

GUILLERMO B. GUEVARRA, PETITIONER, VS. THE HON. PEDRO M. GIMENEZ, AS THE AUDITOR GENERAL OF THE PHILIPPINES AND ISMAEL MATHAY, AS THE AUDITOR OF THE CENTRAL BANK, RESPONDENTS.

G.R. No. L-17115. November 30, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for mandamus to compel respondents, Pedro M. Gimenez, as Auditor General of the Philippines, and Ismael Mathay, as Auditor of the Central Bank of the Philippines, hereafter referred to, respectively, as the Auditor General and the Bank Auditor, to approve and pass in audit two (2) bills of petitioner Guillermo B. Guevara for professional services rendered by him to said Bank.

It is admitted that, on or about September 1, 1959, Miguel Cuaderno, the then Governor of the Central Bank of the Philippines—thereafter referred to as the Central Bank—acting for and in behalf thereof, asked petitioner herein, as member of the Philippine bar and practising lawyer, to cooperate with the legal counsel of the Central Bank in defending the same and its Monetary Board in Civil Case No. 41226 of the Court of First Instance of Manila, an action for certiorari, mandamus, quo warrant and damages in the amount of P574,000, fixed against them by one R. Marino Corpus. Accordingly, petitioner entered his appearance as counsel for the respondents in said case and argued therein, verbally and in writing, on September 1, 8, 12, 24 and 28, October 22 and November 9, 1959, January 7 and 14, and March 10 and 17, 1960, as well as submitted the following:

- Motion to Dismiss, consisting of 16 pages, filed September 5, 1959;
- Motion to Dismiss, the Amended Complaint, consisting of 2 pages, filed September 12, 1959;
- Respondent's Rejoinder, consisting of 11 pages, filed October 11, 1959;
- Additional Legal Arguments in support of Motion to Dismiss, consisting of 5 pages filed June 14, 1960.

In pursuance of his authority, under Resolution No. 1283 of the Monetary Board, dated September 8, 1959, reading:

"The Governor presented to the Board, and the latter approved by unanimous vote, the designation of Judge Guillermo as counsel to collaborate with the Legal Counsel of the Central Bank in connection with the court action filed by Mr. R. Marino Corpus against the individual members of the Monetary Board and the Governor of the Central Bank of the Philippines. The Board also authorized the Governor to arrange with Judge Guevara the amount of fee which the latter will charge the Central Bank for handling the said cases."

Governor Cuaderno urged petitioner herein to submit a proposal setting forth the terms and conditions under which his professional services were being rendered, and petitioner did so in a letter of September 11, 1959, in which he stated that his professional fees would be as follows: "retainer's fee of P10,000, plus a per diem of P300

for every hearing or trial. In case of appeal to the Supreme Court, * * * another fee of P5,000.00". On the same date Governor Cuaderno accepted the proposal, as regards the retainer's fee and the per diem, effective as of the date of entry (September 1, 1959) of petitioner's appearance in said case. On June 14, 1960, the same was dismissed by the Court of First Instance of Manila, on motion of the respondents herein, represented by petitioner herein.

Prior thereto, or on January 10, 1960, the latter had sent to the Central Bank his bill for the retainer's fee of P10,000. The Bank Auditor sought advise thereon from the Auditor General, who, in a communication to the former, dated June 10, 1960, stated that he would not object to said retainer's fee of P10,000, provided that its payment was made "not in lump sum as causes or circumstances may arise which may prevent Judge Guevara from proceeding or continuing as counsel of the Bank in the aforesaid case before it is finally terminated", but, in installments, as follows:

"P3,000.00 after filing the answer to the petition;

P3,000.00 after decision by the CFI;

P2,000.00 after filing briefs in case of appeal; and

P2,000.00 when the case is finally terminated."

with the understanding that, "in case there is no appeal from the CFI decision, the balance will be paid in full", once, presumably, the decision has become final. As regards the P300 per diem, the Auditor General expressed, however, the belief that it is "excessive and may not be allowed in audit". Hence, the present action for mandamus, filed on July 6, 1960, to compel respondents to approve payment of petitioner's retainer fee of P10,000 and his per diem aggregating P3,300, for the eleven (11) hearings attended by him.

In their answer, respondents alleged that the sum of P6,000 has already been paid on account of said retainer fee and impugned the legality of petitioner's contract with the Central Bank, upon the ground that the latter has no authority to enter into said contract, and that its Monetary Board no power to confirm it, because both can be and were represented in said case No. 41226 by the legal staff of the Central Bank, aside from the fact that the Government has its corporate counsel, and because the authority to engage special counsel for the Government of the Republic of the Philippines is vested, pursuant to section 1664 of the Revised Administrative Code, in the Solicitor General, with the approval of the Secretary of Justice. Respondents further alleged that petitioner should have appealed from the action of respondents herein, instead of seeking a writ mandamus.

At the outset, we note that two (2) of the defenses set up by respondents herein are inconsistent with each other. On the one hand, they assail the legality of the contract between petitioner herein and the Central Bank, whereas, on the other hand, they allege that the sum of P6,000 has already been paid on account of the retainer fee stipulated in said contract. That payment which could not have been made without the approval of respondents and/or their authorized representatives—and the reliance placed thereon in respondents' answer constitute a partial performance of the aforementioned contract and a clear admission of its legality. Indeed, such implied admission is merely a reiteration of that made in the communication of the Auditor General to the Bank Auditor, dated June 10, 1960, expressing no objection to said retainer fee, on condition only that its payment be made in installments, as above indicated, and questioning the P300.00 per diem upon the sole ground that it is excessive. In fact, as early as September 19, 1959, the then Secretary of Justice, Hon. Pedro Tuason, had rendered an opinion upholding the inherent power of the Central Bank to employ attorneys for any compensation the Monetary Board may deem reasonable. The pertinent part of said opinion follows:

"This is in reply to your letter of the 20th instant asking me whether Judge Guillermo B. Guevara, who has

been appointed special prosecutor under Section 1686 of the Revised Administrative Code 'to assist the City Fiscal of Manila in the investigation and prosecution of violations of the Central Bank Act and other related laws, including violations of circulars and regulations issued by the Monetary Board, Central Bank, and Department Heads relative to importations and exchange control', may be paid a monthly retainer by the Central Bank instead of per diems.

"The same Section 1686 regulates the compensation of special counsel appointed thereunder, limiting it to 'thirty pesos per day for the time employed'. But I am inclined to believe that this limitations applies to fees payable by the Department of Justice or other branches of the Government. Governed by a special charter and enjoying a distinct personality with a right to sue and be sued, the Central Bank may be regarded as a private party unaffected by the restrictions of said Section 1686 as to salary in the hiring of lawyers to protect the bank's interest and prosecute violations of the Central Bank Act and of the Bank's rules and regulations. The fact that such lawyers are appointed by the Secretary of Justice to better carry out the work for which they are retained does not alter the Central Bank's inherent power to employ attorneys for any compensation the Monetary Board deems reasonable".

The cases of *Angara vs. Gorospe*, 101 Phil., 79; 53 Off. Gaz. [14] 4480, and *Enriquez vs. Auditor General*, 107, Phil., 932; 58 Off. Gaz. (29) 5089, cited by respondents are not in point. The first involved a city official, who by law was entitled to be represented by the city attorney, and the second referred to a municipal corporation, which was entitled to be represented by the provincial fiscal. The aforementioned city official and municipal corporation are subject to the provisions of our Revised Administrative Code, whereas the Central Bank is governed by a special charter.

Section 1664 of the Revised Administrative Code, upon which respondents rely, provide:

"The Solicitor General shall, when in his opinion the public interest requires it, upon approval of the Department Head, employ and retain in the name of the Government of the Republic of the Philippines such attorneys as he may deem necessary to assist him in the discharge of his duties. Such attorneys shall be entitled to travel expenses, if incurred, and such compensation as shall be stipulated for."

This section refers to attorneys retained in the name of the Government of the Republic of the Philippines and deemed necessary by the Solicitor General "to assist him in the discharge of his duties". Petitioner herein does not fall under this class, he having been retained in the name of the Central Bank, which has a personality distinct and separate from that of our Government. Moreover, he did not appear in case No. 41226 as representative of the Solicitor General. In fact, the latter did not participate or intervene in any manner whatsoever in said case. In short, petitioner's services were not engaged for the purpose of rendering any assistance to the Solicitor General. Said Section 1664 is, therefore, inapplicable to this case.

It is urged that the proper remedy for petitioner herein is to appeal from the action of respondents herein, not to seek a writ of mandamus against them. It is well-settled, however, that when a contract has been made by an agency of the Government, through its proper officer, acting within the scope of his authority, and there is an appropriation made by law to cover the disbursements required by said contract, apart from the fact that delivery of the goods or rendition of the services stipulated has been duly attested to, the Auditor General or his representative has the duty, enforceable by mandamus, to approve and pass in audit the voucher for said disbursements, if issued by the proper officer of said agency of the Government. (*Radiowealth vs. Agregado*, 86 Phil, 429; *Tan C. Tee & Co. vs. Wright*, 53 Phil, 194; *Inchausti & Co. vs. Wright*, 47 Phil. 866.)

Under our Constitution, the authority of the Auditor General, in connection with expenditures of the Government is limited to the auditing of expenditures of funds or property pertaining to, or held in trust by, the Government or the provinces or municipalities thereof (Article XI, section 2, of the Constitution). Such function is limited to a

determination of whether there is a law appropriating funds for a given purpose; Whether a contract, made by the proper officer, has been entered into in conformity with said appropriation law; whether the goods or services covered by said contract have been delivered or rendered in pursuance of the provisions thereof, as attested to by the proper officer; and whether payment therefor has been authorized by the officials of the corresponding department or bureau. If these requirements have been fulfilled, it is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury warrant for said payment. He has no discretion or authority to disapprove said payment upon the ground that the aforementioned contract was unwise or that the amount stipulated thereon is unreasonable. If he entertains such belief, he may do more than discharge the duty imposed upon him by the Constitution (Article XI, section 2), "to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive or extravagant". This duty implies a negation of the power to refuse and disapprove payment of such expenditures, for its disapproval, if he had authority therefor, would bring to the attention of the aforementioned administrative officer the reasons for the adverse action thus taken by the General Auditing office, and, hence, render the imposition of said duty unnecessary.

Wherefore, the writ prayed for is granted and respondents herein are hereby ordered to pass in audit and approve the payment of the amounts claimed by petitioner herein, after deducting therefrom the sum of P6,000 already collected by him. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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