ASIAN DEVELOPMENT BANK ADMINISTRATIVE TRIBUNAL

Decision No. 70
(20 January 2005)

A. Maurice de Alwis
v.
Asian Development Bank
(No. 3)

Flerida Ruth P. Romero, President
Khaja Samdani, Vice-President
Claude Wantiez

1. In the original A. Maurice de Alwis v. Asian Development Bank, Decision No. 57 (8 August 2003), the Tribunal held that the Respondent Bank acted within its rights when it ordered the Applicant to return the rental subsidies it had paid to him in 1998-1999 and 1999-2000, as well as to forfeit his right to such subsidy for an additional three years (2000-2001, 2001-2002 and 2002-2003) on the ground that the Applicant, under the facts and Administrative Orders applicable, had not been entitled thereto.

2. The facts showed that the Applicant received rental subsidies from the Bank for two years for leasing property for which he failed to establish that he had actually paid rent. The forfeiture of his right to subsidy in the succeeding three years was ordered because his behavior had manifested a certain neglect of prudence and economy in that he sought to receive subsidy for payments he had not proved and agreed to the increase of his rent during the time of the validity of his existing contract. The Tribunal stressed that it did not purport to rule on any other claims for subsidy that the Applicant might make for any other period.

3. On the other hand, the Respondent was ordered to compensate the Applicant for behavior which constituted a violation of due process and caused some actual inconvenience to the Applicant.

4. Subsequently, the Applicant sought a revision of Decision No. 57 in light of "new evidence" and failure on the part of the Tribunal to apply a provision of the Civil Code of the Philippines. The Tribunal rejected these two arguments in Decision No. 66 of 28 July 2004 and denied the request for revision for non-compliance with the conditions laid down in Article XI of the Statute and on the basis of the principles of finality of judgment and res judicata.

5. On 5 November 2004 or fifteen months after the original decision, the Applicant sought from the Tribunal a clarification of certain "ambiguities and inconsistencies which have led to fundamental differences in interpretation between the Applicant and the Bank." An exchange of comments ensued which revealed their disparate opinions as to what constituted the ambiguities for which they sought clarification.

6. In accordance with past practice, the Tribunal will entertain this request for clarification as it has done before in the case of Mesch and Siy (No. 2), Decision No. 6 [1995], I ADBAT Reports 67, 72, para. 10, where we quoted the International Court of Justice, thus:

> The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and scope of

> what the Court has decided with binding force, and not to obtain an answer to questions not so decided. (Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, I.C.J. Reports 1950, p. 395 at p. 402.)

7. By way of example, the question of whether or not the Tribunal disqualified the Applicant from rental subsidy for the year 2003-2004 is clearly outside the scope of its decision as it merely denied the right to subsidy in 2000-2001, 2001-2002 and 2002-2003. Categorically it declared: "However, the Tribunal does not purport to rule on any other claims for subsidy that the Applicant might make for any other period." (de Alwis, ADBAT Decision No. 57 [2003], para. 32). Another Application may be filed to resolve this issue in the light of the main case in as much as it is still justiciable.

8. The Applicant seeks clarification in relation to the applicability of A.O. No. 3.07 version June 2000 to his case, his position being that the Tribunal has declared that it does not apply to his case and that, therefore, he was not disqualified from rental subsidy for the year 2003-2004.

9. The issue pertains to the eligibility of staff members to housing assistance or rental subsidy. When the applicant first applied for rental subsidy with the Bank for the lease of the subject property on 8 July 1997, the applicable A.O. No. 3.07 disqualified those who own residential property within reasonable commuting distance "whether such property is owned in their own name, in the name of the staff member's spouse or jointly by the staff members and his/her spouse." The Respondent insisted that although the property was owned by the YGC Corporation, not by the Applicant or his spouse, and that he may have pro forma divested himself of his shares in said Corporation, the facts show that he continued to be decisively involved in it.

10. The Tribunal declared that A.O. No. 3.07 was, however, formulated in an unambiguous manner and did not cover the Applicant since neither he nor his spouse owned the property. In other words, the Applicant, under those terms, was not expressly excluded from the rental subsidy. Had the Bank's intention been otherwise, it could have explicitly provided for the exclusion from subsidy of staff members with some type of substantial involvement or control in an entity owning the property where the staff member lives. But it did not.

11. As the Tribunal's decision said: "It [A.O. 3.07] was amended only in 2000 to cover a situation such as that of the Applicant's …. [O]n 22 June 2000, the Administrative Order No. 3.07 was revised to deal with this problem." It added paragraph 4.2, thus: "A Staff Member requesting rental subsidy for a residential property owned by one or more close relatives as defined in A.O. No. 2.01 or owned by a company in which the staff members has a substantial financial interest, has an obligation to disclose such information. As a general rule, in these cases, the staff member will not be eligible for rental subsidy unless otherwise authorized by the Director, BPMSD."

12. That the Applicant was thenceforth excluded from the rental subsidy under the revised wording of the A.O. was clear and unambiguous from the ruling of the Tribunal that: "It would have been prudent for the Bank, in case it wanted to exclude cases such as that of the Applicant's from the rental subsidy scheme, to provide for this expressly, as indeed it did by the amendment of 22 June 2000 to A.O. No. 3.07."

13. While the parties do not exactly agree on the issues on which they seek clarification from the Tribunal, they do ask enlightenment regarding its statement on rental rates. The Applicant argues that Decision No. 57 precludes the Bank from taking disciplinary action against him

considering that paragraph 23 states that "excessive rental rate is clearly a basis on which the Respondent is entitled to deny in advance requests for rental subsidy. But it does not by itself constitute a ground for the exercise of retrospective disciplinary action against a staff member."

14. The matter of excessive rental rate became relevant in connection with the Respondent's assertion that the Applicant "had failed to exercise prudence and economy in his choice of housing as required by A.O. No. 3.07, paragraph 2.1." Actually, such rental rate, by itself did not constitute "ground for the exercise of retrospective disciplinary action." However, in agreeing to a reopening of the lease agreement after the expiry of the first year of the lease, thus increasing the monthly rental from P110,000 to P170,000 without consulting the Bank about this "maneuver", he failed to exercise such prudence and economy as is required in the underlying policy for the payment of rental subsidy, as well as his failure to take account of the bank's legitimate interest.

15. In fact, the Tribunal, in its Conclusion, reiterated that the Applicant's behavior has manifested a certain neglect of prudence and economy when first, he sought to receive subsidy for payments that he had failed to establish having made, and second, when he agreed to the increase of his rent during the time of validity of his existing contract. It was for these reasons that the Tribunal deemed it justified to deny him the right to subsidy in 2000-2001, 2001-2002 and 2002-2003 as a disciplinary measure for his serious misconduct.

16. The Applicant likewise seeks clarification and contends that the Tribunal, in Decision No. 57, nowhere stated that the rent which he paid was too high or out of proportion to market rates. He cites the last sentence of paragraph 23: "Moreover, the information provided by the parties regarding the costs of comparable housing in Manila are insufficient to determine that the rent paid by the Applicant would have been out of proportion."

17. Now the signification of this statement should not be stretched unduly to accommodate the meaning which the Applicant would draw from it, namely, that the Tribunal did not state that the rental he paid was neither too high nor out of proportion to market rates. It should be taken at its face value, i.e., that the information available to the parties regarding comparative rentals is too insufficient to arrive at a definitive conclusion regarding the amount of rent that the Applicant was paying in relation to the condominium's fair rental value.

18. Evidently, failing in his bid to have the Tribunal revise Decision No. 57, the Applicant now seeks a clarification of "ambiguities and inconsistencies" in an attempt to effect such a revision, nonetheless.

Decision

The Tribunal finds no ambiguity or inconsistency in the principal decision which would necessitate clarification or interpretation.