

RAMON DIOKNO, PLAINTIFF AND APPELLANT, VS. REHABILITATION FINANCE CORPORATION, DEFENDANT AND APPELLEE.*G.R. No. L-4712. July 11, 1952*

Ponente: LABRADOR, J.

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Plaintiff is the holder of a backpay certificate of indebtedness issued by the Treasurer of the Philippines under the provisions of Republic Act No. 304 of a face value of P75,857.14 dated August 30, 1948. On or about November 10, 1950, when this action was brought, he had an outstanding loan with the Rehabilitation Finance Corporation, contracted therewith on January 27, 1950, in the total sum of P50,000, covered by a mortgage on his property situated at 44 Alhambra, Ermita, Manila, with interest at 4 per cent per annum, of which P47,355.28 was still unpaid. In this action he seeks to compel the defendant corporation to accept payment of the balance of his indebtedness with his backpay certificate. The defendant resists the suit on the ground that plaintiff's demand is not only not authorized by Section 2 of Republic Act No. 304 but contrary to the provisions thereof, and furthermore because plaintiff's loan was obtained on January 27, 1950, much after the passage of Republic Act No. 304, and because the law permits only "acceptance or discount of backpay certificates," not the repayment of loans. The court a quo held that Section 2 of Republic Act No. 304 is permissive merely, and that even if it were mandatory, plaintiff's case can not fall thereunder because he is not acquiring property for a home or constructing a residential house, but compelling the acceptance of his backpay certificate to pay a debt he contracted after the enactment of Republic Act No. 304. It, therefore, dismissed the complaint with costs.

The appeal involves the interpretation of section 2 of Republic Act No. 304, which provides:

* * * And provided, also, That investment funds or banks or other financial institutions owned or controlled by the Government shall, subject to availability of loanable funds, and any provision of their charters, articles of incorporation, by-laws, or rules and regulations to the contrary notwithstanding, accept or discount at not more than two per centum per annum for ten years such certificate for the following purposes only: (1) the acquisition of real property for use as the applicant's home, or (2) the building or construction or reconstruction of the residential house of the payee of said certificate: * * *

It is first contended by the appellant that the above provision is mandatory, not only because it employs the word "shall", which in its ordinary signification is mandatory, not permissive, but also because the provision is applicable to institutions of credit under the control of the Government, and because otherwise the phrases "subject to availability of loanable funds" and "any provisions of this charter, * * * and regulations to the contrary notwithstanding" would be superfluous.

It is true that in its ordinary signification the word "shall" is imperative.

In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or

when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. *People vs. O'Rourke*, 13 P. 2d. 989, 992, 124 Cal. App. 752. (39 Words and Phrases, Permanent Ed., p. 90.)

The presumption is that the word "shall" in a statute is used in an imperative, and not in a directory, sense. If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning. *Haythorn vs. Van Keuren & Son*, 74 A. 502, 504, 79 N. J. L. 101; *Board of Finance of School City of Aurora vs. People's Nat. Bank of Lawrenceburg*, 89 N. E. 904, 905, 44 Ind. App. 578. (39 Words and Phrases, Permanent Ed., p. 93.)

However, the rule is not absolute; it may be construed as "may", when so required by the context or by the intention of the statute.

In its ordinary signification, "shall" is imperative, and not permissive, though it may have the latter meaning when required by the context. *Town of Milton vs. Cook*, 138 N. E. 589, 590, 244 Mass. 93. (39 Words and Phrases, Permanent Ed., p. 89.)

"Must" or "shall" in a statute is not always imperative, but may be consistent with an exercise of discretion. In *re O'Hara*, 82 N. Y. S. 293, 296, 40 Misc. 355, citing *In re Thurber's Estate*, 162 N. Y. 244, 252, 56 N. E. 638, 639. (Ibid. p. 92.)

The word "shall" is generally regarded as imperative, but in some contexts it is given a permissive meaning, the intended meaning being determined by what is intended by the statute. *National Transit Co. vs. Boardman*, 197 A. 239, 241, 328 Pa. 450.

The word "shall" is to be construed as merely permissive, where no public benefit or private right requires it to be given an imperative meaning. *Sheldon vs. Sheldon*, 134 A. 904, 905, 100 N. J. Ex. 24.

Presumption is that word "shall," in ordinance, is mandatory; but, where it is necessary to give effect to legislative intent, the word will be construed as "may." *City of Colorado Springs vs. Street*, 254 p. 440, 441, 81 Colo. 181.

The word "shall" does not necessarily indicate a mandatory behest. *Grimsrud vs. Johnson*, 202 N. W. 72, 73, 162 Minn. 98.

Words like "may," "must," "shall," etc., are constantly used in statutes without intending that they shall be taken literally, and in their construction the object evidently designed to be reached limits and controls the literal import of the terms and phrases employed. *Fields vs. United States*, 27 App. D. C. 433, 440. (39 Words and Phrases, Permanent Ed., pp. 89, 92).

In this jurisdiction the tendency has been to interpret the word "shall" as the context or a reasonable construction of the statute in which it is used demands or requires. Thus the provision of Section 11 of Rule 4 of the Rules requiring a municipal judge or a justice of the peace to render judgment at the conclusion of the trial has been held to be directory. (*Alejandro vs. Judge of First Instance*[1] 40 Off. Gaz., 9th Supp., 261). In like manner section 178 of the Election Law, in so far as it requires that appeals shall be decided in three months, has been held to be directory for the Court of Appeals. (*Querubin vs. The Court of Appeals*,[2] 46 Off. Gaz., 155).

In the provision subject of controversy, it is to be noted that the verb-phrase "shall accept or discount" has two modifiers, namely, "subject to availability of loanable funds" and "at not more than two per centum per annum for ten years." As to the second modifier, the interest to be charged, there seems to be no question that the verb phrase is mandatory, because not only does the law use "at not more" but the legislative purpose and intent, to conserve the value of the backpay certificate for the benefit of the holders, for whose benefit the same have been issued, can be carried out by fixing a maximum limit for discounts. But as to when the discounting or acceptance shall be

made, the context and the sense demand a contrary interpretation. The phrase "subject" means "being under the contingency of" (Webster's Int. Dict.), a condition. If the acceptance or discount of the certificates is to be "subject" to the condition of the availability of loanable funds, it is evident that the Legislature intended that the acceptance shall be allowed on the condition that there are "available loanable funds." In other words, acceptance or discount is to be permitted only if there are loanable funds.

Let us now consider the meaning of the condition imposed for accepting or discounting certificates, the "availability of loanable funds." On this issue the appellant contends that the mere fact that P50,000 was loaned to him and that the Rehabilitation Finance Corporation has been granting loans up to the time plaintiff offered to pay the loan with his certificate—these prove that there are "available loanable funds." As the court *quo* did not pass on such availability, he also contends that this is a question of fact to be determined by the courts. The defendant denies the existence of "available loanable funds." The gist of plaintiff's contention is that any and all funds of the Rehabilitation Finance Corporation are subject to the provision for the discount or acceptance of the certificates; that of defendant-appellee is that only funds made available for the purpose of discounting backpay certificates may be used for such purpose and that at the time the action was filed there were no such funds.

The Rehabilitation Finance Corporation was created by Republic Act No. 85, which was approved on October 29, 1946. The corporation was created "to provide credit facilities for the rehabilitation and development of agriculture, commerce and industry, the reconstruction of property damaged by war, and the broadening and diversification of the national economy" (section 1), and to achieve the above aims it was granted the following powers:

SEC. 2. Corporate powers.—The Rehabilitation Finance Corporation shall have power:

- (a) To grant loans for home building and for the rehabilitation, establishment or development of any agricultural, commercial or industrial enterprise, including public utilities;
- (b) To grant loans to provincial, city and municipal governments for the rehabilitation, construction or reconstruction of public markets, waterworks, toll bridges, slaughterhouses, and other self-liquidating or income-producing services;
- (c) To grant loans to agencies and corporations owned or controlled by the Government of the Republic of the Philippines for the production and distribution of electrical power, for the purchase and subdivision of rural and urban estates, for housing projects, for irrigation and waterworks systems, and for other essential industrial and agricultural enterprises;
- (d) To grant loans to cooperative associations to facilitate production, the marketing of crops, and the acquisition of essential commodities;
- (e) To underwrite, purchase, own, sell, mortgage or otherwise dispose of stocks, bonds, debentures, securities and other evidences of indebtedness issued for or in connection with any project or enterprise referred to in the preceding paragraphs;
- (f) To issue bonds, debentures, securities, collaterals, and other obligations with the approval of the President, but in no case to exceed at any one time an aggregate amount equivalent to one hundred per centum of its subscribed capital and surplus. * * *

If the Rehabilitation Finance Corporation is to carry out the aims and purposes for which it was created, it must evolve a definite plan of the industries or activities which it should rehabilitate, establish or develop, and apportion its available funds and resources among these, consistent with the policies outlined in its charter.

As of May 31, 1948, immediately prior to the passage of the Backpay Law, it had granted the following classes of

loans:

Agricultural loans

P23,610,350.74

Industrial loans

22,717,565.87

Real Estate loans

34,601,258.29

Loans for purchase, Subdivision and Resale of Landed Estates

7,271,258.78

Loans to Provinces, Cities, and Municipalities for Self-liquidating Projects

1,889,763.00

Total Loans

P90,090,077.68

(Exhibit 2)

As of February 2, 1951, the corporation had accepted in payment of loans granted before June 18, 1948, the total amount of P8,225,299.96, as required by Section 2 of the Backpay Law. (See Exhibit 11, p. 4.)

The third anniversary report of the Rehabilitation Finance Corporation dated January 2, 1950 (Exhibit 1), shows that the funds originally available to the corporation came from the following sources:

Funds made available:

Initial cash capital

P50,000,000.00

Cash transferred from Financial Rehabilitation Funds

2,423,079.74

Cash received from Surplus Property Commission

26,350,000.00

Cash received from Phil. Shipping Adm.

3,700,000.00

Cash payment of capital

82,473,079.74

Proceeds of bond issues

58,909,148.18

Advances from the Central Bank

10,000,000.00

There was also collectible from loans the total amount of P28,659,442.12, so that the total cash available to the corporation from January 2, 1947, to November 30, 1949, was P180,041,670.04. But the total amount of loans already approved as of the last date was P203,667,403.78 and the total of approved loans pending release was P25,342,020.78, and the only cash balance available in November, 1949 to meet these approved loans was P1,716,286.71.

It may readily be seen from the above data that were we to follow appellant's theory and contention that the law is mandatory, the loan he had applied for, as well as that of any holder of a backpay certificate, would have to be paid out of this available cash, pursuant to the alleged mandate of section 2 of the Backpay Law. The compulsory acceptance and discount of certificates will bring about, as a direct and necessary consequence, the suspension of all, if not of most, of the activities of the Rehabilitation Finance Corporation; and no agricultural or industrial loans, or loans to financial institutions and local governments for their markets, water works, etc., would be granted, until all the backpay certificates (amounting to some hundred millions of pesos) shall have been accepted or discounted. And as the defendant-appellant forcefully argues, even funds obtained by the Rehabilitation Finance Corporation by the issue of bonds, at rates of interest of more than 2 per cent, the rate fixed for the discount of backpay certificates, will have to be loaned to holders of backpay certificates at a loss, to the prejudice of the corporation, there would be loans for holders of backpay certificates, but none for rehabilitation or reconstruction, or development of industries, or of the national economy; there would be funds for employees' loans, but none for those engaged in agriculture and industry, none for the improvements of public services, etc., as all Rehabilitation Finance Corporation funds will be necessary to meet the demands of holders of backpay certificates. And if it be remembered that the provision is intended for all financial institutions controlled by the Government, the consequences would be felt by all industries and activities, and the whole scheme of national financial organization and development disrupted. It seems evident that the legislature never could have intended such absurd consequences, even with all the sympathy that it is showing for holders of backpay certificates.

But while we agree with the appellee that it could not have been the intention of Congress to disrupt the whole

scheme of rehabilitation, reconstruction, and development envisioned in the Rehabilitation Act, by its passage of Section 2 of the Backpay Law, neither are we prepared to follow appellee's insinuation that the section is impracticable or impossible of execution by the Rehabilitation Finance Corporation in the situation in which its funds and resources were at the time of the trial. In our opinion, what the Legislature intended by the provision in dispute is that the Rehabilitation Finance Corporation, through its Board of Directors, should from time to time set aside some reasonable amount for the discount of backpay certificates, when this can be done without unduly taxing its resources, or unduly prejudicing the plan of rehabilitation and development that it has mapped out, or that which the corresponding authority has laid down as a policy. This legislative intention can be inferred from the fact that Congress itself expressly ordered that all financial institutions accept or discount backpay certificates in payment of those loans, evidently laying down an example to be followed by financial institutions under its control. The loans granted under Section 2 of the law by the Rehabilitation Finance Corporation amounted to P8,225,299.96. It is not shown or even pretended that the payment of this considerable amount has impaired or disrupted the activities of the Rehabilitation Finance Corporation. It is not claimed, either, that at the time of the filing of appellants action the Rehabilitation Finance Corporation was in no position to set aside a modest sum, in a manner similar to the creation of a sinking fund, for the discount of backpay certificates to help the Government comply with its financial commitments. We are convinced that the Rehabilitation Finance Corporation may, without impairment of its activities, set aside from time to time, say, half a million pesos or a considerable part thereof, for the payment of backpay certificates. But these circumstances notwithstanding, we are of the opinion that the law in question (Section 2 of the Backpay Law), in so far as the discount and acceptance of backpay certificates are concerned, should be interpreted to be directory merely, not mandatory, as claimed by plaintiff-appellant, the same to be construed as a directive for the Rehabilitation Finance Corporation to invest a reasonable portion of its funds for the discount of backpay certificates, from time to time and in its sound discretion, as circumstances and its resources may warrant.

Having come to the conclusion that Section 2 of the Backpay Law is directory merely, we now address ourselves to the propriety of the action, which the plaintiff-appellant labels as specific performance. As the action is not based on any contractual relation between the plaintiff-appellant and the defendant-appellee, it may not be one for specific performance; it is in effect predicated on a supposed legal duty imposed by law and is properly designated as a special civil action of mandamus, because the appellant seeks to compel the appellee to accept his backpay certificate in payment of his outstanding obligation. We are not impressed by the defense, technical in a sense, that the Rehabilitation Finance Corporation is not expressly authorized to accept certificates in payment of outstanding loans. There is no provision expressly authorizing this procedure or system; but neither is there one prohibiting it. The legislature had once ordered it; the Rehabilitation Finance Corporation has once authorized it. We believe the legislature could not have intended to discriminate against those who have already built their houses, who have contracted obligations in so doing. We prefer to predicate our ruling that this special action does not lie on the ground that the duty imposed by the Backpay Law upon the appellee as to the acceptance or discount of backpay certificates is neither clear nor ministerial, but discretionary merely and that mandamus does not issue to control the exercise of discretion of a public officer. (*Viuda e Hijos de Crispulo Zamora vs. Wright and Segado*, 53 Phil., 613, 621; *Blanco vs. Board of Medical Examiners*, 46 Phil., 190, 192, citing *Lamb vs. Phipps*, 22 Phil., 456; *Gonzales vs. Board of Pharmacy*, 20 Phil., 367, etc.) It is, however, argued on behalf of the appellant that inasmuch as the Board of Directors of the Rehabilitation Finance Corporation has seen fit to approve a resolution accepting backpay certificates amounting to P151,000 (Exhibit H), law and equity demand that the same privilege should be accorded him. The trial court held that the above resolution was illegal and that its unauthorized enactment (which he called a "wrong") does not justify its repetition for the benefit of appellant. As we have indicated above, we believe that its approval (not any supposed discrimination on behalf of some special holders) can be defended under the law, but that the passage of a similar resolution can not be enjoined by

an action of mandamus.

We must admit, however, that appellant's case is not entirely without any merit or justification; similar situations have already been favorably acted upon by the Congress, when it orderpd that certificates be accepted in payment of outstanding obligations, and by the Rehabilitation Finance Corporation in its above-mentioned resolution. But we feel we are powerless to enforce his claim, as the acceptance and discount of backpay certificates has been placed within the sound discretion of the Rehabilitation Finance Corporation, and subject to the availability of loanable funds, and said discretion may not be reviewed or controlled by us. It is clear that his remedy must be available in other quarters, not in the courts of justice.

For all the foregoing considerations, we are constrained to dismiss the appeal, with costs against the appellant.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

[1] 70 Phil., 749.

[2] 82 Phil., 226.

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