

TERMINAL SHIPPING CORPORATION, PETITIONER, VS. HON. JUAN L. BOCAR, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND THE REPARATIONS COMMISSION, RESPONDENTS.*G.R. No. L-26369. February 29, 1972*

Ponente: CASTRO, J.

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In reparation for the extensive damage suffered by the Filipino people resulting from the Japanese invasion and occupation of the Philippines during World War II, Japan agreed, on May 9, 1956, to supply the Republic of the Philippines services and products totalling US\$550 million, spanning a period of twenty years. To insure the proper utilization of these reparations payments according to a prescribed national policy,[1] Congress created the Reparations Commission and empowered it to "administer the acquisition, utilization and distribution of reparations goods and/or services."

Republic Act 1789, as amended, assigns to the respondent Commission the task of preparing yearly schedules of the goods and/or services to be procured as reparations from Japan including the persons or entities, private or governmental, for whom the same are to be obtained. Applications for reparations allocations are made in the forms prescribed by the respondent Commission, accompanied in each case by the requisite project study. The tentative schedule drawn from the totality of the applications, when duly approved by the President of the Philippines upon recommendation of the National Economic Council, serves as the basis for the yearly negotiation with Japan.

The petitioner Terminal Shipping Corporation was an applicant for US\$400,000 worth of tugboats and barges under the 10th year reparations schedule. On August 24, 1965 the then Assistant Executive Secretary Armand Fabella wrote the respondent Commission, officially informing the latter of the approval by the President of the Philippines of the 10th Year Tentative Schedule. The latter schedule included the petitioner shipping company's application for tugboats and barges. Shortly thereafter, however, or in January of 1966, with the election of a new President, a new administration took over the Government, and the tentative schedule previously approved was recalled and revised, and a new schedule prepared in its place, also by the respondent Commission. On recommendation of the National Economic Council, the new tentative schedule was approved by the President and became the basis for negotiation with Japan.

Subsequently, the 10th year reparations schedule was concluded between the Philippines and Japan, and was published in the Manila Chronicle issue of June 25, 1966. The petitioner shipping company was not among the entities allocated shares in the Agreed Schedule.

Failing to obtain from the respondent Court of First Instance of Manila a writ of preliminary injunction against the respondent Commission to enjoin the implementation of the just concluded 10th year schedule, the petitioner company lodged the present action for certiorari and mandamus with this Court.

Two issues, also ventilated in the court below, are pressed upon us for adjudication.

1. The petitioner company argues that its inclusion in the tentative reparations schedule, prepared and approved prior to the change of administration, conferred upon it a right or interest that could not be taken away without due notice and hearing. Mainly, it is contended that the respondent Commission, in processing and approving or disapproving individual applications for reparations allocations, exercises quasi-judicial powers and, as such, is bound by the basic procedural requirement of notice and hearing before it could reverse or alter a decision previously made.

The finalization of a yearly tentative schedule and its approval by the President upon recommendation of the National Economic Council are but a single step in the prolix process of programming, negotiation and placement of orders ending in the delivery of goods to the individual applicants. Whether this step, or function if one may so call it, vests property rights in the favored applicant, to the end that the same may not be altered without notice and hearing, largely depends upon the nature and characteristics of the tentative schedule and its relation to the overall reparations-procurement effort.

The Philippine agreement with Japan of May 9, 1956 does not detail the special kinds and quantities of goods or services that will comprise the reparations payments. These are subject to separate negotiations between the two countries made on a yearly basis.[2] Recognizing this, Congress, in laying down the national policy in the procurement and utilization of reparations from Japan, likewise created the Reparations Commission and assigned to it the initial task of determining what items of goods or services in a given year would best approximate the national interest. The list of such items, called the Tentative Schedule, when approved by the President upon recommendation of the National Economic Council, serves as the basis for negotiation by the Philippine Mission in Japan with the Government of the latter country. Basically, the tentative schedule takes the form of a mere proposal containing the items of goods and/or services which the Philippines prefers for the particular reparations year under negotiation. As such, the tentative schedule is essentially subject to change, and the respondent Commission cannot, as it could not have done in the present case, make a final adjudication based on such a schedule.

The approval of a given application and its subsequent inclusion in the tentative schedule form part of the area of preparation and organization which our Government is required by statute to take before dealing with the other sovereign. In this particular phase of the country's reparations-procurement effort, no justiciable controversy as yet presents itself before the respondent Commission would recall to mind the "cardinal principles of administrative proceedings" so vigorously invoked by the petitioner company. Not until the Government of Japan agrees to the schedule of goods and/or services presented by the Philippine Mission, will the respondent Commission be in a position to reasonably ascertain what goods and/or services are subject to its final disposition. The real adjudication in favor of individual end-users, of necessity and by statutory mandate takes place only with the respondent Commission's issuance of a "procurement order" in favor of each individual applicant. This is apparent from the procedure that the reparations law prescribes for the issuance or cancellation of procurement orders, to wit:[3]

First, the schedule concluded between the Philippines and Japan shall "be immediately published in full, indicating clearly the names of the end-users concerned, for three consecutive times every other day in two newspapers of general circulation, one in Tagalog and one in English by the Commission in the Philippines, and both in English by the Philippine Reparations Mission in Japan." [4]

Second, before issuance of any procurement order, the Commission shall first ascertain, among other things, that the applicant has sufficient financial resources and capacity to pay and has the technical capability to take delivery and utilize efficiently the goods applied for. In this connection, the private applicant is required to submit proof, to substantiate that both his financial resources and capacity to pay are commensurate with the value of the goods and/or services applied for, and that he has had experience or has contracted an appropriate

number of experts in the particular field.

Third, the procurement order issued following the investigation and hearing mentioned above shall not take effect "until after the lapse of one week after its final publication * * * for three successive times every other day in two newspapers of general circulation, one in Tagalog and one in English, in the Philippines, and both in English in Japan."

Fourth, a procurement order once issued may not be revoked or suspended except after due investigation, wherein the end-user is given the opportunity to be heard and represented by counsel, showing the applicant to be disqualified or guilty of fraud in connection with his application.

And finally, an appeal may be had to the President from the decision of the Commission within 30 days of receipt thereof by the disqualified end-user.

Verily, it is the issuance of the procurement order not the approval of the tentative schedule, that marks the exercise by the respondent Commission of the adjudicatory powers conferred upon it by law. The tentative schedule is an inherently speculative listing of the reparations mix which the Philippine Government prefers for a given year. The inclusion of the petitioner's project therein is but incidental to the total procurement effort undertaken by the Commission prior to negotiations with the Government of Japan. As such, the first tentative schedule in question did not confer upon the petitioner company any contractual or property right as would vest in it an interest that may not be taken away without notice and hearing. Besides, the nature and function of the tentative schedule may be presumed to have been known by the petitioner company when it applied for a reparations allocation. It has thus no right to entertain any serious expectancy that the inclusion of its project in the said tentative schedule would automatically result in its obtaining a definite share of the reparations for the year in question.[5]

It is quite clear from a reading of the Reparations Law that Congress intended the yearly tentative schedule prepared by the respondent Commission to have some measure of flexibility. Though the law is silent on the matter, the flexible quality of such a schedule is evidently designed to meet the exigencies of bilateral negotiation and to keep pace with the ever-changing needs of a developing nation like ours. Section 6, 2nd paragraph, sub-paragraph (a) of the Reparations Act, as amended, categorically allows subsequent change in the tentative schedule involving any item or project, whether by addition, substitution or deletion whether in kind, quantity, or value, whether partial or total, provided that such change has been duly endorsed by the National Economic Council and approved by the President. There is no question that, in the present case, the revision of the tentative schedule in question was duly recommended by the National Economic Council and approved by the President. Under the circumstances, unless the change in the said schedule is in palpable violation of the spirit and letter of the law, the exercise by the President of his discretion as authorized therein, is binding upon us, following the well-established principle of separation of powers.[6]

2. The second issue raised by the petitioner shipping company has reference to what it assumes as a fatal defect in the composition of the Reparations Commission which revised the 10th year tentative schedule. The petitioner cites section 5(a) of Republic Act 3079 which provides:

"SEC. 5. The implementing machinery. (a) For the purpose of implementing the provisions of this Act, the Reparations Agreement, and the exchange of notes on reparations loans, there is hereby created the Reparations Commission, hereinafter referred to as the Commission, which shall be composed of a Chairman and four other Members, at least one of whom shall belong to the minority party whose presidential candidate obtained the second largest number of votes in the presidential election immediately preceding his appointment, to be appointed by the President of the Philippines, with the consent of the Commission on Appointments, who shall serve until removed for cause or by reason of death or disability. The Chairman shall

receive a salary of eighteen thousand pesos per annum and the other members, fifteen thousand pesos per annum each. All decisions of the Commission shall be by majority vote." (Italics supplied.)

In the present case, it is conceded that only the chairman and two members, none of whom came from the ranks of the minority party, acted to alter the 10th year tentative schedule approved during the previous administration. As it happened, the President had not filled the two other vacancies in the Commission to complete the number fixed by law. The petitioner company contends that the completion of the membership of the Commission vis a vis the attendance of a member belonging to the minority party in the deliberations of the Commission, is intended by Congress to be mandatory such that the Commission cannot act Otherwise.

The respondent Commission is the creation of a special statute and its powers are governed thereby it is nowhere clear from the provision above-cited that Congress would have the Commission deliberate and act only as a body of full membership (at least one of whose members comes from the minority party) or not act at all. The pertinent provision specifically provides that all decisions of the Commission shall be by "majority vote." No doubt such majority vote is the vote of at least any three members of that body no reference being made as to the political affiliation of the members so voting. The prevailing rule in American jurisprudence is that "if a majority possesses all the authority of the whole, then such majority must be competent to its exercise. For all practical purposes, the majority becomes the full board. It is the receptacle - the reservoir — of all the authority conferred upon the whole, and its action * * * cannot be stayed by the non-action, failure to qualify, absence, death or want of eligibility of the minority." [7] The chairman and two members of the respondent Commission who voted to revise the 10th year tentative schedule comprised a majority of that body, and, absent a provision in the statute declaring indispensable the participation therein of a member belonging to a given affiliation, neither this Court nor the respondent court below can set aside the said vote.

In sum, the respondent court did not abuse its discretion nor did it act without jurisdiction in denying the petition for preliminary injunction filed by the petitioner company.

ACCORDINGLY , we deny the present petition. No costs.

Concepcion, C.J., Reyes, J. B. L., Makalintal, Fernando, Teehankee, and Villamor, JJ., concur.

Makasiar, J., reserves his vote.

Zaldivar and Barredo, JJ., took no part.

[1] Section 1, Republic Act 1789. It shall be the policy of the Government of the Philippines to utilize all reparations payments procured in whatever form from Japan under the terms of the Reparations Agreement between the Republic of the Philippines and Japan signed on May nine, nineteen hundred and fifty-six, in such manner as shall assure the maximum possible economic benefit to the Filipino people and in as equitable and widespread a manner as possible.

[2] Article 4, paragraph 1. Reparations Agreement between the Republic of the Philippines and Japan, May 9, 1956.

[3] Section 6. 2nd paragraph, sub-paragraph (a) to (a-1), Republic Act 3079.

[4] The publication, no doubt, is intended to serve notice to all persons who may have an interest in the reparations allocated for the year or who may have cause for protesting any item included therein. These persons are thus given the opportunity to come forward and be heard.

[5] While the pleadings filed by the petitioner company do not raise any issue respecting the propriety of the

intrinsic change in the tentative schedule in question, allusions to the arbitrariness thereof were made during the hearing of the present petition. The pertinent revision has two main features: First, the total amount allocated to tugboats and barges was reduced by about 62% of the previous total from \$2,800,000 to \$1,060,645. The balance of \$1,739,355 was transferred elsewhere to the other items of the schedule. Second, the names of the allocates were completely changed. Per uncontradicted manifestation of the respondent Commission dated August 25, 1966, the awardees of tugboats and barges under the revised 10th year tentative schedule were not new allocates. Separate pronouncement orders have previously been issued in favor of four of them either in the 7th, 8th, or 9th schedule, while the project of the fifth allocatee has been included in the 9th year schedules all remaining unsatisfied. Under the circumstances these five allocatees enjoy preference over the petitioner company and others with it in the cancelled list.

[6] *Lim, Sr. vs. Secretary of Agriculture and Natural Resources*, L-26990, August 31, 1970, 34 SCRA 751; *Climaco vs. Macadaeg*, L-19440, April 18, 1962, 4 SCRA 930; *Pajo, etc., et al. vs. Ago, and Ortiz, etc.*, 108 Phil. 905; *Coloso vs. Board of Accountancy*, 92 Phil. 938.

[7] *People vs. Hecht*, 38 Cat. 941, 943, cited in *Liquefied Petroleum Gas Commission, vs. E.R. Kiper Gas Corporation*, 86 So. 2d 518.

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