

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, PETITIONER,
VS. HON. FELICIANO S. GONZALES, JUDGE OF THE CFI OF RIZAL,
BRANCH IX, AND L & C INTEGRATED INDUSTRIES, INC.,
RESPONDENTS.**

G.R. No. L-34628. July 30, 1979

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a special civil action for certiorari and prohibition with a prayer for preliminary injunction whereby the petitioner seeks to nullify the order dated December 6, 1971 in Civil Case No. Q-8478 entitled "L & C Integrated Industries, Inc. vs. Philippine Virginia Tobacco Administration", the dispositive part of which reads:

"Wherefore, in view of the foregoing, let a special writ of execution issue commanding the defendant to implement the purchase agreement of June 1, 1964 and the memorandum agreement of August 21, 1968, as approved by the Court in its order of September 3, 1968 and July 18, 1969, of the sale of 24.4 million kilos of PVTA tobacco and the importation of 6.1 million kilos of blending tobacco pursuant to the provision of R.A. 4155. The defendant is further ordered to cease and desist from disposing of its tobacco stock by public bidding or by any other means until it has completely performed its obligation to the plaintiff pursuant to the decision of April 27, 1965."¹

On June 1, 1964, petitioner, Philippine Virginia Tobacco Administration (defendant in Civil Case No. Q-8478), PVTA for short, a government entity existing under Republic Act No. 2265 and respondent, L & C Corporation (plaintiff in Civil Case No. Q-8478), L & C for short, a domestic corporation organized and existing under the laws of the Philippines, executed a purchase agreement under which the latter shall buy from the former 42 million kilos of Grades "A", "B", and "C" of redried fluecured Virginia tobacco.

When Republic Act No. 4155 subsequently took effect, the respondent L & C filed with the PVTA on October 9, 1964 an application for authority to import leaf tobacco for blending purposes pursuant to Section 4 thereof which reads:

"SEC. 4. Importation of foreign leaf tobacco only for blending purposes. No person shall import leaf tobacco except as herein provided. When the Philippine Virginia Tobacco Administration Board believes that it is necessary to improve the quality of locally made Virginia cigarettes, the Philippine Virginia Tobacco Administration may authorize any Filipino citizen or Filipino controlled corporation or company to import, subject to rules and regulations promulgated by the Philippine Virginia Tobacco Administration, foreign leaf tobacco for blending purposes: Provided, That the importer is required to purchase local Virginia leaf tobacco from the Philippine Virginia Tobacco Administration and export the same at the ratio of not more than one kilogram of imported foreign leaf tobacco to every four kilograms of exported local Virginia leaf tobacco purchased by the importer from the Philippine Virginia Tobacco Administration which shall be exported simultaneously or earlier than the importation x x x."

On October 21, 1964, the petitioner adopted Resolution No. 283 authorizing the respondent L & C to import

during the fiscal year 1964-1965, an amount of 2.4 million kilos of blending tobacco, it appearing that the initial national requirements for the importation of blending tobacco for the FY 1964-1965 had been fixed at 4.4 million kilos under said resolution;² that the only tobacco available from PVTA stocks for disposal at public bidding had a total of approximately eight million kilos of the 1964 crop; and that at the 4 to 1 ratio under R.A. 4155, the quantity for importation constituted approximately 2 million kilos of foreign blending tobacco, thus leaving a balance of 2.4 million kilos for im-portation.

On December 8, 1964, the petitioner invited bidders for the purchase of eight million kilos of Grades "D" and "E" of PVTA tobacco stock, crop year 1964, to be exported in consideration of the right to import two million kilos of foreign leaf tobacco for blending purposes.

On December 23, 1964, the petitioner adopted Resolution No. 356, authorizing respondent L & C to import during the fiscal year 1964-1965 an additional amount of two million kilos of blending tobacco, provided that no portion of the imported tobacco shall be allowed to be brought into the country unless the counterpart exportation of local Virginia tobacco be first fully paid.³

On January 4, 1965, the respondent L & C filed a complaint for injunction with prayer for preliminary injunction against the petitioner PVTA with the Court of First Instance of Rizal, which was docketed as Civil Case No. Q-8478 and assigned to Branch IX, Quezon City, seeking the following relief:

"(a) That pending final determination of this action, a writ of preliminary injunction be issued to restrain and prohibit defendant, its officers, agents or any other persons acting for and on its behalf from conducting a public bidding on January 8, 1965 or on any other date thereafter in respect of (i) the sale of eight million (8,000,000) kilos of Grades D & E local Virginia leaf tobacco or (ii) the sale of Grades D & E local Virginia leaf tobacco in any other amount or (iii) the sale of any other Grade or Grades of local Virginia leaf tobacco in any amount whatsoever, until such time as plaintiff shall have sold or otherwise disposed of all the 'LOCAL TOBACCO LEAF' it has purchased from defendant under the Contract of June 1, 1964, Appendix 'A';

"(b) That after due hearing, the writ of preliminary injunction herein prayed for be made final and permanent, until such time as plaintiff shall have sold or otherwise disposed of all the 'LOCAL TOBACCO LEAF' it has purchased from defendant under the Contract of June 1, 1964, Appendix 'A'." ⁴

The PVTA filed on January 14, 1965 its answer with opposition to the issuance of the writ of preliminary injunction.

On April 10, 1965, the petitioner and the respondent, assisted by their respective counsels, submitted to the lower court a compromise agreement, the terms and conditions of which are:

"1. (a) The parties mutually agree that the Purchase Agreement of June 1, 1964, Appendix 'A' of the Complaint, covering 42 million kilos of Grades 'A', 'B' and 'C' local tobacco purchased by plaintiff from defendant shall continue in full force and effect under the same terms and conditions.

"(b) Moreover, the parties mutually agree that plaintiff's authority to import blending tobacco, in the total amount of 4.4 million kilos, granted by defendant in its Resolution Nos. 283 and 356, both series of 1964, Appendix 'C' shall continue to be recognized by defendant.

"(c) Furthermore, defendant will make representation to the Office of the President of the Philippines for the confirmation by the said Office of plaintiff's authority to import the aforesaid 4.4 million kilos, which authority has already been granted to plaintiff by virtue of the aforesaid resolutions.

"2. (a) Plaintiff will purchase from defendant and the latter shall sell to the former 9.6 million kilos of defendant's Grades 'D' and 'E' re-dried, flue-cured Virginia tobacco in accordance with the agreement, copy of which is hereto attached as Annex 'A' and made part hereof;

"3. Defendant agrees that it shall assist plaintiff in every way possible within the limits of its resources to realize the implementation of the ex-plantation of the 9.6 million kilos of Grades 'D' and 'E' local tobacco to be acquired from defendant and of the 42 million kilos of Grades 'A', 'B' and 'C' local tobacco covered by the Purchase Agreement of June 1, 1964, Appendix 'A' of the Complaint provided plaintiff is able to comply with its obligations under its contracts with the defendant referred to herein."⁵

On April 14, 1965, as a supplement to the aforementioned Compromise Agreement, the petitioner PVTa and respondent L & C executed a Memorandum Agreement⁶ covering the above-mentioned exportation of 9.6 million kilos of PVTa tobacco and the importation of 2.4 million kilos of foreign blending tobacco.

On April 27, 1965, the lower court rendered its decision approving the Compromise Agreement and enjoining the parties to abide by and comply with the terms and conditions embodied therein.⁷

On March 29, 1966, the respondent L & C filed a motion with the lower court for the issuance of a special writ of execution to enforce the aforementioned compromise agreement.

The petitioner made representations with the Office of the President to authorize the exportation of 9.6 million kilos of local tobacco and the importation of 2.4 million kilos of blending tobacco. The export-import agreement, however, was not approved at the same time. In 1966, only four million kilos of local tobacco were allowed to be exported and one million kilos of blending tobacco to be imported. So, on August 12, 1966, the petitioner and respondent executed an agreement denominated as the "Renegotiated Memorandum of Agreement"⁸ which allowed the export of only four million kilos of PVTa tobacco out of the 9.6 million kilos as agreed upon in the Memorandum Agreement dated April 14, 1965 and the import of one million kilos foreign blending tobacco.

On September 5, 1967, a "Revised Memorandum of Agreement"⁹ was entered into by the petitioner and respondent for the renegotiation of the purchase from the PTVa of the balance of 5.6 million kilos of Virginia leaf tobacco with the right to import 1.4 million kilos blending tobacco.

On April 17, 1968, the respondent L & C filed another motion with the lower court for the issuance of a special writ of execution to order the petitioner to implement the original purchase agreement of June 1, 1964, and to authorize the importation of 4.4 million kilos of blending tobacco as provided for in the aforementioned PVTa Board Resolution Nos. 183 and 356.

The petitioner alleged that despite its opposition on the ground that the respondent L & C has not yet completed the Renegotiated Memorandum of Agreement for 5.6 million kilos, the lower court issued an order dated June 14, 1968 for the implementation of the June 1, 1964 purchase agreement, commanding petitioner to make representation with the Office of the President with the end in view of obtaining clearance for the plaintiff to import blending tobacco.

The petitioner filed a motion for reconsideration which was denied. Hence, the petitioner was constrained to enter into another Memorandum Agreement with the respondent L & C on August 21, 1968, allowing the latter to purchase 17.6 million kilos of PVTa tobacco and to import 4.4 million kilos of blending tobacco based on the following conditions:¹⁰

"The PVTa hereby authorizes the L & C to import 4.4 million kilos of blending tobacco as a recognition of the grant of this right under PVTa Board Resolution Nos. 283 and 356, both series of 1964, in consideration for the purchase and exportation of 17.6 million kilos of PVTa tobacco out of the 42 million kilos under the Contract of June 1, 1964, under the following terms and conditions, to wit:

x x x

"12. That to be able to import blending tobacco, the VENDEE shall first obtain a Certificate of Authority to

import from the PVTA and approved by the Office of the President, provided, however, that no Certificate of Authority to import shall be issued unless the VENDEE has shown by indubitable proof that the corresponding quantity of PVTA tobacco has been previously exported, and only after the VENDEE has complied with its obligations in accordance with the terms and conditions set forth in this Agreement;

x x x

"14. That the right to import, although granted to the VENDEE, may nevertheless be cancelled by the PVTA, and/or by the Office of the President if the VENDEE has not complied fully with its contractual obligations with the PVTA;

"15. That the PVTA and/or the Office of the President reserves the right to suspend the importation of blending tobacco if conditions under which importation may be authorized under Republic Act No. 4155 are no longer present; provided, however, that the suspension will not affect the VENDEE'S certificate(s) of authority to import already issued by the PVTA and approved by the Office of the President;

x x x x

"19. The quantity of 17.6 million kilos out of the 42 million kilos covered by the Contract of June 1, 1964 having already been covered by the export-import transactions in connection with the 4.4 million kilos to be imported, the implementation of the Contract of Purchase of June 1, 1964, as to the balance of 24.4 million kilos shall be the subject of further renegotiation inasmuch as, this part of the implementation of the Contract of Purchase of June 1, 1964 cannot be undertaken all at the same time with the other phases of this Agreement;

"20. That this Agreement shall not be effective unless the same is approved by the Office of the President of the Philippines in accordance with the directive of that Office that Agreements regarding the sale, exportation and importation of PVTA tobacco shall be submitted to it for review and approval and the required cash performance bond, filed."¹¹

The abovementioned Memorandum Agreement of August 21, 1968 was then submitted to the Office of the President which approved the same, subject to the conditions stated in the letter of the Director General of the Presidential Economic Staff¹² dated October 15, 1968, requiring L & C to export without import rights, one-half (1/2) kilo for every four (4) kilos exported and entitled to import rights at the rate of 4 to 1. This agreement, as amended, was approved by the lower court on October 18, 1968.¹³ However, the conditions imposed in the letter of the Director General were withdrawn. On July 18, 1969, the lower court issued an order setting aside the conditions imposed in the letter of the Director General of the Presidential Staff.

On July 23, 1971, the respondent L & C filed with the lower court a motion for the issuance of a special writ of execution requiring PVTA to implement the purchase agreement of June 1, 1964 and Memorandum Agreement of August 21, 1968 for the sale of 24.4 million kilos of PVTA tobacco and the importation of 6.1 million kilos of blending tobacco pursuant to Republic Act No. 4155 and restraining petitioner from disposing of its tobacco stock by public bidding or any other means until compliance therewith.

In said motion, respondent L & C alleged that when it was about to complete the exportation of 17.6 million kilos of export tobacco and the import rights corresponding thereto, it requested PVTA to start implementing the provision regarding the remaining balance of 24.4 million kilos export tobacco and the import rights corresponding thereto in the proportion established by R.A. 4155; that in reply to L & C's request, PVTA informed L & C that while it was willing to allow L & C to purchase 24.4 million kilos, it was not disposed to grant any import rights corresponding to said 24.4 million kilos of tobacco to be purchased by L & C; that this is not denied by PVTA since it was readying to dispose all of its existing stocks of PVTA tobacco in a public bidding on August 4, 1971, wherein successful bidders would be granted corresponding right to import blending

tobacco in the statutory proportion of 1 kilo for every 4 kilos of local tobacco purchased by the successful bidder.¹⁴

On August 4, 1971, the petitioner PVTA filed an opposition alleging that the decision of the lower court, dated April 27, 1965 had become functus officio, as it was superseded by the Memorandum Agreement of August 21, 1968, and that consequently the respondent judge has no jurisdiction to issue a special writ of execution of said decision and to implement the original purchase agreement of July 1, 1964, as it is provided in paragraph 19 of said agreement that:

"19. The quantity of 17.6 million kilos out of the 42 million kilos covered by the Contract of June 1, 1964 having already been covered by the export-import transactions in connection with the 4.4 million kilos to be imported, the implementation of the Contract Purchase of June 1, 1964 as to the balance of 24.4 million kilos shall be the subject of further renegotiations inasmuch as, this part of the implementation of the Contract of Purchase of June 1, 1964 cannot be undertaken at the same time with the other phases of this Agreement."¹⁵

On December 6, 1971, the lower court overruled the opposition and issued an order granting a special writ of execution as prayed for by L & C, a portion of which reads:

"Upon consideration of the premises, the Court finds the contention of the plaintiff entirely well-founded. As contended by the plaintiff, paragraph 19 of the memorandum agreement of August 21, 1966, was not intended for the purpose of determining whether or not the plaintiff was to be granted import rights corresponding to the balance of 24.4 million kilos of local tobacco to be bought by the plaintiff but was for the purpose of agreeing on the schedule of the said importation and the corresponding importation of blending tobacco in a workable staggered schedule. For the defendant now to claim that it is not disposed to grant to the plaintiff any import rights corresponding to the balance of 24.4 million kilos of PVTA tobacco to be purchased by the plaintiff and on top of it to dispose of its existing stock of tobacco in a public bidding to other commercial entities, who are most probably in competition with the plaintiff and to deprive it from importing blending tobacco pursuant to its undertaking in accordance with the provisions of Republic Act 4155 would be in derogation of plaintiff's rights. The Court has noted from the records that inspite of previous negotiations between the parties leading to the signing of several memorandum agreements to implement the decision, the plaintiff has been repeatedly compelled to seek the aid of the Court to order the defendant to perform its obligation."¹⁶

Hence, the PVTA filed the present petition for certiorari and prohibition with a prayer for preliminary injunction to set aside said order of the respondent judge on the ground that the judge acted with grave abuse of discretion, lack of jurisdiction or in excess of jurisdiction.

This Court, in its Resolution dated March 2, 1979, granted the preliminary injunction prayed for by the petitioner upon the posting of a bond of P10,000.00.¹⁷

The issues involved are:

1. Whether or not the petition for certiorari under Rule 65 of the Rules of Court is the proper remedy in the case at bar; and
2. Whether or not the respondent judge can compel petitioner to allow the sale of 24.4 million kilos of PVTA tobacco to and the importation of 6.1 million kilos of blending tobacco by the respondent.

On the first issue, the respondent contends that since the present petition is an original action for certiorari under Rule 65 of the Revised Rules of Court, the petitioner must establish lack or excess of jurisdiction or grave abuse of discretion on the part of respondent court and in addition, absence of appeal or of any plain or speedy and adequate remedy in the ordinary course of law; that the questioned order of respondent court was issued upon the petition of private respondent for the issuance of special writ of execution to compel the petitioner to implement

one of two agreements approved by the respondent court in its decision of April 27, 1965 by allowing L & C to purchase the balance of 24.4 million kilos of local tobacco and to import blending tobacco in the amount of 6.1 million kilos after PVTa was given an opportunity to be heard and in fact PVTa had filed an opposition thereto; that the petition was even set for hearing; that the order of the court in favor of L & C was but an exercise by the court of its jurisdiction and even granting that the court's findings and conclusions were erroneous (and actually they were not), the petition for certiorari will not lie against said order; and that the questioned order was not only within the court's jurisdiction and competence but was in accordance with laws and facts.¹⁸

In answer to respondent's memorandum, the petitioner contends that the respondent judge did not merely err in the judgment, but acted without jurisdiction and with grave abuse of discretion in issuing the aforementioned order because the writ of execution does not conform to any final court decision or order or any court approved compromise agreement as there is none which compels petitioner to sell to respondent L & C 24.4 million kilos of PVTa tobacco and allow it to import 6.1 million kilos of blending tobacco; and that as such the order of execution has no basis.¹⁹

The petitioner's contention is tenable. This Court finds that there is no decision or court approved compromise agreement which could be the subject of a writ of execution to compel the petitioner to sell 24.4 million kilos of PVTa tobacco to the respondent L & C and allow it to import 6.1 million kilos of foreign blending tobacco. The compromise agreement of April 10, 1965 and the purchase agreement of June 1, 1964 strongly relied upon by the respondent does not provide that the purchase of 42 million kilos of PVTa tobacco will entitle respondent L & C to import 10.5 million kilos of blending tobacco. The said compromise agreement provides, inter alia, that the purchase agreement shall remain in full force and effect.

The respondent judge, in rendering the questioned order, relied upon the Memorandum Agreement of August 21, 1968. However, said agreement did not give respondent L & C the right to import 6.1 million kilos of blending tobacco if it were to purchase 24.4 million kilos of PVTa tobacco. It merely reduced the amount of tobacco to be purchased and exported under the June 1, 1964 agreement from 42 million kilos to 17.6 million kilos with the collateral right to import 4.4 million kilos of blending tobacco. Under paragraph 19 of said agreement, the right to purchase the balance of 24.4 million kilos was even "subject to further renegotiation". This means that there was still no contract or agreement over the balance of 24.4 million kilos which would be the basis of a right to import. In the absence of such contract, there are no rights and obligations which can be enforced by a writ of execution.

There being no decision or court approved compromise agreement providing for the right to export 24.4 million kilos of PVTa tobacco and to import 6.1 million kilos of blending tobacco, the respondent judge had no jurisdiction to issue the order of execution in question. The writ of execution must conform with the judgment to be executed as it may not vary the terms of the judgment it seeks to enforce.²⁰ Thus, a petition for certiorari under Rule 65 of the Revised Rules of Court is the proper remedy in the case at bar.

On the second issue, the petitioner cannot be compelled to sell to the L & C 24.4 million kilos of PVTa tobacco and to allow said L & C to import 6.1 million kilos of blending tobacco. In the first place, as previously pointed out, a perusal of the terms of the 1964 purchase agreement and the court approved compromise agreement of 1965 reveals no provision which can be construed as granting to respondent L & C the right to import 10.5 million kilos of blending tobacco. In the second place, the respondent cannot rely on Section 4 of R.A. 4155. The 1964 purchase agreement was entered into on June 1, 1964, before R.A. 4155 took effect. Only laws existing at the time of the execution of contract are applicable to said transaction. Well-settled is the statutory rule that statutes have no retroactive effect unless otherwise provided therein.²¹ Nothing in R. A. 4155 provides that it should have retroactive effect.

It is true that subsequent transactions of the petitioner and the respondent transpired at the time R.A. 4155 had already taken effect. However, it should be noted that the importation of blending tobacco is not a matter of right which can be availed of by every Filipino purchaser-exporter of local PVTA tobacco. Section 4 of R.A. 4155 provides:

"SEC. 4. Importation of foreign leaf tobacco only for blending purposes. No person shall import leaf tobacco except as herein provided. When the Philippine Virginia Tobacco Administration Board believes that it is necessary to improve the quality of locally made Virginia cigarettes, the Philippine Virginia Tobacco Administration may authorize any Filipino citizen or Filipino controlled corporation or company to import, subject to rules and regulations promulgated by the Philippine Virginia Tobacco Administration, foreign leaf tobacco for blending purposes: Provided, That the importer is required to purchase local Virginia leaf tobacco from the Philippine Virginia Tobacco Administration and export the same at the ratio not more than one kilogram of imported foreign leaf tobacco to every four kilograms of exported local Virginia leaf tobacco purchased by the importer from the Philippine Virginia Tobacco Administration which shall be exported simultaneously or earlier than the importation x x x."

It is clear from the foregoing that the PVTA has the discretion to grant import rights if it believes that the importation of foreign leaf tobacco is necessary to improve the quality of locally made Virginia cigarettes. The mere fact that a Filipino citizen or entity holds a contract to purchase PVTA tobacco for exportation does not necessarily give him the right to demand that he be allowed to import blending tobacco. While such purchase and exportation of PVTA tobacco are conditions precedent to the grant of the privilege to import, it is further required that importation of blending tobacco is necessary to improve the quality of locally-made Virginia cigarettes. Otherwise, the PVTA is not obliged to grant the Filipino purchaser-exporter the privilege to import blending tobacco.

The sale of tobacco stock by public bidding, as scheduled by the PVTA, with the collateral import rights at the ratio of 1 to 4 million kilos pursuant to R.A. 4155 to be given to the successful bidder, implies that there is a need for the importation of foreign blending tobacco in order to improve the quality of locally-made Virginia cigarettes. This, however, does not affect the alleged import rights of L & C. The respondent L & C has no right yet to import 6.1 million kilos of blending tobacco because paragraph 19 of the 1968 agreement reads:

"... the implementation of the contract of Purchase of June 1, 1964 as to the balance of 24.4 million kilos shall be the subject of further renegotiation inasmuch as, this part of the implementation of the contract of Purchase of June 1, 1964 cannot be undertaken all at the same time with the other phases of this Agreement."

Paragraph 19 is clear that only the sale of the balance of 24.4 million kilos of PVTA tobacco is subject to further renegotiation. Nothing is said about the import rights of 6.1 million kilos of blending tobacco. The petitioner PVTA has not refused to further renegotiate as to the sale of the 24.4 million kilos of PVTA tobacco to the respondent L & C. In fact, it is admitted that the petitioner is allowing the respondent L & C to purchase 24.4 million kilos of PVTA tobacco but without the import rights of 6.1 million kilos of blending tobacco. The mere fact that the respondent L & C was allowed to purchase the 24.4 million kilos of PVTA tobacco does not necessarily give said respondent the right to demand that it be allowed to import 6.1 million kilos of blending tobacco.

WHEREFORE, the petition for certiorari is granted. The order of the respondent judge, dated December 6, 1971, is declared void and set aside, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and De Castro, JJ., concur.
Melencio-Herrera, J., took no part.

1 Annex "S", Rollo, p. 87.

2 Annex "C", Rollo, p. 27.

3 Annex "E", Rollo, p. 29.

4 Annex "F", Rollo, pp. 30-36.

5 Annex "H", Rollo, pp. 43-44.

6 Annex "I", Rollo, pp. 45-48.

7 Rollo, pp. 51-52.

10 Annex "P", Rollo, pp. 71-76.

11 Ibid., Rollo, pp. 72, 74-76.

12 Rollo, p. 121.

13 Rollo, pp. 122-123.

14 Respondent's Memorandum, p. 13, Rollo, p. 166.

15 Rollo, p. 13.

16 Annex "S", Rollo, pp. 86-87.

17 Rollo, p. 143.

18 Respondent's Memorandum, Rollo, pp. 154-156.

19 Petitioner's Memorandum, Rollo, p. 242.

20 Gamboa's Incorporated vs. Court of Appeals, L-23634, July 29, 1976, 72 SCRA 131; Lopez vs. Reyes, L-29498, March 31, 1977, 76 SCRA 179.

21 Salcedo vs. CA, L-40846, January 31, 1978, 81 SCRA 408.

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