

103 Phil. 417

[G. R. No. L-9957. April 25, 1958]

BAYANI SUBIDO, ETC., ET AL., PETITIONERS AND APPELLANTS, VS. HON. ARSENIO H. LACSON, ETC., ET AL., RESPONDENTS AND APPELLEES.

D E C I S I O N

LABRADOR, J.:

Action for mandamus instituted on March 22, 1954, against the City Auditor and the City Treasurer of Manila to pass in audit and pay the claims of petitioners for refund of meat inspection fees collected under Ordinance No. 2991 (approved November 23, 1946), from the year 1946 to 1951, amounting to around P179,461.33. The Mayor of the City of Manila is joined as defendant because he has ordered the City Auditor and the City Treasurer to suspend action on the said claims, and it is sought to prohibit him from enforcing said order.

The case was submitted for decision upon an agreed statement of facts and various documents having relation to official action in connection with the claims. The stipulation of facts is as follows:

“1. Petitioners (with the exception of Atty. Bayani Subido) are duly licensed meat vendors in the city markets who paid meat inspection fees under Ordinance No. 2991.

“2, The respondent Hon. Arsenio H. Lacson is the incumbent Mayor of Manila, while the respondent Hon. Marcelino Sarmiento is the incumbent City Treasurer of Manila.

“3. That on June 11, 1951 in an opinion No. 6 the Secretary of Justice ruled that Ordinance No. 2991 was illegal and void because it was “patently beyond the power of the City of Manila to enact,” and that the City of Manila forthwith stopped the enforcement of the said ordinance.

“4. That on May 5, 1951, petitioners, through their counsel, Atty. Bayani Subido, filed their claims for refund of meat inspection fees with the City Treasurer.

“5. That the Hon. Manuel de la Fuente, then mayor of the City of Manila referred the matter to the Auditor General for a ruling as to whether or not meat inspection fees claimed by the petitioners were refundable, the same having been paid without protest.

“6. That on June 17, 1952, the respondent Mayor Arsenio H. Lacson informed petitioners’ counsel Atty. Bayani Subido that the Auditor General had authorized the refund of meat inspection fees regardless of whether or not the fees were paid with or without protest, and requested that complete statement of claims for refunds be submitted to his office so that he may ask the Municipal Board to appropriate the necessary funds therefor.

“7. That petitioners, by counsel, informed the respondent Mayor Arsenio H. Lacson that they had submitted the complete statement of claims to the Municipal Board totalling P219,007.93 meat inspection fees paid by petitioners to the City Government under Ordinance No. 2991.

“8. That on October 31, 1952, the respondent Mayor Arsenio H. Lacson approved the City Budget for the year 1952-1953 which city budget was denominated as Ordinance No. 3538 of the City of Manila.

“9. That after the approval of Ordinance No. 3538 by the respondent Mayor Arsenio H. Lacson, the Secretary of the Municipal Board, informed the respondent City Treasurer in a letter dated November 3, 1952 that the claims of petitioners amounting to P219,007.93 filed through counsel have been included in the amount of P297,349.93 under “Miscellaneous Expenditures” of the Appropriation Ordinance No. 3538 of the City of Manila for the fiscal year 1952-1953.

“10. That when petitioners presented the vouchers covering the refund of meat inspection fees paid by them from 1946-1951 the respondent City Treasurer advised them that he will pay only the claims for two years from the date the claims were filed in accordance with a 7th Indorsement of the Auditor General, dated April 7, 1952, that is, from May 5, 1949 to May 5, 1951.

“11. That in view of the information given by the respondent City Treasurer, petitioners filed separate vouchers for the authorized period from May 5, 1949 to May 5, 1951, and another set for the remaining claims, that is, for the period from May 5, 1946 to May 5, 1949.

“12. That the respondent Mayor suspended the payment of meat inspection fees in an order dated January 16, 1953, after the claims of petitioners amounting to P33,834.80 had been paid. Ground for the suspension was the investigation ordered by the respondent Mayor Arsenio H. Lacson of the alleged loss of public documents in the City Veterinarian’s office bearing on the refund.

“13. That the petitioners, through counsel, urged the respondent Mayor Arsenio H. Lacson to exclude them from the suspension order in a letter dated January 17, 1953. But the respondent Mayor, replying on the same day, assured petitioners that payments will be resumed after a thorough investigation of the alleged loss of documents in the City Veterinarian’s Office bearing on the claims.

“14. That in a letter dated February 23, 1954, the respondent mayor authorized the respondent City Treasurer ‘to effect the refund of said fees (meat inspection fees) provided that the claims therefor had been filed within the period of two years from the date of collection thereof by the City’.

“15. That on January 18, 1954, the Auditor General revised its ruling contained in his 7th Indorsement dated April 7, 1952, allowing the payment of refunds of meat inspection fees within five years from the date the claims were filed, provided however, that said dealers or their attorneys were not officially advised nor furnished a copy of the aforementioned 7th Indorsement of April 7, 1952 of the Auditor General before November 19, 1952.

“16. That petitioners were advised of the contents of the 7th Indorsement of April 7, 1952 of the Auditor General on December 18, 1952 by the respondent City Treasurer.

“17. That the claim of petitioner B. Almario for P5,711.70 within the two-year period was paid in July, 1954.

“18. That the respondent City Treasurer will make payment of the claims of petitioners upon the revocation of the ban contained in letter dated January 16,

1953 (Exhibit I) and letter dated February 23, 1954 (Exhibit 'P'). In other words, when these letters are revoked by this Honorable Court, the respondent City Treasurer will pay the claims upon presentation of the vouchers.

"19. That respondent City Treasurer is the department head that approves the vouchers for claims for refund of meat inspection fees as prepared by his office.

"20. That previous to the issuance of letter dated February 23, 1954, the vouchers for refund of meat inspection fees were not passed through, the respondent City Mayor's Office for approval.

"21. That the respondent City Treasurer is under the supervision and control of the Mayor in accordance with the City Charter.

"22. That the City Auditor will act on the vouchers for refund of meat inspection fees when the same are submitted to him.

"23. That the claims of petitioners still unpaid are those paid within the five-year period from the filing of the claims."

The Court of First Instance, Hon. Froilan Bayona presiding, ruled that "there exists no authority promulgated by Congress which gives any one the authority to sue the City Mayor and Treasurer of the City of Manila in lieu of the said City as a public corporation, because any judgment that could be rendered against said officials for refund of license fees unlawfully collected and levied would be unenforceable against the City of Manila and the funds of the latter (City of Manila) in possession or custody of said officials cannot be paid or disposed by them to satisfy any judgment." From the above judgment petitioners have appealed to this Court.

There is no question that an action for refund of fees collected under an illegal ordinance, should, under ordinary circumstances, include the City of Manila as a party as the funds have been received by it and will have to be returned by it if the action succeeds. The officials concerned are not ordinarily the real party in interest but the City or public corporation itself. The situation in the case at bar is, however, entirely different, because (1) the claims for refund have been passed upon favorably and have been authorized to be paid by the Auditor General of the Philippines, whose decision has, upon appeal to the President of the Philippines, been confirmed by the latter; (2) the petitioners herein had submitted the

list of their claims to the Municipal Board of the City and the latter in its Ordinance No. 3538, which is the appropriation ordinance for the City for the fiscal year 1952-1953, had approved an item amounting to P297,349.93 designated as "Miscellaneous Expenditures," which includes the sum of P219,007.93, representing the total amount to be refunded to the petitioners (Exhibit "D," attached to the Stipulation of Facts); (3) some of the claims presented of the same nature as those of the petitioners had already been paid and the City Treasurer is ready and willing to make payment of the claims, except that the City Mayor has ordered the suspension of the payments (see par. 18, Stipulation of Facts).

It is apparent, therefore, that the City had agreed to the refund of the fees collected under the invalid ordinance by the approval in accordance with law of the corresponding appropriation for the purpose, so that the only impediment to the petitioners' action is the refusal of the City Treasurer to approve the vouchers and pay the claims under the excuse that the City Mayor has ordered the suspension of such payments.

It has been held that when an officer refuses or neglects to perform an act which the law imposes as an obligation or a duty, mandamus. lies against such officer to compel. him to execute the ministerial act. We have so held in the cases of *Lamb vs. Phipps*, 22 Phil., 456; *Cia. Gen. de Tobacos vs. French and Unson*, 39 Phil., 34; *Suanes vs. Chief Accountant of the Senate, et al.*, 81 Phil., 818. It is no longer necessary to include the City as the real party in interest, because it has already acquiesced to the refund by the approval of the appropriation necessary for the purpose. The City has ceased to be the real party in interest; the real parties in interest now are the officers or officials of the City who refuse to perform their ministerial acts and duties to pay the claims, to the prejudice of the petitioners.

It is urged in support of the decision of the court a quo that the City Mayor who is vested with the executive control of all the departments of the City government has the power to order the suspension of such payments by the City Treasurer. Before the present action was instituted, the suspension might have been in part justified, because of suspicions entertained by the City Mayor that irregularities have been committed in the refund of claims of other persons similarly situated as the petitioners. But such excuse or reason has ceased to exist with the report of the Chief, General Investigation Section of the Police Department of the City, dated June 7, 1953 (Exhibit "U"), finding no such irregularities.

Then the acts of the chief executive of the City and even of the President of the Philippines should and must be in accordance with law and reason; in other words, the control that the

law vests in executive officers is not arbitrary; the control must be exercised in accordance with law and the facts. Abuse of such power of control is not within the contemplation of the law granting authority of control to executive officials. In the case at bar, under the circumstances, the control by the Mayor can be said to have been abused, there being no reason or ground for further ordering the suspension of payments, it being apparent that the claims appeared to be legitimate. The objection to the action in this particular is, therefore, without merit.

It is also urged that the action of mandamus does not lie but an ordinary action for refund of the inspection fees collected under the illegal ordinance. We hold that under the circumstances of the case an ordinary action would not be adequate. The extraordinary legal remedy of mandamus and prohibition are more speedy and adequate to bring about the end or purpose desired by the petitioners. As the Auditor has already authorized payment of the claims, and the President has affirmed the decision of the Auditor, and the Municipal Board of the City of Manila has already appropriated the funds necessary for the payment of the claims, an ordinary action would be superfluous and would entail more delay than is necessary for the purposes of petitioners.

Other questions and objections raised in the brief of the respondents are either beyond the agreed statement of facts or improperly injected in this Court on appeal, such questions not having been raised for the first time in the court *a quo* and, therefore, not subject to be considered in this Court. (Coingco vs. Flores, 82 Phil., 284, 46 Off. Gaz., 1566; People vs. Mejares, 90 Phil, 102; Talento, et al. vs. Makiki, et al., 93 Phil., 855, 49 Off. Gaz., 4331; The Shell Co. P. I., Ltd. vs. Vaño, 94 Phil., 389, 50 Off. Gaz., 1046 Lamko vs. Dioso, et al., 97 Phil., 821.)

The judgment appealed from is hereby reversed and let the writ issue as prayed for in the petition, against the respondent City Mayor, to prevent him from suspending or interfering with the approval and payment of the claims of the petitioners and against the City Treasurer to compel him to pay the petitioners' claims after the approval of the vouchers supporting the same. The action against the City Auditor is hereby dismissed, it appearing from the stipulation of facts that he has nothing to do with the payment of the claims. Costs against respondents in both instances.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

Reyes, A., J., concurs in the result.

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