

## EN BANC

[ G.R. No. 187854, November 12, 2013 ]

**RAY PETER O. VIVO, PETITIONER, VS. PHILIPPINE AMUSEMENT  
AND GAMING CORPORATION (PAGCOR), RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

By petition for review on *certiorari*, the petitioner seeks the review and reversal of the decision promulgated on February 27, 2009,<sup>[1]</sup> whereby the Court of Appeals (CA) reversed and set aside the resolutions of the Civil Service Commission (CSC) dated April 11, 2007<sup>[2]</sup> and August 1, 2007.<sup>[3]</sup>

Also under review is the denial by the CA of the petitioner's motion for reconsideration through the resolution promulgated May 11, 2009.<sup>[4]</sup>

#### Antecedents

The petitioner was employed by respondent Philippine Amusement and Gaming Corporation (PAGCOR) on September 9, 1986, and was PAGCOR's Managing Head of its Gaming Department at the time of his dismissal from office.<sup>[5]</sup> On February 21, 2002, he received a letter from Teresita S. Ela, the Senior Managing Head of PAGCOR's Human Resources Department, advising that he was being administratively charged with gross misconduct, rumor-mongering, conduct prejudicial to the interest of the company, and loss of trust and confidence;<sup>[6]</sup> that he should submit a written explanation of the charges; and that he was at the same time being placed under preventive suspension.<sup>[7]</sup>

On February 26, 2002, the petitioner's counsel, replying to Ela's letter, assailed the propriety of the show-cause memorandum as well as the basis for placing the petitioner under preventive suspension.

On March 14, 2002, the petitioner received the summons for him to attend an administrative inquiry, instructing him to appear before PAGCOR's Corporate Investigation Unit (CIU) on March 15, 2002.<sup>[8]</sup> At the petitioner's request, however, the inquiry was conducted at his residence on said date. His statement was taken in a question-and-answer format. He was also furnished the memorandum of charges that recited the accusations against him and indicated the acts and omissions constituting his alleged offenses. The memorandum of charges was based on the statements of PAGCOR personnel who had personal knowledge of the accusations against him. However, when his counsel requested to be furnished copies of the statements, PAGCOR rejected the request on the ground that he had already been afforded the sufficient opportunity to confront, hear, and answer the charges against him during the administrative inquiry. The petitioner was then allowed to submit his

answer on March 26, 2002.

Thereafter, the CIU tendered its investigation report to PAGCOR's Adjudication Committee.<sup>[9]</sup>

The Adjudication Committee summoned the petitioner to appear before it on May 8, 2002 in order to address questions regarding his case. His counsel moved for the re-scheduling of the meeting because he would not be available on said date, but the Adjudication Committee denied the request upon the reason that the presence of counsel was not necessary in the proceedings. His counsel moved for the reconsideration of the denial of the request.<sup>[10]</sup>

The petitioner received the letter dated May 15, 2002 from Ela informing him of the resolution of the PAGCOR Board of Directors in its May 14, 2002 meeting to the effect that he was being dismissed from the service.<sup>[11]</sup>

After the petitioner's motion for reconsideration vis-à-vis the resolution of the PAGCOR Board of Directors dismissing him from the service was denied, he appealed his dismissal to the CSC.

In its resolution dated April 11, 2007, the CSC ruled that PAGCOR had violated the petitioner's right to due process, and accordingly set aside his dismissal from the service, viz:

In fine, the Commission finds that the right of Vivo to due process was violated when he was ousted from his office without the corresponding Board Resolution that should have set out the collegial decision of the PAGCOR Board of Directors.

**WHEREFORE**, foregoing premises considered, the appeal of Ray Peter O. Vivo is hereby **GRANTED**. The letters dated May 15, 2002 and June 5, 2002 issued by Teresita S. Ela, Senior Managing Head, Human Resource Department, Philippine Amusement and Gaming Corporation (PAGCOR), are SET ASIDE.<sup>[12]</sup>

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The CSC remanded the case to PAGCOR with the instruction for PAGCOR to complete its reinvestigation within three months from receipt of the resolution.

After the CSC denied its motion for reconsideration, PAGCOR elevated the case to the CA.

On February 27, 2009, the CA promulgated its decision reversing and setting aside the decision of the CSC upon its finding that the petitioner had been accorded procedural due process. The CA remanded the case to the CSC for the determination of the appeal of the petitioner on the merits, specifically the issue of whether the dismissal had been for cause.<sup>[13]</sup>

Hence, this appeal.

### **Issue**

The petitioner raises the following issues, namely:

1. The conclusion of the Court of Appeals that Petitioner's right for (*sic*) due process was not violated transgressed (*sic*) the fundamental rules in administrative due process.
2. The Court of Appeals decision in setting aside CSC Resolutions Nos. 070732, dated 01 April 2007, and 071485, dated 01 August 2007, is contrary to the Uniform Rules on Administrative Cases in the Civil Service and settled jurisprudence.<sup>[14]</sup>

The petitioner would have the Court hold that PAGCOR's failure to furnish him a copy of the Board Resolutions authorizing his dismissal and denying his motion for reconsideration was a fatal and irreparable defect in the administrative proceedings that ultimately resulted in the illegality of his dismissal from the service. He further argues that he was denied due process by PAGCOR's refusal to re-schedule the Adjudication Committee meeting in order to enable his counsel to attend the meeting with him, because the refusal constituted a violation of his right to be represented by counsel.

### **Ruling**

The petition for review lacks merit.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>[15]</sup> Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary,<sup>[16]</sup> and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals*<sup>[17]</sup> elaborates on the well-established meaning of due process in administrative proceedings in this wise:

x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.<sup>[18]</sup>

The petitioner actively participated in the entire course of the investigation and hearings conducted by PAGCOR. He received the letter from Ela apprising him of his being administratively charged for several offenses, and directing him to submit an explanation in writing. He was later on properly summoned to appear before the CIU, which conducted its proceedings in his own residence upon his request. During the administrative inquiry, the CIU served him a copy of the memorandum of charges, which detailed the accusations against him and specified the acts and omissions constituting his alleged offenses. He was also given the opportunity to appear before the Adjudication Committee to answer clarificatory questions. Lastly, he was informed through a memorandum of the decision of the Board of Directors dismissing him from the service.

In contrast, the petitioner could not dispute the observance of his right to due process by PAGCOR as set forth herein. He made no credible showing of the supposed violation of his right to due process. He was heard through the written statement he submitted in response to the memorandum of the charges against him. He actively participated in the administrative inquiry conducted by the CIU at his own residence. He was afforded the opportunity to clarify his position in the proceedings before the Adjudication Committee. He was also able to appeal the adverse decision to dismiss him from the service to the CSC. There is also no question that PAGCOR complied with the twin-notice requirement prior to the termination of his employment, the first notice being made through Ela's letter dated February 21, 2002 informing him on his being administratively charged for the offenses mentioned, and the second being through the letter dated May 15, 2002 advising him that PAGCOR's Board of Directors had resolved to dismiss him from the service. It is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.<sup>[19]</sup>

The petitioner takes the CA to task for not considering: (1) PAGCOR's failure to furnish him copies of the Board Resolutions referred to by Ela in the memorandum served on him, and (2) the refusal of PAGCOR to have him be represented by counsel.

The petitioner cannot be sustained.

As the CA found, and correctly so, the petitioner's pleadings explicitly admitted that his dismissal had been effected through board resolutions. That he was not furnished copies of the board resolutions did not negate the existence of the resolutions, and did not invalidate the contents of the board resolutions. It is beyond question that he was duly informed of the subject-matter of the board resolutions. Consequently, the CSC's conclusion that his dismissal had been unauthorized was unfounded. In any case, even assuming for the sake of argument that there was no board resolution approving his dismissal, the lapse did not render his dismissal illegal but unauthorized. However, as the CA succinctly put it, an unauthorized act could be the subject of ratification.<sup>[20]</sup>

As regards the supposed denial of the petitioner's right to counsel, it is underscored that PAGCOR denied his request to re-schedule the conference before the Adjudication Committee because his counsel would not be available on the day fixed