

THIRD DIVISION

[G.R. No. 173918, April 08, 2008]

**REPUBLIC OF THE PHILIPPINES, represented by the
DEPARTMENT OF ENERGY (DOE), Petitioner, vs. PILIPINAS
SHELL PETROLEUM CORPORATION, Respondent.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision dated 4 August 2006 of the Court of Appeals in C.A. G.R. SP No. 82183.^[1] The appellate court reversed the Decision^[2] dated 19 August 2003 of the Office of the President in OP NO. Case 96-H-6574 and declared that Ministry of Finance (MOF) Circular No. 1-85 dated 15 April 1985, as amended, is ineffective for failure to comply with Section 3 of Chapter 2, Book 7 of the Administrative Code of 1987,^[3] which requires the publication and filing in the Office of the National Administration Register (ONAR) of administrative issuances. Thus, surcharges provided under the aforementioned circular cannot be imposed upon respondent Pilipinas Shell Petroleum Corporation.

Respondent is a corporation duly organized existing under the laws of the Philippines. It is engaged in the business of refining oil, marketing petroleum, and other related activities.^[4]

The Department of Energy (DOE) is a government agency under the direct control and supervision of the Office of the President. The Department is mandated by Republic Act No. 7638 to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation.

On 10 October 1984, the Oil Price Stabilization Fund (OPSF) was created under Presidential Decree No. 1956 for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or increase in world market prices of crude oil and imported petroleum products.^[5]

Letter of Instruction No. 1431 dated 15 October 1984 was issued directing the utilization of the OPSF to reimburse oil companies the additional costs of importation of crude oil and petroleum products due to fluctuation in foreign exchange rates to assure adequate and continuous supply of petroleum products at reasonable prices.^[6]

Letter of Instruction No. 1441, issued on 20 November 1984, mandated the Board of Energy (now, the Energy Regulatory Board) to review and reset prices of domestic oil products every two months to reflect the prevailing prices of crude oil and petroleum. The prices were regulated by adjusting the OPSF impost, increasing

or decreasing this price component as necessary to maintain the balance between revenues and claims on the OPSF.^[7]

On 27 February 1987, Executive Order No. 137 was enacted to amend P. D. No. 1956. It expanded the sources and utilization of the OPSF in order to maintain stability in the domestic prices of oil products at reasonable levels.^[8]

On 4 December 1991, the Office of Energy Affairs (OEA), now the DOE, informed the respondent that respondent's contributions to the OPSF for foreign exchange risk charge for the period December 1989 to March 1991 were insufficient. OEA Audit Task Force noted a total underpayment of P14,414,860.75 by respondent to the OPSF. As a consequence of the underpayment, a surcharge of P11,654,782.31 was imposed upon respondent. The said surcharge was imposed pursuant to MOF Circular No. 1-85, as amended by Department of Finance (DOF) Circular No. 2-94,^[9] which provides that:

2. Remittance of payment to the OPSF as provided for under Section 5 of MOF Order No. 11-85 shall be made not later than 20th of the month following the month of remittance of the foreign exchange payment for the import or the month of payment to the domestic producers in the case of locally produced crude. **Payment after the specified date shall be subject to a surcharge of fifteen percent (15%) of the amount, if paid within thirty (30) days from the due date plus two percent (2%) per month if paid after thirty days.**^[10] (Emphasis supplied.)

On 9 December 1991, the OEA wrote another letter^[11] to respondent advising the latter of its additional underpayment to the OPSF of the foreign exchange risk fee in the amount of P10,139,526.56 for the period April 1991 to October 1991. In addition, surcharges in the amount of P2,806,656.65 were imposed thereon.

In a letter dated 20 January 1992 addressed to the OEA, respondent justified that its calculations for the transactions in question were based on a valid interpretation of MOF Order NO. 11-85 dated 12 April 1985 and MOE Circular No. 85-05-82 dated 16 May 1985.^[12]

On 24 March 1992, respondent paid the OEA in full the principal amount of its underpayment, totaling P24,554,387.31, but not the surcharges.^[13]

In a letter^[14] dated 15 March 1996, OEA notified the respondent that the latter is required to pay the OPSF a total amount of P18,535,531.40 for surcharges on the late payment of foreign exchange risk charges for the period December 1989 to October 1991.

In a letter^[15] dated 11 July 1996, the DOE reiterated its demand for respondent to settle the surcharges due. Otherwise, the DOE warned that it would proceed against the respondent's Irrevocable Standby Letter of Credit to recover its unpaid surcharges.

On 19 July 1996, respondent filed a Notice of Appeal before the Office of the President. The Office of the President affirmed the conclusion of the DOE, contained in its letters dated 15 March 1996 and 11 July 1996. While it admitted that the

implementation of MOF Circular No. 1-85 is contingent upon its publication and filing with the ONAR, it noted that respondent failed to adduce evidence of lack of compliance with such requirements. The aforementioned Decision reads:[16]

Given the foregoing, the DOE's implementation of MOF Circular 1-85 by imposing surcharges on Pilipinas Shell is only proper. Like this Office, the DOE is bound to presume the validity of that administrative regulation.

WHEREFORE, premises considered, the Decision of the Department of Energy, contained in its letters dated 15 March 1996 and 11 July 1996, is hereby **AFFIRMED** *in toto*.

Respondent filed a Motion for Reconsideration of the Decision dated 19 August 2003 of the Office of the President, which was denied on 28 November 2003.[17]

Respondent filed an appeal before the Court of Appeals wherein it presented Certifications dated 9 February 2004[18] and 11 February 2004[19] issued by ONAR stating that DOF Circular No. 2-94 and MOF Circular No. 1-85 respectively, have not been filed before said office.

The Court of Appeals reversed the Decision of the Office of the President in O.P. CASE No. 96-H-6574 and ruled that MOF Circular 1-85, as amended, was ineffective for failure to comply with the requirement to file with ONAR. It decreed that even if the said circular was issued by then Acting Minister of Finance Alfredo de Roda, Jr. long before the Administrative Code of 1987, Section 3 of Chapter 2, Book 7 thereof specifies that rules already in force on the date of the effectivity of the Administrative Code of 1987 must be filed within three months from the date of effectivity of said Code, otherwise such rules cannot thereafter be the basis of any sanction against any party or persons.[20] According to the dispositive of the appellate court's Decision:[21]

WHEREFORE, the instant petition is hereby **GRANTED**. The Decision dated August 19, 2003 and the Resolution dated November 28, 2003 of the Office of the President, are hereby **REVERSED**.

ACCORDINGLY, the imposition of surcharges upon petitioner is hereby declared without legal basis.

On 25 September 2006, petitioner filed the present Petition for Review on *Certiorari*, wherein the following issues were raised:[22]

I

THE SURCHARGE IMPOSED BY MINISTRY OF FINANCE (MOF) CIRCULAR No. 1-85 HAS BEEN AFFIRMED BY E.O. NO. 137 HAVING RECEIVED VITALITY FROM A LEGISLATIVE ENACTMENT, MOF CIRCULAR NO. 1-85 CANNOT BE RENDERED INVALID BY THE SUBSEQUENT ENACTMENT OF A LAW REQUIRING REGISTRATION OF THE MOF CIRCULAR WITH THE OFFICE OF THE NATIONAL REGISTER

II

ASSUMING THAT THE REGISTRATION OF MOF NO. 1-85 IS REQUIRED, RESPONDENT WAIVED ITS OBJECTION ON THE BASIS OF NON-REGISTRATION WHEN IT PAID THE AMOUNT REQUIRED BY PETITIONER.

This petition is without merit.

As early as 1986, this Court in *Tañada v. Tuvera*^[23] enunciated that publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect, to wit:

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.** (Emphasis provided.)

Thereafter, the Administrative Code of 1987 was enacted, with Section 3 of Chapter 2, Book VII thereof specifically providing that:

Filing.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. **Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.**

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection. (Emphasis provided.)

Under the doctrine of *Tañada v. Tuvera*,^[24] the MOF Circular No. 1-85, as amended, is one of those issuances which should be published before it becomes effective since it is intended to enforce Presidential Decree No. 1956. The said circular should also comply with the requirement stated under Section 3 of Chapter 2, Book VII of the Administrative Code of 1987 – filing with the ONAR in the University of the Philippines Law Center – for rules that are already in force at the time the Administrative Code of 1987 became effective. These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance.

In the present case, the Certifications dated 11 February 2004^[25] and 9 February

2004^[26] issued by ONAR prove that MOF Circular No. 1-85 and its amendatory rule, DOF Circular No. 2-94, have not been filed before said office. Moreover, petitioner was unable to controvert respondent's allegation that neither of the aforementioned circulars were published in the Official Gazette or in any newspaper of general circulation. Thus, failure to comply with the requirements of publication and filing of administrative issuances renders MOF Circular No. 1-85, as amended, ineffective.

In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*,^[27] this Court emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances. In support of its ruling, it specified several instances wherein this Court declared administrative issuances, which failed to observe the proper requirements, to have no force and effect:

Nowhere from the above narration does it show that the GRAM Implementing Rules was published in the Official Gazette or in a newspaper of general circulation. Significantly, the effectivity clauses of both the GRAM and ICERA Implementing Rules uniformly provide that they "shall take effect immediately." These clauses made no mention of their publication in either the Official Gazette or in a newspaper of general circulation. Moreover, per the Certification dated January 11, 2006 of the Office of the National Administrative Register (ONAR), the said implementing rules and regulations were not likewise filed with the said office in contravention of the Administrative Code of 1987.

Applying the doctrine enunciated in *Tañada v. Tuvera*, the Court has previously declared as having no force and effect the following administrative issuances: (1) Rules and Regulations issued by the Joint Ministry of Health-Ministry of Labor and Employment Accreditation Committee regarding the accreditation of hospitals, medical clinics and laboratories; (2) Letter of Instruction No. 1416 ordering the suspension of payments due and payable by distressed copper mining companies to the national government; (3) Memorandum Circulars issued by the Philippine Overseas Employment Administration regulating the recruitment of domestic helpers to Hong Kong; (4) Administrative Order No. SOCPEC 89-08-01 issued by the Philippine International Trading Corporation regulating applications for importation from the People's Republic of China; (5) Corporation Compensation Circular No. 10 issued by the Department of Budget and Management discontinuing the payment of other allowances and fringe benefits to government officials and employees; and (6) POEA Memorandum Circular No. 2 Series of 1983 which provided for the schedule of placement and documentation fees for private employment agencies or authority holders.

In all these cited cases, the administrative issuances questioned therein were uniformly struck down as they were not published or filed with the National Administrative Register. On the other hand, in *Republic v. Express Telecommunications Co., Inc.*, the Court declared that the 1993 Revised Rules of the National Telecommunications Commission had not become effective despite the fact that it was filed with the National Administrative Register because the same had not been published at the time. The Court emphasized therein that "publication in the Official