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[G.R. No. 138298, June 19, 2001]

RAOUL B. DEL MAR PETITIONER, V. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, ET. AL. RESPONDENT.

[G.R. NO. 138982. JUNE 19, 2001]

FEDERICO SANDOVAL II, PETITIONER, V. PHILIPPINE AMUSEMENT AND GAMING CORPORATION RESPONDENT, JUAN MIGUEL ZUBIRI INTERVENOR.

D E C I S I O N

Acting on the motions for reconsideration filed by public respondent Philippine Amusement and Gaming Corporation (PAGCOR) and private respondents Belle Jai-Alai Corporation, (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME), seeking to reverse the court's Decision dated November 29, 2000, only seven (7) justices, namely, Josue Bellosillo, Jose Melo, Santiago Kapunan, Leonardo Quisumbing, Consuelo Y. Santiago, Sabino de Leon and Angelina Gutierrez voted to grant the motions. For lack of the required number of votes, the said motions for reconsideration are denied. The opinions of Justices Puno, Melo, Vitug and De Leon are herewith made part of this resolution.

SEPARATE OPINION

PUNO, *J.*:

Before the Court for resolution are the Motions for Reconsideration filed by public respondent Philippine Amusement and Gaming Corporation (PAGCOR), and private respondents Belle Jai-Alai Corporation (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME), seeking to reverse our decision dated November 29, 2000 which enjoined the respondents from managing, maintaining and operating jai-alai games, and from enforcing the agreement entered into by them for that purpose.

In its motion for reconsideration, PAGCOR raised the following grounds:

"I

P.D. 1869, otherwise known as the PAGCOR franchise, is not merely a consolidation of P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1622 but is an express amendment of the latter.

II

The provisions of P .D .1869, taken in their totality, do not limit PAGCOR's franchise to the operation of gambling casinos.

III

Regardless of the fact that the exercise of PAGCOR's franchise to operate and manage gambling casinos and other games of chance affect public morals and notwithstanding any perceived bias against the martial law powers of former President Marcos, it remains that P.D. 1869 has the force and effect of law whose wisdom cannot be validly inquired into by the courts.

IV

The jai-alai games as introduced in the Philippine context or setting has never been associated with or appreciated as a game of skill but as a betting game or gambling activity.

V

Pursuant to the agreement of PAGCOR with BELLE/FILGAME, PAGCOR under a joint venture scheme will be the one to manage and operate the jai-alai games.

VI

The difference in tax treatment between jai-alai and other gaming activities is not crucial as would preclude PAGCOR from operating jai-alai games."[1]

On the other hand, private respondents BELLE and FILGAME averred that:

"A.

The Honorable Court's reading of the franchise granted under Presidential Decree No. 1869 makes meaningless most of Section 10 of the law, which is specifically meant to express the nature of the Philippine Amusement and Gaming Corporation's franchise, and which categorically confers upon it the "rights, privilege and authority to operate and maintain" not only "gambling casinos," but also "clubs, and other recreation or amusement places, sports, gaming pools x x x basketball, football, lotteries, etc.," which plainly includes gaming pools on jai-alai.

B.

By construing Presidential Decree No.1869 as granting only the right to own and operate gambling casinos, this Honorable Court defeats its plainly expressed intent to "centralize and integrate all games of chance

> x x x," and fails to consider that the broad "right and authority to operate and conduct games of chance" was not granted to a mere private business corporation, but to a "corporate entity to be controlled, administered and supervised by the government," meant to regulate gaming activities and earn funding for socio-economic projects for the public good."[2]

Petitioners Federico S. Sandoval II and Michael T. Defensor and intervenor Juan Miguel Zubiri vigorously opposed the Motions for Reconsideration.

Respondents reiterate in the main that Sections 1 and 10 of P.D. 1869, which define the nature and term of PAGCOR's franchise, are broad enough to cover the right to manage and operate jai-alai. They insist that a plain text interpretation of the terms "lotteries, etc." and "gaming pools" as used under Section 10 of the law necessarily includes jai-alai. They allege that P.D. 1869 did not merely incorporate all the laws relating to, but actually enlarged, the powers conferred on PAGCOR. They again submit that to strictly construe the PAGCOR charter as a grant only of a franchise to operate gambling casinos would render nugatory the other provisions of the law. They point out that under Section 11 of the law, the operation of gambling casinos is merely "in addition to the rights and privileges granted it in" Section 10.

I

Respondents' motions for reconsideration are **merely a rehash** of the arguments raised in their previous pleadings. **They failed to refute the following substantive points stated in our decision, to wit:**

1. A "franchise" is a special privilege and its terms and conditions are specifically prescribed by Congress. Thus, the manner of granting the franchise, to whom it may be granted, the mode of conducting the business, the character and quality of the service to be rendered and the duty of the grantee to the public in exercising the franchise are defined in clear and unequivocal language by the legislature. These conditionalities are made more stringent when the franchise involves the operation of a game played for bets, such as jai-alai, which is conceded as a menace to morality. Franchises are granted in accord with this universal principle.

2. The parameters of P.D. 1869 can best be understood by looking at its history. P.D. 1067-B, the predecessor of P.D. 1869, is aptly titled "Granting the Philippine Amusements and Gaming Corporation a **Franchise to establish, operate, and maintain gambling casinos** on land or water within the territorial jurisdiction of the Republic of the Philippines." Beyond debate, P.D. 1067-B is a franchise to maintain gambling casinos alone. Section 10 of P .D .1869 merely reiterated the nature and scope of PAGCOR's existing franchise to maintain gambling casinos and no legal hat trick can be pulled to show that it is a franchise to operate jai-alai.

3. The creation of PAGCOR did not empower it to operate jai-alai in competition with the existing jai-alai franchisee. P.D. 1067-A established PAGCOR for the specific purpose of centralizing and integrating "all games of chance **not heretofore authorized by existing franchises** x x x." Likewise, P.D. 1067-C expressly provided that PAGCOR's franchise "shall become exclusive in character, **subject only to the exception of existing franchises** and games of chance heretofore

permitted by law x x x." It is an uncontested fact that at the time PAGCOR was established, the Philippine Jai-alai and Amusement Corporation had an existing franchise to operate jai-alai. It could not have been the intent of Congress to grant franchises to operate jai-alai to two entities within the same jurisdiction. The proliferation of gambling is not the legislative policy, then as it is now.

4. To determine whether an entity has been given a legislative franchise to operate the game of jai-alai need not be a guessing endeavor. Jai-alai is a different game, hence**, the terms and conditions imposed on the franchisee are spelled out in a form different from that of gambling casinos**. A perusal of past laws and executive orders granting corporations a franchise to operate jai-alai will readily disclose that **standard terms and conditions** are imposed by the franchising authorities. **P.D. 1869 will show that it does not have these standard terms and conditions** found under P.D. 810 or E.O. 135 which are prior laws granting franchises to operate jai-alai. P.D. 1869 is replete with provisions pertinent alone to the operation of gambling casinos. It does not have the standard provisions with regard to the operation of jai-alai such as: the licensing of pelotaris, judges and referees; installation of automatic electric totalizator; sale of betting tickets; computation and payment of dividends based on ticket sales; distribution of wager funds; and rules and regulations governing the pelotaris, games and personnel of the fronton. Without these standard yet necessary provisions, PAGCOR cannot successfully maintain that it was granted a franchise to operate jai-alai frontons.

5. We have always proceeded from the orientation that a legislative franchise to operate jai-alai is imbued with high public interest and is not lightly granted in view of gambling's corrupting effects on the morals of society. What is claimed in the cases at bar is an alleged legislative grant of a gambling franchise, i.e., to operate jai-alai**. A statute which seeks to legalize an otherwise illegal gambling activity punishable by law must therefore be strictly construed and every reasonable doubt must be resolved to limit the powers and rights claimed under its authority. Gambling can bring a lot of money to the government but no self- respecting government can operate and hope to succeed on earnings from gambling**.

6. **The respondents cannot seek sanctuary in the plain meaning rule of statutory construction**. The plain meaning rule rests on the assumption that there is no ambiguity or obscurity in the language of the law. The fact, however, that P.D. 1869 admits of different interpretations is the best evidence that it suffers from the vice of vagueness. If it were true that the language of the law is plain and clear, it is incomprehensible why PAGCOR had to seek the legal opinions of not just one but several government agencies, namely, the Department of Justice, the Office of the Solicitor General, and the Office of the Government Corporate Counsel, to ascertain its alleged authority to operate jai-alai under its charter. With due respect, these solicited opinions could hardly be expected to be dissonant.

II

It cannot be overstressed that PAGCOR was created in light of the State policy "to centralize and integrate all games of chance **not heretofore authorized by existing franchises or permitted by law**" (Section 1 of P.D. 1869). It is clear from the PAGCOR Charter that it does not include those games of chance covered by an existing franchise. **At the time P.D. 1869 was decreed in 1983, the**

Philippine Jai-Alai and Amusement Corporation had a subsisting franchise to operate, construct and maintain a fronton for basque pelota or jai-alai which was granted under P.D. 810 enacted on October 16, 1975. As correctly observed by petitioners, P.D. 1869 was passed at a time when "jai-alai was already very popular and it was no secret that the franchise holder at that time, PJAC, was raking huge profits out of its operation. It could not have escaped the notice of the author of the law. Its omission can only mean a deliberate intention to exclude "jai-alai" from the PAGCOR charter."[3]

Undaunted by the import of the clear language of the law, respondents argue that with the repeal of P.D. 810, the restriction in the PAGCOR Charter on existing franchises was removed and hence, PAGCOR could now exercise its authority to operate and manage jai-alai games. **The fallacy in this argument is that it presupposes that PAGCOR had the power to operate and manage jai- alai except that the exercise thereof was suspended while the PJAC franchise was still subsisting.** To begin with, PAGCOR was never vested with such authority. The phrase "not heretofore authorized by existing franchises" **imposes an exception, not merely a restriction**, on PAGCOR's franchise. Consequently, the repeal of P.D. 810 did not have any effect whatsoever on the franchise of PAGCOR. It must be noted that then President Aquino repealed P.D. 810 with the intention not to grant any franchise for jai-alai. The Aquino government was grounded on a strong sense of morality and was very much against gambling. **It would have been quite illogical for the Aquino government to repeal P.D. 810 on the ground that it is contrary to public morals and in the same breath allow PAGCOR, which is under the Office of the President, to conduct exactly the same activity which it abhorred**. The moral standing of the government in its repeated avowals against illegal gambling is fatally flawed and becomes untenable when it itself engages in the very activity it seeks to eradicate. [4] Perforce, with the repeal of P.D. 810, it is necessary, before PAGCOR can conduct jai-alai, that a law be passed allowing the same. Respondents have not shown that such a law exists.

III

Our moral fiber is in tatters. There is greater reason to insist on the principle that gambling can only be allowed by **express** mandate of Congress. The world over, gambling is recognized as a vice and a social ill which government must minimize, if not eradicate, in pursuit of social and economic development.[5] In all its forms, gambling is generally proscribed as offensive to the public morals and the public good.[6]

In contending that jai-alai is impliedly included in Section 10 of the law, **the respondents are suggesting that an illegal act may be legalized by mere implication of law**. This novel step is difficult to accept. All these years, Congress has been very strict in recognizing gambling as a necessary evil. Starting with Articles 195-197 of the Revised Penal Code and the subsequent laws such as P.D. 1602 (Prescribing stiffer penalties on illegal gambling), P.D. 449 (Cockfighting Law of 1974), R.A. 309 (An Act to Regulate Horse-Racing in the Philippines), R.A. 1169 (An.Act Providing for Charity Sweepstakes Horse Races and Lotteries), C.A. 485 (An Act to Permit Betting on the Game of Basque Pelota), and P.D. 810, the policy has been to punish gambling and in exceptional cases where it is allowed, to strictly