

NONITO J. BERNARDO, PETITIONER, VS. CALTEX (PHILIPPINES), INC., RESPONDENT.

G.R. No. 101345. December 01, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The appeal on certiorari at bar[1] treats of the jurisdiction of the Regional Trial Court over the controversy between petitioner and respondent in light of Sections 3 (par. 2 [a]) and 7 of Executive Order No. 172 and "Section 2, Rule VIII of the Rules and Regulations Governing the Establishment, Construction, Operation, Remodelling, and/or Refurbishing of Petroleum Products Retail Outlets," promulgated by the Oil Industry Commission on 1 September 1972 (68 O.G. 7347[2]), adopted by the BEU[3] in its Memorandum Circular No. 78-04-06, Series of 1978 **." [4] The provision reads as follows:

"Section 2. All disputes between any operator/dealer and an oil company regarding dealership agreement except those arising out of their relationship as debtor and creditor shall be under the jurisdiction of the Oil Industry Commission.

A party seeking relief from or enforcement of any provision of a dealer agreement, except those as hereinabove provided, may do so by filing with the Commission a petition defined in the Rules of practice and Procedure governing hearings before the Commission. The hearing shall be conducted as provided in said Rules."

The "operator/dealer" involved is the petitioner, Nonito J. Bernardo, and the "oil company," the respondent Caltex (Philippines), Inc. (hereafter referred to simply as Caltex). Bernardo operates two (2) Caltex gasoline stations.

On December 3, 1990, Bernardo placed with the Caltex Pandacan Terminal an order for 10,000 liters of diesel fuel. He made full payment therefor in the sum of P57,937.50 on the same day, the payment being evidenced by an official receipt. On December 4, 1990,[5] he placed with the same terminal another order, this time for 10,000 liters of premium gasoline -- for which he also made full payment in the amount of P84,193.50 on December 5, 1990, the payment being evidenced by an official receipt issued on said day.[6]

Bernardo sent his tanker to the Pandacan Terminal as early as 11:20 o'clock in the morning of December 5, 1990, to take delivery of the petroleum products thus purchased.[7] But despite waiting until 6 P.M. on that day, the tanker's driver failed to take delivery, because Caltex's computer system had allegedly malfunctioned and broken down as early as 3:45 A.M. and remained out of order up to 12:10 P.M. on that day, December 5.[8]

It appears that on that same day, December 5, 1990, the Energy Regulatory Board announced an increase in the prices of petroleum products effective at 6 o'clock in the evening of that day. According to Caltex, "(a)t exactly 6:00 in the evening of December 5, 1990, ** (it) had to cut-off the delivery or hauling by dealers of products in order to make the necessary adjustments in its computers as a result of the price increase ** (and after that time) all orders, even for those pre-paid and delivered ex-plant, were invoiced at the new rates ** in accordance with the Purchase and Sale Agreement ** ." [9]

Demands subsequently made by Bernardo for delivery of the petroleum products paid for by him,[10] were refused by Caltex unless Bernardo paid the difference between the old and new prices. Caltex claimed, in justification of its refusal,[11] that when Bernardo demanded "delivery of his orders, the prices had already increased due to the ERB order on December 5, 1990," and Bernardo was bound to pay the increased price in accordance with Section 3 of his "Purchase and Sale Agreement" with Caltex providing as follows:

"(3) PRICES: Prices to be paid by BUYER ex SELLER's storage point shall be at SELLER's official wholesale selling price ex storage point at Pandacan Terminal in effect on date of delivery.

On January 8, 1991, Bernardo filed a complaint in the Regional Trial Court at Quezon City praying that Caltex be ordered to deliver the petroleum products in question and to pay compensatory, exemplary and nominal damages, loss of earnings and profits expected "from the sale of the undelivered petroleum products," and attorney's fees.[12]

Caltex moved to dismiss under date of January 23, 1991,[13] on the ground that (a) venue was improperly laid -- it being provided in the parties' Purchase and Sale Agreement that in case "of any judicial proceedings to enforce any or all of the terms or conditions of ** (said) Agreement, BUYER shall submit itself to the jurisdiction of the Court of the City of Manila or to SELLER's places of transactions at SELLER's option;"[14] and (b) the plaintiff had no cause of action against it -- Caltex having "cut-off the delivery or hauling by dealers of products in order to make the necessary adjustments in its computers as a result of the price increase" (set by ERB on December 5, 1990), and accordingly invoiced "all orders, even for those pre-paid and delivered ex-plant, ** at the new rates," as was allegedly its right under Paragraph (3) of the Purchase and Sale Agreement, supra, reiterated in a Circular dated August 1, 1990 sent to all its dealers and customers pertinently reading as follows:

"1. All orders that have (been) invoiced and paid for before the effectivity of a wholesale Selling Price increase but are not yet delivered to or picked-up by the customers as of the effectivity of the price increase shall be cancelled and a new invoice shall be prepared using the new price/s."

By Order dated January 30, 1991, the Trial Court denied Caltex's motion to dismiss and issued a preliminary mandatory injunction requiring immediate delivery by Caltex of the petroleum products in question upon Bernardo's posting of a bond in the sum of P50,000.00.[15] To invalidate that order, Caltex forthwith instituted in this Court a special civil action of certiorari; but by this Court's Resolution of February 6, 1991, the case was referred to the Court of Appeals where it was docketed as CA-G.R. SP N. 24091. The action resulted in a judgment rendered by said Court of Appeals on March 16, 1991,[16] disposing as follows:

"WHEREFORE, the petition is hereby given due course, the order of respondent judge dated January 30, 1991, is hereby set aside insofar as it granted the application for a writ of preliminary injunction. However, the order is upheld insofar as it denied petitioner's motion to dismiss. The temporary restraining order issued by this Court is hereby made permanent."

This judgment became final and executory. Caltex thereafter filed its answer to the complaint.[17] The answer re-stated the position it had already expressed at one time or another, and set up a compulsory counterclaim. It also asserted the "special and affirmative defense" that it was the Energy Regulatory Board, not the Trial Court which had jurisdiction of the subject matter of the case since it involved "a dispute between an oil company and its dealer, particularly as to the price by which petroleum products are to be sold." Caltex then moved "to set its Affirmative Defenses for Preliminary Hearing." Bernardo opposed the motion. He also filed a motion for summary judgment. Both motions were denied by the Trial Court, in an order dated July 1, 1991.

Caltex moved for reconsideration. The Court required the parties to submit memoranda. On August 14, 1991, the Trial Court promulgated an Order dismissing Bernardo's suit for lack of jurisdiction. The Court cited the judgment

of the Court of Appeals in CA-G.R. SP No. 24091, supra, holding inter alia that "there is still an unsettled dispute as regards the pricing of the ** (petroleum) products" in question, as well as this Court's own holding G.R. Nos. 95203-05 (Maceda v. ERB and companion cases, prom. Dec. 18, 1990) to the effect that it "is not the suitable forum for debate" regarding the wisdom of policy or the logic behind increases in oil prices, in relation to the powers of the Energy Regulatory Board (a) "to fix and regulate the prices of petroleum products,"[18] and of (b) supervision and jurisdiction[19] -

" * * over all persons, corporations, firms or entities engaged in the business of importing, exporting, re-exporting, shipping, transporting, processing or refining of indigenous and imported crude oil or other petroleum products, storing, marketing, distributing, or selling, both at wholesale and retail, and other crude or refined petroleum products, and shall regulate and supervise the operations and activities of said persons and entities. * *."

Upon these undisputed facts, Bernardo submits for resolution the question, "which body has the original jurisdiction over the instant case, the Energy Regulatory Board or ** (the) Court a quo."

The situation in this case is similar to that in Mobil Oil Philippines, Inc. v. Court of Appeals, which this Court decided on December 29, 1989.[20] In said case, the facts were as follows:

"On February 15, 1974 -- a Friday -- while there was still this oil crisis, plaintiff (Fernando A. Pedrosa) placed with defendant (Mobil Oil) a pre-paid order for 8,000 liters of premium gasoline and 2,000 liters of regular gasoline paying therefor a PBTC Cashier's Check in the amount of P4,610.00 ** on the basis of the following computations:

8,000 liters MP at P0.85 P 3,510.00

2,000 liters MR at P0.53 1,060.00

Delivery Freight Cargo 40.00

Total P 4,610.00

The above computation is contained in a product order form, Exh. 3, which was prepared and filled up by defendant's order clerk when plaintiff placed his order on Feb. 15, 1974, as in fact the handwritings thereon are those of the said order clerk. It is stated in Exh. 6 that the order was taken at '2:20' (Exh. 3-A) and '12/15' and the delivery due date is Today.'" (p. 654)

" * * (I)t appears from the record that there was an increase in the price of gasoline on February 18, 1974. Plaintiff was charged the cost of the gasoline under the increased rates, or in the total sum of P7,490.00 including delivery and freight charges. It was defendant's contention that since the gasoline was actually delivered on March 5, 1974, the then prevailing increased rates should be made to apply and not the price prevailing on February 14, 1974, the date when the order was made and paid by plaintiff with a cashier's check." (p. 655)

Upon these facts, the Court ruled that since plaintiff Pedrosa's "prepaid order was prepared on the same date by ** (Mobil Oil's) credit man and after being thus approved by ** (Mobil Oil's) credit man, ** (Pedrosa) paid for the price therein indicated by tendering a Prudential Bank Cashier's Check #19972. Because of this, ** Mobil became duty bound to deliver the gasoline to private respondent on February 15, 1974 and the price paid for by ** (Pedrosa) was that price then prevailing which was the amount indicated in ** (Pedrosa's) cashier's check **. By actually delivering the gasoline on March 6, 1974, petitioner committed a contractual breach and incurred in delay that should make it liable for damages." [21] The Court further held that the "prepaid order form was a perfected contract of sale the moment it was approved and accepted by Mobil through its proper representative on the same

day and paid for by ** Pedrosa likewise on the same day **. On the part of Pedrosa it can even be said that the contract was consummated as far as he was concerned since he executed his part of the contract by his prepayment of the order." [22]

It thus appears to the Court that as in that case, a contract of sale of petroleum products was here perfected between Caltex and its "operator/dealer," Bernardo; that in virtue of the payment admittedly made by Bernardo, Caltex became a "debtor" to him in the sense that it was obligated to make delivery to Bernardo of the petroleum products ordered by him; and that the only issue is the manner by which Caltex shall perform its commitment in Bernardo's favor, or more precisely, what quantity of petroleum products it is bound to deliver to Bernardo: that corresponding to (or at the rate of) the price at the time of the payment effected by Bernardo or the higher price fixed by the Energy Regulatory Board on December 5, 1990; and that the controversy between them cannot be characterized as a dispute within the original jurisdiction of the Energy Regulatory Board, which as already stated, extends to "(a)ll disputes between any operator/dealer and an oil company regarding dealership agreement except those arising out of their relationship as debtor and creditor **." It is rather one cognizable by the Regional Trial Court, as a dispute indeed "arising out of their relationship as debtor and creditor."

As the facts make clearly apparent, there is no "unsettled dispute as regards the pricing of the ** (petroleum) products," as the Regional Trial Court opines in its challenged Order of August 14, 1991. On the contrary, the parties are in agreement about the prices of the petroleum products in question which became effective on December 5, 1990 at 6 o'clock P.M., and those prevailing prior thereto. Their disagreement is as regards which of the two sets of prices shall apply to the transactions subject of Bernardo's complaint.

Neither do the parties impugn the validity or the propriety or wisdom of the specific exercise by the Energy Regulatory Board of its power "to fix and regulate the prices of petroleum products," or its power of supervision over the operations and activities, generally, of persons and entities dealing in oil and petroleum products, as said Regional Trial Court posits in its order of August 14, 1991.

What the controversy is all about, to repeat, is simply the prices at which the petroleum products shall be deemed to have been purchased from Caltex by Bernabe in December, 1990. This is obviously a civil law question, one determinable according to the provisions of the Civil Code and hence, beyond the cognizance of the Energy Regulatory Board of the Oil Industry Commission.

WHEREFORE, the petition is GRANTED, the Order of the Regional Trial Court rendered on August 14, 1991 in Civil Case No. Q-91-7630 is ANNULLED AND SET ASIDE, and said Court is DIRECTED to forthwith resume the proceedings in the case in accordance with the Rules of Court and to dispose of the case in due course. Costs against respondent.

SO ORDERED.

Feliciano, Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Perfected pursuant to Rule 45, Rules of Court, taken directly to this Court from the Regional Trial Court on petitioner's claim that it involves only a question of law

[2] At page 7352

[3] Bureau of Energy Utilization, now the Energy Regulatory Board (ERB)

[4] Rollo, p. 120 (p. 3, respondent's Comment dated Nov. 13, 1991), and pp. 34-135 (pp. 2--3, petitioner's reply dated Dec. 26, 1991)

[5] Caltex avers that the order was placed on December 5, 1990.

[6] Rollo, pp. 8, 27-30; 40-48; 73 (p. 5 of respondent's "Answer" in the RTC, dated April 30, 1991); p. 21 (p. 4, respondent's comment of Nov. 13, 1991).

[7] Id., pp. 9, 49

[8] Id., pp. 8-9, 34

[9] Id., p. 35

[10] Id., pp. 23, 70, 85

[11] Id., pp. 121-122

[12] Id., pp. 22-30. The action was docketed as Civil Case No. Q-91-7630.

[13] Id., pp. 31-37

[14] Bernardo argues that the agreement expired, by express provision, on November 17, 1989.

[15] Rollo, pp. 5, 65-66

[16] Id., pp. 6, 68

[17] Id., pp. 69-76

[18] Sec. par. 2(a), Executive Order No. 172

[19] Under Sec. 7, R.A. 6173, as amended by P.D. 1128

[20] 180 SCRA 651-667

[21] Page 657

[22] Page 658

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