

REPARATIONS COMMISSION, PETITIONER, VS. THE HON. JUDGE JESUS P. MORFE, PRESIDING JUDGE OF BRANCH XIII, COURT OF FIRST INSTANCE, MANILA, AND INDUSTRIAL CHEMICALS, INC., RESPONDENTS.

G.R. No. L-25939. March 20, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

We treat here of a petition for certiorari with pre-liminary injunction instituted by the Reparations Commission (to be referred to simply as REPACOM) which seeks to annul and set aside certain orders issued by the respondent Judge Jesus Morfe of the Court of First Instance of Manila in Civil Case No. 55689. Upon giving due course to the petition, We issued a restraining order against respondent Judge.

While the questions for determination here do not touch on the merits of said Civil Case No. 55689 because they are procedural in nature, yet they cannot be properly comprehended without a reference to the following events which form the background facts:

On September 11, 1958, private respondent Industrial Chemicals, Inc., applied to REPACOM to procure equipment and machineries by means of reparations for a Soda Ash Plant. The application was given due course and respondent was able to procure in advance from REPACOM, equipment worth \$159,942.00 chargeable against the total amount to be ultimately determined for its Soda Ash Plant project.

On May 9, 1960, REPACOM submitted to the President of the Philippines, thru the National Economic Council, the Tentative Reparations Schedule for the 5th Reparations Year,[1] which carried a Soda Ash Plant item worth \$6,500,000.00 for respondent. The National Economic Council reduced this item considerably but the President restored it to its original amount.

The President then forwarded, on May 16, 1960, to respondent a copy of the approved Tentative Schedule for the 5th Reparations Year wherein its Soda Ash Plant project had a \$6,500,000.00 allocation. On June 15, 1961, respondent and REPACOM signed the contract to purchase. The following day, June 16, 1961, REPACOM was notified by the Reparations Mission in Japan that the Japanese Government had accepted the tentative schedule as the Agreed Schedule for the 5th Reparations Year. Subsequently, however, by agreement between the two governments, the same was redesignated as the Agreed Schedule for the 6th Reparations Year.

On June 16, 1961 also, REPACOM issued Resolution No. 437 authorizing the procurement of machineries and equipment for respondent worth \$300,000.00, and Procurement Order No. 10, was issued.

On June 17, 1961, Republic Act 3079 was approved and took effect. This law amended the existing Reparations Act, Republic Act 1789, by adding new requirements for reparations applications. Because of this, Civil Case No. 866 was instituted in the Court of First Instance of Manila[2] to prevent REPACOM from issuing the requisite procurement orders for those items included in the 5th Year Tentative Schedule but which had not been

recommended by the National Economic Council. The preliminary injunction sought for therein was issued.

Since its Soda Ash Plant item was among those involved in Civil Case No. 48661, respondent had to seek intervention therein which was granted on December 9, 1961. On April 11, 1962, the lower court lifted the preliminary injunction insofar as Industrial Chemicals was concerned. Prior to this date, however, or on December 28, 1961, RE-PACOM had issued Resolution No. 557 approving an additional allocation for \$4,200,000.00 to Industrial Chemicals out of its \$6,500,000.00 allocation in the Agreed Schedule for the 6th Reparations Year.

On July 11, 1962, judgment on the merits was rendered in Civil Case No. 48661. Insofar as Industrial Chemicals was affected, the trial court made permanent the lifting of the preliminary injunction as against it. One of the adversely affected reparations end-users therein, however, went on certiorari to the Supreme Court.[3] We ruled in that case, *inter alia*, that the new requirements introduced by Republic Act 3079 are not retroactive.

Meanwhile, going back again, certain correspondence transpired between respondent Industrial Chemicals and RE-PACOM. On November 14, 1962, the former requested from the latter that the machineries already delivered be used in the meanwhile in connection with a separate project. When asked to specify what the separate project was, Industrial Chemicals replied, on December 20, 1962, that some machineries will be used in a light metal shop while the dump trucks and tractors will be used for construction purposes.

On January 30, 1963, Industrial Chemicals reiterated its petition to use the machineries and equipment already delivered for a separate project. It also stated in its letter that if the Soda Ash Plant is to be acquired at the free market rate of exchange of the U.S. dollar, then it would no longer be interested in continuing the same. In reply to this, REPACOM issued Resolution No. 140 on February 27, 1964, approving Industrial Chemicals' request only as to the barrel making machinery and machine shop equipment but authorizing the repossession of the tractors and dump trucks.

On March 23, 1964, respondent again wrote to REPACOM this time requesting that the balance of its reparations allocation for the Soda Ash Plant Project be included in the Schedule for the 9th Reparations Year (1964-1965) and then, that the same be fully implemented. REPACOM replied on April 17, 1964, stating that the request could not be considered unless Industrial Chemicals was willing to proceed with its project on the free market rate of exchange, and subject to other financial, legal and technical requirements. On August 12, 1964, REPACOM again sought from Industrial Chemicals a categorical commitment on whether or not it was willing to pay for its project at the free market rate of exchange. Industrial Chemicals finally replied on August 21, 1964 that for purposes of the inclusion of its remaining allocation balance in the 9th Reparations Year Schedule, it was willing to do so, but subject to whatever decision the courts will render on the matter.

Industrial Chemicals then sought intervention in Civil Case No. 55689 before the Court of First Instance of Manila[4] which had been instituted on December 5, 1963 by several reparations end-users seeking to prevent REPACOM from imposing the free market rate of exchange of the U.S. dollar. Over REPACOM's objection, the lower court on July 6, 1965 allowed the intervention and the corresponding complaint-in-intervention. REPACOM then filed its answer thereto, and subsequently, its opposition to the issuance of preliminary injunction sought by respondent. The lower court sustained the opposition and refused to issue preliminary injunction.

On January 21, 1966, the lower court rendered its decision in Civil Case No. 55689 sustaining the plaintiffs and plaintiff-in-intervention Industrial Chemicals. With particular reference to the latter, the dispositive portion of the decision recites:[5]

"B. In favor of the plaintiff-in-intervention Industrial Chemicals, Inc., judgment is hereby rendered, by way of

the other relief prayed for in its complaint-in-intervention, dated May 21, 1965;

“(a) Commanding the defendant Reparations Commission to take necessary preliminary steps for the full implementation of its Procurement Order No. 10, dated June 16, 1961, for \$300,000.00 worth of Soda Ash Plant machineries; and take necessary preliminary steps towards the issuance and full implementation of Procurement Order for \$6,040,058.00 worth of Soda Ash Plant machines and equipment needed to complete the full allocation of \$6,500,000.00 worth of a Soda Ash Plant for the said plaintiff-in-intervention; such as submitting for said purpose to the President of the Philippines, through the National Economic Council, requisite recommendation for the inclusion in the 10th Year Reparations Schedule, or in the 11th Year Reparations Schedule, whichever is feasible, of the yet undelivered Soda Ash Plant machineries and equipment for approval by the Japanese Government, pursuant to the original provisions of Sec. 6(a) of Rep. Act No. 1789.

“(b) Permanently enjoining the defendant from applying to the aforesaid allocation in favor of the plaintiff-in-intervention the so-called free market rate of the US dollar in terms of the Philippine peso, and commanding that the official rate of P2.00 to US \$1.00 be instead applied to said allocation.

"The defendant is hereby given thirty (30) days from receipt of a copy of this decision within which to voluntarily comply with par. B(a); supra, otherwise the requisite writ of mandatory injunction will be issued upon ex-parte move of the plaintiff-in-intervention."

On February 16, 1966, REPACOM filed its notice of appeal to the Supreme Court. Two days later, or on February 18, 1966, Industrial Chemicals moved to amend the judgment and for special execution. The lower court, by its order of March 2, 1966, granted the motion over REPACOM's opposition. The amended dispositive portion^[6] reads in part:

"WHEREFORE, the aforesaid motion is hereby granted; the said decision is hereby amended by deleting from par. B(a) of said dispositive part the clause 'to the President of the Philippines, through the National Economic Council'; and it is hereby ordered that the requisite joint writ of mandatory injunction and preventive injunction immediately issue: (a) Commanding the defendant Reparations Commission to take necessary preliminary steps for the full implementation of its Procurement Order No. 10, dated June 16, 1961, for \$300,000.00 worth of Soda Ash Plant machineries; and take necessary preliminary steps towards the issuance and full implementation of Procurement Order for \$6,040,058.00 worth of Soda Ash Plant machines and equipment needed to complete the full allocation of \$6,500,000 worth of a Soda Ash Plant for the said plaintiff-in-intervention; such as submitting for said purpose requisite recommendation for the inclusion in the 10th Year Reparations Schedule, or in the 11th Year Reparations Schedule, whichever is feasible, of the yet undelivered Soda Ash Plant machineries and equipment for approval by the Japanese Government, pursuant to the original provisions of Sec. 6(a) of Rep. Act No. 1789; and (b) Permanently enjoining the defendant from applying to the aforesaid allocation in favor of the plaintiff-in-intervention the so-called free market rate of the US dollar in terms of the Philippine peso, and commanding that the official rate of P2.00 to US \$1.00 be instead applied to said allocation."

The following day, March 3, 1966, the lower court issued the writ of permanent mandatory and preventive injunction. REPACOM sought an urgent reconsideration and/or stay of execution. Sustaining the opposition thereto, the lower court on April 1, 1966 denied REPACOM's motion.

Hence, this petition questioning the lower court's orders dated (1) July 6, 1965, permitting Industrial Chemicals to intervene in Civil Case No. 55689; (2) March 2, 1966, amending the decision rendered therein; (3) April 1, 1966, denying petitioner's motion for reconsideration and/or stay of execution; and also the writ of permanent mandatory and preventive injunction dated March 3, 1966. It is submitted first that the lower court acted without jurisdiction in amending its decision; second, that it gravely abused its discretion in ordering

immediate execution thereof, and third, that it gravely erred in allowing Industrial Chemicals to intervene.

In support of the first proposition, petitioner asserts that Civil Case No. 55689 is really a special civil action for prohibition and mandamus where a record on appeal is unnecessary to effect an appeal. Since petitioner is exempt from filing an appeal bond, it is contended that the appeal had already been perfected even as early as the filing of the notice of appeal on February 16, 1966. We find this untenable. The allegations of the basic complaints and of respondent's complaint-in-intervention^[7] unmistakably entitle them as ordinary actions for preventive and mandatory injunctions. Basically, the common cause of action in Civil Case No. 55689 is specific performance. Moreover, the constitutive averments of prohibition and mandamus are conspicuously absent. But the more telling blow against petitioner is its own admission in the very petition that its appeal has not yet been perfected and its record on appeal is still pending approval in the court below.^[8]

Anent the second point, the course of action adopted by the lower court was actually only in compliance with the express directive in Rule 39, Sec. 4 of the Rules of Court providing for the immediate execution of judgments rendered in injunction cases notwithstanding the pendency of an appeal. For this, no special reason need even be invoked. While the trial court could also stay immediate execution in its discretion, its refusal to do so in this instance has not been clearly established by petitioner to amount to grave abuse thereof.

That respondent Industrial Chemicals abandoned its Soda Ash Plant Project is not clear. If this were so, We cannot understand why REPACOM did not reject outright the former's requests for the inclusion of its project in the 9th Reparations Year Schedule. On the other hand it is on record that REPACOM considered the utilization of the machineries already delivered in connection with another project by respondent as merely temporary.^[9] While in one of its earlier letters to REPACOM respondent expressed unwillingness to proceed with its project under the free market rate of exchange,^[10] yet its letter of August 21, 1964 shows that respondent had changed its stand and was quite willing to pay on the basis of the free market rate but subject to the final court decision on the matter.^[11]

Moreover, the fears expressed by petitioner as to the possible effects resulting from an immediate execution of the judgment rendered are without basis. The mandatory injunction issued will not go beyond the status quo but will only strengthen the pre-existing relationship between REPACOM and respondent. The latter's Soda Ash Plant allocation had already been included in the Agreed Schedule for the 6th Reparations Year and had even been partially executed. Respondent merely seeks to complete the execution thereof which had already stood considerable delays for causes beyond its control. Neither will immediate execution necessarily render the main case moot and bring about untold complications. For, as clarified by the lower court,^[12] its judgment does not require REPACOM to immediately procure the machineries and equipment needed but only to take the necessary preliminary steps to fully implement the remaining balance of respondent's approved allocation. If these steps consist in merely submitting the requisite recommendations to higher authorities, then such action would already constitute compliance with the court directive. The Philippine Government then stands in no way definitely committed to the Japanese Government as to any particular equipment or machineries.

Lastly, the order of the lower court would not violate Republic Act 3079 which has imposed new and additional requirements. As stated earlier, this Court has all read held in *Bothelho Shipping Corp. v. Hon. Jose Leuterio*,^[13] that the new and additional requirements imposed not apply to allocations approved before the passage of Republic Act 3079 on June 17, 1961.

As to the last point raised, suffice it to say that the propriety of the complaint-in-intervention more properly pertains to the merits of the main case, to be taken up in the appeal proper.

WHEREFORE, for lack of merit, the petition is hereby dismissed and the restraining order heretofore issued set

aside. No costs.

SO ORDERED.

Reyes, Acting Chief Justice, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] This consists of the period from July 23, 1960 to July 22, 1961.

[2] Marcos, et al. v. Reparations Commission.

[3] Bothelho Shipping Corp. v. Hon. Jose Leuterio, G.R. No. L-20420, May 30, 1963.

[4] New Tanauan Subdivision Farmers Coop. Ass'n., et al. v. Reparations Commission

[5] Rollo, pp. 197-198.

[6] Rollo, pp. 217-218.

[7] See Rollo, pp. 27-45; 61-74.

[8] Pars. 18 & 23 of Petition, Rollo, pp. 13-14.

[9] REPACOM's letter of April 17, 1964, Rollo, p. 76.

[10] Respondent's letter of Jan. 30, 1963, Rollo, p. 99.

[11] In this connection see Consolidated Textile Mills, Inc. v. Reparations Commission, G.R. No. L-23859, Feb. 22, 1958 wherein We held that it is the free market rate of exchange that should apply. This ruling however in no way affects the issues in the present petition.

[12] See Order of April 1, 1966, Rollo, p. 233.

[13] See Note 3, supra.

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