

## THIRD DIVISION

[ G.R. No. 95326, March 11, 1999 ]

**ROMEO P. BUSUEGO, CATALINO F. BANEZ AND RENATO F. LIM,  
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND  
THE MONETARY BOARD OF THE CENTRAL BANK OF THE  
PHILIPPINES, RESPONDENTS.**

### DECISION

**PURISIMA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking a reversal of the Decision<sup>[1]</sup>, dated September 14, 1990, of the Court of Appeals in CA-G.R. CV No. 23656.

As culled from the records, the facts of the case are as follows:

The 16th regular examination of the books and records of the PAL Employees Savings and Loan Association, Inc. ("PESALA") was conducted from March 14 to April 16, 1988 by a team of CB examiners headed by Belinda Rodriguez. Following the said examination, several anomalies and irregularities committed by the herein petitioners; PESALA's directors and officers, were uncovered, among which are:

1. Questionable investment In a multi-million peso real estate project (Pesalaville)
2. Conflict of interest in the conduct of business
3. Unwarranted declaration and payment of dividends
4. Commission of unsound and unsafe business practices.

On July 19, 1988,, Central Bank ("CB") Supervision and Examination Section ("SES") Department IV Director Ricardo. F. Lirio sent a letter to the Board of Directors of PESALA inviting them to a conference on July 21, 1988 to discuss subject findings noted in the said 16th regular examination, but petitioners did not attend such conference.

On July 28, 1988, petitioner Renato Lim wrote the PESALA's Board of Directors explaining his side on the said examination of PESALA's records and requesting that a copy of his letter be furnished the CB, which was forthwith made by the Board.<sup>[2]</sup>

On July 29, 1988, PESALA's Board of Directors sent to Director Lirio a letter concerning the 16th regular examination of PESALA's records.

On September 9, 1988, the Monetary Board adopted and issued MB Resolution No. 805 the pertinent provisions of which are as follows:

"1. To note the report on the examination of the PAL Employees' Savings and Loan Association, Inc. (PESALA) as of December 31, 1987, as submitted in a memorandum of the Director, Supervision and Examination Section (SES) Department IV, dated August 19, 1988;

2. To require the board of directors of PESALA to immediately inform the members of PESALA of the results of the Central Bank examination and their effects on the financial condition of the Association;

x x x

5. To include the names of Mr. Catalino Banez, Mr. Romeo Busuego and Mr. Renato Lim in the Sector's watchlist to prevent them from holding responsible positions in any institution under Central Bank supervision;

6. To require PESALA to enforce collection of the overpayment to the Vista Grande Management and Development Corporation and to require the accounting of P12.28 million unaccounted and unremitted bank loan proceeds and P3.9 million other unsupported cash disbursements from the responsible directors and officers; or to properly charge these against their respective accounts, if necessary;

7. To require the board of directors of PESALA to file civil and criminal cases against Messrs. Catalino Banez, Romeo Busuego and Renato Lim for all the misfeasance and malfeasance committed by them, as warranted by the evidence;

8. To require the board of directors of PESALA to improve the operations of the Association, correct all violations noted, and adopt internal control measures to prevent the recurrence of similar incidents as shown in Annex E of the subject memorandum of the Director, SES Department IV;"<sup>[3]</sup>

xxx xxx xxx

On January 23, 1989, petitioners filed a Petition for Injunction with Prayer for the Immediate Issuance of a Temporary Restraining Order<sup>[4]</sup> docketed as Civil Case No. Q-89-1617 before Branch 104 of the Regional Trial Court of Quezon City.

On January 26 1989, the said court issued a temporary restraining order<sup>[5]</sup> enjoining the defendant, the Monetary Board of the Central Bank, (now Banko Sentral ng Pilipinas) from including the names of petitioners in the watchlist.

On February 10, 1989, the same trial court issued a writ of preliminary injunction<sup>[6]</sup>, conditioned upon the filing by petitioners of a bond in the amount of Ten Thousand (P10,000.00) Pesos each. The Monetary Board presented a Motion for Reconsideration<sup>[7]</sup> of the said Order, but the same was denied.

On September 11, 1989, the trial court handed down its Decision,<sup>[8]</sup> disposing thus:

"WHEREFORE, judgment is hereby rendered declaring Monetary Board Resolution No. 805 as void and inexistent. The writ of preliminary prohibitory injunctions issued on February 10, 1989 is deemed permanent. Costs against respondent."

The Monetary Board appealed the aforesaid Decision to the Court of Appeals which came out with a Decision<sup>[9]</sup> of reversal on September 14, 1990, the decretal portion of which is to the following effect:

"WHEREFORE, the decision appealed from is hereby reversed and another one entered dismissing the petition for injunction."

Dissatisfied with the said Decision of the Court of Appeals, petitioners have come to this Court via the present petition for review on *certiorari*.

On June 5, 1992, petitioners filed an "Urgent Motion for the Immediate Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the Secretary of Justice and the City Prosecutor of Pasay"<sup>[10]</sup> stating that several complaints were lodged against the petitioners before the Office of the City Prosecutor of Pasay City pursuant to Monetary Board Resolution No. 805; that the said complaints were dismissed by the City Prosecutor and the dismissals were appealed to the Secretary of Justice for review, some of which have been reversed already. Petitioners prayed that a Temporary Restraining Order and/or Writ of Preliminary Injunction issue "restraining and enjoining the Secretary of Justice and the City Prosecutor of Pasay City from proceeding and taking further actions, and more specially from filing Informations in **I.S. Nos.-90-1836; 90-1831; 90-1835; 90-1832; 90-1248; 90-1249; 90-3031; 90-3032; 90-1837; 90-1834**, pending the final resolution of the case at bar xxx." However, in the Resolution<sup>[11]</sup> dated September 9, 1992, the court denied the said motion.

The petition poses as issues for resolution.

#### I

WHETHER OR NOT THE PETITIONERS WERE DEPRIVED OF THEIR RIGHT TO A NOTICE AND THE OPPORTUNITY TO BE HEARD BY THE MONETARY BOARD PRIOR TO ITS ISSUANCE OF MONETARY BOARD RESOLUTION NO. 805.

#### II

WHETHER OR NOT THE RESPONDENT BOARD IS LEGALLY BOUND TO OBSERVE THE ESSENTIAL REQUIREMENTS OF DUE PROCESS OF A VALID CHARGE, NOTICE AND OPPORTUNITY TO BE HEARD INSOFAR AS THE PETITIONERS' SUBJECT CASE IS CONCERNED.

#### III

WHETHER OR NOT MONETARY BOARD RESOLUTION NO. 805 IS NULL

AND VOID FOR BEING VIOLATIVE OF PETITIONERS' RIGHTS TO DUE PROCESS.

With respect to the first issue, the trial court said:

"The evidence submitted preponderates in favor of petitioners. The deprivation of petitioners' rights in the Resolution undermines the constitutional guarantee of due process. Petitioners were never notified that they were being investigated, much so, they were not informed of any charges against them and were not afforded the opportunity to adduce countervailing evidence so as to deserve the punitive measures promulgated in Resolution No. 805 of the Monetary Board. xxx"<sup>[12]</sup>

The foregoing disquisition by the trial court is untenable under the facts and circumstances of the case. Petitioners were duly afforded their right to due process by the Monetary Board, it appearing that:

1. Petitioners were invited by Director Lirio to a conference scheduled for July 21, 1988 to discuss the findings made in the 16th regular examination of PESALA's records. Petitioners did not attend, said conference;
2. Petitioner Renato Lim's letter of July 28, 1988 to PESALA's Board of Directors, explaining his side of the controversy, was forwarded to the Monetary Board which the latter considered in adopting Monetary Board Resolution No. 805; and
3. PESALA's Board of Director's letter, dated July 29, 1988, to the Monetary Board, explaining the Board's side of the controversy, was properly considered in the adoption of Monetary Board Resolution No. 805.

Petitioners therefore cannot complain of deprivation of their right to due process, as they were given ample opportunity by the Monetary Board to air their Submission and defenses as to the findings of irregularity during the said 16th regular examination. The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence one may have in support of his defense.<sup>[13]</sup> What is offensive to due process is the denial of the opportunity to be heard.<sup>[14]</sup> Petitioners having availed of their opportunity to present their position to the Monetary Board by their letters-explanation, they were not denied due process<sup>[15]</sup>.

Petitioners cite *Ang Tibay v. CIR*<sup>[16]</sup> and assert that the following requisites of procedural due process were not observed by the Monetary Board:

1. The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;
2. The tribunal must consider the evidence presented;
3. The decision must have something to support itself;

4. The evidence must be substantial;
5. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;
6. The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision;
7. The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceedings can know the various issues involved, and the reason for the decision rendered.

Contrary to petitioners' allegation, it appears that the requisites of procedural due process were complied with by the Monetary Board before it issued the questioned Monetary Board Resolution No. 805. Firstly, the petitioners were invited to a conference to discuss the findings gathered during the 16th regular examination of PESALA's records. (The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.<sup>[17]</sup>) Secondly, the Monetary Board considered the evidence presented. Thirdly, fourthly and fifthly, Monetary Board Resolution No. 805 was adopted on the basis of said findings unearthed during the 16th regular examination of PESALA's records and derived from the letter-comments submitted by the parties. Sixthly, the members of the Monetary Board acted independently on their own in issuing subject Resolution, placing reliance on the said findings made during the 16th regular examination. Lastly, the reason for the issuance of Monetary Board Resolution No. 805 is readily apparent, which is to prevent further irregularities from being committed and to prosecute the officials responsible therefor.

With respect to the second issue, there is tenability in petitioners' contention that the Monetary Board, as an administrative agency, is legally bound to observe due process, although they are free from the rigidity of certain procedural requirements. As held in *Adamson and Adamson, Inc. v. Amores*<sup>[18]</sup>:

"While administrative tribunals exercising quasi-judicial functions are free from the rigidity of certain procedural requirements they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them. However, the standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. Hence, there is no denial of due process where records show that hearings were held with prior notice to adverse parties. But even in the absence of previous notice, there is no denial of procedural due process as long as the parties are given the opportunity to be heard."

Even Section 28, (c) and (d), of Republic Act No. 3779 ("RA 3779") delineating the powers of the Monetary Board over savings and loan associations, require observance of due process in the exercise of its powers: