

BOTHELHO SHIPPING CORPORATION, PETITIONER, VS. THE HON. JOSE N. LEUTERIO, SENATOR FERDINAND MARCOS, REPRESENTATIVE RAMON BAGATSING AND ABELARDO SUBIDO, RESPONDENTS.

G.R. No. L-20420. May 30, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an original petition for certiorari directed against the decision of the Court of First Instance of Manila in Civil Case No. 48661, in so far as said decision affects the intervenor Bothelho Shipping Corporation, petitioner here.

Petitioner, a Filipino-owned corporation organized and doing business in accordance with the laws of the Philippines, filed an application with the Reparations Commission sometime in 1956 for the acquisition of two (2) ocean-going vessels under the Reparations Program. One of the vessels was provisionally awarded to it in 1959 and included in the third reparations year schedule.

On May 9, 1960 the Reparations Commission submitted to the President of the Philippines thru the National Economic Council a tentative schedule for the fifth reparations year, compromising the period from July 23, 1960 to July 22, 1961, which included a variety of projects amounting to \$66,076,630.00. Among those projects were ocean going vessels (2 units) valued at \$6,600,000.00. The National Economic Council, by letter dated September 19, 1960, forwarded the tentative schedule to the President with the recommendation that it be approved as amended. The amendment eliminated, among other items, that pertaining to ocean-going vessels and pared down the aggregate amount of all the items to \$32,586,109.00. In its letter of transmittal and recommendation to the President the National Economic Council stated the reasons for the reduction as follows:

"It will be noted from the foregoing table that the Council approved projects in total amount of \$32,586,109.00 against the total procurement originally recommended by the Reparations Commission in the amount of \$66,076,638.00. The reduction was made on the basis of a verbal information by Commissioner Gregorio Abad to the effect that the Japanese Government is disposed to approve for the fifth year schedule reparations payments in the amount of only around \$30.0 million.

"As already indicated the amount of procurement was reduced to \$32,586,109.00 for reasons already stated above. However, in the event that the Reparations Commission succeeds in arranging for a bigger amount than what is hereby recommended by the Council, it is hereby recommended that certain projects which are either deferred or disapproved and are presently the subject of pending petitions for reconsideration by the interested parties may if favorably reconsidered be included in the expanded schedule."

On May 16, 1961 the President sent a letter to the Chairman of the Reparations Commission containing a list of the projects approved by him for submission to the Japanese Government as the tentative schedule for the fifth reparations year, "after considering the recommendations of the National Economic Council." In the schedule thus

approved by the President the amount of \$6,600,000.00 for ocean-going vessels was restored and the value of all the projects listed was increased to \$79,634,056.00.

The Reparations Commission, through the Reparations Mission in Japan, succeeded in concluding with the Japanese Government on October 25, 1961 a final schedule in the total amount of \$88,783,386.00, including \$13,200,000.00 for ocean-going vessels. One of these, worth \$3,300,000.00 was allotted to herein petitioner pursuant to resolution No. 485 of the Reparations Commission dated November 20, 1961. This is the second of the two vessels applied for by it. The final schedule for the fifth reparations year as agreed upon with the Japanese Government was re-designated as the schedule for the sixth reparations year (July 23, 1961 to July 22, 1962) because at the time it was finally approved the fifth reparations year was already over. Upon learning of the award in its favor petitioner made a down payment of P330,000.00 to the Reparations Commission in accordance with Republic Act No. 1789 and the Commission thereupon, on December 12, 1961, passed resolution No. 516 approving the purchase by petitioner of one (1) ocean-going vessel as awarded. The contract of purchase was executed and signed by petitioner and by the Reparations Commission on the following December 14.

Meanwhile, on November 6, 1961 a petition was filed in the Court of First Instance of Manila (Civil Case No. 48661) by Senator Ferdinand Marcos, Congressman Ramon D. Bagatsing and Abelardo Subido against the Reparations Commission and its members, asking that "the revision, expansions or modifications to the Fifth Year Schedule as recommended by the National Economic Council" be declared null and void; that defendants be ordered "to recognize and implement the original schedule as recommended by the National Economic Council;" and that a writ of preliminary injunction, subsequently to be made permanent, be issued to prevent defendants from issuing procurement orders in favor of persons "who have not complied with the requirements of Section 6, subsection a-1 of the Reparations Act and for items not included in the original schedule endorsed by the National Economic Council."

As prayed for by plaintiffs a writ of preliminary injunction was issued by respondent court on November 28, 1961. Defendants filed their answer in due time asking for the dismissal of the complaint. On February 28, 1962 the Bothelho Shipping Corporation filed a motion to intervene, which was granted, and asked specifically that the writ of preliminary injunction be declared inapplicable to the vessel applied for by and allocated to it. On July 11, 1962 the court rendered its decision, the dispositive portion of which is as follows:

"In view of the foregoing, the Court holds that the expanded schedule approved by His Excellency, the President of the Philippines, involving a total of \$79,634,056.00 insofar as the projects therein had not been previously recommended by the National Economic Council is null and void and the writ of preliminary injunction heretofore issued by the Court is made permanent, excepting projects in favor of the intervenors, with respect to whom, the writ of preliminary injunction had been lifted. Insofar as those intervenors are concerned, the orders lifting the writ of preliminary injunction are hereby, made permanent. Without pronouncement as to costs."

The intervenors referred to in the decision as to whom the injunction had been previously lifted are the Transocean Transport, Inc., and Eastern Shipping Lines. It has not been lifted, but on the contrary rendered permanent, with respect to herein petitioner Bothelho Shipping Corporation. An ex-parte motion was filed by it before us to lift the injunction in the meantime, but we have resolved to defer action thereon until this case is considered and resolved on the merits.

The main issue in this case is whether under the applicable provisions of law the recommendation of the National Economic Council concerning the reparations schedule was merely advisory upon the President, or whether it was compulsory and binding upon him in such a way that, as held by the trial court, the expanded schedule approved by him for the fifth reparations year (later re-designated as the sixth) was null and void.

Section 6, paragraph (a), of Republic Act 1789, prior to its amendment by Republic Act 3079 on July 17, 1961, provided as follows, with respect to the powers granted to the Reparations Commission:

"(a) To prepare sufficiently in advance of need on the basis of the previously approved reparations program and approved applications for reparations goods and services, a tentative schedule of goods and services clearly indicating therein the name of the applicant end-user and the amount allocated for each project to be procured from Japan every year which, when approved by the President of the Philippines upon recommendation of the National Economic Council, shall form the basis of consultation between the Philippines and Japanese Governments towards the formulation of the schedule called for in Article four of the Reparations Agreement."

To "recommend," as the word is generally understood and accepted, is to present one's advice or choice and involves the idea that another has the final decision. Indeed the action of the President himself, approving the recommendation of the National Economic Council, is designed merely to "form the basis of consultation between the Philippine and Japanese Governments towards the formulation of the schedule called for in Article four of the Reparations Agreement." This is as it should be, because the schedule of reparations from year to year as prepared by the Government of the Republic is not necessarily conclusive upon the Government of Japan.

The deliberations in Congress during the consideration of House Bill No. 6753, which was subsequently enacted into Republic Act 1789, show the scope of the recommendatory function lodged in the National Economic Council. Thus Congressman Jose Roy, in answer to an interpellation, explained:

"Mr. Roy: The agencies created in this proposed law are the Reparations Commission and the Mission in Tokyo. The National Economic Council was created by law, Economic Plan No. 10, as an advisory body to the President. Insofar as reparations is concerned, it is among the functions of the National Economic Council to prepare a program of reparations, but that is only advisory. As you will see in the provisions of this measure, it is the President who will finally approve the reparations program. The National Economic Council is an extension of the personality of the President, and as an advisory council it can only advise the President." (Congressional Record, dated Thursday, March 14, 1957, page 823)."

It is true that on July 17, 1961 Section 6, paragraph (a), of Republic Act 1789 was amended by Republic Act 3079, which requires that the "eligible projects" included in the five-year reparations program to be prepared by the Reparations Commission "shall be strictly priority-rated * * * in accordance with the system of priorities established by the National Economic Council * * *"; that "no project shall be included in the tentative schedule unless it has been previously priority-rated as part of the five-year reparations program;" and that the order or priority of each project in the tentative agreed schedule "may not be altered without prior notice to and approval of the corresponding change or amendment by the National Economic Council or the President * * *." But whatever may be the correct interpretation of this amendment-as to which we do not deem it necessary here to express our views-it has no application in the case at bar, because when the President approved the tentative schedule for the fifth reparations year (the one involved herein) Republic Act 3079 had not been enacted, and there is nothing in its provisions or elsewhere to justify according them retrospective effect.

Moreover, it is not as if the National Economic Council did not really recommend the inclusion of the ocean-going vessel allocated to petitioner. It was, as already noted, one of the items enumerated in the tentative schedule prepared by the Reparations Commission and submitted by it to the President, through the National Economic Council, on May 9, 1960. When the Council, in turn, submitted its letter-recommendation to the President on September 19, 1960, it eliminated certain projects in the schedule and reduced the overall amount thereof only because of "a verbal information by Commissioner Gregorio Abad to the effect that the Japanese Government is disposed to approve for the fifth year schedule reparations in the amount of only around \$30 million." And in the same letter the Council recommended the future inclusion of those projects either

disapproved or deferred by it "in the event that the Reparations Commission succeeds in arranging for a bigger amount than what is herein recommended by the Council." As things turned out, that was what actually took place, for the Commission was able to conclude with the Japanese Government on October 25, 1961, a final schedule in the total amount of \$88,783,386.00, including \$13,200,000.00 for ocean-going vessels. In other words, the changes made by the National Economic Council in the schedule prepared by the Reparations Commission were in a sense conditional, and without prejudice to the restoration of the items eliminated by it should a certain condition be fulfilled, as it was later fulfilled.

It is significant that the National Economic Council itself has not challenged the validity of the action of the President in approving, as he did, the expanded fifth year reparations schedule. The action before respondent court was initiated by only two of the fourteen members of the Council-respondents Senator Ferdinand Marcos and Congressman Ramon Bagatsing-together with respondent Abelardo Subido, this last allegedly as Assistant Secretary General and Director of Legal Affairs of the Liberal Party.

Respondents question the propriety of the instant petition for certiorari as the remedy resorted by petitioner, and contend that the case should have been brought before us by regular appeal. We resolved to give due course to the petition, however, because an appeal would not have been sufficiently adequate and expeditious, as demanded by the circumstances. As stated in the petition: "After relying on its contract with the Reparations Commission the petitioner proceeded to take steps for the procurement of the vessel and entered into arrangements with contractors and suppliers in connection with the construction of the vessel, and therefore every day of delay causes irreparable losses and damages to the petitioner in the form of increased construction cost, delayed use of the vessel with consequent loss of income, and the freezing in the meantime of the down payment of P330,000.00 which the petitioner had made to the Reparations Commission." Then also there is the special circumstance that this case involves not only the interests of petitioner, as a private entity, but also an act of the President of the Republic to which due conformity has been given by the government of another country.

Respondent court, in ruling that the said act of the President is null and void because it was not in accordance with the recommendation of the National Economic Council, committed an abuse of discretion correctible by certiorari, considering: (1) that the recommendation of the National Economic Council in the preparation of the reparations schedule under the provisions of Republic Act 1789 was merely advisory, and (2) that respondent court itself so found in its decision, but nevertheless decided against herein petitioner in view of the amendatory provisions of Republic Act 3079, applying them retroactively, which he declined to do when he, lifted, by order dated May 13, 1962, the preliminary injunction he had previously issued with respect to the intervenors Transocean Transport Co., Inc. and Eastern Shipping Line, in which order he stated as follows:

"It is also argued that under Sections 6-a of R. A. 1789 as amended, the National Economic Council must not only approve and recommend the projects but must also approve and recommend the priorities for each project. This is the provision of R. A. 1789 as amended. The schedule for the 5th reparations year, which is now known as the 6th reparations year, was approved by the President prior to the effectivity of the amendatory provisions. It cannot, therefore, have any application to the schedule as approved by the President."

The writ prayed for is granted; the judgment of respondent court, together with the permanent injunction issued therein, is set aside and annulled in so far as herein petitioner is concerned, with costs against respondents other than respondent Judge.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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