

EN BANC

[G.R. No. 205835, June 23, 2020]

NATIONAL FEDERATION OF HOG FARMERS, INC., REPRESENTED BY MR. DANIEL P. JAVELLANA, ABONO PARTYLIST INC., REPRESENTED BY ROSENDO SO, ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN, INC., REPRESENTED BY CONG. ANGELO B. PALMONES, JR., AGRICULTURAL SECTOR ALLIANCE OF THE PHIL., INC., REPRESENTED BY CONG. NICANOR BRIONES, PORK PRODUCERS FEDERATION OF THE PHILIPPINES, INC., REPRESENTED LOPEZ, BY MR. RICO GERON, SOROSORO IBABA DEVELOPMENT COOPERATIVE, REPRESENTED BY DR. ANGELITO D. BAGUI, ASSOCIATION OF PHIL. AQUA FEEDS MILLERS, INC., REPRESENTED BY MR. NAPOLEON G. CO, PETITIONERS, VS. BOARD OF INVESTMENTS, LUCITA P. REYES, FELICITAS AGONCILLO-REYES, EFREN V. LEAÑO, AND RAUL V. ANGELES, PHILIPPINES CORPORATION, IN THEIR CAPACITY AS EXECUTIVE DIRECTORS OF THE BOARD OF INVESTMENTS, THE BOARD OF TRUSTEES OF BOI, AND CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION, RESPONDENTS.

DECISION

LEONEN, J.:

Nationalism is not a mindless ideal. It should not unreasonably exclude people of a different citizenship from participating in our economy. If it were so, nationalism will not foster social justice; rather, it will sponsor a kind of racism quite like what our ancestors had suffered from in our colonial past.

While the Constitution does not bar foreign investors from setting up shop in the Philippines, neither does it encourage their unbridled entry. Thus, it has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors.

The constitutional line demarcating privileges for our citizens over foreigners is a delicate one. We must adjudicate where such line is drawn only with a grounded consciousness of the facts of an actual case rather than through fiery passions of general advocacy. We will not evade the responsibility to adjudicate when that case comes. Sadly, this is not the case.

This Petition should be dismissed. Not only is it not justiciable, but this Court also does not have original jurisdiction over it. The grounds raised reveal that the invocation of grave abuse of discretion is mere subterfuge to a claimed "irregular or illegal" grant of an application for registration under Book I, Chapter III of Executive Order No. 226, or the Omnibus Investments Code of 1987.

This Court resolves the Petition for Certiorari^[1] filed by members of the agribusiness industry, assailing the February 28, 2012, April 24, 2012, and November 6, 2012 Resolutions^[2] issued by the Board of Governors of the Board of Investments, which granted the applications for registration filed by Charoen Pokphand Foods Philippines Corporation (Charoen).

On May 24, 2007, Charoen, a 100% foreign-owned company from Thailand, was registered with the Securities and Exchange Commission.^[3]

On three (3) different occasions, Charoen submitted to the Board of Investments its applications for registration as a new producer of different products and services. These all went through a two-step process before they could be published in a newspaper of general circulation and officially filed with the Board of Investments. First, they underwent check-listing; and second, the Resource-Based Industries Department of the Board of Investments assessed if they complied with Executive Order No. 226.^[4]

Charoen's first application was submitted on October 6, 2011.^[5] It sought registration as a new producer of aqua feeds on a pioneer status with the Board of Investments for check-listing, assessment, and publication.

On December 28, 2011,^[6] the Philippine Star, a daily broadsheet of general circulation, published a notice of Charoen's application for registration as a "New Producer of Aqua Feeds with an annual capacity of 84,000 MT - Fish Feeds and 30,000 MT - Shrimp Feeds on a Pioneer Status"^[7] with the Board of Investments. The notice stated that any person questioning Charoen's application should file an objection under oath with the Board of Investments within three (3) days of the notice's publication.

On February 2, 2012,^[8] Charoen officially filed its application for registration with the Board of Investments by paying the requisite application fees.

On February 28, 2012,^[9] the Board of Investments' Board of Governors approved Charoen's application under Board Resolution No. 8-3 S'2012:

RESOLVED FURTHER, That the firm's application for registration under Book I of E.O. 226 of (sic) as New Producer of aqua feeds at an annual production capacity of 114,000 MT per year (84,000 MT per year of fish feeds and 30,000 MT per year of shrimp feeds) on a **Pioneer** status (based on magnitude of investments) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "C1"**.^[10] (Emphasis in the original)

On October 14, 2011,^[11] Charoen submitted its second application for registration as a new producer of hog parent stocks and slaughter hogs.

On January 5, 2012,^[12] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Hogs ... on a Pioneer Status[.]"^[13] It contained a similar instruction for people with objections to file a statement under

oath with the Board of Investments within three (3) days of the notice's publication.

On March 28, 2012,^[14] Charoen paid the application fees. Later, on April 24, 2012, the Board of Governors approved Charoen's second application under Board Resolution No. 13-6 S'2012:

RESOLVED, That the application for registration under Book I of E.O. 226 of CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION as New Producer of the following hog products:

	Annual Capacities
Breeder Hogs	25,453 heads
Slaughter Hogs	3,647 MT

be **APPROVED**, as it is hereby **APPROVED** on a Pioneer (with non-pioneer incentives), subject to the specific terms and conditions attached as **Annex "E1"**.^[15] (Emphasis in the original)

On October 11, 2012,^[16] Charoen submitted its third application for registration for its Integrated Broiler Project with the Board of Investments. On October 23, 2012,^[17] it filed the corresponding application fees.

On October 24, 2012,^[18] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Live Chickens at a capacity of 21,847 MT/year on a Pioneer Status."^[19] Again, the notice contained a directive for oppositors to file their objection under oath with the Board of Investments.

On November 6, 2012, the Board of Governors approved Charoen's application for registration under Board Resolution No. 35-10 S'2012:

RESOLVED, That the application for registration of **CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION** as New Producer of Chickens (Integrated Broiler Project) at a capacity of 21,847 MT per year on a Pioneer status (based on magnitude of investment) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "11"** and to the usual general terms and conditions.^[20] (Emphasis in the original)

On November 20, 2012,^[21] the counsel for some "members of the local swine, poultry and aquaculture industries"^[22] wrote the Board of Investments to ask for copies of the documents Charoen submitted in support of its three (3) applications for registration.

On December 17, 2012,^[23] the Board of Investments denied the request for the documents, noting that these were confidential.

Thus, on March 7, 2013, the National Federation of Hog Farmers, Abono Party-list, Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya Para sa Mamamayan, Inc.,

Agricultural Sector Alliance of the Philippines, Inc., Pork Producers Federation of the Philippines, Inc., Sorosoro Ibaba Development Cooperative, and Association of Philippine Aqua Feeds Millers, Inc., jointly filed before this Court a Petition for Certiorari^[24] with prayer for a temporary restraining order. They mainly claim that the three (3) Board Resolutions of public respondent Board of Investments, which granted private respondent Charoen's applications for registration, were issued with grave abuse of discretion.

Petitioners allege that the assailed Board Resolutions violated their constitutional right to be protected against unfair foreign competition and trade practices.^[25] They accuse public respondent of deliberately depriving them of the chance to appeal by refusing to provide them with copies of the pertinent resolutions.^[26]

Petitioners maintain that the assailed Board Resolutions were issued without prior consultation with the Department of Agriculture, as required by Executive Order No. 226,^[27] and were contrary to public policy.^[28]

Petitioners also assert that public respondent wrongly classified private respondent as a new producer when it had been operating in the Philippines as early as 2009, raising shrimps and hogs.^[29]

Finally, petitioners stress that they will sustain injury as they do not enjoy incentives similar to what the issued Board Resolutions have provided. Private respondent was allegedly given preferential treatment and incentives, which gave it undue advantage to significantly lower its prices.^[30]

On April 10, 2013,^[31] this Court directed respondents to comment on the Petition. Additionally, petitioners were instructed to provide copies of the assailed Board Resolutions.

In its Comment,^[32] public respondent argues that the Petition is dismissible for petitioners' failure to exhaust all administrative remedies before going to this Court. It points out that they should have first appealed to the Office of the President, which is the available remedy from its decisions on applications for registration under Article 36 of Executive Order No. 226.^[33] It further faults petitioners for filing the Petition directly before this Court, instead of the Court of Appeals, as required under Rules 43 and 65 of the Rules of Civil Procedure.^[34]

Public respondent also claims that petitioners were not properly authorized to file the Petition, as the special powers of attorney issued to them did not include filing an original action before this Court.^[35] Additionally, it contends that its Executive Directors Lucita P. Reyes, Felicitas Agoncilio-Reyes, Efren V. Leaño, and Raul V. Angeles are not proper parties in interest as they were not members of the Board of Governors who signed the assailed Board Resolutions.^[36]

Public respondent then denies petitioners' claim that it withheld copies of the assailed Board Resolutions. It avers that petitioners only asked for copies of the supporting documents of private respondent's applications and not the copies of the resolutions.^[37]

Public respondent emphasizes that it issued the assailed Board Resolutions within its powers under Executive Order No. 226 and the Investment Priorities Plan then in effect^[38] which was formulated through a series of consultations with the Department of Agriculture and other stakeholders.^[39] It stresses that private respondent's applications for registration were approved to bridge the gap between local production and local demand for aqua feeds, pork, and poultry.^[40]

Public respondent then belies petitioners' claim that private respondent was mistakenly classified as a "New Project" under the Investment Priorities Plan. It explains that registration is made per project; thus, even if a company is already existing, its new projects can qualify for registration if its activity is included in the current Investment Priorities Plan. Hence, the projects of private respondent, which had only begun its commercial operations in aqua feeds, breeder and slaughter hogs, and integrated broiler chickens, qualified as New Projects.^[41]

Public respondent underscores that the Constitution does not bestow "an automatic mantle of protection"^[42] against foreign competition. It asserts that agribusiness is not one of the areas of investments that require at least a 60% Filipino capitalization. It points out that 100% foreign equity participation is allowed in agribusiness.^[43]

Finally, public respondent asserts that petitioners failed to show a clear and unmistakable right, or that they would suffer undue injury, that would merit an injunctive writ against the assailed Board Resolutions.^[44]

In its Comment,^[45] private respondent asserts that while the Constitution is guided by economic nationalism, "Filipino monopoly of the economy is proscribed"^[46] and foreign investments are encouraged to boost the Philippine economy,^[47] as evidenced by the numerous laws^[48] enacted to attract foreign investments. Private respondent likewise points out that this Court has repeatedly declared as constitutional the various statutes that liberalized entry of foreign investors.^[49]

Similar to public respondent, private respondent also adverts to petitioners' procedural mistakes in, among others, filing an original petition before this Court instead of an appeal to the Office of the President^[50] and failing to exhaust the available administrative remedies.^[51] It also maintains that the assailed Board Resolutions have long attained finality.^[52]

Private respondent posits that public respondent did not gravely abuse its discretion in approving the applications for registration. It maintains that public respondent carefully assessed that these applications adhered to existing rules and regulations.^[53]

Finally, private respondent avers that the findings of fact of public respondent, as a "specialized government agency tasked with the preparation and formulation of the annual Investment Priorities Plan as well as the registration of pioneer new products[,]"^[54] should be respected.^[55]