

CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. HON. HERMOGENES CALUAG, ET AL., RESPONDENT.*G.R. No. L-12361. September 28, 1957*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari and prohibition with preliminary injunction seeking to set aside an order of respondent judge entered, on April 29, 1957 enjoining petitioner from enforcing its directive prohibiting American residents who receive U.S. treasury warrants from remitting them for deposit to their banks in the United States in accordance with the authorization previously given them by petitioner.

Tomas Fortes is an American citizen, who had retired from the Armed Forces of the United States. He is a temporary resident of the Philippines and a recipient of a monthly pension from the US government which is paid to him in the form of a treasury warrant. He had been regularly receiving his pension in the manner above stated and had been transmitting the corresponding treasury warrant to his bank in the United States through the National City Bank of New York, Manila Branch, for deposit, until February 26, 1957 which the Central Bank issued a directive enjoining said National City Bank from henceforth, transmitting said treasury warrants as previously authorized, for which reason he brought an action in the Court of First Instance of Quezon City seeking; to enjoin 'the Central Bank from enforcing the aforesaid directives.

Tomas Fortes claims that the directive issued by the 'Central Bank on February 26, 1957 is arbitrary and unconstitutional because (a) the charter of said bank does not vest in it the power to control the treasury warrants issued to American citizens since the same are chargeable against the funds of the United States ; (b) the directive ,was issued Dy Deputy Governor Andrea V, Castillo in contravention of Section 5, Republic Act No. 265, which cite ;such power to "the Monetary Board; (c) the directive is confiscatory as it deprives petitioner (Fortes) of his property without due process of law; and (d) it was not approved b the Monetary Board nor by the President of the Philippines and was not even published in the Official Gazette. In his petition, Tomas Fortes asked for the immediate issuance of a deceit of preliminary injunction, claiming that, unless that writ is issued, irreparable damage and and injury would be caused to him and many others similarly situated.

This petition was vigorously objected to by the Central Bank on the following grounds: (a) the writ was unnecessary because Fortes and others similarly' situated could cash ,their treasury warrants at the National City Bank of New York, Manila Branch, and receive the full value thereof, or could remit the dollar proceeds representing their!, to their tanks in the United States pursuant to the provisions of Central Bank Circular No. 20; (b) the directive was issued by the deputy governor in the exercise .of his power to implement arid enforce the provisions of said circular; (c) the authorization previously given by the deputy governor to American citizens on August 31, 1950 to remit abroad the dollar proceeds of their treasury warrants through the National City Bank of New York, Manila Branch, was but a left privilege which could be revoked when such privilege is misused or abused; (d) if the writ is issued, the injury and damage, that public interest would suffer would , be beyond pecuniary estimation whereas, if denied the injury that Fortes may suffer would be fully compensated: and (e) the

treasury warrants in question partake of the nature of "foreign exchange" which are subject to regulation by the Central Bank.

At the hearing held in connection with the petition 'for' the issuance of a writ of preliminary injunction, both parties appeared and argued and submitted written memoranda. Thereafter, the court issued an order granting the writ. The court held that the deputy governor did not have the authority to issue the directive of February 26, 1957, the same being the exclusive function of the Monetary Board. The court further held "that the withdrawal of the exemption may only be made by the Monetary Board, subject to the approval of the Resident of the Philippines and only "after negotiations with the United States government " or its representative here in the Philippines. It may not 'be made by a unilateral act of one party where the agreement was made by two. " The court did not deem it necessary at that instance to pass upon the validity of Circular No. 20 of the Central Bank. In due course, the Central Bank filed the present petition for certiorari.

The main issue involved in the present, petition hinges on the validity of the directive of the Central Bank dated February 26, 1957, but before this can be determined, there is need to make a brief statement of the factual background which led to the issuance of said directive.

On December 9, 1949, the Central Bank promulgated 'Circular No. 20 providing that all transactions in old and foreign exchange in the Philippines were subject to license by said bank and that all foreign exchange received or acquired by residents whether nationals or not are to be sold to the Central Bank or to any of its authorized agents within one business day following receipt. American citizens residing in the Philippines who were receiving checks in dollars from the U. S. government as pensions were included. These citizens, when transmitting to the United States the dollar proceeds of their pension checks had to apply for a license from the Central Bank for each and every remittance.

Sometime in 1950, however, due to the fact that a great number of these checks were found channelled to Hongkong and to the United States through the blackmarket in violation of the exchange control, the Central Bank went into consultation with the representatives of the U.S. Treasury Department and with U.S. Ambassador Myron Cowen with the result that an informal arrangement was arrived at whereby a change in the procedure of payment of said checks to American citizens was effected. The change was that the U.S. Treasury Department would issue restrictive checks which are made payable only to the National City Bank of New York, Manila Branch, and that "American citizens who are residing in the Philippines will be permitted to remit to the United States the dollar amount of checks issued in their names, or any part thereof, and that the Philippine Exchange Control will issue, an appropriate authorization to the Manila Branch of the National City Bank of New York to enable that bank to make such remittances." Accordingly, on August 31, 1950, Deputy Governor Alfonso Calalang issued the requested authorization under "certain specific conditions which must be complied with by American citizens. This authorization was subsequently amended on two other occasions in view of the new situation that had arisen which necessitated the adoption of measures calculated to plug certain loopholes devised to circumvent the exchange control regulations.

On December 12, 1956, the National City Bank of New York, Manila Branch, wrote to the Central Bank report in that the remittances effected by said National City Bank through its San Francisco correspondent, the American Trust Company, for credit to the accounts of the persons named in a given list, ninety-nine (99) in all, were returned with the advice that said persons did not have accounts therein and that, subsequently, said correspondent also received 99 unsigned letters supposedly sent by the remitters of the checks giving instructions for the disposal of the funds involved. On the other hand, the Intelligence Division of the Central Bank received a communication from Mr. Paul F. Cassidy, Security Officer of the U.S. Embassy, Manila, stating that a Filipino-American woman went to said embassy for the authentication of a certain card authorizing the deposit of

a check in the amount of over two thousand, dollars in a certain bank. Because said card appeared to be similar to those which had been used previously by one Vernon King, an American well known in the embassy for his questionable activities the woman was investigated. She revealed that Vernon King was waiting for her in a car outside the embassy compound; that he offered to pay her check in pesos at the rate, of P2.50 for every dollar that she had already made two trips to the office of Vernon King and during those trips she had seen at least fifteen (15) more Americans and Filipinos also holders of U.S. treasury checks who had gone there for same purpose. The investigation revealed that, the privilege granted by the Central Bank to American citizens was being flagrantly abused by selling the checks to unauthorized persons in exchange for pesos at a premium, thus channelling them to the blackmarket. This discovery prompted the Central Bank to issue its directive of February 26, 1957.

As we have already stated elsewhere, the validity of Circular No. 20 of the Central Bank is not now in issue. for the same was considered by the trial, court as one which strikes at the very merit of the case, and so we will limit our discussion to the determination of the validity of the directive issued by Deputy Governor Castillo on February 26, 1957. It is contended that said directive which withdraws from American residents in the Philippines the privilege of remitting the proceeds of their treasury warrants to their banks in the United States through the National City Bank of New York, Manila Branch, is legally ineffective because when said directive was issued the deputy governor did not have the authority to do so for that power can only to exercised by the Monetary Board. It is likewise contended that inasmuch as the exemption granted to American citizens by the Central Bank was the result of an agreement between the two governments, that exemption can not be withdrawn by one without the consent of the other or, as the trial court said, "It may not be made by a unilateral act of one party where the agreement was made by two."

There can be no question that the governor and in his absence, the deputy governor, has the power and the duty to submit for the consideration, of the Monetary Board the policies and measures which they believe to be necessary to carry out the purposes of Republic Act No. 265, and that it is they who are called upon to represent the Monetary Board "in all dealings with other offices, agencies, and instrumentalities of the Government and. with all other persons or entities, public or private, whether domestic, foreign or International" (Sections 16, 17 and 21, Republic Act No. 265). It is under this authority that Deputy Governor Culalang first, and Governor Castillo later, conducted negotiations with the representatives of the U.S. government relative to the issuance of the two directives relating to the authorization and cancellation of the privilege given to American citizens to remit to their banks in the United States the dollar proceeds of the checks issued to them. And it cannot be contended that said directives were issued without the sanction of the Monetary Board for the record shows that they were submitted to that body for its information and approval (Exhibit E-1 of Petitioner).

The claim that the authorization given by Deputy Governor Calalang on August 31, 1950 was the result of an formal bilateral agreement between the United States, and Philippine governments cannot be seriously entertained, 'for the truth is that the same, is but the result of an informal negotiation conducted between a" representative of the Central Bank on one hand and the American ambassador and representatives of the United States on the other. It was a mere arrangement arrived at between them in order, merely to accommodate the American citizens in the Philippines, and the same cannot be deemed to be a formal agreement between the two governments. Rathers it was a mere request on the part of Ambassador Cowen to extend said privilege to American reside nits whose families may be abroad to which the Central Bank graciously acceded, as can be inferred from the following portion of Mr. Cowen.'s letter.

"x x x That the Philippine Exchange Control will issue an appropriate authorization to the Manila Branch of the National City Bank of New York to enable that bank to make such remittances. I will be glad if you will issue such authorization, in order that I may advise the Treasury Department ."

Moreover, it should be mentioned that the issuance of the directive was prompted by the recurrent violation of the privilege by American citizens by channelling their checks to the blackmarket, and the directive was issued after mutual correspondence and consultation between the authorities concerned. This is shown by the letter of Mr. Cassady of the U.S. Embassy to the Central Bank dated, June 11, 1956 (Appendix A), the testimony of Mr. Cradock of the U. S. Treasury before the Fiscal of Pasay City (Appendix C), and the letter of the Central Bank to Mr. Michael Cross,. U.S. Treasury Attache to the U.S. Embassy of Manila, dated May 10, 1957 (Appendix D). It further appears that the directive is merely temporary in nature it having been resorted to to forestall the of restricted U.S. treasury checks. It is evident that the exemption is a mere privilege that can be withdrawn when there are justifiable reasons that warrant it. Here both authorities agree that that privilege had been abused.

Wherefore, the order of respondent judge dated April 29, 1957 is hereby set aside. The injunction issued by this Court is declared permanent.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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