



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 13, 2020**, which reads as follows:

“**G.R. No. 220330 (Maria Lourdes Esperanza C. Gaw v. Cathay Pacific Airways, Ltd.)**. – This is a Petition for Review on *Certiorari* assailing the April 24, 2015 Decision¹ and August 20, 2015 Resolution² issued by the Court of Appeals (CA) in CA-G.R. SP No. 130972, entitled *Maria Lourdes Esperanza C. Gaw v. Cathay Pacific Airways, Ltd. (Cathay Pacific)*. The CA affirmed the Order of the Civil Aeronautics Board (CAB), which converted into a Formal Passenger Complaint petitioner’s Formal Opposition to respondent’s petition for renewal of its Foreign Air Carrier’s Permit (FACP), and denied petitioner’s Motion for Reconsideration of such affirmance.

The controversy originated from respondent’s failure to transport petitioner and her husband to their intended destination, which led to deleterious consequences on the part of petitioner.

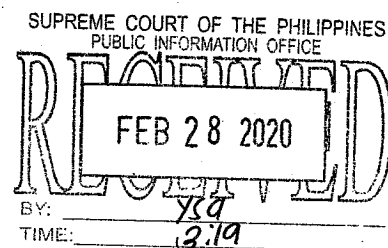
Petitioner claims that her husband, Alfredo Lim Gaw (*Fred*), was diagnosed with Adenocarcinoma Lung Cancer Stage 4. In June 2011, his oncologist recommended a specialized cancer treatment for him at the St. George Hospital in Munich, Germany. Consequently, arrangements were made for Fred’s admission and urgent intensive treatment in the said hospital on June 20, 2011.³ On June 19, 2011, petitioner and an up-and-about Fred boarded Cathay Pacific Flight No. CX 902 that left Manila for Hong Kong at 7:50 p.m. They were scheduled to fly from Hong Kong to Frankfurt, Germany at 11:55 p.m. that same night *via* Flight No. CX 289, and then take another connecting flight to Munich.⁴

¹ *Rollo*, pp. 160-177; penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

² *Id.* at 179-181.

³ *Id.* at 29-30.

⁴ *Id.* at 227.



During the flight to Hong Kong, Fred's oxygen level as shown on his oxymeter dropped, but it normalized once oxygen was administered to him. One of the flight attendants paged for a doctor on board the plane, and a lady doctor came over to check on Fred. She advised that oxygen be continuously administered on Fred, and that he should relax.⁵

Upon the couple's arrival in Hong Kong, paramedics boarded the plane together with a Cathay Pacific personnel named Shannon Rose. Fred was told to go to the hospital but he refused, saying that all he needed was oxygen on his next flight. He was then advised to relax at the airport lounge. On their way to the lounge, petitioner and Fred were met by a supervisor of respondent named Shirly Su, who insisted that Fred see a doctor at the airport clinic. Shannon Rose brought the couple to the Raffles Medical Hong Kong clinic at Terminal 1 of the Hong Kong International Airport, where Fred was attended to by Dr. Tan Cheong Eng at around 11 p.m. After examination, the doctor issued a certificate of fitness to travel, stating that Fred was fit to travel on the conditions that his oxymeter be regularly monitored and his oxygen adjusted accordingly. The hospital charged the couple HKD500 for the consultation.⁶

Nonetheless, petitioner and her husband were unable to board the plane going to Frankfurt. Another personnel of respondent, Terry Wan, insisted that Fred be brought to the hospital. However, the airline made no arrangements for the purpose. The couple remained at the airport and transferred from one spot to another until another personnel of respondent decided to book them at the Regal Airport Hotel. That was already past 1 a.m. The couple was not given their luggage and had no clothes to change into.⁷

The following day, Gloria Tsang, respondent's personnel, picked up the couple from the hotel and brought them to the Tsuen Wan Adventist Hospital, where Fred was seen by Dr. Yiu Kwai Ping Sally. After some tests, the doctor allowed Fred to travel as long as he is accompanied by an SOS international doctor who will fly with him at the cost of USD12,000.00. Petitioner told the doctor that it was the delay in their flight that was affecting Fred's chances of survival because he was not getting the medical treatment that he was supposed to avail. Fred pleaded for the doctor and respondent's personnel to allow him to travel to Germany and undergo medical treatment, but his pleas fell on deaf ears. The couple offered to sign a waiver just so respondent will allow them to fly, but the latter refused. The hospital charged them HKD1,110.00. At about mid-afternoon of the same day, Fred's oxygen level went down. The couple decided to go back to Raffles Medical Hong Kong

⁵ Id. at 32-33.

⁶ Id. at 33-34.

⁷ Id. at 34-35.

clinic where Fred underwent oxygen therapy. The clinic charged them HKD1,770.00 for it.⁸

Later, Dr. Yiu Kwai Ping Sally accomplished a Cathay Pacific Medical Information Form allowing Fred to travel on certain conditions, such as availability of oxygen equipment inflight. She also specified the medication needed and indicated that Fred did not need hospitalization either during the long layover or upon arrival at their destination. However, petitioner subsequently received a phone call from SOS International insisting that Fred see a respiratory doctor with whom an appointment had already been arranged. Petitioner was not able to administer Fred's medication on this occasion as they needed to catch his appointment. The couple, with Fred's sister Georgie, rode a taxi going to the clinic of Dr. Christopher K.W. Lai as they were not provided with transportation by respondent.⁹

The group travelled for more than an hour on a rainy afternoon and were dropped off by the taxi cab still quite a distance from the clinic. They had to walk, but Fred at this time was wobbly. Bystanders who saw them asked if they needed to call an ambulance, but petitioner and Georgie declined. They instead sat Fred on a bench and gave him water and medication. Georgie went to the clinic to ask for a wheelchair, but there was none available. As Fred no longer wanted to walk, his wife and sister held and supported him on both sides. The trio continued walking and stopped from time to time to enable Fred to rest. At one point Fred almost fainted, and the bystanders who saw them asked if they needed an ambulance. Petitioner and Georgie settled for a chair lent by a vendor and gave Fred some water. After Fred had rested, the group continued walking the distance of two buildings going to the clinic. When they arrived, Fred was tired and exhausted. The doctor, however, did not see him right away as there were other patients waiting. When Dr. Christopher K.W. Lai finally saw Fred, his oxygen level was low. After examination, the doctor called SOS International to say that Fred needed an ambulance going to a hospital. He charged HKD2,000.00 for the consultation and sent Fred to Queen Mary Hospital.¹⁰

Fred's condition was stable in his first two days at the Queen Mary Hospital. Allegedly, while he did not have pneumonia, he was nonetheless treated for it. The hospital did not allow him a companion beyond visiting hours, which he did not like. On his third day at the hospital, his blood pressure dropped. The next day, he passed away. The cause of death was indicated to be carcinoma of the lung. The hospital charged him a huge amount, and additional expenses were incurred, such as HKD71,800.00 as burial service fee and HKD595.00 as Philippine Consulate General, Hong Kong SAR service fee. These were paid for by his employer. When petitioner expressed

⁸ Id. at 36-38.

⁹ Id. at 40-42.

¹⁰ Id. at 43-45.

her intention to bring Fred's remains to the Philippines on board Cathay Pacific, respondent was charging her a large amount. It was only when Fred's sister told the airline that "they would have a problem" that respondent waived the charges for the transport of Fred's remains, upgraded the seats of Fred's contingent from economy to business class, and waived the charges for excess baggage.¹¹

A year later, or on July 20, 2012, respondent Cathay Pacific, a foreign corporation doing business in the Philippines and engaged in the business of international air transport of passengers and cargo and the provision of related services, filed with the CAB a petition for the renewal of its FACP to operate international scheduled air transportation services between Hong Kong and the Philippines. The CAB subsequently issued a Notice of Hearing, setting the hearing of the petition on August 16, 2012 at 2:30 p.m. at the CAB Conference Room, Old MIA Road, Pasay City.¹²

On August 15, 2012, petitioner filed a Formal Opposition to respondent's application based on her experience in Hong Kong, as summarized above. She claimed that respondent had been consistently insensitive and merciless in the treatment of its passengers, and its actions and omissions led to the demise of her husband. Petitioner invoked the CAB to deny respondent's petition for the renewal of its FACP.¹³

On October 11, 2012, the CAB issued an *Order Resolving the Formal Opposition to Cathay Pacific Airways Limited*,¹⁴ in which it converted petitioner's Formal Opposition into a Formal Passenger Complaint and endorsed it to its Legal and Enforcement Division (*LED*), to proceed independently of the proceedings for the renewal of respondent's FACP.¹⁵ The CAB cited four (4) grounds for this action. *First*, its jurisdiction is regulatory in character and limited to the economic aspect of air transportation or for the enforcement of the economic regulatory provisions of its Charter, Republic Act (*R.A.*) No. 776.¹⁶ The CAB only determines *prima facie* evidence of the applicant's fitness, willingness, and ability to operate the services applied for, as well as the need of the public for its transportation service. Petitioner's Formal Opposition is in reality a passenger complaint which should be lodged before the LED.¹⁷

Second, petitioner has not demonstrated her personal stake or material interest in the outcome of the petition for renewal of respondent's FACP because her interest was merely consequential. The CAB can assume

¹¹ *Id.* at 45-47.

¹² *Id.* at 162.

¹³ *Id.* at 239-240.

¹⁴ *Id.* at 444-451.

¹⁵ *Id.* at 449-450.

¹⁶ The Civil Aeronautics Act of the Philippines.

¹⁷ *Rollo*, pp. 444-445.

jurisdiction under R.A. No. 776 to investigate whether respondent violated any of the terms of the FACP to warrant the suspension, revocation or non-renewal of its FACP, but not on the basis of the underlying incidents which appeared isolated.¹⁸

Third, the Agreement Between the Government of Hong Kong Special Administrative Region (*SAR*) and the Government of the Republic of the Philippines Concerning Air Services dated October 2, 1996 (1996 HK-RP Air Services Agreement), and the subsequent Confidential Memorandum of Understanding, govern the relationship between the parties and must be honored as being in the nature of international contracts or treaties. The grounds mentioned in these agreements for the revocation or suspension of respondent's FACP are not present in this case. Moreover, the 1996 HK-RP Air Services Agreement provides that unless urgent, the right to revoke or suspend the operating authorization of the airline designated by the other party shall be exercised only after consultation with the other contracting party. No such prior consultation was exercised in this case.¹⁹

Finally, Cathay Pacific submitted all the requirements imposed by the CAB for the renewal of its FACP. The dispositive portion of the CAB Order states:

WHEREFORE, in view of the foregoing, the instant Opposition is endorsed to the Legal Division of the Board and consequently, the Formal Opposition to Cathay Pacific Airways Limited's Petition for Renewal of Foreign Air Carrier's Permit to Operate International Scheduled Transportation Services in the Philippines be converted to a Formal Passenger Complaint against Petitioner and shall be proceeded independently of the proceedings for the renewal of the Petitioner's Foreign Air Carrier's Permit.

It is so ORDERED.²⁰

Petitioner filed a Motion for Reconsideration, but the CAB denied it through its December 18, 2012 Resolution,²¹ the dispositive portion of which states:

NOW, THEREFORE, in view of the foregoing, the Board **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the instant **Motion for Reconsideration**.

The Board further **RESOLVED**, however, even if the Foreign Air Carrier's Permit may issue in favor of Cathay Pacific Airways Limited, to **further investigate** the allegations of herein Movant Maria Lourdes

¹⁸ Id. at 446.

¹⁹ Id. at 446-448.

²⁰ Id. at 450.

²¹ Id. at 167; 537-539.

Esperanza Gaw, **for the purpose of imposing sanctions on Cathay Pacific as may be appropriate and warranted.** (emphasis in the original)

Hence, petitioner filed with the CA a Petition for Review²² under Rule 43 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, alleging serious error on the part of the CAB in issuing the said Order and praying for its nullification and the revocation of respondent's FACP.

Meanwhile, on January 31, 2013, the CAB issued Resolution No. 01 (BM1-01-31-2013) which renewed respondent's FACP for another five years, or from August 9, 2012 to August 8, 2017.²³

On April 24, 2015, the CA issued the assailed Decision which found no merit in the petition. It held that petitioner failed to show either the existence of grounds under the 1996 HK-RP Air Services Agreement that may serve as basis for the CAB to revoke, suspend, or not renew respondent's FACP,²⁴ or grounds for the modification, suspension or revocation of respondent's FACP under Section 22 of R.A. No. 776.²⁵ On the other hand, records revealed that the airline complied with all the documentary requirements imposed by the CAB, so that its FACP was validly renewed.²⁶ The CA concluded that petitioner failed to show that the CAB's findings lacked the necessary evidentiary support. Thus, the legal presumption that official duty had been duly performed stands. Moreover, settled is the rule that courts of justice should respect the findings of administrative agencies unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial.²⁷

Petitioner's Motion for Reconsideration having been denied by the CA in its August 20, 2015 Resolution, she filed the present petition alleging manifest error on the part of the CA: *first*, in not holding that the CAB had power and duty to hear petitioner's Formal Opposition;²⁸ *second*, in holding that the CAB's regulatory and supervisory powers, duty and jurisdiction under R.A. No. 776 are subordinate to the obligation assumed by the Philippines in any treaty, convention or agreement with foreign countries on matters

²² Id. at 562-698.

²³ Id. at 980-983.

²⁴ Id. at 173.

²⁵ Id. at 174. Sec. 22 of R.A. No. 776 provides:

SECTION 22. Modification, suspension or revocation. - The Board, upon petition or complaint or upon its own initiative, may, by order entered after notice and opportunity for hearing, alter, amend, modify or suspend any permit, in whole or in part, if public convenience and necessity so require, or may revoke any permit in whole or in part, for intentional failure to comply with any provision of this Act or any order, rule or regulation issued thereunder, or any term condition or limitation of such permit: x x x Any interested person may file with the Board a protest or memorandum in support of or opposition to the alteration, amendment, modification, suspension, or revocation of any permit.

²⁶ Id. at 175.

²⁷ Id. at 176.

²⁸ Id. at 82.

affecting civil aviation,²⁹ specifically the 1996 HK-RP Air Services Agreement;³⁰ *third*, in not holding that CAB can suspend or deny renewal of respondent's FACP in the exercise of its regulatory and supervisory power and jurisdiction over air carriers and in the exercise of police power³¹ considering that respondent failed to comply in good faith with its obligation to transport petitioner and her husband to their destination; *fourth*, in not upholding the applicability of Section 22 of R.A. No. 776 with respect to the modification, suspension or revocation of respondent's FACP considering the public interest involved;³² *fifth*, in upholding the conversion of petitioner's Formal Opposition into a passenger complaint, which was unwarranted in light of the factual and legal circumstances of the case;³³ *sixth*, in upholding the CAB's renewal of respondent's FACP on the basis that it had complied with all the documentary requirements despite petitioner's Formal Opposition;³⁴ and *seventh*, in upholding the applicability of the presumption of regularity in the performance of official duty with respect to the CAB's action, even if the CAB's findings lacked evidentiary support.³⁵ Petitioner also seeks injunctive relief, alleging "urgency and pressing necessity to avoid injurious consequences...which cannot be remedied under any standard relief[,]"³⁶ and ultimately prayed for judgment setting aside and declaring null and void the assailed Decision and Resolution of the CA.

After a considered review, We resolve to deny the petition.

To begin with, the petition is now moot.

Ultimately, the Petition seeks the reversal of the CAB Order which converted into a passenger complaint petitioner's Formal Opposition to respondent's petition for renewal of its FACP. If the petition is granted, it will have the effect of restoring the Formal Opposition to its original objective. However, the CAB already renewed respondent's FACP for another five years, or from August 9, 2012 to August 8, 2017,³⁷ and obviously for an additional period afterwards as respondent continues to do business in the country. For all intents and purposes therefore, even if the petition is granted, petitioner's Formal Opposition would have had nothing more to oppose.

We have held that a case becomes moot and academic when, by virtue of supervening events, there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits of the case.

²⁹ Id. at 98-99.

³⁰ Id. at 102.

³¹ Id. at 104.

³² Id. at 112.

³³ Id. at 120, 122.

³⁴ Id. at 138-139, 141-142.

³⁵ Id. at 145-146.

³⁶ Id. at 147.

³⁷ Supra note 23.

Courts of justice are constituted to pass upon substantial rights and will not consider questions that will no longer serve any practical value.³⁸

Petitioner's arguments that the Court's resolution of the issues presented will not be devoid of practical use or value³⁹ and that the moot and academic principle is not an iron-clad rule and is subject to exceptions,⁴⁰ do not avail.

While it is true that the moot and academic principle is not an iron-clad rule, none of its exceptions are present in this case. In *Stradcom Corporation v. Judge Laqui*,⁴¹ the Court held that it will decide a case otherwise moot and academic if it finds that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review. Since there are no constitutional issues involved in this case, only exceptions (b) and (d) may be applicable. It must be borne in mind, however, that the CAB did not deny petitioner's Formal Opposition, but only placed it in the category of a passenger complaint to be resolved by its legal department. The CAB in fact committed to take into thoughtful consideration the allegations in the Formal Opposition when it resolved to "further investigate" petitioner's allegations "for the purpose of imposing sanctions on Cathay Pacific as may be appropriate and warranted."⁴² In this view, public interest was not abandoned, and respondent's alleged undesirable conduct capable of repetition will be scrutinized. In effect, petitioner's cause of action is not lost. There is thus no compelling reason to apply the exceptions to the principle of mootness in this proceeding.

Apart from mootness, the petition must be dismissed in view of the traditional respect accorded by the courts to administrative agencies.⁴³ A long line of cases establishes the basic rule that courts will not interfere in matters that are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under their special technical knowledge and training, unless there is a clear showing of arbitrary action or palpable and serious error.⁴⁴

³⁸ See *Stradcom Corp. v. Judge Laqui*, 685 Phil. 37, 46 (2012).

³⁹ *Rollo*, p. 1094. Petitioner asserts that if the Court "rules in favor of the impropriety of renewal of respondent's FACP without regard to the valid opposition filed against it which was imbued with public interest, the issuance could be invalidated and respondent's illegal operation during the past years could be annulled, and the remaining period covered by the FACP would be revoked.

⁴⁰ *Id.* at 1094-1095. Particularly, petitioner argues there is paramount public interest involved and the subject matter of the controversy is susceptible of recurring, yet evading review. The issues raised also require the formulation of controlling principles to guide the bench, the bar, and the travelling public.

⁴¹ *Supra*, note 38.

⁴² *Rollo*, p. 161.

⁴³ *Globe Telecom, Inc. v. The National Telecommunications Commission*, 479 Phil. 1, 11 (2004).

⁴⁴ See *Beautifont, Inc. v. Court of Appeals*, 241 Phil. 515, 526-527 (1988); *Felipe Ysmael, Jr. & Co. Inc. v. Deputy Executive Secretary*, 268 Phil. 739 (1990); *Energy Regulatory Board v. Court of Appeals*, 409 Phil. 37, 46-47 (2001).

Section 10 of R.A. No. 776 empowers the CAB to regulate the economic aspect of air transportation, and to exercise general supervision and regulation of, and jurisdiction and control over, air carriers, among others. Pursuant to this, it is authorized to issue FACP's to foreign air carriers like respondent to engage in air transportation services with the approval of the President of the Republic of the Philippines.⁴⁵ The CAB's jurisdiction to hear petitions for the renewal of FACP's and oppositions to such petitions is a function that is purely executive and administrative in nature. Accordingly, it should be afforded a wide latitude of discretion in determining the appropriate actions it should take under the circumstances.

We find the CAB's decision to convert petitioner's Formal Opposition into a passenger complaint reasonable.

Section 10(H)(2) of R.A. No. 776 provides that in exercising and performing its powers and duties under the provisions of the Act, the CAB shall take into consideration the obligation assumed by the Republic of the Philippines in any treaty, convention or agreement with foreign countries on matters affecting civil aviation. One such agreement is the 1996 HK-RP Air Services Agreement. It provides that each contracting party shall have the right to designate in writing to the other contracting party one or more airlines for the purpose of operating the agreed services on the specified routes. Once a contracting party receives such designation, its duty is to grant operating authorization to the designated airline without unnecessary delay.⁴⁶ Respondent is a designated airline of Hong Kong SAR which had been granted authority to operate scheduled air services to and from the Philippines.⁴⁷

The 1996 HK-RP Air Services Agreement also provides that the Philippine government may revoke or suspend the operating authorization granted to a designated airline only on limited grounds, namely: 1) in any case where it is not satisfied that the airline is incorporated and has its principal place of business in Hong Kong; or 2) in the case of failure by the airline to comply with the laws or regulations of the Philippine government granting those rights; or 3) if the airline otherwise fails to operate in accordance with the conditions prescribed under the agreement. As the CAB held, none of these grounds are present.⁴⁸ In fact, none of petitioner's allegations in her formal opposition pertained to any of these grounds. Moreover, respondent submitted all the documents necessary to comply with the requirements imposed by the CAB in its checklist labelled "requirements for renewal of foreign air carrier's permit (FACP), revised June 2009."⁴⁹

⁴⁵ Sec. 10(C)(1) in relation to Sec. 11, R.A. No. 776.

⁴⁶ *Rollo*, p. 447.

⁴⁷ *Id.* at 211.

⁴⁸ *Id.* at 448.

⁴⁹ *Id.* at 449.

The Court will not interfere in the CAB's exercise of its functions without proof that it acted arbitrarily or that it committed manifest error in dealing with the matters before it. Indeed, the purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions.⁵⁰ Judicial review is proper in cases of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion,⁵¹ all of which are circumstances not present in this case.

In all, the CA correctly held that petitioner failed to show that the CAB's Order lacked evidentiary support. Hence, the legal presumption that official duty has been regularly performed remains unrebutted.⁵² Judicial review is not called for, as also provided under Section 49 of R.A. No. 776, which states:

SECTION 49. **Judicial Review.** - The Supreme Court may review any order, ruling or decision of the Board and modify or set aside such order, ruling or decision when it clearly appears that there was no evidence before the Board to support reasonably such order, ruling, or decision, or that the same is contrary to law or that the Board has no or has exceeded its jurisdiction. x x x.

WHEREFORE, the petition is **DENIED**. The assailed April 24, 2015 Decision and August 20, 2015 Resolution rendered by the Court of Appeals in CA-G.R. SP No. 130972 are **AFFIRMED**.

SO ORDERED."

Very truly yours,

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MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court *2/19/2020*

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⁵⁰ 73 C.J.S. 507, Sec. 165, cited in *Guagua National Colleges v. Court of Appeals*, G.R. No. 188492, August 28, 2018.

⁵¹ *Timbancaya v. Vicente*, 62 O.G. 9424; *Macatangay v. Secretary of Public Works and Communications*, 63 O.G. 11236; and *Ortua v. Singson Encarnacion*, 59 Phil. 440, (1934) all cited in *Guagua National Colleges v. Court of Appeals*, supra.

⁵² *Rollo*, p. 176.