

CHAMBER OF AGRICULTURE AND NATURAL RESOURCES OF THE PHILIPPINES, ET AL., PETITIONERS VS. CENTRAL BANK OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-23244. June 30, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Original petition by a group of exporters for a writ of prohibition to restrain the Central Bank of the Philippines from continuing to enforce its Circulars No. 133 and 171, requiring that 20 % of export receipts be surrendered to the Central Bank at par value (P2.00 to \$1.00), and authorizing the sale of the other 80 % at the prevailing free market rate.

For a background of the case, it must be recalled that on December 9, 1949, because of a foreign exchange crisis, the Monetary Board of the Central Bank of the Philippines, claiming to act under section 71 of its Charter (Republic Act 265), and with the approval of the President, promulgated Circular No. 20, entitled "Restriction on Gold and Foreign Exchange Transactions", restricting sales of exchange by the Central Bank, subjecting all transactions in gold and foreign exchange to licensing, and requiring surrender of foreign exchange acquisitions to the authorized agents of the Central Bank.

On July 16, 1959, Republic Act No. 2609 was enacted to authorize the Central Bank to establish a margin of not more than 40% over banks' selling rates of foreign exchange, up to December 31, 1964 (section 10). Section 1 of this Act reads as follows:

"SECTION 1. The provisions of any law to the contrary notwithstanding when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Numbered Two Hundred sixty-five, the Central Bank, in respect of all sales of foreign exchange by the Central Bank and its authorized agent banks, shall have authority to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under section seventy-nines of Republic Act Numbered Two hundred sixty-five, which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve.

In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol."

In line with the provisions above-quoted, the Central Bank adopted a "Plan for Gradual Lifting of Exchange and Import Controls", by resolution of the Monetary Board dated April 22, 1960 (Answer, Annexes 13 & 14), outlining action that it considered necessary to be taken by the Monetary Board, Congress, and the Executive to carry gradual decontrol into effect, and the reasons therefor. To implement its part of the plan, the Central Bank

proceeded to issue, from time to time, certain circulars, as follows:

No. 105 (April 25, 1960), requiring 75% of export receipts to be surrendered to it at the official rate of P2 to \$1 and the balance of 25% at the "free market rate";

No. 111 (Sept. 12, 1960), reducing the retention rate from 75-25% to 70-30 %;

No. 117 (November 28, 1960), further reducing the rate to 50-50% ;

No. 121 (March 2, 1961), establishing a retention of 25% of export receipts at the official rate and authorizing sale of 75% at free market rates;

No. 133 (January 21, 1962), further reducing the retention rate to 20%-80%.

The percentage retained and sold to the Central Bank and resold by it at free market rates netted P366.74 millions, from 1962 up to March, 1964.

On April 23, 1964, the Monetary Board, claiming to act under section 74 of its Charter, and with the approval of the President, issued Circular No. 171, reciting in part as follows:

"WHEREAS, the gradual lifting of exchange controls under the above-mentioned circulars and others subsequently issued was premised on the adoption of complementary credit and fiscal measures to stabilize the economy, including adequate revision of the tariff and enactment of an export tax;

"WHEREAS, while the monetary authority has taken appropriate credit measures, the necessary fiscal measures, notably the enactment of an export tax contemplated under the program, were not implemented;

"WHEREAS the pressure on the international reserve of tire country and the threat to economic stability still continue and will become stronger if existing monetary measures to contain inflation are lifted;

"WHEREAS, the flute of exchange crisis still continues and in order to protect the international reserve of the Central Bank and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, it is necessary to continue in force existing Central Bank regulations governing transactions in foreign exchange;

"NOW THEREFORE, pursuant to the provisions of law, particularly section. 74 of Republic Act No. 265. and by unanimous vote of the Monetary Board and with approval of the President of the Philippines and in accordance with executive and international agreements to which the Republic of the Philippines is a party, the provisions of Circular No. 133, as amended, are hereby continued in force and effect."

Petitioners herein, invoking the decision of the Supreme Court in *Bacolod-Murcia Milling Co. vs. Central Bank of the Philippines* (G. R. No. 1[^]12610, October 25, 1963), paragraph 2 of section 1 of Republic Act 2609, urged that Circular No. 171 be reconsidered and set aside, and asked that the portion of export receipts "appertaining to the said retention be held in trust to be disposed of in accordance with the final judicial ruling of the competent Council" (Petition, Annex D), to which holding in trust the Central Bank agreed (Annex G).

Hence, the present action was initiated on July 27, 1964.

Tha petitioners insist that (a) the maintenance of the partial retention of export receipts (CB Circulars 171 and 133) is illegal in view of this Court's decision in the *Bacolod-Murcia Milling Co.* case (*supra*) ; (b) that maintenance of said circulars beyond December 31, 1964 contravenes paragraph 2 of Republic Act 2609; (c) that said Circulars involve an unlawful delegation of powers; (d) that they are confiscatory and are an invalid exercise of police power and that of eminent domain; (e) that they deprive exporters of property rights without due process; (f) that they actually impose a tax on exports, beyond the power of the Central Bank to impose.

The respondent Central Bank denies the legal propositions advanced by the petitioners⁰, and contends that maintenance of the 20% retention at parity of export dollars is a measure of exchange restriction designed to protect the international reserve of the Central Bank, as authorized by section 74 of Republic Act No. 265.

Miguel Cuaderno, former Governor of respondent Bank, in his authorized memorandum as intervenor, contends that after expiration of Republic Act 2609 the Central Bank no longer has the power to sell dollars at free market rates because such action constitutes an unauthorized devaluation of the peso, in violation of section 50 of the Central Bank Charter fixing the parity of the peso in relation to foreign currencies as well as sections 73 (par. 4), 72, 76, and 79.

From the foregoing, it can be seen that the only issue tendered by petitioner herein is whether the Central Bank is authorized by law to compel sale to it of 20% of exporter's foreign exchange receipts four years after the enactment of Republic Act No. 2609.

Petitioners proceed on the assumption that the pronouncement of the ponente, Mr. Justice Labrador, in *Bacolod-Murcia Milling Co. vs. Central Bank*, G. R. No. L-12610, October 25, 1963, to the effect that the Central Bank Act (R. A. 265) does not authorize it to require the surrender (commandeer) of foreign exchange earned by exporters and pay for it the price fixed by the Central Bank, was part of the ratio decidendi of the case and, therefore, a binding precedent. This is a misconception of the actual ruling in the case. As it clearly appears from the text itself (Decision, p. 12), the pronouncements in question were the personal views of the writer, and he said so in express terms.

"In short, the writer holds the view that the Central Bank Act merely authorizes the Monetary Board to license or to restrict or regulate foreign exchange; said Act does not authorize it to commandeer foreign exchange earned by exporters and pay for it the price it fixed, later selling it to importers at the same rate of purchase. The writer further holds the belief that the power to commandeer amounts to a confiscatory power that may not be exercised by the Central Bank under its Charter; that such confiscatory measures if justified by a monetary crisis can be adopted by the Legislature alone under its police power. In the opinion of the writer, therefore, the disputed Section 4 (a) of Circular No. 20 of the Central Bank is beyond the power of the Central Bank to adopt under the provisions of its Charter, particularly Section 71 thereof." (Italics supplied).

In significant contrast, on page 13 of the same decision, it is unqualifiedly stated that:

"The majority of the members of the Court, however, are of the belief that petitioner's present suit is subject to the defense of estoppel. * * *"

Thus it becomes plain that the views of the writer on the Central Bank's lack of power under Republic Act 265 to commandeer exporter's dollars did not represent the view of the majority members of the Court, and are not binding as legal doctrine.

The fact is that the validity of Central Bank (Circular No. 20, requiring exporters to surrender 100 % of their foreign exchange receipts to the Central Bank at legal parity (\$1 to P2), had been previously sustained by this Court in previous decisions (*People vs. Francisco Tan*, 108 Phil., 667; *Peo. vs. Koh, et al.*, 105 Phil. 925; *Earnshaw Docks vs. Gimenez*, L-14814, December 30, 1961) as well as in the Court's resolution of July 16, 1964 denying the motion to reconsider the decision in *Bacolod-Murcia vs. Central Bank*, L-21610 (*supra*), wherein it was stated:

"Under Republic Act No. 2609, the power of the Central Bank to commandeer the dollars earned by exporters was superseded by the provisions of said Act. * * *"

This pronouncement clearly recognizes that prior to R. A. No. 2609 the Central Bank had authority to

"commandeer the dollars earned by exporters", as was done by Circular No. 20, issued pursuant to the powers granted to the Bank by section 74 of its Charter, that—

"in order to protect the international reserve of the Central Bank during an exchange crisis the Monetary Board, with the concurrence of at least five of its members and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank, and may subject all transactions in gold and foreign exchange to license by the Central Bank."

This power to license and restrict foreign exchange transactions necessarily implies the authority of the Bank to impose upon licensees such conditions, including that of surrendering the receipts to the Bank, as the latter may deem necessary to protect its international reserve. Whether, in the face of the exchange crisis, the Central Bank should have limited itself to restricting imports to the value of exports (in itself an amount not susceptible of exact predetermination), or whether the Bank should also commandeer exports' foreign exchange in order to augment or replenish its exchange reserves, are matters primarily entrusted to the discretion of the Monetary Board and the President; they constitute questions of policy and wisdom that are not for the courts to decide, once it is apparent that the actions taken relate to the protection of the international reserve. That to secure this end is to the public interest requires no argument.

Petitioners question the existence of a real exchange crisis at the present date that would justify the continuation of the Bank's policy of requiring surrender to it, at parity, of any part of their foreign exchange earnings. The very fact that Republic Act No. 2609 authorized the imposition of a 40% margin fee on foreign exchange until December of 1964 is proof that there is an exchange crisis up to the present. That foreign exchange restrictions have existed since 1949 is no proof to the contrary. While crises, like emergencies, are ordinarily thought of suddenly arise and to pass away as quickly, there are no standards whereby any particular crisis can be held down a definite length of time. It is not contested that while the international reserves stood at \$251 million when controls were instituted on December 9, 1949, at the end of April, 1964, when Circular No. 171 was issued, the reserves had gone down to \$104.7 million (Ans., par. 20), so that the deterioration of the situation plainly demanded arresting measures. It appears logical that the crisis be considered as continuing, at least while the international reserves remain at a level below those of 1949.

On the other hand, that the required surrender of foreign exchange receipts has been gradually relaxed, from 100% under Circular No. 20 to only 20% under Circulars Nos. 133 and 171, would apparently indicate that the crisis is waning, and that the exchange restrictions of the Central Bank are really temporary, as contemplated in section 74 of the Charter, and are by no means permanent. Hence, the maintenance of the retention of exporters' earnings can not be said to clearly transcend the limits set by section 74 of the Central Bank Charter.

Petitioners also urge that under paragraph 2 of section 1 of Republic Act 2609, it was obligatory for the Central Bank to decontrol all foreign exchange in four years. As we read the paragraph (previously quoted in this opinion), there is nothing therein that imperatively decrees total decontrol after four years from the passage of the Act in 1960. The express terms are that—

"the monetary authorities, shall take steps for the adoption of a four year program of gradual decontrol."

It is not difficult to understand why the legislature did not deem it wise to decree that after four years total decontrol should exist. Total decontrol would necessarily depend on the balance of payments and a multiplicity of complex economic factors that could not be foreseen in their entirety four years in advance. Nor has the Legislature imposed on the Central Bank the duty to decontrol exchange after 4 years to the extent of sacrificing the main objectives and responsibilities set in its Charter (R. A. No. 265, sec. 2). to wit: maintain monetary stability; preserve the international value and convertibility of the peso; and promote a rising level of production,

employment, and real income in the Philippines. Hence, the cautious wording of the statute: to take steps to adopt a 4-year program of gradual decontrol, without even specifying from what date the period should be counted.

Has the Central Bank complied with the statutory injunction? The records show that it did. It formulated such a program by Monetary Board Resolution No. 632, dated April 22, 1960, a "Plan for Gradual Lifting of Exchange and Import Controls", outlining the measures that ought to be taken by the Central Bank, the Administration, and the Congress for a successful decontrol after 4 years (Answer, Exhibits 18 and 14), and started relaxing its own exchange restrictions, from Circular No. 105 (of April, 1960) to 171 of April 25, 1964. Unfortunately, as expressed in the preamble to Circular No. 171, while the bank adopted appropriate credit measures, the complementary fiscal measures required for the success of the program were not adopted; so that in order to protect the international reserve, it became necessary to continue beyond 1964 the existing regulations governing foreign exchange transactions, previously established by Central Bank Circular No. 133.

Petitioners lay much emphasis in the pronouncement of this Court to the effect that the Central Bank's power to commandeer foreign exchange receipts had been superseded by Republic Act 2609 (Resolution of July 16, 1964 on Motion to Reconsider, *Bacolod-Murcia Milling Co. vs. Central Bank*, L-12610), and argue that this supersession implies a repeal of any such powers. But in the first place, section 1 of Republic Act No. 2609 expressly recognizes the Central Bank's power to control foreign exchange transactions:

"The provisions of any law to the contrary notwithstanding when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Number Two Hundred Sixty-five * * *."

In the second place, as already pointed out, Republic Act 2609 did not decree absolute decontrol after four years. In fact, the speech of Senator Puyat announcing and sponsoring his amendment that later became paragraph 2, section 1, of Republic Act No. 2609 (said speech being the only parliamentary discussion touching on the point) reveals that the intention was that the decontrol should be such that by the end of the fourth fiscal year no less than 80% of the total imports are decontrolled (Senate Journal No. 20, June 29, 1959).

"2. In advocating the marginal fee on foreign exchange my decision is necessarily premised steps should be simultaneously "taken otherwise even this measure now under consideration would be in vain;

"b) The Central Bank should plan and work out the implementation of the provisions of this Bill, if enacted, to:

x x x x x x

"(4) effect a gradual decontrol scheme whereby, for example, during the first fiscal year this measure will be implemented all essential consumer imports will be added to the present decontrolled list. During the second fiscal year an appreciable percentage of the essential producers items will be added to the decontrolled list; the third fiscal year the decontrolled goods will be expanded by the inclusion of some more essential producers goods; and in the fourth fiscal year the full essential producer's requirements may be decontrolled and then expand the decontrolled list to include a certain percentage of the semi-essential producers goods so that by the end of the fourth fiscal year no less than 80% of the total imports are decontrolled. I am presenting an amendment to make this suggestion a part of the bill." (See transcript of Senate Journal No. 20, June 29, 1959, on file at the Senate Journal Division; Italics supplied.)"

Now, if by the end of the four-year program envisaged by Republic Act No. 2609 imports were designed to be decontrolled up to 80%, then the power and authority of the Central Bank to restrict and license foreign exchange transactions under section 74 of its Charter had to continue with respect to the balance. In other words, the supersession of section 74 (R.A. 265) by Act 2609 was not total, and the power continued to exist, albeit limited by the provisions of said Act 2609.

Petitioners call attention to the declaration contained in Central Bank Circular No. 105 of April 25, 1960 (Answer, Exh. "i") to the effect that—

"The percentage of transactions in the from market will be increased gradually each year until all purchase and sale of foreign exchange will be effected in the free market not later than 1964."

We fail to see, however, how this provision can be considered beyond a mere expression of what the Central Bank expected to achieve. As we have previously shown, whether or not conditions would permit total decontrol by 1964 or later depended on factors that were not susceptible of accurate gauging or participation four years in advance. Moreover, it was evidently a declaration made on the assumption that the Central Bank's Plan for Gradual Decontrol would meet with the active cooperation of all sectors of the Government, which, unfortunately, proved to be wanting. The assumed premises not having materialized, the Central Bank can not in justice be held to the letter of its declaration.

In any event, as stated by amicus curiae (Memorandum P. 6)—

"Even granting, for the sake of argument, that, because of the Congressional mandate (the Puyat amendment) at the end of the four-year period, all controls had become invalid after April 25, 1964 still the Monetary Board of the Central Bank acted in accordance with the Charter of the said Bank, particularly Section 74 thereof when on April 23, 1964, that body issued Circular No 171 continuing the existing controls under Circular No. 133 of January 21, 1962. In approving Section 74 of the Charter of the Central Bank, Congress must have realized that factors which could bring about a foreign exchange crisis could emerge at any time in an under developed economy. It is inconceivable that Congress in approving the Puyat amendment intended to inhibit the respondent Central Bank from reimposing exchange controls after the four-year period of decontrol even if the country was in the throes of a foreign exchange crisis."

Petitioners aver that exports are not being licensed at present by the Central Bank. This allegation is nullified by the terms of Central Bank Circular 133 (which was merely maintained by Circular 171, here questioned) that—

"1. All exports shall be previously authorized by the Central Bank, and receipts of foreign exchange therefrom shall be subject to the following:

a) Eighty (80%) per cent of all export receipts as well as all receipts from invisibles shall be retained by the authorized agent banks for sale at the prevailing free market rate.

b) Twenty (20%) per cent balance of export receipts shall be surrendered to the Central Bank at par value (P2.00 to \$1.00).

c) The proceeds of exports must be received in currencies prescribed to form part of the international reserve"

(CB Cir. No. 103, Jan. 31, 1962-Exh. 5.)

The requirement that "all exports shall be previously authorized" is, in effect, a regulation that export must be licensed by the Bank, subject to the conditions specified.

The claim that the 20 %o retention is in effect a confiscation of foreign exchange is an exaggeration, considering that the 20 c/o retained by respondent Central Bank is paid for at the legal parity or value for the peso, as established by law (R.A. 265, sec. 48). Granting that the Central Bank resells the dollars at a higher price and realizes profits thereby, it must be remembered that under section 44 of the Bank Charter the profits thus obtained are credited to the "Revaluation of International Reserve" account, which can not be included in the computation of the annual profit and loss of the respondent Central Bank (Answer, Exh. "25"). They are, therefore, not profits in the usual sense, disposable at the discretion of the Bank or the Monetary Board; instead, they are primarily

earmarked for the stabilization of the national currency.

"SEC. 44"—Revaluation profits and losses.—The revaluation profits or losses made or assumed by the Central Bank in accordance with the provisions of sections 77 and 83 of this Act shall not be included in the computation of the annual profits and losses of the Central Bank.

Any profits or losses arising in this manner shall be offset by any amounts which, as a consequence of such revaluations are owed by the Philippines to the International Monetary Fund and the International Bank for Reconstruction and Development or are owed by these institutions to the Philippines. Any remaining profit or loss shall be carried in a special frozen account which shall be named "Revaluation of International Reserve" and the net balance of which shall appear either among the liabilities or among the assets of the Central Bank, depending on whether the revaluation have produced net profit or net losses.

The Revaluation of International Reserve account shall be neither credited nor debitted for any purpose other than those specifically authorized in the present section or in section 45 of this Act."

Neither do we find merit in the argument that the 20% retention of exporters' foreign exchange constitutes an export tax. A tax is a levy for the purpose of providing revenue for government operations, while the proceeds of the 20% retention, as we have seen, are applied to strengthen the Central Bank's international reserve.

The remaining objections advanced by petitioners in assailing the maintenance of the 20% retention under Circular 133 and 171, that it constitutes an undue delegation of legislative power on an invalid exercise of police power, have already been adversely resolved by this Court in connection with other Central Bank Circulars (Nos. 21 and 37) of the same character as those assailed now (*Peo. vs. Jolliffe*, 105 Phil. 677; *Peo. vs. Excone*, 101 Phil. 405; *Peo. vs. Tan*, 108 Phil. 667).

In the last case (*Peo. vs. Tan*, *supra*) this Court stated:

"In any event, the purchase of foreign exchange, directly or indirectly, without the necessary license or permit from persons or entities other than the Central Bank or its authorized agents constitutes a violation of Circular No. 20, regardless of the length of possession of said foreign exchange.

Under the fourth assignment of error, defendants contend that Circular No. 20 cannot be considered a valid penal law because (1) it has not been approved by the President of the Philippines; (2) it contravenes international agreements to which the Philippines is a party; (3) its context does not indicate that it was an emergency measure which temporarily suspends or restricts sales of exchange; (4) it could only be issued as an emergency measure during a crisis and has no more force or effect since the emergency it seeks to remedy never existed or no longer exists; and (5) it constitutes an undue delegation of legislative power. The issues raised may now be considered settled by the decisions of this Court in cases of *People vs. Jolliffe*, *supra*; *People vs. Koh, et al.*, 105 Phil. 925; *People vs. Herderson*, 105 Phil. 859; and *People vs. Lim Ho, et al.*, *supra*, wherein the validity of Central Bank Circular No. 20 was assailed on identical grounds.

In all the above-cited cases, this Court held that Circular No. 20, which subjects to licensing by the Central Bank all transactions in gold and foreign exchange, was in fact approved by the President of the Philippines. As regards the necessity of approval by the International Monetary Fund, this Court said in *People vs. Koh*, *supra*, that "it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials knew whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments".

With respect to the contention that the authority of the Monetary Board to suspend or restrict the sales of exchange to license is temporary in nature and may be exercised only during an exchange crisis, and that the

context of the circular in question does not indicate that it was a temporary emergency measure, this Court again said in *People vs. Jolliffe*, supra: "It is not necessary, however, for the legality of said circular that its temporary character be stated on its face, so long as the circular has been issued during an exchange crisis, for the purpose of combating the same. In the absence of evidence to the contrary which has not been offered in the present, it is presumed that the provisions of sec. 74 of Republic Act 265, under the authority of which the aforementioned circular was issued, has been complied with. Besides, the fact that there has been an exchange crisis in the Philippines and that such crisis, not only existed at the time of the issuance of said circular in 1949 and 1950, but, also, has remained in existence up to the present, may be taken judicial cognizance of".

Regarding the allegation that the grant of authority to the Central Bank to issue the same constitutes an undue delegation of legislative power, this Court has also held in the case of *People vs. Jolliffe* that the standards set forth in the Central Bank Charter (Rep. Act No. 265) are sufficiently concrete and definite to vest in the delegated authority the character of administrative details in the enforcement of the law and to place the grant of said authority beyond the category of a delegation of legislative powers * * *."

We conclude, therefore, that the continuation by Central Bank Circular No. 171 of the 20% retention of foreign exchange receipts for sale to the Central Bank at parity is a valid exercise of the emergency powers granted to the Bank under section 74 of Republic Act No. 265 (Central Bank Act), and that said powers continue in existence at the expiration of Republic Act No. 2609.

With respect to the point raised by the intervenor, Miguel Cuacferno, Sr., that upon the expiration of Republic Act 2609 the Central Bank may only sell dollars at parity (P2 for \$1), unless a new par value for the peso is set in accordance with section 49 of the Central Bank Act (R. A 265) we find that the question lies outside the issues posed by the pleadings of the parties; they limited their controversy to the 20% retention of exporters' dollars, and, therefore we must decline to rule on other questions without prejudice to our doing so if and when the same are placed in issue by interested parties in a proper case. The function of the courts is to decide only actual controversies, not to pass upon hypothetical cases or to give opinions upon abstract propositions (*Cruz vs. Martin*, 75 Phil. 11).

IN VIEW OF THE FOREGOING, the writ of prohibition prayed for is denied. Without special pronouncements as to costs.

Bengzon, C.J., Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

Petition denied.

CONCURRING

BENGZON, J. P., J.,

With complete awareness of the gravity of the case at bar, I have joined my colleagues in giving the issues the intensive study they deserve. For the situation presented here involves a problem that would strike deeply into the country's economy. And a nation's economic position has greatly to do with the reality or fullness of its sovereignty. Fully concurring with the majority opinion, I would like to lay further emphasis on some central points.

Petitioners are, as stated in the majority opinion, producers and/or exporters whose current exports amount to about \$2,055,000.00 daily. On April 25, 1960, respondent Central Bank of the Philippines, pursuant to Republic Act 2609 among others, adopted a 4-year program of gradual decontrol. Among the series of circulars thereafter issued by respondent in accordance with said program, was C.B. Circular No. 133, effective January 21, 1962,

allowing exporters to sell 80% of their foreign exchange receipts at free market rate^[1] and requiring them to surrender 20% of said receipts to the Central Bank at the official rate of P2.00 to \$1.00.^[2]

On April 23, 1964, or two days short of four years since gradual decontrol was actually started on April 25, 1960, respondent passed C.B. Circular No. 171, to take effect April 25, 1964, extending the force and effect of Circular No. 133.

Petitioners asked respondent for a reconsideration of Circular No. 171.

Respondent's Governor Andres V. Castillo, on May 22, 1964, wrote petitioners that "Since April 25, 1964, the Central Bank recognizes and will continue to recognize the reservation on the part of exporters to claim the peso differential incident to the twenty percent (20%) foreign exchange being retained by the Central Bank and that "The said differential shall continue to be held in trust by the Central Bank, to be disposed of pursuant to final judicial determination or under such solution as may be acceptable to the parties." (Annex "1" to the Answer)

Thereafter, petitioner came to this Court.

Petitioners specifically invoke Paragraph 2, Section 1, Republic Act 2609:

"In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol."

Since respondent started the implementation of its decontrol program on April 25, 1960, petitioners argue that pursuant to the above-quoted provision of Republic Act 2609, respondent was bound to effect total decontrol, and thus lift outright the 20% retention under Circular No. 133, after April 25, 1961.

To begin with, it must be noted that the provision relied upon speaks of steps to adopt a "four-year program of gradual decontrol" without stating that such gradual decontrol must culminate, at the end of the four-year period, in full decontrol. Which is but understandable, for Senator Puyat himself, who proposed the insertion in Republic Act 2609 of the provision in question, as a matter of fact put in record an "example" of how the scheme of what he termed "gradual decontrol" may be followed: so that by the end of the fourth fiscal year no less than 80% of the total imports are decontrolled" (Senate Journal No. 20, June 29, 1959). Clearly, therefore, the phrase in the law regarding adoption of a four-year program of gradual decontrol does not necessarily mean total decontrol at the end of the four-year period. Incidentally, Congress must have been aware, as it is presumed to be aware, of the Articles of Agreement of the International Monetary-Fund, to which the Philippines is signatory, providing, in effect, that before exchange restrictions may be withdrawn a stable economic position must first be in existence:

"SEC. 2. Exchange restrictions.—In the postwar transitional period members may, notwithstanding the provisions of any other articles of this agreement, maintain and adopt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund." (Article XIV, italics supplied.)

Secondly, it must be noted further from the above-quoted provision of Republic Act 2609 that the projected adoption of a four-year program of gradual decontrol is premised with the objective of implementing "the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy". As I see it,

therefore, the envisioned gradual decontrol is tied up with, not regardless of, economic stability; not necessarily a total decontrol after four years at all costs, but such gradual decontrol, along with other credit and fiscal measures, as would reasonably insure stability of the nation's economy.

Now, in compliance with the law, the Central Bank formulated an integrated four-year program of gradual decontrol (Annex "13" to the Answer) incorporating expected adoption of certain fiscal measures in conjunction with

which the gradual decontrol was to be implemented. Among these were corollary actions to be taken by Congress, thus:

"I. THE PLAN—

"A. Action to be Taken:

"1. * * *

"2. By the Congress:

"a. Repeal of barter (Republic Act 2261).

"b. Amendment of Margin Law (Republic Act 2609) eliminating the exemptions provided in said law.

"c. An enabling Act authorizing the President to impose an export tax of not more than 40 %, to take effect not later than the end of 1962." (Annex "13" to the Answer)

These complementary measures were expected to forestall disequilibria resulting from the impact of decontrol. For instance, explaining the need for "an enabling Act authorizing the President to impose an export tax not later than the end of 1962" it is stated in the program of gradual decontrol:

"3. Why an export tax must be enforced after 1962:

"Upon the expiration of the margin levy and when full decontrol is achieved, the exporters will enjoy large windfall incomes due to the changed rates so that in order to curb inflation a portion of such windfalls must be siphoned off by an export tax. And since such tax will replace the margin levy it will also serve as a source of development revenue. After 1962, tariffs will have full effective on imports from the United States which constitute half of our total imports. Thus, with the changed rates and full tariffs, there will be an adequate cost restrictions on import demand.

The expectations, however, did not materialize. It is admitted for one, that the Legislature failed to pass the projected export-tax measure. Thus it became impossible to effect total decontrol within the four-year time-table without serious economic dislocation.

The set-up of the economy on April 25, 1964—the date when, according to petitioners, total decontrol should have been effected by the Central Bank—was as follows: "Consumer price indices, since September of 1963, had exceeded the ceilings indicated by Section 66 of the Central Bank Act. From 1963 to February 1964, the level of money supply for every month had exceeded by more than 15% the corresponding 1962 figures. And during the first four months of the year 1964, total international reserve dropped by 30% from \$147 million to \$103.70 million, admittedly far below satisfactory level, aside from being the lowest since the gradual decontrol program was initiated. (Exhibits 31 to 32)

Considering, then, the prevailing disequilibrium in the economy, and the tenor as well as the objectives of the aforesaid provision of Republic Act 2609, respondent certainly was not called upon to swing the country into total decontrol on April 25, 1964 as petitioners would have wanted. Such an action, the outright lifting of the 20% retention under Circular No. 133, would most likely, have generated further inflationary pressures on the

economy, with the release of around P1 million to P1.5 million of additional money per day[3]; prices would have risen still higher; and our international reserve position would have all the more seriously deteriorated.

Nonetheless, petitioners—invoking the personal opinion of Mr. Justice Labrador in the case of Bacolod Murcia Milling Co., Inc. vs. Central Bank of the Philippines, L-12610, October 25, 1963—would claim that the 20% retention by the Central Bank is at least partly confiscatory in nature, and that the adoption of confiscatory measures falls within the Legislature's functions in its exercise of the police power. Supposing it is so, is there, then, an undue delegation of legislative power to the Central Bank, as petitioner would conclude? The negative answer must of course be held, in view of the controlling jurisprudence evolved in at least two precedents, namely, the cases of Jolliffe and Tan cited in the majority decision, concerning other Central Bank Circulars (Nos. 21 and 37)) of the same import as those presently assailed.

[1]Around P3.90 to \$1.00 presently.

[2]Circulars issued pursuant to RA' 2609 and RA 205 and in, accordance W1th Executive and International Agreements to which the Republic of the Philippines is a party.

[3]See Par. 5 of Petition and p. 7 of Petitioners' Memorandum.

CONCEPCION, J.,

I concur in the undergoing opinion of Mr. Justice Reyes (J.B.L.) as well as in the concurring opinion of Mr. Justice J.P. Bengzon.

DISSENTING

BAUTISTA ANGELO, J.,

I dissent from the majority opinion which upholds the validity of Circulars Nos. 133 and 1711 of the Central Bank because I am of the view that by requiring 20c/o of export receipts to be surrendered at par value is in effect to deprive the exporter of their true value at the prevailing free market rate. This is confiscatory, as already expressed by Mr. Justice Labrador in Bacolod-Murcia Milling Co., Inc. vs. Central Bank of the Philippines L-12610, October 25, 1963, to whose views I fully subscribe. Specifically, I concur in the following opinion of Mr. Justice Labrador:

"In short, the writer holds the view that the Central Bank Act merely authorizes the Monetary Board to license or to restrict or regulate foreign exchange; said Act does not authorize it to commandeer foreign exchange earned by exporters and pay for it the price it fixes, later selling it to importers at the same rate of purchase. The writer further holds the belief that the power to commandeer amounts to a confiscatory power that may not be exercised by the Central Rank under its Charter; that such confiscatory measures if justified by a monetary crisis can be adopted by the Legislature alone under its police power. In the opinion of the writer, therefore, the disputed Section 4 (a) of Circular No. 20 of the Central Bank is beyond the power of the Central Bank to adopt under the provisions of its charter, particularly Section 74 thereof."

It is averred that the 20% retention of foreign receipts does not have the effect of confiscation because said 20 % is paid for at legal parity as established by law, but there is a substantial difference between the par value of the peso and its value at the prevailing free market rate, of which difference the exporter is deprived without compensation. And this cannot be justified simply because its purpose is to strengthen the Central Bank's international reserve.

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