

LIRAG TEXTILE MILLS, INC., PLAINTIFF-APPELLANT, VS. REPARATIONS COMMISSION, DEFENDANT-APPELLEE.

G.R. No. L-22768. October 28, 1977

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

Appellant seeks reversal of the judgment of the Court of First Instance of Manila (dated February 22, 1964 in civil case 54832) which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of defendant and against the plaintiff declaring that, pursuant to Presidential directive dated March 28, 1963, payments to the defendant Reparations Commission for the reparations goods allocated to the plaintiff shall be subject to, and be based upon, the free market rate of exchange. . . ."

In its complaint for declaratory relief filed by the Lirag Textile Mills, Inc. (hereinafter referred to as Lirag) in the Court of First Instance of Manila, Civil Case No. 54832, against the Reparations Commission (hereinafter referred to as the Commission), the plaintiff prayed for a judicial declaration that the payment to the defendant Commission for the additional goods worth \$ 1,300,000 allocated to it, should be based on the official rate of exchange of P2.00 to US \$ 1.00. The Commission however contends that the peso cost of the goods in question should be computed on the basis of the free market rate of exchange which was then about P4.00 to \$1.00.

In the decision adverted to above, the court a quo denied the claim of the plaintiff, and declared that payments for the goods in question shall be subject to, and be based upon, the free market rate of exchange of the peso to the dollar.

On October 16, 1963, the parties entered into a "Stipulation of Facts," Stripped of non essentials, the following are the uncontroverted facts.

In July, 1956, Lirag filed an application for the purchase of reparations goods with the National Development Company for machineries and equipment for an integrated textile mill plant in the amount of \$3,052,600, which the latter endorsed to the Office of the President which, in turn, endorsed the same to the National Economic Council. Upon the creation of the Reparations Commission, the National Economic Council forwarded the application to the former. Pursuant to the provisions of Republic Act 1789, otherwise known as the Reparations Law, the application was processed and recommended for approval by the Processing and Project Evaluation Department on August 26, 1958.

The applicant submitted to the Commission, as an accompanying document to its application, a project study which stated the value or price of the goods in U.S. dollars converted into Philippine pesos at the official rate of exchange of P2.00 to \$1.00.

The Commission approved an initial allocation of \$1.5 million or part of the set of textile machineries and equipment at the official exchange rate of P2.00 to \$1.00 and, subsequently, another allocation of \$1.3 million or

P2,600,000. The implementation of this subsequent allocation was, however, suspended as a result of an injunction obtained by then Senator Ferdinand E. Marcos in Civil Case No, 48661, entitled "Ferdinand E. Marcos vs. Reparations Commission," of the Court of First Instance of Manila. Consequently, this later allocation was among the items of the 6th Year Agreed Schedule carried over to the 7th Year Agreed Schedule, appearing as Item No. 11, Category A-II, Private Sector-Textile Mill Equipment valued at \$1,300,000 for Lirag as end-user.

On November 29, 1961, to implement and formalize the allocation, the applicant and the Commission entered into a "Contract to Purchase" (Annex A to the complaint). The contract contained an acknowledgment by the Commission of receipt from Lirag of a down payment of P450,000 corresponding to the two allocations (Annex B to the complaint), P130,000 of which corresponded to 5% of the value or price of the subsequent allocation of \$1.3 million converted into P2.6 million at the official rate of exchange of P2.00 to \$1.00. The contract also contained a stipulation binding Lirag "to enter into a contract of conditional purchase and sale with the Party of the First Part for the goods accordingly procured, and when said Contract of Conditional Purchase and Sale is thus executed, same shall supersede the instant Contract to Purchase."

After the injunction issued against the Commission in Civil Case No. 48661 was lifted, the Commission adopted Resolution No. 510 on December 12, 1961 (Annex C to the complaint), by which it was "Resolved, to approve the procurement of one textile mill machinery and equipment for LIRAG TEXTILE MILLS, INC., at the estimated contract value of U.S. dollars ONE MILLION THREE HUNDRED THOUSAND (\$1,300,000.00)."

On December 29, 1961, the Commission issued Procurement Order No. 18, (Annex D to the complaint) for the procurement of one integrated textile mill for Lirag for the value or price of \$1,300,000.

On February 28, 1962, the Office of the President issued two directives (Annexes 1 & 2 to the Stipulation of Facts) addressed to both the Commission and National Economic Council enjoining further implementation of all items in the Sixth Year Agreed Schedule, except those for small-scale industries, pending re-examination of said items in the light of the new socio-economic development program. Another directive of the same import was addressed to the Chief of the Reparations Mission in Japan on February 28, 1962.

On October 9, 1962, the Commission adopted resolution No. 721 (Annex 1 to the complaint) by virtue of which bids of Japanese suppliers of the additional machineries and equipment allocated to Lirag were approved. The requirements regarding this procurement contract were duly complied with, including verification by the Japanese Government.

On March 28, 1963, a Presidential Directive signed by then Executive Secretary Salvador Marino (Annex 1 to the Answer) was issued, providing, among others, that the free market rate shall be imposed without exception as to all items appearing in the Seventh Year Reparations Schedule, including items which have appeared in previous schedules.

The Commission, in pursuance of the above directive, required compliance with the following, among others, as a condition precedent to delivery of the goods to Lirag:

"(1) End-user, before delivery of the goods, shall as stipulated in the Contract to Purchase, execute with the defendant Commission a Contract of Conditional Purchase and Sale, which shall also reflect the value or price at the free market rate which when so executed shall supersede the Contract to Purchase;

"xxx

xxx

xxx

"(3) End-user shall also pay before delivery of the goods the difference between the down payment computed at the official exchange rate of P-2.00 to \$1.00 and the down payment computed at the free market rate."

Lirag objected, contending that in the contract of conditional purchase and sale, the peso equivalent should be at the official rate of exchange of P2.00 to \$1.00, in accordance with the intention of the parties to the "Contract to Purchase," which was a perfected contract to buy and sell, and that the application of the free market rate ordained by the Presidential directive of March 23, 1963 to said contract would impair the obligation of the same.

The above developments precipitated the filing by Lirag on August 26, 1963 of a petition for declaratory relief in the Court of First Instance of Manila against the Commission, docketed as Civil Case No. 54832, seeking a judicial declaration as to the rate of exchange that should be applied to ascertain the peso price of the additional goods allocated to it. Upon plaintiffs motion, the court issued a writ of preliminary injunction on September 26, 1963, supplemented by another on October 17, 1963, whereby defendant Commission was ordered, among others, to refrain from specifying in the "conditional contract of purchase and sale" to be executed by the parties the peso value of the reparations goods allocated to the plaintiff; the writ further enjoined the defendant Commission from requiring the plaintiff to pay the difference between the 5% down payment based on the free market rate and the amount actually deposited by the latter for the said purpose.

On February 22, 1964, the Court of First Instance of Manila rendered the decision appealed from which upheld the right of the Commission to apply the current rate of exchange in determining the equivalent peso price of the additional reparations goods allocated to, and procured from Japan by, the plaintiff.

Hence, the present recourse.

Appellant impugns the validity of the conclusions arrived at in the decision a quo of February 22, 1964, to wit, (1) the Contract to Purchase dated November 29, 1961 merely constituted a preliminary agreement; (2) the said Contract to Purchase, even on the assumption that it partook of the nature of a perfected contract between the parties, "can only be so with respect to the rights and obligations therein stipulated and agreed upon by the parties"; and (3) the application by the Commission of the free market rate of exchange in the determination of the Philippine Peso cost of the reparations goods "would not spell impairment of any contractual obligations."

Stated otherwise, it is the appellant's thesis that the "Contract to Purchase" the reparations goods in question was concluded at a time (November 29, 1961) when the rate of exchange obtaining between the peso and the dollar was in the ratio of 2 to 1; that the said "Contract to Purchase" was a valid and perfected contract between the parties; and that the Presidential directive requiring the Reparations Commission to apply the current free market rate of exchange as the basis of computation of the peso cost of the reparations goods allocated to it would result in impairment of the contract, would amount to a denial of due process, and would be a total disregard of the principle of equal protection of the laws.

All of the above can be narrowed down to one basic issue: did the lower court err in declaring that "pursuant to the Presidential directive dated March 28, 1963, payments to the defendant Reparations Commission for the reparations goods allocated to the plaintiff shall be subject to and be based upon the free market rate of exchange?"

A petition to act as amici curiae was filed with the Court on September 8, 1964 by counsels for Mabuhay Rubber Corporation (now Mabuhay Vinyl Corporation), intervenor in a related case then pending — Consolidated Mills, Inc. vs. Reparations Commission, L-23859 — which petition was granted in the Court's resolution of September 25, 1964. The Court then requested Emilio Abello (Chairman, Council for Economic Development), Amado R.

Brinas (Deputy Governor, Central Bank of the Philippines), Manuel J. Marquez (Chairman of the Board, Commercial Bank & Trust Company), Sixto K. Roxas (President, Economic Development Foundation), Cesar Virata (Secretary, Department of Finance), and Leonides S. Virata (Chairman, Development Bank of the Philippines) to act as amici curiae to assist in the intelligent appraisal of the issues of the case. On September 10, 1969, this group submitted its joint memorandum, as to which the parties submitted their comments, as required in the Court's resolution of September 11, 1969.

On October 28, 1970, the amici curiae (Abello, etc.) submitted a "clarificatory supplement" under date of 28 October 1970 to clarify certain material points in their joint memorandum, as to which supplement Lirag and intervenor Mabuhay Rubber Corporation (now Mabuhay Vinyl Corporation) submitted their respective comments.

Parenthetically, on October 15, 1971, the intervenor Mabuhay Rubber Corporation filed a petition for leave to withdraw its intervention in the case of "Consolidated Mills, Inc. vs. Reparations Commission," supra, for the reason that it had entered into a "Memorandum of Agreement," dated July 28, 1971, with the Commission, which withdrawal was granted in the Court's resolution dated 21 October 1971 in that case.

The briefs, the oral arguments, and the memoranda of the parties are extensive discussions of their respective points of view in relation to the basic issue. (Appellant likewise raises in its brief a number of other incidental questions affecting the merits of the case).

In Consolidated Mills, Inc. vs. Reparations Commission; Mabuhay Rubber Corporation, Intervenor, L-23859, February 22, 1968, 22 SCRA 73 7, this Court was presented with facts (including the terms and conditions of the Contract to Purchase) and confronted with issues exactly similar to the ones raised by the appellant, and we held there as follows:

"For a clear understanding of the issues, we shall reproduce herein the terms of the 'contract to purchase' claimed to have been impaired, and the text of the directive of the President that allegedly impairs it.

"The 'Contract to Purchase' which was executed by the parties on November 29, 1961, reads as follows:

'KNOW ALL MEN BY THESE PRESENTS:

'This CONTRACT, made and executed in the City of Manila, Philippines, this 29 day of November 1961, by and between:

'The REPARATIONS COMMISSION, a government entity vested with a juridical personality to enter into contract, being domiciled at and with head office at the 5th floor, DBP Bldg. No. 2, Port Area, Manila, Philippines, represented in this instance by its Chairman, Rodolfo Maslog, acting for and by authority of the said Commission and hereinafter referred to as the PARTY OF THE FIRST PART,.

- and -

'CONSOLIDATED TEXTILE MILLS, INC., a corporation duly organized and existing under the laws of the Philippines, with head office and business address at Suite 206-214 L& S Bldg., 1414 Dewey Blvd., Manila, represented in this instance by Felix K. Lirag, its authorized representative and hereinafter referred to as the PARTY OF THE SECOND PART.

'WITNES SETH:

'That the PARTY OF THE SECOND PART is an appellant for reparations goods, more particularly described in Application No. 0953, filed with the PARTY OF THE FIRST PART and incorporated herein as an integral part of this contract by way of reference;.

'That the PARTY OF THE SECOND PART is giving due course to the aforesaid application of the PARTY OF THE SECOND PART, and in consideration of the same, and for the added consideration of the procurement for and delivery to the PARTY OF THE SECOND PART of the goods and/or services subject of the said application, in whole or in part, the PARTY OF THE SECOND PART HEREBY ENGAGES itself to perform the following:

'a) To make a down payment to the PARTY OF THE FIRST PART for the project applied for which shall not be less than 2% of the value of the project applied for which shall not be less than 2% of the value of the project if it does not exceed P50,000 and 5% of the value if the project exceeds P50,000. (PARTY OF THE SECOND PART has paid under O.R. No. 0125246, dated November 29, 1961, the amount of P390,000.00 by way of down payment);

'b) That no procurement order will be issued until and unless this contract is signed by the PARTY OF THE SECOND PART and the down payment herein required is actually paid and other requirements of law are complied with;

'c) That upon his failure to pay the down payment, said application shall be deemed cancelled or withdrawn and, as a further penalty for such failure, no other application shall likewise be accepted by the PARTY OF THE FIRST PART;

'd) To take delivery of the goods applied for when procured, immediately upon arrival in the Philippines and to inspect the goods upon delivery to ascertain whether or not they are in accordance with the approved plans and specifications and if not, to file the corresponding claim against the supplier;

'e) That if he fails to take delivery, or backs out from the procurement of the reparations goods when the same are already in the process of manufacture, he shall forfeit his down payment and he shall also be barred from subsequently applying for reparation goods;

'f) That after the issuance of the procurement order and before the verification of the Procurement Contract by the PARTY OF THE FIRST PART, the PARTY OF THE SECOND PART shall deposit with the PARTY OF THE FIRST PART the approximate value of all necessary costs and charges incident to the application for, and the procurement, production, delivery and acquisition of, the goods concerned;

'g) To enter into a Contract of Conditional Purchase and Sale with the PARTY OF THE FIRST PART for the goods accordingly procured, and when said Contract of Conditional Purchase and sale is thus executed, same shall supersede the instant Contract to Purchase;

'That the parties to this contract further covenant and agree that this contract shall be automatically cancelled and inoperative if the goods applied for is [sic] not actually procured by reason of any fortuitous circumstance.

'IN WITNESS WHEREOF, the parties have hereunto set their hands this 29 day of November, 1961, in the City of Manila, Philippines.'

"On the other hand, the directive of the Office of the President to the Chairman of the Reparations Commission on March 28, 1963, which is claimed by the appellant to have impaired its contractual rights under the foregoing contract, is as follows:

'Sir:

'This has reference to your letter dated November 26, 1962 requesting clarification regarding the imposition of the free market rate on items to be procured by the Reparations Commission.

'The following rules shall govern:

'1. The free market rate shall be applied without exception to all items appearing in the Seventh Year Schedule,

including those items which had appeared in previous schedules.

'2. The previous exchange rate shall be applied to those items in previous schedules, but not carried over in the Seventh Year Schedule, even if the contract of conditional purchase and sale has not yet been signed.

'Our letter of October 9, 1962 (last paragraph), as clarified by the above rules, shall be considered as a directive for all intents and purposes.'

"Appellant contends that from the time it filed its application in 1961 for the aforesaid reparations goods up to the time the corresponding Procurement Contracts for the same goods were approved by the Commission in 1963, it was expressly understood and agreed by both parties that the official rate of exchange of P2.00 for \$1.00 would be the measure of its obligation under the 'Contract to Purchase' earlier quoted. It specifically points out the fact that the Commission had required it to make down payment of P390,000.00 and to post a guarantee bond in the amount of P1,170,000.00, representing 5% and 15%, respectively, of the estimated contract value of its \$3,900,000.00 allocation as computed at the exchange rate of P2.00 to \$1.00. It argues, therefore, that to apply the current free market rate of exchange of the peso to the dollar to its case as directed by the Office of the President and imposed upon it by the Commission thereby increasing by about two (2) times the peso cost of the reparations goods allocated to it — would clearly impair the obligations it has assumed under the 'contract to purchase' aforequoted.

"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 remarks 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.

"The instrument sued on is what is known as an agreement to make an agreement. Such agreements are usually provisional or temporary, it being the intention of the parties at some later date to set out in a more formal way the terms and conditions of the proposed agreement. If all the conditions of the postponed agreement are specified in such agreement, it is an agreement *praesenti*. (*Mckell v. Chesapeake & Ohio Ry. Co.*, 175 Fed. 321, 91 CCA. 109, 20 Ann. Cas. 1097.) But where the conditions of the deferred contract are not set out in the provisional one, or where material conditions are omitted, it is not a contract *in praesenti*, because the minds have not met and may never meet.' (*Peer v. Hughes*, 25 Ariz. 105, 213 P. 691. See also the holdings in the following cases which are of similar import: *Griffin Grocery Co. v. Kingfisher Mill & Electric Co.*, 168 Okla. 157, 32 [2d] 63; *Hi-way Motor Co. v. Service Motor Co.*, 68 Utah 65, 249 P. 133; *Owens v. Wilson*, 135 Okla. 38, 273 P. 895).

"With this authority in mind, and considering the surrounding circumstances of the case already stated, it is our considered opinion that the Secretary of Justice was right, and the court below did not err, in holding that 'existing contracts to purchase reparations goods are, at best, preliminary agreements which do not definitely stipulate the contract price; nor do they carry any provision as to the rate to be used for the conversion into pesos of the dollar value of the reparations goods.'

"Even from the standpoint that the 'contract to purchase' is a perfected contract between the parties, as contended by the appellant, it can only be so with respect to the rights and obligations therein stipulated and agreed upon by the parties. We find that the Commission had assumed under the 'contract to purchase' the obligation to give due course to appellant's application for the goods in question and to procure and deliver the same after appellant shall have executed a contract of conditional purchase and sale of the goods accordingly procured which may be in whole or in part of the item specified in the procurement order. Before the contemplated contract of conditional purchase and sale may be executed, certain essential points must necessarily be threshed out first between them, as the terms of payment, and the rate of exchange to be used in determining the peso cost of the goods over which the minds of the parties may or may not meet. And since the parties made no mention whatsoever in the 'contract of purchase' about the rate of exchange to be adopted in fixing the peso cost of the goods, it becomes necessary that a final contract of conditional purchase and sale be subsequently executed by them before delivery of the goods wherein the dollar price of the goods may be reduced into its peso equivalent.

"But it is pointed out by the appellant that in the 'contract to purchase' under consideration, it was required and made to pay a down payment of P390,000.00, and that thereafter, it was again made to put up a guarantee bond in the amount of P1,170,000.00. Appellant therefore contends that since these amounts correspond to 5% and 15% respectively, of the \$3,900,000.00 contract value of the reparations goods it has applied for as required in the existing rules and regulations of the Commission, and were arrived at by using the then prevailing P2.00 to \$1.00 rate of exchange, it may reasonably be inferred therefrom that the parties intended and understood that the same ratio [2:1] of the peso to the dollar would be used in ascertaining the peso price of the goods after the same shall have been subsequently procured from Japan. Hence, its insistence that rate of exchange may no longer be altered or changed in the contract of conditional purchase and sale to be executed by the parties before the delivery of the goods. The contention should be denied. From the fact alone that the exchange rate of P2.00 to \$ 1.00 had been used in the computation of the above-mentioned amounts of down payment and guarantee bond as required in the then existing regulations of the Reparations Commission, it cannot be lightly inferred that the parties bound themselves to use the same rate of exchange in all their future dealings relative to the same goods. The parties could have so provided the same in the contract had they wanted to, which they did not. And certainly, we cannot write something into the 'contract to purchase and make its provisions cover points not expressly stipulated therein, such as the conversion rate of the peso to the dollar to be used to determine the equivalent in Philippine pesos of the dollar price of the goods which, at the time of said 'contract to purchase' was entered into, had not even then been definitely ascertained. It logically follows, therefore, that the circumstances pointed out by the appellant can not be determinative of the question regarding the rate of exchange that should govern the transaction in question.

"An examination of the evidence of record reveals that the appellant stated the value of the goods in its application filed with the Reparations Commission as P3,904,915.42; and the Reparations Commission had referred to the cost of the goods in dollars only in all its subsequent actions on the said application. Thus, when the Commission approved the application on December 12, 1961, it resolved to approve the procurement of textile machineries and equipment for Consolidated Textile Mills, Inc. at the estimated contract value of the U.S. dollars THREE MILLION NINE HUNDRED THOUSAND (\$3,900,000.00).' The same amount of \$3,900,000.00 appears in the procurement order for the goods issued by the Reparations Commission on the following day,

addressed to the Chief of the Reparations Mission in Japan. Biddings were subsequently conducted in Japan for the supply of the goods, as a result of which the Philippine and Japanese Governments approved the procurement contracts involving a total amount of \$3,357,191.00. And thereafter, herein appellant applied for additional equipment in the sum of \$542,809.00 to make use of the balance of the \$3,900,000.00 previously allocated to it. It is, therefore, clear that the goods in question were acquired by the Reparations Commission for herein appellant in the amount of \$3,900,000.00.

'Contracts which are by their terms payable in foreign money, if they are enforced in the United States, must be paid in United States money equivalent, according to the acts of Congress, to the amount stipulated in the contract. It has been held, however, that the exchange of currency or the rate of exchange determines the purchasing power or the equivalent or the currency of one country as measured by or in the currency of another. As the rate which normally affects business transactions fluctuates from day to day, it is more commonly expressed as the current rate of exchange; but when the rate is established by contract or otherwise, it is a fixed rate and controls all matters within the scope of its operation.' (36 Am. Jur. 471)

"From the foregoing circumstances, and in the light of the authority just quoted, it is seen that the real value of the reparations goods procured for herein appellant is \$3,900,000.00 which should be the basis of the peso value of said goods to be specified in the contract of conditional purchase and sale entered into between the parties. The sum of \$3,900,000.00 is the amount the Reparations Commission is supposed to pay to the Japanese suppliers of the goods. The appellant may not expect the Reparations Commission to part with the goods for any amount less than what it will actually pay, or is supposed to pay therefor in Japan, in the same way that the Reparations Commission cannot compel herein appellant to pay more than the value of the goods. This being so, and considering the failure of the parties to stipulate in the 'contract to purchase' the rate of exchange to be used in determining the peso value or cost of the said goods, it would surely be fair and just, and in keeping with the substance of the obligation, that herein appellant should pay for the goods in its equivalent peso cost based on the free market rate of exchange of the peso to the dollar at the time of the procurement in Japan. Neither would the circumstance that by so applying the current rate of exchange obtaining at the time of procurement, the acquisition cost of machineries as reflected in its original project studies would be doubled, carry the day for herein appellant. The fact still remains that the Reparations Commission would not be unjustly enriched thereby at appellant's expense for the reason that what appellant would pay would only be equal to what the Reparations Commission is supposed to pay for the goods to the Japanese suppliers.

"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."

In a resolution promulgated by the Court on March 2, 1977 (76 SCRA 18,25,28,30,31,33 to 36), denying therein appellant's "Motion for Reconsideration and/or Clarification," the Court, in amplification and emphasis, further stated:

"The procurement of reparations goods involves a series of tedious, although not complicated, steps, all directly affecting and qualifying any agreement entered into between an applicant end-user and the Commission in relation thereto. This, a close reading of the provisions of Republic Act 1789 (AN ACT

PRESCRIBING THE NATIONAL POLICY IN THE PROCUREMENT AND UTILIZATION OF REPARATIONS AND DEVELOPMENT LOANS FROM JAPAN, CREATING A REPARATIONS COMMISSION TO IMPLEMENT THE POLICY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES), as amended by Republic Act 2611 approved on 20 July 1959 and by Republic Act 3079 approved on 17 June 1961, of the Reparations Agreement, and of the Exchange Notes on Reparations, makes manifest.

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"An analysis of the aforementioned steps or phases attached to the procurement program of reparations goods in implementation of the Reparations Agreement easily results in the observation that the conclusion between the Commission and the applicant end-user of any agreement — wherein the Commission gives 'due course' to the application of the applicant end-user; wherein the said applicant end-user 'engages itself to perform' certain obligations derived from the pertinent provisions of Republic Act 1789, as amended; and, notably, wherein the parties agree to enter into a subsequent contract to supersede the earlier agreement — evidences nothing more than the parties' participation in a simple preliminary transaction, devoid of any obligatory effect whatsoever. The qualification of such a transaction into a complete one attaches only upon the conclusion of certain salient phases of the procurement program.

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"Section 7(b) of Republic Act 1789, as amended, and Article 5 of the Reparations Agreement spell out other details of comparative significant effect to the Contract to Purchase between the CMI and the Commission. Both section 7(b) and Article 5 provide that the authority to conclude, on behalf of the Philippine government, any proposed reparations contract with any Japanese national or firm for the manufacture, production or supply of reparations goods resides with the Mission in Japan. Article 5, however, subjects the proposed reparations contract, before its conclusion by the Mission with the Japanese national or firm, to verification by the Japanese government as to its compliance with (a) the terms of the Reparations Agreement; (b) the provisions of arrangements between the two government for the implementation of the said Agreement; and (c) the applicable schedule. Indeed, the said Article requires the Japanese government to examine all aspects of the proposed reparations contract and to determine their acceptability or non-acceptability.

"Upon the favorable action taken, under such requirements, by the Japanese government on the proposed reparations contract — which contract provides for either the manufacture or production or supply by the particular Japanese national or firm of the specific reparations items verified as to their approved specifications — finally rests the availability of the reparations goods subject of the preliminary agreement between the applicant end-user and the Commission. With the availability of the reparations goods applied for definitely ascertained, the procurement of the said goods for and in behalf of the applicant end-user becomes actually and absolutely certain. This then qualifies the transaction, evidenced by the Contract to Purchase, between the applicant end-user and the Commission into a complete one. More importantly, such completion of the transaction makes operative the essential commitment of the parties expressly stipulated in the Contract to Purchase, which is, the execution of the contract of conditional purchase and sale for the reparations goods

accordingly procured.

"In the instant case, the records clearly indicate the verification by the Japanese government of the reparations contract for the procurement of the reparations goods applied for by the CMI on 1 April 1963 (Partial Stipulation of Facts under date of 11 October 1963, Record on Appeal, p. 72). Thus, on 1 April 1963, the definite availability of the said goods became finally certain. The element of completeness then accrued to the Contract to Purchase entered into between the CMI and the Commission on 29 November 1961, and the completion of the said transaction, in turn, rendered in force the obligation of the parties to execute the contract of conditional purchase and sale — a contract to supersede the antecedent agreement.

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"The concomitant dilemma as to the translation of the value of the reparations goods expressed in US dollars into Philippine pesos poses no real difficulty. The actual and exact procurement cost of the reparations goods — and this the CMI admits — becomes known to the applicant end-user and the Commission only upon the submission and transmission by the Mission to the said Commission of the Summary Statement of Costs covering the reparations goods procured and already shipped to the Philippines. This statement quotes the procurement cost — fixed and specified in US dollars — of the reparations goods as reflected in the reparations contract entered into between the Mission and the Japanese manufacturer, producer or supplier concerned. Plainly, under the circumstances, the prevailing rate of exchange (of the Philippine peso to the US dollar) at the time of that particular phase of the procurement program when the procurement cost becomes fixed and certain as well as definitely ascertained — more specifically, upon the conclusion by the Mission of the reparations contract with the Japanese manufacturer, producer or supplier concerned — constitutes the appropriate measure for converting the US-dollar-stated procurement cost of the reparations goods into the domestic currency. Thus, if the Commission secures for an applicant end-user an animal feed plant with the procurement cost of \$1,500,000 per the Summary Statement of Costs as well as the reparations contract, and the free money market at that time when the Mission concluded the reparations contract with the Japanese supplier of the said plant dictates a rate of exchange (of the Philippine peso to the US dollar) of P3 for every \$ 1, the peso cost of the said plant, after the proper translation, would amount to P4,500,000.

"This of course necessarily implies no determinate rate of exchange (of the Philippine peso to the US dollar) for use by the Commission in fixing the procurement cost in Philippine pesos of all the items it requisitions from Japan as reparations for applicant end-users. Any change — rise or fall — in the purchasing power of the Philippine peso in the foreign money exchange, particularly in relation to the US dollar, would consequently affect the translation of the US-dollar-stated procurement cost of the reparations goods into Philippine pesos. In such wise, the conversion of the procurement cost — stated in US dollars — into Philippine pesos definitely rests on whatever rate of exchange (of the Philippine peso to the US dollar) obtains — to repeat — at the time of that particular phase of the procurement program when the said cost becomes not only fixed and certain but also definitely ascertained. For indeed, if Republic Act 1789, as amended, required the applicant end-user to pay the procurement cost of the reparations goods it applied for in US dollars, the said applicant end-user would have to purchase, with the necessary amount of Philippine pesos, US dollars at no matter what rate of exchange (of the Philippine peso to the US dollar) prevails at the time it would make payment to the Commission in order to satisfy the said cost.

"Apropos to all of these, the circumstance that an applicant end-user chooses to acquire reparations goods on a credit basis, preferring to pay on installments the cost of the said goods according to a schedule of payments, creates no effect on the said cost expressed in US dollars. No justification exists for demanding of the applicant

end-user to shoulder an unwarranted burden: that of requiring it, after splitting the US-dollar-stated procurement cost into equal amounts, to make payment of every installment in a sum in Philippine pesos corresponding to the installment amount stated in US dollars converted at the rate of exchange (of the Philippine peso to the US dollar) obtaining at the time the said installment payment falls due. It suffices that the translation exclusively involves the total US-dollar stated procurement cost and makes use of a single measure of conversion — that rate of exchange (of the Philippine peso to the US dollar) prevailing at the time of that particular phase of the procurement program when the said cost becomes fixed and certain as well as definitely ascertained.

"In the controversy at bar, the Mission concluded reparations contracts for the procurement of the reparation goods applied for by the CMI with the corresponding Japanese suppliers sometime in April 1963. Consistency with all the foregoing demands the adoption of that money market rate of exchange of the Philippine peso vis-a-vis the US dollar prevailing at that time in the determination of the peso equivalent of the procurement cost of the reparations goods expressed in US dollars."

We hold that the doctrines enunciated in the above case apply squarely and in full measure and with full force to the case at bar. Resolution of the incidental questions raised cannot therefore serve any useful purpose.

ACCORDINGLY, the decision a quo of February 22, 1964 is affirmed. No costs.

Teehankee, Barredo, Makasiar, Antonio, Munoz Palma, Aquino, Concepcion Jr., Martin, Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., took no part.

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