Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PURINA PHILIPPINES, INC.,[1]
Petitioner,

- versus -

HON. WALDO Q. FLORES, in his capacity as Senior Deputy Executive Secretary of the Office of the President, and NATIONAL FOOD AUTHORITY,
Respondents.

G.R. No. 180323

Present:

SERENO, *CJ,* Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ and
PERLAS-BERNABE, *JJ.*

Promulgated:

SEP 16 2015

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DECISION

SERENO, *CJ:*

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[2] dated 4 July 2007 and Resolution[3] dated 24 October 2007 in CA-G.R. SP No. 91619.

The CA upheld the decision of the Office of the President (OP) affirming the finding of the National Food Authority (NFA) that petitioner is engaged in the corn industry. The CA Resolution denied petitioner's motion for reconsideration.

FACTS

Petitioner is a domestic corporation with 100% foreign equity and registered with the Securities and Exchange Commission.[4] It was granted a

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[1]*Rollo*, p. 10. Petitioner has merged with Cargill Philippines, Inc. The Certificate of the Articles and Plan of Merger was issued by the Securities and Exchange Commission on 8 March 2002.
[2]Id. at 35-41. The Decision issued by the Court of Appeals Fifteenth Division was penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo (now a Member of this Court) and Romeo F. Barza concurring.
[3] Id. at 43-44.
[4]Id. at 35.

certificate of authority in 1990 by the Board of Investments to engage in the manufacture of animal feeds in the country.[5]

One of the components used by petitioner in the manufacture of animal feeds is corn, which is bought from local suppliers or imported from other countries with authority from the NFA when local supply is unavailable.[6] The corn is stored in a warehouse in Dampol St., Pulilan, Bulacan.[7]

In 1995, the NFA required petitioner to acquire a warehouse license to store corn.[8] Petitioner filed the necessary application, which was denied by the NFA in a letter dated 30 October 1996.[9] The letter alluded to petitioner's 100% foreign equity, which gave rise to legal impediments hindering the issuance of the license.

In its reply,[10] petitioner sought a clarification of the license requirement. It also requested the issuance of a provisional authority to continue its "corn-related business activities, including the purchase and storage of corn in its warehouses"[11] pending the resolution of the legal issue.

In the letter dated 8 January 1997,[12] the NFA stated that petitioner, as a domestic enterprise, was restricted by List A of the Second Regular Foreign Investment Negative List of the Foreign Investment Act.[13] The law limits to 40% the foreign equity participation of those engaged in the rice and corn industry pursuant to Presidential Decree No. (P.D.) 194.[14] The NFA therefore granted the request of petitioner for a provisional authority to continue the latter's business, but on one condition. Petitioner was to submit within 20 days a divestment plan of its foreign equity participation in order to comply with the 40% foreign equity limitation as provided by law.

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[5] Id.
[6] Id. at 35-36.
[7] Id. at 36.
[8] Id.
[9] Id. at 45.
[10] Id. at 46-48.
[11] Id. at 47.
[12] Id. at 49-50.
[13] REPUBLIC ACT NO. 7042 dated 13 June 1991. Sections 3(g) and 8(a) thereof state:
SECTION 3. *Definitions.*— As used in this Act:
x x x x
g) The term "Foreign Investments Negative List" or "Negative List" shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent (40%) of the equity capital of the enterprises engaged therein.
x x x x
SECTION 8. *List of Investment Areas Reserved to Philippine Nationals (Foreign Investment Negative List).* — The Foreign Investment Negative List shall have three (3) component lists: A, B, and C:
a) List A shall enumerate the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws.
[14] Entitled "Authorizing Aliens, as well as Associations, Corporations or Partnerships Owned in Whole or in Part by Foreigners to Engage in the Rice and Corn Industry, and for Other Purposes."

Petitioner requested a reconsideration of the NFA finding.[15] In a letter dated 31 October 1997,[16] the NFA reminded petitioner about the submission of the divestment plan. Attached to the letter was Opinion No. 234[17] dated 10 October 1997 issued by the Office of the Government Corporate Counsel, which found that petitioner was indeed engaged in the corn industry.

Petitioner filed an appeal before the Secretary of Agriculture.[18] In the mean time, it requested and was again granted a provisional authority to continue to purchase and store corn in pursuance of its business.[19] Considering the transfer of administrative jurisdiction over the NFA from the Department of Agriculture to the OP,[20] the OP took cognizance of petitioner's appeal.[21]

RULING OF THE OFFICE OF THE PRESIDENT

In a Decision[22] dated 13July 2005, the OP dismissed the appeal for lack of merit.

According to the OP, in view of the admissions of petitioner that it buys or imports corn and stores them in a company warehouse, petitioner is engaged in the corn industry as defined under Section 1 of Republic Act No. (R.A.) 3018, the Rice and Corn Industry Act.[23] Furthermore, petitioner uses corn as raw material for its manufacture of animal feeds. Under Section 2(a) of P.D. 194,[24] the activity of purchasing rice and corn for use as raw material in the manufacture or processing of finished products falls under the term "rice and/or corn industry." The OP ruled that based on the law, as long as a company uses corn as raw material or processes it as a supplementary activity, that company shall be deemed engaged in the corn industry.[25]

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[15] *Rollo*, pp. 51-76.
[16] Id. at 77.
[17] Id. at 79-82.
[18] Id. at 83-92.
[19] Id. at 93-96.
[20] Executive Order No. 2 dated 13 July 1998, entitled "Transferring the National Food Authority from the Department of Agriculture to the Office of the President."
[21] *Rollo*, p. 100.
[22] Id. at 121-125. The Decision of the Office of the President in O.P. Case No. 98-H-8525 was penned by Senior Deputy Executive Secretary Waldo Q. Flores.
[23] The second paragraph of Section 1 states:
As used in this Act, the term "rice and/or corn industry" shall mean and include the culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail, the provisions of Republic Act Numbered Eleven hundred and eighty to contrary notwithstanding, or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof: *Provided*, That public utilities duly licensed and registered in accordance with law may transport corn or rice.
[24] SECTION 2. As used in this Decree, the term "rice and/or corn industry" shall include the following activities:
a. Acquiring by barter, purchase or otherwise, rice and corn and/or the by-products thereof, to the extent of their raw material requirements when these are used as raw materials in the manufacture or processing of their finished products.
[25] *Rollo*, p. 124.

The OP found no error on the part of the NFA when it required petitioner to submit a divestment plan of the majority of its foreign equity in favor of Filipino citizens.[26]

Petitioner filed a Motion for Reconsideration,[27] which was denied by the OP in the Order dated 16 September 2005.[28] Accordingly, petitioner filed an appeal before the CA.[29]

RULING OF THE CA

The CA issued the assailed Decision[30] dated 4 July 2007 denying the appeal.

The CA ruled that there was no ambiguity in the language of Section 2(a) of P.D. 194 with regard to the definition of the term "rice and/or corn industry."[31] Since petitioner uses corn as raw material in its processing and manufacture of animal feeds, it is a corporation engaged in the corn industry.

Petitioner's Motion for Reconsideration was likewise denied by the CA in the challenged Resolution dated 24 October 2007.[32] Hence, the instant petition.

ISSUE

Whether petitioner is engaged in the corn industry.

OUR RULING

We answer in the affirmative.

In 1960, Congress nationalized the rice and corn industry through the enactment of R.A. 3018 on 2 August 1960.[33] R.A. 3018 prohibits any person who is not a citizen of the Philippines, or any association, partnership or corporation whose capital or capital stock is not wholly owned by citizens of the Philippines, from engaging directly or indirectly in the rice and corn industry.[34] It defines the term "rice and/or corn industry" as follows:

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[26] Id.
[27] Id. at 126-137.
[28] Id. at 138.
[29] Id. at 144-163.
[30] Id. at 35-41.
[31] Id. at 39.
[32] Id. at 43-44.
[33] *Chua U v. Lim*, 121 Phil. 251(1965).
[34] R.A. 3018, Section 1.

> x x x[T]he term "rice and/or corn industry" shall mean and include the **culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail,** the provisions of Republic Act Numbered Eleven hundred and eighty to [the] contrary notwithstanding, **or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof**: *Provided*, That public utilities duly licensed and registered in accordance with law may transport corn or rice.[35] (Emphases supplied)

R.A. 3018 also created the Rice and Corn Board, which was tasked to study and recommend measures for the improvement and development of the rice and corn industry. On 21 November 1960, the Rice and Corn Board issued Resolution No. 10 pursuant to its mandate to issue rules and regulations implementing R.A. 3018.[36] Resolution No. 10 defined the term "by-product" as "the secondary products resulting from the process of husking, grinding, milling, and cleaning of palay and corn, such as, but not limited to *binlid*, *darak, tahop*, *tiktik*, corn husk, corn drips and corn meals."[37]

On 26 September 1972, P.D. 4 was issued creating the National Grains Industry Development Administration (Administration). The Administration took over the functions of the Rice and Corn Board in carrying out the purpose of R.A. 3018.[38] The Administration was later reconstituted into the National Grains Authority.[39]

Thirteen years into the effectivity of R.A. 3018, the law succeeded in transferring the country's rice and corn industry to Filipinos and Filipino-owned enterprises.[40] The government then felt the need for the infusion of foreign investments, which may be done by allowing foreign entities to participate in the rice and corn industry through the use of the grains as raw materials in the manufacture or processing of their finished products.[41] P.D. 194 was thus issued on 17 May 1973. It allows aliens and associations, partnerships or corporations owned in whole or in part by foreigners to engage in the rice and corn industry. It defines the "rice and/or corn industry" as follows:

> SECTION 2. As used in this Decree, the term "rice and/or corn industry" shall include the following activities:

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[35] Id.

[36] *Go Ka Toc Sons & Co. v. Rice & Corn Board*, 126 Phil. 481(1967).

[37] Id. at 481-482.

[38] Section 27 of P.D. 4 dated 26 September 1972, as amended, provides:
SECTION 27. *Transfer of the Rice and Corn Board.* — The functions, personnel, properties, assets and unexpended appropriations of the Rice and Corn Board are hereby transferred to the Administration under which the Board shall continue to carry out the purpose of Republic Act Numbered Three thousand eighteen in synchronization with the grains industry development program.

[39] P.D. 1485 dated 11 June 1978 entitled "National Grains Authority Act."

[40] "Whereas" clauses of P.D. 194 dated 17 May 1973.

[41] Id.

> **a. Acquiring by barter, purchase or otherwise, rice and corn and/or the by-products thereof, to the extent of their raw material requirements when these are used as raw materials in the manufacture or processing of their finished products.**
>
> b. Engaging in the culture, production, milling, processing and trading, except retailing, of rice and corn; *Provided*, That the designation of the area in the culture and production, as well as the trading of the produce in the domestic or foreign markets, shall be under the direction and control of the National Grains Authority. (Emphasis supplied)

Whereas foreign equity participation in the rice and corn industry is absolutely prohibited under R.A. 3018, P.D. 194 allows it in associations, partnerships or corporations to the extent of 40%. Section 5 of P.D. 194 provides:

> SECTION 5. In connection with the foreign equity participation, at least 60% thereof shall be transferred to Filipino citizens over a period to be established by the National Grains Authority at the time of approval of its authority to engage in the industry, or phase out its operation within the same period.

Associations, partnerships or corporations owned in whole or in part by foreigners are allowed to engage in the rice and corn industry, but are required to transfer at least 60% of their foreign equity participation to Filipino citizens over a period to be established by the National Grains Authority. Otherwise, the foreign entity's business shall phase out within the same period.

The powers and functions of the National Grains Authority were later expanded, and the agency was reconstituted into the present NFA.[42] In Resolution No. 193-98 dated 27 May 1998, the NFA approved a 30-year period for the divestment of 60% of foreign investors' equity participation in the rice and corn business. Under the *Guidelines in the Divestment of Foreign Equity as Required by P.D. 194*,[43] associations, partnerships or corporations owned in whole or in part by foreigners shall obligate themselves to attain the status of a Philippine national by limiting the foreign ownership of the enterprise to a maximum of 40% of its equity capital at the end of 30 years from actual operation of the business.

In support of its position that it is not engaged in the corn industry, petitioner puts forward the argument that its purchase, storage and use of corn is not *for the purpose of trade* as provided under the definition of the term "rice and/or corn industry" under R.A. 3018.[44] Petitioner argues that its acquisition of corn is solely for the purpose of the processing and

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[42] P.D. 1770 dated 14 January 1981 entitled the "National Food Authority Act."
[43] *Rollo*, pp. 343-344.
[44] Id. at 17-20.

manufacture of animal feeds, a product that consists of corn and other ingredients.[45]

The argument fails to convince.

R.A. 3018 defines the rice and/or corn industry as "culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail, x xx or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof." A plain reading of the definition shows that the term "for the purpose of trade" qualifies only the term "acquisition" in order to distinguish it from other motives for acquiring rice or corn, *e.g.*, for personal consumption. There is no need to qualify "culture, milling, warehousing, transporting, exportation, importation [and] handling the distribution, either in wholesale or retail," as these terms already connote commerce. Even if we were to grant that petitioner's acquisition of corn is not for the purpose of trade, it is clear that it engages in the corn industry through the importation and warehousing of corn.

Vigorously resisting the application of P.D. 194 as well, petitioner invokes the Court's ruling in *Chua U v. Lim*:[46]

> x x x [T]he avowed purpose of Republic Act No. 3018, as shown in the explanatory note to the original bill, was to do away with the possibility and practice of aliens creating artificial shortages of rice and corn by hoarding these commodities or cornering the market therefor, so as to enable them to dictate prices thereof. It thus becomes a necessary point of inquiry whether or not the producers of derivatives, in which rice or corn is the main ingredient, could singly, or in combination with others, create an artificial scarcity of the cereals at any given time; and for that purpose, complete data of the consumption capacity of these producers are material.[47] x x x.

According to petitioner, in order for an enterprise to be regarded as one engaged in the rice and corn industry under R.A. 3018, it must be shown (1) that rice or corn is the principal ingredient of its product; and (2) that it has the ability – singly or in combination with others – to create an artificial scarcity of the grain at any time.[48] Considering that P.D. 194 must "be read in furtherance of the general design"[49] of R.A. 3018, petitioner concludes that P.D. 194 should also apply only when the two requisites concur. In this case, it is argued that corn is not the principal ingredient of the animal feeds that petitioner manufactures.[50]

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[45] Id. at 19.
[46] Supra note 33.
[47] Id. at 254.
[48] *Rollo*, p. 25.
[49] Id. at 23.
[50] Id. at 21.

We cannot appreciate the position that P.D. 194 should be interpreted according to the legislative intent of R.A. 3018.

P.D. 194 authorizes aliens, as well as associations, corporations or partnerships owned in whole or in part by foreigners to engage in the rice and corn industry. The decree is a departure from R.A. 3018, which commands that the right to engage in the rice and corn industry be limited to citizens of the Philippines and associations, corporations or partnerships whose capital or capital stock is wholly owned by citizens of the Philippines. Whereas R.A. 3018 effectively eschews foreign participation in the rice and corn industry in any degree, P.D. 194 endeavors to attract foreign investments that would help develop lands for cultivating rice and corn in the country.[51] While P.D. 194 authorizes the issuance of licenses to aliens and business organizations to allow them to engage in the rice and corn industry,[52] R.A. 3018 prohibits it.[53]

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[51]The "Whereas" clauses of P.D. 194 read:

WHEREAS, Republic Act No. 3018 was enacted into law in 1960 to nationalize the rice and corn industry;

WHEREAS, after thirteen (13) years of operation, the law has a great extent succeeded in transferring the rice and corn industry in all its aspects to Filipinos and Filipino-owned entities;

WHEREAS, the existing law has created artificial restraints in the national effort to develop the rice and corn industry;

WHEREAS, it is imperative to lift the prohibition especially in cases where grains, including rice and corn and/or by-products thereof, are used for direct consumption or as raw materials in the manufacture or processing of their finished products;

WHEREAS, there is need to encourage foreign investments on a large scale to develop virgin lands for rice and corn;

[52]Section 3 of P.D. 194 states:

SECTION 3. **The National Grains Authority may authorize the alien or business organization mentioned in Section 1 hereof to engage in the rice and/or corn industry**, subject to the following conditions:

a. The National Grains Authority shall certify that there is an urgent need for foreign investment in the undertaking and that the same will not pose a clear and present danger of promoting monopolies or combination in restraint of trade.

b. The alien, association, corporation or partnership shall have the necessary financial capability and technical competence.

c. The alien, association, corporation or partnership shall submit a development plan acceptable to the National Grains Authority. (Emphasis supplied)

[53]Section 3 of R.A. 3018 states:

SECTION 3. All such persons, associations, partnerships, or corporations that have complied with the requirements provided in Section two hereof, if they so apply, shall be allowed to continue to engage in their respective lines of activity in the rice and/or corn industry only for the purpose of liquidation, as follows:

(a) Those engaged in the retail, wholesale, culture, transportation, handling, distribution or acquisition for the purpose of trade of rice and/or corn and the by-products thereof shall be allowed to continue to engage therein for a period of two years from the date of effectivity of this Act; and

(b) Those engaged in the milling and/or warehousing of rice and/or corn and the by-products thereof shall be allowed to continue to engage therein for a period of three years from the date of effectivity of this Act:

Provided, That upon the termination of the periods above-provided none of said alien persons or entities shall be allowed and granted a license to engage in the rice and/or corn industry: *Provided, further*, That the maximum amount of the capital investments of said alien persons or entities in their respective lines of activity in the industry shall be pegged to the amount of capital investments required to be declared under Section two hereof: *Provided, finally*, **That after the date of approval of this Act no license to engage in the rice and/or corn industry in any field of activity shall be granted to any new alien applicant therefor**. (Emphasis supplied)

Chua U v. Lim was promulgated by this Court under the auspices of R.A. 3018. As correctly observed by the CA, the interpretation of the legislative intent of R.A. 3018 therein has been rendered academic by the enactment of P.D. 194 eight years thereafter.[54] P.D. 194 had been in effect for 17 years before petitioner started doing business in the country. No amount of creative interpretation of the law can remove petitioner from the application of P.D. 194, especially since it readily admits that it acquires corn to the extent of its raw material requirement and uses it in the manufacture or processing of animal feeds. The acquisition of corn for use as raw material in the manufacture or processing of finished products is squarely treated under P.D. 194. This activity is clearly included in the term "rice and/or corn industry."

As we said in *Quijano v. Development Bank of the Philippines*:[55]

> This Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed.[56]

The wordings of R.A. 3018 and P.D. 194 are clear and unambiguous. Engaging in the importation, warehousing and use of corn as raw material in the manufacture or processing of finished products makes one a participant in the corn industry. Petitioner has never denied engaging in these activities. Accordingly, the law must be applied according to its express terms. We exercise no discretion in declaring that petitioner is engaged in the corn industry.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated 4 July 2007 and Resolution dated 24 October 2007 in CA-G.R. SP No. 91619 are **AFFIRMED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[54] *Rollo*, p. 44.
[55] 146 Phil. 283 (1970).
[56] Id. at 291.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice