

**CARABAO, INC., PLAINTIFF-APPELLANT, VS. AGRICULTURAL
PRODUCTIVITY COMMISSION, FRANCISCO P. SAGUIGUIT AND/OR
FAUSTINO SYCHANGCO, DEFENDANTS-APPELLEES.**

G.R. No. L-29304. September 30, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal on questions of law from the lower Court's order of dismissal of the case for lack of jurisdiction.

Plaintiff had filed on October 3, 1967 in the Court of First Instance of Rizal its complaint to recover the sum of P238,500.00 representing the unpaid price of 300 units of fire extinguishers sold and delivered by it to defendant Agricultural Productivity Commission. It alleged that it had presented on June 14, 1967 a claim for payment of the sum with the Auditor General, but that since the latter had failed to decide the claim within two (2) months from date of its presentation which should have been by August 13, 1967, it had acquired the right under Act No. 3083 to file the original action for collection in the lower court.[1]

Defendants moved for the dismissal of the case principally on the ground of the lower court's lack of jurisdiction over the subject matter, alleging that under sections 2 and 3, Article XI of the Philippine Constitution, creating the General Auditing Office as a constitutional office and defining its functions, in relation to Commonwealth Act No. 327 enacted in 1938 as an implementing law, and under Rule 44 of the Revised Rules of Court, the settlement of money claims against the Government of the Philippines has been placed under the exclusive original jurisdiction of the Auditor General to the exclusion of courts of first instance, while the Supreme Court is vested with appellate jurisdiction over the Auditor General's decisions involving claims of private persons or entities.[2]

The lower court sustained defendants' dismissal motion and declared itself without jurisdiction to hear the case. Upon plaintiff's filing of its motion for reconsideration of December 9, 1967, defendants further brought out the fact that on October 6, 1967,[3] the Auditor General had rendered his decision denying plaintiff's claim on the ground that the alleged purchase order relied upon by plaintiff was null and void, since there was no obligating instrument as required by law,[4] besides mentioning the grossly exorbitant price of P795.00 for each fire extinguisher as compared to the Director of Supply Coordination's approved purchases of the same fire extinguisher at the price of P199.00 each.[5] The lower court having maintained its dismissal order, plaintiff instituted the present appeal.

The sole question of law that plaintiff submits on appeal is its contention that under Act 3083 - which it claims to be still in force, not having been amended, repealed or declared unconstitutional - it had the clear right to institute its direct action in the lower court upon the Auditor-General's failure to decide its claim within two months from the date of its presentation, and that the lower court's jurisdiction which had thus attached could no longer be displaced, notwithstanding the Auditor General's subsequent adverse decision of October 6, 1967.

The dismissal order must be affirmed.

It is patent that the governing law under which private parties may sue and seek settlement by the Philippine Government of their money claims pursuant to Article XI, section 3 of the Philippine Constitution[6] is Commonwealth Act No. 327. Section 1 of said Act, pursuant to the Constitutional injunction, fixes the period of "sixty days exclusive of Sundays and holidays after their presentation" within which the Auditor General shall act on and decide the same. Said section further provides that "If said accounts or claims need reference to other persons, office or offices, or to the party interested, the period shall be counted from the time the last comment necessary to a proper decision is received by him." Under section 2 of said Act, furthermore, the aggrieved private party may take an appeal, within thirty (30) days from receipt of the Auditor General's adverse decision only to the Supreme Court, by filing with the Court a petition for review thereof, as provided in Rule 44 of the Revised Rules of Court.

The corresponding provisions of Act 3083 which are utterly incompatible with those of Commonwealth Act must therefore be deemed superseded and abrogated, under the principle of "leges posteriores priores contrarias abrogant" - a later statute which is repugnant to an earlier statute is deemed to have abrogated the earlier one on the same subject matter.

Inaction by the Auditor General for the sixty-day period now provided by Commonwealth Act 327 (exclusive of Sundays and holidays) and of time consumed in referring the matter to other persons or officers) no longer entitles the claimant to file a direct suit in court, as he was formerly authorized under Act 3083 in the event of the Auditor General's failure to decide within a flat period of two months. Since the Constitution and Commonwealth Act 327 expressly enjoin the Auditor General to act on and decide the claim within the fixed 60-day period, a claimant's remedy is to institute mandamus proceedings to compel the rendition of a decision by the Auditor General in the event of such inaction.

The courts of first instance no longer have the original jurisdiction to act on such claims, which actions, under section 4 of Act 3083 now discarded, "shall be governed by the same rules of procedure, both original and appellate, as if the litigants were private parties" - since exclusive original jurisdiction under Article XI of the Constitution and the implementing Act, Commonwealth Act 327 is vested in the Auditor General, and appellate jurisdiction is vested in the President in cases of accountable officers, and in the Supreme Court in cases of private persons and entities upon proper and timely petitions for review.

The Court has so indicated in a number of cases that claimants have to prosecute their money claims against the Government under Commonwealth Act 327, stating that Act 3083 stands now merely as the general law waiving the State's immunity from suit, subject to the general limitation expressed in Section 7 thereof that "no execution shall issue upon any judgment rendered by any Court against the Government of the (Philippines),[7] and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed.[8]

No error was committed, therefore, by the lower court in dismissing the case and declaring itself without jurisdiction over the same.

ACCORDINGLY, the order appealed from is hereby affirmed, with costs against plaintiff--appellant. As prayed for by defendants-appellees, plaintiff-appellant is ordered to remove immediately the 300 units of fire extinguishers from the warehouse of appellee Agricultural Productivity Commission.

Reyes, J. B. L., Acting C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J., and Villamor, J., on leave.
Barredo and Makasiar, JJ., did not take part.

[1] The pertinent sections of Act No. 3083 enacted on March 16, 1923 cited by plaintiff-appellant provide: "Sec. 1. Subject to the provisions of this Act, the Government of the Philippine Islands, hereby consents and submits to be sued upon any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties.

"Sec. 2. A person desiring to avail himself of the privilege herein conferred must show that he has prosecuted his claim to the Auditor General and the latter did not decide the same within two months from the date of its presentation.

"Sec. 3. Original action brought pursuant to the authority conferred in this Act shall be instituted in the Court of First Instance of Manila or of the province where the claimant resides at the latter's option."

[2] See *Rosario vs. Auditor General*, 103 Phil. 1132 (1958).

[3] Served on plaintiff on November 15, 1967.

[4] Section 17 in relation to section 21 of the Revised Budget Act (Rep. Act No. 992).

[5] Rec. on Appeal, pp. 27-36. The State's brief further submits documents showing that the Auditor General denied on April 23, 1968 plaintiff's motion for reconsideration of his decision on the ground that the same was filed out of time and his decision had become final and executory.

[6] "Sec. 3. The decision of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President, whose action shall be final. When the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner prescribed by law."

[7] *Com. of Public Highways vs. San Diego*, 31 SCRA 616 (Feb. 18, 1970) and cases cited.

[8] *Customs Arrastre Service*, 18 SCRA 1120 (1966) and subsequent cases cited in *Providence Wash. Ins. Co. vs. Republic*, 29 SCRA 598. (1969)

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