

SALVADOR ARANETA, ETC., ET AL., PETITIONERS, VS. THE HON. MAGNO S. GATMAITAN, ETC., ET AL., RESPONDENTS. EXEQUIEL SORIANO, ET AL., PETITIONERS AND APPELLEES, VS. SALVADOR ARANETA...

G. R. Nos. L-8895 and L-9191. April 30, 1957

Ponente: FELIX, J.

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FELIX, J.:

San Miguel Bay, located between the provinces of Camarines Norte and Camarines Sur, a part of the National waters of the Philippines with an extension of about 250 square miles and an average depth of approximately 6 fathoms (Otter trawl explorations in Philippine waters— p. 21, Exh. B), is considered as the most important fishing area in the Pacific side of the Bicol region. Sometime in 1950, trawl^[1] operators from Malabon, Navotas and other places migrated to this region most of them settling at Sabang, Calabanga, Camarines Sur, for the purpose of using this particular method of fishing in said bay. On account of the belief of sustenance p fishermen that the operation of this kind of gear caused the depletion of the marine resources of that area, there arose a general clamor among the majority of the inhabitants of coastal towns to prohibit the operation of trawls in San Miguel Bay. This move was manifested in the resolution of December 18, 1953 (Exh. F), passed by the Municipal Mayors' League condemning the operation of trawls as the cause of the wanton destruction of the shrimp specie and resolving to petition the President of the Philippines to regulate fishing in San Miguel Bay by declaring it closed for trawl fishing at a certain period of the year. In another resolution dated March 27, 1954, the same League of Municipal Mayors prayed the President to protect them and the fish resources of San Miguel Bay by banning the operation of trawls therein (Exh. 4). The Provincial Governor also made proper representations to this effect and petitions in behalf of the non-trawl fishermen were likewise presented to the President by social and civic organizations as the NAMFREL (National Movement for Free Elections) and the COMPADRE (Committee for Philippine Action in Development, Reconstruction and Education), recommending the cancellation of the licenses of trawl operators after investigation, if such inquiry would substantiate the charges that the operation of said fishing method was detrimental to the welfare of the majority of the inhabitants (Exh. 2). In response to these pleas, the President issued on April 5, 1954, Executive Order No. 22 (50 Off. Gaz., 1421) prohibiting the use of trawls in San Miguel Bay, but said executive order was amended by Executive Order No. 66, issued on September 23, 1954 (50 Off. Gaz., 4037), apparently in answer to a resolution of the Provincial Board of Camarines Sur recommending the allowance of trawl fishing during the typhoon season only. On November 2, 1954, however, Executive Order No. 80 (50 Off. Gaz., 5198) was issued reviving Executive Order No. 23, to take effect after December 31, 1954;

A group of Otter trawl operators took the matter to the court by filing a complaint for injunction and/or declaratory relief with preliminary injunction with the Court of First Instance of Manila, docketed as Civil Case No. 24867, praying that a writ of preliminary injunction be issued to restrain the Secretary of Agriculture and Natural Resources and the Director of Fisheries from enforcing said executive order; to declare the same null and

void, and for such other relief as may be just and equitable in the premises.

The Secretary of Agriculture and Natural Resources and the Director of Fisheries, represented by the Legal Adviser of said Department and a Special Attorney of the Office of the Solicitor General, answered the complaint alleging, among other things, that of the 18 plaintiffs (Exequiel Soriano, Teodora Donato, Felipe Concepcion, Venancio Cor-rea, Santo Gaviana, Alfredo General, Constaneio Gutierrez, Arsenio de Guzman, Pedro Lazaro, Porfirio Lazaro, Deljie de Leon, Jose Nepomueeno, Bayani Pingol, Claudio Salgado, Porfirio San Juan, Luis Sioco, Casimiro Villar and Enrique Voluntad), only 11 were issued licenses to operate fishing boats for the year 1954 (Annex B, petition—L-8895) ; that the executive orders in question were issued in accordance with law; that the encouragement by the Bureau of Fisheries of the use of Otter trawls should not be construed to mean that the general welfare of the public could be disregarded, and set up the affirmative defenses that since plaintiffs question the validity of the executive orders issued by the President, then the Secretary of Agriculture and Natural Resources and the Director of Fisheries were not the real parties in interest; that said executive orders do not constitute a deprivation of property without due process of law, and therefore prayed that the complaint be dismissed (Exh. B, petition, L-8895).

During the trial of the case, the Governor of Camarines Sur appearing for the municipalities of Siruma, Tinambac, Calabanga, Cabusao and Sipocot, in said province, called the attention of the Court that the Solicitor General had not been notified of the proceeding. To this manifestation, the Court ruled that in view of the circumstances of the case, and as the Solicitor General would only be interested in maintaining the legality of the executive orders sought to be impugned, section 4 of Rule 66 could be interpreted to mean that the trial could go on and the Solicitor General could be notified before judgment is entered.

After the evidence for both parties was submitted and the Solicitor General was allowed to file his memorandum, the Court rendered decision on February 2, 1955, the last part of which reads as follows:

"The power to close any definite area of the Philippine "waters, from the fact that Congress has seen fit to define under what conditions it may be done by the enactment of the sections cited, in the mind of Congress must be of transcendental significance. It is primarily within the fields of legislation not of execution; for it goes far and says who can and who can not fish in definite territorial waters. The court can not accept that Congress had intended to abdicate its inherent right to legislate on this matter of national importance. To accept respondents' view would be to sanction the exercise of legislative power by executive decrees. If it is San Miguel Bay now, it may be Davao Gulf tomorrow, and so on. That may be done only by Congress. This being the conclusion, there is hardly need to go any further. Until the trawler is outlawed by legislative enactment, it cannot be banned from San Miguel Bay by executive proclamation. The remedy for respondents and population of the coastal towns of Camarines Sur is to go to, the Legislature. The result will be to issue the writ prayed for, even though this be to strike at public clamor and to annul the orders of the President issued in response therefor. This is a task mi welcome and unpleasant; unfortunately, courts ol justice use only-one measure for both the rich and poor, and are not bound by the more popular cause when they give judgments.

"IN VIEW WHEREOF, granted; Executive Order Nos. 22, 66 and 80 are declared invalid; the injunction prayed for is ordered to issue; no pronouncement as to costs".

Petitioners immediately filed an ex-parte motion for the issuance of a writ of injunction which was opposed by the Solicitor General and after the parties had filed their respective memoranda, the Court issued an order dated February 19, 1955, denying respondents' motion to set aside judgment and ordering them to file a bond in the sum. of P30,000 on or before March 1, 1955, as a condition for the non-issuance of the injunction prayed for by petitioners pending appeal. The Solicitor General filed a motion for reconsideration which was denied for lack of merit, and the Court, acting upon the motion for new trial filed by respondents, issued another order on March 8, 1955, denying said motion and granting the injunction prayed for by petitioners upon the latter's filing a bond for

1*30,000 unless respondents could secure a writ of preliminary injunction from the Supreme Court on or before March 15, 1955. Respondents, therefore, brought the matter to this Court in a petition for prohibition and certiorari with preliminary injunction, docketed as G. R. No. L-8895, and on the same day filed a notice to appeal from the order of the lower court dated February 2, 1955, which appeal was docketed in this Court as G. R. No. L-9191.

In the petition for prohibition and certiorari, petitioners (respondents therein) contended among other things, that the order of the respondent Judge requiring petitioners Secretary of Agriculture and Natural Resources and the Director of Fisheries to post a bond in the sum of P30,000 on or before March 1, 1955, had been issued without jurisdiction or in excess thereof, or at the very least with grave abuse of discretion, because by requiring the bond, the Republic of the Philippines was in effect made a party defendant and therefore transformed the suit into one against the Government which is beyond the jurisdiction of the respondent Judge to entertain; that the failure to give the Solicitor General the opportunity to defend the validity of the challenged executive orders resulted in the receipt of objectionable matters at the hearing; that Rule 66 of the Rules of Court does not empower a court of law to pass upon the validity of an executive order in a declaratory relief proceeding; that the respondent Judge did not have the power to grant the injunction as Section 4 of Rule 39 does not apply to declaratory relief proceedings but only to injunction, receivership and patent accounting proceedings; and prayed that a writ of preliminary injunction be issued to enjoin the respondent Judge from enforcing its order of March 3, 1955, and for such other relief as may be deemed just and equitable in the premises. This petition was given due course and the hearing on the merits was set by this Court for April 12, 1955, but no writ of preliminary injunction was issued. Meanwhile, the appeal (G. R. No. L-9191) was heard on October 3, 1956, wherein respondents-appellants ascribed to the lower court the commission of the following errors:

- In ruling that the President has no authority to issue Executive Orders Nos. 22, 66 and 80 banning the operation of trawls in San Miguel Bay;
- In holding that the power to declare a closed area for fishing purposes has not been delegated to the President of the Philippines under the Fisheries Act;
- In not considering Executive Orders Nos. 22, 66 and 80 as declaring a closed season pursuant to Section 7, Act 4003, as amended, otherwise known as the Fisheries Act;
- In holding that to uphold the validity of Executive Orders Nos. 22 and 80 would be to sanction the exercise of legislative power by executive decrees;
- In its suggestion that the only remedy for respondents and the people of the coastal towns of Camarines Sur and Camarines Norte is to go to the Legislature; and
- In declaring Executive Orders Nos. 22, 66 and 80 invalid and in ordering the injunction prayed for to issue.

As Our decision in the prohibition and certiorari case (G. R. No. L-8895) would depend, in the last analysis, on Our ruling in the appeal of the respondents in case G. R. No. L-9191, We shall first proceed to dispose of the latter case.

It is indisputable that the President issued Executive Orders Nos. 22, 6Q and 80 in response to the clamor of the Inhabitants of the municipalities along the coastline of San Miguel Bay. They read as follows:

"Executive Order No. 22

"PROHIBITING THE USE OF TRAWLS IN SAN MIGUEL BAY"

"In order to effectively protect the municipal fisheries of San Miguel Bay, Camarines Norte and Camarines Sur, and to conserve fish and other aquatic resources of the area, I, RAMON MAGSAYSAY, President of

the Philippines, by virtue of the powers vested in me by law, do hereby order that:

- Fishing by means of trawls (utase, otter and/of perenzclla) of any kind, in the waters comprised within San Miguel Bay, is hereby prohibited.
- Trawl shall mean, for the purpose of this Order, a fishing net made in the form of a bag with the mouth kept open by a device, the whole affair being towed, dragged, trailed or trawled on the bottom of, the sea to capture demersal, ground or bottom species.
- Violation of the provisions of this Order shall subject the offender to the penalty provided under Section 88 of Act 4993, or a fine of not more than two hundred pesos, or imprisonment for not more than six months, or both, in the discretion of the Court.

"Done: in the City of Manila, this 5th day of April, nineteen hundred and fifty-four and of the Independence of the Philippines, the eighth." (50 Off. Gaz. 1421)

"Executive Order No. 66

"AMENDING EXECUTIVE ORDER NO. 22, DATED APRIL 5, 1954, ENTITLED 'PROHIBITING THE USE OF TRAWLS IN SAN MIGUEL BAY'"

"By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby amend Executive.

Order No. 22, dated April 5, 1954, so as to allow fishing by means of trawls, as defined in said. Executive Order, within that portion of San Miguel Bay north of a straight line drawn from Tacub-tacuban Hill in the Municipality of Tinambac, Province of Camarines Sur. Fishing by means of trawls south of said line shall still be absolutely prohibited.

"Done in the City of Manila, this 23rd day of September, in the year of our Lord, nineteen, hundred and fifty-four, and of the Independence of the Philippines, the ninth." (50 Off. Gaz. 4037)

"Executive Order No. 80

"FURTHER AMENDING EXECUTIVE ORDER NO. 22, DATED APRIL 5, 1954, AS AMENDED BY EXECUTIVE ORDER NO. 66, DATED SEPTEMBER 23, 1954.

"By virtue of the powers vested in me by law, I, RAMON MAGSAYSAY, President of the Philippine do hereby amend Executive Order No. 66, dated September 23, 1954, so as to allow fishing by means of trawls, as defined in Executive Order No. 22, dated April 5, 1954, within that portion of San Miguel Bay north of a straight line drawn from Tacubtacuban Hill in the Municipality of Mercedes, Province of Camarines Norte to Balocbaloc Point in the Municipality of Tinambae, Province of Camarines Sur, until December 31, 1954, only.

Thereafter, the provisions of said Executive Order No. 22 absolutely prohibiting fishing by means of trawls in all the waters comprised within the San Miguel Bay shall be revived and given full force and effect as originally provided therein.

"Done in the City of Manila, this 2nd day of November, in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the ninth." (50 Off. Gaz. 5198)

It is likewise admitted that petitioners assailed the validity of said executive orders in their petition for a writ of injunction and/or declaratory relief filed with the Court of First Instance of Manila, and that the lower court, upon declaring Executive Orders Nos. 22, 66 and 80 invalid, issued an order requiring the Secretary of Agriculture and Natural Resources and the Director of Fisheries to post a bond for P30,000 if the writ of injunction restraining them from enforcing the executive orders in question must be stayed.

The Solicitor General avers that the constitutionality of an executive order cannot be ventilated in a declaratory relief proceeding. We find this untenable, for this Court taking cognizance of an appeal from the decision of the lower court in the case of *Hilado vs. De la Costa et al.*, 83 Phil., 471, which involves the constitutionality of another executive order presented in an action for declaratory relief, in effect accepted the propriety of such action. This question being eliminated, the main issues left for Our determination with respect to defendants' appeal (G. R. No. L-9191), are:

- (1) Whether the Secretary of an Executive Department and the Director of a Bureau, acting in their capacities as such Government officials, could lawfully be required to post a bond in an action against them;
- (2) Whether the President of the Philippines has authority to issue Executive Orders Nos. 22, 66 and 80, banning the operation of trawls in San Miguel Bay, or, said in other words, whether said Executive Orders Nos. 22, 66 and 80 were issued in accordance with law; and
- (3) Whether Executive Orders Nos. 22, 66 and 80 were valid, for the issuance thereof was not in the exercise of legislative powers unduly delegated to the President.

Counsel for both parties presented commendable exhaustive defenses in support of their respective stands. Certainly, these cases deserve such efforts, not only because the constitutionality of an act of a coordinate branch in our tripartite system of Government is in issue, but also because of the number of inhabitants, admittedly classified as "subsistence fishermen", that may be affected by any ruling that We may promulgate herein.

I. As to the first proposition, it is an elementary rule of procedure that an appeal stays the execution of a judgment. An exception is offered by section 4 of Rule 39 of the Rules of Court, which provides that:

"Sec. 4. INJUNCTION, RECEIVERSHIP AND PATENT ACCOUNTING, NOT STAYED.—Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letter patent, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of an appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

This provision was the basis of the order of the lower court dated February 19, 1955, requiring the filing by the respondents of a bond for P30,000 as a condition for the non-issuance of the injunction prayed for by plaintiffs therein, and which the Solicitor General charged to have been issued in excess of jurisdiction. The State's counsel, however, alleges that while judgment could be stayed in injunction, receivership and patent accounting cases and although the complaint was styled "Injunction and/ or Declaratory Relief with Preliminary Injunction", the case is necessarily one for declaratory relief, there being no allegation sufficient to convince the Court that the plaintiffs intended it to be one for injunction. But aside from the title of the complaint, We find that plaintiffs pray for the declaration of the nullity of Executive Order Nos. 22, 66 and 80; the issuance of a writ of preliminary injunction, and for such other relief as may be deemed just and equitable. This Court has already held that there are only two requisites to be satisfied if an injunction is to issue, namely, the existence of the right sought to be protected, and that the acts against which the injunction is to be directed are violative of said right (*North Negros Sugar Co., Inc. vs. Serafin Hidalgo*, 63 Phil., 664). There is no question that at least 11 of the complaining trawl operators were duly licensed to operate in any of the national waters of the Philippines, and it is undeniable that the executive enactments sought to be annulled are detrimental to their interests. And considering further that the granting or refusal of an injunction, whether temporary or permanent, rests in the sound discretion of the Court, taking into account the circumstances and the facts of the particular case (*Rodulfa vs. Alfonso*, 76 Phil., 225, 42 Off. Gaz., 2439), We find no abuse of discretion when the trial Court treated the complaint as one for injunction and

declaratory relief and executed the judgment pursuant to the provisions of section 4 of Rule 39 of the Rules of Court.

On the other hand, it shall be remembered that the party defendants in Civil Case No. 24867 of the Court of First Instance of Manila are Salvador Araneta, as Secretary of Agriculture and Natural Resources, and Deogracias Villadolid, as Director of Fisheries, and were sued in such capacities because they were the officers charged with duty of carrying out the statutes, orders and regulations on fishing and fisheries. In its order of February 19, 1955, the trial court denied defendants motion to set aside judgment and they were required to file a bond for P30,000 to answer for damages that plaintiffs were allegedly suffering at the time, as otherwise the injunction prayed for by the latter would be issued.

Because of these facts, We agree with the Solicitor General when he says that the action, being one against herein petitioners as such Government officials, is essentially one against the Government, and to require these officials to file a bond would be indirectly a requirement against the Government, for as regards bonds or damages that may be proved, if any, the real party in interest would be the Republic of the Philippines (L. S. Moon and Co. vs. Harrison, 43 Phil., 39; Salgado vs. Ramos, 64 Phil., 724-727, and others). The reason for this pronouncement is understandable; the State undoubtedly is always solvent (Tolentino vs. Carlos, 66 Phil., 140; Government of the P. I. sis. Judge of the Court of First Instance of Iloilo, 34 Phil., 157, cited in Joaquin Gutierrez et al, vs. Camus et al.* G. R. No. L-6725, promulgated October 30* 1954). However, as the records show that herein petitioners failed to put up the bond required by the lower court, allegedly due to difficulties encountered with the Auditor General's Office (giving the impression that they were willing to put up said bond but failed to do so for reasons beyond their control), and that the orders subjects of the prohibition and certiorari proceedings in G. R. No. L-8895, were enforced, if at all,[1] in accordance with section 4 of Rule 39, which We hold to be applicable to the case at bar, the issue as to the regularity or adequacy of requiring herein petitioners to post a bond, becomes moot and academic.

II. Passing upon the question involved in the second proposition, the trial judge extending the controversy to the determination of which between the Legislative and Executive Departments of the Government had "the power to close any definite area of the Philippine waters" instead of limiting the same to the real issue raised by the enactment of Executive Orders Nos. 22, 66 and 80, specially the first and the last "absolutely prohibiting fishing by means of trawls in all the waters comprised within the San Miguel Bay", ruled in favor of Congress, and as the closing of any definite area of the Philippine waters is, according to His Honor, primarily within the fields of legislation and Congress had not intended to abdicate its power to legislate on the matter, he maintained, as stated before, that "until the trawler is outlawed by legislative enactment, it cannot be banned from San Miguel Bay by executive proclamation", and that "the remedy for respondents and population of the coastal towns of Camarines Sur is to go to the Legislature," and thus declared said Executive Orders Nos. 22, 66 and 80 invalid".

The Solicitor General, on the contrary, asserts that the President is empowered by law to issue the executive enactments in question.

Sections 6, 13 and 75 of Act No. 4003, known as the Fisheries Law, the latter two sections as amended by section 1 of Commonwealth Act No. 471, read as follows:

"Sec. 6. Words and Phrases Defined,—Words and terms used in this Act shall be construed as follows:

* * * * TAKE or TAKING, includes pursuing, shooting, killing, capturing-, trapping, snaring, anrl netting fish and other aquatic animals, and all lesser acts, such as disturbing, wounding, stupefying, or placing, setting, drawing, or using any net or other device commonly used to take or collect fish and other aquatic animals, whether they result m taking or not, and includes every attempt to take and every act of assistance to every

other person in taking¹ or attempting- to take or collect fish and other aquatic animals: Provided, That whenever taking is allowed by law, reference is had to taking by lawful means and in lawful manner.

* * * * *

"SEC. 13. PROTECTION OF FRY OR FISH EGGS.—Except for scientific or educational purpose or for propagation, it shall be unlawful to take or catch fry or fish eggs and the small fish, not more than three (3) centimeters long, known as siliniasi, in the territorial waters of the Philippines. Towards this end, the Secretary of Agriculture and Commerce shall be authorized to provide by regulations such restrictions as may be deemed necessary to be imposed on THE USE OF ANY FISHING NET OR FISHING DEVICE FOR THE PROTECTION OF FRY OR FISH EGGS; Provided, however, That the Secretary of Agriculture and Commerce shall permit the taking of young of certain species of fish known as hipon under such restrictions as may be deemed necessary.

"SEC. 75. FISH REFUGES AND SANCTUARIES.—Upon the recommendation of the officer or chief of the bureau, office Or service concerned, the Secretary of Agriculture and Commerce may set aside and establish fishery reservation or fish Refuges and sanctuaries to be administered in the manner to be prescribed by him. All streams, ponds, and waters "Within the game refuge, birds sanctuaries, national parks, botanical gardens, communal forests and communal pastures are hereby declared fishing refuges and sanctuaries. It shall be unlawful for any person, to take, destroy or kill in any of the places aforementioned, or in any manner disturb or drive away or take therefrom, any fish fry or fish eggs."

Act No. 4003 further provides as follows:

"SEC. 83. OTHER VIOLATIONS.—Any other violation of the provisions of this Act or any rules and regulations promulgated thereunder shall subject the offender to a fine of not more than two hundred pesos, or imprisonment for not more than six months, or both, in the discretion of the Court."

As may be seen from the just quoted provisions, the law declares unlawful and fixes the penalty for the taking (except for scientific or educational purposes or for propagation), destroying or killing of any fish fry or fish eggs, and the Secretary of Agriculture and Commerce (now the Secretary of Agriculture and Natural Resources) is authorized to promulgate regulations restricting the use of any fish net or fishing device (which includes the net used by trawl fishermen) for the protection of fry or fish eggs, as well as to set aside and establish fishery reservations or fish refuges and sanctuaries to be administered in the manner prescribed by him, from which no person could lawfully take, destroy or kill in any of the places aforementioned, or in any manner disturb or drive away or take, therefrom any small or immature fish, fry or fish eggs. It is true that said section 75 mentions certain streams, ponds and waters within the game refuges, * * * communal forests, etc., which the law itself declares fish refuges and sanctuaries, but this enumeration of places does not curtail the general and unlimited power of the Secretary of Agriculture and Natural Resources in the first part of section 75, to set aside and establish fishery reservations or fish refuges and sanctuaries, which naturally include seas or bays, like the San Miguel Bay in Camarines.

From the resolution passed at the Conference of Municipal Mayors held at Tinambac, Camarines Sur, on December 18, 1953 (Exh. F), the following manifestation is made:

"Whereas, the continuous operation of said trawls even during the close season as specified in said Executive Order No. 20 caused the wanton destruction of the mother shrimps laying their eggs and the millions of eggs laid and the inevitable extermination of the shrimps specie; in order to save the shrimps specie from eventual extermination and in order to conserve the shrimps specie for posterity;"

In the brief submitted by the NAMFREL and addressed to the President of the Philippines (Exh. 2), in support of the petition of San Miguel Bay fishermen (allegedly 6,175 in number), praying that trawlers be banned from

operating in San Miguel Bay, it is also stated that:

The trawls ram and destroy the fish corrals. The heavy trawl nets dig deep into the ocean bed. They destroy the fish food which lies below the ocean floor. Their daytime catches net millions of shrimps scooped up from the mud. In their nets they bring up the life of the sea: algea, shell fish and star fish. * * *

"The absence of some species or the apparent decline in the catch of some fishermen operating in the bay may be due to several factors, namely: the indiscriminate catching of fry and immature sizes of fishes, the wide-spread use of explosives inside as well as at the mouth and approaches of the bay, and the extensive operation of the trawls." (p. 9, Report of Santos B. Kasalan, Exh. A).

Extensive Operation of Trawls:—The strenuous effect of the operations of the 17 TRAWLS of the demersal fisheries of San Miguel Bay is better appreciated when we consider the fact that out of its about 850 square kilometers area, only about 350 square kilometers of f) fathoms up could be trawled. With their continuous operation, coupled with those of the numerous fishing methods, the fisheries is greatly strained. This is shown by the fact that in view of the non-observance of the close season from May to October, each year, majority of their catch are immature. If their operation would continue unrestricted, the supply would be greatly depleted." (p. 11, Report of Santos B. Kasalan, Exh. A).

San Miguel Bay—can sustain 3 to 4 small trawlers (Otter Trawl Explorations in Philippine Waters, Research Report on of the Fish and Wildlife Service, United States Department of the Interior, p. 9, Exhibit R).

According to Annex A of the complaint filed in the lower court in Civil Case No. 24867—G. R. No. L-9191 (Exh. D, p. 53 of the folder of Exhibits), the 18 plaintiffs-appellees operate 29 trawlingboats, and their operation must be in a big scale considering the investments plaintiffs have made therefor, amounting to P387,000 (Record on Appeal, p. 16-17).

In virtue of the aforementioned provisions of law and the manifestations just copied, We are of the opinion that with or without said Executive Orders, the restriction and banning of trawl fishing from all Philippine waters come, under the law, within the powers of the Secretary of Agriculture and Natural Resources, who in compliance with his duties may even cause the criminal prosecution of those who in violation of his instructions, regulations or orders are caught fishing with trawls in Philippine waters.

Now, if under the law the Secretary of Agriculture and Natural Resources has authority to regulate or ban the fishing by trawl which, it is claimed, is obnoxious for it carries away fish eggs and fries which should be preserved, can the President of the Philippines exercise that same power and authority? Section 10(1), Article VII of the Constitution of the Philippines prescribes:

Sec. 10(1). The President shall have, control of all the executive departments, bureaus or offices, exercises general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

Section 68 of the Revised Administrative Code reads as follows:

"Sec. 63. EXECUTIVE ORDER AND EXECUTIVE PROCLAMATION,— Administrative acts and commands of the President of the Philippines touching the organization or mode of operation of the Government or rearranging' or readjusting any of the districts, divisions, parts or ports of the Philippines, and all acts and commands governing the general performance of duties by public employees or disposing of issues of general concern shall be made in executive orders."

* * * *

Regarding department organization Section 74 of the Revised Administrative Code also provides that:

"All executive functions of the Government of the Republic of the Philippines shall be directly under the Executive Department subject to the supervision and control of the President of the Philippines in matters of general policy. The Departments are established for the proper distribution of the work of the Executive, for the performance of the functions expressly assigned to them by law, and in order that each branch of the administration may have a chief responsible for its direction and policy. Each Department Secretary shall assume the burden of, and responsibility for, all activities of the Government under his control and supervision.

For administrative purposes the President of the Philippines shall be considered the Department Head of the Executive Office." * * *

One of the executive departments is that of Agriculture and Natural Resources which by law is placed under the direction and control of the Secretary, who exercises its functions subject to the general supervision and control of the President of the Philippines (Sec. 75, R. A. C). Moreover, "executive orders, regulations, decrees and proclamations relative to matters under the supervision or jurisdiction of a Department, the promulgation whereof is expressly assigned by law to the President of the Philippines, shall as a general rule, be issued upon proposition and recommendation of the respective Department" (Sec. 79-A, R.A.C.), and there can be no doubt that the promulgation of the questioned Executive Orders was upon the proposition and recommendation of the Secretary of Agriculture and Natural Resources and that is why said Secretary, who was and is called upon to enforce said executive Orders, was made a party defendant in one of the cases at bar (G. R. No. L-9191).

For the foregoing reasons We do not hesitate to declare that Executive Orders Nos. 22, 66 and 80, series of 1954, of the President, are valid and issued by authority of law.

III. But does the exercise of such authority by the President constitute an undue delegation of the powers of Congress?

As already held by this Court, the true distinction between delegation of the power to legislate and the conferring of authority or discretion as to the execution of the law consists in that the former necessarily involves a discretion as to what the law shall be, while in the latter the authority or discretion as to its execution has to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made (Cruz vs. Youngberg, 56 Phil., 234, 239. See also Rubi, et al. vs. The Provincial Board of Mindoro, 39 Phil., 660).

In the case of U. S. vs. Ang Tang Ho., 43 Phil. 1, We also held:

"THE POWER TO DELEGATE.—The Legislature cannot delegate legislative power to enact any law. If Act No. 2868 is a law unto itself, and within itself, and it does nothing more than to authorize the Governor-General to make rules and regulations to carry it into effect, then the Legislature created the law. There is no delegation of power and it is valid. On the other hand, if the act within itself does not define a crime and is not complete, and some legislative act remains to be done to make it a law or a crime, the doing of which is vested in the Governor-General, the act is a delegation of legislative power, is unconstitutional and void."

From the provisions of Act No. 4003 of the Legislature, as amended by Commonwealth Act No. 471, which have been aforequoted, We find that Congress (a) declared it unlawful "to take or catch fry or fish eggs in the territorial waters of the Philippines; (b) towards this end, it authorized the Secretary of Agriculture and Natural Resources to provide by the regulations such restrictions as may be deemed necessary' to be imposed on the use of any fishing net or fishing device for the protection of fish fry or fish eggs (Sec. 13); (c) it authorized the Secretary of Agriculture and Natural Resources to set aside and establish fishery reservations or fish refuges and sanctuaries to be administered in the manner to be prescribed by him and declared it unlawful for any person to take, destroy or kill in any of said places, or in any manner disturb or drive away or take therefrom, any fish fry or fish eggs (Sec. 75); and (d) it penalizes the execution of such acts declared unlawful and in violation of this Act (No. 4003) or of

any rules and regulations promulgated thereunder, making the offender subject to a fine of not more than P200, or imprisonment for not more than 6 months, or both, in the discretion of the court (Sec. 83).

From the foregoing it may be seen that in so far as the protection of fish fry or fish egg is concerned, the Fisheries Act is complete in itself, leaving to the Secretary of Agriculture and Natural Resources the promulgation of rules and regulations to carry into effect the legislative intent. It also appears from the exhibits on record in these cases that fishing with trawls causes "a wanton destruction of the mother shrimps laying their eggs and the millions of eggs laid and the inevitable extermination of the shrimps specie" (Exh. F), and that "the trawls ram and destroy the fish corrals. The heavy trawl nets dig deep into the ocean bed. They destroy the fish food which lies below the ocean floor. Their daytime catches net millions of shrimps scooped up from the mud. In their nets they bring up the life of the sea" (Exh. 2).

In the light of these facts it is clear to Our mind that for the protection of fry or fish eggs and small and immature fishes, Congress intended with the promulgation of Act No. 4003, to prohibit the use of any fish net or fishing device like trawl nets that could endanger and deplete our supply of sea food, and to that end authorized the Secretary of Agriculture and Natural Resources to provide by regulations such restrictions as he deemed necessary in order to preserve the aquatic resources of the land. Consequently, when the President, in response to the clamor of the people and authorities of Camarines Sur issued Executive Order No. 80 absolutely prohibiting fishing by means of trawls in all waters comprised within the San Miguel Bay, he did nothing but show an anxious regard for the welfare of the inhabitants of said coastal-province and dispose of issues of general concern (Sec. 63, R.A.C) which were in consonance and strict conformity with the law.

Wherefore, and on the strength of the foregoing considerations We render judgment, as follows:

(a) Declaring that the issues involved in case G. R. No. L-8895 have become moot, as no writ of preliminary injunction has been issued by this Court enjoining the respondent Judge of the Court of First Instance of Manila, Branch XIV, from enforcing his order of March 3, 1955; and Lopez vs. Board .of Directors and Gen. Manager of the National Marketing Corporation

(b) Reversing the decision appealed from in case G. E. No. L-9191; dissolving the writ of injunction prayed for in the lower' court by plaintiffs, if any has been actually issued by the court a quo; and declaring Executive Orders Nos. 22, 66 and 80, series of 1954, valid for having been issued by authority of the Constitution, the Revised Administrative Code and the Fisheries Act.

Without pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Trawl is a fishing net made in the form of a bag with the mouth kept open by a device the whole, affair being towed, dragged, trailed or trawled on the bottom of the sea to capture demersal, ground or bottom species (Executive Order No. 22, series of 1954).

* 96 Phil., 114

[1] Whether said orders "were enforced is not dear from the record, for it does not appear certain therefrom that plaintiffs furnished the bond required from them and that the writ of injunction was actually issued by the Court.

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