

NATIONAL MARKETING CORPORATION, PETITIONER, VS. THE HONORABLE BIENVENIDO TAN, JUDGE OF BRANCH XIII OF THE COURT OF FIRST INSTANCE OF MANILA, FEDERATION OF UNITED NAMARCO DISTRI...

G.R. No. L-17074. March 31, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner National Marketing Corporation (NAMARCO) is a government-owned and controlled corporation organized under Republic Act 1345. Respondent Federation of United NAMARCO Distributors Inc., hereinafter referred to as the Federation, is a private corporation, the members of which are bona fide distributors and retailers of NAMARCO goods. Said members have been joined in this case as individual respondents.

On August 8, 1959, the Board of Directors of the Federation addressed a letter to the President of the Philippines requesting his intervention to have NAMARCO set aside \$2,001,031.00, out of a special allocation of \$10,000,000.00 granted to it by the Central Bank, with which to import commodities to be in turn allocated to the members of the Federation for distribution. The commodities sought to be imported were itemized in the letter.

The conditions under which they were to be allocated to the Federation were likewise specified, as follows: (a) the Federation would pay on cash basis the procurement cost, plus 5% mark-up; (b) all handling and storage charges of the goods imported should be for the account of the Federation; and (c) the Federation should distribute said goods among its members and retailers in accordance with NAMARCO rules and regulations governing such distribution.

The President indorsed the letter favorably and expressed his desire that the request be approved by NAMARCO. On November 3, 1954, the NAMARCO Board of Directors passed resolution No. 524 authorizing the importation. On November 16, 1959, upon payment by the Federation to NAMARCO of the sum of P200,000.00 as partial advance on the procurement cost, a contract between them was executed whereby NAMARCO sold to the Federation the commodities to be thus imported. The contract contained a list thereof, with the corresponding prices, and embodied the three (3) conditions enumerated in Resolution No. 524.

In view of the stipulation concerning the handling and storage of the goods, the Federation entered into an agreement with the owner of the "Pasig River Bodegas" for the purpose. The agreement was duly approved by NAMARCO. As the commodities arrived in Manila they were taken care of by and stored in the said "bodegas" with the express consent of NAMARCO, and the corresponding storage charges were paid by the Federation.

After the initial advance of P200,000.00 additional payments were made by the Federation, aggregating over P2,000,000.00, in consideration of which NAMARCO invoiced to the Federation the items that had been paid for. On the strength of the invoices the "Pasig River Bodegas" released the commodities covered thereby to the Federation.

The same procedure was followed until about the end of January 1960, when NAMARCO was taken over by a new Board of Directors and a new General Manager. The new management thereafter refused further release of goods imported under the contract and resolved to allocate them to distribution outlets other than the members of the Federation. In view of this development the Federation and its members filed an action for specific performance in the Court of First Instance of Manila (Civil Case No. 42684).

In its answer to the complaint NAMARCO alleged, by way of defenses, that the contract of sale sought to be enforced had been executed by its former General Manager, Benjamin F. Estrella, without authority of the Board of Directors; that the contract had not been approved by the Auditor General; that according to Resolution No. 530 is adopted on October 19, 1959 by the old NAMARCO Board, the commodities specified in Resolution No. 524 should be distributed and allocated only to regular outlets of the NAMARCO in accordance with its regulations and practices; and that in any event NAMARCO was no longer obligated to comply with the contract for the reason that the Federation had violated its terms and conditions.

In its complaint the Federation prayed for a writ of preliminary injunction to restrain NAMARCO and all other persons acting under it from allocating the commodities subject of the contract of sale sued upon to distributors other than those who were members of the Federation and from removing such commodities from the bodegas or wherever they were stored. The writ prayed for was issued on a bond of P20,000.00.

On March 17, 1960 the Federation filed a "Motion and Consignation" alleging that it had deposited P80,689.92 with respondent Court, which amount, together with a certified check for P28,489.82 previously delivered to NAMARCO, covered the estimated landed costs, plus 5% mark-up, of certain commodities which had already arrived. It was prayed in said motion that the release of said goods be authorized. NAMARCO opposed the motion, but the Court granted it by order dated March 26, 1960. On different dates thereafter the Federation made similar deposits in Court for the same purpose, the amounts deposited being P443,179.51, P261,308.16; P457,343.87; P196,493.87; P208,269.90, and P231,519.42, respectively. In several orders issued by respondent Court it directed the release to the Federation of the commodities covered by the amounts deposited.

Motions for reconsideration filed by NAMARCO having been denied, it filed the instant petition for certiorari, alleging that the writ of preliminary injunction as well as the different orders for the release of the commodities to the Federation constituted a grave abuse of discretion, principally on the ground that they prejudged the issues in the case, and on the further ground that the consignations made by the Federation were not in accordance with the law. Pursuant to the prayer in the petition we issued a writ of preliminary injunction to restrain respondents from carrying out the orders complained of.

Respondents, in their answer, stated among other things that NAMARCO had asked the Court to increase the bond for the maintenance of the injunction it had issued to P400,000.00, which was granted and duly complied with. On November 7, 1960 respondents filed a supplement to the answer, alleging that on the previous October 15, respondent Court decided the main case in favor of the Federation and declared the writ of preliminary injunction permanent. Copy of the decision was attached to the supplemental answer.

We are of the opinion that the writ prayed for by petitioner must be denied.

On January 31, 1961 respondents filed a second supplement to their answer, alleging that on the previous January 25 petitioner filed a complaint in the Court of First Instance of Manila against the Federation (Civil Case No. 46124) precisely to enforce compliance with the contract of sale, the validity of which had been denied by NAMARCCO in the previous action as well as in the instant petition.

Contrary to petitioner's contention, the contract of sale issued upon below was duly authorized and approved. The

authorization is contained in Resolution No. 524 of the NAMARCO Board of Directors for "the immediate importation for the following items in the quantities herein mentioned," which items were the very ones listed in the latter-request of the Federation to the President of the Philippines. The resolution was passed pursuant to the of favorable indorsement of that request by the President and hence contemplated that the goods to be imported were A for allocation to the Federation and its members. The contract of sale signed for NAMARCO by its General Manager on November 16, 1959 expressly states that it was entered into by virtue of Resolution No. 524. Aside from a such authorization, the contract was subsequently approved by the Board in its Resolution No. 14, passed on January 12, 1960, which reads as follows:

"RESOLVED that the Board of Directors approve, as it hereby approves, the contract entered into by and between the NAMARCO and the Federation of United NAMARCO Distributors, Inc., for the sale of \$2,001,031.00 worth of NAMARCO commodities, executed on November 16, 1959, which contract is the subject of an inquiry of the Auditor in his 1st indorsement dated December 21, 1959, the approval hereof to be subject to the terms and conditions laid down by the Board in Resolution No. 524 adopted on November 3, 1959 and in Resolution No. 530 adopted on November 19, 1959."

Petitioner contends, however, that Resolution No. 530, referred in Resolution No. 14, in effect nullified, or at least modified, the terms of the contract, because Reso VOL. 119, MARCH 31, 1964 793 National Marketing Corp. vs. Tan, etc., et al. lution No. 530 prohibited "forward sale" of NAMARCO goods, that is, sales thereof prior to their arrival, and the said contract provides for such kind of sales, since it was executed before the goods subject thereof arrived. I t is at least seriously to be doubted if NAMARCO could unilaterally annul or modify the contract. Concerning Resolution No, 530 respondent court states in its decision:

"Counsel for the defendant has maintained that this resolution (No. 14) did not approve the contract of sale because in his understanding, the contract of sale is inconsistent with the provisions of the Resolution No. 530 to which, that contract, in approving it, is made subject. In the words of counsel for the defendant, the inconsistency is that while Resolution No. 530 'prohibits' forward sales', the contract of sale in question partakes the nature of a 'forward sales' for it is a sale of merchandise before arrival thereof; under paragraph 3 of Resolution No. 530, it is the NAMARCO that will distribute and allocate the merchandise in question to regular NAMARCO outlets, while under paragraph 4 of the contract of sale, plaintiff FEDERATION is the one authorized to distribute the merchandise among its members and retailers.' (See Memorandum for defendant, p. 6.) Counsel for the defendant argued that, according to the testimony of Rodolfo E. Tecson, supervisor of defendant's Marketing Department, who was a witness for the defendant, 'it is a regular practice of defendant corporation that goods imported should be allocated and distributed to all regular NAMARCO outlets or authorized distributors who are willing to purchase and market the same (Ibid., p. 6). The witness said so. But with respect to the importation now under consideration, the fact is that it is an exception to such a regular practice, in that it was recommended to the defendant's board of directors by the President of the Philippines to be distributed, through the FEDERATION, among the defendant's distributors and retailers, who are members of the FEDERATION, the defendant's board of directors acquiesced in that recommendation as its Resolution No. 524 shows, and it was implemented with the execution of the contract of sale so as to defeat the effects of the strike on the defendant against the distribution of goods. On the other hand, it is not shown that other distributors or retailers of the defendant, who are not members of the FEDERATION, also are willing to purchase and market said commodities."

"The Resolution No. 530 does not require that the commodities subject matter of said contract of sale should be distributed to all regular outlets of the defendant; it states that "Die goods shall be distributed and allocated only to regular NAMARCO outlets x x x, meaning that, considering the fact that the Resolution No. 530 is but amendatory to Resolution No. 524, only the FEDELATION'S members who are defendant's regular outlets should participate in the distribution of said commodities. The requirement is satisfied by the fact that all the FEDERATION'S members are defendant's regular outlets as the defendant itself has admitted. At any rate, the

contract of sale in question having been formally approved by defendant's board of directors and the defendant thereby is bound, the provisions of said contract should be followed, one of which provides 'that the items and/or merchandise sold by NAMARCO to the FEDERATION shall be distributed among its members and retailers in accordance with NAMARCO'S existing rules and regulations governing the distribution of NAMARCO goods. x x x'.

Petitioner also contends that the contract of sale in question was never approved by the Auditor-General. In its decision respondent court ruled on the contention as follows:

"Passing on the defendant's defense that the contract of sale has not been approved by the Auditor General under Administrative Order No. 290 (Exh. 12), the evidence for the plaintiffs shows that on December 17, 1959, the then General Manager Benjamin F. Estrella of the defendant forwarded said contract to the auditor for the defendant for examination and review pursuant to that Administrative Order (Exh. N for plaintiffs; Exh. 1 for defendant). The auditor did not take action thereon until December 21, 1959 when he had referred said contract to defendant's former board of directors, requesting that, if the Resolution No. 530 had not nullified the same contract, it 'be first approved by the Board before it is forwarded to the Auditor General for examination and review' (Exh. NN for plaintiffs; Exh. 2 for defendant). As already stated, said contract was formally approved by defendant's former board of directors on January 12, 1960, and until March 2, 1960 when the plaintiffs instituted this action no objection to said contract from the Auditor General was ever expressed."

The failure of the Auditor-General to take action was explained by him in his indorsement to the NAMARCO auditor dated March 30, 1960, concerning the contract of sale. It is there stated:

"It appearing that the within contract is the subject-matter of Civil Case No. 42684 for Specific Performance with Injunction, filed with the Court of First Instance of Manila by the Federation of United NAMARCO Distributors, Inc. against the NAMARCO on March 1, 1960, the said contract is herewith returned to that Office without action, pending the results of the aforementioned case."

In other words, the Auditor-General did not disapprove the contract, but decided to subordinate his action to whatever the court would decide in the case already pending.

Concerning the alleged failure of respondent Federation to comply with its obligations under the contract of sale, the Court declared in its decision that petitioner "did not even attempt to prove any commission or omission by the Federation, constitutive of violation of the terms and conditions of the contract of sale."

The decision is not before us for review; indeed the record does not show that an appeal from it has been taken. For purposes of the resolution of the issue now before us, namely, whether or not a grave abuse of discretion, correctable by certiorari, has been committed by respondent Court, its reasons and findings in the said decision may properly be taken into consideration. On the basis thereof, we conclude that there was no such abuse.

It may be added, as a last observation, that NAMARCO, until the end of January 1960, voluntarily complied with the contract and accepted benefits thereunder, and on October 15, 1960 filed Civil Case No. 46124 against the Federation for the collection of the sum of P611,053.38, representing the cost of merchandise allegedly delivered but unpaid. These circumstances show that petitioner recognized the validity of such contract; and it should not be heard to raise its nullity in the instant proceeding for the purpose of setting aside certain interlocutory orders of respondent court.

WHEREFORE, the writ prayed for is denied, and the injunction issued by this Court is dissolved, with costs against petitioner.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes J. B. L., Barrera, Paredes, Dizon and Regala, JJ.,

concur.

Padilla, J., took no part.

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