

**AMERICAN TOBACCO COMPANY, CARNATION COMPANY, CURTISS CANDY COMPANY, CUDAHY PACKING CO., CLUETT, PEABODY & CO., INC., CANNON MILLS COMPANY, FORMICA CORPORATION, GENERAL MOTORS CO...**

*G.R. No. L-26803. October 14, 1975*

Ponente: ANTONIO, J.

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**ANTONIO, J.:**

In this petition for mandamus with preliminary injunction, petitioners challenge the validity of Rule 168 of the "Revised Rules of Practice before the Philippine Patent Office in Trade-mark Cases" as amended, authorizing the Director of Patents to designate any ranking official of said office to hear "inter partes" proceedings. Said Rule likewise provides that "all judgments determining the merits of the case shall be personally and directly prepared by the Director and signed by him." These proceedings refer to the hearing of opposition to the registration of a mark or trade name, interference proceeding instituted for the purpose of determining the question of priority of adoption and use of a trade-mark, trade name or service-mark, and cancellation of registration of a trade-mark or trade name pending at the Patent Office.

Petitioners are parties, respectively, in the following opposition, interference and cancellation proceedings in said Office: Inter Partes Cases Nos. 157, 392, 896, 282, 247, 354, 246, 332, 398, 325, 374, 175, 297, 256, 267, 111, 400, 324, 114, 159, 346, and 404.

Under the Trade-mark Law (Republic Act No. 166), the Director of Patents is vested with jurisdiction over the above-mentioned cases. Likewise, the Rules of Practice in Trade-mark Cases contains a similar provision, thus:

"168. Original jurisdiction over inter partes proceedings. — The Director of Patents shall have original jurisdiction over inter partes proceedings. In the event that the Patent Office should be provided with an Examiner of Interferences, this Examiner shall have the original jurisdiction over these cases, instead of the Director. In the case that the Examiner of Interferences takes over the original jurisdiction over inter partes proceedings, his final decision shall be subject to appeal to the Director of Patents within three months of the receipt of notice of decisions. Such appeals shall be governed by sections, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 22 of Rule 41 of the Rules of Court insofar as said sections are applicable and appropriate, and the appeal fee shall be P25.00."

The Rules of Practice in Trade-mark Cases were drafted and promulgated by the Director of Patents and approved by the then Secretary of Agriculture and Commerce.[1]

Subsequently, the Director of Patents, with the approval of the Secretary of Agriculture and Commerce, amended the afore-quoted Rule 168 to read as follows:

"168. Original jurisdiction over inter partes proceedings. — The Director of Patents shall have original jurisdiction over inter partes proceedings. [In the event that the Patent Office is provided with an Examiner of Interferences, this Examiner shall then have the original jurisdiction over these cases, instead of the Director.

In the case that the Examiner of Interferences takes over the original jurisdiction over inter partes proceedings, his final decisions shall be subject to appeal to the Director of Patents within three months of the receipt of notice of decision. Such appeals shall be governed by Sections 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 22 of Rule 41 of the Rules of Court insofar as said sections are applicable and appropriate, and the appeal fee shall be P25.00.] Such inter partes proceedings in the Philippine Patent Office under this Title shall be heard before the Director of Patents, any hearing officer, or any ranking official of the office designated by the Director, but all judgments determining the merits of the case shall be personally and directly prepared by the Director and signed by him." (Italics supplied.)

In accordance with the amended Rule, the Director of Patents delegated the hearing of petitioners' cases to hearing officers, specifically, Attys. Amando Marquez, Teofilo Velasco, Rustico Casia and Hector Buenaluz, the other respondents herein.

Petitioners filed their objections to the authority of the hearing officers to hear their cases, alleging that the amendment of the Rule is illegal and void because under the law the Director must personally hear and decide inter partes cases. Said objections were overruled by the Director of Patents, hence, the present petition for mandamus, to compel the Director of Patents to personally hear the cases of petitioners, in lieu of the hearing officers.

It would take an extremely narrow reading of the powers of the Director of Patents under the general law[2] and Republic Acts Nos. 165[3] and 166[3-A] to sustain the contention of petitioners. Under section 3 of RA 165, the Director of Patents is "empowered to obtain the assistance of technical, scientific or other qualified officers or employees of other departments, bureaus, offices, agencies and instrumentalities of the Government, including corporations owned, controlled or operated by the Government, when deemed necessary in the consideration of any matter submitted to the Office relative to the enforcement of the provisions" of said Act. Section 78 of the same Act also empowers "the Director, subject to the approval of the Department Head", to "promulgate the necessary rules and regulations, not inconsistent with law, for the conduct of all business in the Patent Office." The aforecited statutory authority undoubtedly also applies to the administration and enforcement of the Trade-mark Law (Republic Act No. 166).

It has been held that power conferred upon an administrative agency to which the administration of a statute is entrusted to issue such regulations and orders as may be deemed necessary or proper in order to carry out its purposes and provisions may be an adequate source of authority to delegate a particular function, unless by express provisions of the Act or by implication it has been withheld.[4] There is no provision either in Republic Act No. 165 or 166 negating the existence of such authority, so far as the designation of hearing examiners is concerned. Nor can the absence of such authority be fairly inferred from contemporaneous and consistent Executive interpretation of the Act.

The nature of the power and authority entrusted to the Director of Patents suggests that the aforecited laws (Republic Act No. 166, in relation to Republic Act No. 165) should be construed so as to give the aforesaid official the administrative flexibility necessary for the prompt and expeditious discharge of his duties in the administration of said laws. As such officer, he is required, among others, to determine the question of priority in patent interference proceedings,[5] decide applications for reinstatement of a lapsed patent,[6] cancellations of patents under Republic Act No. 165,[7] inter partes proceedings such as oppositions,[8] claims of interference,[9] cancellation cases under the Trade-mark Law[10] and other matters in connection with the enforcement of the aforesaid laws. It could hardly be expected, in view of the magnitude of his responsibility, to require him to hear personally each and every case pending in his Office. This would leave him little time to attend to his other duties.[11] For him to do so and at the same time attend personally to the discharge of every other duty or responsibility imposed upon his Office by law would not further the development of orderly and responsible

administration. The reduction of existing delays in regulating agencies requires the elimination of needless work at top levels. Unnecessary and unimportant details often occupy far too much of the time and energy of the heads of these agencies and prevent full and expeditious consideration of the more important issues. The remedy is a far wider range of delegations to subordinate officers. This subdelegation of power has been justified by "sound principles of organization" which demand that "those at the top be able to concentrate their attention upon the larger and more important questions of policy and practice, and their time be freed, so far as possible, from the consideration of the smaller and far less important matters of detail." [12]

Thus, it is well-settled that while the power to decide resides solely in the administrative agency vested by law, this does not preclude a delegation of the power to hold a hearing on the basis of which the decision of the administrative agency will be made. [13]

The rule that requires an administrative officer to exercise his own judgment and discretion does not preclude him from utilizing as a matter of practical administrative procedure, the aid of subordinates to investigate and report to him the facts, on the basis of which the officer makes his decisions. [14] It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law. Neither does due process of law nor the requirements of fair hearing require that the actual taking of testimony be before the same officer who will make the decision in the case. As long as a party is not deprived of his right to present his own case and submit evidence in support thereof, and the decision is supported by the evidence in the record, there is no question that the requirements of due process and fair trial are fully met. [15] In short, there is no abnegation of responsibility on the part of the officer concerned as the actual decision remains with and is made by said officer. [16] It is, however, required that to "give the substance of a hearing, which is for the purpose of making determinations upon evidence the officer who makes the determinations must consider and appraise the evidence which justifies them." [17]

In the case at bar, while the hearing officer may make preliminary rulings on the myriad of questions raised at the hearings of these cases, the ultimate decision on the merits of all the issues and questions involved is left to the Director of Patents. Apart from the circumstance that the point involved is procedural and not jurisdictional, petitioners have not shown in what manner they have been prejudiced by the proceedings.

Moreover, as then Solicitor General Antonio P. Barredo, now a Member of this Court, has correctly pointed out, the repeated appropriations by Congress for hearing officers of the Philippine Patent Office from 1963 [18] to 1968 not only confirms the departmental construction of the statute, but also constitutes a ratification of the act of the Director of Patents and the Department Head as agents of Congress in the administration of the law. [19]

WHEREFORE, the instant petition is hereby dismissed, with costs against petitioners.

Castro, (Chairman), Muñoz Palma, Aquino, and Martin, JJ., concur.

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[1] Under Sec. 78 of Republic Act No. 165 (Act creating Patent Office, etc.) "the Director, subject to the approval of the Department Head, shall promulgate the necessary rules and regulations not inconsistent with law, for the conduct of all business in the Patent Office."

[2] Sections 550, 551, 553, 554, 557 to 559 and 580, Rev. Administrative Code.

[3] An Act creating a Patent Office, prescribing its powers and duties, regulating the issuance of patents, etc.

[3-A] An Act to provide for the registration and protection of trade-marks, trade names and service-marks, defining unfair competition and false marking and providing remedies against the same, and for other purposes.

[4] Fleming vs. Mohawk Wrecking & Lumber Co., 331 U.S. 111-124, 9 L. ed. 1385.

[5] Sections 10 and 16, Republic Act No. 165.

[6] Section 23, Ibid.

[7] Sections 32 and 33, Ibid.

[8] Sections 8 and 9, Republic Act No. 166.

[9] Section 10-A, Ibid.

[10] Sections 17 to 19, Ibid.

[11] The Director of Patents has the following duties, as specified under the WAPCO Guide or Classification of Positions for the Philippine Patent Office:

"Directs the functions and operations of the Patent Office; approves and authorizes the registration and issuance of patents and the registration of marks and names; hears appeals from negative decisions of the examining staff on ex parte cases as well as inter partes cases involving opposition, interferences, compulsory licensing and cancellation and renders decisions thereon which are appealable only to the Supreme Court; formulates and recommends the adoption of rules and forms relating to the statutory functions of the office; drafts and recommends amendments to the Patent Law and Rules of Practice; formulates and puts into effect rules and regulations for the administration of the office; prescribes the functions of the organizational components as well as of the employees of the office; recommends appointments, promotions and discharges and makes other personal actions; reviews and approves or modifies requisitions for supplies, materials and equipment; supervises the formulation of budget requests; directs the preparation of annual and special reports and represents the Patent Office before Congress and other official bodies."

[12] Davis, Administrative Law, p. 201.

[13] Sec. 9, C.A. 103; Ang Tibay vs. C.I.R., 69 Phil. 635; National Union vs. Asian Printing, 99 Phil. 589; Ruperto vs. Torres, Feb. 25, 1957; Orlanes, et al. vs. Public Service Commission, 57 Phil. 634; Northern Luzon Transportation, Inc. vs. Sambrano, 58 Phil. 35; Cebu Transit, Inc. vs. Jereza, 58 Phil. 760.

"It is well established that a delegate may, without delegating his power, exercise his authority through persons he appoints to assist him in his functions, particularly where an act performed by a subordinate is subsequently ratified or approved by the responsible official. Also, even though delegation may be regarded as existing, the question of permissible delegation is regarded as one of degree.

"No matter how strict or stubborn the statutory requirement may be, the law does not preclude practicable administrative procedure in obtaining the aid of assistants in the department, apparently to any extent so long as the agency does not abdicate its power and responsibility and preserves for itself the right to make the final decision. Thus, without any statutory authority therefor and without any unlawful delegation of its power, an agency may appoint a referee to hear and report testimony." (2 Am. Jur. 2d, section 224, pp. 54-55.)

Likewise, it has been said that:

"While particular statutes may create certain restrictions, it is generally regarded that the fact that the power to decide resides solely in the administrative agency vested by statute with such power does not preclude a delegation of the power to hold a hearing and conduct the proceedings on the basis of which the decision will be made. Neither does due process of law or the concept of a fair or full hearing require that the actual taking of testimony be before the same officers as are to determine the matter involved. Whether or not expressly authorized by statute, it is permissible, and does not render a hearing inadequate or unlawful, for an

administrative agency to employ the panel method of hearing in which one or more of the members of the agency takes the testimony in the matter before the agency, or to employ other persons, such as an examiner, investigator or referee to obtain the evidence and conduct the hearings and make a report to the agency upon which the agency makes its decision. Such a procedure is a practical necessity." (2 Am. Jur. 2d, sec. 407, pp. 217-218. *Italics supplied.*)

[14] "This necessary rule ('The one who decides must hear') does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Arguments may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them." (*Morgan vs. United States*, 298 U.S. 468, 481-482, [1935], 80 L. ed. 1288, 1295-1296.)

[15] *Manila Trading and Supply Co. vs. Phil. Labor Union*, 71 Phil. 124.

[16] "While 'the one who decides must hear', it must be remembered that 'hear' is used in the technical sense of requiring certain procedural minimums to insure an informed judgment by the one who has the responsibility of making the final decision and order, but that this does not require the deciding agency to take the evidence itself. *Southern Garment Mfrs. Asso. vs. Fleming*, [1941] 74 App DC 228, 122 F 2d 622 \* \* \*." (18 ALR 2d, section 3, p. 609.)

[17] *Morgan vs. U.S.*, *supra*.

[18] Rep. Act No. 3845, Items 26-28, p. 2009, for the fiscal year 1963-64; Rep. Act No. 4164, Items 21-24, p. 2204, for the fiscal year 1964-65; Rep. Act No. 4642, Items 22-25, p. 2318, for the fiscal year 1966-67; Rep. Act No. 5170, Items 22-25, p. 2318, for the fiscal year 1967-68.

[19] "Any doubt as to the authority of the President under the Legislative Appropriation Act of June 30, 1932, as amended March 3, 1933, 47 Sta. at L. 413, 1517, to transfer the functions of the United States Shipping Board to the Department of Commerce by Executive order, and as to whether the conditions of the exercise of such authority were met, it set at rest by the subsequent recognition by Congress of the validity of the transfer in making appropriations to the Department of Commerce for salaries and expenses to carry out the provisions of the Shipping Act and in referring, in S 204 (a) of the Merchant Marine Act of June 29, 1936; 48 Sta. at L. 1985, chap. 858, to the functions of the Shipping Board as having been vested in the Department of Commerce pursuant to an executive order." (*Isbrandtsen-Moller Co. vs. United States*, 300 U.S. 139-149 [1936], 81 L. ed. 563.)

"The repeated appropriations of the proceeds of the fees thus covered and to be covered into the Treasury, not only confirms the departmental construction of the statute, but constitutes a ratification of the action of the Secretary as the agent of Congress in the administration of the act." (*Brooks vs. Dewar*, 313 U.S. 300-362 [1940], 85 L. ed. 1403.)

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