

SECOND DIVISION

[CA-G.R. SP No. 134583, December 12, 2014]

METRO CEBU HARBOR PILOTS CO., INC., PETITIONER, VS. HON. EUGENIO G. DELA CRUZ (IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY), HON. PEDRO DE LEON GUTIERREZ (IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 119, PASAY CITY), CEBU PORT AUTHORITY, APL CO. PTE LTD., RESPONDENTS.

D E C I S I O N

GARCIA, R.R., J.:

Before Us is a Petition for Certiorari^[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Order^[2] dated October 8, 2012 of the Regional Trial Court (RTC), Branch 117, Pasay City which dismissed the cross-claim of petitioner Metro Cebu Harbor Pilots, Co., Inc.; and the Order^[3] dated November 19, 2013 of the Regional Trial Court, Branch 119, Pasay City denying the motion for reconsideration^[4] thereof.

THE FACTS

The instant case stemmed from a Petition^[5] for Declaratory Relief filed before the RTC, Branch 117, Pasay City by herein private respondent APL CO. PTE LTD. (APL, for brevity) against petitioner Metro Cebu Harbor Pilots Co., Inc. (MCHPCI, for brevity) and public respondent Cebu Port Authority (CPA, for brevity).

It was alleged therein that in 1992, Republic Act No. 7621 creating the Cebu Port Authority was enacted into law pursuant to the state policy of promoting the establishment and growth of regional port bodies. As a result, all ports in Cebu City which were previously under the jurisdiction of the Philippine Ports Authority (PPA) were transferred to public respondent CPA.

In line with its mandate to manage and operate the activities of all ports within its territorial jurisdiction, public respondent CPA issued on November 24, 1997 Memorandum Circular No. 22-97 prescribing pilotage rates which shall be **inclusive** of premium or overtime pay, whether pilotage services are rendered during Sundays, holidays and nighttime from 1800H-0600H.

Thereafter, on March 31, 2004, public respondent CPA issued Administrative Order (AO) No. 02, Series of 2004, effectively repealing MC No. 22-97 such that the prescribed fees for pilotage services are now **exclusive** of overtime pay and premium pay.

Sometime in March 2009, private respondent APL received a demand letter from petitioner MCHPCI for the payment of the amount of P20,934,559.11 representing the latter's alleged collectible overtime pay plus interest from private respondent APL for the period beginning 1997 until 2004. In its reply, private respondent APL informed petitioner MCHPCI that it cannot adhere to such demand considering that the prescribed pilotage rates under MC No. 22-97 issued on November 24, 1997 are inclusive of overtime and premium pay.

Consequently, private respondent APL filed the instant petition for declaratory relief before the court *a quo* praying that the pilotage fees which it paid to petitioner MCHPCI from 1997-2004 be considered as inclusive of overtime and nighttime pay pursuant to the provisions of MC No. 22-97.

In its Answer^[6], petitioner MCHPCI averred that it is entitled to collect overtime and nighttime pay. As an affirmative defense, it contended that MC No. 22-97 is unconstitutional for being an invalid administrative issuance. The said memorandum circular is an erroneous interpretation of Executive Order No. 1088 and that it served as a class legislation depriving harbor pilots operating in Cebu of overtime and nighttime pay. By way of compulsory counterclaim, petitioner MCHPCI prayed that private respondent APL be ordered to pay the amount of P20,934,559.11 representing petitioner MCHPCI's collectible overtime pay and nighttime pay covering the period of May 1998 to December 2003 plus legal interest thereon as well as attorney's fees of p500,000.00 and litigation expenses of P200,000.00.

In a Motion to Dismiss MCHPCI's Cross-claim^[7] filed by public respondent CPA, it was alleged that the validity and constitutionality of MC No. 22-97 can no longer be assailed as it had already been superseded and repealed by Administrative Order No. 02, Series of 2004, and that the same constitutes as a collateral attack on the said memorandum circular. Further, petitioner MCHPCI never challenged the inclusion of overtime and nighttime pay on the pilotage rates prescribed under MC No. 22-97 thereby waiving its rights thereunder. Petitioner MCHPCI likewise failed to exhaust administrative remedies in questioning the same.

In its Reply^[8], petitioner MCHPCI asserted that the merits of its defense as to the validity and constitutionality of MC No. 22-97 should be heard since it constitutes one of the key grounds in resisting private respondent APL's petition for declaratory relief. The said MC No. 22-97 runs counter to jurisprudence upholding harbor pilots' entitlement to overtime and nighttime pay. In addition, the question of constitutionality of MC No. 22-97 involves a legal issue which is an exception to the doctrine of exhaustion of administrative remedies.

In an Order^[9] dated October 8, 2012, the RTC, Branch 117, Pasay City granted the Motion to Dismiss MCHPCI's Cross-Claim filed by public respondent CPA. It ratiocinated that in assailing the validity of MC No. 22-97, petitioner MCHPCI must first exhaust available administrative remedies before it can invoke judicial intervention. While there may be exceptions to the doctrine of exhaustion of administrative remedies, none is present in the instant case. The pertinent portions of the Order read:

Called to fore is a Motion to Dismiss (private respondent MCHPCI's Cross-Claim) dated 18 April 2011, then filed by the Office of the Solicitor General (OSG) and thereafter, adopted by the Office of the Government Corporate Counsel (OGCC), the present counsel for Cebu Port Authority (CPA).

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Private respondent MCHPCI alleged in its Answer, *inter alia*, by way of special and affirmative defenses, through a cross-claim against CPA that the latter's Memorandum Circular No. 22097 is invalid and unconstitutional as it was allegedly an incorrect interpretation of E.O. 1088 and other existing jurisprudence.

On 04 April 2011, herein petitioner, by counsel, filed its Reply and Answer to Counterclaim (to the respondent CPA's Answer). Petitioner admitted that respondent CPA was only impleaded in this case for having issued CPA MC No. 22-97 and said memorandum circular is clear and need not be interpreted by the Court. It further alleged, that CPA has no basis in filing a counterclaim in said petition considering that there was no positive relief being prayed for against it.

The Motion to Dismiss (private respondent Cross-Claim) is hereby granted for being meritorious. Private respondent cannot be allowed to invoke the judicial intervention without first seeking its redress in the administrative sphere if it wishes to question an administrative issuance.

While it may be true that the doctrine of exhaustion of administrative remedies is subject to several exceptions, the Court finds that the subject case does not fall under any of them.

IN THE LIGHT OF THE FOREGOING, as prayed for by public respondent CPA, and taking considerations the comments to the pleadings filed by OSG and subsequently adopted by OGCC, the Court GRANTS the Motion to Dismiss the cross-claim of MCHPCI.

SO ORDERED.^[10]

Aggrieved, petitioner MCHPCI filed a Motion for Reconsideration^[11] of the above Order.

Meanwhile, when the parties failed to reach an amicable settlement after the petition for declaratory relief was referred to judicial dispute resolution, the case was re-raffled to the RTC, Branch 119, Pasay City. In an Order^[12] dated November 19, 2013, the court *a quo* denied petitioner MCHPCI's motion for reconsideration for lack of merit. The pertinent portions of the Order are quoted:

Respondent MCHPCI anchored its motion on the ground that the doctrine of primary jurisdiction and exhaustion of administrative remedies are not iron-clad rule, as these are subject to numerous exceptions. Respondent further argued that its imputation of unconstitutionality of the CPA Memorandum Circular subject of this petition is purely legal issue which constitutes one of the valid exceptions to the administrative law doctrines. The respondent's allegation of unconstitutionality of MC 22-97 should be heard as it constitutes one of the key grounds for resisting the Petition filed by the petitioner. This very issue was the cause of this petition and both parties should be heard respecting their claims and defenses without a strict regard for procedural technicalities and disposing said action on the merits. And respondent MCHPCI's defense of unconstitutionality should be considered in this case and not be dismissed as a mere cross-claim against Cebu Port Authority.

Respondent Cebu Port Authority (CPA) on the other hand, maintained that said motion should be given scant consideration, as all the allegations and arguments raised in it have all been amply addressed in the Court's Order of October 8, 2012 and no new issues or arguments raised to warrant reconsideration. Respondent CPA further contend that respondent MCHPCI's claim of unconstitutionality of CPA MC 22-97 constitutes collateral attack and their failure to question and make a timely demand for overtime pay upon the passage of CPA MC 22-97 constitutes a waiver and abandonment of its right to it.

Having taken both parties' arguments and there being no cogent reason why this Court divest the previous ruling of October 8, 2012 dismissing respondent MCHPCI's cross-claim against respondent Cebu Port Authority, the motion should be denied.

WHEREFORE, the respondent MCHPCI's motion for reconsideration is hereby denied for lack of merit.

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SO ORDERED.

Aggrieved, petitioner MCHPCI filed the instant Petition for Certiorari, raising the lone ground^[13] for its allowance, to wit:

PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENT CPA'S MOTION TO DISMISS CROSS-CLAIM THEREBY DENYING PETITIONER MCHPCI OF ITS DEFENSE OF THE UNCONSTITUTIONALITY OF CPA MEMORANDUM CIRCULAR NO. 22-97.

THE ISSUE