

CENON S. CERVANTES, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

G.R. No. L-4043. May 26, 1952

Ponente: REYES, J.

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REYES, J.:

This is a petition to review a decision of the Auditor General denying petitioner's claim for quarters allowance as manager of the National Abaca and Other Fibers Corporation, otherwise known as the NAFCO.

It appears that petitioner was in 1949 the manager of the NAFCO with a salary of P15,000 a year. By a resolution of the Board of Directors of this corporation approved on January 18 of that year, he was granted quarters allowance of not exceeding P400 a month effective the first of that month. Submitted to the Control Committee of the Government Enterprises Council for approval, the said resolution was on August 3, 1949, disapproved by the said Committee on the strength of the recommendation of the NAFCO auditor, concurred in by the Auditor General, (1) that quarters allowance constituted additional compensation prohibited by the charter of the NAFCO, which fixes the salary of the general manager thereof at a sum not to exceed P15,000 a year, and (2) that the precarious financial condition of the corporation did not warrant the granting of such allowance.

On March 16, 1949, the petitioner asked the Control Committee to reconsider its action and approve his claim for allowance for January to June 15, 1949, amounting to P1,650. The claim was again referred by the Control Committee to the Auditor General for comment. The latter, in turn, referred it to the NAFCO auditor, who reaffirmed his previous recommendation and emphasized the fact that the corporation's finances had not improved. In view of this, the Auditor General also reiterated his previous opinion against the granting of petitioners claim and so informed both the Control Committee and the petitioner. But as the petitioner insisted on his claim the Auditor General Informed him on June 19, 1950, of his refusal to modify his decision. Hence this petition for review.

The NAFCO was created by Commonwealth Act No. 332, approved on June 18, 1939, with a capital stock of P20,000,000, 51 per cent of which was to be subscribed by the National Government and the remainder to be offered to provincial, municipal, and city governments and to the general public. The management of the corporation was vested in a board of directors of not more than 5 members appointed by the President of the Philippines with the consent of the Commission on Appointments. But the corporation was made subject to the provisions of the corporation law in so far as they were compatible with the provisions of its charter and the purposes for which it was created and was to enjoy the general powers mentioned in the corporation law in addition to those granted in its charter. The members of the board were to receive each a per diem of not to exceed P30 for each day of meeting actually attended, except the chairman of the board, who was to be at the same time the general manager of the corporation and to receive a salary not to exceed P15,000 per annum.

On October 4, 1946, Republic Act No. 51 was approved authorizing the President of the Philippines, among other things, to effect such reforms and changes in government-owned and controlled corporations for the purpose of

promoting simplicity, economy and efficiency in their operation. Pursuant to this authority, the President, on October 4, 1947, promulgated Executive Order No. 93 creating the Government Enterprises Council to be composed of the President of the Philippines as chairman, the Secretary of Commerce and Industry as vice-chairman, the chairman of the board of directors and managing heads of all such corporations as ex-officio members, and such additional members as the President might appoint from time to time with the consent of the Commission on Appointments. The council was to advise the President in the exercise of his power of supervision and control over these corporations and to formulate and adopt such policy and measures as might be necessary to coordinate their functions and activities. The Executive Order also provided that the council was to have a Control Committee composed of the Secretary of Commerce and Industry as chairman, a member to be designated by the President from among the members of the council as vice-chairman and the secretary as ex-officio member, and with the power, among others—

"(1) To supervise, for and under the direction of the President, all the corporations owned or controlled by the Government for the purpose of insuring efficiency and economy in their operations;

"(2) To pass upon the program of activities and the yearly budget of expenditures approved by the respective Boards of Directors of the said corporations; and

"(3) To carry out the policies and measures formulated by the Government Enterprises Council with the approval of the President". (Sec. 3, Executive Order No. 93.)

With its controlling stock owned by the Government and the power of appointing its directors vested in the President of the Philippines, there can be no question that the NAFCO is a Government controlled corporation subject to the provisions of Republic Act No. 51 and the executive order (No. 93) promulgated in accordance therewith. Consequently, it was also subject to the powers of the Control Committee created in said executive order, among which is the power of supervision for the purpose of insuring efficiency and economy in the operations of the corporation and also the power to pass upon the program of activities and the yearly budget of expenditures approved by the board of directors. It can hardly be questioned that under these powers the Control Committee had the right to pass upon, and consequently to approve or disapprove, the resolution of the NAFCO board of directors granting quarters allowance to the petitioner as such allowance necessarily constituted an item of expenditure in the corporation's budget. That the Control Committee had good grounds for disapproving the resolution is also clear, for, as pointed out by the Auditor General and the NAFCO auditor, the granting of the allowance amounted to an illegal increase of petitioner's salary beyond the limit fixed in the corporate charter and was furthermore not justified by the precarious financial condition of the corporation.

It is argued, however, that Executive Order No. 93 is null and void, not only because it is based on a law that is unconstitutional as an illegal delegation of legislative power to the executive, but also because it was promulgated beyond the period of one year limited in said law. The second ground ignores the rule that in the computation of the time for doing an act, the first day is excluded and the last day included (Section 13, Rev. Ad. Code.) As the act was approved on October 4, 1946, and the President was given a period of one year within which to promulgate his executive order and that order was in fact promulgated on October 4, 1947, it is obvious that under the above rule the said executive order was promulgated within the period given.

As to the first ground, the rule is that so long as the legislature "lays down a policy and a standard is established by the statute" there is no undue delegation. (11 Am. Jur. 957). Republic Act No. 51 in authorizing the President of the Philippines, among others, to make reforms and changes in government-controlled corporations, lays down a standard and policy that the purpose shall be to meet the exigencies attendant upon the establishment of the free and Independent Government of the Philippines and to promote simplicity, economy and efficiency in their operations. The standard was set and the policy fixed. The President had to carry the mandate. This he did by

promulgating the executive order in question which, tested by the rule above cited, does not constitute an undue delegation of legislative power.

It is also contended that quarters allowance is not compensation and so the granting of it to the petitioner by the NAFCO board of directors does not contravene the provisions of the NAFCO charter that the salary of the chairman of said board who is also to be general manager shall not exceed P15,000 per annum. But regardless of whether quarters allowance should be considered as compensation or not, the resolution of the board of directors authorizing payment thereof to the petitioner cannot be given effect since it was disapproved by the Control Committee in the exercise of the powers granted to it by Executive Order No. 93. And in any event, petitioner's contention that quarters allowance is not compensation, a proposition on which American authorities appear divided, cannot be insisted on behalf of officers and employees working for the Government of the Philippines and its instrumentalities, including, naturally, government-controlled corporations. This is so because Executive Order No. 332 of 1941, which prohibits the payment of additional compensation to those working for the Government and its instrumentalities, including government-controlled corporations, was in 1945 amended by Executive Order No. 77 by expressly exempting from the prohibition the payment of quarters allowance "in favor of local government officials and employees entitled to this under existing law." The amendment is a clear indication that quarters allowance was meant to be included in the term "additional compensation", for otherwise the amendment would not have expressly excepted it from the prohibition. This being, so, we hold that, for the purposes of the executive order just mentioned, quarters allowance is considered additional compensation and, therefore, prohibited.

In view of the foregoing, the petition for review is dismissed, with costs.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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