

FELIX V. ESPINO, PETITIONER, VS. PEDRO G. GIMENEZ, AUDITOR GENERAL OF THE REPUBLIC OF THE PHILIPPINES AND JUAN M. MATUTINA, CORPORATION AUDITOR, NATIONAL POWER CORPORATION, RESP...*G.R. No. 18271. April 30, 1964*

Ponente: CONCEPCION, J.

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The petition herein purports to be one for review, under Rule 45 of the Rules of Court, of a ruling or decision of the Auditor General.

Petitioner Felix V. Espino, was the Chief of the Chemical Fertilizer Department, National Power Corporation, hereinafter referred to as the NPC. In December, 1959, he applied for retirement under Republic Act No. 1616. By resolution No. 60-3725 dated June 3, 1960, he was granted a retirement gratuity, equivalent to P17,150.00, for his creditable service of 20.58 years, said amount to be charged against the Fertilizer Plant Retirement Fund of the NPC. The general voucher covering the payment of said amount was signed by the Assistant Manager of the NPC, and, also, by its Accounting Officer, as to availability of funds. However, petitioner could not get the approval of the General Manager of the NPC because its auditor, respondent Juan M. Matutina, had refused to issue the corresponding clearance.

It appears that, sometime in 1958, petitioner had authorized the release of 4,000 bags of fertilizer to one Lucio Villanueva, whose check for P25,640.00 in payment of part thereof was later dishonored by the bank for lack of funds. Hence, Villanueva was charged with estafa in Criminal Case No. 52086 of the Court of First Instance of Manila on September 20, 1960, and the NPC auditor sought the advice of respondent Auditor General on the matter of petitioner's clearance. In a 5th indorsement, dated September 30, 1960, said respondent held the petitioner guilty of negligence in authorizing the aforementioned release and ruled that action on his clearance certificate "should be held in abeyance pending the settlement of the account of and/or termination of the estafa case against Mr. Villanueva." The review of his ruling is now sought by petitioner herein, who prays, also, that the Auditor General and respondent Matutina, as auditor of the NPC, "be ordered to issue the certificate of clearance of the petitioner and approve the payment of his retirement gratuity * * * under Republic Act No. 1616."

The record shows that, as Chief of the Chemical Fertilizer Department of the NPC, petitioner had authority over one Leopoldo A. Barrios, the sales supervisor and chief of the NPC Marketing Division, whose duties included the reception and processing of applications and orders and to ascertain the credit standing and banking facilities of buyers; that on July 28, 1958, the Goodwill Planters Association, thru Lucio Villanueva, purchased from the NPC 4,000 bags of ammonium sulfate fertilizer worth P29,640, for which Villanueva paid P4,000 in cash and the balance of P25,640 in a check issued against the Equitable Banking Corporation, that upon verification from the banks, the NPC was verbally informed, on July 31, 1958, that said check would be dishonored for lack of

sufficient deposit; that, accordingly, petitioner notified the Compañía Marítima—hereinafter referred to as the Marítima—carrier of aforementioned fertilizer, to withhold delivery thereof to Villanueva; that, thereupon, the latter made representations with the NPC for the release of said goods, upon the ground that he had already deposited P26,000.00 with said bank, as evidenced by the stub of his receipt for said alleged deposit, photostatic copy of which stub appears in the record; that on August 1, 1958, petitioner consequently wrote, on behalf of the NPC, the letter attached to his petition as Annex F, authorizing the Marítima to release the goods to Villanueva; and that, after the latter had taken delivery of said goods, his aforesaid check for P25,640 was dishonored by the bank.

Petitioner maintains that, when Villanueva saw him on August 1, 1958, he (Villanueva) was accompanied by the NPC sales supervisor, Leopoldo A. Barrios, who brought with him said letter Annex F and asked him (petitioner) to sign it; that he (petitioner) inquired from Barrios whether he had checked the veracity of the alleged deposit of P26,000 by Villanueva; that Barrios answered affirmatively, and added that Villanueva was an old customer with a long line of big transactions with the NPC; and that, relying upon the assurance thus given by Barrios and considering that, pursuant to "Job Description and Duty Sheet" Annex E, he (Barrios) was subject to his (petitioner's) supervision only in a "general" way "and seldom", he (petitioner) signed said letter Annex F.

Barrios denied having prepared this letter or given the aforementioned assurance, but his version is refuted by the fact that his handwritten initials appear under petitioner's typewritten name in Annex F, which, likewise, bears his (Barrios') initials ("LAB") and the initials ("fsv") of his (Barrios') stenographer (Felix S. Velasco) typewritten on the Mt lower margin of said document. In any event, the management of the NPC, after considering the pertinent facts, as set forth in a communication of its auditor, respondent Matutina, concluded that petitioner had acted "in good faith, although * * * it turned out later that his judgment was erroneous", and that he "should not be answerable civilly for the unpaid account of the Goodwill Planters Association." Thus, the Corporation does not hold petitioner liable for said unpaid account, and, considering its inaction for about five (5) years and seven (7) months, does not seem to contemplate taking any action against him in connection therewith.

In the light of these facts, were respondents justified in holding petitioner's clearance in abeyance, "pending the settlement of the account of and/or termination of the estafa case against Mr. Villanueva?"

Section 624 of the Revised Administrative Code reads:

"When any person is indebted to the Government of the Philippines (or Government of the United States), the Auditor General may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

It is clear from this provision that respondents may set-off an uncontested indebtedness in favor of the Government against a settled money claim due from it. This is so because, if the creditor of the Government admits that he is, in turn, indebted to the latter in a settled and definite sum, compensation takes place by operation of law, both credits being liquidated (Articles 1278 and 1279, Civil Code of the Philippines; *Luengo vs. Herrero*, 17 Phil., 29). But, when the alleged credit of the Government agency concerned is denied, not only by the creditor of the Government, but, also, by said agency, may respondents hold conclusively otherwise? *Compañía General de Tabacos vs. French and Unson* (39 Phil., 34) answered this question as follows:

"* * * We think not. Certainly it is not likely to be assumed that such an authority, to be exercised with none of the safeguards which surround a judicial inquiry into such matters, has been conferred.

"It is important, in construing section 624 of the Administrative Code, to ascertain the meaning of the term 'indebted' as there used. To be indebted is to owe a debt. The word 'debt', in legal parlance, is of more restricted meaning than the terms 'obligation' or 'liability.' 'A debt' says Sir John Cross, in *Ex parte Thompson* (Mon. &

B., 219), 'is a demand for a sum certain.' A debt is an amount actually ascertained. That there must be an ascertained debt and not a mere unliquidated demand or liability, 'is sustained by all the cases, legal and equitable.' (In re Adams [N. Y.], 12 Daly, 454.) In Bacon's Abridgement the term 'debt' is defined as limited to cases in which the certainty of the sum is made to appear and that therefore, 'the plaintiff is to recover the same in numero and not to be repaired in damages by the jury as in those actions sounding the damage.' (Watson vs. McNairy, 4 Ky. 356.)

'A debt is properly opposed to unliquidated damages * * *'. (Commercial National Bank vs. Taylor, 19 N.Y. Supp., 633.) It seems to us, therefore, quite clear that the authority conferred upon the Auditor by section 624 of the Administrative Code of 1917 to set-off 'debts' to the Government against 'money due' the debtor does not extend to unliquidated, disputed claims arising from tort or breach of contract."

The reason for this view was set forth in the decision of this Court in the case last cited, from which we quote:

"The principle under consideration "was the basis of the decision in the very recent and important case of Smith vs. Jackson, decided by the Supreme Court of the United States, April 15, 1918 (Advance Sheets, 1918, p. 478). The plaintiff in that proceedings was the judge of the district court of the Panama Canal Zone, and was entitled, by statute, to an annual salary of \$6,000, payable at the rate of \$500 a month. A dispute arose between Judge Jackson and H. S. Smithy the auditor of the Canal Zone, arising from the fact that the judge had occupied a house belonging to the government for which, in the opinion of the auditor, he should have paid rent. The Auditor was also of the opinion that the judge had overstayed his leave of absence by several days, and that he should be deprived of his salary for the corresponding period. The judge denied the liability. The auditor thereupon proceeded to liquidate the alleged claim of the government against the judge, and to enforce his decision by offsetting the supposed debt against the judge's salary. The judge declined to acquiesce in this ruling and filed suit in the district court of the Canal Zone for a mandamus against the auditor to compel him to pay the salary without any deductions whatsoever. The Honorable Henry D. Clayton, district judge of the middle and northern districts of Alabama, was designated by the President to bear the case. In a carefully prepared opinion, based upon an exhaustive citation of authorities. Judges Clayton held that the writ should issue, and that the auditor was without authority to set-off against the liquidated debt of the government to the petitioner the unliquidated claim which he conceived to exist in favor of the government.

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"* * * Upon this point Judge Clayton said:

'Mr. Attorney-General Gregory was correct in saying that if the authorities in the Canal Zone believe that the relator in the present case owed any amounts of money whatsoever to the Panama Canal, it was a 'question for judicial rather than administrative determination', and that the claim now urged by the respondent in this case 'could only be enforced through proceedings in the courts. That is a sententious and felicitous statement of this case.

'Judge Jackson has never had his day in court. He has been deprived of his salary, or the sum of \$1,131.76, without due process of law. It has been withheld from him by the refusal of the auditor in this case to issue his voucher upon which the salary is paid. The indebtedness is denied by Judge Jackson, He denies it upon the grounds that there was no law or regulation under which the indebtedness was or could have been created. He denies that the respondent has authority to withhold any part of his pay in the collection of an alleged but disputed indebtedness. And yet the executive officer has sat as a court and without evidence or hearing, except what he considered evidence, and except what he considered a hearing, decided a controversy that he created by his own action. He has passed upon a disputed claim which is a disputed claim merely because he has created the dispute in refusing to make payment where it was his plain duty to make such payment. His conduct, however good his intention may have been, hardly falls short of being shocking to the judicial sense of justice, proper and orderly procedure, in a matter that is clearly justifiable. Perhaps it is not to be doubted that if, after he had made a careful examination, the Attorney-General had found Judge Jackson was indebted,

owed the items amounting to the salary which has been withheld by the Auditor, the account would have been settled without court proceedings. Or, if not so settled, then appropriate court action could have been had for its collection. In any event Judge Jackson was entitled to his day in court. But the auditor here held that, having the money for Judge Jackson under his control and subject to his disbursement, he had the right to determine the claim against Judge Jackson one disputed in law and in fact, and now insists that his summary way of determining an issue of law and an issue of fact, and the collection by deduction from the Judge's salary of a disputed indebtedness, cannot be reviewed or questioned by the court. Notwithstanding that view I think the Attorney-General was right in saying that the matter 'was one for judicial rather than administrative determination, and that whatever demand or offset that the Government may have 'could be enforced through proceedings in the Courts.'

"From that decision the auditor appealed to the United States Court of Appeals for the Fifth Circuit. That court adopted in its entirety (241 Fed., 747) the reasoning of the opinion of Judge Clayton and affirmed his judgment. The respondent thereupon sued out a writ of error to the Supreme Court in the United States, where the judgment was again affirmed in a brief but emphatic opinion in which the Chief Justice, speaking for the court, said that the decision of Judge Clayton made 'perfectly manifest the error of the action of the auditor', and that the prosecution of the writ of error 'constituted a plain abuse by the auditor of his administrative functions.'"

The foregoing does not imply necessarily that respondents may not, under said Section 624, settle money claims which are contested and unliquidated, if, upon the admitted facts, the indebtedness in favor of the Government appears to be certain and can be sustained without extraneous proof, or its exact amount, though not fixed, is readily determinable by the ordinary process of accounting. Thus in *Ynchausti Steamship Co. vs. Dexter and Unson* (41 Phil., 289), it was held that the purchasing agent may, under the direction of the Insular Auditor, deduct from the freight due to said company the amount of the loss, shortage or damages sustained in the course of the transportation of Government property. So too, in *Auditor General vs. Bartolome* (94 Phil., 718), the Court sustained the authority of the Auditor General, under said Section 624, to order the withholding of one-half of the salary of a cashier, until the full satisfaction of his liability to the Government, for having cashed to an impostor a U.S. Treasury check for P3,522.60 which was expressly payable only at the Manila branch of the National City Bank of New York.

The alleged liability of herein petitioner does not belong to the foregoing class. As clearly pointed out, apart from contested by the petitioner, the very management of the corporation in whose favor respondents claim said liability to exist, does not believe in the existence thereof. Indeed, some of the circumstances which may be essential to the determination of said liability are disputed, as well as disputable. Consequently, upon the facts of record before respondents, it is not possible to determine with reasonable certainty whether or not petitioner was negligent in authorizing the release in question on August 1, 1958. It is not fair, therefore, to make the enjoyment of the retirement benefits to which petitioner is admittedly entitled dependent upon the outcome of the estafa case against Villanueva, in which petitioner is not a party and the result of which would not necessarily establish that he is indebted to the NPC. If respondents feel that the latter has a valid claim against the petitioner, the first should cause the corresponding action to be filed, with all reasonable dispatch, with the proper court, and apply therein for the relief necessary to protect adequately the interest of the NPC. Otherwise, the purpose for which the aforementioned retirement benefits has been granted would be defeated.

Respondents have moved for the dismissal of the present case upon the ground: (1) that petitioner is not a private person or entity and, accordingly, the decision of respondent Auditor General is appealable exclusively to the President ; and (2) that the subject matter of the petition herein is not a money claim against the Republic of the Philippines, and, hence, the decision of the Auditor General in connection therewith is not appealable to the courts of justice.

The motion is without merit. Although petitioner was an employee of the NPC, upon retirement as such he became a private individual. Otherwise, he would not be entitled to the retirement benefits, his right to which is conceded by respondents. For this reason we entertained the appeals from decision of the Auditor General in, among other cases, *Dimaano vs. Auditor General* (L-15436, December 30, 1961), *Madrid vs. Auditor General* (108 Phil., 578), *Lacson vs. Auditor General* (107 Phil., 921) *Valencia vs. Auditor General* (107 Phil., 128) *Recio vs. Auditor General* (105 Phil., 508), *Bautista vs. Auditor General* (104 Phil., 428), *Peralta vs. Auditor General* (100 Phil., 105), and *Espeso vs. Auditor General* (97 Phil., 216).

Respondents rely upon *Styver vs. Dizon* (76 Phil., 725), in support of the second ground of their motion to dismiss. That case involved an appeal from a decision of the Auditor General affirming the ruling of the Auditor of the Postal Savings Bank to the effect that the latter could not allow the issuance of a duplicate deposit book covering an alleged deposit of Styver in said Bank. It was held that the issue did not involve a money claim, "that the Auditor General had no authority to decide or pass upon" it, and that, accordingly, the case had been improperly brought on appeal to this Court. Upon the other hand, it is not disputed that the case at bar refers to a money claim. Moreover, the above mentioned cases of *Valencia* and *Lacson* involved money claims against the Cebu Portland Cement Co. and the Namarco, respectively, and yet the appeals from the decisions of the Auditor General in connection with said cases were entertained by this Court. At any rate, inasmuch as petitioner prays that respondents be ordered to issue the certificate of clearance in question and to approve the payment of the retirement gratuity due him under Republic Act No. 1616, the petition herein may be regarded as one for mandamus, not covered by Commonwealth Act No. 327.

WHEREFORE, respondents are hereby ordered to issue the clearance certificate sought by the petitioner herein and to approve payment of his aforementioned retirement gratuity, without special pronouncement as to costs. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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