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[G.R. No. 110526, February 10, 1998]

ASSOCIATION OF PHILIPPINE COCONUT DESICCATORS, PETITIONER, VS. PHILIPPINE COCONUT AUTHORITY, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

At issue in this case is the validity of a resolution, dated March 24, 1993, of the Philippine Coconut Authority in which it declares that it will no longer require those wishing to engage in coconut processing to apply to it for a license or permit as a condition for engaging in such business.

Petitioner Association of Philippine Coconut Desiccators (hereafter referred to as APCD) brought this suit for *certiorari* and *mandamus* against respondent Philippine Coconut Authority (PCA) to invalidate the latter's Board Resolution No. 018-93 and the certificates of registration issued under it on the ground that the resolution in question is beyond the power of the PCA to adopt, and to compel said administrative agency to comply instead with the mandatory provisions of statutes regulating the desiccated coconut industry, in particular, and the coconut industry, in general.

As disclosed by the parties' pleadings, the facts are as follows:

> On November 5, 1992, seven desiccated coconut processing companies belonging to the APCD brought suit in the Regional Trial Court, National Capital Judicial Region in Makati, Metro Manila, to enjoin the PCA from issuing permits to certain applicants for the establishment of new desiccated coconut processing plants. Petitioner alleged that the issuance of licenses to the applicants would violate PCA's Administrative Order No. 02, series of 1991, as the applicants were seeking permits to operate in areas considered "congested" under the administrative order.[1]
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> On November 6, 1992, the trial court issued a temporary restraining order and, on November 25, 1992, a writ of preliminary injunction, enjoining the PCA from processing and issuing licenses to Primex Products, Inc., Coco Manila, Superstar (Candelaria) and Superstar (Davao) upon the posting of a bond in the amount of ₱100,000.00.[2]

Subsequently and while the case was pending in the Regional Trial Court, the Governing Board of the PCA issued on March 24, 1993 Resolution No. 018-93, providing for the withdrawal of the Philippine Coconut Authority from all regulation of the coconut product processing industry. While it continues the registration of coconut product processors, the registration would be limited to the "monitoring" of their volumes of production and administration of quality standards. The full text of the resolution reads:

> RESOLUTION NO. 018-93

POLICY DECLARATION DEREGULATING

THE ESTABLISHMENT OF NEW COCONUT

PROCESSING PLANTS

WHEREAS, it is the policy of the State to promote free enterprise unhampered by protective regulations and unnecessary bureaucratic red tapes;

WHEREAS, the deregulation of certain sectors of the coconut industry, such as marketing of coconut oils pursuant to Presidential Decree No. 1960, the lifting of export and commodity clearances under Executive Order No. 1016, and relaxation of regulated capacity for the desiccated coconut sector pursuant to Presidential Memorandum of February 11, 1988, has become a centerpiece of the present dispensation;

WHEREAS, the issuance of permits or licenses prior to business operation is a form of regulation which is not provided in the charter of nor included among the powers of the PCA;

WHEREAS, the Governing Board of PCA has determined to follow and further support the deregulation policy and effort of the government to promote free enterprise;

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that, henceforth, PCA shall no longer require any coconut oil mill, coconut oil refinery, coconut desiccator, coconut product processor/factory, coconut fiber plant or any similar coconut processing plant to apply with PCA and the latter shall no longer issue any form of license or permit as condition prior to establishment or operation of such mills or plants;

RESOLVED, FURTHER, that the PCA shall limit itself only to simply registering the aforementioned coconut product processors for the purpose of monitoring their volumes of production, administration of quality standards with the corresponding service fees/charges.

ADOPTED this 24th day of March 1993, at Quezon City.[3]

The PCA then proceeded to issue "certificates of registration" to those wishing to operate desiccated coconut processing plants, prompting petitioner to appeal to the Office of the President of the Philippines on April 26, 1993 not to approve the resolution in question. Despite follow-up letters sent on May 25 and June 2, 1993, petitioner received no reply from the Office of the President. The "certificates of registration" issued in the meantime by the PCA has enabled a number of new coconut mills to operate. Hence this petition.

Petitioner alleges:

I

RESPONDENT PCA'S BOARD RESOLUTION NO. 018-93 IS NULL AND VOID FOR BEING AN UNDUE EXERCISE OF LEGISLATIVE POWER BY AN ADMINISTRATIVE BODY.

II

ASIDE FROM BEING ULTRA-VIRES, BOARD RESOLUTION NO. 018-93 IS WITHOUT ANY BASIS, ARBITRARY, UNREASONABLE AND THEREFORE IN VIOLATION OF SUBSTANTIVE DUE PROCESS OF LAW.

III

IN PASSING BOARD RESOLUTION NO. 018-93, RESPONDENT PCA VIOLATED THE PROCEDURAL DUE PROCESS REQUIREMENT OF CONSULTATION PROVIDED IN PRESIDENTIAL DECREE NO. 1644, EXECUTIVE ORDER NO. 826 AND PCA ADMINISTRATIVE ORDER NO. 002, SERIES OF 1991.

On the other hand, in addition to answering petitioner's arguments, respondent PCA alleges that this petition should be denied on the ground that petitioner has a pending appeal before the Office of the President. Respondent accuses petitioner of forum-shopping in filing this petition and of failing to exhaust available administrative remedies before coming to this Court. Respondent anchors its argument on the general rule that one who brings an action under Rule 65 must show that one has no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

I.

The rule of requiring exhaustion of administrative remedies before a party may seek judicial review, so strenuously urged by the Solicitor General on behalf of respondent, has obviously no application here. The resolution in question was issued by the PCA in the exercise of its rule- making or legislative power. However, only judicial review of decisions of administrative agencies made in the exercise of their quasi-judicial function is subject to the exhaustion doctrine. The exhaustion doctrine stands as a bar to an action which is not yet complete[4] and it is clear, in the case at bar, that after its promulgation the resolution of the PCA abandoning regulation of the desiccated coconut industry became effective. To be sure, the PCA is under the direct supervision of the President of the Philippines but there is nothing in P.D. No. 232, P.D. No. 961, P.D. No. 1468 and P.D. No. 1644 defining the powers and functions of the PCA which requires rules and regulations issued by it to be approved by the President before they become effective.

In any event, although the APCD has appealed the resolution in question to the Office of the President, considering the fact that two months after they had sent their first letter on April 26, 1993 they still had to hear from the President's office, meanwhile respondent PCA was issuing certificates of registration indiscriminately to new coconut millers, we hold that petitioner was justified in filing this case on June 25, 1993.[5] Indeed, after writing the Office of the President on April 26, 1993[6] petitioner sent inquiries to that office not once, but twice, on May 26, 1993[7] and on June 2, 1993,[8] but petitioner did not receive any reply.

II.

We now turn to the merit of the present petition. The Philippine Coconut Authority was originally created by P.D. No. 232 on June 30, 1973, to take over the powers and functions of the Coconut Coordinating Council, the Philippine Coconut Administration and the Philippine Coconut Research Institute. On June 11, 1978, by P.D. No. 1468, it was made "an independent public corporation . . . directly reporting to, and supervised by, the President of the Philippines,"[9] and charged with carrying out the State's policy "to promote the rapid integrated development and growth of the coconut and other

palm oil industry in all its aspects and to ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth."[10] through a regulatory scheme set up by law.[11]

Through this scheme, the government, on August 28, 1982, temporarily prohibited the opening of new coconut processing plants and, four months later, phased out some of the existing ones in view of overproduction in the coconut industry which resulted in cut-throat competition, underselling and smuggling of poor quality products and ultimately in the decline of the export performance of coconut-based commodities. The establishment of new plants could be authorized only upon determination by the PCA of the existence of certain economic conditions and the approval of the President of the Philippines. Thus, Executive Order No. 826, dated August 28, 1982, provided:

> SECTION 1. *Prohibition.* - Except as herein provided, no government agency or instrumentality shall hereafter authorize, approve or grant any permit or license for the establishment or operation of new desiccated coconut processing plants, including the importation of machinery or equipment for the purpose. In the event of a need to establish a new plant, or expand the capacity, relocate or upgrade the efficiencies of any existing desiccated plant, the Philippine Coconut Authority may, upon proper determination of such need and evaluation of the condition relating to:

a. the existing market demand;
b. the production capacity prevailing in the country or locality;
c. the level and flow of raw materials; and
d. other circumstances which may affect the growth or viability of the industry concerned,

> authorize or grant the application for, the establishment or expansion of capacity, relocation or upgrading of efficiencies of such desiccated coconut processing plant, subject to the approval of the President.

On December 6, 1982, a phase-out of some of the existing plants was ordered by the government after finding that "a mere freeze in the present capacity of existing plants will not afford a viable solution to the problem considering that the total available limited market is not adequate to support all the existing processing plants, making it imperative to reduce the number of existing processing plants."[12] Accordingly, it was ordered:[13]

> SECTION 1. The Philippine Coconut Authority is hereby ordered to take such action as may be necessary to reduce the number of existing desiccated coconut processing plants to a level which will insure the survival of the remaining plants. The Authority is hereby directed to determine which of the existing processing plants should be phased out and to enter into appropriate contracts with such plants for the above purpose.

It was only on October 23, 1987 when the PCA adopted Resolution No. 058-87, authorizing the establishment and operation of additional DCN plants, in view of the increased demand for desiccated coconut products in the world's markets, particularly in Germany, the Netherlands and Australia. Even then, the opening of new plants was made subject to "such implementing guidelines to be set forth by the Authority" and "subject to the final approval of the President."

The guidelines promulgated by the PCA, as embodied in Administrative Order No. 002, series of 1991, inter alia authorized the opening of new plants in "non-congested

areas only as declared by the PCA" and subject to compliance by applicants with "all procedures and requirements for registration under Administrative Order No. 003, series of 1981 and this Order." In addition, as the opening of new plants was premised on the increased global demand for desiccated coconut products, the new entrants were required to submit sworn statements of the names and addresses of prospective foreign buyers.

This form of "deregulation" was approved by President Aquino in her memorandum, dated February 11, 1988, to the PCA. Affirming the regulatory scheme, the President stated in her memorandum:

> It appears that pursuant to Executive Order No. 826 providing measures for the protection of the Desiccated Coconut Industry, the Philippine Coconut Authority evaluated the conditions relating to: (a) the existing market demands; (b) the production capacity prevailing in the country or locality; (c) the level and flow of raw materials; and (d) other circumstances which may affect the growth or viability of the industry concerned and that the result of such evaluation favored the expansion of production and market of desiccated coconut products.
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> In view hereof and the favorable recommendation of the Secretary of Agriculture, the deregulation of the Desiccated Coconut Industry as recommended in Resolution No. 058-87 adopted by the PCA Governing Board on October 28, 1987 (*sic*) is hereby approved.[14]

These measures — the restriction in 1982 on entry into the field, the reduction the same year of the number of the existing coconut mills and then the lifting of the restrictions in 1987 — were adopted within the framework of regulation as established by law "to promote the rapid integrated development and growth of the coconut and other palm oil industry in all its aspects and to ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth."[15] Contrary to the assertion in the dissent, the power given to the Philippine Coconut Authority — and before it to the Philippine Coconut Administration — "to formulate and adopt a general program of development for the coconut and other palm oils industry"[16] is not a roving commission to adopt any program deemed necessary to promote the development of the coconut and other palm oils industry, but one to be exercised in the context of this regulatory structure.

In plain disregard of this legislative purpose, the PCA adopted on March 24, 1993 the questioned resolution which allows not only the indiscriminate opening of new coconut processing plants but the virtual dismantling of the regulatory infrastructure whereby, forsaking controls theretofore placed in its keeping, the PCA limits its function to the innocuous one of "monitoring" compliance by coconut millers with quality standards and volumes of production. In effect, the PCA would simply be compiling statistical data on these matters, but in case of violations of standards there would be nothing much it would do. The field would be left without an umpire who would retire to the bleachers to become a mere spectator. As the PCA provided in its Resolution No. 018-93:

> NOW, THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, that, henceforth, PCA shall no longer require any coconut oil mill, coconut oil refinery, coconut desiccator, coconut product processor/factory, coconut fiber plant or any similar coconut processing plant to apply with PCA and the latter shall no longer