

EN BANC

[G.R. NO. 165665, January 31, 2007]

THE HON. ALBERTO ROMULO, SUBSTITUTED BY THE HON. EDUARDO I. ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, THE OFFICE OF THE PRESIDENT, THE HON. LEANDRO MENDOZA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION, THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC, THE CIVIL AERONAUTICS BOARD (CAB), AND THE CAB CHAIRMAN, PETITIONERS, VS. THE HON. JUDGE EDUARDO B. PERALTA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 17, MANILA, PAL EMPLOYEES ASSOCIATION (PALEA), NATIONAL LABOR UNION AND THE NATIONAL FEDERATION OF LABOR UNIONS, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for *certiorari* filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Orders^[1] of the Regional Trial Court (RTC), Branch 17, Manila, dated April 16, 2004, June 21, 2004, and September 3, 2004 in Civil Case No. 04-109201, entitled

"PAL Employees Association (PALEA), et al. v. Alberto Romulo, in his capacity as Executive Secretary, et al."

While we could have dismissed this petition outright for violation of the principle of hierarchy of courts,^[2] however, we opted to resolve the same in the interest of speedy administration of justice.

On December 3, 2003, President Gloria Macapagal Arroyo issued Executive Order (E.O.) No. 253,^[3] providing for an "open skies" policy in the aviation industry. Pursuant to this E.O. the Diosdado Macapagal International Airport at Clark Field, Pampanga and the Subic Bay International Airport at Subic, Zambales were opened to international air cargo transportation providers and foreign airlines.

On February 23, 2004, the PAL Employees Association (PALEA), the National Labor Union (NLU), and the National Federation of Labor Unions (NAFLU), as legitimate labor organizations representing the bulk of workers in the local aviation, industry, herein respondents, filed with the RTC, Branch 17, Manila a petition for *certiorari*, prohibition, and injunction, assailing the constitutionality of E.O. No. 253. Impleaded therein as respondents were then Executive Secretary Alberto Romulo, substituted subsequently by Executive Secretary Eduardo I. Ermita, the Office of the President, Mr. Leandro Mendoza, in his capacity as Secretary of the Department of

Transportation and Communication (DOTC), the DOTC, the Civil Aeronautics Board (CAB), and the CAB Chairman, herein petitioners. The petition, docketed as Civil Case No. 04-109201, alleged that E.O. No. 253 is unconstitutional on the following grounds:

- a) The power and authority to declare an "open skies" policy is a sole prerogative of Congress. By providing for such a policy, the Executive Department usurped the authority of the Legislature in contravention of the fundamental law;
- b) E.O. No. 253 actually amends Republic Act (R.A.) No. 7227,^[4] an action beyond the power of the President, for it is only Congress which may amend laws;
- c) E.O. No. 253 also amends and repeals parts of R.A. No. 776 creating the Civil Aeronautics Board; and
- d) E.O. No. 253 allows foreign airlines to operate as common carriers in Philippine territory without complying with the requirements prescribed by the Constitution.

The Office of the Solicitor General (OSG), representing petitioners, filed a motion to dismiss the petition in Civil Case No. 04-109201 for lack of cause of action.

On April 6, 2004, the OSG served by registered mail a copy of its motion upon Atty. Froilan M. Bacungan, counsel for petitioners in Civil Case No. 04-109201 (now respondent labor unions).

On April 16, 2004, the trial court issued an Order denying the OSG's motion to dismiss, thus:

In the absence of proof of transmittal by registered mail of a copy of the subject Motion to Dismiss dated April 5, 2004, addressed to the petitioner's counsel, pursuant to the second paragraph of Section 4, Rule 15 of the 1997 Rules of Civil Procedure, the subject Motion to Dismiss dated April 5, 2004 from the Office of the Solicitor General is hereby DENIED.

SO ORDERED.

On May 19, 2004, the OSG filed a motion for reconsideration. Attached thereto is a photocopy of registry return receipt No. 4096. But this motion was denied by the trial court in its Order dated June 21, 2004, thus:

In the absence of any indication on the photocopy of the registry return receipt (Annex "A," Motion for Reconsideration dated May 17, 2004) that it was, in fact a copy of the Motion to Dismiss dated April 25, 2004 from the Office of the Solicitor General as supposedly addressed to petitioner's counsel (Sapida v. Villanueva, 48 SCRA 19, 23, 27, 29-30 [1972]), the Office of the Solicitor General's Motion for Reconsideration dated May 17,

2004 is hereby DENIED.

SO ORDERED.

On July 28, 2004, the OSG again filed a motion for reconsideration. Attached thereto are the following: (1) a certified photocopy of the OSG's original registry return receipt No. 4096; (2) a certified photocopy of page 374, Official Records Book of the OSG Docket Division; and (3) the affidavit of Josephine S. Masangkay-Bayongan, Records Officer III, OSG Docket Division, stating that the mail matter sent by the OSG to Atty. Bacungan on April 6, 2004 was, in fact, a copy of the motion to dismiss the petition in Civil Case No. 04-109201 dated April 5, 2004.

In its Order dated September 3, 2004, the trial court denied the OSG's second motion for reconsideration, thus:

In view of the judicial admission on the face of the Motion for Reconsideration dated July 23, 2004, particularly paragraph 2 thereof to the effect that a copy of the Motion to Dismiss dated [April 5, 2004] was received by the petitioners' counsel only on April 20, 2004 after the slated hearing thereof on April 16, 2004, consistent with the caveat under Section 4, Rule 15 of the 1997 Rules of Civil Procedure, the Motion for Reconsideration dated July 23, 2004 from the Office of the Solicitor General is hereby DENIED.

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Hence, the instant petition. Petitioners alleged that in denying their motion to dismiss, respondent trial court acted with grave abuse of discretion.

As a general rule, an order denying a motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari, the remedy of the aggrieved party being to file an answer and interpose as a defense the objections raised in his motion and in case of an adverse decision, to appeal in due course.^[5] An exception, however, may be made where the denial of the motion to dismiss was made with grave abuse of discretion or without or in excess of jurisdiction.^[6]

In the instant case, there is no dispute that Atty. Bacungan, counsel for respondent labor unions, received a copy of the OSG's motion to dismiss dated April 5, 2004 on April 20, 2004, or four (4) days after it was set for hearing. Petitioners insist though that they sent a copy of their motion to him by registered mail on April 6, 2004.

Sections 7, 10 and 13 of Rule 13, of the 1997 Rules of Civil Procedure, as amended, provide:

SEC. 7. *Service by mail.* - Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 10. *Completeness of service.* — Personal service is complete upon