

**LUIS G. PERALTA, IN HIS OWN BEHALF AND IN BEHALF OF OTHER
FILIPINO RESIDENTS IN HONGKONG, PETITIONER, VS. HON.
FELIXBERTO SERRANO, IN HIS CAPACITY AS SECRETARY OF
FOREIGN AFFAIR...**

G.R. No. L-16523. November 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an original petition for mandamus filed by petitioner Luis G. Peralta, to compel respondents Secretary of Foreign Affairs and Philippine Consul General in Hongkong to accept Philippine pesos in payment of fees for application for, and the issuance of Philippine passports by the Philippine Consulate in Hongkong.

The petition alleges, inter alia, that petitioner is a Filipino citizen, of age, and a resident of Kowloon, British Colony of Hongkong; that he is a holder of Philippine Passport No. HK-123, issued to him in April, 1958, by respondent Consul General pursuant to the Rules and Regulations of the Department of Foreign Affairs; that under said rules and regulations and Executive Order No. 1, dated July 4, 1946, the validity of a Philippine Passport is limited to 2 years, renewable for an additional period of 2 years; that under said executive order, a fee of P10.00 is charged for an application for and the issuance of a passport, and P55.00 for its renewal; that being a permanent resident of Hongkong, petitioner finds himself under continuous necessity to have a Philippine passport, and to have it renewed upon its expiry date by the Philippine Consulate in Hongkong; that on April 1, 1950, the Department of Foreign Affairs issued Department Order No. 67; providing, inter alia, that Philippine foreign service establishments abroad, such as the Philippine Consulate in Hongkong, are prohibited from accepting payment of fees in Philippine pesos, for services rendered or performed; that pursuant to said department order, respondent Consul General refused to accept from petitioner Philippine pesos, in payment of the fees for the application for, and the issuance or renewal of his passport, and instead exacted of him payment thereof in U.S. dollars or local currency; that said department order is illegal and void, being contrary to Section 1612 of the Revised Administrative Code which provides that Philippine pesos shall be legal tender at the rate of one dollar for two pesos for all debts, public and private; that the action of respondent Consul General in reliance thereon, sanctioned and enjoined by respondent Secretary of Foreign Affairs is, likewise, illegal and in violation of a duty specifically enjoined by law; that said department order is, furthermore, contrary to Section 1(1), Article III of the Constitution, for it denies to petitioner and other Filipino residents of Hongkong the equal protection of law; that the Philippine pesos freely circulates in Hongkong; that the Central Bank itself, in its Circular No. 89, dated October 21, 1958, permits outgoing Philippine residents and transient visitors leaving the Philippines to take with them Philippine coins and notes in an amount not exceeding P20.00; and that petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law, except said petition for mandamus. Petitioner prayed that judgment be rendered holding the aforecited Department (of Foreign Affairs) Order No. 67, dated April 1, 1950, illegal and void; and ordering respondents to accept Philippine pesos in payment of fees for applications for, and the issuance or renewal of Philippine passports by the Philippine Consulate in Hongkong.

Answering said petition, respondents, while admitting substantially the allegations of fact, denied nevertheless the legal conclusions drawn therefrom and alleged, by way of affirmative and/or special defense, that the petition states no valid and sufficient cause of action for mandamus, and prayed for its dismissal with costs against petitioner.

The only issue to be resolved in this petition, concerns the validity or legality of Department of Foreign Affairs Order No. 67, dated April 1, 1950, which reads:

"Republic of the Philippines
Department of Foreign Affairs

Manila, April 1, 1950

Department Order No. 67

Pursuant to the authority conferred upon me by Section 30 of Executive Order No. 18, dated September 16, 1946, paragraph 1b, of Department Ordier No. 5, dated December 6, 1946, and entitled Regulations Dealing with Accounts and Returns, is hereby amended to read as follows:

1b. Official Receipts and Records of Collections:

No money for whatever purpose, including refunds of overpayment, will be received by any accountable officer without the immediate issuance of an official receipt either on General Form No. 13 (A) or Foreign Affairs Form No. 89. No other form of official receipt shall be used without the written consent of the Secretary of Foreign Affairs. The official receipt is to be accomplished in triplicate and must show the full particulars and nature of the account for which the same is issued. Philippine foreign service establishments abroad are hereby prohibited to accept payments of fees in Philippine pesos for services rendered or performed, as prescribed under existing laws and regulations. Only United States dollars or local currency shall be accepted in payment thereof. When collections are in local currency, the prevailing rate of exchange with the United States dollars and the corresponding value in Philippine currency (P2.00) to US (\$1.00) of the amount receipted shall invariably and plainly be indicated in the duplicate and triplicate copies of the prescribed official receipts.

Strict compliance by all concerned) with the regulations herein prescribed is hereby enjoined.

For the Secretary:

Felino Neri
Undersecretary"

Under Section 78 (B) of the Revised Administrative Code, respondent Secretary of Foreign Affairs is empowered to promulgate only such rules, regulations, orders, circulars, memoranda, and other instructions, to all offices and dependencies of his department, as are not contrary to law.

Executive Order No. 1, dated July 4, 1946[1] prescribes the rules and regulations for the granting and issuing of passports. Section 22 of said order provides that—

"Sec. 22. A fee of P2 shall be collected for the execution of each application for a passport; P25 for the issuance of a passport; and P10 for the renewal thereof." [2] (Italics supplied.)

It is to be noted that this provision expressly requires payment for application for, and the issuance or renewal of passports in Philippine pesos, and not in other forms of currency.

Section 28 of the same executive order, reads:

"28. The Secretary of Foreign Affairs is authorized to prescribe regulations on the subject of issuing, renewing, extending, amending, restricting, or withdrawing a passport, additional to and not inconsistent with these rules."

Note that there is nothing in the provision just quoted which authorizes the Secretary of Foreign Affairs to prescribe in what currency payment of passport fees must be made. On the contrary, said provision expressly enjoins him from prescribing regulations which are inconsistent with the rules set forth in the cited executive order. In fine, a regulation or order which prescribes payment of passports fees in a currency other than Philippine pesos, such as Department (of Foreign Affairs) Order No. 67 in question, would be inconsistent with said rules and, therefore, null and void.

Section 2 of Executive Order No. 18, dated September 16, 1946,[3] pursuant to which the department order in question was issued, authorizes respondent Secretary of Foreign Affairs to "prescribe a uniform schedule of fees for services rendered the public by the Department (of Foreign Affairs), and the foreign service," which "fees shall be deposited and credited to the National Treasury." Again, there is nothing that expressly authorizes the Secretary to prescribe in what currency said fees are to be paid. Assuming, arguendo, that the authority to prescribe a uniform schedule of fees impliedly includes the authority to prescribe the currency in which the fees must be paid, the department order in question, insofar as it prohibits the acceptance of Philippine pesos in payment of the fees for services rendered by Philippine foreign establishments abroad, is, to our mind, null and void, inasmuch as it contravenes the explicit and clear provisions of Sections 1612 of the Revised Administrative Code, Section 54 of Republic Act No. 265, and Section 1 of Republic Act No. 529, which, respectively, read:

"Sec. 1612. Legal tender.—The Philippine peso and half-peso, including Philippine Treasury certificates of any denomination, shall be legal tender at the rate of one dollar for two pesos for all debts, public and private. * * *, " (Revised Administrative Code; Italics supplied.)

"Sec. 54. Legal tender power.—All notes and coins issued by the Central Bank shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private." (Republic Act No. 265, Id.)

"Section 1. Every provision contained in, or made with respect to, any obligation which provision purports to give the obligee the right to require payment in gold, or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void and of no effect, and no such provision shall be contained in, or made with respect to, any obligation hereafter incurred. Every obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: Provided, That, if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency, measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank Notes, heretofore or hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private." (Republic Act No. 529; Id.)

The term "legal tender" has been defined as "that currency which has been made suitable by law for the purposes of a tender of the payment of debts" (2 Bouvier's Law Dictionary [3rd Revision] 1912). The term "public debt", on the other hand, means "that which is due (to) or owing by the government" (Id. at p. 2764). The fees prescribed for applications and the issuance or renewal of Philippine passports are, undoubtedly, obligations owing to the Philippine Government, considering that the aforesaid Executive Order No. 18, invoked as authority for the

issuance of the department order in question, expressly requires that said fees "should be deposited and credited to the National Treasury" (Sec. 3). And, although the tender of Philippine peso in payment of said fees is made by petitioner in Hongkong, the character of the fees as public debt does not disappear. In fact, Department Order No. 5 issued on December 6, 1946, in its paragraph 1b (which was the one amended by the questioned Department Order No. 67), expressly provided that "Amounts receipted for (for whatever purpose) shall be in Philippine currency or in local currency sufficient to purchase the equivalent peso draft on Manila". Why this original mandatory regulation was suddenly amended in 1950 to proscribe the legal tender of our foreign service's own country, has not been explained in the amending department order itself or in the answer of respondents in this case.

There is no merit to respondents' present and main argument that the department order in question conforms to Section 1 of Republic Act No. 2609, which grants to the Central Bank the authority to establish a uniform margin of not more than 40 per cent over its selling rates of foreign exchange. In the first place, what is involved in this case is not a Central Bank order. Secondly, the payment of fees for applications for and the issuance or renewal of Philippine passports is not a foreign exchange-or-gold transaction (See Sec. 2, Central Bank Circular No. 42, dated May 21, 1953). And granting, arguendo, that the 2-to-1 exchange rate of the Philippine peso to the U.S. dollar prescribed in Section 1612 of the Revised Administrative Code has been superseded by said Republic Act No. 2609, by the same token, the department order in question, which maintains the 2 to 1 rate, is no longer controlling.

We find no further need of discussing the other legal points raised in petitioner's memorandum.

Having arrived at the conclusion that the questioned department order, insofar as it prohibits the acceptance of Philippine pesos in payment of fees for services rendered by Philippine foreign establishments abroad, is null and void, it would follow that respondents have the ministerial duty to perform, namely, the issuance or renewal of petitioner's passport, upon the latter's tender of Philippine peso in payment thereof. Their refusal to do so, in the instant case, is properly compellable by mandamus, pursuant to Section 3, Rule 67 of the Rules of Court.

Wherefore, we hold that Department (of Foreign Affairs) Order No. 67 in question is invalid insofar only as it prohibits the acceptance of Philippine pesos in payment of fees for services rendered by Philippine foreign establishments abroad. The writ of mandamus is granted, and respondent Consul General of the Philippines in Hongkong is ordered to accept Philippine pesos in payment of the passport fees of petitioner. No pronouncements as to costs. It is so ordered.

Paras, C.J., Bengzon, Bautista Angelo, Reyes, J.B.L., Gutierrez David, Paredes, and Dizon, JJ., concur.

Writ granted.

[1] 42 Off. Gaz., 1400.

[2] The rates herein provided have been subsequently raised.

[3] 42 Off. Gaz., (9) 2064.

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