

Superior Court of Justice

PETITION in the CONFLICT OF VENUE nº 52.525 – RS (2005/0117164-4)

COURT REPORTER : MINISTER HUMBERTO MARTINS

APPLICANT : JAIME LUIZ SOTORIVA
LEGAL COUNSEL : TIAGO PIMENTEL SOUZA AND OTHER(S)
RESPONDENT : CENTRAIS ELÉTRICAS BRASILEIRAS S/A ELETROBRÁS
LEGAL COUNSEL : CARLOS SUPLYCY DE FIGUEIREDO FORBES AND OTHER(S)
CLAIMANT : FEDERAL COURT OF LAW OF THE 1ST TAX COURT OF PORTO ALEGRE – STATE OF RIO GRANDE DO SUL
DEFENDANT : COURT OF LAW OF THE 19TH CIVIL COURT OF PORTO ALEGRE – STATE OF RIO GRANDE DO SUL

DECISION

Court records examined.

It is concerned to a separate petition named by the applicant as Occurrence of Public Order, which briefly aims to the declaration of avoidance of all and any decision made after the defendant's pleading / rejection of the lawsuit in progress at the 19th Civil Court of Porto Alegre – State of Rio Grande do Sul.

The applicant's petition is under process at the STJ – Superior Court of Justice separately, by virtue of final decision passed in the Conflict of Venue nº 52.525/RS (State of Rio Grande do Sul) ("CC 52.525/RS") and discharge of the court records.

At first, the applicant states the necessity to keep these records confidential.

At second, the applicant states the necessity to summon the Brazilian Securities Commission – CVM, by virtue of the provision set forth in article 31 of Law number 6,385/76, as well as the necessity to declare void all and any decision on the leading suit.

At third, the applicant requests the notification of the Office of the Federal Public Prosecutor, considering the possibility of crime committed by the management of Eletrobrás S/A (page 10, item "b"), as well as the notification of the Presidents of the Brazilian Bar Association, including the Federal Council and the Regional Offices (forgetting to include the Regional Office of the Federal District on page 11).

The petition is signed by lawyer Édison Freitas Siqueira (page 11).

I decide.

The called occurrence of public order raised in the Petition number 00024598/STJ in truth concerns the grounds of action in the judicial records of the

leading suit, carried out at the 19th Civil Court of Porto Alegre – State of Rio Grande do Sul, between Jaime Luiz Sorotiva and Eletrobrás S/A.

The Conflict of Venue CC 52.525/RS only considered the subject matter relative to the authority to process and judge that lawsuit, which decision of the First Section of the STJ – Superior Tribunal of Justice determined the processing by the State Court and not by the Federal Court, sentence passed on August 3, 2007, according to the certificate on page 34.

The judicial records of the Conflict of Venue CC 52.525/RS were forwarded to its origin on October 1, 2007.

As shown, the petition of the applicant does not discuss appropriately the authority to judge the case and even if it did, the decision on the judicial records of the conflict of venue already became final and not subject to appeal.

Thus, any occurrence must be raised in the court records of the original process, and not here at the STJ – Superior Tribunal of Justice, which is not the original court of the lawsuit.

Therefore, initially, I reject the petition to summon the Securities Commission – CVM and to declare void the decisions granted, contained in item “a” and “c” of the separate request, pages 10 and 11, since the cause of the petition concerns the ground of the action. In case the natural judge understands that CVM must be a party in the law suit, there is no impairment in raising a new conflict of venue, in case the authority is not relocated by virtue of a new fact.

In addition, any jurisdiction activity of the STJ – Superior Tribunal of Justice is impossible.

I also fully reject the request to summon the Presidents of the Brazilian Bar Association (item “d” page 11), since this role may be performed by the lawyer himself, who is a member of the Regional Bar Association in several States, as shown on page 11, and may enforce his highest prerogatives among his peers.

Furthermore, I reject the request of non-disclosure of the court records once the simple allegation without full evidence that the respondent and the debenture holders may incur into economic losses, as well as the accusation of corporate crimes supposedly committed by the management of Eletrobrás S/A, is not sufficient evidence to support the court secrecy, considering that the mentioned directors also have the right to defend themselves from the serious allegations herein tailored, made by the lawyer signing the petition.

Finally, I grant the request to forward copies of this proceeding to the MPF - Office of the Federal Public Prosecutor, with the purpose of determining the allegations of corporate crimes made in the petition on pages 2/11, considering that pursuant to article 40 of the CPP – Code of Criminal Procedure and article 35, I of Complementary Law nº 35/79 (“Loman”- Fundamental Law of the Bench) it is the magistrate’s duty to inform any illegality evidenced or alleged by the party under the jurisdiction of the court to the Office of the Public Prosecutor.

Thus, I have already decided in the judicial records of the Conflict of Venue CC 63.644/PR: *“The party having claimed contingent illegality committed by the Mayor in the engagement of a lawyer, it is the magistrate’s duty to inform the Office of the Public Prosecutor and other authorities on the fact alleged in the court records.*

Intelligence of article 35, I of Complementary Law nº 35/79 (“Loman”- Fundamental Law of the Bench) and article 40 of the CPP – Code of Criminal Procedure”.

In view of the foregoing, I reject the request of non-disclosure of these records made in items “a”, “c” and “d” of the petition (pages 10 and 11), **granting only the remittance of the official letter to the Office of the Federal Public Prosecutor with a copy of the records, for the determination of contingent illegality.**

Submit the official letter to the Attorney General jointly with a copy of these court records so that he, at his discretion, initiates civil proceedings and/or remits the official letter to one of the Regional Offices of the Attorney General, such as the State of São Paulo, where the head office of CVM – Brazilian Securities Commission and Bovespa – São Paulo Stock Exchange are located, or the State of Rio Grande do Sul, where the leading action is in progress.

Publish. Notify.

Brasília (DF), February 29, 2008.”

MINISTER HUMBERTO MARTINS

Court Reporter