

EN BANC

[G.R. No. 177131, June 07, 2011]

BOY SCOUTS OF THE PHILIPPINES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

The jurisdiction of the Commission on Audit (COA) over the Boy Scouts of the Philippines (BSP) is the subject matter of this controversy that reached us *via* petition for prohibition ^[1] filed by the BSP under Rule 65 of the 1997 Rules of Court. In this petition, the BSP seeks that the COA be prohibited from implementing its June 18, 2002 **Decision**, ^[2] its February 21, 2007 **Resolution**, ^[3] as well as all other issuances arising therefrom, and that all of the foregoing be rendered null and void. ^[4]

Antecedent Facts and Background of the Case

This case arose when the COA issued **Resolution No. 99-011** ^[5] on August 19, 1999 ("the COA Resolution"), with the subject "*Defining the Commission's policy with respect to the audit of the Boy Scouts of the Philippines.*" In its whereas clauses, the COA Resolution stated that the BSP was created as a public corporation under Commonwealth Act No. 111, as amended by Presidential Decree No. 460 and Republic Act No. 7278; that in *Boy Scouts of the Philippines v. National Labor Relations Commission*, ^[6] the Supreme Court ruled that the BSP, as constituted under its charter, was a "government-controlled corporation within the meaning of Article IX(B)(2)(1) of the Constitution"; and that "the BSP is appropriately regarded as a government instrumentality under the 1987 Administrative Code." ^[7] The COA Resolution also cited its constitutional mandate under Section 2(1), Article IX (D). Finally, the COA Resolution reads:

NOW THEREFORE, in consideration of the foregoing premises, the COMMISSION PROPER HAS RESOLVED, AS IT DOES HEREBY RESOLVE, **to conduct an annual financial audit of the Boy Scouts of the Philippines in accordance with generally accepted auditing standards**, and express an opinion on whether the financial statements which include the Balance Sheet, the Income Statement and the Statement of Cash Flows present fairly its financial position and results of operations.

x x x x

BE IT RESOLVED FURTHERMORE, that for purposes of audit supervision, **the Boy Scouts of the Philippines shall be classified among the government corporations belonging to the Educational, Social, Scientific, Civic and Research Sector** under the Corporate Audit Office I, to be audited, similar to the subsidiary corporations, by employing the team audit approach. ^[8] (Emphases supplied.)

The BSP sought reconsideration of the COA Resolution in a **letter** ^[9] dated November 26,

1999 signed by the BSP National President Jejomar C. Binay, who is now the Vice President of the Republic, wherein he wrote:

It is the position of the BSP, with all due respect, that it is not subject to the Commission's jurisdiction on the following grounds:

1. We reckon that the ruling in the case of Boy Scouts of the Philippines vs. National Labor Relations Commission, et al. (G.R. No. 80767) classifying the BSP as a government-controlled corporation is anchored on the "substantial Government participation" in the National Executive Board of the BSP. It is to be noted that the case was decided when the BSP Charter is defined by Commonwealth Act No. 111 as amended by Presidential Decree 460.

However, may we humbly refer you to Republic Act No. 7278 which amended the BSP's charter after the cited case was decided. The most salient of all amendments in RA No. 7278 is the alteration of the composition of the National Executive Board of the BSP.

The said RA virtually eliminated the "substantial government participation" in the National Executive Board by removing: (i) the President of the Philippines and executive secretaries, with the exception of the Secretary of Education, as members thereof; and (ii) the appointment and confirmation power of the President of the Philippines, as Chief Scout, over the members of the said Board.

The BSP believes that the cited case has been superseded by RA 7278. Thereby weakening the case's conclusion that the BSP is a government-controlled corporation (*sic*). The 1987 Administrative Code itself, of which the BSP vs. NLRC relied on for some terms, defines government-owned and controlled corporations as agencies organized as stock or non-stock corporations which the BSP, under its present charter, is not.

Also, the Government, like in other GOCCs, does not have funds invested in the BSP. What RA 7278 only provides is that the Government or any of its subdivisions, branches, offices, agencies and instrumentalities can from time to time donate and contribute funds to the BSP.

x x x x

Also the BSP respectfully believes that the BSP is not "appropriately regarded as a government instrumentality under the 1987 Administrative Code" as stated in the COA resolution. As defined by Section 2(10) of the said code, instrumentality refers to "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."

The BSP is not an entity administering special funds. It is not even included in the DECS National Budget. x x x

It may be argued also that the BSP is not an "agency" of the Government. The 1987 Administrative Code, merely referred the BSP as an "attached agency" of the DECS as distinguished from an actual line agency of departments that are included in the National Budget. The BSP believes that

an "attached agency" is different from an "agency." Agency, as defined in Section 2(4) of the Administrative Code, is defined as any of the various units of the Government including a department, bureau, office, instrumentality, government-owned or controlled corporation or local government or distinct unit therein.

Under the above definition, the BSP is neither a unit of the Government; a department which refers to an executive department as created by law (Section 2 [7] of the Administrative Code); nor a bureau which refers to any principal subdivision or unit of any department (Section 2 [8], Administrative Code). [10]

Subsequently, requests for reconsideration of the COA Resolution were also made separately by Robert P. Valdellon, Regional Scout Director, Western Visayas Region, Iloilo City and Eugenio F. Capreso, Council Scout Executive of Calbayog City. [11]

In a **letter** [12] dated July 3, 2000, Director Crescencio S. Sunico, Corporate Audit Officer (CAO) I of the COA, furnished the BSP with a copy of the **Memorandum** [13] dated June 20, 2000 of Atty. Santos M. Alquizalas, the COA General Counsel. In said Memorandum, the COA General Counsel opined that Republic Act No. 7278 did not supersede the Court's ruling in *Boy Scouts of the Philippines v. National Labor Relations Commission*, even though said law eliminated the substantial government participation in the selection of members of the National Executive Board of the BSP. The Memorandum further provides:

Analysis of the said case disclosed that the substantial government participation is only one (1) of the three (3) grounds relied upon by the Court in the resolution of the case. Other considerations include the character of the BSP's purposes and functions which has a public aspect and the statutory designation of the BSP as a "public corporation". These grounds have not been deleted by R.A. No. 7278. On the contrary, these were strengthened as evidenced by the amendment made relative to BSP's purposes stated in Section 3 of R.A. No. 7278.

On the argument that BSP is not appropriately regarded as "a government instrumentality" and "agency" of the government, such has already been answered and clarified. The Supreme Court has elucidated this matter in the BSP case when it declared that BSP is regarded as, both a "government-controlled corporation with an original charter" and as an "instrumentality" of the Government. Likewise, it is not disputed that the Administrative Code of 1987 designated the BSP as one of the attached agencies of DECS. Being an attached agency, however, it does not change its nature as a government-controlled corporation with original charter and, necessarily, subject to COA audit jurisdiction. Besides, Section 2(1), Article IX-D of the Constitution provides that COA shall have the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charters. [14]

Based on the Memorandum of the COA General Counsel, Director Sunico wrote:

In view of the points clarified by said Memorandum upholding COA Resolution No. 99-011, we have to comply with the provisions of the latter, among which is to

conduct an annual financial audit of the Boy Scouts of the Philippines. [15]

In a letter dated November 20, 2000 signed by Director Amorsonia B. Escarda, CAO I, the COA informed the BSP that a preliminary survey of its organizational structure, operations and accounting system/records shall be conducted on November 21 to 22, 2000. [16]

Upon the BSP's request, the audit was deferred for thirty (30) days. The BSP then filed a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order before the COA. This was **denied** by the COA in its questioned Decision, which held that the BSP is under its audit jurisdiction. The BSP moved for reconsideration but this was likewise denied under its questioned Resolution. [17]

This led to the filing by the BSP of this petition for prohibition with preliminary injunction and temporary restraining order against the COA.

The Issue

As stated earlier, the sole issue to be resolved in this case is whether the BSP falls under the COA's audit jurisdiction.

The Parties' Respective Arguments

The BSP contends that *Boy Scouts of the Philippines v. National Labor Relations Commission* is inapplicable for purposes of determining the audit jurisdiction of the COA as the issue therein was the jurisdiction of the National Labor Relations Commission over a case for illegal dismissal and unfair labor practice filed by certain BSP employees. [18]

While the BSP concedes that its functions do relate to those that the government might otherwise completely assume on its own, it avers that this alone was not determinative of the COA's audit jurisdiction over it. The BSP further avers that the Court in *Boy Scouts of the Philippines v. National Labor Relations Commission* "simply stated x x x that in respect of functions, the BSP is *akin* to a public corporation" but this was not synonymous to holding that the BSP is a government corporation or entity subject to audit by the COA. [19]

The BSP contends that Republic Act No. 7278 introduced crucial amendments to its charter; hence, the findings of the Court in *Boy Scouts of the Philippines v. National Labor Relations Commission* are no longer valid as the government has ceased to play a controlling influence in it. The BSP claims that the pronouncements of the Court therein must be taken only within the context of that case; that the Court had categorically found that its assets were acquired from the Boy Scouts of America and not from the Philippine government, and that its operations are financed chiefly from membership dues of the Boy Scouts themselves as well as from property rentals; and that "the BSP may correctly be characterized as non-governmental, and hence, beyond the audit jurisdiction of the COA." It further claims that the designation by the Court of the BSP as a government agency or instrumentality is mere *obiter dictum*. [20]

The BSP maintains that the provisions of Republic Act No. 7278 suggest that "governance of BSP has come to be overwhelmingly a private affair or nature, with government participation restricted to the seat of the Secretary of Education, Culture and Sports." [21] It cites *Philippine Airlines Inc. v. Commission on Audit* [22] wherein the Court declared that, "PAL, having ceased to be a government-owned or controlled corporation is no longer under the audit jurisdiction of the COA." [23] Claiming that the amendments introduced by Republic Act No. 7278 constituted a supervening event that changed the BSP's corporate identity in the same way that the government's privatization program changed PAL's, the BSP makes the

case that the government no longer has control over it; thus, the COA cannot use *the Boy Scouts of the Philippines v. National Labor Relations Commission* as its basis for the exercise of its jurisdiction and the issuance of COA Resolution No. 99-011. [24] The BSP further claims as follows:

It is not far-fetched, in fact, to concede that BSP's funds and assets are private in character. Unlike ordinary public corporations, such as provinces, cities, and municipalities, or government-owned and controlled corporations, such as Land Bank of the Philippines and the Development Bank of the Philippines, the assets and funds of BSP are not derived from any government grant. For its operations, BSP is not dependent in any way on any government appropriation; as a matter of fact, it has not even been included in any appropriations for the government. To be sure, COA has not alleged, in its Resolution No. 99-011 or in the Memorandum of its General Counsel, that BSP received, receives or continues to receive assets and funds from any agency of the government. The foregoing simply point to the private nature of the funds and assets of petitioner BSP.

x x x x

As stated in petitioner's third argument, BSP's assets and funds were never acquired from the government. Its operations are not in any way financed by the government, as BSP has never been included in any appropriations act for the government. Neither has the government invested funds with BSP. BSP, has not been, at any time, a user of government property or funds; nor have properties of the government been held in trust by BSP. This is precisely the reason why, until this time, the COA has not attempted to subject BSP to its audit jurisdiction. x x x. [25]

To summarize its other arguments, the BSP contends that it is not a government-owned or controlled corporation; neither is it an instrumentality, agency, or subdivision of the government.

In its **Comment**, [26] the COA argues as follows:

1. The BSP is a public corporation created under Commonwealth Act No. 111 dated October 31, 1936, and whose functions relate to the fostering of public virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of the youth. The manner of creation and the purpose for which the BSP was created indubitably prove that it is a government agency.
2. Being a government agency, the funds and property owned or held in trust by the BSP are subject to the audit authority of respondent Commission on Audit pursuant to Section 2 (1), Article IX-D of the 1987 Constitution.
3. Republic Act No. 7278 did not change the character of the BSP as a government-owned or controlled corporation and government instrumentality. [27]

The COA maintains that the functions of the BSP that include, among others, the teaching to the youth of patriotism, courage, self-reliance, and kindred virtues, are undeniably sovereign functions enshrined under the Constitution and discussed by the Court in *Boy Scouts of the Philippines v. National Labor Relations Commission*. The COA contends that any attempt to