SUPREME COURT
SECOND DIVISION

FIRST LEPANTO CERAMICS, INC.,
***Petitioner*,**

-versus-

G.R. No. 110571
March 10, 1994

THE COURT OF APPEALS and MARIWASA MANUFACTURING, INC.,
***Respondents*.**
x----------x

D E C I S I O N
RESOLUTION dated October 7, 1994

NOCON, *J.*:

Brought to fore in this Petition for *Certiorari* and prohibition with application for preliminary injunction is the novel question of where and in what manner appeals from Decisions of the Board of Investments (BOI) should be filed. A thorough scrutiny of the conflicting provisions of Batas Pambansa Bilang 129, otherwise known as the "Judiciary Reorganization Act of 1980," Executive

Order No. 226, also known as the Omnibus Investments Code of 1987 and Supreme Court Circular No. 1-91 is, thus, called for.

Briefly, this question of law arose when BOI, in its decision dated December 10, 1992 in BOI Case No. 92-005 granted petitioner First Lepanto Ceramics, Inc.'s application to amend its BOI certificate of registration by changing the scope of its registered product from "glazed floor tiles" to "ceramic tiles." Eventually, oppositor Mariwasa filed a motion for reconsideration of the said BOI decision while oppositor Fil-Hispano Ceramics, Inc. did not move to reconsider the same nor appeal therefrom. Soon rebuffed in its bid for reconsideration, Mariwasa filed a petition for review with respondent Court of Appeals pursuant to Circular 1-91.

Acting on the petition, respondent court required the BOI and petitioner to comment on Mariwasa's petition and to show cause why no injunction should issue. On February 17, 1993, respondent court temporarily restrained the BOI from implementing its decision. This temporary restraining order lapsed by its own terms on March 9, 1993, twenty (20) days after its issuance, without respondent court issuing any preliminary injunction.

On February 24, 1993, petitioner filed a "Motion to Dismiss Petition and to Lift Restraining Order" on the ground that respondent court has no appellate jurisdiction over BOI Case No. 92-005, the same being exclusively vested with the Supreme Court pursuant to Article 82 of the Omnibus Investments Code of 1987.

On May 25, 1993, respondent court denied petitioner's motion to dismiss, the dispositive portion of which reads as follows:

> "WHEREFORE, private respondent's motion to dismiss the petition is hereby DENIED, for lack of merit.
>
> "Private respondent is hereby given an inextendible period of ten (10) days from receipt hereof within which to file its comment to the petition."[1]

Upon receipt of a copy of the above resolution on June 4, 1993, petitioner decided not to file any motion for reconsideration as the

question involved is essentially legal in nature and immediately filed a petition for *certiorari* and prohibition before this Court.

Petitioner posits the view that respondent court acted without or in excess of its jurisdiction in issuing the questioned resolution of May 25, 1993, for the following reasons:

> "I. Respondent court has no jurisdiction to entertain Mariwasa's appeal from the BOI's decision in BOI Case No. 92-005, which has become final.
>
> II. The appellate jurisdiction conferred by statute upon this Honorable Court cannot be amended or superseded by Circular No. 1-91."[2]

Petitioner then concludes that:

> "III. Mariwasa has lost it right to appeal in this case."[3]

Petitioner argues that the Judiciary Reorganization Act of 1980 or Batas Pambansa Bilang 129 and Circular 1-91, "Prescribing the Rules Governing Appeals to the Court of Appeals from a Final Order or Decision of the Court of Tax Appeals and Quasi-Judicial Agencies" cannot be the basis of Mariwasa's appeal to respondent court because the procedure for appeal laid down therein runs contrary to Article 82 of E.O. 226, which provides that appeals from decisions or orders of the BOI shall be filed directly with this Court, to wit:

> "Judicial relief. — All orders or decisions of the Board (of Investments) in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such an order or decision; Provided, that all appeals shall be filed directly with the Supreme Court within thirty (30) days from receipt order or decision."

On the other hand, Mariwasa maintains that whatever "obvious inconsistency" or "irreconcilable repugnancy" there may have been between B.P. 129 and Article 82 of E.O. 226 on the question of venue for appeal has already been resolved by Circular 1-91 of the Supreme

Court, which was promulgated on February 27, 1991 or four (4) years after E.O. 226 was enacted.

Sections 1, 2 and 3 of Circular 1-91, is herein quoted below:

> "1. Scope. — These rules shall apply to appeals from final orders or decisions of the Court of Tax Appeals. They shall also apply to appeals from final orders or decisions of any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Secretary of Agrarian Reform and Special Agrarian Courts under RA 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission and Philippine Atomic Energy Commission.
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> "2. Cases not covered. — These rules shall not apply to decisions and interlocutory orders of the National Labor Relations Commission or the Secretary of Labor and Employment under the Labor Code of the Philippines, the Central Board of Assessment Appeals, and other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute.
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> "3. Who may appeal and where to appeal. — The appeal of a party affected by a final order, decision, or judgment of the Court of Tax Appeals or of a quasi-judicial agency shall be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact or of law or mixed questions of fact and law. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by *certiorari* to the Supreme Court as provided in Rule 45 of the Rules of Court."

It may be called that Section 9(3) of B.P. 129 vests appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of quasi-judicial agencies on the Court of Appeals, to wit:

> "(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
>
> The Intermediate Appellate Court shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings.
>
> These provisions shall not apply to decisions and interlocutory orders issued under the Labor Code of the Philippines and by the Central Board of Assessment Appeals."

Clearly evident in the aforequoted provision of B.P. 129 is the laudable objective of providing a uniform procedure of appeal from decisions of all quasi-judicial agencies for the benefit of the bench and the bar. Equally laudable is the twin objective of B.P. 129 of unclogging the docket of this Court to enable it to attend to more important tasks, which in the words of Dean Vicente G. Sinco, as quoted in our decision in Conde vs. Intermediate Appellate Court[4] is "less concerned with the decisions of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights."

In Development Bank of the Philippines vs. Court of Appeals,[5] this Court noted that B.P. 129 did not deal only with "changes in the rules

on procedures" and that not only was the Court of Appeals reorganized, but its jurisdiction and powers were also broadened by Section 9 thereof. Explaining the changes, this Court said:

> "Its original jurisdiction to issue writs of mandamus, prohibition, *certiorari* and habeas corpus, which theretofore could be exercised only in aid of its appellate jurisdiction, was expanded by (1) extending it so as to include the writ of quo warranto, and also (2) empowering it to issue all said extraordinary writs 'whether or not in aid of its appellate jurisdiction.' Its appellate jurisdiction was also extended to cover not only final judgments of Regional Trial Courts, but also 'all final judgments, decisions, resolutions, orders or awards of quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of sub-paragraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948,' it being noteworthy in this connection that the text of the law is broad and comprehensive, and the explicitly stated exceptions have no reference whatever to the Court of Tax Appeals. Indeed, the intention to expand the original and appellate jurisdiction of the Court of Appeals over quasi-judicial agencies, instrumentalities, boards or commissions, is further stressed by the last paragraph of Section 9 which excludes from its provisions, only the 'decisions and interlocutory orders issued under the Labor Code of the Philippines and by the Central Board of Assessment Appeals."[6]

However, it cannot be denied that the lawmaking system of the country is far from perfect. During the transitional period after the country emerged from the Marcos regime, the lawmaking power was lodged on the Executive Department. The obvious lack of deliberation in the drafting of our laws could perhaps explain the deviation of some of our laws from the goal of uniform procedure which B.P. 129 sought to promote.

In exempli gratia, Executive Order No. 226 or the Omnibus Investments Code of 1987 provides that all appeals shall be filed

directly with the Supreme Court within thirty (30) days from receipt of the order or decision.

Noteworthy is the fact that presently, the Supreme Court entertains ordinary appeals only from decisions of the Regional Trial Courts in criminal cases where the penalty imposed is reclusion perpetua or higher. Judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on *certiorari* within fifteen (15) days from notice of judgment in accordance with Rule 45 of the Rules of Court in relation to Section 17 of the Judiciary Act of 1948, as amended, this being the clear intendment of the provision of the Interim Rules that "(a)ppeals to the Supreme Court shall be taken by petition for *certiorari* which shall be governed by Rule 45 of the Rules of Court." Thus, the right of appeal provided in E.O. 226 within thirty (30) days from receipt of the order or decision is clearly not in consonance with the present procedure before this Court. Only decisions, orders or rulings of a Constitutional Commission (Civil Service Commission, Commission on Elections or Commission on Audit), may be brought to the Supreme Court on original petitions for *certiorari* under Rule 65 by the aggrieved party within thirty (30) days form receipt of a copy thereof.[7]

Under this contextual backdrop, this Court, pursuant to its Constitutional power under Section 5(5), Article VIII of the 1987 Constitution to promulgate rules concerning pleading, practice and procedure in all courts, and by way of implementation of B.P. 129, issued Circular 1-91 prescribing the rules governing appeals to the Court of Appeals from final orders or decisions of the Court of Tax Appeals and quasi-judicial agencies to eliminate unnecessary contradictions and confusing rules of procedure.

Contrary to petitioner's contention, although a circular is not strictly a statute or law, it has, however, the force and effect of law according to settled jurisprudence.[8] In Inciong vs. de Guia,[9] a circular of this Court was treated as law. In adopting the recommendation of the Investigating Judge to impose a sanction on a judge who violated Circular No. 7 of this Court dated September 23, 1974, as amended by Circular No. 3 dated April 24, 1975 and Circular No. 20 dated October 4, 1979, requiring raffling of cases, this Court quoted the ratiocination of the Investigating Judge, brushing aside the contention of

respondent judge that assigning cases instead of raffling is a common practice and holding that respondent could not go against the circular of this Court until it is repealed or otherwise modified, as "(L)aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or customs or practice to the contrary."[10]

The argument that Article 82 of E.O. 226 cannot be validly repealed by Circular 1-91 because the former grants a substantive right which, under the Constitution cannot be modified, diminished or increased by this Court in the exercise of its rule-making powers is not entirely defensible as it seems. Respondent correctly argued that Article 82 of E.O. 226 grants the right of appeal from decisions or final orders of the BOI and in granting such right, it also provided where and in what manner such appeal can be brought. These latter portions simply deal with procedural aspects which this Court has the power to regulate by virtue of its constitutional rule-making powers.

The case of Bustos vs. Lucero[11] distinguished between rights created by a substantive law and those arising from procedural law:

> "Substantive law creates substantive rights. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations (60 C.J., 980). Substantive law is that part of the law which creates, defines and regulates rights, or which regulates rights and duties which give rise to a cause of action, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains a redress for their invasion."[12]

Indeed, the question of where and in what manner appeals from decisions of the BOI should be brought pertains only to procedure or the method of enforcing the substantive right to appeal granted by E.O. 226. In other words, the right to appeal from decisions or final orders of the BOI under E.O. 226 remains and continues to be respected. Circular 1-91 simply transferred the venue of appeals from decisions of this agency to respondent Court of Appeals and provided a different period of appeal, i.e., fifteen (15) days from notice. It did not make an incursion into the substantive right to appeal.

The fact that BOI is not expressly included in the list of quasi-judicial agencies found in the third sentence of Section 1 of Circular 1-91 does not mean that said circular does not apply to appeals from final orders or decision of the BOI. The second sentence of Section 1 thereof expressly states that "(T)hey shall also apply to appeal from final orders or decisions of any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court." E.O. 266 is one such statute. Besides, the enumeration is preceded by the words "(A)mong these agencies are," strongly implying that there are other quasi-judicial agencies which are covered by the Circular but which have not been expressly listed therein. More importantly, BOI does not fall within the purview of the exclusions listed in Section 2 of the circular. Only the following final decisions and interlocutory orders are expressly excluded from the circular, namely, those of: (1) the National Labor Relations Commission; (2) the Secretary of Labor and Employment; (3) the Central Board of Assessment Appeals and (4) other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute. Since in DBP vs. CA[13] we upheld the appellate jurisdiction of the Court of Appeals over the Court of Tax Appeals despite the fact that the same is not among the agencies reorganized by B.P. 129, on the ground that B.P. 129 is broad and comprehensive, there is no reason why BOI should be excluded from Circular 1-91, which is but implementary of said law.

Clearly, Circular 1-91 effectively repealed or superseded Article 82 of E.O. 226 insofar as the manner and method of enforcing the right to appeal from decisions of the BOI are concerned. Appeals from decisions of the BOI, which by statute was previously allowed to be filed directly with the Supreme Court, should now be brought to the Court of Appeals.

WHEREFORE, in view of the foregoing reasons, the instant Petition for *Certiorari* and prohibition with application for temporary restraining order and preliminary injunction is hereby **DISMISSED** for lack of merit. The Temporary Restraining Order issued on July 19, 1993 is hereby **LIFTED.**

SO ORDERED.

Narvasa, *C.J.*, Padilla, Regalado and Puno, *JJ.*, concur.

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[1] Rollo, p. 71.
[2] Rollo, p. 180.
[3] Ibid.
[4] G.R. No. 70443, 144 SCRA 144 (1986).
[5] G.R. No. 86625, 180 SCRA 609 (1989).
[6] Ibid.
[7] Sec. 7, Art. IX, 1987 Constitution.
[8] Sare vs. Aseron, G.R. No. L-22380, 20 SCRA 1027 (1967); Pascual vs. Commission of Customs, G.R. No. L-12219, 4 SCRA 1020 (1962).
[9] AM. R-249-RTJ, 154 SCRA 93 (1987).
[10] Article 7, New Civil Code.
[11] 81 Phil. 640.
[12] 36 C.J. 27; 52 C.J.S., 1026.
[13] Supra.
