

**HON. NICOLAS C. ADOLFO, MUNICIPAL JUDGE OF THE
MUNICIPALITY OF SUBIC, PROVINCE OF ZAMBALES, PETITIONER,
VS. COURT OF FIRST INSTANCE OF ZAMBALES, BRANCH I, HON.
LUCAS LACSON, PRE...**

G.R. No. L-30650. July 31, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

In filing this petition for review on certiorari, on September 1, 1969, the Municipal Judge of Subic, Zambales, the Honorable Nicolas C. Adolfo, against the Court of First Instance of that province and a certain Albert L. Merchant, as respondents, would have us reverse and set aside a decision of respondent Court of November 20, 1968 annulling petitioner's order of June 29, 1967 in a criminal case pending before him declaring as non-existent the custody receipt issued by the Commander of the United States Naval Base at Subic Bay for the provisional liberty of the respondent Albert L. Merchant, the accused in that case, so that the warrant for his arrest could be reissued pursuant to Article 13 of the United States -Philippines Military Bases Agreement of 1937. The petition quoted the specific provision of paragraph 5 of the aforesaid article in the 1947 Military Bases Agreement. It is worded thus: "In all cases over which the Philippines exercises jurisdiction the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy of the information against the accused upon the filing of the original in the competent court." [1] It likewise alleged that the clause "in all cases over which the Philippines exercises jurisdiction" did obviously refer to the second paragraph of the same article which reads: "2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by an member of the armed forces of the United States." [2] After which came this assertion in the petition: "There is no dispute that the crime for which respondent Albert L. Merchant is charged was committed outside a base, or more particularly in Barrio Manggahan, Subic, Zambales * * *. Said respondent, though a citizen of the United States, is a civilian employee or component of the U. S. Naval Base at Subic Bay, thus not a member of the armed forces of the United States within the purview of the oft-repeated Base Agreement." [3]

Petitioner, represented by the then Solicitor General, the Honorable Felix Makasiar, took due note of the stand of respondent Court and of private respondent which is that "even if the right of custody of a commanding officer over the person of an accused civilian component of the base is not prescribed by the original Base Agreement, nonetheless such a right is now provided for in paragraph 5 of the Agreed Official Minutes of the Agreement entered into between the Philippines and the United States on August 10, 1965, to wit: '5. In all cases over which the Republic of the Philippines exercises jurisdiction, the custody of an accused member of the United States armed forces, civilian component, or dependent, pending investigation, trial and final judgment, shall be entrusted

without delay to the commanding officer of the nearest base, who shall acknowledge in writing (a) that such accused has been delivered to him for custody pending investigation, trial and final judgment in a competent court of the Philippines (b) that he will be made available to the Philippine authorities for investigation upon their request and (c) that he will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy of the information against the accused upon the filing of the original in the competent court." [4]

The petition thus squarely raised in issue the validity of the exchange of notes on August 10, 1965, more commonly known as the Mendez-Blair Agreement insofar as it would modify or amend the provisions of the Military Bases Agreement without such exchange of notes having been submitted to the Senate for ratification as the Constitution requires in the case of treaties. It made a distinction between a treaty and executive agreements, to which category the aforesaid exchange of notes belongs. Thus: "A treaty may be defined as a compact made between two or more independent nations with a view to the public welfare. (Tañada & Fernando, Constitution of the Philippines, 4th Edition, Vol. II, citing *Altman & Co. vs. United States*, 224 U.S. 583). Executive Agreements fall into two classes: (1) agreements made purely as executive acts effecting external relations and independent of or without legislative authorization, termed as 'presidential agreements', and (2) agreements entered into in pursuance to acts of Congress, designated as Congressional-Executive Agreements. (*USAFFE Veterans Association Inc. vs. The Treasurer of the Philippines, et al.*, 105 Phil. 1030, 1038; citing several authorities). However, the distinction between a 'treaty' or the so-called 'executive agreements' is best understood by statements of what they are supposed to cover, including examples thereof. This we can find in the above-cited case of the Commissioner of Customs vs. Eastern Sea Trading, supra, citing U.S. authorities, to wit: 'International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.' [5] After citing an article of Francis B. Sayre on "The Constitutionality of Trade Agreement Acts" [6] it concluded: "We can thus see that executive agreements cover such subjects as commercial and consular relations, property relations like patent rights, trademark and copyrights, postal, navigation, settlement of private claims, tariff and trade matters. These types of agreements are certainly not in the plane of one, like the U.S. - P.I. Military Bases Agreement, which affects and reduces to a certain degree the territorial authority, the jurisdiction and even the dignity of the country and its people. Said Base Agreement undoubtedly involves more than a national policy, and is practically of a permanent nature (99 years or longer, Art. XXIX, *ibid*). Therefore, said Agreement is a treaty which must be ratified, as it was ratified, by the Senate." [7] The petition reinforced the above conclusion with this argument: "Since the power to make treaties is lodged under our Constitution with the President with the concurrence of two-thirds of the Senate, the power to amend these treaties must similarly be vested in those organs of the government. After all, an amendment to a statute produces one law, usually the statute as amended. (Black, *Interpretation of Laws*, p. 574). In *pari materia* is the observation that only Congress, with its legislative power, can make laws and alter or repeal them (Cooley, p. 183). The Chief Executive, with all his vast powers, cannot suspend the operation of a statute (*Philippine National Bank vs. Bitulok Sawmill Inc., et al.*, G. R. L-24177-85, June 29, 1968); a fortiori, he cannot exercise the greater power to amend or to revoke a statute. Therefore, as applied to this case, the making of the treaty having been undertaken under the joint auspices of the President and the Senate, its amendment or revision must similarly be undertaken by both agencies of the State as directed by the Constitution. The August 10, 1965 notes to the U.S. - P.I. Military Bases Agreement of 1947, not having been ratified yet by the Senate, remain as mere proposals." [8]

The answer for respondents, filed on October 25, 1969, after it admitted substantially the statement of facts,

agreed as to the decisive issue being the validity of the exchange of notes of August 10, 1965, which they would uphold, being, in their opinion, in accord with law and established precedents.

The brief for petitioner-appellant was filed on February 26, 1970. After a motion for the extension of time to file the brief for respondents-appellees was filed on April 27, 1970, they filed a motion to dismiss on May 6, 1970, wherein it was noted: "By a letter dated April 16, 1970 which was received on April 20, 1970, Rear Admiral V. G. Lambert, Commander of the U.S. Naval Base at Subic Bay, advised petitioner-appellant Judge Nicolas G. Adolfo as follows: 'This is in reference to Criminal Case No. 1625 in which Albert L. Merchant is charged with the crime of 'Less Serious Physical Injuries thru Reckless Imprudence.' Please be advised that, upon the request of Albert L. Merchant, the custody receipt issued on 26 June 1967 in accordance with Article XIII of the Military Bases Agreement, as revised on 10 August 1965, is hereby withdrawn; and the undersigned can no longer be held responsible for his presence. We understand that Mr. Merchant is taking this action because he desires to have his case finally adjudicated in your Court at the earliest possible time.'"[9] Mention was likewise made of the following: "On April 20, 1970, Albert L. Merchant, through counsel, submitted a Constancia to the Municipal Court of Subic, Zambales, as follows: '[Comes now] the accused in the above-entitled case, by his undersigned counsel, and, in accordance with the provisions of Section 14, Rule 114, of the Rules of Court, to this Honorable Court respectfully submits the certificate from the Municipal Treasurer of Subic, Zambales, dated April 20, 1970, that the sum of Six Hundred Pesos (P600.00), Philippine currency, has been deposited as Cash Bond Deposit for the accused in the above-entitled case, under Official Receipt No. M-8888315 dated April 20, 1970, as well as a Xerox copy of said official receipt, which are marked as Annexes 'A' and 'B', respectively, and made integral parts hereof. [Wherefore], it is most respectfully prayed of this Honorable Court that the warrant for the arrest of the accused be recalled or the accused be released from custody in accordance with the provisions of Section 14, Rule 114, of the Rules of Court.'"[10]

The motion to dismiss was referred for comment to petitioner-appellant in a resolution of May 15, 1970. The comment came in the form of a manifestation filed with us on June 2, 1970, the pertinent portion of which reads: "That as thus crystallized, the issue is the validity of the custodial receipt issued by the Commander of the US Naval Base at Subic Bay over the person of respondent Albert L. Merchant who is a civilian component of the United States Navy. It is appellant's contention that custodial authority over the person of a civilian component by the U.S. Base Commander is not provided for in the original US-P.I. Military Bases Agreement of 1947, though it is now the subject of the so-called Mendez-Blair Agreement of August 10, 1965; and 2. That considering the fact that the custody receipt over the person of Albert L. Merchant has already been withdrawn by the Base Commander and Merchant has offered to submit a cash bond, in lieu of said receipt, before the Municipal Court of Subic, Zambales, the question with regard to said custodial authority has indeed become moot and academic."[11]

The question raised is one the importance of which cannot be denied. Fortunately the turn of events clearly reflects a change of mind on the part of respondent Albert L. Merchant manifesting respect towards the terms of the Military Bases Agreement prior to its alleged modification in the exchange of notes of August 10, 1965. Its validity could have been passed upon in this case were it not for such respondent Merchant's recognition of the controlling force and effect of the explicit provision in the Military Bases Agreement as ratified by the Senate. As things stand now however, the determination of such crucial question must await another day, the matter having become moot and academic.

WHEREFORE, in the absence of any objection to the dismissal of this petition by petitioner-appellant, this petition for review on certiorari is dismissed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, and Villamor, JJ., concur.

Teehankee and Barredo, JJ., took no part.

[1] Petition, par. 16, pp. 8-9.

[2] Ibid, p. 9.

[3] Ibid.

[4] Ibid, par. 17, pp. 11-12.

[5] Ibid, pp. 15-16.

[6] 39 Col. Law Rev. 753 (1939).

[7] Petition, par. 17, pp. 17-18.

[8] Ibid, p. 19.

[9] Motion to Dismiss, par. 2, pp. 3-4.

[10] Ibid, p. 4.

[11] Manifestation, pars. 1-2.

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