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[G.R. No. 141735. June 8, 2005]

SAPPARI K. SAWADJAAN, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE CIVIL SERVICE COMMISSION and AL-AMANAH INVESTMENT BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; CONSTRUED.**— The general rule is that the remedy to obtain reversal or modification of the judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.

2. **ID.; SPECIAL CIVIL ACTIONS;** ***CERTIORARI*****; MAY NOT BE USED AS A SUBSTITUTE FOR THE LOST REMEDY OF APPEAL; APPLICATION IN CASE AT BAR.**— It is settled that a special civil action for *certiorari* will not lie as a substitute for the lost remedy of appeal, and though there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, we find no special reasons for making out an exception in this case. Even if we were to overlook this fact in the broader interests of justice and treat this as a special civil action for *certiorari* under Rule 65, the petition would nevertheless be dismissed for failure of the petitioner to show grave abuse of discretion. Petitioner's recurrent argument, tenuous at its very best, is premised on the fact that since respondent AIIBP failed to file its by-laws within the designated 60 days from the effectivity of Rep. Act No. 6848, all proceedings initiated by AIIBP and all actions resulting therefrom are a patent nullity. Or, in his words, the AIIBP and its officers and Board of Directors, . . . [H]ave no legal authority nor jurisdiction to manage much less operate the Islamic Bank, file administrative charges and investigate petitioner in the manner they did and allegedly passed Board Resolution No. 2309 on December 13, 1993 which is *null*

Supreme Court E-Library

and void for *lack of an (sic) authorized and valid by-laws.* The CIVIL SERVICE COMMISSION was therefore affirming, erroneously, a null and void "Resolution No. 2309 dated December 13, 1993 of the Board of Directors of Al-Amanah Islamic Investment Bank of the Philippines" in CSC Resolution No. 94-4483 dated August 11, 1994. A motion for reconsideration thereof was denied by the CSC in its Resolution No. 95-2754 dated April 11, 1995. Both acts/resolutions of the CSC are erroneous, resulting from fraud, falsifications and misrepresentations of the alleged Chairman and CEO Roberto F. de Ocampo and the alleged Director Farouk A. Carpizo and his group at the alleged Islamic Bank. Nowhere in petitioner's voluminous pleadings is there a showing that the court *a quo* committed grave abuse of discretion amounting to lack or excess of jurisdiction reversible by a petition for *certiorari.* Petitioner already raised the question of AIIBP's corporate existence and lack of jurisdiction in his Motion for New Trial/Motion for Reconsideration of 27 May 1997 and was denied by the Court of Appeals. Despite the volume of pleadings he has submitted thus far, he has added nothing substantial to his arguments.

3. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION AS A GROUND; DEFINED.**— Grave abuse of discretion implies such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The records show that the respondents did none of these; they acted in accordance with the law.

4. **MERCANTILE LAW; CORPORATIONS; EFFECT OF FAILURE TO FILE BY-LAWS WITHIN THE PRESCRIBED PERIOD.**— The AIIBP was created by Rep. Act No. 6848. It has a main office where it conducts business, has shareholders, corporate officers, a board of directors, assets, and personnel. It is, in fact, here represented by the Office of the Government Corporate Counsel, "the principal law office of government-owned corporations, one of which is respondent bank." At the very least, by its failure to submit its by-laws on time, the AIIBP may be considered a *de facto* corporation whose right to exercise corporate powers may not be inquired into collaterally in any private suit to which such corporations may be a party. Moreover, a corporation which has failed to file its by-laws within the prescribed period does not *ipso facto* lose its powers as such. The SEC Rules on Suspension/Revocation of the Certificate of Registration of

Supreme Court E-Library

Corporations, details the procedures and remedies that may be availed of before an order of revocation can be issued.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR DISPUTE IS NOT AFFECTED BY THE EMPLOYER'S FORM OF BUSINESS; APPLICATION IN CASE AT BAR.— In any case, petitioner's argument is irrelevant because this case is not a corporate controversy, but a labor dispute; and it is an employer's basic right to freely select or discharge its employees, if only as a measure of self-protection against acts inimical to its interest. Regardless of whether AIIBP is a corporation, a partnership, a sole proprietorship, or a *sari-sari* store, it is an undisputed fact that AIIBP is the petitioner's employer. AIIBP chose to retain his services during its reorganization, controlled the means and methods by which his work was to be performed, paid his wages, and, eventually, terminated his services. And though he has had ample opportunity to do so, the petitioner has not alleged that he is anything other than an employee of AIIBP. He has neither claimed, nor shown, that he is a stockholder or an officer of the corporation. Having accepted employment from AIIBP, and rendered his services to the said bank, received his salary, and accepted the promotion given him, it is now too late in the day for petitioner to question its existence and its power to terminate his services. One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation.

APPEARANCES OF COUNSEL

Samuel S. Samuela for petitioner.
Pangalangan & Pineda for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court of the Decision[1] of the Court of Appeals of 30 March 1999

[1] Docketed as CA-G.R. SP No. 37891; Penned by Associate Justice Romeo A. Brawner, with Associate Justices Angelina Sandoval-Gutierrez and Martin S. Villarama, Jr., concurring.

Supreme Court E-Library

affirming Resolutions No. 94-4483 and No. 95-2754 of the Civil Service Commission (CSC) dated 11 August 1994 and 11 April 1995, respectively, which in turn affirmed Resolution No. 2309 of the Board of Directors of the Al-Amanah Islamic Investment Bank of the Philippines (AIIBP) dated 13 December 1993, finding petitioner guilty of Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and dismissing him from the service, and its Resolution[2] of 15 December 1999 dismissing petitioner's Motion for Reconsideration.

The records show that petitioner Sappari K. Sawadjaan was among the first employees of the Philippine Amanah Bank (PAB) when it was created by virtue of Presidential Decree No. 264 on 02 August 1973. He rose through the ranks, working his way up from his initial designation as security guard, to settling clerk, bookkeeper, credit investigator, project analyst, appraiser/inspector, and eventually, loans analyst.[3]

In February 1988, while still designated as appraiser/investigator, Sawadjaan was assigned to inspect the properties offered as collaterals by Compressed Air Machineries and Equipment Corporation (CAMEC) for a credit line of Five Million Pesos (₱5,000,000.00). The properties consisted of two parcels of land covered by Transfer Certificates of Title (TCTs) No. N-130671 and No. C-52576. On the basis of his Inspection and Appraisal Report,[4] the PAB granted the loan application. When the loan matured on 17 May 1989, CAMEC requested an extension of 180 days, but was granted only 120 days to repay the loan.[5]

In the meantime, Sawadjaan was promoted to Loans Analyst I on 01 July 1989.[6]

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[2] *Rollo*, p. 37.

[3] Petitioner's Service Record, *Rollo*, p. 61.

[4] *Rollo*, p. 64.

[5] Decision of the AIIBP Investigating Committee dated 3 December 1993, CA *Rollo*, p. 68.

[6] Petitioner's Service Record, *Rollo*, p. 61.

Supreme Court E-Library

In January 1990, Congress passed Republic Act 6848 creating the AIIBP and repealing P.D. No. 264 (which created the PAB). All assets, liabilities and capital accounts of the PAB were transferred to the AIIBP,[7] and the existing personnel of the PAB were to continue to discharge their functions unless discharged.[8] In the ensuing reorganization, Sawadjaan was among the personnel retained by the AIIBP.

When CAMEC failed to pay despite the given extension, the bank, now to as the AIIBP, discovered that TCT No. N-130671 was spurious, the property described therein non-existent, and that the property covered by TCT No. C-52576 had a prior existing mortgage in favor of one Divina Pablico.

On 08 June 1993, the Board of Directors of the AIIBP created an Investigating Committee to look into the CAMEC transaction, which had cost the bank Six Million Pesos (₱6,000,000.00) in losses.[9] The subsequent events, as found and decided upon by the Court of Appeals,[10] are as follows:

> On 18 June 1993, petitioner received a memorandum from Islamic Bank [AIIBP] Chairman Roberto F. De Ocampo charging him with Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and preventively suspending him.
>
> In his memorandum dated 8 September 1993, petitioner informed the Investigating Committee that he could not submit himself to the jurisdiction of the Committee because of its alleged partiality. For his failure to appear before the hearing set on 17 September 1993, after the hearing of 13 September 1993 was postponed due to the Manifestation of even date filed by petitioner, the Investigating Committee declared petitioner in default and the prosecution was allowed to present its evidence *ex parte*.

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[7] Sec. 48, Republic Act No. 6848.

[8] Sec. 49, Republic Act No. 6848.

[9] Decision of the AIIBP Investigating Committee dated 3 December 1993, CA *Rollo*, p. 48.

[10] *Rollo*, pp. 30-36.

Supreme Court E-Library

On 08 December 1993, the Investigating Committee rendered a decision, the pertinent portions of which reads as follows:

> In view of respondent SAWADJAAN'S abject failure to perform his duties and assigned tasks as appraiser/inspector, which resulted to the prejudice and substantial damage to the Bank, respondent should be held liable therefore. At this juncture, however, the Investigating Committee is of the considered opinion that he could not be held liable for the administrative offense of dishonesty considering the fact that no evidence was adduced to show that he profited or benefited from being remiss in the performance of his duties. The record is bereft of any evidence which would show that he received any amount in consideration for his non-performance of his official duties.
>
> This notwithstanding, respondent cannot escape liability. As adverted to earlier, his failure to perform his official duties resulted to the prejudice and substantial damage to the Islamic Bank for which he should be held liable for the administrative offense of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.
>
> Premises considered, the Investigating Committee recommends that respondent SAPPARI SAWADJAAN be meted the penalty of SIX (6) MONTHS and ONE (1) DAY SUSPENSION from office in accordance with the Civil Service Commission's Memorandum Circular No. 30, Series of 1989.

On 13 December 1993, the Board of Directors of the Islamic Bank [AIIBP] adopted Resolution No. 2309 finding petitioner guilty of Dishonesty in the Performance of Official Duties and/or Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of Dismissal from the Service.

On reconsideration, the Board of Directors of the Islamic Bank [AIIBP] adopted the Resolution No. 2332 on 20 February 1994 reducing the penalty imposed on petitioner from dismissal to suspension for a period of six (6) months and one (1) day.

On 29 March 1994, petitioner filed a notice of appeal to the Merit System Protection Board (MSPB).

On 11 August 1994, the CSC adopted Resolution No. 94-4483 dismissing the appeal for lack of merit and affirming Resolution No. 2309 dated 13 December 1993 of the Board of Directors of Islamic Bank.

Supreme Court E-Library

On 11 April 1995, the CSC adopted Resolution No. 95-2574 denying petitioner's Motion for Reconsideration.

On 16 June 1995, the instant petition was filed with the Honorable Supreme Court on the following assignment of errors:

> I. Public respondent Al-Amanah Islamic Investment Bank of the Philippines has committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it initiated and conducted administrative investigation without a validly promulgated rules of procedure in the adjudication of administrative cases at the Islamic Bank.
>
> II. Public respondent Civil Service Commission has committed a grave abuse of discretion amounting to lack of jurisdiction when it prematurely and falsely assumed jurisdiction of the case not appealed to it, but to the Merit System Protection Board.
>
> III. Both the Islamic Bank and the Civil Service Commission erred in finding petitioner Sawadjaan of having deliberately reporting false information and therefore guilty of Dishonesty and Conduct Prejudicial to the Best Interest of the Service and penalized with dismissal from the service.

On 04 July 1995, the Honorable Supreme Court *En Banc* referred this petition to this Honorable Court pursuant to Revised Administrative Circular No. 1-95, which took effect on 01 June 1995.

We do not find merit [in] the petition.

Anent the first assignment of error, a reading of the records would reveal that petitioner raises for the first time the alleged failure of the Islamic Bank [AIIBP] to promulgate rules of procedure governing the adjudication and disposition of administrative cases involving its personnel. It is a rule that issues not properly brought and ventilated below may not be raised for the first time on appeal, save in exceptional circumstances (*Casolita, Sr. v. Court of Appeals*, 275 SCRA 257) none of which, however, obtain in this case. Granting *arguendo* that the issue is of such exceptional character that the Court may take cognizance of the same, still, it must fail. Section 26 of Republic Act No. 6848 (1990) provides:

> Section 26. Powers of the Board. The Board of Directors shall have the *broadest powers to manage the Islamic Bank*, x x x The Board shall adopt policy guidelines necessary to carry out

Supreme Court E-Library

effectively the provisions of this Charter as well as *internal rules and regulations* necessary for the conduct of its Islamic banking business and all matters related to *personnel organization, office functions and salary administration.* (Italics ours)

On the other hand, Item No. 2 of Executive Order No. 26 (1992) entitled "Prescribing Procedure and Sanctions to Ensure Speedy Disposition of Administrative Cases" directs, "all administrative agencies" to "adopt and include in their respective Rules of Procedure" provisions designed to abbreviate administrative proceedings.

The above two (2) provisions relied upon by petitioner does not require the Islamic Bank [AIIBP] to promulgate rules of procedure before administrative discipline may be imposed upon its employees. The internal rules of procedures ordained to be adopted by the Board refers to that necessary for the conduct of its Islamic banking business and all matters related to "personnel organization, office functions and salary administration." On the contrary, Section 26 of RA 6848 gives the Board of Directors of the Islamic Bank the "broadest powers to manage the Islamic Bank." This grant of broad powers would be an idle ceremony if it would be powerless to discipline its employees.

The second assignment of error must likewise fail. The issue is raised for the first time *via* this petition for *certiorari*. Petitioner submitted himself to the jurisdiction of the CSC. Although he could have raised the alleged lack of jurisdiction in his Motion for Reconsideration of Resolution No. 94-4483 of the CSC, he did not do so. By filing the Motion for Reconsideration, he is estopped from denying the CSC's jurisdiction over him, as it is settled rule that a party who asks for an affirmative relief cannot later on impugn the action of the tribunal as without jurisdiction after an adverse result was meted to him. Although jurisdiction over the subject matter of a case may be objected to at any stage of the proceedings even on appeal, this particular rule, however, means that jurisdictional issues in a case can be raised only during the proceedings in said case and during the appeal of said case (*Aragon v. Court of Appeals*, 270 SCRA 603). The case at bar is a petition [for] *certiorari* and not an appeal.

But even on the merits the argument must falter. Item No. 1 of CSC Resolution No. 93-2387 dated 29 June 1993, provides:

Supreme Court E-Library

> Decisions in administrative cases involving officials and employees of the civil service appealable to the Commission pursuant to Section 47 of Book V of the Code (*i.e.,* Administrative Code of 1987) including personnel actions such as contested appointments shall now be appealed directly to the Commission and not to the MSPB.

In *Rubenecia v. Civil Service Commission*, 244 SCRA 640, 651, it was categorically held:

> . . . The functions of the MSPB relating to the determination of administrative disciplinary cases were, in other words, re-allocated to the Commission itself.

Be that as it may, "(i)t is hornbook doctrine that in order '(t)o ascertain whether a court (in this case, administrative agency) has jurisdiction or not, the provisions of the law should be inquired into.' Furthermore, 'the jurisdiction of the court must appear clearly from the statute law or it will not be held to exist.'" (*Azarcon v. Sandiganbayan*, 268 SCRA 747, 757) From the provision of law abovecited, the Civil Service Commission clearly has jurisdiction over the Administrative Case against petitioner.

Anent the third assignment of error, we likewise do not find merit in petitioner's proposition that he should not be liable, as in the first place, he was not qualified to perform the functions of appraiser/investigator because he lacked the necessary training and expertise, and therefore, should not have been found dishonest by the Board of Directors of Islamic Bank [AIIBP] and the CSC. Petitioner himself admits that the position of appraiser/inspector is "one of the most serious [and] sensitive job in the banking operations." He should have been aware that accepting such a designation, he is obliged to perform the task at hand by the exercise of more than ordinary prudence. As appraiser/investigator he is expected, among others, to check the authenticity of the documents presented by the borrower by comparing them with the originals on file with the proper government office. He should have made it sure that the technical descriptions in the location plan on file with the Bureau of Lands of Marikina, jibe with that indicated in the TCT of the collateral offered by CAMEC, and that the mortgage in favor of the Islamic Bank was duly annotated at the back of the copy of the TCT kept by the Register of Deeds of Marikina. This, petitioner failed to do, for which he must be held liable. That he did not profit from his false report is of no moment. Neither the fact that it was not deliberate or willful, detracts

Supreme Court E-Library

from the nature of the act as dishonest. What is apparent is he stated something to be a fact, when he really was not sure that it was so.

WHEREFORE, above premises considered, the instant Petition is DISMISSED, and the assailed Resolutions of the Civil Service Commission are hereby AFFIRMED.

On 24 March 1999, Sawadjaan's counsel notified the court *a quo* of his change of address,[11] but apparently neglected to notify his client of this fact. Thus, on 23 July 1999, Sawadjaan, by himself, filed a Motion for New Trial[12] in the Court of Appeals based on the following grounds: fraud, accident, mistake or excusable negligence and newly discovered evidence. He claimed that he had recently discovered that at the time his employment was terminated, the AIIBP had not yet adopted its corporate by-laws. He attached a Certification[13] by the Securities and Exchange Commission (SEC) that it was only on 27 May 1992 that the AIIBP submitted its draft by-laws to the SEC, and that its registration was being held in abeyance pending certain corrections being made thereon. Sawadjaan argued that since the AIIBP failed to file its by-laws within 60 days from the passage of Rep. Act No. 6848, as required by Sec. 51 of the said law, the bank and its stockholders had, "already forfeited its franchise or charter, including its license to exist and operate as a corporation,"[14] and thus no longer have "the legal standing and personality to initiate an administrative case."

Sawadjaan's counsel subsequently adopted his motion, but requested that it be treated as a motion for reconsideration.[15] This motion was denied by the court *a quo* in its Resolution of 15 December 1999.[16]

Still disheartened, Sawadjaan filed the present petition for *certiorari* under Rule 65 of the Rules of Court challenging the

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[11] CA *Rollo*, p. 171.

[12] CA *Rollo*, pp. 175-193.

[13] Dated 19 October 1993, CA *Rollo*, pp. 196.

[14] CA *Rollo*, p. 194.

[15] CA *Rollo*, p. 200.

[16] CA *Rollo*, p. 205.

Supreme Court E-Library

above Decision and Resolution of the Court of Appeals on the ground that the court *a quo* erred: i) in ignoring the facts and evidences that the alleged Islamic Bank has no valid by-laws; ii) in ignoring the facts and evidences that the Islamic Bank lost its juridical personality as a corporation on 16 April 1990; iii) in ignoring the facts and evidences that the alleged Islamic Bank and its alleged Board of Directors have no jurisdiction to act in the manner they did in the absence of a valid by-laws; iv) in not correcting the acts of the Civil Service Commission who erroneously rendered the assailed Resolutions No. 94-4483 and No. 95-2754 as a result of fraud, falsification and/or misrepresentations committed by Farouk A. Carpizo and his group, including Roberto F. de Ocampo; v) in affirming an unconscionably harsh and/or excessive penalty; and vi) in failing to consider newly discovered evidence and reverse its decision accordingly.

Subsequently, petitioner Sawadjaan filed an "*Ex parte* Urgent Motion for Additional Extension of Time to File a Reply (to the Comments of Respondent Al-Amanah Investment Bank of the Philippines),[17] Reply (to Respondent's Consolidated Comment,)[18] and Reply (to the Alleged Comments of Respondent Al-Amanah Islamic Bank of the Philippines)."[19] On 13 October 2000, he informed this Court that he had terminated his lawyer's services, and, by himself, prepared and filed the following: 1) Motion for New Trial;[20] 2) Motion to Declare Respondents in Default and/or Having Waived their Rights to Interpose Objection to Petitioner's Motion for New Trial;[21] 3) *Ex-Parte* Urgent Motions to Punish Attorneys Amado D. Valdez, Elpidio J. Vega, Alda G. Reyes, Dominador R. Isidoro, Jr., and Odilon A. Diaz for Being in Contempt of Court & to Inhibit them from Appearing in this Case Until they Can Present Valid Evidence of Legal Authority;[22] 4) Opposition/Reply (to

[17] Dated 15 June 2000, *Rollo*, pp. 140-143.

[18] Dated 1 June 2000, *Rollo*, pp. 144-166.

[19] Dated 1 July 2000, *Rollo*, pp. 168-197.

[20] *Rollo*, pp. 203-238.

[21] Dated 9 March 20001, *Rollo*, pp. 260-262.

[22] Dated 21 October 2001, *Rollo* pp. 287-293.

Supreme Court E-Library

Respondent AIIBP's Alleged Comment);[23] 5) Ex-Parte Urgent Motion to Punish Atty. Reynaldo A. Pineda for Contempt of Court and the Issuance of a Commitment Order/Warrant for His Arrest;[24] 6) Reply/Opposition (To the Formal Notice of Withdrawal of Undersigned Counsel as Legal Counsel for the Respondent Islamic Bank with Opposition to Petitioner's Motion to Punish Undersigned Counsel for Contempt of Court for the Issuance of a Warrant of Arrest);[25] 7) Memorandum for Petitioner;[26] 8) Opposition to SolGen's Motion for Clarification with Motion for Default and/or Waiver of Respondents to File their Memorandum;[27] 9) Motion for Contempt of Court and Inhibition/Disqualification with Opposition to OGCC' Motion for Extension of Time to File Memorandum;[28] 10) Motion for Enforcement (In Defense of the Rule of Law);[29] 11) Motion and Opposition (Motion to Punish OGCC's Attorneys Amado D. Valdez, Efren B. Gonzales, Alda G. Reyes, Odilon A. Diaz and Dominador R. Isidoro, Jr., for Contempt of Court and the Issuance of a Warrant for their Arrest; and Opposition to their Alleged "Manifestation and Motion" Dated February 5 2002);[30] 12) Motion for Reconsideration of Item (a) of Resolution dated 5 February 2002 with Supplemental Motion for Contempt of Court;[31] 13) Motion for Reconsideration of Portion of Resolution Dated 12 March 2002;[32] 14) *Ex-Parte* Urgent Motion for Extension of Time to File Reply Memorandum (To: CSC and AIIBP's Memorandum);[33] 15) Reply Memorandum (To: CSC's Memorandum) With *Ex-Parte* Urgent Motion for Additional Extension of time to File Reply Memorandum (To: AIIBP's Memorandum);[34] and 16) Reply

[23] Dated 27 October 2001, *Rollo*, pp. 294-313.
[24] Dated 18 October 2001, *Rollo*, pp. 314-318.
[25] Dated 4 December 2001, *Rollo*, pp. 325-339.
[26] Dated 7 January 2002, *Rollo*, pp. 349-381.
[27] Dated 20 January 2002, *Rollo*, pp. 382-388.
[28] Dated 23 January 2002, *Rollo*, pp. 389-400.
[29] Dated 05 February 2002, *Rollo*, pp. 405-411.
[30] Dated 24 January 2002, *Rollo*, pp. 412-418.
[31] Dated 08 April 2002, *Rollo*, pp. 419-429.
[32] Dated 12 May 2002, *Rollo*, pp. 430-434.
[33] Dated 08 November 2002, *Rollo*, pp. 486-489.
[34] Dated 08 December 2002, *Rollo*, pp. 490-A-490-A-6.

Supreme Court E-Library

Memorandum (To: OGCC's Memorandum for Respondent AIIBP).[35]

Petitioner's efforts are unavailing, and we deny his petition for its procedural and substantive flaws.

The general rule is that the remedy to obtain reversal or modification of the judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.[36]

The records show that petitioner's counsel received the Resolution of the Court of Appeals denying his motion for reconsideration on 27 December 1999. The fifteen day reglementary period to appeal under Rule 45 of the Rules of Court therefore lapsed on 11 January 2000. On 23 February 2000, over a month after receipt of the resolution denying his motion for reconsideration, the petitioner filed his petition for *certiorari* under Rule 65.

It is settled that a special civil action for *certiorari* will not lie as a substitute for the lost remedy of appeal,[37] and though there are instances[38] where the extraordinary remedy of *certiorari*

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[35] Dated 08 January 2003, *Rollo*, pp. 491-524.

[36] *Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, G.R. No. 147205, 10 March 2004, 425 SCRA 236, citing *MMDA v. JANCOM Environmental Corp.*, G.R. No. 147465, 30 January 2002, 375 SCRA 320.

[37] *Paa v. Court of Appeals*, G.R. No. 126560, 4 December 1997, 282 SCRA 448, citing *Vda. De Espina v. Abaya*, G.R. No. 45142, 26 April 1991, 196 SCRA 312, *Sy v. Romero*, G.R. No. 83580, 23 September 1992, 214 SCRA, 187, *Hipolito v. Court of Appeals*, G.R. Nos. 108478-79, 21 February 1994, 230 SCRA 191, *Fajardo v. Bautista*, G.R. Nos. 102193-97, 10 May 1994, 232 SCRA 291, *De la Paz v. Panis*, G.R. No. 57023, 22 June 1995, 245 SCRA 242.

[38] When public welfare and the advancement of public policy dictates, or when the broader interests of justice so require, or when the writs issued are null, or when the questioned order amount to an oppressive exercise of judicial authority.

Supreme Court E-Library

may be resorted to despite the availability of an appeal,[39] we find no special reasons for making out an exception in this case.

Even if we were to overlook this fact in the broader interests of justice and treat this as a special civil action for *certiorari* under Rule 65,[40] the petition would nevertheless be dismissed for failure of the petitioner to show grave abuse of discretion. Petitioner's recurrent argument, tenuous at its very best, is premised on the fact that since respondent AIIBP failed to file its by-laws within the designated 60 days from the effectivity of Rep. Act No. 6848, all proceedings initiated by AIIBP and all actions resulting therefrom are a patent nullity. Or, in his words, the AIIBP and its officers and Board of Directors,

> . . . [H]ave no legal authority nor jurisdiction to manage much less operate the Islamic Bank, file administrative charges and investigate petitioner in the manner they did and allegedly passed Board Resolution No. 2309 on December 13, 1993 which is *null and void* for *lack of an (sic) authorized and valid by-laws.* The CIVIL SERVICE COMMISSION was therefore affirming, erroneously, a null and void "Resolution No. 2309 dated December 13, 1993 of the Board of Directors of Al-Amanah Islamic Investment Bank of the Philippines" in CSC Resolution No. 94-4483 dated August 11, 1994. A motion for reconsideration thereof was denied by the CSC in its Resolution No. 95-2754 dated April 11, 1995. Both acts/resolutions of the CSC are erroneous, resulting from fraud, falsifications and misrepresentations of the alleged Chairman and CEO Roberto F. de Ocampo and the alleged Director Farouk A. Carpizo and his group at the alleged Islamic Bank.[41]

Nowhere in petitioner's voluminous pleadings is there a showing that the court *a quo* committed grave abuse of discretion amounting to lack or excess of jurisdiction reversible by a petition for *certiorari*. Petitioner already raised the question of AIIBP's corporate existence and lack of jurisdiction in his Motion for

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[39] *Supra*, Note No. 36, citing *Ruiz, Jr. v. Court of Appeals*, G.R. No. 101566, 26 March 1993, 220 SCRA 490.

[40] *Ligon v. Court of Appeals*, G.R. No. 127683, 7 August 1998, 294 SCRA 73.

[41] Petition for *Certiorari*, *Rollo*, pp. 22-23.

Supreme Court E-Library

New Trial/Motion for Reconsideration of 27 May 1997 and was denied by the Court of Appeals. Despite the volume of pleadings he has submitted thus far, he has added nothing substantial to his arguments.

The AIIBP was created by Rep. Act No. 6848. It has a main office where it conducts business, has shareholders, corporate officers, a board of directors, assets, and personnel. It is, in fact, here represented by the Office of the Government Corporate Counsel, "the principal law office of government-owned corporations, one of which is respondent bank."[42] At the very least, by its failure to submit its by-laws on time, the AIIBP may be considered a *de facto* corporation[43] whose right to exercise corporate powers may not be inquired into collaterally in any private suit to which such corporations may be a party.[44]

Moreover, a corporation which has failed to file its by-laws within the prescribed period does not *ipso facto* lose its powers as such. The SEC Rules on Suspension/Revocation of the Certificate of Registration of Corporations,[45] details the procedures and remedies that may be availed of before an order of revocation can be issued. There is no showing that such a procedure has been initiated in this case.

In any case, petitioner's argument is irrelevant because this case is not a corporate controversy, but a labor dispute; and it is an employer's basic right to freely select or discharge its employees, if only as a measure of self-protection against acts inimical to its interest.[46] Regardless of whether AIIBP is a corporation, a partnership, a sole proprietorship, or a *sari-sari* store, it is an undisputed fact that AIIBP is the petitioner's employer. AIIBP chose to retain his services during its reorganization, controlled

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[42] Resolution dated 6 August 2002, *Rollo*, pp. 435-436.

[43] *Hall v. Piccio*, No. L-2598, 29 June 1950, 86 Phil. 603.

[44] Sec. 20, Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines."

[45] XXVIII SEC Quarterly Bulletin 90 (No. 3, June 1994).

[46] *Filipro, Incorporated v. National Labor Relations Commission*, G.R. No. 70546, 16 October 1986, 145 SCRA 123.

Supreme Court E-Library

the means and methods by which his work was to be performed, paid his wages, and, eventually, terminated his services.[47]

And though he has had ample opportunity to do so, the petitioner has not alleged that he is anything other than an employee of AIIBP. He has neither claimed, nor shown, that he is a stockholder or an officer of the corporation. Having accepted employment from AIIBP, and rendered his services to the said bank, received his salary, and accepted the promotion given him, it is now too late in the day for petitioner to question its existence and its power to terminate his services. One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation.[48]

Even if we were to consider the facts behind petitioner Sawadjaan's dismissal from service, we would be hard pressed to find error, in the decision of the AIIBP.

As appraiser/investigator, the petitioner was expected to conduct an ocular inspection of the properties offered by CAMEC as collaterals and check the copies of the certificates of title against those on file with the Registry of Deeds. Not only did he fail to conduct these routine checks, but he also deliberately misrepresented in his appraisal report that after reviewing the documents and conducting a site inspection, he found the CAMEC loan application to be in order. Despite the number of pleadings he has filed, he has failed to offer an alternative explanation for his actions.

When he was informed of the charges against him and directed to appear and present his side on the matter, the petitioner sent instead a memorandum questioning the fairness and impartiality of the members of the investigating committee and refusing to recognize their jurisdiction over him. Nevertheless, the investigating committee rescheduled the hearing to give the petitioner another chance, but he still refused to appear before it.

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[47] *Brotherhood Labor Unity Movement of the Philippines v. Zamora*, G.R. No. L-48645, 07 January 1987, 147 SCRA 49.

[48] Par. 2, Sec. 21, Batas Pambansa Blg. 68, The Corporation Code of the Philippines.

Supreme Court E-Library

Thereafter, witnesses were presented, and a decision was rendered finding him guilty of dishonesty and dismissing him from service. He sought a reconsideration of this decision and the same committee whose impartiality he questioned reduced their recommended penalty to suspension for six months and one day. The board of directors, however, opted to dismiss him from service.

On appeal to the CSC, the Commission found that Sawadjaan's failure to perform his official duties greatly prejudiced the AIIBP, for which he should be held accountable. It held that:

> . . . (I)t is crystal clear that respondent SAPPARI SAWADJAAN was remiss in the performance of his duties as appraiser/inspector. Had respondent performed his duties as appraiser/inspector, he could have easily noticed that the property located at Balintawak, Caloocan City covered by TCT No. C-52576 and which is one of the properties offered as collateral by CAMEC is encumbered to Divina Pablico. Had respondent reflected such fact in his appraisal/inspection report on said property the ISLAMIC BANK would not have approved CAMEC's loan of ₱500,000.00 in 1987 and CAMEC's ₱5 Million loan in 1988, respondent knowing fully well the Bank's policy of not accepting encumbered properties as collateral.
>
> Respondent SAWADJAAN's reprehensible act is further aggravated when he failed to check and verify from the Registry of Deeds of Marikina the authenticity of the property located at Mayamot, Antipolo, Rizal covered by TCT No. N-130671 and which is one of the properties offered as collateral by CAMEC for its ₱5 Million loan in 1988. If he only visited and verified with the Register of Deeds of Marikina the authenticity of TCT No. N-130671 he could have easily discovered that TCT No. N-130671 is fake and the property described therein non-existent.
>
> . . . . . .
>
> This notwithstanding, respondent cannot escape liability. As adverted to earlier, his failure to perform his official duties resulted to the prejudice and substantial damage to the ISLAMIC BANK for which he should be held liable for the administrative offense of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE."[49]

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[49] CA *Rollo*, pp. 59-60.

Supreme Court E-Library

From the foregoing, we find that the CSC and the court *a quo* committed no grave abuse of discretion when they sustained Sawadjaan's dismissal from service. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[50] The records show that the respondents did none of these; they acted in accordance with the law.

WHEREFORE, the petition is *DISMISSED*. The Decision of the Court of Appeals of 30 March 1999 affirming Resolutions No. 94-4483 and No. 95-2754 of the Civil Service Commission, and its Resolution of 15 December 1999 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, and *Garcia, JJ.,* concur.

Puno, J., on official leave.

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[50] *Bernaldez v. Francia*, G.R. No. 143929, 28 February 2003, 398 SCRA 489; *People v. Ebias*, G.R. No. 127130, 12 October 2000, 342 SCRA 675; *Esguerra v. Court of Appeals*, G.R. No. 119310, 03 February 1997, 267 SCRA 380, 399-400.