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SECOND DIVISION

[G.R. No. 181178. July 26, 2010]

AMELIA R. OBUSAN, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETIREMENT; RETIREMENT AGE.— The pertinent law on this matter is Article 287 (on Retirement) of the Labor Code, as amended by Republic Act No. 7641, which took effect on January 7, 1993. x x x [U]nder this provision, the retirement age is primarily determined by the existing agreement or employment contract. Absent such an agreement, the retirement age shall be fixed by law. The law mandates that the compulsory retirement age is at 65 years, while the minimum age for optional retirement is set at 60 years. Moreover, Article 287 of the Labor Code, as amended, applies only to a situation where (1) there is no CBA or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law. The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. The rationale for the second situation is to prevent private contracts from derogating from the public law. x x x Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.

2. ID.; ID.; ID.; RETIREMENT PLANS; ACCEPTANCE BY EMPLOYEES; BUT MANAGEMENT NEED NOT FIRST

CONSULT EMPLOYEE PRIOR TO RETIRING HIM.— [C]ompany retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period. x x x [However,] we already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to annul and set aside the Decision[2] dated September 21, 2007 and the Resolution[3] dated January 8, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96918.

The antecedents that spawned this controversy are as follows—

Back in 1979, respondent Philippine National Bank (PNB) hired petitioner Amelia R. Obusan (Obusan), who eventually became the Manager of the PNB Medical Office. At that time, PNB was a government-owned or controlled corporation, whose retirement program for its employees was administered by the Government Service Insurance System (GSIS), pursuant to the

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[1] *Rollo,* pp. 8-20.

[2] Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *id.* at 21-30.

[3] *Id.* at 31-32.

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Revised Government Service Insurance Act of 1977 (Presidential Decree No. 1146).

On May 27, 1996, PNB was privatized. Section 6 of the Revised Charter of the PNB (Executive Order No. 80, December 3, 1986), with respect to the effect of privatization of PNB, provides –

> *Change in Ownership of the Majority of the Voting Equity of the Bank.* – When the ownership of the majority of the issued common voting shares passes to private investors, the stockholders shall cause the adoption and registration with the Securities and Exchange Commission of the appropriate Articles of Incorporation and revised by-laws within three (3) months from such transfer of ownership. Upon the issuance of the certificate of incorporation under the provisions of the Corporation Code, this Charter shall cease to have force and effect, and shall be deemed repealed. Any special privileges granted to the Bank such as the authority to act as official government depository, or restrictions imposed upon the Bank, shall be withdrawn, and the Bank shall thereafter be considered a privately organized bank subject to the laws and regulations generally applicable to private banks. **The bank shall likewise cease to be a government owned or controlled corporation subject to the coverage of service-wide agencies** such as the Commission on Audit and the Civil Service Commission. (Emphasis supplied.)

Consequent to the privatization, all PNB employees, including Obusan, were deemed retired from the government service. The GSIS, in its letter[4] dated February 3, 1997, confirmed Obusan's retirement from the government service, and accordingly paid her retirement gratuity in the net amount of ₱390,633.76. Thereafter, Obusan continued to be an employee of PNB.

Later, the PNB Board of Directors, through Resolution No. 30 dated December 22, 2000, as amended, approved the PNB Regular Retirement Plan[5] (PNB-RRP). Section 1, Article VI of which provides –

> Normal Retirement. The normal retirement date of a Member shall be the day he attains sixty (60) years of age, regardless of length of

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[4] *Id.* at 87.

[5] *Id.* at 56-68.

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service or has rendered thirty (30) years of service, regardless of age, whichever of the said conditions comes first. A Member who has reached the normal retirement date shall have to compulsor[il]y retire and shall be entitled to receive the retirement benefits under the Plan.[6]

In a Memorandum[7] dated February 21, 2001, PNB informed its officers and employees of the terms and conditions of the PNB-RRP, along with its implementing guidelines.

Subsequently, the PNB-RRP was registered with the Bureau of Internal Revenue, per its letter[8] dated June 27, 2001. Later, the Philnabank Employees Association, the union of PNB rank-and-file employees, recognized the PNB-RRP in the Collective Bargaining Agreement (CBA) it entered with PNB.[9]

In a Memorandum[10] dated February 11, 2002, PNB informed Obusan that her last day of employment would be on March 3, 2002, as she would reach the mandatory retirement age of 60 years on March 4, 2002. In her counsel's letter[11] dated February 26, 2002, Obusan questioned her compulsory retirement and even threatened to take legal action against PNB for illegal dismissal and unfair labor practice in the form of union busting, Obusan being then the President of the PNB Supervisors and Officers Association.

In a letter[12] dated March 1, 2002, PNB replied to Obusan, explaining that compulsory retirement under the PNB-RRP is

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[6] *Id.* at 61.

[7] *Id.* at. 101-105.

[8] *Id.* at 106-108.

[9] Article XVI of the CBA reads: "The retirement benefits of the employees shall be in accordance with the existing non-contributory Retirement Plan of the Bank," as cited in PNB's Memorandum; *id.* at 133.

[10] *Id.* at 109.

[11] *Id.* at 110.

[12] *Id.* at 111-112.

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not contrary to law and does not constitute union busting. Dissatisfied with PNB's explanation, Obusan filed before the Labor Arbiter a complaint for illegal dismissal and unfair labor practice, claiming that PNB could not compulsorily retire her at the age of 60 years, with her having a vested right to be retired only at 65 years old pursuant to civil service regulations.

On April 25, 2003, the Labor Arbiter rendered a decision,[13] dismissing Obusan's complaint as he upheld the validity of the PNB-RRP and its provisions on compulsory retirement upon reaching the age of 60 years. The Labor Arbiter found –

> Complainant posits that she has a vested right to be retired at 65 years since this was the retirement age at the time she was hired. However, there is neither jurisprudence nor law which supports this contention. Undisputed is the fact that, when complainant was hired, PNB was still a government owned and controlled corporation. Accordingly, the Revised Government Service Insurance Act [RGSI] of 1977 (Presidential Decree No. 1146), which established that the compulsory retirement age for government employees to be 65 years governs the employment of PNB employees. The PNB then did not have any participation in establishing the compulsory retirement age but the RGSI Act which is the law itself. But the same may apply only as long as PNB remains a government owned and controlled corporation. From the time PNB ceased to be such, it cannot be said that [the] RGSI Act of 1977 still applies. Thus negating the claim of complainant to retire at age 65 under the said law.
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> When PNB ceased to be a government owned or controlled corporation, the law now applicable to the Bank is the Labor Code which allows PNB to establish its own retirement plan. As such, PNB is empowered to formulate its Regular Retirement Plan provided it is within the bounds of the Labor Code. We find no cogent reason to invalidate the Regular Retirement Plan as it is in accord with the law.
>
> Indeed, this Office cannot see how complainant can assert that her right to be retired at the age of 65 years has been "vested" at the time of her hiring when, in fact, such right can only be vested at the time of her retirement. Necessarily, complainant can only avail a

[13] *Id.* at 33-43.

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retirement plan that is in effect at the time of her retirement. In this case, the retirement plan she insists on applying is no longer existent and instead it was replaced by the PNB Regular Retirement Plan which, by its terms, complies with the pertinent provisions of the Labor Code on retirement plans.[14]

Obusan then appealed to the National Labor Relations Commission (NLRC). In a resolution[15] dated May 31, 2004, the NLRC dismissed Obusan's appeal, and affirmed the assailed decision *in toto*. Obusan's motion for reconsideration of this resolution was later denied in an NLRC resolution[16] dated August 28, 2006. The NLRC held –

> Movant invokes the ruling of the Supreme Court in *Razon, Jr. v. NLRC* (185 SCRA 44), where the Supreme Court held:
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> > "We believe that upon acceptance of employment, a contractual relationship was established giving private respondent an enforceable vested interest in the retirement fund. Verily, the retirement scheme became an integral part of his employment package and the benefits to be derived therefrom constituted as it were a continuing consideration for services rendered, as well as an effective inducement for remaining with the firm."
>
> It is clear that the contractual relationship established between the employer and employee upon the latter's acceptance of employment was an enforceable vested interest *in the retirement fund*. The Supreme Court did not hold that the private respondent has a vested right to his retirement age. x x x.
>
> x x x A vested right or a vested interest may be held to mean some right or interest in *property* that has become fixed or established, and is no longer open to doubt or controversy. Retirement age is not a property. It cannot be also fixed or permanent. Laws, contracts, and collective bargaining agreements may amend or alter the retirement age of an employee. Complainant may have had a vested

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[14] *Id.* at 38-39.

[15] *Id.* at 44-46.

[16] *Id.* at 47-48.

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right to the retirement funds under the old retirement plan of the bank, but as held in *Razon*, this right could be withheld upon a clear showing of good and compelling reasons. The privatization of PNB and the consequent severance of its employees from government service is the reason why complainant lost her right to the government retirement plan. These are causes which are persuasive and compelling.[17]

Undaunted, Obusan filed a petition for *certiorari* before the CA, ascribing grave abuse of discretion to the NLRC when it affirmed the decision of the Labor Arbiter. The CA, however, dismissed the petition in its assailed Decision dated September 21, 2007, ratiocinating that the PNB-RRP's lowering the compulsory retirement age to 60 years is not violative of Article 287 of the Labor Code of the Philippines, as amended, despite the issuance of the plan years after Obusan was hired. Obusan's motion for reconsideration of this Decision was subsequently denied by the CA in its Resolution dated January 8, 2008.

Hence, this petition anchored on the argument that PNB cannot unilaterally lower the compulsory retirement age to 60 years without violating Article 287 of the Labor Code and Obusan's alleged right to retire at the age of 65 years.

According to Obusan, the PNB-RRP should only apply to employees hired on and after February 21, 2001, the date of its adoption. She insists that if the lowering of the compulsory retirement age to 60 years under the PNB-RRP was the product of an agreement between PNB and its employees, she would definitely accede to be bound by it. She points out that the questioned provision on retirement age was a unilateral act of PNB, to which she did not give her consent. In her Supplement to Petition for Review on *Certiorari*,[18] Obusan invoked *Jaculbe v. Silliman University*,[19] where this Court held—

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[17] Citations omitted.

[18] *Rollo*, pp. 71-74.

[19] G.R. No. 156934, March 16, 2007, 518 SCRA 445.

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Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age agrees to sever his or her employment with the former. In *Pantranco North Express, Inc. v. NLRC*, to which both the CA and respondent refer, the imposition of a retirement age below the compulsory age of 65 was deemed acceptable because this was part of the CBA between the employer and the employees. The consent of the employees, as represented by their bargaining unit, to be retired even before the statutory retirement age of 65 was laid out clearly in black and white and was therefore in accord with Article 287.

In this case, neither the CA nor the respondent cited any agreement, collective or otherwise, to justify the latter's imposition of the early retirement age in its retirement plan, opting instead to harp on petitioner's alleged "voluntary" contributions to the plan, which was simply untrue. The truth was that petitioner had no choice but to participate in the plan, given that the only way she could refrain from doing so was to resign or lose her job. It is axiomatic that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. This was clearly just such an instance.

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As already stated, an employer is free to impose a retirement age less than 65 for as long as it has the employee's consent. Stated conversely, employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her, respondent was guilty of illegal dismissal.[20]

Put differently, Obusan posits that the severance of her employment from PNB constituted illegal dismissal. She claims that the PNB-RRP, which compulsorily retired her at the age of 60 years without her consent, runs afoul of her right to security of tenure as guaranteed by the Constitution. She further argues

[20] *Id.* at 451-452. (Citations omitted.)

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that since PNB-RRP cannot be made to apply to her, Article 287 of the Labor Code should prevail, giving her the right to compulsorily retire at the age of 65 years.

We disagree.

The pertinent law on this matter, Article 287 of the Labor Code, as amended by Republic Act No. 7641, which took effect on January 7, 1993, provides –

> ART. 287. *Retirement.* – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining agreement and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Undoubtedly, under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Absent such an agreement, the retirement age shall be fixed by law. The above-cited law mandates that the compulsory retirement age is at 65 years, while the minimum age for optional retirement is set at 60 years. Moreover, Article 287 of the Labor Code, as amended, applies only to a situation where (1) there

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is no CBA or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law. The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. The rationale for the second situation is to prevent private contracts from derogating from the public law.[21]

In this case, Obusan was initially hired in 1979 as a government employee, PNB then being a government-owned and controlled corporation. As such, she was governed by civil service laws, and the compulsory retirement age, as imposed by law, was at 65 years. Peculiar to her situation, however, was that the corporate entity that hired her ceased to be government-owned and controlled when it was privatized in 1996. As a result of the privatization of PNB, all of its officers and employees were deemed retired from the government service. Consequently, many of them, Obusan included, received their respective retirement gratuities.

It cannot be said that the PNB-RRP is a retirement plan providing retirement benefits less than what the law requires. In fact, in the computation of the employees' retirement pay, the plan factored what Article 287 requires. Thus the plan provides:

> 3. For service rendered after privatization, a Member, regardless whether or not he received GSIS Retirement Gratuity Benefits, shall be entitled to one hundred twelve (112%) percent of his "Latest Monthly Plan Salary"[22] for

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[21] *Oxales v. United Laboratories, Inc.*, G.R. No. 152991, July 21, 2008, 559 SCRA 26.

[22] Article II, Sec. 1(h) of the PNB-RRP states -

h. **"Latest Monthly Plan Salary"** shall mean the latest gross monthly salary paid to a Member **excluding** Rice/Sugar/Meal Allowances, Teller's/

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> every year of service rendered, a fraction of at least six (6) months being considered as one (1) whole year.
>
> The vesting multiple of one hundred twelve (112%) percent that is applied to the "Latest Monthly Plan Salary" is derived as the sum of fifteen (15) days of the "Latest Daily Plan Salary" plus five (5) days of the service incentive leave (based on Latest Daily Plan Salary) plus one-twelfth (1/12) of the "Latest Monthly Plan Salary." The Daily Plan Salary used is computed as "Latest Monthly Plan Salary" multiplied by thirteen (13) months and divided by two hundred fifty-one (251) days.[23]

Moreover, the PNB-RRP also considered the effects of PNB's privatization, as it also provided for additional benefits to those employees who were not qualified to receive the GSIS Retirement Gratuity Benefits, *viz.* –

> 2. A Member who failed to qualify to receive GSIS Retirement Gratuity Benefits shall be entitled [to] one Month Basic Salary (as of May 26, 1996) for every year of service rendered before privatization.[24]

Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less

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Fieldman's Allowances or allowances of a similar nature, Clothing/Travel allowances, Temporary Detail Allowances, overtime pay, night premium, discretionary funds and/or special allowances (if any) that were granted on case-to-case basis, anniversary/quarterly/year-end bonuses, and/or profit-sharing payments and other fluctuating emoluments/monetary benefits which are not considered as part of or integrated into the regular salary of the Member. (*Rollo*, p. 58.)

[23] Article VIII, Sec. 1(a)(3) of the PNB-RRP; *id.* at 63.

[24] *Id.*

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than those provided therein.[25] By this yardstick, the PNB-RRP complies.

However, company retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period.[26]

To our mind, Obusan's invocation of *Jaculbe* on account of her lack of consent to the PNB-RRP, particularly as regards the provision on compulsory retirement age, is rather misplaced.

It is true that her membership in the PNB-RRP was made automatic, to wit –

> Section 1. Membership. Membership in the Plan shall be automatic for all full-time regular and permanent officers and employees of the Bank as of the effectivity date of the Plan. For employees hired after the effectivity of this Plan, their membership shall be effective on "Date Entered Bank."[27]

The records show that the PNB Board of Directors approved the PNB-RRP on December 22, 2000. On February 21, 2001, PNB informed all of its officers and employees about it, complete with its terms and conditions and the guidelines for its implementation. Then, the PNB-RRP was registered with the BIR and, later, was recognized by the Philnabank Employees Association in the CBA it entered with PNB.

With the information properly disseminated to all of PNB's officers and employees, the PNB-RRP was then opened for

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[25] *Jaculbe v. Silliman University*, *supra* note 19.

[26] See *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, July 28, 2008, 560 SCRA 115; *Oxales v. United Laboratories, Inc.*, *supra* note 21; *Jaculbe v. Silliman University*, *supra* note 19; *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines*, 424 Phil. 356 (2002); *Capili v. National Labor Relations Commission*, 273 Phil. 576 (1997); *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470 (1996).

[27] Article IV, Sec. 1 of the PNB-RRP; *rollo*, p. 60.

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scrutiny. The employees had every opportunity to question the plan if, indeed, it would not be beneficial to the employees, as compared to what was mandated by Article 287 of the Labor Code. Consequently, the union of PNB's rank-and-file employees recognized it as a legally-compliant and reasonable retirement plan by the act of incorporating it in their CBA with PNB.

With respect to Obusan and the PNB Supervisors and Officers Association, of which she was the President when she was compulsorily retired, there is nothing on record to show that they expressed their dissent to the PNB-RRP. This deafening silence eloquently speaks of their lack of disagreement with its provisions. It was only at the time that she was to be compulsorily retired that Obusan questioned the PNB-RRP's provision on compulsory retirement age.

Besides, we already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.[28]

Finally, it is also worthy to mention that, unlike in *Jaculbe*, the PNB-RRP is solely and exclusively funded by PNB,[29] and no financial burden is imposed on the employees for their retirement benefits.

All told, we hold that the PNB-RRP is a valid exercise of PNB's prerogative to provide a retirement plan for all its employees.

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[28] *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines, supra* note 26.

[29] Article V, Sec. 1 of the PNB-RRP states -

Sec. 1. The Retirement Fund. The funding of the Plan and the payment of the benefits hereunder shall be provided for through the medium of a retirement fund held by a Trustee under and pursuant to a Trust Agreement. **The contributions of the Bank to the fund so created, together with any income, gains or profits, less distributions, expenses, charges or losses, shall constitute the Fund.** (Emphasis supplied; *rollo* p. 60.)

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WHEREFORE, the petition is *DENIED*. The assailed Decision dated September 21, 2007 and the Resolution dated January 8, 2008 of the Court of Appeals in CA-G.R. SP No. 96918 are *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183027. July 26, 2010]

SPOUSES EDMUNDO and LOURDES SARROSA, *petitioners, vs.* **WILLY O. DIZON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE MUST BE STRICTLY OBSERVED.— Under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, failure to comply with the requirements stated therein, such as the statement of material dates, is sufficient ground to dismiss the petition. Being an extraordinary remedy, the party who seeks to avail of the special civil action of *certiorari* must strictly observe the rule laid down by law.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT PRESENT WHEN JUDGE DENIED THE MOTION TO CONSOLIDATE CASES INVOLVING DIFFERENT QUESTIONS OF FACT AND LAW.— The Court agrees with the finding of the Court of Appeals that the RTC of Parañaque City, Branch 257 did not gravely abuse its discretion in issuing the Order dated June 29, 2007, denying the motion to consolidate LRC Case No. 05-0047 (*Ex-Parte* Petition for Issuance of