

SMITH BELL & CO., (PHIL.), INC., PETITIONER, VS. HON. PEDRO M. GIMENEZ, AS AUDITOR GENERAL, RESPONDENT.*G.R. No. 17617. June 29, 1963*

Ponente: BARRERA, J.

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This is a petition filed by petitioner Smith, Bell & Co. (Phils.), to review; the decision of respondent Pedro M. Gimenez (as Auditor General) absolving the municipality of Paniqui, Tariac, from liability from the cost (P820.00) of a lost typewriter it purchased from petitioner.

The records disclose that upon requisition by the Municipal Treasurer of Paniqui, Tarlac, the Bureau of Supply Coordination sent Order No. A-236113 to petitioner for 1 Underwood Typewriter, Model SX 161, 15" carriage, elite type, at a price of P820.00 taxes included (Exh. B-1). By express agreement of the parties, the terms of the sale were F.O.B. Manila.

Government Bill of Lading No. 49226 dated August 26, 1958, signed by Eutiquio Flores, Principal Storekeeper of Supply Coordination authorized the Phil-American Freight Forwarding Services, Inc. to receive, carry, and deliver the typewriter, to the Municipal Treasurer of Paniqui (Exh. B-2). An agent of the carrier signed for the receipt of the typewriter, on August 28, 1958 in apparent good order, but "contents and condition of contents of sealed packages unknown". (Exh. B-2).

By Commercial Way Bill No. 1114 of the Phil-American Freight Forwarding Services, Inc. the carrier acknowledged on August 28, 1958 sending one carton Underwood Typewriter, Model Brand Now from consignor Smith Bell at Manila to the consignee the Municipal Treasurer of Paniqui. (Exh. A). The blank spaces opposite the printed word "Consignee" and "Date Received" are filled with handwritten square letters reading, respectively: "Pat. H. S. Musni" and "Aug. 30, 1958".

On September 9, 1958, at dawn, the Municipal building of Paniqui was totally razed by fire.

Shortly after the delivery of the typewriter as certified by the carrier, petitioner Smith Bell & Co. sent a bill for P820.00 covering its cost. On October 25, 1958, the municipal Council of Paniqui adopted Resolution No. III in effect requesting petitioner to condone the payment of the said typewriter, it having been burned 10- days after it was bought with all the office equipment when the municipal building was totally razed by fire on September 9, 1958. Petitioner declined the request.

Thereafter or on May 25, 1959, the Municipal Treasurer of Paniqui submitted to the Provincial Treasurer of Tarlac a voucher covering the payment of the typewriter. The matter was referred to the administrative deputy for investigation. This official, in his report dated January 29, 1960, (pp. 32-34, GAO record) found that there was actual delivery of the typewriter and that the municipality was liable for the payment thereof. The Provincial Treasurer, in view of this report, indorsed the papers to the Provincial Auditor, with the statement that payment of the typewriter be effected as soon as possible.

The Provincial Auditor, instead, forwarded the papers to the Auditor General for final decision, which latter official disapproved the claim and held that the Municipality of Paniqui is not liable for the amount of P820.00 representing the cost of the typewriter. In refusing to pass the claim in audit, respondent held that there was no delivery, and that the article in question was never presented for inspection and verification as agreed upon and consequently, the ownership of the typewriter did not pass to the consignee, and the risk of loss remained with the seller.

This is an appeal from said decision.

The first ground of objection raised by the Auditor General is not supported by the facts as they appear in the records of this case. That there was actual delivery of a typewriter to the municipality of Paniqui is, to our mind, unquestionable. The records of the carrier proves the testimony of the policeman on guard at the municipal building of Paniqui at the time of its delivery in the afternoon of Saturday, August 30, 1958 and who personally received the same establishes it; and the testimony of the then municipal mayor who saw the delivery and ordered the taking of the typewriter to his office, undisputably corroborates it. A verification of the debris after the fire conclusively shows that there was one additional typewriter burned in the premises, more than those formerly present in the municipal building before said fire. If these were not sufficient, the official act of the municipal council in adopting the resolution of October 25, 1958, requesting the petitioner herein, in effect, to condone the payment of the typewriter purchased by the municipality, shows beyond doubt that the typewriter was actually delivered to, and received by said municipality. The Auditor General, in his decision, depended more on technicalities when he based his refusal to pass in audit the claim of petitioner, on the mere fact that the delivery of the machine was made not to the municipal treasurer personally (who was the consignee named in the bill of lading), or to his duly authorized representative as required in the bill of lading, but to a policeman of the same municipality. But this circumstance has been explained both by the municipal treasurer himself and the policeman and the mayor who took delivery of the machine, to the effect that the delivery was made on a Saturday afternoon when the municipal treasurer's office was already closed, and that the municipal treasurer went to Manila on official business from September 2 to 6, returning to Paniqui only on the following Saturday, September 7, when he went to his office late in the afternoon just to fix his papers. In this connection, let it be noted that the non-compliance of the condition in the bill of lading that delivery must be made to the consignee or his representative, is attributable to the carrier and not to the petitioner. And, since the carrier was chosen and authorized to make the delivery by the Bureau of Supply Coordination itself, certainly the petitioner cannot be held responsible for such misdelivery, if at all it was one.

The fact that the typewriter purchased by the municipality was of a 15-inch carriage-type and that none of those found in the debris had such make, is no sufficient reason to conclude that the typewriter ordered was not delivered to the municipality, because as the inspector who examined the remains of the fire himself stated there were certain missing parts in some of the typewriters that could not be located. The fact remains that there was one additional typewriter that was burned, which under the circumstances could be none other than the one delivered to the municipality 10 days before the fire.

With respect to the claim that the petitioner failed to call the General Auditing Office for inspection and checking of the typewriter before making delivery thereof, as contained in condition No. 2 in the mimeographed contract-order Exhibit B-1, it appears undisputed that this is a condition embodied in the old forms used before 1957. However, as of January 22 of that year (1957), General Auditing Office circular No. 45 was promulgated providing that "effective immediately, employees of the General Auditing Office will no longer participate in an agency's inspection of supplies, materials and equipment upon receipt, where the amount of the order is P2,000.06 or less". This circular was supplemented by GAO Provincial Auditor's circular No. 35 of April 24, 1957 to the

effect that "deliveries of supplies, materials and equipment of P2,000.00 or less per order need not be submitted to the Auditor for inspection". The only answer made to the contention of the petitioner that in view of these circulars, condition No. 2 appearing in the printed or mimeographed form-contract became a dead provision as of the dates of said circulars, is that since said condition appeared in the purchase order in question and accepted by the petitioner, the latter is bound thereby, pursuant to the legal principle that the terms of the contract are the law between the parties. While we agree with this as a general principle, yet upon the facts obtaining in this case, we believe that injustice would be done the petitioner if we apply said principle to the present claim.

Lastly, the fact that the municipal officials of Paniqui took delivery of the typewriter in question and made use thereof for a period of 10 days, constitutes proof that said typewriter was accepted and the municipality thereby, as a buyer, became liable for the payment of the price thereof.

"Art. 1585. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does an act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."

For all the foregoing, we find that under the law and equity of the case, the municipality of Paniqui is legally bound to pay for the price of the typewriter involved herein and, therefore, the decision of the Auditor General is hereby reversed. Without costs. So ordered.

Padilla, Bautista Angela, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ. concur.

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