

TAN SE CHIONG, PETITIONER, VS. THE DIRECTOR OF POSTS AND THE AUDITOR-GENERAL, RESPONDENTS.

G.R. No. L-5920. June 25, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition to review the decision of the Auditor General of the Philippines, denying the claim of Tan Se Chiong for the redemption of 208 money orders issued by the postmaster of Guiuan, Samar, between May 6 to December 11, 1943, in favor of petitioner as remitter, payee or indorsee, and aggregating a face value of P41,600.00. The Auditor General ruled that such money orders were not redeemable "for the reason that they were purchased after the official occupation of Samar Province by the Japanese invader.

According to the March 18, 1952 indorsement of the Director of Posts (Petitioner Annex B), and which the Government does not dispute,--

"The second group of money orders were all issued in Guiuan, Samar on different dates in 1943. Guiuan was visited by the Japanese forces on July 23, 1942, but they did not stay long. After the forces left, Guiuan was controlled by the guerrilla unit of Overall Commander Manuel Valle of the South Gueirilla Sector in Samar. The money orders were issued by Mr. Proceso Quijoy, who relieved the former postmaster on March 18, 1942, on the instruction of then Post Office Inspector Cayetano Buena, who apparently continued to discharge his duties under the guerrilla.

Postmaster Quijoy did not receive the corresponding amounts for these money orders. He received, instead, receipts from the municipal treasurer, some of which follows:

Official Receipt No.

E-4189349

July 6, 1943

600.00

Official Receipt No.

E-4745538

Oct. 7, 1943

2,000.00

Official Receipt No.

E-4745681

Oct. 12, 1943

2,600.00

Official Receipt No.

E-4745696

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745697

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745698

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745699

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745700

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745801

Oct. 25, 1943

3,000.00

Official Receipt No.

E-4745824

Oct. 12, 1943

17,450.00

It is to be noted that it was made to appear in the receipts that the sums represented were deposited as post office funds by the former with the latter.

(SGD.) JUAN RUIZ

Director of Posts"

The redemption of money orders of the kind herein involved was dealt with in Administrative Order No. 1 (1947), of the Director of Posts, approved by the Secretary of Public Works and Communications (43 Off, Gaz., No. 3, p. 831). Section 5 thereof reads as follows:

"5. Money orders issued during the war or on and after December 8, 1941. - Any money order regularly issued in the Philippines on and after December 8, 1941 (except those falling under paragraph 6) which is in good condition and regular in all respects, may be paid only at the Money Order Division of this Bureau upon statement under oath in triplicate of the claimant stating—

(a) His full name, address and occupation or profession;

(b) That the order was issued in the regular course of business at the post office indicated therein as the office of issue, for which legal currency (Treasury or Philippine National Bank notes or Government checks or warrant but not scrip money or emergency notes) was paid (section 831 [4], Service Manual);

(c) That the money order was not issued in payment of salary and/or bonus, or other obligations of the Government;

(d) That the post office where the money order was issued was at the time still under the control of the Commonwealth Government and the place where it was located was not yet occupied by the enemy.

(Note.—This statement must be corroborated by a certificate or statement under oath of the Municipal Mayor and the Municipal Treasurer. If the Municipal Treasurer is at the same time the Postmaster, the statement of the Principal Teacher of the local elementary school or the Chief of Police will do.)"

The Solicitor General, on behalf of the Auditor General, correctly holds that Guiuan, Samar, does not come within requirement (d) above quoted; that is to say, the money orders were not issued by a post office "at the time (1943) was still under the control of the Commonwealth Government. and the place where it was located was not yet occupied by the enemy."

The fact that Guiuan, Samar, was occupied by Japanese forces only in July, 1942 and that, in their absence the guerrilla forces assumed control until 1944, when the invader returned, does not mean that the place was not under affective belligerent occupation by the enemy. The point has been passed upon and decided by this Court in *Co Kim Cham vs. Valdez*, 75 Phil. 371, and *Etorma vs. Ravelo*, 78 Phil. 155. The Court held that:

"The presence of guerrilla bands in barrios and mountains, and even in towns of the Philippines whenever these towns were left by Japanese garrisons or by the detachments of troops sent on patrol to these places, was not sufficient to make the military occupation ineffective, nor did it cause that occupation to cease, or prevent the constitution or establishment of a de facto government in the Islands. The belligerent occupation of the Philippines by the Japanese invaders became an accomplished fact from the time General Wainwright, Commander of the African and Filipino forces in Luzon, and General Sharp, Commander of the forces in Visayas and Mindanao, surrendered and ordered the surrender of their forces to the Japanese invaders, and the Commonwealth Government had become incapable of publicly exercising its authority, and the invader had substituted his own authority for that of the legitimate government in Luzon, Visayas and Mindanao.

'According to the rules of Land Warfare of the United States Army, belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded.' (International Law Chiefly as Interpreted and Applied by the United States, by Hyde, Vol. II, pp. 361-362.) 'Belligerent occupation must be both actual and effective. Organized resistance must be overcome and the forces in

possession must have taken measures to establish law and order. It doubtless suffices if the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district.' (Id., p. 364.) 'Occupation once acquired must be maintained * * *. It does not cease, however, * * *. Nor does the existence of a rebellion or the operations of guerrilla bands cause it to cease, unless the legitimate government is reestablished and the occupant fails promptly to suppress such rebellion or guerrilla operations' (Id., p. 365)."

(Co Kim Cham vs. Valdez, 75 Phil. 373-374).

Like possession, therefore, belligerent occupation would not require that the occupant should have its feet continuously planted on every square foot of territory (cf. Ramos vs. Dir. of Lands, 39 Phil. 181) provided it maintains effective control and military superiority therein, being able to send, in case of attack, sufficient force to assert its authority within a reasonable time, as in the case of the British occupation of the Boer republics during 1901 (Oppenheim, Int. Law, 6th Ed. Vol. II, pp. 340-341).

There is no proof that when the Japanese withdraw in 1942, they had no intention of returning; or that the retirement was coerced by military action of the guerrilla forces; or that the latter were able to resist the enemy's efforts to dislodge them and reoccupy the town. On the contrary, this record is clear that the guerrillas were only able to control Guiuan as long as the Japanese were not minded to return. In fact, the Japanese returned in 1944, and reoccupied the town without the guerrilla forces being able to prevent it. So that the absence of a Japanese garrison in 1943 did not mean that the belligerent occupation had ceased or become ineffective.

Another point that militates against petitioner's recovery is found in his own affidavit of December 29, 1938, made at Guiuan, Samar (Exhibit roll, fol. 5). Asked,

"What kind of money, scrip or emergency notes (had) been paid by you?"

the petitioner answered:

"As far as I can remember, those issued in Guiuan were of the Cebu Emergency notes, about P7,500.00 and the rest all in genuine money,"

The requirement of Administrative Order No. 1, of 1947, par. 5(b), is that, to be entitled to redemption, it must appear that the money order was paid for in legal currency, "Treasury or PNB notes or government checks or warrants, but not scrip money or emergency notes". Hence, it was incumbent on this petitioner to clearly segregate and identify the money orders corresponding to the emergency notes he paid, and those that were supported by lawful consideration. Not having done so, he can not be said to have complied with the redemption order (cf. Lichauco vs. Martinex, 6 Phil. 597).

Petitioner also complains that the Auditor General rejected his reimbursement claim when that official allowed redemption in the similar cases of Juan R. Whalen and Loida N. Palanca, involving money orders issued in Culion, Palawan, after the capital of that province had already been occupied by the Japanese forces on May 18, 1942. But in the latter cases the money orders were purchased before the Japanese reached or landed in Culion itself to assert their authority; while in the case now before us, Tan Se Chiong purchased money orders after the enemy forces had entered and established their authority in Guiuan itself in 1942. Anyway, as the Solicitor General states in his brief (p. 10), —

"* * *. Assuming the facts to be as stated by petitioner in connection with the Whalen and Palanca claims, the most that can be said is that the Auditor General erred in allowing those claims, and such error on the part of the Auditor General is no reason for compelling him to make another error that would cost the government a much higher sum. Obviously, the equal protection clause of the Constitution does not require either the courts, the executive and the legislative departments, after having committed an error, to repeat the same error in

subsequent similar cases, specially when no principle of estoppel is involved."

The excision of the Auditor General is, therefore, affirmed, with costs against appellant.

Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Paras, C.J., and Pablo, J., did not take part.

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