

THIRD DIVISION

[G.R. No. 188952, September 21, 2016]

**PEÑAFRANCIA SHIPPING CORPORATION AND SANTA CLARA
SHIPPING CORPORATION, PETITIONERS, VS. 168 SHIPPING
LINES, INC., RESPONDENT.**

DECISION

JARDELEZA, J.:

This case questions the propriety of the dismissal by the Court of Appeals (CA) of a Rule 43 petition for review of a decision of the Maritime Industry Authority (MARINA), for failure to appeal the same to the Secretary of the Department of Transportation and Communications (DOTC), and subsequently, to the Office of the President (OP).

Facts

On September 28, 2007, respondent 168 Shipping Lines, Inc. (respondent) filed with the MARINA Regional Office V (MARINA RO V), Legaspi City an application^[1] for the issuance of a Certificate of Public Convenience (CPC) to operate M/V Star Ferry I, a roll-on-roll-off vessel, in the route Matnog, Sorsogon to Allen, Northern Samar, and vice versa. The schedule of trips as reflected in the application has 90 departures from the port of Matnog, Sorsogon and 86 departures from the port of Allen, Northern Samar.^[2]

Peñafrancia Shipping Corporation and Santa Clara Shipping Corporation (petitioners), existing operators who own and operate ferry boats serving the ports of Allen, Northern Samar and Matnog, Sorsogon, intervened in the proceeding and opposed^[3] the application on the following grounds: (1) respondent failed to submit a Certificate of Berthing as required under MARINA Memorandum Circular No. 74-B;^[4] (2) the proposed schedule of trips in the original application is physically impossible to perform by the applicant's lone vessel, the M/V Star Ferry I;^[5] and (3) there exists an overtonnage in the route applied for by the respondent, thus warranting the intervention of MARINA.^[6] Respondent countered that under Republic Act (R.A.) No. 9295^[7] and its Implementing Rules and Regulations (IRR): (1) an application for CPC is not adversarial in character and thus, a motion to intervene and opposition are not allowed; and (2) there is no requirement for the CPC applicant to secure a Certificate of Berthing from the Philippine Ports Authority.^[8]

On December 13, 2007, the MARINA RO V required respondent to file an amended CPC application with workable sailing frequencies/schedule of trips.^[9] However, instead of complying with the directive, respondent merely submitted a pleading denominated as RE: ADOPTION OF AMENDED SCHEDULE OF TRIPS.^[10]

The MARINA RO V, in its Decision^[11] dated February 1, 2008, denied due course to respondent's application. Respondent filed its Motion for Reconsideration but this was denied.^[12]

Respondent filed a Notice of Appeal on March 26, 2008 before the Office of the MARINA Administrator.^[13]

On August 8, 2008, MARINA Administrator Vicente T. Suazo, Jr., joined by Deputy Administrator for Operations Primo V. Rivera, all acting by authority of the Board, reversed the Decision of the MARINA RO V and granted respondent's application for issuance of a CPC.^[14] Thus, petitioners sought reconsideration of the MARINA Decision, but their motion was denied through a Resolution^[15] signed by the MARINA Officer-in-Charge Maria Elena H. Bautista who was then concurrent Undersecretary for Maritime Transport of the DOTC.

Petitioners appealed to the CA via Rule 43 of the Rules of Court. However, the CA dismissed the petition for failure of the petitioners to exhaust administrative remedies, hence, for lack of cause of action.^[16]

The CA dismissed the petition through its Resolution^[17] dated March 24, 2009, holding that:

Contrary to petitioners' stance that the Maritime Industry Authority (MARINA) is an independent agency and that it has the final say in the outcome of its adjudication in any contested matter, this Court finds and holds that MARINA is an entity within the Executive Department. It will be noted that Presidential Decree No. 474 (Maritime Industry' Decree of 1974) organized MARINA under the Office of the President. This was modified on July 23, 1979 by Executive Order No. 546 wherein MARINA was made an attached agency of the then Ministry of Transportation and Communications (MOTC) for policy and program coordination. This was confirmed by the Administrative Code of 1987 x x x which explicitly provides that MARINA is an agency attached to the Department of Transportation and Communication (DOTC).

Hence, MARINA is not independent of the executive structural organization and the ruling of the MARINA Administrator is subject to the consecutive reviews of the DOTC Secretary and the Office of the President as its administrative superiors in the Executive Department pursuant to the doctrine of exhaustion of administrative remedies which requires an administrative decision to first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. Thus, if a remedy within the administrative machinery can still be had by giving the administrative body concerned the opportunity to decide on the matter that comes within its jurisdiction, then such remedy should be priorly exhausted before the court's judicial power is invoked.

Petitioners' failure to resort to the DOTC Secretary and then the Office of the President, in case of an adverse decision, and the filing of the herein

petition before this Court is a premature invocation of the Court's intervention which renders the instant petition without cause of action, hence, dismissible.^[18] (Underscoring supplied; citations omitted.)

Petitioners filed a motion for reconsideration but this was denied.^[19] Hence, this petition.

Petitioners, relying on the IRR of R.A. No. 9295, argue that: (1) a petition for review under Rule 43 of the Rules of Court is the immediate and direct remedy from the adverse rulings of the MARINA;^[20] (2) the proper forum for review of the decision rendered by a quasi-judicial agency is the CA;^[21] (3) the decision and resolution subject of the Rule 43 petition were acts of the MARINA Board, and not merely by the Administrator;^[22] (4) assuming an appeal to the DOTC Secretary and the Office of the President is necessary, this case is an exception because . an appeal would be a superfluity;^[23] (5) the doctrine of qualified political agency applies because the DOTC Secretary, who is the chairman of the MARINA Board, is the alter ego of the President;^[24] and (6) it would be impractical to file an appeal with the OP because an individual from the OP is also a member of the MARINA Board.^[25]

In its Comment,^[26] respondent counters that: (1) the IRR provision on appeal is void and cannot supplant Section 19, Chapter IV, Book VII of the Administrative Code of 1987 which provides that an appeal from a final decision of the agency may be taken to the Department Head unless otherwise provided by law;^[27] (2) the IRR is inapplicable since it did not provide for the mode of appeal of the decisions of the MARINA Board, rather, it provided for appeals from an order, ruling, decision or resolution of the MARINA Administrator;^[28] (3) the DOTC is an attached agency under the control of the executive department and the decisions or rulings rendered by the MARINA Board in the exercise of its quasi-judicial functions are subject to the review of the DOTC Secretary and the OP;^[29] (4) the MARINA was never taken out of the framework of the executive department;^[30] (5) even assuming that the decisions by the MARINA are not reviewable by the DOTC, the Constitution and the Administrative Code of 1987 provide that the President shall have control of all the executive departments, bureaus and offices;^[31] and (6) the case is not an exception to the doctrine of exhaustion of administrative remedies.^[32]

Respondent moved to dismiss the petition on the ground that petitioners committed a willful act of forum shopping.^[33] Petitioners filed a Petition^[34] (moratorium petition) dated March 22, 2010 before the MARINA, praying the latter to issue a moratorium in the grant of CPCs for carriage of passengers and cargoes covering the routes Matnog, Sorsogon - Allen, Northern Samar or Matnog; Sorsogon - Dapdap, Allen, Northern Samar or Matnog; Sorsogon — San Isidro, Northern Samar and vice-versa. They contend that the moratorium petition is an attempt by the petitioners to achieve what they sought to achieve in the present case, *i.e.*, to prevent respondent or other entities from operating in the subject routes.^[35]

Petitioners, in their Comment (To Respondent's Manifestation/Submission with Leave of Court dated June 1, 2010),^[36] maintain that there is no forum shopping since the two cases have different causes of action. In the present case, if the judgment is

favorable to petitioners, the effect will be retroactive, *i.e.*, voidance of the CPC already issued by the MARINA to respondent. Meanwhile, if the moratorium petition is granted, the effect of the moratorium will be prospective, *i.e.*, the freezing of new applications for CPC or additional bottoms in the subject route.

Issues

- (1) Whether petitioners committed forum shopping when they filed the moratorium petition; and
- (2) Whether the decision of the MARINA Board in the exercise of its quasi-judicial function should be appealed first to the DOTC Secretary, and subsequently to the OP, before appeal to the CA.

Our Ruling

We deny the petition.

I. No forum shopping.

There is, no forum shopping. There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."^[37] The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.^[38]

The moratorium petition prays for a relief different from that sought in the main case, from which the present petition arose. In the moratorium petition, the petitioners did not pray for the cancellation, or revocation of the CPC issued to the respondent. What petitioners prayed for was a "moratorium or stoppage in the grant of Certificates of Public Convenience for carriage of passengers and cargoes involving the routes MATNOG, SORSOGON - ALLEN, NORTHERN SAMAR or MATNOG, SORSOGON - DAPDAP, ALLEN, NORTHERN; SAMAR, or MATNOG, SORSOGON - SAN ISIDRO, NORTHERN SAMAR AND VICE VERSA."^[39] Thus, any decision of the MARINA on the moratorium petition will not affect the CPC already issued in favor of the respondent and appealed before the CA, the subject matter of the present case.

II. The CA properly dismissed the appeal.

Petitioners justify their direct resort to the CA by invoking the IRR of R.A. No. 9295,^[40] which provides for a procedure for appeal of decisions involving CPCs,^[41] to wit:

Sec. 1. *Appeal on Decisions Involving the CPC* — Any order, ruling, decision or resolution of the CO/MRO Director/OIC relating to the application for issuance of Entity/Company CPC shall become final and executory fifteen (15) days unless a Motion for Reconsideration is filed within the same period with the CO/MRO Director/OIC concerned after the receipt of a copy thereof by the party affected. The decision of the CO/MRO Director/OIC shall be final and executory unless within the same period an appeal to the MARINA Administrator has been perfected.

The order, ruling, decision or resolution of the MARINA Administrator shall be final and executory within fifteen (15) days unless an administrative appeal is filed with the MARINA Board or petition for judicial review is filed with the Court of Appeals or Supreme Court in accordance with the provisions of the Revised Rules of Court. (Underscoring supplied.)

Petitioners claim that this provision of the IRR shows that "the appropriate remedy against the adverse ruling of;the MARINA Board is a petition for review to the Honorable Court of Appeals under Rule 43 of the Rules of Court."^[42] However, as correctly pointed out by the respondent, paragraph 2, Section 1, Rule XV of the IRR applies only to an appeal of the order, ruling, decision or resolution of the MARINA Administrator. There is no procedure for appeal of the decisions of the MARINA Board. Hence, the IRR cannot be the basis for petitioners' appeal. Moreover, no procedure for appeal before the courts is provided by R.A. No. 9295. Rules and regulations issued to implement a law cannot go beyond its terms and provisions.^[43]

Rule 43 governs all appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial¹ agency in the exercise of quasi-judicial functions. Resort to the CA is authorized by Section 9 of Batas Pambansa Blg. 129^[44] which provides that the CA shall have jurisdiction over the decisions or final orders of quasi-judicial agencies. The MARINA is a quasi-judicial agency, and though it is not among the enumerated agencies in Rule 43, the list is not meant to be exclusive.^[45]

However, while Rule 43 provides for the appeal procedure from quasi-judicial agencies to the CA, the aggrieved party must still exhaust administrative remedies prior to recourse to the CA. Thus, Executive Order No. 292 otherwise known as the Administrative Code of 1987 provides for the framework of administrative appeal prior to judicial review:

BOOK VII - ADMINISTRATIVE PROCEDURE

CHAPTER 4 - ADMINISTRATIVE APPEAL IN CONTESTED CASES

Sec. 19. *Appeal*.—Unless otherwise provided by law or executive order, an appeal from a final decision of the agency may be taken to the Department head.

Sec. 20. *Perfection of Administrative Appeals*.—

(1) Administrative appeals under this Chapter shall be perfected within fifteen (15) days after receipt of a copy of the decision