

## EN BANC

[ G.R. No. 138298, November 29, 2000 ]

**RAOUL B. DEL MAR, PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, BELLE JAI-ALAI CORPORATION, FILIPINAS GAMING ENTERTAINMENT TOTALIZATOR CORPORATION, RESPONDENTS.**

[G.R. No. 138982. November 29, 2000]

**FEDERICO S. SANDOVAL II and MICHAEL T. DEFENSOR, PETITIONERS, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, RESPONDENT. JUAN MIGUEL ZUBIRI, INTERVENOR.**

### D E C I S I O N

**PUNO, J.:**

These two consolidated petitions concern the issue of whether the franchise granted to the Philippine Amusement and Gaming Corporation (PAGCOR) includes the right to manage and operate jai-alai.

First, we scour the significant facts. The Philippine Amusement and Gaming Corporation is a government-owned and controlled corporation organized and existing under Presidential Decree No. 1869 which was enacted on July 11, 1983. Pursuant to Sections 1 and 10 of P.D. No. 1869, respondent PAGCOR requested for legal advice from the Secretary of Justice as to whether or not it is authorized by its Charter to operate and manage jai-alai frontons in the country. In its Opinion No. 67, Series of 1996 dated July 15, 1996, the **Secretary of Justice** opined that "the authority of PAGCOR to operate and maintain games of chance or gambling extends to jai-alai which is a form of sport or **game played for bets** and that the Charter of PAGCOR amounts to a legislative franchise for the purpose."<sup>[1]</sup> Similar favorable opinions were received by PAGCOR from the Office of the **Solicitor General** per its letter dated June 3, 1996 and the Office of the **Government Corporate Counsel** under its Opinion No. 150 dated June 14, 1996.<sup>[2]</sup> Thus, PAGCOR started the operation of jai-alai frontons.

On May 6, 1999, petitioner Raoul B. del Mar **initially filed** in G.R. No. 138298 a **Petition for Prohibition** to prevent respondent PAGCOR from managing and/or operating the jai-alai or Basque pelota games, by itself or in agreement with Belle Corporation, on the ground that the controverted act is patently illegal and devoid of any basis either from the Constitution or PAGCOR's own Charter.

However, on June 17, 1999, respondent PAGCOR entered into an **Agreement** with private respondents Belle Jai Alai Corporation (BELLE) and Filipinas Gaming Entertainment Totalizator Corporation (FILGAME) wherein it was agreed that BELLE

will make available to PAGCOR the required infrastructure facilities including the main fronton, as well as provide the needed funding for jai-alai operations with no financial outlay from PAGCOR, while PAGCOR handles the actual management and operation of jai-alai.<sup>[3]</sup>

Thus, on August 10, 1999, petitioner Del Mar filed a **Supplemental Petition for Certiorari** questioning the validity of said Agreement on the ground that PAGCOR is without jurisdiction, legislative franchise, authority or power to enter into such Agreement for the opening, establishment, operation, control and management of jai-alai games.

A little earlier, or on July 1, 1999, petitioners Federico S. Sandoval II and Michael T. Defensor filed a **Petition for Injunction**, docketed as G.R. No. 138982, which seeks to enjoin respondent PAGCOR from operating or otherwise managing the jai-alai or Basque pelota games by itself or in joint venture with Belle Corporation, for being patently illegal, having no basis in the law or the Constitution, and in usurpation of the authority that properly pertains to the legislative branch of the government. In this case, a **Petition in Intervention** was filed by Juan Miguel Zubiri alleging that the operation by PAGCOR of jai-alai is illegal because it is not included in the scope of PAGCOR's franchise which covers only games of chance.

Petitioners Raoul B. del Mar, Federico S. Sandoval II, Michael T. Defensor, and intervenor Juan Miguel Zubiri, are **suing as taxpayers and in their capacity as members of the House of Representatives** representing the First District of Cebu City, the Lone Congressional District of Malabon-Navotas, the Third Congressional District of Quezon City, and the Third Congressional District of Bukidnon, respectively.

The bedrock **issues** spawned by the petitions at bar are:

**G.R. No. 138298**

Petitioner **Del Mar** raises the following issues:

I. The respondent PAGCOR has no jurisdiction or legislative franchise or acted with grave abuse of discretion, tantamount to lack or excess of jurisdiction, in arrogating unto itself the authority or power to open, pursue, conduct, operate, control and manage jai-alai game operations in the country.

II. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x in executing its agreement with co-respondents Belle and Filgame for the conduct and management of jai-alai game operations, upon undue reliance on an opinion of the Secretary of Justice.

III. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x in entering into a partnership, joint venture or business arrangement with its co-respondents Belle and Filgame, through their agreement x x x. The Agreement was entered into through manifest partiality and evident bad faith (Sec. 3 (e), RA 3019), thus manifestly and grossly disadvantageous to the government [Anti-Graft and Corrupt Practices

Act, RA 3019, Sec. 3 (g)].

IV. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to award to its co-respondents Belle and Filgame the right to avail of the tax benefits which, by law, inures solely and exclusively to PAGCOR itself.

V. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to cause the disbursement of funds for the illegal establishment, management and operation of jai-alai game operations.

VI. x x x Respondent PAGCOR has equally no jurisdiction or authority x x x to award or grant authority for the establishment, management and operation of off-fronton betting stations or bookies.

VII. The respondent PAGCOR has no jurisdiction or authority x x x in awarding unto its co-respondents Belle and Filgame, without public bidding, the subject agreement.

In defense, private respondents **BELLE and FILGAME** assert:

1. The petition states no cause of action and must be dismissed outright;
2. The petitioner has no cause of action against the respondents, he not being a real party in interest;
3. The instant petition cannot be maintained as a taxpayer suit, there being no illegal disbursement of public funds involved;
4. The instant petition is essentially an action for quo warranto and may only be commenced by the Solicitor General;
5. The operation of jai-alai is well within PAGCOR's authority to operate and maintain. PAGCOR's franchise is intended to be wide in its coverage, the underlying considerations being, that: (1) the franchise must be used to integrate all gambling operations in one corporate entity (i.e. PAGCOR); and (2) it must be used to generate funds for the government to support its social impact projects;
6. The agreement executed by, between and among PAGCOR, BJAC and FILGAME is outside the coverage of existing laws requiring public bidding.

Substantially the same defenses were raised by respondent PAGCOR in its Comment.

**G.R. No. 138982**

Petitioners contend that:

I. The operation of jai-alai games by PAGCOR is illegal in that:

1) the franchise of PAGCOR does not include the operation of jai-alai since jai-alai is a prohibited activity under the Revised Penal Code, as amended by P.D. No. 1602 which is otherwise known as the Anti-Gambling Law;

2) jai-alai is not a game of chance and therefore cannot be the subject of a PAGCOR franchise.

II. A franchise is a special privilege that should be construed strictly against the grantee.

III. To allow PAGCOR to operate jai-alai under its charter is tantamount to a license to PAGCOR to legalize and operate any gambling activity.

In its Comment, respondent **PAGCOR** avers that:

1. An action for injunction is not among the cases or proceedings originally cognizable by the Honorable Supreme Court, pursuant to Section 1, Rule 56 of the 1997 Rules of Civil Procedure.

2. Assuming, *arguendo*, the Honorable Supreme Court has jurisdiction over the petition, the petition should be dismissed for failure of petitioners to observe the doctrine on hierarchy of courts.

3. x x x Petitioners have no legal standing to file a taxpayer's suit based on their cause of action nor are they the real parties-in-interest entitled to the avails of the suit.

4. Respondent's franchise definitely includes the operation of jai-alai.

5. Petitioners have no right *in esse* to be entitled to a temporary restraining order and/or to be protected by a writ of preliminary injunction.

The **Solicitor General** claims that the petition, which is actually an action for *quo warranto* under Rule 66 of the Rules of Court, against an alleged usurpation by PAGCOR of a franchise to operate jai alai, should be dismissed outright because only the Solicitor General or public prosecutor can file the same; that P.D. No. 1869, the Charter of PAGCOR, authorizes PAGCOR to regulate and operate games of chance and skill which include jai-alai; and that P.D. No. 1602 did not outlaw jai-alai but merely provided for stiffer penalties to illegal or unauthorized activities related to jai-alai and other forms of gambling.

**We shall first rule on the important procedural issues raised by the**

## respondents.

Respondents in G.R. No. 138982 contend that the Court has no jurisdiction to take original cognizance of a petition for injunction because it is not one of those actions specifically mentioned in Section 1 of Rule 56 of the 1997 Rules of Civil Procedure. Moreover, they urge that the petition should be dismissed for failure of petitioners to observe the doctrine on hierarchy of courts.

It is axiomatic that what determines the nature of an action and hence, the jurisdiction of the court, are the allegations of the pleading and the character of the relief sought.<sup>[4]</sup> A cursory perusal of the petition filed in G.R. No. 138982 will show that it is actually one for Prohibition under Section 2 of Rule 65 for it seeks to prevent PAGCOR from managing, maintaining and operating jai-alai games. Even assuming, *arguendo*, that it is an action for injunction, this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction.<sup>[5]</sup> It cannot be gainsaid that the issues raised in the present petitions have generated an oasis of concern, even days of disquiet in view of the public interest at stake. In *Tano, et al. vs. Socrates, et al.*,<sup>[6]</sup> this Court did not hesitate to treat a petition for *certiorari* and injunction as a special civil action for *certiorari* and prohibition to resolve an issue of far-reaching impact to our people. This is in consonance with our case law now accorded near religious reverence that rules of procedure are but tools designed to facilitate the attainment of justice such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.<sup>[7]</sup>

Respondents also assail the ***locus standi*** or the standing of petitioners to file the petitions at bar as taxpayers and as legislators. First, they allege that petitioners have no legal standing to file a taxpayer's suit because the operation of jai-alai does not involve the disbursement of public funds.

Respondents' stance is not without oven ready legal support. A party suing as a taxpayer must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation.<sup>[8]</sup> In essence, taxpayers are allowed to sue where there is a claim of illegal disbursement of public funds,<sup>[9]</sup> or that public money is being deflected to any improper purpose,<sup>[10]</sup> or where petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.<sup>[11]</sup>

In the petitions at bar, the Agreement entered into between PAGCOR and private respondents BELLE and FILGAME will show that all financial outlay or capital expenditure for the operation of jai-alai games shall be provided for by the latter. Thus, the Agreement provides, among others, that: PAGCOR shall manage, operate and control the jai-alai operation at no cost or financial risk to it (Sec. 1[A]<sup>[1]</sup>); BELLE shall provide funds, at no cost to PAGCOR, for all capital expenditures (Sec. 1[B]<sup>[1]</sup>); BELLE shall make available to PAGCOR, at no cost to PAGCOR, the use of the integrated nationwide network of on-line computerized systems (Sec. 1[B]<sup>[2]</sup>); FILGAME shall make available for use of PAGCOR on a rent-free basis the jai-alai fronton facilities (Sec. 1 [C]<sup>[1]</sup>); BELLE & FILGAME jointly undertake to provide