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FIRST DIVISION

[G.R. No. 113357, February 01, 1996]

BENJAMIN PAREDES, LUZ BUENSUCESO, AUGUSTO SEVERINO, RODRIGO TABANERA, STEPHEN SOLIVEN AND ROBERTO SANCHEZ; PETITIONERS, VS. COURT OF APPEALS, RIZALINO S. NAVARRO, AS SECRETARY OF TRADE AND INDUSTRY, AND IGNACIO S. SAPAL, DIRECTOR OF THE BUREAU OF PATENTS, TRADEMARKS AND TECHNOLOGY TRANSFER, RESPONDENTS.

R E S O L U T I O N

KAPUNAN, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the Decision dated 27 October 1993 of the Court of Appeals in CA-G.R. SP No. 30388 which dismissed petitioners' Special Civil Action for Prohibition and said court's Resolution dated 10 January 1994 which denied petitioners' motion for reconsideration of the said decision.

On 9 November 1992, public respondents promulgated Administrative Order Nos. 1 and 2, Series of 1992, revising the rules of practice before the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) in patent and trademark cases, to take effect on 15 March 1993. Among the provisions of said administrative orders are Rule 16 of A.O. No. 1 and Rule 15 of A.O. No. 2, which increased the fees payable to the BPTTT for registration of patents and trademarks and Rule 59 of A.O. No. 2 which prohibited the filing of multi-class applications, that is, one application covering several classes of goods.[1]

On 11 March 1993, petitioners, who are registered patent agents, filed with the Court of Appeals a Petition for Prohibition with prayer for the issuance of a Writ of Preliminary Injunction to stop public respondents from enforcing the aforementioned administrative orders[2] and to declare Rule 16 of A.O. No. 1 and Rules 15 and 59 of A.O. No. 2, series of 1992 of the BPTTT null and void.

On 27 October 1993, the Court of Appeals dismissed the petition for prohibition and on 10 January 1994, denied the motion for reconsideration filed by petitioners on 18 November 1993.[3]

In the present appeal, petitioners assign the following errors:

I

THE RESPONDENT COURT ERRED IN DISMISSING THE PETITION ON THE GROUND OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES.

II

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE QUESTIONED ADMINISTRATIVE ORDERS ARE NULL AND VOID FOR FAILURE TO COMPLY WITH THE PUBLICATION REQUIREMENTS OF BOTH THE ADMINISTRATIVE CODE AND B.P. NO. 325.

III

THE RESPONDENT COURT ERRED IN NOT DECLARING NULL AND VOID RULE 59 OF ADMINISTRATIVE ORDER NO. 1 ON THE GROUND THAT THE PUBLIC RESPONDENTS DO NOT HAVE THE POWER TO AMEND THE TRADEMARK LAW.[4]

Petitioners do not dispute that public respondents are expressly authorized to revise their fees and charges under B.P. Blg. 325, entitled "An Act Authorizing Heads of Ministries, Offices, Agencies and Commissions of the National Government, including the Supreme Court and Constitutional Bodies, to Revise the Rates of Fees and Charges," which took effect on 1 January 1983.[5]

Petitioners, however, claim that the aforementioned administrative orders, particularly Rule 16 of A.O. No. I and Rules 15 and 59 of A.O. No. 2, series of 1992, are null and void for failure of public respondents to comply with the requirements of Cabinet approval and publication as specifically provided in Sections 2 and 5 of B.P. BIg. 325.[6]

We deny the petition.

Prohibition is not the proper remedy. The enabling law itself, which is B.P. Blg. 325, has specifically tasked the Cabinet to review and approve any proposed revisions of rates of fees and charges. Petitioners should have availed of this easy and accessible remedy instead of immediately resorting to the judicial process.

Our legislature in delegating to administrative officers the authority to revise fees and charges expressly required cabinet approval for the proper exercise of said power. Petitioners should not have wasted the opportunity to utilize this built-in remedy.

The grant (or denial) of a writ of prohibition is ordinarily within the sound discretion of the court to be exercised with caution and forbearance, according to the circumstances of the particular case, and only where the right to seek relief is clear. [7]

Prohibition is granted only in cases where no other remedy is available which is sufficient to afford redress. That the petitioners have another and complete remedy at law either by appeal or otherwise, is generally a sufficient reason for dismissing the writ.[8]

Hence, in Chua Huat v. CA,[9] we ruled that:

> Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given opportunity to act and correct the errors committed in the administrative forum.

And in *Philnabank Employees v. Estanislao,*[10] we declared:

> Secondly, although not inflexible, we have repeatedly declined on grounds of prematurity, as well as in the interest of good order, a hasty recourse to the courts when administrative avenues are still open.

In the instant case, we concur with the ruling of the Court of Appeals that:

> . . . herein petitioners have still another available recourse under the law being relied upon. Section 2 of B.P. 325 reads in part:
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> Sec. 2. Determination of Ratio.- xxx. The revision of rates shall be determined by the respective ministry heads or equivalent functionaries conformably with the rules and regulations of the Ministry of Finance issued pursuant to Section 4 hereof, upon recommendation of the imposing and collecting authorities concerned, subject to the approval of the Cabinet. xx x (Italics supplied)
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> The above provision envisions a three-step process involving a hierarchy of authority before the rate increases and charges can be imposed and collected. First, the BPTTT, which is the imposing and collecting agency, makes a recommendation of the fee increases and charges. Those recommended rates and charges are submitted to the Secretary of the DTI for his evaluation and approval. Second, if the Secretary of the DTI finds that the rate increases and charges conform with the rules and regulations of the Ministry of Finance, then the same are approved and in turn become the rates of the department. The determination of the supposed rates and charges does not end here. As mentioned in Section 2 above; the rates as determined by the department head are "subject to the approval of the Cabinet."
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> The phrase "subject to" is one qualification. It means under the control, power or dominion of or subordinated to, a higher authority (cf. PNB vs. Deputy, G.R. No. 35515-R, December 12, 1970). Meaning, that the proposed rates and charges still have to obtain the imprimatur of the Cabinet, and prior to which, they have to undergo Cabinet scrutiny. Thus, there is the contingency that the same may not obtain the approval of the Cabinet.[11]

Petitioners are not unaware of this remedy provided by law. They have, in fact, raised the lack of Cabinet approval as one of the reasons for seeking the nullification of the aforementioned administrative orders.[12]

Petitioners' claim that public respondents "should have brought the revised schedule of fees to the Cabinet for the latter's approval"[13] is trivial considering that prior to the filing of the petition for prohibition, petitioners admittedly requested public respondents to reconsider or defer implementation of the subject administrative orders.[14] They were already in the process of availing themselves of the administrative process when they suddenly abandoned the recourse and went to court.

Petitioners further contend that there was no appeal or other plain, speedy and adequate remedy available to them considering the alleged absence of any mechanism or procedure in the administrative branch of the government to stop public respondents from enforcing the questioned fee increases. They insist that the Cabinet is not an appellate body with the authority to pass upon the legality of the acts of department heads.[15]

We do not agree. The provisions of Section 2 of B.P. 325 cannot be any clearer. The recommended rates and charges are submitted to the Secretary of the DTI for his evaluation and approval. The rate increases should be in conformity with the rules and regulations of the Secretary of Finance and are "subject to the approval of the Cabinet." Since according to petitioners the rate increases and charges have not been submitted to the Cabinet for approval, judicial review thereof is certainly premature.

The need for Cabinet approval can further be gleaned from Sec. 5 of B.P. Blg. 325, which provides:

> Sec. 5. Publication requirement. - Upon review and approval by the Cabinet of the adjusted rates of fees or charges, the heads of ministries, offices, agencies or commissions concerned, including the courts and constitutional bodies, shall each cause the revised schedule of fees and charges to be published once a week for two consecutive weeks in two newspapers of general circulation in the Philippines in lieu of publication in the Official Gazette and the same shall be effective fifteen days after the last publication. (Italics ours.)

However, we reject the claim of public respondents that the required Cabinet approval was deemed to have been fulfilled with the issuance of Executive Order (E.O.) No. 159, dated 23 February 1994, the pertinent portions of which provide:

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