

**THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. TEE
HONORABLE JUDGE GAUDENCIO CLORIBEL, JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, BRANCH VI, AND HERMINIO G.
TEVES, RESPONDENTS.**

G.R. No. L-20266. January 31, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

On June 30, 1960, respondent Herminio G. Teves entered into an agreement with the National Rice and Corn Corporation.[1] By virtue thereof, Teves was authorized "to act as Agent" of the Naric "in exporting" rice "as well as in importing the collateral goods" that will be brought in "thru barter under the NARIC Charter and the arrangements with other government agencies, as presently authorized and to buy the aforementioned collateral goods".

The foregoing notwithstanding, the same contract contains, amongst others, the following stipulations:

"III. CONSIDERATIONS:

(1) The price of the rice subject matter of this contract, shall be FOUR HUNDRED THIRTY ONE FIFTY (P431.50) PESOS, Philippine Currency, per metric ton, FOB Manila, stowed and timmed or a total of ONE MILLION SEVEN HUNDRED TWENTY SIX THOUSAND (P1,726,000.00) PESOS, for 4,000 metric tons;

(2) The C & F price in Manila, or other Philippine ports of the imported commodities shall be equal to the total peso price offered for the rice. The BUYER will import commodities under the aforementioned ratio of 40%-20%-40% mentioned in paragraph 1 above not exceeding ONE MILLION SEVEN HUNDRED TWENTY SIX (P1,726,000.00) PESOS, equivalent to the peso price, offered for the rice on the basis of Philippine P2.00 to U.S. \$1.00.

IV. PAYMENT:-

Within fifteen (15) days after due notice to BUYER by SELLER of the effectivity of this contract pursuant to paragraph XII hereunder and of the availability of the rice for delivery, BUYER shall immediately pay FOUR HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED (P431,500.00) PESOS to SELLER corresponding to the price of the first lot amounting to P431,500.00 thereafter, payment of each succeeding lot amounting to P431,500.00 shall be made by BUYER to SELLER within fifteen (15) days from notice of availability of rice corresponding to each lot.

V. DELIVERY:

(1) Under this contract SELLER agrees to make delivery of the first lot of 1,000 metric tons after due payment of the price corresponding to same within fifteen (15) days also from notice of effectivity of the contract and availability of the rice; thereafter of each succeeding lot of 1,000 metric tons shall be made by SELLER within fifteen (15) days from due notice to BUYER of the availability of said lot."

Shortly, after the execution of the contract, allegedly because of the acute shortage of staple products that cropped up in the country, the President of the Philippines suspended all projected rice exportations, including that of Teves.

But Teves, representing that he already had contractual commitments here to supply third parties with the goods he intended to import, and likewise abroad for the barter of local rice with foreign products, sought authority from the President and his cabinet to import - ahead of the exportation - the collateral commodities supposed to have been bartered under his agreement with the NARIC, namely, 40% essentials, 20% semi-essentials and 40% non-essentials.

On October 26, 1960, the President and his cabinet granted the authority requested. The license of Teves to import was revalidated "for a period of one hundred twenty (120) days" from October 26, 1960, "provided the importation of such collateral commodities shall be limited only to the extent of [his] contractual commitments with foreign suppliers as of September 14, 1960" and that "the existence of such contractual commitments shall be verified by the Administrator of Economic Coordination."

In accordance therewith, Teves imported within the period from April 17, 1961 to January 12, 1962, twenty-two (22) shipments or more of merchandise consisting largely of 84 cases (70 units) of Toyopet cars, several bags of synthetic rubber and resin, medicinal preparations, and radio and electronic parts and motors, and other items. Customs duties and taxes therefor were paid.

On January 2, 1962, the Economic Coordinator wrote the Commissioner of Customs^[2] [both positions were then concurrently held by Cesar C. Climaco] stating that "[a]s per agreement with the Chairman-General Manager of the NARIC, we are requesting that you hold goods coming in as importations, using the name of NARIC and same should only be released after clearance by the NARIC, through the Office of Economic Coordination."

Because of this, the shipments of Teves just mentioned were withheld by the Commissioner, pending compliance by Teves of said directive of January 12, 1962. On March 7, 1962, the Executive Secretary wrote the Commissioner saying that "the President, at the Cabinet meeting today, decided that action on this matter be taken upon consultation and/or in collaboration with the Secretary of Justice."

The matter of the legality of the shipments was, therefore, referred to the Secretary of Justice. Teves asked the justice secretary and the Commissioner to have the imported goods delivered to him, because of the deteriorating nature of some of them, upon the filing of surety bonds.

To this request of Teves, the Secretary of Justice acceded. In the latter's 3rd indorsement dated April 25, 1962, addressed to the Commissioner, he wrote that "[s]ince the question concerning the legality of the importations of Mr. Herminio G. Teves has been brought to court in Civil Case No. 49977 of the Court of First Instance of Manila, entitled 'Herminio G. Teves, Petitioner, vs. Teotimo A. Roja . . . and Cesar C. Climaco, Respondents', [this case was not heard and was subsequently withdrawn on motion of Teves after the shipments were released under bond]^[3] and is now sub judice, this Department cannot with propriety give its views on the matter, as requested." The Secretary added that "[h]owever, in line with our 1st indorsement of April 2, 1962, regarding the release of perishable food products, this Office will interpose no objection to the release to the recorded consignee or his duly authorized representative of the seventy units of Toyopet cars and other shipments which are not banned, subject to the conditions stated in the within 1st indorsement dated March 15, 1962 - i.e., 'upon filing of special time deposit required by Central Bank Circular 137 and/or filing of sufficient bond to protect the interests of the government' - pending judicial determination of the legality of the importations of Mr. Teves under the 'NARIC Rice Barter'".

Teves then posted surety bonds, accepted by the Commissioner, in the total amount of P294,620.25: some issued by Meridian Assurance Corporation amounting to P169,784.64, the rest by Fieldmen's Insurance Company for P124,835.61.

The Meridian bonds contain the following risk: "x x x in the event that it should be finally decided that the merchandise herein mentioned were imported in violation of some laws and regulations, the entire amount of this bond will be forfeited in favor of the Government and/or if a fine or surcharge should be imposed, as the case may be, the principal and/or the Surety will pay to the Bureau of Customs in CASH the amount adjudged to be paid: PROVIDED, HOWEVER, that if within thirty (30) days from demand for payment of the liability to be mentioned thereby, and said liability is not paid, and if it should be found necessary to file an action in court to effect collection thereof, a penalty of One Thousand Pesos (P1,000.00) in addition shall be imposed, otherwise, this obligation shall be void and of no effect." The risk defined in Fieldmen's bonds is identically worded except that liability principally attaches "in the event that it should be finally decided that the NARIC-Rice Barter Agreement is held illegal."

The importations were thus released under these bonds.

Teves subsequently sued for prohibition and mandamus in the Court of First Instance of Manila upon a complaint dated August 18, 1962, amended on August 24, 1962.[4] Therein, he prayed for a restraining order against the (a) Administrator of Economic Coordination, from enforcing his directive of January 12, 1962, requiring him to secure NARIC clearance on his shipments aforesaid; (b) General Manager, Rice and Corn Administration,[5] from acting on said NARIC clearances, and (c) Commissioner of Customs, from referring the shipments which arrived prior to January 12, 1962 to any office for ruling. Also, Teves moved the court to issue a writ of preliminary mandatory injunction, ordering the Commissioner to cancel and/or cause to be cancelled the bonds heretofore recited covering the 22 shipments or more, which arrived prior to January 12, 1962. Then, Teves asked that, after hearing, all injunctions be declared permanent.

On August 27, 1962, the Commissioner registered written opposition against the issuance of a writ of preliminary mandatory injunction. His reasons are: (a) the lower court lacks jurisdiction over the subject-matter; (b) all administrative remedies have not been exhausted; (c) mandamus lies only to compel performance of a purely ministerial act; and (d) Teves' right herein to import is not well-defined, clear and certain.

Likewise opposing was the RCA, which, through its pleading of August 27, 1962, stated that Teves would not suffer great or irreparable injury because (a) the goods have been released under bond; and (b) the NARIC, or its successor, the RCA, has the right to know whether the importations are in accordance with, and not in violation of, the contract provisions.

Oppositions notwithstanding, respondent judge Gaudencio Cloribel made out an order dated August 29, 1962 granting the injunctions prayed for, including a preliminary mandatory injunction ordering the Commissioner "to cancel and/or cause to be cancelled the corresponding bonds of the twenty-two (22) shipments and/or more of them consigned to NARIC-HERMINIO G. TEVES which arrived at the port of Manila prior to January 12, 1962 and which bonds were filed by the Fieldmen's Insurance Company and the Meridian Insurance Company, until further orders from this Court." The next day, August 30, 1962, the writ was issued, upon the posting of a P5,000.00 bond by Teves.

On August 31, 1962, the Commissioner and also the RCA filed with the court below their respective answers to Teves' petition.

On September 5, 1962, Judge Cloribel issued another order [upon Teves' urgent ex-parte manifestation filed on

the same date that the Commissioner had not yet obeyed the mandatory injunction] commanding said Commissioner and those wider him to comply with the writ.

On the same date, September 5, 1962, the Commissioner moved to reconsider the orders of August 29 and September 5, and to quash the writ issued thereunder. This motion was followed by another of September 10, of the same tenor, this time with arguments.

On September 10, 1962, respondent judge denied both motions.

Hence, the present original petition for certiorari and prohibition. The prayer of the herein petition reads:

"WHEREFORE, it is respectfully prayed that this Honorable Court:

- a) Find this petition to be sufficient in form and substance and give due course to the same;
- b) That upon giving due course to this petition, issue a writ of preliminary injunction against respondents restraining them in enforcing the order dated August 29, 1962 (Annex L) and the writ of preliminary injunction dated August 30, 1962 (Annex M) during the pendency of this petition.

And after hearing, this Honorable Court render judgment:

c) Declaring that respondent judge does not have jurisdiction over the cause of action in Civil Action No. 51296 entitled 'Teves vs. Administrator, Economic Coordination, etc., et al.' abovementioned;

d) That granting respondent has jurisdiction, he nevertheless acted with grave abuse of discretion or in excess of his jurisdiction in issuing his Orders dated August 29, 1962, September 5, 1962 and September 10, 1962 and the writ of injunction dated August 30, 1962, which are therefore null and void; and

e) Making the preliminary injunction issued by this Honorable Court against respondents to be permanent."

On September 20, 1962, this Court granted, without bond, the preliminary injunction prayed for, restraining respondents from proceeding or enforcing the lower court's order of August 29, 1962 and the writ of preliminary injunction thereupon issued on August 30, 1962.

1. Challenged by the Commissioner is the jurisdiction of the respondent judge to hear and determine Civil Case 51296 aforesaid.

A condition of the bonds - subject of that action - is that should it be finally decided that the merchandise were imported in violation of some laws and regulations, the entire amount thereof will be forfeited in favor of the government.

The articles were imported by Teves upon the authority of the agreement between him and Naric. While this contract professes that Teves was agent of the Naric "in exporting" a given quantity and kind of rice valued at P1,726,000.00 "as well as in importing the collateral goods" which had to be brought in "thru barter under the NARIC Charter", the subsequent stipulations thereof purport to show that Teves buys the rice from the Naric for exportation, and by way of barter is authorized to import the collateral goods, not as agent, but on his own personal account. Thus, the contract stipulates: "The collateral commodities imported by virtue of this AGREEMENT shall belong and accrue solely to the BUYER (Teves) free from any SELLER'S (Naric's) equity, lien or claim of whatever kind or nature provided BUYER complies faithfully with his obligations herein." Whether or not under the Naric charter a transaction of the nature herein involved is allowable, poses a serious legal problem.

Did Teves export the rice he purchased from the Naric? Or did he sell it in the local market? This is not yet clear in the record.

The contract specifies the nature of the goods he could import: 40% essential goods, 20% semi-essential goods and 40% non-essential goods. This, too, needs to be checked to ascertain adherence thereto. And, were banned goods imported?

Another condition of that importation is that it is limited to the extent of contractual commitments with foreign suppliers as of September 14, 1960, a fact to be verified by the Office of Economic Coordination. Again, compliance therewith is yet to be determined.

The duty of the Commissioner to first cause an inquiry into the facts before he releases the bonds is quite apparent. He must look into the legality of the importation. This duty is implicit in Section 1207 of the Tariff and Customs Code which provides:

"Section 1207. Jurisdiction of Collector over articles of prohibited importation. - Where articles are of prohibited importation or subject to importation only upon conditions prescribed by law, it shall be the duty of the Collector [of Customs] to exercise such jurisdiction in respect thereto as will prevent importation or otherwise secure compliance with all legal requirements."

Nothing extant in the record would show that the Commissioner, by a formal decision, had ruled on the legality of the importation. It is only after a decision adverse to him is rendered that Teves may summon the aid of the corresponding court.

But, the disposition the Commissioner will take concerning the Teves importations, will not come under the Court of First Instance on appeal. Such appeal should be addressed to the Court of Tax Appeals. Because, at bottom, the problem is: Was the importation authorized by law?

And, Section 7(2) of Republic Act 1125 creating the Court of Tax Appeals, recites:

"SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

x x x

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs."

Jurisprudence is not wanting which would show that Section 7 of Republic Act 1125 has taken away the power of courts of first instance to review the actuations of the customs authorities in a case involving seizure, detention or release of property, or other matters arising under the Customs Law or other law administered by the Bureau of Customs. And this, notwithstanding the fact that complaints may be styled "mandamus", "prohibition" or "certiorari". For, in reality, these are but expressions in varying forms of a petition to review the actuations of the customs authorities.[6] Expressive of the rule is our opinion in the Millarez case (97 Phil. 282, 284-285), viz:

"Republic Act No. 1125, section 7, effective June 16, 1954 gave the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal, decisions of the Commissioner of Customs, involving 'seizure, detention or release of property affected * * * or other matters arising under the Customs Law or other law administered by the Bureau of Customs'. In our opinion this provision necessarily has taken away the power of the Manila court of first instance to 'review' decisions of the Customs authorities, 'in any case of seizure' - as in this case - under section 1383 et seq. of the Revised Administrative Code."

It matters not that no seizure proceedings were had. Section 7 of the charter of the Court of Tax Appeals does not limit the appellate jurisdiction of said court to seizure proceedings. The law employs the term "seizure, detention

or release".

It is true that, in the petition filed by Teves in the court of first instance, he there asks the court to enforce his NARIC Barter Agreement and to declare the NARIC clearances no longer necessary, the previous detention of his shipments by the Bureau of Customs illegal, and the bond requirement for the release of the importations superfluous. He grounds his petition below upon the averments that, prior to January 12, 1962, only the release certificates of the Export Control Committee were needed to take the shipments off the piers; that since NARIC has been abolished, no agency exists that can give the clearances; that his barter agreement has already been approved by the then Economic Coordinator, and that the intrinsic validity of contracts may only be determined by the courts.

We do say, however, that these present questions which cannot be divorced from the main issue: Is the importation illegal? Resolution of this question necessarily determines the merits of the propositions just adverted to advanced by Teves in his petition below aforesaid. The authority to rule on the legality of the importation still rests with the Customs authorities; appeal from the decision of the Commissioner is to the Court of Tax Appeals.

We, accordingly, hold that the Court of First Instance of Manila had no jurisdiction to entertain the case (Civil Case No. 51296) therein filed by Teves.

2. But even assuming that the court below had jurisdiction, did the respondent judge abuse his discretion in issuing the writ of preliminary mandatory injunction?

By Section 1, Rule 58, 1964 Rules of Court, it is now expressly provided - though already long generally recognized - that a court, at any stage of an action prior to final judgment, may "require the performance of a particular act, in which case it shall be known as a preliminary mandatory injunction." But, stock must be taken of the truism that, like preventive injunctions, it is but a provisional remedy to which parties may resort "for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action." [7] More than this, as a mandatory injunction "usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing." [8] Per contra, it may issue "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation." [9] Indeed, "the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute." [10]

With these postulates, let us turn to the dispute in this case.

The Commissioner (petitioner here) believes that respondent judge abused his discretion in issuing the writ of preliminary mandatory injunction. Because, so he decries, if the surety bonds posted by Teves are already cancelled before trial has ever begun, "there would be no more subject matter of Civil Case No. 51296, as the respondent Judge would have in effect granted complete relief to respondent Teves, and the government would be completely without any protection for whatever claims and interest it might have in the importations which were released, except to go after the bond of petitioner in the small sum of P5,000.00 as compared to the amount of the bonds sought to be cancelled in total sum of P294,620.25."

Petitioner's view deserves assent. For, Teves has not made out "a clear case, free from doubt and dispute". True, there is no question as to the legal authority of NARIC to engage in barter transactions. The law - Section 3(b) of Republic Act 663 - so articulates. But, as heretofore adverted to, doubts there are, still unresolved, as to the

legality of how such barter authority was here exercised. On this score alone, Teves' right to import - purportedly as an agent of the NARIC and ahead of rice exportation - is not so clear that he can ask for the cancellation of the bonds he posted to secure the release of his importations even before a hearing on the merits.

Important to the issue here is the fact that the writ issued by the judge does not maintain the status quo. Had the bonds not been posted by Teves, the goods he imported would not have been released. The purpose of injunctions i.e., to restore the original situation of the parties, is here absent. Not being present, the writ itself can hardly be sustained as equitable.

The most convincing argument, of course, is that to enforce the writ is to practically decide the case in favor of Teves. To proceed with the case below on the merits would then be a useless ceremony. Because, Teves would have gotten what he precisely wanted in that suit - cancellation of the bonds. And, the government shall have lost its last hold on the shipments of Teves and literally shall have been left "holding the bag". By all notions of equity, this cannot be sanctioned.

We concede that the issuance of preliminary injunctions rests upon the sound discretion of the court. Nevertheless, as this Court pointed out in a recent case,[11] "[s]ound judicial discretion, however, is no license to undo the law by defeating its objectives." A clear case of abuse of discretion is here present.

For the reasons given -

1. The Orders dated August 29, 1962, September 5, 1962 and September 10, 1962, and the writ of preliminary injunction dated August 30, 1962, all in Civil Case 51296 of the Court of First Instance of Manila, entitled "Herminio G. Teves, petitioner, vs. Administrator, Economic Coordination, Commissioner of Customs, and General Manager, Rice and Corn Administration, respondents," are hereby declared null and void;
2. The writs of certiorari and prohibition shall accordingly issue;
3. The preliminary injunction we issued herein on September 20, 1962 is hereby made permanent; and
4. The respondent Judge is hereby directed to dismiss said Civil Case No. 51296 of the Court of First Instance of Manila.

Costs against respondent Herminio G. Teves.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Ruiz Castro, JJ., concur.

[1] Hereinafter referred to simply as NARIC.

[2] Hereinafter referred to as Commissioner.

[3] See: Memorandum for the Acting Commissioner of Customs by Senior Legal Officer Manuel B. Millora, dated October 11, 1963, Rollo, pp. 174-175.

[4] Docketed as Civil Case 51296, Branch VI, entitled "Herminio G. Teves, petitioner, vs. Administrator, Economic Coordination, Commissioner of Customs, and General Manager, Rice and Corn Administration, respondents."

[5] Hereinafter referred to simply as RCA. On June 14, 1962, NARIC was abolished by Congress, and RCA was created to take its place. Republic Act 3452.

[6] Millarez, etc., et al. vs. Amparo, etc., et al., 97 Phil. 282; Pepsi-Cola Bottling Co., Inc. vs. Manahan, etc., et al., L-12096, April 30, 1959; Acting Collector of Customs vs. De la Rama Steamship Co., L-20676, February 26, 1965.

[7] Calo, et al. vs. Roldan, etc., et al., 76 Phil. 445, 451-452; emphasis supplied.

[8] Manila Electric Railroad and Light Company vs. Del Rosario, etc., et al., 22 Phil. 433, 437.

[9] Id.; emphasis supplied.

[10] Id., emphasis supplied. See also: Villadores, et al. vs. Encarnacion, etc., et al.; 95 Phil. 913, 919; Coronado vs. Tan, etc., et al., 96 Phil. 729, 732-733; Bautista, et al. vs. Barcelona, etc., et al., 100 Phil. 1078, 1081-1082.

[11] Vivo, etc. vs. Cloribel, etc., et al., L-23239, November 23, 1966.

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