

RAMON A. GONZALES, PLAINTIFF-APPELLANT, VS. HON. ANTONIO V. RAQUIZA, AS SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS; BALTAZAR AQUINO, AS COMMISSIONER OF PUBLIC HIGHWAYS; THE PH...

G.R. No. 29627. December 19, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from the decision dated July 3, 1968 of the then Court of First Instance (CFI) of Manila in Civil Case No. 69345 dismissing plaintiff's suit to annul the One Hundred Thirty-Six (P136) Million Peso contracts entered into by the Republic of the Philippines with three (3) American corporations as well as the letters of credit issued thereunder and to restrain their enforcement.

The undisputed facts as found by the trial court are as follows:

On January 4, 1967, the defendant Commissioner of Public Highways in behalf of the Republic of the Philippines hereinafter referred to as Republic, entered into two separate contracts with defendant Continental Ore (Phil.), Inc., the latter acting as representative of Huber Corporation in the first contract and as agent of Allis-Chalmers International and General Motors Corporation in the second.

In the first contract, the Republic obligated itself to pay to Huber Corporation the sum of US\$13,387,170.23 in the form of irrevocable, confirmed and divisible letters of credit in favor of Continental Ore Corporation, 500 Fifth Avenue, New York or its nominees, for the purchase of road construction equipment and spare parts. The shipment of said goods shall begin one to twelve months after the acceptance of the letters of credit.

The second contract provided that for and in consideration of US\$21,077,314.84, which the Republic obligated itself to pay to Continental Ore Corp. (New York) in the form of irrevocable, confirmed and divisible letters of credit, Allis-Chalmers International and General Motors Corporation would sell, transfer and convey to the Republic road construction equipment and spare parts under the same terms and conditions stated in the first contract.

Both contracts were duly approved by the defendant Secretary of Public Works and Communications and the Auditor General.

Upon prior application by the Bureau of Public Highways for the establishment of letters of credit in the aggregate sum of US\$13,387,170.23, defendant Philippine National Bank (PNB) wrote the Bureau of Public Highways approving said application provided that said accommodation be secured by the guaranty of the national government to be given by the Secretary of Finance upon written approval by the Office of the President and that said letters of credit be opened in favor of the defendant Huber Corporation.

On February 6, 1967, the Secretary of Finance requested the Office of the President for approval of the guaranty

of the letters of credit in favor of Huber Corporation, which request was favorably acted upon the following day.

On February 9, 1967, the PNB informed the Bureau of Public Highways that it had recommended the approval by its Board of Directors of the Bureau's application for the opening of another irrevocable, confirmed and divisible letters of credit in favor of General Motors Corporation and Allis-Chalmers International, provided that said accommodation be likewise secured by a guaranty from the national government to be given by the Secretary of Finance upon written approval of the Office of the President.

As in the first application, the Executive Secretary, by authority of the President, directed the Secretary of Finance to extend the necessary guaranty for the letters of credit in favor of General Motors Corporation and Allis-Chalmers International in the amount of US\$21,077,214.84. Accordingly, the guaranty was extended by the Secretary of Finance on February 15, 1967.

On April 27, 1967, plaintiff Ramon A. Gonzales, as taxpayer and later as stockholder of the PNB, filed before the CFI of Manila Civil Case No. 69345 praying for the annulment of the contracts of sale and for the issuance of a writ of preliminary injunction to restrain their enforcement on the ground that these contracts of sale, accommodation and letters of credit are illegal for being violative of Sections 606, 607 and 608 of the Revised Administrative Code for want of appropriation by law and certification as to the availability of funds by the Auditor General and for being violative of the PNB Charter since the accommodation or loan to the Republic is beyond the lending capacity of the bank.

The Secretary of Public Works and Communications and the Commissioner of Public Highways filed their answers admitting substantially the factual allegations of the complaint but raising several affirmative defenses.

On May 19, 1967, plaintiff filed a motion to declare Huber Corporation, Allis-Chalmers International and General Motors Corporation in default for failure to file their answers within the reglementary period. Meanwhile, defendants Secretary of Public Works and Communication and Commissioner of Public Highways asked the court to set for hearing their affirmative defenses as grounds for a motion to dismiss.

PNB filed its answer, likewise expressly admitting the principal facts of the complaint and interposing affirmative defenses and praying that said affirmative defenses be set for hearing.

On July 1, 1967, the motion for preliminary injunction was denied, the motion for default was granted and the motions to dismiss the complaint were deferred for determination until trial on the merits.

After a full-blown trial, the lower court dismissed the complaint together with the counter-claim with costs on July 3, 1968. Hence, this appeal by the plaintiff-appellant on the following legal issues:

I

Whether the contracts of sales are covered by Sections 606, 607 and 608 of the Revised Administrative Code;

II.

Whether the said contracts are valid inspite of the fact that the three American corporations which entered into said contracts are not licensed to do business in the Philippines;

III.

Whether letters of credit arising from an invalid contract are likewise invalid;

IV.

Whether letters of credit are loans and have exceeded the statutory limit thereof and the requirement of collateral.

Under the first assigned error, plaintiff-appellant posits that the questioned contracts of sale, accommodations and letters of credit are illegal: (a) under Sections 606, 607 and 608 of the Revised Administrative Code for want of appropriation law and certification as to the availability of funds by the Auditor General and (b) under the PNB Charter as the accommodation or loan to the Republic is allegedly beyond the lending capacity of the PNB.

The lower court ruled in the negative for the reason that the contracts under consideration did not "involve directly the expenditure of public funds for they (did) not require the immediate payment by the government of funds out of its treasury, but rather (for) a financing scheme or arrangement with the Philippine National Bank under different laws."^[1]

We are inclined to agree. Sections 606 and 607 of the Revised Administrative Code read as follows:

"Sec. 606. Appropriation antecedent to making of contract.- No contract involving the expenditure of public funds shall be made until there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure. This provision shall not, however, be construed to prevent the purchasing and carrying of supplies in stock, under the regulations of the Bureau of Audits, provided that when issued such supplies shall be charged to the proper appropriation account.

"Sec. 607. Certificate showing appropriation to meet contracts.- Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the insular government of three thousand pesos or more shall be entered into or authorized until the Insular Auditor shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure to account thereof. x x x "

The above provisions of the Administrative Code are without question an implementation of Art. VI, Sec. 23, Clause 2 of the 1935 Constitution then applicable, which provides that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Said provision was restated in toto, in Art. VIII, Sec. 18 of the 1973 Constitution and in Art. VI, Sec. 29 of the New Constitution.

In a strict sense, appropriation has been defined "as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury", while appropriation made by law refers to "the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors."^[2]

On the premise, therefore, that no money can be taken out of the treasury without an appropriation,^[3] the decisive issue in this case is what constitutes compliance with the Constitution and Sections 606, 607 and 608 of the Administrative Code where the total governmental expenditure involves partial payments or disbursements of funds to run for a number of years.

As early as the year 1934, this Court, under similar circumstances, had laid this issue to rest.

A Contract between Imus Electric Co., Inc. and the Municipal Council of Imus for a public street lighting service to run for a period of ten (10) years and involving a monthly payment of P202.50 was assailed on the ground that the Municipal Council of Imus approved the same without having the necessary funds to pay for the value of the service to be rendered by the Imus Electric Co. for a period of ten years and without the provincial treasurer's previous certificate to the effect that said funds have been appropriated and were available. Said contract was therefore allegedly in violation of Sections 606, 607 and 608 of the Revised Administrative Code of 1917,

particularly because the Municipality of Imus appropriated funds for a period of six (6) months only.

In resolving the issue, this Court ruled that while it is true that the duration of the contract was fixed at ten (10) years, a period which was accepted by the municipality, it is also true that under the terms of the contract, and the law, the municipality was not bound to make advance payments and consequently, there was no reason for it to appropriate funds for the said public service except for a period of one month or one year at most, if it had sufficient funds in order to comply with the provisions of Section 2296 of the Revised Administrative Code which requires that municipalities should at the beginning of every year, make a general appropriation containing the probable expenses which they would have to incur. Accordingly, it was held that the contract in question is not in conflict with the provisions of Sections 607 and 608 of said Code.[4] Otherwise stated, appropriation must be made only on amounts immediately demandable.

The above doctrine is no less applicable to the case at bar, despite the magnitude of the government's needs and investments. It will be recalled that the questioned contracts constitute a negotiated sale on credit where the Bureau of Public Works is not required to make direct or immediate payment.

Without abandoning the constitutional and legal safeguards against the indiscriminate disbursements of public funds, this Court takes judicial notice of the imperatives of national development that demand immediate implementation of programs, the funding of which cannot be appropriated simply because there are no sufficient funds therefor.

That there was no deviation, much less a violation of Article VI, Section 29 of the Constitution and of Sections 606, 607 and 608 of the Revised Administrative Code, is readily apparent in the enactment of Republic Act No. 4680, which provides among others:

"Sec. 1. The President of the Philippines is hereby authorized in behalf of the Republic of the Philippines to contract such loans, credits and indebtedness with foreign governments, agencies or instrumentalities of such foreign governments, foreign financial institutions, or other international organizations, with whom or belonging to countries with which the Philippines has diplomatic relations, as may be necessary and upon such terms and conditions as may be agreed upon, to enable the Government of the Philippines to finance, either directly or through any government office, agency or instrumentality or any government-owned, or controlled corporation, industrial, agricultural or other economic development purposes or projects authorized by law x x x ."

Section 6 of said law further provides:

"Sec. 6. The Congress shall appropriate the necessary amount out of any funds in the National Treasury not otherwise appropriated, to cover the payment of the principal and interest on such loans, credits or indebtedness as and when they shall become due."

As correctly observed by the trial court,

"Under Republic Act 4860, the Republic is authorized to procure foreign loans or credits from financial institutions or other international organizations, upon such terms and conditions as may be agreed upon for the purpose of financing economic development purposes or projects authorized by law, including the construction and improvement of highways and bridges. It will be noted that, precisely, Republic Act 4860 authorizes procurement on credit when there are no available funds or appropriation. Section 6 thereof provides that 'Congress shall appropriate the necessary amount to cover the payment of the principal and interest on such credits as and when they shall become due.' "[5]

Moreover, the questioned contracts are funded by various sources authorized by law, thereby constituting a standing appropriation or antecedent appropriation required by Section 606 of the Revised Administrative Code

before execution of contracts involving expenditure of public funds. They are:

"1. Under Section 6(b) of R.A. 917, 1% of the annual accrual (about P200 million) to the Highway Special fund.

P2 million

2. Increase in taxes on oils and motor fuels accruing annually into the Highway Special Fund pursuant to R.A. 1435 representing total receipts (P17 million) less the amount (P11 million) annually earmarked for amortization of outstanding debts previously incurred to finance public works projects.

P6 million

3. Pursuant to Section 24 of R.A. 917 annual rentals from lease of present public works equipment and estimated rentals on equipment to be acquired based on six months annual utilization and proceeds from sale of obsolete or worn-out equipment, broken down as follows:

a. Rental chargeable against projects financed from the contingent fund and the maintenance and improvement portions of the Highway Special Fund under Sections 6(c), 7 and 8 of RA 917, equivalent to 10% of P188 million.

P18.8 M.

b. Rentals chargeable against projects financed by bond funds (P92 M.) and general funds (P16 M.) equivalent to 10% of P108 M.

P10.8 M.

c. Other rentals and proceeds of sale of wornout or obsolete equipment amounting annually to P9 M. less P5 M. earmarked for maintenance and operations.

P 4.0 M.

P33.6 M.

T O T A L P41. million[6]

Thus the annual aggregate of these funds in the amount of P41.6 million is obviously more than sufficient to meet the diminishing yearly installments on the contracts in question ranging from P29,847,049.32 on the first year to P23,919,563.29 on the fifth year.[7]

More than that, the foregoing funding program for the repayment of the herein government's obligations, satisfactorily negates petitioner's fears that private funds deposited with the PNB will be used to liquidate subject loans. In addition, petitioner himself declared that only the certificate of the Auditor General can prevent the funds intended for payment of said purchase, if any, from being diverted to other purposes.

The records show that the questioned contracts carry the approval of the Auditor General as may be seen in Exhibits "5" and "53 PNB" and the affidavit of the Commissioner of Public Highways (Annex "A" to defendants' answer).[8]

With respect to the second assigned error that the contracts are void as the three American corporations are not licensed to do business in the Philippines, we re-state the generally accepted rule that one single or isolated business transaction does not constitute "doing business" within the meaning of the law. Transactions which are occasional, incidental, and casual - not of a character to indicate a purpose to engage in business - do not

constitute the doing or engaging in business as contemplated by law. Where the three transactions indicate no intent by the foreign corporation to engage in a continuity of transactions, they do not constitute doing business in the Philippines.[9]

Since the third assigned error is premised on the supposed invalidity of the contracts under consideration, our ruling sustaining their validity, renders a discussion of the third issue raised unnecessary.

Anent the fourth assigned error, which is also petitioner's second ground on the supposed illegality of the questioned contracts, Section 23 of R.A. 337 as approved on July 24, 1948 reads:

"Sec. 23. Except as the Monetary Board may otherwise prescribe, the total liabilities of any person, company, corporation or firm, to a commercial banking corporation for money borrowed with the exception of money borrowed against obligations of the Central Bank, or of the Philippine Government, or borrowed with the full guarantee by the Government of payment or principal and interest, shall at no time exceed fifteen per cent (15%) of the unimpaired capital and surplus of such bank." (Underscoring supplied.)

Even assuming that the accommodation given by the PNB was in legal contemplation a loan, the fact that the same was fully guaranteed by the Republic of the Philippines removes said accommodation from the statutory limits set under Section 5(e) of R.A. 1300 by reason of Section 23 of R.A. 337 above-quoted which is applicable to the PNB as a commercial bank authorized to exercise the general powers mentioned in the General Banking Act (Sec. 2(j), R.A. 1300).

WHEREFORE, the instant appeal is hereby DENIED. No pronouncements as to costs.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] p. 126, Record on Appeal, p. 12, Rollo.

[2] Martin "New Constitution of the Philippines", p. 399, 1987 edition.

[3] City of Manila v. Posadas, Jr., etc., et al., 48 Phil. 309 (1926).

[4] Imus Electric Co. v. Municipality of Imus, 59 Phil. 832-833 (1934).

[5] pp. 130-131, Record on Appeal.

[6] pp. 131-132, Record on Appeal.

[7] p. 30, Record on Appeal.

[8] p. 133, Record on Appeal.

[9] Antam Consolidated, Inc. v. Court of Appeals, 143 SCRA 288

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