

EXTENSIVE ENTERPRISES CORPORATION, PETITIONER, VS. SARBRO & CO., ET AL., RESPONDENTS.

G.R. Nos. L-22383 and L-22386. May 16, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals rendered on October 18, 1903 (1) affirming the decision of the lower court on two contempt cases, and (2) modifying said decision by ordering the Secretary of Agriculture and Natural Resources and the Director of Forestry to "award the whole forest area of 29,000 hectares covered by Notice No. 1900 in favor of Sarbro and Co., Inc. and to issue to it the corresponding timber license."

Sometime in June, 1956, the Director of Forestry caused to be published an advertisement for bids designated as Notice No. 1900 calling for submission of sealed proposals from interested applicants for the exploitation of a tract of public forest with an approximate area of 29,000 hectares situated in Compostela, province of Davao. This forest area was formerly a part of a forest zone of 51,000 hectares which the Bureau of Forestry divided into two logging units and opened for bids under Notice No. 1899 and Notice No. 1900, the latter covering the unit of 29,000 hectares, subject matter of the instant petition.

The Committee on Award created for the purpose of conducting said bidding under Administrative Order No. 23 issued on March 8, 1956 by the Secretary of Agriculture, after considering the bid proposals submitted by the applicants including those of Sarbro & Co., Inc., Sarbro for short, and Extensive Enterprises Corporation, briefly referred to herein as Extensive, awarded the entire area in question to Sarbro as the best and qualified bidder subject however to two conditions, namely: (1) that Sarbro shall establish a plywood factory within one year from the date of issuance of the license that may be issued in its favor; and (2) that the president and manager of said corporation or any stockholder who may have an interest in the area described in Notice No. 1788 situated in Moncayo, Davao, shall relinquish any claim or interest that they may have therein and the corporation shall file with the Department of Agriculture and Natural Resources within 15 days from the date of receipt of the Committee's decision an affidavit showing compliance with the aforesaid conditions. The Committee warned in said decision that failure on the part of Sarbro to comply with any of the aforesaid conditions shall be sufficient cause for the cancellation of the award.

Dissatisfied with the foregoing decision, Sarbro moved for its reconsideration seeking the elimination of the two conditions above set forth, while Extensive likewise moved for its reconsideration praying that the entire area be awarded to it inasmuch as it is as qualified if not more than Sarbro, and that it is a corporation that so far had no concession whatsoever nor does it have any individual incorporator or stockholder that has ever been awarded even a square meter of forest land for exploitation, whereas Sarbro, which is the controlling stockholder of other corporations like the L. S. Sarmiento & Co., Inc., the Pablo Sarmiento & Co., Inc., Plaridel Commercial Co., Inc., and the Plaridel Lumber Co., Inc., is already a holder of many concessions throughout Mindanao, such for instance as L. S. Sarmiento & Co., Inc. which appears to be the awardee of a forest concession consisting of 26,000 hectares covered by Notice No. 1788 situated in Moncayo, Davao. And acting on said two motions for

reconsideration, the Secretary denied the request of Sarbro for being contrary to the existing policy of the Department of Agriculture to distribute the bounties of our natural resources to as many applicants as possible to avoid the monopoly by a few individuals or corporations of the exploitation of forest concessions, while he gave Sarbro live days from receipt of the order within which to comply with the conditions already stated. In a separate decision, the Secretary likewise denied the motion for reconsideration of Extensive.

Sarbro, still dissatisfied, interposed a second motion for reconsideration which the Secretary resolved on June 2, 1958, but this time he declared the award made in its favor cancelled and without any legal force and effect for Sarbro's failure to comply with the conditions set forth in the award. Sarbro again moved for a reconsideration of this order, but while action thereon was pending, Sarbro filed a manifestation expressing its willingness to comply with the condition imposed in his previous decision of August 21, 1950 requiring its present stockholders to give up their interests in the corporation L. S. Sarmiento & Co., Inc. with respect to the forest area covered by Notice No. 1788 situated in Moncayo Davao, and before said manifestation could be acted upon by the Secretary, Sarbro submitted certain affidavits subscribed to by its president and vice-president purportedly averring that they were giving up their interests in the area abovementioned and were disposing of their shares of stock in L. S. Sarmiento & Co., Inc. To this effect, Sarbro, thru its president and general manager, also submitted a certification of its secretary attesting to the transfer of every share of stock held in the corporation by Messrs. Pablo and Feliciano Sarmiento followed by a similar certification of the acting secretary attesting to the transfer and relinquishment of all their shares of stock in said sister corporation.

On November 25, 1958, the Secretary of Agriculture and Natural Resources resolved Sarbro's motion for reconsideration setting aside his order of June 2, 1958 which cancelled the award thereby reinstating the previous award of August 21, 1956, while on the other hand he denied the motion for reconsideration filed by Extensive and other bidders or applicants.

From this last decision of the Secretary of Agriculture and Natural Resources, Extensive and bidder Buenavista Timber Corporation appealed to the Office of the President, and pending action on this appeal, upon recommendation of said Secretary, the Executive Secretary on February 5, 1959, issued an order authorizing the grant of a temporary permit to Sarbro to operate the forest concession, as in fact, after paying the corresponding license fee, Sarbro commenced the construction of roads and other improvements in the concession awarded to it as well as it undertook activities and investments for the commencement of the logging operations.

Meantime, the then Acting Executive Secretary Enrique C. Quema, by authority of the President, rendered on December 29, 1959, a decision dividing the area in question between Extensive and Sarbro based on his opinion that both corporations appeared to be well qualified to operate the logging area, and as a result he revoked the temporary permit granted to Sarbro for the logging of the entire area meanwhile the division as thus ordered has not yet been effected by the Director of Forestry pursuant to the decision. This order, however, was later amended by making the revocation of the temporary permit effective as of the date of the division of the area in question.

On March 21, 1960, the Executive Secretary Natalio P. Castillo issued a directive to the Secretary of Agriculture and Natural Resources requiring him to cancel immediately the temporary permit issued to Sarbro it appearing that the division of the area has already been made by the Bureau of Forestry. And this directive having been referred to the Director of Forestry for compliance, this official gave due course to it in a letter addressed to Sarbro for its implementation.

Upon learning that the Director of Forestry was about to implement and enforce the order of the Executive Secretary which divides the area in question between Extensive and Sarbro, Sarbro, without first moving for a reconsideration of said order, commenced the instant special civil action for certiorari and mandamus with

preliminary injunction before the Court of First Instance of Manila wherein, among- others, it asked the court to annul the decision rendered by the Acting Executive Secretary on December 29, 1959 as later amended in an order of January 18, 1960, to compel the Secretary of Agriculture and Natural Resources to execute the decision originally rendered by him awarding the entire forest area to Sarbro, as well as to compel the Director of Forestry to issue a final license in its favor for the logging of the whole area thereby enjoining said official from enforcing the aforesaid decision of the Acting Executive Secretary.

Extensive filed its answer with a cross-petition seeking not only to have the decision of Malacañang dated December 29, 1959, as amended, set aside but to have the entire forest area of 29,000 hectares awarded to it upon the claim that it was the best and most qualified bidder among the different applicants who submitted bids. The other respondents also filed their answers with a cross'-petition through the Solicitor General.

After trial on the merits the court a quo rendered decision on May 7, 1960 affirming in toto the decision of the Acting Executive Secretary dated December 29, 1959 thereby dismissing both the petition and cross-petitions interposed by respondents while it dissolved the preliminary injunction it had issued earlier. Sarbro and Extensive appealed from this decision directly to the Supreme Court under separate proceedings but their appeals were later certified to the Court of Appeals on the ground that both involved questions of facts.

The pendency of this case in the trial court gave rise to two contempt cases. One was instituted by Sarbro against Extensive and its two lawyers Ramon Durano and Pedro I. Rodriguez, and the other was instituted by Extensive for an alleged violation of the condition stated in the writ of preliminary injunction previously issued by the court to the effect that Sarbro should not in the meantime cut timber within the area assigned to Extensive. The court a quo found Attys. Durano and Rodriguez, together with their client Extensive, guilty and were ordered to pay jointly and severally a fine of P100.00 for contempt. The case against Sarbro was dismissed.

Extensive and its lawyers also appealed from this portion of the decision finding them guilty of contempt, as well as from the order denying its motion to declare Sarbro in contempt.

The Court of Appeals, after due hearing, rendered its decision on October 18, 1960 the dispositive portion of which has already been stated in the early part of this decision. Thereupon, Extensive and the other respondents filed separately a petition for review which this Court has in due time given due course. And because these two appeals are interrelated, they will be taken up in one consolidated decision.

In submitting their briefs to this Court in support of their respective contentions, both petitioners/or appellants assigned several errors allegedly committed by the Court of Appeals which in substance may be boiled down to the following issues: (1) Has Sarbro failed to exhaust its administrative remedies before filing its petition before the court a quo so that the latter should be dismissed on this ground?; (2) Has the Executive Secretary committed a grave abuse of discretion in dividing the forest area in question between Sarbro and Extensive?; and (3) Are Extensive and its lawyers really guilty of contempt?

These issues will be the subject of separate considerations.

- It is contended that the failure of Sarbro to file a motion for reconsideration with the Office of the President so that it may have an opportunity to revise its opinion embodied in its decision of December 29, 1959 before filing this petition in court amounts to a failure to exhaust its administrative remedies and so the Court of Appeals erred in ruling that such motion for reconsideration under the circumstances was not necessary.

This Court has consistently ruled that if a remedy is still available within the administrative machinery by giving the official concerned every chance to act on a matter that comes within his jurisdiction such remedy should be resorted to before resort can be made to the courts not only to give the administrative agency an opportunity to

decide the matter by itself correctly but also to prevent unnecessary and premature resort to the courts.[1] But it is no less true that this Court has likewise ruled that the failure to appeal from a decision of the Secretary of Agriculture and Natural Resources to the President does not preclude the plaintiff from taking the case to the court in view of the theory that the Secretary is merely an alter ego of the President.[2] If this appeal is not necessary in order that the principle of exhaustion of administrative remedies may operate much less would a motion for reconsideration of the decision of the Executive Secretary on a case appealed to him from a department secretary be necessary in order that the case may be taken to court. In the case at bar the highest administrative authority had already spoken and this he had done after a careful study of the question submitted to him for consideration. To require, therefore, the filing of a formal motion for reconsideration of the decision of the Executive Secretary would have been a use less formality. We do not, therefore, find the failure of Sarbro to file such motion sufficient to impair the validity of the petition it later filed in court.

- Has the Executive Secretary committed a grave abuse of discretion in dividing the forest area in question between Sarbro and Extensive contrary to the ruling made by the Secretary of Agriculture and Natural Resources?

At the outset, it should be stated that under our constitutional setup the Executive Secretary who acts for and in behalf and by authority of the President has an undisputed jurisdiction to affirm, modify, or even reverse any order that the Director of Forestry, or even the Secretary of Agriculture and Natural Resources, may issue regarding the grant or renewal of any timber license that may be issued by the two officials abovementioned. The law on this matter is clear.[3] On the other hand, our Constitution ordains that the President shall have control over all executive departments, bureaus and offices[4] while the word "control" implies "the power of an officer to alter, modify or set aside what a subordinate officer had done * * * and to substitute the judgment of the former for that of the latter." [5] Hence, the Executive Secretary in the instant case can be said to have acted within his powers when by substituting his judgment for that of the department secretary he modified the latter's decision by dividing the area into two and awarded one-half to Sarbro and the other half to Extensive. It is, therefore, error to say that acting in that manner the Executive Secretary committed a grave abuse of discretion.

Of course, cases there are where in acting on a ruling or decision of a subordinate official the Executive Secretary may exercise his judgment in a capricious and whimsical manner or in a manner so despotic that it may be said that he acted merely by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform a duty that is enjoined by law,[6] but there is nothing in the record that may serve as basis to impute, such motivation to the Executive Secretary. On the contrary, the text of his decision in itself shows that he was only prompted by the facts and by the evidence before him, as may be seen from the following pertinent portion of said decision:

"Quite apparent it is that the award to Sarbro of the contested area was made because of the foregoing conditions. However, these conditions were not stated in the bid notice as decisive factors in the determination of the winning bidder. The bid should have been adjudicated on the basis of the financial capacity, technical know-how, and availability of logging equipment of the various bid applicants. But the record does not show that the award committee made a comparative analysis of the respective qualifications of the bid applicants with particular references to the matters just mentioned.

"An examination of the bid proposals of the parties to the present appeal discloses the following- data regarding their respective financial capacity and logging equipment, to wit:

I. Financial Capacity

(a) Sarbro — Plfifi.425.1,2—Current account with hanks 1,000,000.00—Credit line 100,000.00—Overdraft line

(b) Extensive — 215,779.52—Current account with banks 900,000.00—Credit lime

(c) Buenavista— 140,551.55—Current account with banks 75,000.00—Credit line

II. Logging Equipment

(a) Sarbro —3-D-7 Caterpillar tractors

- 1 Truck mounted crane, 3/4 yard
- 1 Logging truck 192 inch wheel base
- 1 Ford truck
- 1 Caterpillar D-7 tractor w/dozes & winch
- 4 Mach Cargo trucks
- 2 Int. K-9 dump trucks
- 1 Complete set sawmill machinery
- 5 Logging trucks
- 5 D-7 Caterpillar tractors

(b) Extensive —It does not actually own but proposes, to purchase the following equipments

- 2 Allis chulmers No. 11B tractors
- 3 Allis chalmers No. 16AC tractors
- 1 Frick No. 1 Sawmill
- 2 Mdl 157 Washington Iron Works Three-Drum Yardcrs
- 12 Reels of Wire rope
- 2 Hinging equipment 2 Chevrolet trucks

(c) Buenavista—7 tractors

- 5 Logging trucks
- 1 trailer
- 1 Pick-up truck
- 1 Crane1 Motor Launch
- 1 Minor logging shop and pond equipment

"From the foregoing, it can readily be gleaned that Extensive has more actual financial resources than Sarbro or Buenavista, although Sarbro has a bigger credit line than either of the other two. On the score of logging equipment, Sarbro enjoys a comfortable margin over its rivals. Buenavista it seems, has an edge over Extensive as regards logging equipment, but the latter's financial capacity outweighs that of the former, and Buenavista's advantage on logging equipment is quite insufficient to overcome Extensive's financial superiority.

"It appearing that Extensive and Sarbro on the scores of financial capacity and logging- equipment, respectively, are far above Buena-vista, and considering that both are well qualified to operate the area in question, this Office finds that an equal division thereof between them will be in order. The appealed order is therefore hereby modified accordingly and the temporary permit granted Sarbro for the entire area in controversy revoked."

But what should be here emphasized is that the Executive Secretary in rendering said decision was principally guided by the fundamental! policy that the government has always pursued relative to the grant of forest concessions to the public for logging operations. In other words, the Executive Secretary, aside from the facts of the case, was influenced more by the guiding principles that have always been followed in the disposition of forest areas for timber concession by the Bureau of Forestry with the approval of the Secretary of Agriculture and Natural Resources as contained in Forestry Administrative Order No. 10-11 in the sense that our natural resources' should be opened to the exploitation by as many qualified applicants as possible in order to disperse in the most

equitable manner the rich bounties of our natural resources and thereby prevent the concentration of wealth in the hands of a few. And bearing in mind these guiding principles, the decision should not have been other than what was rendered considering the many opportunities and privileges that Sarbro had already had insofar as timber concessions are concerned before the consideration of the different bids in question. In this respect, suffice it to say that while Extensive has not had so far any opportunity to exploit any forest concession, Sarbro has been the recipient of the following timber licenses : 17,800 hectares in Compoatela, Davao, covered by O. T. License 75—'61; 147,125 hectares in Palimban, Cotabato, covered by O. T. License 731—'63; and 20,000 hectares in Malaybalay, Bukidnon, covered by O. T. License 731—'63. In addition, the Sarmiento brothers who composed the corporation are also the principal stockholders in other corporations that are at present engaged in lumber operation, such as L. S. Sarmiento & Co., Inc., Plaridel Commercial & Co., Inc., Pablo Sarmiento & Co., Inc., and the Plaridel' Lumber & Co., Inc. We, therefore, find also no reason for the imputation that the Executive Secretary committed a grave abuse of discretion in dividing the area between Sarbro and Extensive.

- Finally, petitioner Extensive claims that the Court of Appeals erred in ruling that, together with its lawyers, it - is guilty of contempt even if the evidence does not support that conclusion. And in support of said claim Extensive adduces the following facts, namely: that the license in favor of Extensive was issued one day before the restraining order was issued on March 4, 1960; that the temporary license of Sarbro was automatically revoked by virtue of the division effected by the Director of Forestry since February 15, 1960; and therefore, revocable at will. But these reasons have already been duly considered by the Court of Appeals in its decision from which we quote the following with approval:

"The restraining order which was issued by the trial court on 4 March 1960 reads:

'In view of the validity of the petition for postponement, postponed to March 12, 1960 at 9:00 a.m. the hearing of the incident of preliminary injunction; but the Court, to maintain the status quo and so that the hearing of the preliminary injunction would not be academic, the orders the immediate issuance of restraining order prohibiting the commission of the acts complained of, up to March 12, 1960 and up to the time the Court shall have ruled upon the preliminary injunction * * *.'

"According to this order, Sarbro was not to be distributed in its possession of the forest area, and for their acts in attempting to nullify the said order, Extensive and its lawyers are guilty of contempt.

"In excepting to the declaration of the lower court that Extensive and its lawyers are guilty of contempt, several reasons are cited. First, it is argued that because the license in favor of Extensive was issued one day before the issuance of the license in favor of Extensive but for their acts in attempting to have the license of Sarbro cancelled. The second contention that the permit issued in favor of Sarbro had already been automatically revoked with the division of the forest area by the Director of Forestry on 15 February 1960 is untenable because Sarbro had no notice of such division as brought out in the testimony of the Director of Forestry himself, and also because out in the testimony of the Director of Forestry himself, and also because there could in reality be no automatic revocation otherwise there would have been no need for any directive from the Executive Secretary and the Secretary of Agriculture and Natural Resources or any communication from the Director of Forestry concerning the cancellation of Sarbro's temporary permit.

"As to the contention that the timber license or permit issued to Sarbro was only temporary in character and therefore revocable at will, it is sufficient to take account of the fact that the petition of Sarbo precisely sought the annulment of the decision of the Executive Secretary dividing the forest concession into two and of the further fact that pending final resolution of the petition, Sarbro's possession of the whole area is protected by the preliminary injunction issued.

"Everything considered, we believe and hold that the lower court was right in declaring Extensive and its lawyers guilty of contempt."

Wherefore, the decision of the Court of Appeals is hereby modified by declaring that Extensive Enterprises Corporation is entitled to one-half (1/2) of the area advertised in Notice No. 1900 as adjudicated by the Acting Executive Secretary in his decision of December 29, 1959, and ordering the Director of Forestry and the Secretary of Agriculture and Natural Resources to issue the corresponding timber license to said Extensive Enterprises Corporation. The decision in all other respects is affirmed. No costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

Decision modified.

[1] Montes vs. Civil Service Board of Appeals, et al., 101 Phil., 490; Cabanes vs. Rodriguez, L-9799, May 31, 1957.

[2] Villena vs. The Secretary of Interior, 67 Phil., 451; Demaisip vs. The Court of Appeals, 106 Phil., 237.

[3] Suarez vs. Reyes, L-19828, February 28, 1963, citing Article VII, Section II (1)J Constitution, and Section 75 Revised Administrative Code.

[4] Article VII, Section 10(1), Constitution.

[5] Mencloza vs. Silvosa, 57 Off. Gaz., 2887.

[6] Pajo vs. Ago, 108 Phil., 905.

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