

MARCELO STEEL CORPORATION ET AL., PETITIONERS, VS. THE IMPORT CONTROL BOARD ET AL., RESPONDENTS, WILLIAMS INTERNATIONAL LTD., ET AL., INTERVENORS.

G.R. No. L-4033. September 21, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioners, Philippine manufacturers of nails, ask for mandamus ordering respondents to confiscate or impound for purposes of forfeiture about 11,475 kegs of nails recently imported from Japan and Hongkong by the intervenors. They allege that such kegs were landed in violation of the Import Control Law, and that if released into the local market will prejudice their financial interests and investments.

The respondents are the Import Control Board, the Honorable Guillermo Gomez as Import Control Commissioner and the Honorable Alfredo Jacinto as Acting Commissioner of Customs. These aver that the nails are galvanized iron nails; that before ordering the said nails the intervenors asked the opinion of the Import Control office on the point whether said nails were subject to control; that the then Import Control Commissioner (Rufino Luna) ruled that such nails were not controlled because they were different from "common, wire nails" enumerated in the Control Law; that these nails were imported in accordance with the ruling of the said Import Control Commissioner; that subsequently, heeding repeated protests of local nail factories, the present Import Control Board passed a resolution declaring that galvanized iron nails should be considered as common wire nails subject to control; that the said Board and the other respondents believe this new ruling should not apply to the nails in question, which were Imported in good faith in accordance with the ruling of the then Import Control Commissioner declaring galvanized iron nails as free from control. The respondents consequently pray for dismissal of this petition, with costs.

Given permission to take part in this proceeding, the intervenors join the respondents as to the allegations of importation in good faith and reliance do the ruling of Import Control Commissioner Luna; but they maintain that the nails are galvanized iron nails—not common wire nails subject to the regulations of the Import Control Law. Some of the intervenors interposed other defenses, which, in the view we take of the controversy do not need to be stated in detail.

At the oral argument the discussion centered around the question whether "galvanized iron nails" were "common wire nails". Petitioners had the burden to show the affirmative, because the Import Control Law speaks of common wire nails¹¹, and not galvanized iron nails. The respondents introduced a report of the Bureau of Science to the effect that the nails submitted for analysis (samples of the disputed hardware) "are galvanized iron nails." However, the report does not affirm that the nails are not common wire nails. On the other hand, the petitioners offered some catalogs advertising nails of various classes. In size and form the intervenors' nails look like the common wire nails advertised therein. However, the same catalogs either charge extra prices for "galvanizing" the nails (Exhibit D, Wickwire Brothers, p. 71) or quote special prices for galvanized wire nails (Exhibit C, American

Steel & Wire Company, p. 10).

The end of the hearing found us with no definite impression that petitioners had established their case, what with the undeniable fact that the purpose of the control law was to protect local industry, and "galvanized iron nails" were not and are not manufactured in this country. The petitioners proved, at most, that galvanized iron nails are common wire nails with the difference that they are coated or plated with cadmium, zinc, lead or other base metals. With the further difference suggested by intervenors that because of such plating, they (galvanized iron nails) are used for certain purposes for which common wire nails are not suitable.

It is true that the Import Control Board recently decreed that "galvanized iron nails" should also be controlled. But such ruling might have been promulgated in the exercise of its power, under the law (Rep. Act No. 426), to place in the control list other articles or commodities (sec. 7, subsection 4, third paragraph). Hence it is not necessarily an acknowledgment that as a matter of fact "galvanized iron nails" are "common wire nails."

At any rate, supposing that galvanized iron nails are common wire nails within the meaning of the law, the opinion is unanimous in this Court that this petition may not, or should not, be granted for the following reasons, in addition to others:

First. We have no power to order the confiscation of the nails, because under the last proviso of section 20 of the Import Control Law (Rep. Act No. 426) in connection with Article 18, chapter 39 of the Revised Administrative Code, forfeiture of goods imported in violation of said Law is subject to the discretion of the respondent Commissioner of Customs (see section 1365, Adm. Code). It is elementary that mandamus does not lie to compel performance of a discretionary duty.[1]

Second. All equities favor the intervenors. It is unquestioned that they ordered these nails believing in good faith in the ruling of Import Control Commissioner Luna that "galvanized iron nails" were not subject to control. There was reasonable ground for the ruling, and their belief. They placed the orders before the Import Control Board had decided that "galvanized iron nails" should be controlled like "common wire nails".

Wherefore, of for no other reason than to honor and instill confidence in government commitments made through responsible officials"[2] the difference between "common wire nails" and "galvanized iron nails" however small, should be deemed sufficient basis and excuse for respondents' refusal to impound the questioned shipments.

And remembering that "as a general rule mandamus is not a writ of right and its allowance or refusal is a matter of discretion[3] to be exercised on equitable principles and in accordance with well-settled rules of law"[4]; and that "it should never be used to effectuate an injustice, but only to prevent a failure of justice,"[5] this Court should not compel respondents to forfeit the nails and thereby perform an act which they believe, and this Court believes, would do violence to natural justice.

By this we do not mean that newly appointed officers or boards are bound to uphold or tolerate the erroneous resolutions of their predecessors. Occasions will undoubtedly arise when the interests of the public or other important considerations will demand immediate unqualified repudiation. But we are not aware this is one of them.

In view of all the foregoing, the petition is denied, with costs against petitioners. The injunction orders heretofore issued are hereby dissolved.

Moran, C.J., Ozaeta, Pars, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Inchausti & Co. vs. Wright, 47 Phil., 366; Blanco vs. Board of Medical Examiners, (46 Phil., 190); Moran,

Rules of Court, Vol. II, p. 151.

[2] U. S. Tobacco Corporation vs. Luna, G. R. No. L-3875, promulgated July 6, 1950. Supra, p. 4.

[3] 55 Corpus Juris Secundum, p. 25.

[4] 55 Corpus Juris Secundum, p. 29.

[5] Op. cit. p. 33 citing many cases.

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