

BACOLOD MURCIA MILLING CO., INC., PETITIONER AND APPELLANT, VS. CENTRAL BANK OF THE PHILIPPINES, RESPONDENT AND APPELLEE.

G.R. No. 12610, October 25, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of First Instance of Manila, Hon. Magno Gatmaitan, presiding, dismissing a petition for prohibition filed by petitioner-appellant, praying that the court declare Circular No. 20 of the Central Bank, particularly section 4 (a) thereof, null and void, and that the Central Bank be perpetually enjoined from enforcing the same. The complaint contains a petition for the issuance of a writ of preliminary injunction.

Circular No. 20 of the Central Bank was promulgated on December 9, 1949 and section 4(a) thereof provides:

"4. (a) All receipts of foreign exchange shall be sold daily to the Central Bank by those authorized to deal in foreign exchange. All receipts of foreign exchange by any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation, shall be sold to the authorized agents of the Central Bank by the recipients within one business day following the receipts of such foreign exchange. Any person, firm, partnership, association, branch office, agency, company or other unincorporated body, or corporation, residing or located within the Philippines, who acquires on and after the date of this Circular foreign exchange shall not, unless licensed by the Central Bank, dispose of such foreign exchange in whole or in part, nor receive less than its full value, nor delay taking ownership thereof except as such delay is customary; provided, further, that within one day upon taking ownership, or receiving payment, of foreign exchange the aforementioned persons and entities shall sell such foreign exchange to designated agents of the Central Bank."

Section 8 also provides:

"Strict observance of the provisions of this Circular is enjoined; and any person, firm or corporation, foreign or domestic, who, being bound to the observance thereof, or of such other rules, regulations or directives as may hereafter be issued in implementation of this Circular, shall fail or refuse to comply with, or abide by, or shall violate the same, shall be subject to the penal sanctions provided in the Central Bank Act." -

The facts and circumstances giving rise to the petition are, as found by the court below, as follows:

"On or about December 17, 1956, plaintiff sold and exported to Olavarria & Co., Inc. of New York, United States of America 48,192 piculs (equivalent to 3,000 tons) of sugar for the total price of \$416,640.00 U.S. currency, and as a consequence drew against said Olavarria & Co., Inc. two (2) drafts for the total sum of \$336,995.40 U.S. Currency, to cover an initial payment of 95% of said purchase price (Exh. 4E' and 'F'); said drafts were then entrusted and delivered for collection to the Philippine Bank of Commerce, which duly accepted the undertaking to collect the amount thereof for the account of plaintiff, but called the attention of plaintiff that under existing rules and regulations all exchange proceeds of the drafts must be sold to the

Central Bank authorities at the prevailing rate of exchange set up by the Central Bank (Exhibits 'E', 'F', 'G', and 'H') creating a reserve supply of dollars which the Central Bank thereafter disposed to parties in need thereof, but at the rate also of 2 to 1. Plaintiff apparently felt, that it had suffered enough; therefore, on December 29, 1956, it wrote to the defendant Central Bank that 'we seriously doubt the legality and validity of your rules and regulations on this particular point, and cannot therefore agree and cannot give our consent to the sale of the dollar proceeds of our said drafts to the Central Bank of the Philippines, unless the Central Bank should agree to pay us, as fair consideration and just compensation, the real international worth and prevailing market value of the said dollar proceeds of our sugar,'

"It was because of this that on 28 January 1957, plaintiff brought this special civil action for prohibition in order to stop the defendant Central Bank from taking: further action to enforce Circular No. 20. Plaintiff says that the forced sale of foreign exchange to the Central Bank required in Circular No. 20 is 'ultra vires'; and that the practice of the Central Bank in paying for such exchange only at the legal parity rate with the purpose of reselling the same to other private parties at the same rate is a confiscation of private property not for public use nor for just compensation. Respondent contends the contrary."

The defenses presented by the respondent-appellee in its answer are (1) that Circular No. 20 is presumed to be valid; (2) that the Philippines is a signatory member of the International Monetary Fund Agreement and as such is bound to respect or to maintain the par value of the Philippine currency; (3) that Circular No. 20 was approved in an exchange crisis in accordance with Section 74 of the Central Bank Act and said circular was approved by the President of the Philippines and by the International Monetary Fund; (4) that the powers of the Central Bank to curtail, regulate and license the use of foreign exchange include the right to require that all foreign exchange be surrendered and that the plaintiff has not exhausted all the administrative remedies available in the ordinary course of law, etc.

The court below found, as plaintiff's evidence itself shows, that there is a monetary crisis. It also found that the export of sugar by plaintiff was a transaction on foreign exchange; it declared that plaintiff would stand to lose by the operation of the exchange control circular, but that the enactment of a law on currency and even the issuance of paper money as legal tender are attributes of the sovereign power (citing *Juillard vs. Greenan*, 110 U.S. 421); that the devaluation of the dollar by authority of the Congress of the United States and the provision legalizing payment of contractual obligations and other restrictions may not be considered as a capricious or arbitrary exercise of its powers; and the damage done to plaintiff in this case may be considered *damnum absque injuria*.

The foregoing decision is the subject of the present appeal.

In its brief appellant argues that the court below failed to pass upon the specific objections of appellant to the circular and its provision, namely,

- That the compulsory sale regulation expressly violates Section 73 of the Central Bank Charter, that it may engage in exchange transactions only with banking- institutions and other entities specified;
- That the circular establishes a monopoly by allowing, commandeering of foreign exchange, when its charter allows commandeering only of gold (Sec. 72) ;
- That compelling private persons to sell foreign exchange to the Central Bank can not be included in the power "to subject to license all transactions in gold and foreign exchange during an exchange crisis" as defined in Section 74 of the Charter.

The first three objections may be explained away by the observation that the power granted in Section 72, 73, and 80 of the Central Bank Charter, which plaintiff-appellant claims to have been violated, are the powers of the Bank in normal times, and not during an exchange crisis, when the Bank may adopt the remedies indicated in Section

74 of its Charter, entitled "Emergency Restrictions on Exchange Operations."

Issue

The most important issue now before the Court is whether the exchange control provision contained in Section 4 (a) of Central Bank Circular No. 20, may be considered as sufficiently authorized by the provisions of the Charter. Petitioner sustains the negative of the issue, i.e., that the establishment of exchange control can not be considered authorized by the provisions of Section 74 of the Bank Charter and is, therefore, null and void. Respondent supports the affirmative, arguing that such establishment (of exchange control) may be considered authorized by implication from the general duty imposed upon the Bank of preserving and maintaining the international value of the peso.

Reasons Adduced To Justify Exchange Control

The provisions of Republic Act 265 are so broad and encompassing with respect to the Bank's powers that it is difficult to believe that exchange control was not authorized within the scope of the Charter. The fact that the Charter does not expressly grant the Bank the power to require the forcible sale of foreign exchange is no reason, per se, for holding that the Bank may not do so; the inquiry should be whether the Act contains sufficient standards on which the exercise of a power could be premised. On this score Republic Act No. 265 is not wanting.

In Section 2, the Central Bank is charged with the duty "to administer the monetary and banking system of the Republic, to maintain monetary stability in the Philippines; to preserve the international value of the peso; and to promote a rising level of production, employment and real income in the Philippines." In Section 64, it is given the duty to "control any expansion or contraction in the money supply, or any rise or fall in prices, which, in the opinion of the Board is prejudicial to the attainment or maintenance of a high level of production, employment and real income." Under this section, the Monetary Board shall have due regard "for their effects (measures) on the availability and cost of money to particular sectors of the economy as well as to the economy as a whole, and their effects on the relationship or domestic prices and costs to world prices and costs."

Dealing on the international reserve Section 68 enjoins the Central Bank to maintain an international reserve "adequate to meet any foreseeable net demands on the Bank for foreign currencies." In gauging the adequacy of the international reserve, the guide is the "prospective receipts and payments of foreign exchange by the Philippines." Further, the Monetary Board is required to consider the "volume and maturity of the Central Bank's own liabilities in foreign currencies, the volume and maturity of the foreign exchange assets and liabilities of other banks operating in the Philippines, and in so far as they are known or can be estimated, the volume and maturity of the foreign exchange assets and liabilities of all other persons and entities in the Philippines."

In Section 70, the Central Bank shall take remedial measures as are appropriate and within the powers granted whenever the international reserve falls "to an amount which the Monetary Board considers inadequate to meet the prospective net demands on the Central Bank for foreign currencies, or whenever the international reserve appears to be in imminent danger of falling to such a level, or whenever the international reserve is falling as a result of payments or remittances abroad, which, in the opinion of the Monetary Board, are contrary to the national welfare."

It would seem, from a study of the provisions cited, that the Act contains sufficient standards as the term is understood in Philippine jurisprudence. It is recognized that a body created by law has the power to promulgate rules and regulations to implement a given legislation and effectuate its policies. (See *People vs. Pedro R. Exconde*, G. R. No. L-9820, Aug. 30, 1957; *Calalang vs. Williams*, 70 Phil. 727; *Pangasinan Transportation vs. Public Service Commission*, 70 Phil. 22; *People vs. Rosenthal*, 68 Phil. 328; *People vs. Vera*, 39 Phil. 660; *Rubi*

vs. The Provincial Board of Mindoro, 39 Phil. 660.)

Even the Legislature was perhaps aware that by the nature of the vast subject matter which R.A. No. 265 1114 covers, it could not foresee every conceivable means or power by which the objectives of the law could be achieved. That is why under Section 14 the Monetary Board is given the authority to "prepare and issue such rules and regulations as it considers necessary for the effective discharge of the responsibilities and exercise the powers assigned to the Monetary Board and to the Central Bank." This is reiterated under Section 70 *aforecited*, under which when the international stability of the peso is threatened, the Central Bank may "take such remedial measures as are appropriate and within the power granted to the Monetary Board and the Central Bank under the provisions of this Act." (R.A. No. 265)

Against appellant's contention that the rules and regulations which the Central Bank or the Monetary Board may promulgate are only such as are within the powers granted by the Charter, and that the latter does not grant the Central Bank the power to impose the forcible sale of foreign exchange, it is pointed out that the test of whether a power has been granted to a body created by law is not necessarily whether the Charter expressly grants such power, but whether the law contains sufficient standards on which its exercise may be based. (*People vs. Jolliffe*, 105 Phil. 677.)

The forcible sale of foreign exchange to the Central Bank, in relation to the powers and responsibilities given to it in Secs. 2, 14, 64, 68, 70, 74 and other sections of R. A. No. 265 can be regarded as falling within the category of "implied powers" as those necessary for the effective discharge of its responsibilities.

"Implied powers flow from a grant of expressed powers and are those powers necessary or incidental to the exercise of the expressed powers." (*Shelby Oil Co. vs. Pruitt & McCrory*, 221 P. 709, 710, 94 Okl. 232).

"Implied powers are such as are necessary to carry into effect those which are expressly granted, and which must therefore be presumed to have been within the intention of the legislative grant." (*City of Madison vs. Daley*, 58 F. 751, 755);

"* * * incidental powers are such as are necessary in order to enable a corporation to carry into execution the specific powers conferred upon it by its Charter." (*First M.E. Church vs. Dixon*, 152 N.E. 887, 890, 178 Ill. 260.)

Criticism Of The Theory Supporting Control

The gist of the argument for exchange control, therefore, is the rule of necessity, i.e., its establishment would affect the international stability of the peso and it is necessary to establish it to maintain international reserve, etc. The writer does not understand how commandeering of the foreign exchange by the Central Bank itself is necessary to carry out the purpose of establishing the stability of the peso or maintaining the international reserve. Commandeering does not increase foreign exchange neither does it decrease demand therefor. With the licensing of exports and imports possession of foreign exchange becomes known, and the stability can be maintained by the limitation of licenses for the importation of goods to such foreign exchange as may have been secured through exports. It is not necessary that the Central Bank get the foreign exchange itself for it to distribute among persons whom it chooses; it is sufficient that the foreign exchange obtained be apportioned among legitimate importers in accordance with the relative necessity of such imports. If the demand for exchange exceeds the foreign exchange earned by exports, the demand, if deemed necessary to preserve the economy of the country, can be met by the international reserves or by international loans, etc. By limiting the sale of foreign exchange to be used for imports to the amounts earned through exports and obtained by loans, the stability of the currency could be secured, even without the Bank commandeering the foreign exchange earned by exporters in the course of their business operations.

By way of remark it may be added that exchange control is unwise in that the profits that are derived from the producer of export products and which could stimulate further production of export products is removed from the hands of the producer and transferred to the importer-trader to the ultimate detriment of the over-all economy, reducing production and increasing importation. And by placing the allocation of foreign exchange in the hands of the Government opportunities for graft and corruption are multiplied resulting not in the demoralization of industry only but in that of the whole Government. The previous administration is witness to the deleterious effect of exchange control.

Theory Sustained By Appellant

The theory sustained by appellant is that exchange control can not be embraced or intended within the meaning of the clause "may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license", embodied in the provisions of Section 74 of the Bank's Charter.

Let us examine the merits of appellant's arguments.

Evitt,[1] states that "exchange control" is one form of exchange restriction; the most drastic form thereof and the last step in a series of exchange restrictions. He considers exchange control separately from exchange restriction.

"Forms of Exchange Restrictions.

* * * * *

"The expression 'exchange restrictions' is applied not only to official regulation of dealings in foreign exchange, but also to any disabilities attaching to the ownership of certain forms of the home currency.

* * * * *

"Each of the main methods is capable of refinements. An exchange 'quota' system may be introduced, allowing the purchase at the official selling rate of a monthly allowance of exchange based on the average over a previous period; arbitrary 'rationing' of exchange to buyers may be resorted to; exporters may be required to hand over only a proportion of the proceeds in foreign currency of their exports, leaving them free to dispose of any balance in whatever manner they choose, etc. Again, import and export restrictions and official control of exchange dealings are usually combined, and may be reinforced by regulations against the granting of 'clean' credits or overdrafts to foreigners (to prevent outside speculation against the currency), by the enforced surrender on the part of home owners of any assets which they may hold abroad, usually at an arbitrarily fixed price, and by the prohibition of the export of capital in any form.

* * * * *

"All these restrictions are fairly simple both to operate and to understand. The serious complications arise when restrictions are placed on the actual use of certain funds in the home country. Since the object of the government when imposing any trade or exchange restrictions is to reduce the demand for and increase the supply of foreign currencies against the home currency so that a larger balance of foreign exchange shall be available for government purposes, it follows that this object would be defeated if foreign owners of capital were able to withdraw that capital from the country at will, or if foreign exporters were allowed to take payment from home currency and then offer that currency for sale in the exchange market, or if existing home debtors to foreign creditors could have any pressure brought to bear on them by the latter to discharge such debts immediately in full either by payment in home currency (no foreign exchange being available) or in goods, services, or securities. To prevent such possibilities, the restrictions on trade and exchange are frequently reinforced by restrictions on the working of foreign-owned accounts, either banking or trading by restrictions as to the uses which may be made of the proceeds of specified operations in trade and finance, and,

more drastic still, the declaration of moratoria on certain forms of foreign debts." (H.E. Evitt, Manual of Foreign Exchange, pp. 289-291.)

* * * * *

"Methods of Exchange Control.

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"The most drastic form of official action is that by which all exporters are compelled by law to sell only in terms of the currencies of buying countries and to hand over to the home Central Bank or State Bureau the entire proceeds of such sales. Such foreign currency will be purchased from the exporter by the central authority only at an arbitrarily fixed 'official' rate of exchange in terms of the home currency. At the same time importers wishing to buy goods from abroad must first apply for a license to import and must also apply to the central authority for the allocation of the necessary foreign exchange. This latter will only be sold to them at another arbitrarily fixed 'official' rate (which may bear little relation to current market quotation), and which even then may only be obtainable in a series of small amounts. It is under such conditions that clandestine dealings in exchange take place and which lead to the creation of a 'Black Bourse' or illegal exchange market. Such markets have persisted under these conditions in spite of rigorous attempts to suppress them, as the prospects of large profits for the operators appear to outweigh the fears of fines and imprisonment. A slight relaxation of this form of control is to be found when the central authority is permitted to offer specified sums of foreign exchange for sale by tender to prospective buyers who already hold the necessary licenses, instead of 'rationed' sales at the 'official' rate.

"In a still more relaxed form, the duty of acquiring all foreign exchange from exporters and allotting it to importers may be handed over to approved home banks instead of being carried out by the State Bank or a State Bureau. Even so, it is usually stipulated that official buying and selling rates shall be fixed and that a stated percentage of all foreign exchange acquired by the banks shall be sold to the State at the fixed price." (Ibid., pp. 300-301.)

Henius in his Dictionary of Foreign Trade explains that "exchange restrictions apply to official regulation (such as licensing) and also to disabilities attaching to ownership of foreign exchange, but control or commandeering of all exchange is a last stage or step in regulation."

"The term exchange restrictions is applied not only to official regulation of dealings in foreign exchange, but also to any disabilities attaching to the ownership of certain forms of home currency. * * * In their early form, exchange restrictions usually consist of regulations requiring importers to open market the foreign exchange needed to pay for their imports. * * * The next stage is for the State to require all exporters of home produce to sell only in terms of foreign currencies to the government banking agent, which will pay out the equivalent in home currency to the exporter at the official rate of exchange.

"Laws or regulations for exchange control generally commandeer all foreign exchange arising from the country's export and release that exchange as a means of paying for imports in accordance with certain conditions." (Henius, Dictionary of Foreign Trade, 2nd Ed., pp. 292-293.)

Another author explains the monopolistic and compulsory nature of exchange control, thus:

"Where there is an effective exchange control, residents are required to sell to the control at a rate set by the control, all foreign exchange that comes into their possession from any source whatsoever. Residents are unable to buy foreign exchange from any source except the exchange control, for purposes, in amounts, and at rates fixed by the control. The exchange control thus becomes a monopsonistic buyer of foreign exchange to which all residents must sell as soon as they acquire exchange and a monopsonistic seller, the only source from which residents may acquire foreign exchange for payment abroad. The heart of all exchange control is

compulsion." (International Trade & Commercial Policy, 2nd. Ed., Lawrence W. Towle, p. 93)

From the above it would appear that the grant of the power to adopt "exchange restrictions" and to license exchange should, if a reasonable construction is to be adopted, not be extended to include the most drastic step of control, namely, the commandeering of the exchange earned by private individuals and the power to pay therefor at prices which the controller or commandeering itself fixes.

It is true that under Section 70 of the Central Bank Charter the Bank may adopt such remedial measures as are appropriate to maintain the international reserve to a desired level, as directed in Section 70 of the Charter, which provides:

"Sec. 70. Action when the international stability of the peso is threatened.—Whenever the international reserve of the Central Bank falls to an amount which the Monetary Board considers inadequate to meet the prospective net demands on the Central Bank for foreign currencies, or whenever the international reserve appears to be in imminent danger of falling to such a level, or whenever the international reserve is falling as a result of payments or remittances abroad which, in the opinion of the Monetary Board, are contrary to the national welfare, the Monetary Board shall:

"(a) Take such remedial measures as are appropriate and within the powers granted to the Monetary Board and the Central Bank under the provisions of this Act." (Italic ours)

As indicated in the italicized portions of the provision cited, the remedial measures must be within the powers granted under the provisions of the Act. We venture the suggestion that the commandeering of an exporter's dollars for a price less by 50% than its value and the selling of said dollars to an importer to the exclusion of the exporter himself,[1] cannot be said to be authorized even under the pretext of an exchange crisis, by the provisions acts taken to remedy an exchange crisis must be within the powers granted and exchange control is not mere licensing of foreign exchange or the restriction thereof.

If, as contended, there is need for the Government to adopt such a radical compulsory and confiscatory measure as the exchange control, the matter should be reported to the President and the Legislature for the formulation of a law authorizing such confiscation, because such confiscation can be exercised only under a clear and express provision of law authorizing or directing such confiscation. In other words, it is only the legislature that has the power to determine when the police power should be exercised and when the circumstance for the exercise thereof exist. The Central Bank can not be said to have been given the authority to pass or enact by law the exchange control provision that it had established.

In short, the writer holds the view that the Central Bank Act merely authorizes the Monetary Board to license or to restrict or regulate foreign exchange; said Act does not authorize it to commandeer foreign exchange earned by exporters and pay for it the price it fixes, later selling it to importers at the same rate of purchase. The writer further holds the belief that the power to commandeer amounts to a confiscatory power that may not be exercised by the Central Bank under its Charter; that such confiscatory measures if justified by a monetary crisis can be adopted by the legislature alone under its police power. In the opinion of the writer, therefore, the disputed Section 4 (a) of Circular No. 20 of the Central Bank is beyond the power of the Central Bank to adopt under the provisions of its Charter, particularly Section 74 thereof.

That exchange control helped to ward off the exchange crisis is true; but it was by no means the only way to do so. It was not necessary for the bank to commandeer all foreign exchange to maintain the international monetary reserve. This could be done by mere licensing of the sale of foreign exchange, directing those that earn the dollars, for example, to sell to those that are licensed to import the foreign commodities needed by the country's population and economy. As the exports are to be licensed also, the bank could merely restrict the freedom of the

exporter holding the foreign exchange, requiring him to sell the foreign exchange to the licensed importer.

Lastly, it may not be amiss to state here that the alleged necessity and wisdom of the exchange control has been refuted by the success of the decontrol measure adopted by this administration upon its inception.

Estoppel Bars Action To Compel Payment At P3.00 To the Dollar

The majority of the members of the Court, however, are of the belief that petitioner's present suit is subject to the defense of estoppel. As petitioner obtained the license to export under the provisions of Circular No. 20, it may not question the right of power of the Bank to enforce the provisions of said circular requiring surrender of the proceeds of the shipment obtained through the use of the license. When the petitioner secured the license it was aware of the fact that the license was being issued under general Circular No. 20, subject to the right of the Bank to commandeer the proceeds of the exportation. Although aware of said provisions petitioner nevertheless secured the license; it may not now after the use of the license to secure exportation, refuse to comply with the obligation it has assumed under the license to surrender the foreign exchange earned. Under general principles of law such action on the part of the petitioner cannot be sustained because he is estopped from questioning the right of the Bank to commandeer the dollars earned through the license.

The defense of estoppel, however, can be set up only with respect to the demand for the payment of the foreign exchange earned at the rate of P3 to \$1. The defense of estoppel is no bar to the petitioner's present petition to prohibit the enforcement of Circular No. 20. The defense to this position of the petitioner must be found in the other provisions or principles of law.

Suit Barred By Republic's Exchange Commitments And By Republic Act No. 265

One last defense raised by the Bank against the action is that under present laws and because of international agreements which the country has entered into, the Bank may not unilaterally change the present rate of exchange of P2 to the dollar. The members of the Court agreed that this defense is valid and bars the present suit.

Sections 3 and 4 of Article IV of the International Monetary Fund Agreement of which the Philippines is a signatory, provides as follows:

"SEC. 3. Foreign Exchange dealings based on parity.—The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity:

- (i) in the case of spot exchange transactions, by more than one per cent; and
- (ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable."

"SEC. 4. Obligations regarding exchange stability—

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under section 3 of this article."

The main purpose of the agreement is to promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation. (Art. 1, par. iii, International Monetary Fund Agreement.)

To comply with its obligations under the agreement, especially as regards exchange stability, the Bank may not

change the par value of the peso in relation to the dollar without previous consultation or approval by the other signatories to the agreement. Circular No 20 must have been communicated to the other members of the agreement—and it is assumed that no contemplated change therein had been communicated to the other signatories at the time of the filing of this case.

The Central Bank, therefore, may not be compelled to ignore Circular No. 20, which was adopted with the advice and acquiescence of the other members of the International Monetary Fund, and it may not be compelled by mandamus to prohibit its enforcement.

Furthermore, under Article 49 of Republic Act No. 265, the Central Bank does not have the power to change the par value of the peso, a change which the present suit would require. This can be done only by the President upon proposal of the Monetary Board and with the approval of Congress. Were the petition of the petitioner for the payment of his dollar earnings at the rate of P3 to the dollar granted, the Central Bank would be violating the above provision of Republic Act No. 265 because it would be consenting to an actual change in the par value of the peso in relation to the dollar without previous approval or authority of those empowered to make the change.

Wherefore, the petition should be, as it is hereby, dismissed, without costs. So ordered.

Bengzon, C. J., Padilla, Concepcion, Barrera and Regala JJ., concur.

Reyes, J. B. L. J., concur that the suit is barred by estoppel and the Monetary Fund Agreement.

Bautista Angelo and Dizon, JJ., concur in the result.

[1] H.E. Evitt, Manual of Foreign Exchange, Sir Isaac Pitman & Sons, Ltd., London 1946.

[1] An exporter is paid only P2 per dollar. The dollar thus earned by the exporter is sold to the importer for P2. The importer brings into the country with the dollar goods valued or that can be sold for P3, thus gaining fully 50% on the dollar earned by the exporter. Hence, the exporter is discriminated against in favor of the importer. We have witnessed the results of the unjust policy; exportations have decreased, importers grew like mushrooms everywhere.

RESOLUTION

July 16, 1963

LABRADOR, J.:

The motion raises two important issues: (1) that petitioner can not be held to have been estopped by his failure to protest against the enforcement of Circular No. 20 on time, and (2) that the injunction should issue on the ground that Circular No. 20 is unconstitutional.

On the first issue, the record discloses that on December 16, 1949 Export Regulations (Annex 1-B to Reply Memo. of Appellee), formerly known as E.C. Form No. 2, was promulgated with the following provisions:

"Without a specific license from the Central Bank no goods, merchandise and/or commodities may be shipped, forwarded, or sent direct to the exporter's head office and/or agents abroad, or to any foreign branch or agency of such exporter, which are not covered by a draft or drafts drawn in U.S. dollars representing the full value of

the goods, merchandise and/or commodities being or to be shipped, forwarded, or sent abroad, and unless the collection of the proceeds of sale of such goods, merchandise and/or commodities is to be undertaken by, or entrusted to, a bank which is incorporated or licensed to do business in the Philippines.

* * * * *

"All commercial banks incorporated and/or licensed to do business in the Philippines are hereby designated agents of the Central Bank of the Philippines, for the purpose of these regulations, and a general license is hereby granted such bank to handle bills and shipping documents arising from the exportation of goods, commodities, and/or merchandise from the Philippines to foreign countries, and/or the collection of such bills or the proceeds of sale of such goods, merchandise and/or commodities in accordance with these regulations."

Consonant with the above regulations, especially with the first paragraph quoted, petitioner herein had secured its export license for the sugar shipped with the accompanying drafts drawn in U.S. dollars representing the value of the whole sugar. In accordance with paragraph 2 above quoted, the drafts accompanying the sugar were, as per regulations, entrusted to the Commercial Bank "for the collection of the proceeds of the sale" of the sugar. So that the petitioner herein was well aware that it was exporting its sugar subject to the conditions set forth in the said regulations, especially the paragraphs quoted above.

The supposed protest made by the petitioner herein against the collection of the proceeds of the sale in U.S. dollars by the Central Bank came after the shipment had been made under the conditions specified in the license issued by the Central Bank accompanying the corresponding draft and subject to the export regulations already mentioned. If the petitioner had really protested the enforcement of Circular No. 20, it should have refused to secure the license with the draft mentioned, with the authority granted to the commercial banks to collect the dollars for the Central Bank.

We therefore, find no merit in the first ground of the motion for reconsideration.

With respect to the second ground, it is Our considered opinion that the matter has long 'become moot'. Under Republic Act No. 2609, the power of the Central Bank to commandeer the dollars earned by exporters was superseded by the provisions of the said Act, which provided in part:

"Section 1. The provisions of any law to the contrary notwithstanding' when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Numbered Two hundred sixty-five, the Central Bank, in respect of all sales of foreign exchange by the Central Bank authorized agent banks, shall have authority to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under section seventy-nine of Republic Act Numbered Two hundred sixty-five, which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve.

"In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol."

The above law was implemented by Circular No. 133 of the Central Bank dated January 21, 1962 (58 Off. Gaz., p. 882).

The issue to prohibit the enforcement of said Circular No. 20 is therefore, moot and it is unnecessary for Us to pass upon the same.

Wherefore, the motion for reconsideration filed by the petitioner should be, as it is hereby, denied.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L. and Regala, JJ., concur.

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