

**RAMON A. GONZALES, PETITIONER VS. RUFINO G. HECHANOVA, ETC., ET AL., RESPONDENTS.***G.R. No. 21897. October 22, 1963*

Ponente: CONCEPCION, J.

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This is an original action for prohibition with preliminary injunction.

It is not disputed that on September 22, 1963, respondent Executive Secretary authorized the importation of 67,000 tons of foreign rice to be purchased from private sources, and created a rice procurement committee composed of the other respondents herein for the implementation of said proposed importation. Thereupon, or on September 25, 1963, herein[1] petitioner, Ramon A. Gonzales—a rice planter, and president of the Iloilo Palay and Corn Planters Association, whose members are, likewise, engaged in the production of rice and corn—filed the petition herein, averring that, in making or attempting to make said importation of foreign rice, the aforementioned respondents "are acting without jurisdiction or in excess of jurisdiction", because Republic Act No. 3452—which allegedly repeals or amends Republic Act No. 2207—explicitly prohibits the importation of rice and corn by "the Rice and Corn Administration or any other government agency"; that petitioner has no other plain, speedy and adequate remedy in the ordinary course of law; and that a preliminary injunction is necessary for the preservation of the rights of the parties during the pendency of this case and to prevent the judgment therein from becoming ineffectual. Petitioner prayed, therefore, that said petition be given due course; that a writ of preliminary injunction be forthwith issued restraining respondents, their agents or representatives from implementing the decision of the Executive Secretary to import the aforementioned foreign rice; and that, after due hearings judgment be rendered making said injunction permanent.

Forthwith, respondents were required to file their answer to the petition which they did, and petitioner's prayer for a writ of preliminary injunction was set for hearing, at which both parties appeared and argued orally. Moreover, a memorandum was filed, shortly thereafter, by the respondents. Considering, later on, that the resolution of said incident may require some pronouncements that would be more appropriate in a decision on the merits of the case, the same was set for hearing on the merits soon thereafter. The parties, however, waived the right to argue orally, although counsel for respondents filed their memoranda.

**I. Sufficiency of petitioner's interest.**

Respondents maintain that the status of petitioner as a rice planter does not give him sufficient interest to file the petition herein and secure the relief therein prayed for. We find no merit in this pretense. Apart from prohibiting the importation of rice and corn "by the Rice and Corn Administration or any other government agency", Republic Act No. 3452 declares, in Section 1 thereof, that "the policy of the Government" is to "engage in the purchase of these basic foods directly from those tenants, farmers, growers, producers and landowners in the Philippines who wish to dispose of their products at a price that will afford them a fair and just return 'for their labor and capital investment. \* \* \*.'" Pursuant to this provision, petitioner, as a planter with a rice land of

substantial proportion,[2] is entitled to a chance to sell to the Government the rice it now seeks to buy abroad. Moreover, since the purchase of said commodity will have to be effected with public funds mainly raised by taxation, and as a rice producer and landowner petitioner must necessarily be a taxpayer, it follows that he has sufficient personality and interest to seek judicial assistance with a view to restraining what he believes to be an attempt to unlawfully disburse said funds.

## II. Exhaustion of administrative remedies.

Respondents assail petitioner's right to the relief s prayed for because he "has not exhausted all administrative remedies available to him before coming to court". We have already held, however, that the principle requiring the previous exhaustion of administrative remedies is not applicable "where the question in dispute is purely a legal one",[3] or where the controverted act is "patently illegal" or was performed without jurisdiction or in excess of jurisdiction,[4] or where the respondent is a department secretary, whose acts as an alter-ego of the President bear the implied or assumed approval of the latter,[5] unless actually disapproved by him,[6] or where there are circumstances indicating the urgency of judicial intervention. [7] The case at bar falls under each one of the foregoing exceptions to the general rule. Respondents' contention is, therefore, untenable.

## III. Merits of petitioner's cause of action.

Respondents question the sufficiency of petitioner's cause of action upon the theory that the proposed importation in question is not governed by Republic Act Nos. 2207 and 3452, but was authorized by the President as commander-in-chief "for military stock pile purposes" in the exercise of his alleged authority under Section 2 of Commonwealth Act No. I; [8] that in cases of necessity, the President "or his subordinates may take such preventive measure for the restoration of good order and maintenance of peace"; and that, as Commander-in-Chief of our armed forces, "the President \* \* \* is duty-bound to prepare for the challenge of threats of war or emergency without waiting for any special authority."

Regardless of whether Republic Act No. 3452 repeals Republic Act No. 2207, as contended by petitioner herein on which our view need not be expressed—we are unanimously of the opinion—assuming that said Republic Act No. 2207 is still in force—that the two Acts are applicable to the proposed importation in question because the language of said laws is such as to include within the purview thereof all importations of rice and corn into the Philippines. Pursuant to Republic Act No. 2207, "it shall be unlawful for any person, association, corporation or government agency to import rice and corn into any point in the Philippines", although, by way of exception, it adds that "the President of the Philippines may authorize the importation of these commodities through any government agency that he may designate", if the conditions prescribed in Section 2 of said Act are present. Similarly, Republic Act No. 3452 explicitly enjoins "the Rice and Corn Administration or any government agency from importing rice and corn.

Respondent allege, however, that said provisions of Republic Acts Nos. 2207 and 3452, prohibiting the importation of rice and corn by any "government agency", do not apply to importations "made by the Government itself", because the latter is not a "government agency". This theory is devoid of merit. The Department of National Defense and the Armed Forces of the Philippines, as well as respondents herein, and each and every officer and employee of our Government, are government agencies and/or agents. The applicability of said laws even to importations by the Government, as such, becomes more apparent when we consider that:

- The importation permitted in Republic Act No. 2207 is to be authorized by "the President of the Philippines", and, hence, by or on behalf of the Government of the Philippines;
- Immediately after enjoining the Rice and Corn Administration and any other government agency from importing

rice and corn, Section 10 of Republic Act No. 3452 adds " that the importation of rice and corn is left to private parties upon payment of the corresponding taxes", thus indicating that only "private parties" may import rice under its provisions; and

- Aside from prescribing a fine not exceeding P10,000.00 and imprisonment of not more than five (5) years for those who shall violate any provision of Republic Act No. 3452 or any rule and regulation promulgated pursuant thereto, Section 15 of said Act provides that "if the offender is a public official and/or employee", he shall be subject to the additional penalty specified therein. A public official is an officer of the Government itself, as distinguished from officers or employees of instrumentalities of the Government. Hence, the duly authorized acts of the former are those of the Government, unlike those of a government instrumentality which may have a personality of its own, distinct and separate from that of the Government, as such. The provisions of Republic Act No. 2207 are, in this respect, even more explicit. Section 3 thereof provides a similar additional penalty for any "officer or employee of the Government" who "violates, abets or tolerates the violation of any provision" of said Act. Hence, the intent to apply the same to transactions made by the very government is patent.

Indeed, the restrictions imposed in said Republic Acts are merely additional to those prescribed in Commonwealth Act No. 138, entitled "An Act to give native products and domestic entities the preference in the purchase of articles for the Government" Pursuant to Section 1 thereof:

"The Purchase and Equipment Division of the Government of the Philippines and other officers and employees of the municipal and provincial governments and the Government of the Philippines and of chartered cities, boards, commissions, bureaus, departments, offices, agencies, branches, and bodies of any description, including government-owned companies, authorized to requisition, purchase, or contract or make disbursements for articles, materials, and supplies for public use, public buildings, or public works, shall give preference to materials \* \* \* produced \* \* \* in the Philippines or in the United States, and to domestic entities, subject to the conditions hereinbelow specified." (Italic supplied.)

Under this provision, in all purchase by the Government, including those made by and/or for the armed forces, preference shall be given to materials produced in the Philippines. The importation involved in the case at bar violates this general policy of our Government, aside from the provisions of Republic Act Nos. 2207 and 3452.

The attempt to justify the proposed importation by invoking reasons of national security—predicated upon the "worsening situation in Laos and Vietnam", and "the recent tension created by the Malaysia problem"—and the alleged powers of the President as commander-in-chief of all armed forces in the Philippines, under Section 2 of the National Defense Act (Commonwealth Act No. 1), overlooks the fact that the protection of local planters of rice and corn in a manner that would foster and accelerate self-sufficiency in the local production of said commodities constitutes a factor that is vital to our ability to meet a possible national emergency. Even if the intent in importing goods in anticipation of such emergency were to bolster up that ability, the latter would, instead, be impaired if the importation were so made as to discourage our farmers from engaging in the production of rice.

Besides, the stocking of rice and corn for purposes of national security and/or national emergency is within the purview of Republic Act No. 3452. Section 3 thereof expressly authorizes the Rice and Corn Administration "to accumulate stocks as a national reserve in such quantities as it may deem proper and necessary to meet any contingencies". Moreover, it ordains that "the buffer stocks held as a national reserve \* \* \* be deposited by the Administration throughout the country under proper dispersed plans \* \* \* and maybe released only upon the occurrence of calamities or emergencies \* \* \* (Italic supplied.)

Again, the provisions of Section 2 of Commonwealth Act No. 1, upon which respondents rely so much, are not

self-executory. They merely outline the general objectives of said legislation. The means for the attainment of those objectives are subject to congressional legislation. Thus, the conditions under which the services of citizens, as indicated in said Section 2, may be availed of, are provided for in Sections 3, 4 and 51 to 88 of said Commonwealth Act No. 1. Similarly, Section 5 thereof specifies the manner in which resources necessary for our national defense may be secured by the Government of the Philippines, but only "during a national mobilization", [9] which does not exist. Inferentially, therefore, in the absence of a national mobilization, said resources shall be produced in such manner as Congress may by other Laws provide from time to time. Insofar as rice and corn are concerned, Republic Act Nos. 2207 and 3452, and Commonwealth Act No. 138 are such laws.

Respondents cite Corwin in support of their pretense, but in vain. An examination of the work cited [10] shows that Corwin referred to the powers of the President during "war time" [11] or when he has placed the country or a part thereof under "martial law". [12] Since neither condition obtains in the case at bar, said work merely proves that respondents' theory, if accepted, would, in effect, place the Philippines under martial law, without a declaration of the Executive to that effect. What is worse, it would keep us perpetually under martial law.

It has been suggested that even if the proposed importation violated Republic Acts Nos. 2207 and 3452, it should, nevertheless, be permitted because "it redounds to the benefit of the people". *Salus populi est suprema lex*, it is said.

If there were a local shortage of rice, the argument might have some value. But the respondents, as officials of this Government, have expressly affirmed again and again that there is no rice shortage. And the importation is avowedly for stockpile of the Army—not the civilian population.

But let us follow the respondents' trend of thought. It has a more serious implication than appears on the surface. It implies that if an executive officer believes that compliance with a certain statute will not benefit the people, he is at liberty to disregard it. That idea must be rejected—we still live under a rule of law.

And then, "the people" are either producers or consumers. Now—as respondents explicitly admit—Republic Acts Nos. 2207 and 3452 were approved by the Legislature for the benefit, of producers and consumers, i.e., the people, it must follow that the welfare of the people lies precisely in the compliance with said Acts.

It is not for respondent executive officers now to set their own opinions against that of the Legislature, and adopt means or ways to set those Acts at naught. Anyway, those laws permit importation—but under certain conditions, which have not been, and should be complied with.

#### IV. The Contracts With Vietnam and Burma.

It is lastly contended that the Government of the Philippines has already entered into two (2) contracts for the purchase of rice, one with the Republic of Viet Nam, and another with the Government of Burma, that these contracts constitute valid executive agreements under international law; that such agreements became binding and effective upon signing thereof by representatives of the parties thereto; that in case of conflict between Republic Acts Nos. 2207 and 3452 on the one hand, and; the aforementioned contracts, on the other, the latter should prevail, because, if a treaty and a statute are inconsistent with each other, the conflict must be resolved—under the American jurisprudence—in favor of the one which is latest in point of time; that petitioner herein assails the validity of acts of the executive relative to foreign relations in the conduct of which the Supreme Court cannot interfere; and that the aforementioned contracts have already been consummated, the Government of the Philippines having already paid the price of the rice involved therein through irrevocable letters of credit in favor of the sellers of said commodity. We find no merit in this pretense.

The Court is not satisfied that the status of said contracts as alleged executive agreements has been sufficiently

established. The parties to said contracts do not appear to have regarded the same as executive agreements. But, even assuming that said contracts may properly be considered as executive agreements, the same are unlawful, as well as null and void, from a constitutional viewpoint, said agreements being inconsistent with the provisions of Republic Acts Nos. 2207 and 3452. Although the President may, under the American constitutional system, enter into executive agreements without previous legislative authority, he may not, by executive agreement, enter into a transaction which is prohibited by statutes enacted prior thereto. Under the Constitution, the main function of the Executive is to enforce laws enacted by Congress. The former may not interfere in the performance of the legislative powers of the latter, except in the exercise of his veto power. He may not defeat legislative enactments that have acquired the status of laws, by indirectly repealing the same through an executive agreement providing for the performance of the very act prohibited by said laws.

The American theory to the effect that, in the event of conflict between a treaty and a statute, the one which is latest in point of time shall prevail, is not applicable to the case at bar, for respondents not only admit, but, also, insist that the contracts adverted to are not treaties. Said theory may be justified upon the ground that treaties to which the United States is signatory require the advice and consent of its Senate, and, hence, of a branch of the legislative department. No such justification can be given as regards executive agreements not authorized by previous legislation, without completely upsetting the principle of separation of powers and the system of checks and balances which are fundamental in our constitutional set up and that of the United States.

As regards the question whether an international agreement may be invalidated by our courts, suffice it to say that the Constitution of the Philippines has clearly settled it in the affirmative, by providing, in Section 2 of Article VIII thereof, that the Supreme Court may not be deprived "of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in—(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question". In other words, our Constitution authorizes the nullification of a treaty, not only when it conflicts with the fundamental law, but, also, when it runs counter to an act of Congress.

The alleged consummation of the aforementioned contracts with Vietnam and Burma does not render this case academic. Republic Act No. 2207 enjoins our Government not from entering into contracts for the purchase of rice, but from importing rice, except under the conditions prescribed in said Act. Upon the other, Republic Act No. 3452 has two (2) main features, namely; (a) it requires the Government to purchase rice and corn directly from our local planters, growers or landowners; and (b) it prohibits importations of rice by the Government, and leaves such importations to private parties. The pivotal issue in this case is whether the proposed importation—which has not been consummated as yet—is legally feasible.

Lastly, a judicial declaration of illegality of the proposed importation would not compel our Government to default in the performance of such obligations as it may have contracted with the sellers of the rice in question, because, aside from the fact that said obligations may be complied with without importing the commodity into the Philippines, the proposed importation may still be legalized by complying with the provisions of the aforementioned laws.

#### V. The writ of preliminary injunction.

The members of the Court have divergent opinions on the question whether or not respondents herein should be enjoined from implementing the aforementioned proposed importation. However, the majority favors the negative view, for which reason the injunction prayed for cannot be granted.

Wherefore, judgment is hereby rendered declaring that respondent Executive Secretary had and has no power to authorize the importation in question; that he exceeded his jurisdiction in granting said authority; that said

importation is not sanctioned by law and is contrary to its provisions; and that, for lack of the requisite majority, the injunction prayed for must be and is, accordingly, denied. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Dizon, and Makalintal, JJ., concur.  
Paredes, and Regala, JJ., concur in the result.

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[1] The Secretary of National Defense, the Auditor General, the Secretary of Commerce and Industry, and the Secretary of Justice.

[2] 275 hectares.

[3] *Tapales vs. The President and the Board of regents of the U.P.*, G.R. No. L-17523, March 30, 1963.

[4] *Mangubat vs. Osmeña*, G.R. No. L-12837, April 30, 1959; *Baguio vs. Hon. Jose Rodriguez*, G.R. No. L-11078, May 27, 1959; *Pascual vs. Provincial Board*, 106 Phil., 466.

[5] *Marinduque Iron Mines Agents, Inc., vs. Secretary of Public Works*, G.R. No. L-15982, May 31, 1963.

[6] In the present case, respondents allege in their answer that "the importation x x x in question x x x is authorized by the President.

[7] *Alzate vs. Aldaba*, G.R. No. L-14407, February 29, 1960; *Demaisip vs. Court of Appeals*, 106 Phil., 237.

[8] Which provides that "the national defense policy of the Philippines shall be as follows:

"(a) The preservation of the State is the obligation of every citizen. The security of the Philippines and the freedom, independence and perpetual neutrality of the Philippine Republic shall be guaranteed by the employment of all citizens, without distinction of sex, or age, and all resources.

"(b) The employment of the nation's citizens and resources for national defense shall be affected by a national mobilization.

"(c) The national mobilization shall include the execution of all measures necessary to pass from a peace to a war footing.

"(d) The civil authority shall always be supreme. The President of the Philippines as the Commander-in-Chief of all military forces, shall be responsible that mobilization measures are prepared at all times.

[9] In line with the provisions of paragraph b), c), e), and f) of Section 2 of said Act.

[10] *The Constitution and What It Means Today*, pp. 95-96.

[11] The power of the President as Commander-in-Chief is primarily that of military command in wartime, and as such includes, as against the persons and property of enemies of the United States encountered within the theater of military operations, all the powers allowed a military commander in such cases by the Law of Nations. President Lincoln's famous Proclamation of Emancipation rested upon this ground. It was effective within the theater of military operations while the war lasted, but no longer (p. 93, *Italics supplied*).

[12] From an early date the Commander-in-Chief power came to be emerged with the President's duty to "take care that the laws be faithfully executed". So, while in using military force against unlawful combinations too strong to be dealt with through the ordinary processes of law the President acts by authorization of statue, his powers are still those of Commander-in-Chief.\* \* \*

Under "preventive martial law", so called because it authorizes "preventive" arrests and detentions, the military acts as an adjunct of the civil authorities but not necessarily subject to their orders. It may be established whenever the executive organ, State or national, deems it to be necessary for the restoration of good order. The concept, being of judicial origin, is of course for judicial application, and ultimately for application by the Supreme Court, in enforcement of the "due process" clauses. (See, also, Section III of this Article, and Article IV, Section IV.) (Pp. 95-96, Italics supplied).

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## CONCURRING

### BAUTISTA, ANGELO, J.,

Under Republic Act 2207, which took effect on May 15, 1959, it is unlawful for any person, association, corporation or government agency to import rice and corn into any point in the Philippines. The exception is if there is an existing or imminent shortage of such commodity of such gravity as to constitute national emergency in which case an importation may be authorized by the President when so certified by the National Economic Council.

However, on June 14, 1962, Republic Act 3452 was enacted providing that the importation of rice and corn can only be made by private parties thereby prohibiting from doing so the Rice and Corn Administration or any other government agency. Republic Act 3452 does not expressly repeal Republic Act 2207, but only repeals or modifies those parts thereof that are inconsistent with its provisions. The question that now arises is: Has the enactment of Republic Act 3452 the effect of prohibiting completely the government from importing rice and corn into the Philippines?

My answer is in the negative. Since this Act does not in any manner provide for the importation of rice and corn in case of national emergency, the provision of the former law on the matter should stand, for that is not inconsistent with any provision embodied in Republic Act 3452. The Rice and Corn Administration, or any other government agency, may therefore still import rice and corn into the Philippines as provided in Republic Act 2207 if there is a declared national emergency.

The next question that arises is: Can the government authorize the importation of rice and corn regardless of Republic Act 2207 if that is authorized by the President as Commander-in-Chief of the Philippine Army as a military precautionary measure for military stock-pile?

Respondents answer this question in the affirmative. They advance the argument that it is the President's duty to see to it that the Armed Forces of the Philippines are geared to the defense of the country as well as to the fulfillment of our international commitments in Southeast Asia in the event the peace and security of the area are in danger. The stock piling of rice, they aver, is an essential requirement of defense preparation in view of the limited local supply and the probable disruption of trade and commerce with outside countries in the event of armed hostilities, and this military precautionary measure is necessary because of the unsettled conditions in the Southeast Asia bordering on actual threats of armed conflicts as evaluated by the Intelligence Service of the Military Department of our Government. This advocacy, they contend, finds support in the national defense policy embodied in Section 2 of our National Defense Act (Commonwealth Act No. 1), which provides:

"(a) The preservation of the State is the obligation of every citizen. The security of the Philippines and the

freedom, independence and perpetual neutrality of the Philippine Republic shall be guaranteed by the employment of all citizens, without distinction of sex or age, and all resources.

"(b) The employment of the nation's citizens and resources for national defense shall be effected by a national mobilization.

"(c) The national mobilization shall include the execution of all national defense shall be effected by a national mobilization.

"(d) The civil authority shall always be supreme. The President of the Philippines as the Commander-in-Chief of all military forces, shall be responsible that mobilization measures are prepared at all times." (Italic supplied.)

Indeed, I find in that declaration of policy that the security of the Philippines and its freedom constitutes the core of the preservation of our State which is the basic duty of every citizen and that to secure which it is enjoined that the President employ all the resources at his command. But over and above, all that power and duty, fundamental as they may seem, there is the injunction that the civil authority shall always be supreme. This injunction can only mean that while all precautions should be taken to insure the security and preservation of the State and to this effect the employment of all resources may be resorted to, the action must always be taken within the framework of the civil authority. Military authority should be harmonized and coordinated with civil authority, the only exception being when the law clearly ordains otherwise. Neither Republic Act 2207, nor Republic Act 3452, contains any exception in favor of military action concerning importation of rice and corn. An exception must be strictly construed.

A distinction is made between the government and government agency in an attempt to take the former out of the operation of Republic Act 2207. I disagree. The Government of the Republic of the Philippines under the Revised Administrative Code refers to that entity through which the functions of government are exercised, including the various arms through which political authority is made effective whether they be provincial, municipal or other form of local government, whereas a government instrumentality refers to corporations owned or controlled by the government to promote certain aspects of the economic life of our people. A government agency, therefore, must necessarily refer to the government itself of the Republic, as distinguished from any government instrumentality which has a personality distinct and separate from it (Section 2).

The important point to determine, however, is whether we should enjoin respondents from carrying out the importation of the rice which according to the record has been authorized to be imported on government to government level, it appearing that the arrangement to this effect has already been concluded, the only thing lacking being its implementation. This is evident from the manifestation submitted by the Solicitor General wherein it appears that the contract for the purchase of 47,000 tons of rice from Vietnam had been signed on October 5, 1963, (and for the purchase of 20,000 tons from Burma on October 8, 1963,) by the authorized representatives of both our government and the Governments of Vietnam and Burma, respectively. If it is true that our government has already made a formal commitment with the selling countries there arise the question as to whether the Act can still be impeded at this stage of the negotiations. Though on this score there is a divergence of opinion, it is gratifying to note that the majority has expressed itself against it. This is a plausible attitude for, had the writ been issued, our government would have been placed in a predicament where, as a necessary consequence, it would have to repudiate a duly formalized agreement to its great embarrassment and loss of face. This was avoided by the judicial statesmanship evinced by the Court.

## CONCURRING

### BARRERA, J.:

Because of possible complications that might be aggravated by misrepresentation of the true nature and scope of the case before this Court, it is well to restate as clearly as possible, the real and only issue presented by the respondents representing the government.

From the answer filed by the Solicitor General, in behalf of respondents, we quote:

"The importation of the rice in question by the Armed Forces of the Philippines is for military stockpiling authorized by the President pursuant to his inherent power as commander-in-chief and as a military precautionary measure in view of the worsening situation in Laos and Vietnam and, it may be added, the recent tension created by the Malaysia problem." (Answer, p. 2: *italic supplied.*)

During the oral argument, Senator Fernandez, appearing in behalf of the respondents, likewise reiterated that the imported rice was for military stockpiling, and while he admitted that some of it went to the Rice and Corn Administration, he emphasized again and again that the rice was not intended for the RCA for distribution to the people, as there was no shortage of rice for that purpose, but it was only exchanged for palay because this could be better preserved.

From the memorandum filed thereafter by the Solicitor General, again the claim was made:

"We respectfully reiterate the arguments in our answer dated October 4, 1963 that the importation of rice sought to be enjoined in this petition is in the exercise of the authority vested in the President of the Philippines as Commander-in-Chief of the Armed Forces, as a measure of military preparedness demanded by a real and actual threat of emergency in the South East Asian countries. (p. 1: *italic supplied.*)

\* \* \* \* \*

"It (the stressing of the unsettled conditions in Southeast Asia) is merely our intention to show the necessity for the stockpiling of rice for army purposes, which is the very reason for the importation. (p. 3, *italic supplied.*)

\* \* \* \* \*

"As it is, the importation in question is being made by the Republic of the Philippines for its own use: and the rice is not supposed to be poured into the open market as to affect the price to be paid by the public, (p. 4, *italic supplied.*)

\* \* \* \* \*

"What we do contend is that the law, for want of express and clear provision to the effect, does not include in its prohibition importation by the Government of rice for its own use not for the consuming public, regardless of whether there is or there is no emergency." (p. 5, *italic supplied.*)

From the above, it not only appears but is evident that the respondents were not concerned with the present rice situation confronting the consuming public, but were solely and exclusively after the stockpiling of rice for the future use of the army. The issue, therefore, in which the Government was interested is not whether rice is imported to give the people a bigger or greater supply to maintain the price at P.80 per ganta—for, to quote again their contention: "the rice is not supposed to be poured into the open market to affect the price to be paid by the public", as it is "not for the consuming public, regardless of whether there is or there is no emergency",—but whether rice can legally be imported by the Armed Forces of the Philippines avowedly for its future use, notwithstanding the prohibitory provisions of Republic Acts Nos. 2207 and 3452. The majority opinion ably sets

forth the reasons why this Court can not accept the contention of the respondents that this importation is beyond and outside the operation of these statutes. I can only emphasize that I see in the theory advanced by the Solicitor General a dangerous trend—that because the policies enunciated in the cited laws are for the protection of the producers and the consumers, the army is removed from their application. To adopt this theory is to proclaim the existence in the Philippines of three economic groups or classes; the producers, the consumers, and the Armed Forces of the Philippines. What is more portentous is the effort to equate the army with the Government itself.

Then again, the importation of this rice for military stockpiling is sought to be justified by the alleged threat of emergency in the Southeast Asian countries. But the existence of this supposed threat was unilaterally determined by the Department of National Defense alone. We recall that there exists a body called the National Security Council in which are represented the Executive as well as the Legislative department. In it sit not only members of the party in power but of the opposition as well. To our knowledge, this is the highest consultative body which deliberates precisely in times of emergency threatening to affect the security of the state. The democratic composition of this council is to guarantee that its deliberations would be non-partisan and only the best interests of the nation will be considered. Being a deliberative body, it insures against precipitate action. This is as it should be. Otherwise, in these days of ever present cold war, any change or development in the political climate in any region of the world is apt to be taken as an excuse for the military to conjure up a crisis or emergency and thereupon attempt to override our laws and legal processes, and imperceptibly institute some kind of martial law on the pretext of precautionary mobilization measure avowedly in the interest of the security of the state. One need not be too imaginative to perceive a hint of this in the present case.

The Supreme Court, in arriving at the conclusion unanimously reached, is fully aware of the difficult and delicate task it had to discharge. Its position is liable to be exploited by some for their own purposes, by claiming and making it appear that the Court is unmindful of the plight of our people during these days of hardship; that it preferred to give substance to the "niceties of the law" than heed the needs of the people. Our answer is that the Court was left no alternative. It had, in compliance with its duty, to decide the case upon the facts presented to it. The respondents, representing the administration, steadfastly maintained and insisted that there is no rice shortage; that the imported rice is not for the consuming public and is not supposed to be placed in the open market to affect the price to be paid by the public; that it is solely for stockpiling of the army for future use as a measure of mobilization in the face of what the Department of National Defense unilaterally deemed a threatened armed conflict in Southeast Asia. Confronted with these facts upon which the Government has built and rested its case, we have searched in vain for legal authority or cogent reasons to justify this importation made admittedly contrary to the provisions of Republic Acts Nos. 2207 and 3452, I say admittedly, because respondents never as much as pretended that the importation fulfills the conditions specified in these laws, but limited themselves to the contention, which is their sole defense, that this importation does not fall within the scope of said laws. In our view, however, the laws are clear. The laws are comprehensive and their application does not admit of any exception. The laws are adequate. Compliance therewith is not difficult, much less impossible. The avowed emergency, if at all, is not urgently immediate.

In this connection, it is pertinent to bear in mind that the Supreme Court has a duty to perform under the Constitution. It has to decide, when called upon to do so in an appropriate proceeding, "all cases in which the constitutionality or validity of any treaty, law, ordinance, executive order or regulation is in question". We can not elude this duty. To do so would be culpable dereliction on our part. While we sympathize with the public that might be adversely affected as a result of this decision, yet our sympathy does not authorize us to sanction an act contrary to applicable laws. The fault lies with those who stubbornly contended and represented before this Court that there is no rice shortage, that the imported rice not intended for the consuming public, but for stockpiling of the army. And, if as now claimed before the public, contrary to the Government's stand in this case, that there is

need for imported rice to stave off hunger, our legislature has provided for such a situation. As already stated, the laws are adequate. The importation of rice under the conditions set forth in the laws may be authorized not only where there is an existing shortage, but also when the shortage is imminent. In other words, lawful remedy to solve the situation is available, if only those who have the duty to execute the laws perform their duty. If there is really need for the importation of rice, why adopt some dubious means which necessitates resort to doubtful exercise of the power of the President as Commander-in-Chief of the Army? Why not comply with the mandate of the laws? Ours is supposed to be a regime under the rule of law. Adoption as a government policy of the theory of "the end justifies the means" brushing aside constitutional and legal restraints, must be rejected, lest we end up with the end of freedom.

For these reasons, I concur in the decision of the Court.

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