

CHINESE FLOUR IMPORTERS ASSOCIATION, MANILA, PHILIPPINES, PETITIONER AND APPELLEE VS. PRICE STABILIZATION BOARD (PRISCO), RESPONDENTS AND APPELLANTS. MANUEL RUSTIA, ERNESTO Y. S...

G. R. No. L-4465. July 12, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal interposed by respondents as well as intervenors from a decision of the Court of First Instance of Manila ordering the Price Stabilization Corporation (PRISCO) to grant flour quota allocations to the members of the petitioner association and other qualified importers pursuant to the provisions of sections 12 and 14 of Republic Act No. 426 on the basis of their quota allocations for the years 1948 and 1949, and dismissing the complaint of the intervenors.

On September 5, 1950, the Chinese Flour Importers Association, Manila, Philippines, filed in the Court of First Instance of Manila a petition for mandamus to compel the Philippine Relief and Trade Rehabilitation Administration (PRATRA) and the Philippine Wheat Flour Board to issue in favor of petitioner's members the import quota allocations of wheat flour to which they claim to be entitled under sections 12 and 14 of Republic Act No. 426, known as Import Control Law, with a prayer that a writ of preliminary injunction be issued to restrain the PRATRA and the Wheat Flour Board from granting flour allocations and import licenses therefor to new importers in excess of the latter's shares in the portion reserved for new importers by the provisions of Republic Act No. 426. After hearing, the writ was granted. In the meantime, Manuel S. Rustia, Ernesto Y. Sibal, and other members of the Philippine Flour Institute Inc., were allowed to intervene. The parties having agreed to submit the case on the pleadings and on their respective memoranda, because it involves only a question of law, the trial court rendered judgment as stated in the early part of this decision. From this judgment respondents and intervenors appealed. On November 16, 1950, petitioner filed a motion for a writ of execution pending appeal from the judgment of the trial court. The motion was granted over the objection of the respondents, and in order to stay the execution, respondents were allowed to file a supersedeas bond. The case is now before us purely on questions of law.

The background of this case is as follows: On March 23, 1949, the Republic of the Philippines signed the International Wheat Agreement together with the governments of forty-one (41) other countries, which was entered into for the purpose of assuring supplies of wheat to importing countries and markets of wheat to exporting countries at equitable and stable prices (Part 1, article 1). The agreement fixes the quantities of wheat representing the guaranteed sales of an exporting country to the importing countries and the guaranteed purchases of an importing country from the exporting countries, and specifies the prices for such sales and purchases (arts. III and VI). The guaranteed purchases of the Philippines as an importing country is 196,000 metric tons of wheat every crop year during the period of the agreement which expires on July 31, 1953, (Annex A to art. III). The Agreement also provides that the exporting and importing countries shall be free to fulfill their guaranteed

quantities through private channels or otherwise (art. III).

By a resolution approved on February 17, 1950, the Senate of the Philippines concurred in the acceptance of the Agreement by the President "with the understanding that nothing contained in this Agreement shall be construed as in any way curtailing or abridging the right, authority and discretion of the Philippine Government to distribute and allocate among the private importers in the Philippines the guaranteed purchases of the Philippine Government." This Agreement became effective with respect to the Philippines on February 27, 1950.

On March, 17, 1950, the President issued Executive Order No. 305 regulating the importation of wheat flour into the Philippines by way of implementation of the International Wheat Agreement and authorizing the PRATRA to control its importation and distribution. The Order provides that from March 17, 1950, no wheat flour should be imported into the Philippines without any import license duly issued by the PRATRA which shall be signed by its General Manager by authority of the President. It also provides that the 196,000 metric tons of wheat, which the Philippine Government has guaranteed to purchase yearly under the International Wheat Agreement, shall be imported in the name of the Republic of the Philippines and that the said quantity of wheat shall in turn be allocated to local consumers, dealers and/or importers of flour who may be authorized by the General Manager of the PRATRA pursuant to the rules and regulations to be promulgated by the Philippine Wheat Flour Board created in said order. On the same date, the Philippine Flour Board issued circular No. 1, containing the required rules and regulations, and since said date, the PRATRA began allocating the importation of wheat flour into the Philippines under the Agreement by virtue of Executive Order No. 305.

On May 19, 1950, Republic Act No. 426 was approved. This Act provides for the allocation of import commodities to old and new importers and lays down the pattern to be followed with respect to the amount of quota allocations. It provides that 70 per cent, 60 per cent and 50 per cent of the total import quota for the fiscal years 1950-51, 1951-52 and 1952-53 respectively shall be allocated to old importers, and 30 per cent, 40 per cent and 50 per cent respectively of said quota for the same fiscal years shall be allocated to new importers (section 14). It designates the Import Control Commissioner as the official authorized to allocate the import quota among the various importers, with the exception of wheat flour for the allocation of which the Pratra was given exclusive power and authority.

On October 3, 1950, Executive Order No. 350 was issued by the President creating the Price Stabilization Corporation, known as PRISCO, and dissolving the PRATRA effective as of that date. In view thereof, the PRISCO was substituted for PRATRA as party in this case.

Appellee is an association of fifty-nine (59) licensed Chinese importers of flour which was organized under the laws of the Philippines and was registered in the Securities and Exchange Commission. Its members individually imported wheat flour in 1946, 1947 and 1948, and as such are old importers within the meaning of section 1 of Republic Act No. 426. They are duly licensed to do business in the Philippines and have individually filed with the PRATRA the prescribed applications for wheat flour import quota allocations and for licenses to import their quota into the Philippines. They made representations and demands upon the PRATRA and the Philippine Wheat Flour Board in order that they may be given import quota allocations of wheat flour in the amount which should correspond to them in accordance with section 14 of Republic Act No. 426, but their demands were disregarded and their representations ignored. They made the same representations and demands upon the Prisco, but with the same result. Considering this attitude of the PRATRA to be discriminatory, unfair and oppressive, appellee filed the present action.

Stripped of unnecessary verbiage, the basic issue involved in this case may be boiled down as follows: Shall the PRATRA, now PRISCO, make the allocation of import quota on wheat flour in accordance with the provisions of

Republic Act No. 426, as claimed by the appellee, or shall it make such allocation in accordance with sections 1 and 2 of Executive Order No. 305 in conjunction with section 15 of Republic Act No. 426, as claimed by the appellants?

Let us discuss both theories.

Appellants' theory is "that the importation and allocation of wheat flour must be governed by sections 1 and 2 of Executive Order No. 305, in conjunction with section 15 of Republic Act No. 426." They allege that the allocation of wheat flour is not subject to the provisions of Republic Act No. 426; that wheat flour being considered as a class by itself, Republic Act No. 426 does not apply to this particular commodity; and that in so far as wheat flour is concerned, the PRATRA, now PRISCO, has the exclusive power to use its discretion in the allocation of wheat flour, which discretion is not subject to judicial control.

On the other hand, it is appellee's theory (1) that being old importers of wheat flour, appellee's members are entitled as a matter of right to quota allocations in the amount which should be determined in accordance with section 14 of Republic Act No. 426; (2) that as the agency designated by section 15 of said Act and charged with the function of determining and Regulating the allocation of wheat flour among importers, it is the duty of the PRATRA, now PRISCO, to allocate this commodity in accordance with section 14; (3) that in denying, neglecting, and refusing to give import quota allocations to appellee's members in the amount indicated in section 14, the PRATRA, now PRISCO, has unlawfully neglected the performance of an act which is specifically enjoined upon it by section 14, and has thereby excluded appellee's members from the use and enjoyment of their rightful shares in the wheat flour quota under section 14; and (4) that appellee's remedy is mandamus.

The theory of appellants "that the importation and allocation of wheat flour must be governed by sections 1 and 2 of Executive Order No. 305, in conjunction with section 15 of Republic Act No. 426", is mainly based upon the provisions of said section 15 and appendix "C" of Republic Act No. 426. It is therefore important to examine and analyze these provisions.

Section 15 of said Act provides:

"Any existing law, executive order or regulation to the contrary notwithstanding, no Government, office, agency, or instrumentality, except the Import Control Commissioner, shall allocate the import quota among the various importers: Provided, That the Philippine Rehabilitation and Trade Rehabilitation Administration shall have exclusive power and authority to determine and regulate the allocation of wheat flour, among importers.

"Quota allocations of any importer for any particular article, including wheat flour, shall not be transferable.

"It shall be illegal to cede, transfer, sell, rent, lease or donate, his or its import quota allocation or license either directly or indirectly by the use of any simulation, strategy or scheme, under the provisions of this Act, and any violation thereof shall be punishable with the forfeiture by the Commissioner of the import quota or license of the erring party without prejudice to his subjection to the penal provisions of this Act."

Appendix "C" likewise provides in part:

"(Controlled Non-essential Imports)

"Flour, all kinds, except wheat flour."

It is contended that, under the above quoted provisions, wheat flour has been removed from the scope and operation of Republic Act No. 426 and placed under Executive Order No. 305 and the rules and regulations promulgated thereunder by the Wheat Flour Board because, while on one hand, section 15 of said Act declares that no government office, agency or instrumentality, except the Import Control Commissioner, shall allocate the

import quota among the various importers, on the other hand, the same section declares in its proviso that Pratra shall have exclusive power and authority to determine and regulate the allocation of wheat flour among importers, and while Appendix "C" of Republic Act No. 426 contains a list of all controlled non-essential imports, however, in the group of flour of all kinds listed therein, wheat flour is excepted, or excluded therefrom. The said proviso and exclusion, appellants claim, confirm their view that wheat flour has been excluded from the operation of Republic Act No. 426.

This argument is met by appellee in this wise: In arguing that because wheat flour is excluded in Appendix "C" this commodity is deemed removed from the scope and operation of Republic Act No. 426, appellants have completely misunderstood the purpose of the appendices. These appendices were made part of the Act merely to establish a range of percentage reductions on the items listed therein which shall guide the Import Control Board in fixing the import quota of said items in accordance with section 7 where express reference is made to the appendices. If wheat flour was excepted from Appendix "C", it is because the amount of wheat flour which may be imported into the Philippines and its price are already fixed and determined in the International Wheat Agreement. There is, therefore, no need for fixing the import quota of wheat flour.

We agree with this line of reasoning of counsel for the appellee. The only purpose of the appendices is to itemize the commodities which are deemed controlled, the import quota of which need to be fixed by the Import Control Board in accordance with section 7 of the law for the purpose of allocating them to the importers. They do not necessarily indicate that those excluded therefrom are not subject to the operation of said Act, because they also come under the provisions of section 9 which have reference to the items of import not enumerated in the appendices. In this connection, we also notice, as pointed out by counsel for the appellee, that, aside from wheat flour, there are other commodities that are excepted from Appendix "C", among which may be mentioned: Oats and infant foods, umbrella fabrics, salmon and sardines, corned beef, hams and shoulders, master records, yarn and threads, industrial starch and table cutlery. Other articles are similarly excepted in appendix "D". Certainly, appellants cast not seriously contend that these articles are not within the purview of Republic Act No. 426 by the mere fact that, like wheat flour, they are excepted in appendices "C" and "D". To our mind, their importation is governed by section 9 we have already adverted to, which has reference to items of import not enumerated in the appendices. This section provides that no such items of import shall be allowed an import license and exchange cover in excess of its import value (C. I. F.) for the year 1948, except agricultural machineries, equipment and other machinery, and materials and equipment for dollar-producing and dollar-saving industries, which means that as regards those articles not mentioned in the appendices they can also be imported by those who had imported them in 1948, subject only to the limitation that the import quota shall not exceed their import value in 1948, and to the reservation in favor of new importers provided for in section 14 of Republic Act No. 426.

As regards appellants' contention that the second part of section 15, which is preceded by the word "provided" operates as an exception to exclude wheat flour from the provisions of the Act, we likewise find more tenable the line of reasoning of the appellee on the matter. Said proviso, in our opinion, can only refer to the clause immediately preceding it in section 15 and can have no other meaning than that the function of allocating the wheat flour instead of being assigned to the Import Control Commissioner was assigned to the PRATRA which heretofore has been charged with said duty by Executive Order No. 305. It simply means that the authority to determine and grant flour quota allocations was taken from the Import Control Commissioner and given to the PRATRA, now PRISCO, which must have been done presumably because of the practice and experience heretofore enjoyed by said office in so far as the allocation of wheat flour import quota is concerned under the provisions of Executive Order No. 305, which was issued to implement and carry out the objectives of the International Wheat Flour Agreement. If the intention of the law is to exempt said wheat flour from the provisions of Republic Act No. 426, the proper place of said proviso would be in section 22, which contains the repealing

clause, and not in section 15. Indeed, if the intention of the law is to except Executive Order No. 305 from the operation of Act No. 426, that exception would have been clearly stated in said section 22.

"The proviso is to be construed with reference to the immediately preceding parts of the clause, to which it is attached. *Lewis' Sutherland*, Statutory Construction, sections 352, 420; *Friedlman vs. Sullivan*, 48 Ark. 213, 2 S. W. 785; *United States vs. Babbit*, 1 Black 55, 17 L. Ed. 94; *McRae vs. Holcomb*, 46 Ark. (306), 310; *Towson vs. Denson*, 74 Ark. 302, 306, 86 S. W. 661. (*Hackney vs. Southwest Hotels*, 195 S. W. 2d. 55, 58.)"

"The term "provided", is frequently regarded as used, not as qualifying the operation of the statute, but as conjunctive to an independent paragraph. Provisos have therefore frequently been held to bring in new matter rather than to limit or explain that which has gone before. (50 Am. Jur., sec. 436.)"

"The natural and appropriate office of a proviso is to modify the operation of that part of the statute immediately preceding the proviso, or to restrain or qualify the generality of the language that it follows. Indeed, the presumption is that a proviso in a statute refers only to the provision to which it is attached, and, as a general rule, a proviso is deemed to apply only to the immediately preceding clause or provision. (50 Am. Jur., sec. 438.)"

"The operation of a proviso is usually and properly confined to the clause or distinct portion of the enactment which immediately precedes it, and does not extend to or qualify other sections, unless the legislative intent that it shall so operate is clearly disclosed; and, a fortiori, a proviso contained in an amendatory statute will not be extended to the original act. (50 Am. Jur., sec. 640.)"

"Since the proviso in sec. 7205 applies only to that section, and not to sec. 7204, it follows that there is no limitation of liability as to the value of property entrusted by the guest to the hotelkeeper under sec. 7204. (59 C. J. 1090)."

To bolster up the contention that the proviso of section 15 of Act No. 426 has the effect of excluding the importation of wheat flour from the operation of said Act, counsel for appellants lay stress in the phraseology used by the law in that, while the first part provides that the Import Control Commissioner shall allocate the import quota, the proviso prescribes that the PRATRA shall have power and authority to determine and regulate the allocation. In other words, the first part uses the word "allocate" with respect to Import Control Commissioner, whereas the proviso employs the phrase "to determine and regulate the allocation" which, it is contended, is broader in scope and confers absolute discretion upon the PRATRA to make the allocation without following the pattern set in section 14 of the same Act.

The claim is based upon a misconception of the true import of the terms used in the law. The reason why the first part of section 15 merely employs the word allocate when referring to Import Control Commissioner is because the fixing of quota is a function that the law gives to the Import Control Board (section 3) in accordance with the schedule and pattern set in sections 7 and 14 of Republic Act No. 426, so that once the quotas are fixed, the allocation thereof becomes the concern of the Import Control Commissioner. The Import Control Board is the policy-determining body that fixes and allocates the import quota, whereas the Import Control Commissioner is the executive officer charged with the execution of the policy and directives of the Board. Upon the other hand, the proviso gives to the PRATRA exclusive power and authority to determine and regulate the allocation because the intention is to give to that office the power and authority not only to allocate the quota but also to pass on the financial capacity and other requisite qualifications of the importers to whom the quota should be allocated. This is a function which the Pratra has been exercising before the approval of Republic Act No. 426 in the light of the rules and regulations adopted by the Import Flour Board under the provisions of Executive Order No. 305, and the PRATRA has the machinery for determining and passing upon the fitness and financial qualifications of the importers, and that machinery is the one contemplated in that proviso. But in allocating the import quota of the

importers once they have been screened and determined, it is our opinion that the PRATRA should follow the pattern set in section 14 of Republic Act No. 426.

We wish to take note of the inference drawn by appellants from the use of the phrase "including wheat flour" in the second paragraph of section 15 which prohibits the transfer of quota allocations of any importer for any particular article pointing out that by the use of that phrase, the legislator meant to exclude wheat flour from the other provisions of the Act, specially the provisions of sections 12 and 14 relative to the quota allocations. The argument is specious, for it fails to recognize that the intention of Congress in inserting said phrase is precisely to dispel the doubt that may be engendered by the proviso of the first paragraph of section 15. The preceding paragraph excluded wheat flour from among the imported commodities which the Import Control Commissioner is called upon to allocate, and the insertion becomes necessary to avoid any inference that wheat flour is also excepted from the second paragraph of the section. The insertion was made just to leave no doubt that wheat flour comes within the purview of Republic Act No. 426.

Appellants may inquire, what are the provisions of Executive Order No. 305 which are inconsistent with Republic Act No. 426? The answer is simple. There are several that may be mentioned, the most important of which are: on the matter of allocation, the Executive Order provides that wheat flour shall be allocated to local consumers, dealers and/or importers (sec. 2), whereas Act No. 426 provides that the wheat flour shall be allocated only among importers within the meaning of said Act (sec. 15). While the Executive Order does not classify who are qualified importers, nor give any pattern for the allocation of quota, the Act divides the importers into old and new importers, prescribes their qualifications (sections 1 and 14), and establishes the basis to be followed in determining the amount of quota allocations which may be given to them (sections 9, 12, 13 and 14). The Executive Order creates a Board which is authorized to issue rules and regulations to be followed by the PRATRA in the allocation of wheat flour (section 3), whereas the Act provides that the determination and regulation of wheat flour among importers is a function that is exclusively given to the PRATRA, which as a consequence it may exercise without necessarily being bound by such rules and regulations (section 13). Needless to say that, as far as the issue involved in this case is concerned, where the provisions of Executive Order are inconsistent with or repugnant to the provisions of the Act, the mandate of the Act must prevail and must be followed. In this connection, we note that section 5 of the Rules and regulations adopted by the Wheat Flour Board to implement the provisions of Executive Order No. 305, provides that 20 per cent of wheat flour to be imported may be reserved for direct importation by the PRATRA for stabilization purposes, and the 80 per cent shall be distributed first to direct consumers who are financially able and who by themselves have been regularly importing their flour requirements, then to qualified Filipino importers, and finally to other importers. Because these provisions are repugnant to the pattern set for the allocation of quota in section 14 of Republic Act No. 426, they must be deemed to have been impliedly repealed by section 22 of the same Act. It follows that PRATRA can only make the allocation of wheat flour now by observing the pattern set in said section 14.

We are urged to interpret the provisions of Act No. 426 in a way that may exclude wheat flour from its operation in order to allow the PRATRA to carry out its policy of placing the importation of wheat flour exclusively in the hands of Filipino importers in line with the policy of our Government to encourage and foster the spirit of nationalism among our people in business, commerce and industry in the Philippines. We have been informed, and have taken notice of the claim, that the PRATRA recently in line with the above mentioned policy of nationalism has determined to allocate the import quota of wheat flour exclusively among the new importers, to the complete exclusion of the old importers, under the claim that it has absolute discretion to do so subject only to the restrictions that may be imposed by the Chief Executive.

We are not oblivious of this policy of our Government which is indeed very plausible and should be encouraged

to give a break to our countrymen so that they may have greater share in our local trade, business and commerce in line with the spirit of nationalism underlying our Constitution, but plausible and patriotic though it may be, such policy should, however, be adopted gradually so as not to cause injustice and discrimination to alien firms or businessmen of long standing in the Philippines and who have been long engaged in this particular trade thereby contributing with their money and efforts to the economic development of our country. In fact, this is the policy that our Congress has set in an unmistakable manner in Republic Act No. 426. This is also the policy that our President has expressed in the letter he sent to the PEATRA relative to the determination of import quota allocations of wheat flour.[1] When the Pratra decided to ignore entirely the rights of the old importers, simply because they are aliens, in complete disregard of this policy of our Government, these importers have the right to recur to the sanctuary of justice for redress, for they too are entitled to certain rights under our Constitution.

"Aliens within the state of their residence enjoy certain rights and privileges like those enjoyed by its citizens, such as free access to the courts and the equal protection of the laws. Nor may aliens be deprived of life, liberty, or property without due process of law. Citizens may, of course, be preferred to non-citizens without violating constitutional guaranties. They are excluded from the enjoyment of political rights, such as the right to vote and to hold public office. Other restrictions may be imposed for reasons of public policy and in the exercise of police power." (Padilla's Civil Code, pp. 95-96).

It is claimed that wheat flour as a commodity is a class by itself because it has been the subject of an International Wheat Agreement and as such should be excepted from the provisions of Republic Act No. 426. What is their special in wheat flour which should make it a class by itself? This commodity is an import, as are other import items, and the International Wheat Agreement is merely a trade agreement the objectives of which are to assure supplies of wheat to importing countries and markets for wheat to exporting countries at equitable and stable prices. The Agreement merely regulates the outflow and inflow of flour between and among the countries signatories thereto. But the agreement does not interfere with the internal laws of the signatory countries regarding imports and exports, and as a matter of fact it provides in Article II that "Nothing in this Agreement shall be construed to exempt any private trader from any laws or regulations to which he is otherwise subject", and in the resolution approved by the Senate on February 17, 1950, the Senate concurred in its acceptance by the President "with the understanding that nothing contained in this Agreement shall be construed as in any way curtailing or abridging the right, authority and discretion of the Philippine Government to distribute and allocate among the private importers in the Philippines the guaranteed purchases of the Philippine Government."

Wheat flour is, therefore, like any other commodity whose importation should be regulated, and as such should be included within the purview of Republic Act No. 426. A perusal of this act will show that it is all-comprehensive and covers the whole field of imports. It is the general and basic law on imports intended to replace and substitute all prior laws, executive orders, and rules and regulations on the same subject. Section 22 which provides that "Any Act or executive order, rules or regulations whose provisions are contrary to, or in contravention with any provision of this Act are hereby repealed", clearly reveals the intent of Congress to establish a uniform system of rules on imports and to nullify the heretofore existing laws, executive orders, and rules and regulations which may be inconsistent with the Act. No reason is perceived, therefore, why wheat flour shall be regarded as a class by itself and should be excluded from its operation simply because it has been the subject of an international agreement.

To the foregoing considerations we may add that to interpret Republic Act No. 426 as excluding wheat flour from its operation, as contended by appellants, would be tantamount to an undue delegation of powers to the PRATRA and would render the Act unconstitutional and void. As a general rule, the functions of legislation may not be delegated by the legislative to the executive department or to any executive or administrative officer, board, or commission, except as such delegation may be expressly authorized by a constitutional provision. And a statute

that vests an arbitrary discretion in administrative officers with respect to an ordinary lawful business, profession or appliance, or fails to prescribe a uniform rule of action or to lay down a guide or standard whereby the exercise of discretion may be measured, is void and unconstitutional. We are not prepared to adopt such interpretation.

"As the general rule is stated in *Corpus Juris*, which statement has been cited and quoted with approval, the functions of legislation may not be delegated by the legislative to the executive department or to any executive or administrative officer, board, or commission except as such delegation may be expressly authorized by a constitutional provision, and the constitution affords the measure of the powers which may be granted to purely administrative boards or officers. Hence, where executive officers or bodies are charged with the administration of statutes, the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary or uncontrolled discretion with regard thereof or as to the matters or persons to which the statutes shall be applied. So the legislature cannot vest in executive officers or bodies an uncontrolled power to vary, change, or suspend a statute unless the constitution so provides." (16 C. J. S. pp. 348-349.)

"The practical question which arises in this problem is the determination of what is a proper and reasonable discretion and what is an invalid arbitrary discretion. The general accepted rule as to this question is to the effect that a statute or ordinance vests an arbitrary discretion in administrative officers with respect to an ordinarily lawful business, profession, or appliance, if it fails to prescribe a uniform rule of action or fails to lay down a guide or standard whereby the exercise of discretion may be measured. Any law which authorizes the issuing or withholding of licenses, permits or approvals or sanctions other administrative functions in such a manner as the designated officials arbitrarily choose, without reference to all of the class to which the law under consideration was intended to apply and without being controlled or guided by any definite rule or specified conditions to which all similarly situated may conform, is unconstitutional and void." (11 Am. Jur., p. 947.)

Our attention has been invited to resolution No. 43, approved by the Senate of the Philippines after this case has been decided by the lower court, in which it is reiterated that the intent and policy of the Senate in inserting in the law the proviso under consideration is to afford Filipino business enterprises more substantial participation in the vital wheat flour import trade. Indeed, in that resolution, it is intimated that the proviso of section 15 of Act No. 426 came into being as an amendment of the Senate with the considered object of utilizing the PRATRA as the sole arbiter in fixing wheat flour allocations in consonance with the national policy to advance the field of Filipino participation in the business enterprises in the Philippines. But it is to be regretted that the attempted clarification has not been written into the law, and the resolution has not been concurred in by the House, and as such it does not have any binding effect in the determination of this case. The resolution does not have the effect of law. The same cannot swerve this Court from its constitutional duty to interpret the law in accordance with well-known rules of statutory construction.

"While a court may not inquire into the intent of a legislator, it is bound to ascertain the legislative intent from what was done by the legislature as an entity." (*People vs. Marxhausen*, 171 N. W. p. 537.)

"A legislative construction placed on a prior statute is without binding force in a judicial proceeding and court is free to place its own construction on the prior statute." *In re Cauldwell's Estate*, 36 N. Y. Swd 48, 178 Misc. 916. (40 Fifth Dec. Digest, p. 1527.)

"A legislative declaration of opinion as to meaning of earlier statute, without a positive legislative act, is not binding on the court in the construction of the earlier statute, since statutory construction is a 'judicial' not a 'legislative function'.—*State ex rel Washington-Oregon I vs. Co. Dobson*, 130 P2d 939, 169, Or. 546." (40 Fifth Dec. Digest, p. 1528.)

"* * * under the general rule that a legislative resolution does not have force or effect as a law, a legislative

resolution as to the proper construction of a statute is not binding on the courts." *Boyer-Campbell Co. vs. Fry*, 271 Mich. 221, 260 N. W. 165, 98 ALR. 827 (50 Am. Jur. p. 331.)

The other point stressed by the appellants is that mandamus does not lie in this case because the power vested in the PRISCO to determine and regulate the allocation of wheat flour among importers requires exercise of discretion. They claim that it is elementary that mandamus will not lie to compel the performance of a discretionary duty, and in issuing the writ, the trial court in effect has ordered the PRISCO not merely to act, but to act in a particular manner, to wit: to give wheat flour allocations to Chinese importers. The contention presupposes that the power and authority vested in the PRISCO to determine and regulate the allocation of wheat flour among importers is to be governed exclusively by the provisions of Executive Order No. 305. Under this theory, the claim is indeed well taken, for there is no doubt that the aforesaid order gives to the PRISCO wide range of discretion to allocate the import quota of wheat flour to the importers. But the assumption runs counter to our theory that, while the PRISCO is given the power and authority to determine and regulate the allocation of wheat flour, the allocation shall be made in accordance with the pattern set in section 14 of Republic Act No. 426. Such being the case, the guaranteed purchases of wheat flour must be allocated among old and new importers in accordance with the mandatory provisions of section 14. And being old importers of wheat flour, the members of the appellee are entitled as a matter of right to quota allocations of this commodity, hence their remedy is mandamus.

The claim that appellee has a plain, speedy and adequate remedy in the ordinary course of law, other than the special civil action for mandamus, by a direct appeal to the President of the Philippines, would be tenable if Executive Order No. 90, creating the PRATRA, now PRISCO, contain a provision requiring such appeal before action could be taken in court against the PRATRA in connection with the performance of its functions. But no such appeal is therein provided, and the PRATRA, now PRISCO, being an agency created by the President, it is presumed that its actions bear his official approval. Such appeal, therefore, is deemed unnecessary. Neither can the acts of the PRATRA be considered as acts of the President even if the import licenses to be issued by the PRATRA are to be signed by authority of the President, because the PRATRA is a mere agency or instrumentality of the executive branch of the Government whose functions can be looked into by the Courts without infringing the principle of the separation of powers.

"In addition to the various federal boards and officers considered supra this section, mandamus may lie, in a proper case, to compel action by other federal boards or officers. Thus it has been held that a collector of customs may be compelled by mandamus to perform purely ministerial duties;" (55 C. J. S. p. 202).

"Mandamus lies to compel the interstate commerce commission to perform a purely legal duty, in the performance of which no act of judgment is involved; also to proceed and decide a case according" to its judgment and discretion, where it refuses to proceed at all on the ground that it is without jurisdiction and where in fact the law requires it to do so." (55 C. J. S. p. 202).

"Mandamus lies to compel the commissioner of patent to perform ministerial duties; and it is a proper remedy where he acts beyond his authority and without warrant of law." (55 C. J. S. p. 201).

The remaining question to be determined refers to the claim that the Chinese Flour Importers Association is not the real party in interest in this case and, therefore, the petition should be dismissed. It is true that the petition has been filed in the name of the association, but it is likewise true that the association has filed the petition in behalf of its members who are all old importers and are entitled to import quota allocations under the law. This association dealt with the PRATRA directly, and vice versa, in so far as the subject matter of litigation is concerned, and it is this association that filed the bond for the issuance of the writ of preliminary injunction prayed for in the petition. In *Gallego et al. vs. Kapisanan Timbulan ng mga Manggagawa*,[*] 46 Off. Gaz., 4245,

it was held that a labor organization has legal personality to file a complaint in representation of its members. By analogy, the appellee has legal personality to represent its members in this case. This case can also be considered as class suit under section 12, Rule 3 of the Rules of Court.

Wherefore, the decision appealed from is affirmed, with costs against the appellants. The writ of preliminary injunction issued by the lower court is hereby made final.

Paras, C. J., Bengzon, Padilla, Tuason, Montemayor, and Jugo, JJ., concur.

[1] "His Excellency, the President, at the Cabinet meeting held on August 4, 1950, decided that in the matter of allocating quotas for flour importation, alien firms of long standing in the Philippines and generally known to have been engaged in this particular trade should not be discriminated against but should receive a fair and equitable share of the business, without, however, prejudice, as a matter of national policy, to giving preferences to Filipino importers in the allocation of new flour quotas, and to gradually place the business in Filipino hands.

"It is requested that this policy enunciated by the President referred to herein and in the next preceding indorsement, be used as a basis by the PRATRA in the allocation of flour quotas.

"By authority of the President."

[*] 83 Phil., 124.

PARAS, C. J.:

Mr. Justice Feria voted with the majority.

CONCURRENTE

PABLO, M.,

Los apelantes contienden que el artículo 15 de la Ley Numero 426 concede al PRISCO facultad y autoridad exclusivas para detenninar la asignacion a los importadores. Dicho artículo dice textualmente:

"ART. 15. No obstante las disposiciones en contrario de la ley, orden ejecutiva o reglamento vigente, ninguna oficina, organismo o dependencia del Gobierno, con excepcion del Comisionado de Control de Importaciones, asignara la cuota de importacion a los varios importadores: Entendicndose, Que la Administracion de Ayuda Comercial y Rehabilitation de Filipinas tendra la facultad y autoridad exclusivas de determinar y reglamentar la asignacion de la harina de trigo a los importadores.

"No seran transferibles las asignaciones de cuota de un importador para cualquier mercancia determinada, incluyendo la harina de trigo.

"Sera ilegal ceder, traspasar, vender, arrendar o donar, su asignacion o licencia de cuota de importacion, ya sea directa o indirectamente, o por medio del uso de alguna simulacion, estrategia o ardid, a las personas o entidades que no tengan derecho a la cuota de importacion bajo las disposiciones de esta Ley, y la infraccion de la misma sera castigada con la perdida de la cuota o licencia de importacion del infractor, que sera decretada por el Comisionado, sin perjuicio de estar sujeto a las disposiciones de esta Ley."

Si las disposiciones de este artículo se aplicasen independientemente de las del artículo 14,—como pretenden los apelantes—el PRISCO tendria poderes omnimodos: podria conceder a dos o mas importadores chinos—que pueden ser nuevos o antiguos—la asignacion de toda la cuota de importacion de harina de trigo correspondiente a Filipinas,

o podria asignarla a dos o mas importadores indios, en perjuicio del importador filipino y de todos los demas importadores. La discretion concedida al PRISCO, de acuerdo con el sentido literal del articulo, es absoluta: puede asignarla solamente a dos o tres importadores Australianos (antiguos o nuevos), privando de ella a todos los demas; puede distribuir la importacion entre varios importadores de diferentes nacionalidades y en la cantidad que crea conveniente, sin necesidad de apoyarse en base alguna sobre que fundar esta distribucion; puede concederla solamente a importadores filipinos, pero tambien puede no concederles ni un solo saco de harina, sino a dos o tres importadores marroquies. En tal caso, toda la cuota de harina para Filipinas podria colocarse en manos o a disposicion de los importadores extranjeros solamente. Esto seria desastroso, tanto mas si estallara una tercera guerra mundial. La vida de los habitantes de Filipinas estaria a merced de esos dos o tres importadores extranjeros. Se repetiria lo que hemos sufrido durante el regimen japones. Mientras algunos extranjeros, que privaban en los altos consejos del comandante en jefe de ejercito invasor, amasaban fortuna con el acaparamiento de articulos de primera necesidad, el pueblo se moria de hambre. No creo que la Legislatura haya dado al PRISCO una facultad tan ilimitada, que puede ser tan proteccionista como desastrosa. Proteccionista si asigna toda la importacion a los importadores filipinos y desastrosa si la concede a desalmados extranjeros. Si la intencion de la Legislatura fuera entregar al comerciante filipino el control inmediato y absoluto del negocio de importacion de harina de trigo, habria puesto en la ley "importadores filipinos," en vez de "importadores" solamente.

Teniendo en cuenta la recomendacion del Presidente en la sesion del Gabinete de 4 de agosto de 1950 y la resolucion Numero 43 del Senado de 12 de diciembre de 1950, se puede concluir que la Legislatura ha tenido la intencion de conceder al comerciante filipino participacion sustancial en la importacion de harina de trigo, pero no la de adoptar la politica drastica de eliminar inmediata y completamente a los antiguos importadores, colocando en su lugar a los nuevos. Por eso, establecio un proceso de aumento gradual de la participacion del nuevo importador en la distribucion de las cuotas de importacion.

El articulo 14 de la Ley Numero 426 da oportunidad a los antiguos importadores de hacer su composition de lugar durante los anos de 1950 a 1953, durante los cuales, de una manera gradual y razonable, se ira disminuyendo la participacion de los antiguos importadores y aumentando la de los nuevos, en la importacion de "cualesquier mercancias, efectos o articulos de consumo." La harina de trigo esta incluido indudablemente en estas "mercancias, efectos o articulos de consumo." Fuerza es concluir, por tanto, que el articulo 14 es la base sobre la cual el PRISCO ha de distribuir la harina de trigo. Durante ese proceso, los antiguos importadores pueden decidir si han de dejar el negocio de importar harina de trigo o de continuarlo, dedicandose al mismo tiempo a otras actividades para mantener su negocio. Es una medida razonable y justa, y evita fricciones innecesarias.

Opino que el articulo 15 debe interpretarse en consonancia con las disposiciones del articulo 14.

Concurro, ademas, con la opinion de la mayoria.

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