

**NATIONAL MARKETING CORPORATION, CORNELIO BALMACEDA,
JOSE CAL-DERON, ANTONIO ARAMBULO, PEDRO BALINGIT,
CIPRIANO MALONZO AND ROSENDO TOMAS, PETITIONERS, VS. HON.
FRANCISCO ARCA, P...**

G.R. No. L-25743. September 30, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

This is an original action for certiorari and prohibition with prayer for a writ of preliminary injunction to enjoin respondent Judge Francisco Arca from enforcing his Order dated January 12, 1966, directing petitioners to reinstate respondent Juan T. Arive to his former position in the National Marketing Corporation (hereinafter referred to as NAMARCO) and the writ of preliminary mandatory injunction issued pursuant thereto on January 14, 1966.

Respondent Juan T. Arive was the Manager of the Traffic-Storage Department of the NAMARCO receiving an annual compensation of P7,200.00. Pursuant to the General Manager's Administrative Order No. 118 dated February 24, 1960, he was investigated by a committee for violating Management Memorandum Order dated February 1, 1960, directing "that the allocation and deliveries of merchandise imported under the so-called Trade Assistance Program to its designated beneficiaries be stopped;" and causing the improper release of shipments intended for delivery upon full payment thereof by the Federation of United NAMARCO Distributors (FUND), which were covered by certain domestic letters of credit for the total sum of P361,053.85. After due hearing, the investigating committee found Arive guilty of the charges but left the imposition of the penalty to the discretion of the General Manager and the Board of Directors. Subsequently, the General Manager issued Administrative Order No. 137, series of 1960, holding Arive guilty of the charges and dismissing him from the service. On November 4, 1960, the Board of Directors adopted Resolution No. 584-60 dismissing Arive from the service effective as of the date of his suspension, with prejudice to his reinstatement in the NAMARCO and to all benefits to which he would otherwise have been entitled, Arive filed a motion for reconsideration, which was denied on January 24, 1961.

On March 2, 1961, Arive appealed from the decision of the NAMARCO to the President of the Philippines. The NAMARCO was advised by the Office of the President of the appeal, and was asked to forward the records of the administrative case. On January 26, 1965, then Executive Secretary Ramon A. Diaz, presumably acting for the President, handed down a decision setting aside Resolution No. 584-60 of the NAMARCO and reinstating Juan T. Arive to his former position. In the decision it was pointed out that the order of the NAMARCO stopping the further delivery of commodities imported under the trade assistance program to the designated beneficiaries had been subsequently declared illegal by the Supreme Court in the case of Federation of United NAMARCO Distributors vs. NAMARCO, G. R. No. L-17819, March 31, 1962, on the ground that said order was a violation of the contract of sale; hence, it would not be proper to hold Arive administratively liable for his failure to comply with said order; and that the Pasig River Bodegas being private warehouses over which Arive did not have

supervision, much less control, the release of the commodities therefrom could have been effected even had Arive tried to block it. In the meantime, another person was appointed to, the position formerly occupied by Juan T. Arive.

On April 6, 1965, the NAMARCO, through its General Manager, in a letter addressed to the President, asked for a reconsideration of the decision ordering Arive's reinstatement. In that letter it was contended that the Office of the President had no jurisdiction to review any decision of the NAMARCO Board of Directors removing, suspending, or otherwise disciplining any of its subordinate employees, because Republic Act No. 1345 (the NAMARCO Charter), which grants that power to the General Manager and to the Board of Directors, does not provide for an appeal to any governmental body. In a letter to the NAMARCO dated June 8, 1965, then Executive Secretary Ramon A. Diaz, this time expressly acting "[b]y authority of the President," refused to reconsider the decision, stating that the President had jurisdiction under his constitutional power of control over all executive departments, bureaus and offices, and directing that the decision be implemented. The NAMARCO filed a second motion for reconsideration; and on November 17, 1965, the President, through Salvador Mariño as Acting Executive Secretary, denied the motion and again directed immediate compliance with the order of reinstatement. On December 9, 1965, the Office of the President, acting on complaints of Arive that he had not been reinstated in spite of the denial of the NAMARCO's two motions for reconsideration, sent a telegram to the General Manager requesting him to act on the case and to comment within forty-eight hours; but the said General Manager neither acted on the case nor commented.

On December 23, 1965, respondent Juan T. Arive filed a complaint (Civil Case No. 63720) with the Court of First Instance of Manila against the NAMARCO and the members of its Board of Directors for reinstatement and damages, with prayer for a writ of preliminary mandatory injunction. Hearing was held on the petition for issuance of the writ; and after the parties had submitted their respective memoranda, respondent Judge issued an order dated January 12, 1966, the pertinent portion of which reads:

"x x x The Court is, however, of the view that the President of the Philippines does not only exercise supervision but also control over all government-owned and controlled corporations including the NAMARCO; hence, he may review, revise, alter, modify or nullify the decision or action of the Board of Directors of any government-owned and controlled corporation and substitute his judgment for that of the latter. Plaintiffs right to reinstatement, therefore, appears to be very clear; and considering that the effect of the issuance of the writ prayed for is rather to re-establish and maintain a pre-existing continuing relation between the parties; and considering further that there is an invasion of plaintiff's rights and the injury is a continuing one, the Court hereby grants plaintiffs prayer and hereby orders the issuance of a writ of preliminary mandatory injunction directing the defendants to immediately reinstate the plaintiff to his position as Manager of the Traffic-Storage Department of the National Marketing Corporation upon filing a bond in the amount of P5,000.00."

Defendants filed a motion for reconsideration; and when the motion was denied, they filed the present petition with this Court, which on March 15, 1966, issued a writ of preliminary injunction.

The pivotal point at issue is whether the President of the Philippines had authority to reverse the decision of the Board of Directors of the NAMARCO and to order the re-instatement of Juan T. Arive. Respondents maintain that he had, and they anchor their stand on Section 10(1), Article VII, of the Constitution, which reads:

"The President shall have control of all executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

Petitioners, however, disagree, and contend that the word "offices," interpreted in the light of the preceding words "executive departments," and "bureaus," refers to Offices performing governmental functions which have no

juridical, personality, and, therefore, does not include government-owned and controlled corporations. They claim that the above-quoted constitutional provision is not applicable and that what should apply is Section 13(d) of Republic Act No. 1345, (NAMARCO Charter) which vests in the General Manager the power and/or duty, with the approval of the Board of Directors, to remove, suspend or otherwise discipline for cause any subordinate employee of the NAMARCO. They contend that in reversing the order of the NAMARCO Board of Directors dismissing Juan T. Arive from the service, and in ordering his reinstatement, the President of the Philippines arrogated unto himself a power not authorized either by the Constitution or by law, hence his actions were legally ineffective and certainly could not be a basis for issuance of the writ of preliminary injunction.

We hold that the President of the Philippines' authority to review and reverse the decision of the NAMARCO Board of Directors dismissing Juan T. Arive from his position in the NAMARCO and to order his reinstatement falls within the constitutional power of the President over all executive departments, bureaus and offices. Under our governmental setup, corporations owned or controlled by the government, such as the NAMARCO, partake of the nature of government bureaus or offices, which are administratively supervised by the Administrator of the Office of Economic Coordination, "whose compensation, and rank shall be that of a head of an Executive Department" and who "shall be responsible to the President of the Philippines under whose control his functions . . . shall be exercised." (Executive Order No. 386 of December 22, 1950, section 1, issued under the Reorganization Act of 1950).

The fact that section 13(d) of Republic Act No. 1345 (the NAMARCO Charter), and likewise section 11(d) of the Uniform Charter for Government Owned or Controlled Corporations (Ex. Order No. 399 of January 5, 1951, which authorize the general manager of such corporations, with the approval of the Board of Directors, to remove for cause any subordinate employee of the Corporation do not provide for an appeal from the general manager's decision of removal to any superior officer, body or agency, does not mean that no appeal lies from such decision to the President. In *Lacson-Magallanes Co., Inc. vs. Paño*, (21 SCRA 895, 899), where the Court upheld the President's action through his Executive Secretary of reversing a decision of the Director of Lands which had been affirmed by the Secretary of Agriculture and Natural Resources, notwithstanding the provision of Section 4 of Commonwealth Act No. 141 that such decisions "as to questions of fact shall be conclusive", we stated that "the right to appeal to the President reposes upon the President's power of control over the executive departments. And control simply means "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter." As enunciated through Justice Laurel in *Planes vs. Gil* (69 PHIL. 52, 76), "under the presidential type of government which we have adopted x x x all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive."

We find the President's action through his Executive Secretary of reversing the NAMARCO Board decision and ordering the reinstatement of respondent Arive to be an act of justice due respondent. In the decision of January, 20, 1965, then Executive Secretary Diaz stated:

"Moreover, it is an established fact that the Pasig River Bodegas is a private warehouse. Arive did not have the supervision, much less the control, of said warehouse. Under this circumstance, the release of the commodities in question could have been effected even if Arive tried to do his best to block it. To paraphrase Arive, and in this regard there is no evidence that contradicts him, his only duty in connection with shipments imported by the NAMARCO for the FUND under the trade assistance program was to undertake the proper clearance therefor with the Bureau of Customs. Clearly, therefore, Arive should not be made to suffer for the release of commodities in violation of the NAMARCO order of February 1, 1960, even if it were lawful, which it is not according to the Supreme Court, because the custody and release thereof were not within his control

and supervision." (Annex "A" of Complaint, Annex "C" of Petition)

Executive Secretary Diaz further pointed out in the first denial on June 8, 1965 of petitioners' motion for reconsideration that:

"It cannot be said therefore that it was an act of insubordination on Arive's part not to stop the release of the shipments in question in favor of the FUND. Had he done so, in total dis-regard of a contract between NAMARCO and FUND which that memorandum order violates, and of an injunction issued by the Court of First Instance hearing the complaint filed by the FUND against the NAMARCO for specific performance of that con-tract, he would have been held liable therefor, especially considering that the shipments intended for the FUND were stored in a private warehouse. The shipments could not have been stopped at all even if Arive did not 'okay for release' from the Bureau of Customs those shipments. Furthermore, the memorandum order allegedly not obeyed by him was declared illegal by no less an authority than the Supreme Court.

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"The primary question is whether Arive was illegally dismissed or not. Whether his reinstatement would entail the alleged adverse effects is of secondary importance and legal significance. This Office having found, in effect, that Arive was not lawfully dismissed for cause, he was entitled to reinstatement and to the benefits incidental thereto, inasmuch as his temporary cessation from work was not of his own doing nor within his control. The fact that one has replaced him already is immaterial because legally speaking his position never became vacant, hence there was no vacancy to which a new incumbent could be permanently appointed; in other words, the new incumbent's occupancy of, or tenure in, said post is temporary and precarious and does not come within the contemplation of the Constitutional prohibition. (Batungbakal vs. National Development Company et al., 49 O.G. 2290)." (Annex "B" of Complaint, Annex "D" of Petition)

Implementation of the President's decision has been delayed all these long years by the NAMARCO, notwithstanding the Government Corporate Counsel's advice and opinion that 'may not legally refuse to implement the decision of the Office of the President in the performance of the exercise of his supervision and control over said government owned and controlled corporations' (Op. No. 175, Series of 1963). Yet, in the case of a co-employee of respondent Arive, Victor Macaraig, who was similarly dismissed by the Board, the NAMARCO Board promptly reinstated him on December 4, 1962, in implementation of the President's decision of August 30, 1962, ordering his reinstatement. (Annexes 2 and 3, Respondents' Answer). Arive's right to reinstatement by virtue of the President's decision, which was reiterated twice in denying the petitioners' persistent motions for reconsideration was therefore clearly established, and which is now final and binding upon petitioners, and respondent judge did not act without jurisdiction or with grave abuse of discretion in issuing the writ of preliminary mandatory injunction for his immediate reinstatement. We deem it unnecessary to pass upon the other issues raised by the parties, which are, after all, merely incidental to the main issue of the President's authority to review and reverse Resolution No. 584-60 of the NAMARCO Board of Directors.

WHEREFORE, the petition is dismissed, with costs against petitioners. The writ of preliminary injunction issued on March 15, 1966 against the enforcement of respondent judge's order dated January 12, 1966 and writ of preliminary mandatory injunction dated January 14, 1966 in Civil Case No. 63720 of the Court of First Instance of Manila is hereby dissolved effective immediately.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Reyes, JBL, J., on official leave.

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