PHILIPPINE OPERATIONS, INC., PETITIONER, VS. AUDITOR GENERAL OF THE PHILIPPINES AND THE BUREAU OF PRISONS, RESPONDENTS.

G.R. No. L-3659. April 30, 1954

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Auditor General denying a claim of the Philippine Operations, Inc., against the Government amounting to P105,000.00. The circumstances leading to this appeal are briefly as follows:

On October 3, 1947, the petitioner herein, Philippine Operations, Inc., entered into a barter agreement with the Bureau of Prisons whereby it agreed to deliver to the Bureau a sawmill, complete, with a diesel fuel engine, a stop saw edge and log turner, etc., and two LGMs in good running condition, in exchange for 350,000 board feet of sawed lumber (Annex A). The principal conditions of the barter agreement are as follows:

- That Party of the Second Part shall deliver to the Party of the First Part, the Sawmill above described, complete, with accessories already crated, in Mindoro where it is at present located, after the same shall have been inspected and found satisfactory;

- That the Party of the Second Part shall deliver to the Party of the First Part, the two (2) LCMs, in good running condition, in Manila at the Pasig River, after the same shall have been inspected and found satisfactory;

- That the Party of the First Part shall deliver to the Party of the Second Part, SEVENTY THOUSAND (70,000) bd. ft. of sawed lumber (Apitong, Malugay or Amugis) thirty days after installation of the sawmill, and SEVENTY THOUSAND (70,000) bd. ft. of said lumber every month there- after, until the Party of the First Part shall have delivered to the Party of the Second Part THREE HUNDRED FIFTY THOUSAND (350,000) bd. ft. of lumber.

The receipt that an employee of the Bureau of Prisons issued for the sawmill and its accessories discloses the following unsatisfactory conditions: there was no belting for the main saw; there was one carriage frame broken; one head block was without hook and doe; there was no steel rope cable for carriage drive; and all other important parts of the machine were worn out and rusty and needing overhauling. The cable and the belting, however, were furnished the Bureau of Prisons on February 4, 1948 (Annex C). As to the landing barges, one was received without any statement as to its condition, while the other, upon inspection, was found acceptable, although various spare parts were missing (Annex E). The person who received the landing barge recommended that the spare parts needed to put it in running condition be deducted from the contract price.

Claim is made by the Bureau of Prisons that when the barges were examined at the Davao Penal Colony, the petitioner and its representative were advised verbally about the defects therein, and so were they with respect to the parts of the sawmill when it was found, Upon delivery to the Iwahig Penal Colony, that it was not in good running condition and that some parts were missing; and that petitioner's manager agreed to reimburse the Bureau

of Prisons for whatever expenses the latter may incur in putting the equipment in good running condition. (2nd Indorsement of the Director of Prisons dated November 26, 1948.) At the time the above indorsement was written, the repairs on the barges and the sawmill had not yet been completed.

When around a year later, it became evident that it was not feasible for the Bureau of Prisons to deliver the lumber, obviously due to the delay in the installation, the petitioner herein proposed to obtain surplus properties from the Surplus Property Commission in lieu of the lumber so as to finally liquidate the obligation contracted by the Bureau of Prisons. It turned out, however, that no equipment could be found in the various Surplus Property Commission depots which could be of service to the petitioner herein, so it proposed that the corporation be credited with the amount of P70,000 and be allowed to bid and negotiate in future surplus offerings up to that amount. (Annex B to letter of Counsel for petitioner to Auditor General dated June 20, 1949.) Again, on November 2, 1948, petitioner offered to acquire certain surplus properties located in Manicani Island, Samar, for P100,000, with the suggestion that this price be paid for with its credit of P70,000, plus an additional amount of P30,000 with which to complete the full price above mentioned. (Annex C, Ibid.) As no definite arrangement could be arrived at, the Bureau of Prisons in the second indorsement of November 26. 1948, already alluded to, declared that the Bureau had made preparations to deliver the lumber from the Davao Penal Colony, and that it had a sufficient quantity of logs stored to make initial delivery. Evidently, no action was taken by the petitioner on this advice of the Director of Prisons.

On June 20, 1949, the attorney for the petitioner filed a claim with the Auditor General. On August 26, 1949, the Director of Prisons offered to deliver the first installment of sawed lumber after 30 days. This offer was rejected by the petitioner on the ground that the offer to deliver the lumber came too late, and it demanded that cash payment of P70,000 be paid to it, plus P35,000 for damages suffered.

Upon the presentation of the claim with the Auditor General, the latter sought the opinion of the Secretary of Justice, and this official on January 3, 1950, held that inasmuch as the contract entered into was one of barter, pure and simple, and not one of purchase and sale, and as no money consideration ever entered the minds of the parties at the time of the agreement, the demand of the petitioner for P70,000 should be denied, and that instead in view of the willingness of the Bureau of Prisons to perform its part of the obligation, the contract be carried out by the immediate delivery of the 350,000 board feet of lumber stipulated in the agreement. (See 6th Indorsement of the Department of Justice dated January 3, 1950.) On the basis of this opinion, the Auditor General denied the petitioner's claim, and the latter thereafter appealed to this Court.

It is to be noted at the outset that the original contract of barter did not state what the value was of the barges and sawmill to be delivered, or that of the 350,000 board feet of sawn lumber to be given in exchange. As early as October 8, 1948, when attempts were made to settle the obligation of the Bureau of Prisons in terms of surplus materials, petitioner herein had claimed "that the value of the barges and sawmill delivered was P70,000. (See letters of October 8, 1948, and November 2, 1948.) On the other hand, as early as November 2, 1948, the Director of Prisons had averred that he entered into a barter agreement fixing P35,000 as the value of the equipment, equivalent to the 350,000 board feet which it promised to deliver in exchange, at P0.10 a board foot. There is question, therefore, whether the equipment could be valued at P70,000 or not.

The respondent also claims that the condition in which the barge and the machinery were found at the time of delivery was unsatisfactory. The Director of Prisons stated in his indorsement that notice of these defects was given the petitioner through one Mr. Rowe and Mr. Enriquez, and this fact is not, nor does not appear to be, denied. The receipt issued upon the delivery of the sawmill shows that there were many parts missing, and states that the specification that most of the parts and engines needed complete overhauling was a notice to the petitioner that the sawmill was not found satisfactory upon inspection. But the claim of petitioner, as presented to the

Auditor General, alleges that the machinery were found satisfactory and in good running condition, on the ground that the Bureau of Prisons had accepted the delivery thereof. There is therefore, also an issue as to the condition of the equipment bartered.

Again, it is the contention of the government, as indicated in the opinion of the Secretary of Justice, that inasmuch as the first delivery of lumber was to take effect upon the installation of the sawmill, said installation was an essential element of the contract, and consequently its obligation to deliver the lumber did not accrue upon the delivery of the barges and machinery, and the accessories thereof by the Bureau of Prisons, but from the moment that the installation was finished. Lastly, the amount of petitioner's claim for damages does not appear to have been admitted by the Bureau of Prisons or by any official of the Government, so that outside of petitioner's right thereto, its amount, assessed at P35,000, can not be considered as a fact admitted by the adverse party.

The above considerations, regarding the existence of issues with regard to petitioner's claim for P105,000 are set forth in view of the defense set up by the Bureau of Prisons that the Auditor General has no jurisdiction over petitioner's claim, and that the same is not authorized under Commonwealth Act No. 327. However, it now appears that in April, 1950, pending determination of petitioner's claim, the 350,000 board feet of lumber agreed to be delivered by the Bureau of Prisons were, by agreement of both parties, to be sold and the proceeds delivered to petitioner. The latter has actually received the sum of P45,500. So the claims of petitioner at the time of the submission of this case to the Court for decision are, (1) the amount of P4,500 representing the difference between the alleged market value of the lumber of P70,000 and the amount of P45,500 received, and (2) the amount of P35,000 representing the damages allegedly suffered by the petitioner due to the delay in the delivery of the lumber.

The respondents contend that Commonwealth Act No. 327, which imposes upon the Auditor General the duty of acting upon and deciding "all cases involving the settlement of accounts or claims other than those of accountable officers," does not authorize or empower the Auditor General to pass upon the petitioner's claim for P105,000, because the term "claims" used in the said Act can refer to no other than liquidated claims, as held in the case of Compana General de Tabacos vs. French and Unson, 39 Phil. 34. In reply the petitioner argues that under Commonwealth Act No. 3038, Sections 1 and 2, the Auditor General has been granted the additional power upon "any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis for civil action between private parties," and that even granting that the Auditor General has jurisdiction only over liquidated claims, the claim for P70,000 is a liquidated claim because it has been accepted by the parties as such.

Before the advent of the Commonwealth Government, the jurisdiction of the Auditor General to pass upon and decide claims of private persons against the Government was contained in sections 24 and 25 of the Jones Law promulgated August 29, 1916. The pertinent provisions of the said law are as follows:

> SEC. 24. * * *. The Auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.
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> SEC. 25. That any person aggrieved by the action or decision of the Auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor-General, which appeal shall specifically set forth the particular action of the Auditor to which exception is taken, with the reason and authorization relied on for reversing such decision.

The powers of treasury officials of the United States over the settlement of accounts has always been clearly distinguished from their power over claims. It has been generally held that an account is something which may be adjusted and liquidated by an arithmetical computation (Power vs. U. S., 18 Court of Claims 263; 31 USCA 23),

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and that claims for unliquidated damages can not be considered as accounts and are not committed by law to their control and decision. (Ibid.; McClure vs. U. S., 19 Court of Claims 173, 179; Denis vs. V. S., 20 Court of Claims, 119, 121; U. S. vs. McKee, 97 U. S. 233, 24 L. ed. 911; 31 USCA 23-24.) The reason for denying treasury officials of the United States jurisdiction over unliquidated damages for breach of contract is because these claims "often involve a broad field of investigation and require the application of judgment and discretion upon the measure of damages and the weight of conflicting evidence. (Ibid.)

A case decided in this jurisdiction while the Jones Law was still in force is that of Compania General de Tabacos vs. French and Unson, 39 Phil. 34, 42, where we held:

> "Section 584 of the Administrative Code of 1917 is very similar in its terms to section 236 of the Revised Statutes of the United States which reads as follows:
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> "All claims and demands whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury." Nevertheless, the words 'all claims and demands whatever * * * against' the United States as used in this statute have been held repeatedly not to authorize the officers of the Treasury Department to entertain unliquidated claims against the United States for damages. In the case of Power vs. United States (18 C. Cls. R., 275), Judge Davis writing the opinion of the court said:
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> "An account is something which may be adjusted and liquidated by an arithmetical process * * *. But no law authorizes Treasury officials to allow and pass in accounts a number not the result of numerical computation upon a subject within the operation of a mutual part of a contract. Claims for unliquidated damages require for their settlement the application of the qualities of judgment and discretion. They are frequently, perhaps generally sustained by extraneous proof, having no relation to the subjects of the contract which are common to both parties. * * *. The results to be reached in such cases can in no just sense be called an account, and are not committed by law to the control and decision of Treasury accounting officers."

It is contended on behalf of the petitioner that Act No. 3083 authorizes the Auditor to take cognizance of unliquidated claims. We find nothing in the context from which this contention can be inferred. The term used is moneyed claims, which has a well-defined concept under the Jones Law as above indicated.

There are other fundamental reasons why Act No. 3083 could not have contemplated unliquidated claims, or cases where the liability of the Government or its non-liability is in issue. In these cases the most important questions to be determined are judicial in nature, involving the examination of evidence and the use of judicial discretion. To assume that the legislature granted this jurisdiction to an administrative officer like the Auditor General is not warranted, because it would amount to an illegal act, as a delegation of judicial power to an executive officer. If the power were interpreted as having been granted to the Auditor General to pass upon the rights of private persons, without the judicial process established by the Constitution and the laws, private parties would be deprived of their property without due process of law. For these very obvious reasons, therefore, Act No. 3083 may not be interpreted to grant jurisdiction to the Auditor General to determine and decide cases involving unliquidated damages.

Having come to the conclusion that under the Jones Law and the laws in force up to the time of the adoption of the Constitution the Auditor General has no jurisdiction or power to take cognizance of claims for unliquidated damages, we now come to the question as to whether under the provisions of the Constitution and the laws enacted thereafter by Congress, such power may not be considered as having been lodged in the Auditor General. An examination of the provisions of the Constitution fails to disclose any power vested in or granted to the Auditor General to consider claims. All that is vested in the Auditor General is the settlement of accounts. "Accounts," because of the absence of any reasons to the contrary, must be deemed to have the same meaning as

accounts under the laws in force before the approval of the Constitution. The Constitution does not grant the Auditor General the right to consider claims. After the promulgation of the Constitution, the power was granted under the provisions of Commonwealth Act No. 327. We have examined this law, and we find nothing therein to show that the term "moneyed claims," the jurisdiction over which is granted the Auditor General, should not be interpreted in the same sense that it was understood prior to the adoption of the Constitution.

The above considerations would suffice to dispose of the case. We prefer to rest the decision thereof, however, not on the technical ground of jurisdiction alone, but on the merits also.

The only remaining part of the original claim presented by the petitioner is the supposed damage caused by the delay in the delivery of the lumber. It is claimed by the petitioner that P24,500 and P35,000 represent the difference between the actual value of the lumber received by it in April, 1950, and the value thereof had it been delivered within a reasonable time after the delivery of the sawmill and the landing barges. A first reason for denying the claim is the fact that the delay was due to the failure on the part of the petitioner, party of the second part, to deliver the sawmill in the condition it was to be delivered, i.e., the sawmill shall be "complete" and upon inspection "found satisfactory." At the time of delivery, it was incomplete, and it presented various unsatisfactory conditions. The two landing barges were also agreed to be in good running condition, but on delivery one of them was found with various spare parts missing, and these had to be purchased to put it "in running condition." The sawmill and the landing barges were, therefore, unsatisfactory and were not as guaranteed in the barter agreement. The fact that the petitioner itself purchased various spare parts both for the sawmill and the landing barges in order to complete them, is a clear admission on its part of its failure to deliver the sawmill and barges complete. The obligation of the party of the first part to deliver the lumber in exchange for the equipment was to accrue or became due "thirty days after the installation of the sawmill." But the delay in said installation is not attributable to the party of the first part, but to the party of the second part, which had not complied with its obligation to deliver the equipment and machinery "in good running condition." The responsibility for the resulting delay in the delivery of the lumber may not, therefore, be laid at the door of the party of the first part, but to that of the party of the second part, which had failed to live up to its obligation.

A second reason is the fact that the party of the second part was ready to deliver the lumber in November, 1948, even before the sawmill could be installed, but the petitioner preferred to be paid in another manner. The original agreement was entered into on October 3, 1947, and the missing parts of the sawmill were furnished only in the month of February, 1948. Before the end of the year 1948, even if the installation of the sawmill had not yet been completed, the Director of Prisons offered to deliver the lumber to the petitioner (See 2nd Indorsement of the Director of Prisons dated November 26, 1948), but at that time petitioner was not ready and willing to accept the lumber, for it had proposed, with the consent of the party of the first party, that the value of the sawmill and the landing barges was to be collected by it in the form of surplus materials. This attempted modification of the contract, by allowing the party of the second part to accept surplus materials instead of the lumber, was to a great extent, the cause for the belated delivery of the lumber.

The above considerations clearly show that the claim of the petitioner for P24,500 and P35,000 damages cannot be sustained, for admitting that the said amounts represent the difference in the value between the lumber delivered in April, 1950, and that which was to be delivered within thirty days after the installation of the sawmill, the delay in the delivery was" due to petitioner's own fault, namely, its failure to deliver the sawmill and the landing barges complete and in the satisfactory condition it had guaranteed them, and in part to its desire to change the lumber for surplus materials.

For the foregoing considerations, the petition for review is hereby dismissed, with costs against the petitioner.

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Paras, C. J., Bengzon, Reyes, Jugo, and Concepcion, JJ., concur.

PABLO, M.:

Concurro con el sobreseimiento por la razon de que el Auditor no tiene jurisdiccion para decidir la reclamacion.

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