

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 117680 **February 9, 1996**

FIRST LEPANTO CERAMICS, INC., petitioner,

vs.

HON. COURT OF APPEALS and MARIWASA MANUFACTURING, INC., respondents.

D E C I S I O N

VITUG, J.:

Sought to be reversed by the Court is the 13th August 1993 decision of the Court of Appeals nullifying the approval,¹ dated 10 December 1992, by the Board of Investments ("BOI") of the application of First Lepanto Ceramics, Inc., for an amendment of its Certificate of Registration No. EP 89-452 that would change the registered product from "glazed floor tiles" to "ceramic tiles."

Petitioner First Lepanto Ceramics, Inc., was registered as a "non-pioneer enterprise" with public respondent BOI having been so issued, on 16 October 1989, a Certificate of Registration (No. EP 89-452) under Executive Order NO. 226, also known as the Omnibus Investments Code of 1987, in the manufacture of glazed floor tiles. Among the specific terms and conditions imposed on First Lepanto's registration were that:

1. The enterprise shall export at least 50% of its production; (and)
2. The enterprise shall produce only glazed floor tile.²

First Lepanto was, by virtue of its registration, granted non-fiscal and fiscal incentives by the BOI, including an exemption from taxes on raw materials and tax and duty exemption on its imported capital equipment.

Private respondent Mariwasa Manufacturing, Inc., a competitor of First Lepanto, is also registered with the BOI as a non-pioneer producer of ceramic tiles (Certificate of Registration No. 89-427).

In a letter, dated 10 August 1991, addressed to the BOI, First Lepanto requested for an amendment of its registered product to "ceramic tiles" in order to likewise enable it to manufacture ceramic wall tiles; however, before the BOI could act on First Lepanto's request for amendment, Mariwasa and Fil-Hispano Ceramics, Inc., already had on file their separate

complaints with the BOI against First Lepanto for violating the terms and conditions of its registration by the use of its tax and duty-free equipment in the production of ceramic wall tiles.

On 30 April 1992, the BOI rendered a decision finding First Lepanto guilty and imposing on the latter a fine of P797,950.40 without prejudice, however, 1) to an imposition of additional penalty should First Lepanto continue to commit the same violation; and 2) to the Board's authority to consider/ evaluate First Lepanto's request for an amendment of its certificate of registration, including, among other things, a change in its registered product from "glazed floor tiles" to "ceramic tiles."³

After paying the imposed fine, First Lepanto, on 20 June 1992, formally filed its application with the BOI (docketed BOI Case No. 92-005)⁴ to amend its registered product from "glazed floor tiles" to "ceramic tiles."

On 06 August 1992, another verified complaint was filed by Mariwasa with the BOI (docketed BOI Case No. 92-004) which asseverated that, despite BOI's finding that First Lepanto had violated the terms and conditions of its registration, the latter still continued with its unauthorized production and sale of ceramic wall tiles. Respondent BOI dismissed the complaint for lack of merit.⁵ Its motion for reconsideration having been denied, Mariwasa appealed the case to the Office of the President.⁶

In the meantime, First Lepanto caused the publication, on 24 September 1992, in the Manila Bulletin of a notice on the official filing with the BOI of the aforementioned application for amendment of Certificate of Registration No. EP 89-452 (BOI Case No. 92-005).⁷ Mariwasa opposed the application. On 10 December 1992, respondent BOI handed down its decision approving First Lepanto's application.

Mariwasa went to the Court of Appeals *via* a petition for review, with an application for a writ of preliminary injunction and/or temporary restraining order, assailing the decision of the BOI. On 17 February 1992, the appellate court issued a temporary restraining order enjoining the BOI and First Lepanto from enforcing or executing the assailed ruling. First Lepanto moved for the dismissal of the petition and to lift the restraining order. The motion was denied. On 13 August 1993, the Court of Appeals rendered its now disputed decision⁸ annulling the 10th December 1992 decision of the BOI. First Lepanto moved for a reconsideration but it was denied.

Hence, the instant recourse.

The Court grants the petition.

The challenged decision of the appellate court, annulling the BOI decision in Case No. 92-005, is anchored mainly on the fact that the BOI did not hold in abeyance its action on First Lepanto's application for amendment of its certificate of registration until after BOI Case No. 92-004

would have been finally resolved. It has described the grant by the BOI of First Lepanto's application to be "premature" and "an exercise in futility" in the sense that "(i)f a decision is rendered in aforesaid BOI case (92-004) finding merit in the complaint, it is *not farfetch* that cancellation of (First Lepanto's) certificate of registration may be ordered." It is unacceptable, in our view, for the appellate court to base its peremptory judgment on a conjecture, *i.e.*, the possibility that BOI Case No. 92-004 could be decided against petitioner, and to second-guess the BOI on what it would do in the event of such an adverse ruling. The appellate court itself has recognized that the final results of the controversy in BOI Case No. 92-004 cannot necessarily foreclose or circumscribe the action that may be had on First Lepanto's application for amendment. Under Chapter II, Art. 7(8) of E.O. No. 226,⁹ the BOI need not cancel the certificate of a registrant found to have infringed the terms and conditions of its registration.

Rather significant is the fact that to hold the BOI from taking action on First Lepanto's application would be to defeat the declaration of investment policies expressed in the law; *viz.*:

Art. 2. Declaration of Investment Policies. To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism and in pursuance of a planned economically feasible and practical dispersal of industries and the promotion of small and medium scale industries, under condition which will encourage competition and discourage monopolies.¹⁰

The BOI is the agency tasked with evaluating the feasibility of an investment project and to decide which investment might be compatible with its development plans. The exercise of administrative discretion is a policy decision and a matter that can best be discharged by the government agency concerned and not by the courts.¹¹ BOI has allowed the amendment of First Lepanto's product line because that agency "believes that allowing First Lepanto to manufacture wall tiles as well will give it the needed technical and market flexibility, a key factor, to enable the firm to eventually penetrate the world market and meet its export requirements."¹² In *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary*,¹³ we have already said and now still reiterate that

. . . while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will stand clear. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals is hereby REVERSED and SET ASIDE and the decision of the Board of Investments is REINSTATED. No costs.

Padilla, Bellosillo, Kapunan and Hermosissima, Jr., JJ., concur.

Footnotes

¹ Penned by Mme. Justice Regina G. Ordonez-Benitez and concurred in by Justices Manuel C. Herrera and Bernardo P. Pardo.

² *Rollo*, p. 184.

³ *Rollo*, pp. 184-188.

⁴ *Rollo*, p. 38.

⁵ *Rollo*, p. 66.

⁶ The appeal, according to the Court of Appeals and respondent Mariwasa, remains pending up to the present. First Lepanto, however, now points out that Mariwasa's appeal from the decision in BOI Case No. 92-004 has been denied as early as 23 March 1994 by the Office of the President and that it is only Mariwasa's motion for reconsideration that remains pending and unresolved at this time. *See also* Petitioner's Reply, p. 18.

⁷ *Rollo*, p. 37.

⁸ Penned by Mme. Justice Regina G. Ordodez-Benitez and concurred in by Justices Manuel C. Herrera and Bernardo P. Pardo.

⁹ . . . After due notice, cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprises and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties; for (a) failure to maintain the qualifications required by this Code for registration with the Board of (b) for violation of any provisions of this Code, of the rules and regulations issued under this Code, of the terms and conditions of registration, or of laws for the protection of labor or of the consuming public: *Provided*, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board.

¹⁰ Executive Order No. 226.

¹¹ Bureau Veritas vs. Office of the President, 205 SCRA 705.

¹² *Rollo*, p. 99.

¹³ 190 SCRA 673.