA 603). The case at bar is a petition [for] *certiorari* and not an appeal.

But even on the merits the argument must falter. Item No. 1 of CSC Resolution No. 93-2387 dated 29 June 1993, provides:

Decisions in administrative cases involving officials and employees of the civil service appealable to the Commission pursuant to Section 47 of Book V of the Code (*i.e.*, Administrative Code of 1987) including personnel actions such as contested appointments shall now be appealed directly to the Commission and not to the MSPB.

In *Rubenecia v. Civil Service Commission*, 244 SCRA 640, 651, it was categorically held:.

. . The functions of the MSPB relating to the determination of administrative disciplinary cases were, in other words, re-allocated to the Commission itself.

Be that as it may, "(i)t is hornbook doctrine that in order `(t)o ascertain whether a court (in this case, administrative agency) has jurisdiction or not, the provisions of the law should be inquired into." Furthermore, `the jurisdiction of the court must appear clearly from the statute law or it will not be held to exist.'"(*Azarcon v. Sandiganbayan*, 268 SCRA 747, 757) From the provision of law abovesited, the Civil Service Commission clearly has jurisdiction over the Administrative Case against petitioner.

Anent the third assignment of error, we likewise do not find merit in petitioner's proposition that he should not be liable, as in the first place, he was not qualified to perform the functions of appraiser/investigator because he lacked the necessary training and expertise, and therefore, should not have been found dishonest by the Board of Directors of Islamic Bank [AIIBP] and the CSC. Petitioner himself admits that the position of appraiser/inspector is "one of the most serious [and] sensitive job in the banking operations." He should have been aware that accepting such a designation, he is obliged to perform the task at hand by the exercise of more than ordinary prudence. As appraiser/investigator, he is expected, among others, to check the authenticity of the documents presented by the borrower by comparing them with the originals on file with the proper government office. He should have made it sure that the technical descriptions in the location plan on file with the Bureau of Lands of Marikina, jibe with that indicated in the TCT of the collateral offered by CAMEC, and that the mortgage in favor of the Islamic Bank was duly annotated at the back of the copy of the TCT kept by the Register of Deeds of Marikina. This, petitioner failed to do, for which he must be held liable. That he did not profit from his false report is of no moment. Neither the fact that it was not deliberate or willful, detracts from the nature of the act as dishonest. What is apparent is he stated something to be a fact, when he really was not sure that it was so.

Wherefore, above premises considered, the instant Petition is DISMISSED, and the assailed Resolutions of the Civil Service Commission are hereby AFFIRMED.