

REPARATIONS COMMISSION, PETITIONER, VS. HON. JESUS P. MORFE, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XIII, NEW TANAUAN SUBDIVISION FARMERS COOP...

G.R. No. L-35796. January 31, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

The subject matter of these two cases is the decision dated January 21, 1966 of the Court of First Instance of Manila, Branch XIII, in Civil Case No. 55689, entitled "New Tanauan Subdivision Farmers Cooperative Association, United Disabled Veterans Association of the Philippines and Teberazo Development and Investment, Inc., plaintiffs, versus Reparations Commission, defendant, and Industrial Chemicals, Inc., plaintiff-intervenor."

Plaintiffs and plaintiff-intervenor applied for the procurement of reparations goods through defendant Reparations Commission (to be referred to as Repacom). Plaintiff United Disabled Veterans Association of the Philippines (UDVAP for short), was allocated a total amount of \$2.2 million worth of specified reparations consumers goods. A contract to purchase dated December 28, 1961[1] was entered into between Repacom and UDVAP. Plaintiff Teberazo Development and Investment, Inc. is the business arm of UDVAP.

The New Tanauan Subdivision Farmers Cooperative Association (to be referred to as New Tanauan), was allocated 10,000 metric tons of ammonium sulphate fertilizer. Of the total amount, only a total of 6,500 metric tons were delivered to New Tanauan leaving a balance of 3,500 metric tons undelivered. On January 18, 1963 a contract to purchase[2] was entered into between Repacom and New Tanauan with respect to the aforesaid remaining 3,500 metric tons.

Plaintiff-intervenor Industrial Chemicals, Inc., another reparations end-user, was likewise allocated an aggregate amount of \$6,500,000.00 worth of soda ash plant machineries and equipment. On the said allocation, Repacom made a partial delivery of soda ash plant equipment worth \$159,942.00 for which the intervenor made the corresponding payment.

The worth of reparations goods applied for and/or partially delivered and paid for was actually based on the official rate of P2.00 to each \$1.00.

On March 28, 1963, a Presidential Directive was issued requiring that payment of reparations goods must be at the free market rate, instead on the conversion rate of P2.00 to \$1.00.

On December 4, 1963, Repacom informed New Tanauan of the impending arrival of the remaining balance of 3,500 tons of ammonium sulphate fertilizer and pursuant to the aforesaid directive, demanded payment of the shipment at the free market rate of exchange or at P3.91 to each \$1.00. This demand precipitated a disagreement between the parties.

On December 11, 1963 New Tanauan instituted before the Court of First Instance of Manila the present case seeking to prevent Repacom from imposing the free market rate of exchange of the U.S. dollar.

On June 2, 1964 the complaint was amended impleading UDVAP and Teberazo as plaintiffs.

Industrial Chemicals filed a motion to intervene and a complaint-in-intervention both dated May 21, 1965, and the lower court on July 6, 1965 over the objection of Repacom, allowed the intervention and the corresponding complaint-in-intervention.

On January 21, 1966, the lower court rendered its decision sustaining the plaintiffs and plaintiff-in-intervention. The dispositive portion of the decision recites:

"WHEREFORE, judgment is hereby rendered as follows:

"A. In favor of all the plaintiffs in the amended complaint, dated June 2, 1964, declaring that it is the official rate of P2.00 to each \$1.00 that is applicable to the reparations goods allocated to said plaintiffs and, therefore:

"(a) As to plaintiff New Tanauan Subdivision Farmers Cooperative Association, Inc., the defendant Reparations Commission is hereby permanently enjoined from applying to the 3,500 metric tons of ammonium sulphate (fertilizer) the so-called free market rate of P3.91 to US \$1.00; and the writ of preliminary injunction issued in the instant case on April 14, 1964, is hereby made permanent.

"(b) As to plaintiffs United Disabled Veterans Association of the Philippines and Teberazo Development and Investment, Inc., the defendant Reparation Commission is hereby permanently enjoined from applying to the \$2.2 million worth of reparations consumers goods allocated to plaintiff United Disabled Veterans Association of the Philippines the so-called free market rate of P3.91 to US \$1.00; and the writs of preliminary injunction issued in the instant case on June 26, 1964, September 12, 1964, and December 2, 1964, are hereby made permanent.

"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 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 machineries 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 Republic 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 pesos, 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 March 2, 1966, the lower court on motion of Industrial Chemicals, amended its decision by deleting from paragraph B (a) the dispositive part the clause "to the President of the Philippines, through the National Economic Council."

Repacom sought an urgent reconsideration of the lower court's decision. Sustaining the opposition thereto, the court a quo on April 1, 1966 denied Repacom's motion for reconsideration; hence, the latter filed its notice of appeal.

On August 26, 1972 the records of Civil Case No. 55689 were forwarded to this Court and in the resolution of September 12, 1972 Repacom was required to file a petition for review on certiorari. In compliance with said resolution Repacom filed a petition for review on November 2, 1972 which was docketed as G. R. No. L-35796. On December 8, 1972 Industrial Chemicals filed its answer with counter-petition for mandamus praying that respondent Judge be ordered to carry out and implement the amended decision dated March 2, 1966. The counter-petition for mandamus was docketed as G. R. No. L-35932.

Appeal by Reparations Commission

Repacom raised the following issues in its appeal:

"(1) Whether the rate of exchange to be applied in fixing the peso equivalent of the dollar value of the reparations goods procured, or to be procured, for the end-use of respondents should be on the basis of the preferred rate of exchange of P2.00 for US \$1.00 or at the free market rate of exchange between the said currencies;

"(2) Whether or not the intervention of Industrial Chemicals, Inc. in Civil Case No. 55689 was proper, valid and legal; and

"(3) Whether or not petitioner can be compelled through mandatory injunction to implement the project of Industrial Chemicals, Inc."

The first issue is not new and has already been squarely settled in the case of Consolidated Textile Mills, Inc. vs. Reparations Commission,[3] promulgated on February 22, 1968 which laid down the rule that the conversion rate should be based on the prevailing free market rate of exchange of the peso to the dollar as proposed by Repacom. This Court said:

"The gravamen of appellant's contention is anchored on the proposition that under the "contract to purchase" earlier quoted, the Commission is under obligation to procure, sell and deliver the goods, which said appellant had requisitioned or applied for at the rate of P2.00 for every \$1.00 of the procurement cost of said reparations item. In a word, appellant holds the view that the said "contract to purchase" is a bilateral promise to buy and sell at the rate of P2.00 to \$1.00 and is as good as a perfected sale. In this posture, therefore, it argues with vehemence that the appellee Commission cannot unilaterally alter the consideration of the perfected sale by applying a rate of exchange which was not agreed upon, nor contemplated by the parties when they executed the aforesaid "contract to purchase". Unfortunately, however, an examination of that "contract to purchase" does not support appellant's assumption and contention. On the contrary, it reveals all the earmarks of a mere preliminary agreement. Admittedly, both the objects to be procured and the price to be paid were not specifically described therein. It is likewise significant to note that in the "contract to purchase" there is no stipulation as to what rate of exchange should govern in the determination of the peso equivalent of the dollar value of the reparations to be procured thereunder. It is, we hold, obvious from the face of the agreement that it does not contain, and was not intended to contain, all of the important terms and conditions of the future contract. It was really incomplete, for it left out material terms thereof for future determination. Hence, it was indeed necessary that the parties should, as they did stipulate, in the very same "contract to purchase" relied upon heavily by the appellant that before the delivery of the goods, a contract of conditional purchase and sale shall be executed by the parties to the agreement which shall supersede the said contract to purchase."

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"In fine, it is the opinion of the Court, that whether the "contract to purchase" be treated as a mere preliminary

agreement of the parties, or as a perfected contract which bound the Reparations Commission to procure and then sell the goods, and herein appellant to purchase the said goods, we have arrived at the same conclusion — that for the failure of the agreement to specify therein the rate of exchange to be adopted in computing the dollar value of the goods to its peso equivalent — the adoption of the free market rate by the Reparations Commission to ascertain the peso cost of the goods would not spell impairment of any obligation thereunder. Consequently, we do not find it necessary to dwell at length on the discussion of the principle of non-impairment of obligation so elaborately expounded by appellant in its brief; and so, with the alleged denial of due process and equal protection of the laws."

It will be observed that under the contracts to purchase entered into between Repacom and New Tanauan and UDVAP, just like the contract between Repacom and Consolidated Textile Mills, as adverted into the cited case, do not contain any stipulation as to what rate of exchange should govern in the determination of the peso equivalent of the dollar value of the reparations to be procured thereunder. Hence, Repacom is justified in demanding that the free market rate shall be the conversion rate on reparations contracts.

The recent case of *Associated Development Corporation vs. Reparations Commission*[4] reiterated the doctrine laid down in the case of *Consolidated Textile Mills* on the question of what the conversion rate should be. This Court ruled:

"Plaintiff-appellant had submitted an extensive brief quite vigorous in its plea for the conversion rate of P2.00 for every \$1.00. It raised questions of importance which admittedly would have some bearing on the final determination of that issue which if were not previously decided, certainly ought to have been taken into consideration. Nonetheless, with the *Consolidated Mills* decision, as originally promulgated, as well as the equally extensive resolution on the motion for reconsideration, it clearly appears that this Court had decided with finality the question of what the conversion rate should be. It supplies the answer to this case. The plea of appellant as to the conversion rate of P2.00 to \$1.00 cannot, therefore, be granted."

Anent the second issue as to whether or not the intervention of Industrial Chemicals was proper, valid and legal, the Rules of Court[5] provides:

"Sec. 2. Intervention.— A person may before or during a trial, be permitted by the Court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

There is no question that the intervenor, Industrial Chemicals, has legal interest in the proceeding. It seeks practically the same relief prayed for by New Tanauan and UDVAP in preventing Repacom from imposing on it (Industrial Chemicals) the payment of the remaining undelivered reparations goods at the free market exchange rate of US dollars to Philippine currency. An unfavorable judgment of the court in so far as the conversion rate is concern would certainly affect the interest of Industrial Chemicals.

It is a rule that the granting or refusal of a motion to intervene is a matter of judicial discretion; and once exercised, the action of the court cannot be reviewed or controlled by mandamus, however erroneous it may be, except where there is an arbitrary abuse of that discretion.[6] No grave abuse of discretion in allowing intervention had been shown, hence, the intervention of Industrial Chemicals is proper. Furthermore, joining the action of Industrial Chemicals will not actually prejudice or cause disadvantage to Repacom and will prevent multiplicity of suits.

The third issue will be discussed in the petition for mandamus of Industrial Chemicals.

Industrial Chemicals' Petition for Mandamus

The only issue in this counter-petition for mandamus is whether or not Repacom could be compelled by a writ of mandamus to procure the machineries and equipment needed by petitioner Industrial Chemicals for its soda ash plant project.

A reading of the questioned amended decision dated March 2, 1966 shows that Repacom is not required to immediately procure the machineries and equipment needed but only to take the necessary preliminary steps to fully implement the remaining balance of petitioner's approved allocation. We believe that the Repacom has complied with the lower court's directive because even the court a quo has acknowledged said compliance. It appears that petitioner filed a motion before the lower court to cite the members of the Repacom and the National Economic Council in contempt of court for their alleged failure, among others, to take necessary steps for the full implementation of petitioner's allocation. The lower court in denying the motion in its order dated January 26, 1972[7] said:

"In the light of all these facts, We find that all the respondents have done everything within their power, not only to take the preliminary steps but even the last step, the actual procurement of this reparations item, but they have only the power of recommendation, but not the final say, namely, the approval of the Annual Reparations Schedule by the President pursuant to Sec. 6 of Republic Act. No. 1789."

Furthermore, under Section 6 and 6(a) of Republic Act No. 1789 (Reparations Law) it is provided that:

"Sec. 6. Powers, functions and duties of the Commission.— The Commission shall administer the acquisition, utilization and distribution of reparations goods and/or services subject to the provisions of the Reparations Agreement and this Act. In line with the overall economic program and the policy set in the Act, the Commission shall prepare and submit for the approval of the President of the Philippines, upon recommendation of the National Economic Council, a five-year reparations program to be revised yearly as conditions warrant, consisting of a broad list of eligible projects, ..."

"In addition, the Commission shall have the following specific powers, functions and duties:

"(a) To prepare sufficiently in advance of need, on the basis of previously approved applications for reparations goods and services, a tentative schedule of goods and services clearly indicating thereon the name of the applicant end-user and the amount allocated to 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 Philippine and Japanese governments towards the formulation of the schedule called for in Article four of the Reparations Agreement. . . ."

There is nothing under the said provisions which specifically enjoins Repacom to perform as a duty the act of procuring reparations goods. Thereunder, the schedule of goods and services to be procured from Japan has to be approved by the President of the Philippines and agreed to by the Japanese government. Repacom cannot by its own acts alone procure the soda ash plant machineries and equipment and the desired implementation of the remaining balance of petitioner's allocation without prior reference to the Office of the President would exceed the power of Repacom.

Mandamus refers only to acts enjoined by law to be done.[8] It is necessary that the officials concerned have the power to perform the act concerning which the application for mandamus is made; otherwise, the writ will not issue however clear his duty to perform may be.[9] For these reasons, the petition for mandamus should be dismissed.

WHEREFORE, judgment is hereby rendered:

(a) In L-35796, reversing the decision dated January 21, 1966 and amended decision dated March 2, 1982 of the court a quo and ordering that the free market rate of P3.91 to US \$1.00 be made as the basis in payment of

reparations consumers goods to be procured by respondents;

(b) In L-35932, dismissing the petition for mandamus. No costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] p. 68, Rollo of L-35796.

[2] p. 115, Rollo of L-35796.

[3] 22 SCRA 717.

[4] G. R. No. L-29555, promulgated on May 22, 1982.

[5] Sec. 2, Rule 12, Rules of Court.

[6] Dizon vs. Romero, 26 SCRA 452.

[7] pp. 106-112, Rollo of L-35932.

[8] Sec. 3, Rule 65, Rules of Court.

[9] Alzate vs. Aldana, 8 SCRA 219.

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