

## EN BANC

[ G.R. No. 193978, February 28, 2012 ]

**JELBERT B. GALICTO, PETITIONER, VS. H.E. PRESIDENT BENIGNO SIMEON C. AQUINO III, IN HIS CAPACITY AS PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; ATTY. PAQUITO N. OCHOA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY; AND FLORENCIO B. ABAD, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.**

### R E S O L U T I O N

#### **BRION, J.:**

Before us is a Petition for *Certiorari* and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order,<sup>[1]</sup> seeking to nullify and enjoin the implementation of Executive Order No. (EO) 7 issued by the Office of the President on September 8, 2010. Petitioner Jelbert B. Galicto asserts that EO 7 is unconstitutional for having been issued beyond the powers of the President and for being in breach of existing laws.

The petitioner is a Filipino citizen and an employee of the Philippine Health Insurance Corporation (*PhilHealth*).<sup>[2]</sup> He is currently holding the position of Court Attorney IV and is assigned at the PhilHealth Regional Office CARAGA.<sup>[3]</sup>

Respondent Benigno Simeon C. Aquino III is the President of the Republic of the Philippines (*Pres. Aquino*); he issued EO 7 and has the duty of implementing it. Respondent Paquito N. Ochoa, Jr. is the incumbent Executive Secretary and, as the *alter ego* of Pres. Aquino, is tasked with the implementation of EO 7. Respondent Florencio B. Abad is the incumbent Secretary of the Department of Budget and Management (*DBM*) charged with the implementation of EO 7.<sup>[4]</sup>

#### **The Antecedent Facts**

On July 26, 2010, Pres. Aquino made public in his first State of the Nation Address the alleged excessive allowances, bonuses and other benefits of Officers and Members of the Board of Directors of the Manila Waterworks and Sewerage System – a government owned and controlled corporation (*GOCC*) which has been unable to meet its standing obligations.<sup>[5]</sup> Subsequently, the Senate of the Philippines (*Senate*), through the Senate Committee on Government Corporations and Public Enterprises, conducted an inquiry in aid of legislation on the reported excessive salaries, allowances, and other benefits of GOCCs and government financial institutions (*GFI*s).<sup>[6]</sup>

Based on its findings that “officials and governing boards of various [GOCCs] and

[GFIs] x x x have been granting themselves unwarranted allowances, bonuses, incentives, stock options, and other benefits [as well as other] irregular and abusive practices,”<sup>[7]</sup> the Senate issued Senate Resolution No. 17 “urging the President to order the immediate suspension of the unusually large and apparently excessive allowances, bonuses, incentives and other perks of members of the governing boards of [GOCCs] and [GFIs].”<sup>[8]</sup>

Heeding the call of Congress, Pres. Aquino, on September 8, 2010, issued EO 7, entitled “*Directing the Rationalization of the Compensation and Position Classification System in the [GOCCs] and [GFIs], and for Other Purposes.*” EO 7 provided for the guiding principles and framework to establish a fixed compensation and position classification system for GOCCs and GFIs. A Task Force was also created to review all remunerations of GOCC and GFI employees and officers, while GOCCs and GFIs were ordered to submit to the Task Force information regarding their compensation. **Finally, EO 7 ordered (1) a moratorium on the increases in the salaries and other forms of compensation, except salary adjustments under EO 8011 and EO 900, of all GOCC and GFI employees for an indefinite period to be set by the President,<sup>[9]</sup> and (2) a suspension of all allowances, bonuses and incentives of members of the Board of Directors/Trustees until December 31, 2010.**<sup>[10]</sup>

EO 7 was published on September 10, 2010.<sup>[11]</sup> It took effect on September 25, 2010 and precluded the Board of Directors, Trustees and/or Officers of GOCCs from granting and releasing bonuses and allowances to members of the board of directors, and from increasing salary rates of and granting new or additional benefits and allowances to their employees.

### **The Petition**

The petitioner claims that as a PhilHealth employee, he is affected by the implementation of EO 7, which was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, based on the following arguments:

#### **I.**

**EXECUTIVE ORDER NO. 7 IS NULL AND VOID FOR LACK OF LEGAL BASIS  
DUE TO THE FOLLOWING GROUNDS:**

- A. P.D. 985 IS NOT APPLICABLE AS BASIS FOR EXECUTIVE ORDER NO. 7 BECAUSE THE GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WERE SUBSEQUENTLY GRANTED THE POWER TO FIX COMPENSATION LONG AFTER SUCH POWER HAS BEEN REVOKED BY P.D. 1597 AND R.A. 6758.**
- B. THE GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS DO NOT NEED TO HAVE ITS COMPENSATION PLANS, RATES AND POLICIES REVIEWED BY THE DBM AND APPROVED BY THE PRESIDENT BECAUSE P.D. 1597 REQUIRES ONLY THE GOCCs TO REPORT TO THE OFFICE TO THE PRESIDENT THEIR COMPENSATION**

PLANS AND RATES BUT THE SAME DOES NOT GIVE THE PRESIDENT THE POWER OF CONTROL OVER THE FISCAL POWER OF THE GOCCs.

C. J.R. NO. 4, [SERIES] 2009 IS NOT APPLICABLE AS LEGAL BASIS BECAUSE IT HAD NOT RIPENED INTO X X X LAW, THE SAME NOT HAVING BEEN PUBLISHED.

D. ASSUMING ARGUENDO THAT J.R. NO. 1, S. 2004 (sic) AND J.R. 4, S. 2009 ARE VALID, STILL THEY ARE NOT APPLICABLE AS LEGAL BASIS BECAUSE THEY ARE NOT LAWS WHICH MAY VALIDLY DELEGATE POWER TO THE PRESIDENT TO SUSPEND THE POWER OF THE BOARD TO FIX COMPENSATION.

## II.

EXECUTIVE ORDER NO. 7 IS INVALID FOR DIVESTING THE BOARD OF DIRECTORS OF [THE] GOCCS OF THEIR POWER TO FIX THE COMPENSATION, A POWER WHICH IS A LEGISLATIVE GRANT AND WHICH COULD NOT BE REVOKED OR MODIFIED BY AN EXECUTIVE FIAT.

## III.

EXECUTIVE ORDER NO. 7 IS BY SUBSTANCE A LAW, WHICH IS A DEROGATION OF CONGRESSIONAL PREROGATIVE AND IS THEREFORE UNCONSTITUTIONAL.

## IV.

THE ACTS OF SUSPENDING AND IMPOSING MORATORIUM ARE ULTRA VIRES ACTS BECAUSE J.R. NO. 4 DOES NOT EXPRESSLY AUTHORIZE THE PRESIDENT TO EXERCISE SUCH POWERS.

## V.

EXECUTIVE ORDER NO. 7 IS AN INVALID ISSUANCE BECAUSE IT HAS NO SUFFICIENT STANDARDS AND IS THEREFORE ARBITRARY, UNREASONABLE AND A VIOLATION OF SUBSTANTIVE DUE PROCESS.

## VI.

EXECUTIVE ORDER NO. 7 INVOLVES THE DETERMINATION AND DISCRETION AS TO WHAT THE LAW SHALL BE AND IS THEREFORE INVALID FOR ITS USURPATION OF LEGISLATIVE POWER.

## VII.

CONSISTENT WITH THE DECISION OF THE SUPREME COURT IN PIMENTEL V. AGUIRRE CASE, EXECUTIVE ORDER NO. 7 IS ONLY DIRECTORY AND NOT MANDATORY.<sup>[12]</sup>

## The Case for the Respondents

On December 13, 2010, the respondents filed their Comment. They pointed out the following procedural defects as grounds for the petition's dismissal: (1) the petitioner lacks *locus standi*; (2) the petitioner failed to attach a board resolution or secretary's certificate authorizing him to question EO 7 in behalf of PhilHealth; (3) the petitioner's signature does not indicate his PTR Number, Mandatory Continuing Legal Education (*MCLE*) Compliance Number and Integrated Bar of the Philippines (*IBP*) Number; (4) the *jurat* of the Verification and Certification of Non-Forum Shopping failed to indicate a valid identification card as provided under A.M. No. 02-8-13-SC; (5) the President should be dropped as a party respondent as he is immune from suit; and (6) *certiorari* is not applicable to this case.<sup>[13]</sup>

The respondents also raised substantive defenses to support the validity of EO 7. They claim that the President exercises control over the governing boards of the GOCCs and GFIs; thus, he can fix their compensation packages. In addition, EO 7 was issued in accordance with law for the purpose of controlling the grant of excessive salaries, allowances, incentives and other benefits to GOCC and GFI employees. They also advocate the validity of Joint Resolution (J.R.) No. 4, which they point to as the authority for issuing EO 7.<sup>[14]</sup>

Meanwhile, on June 6, 2011, Congress enacted Republic Act (R.A.) No. 10149,<sup>[15]</sup> otherwise known as the "GOCC Governance Act of 2011." Section 11 of RA 10149 expressly authorizes the President to fix the compensation framework of GOCCs and GFIs.

### The Court's Ruling

**We resolve to DISMISS the petition for its patent formal and procedural infirmities, and for having been mooted by subsequent events.**

#### A. *Certiorari* is not the proper remedy.

Under the Rules of Court, petitions for *Certiorari* and Prohibition are availed of to question judicial, quasi-judicial and mandatory acts. Since the issuance of an EO is not judicial, quasi-judicial or a mandatory act, a petition for *certiorari* and prohibition is an incorrect remedy; instead a petition for declaratory relief under Rule 63 of the Rules of Court, filed with the Regional Trial Court (RTC), is the proper recourse to assail the validity of EO 7:

Section 1. *Who may file petition.* Any person interested under a deed, will, contract or other written instrument, **whose rights are affected by** a statute, **executive order** or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Emphases ours.)

*Liga ng mga Barangay National v. City Mayor of Manila*<sup>[16]</sup> is a case in point.<sup>[17]</sup> In *Liga*, we dismissed the petition for certiorari to set aside an EO issued by a City Mayor and insisted that a petition for declaratory relief should have been filed with the RTC. We painstakingly ruled:

After due deliberation on the pleadings filed, we resolve to dismiss this petition for *certiorari*.

First, the respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives. A petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial or quasi-judicial functions.

Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:

SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Elsewise stated, for a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting [to] lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.

*Quasi-judicial function*, on the other hand, is “a term which applies to the actions, discretion, etc., of public administrative officers or bodies ... required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.”

Before a tribunal, board, or officer may exercise judicial or quasi-judicial