

MANILA ELECTRIC COMPANY, PETITIONER, VS. PASAY TRANSPORTATION COMPANY, INC., ET AL., RESPONDENTS.

G. R. No. 37878. November 25, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

The preliminary and basic question presented by the petition of the Manila Electric Company, requesting the members of the Supreme Court, sitting as a board of arbitrators, to fix the terms upon which certain transportation companies shall be permitted to use the Pasig bridge of the Manila Electric Company and the compensation to be paid to the Manila Electric Company by such transportation companies, relates to the validity of section 11 of Act No. 1446 and to the legal right of the members of the Supreme Court, sitting as a board of arbitrators, to act on the petition. Act No. 1446 above referred to is entitled, "An Act granting a franchise to Charles M. Swift to construct, maintain, and operate an electric railway, and to construct, maintain, and operate an electric light, heat, and power system from a point in the City of Manila in an easterly direction to the town of Pasig, in the Province of Rizal." Section 11 of the Act provides: "Whenever any franchise or right of way is granted to any other person or corporation, now or hereafter in existence, over portions of the lines and tracks of the grantee herein, the terms on which said other person or corporation shall use such right of way, and the compensation to be paid to the grantee herein by such other person or corporation for said use, shall be fixed by the members of the Supreme Court, sitting as a board of arbitrators, the decision of a majority of whom shall be final."

When the petition of the Manila Electric Company was filed in this court, it was ordered that the petitioner be required to serve copies on the Attorney-General and the transportation companies affected by the petition. There after, the Attorney-General disclaimed any interest in the proceedings, and opposition was entered to the petition by a number of public utility operators. On the submission of memoranda after an oral hearing, the petition was made ready for resolution.

Examining the statutory provision which is here invoked, it is first noted that power is attempted to be granted to the members of the Supreme Court sitting as a board of arbitrators and not to the Supreme Court as an entity. It is next seen that the decision of a majority of the members of the Supreme Court is made final. And it is finally observed that the franchise granted the Manila Electric Company by the Government of, the Philippine Islands, although only a contract between the parties to it, is now made to effect the rights of persons not signatories to the covenant.

The law calls for arbitration which represents a method of the parties' own choice. A submission to arbitration is a contract. The parties to an arbitration agreement may not oust the courts of jurisdiction of the matters submitted to arbitration. These are familiar rules which find support in articles 1820 and 1821 of the Civil Code. Citation of authority is hardly necessary, except that it should be recalled that in the Philippines, and in the United States for that matter, it has been held that a clause in a contract, providing that all matters in dispute between the parties shall be referred to arbitrators and to them alone, is contrary to public policy and cannot oust the courts of jurisdiction. (*Wahl and Wahl vs. Donaldson, Sims & Co.* [1903], 2 Phil., 301; *Puentebella vs. Negros Coal Co.*

[1927], 50 Phil., 69; Vega vs. San Carlos Milling Co. [1924], 51 Phil., 908; District of Columbia vs. Bailey [1897], 171 U. S., 161.) We would not be understood as extending the principles governing arbitration and award too far. Unless the arbitration agreement is such as absolutely to close the doors of the courts against the parties, the courts should look "with favor upon such amicable arrangements. We can also perceive a distinction between a private contract for submission to arbitration and agreements to arbitrate falling within the terms of a statute enacted for such purpose and affecting others than the parties to a particular franchise. Here, however, whatever else may be said in extenuation, it remains true that the decision of the board of arbitrators is made final, which if literally enforced would leave a public utility, not a party to the contract authorized by Act No. 1446, without recourse to the courts for a judicial determination of the question in dispute.

Counsel for the petitioner rely principally on the case of Tallassee Falls Mfg. Co. vs. Commissioners' Court [1908], 158 Ala., 263. It was there held that an Act of a state legislature authorizing the commissioners' court of a certain county to regulate and fix the rate of toll to be charged by the owners of a bridge is not unconstitutional as delegating legislative power to the courts. But that is not the question before us. Here the question is not one of whether or not there has been a delegation of legislative authority to a court. More precisely, the issue concerns the legal right of the members of the Supreme Court, sitting as a board of arbitrators the decision of a majority of whom shall be final, to act in that capacity.

We run counter to this dilemma. Either the members of the Supreme Court, sitting as a board of arbitrators, exercise judicial functions, or the members of the Supreme Court, sitting as a board of arbitrators, exercise administrative or quasi judicial functions. The first case would appear not to fall within the jurisdiction granted the Supreme Court. Even conceding that it does, it would presuppose the right to bring the matter in dispute before the courts, for any other construction would tend to oust the courts of jurisdiction and render the award a nullity. But if this be the proper construction, we would then have the anomaly of a decision by the members of the Supreme Court, sitting as a board of arbitrators, taken therefrom to the courts and eventually coming before the Supreme Court, where the Supreme Court would review the decision of its members acting as arbitrators. Or in the second case, if the functions performed by the members of the Supreme Court, sitting as a board of arbitrators, be considered as administrative or quasi judicial in nature, that would result in the performance of duties which the members of the Supreme Court could not lawfully take it upon themselves to perform. The present petition also furnishes an apt illustration of another anomaly, for we find the Supreme Court as a court asked to determine if the members of the court may be constituted a board of arbitrators, which is not a court at all.

The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions.

The Organic Act provides that the Supreme Court of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law (sec. 26). When the Organic Act speaks of the exercise of "jurisdiction" by the Supreme Court, it could only mean the exercise of "jurisdiction" by the Supreme Court acting as a court, and could hardly mean the exercise of "jurisdiction" by the members of the Supreme Court, sitting as a board of arbitrators. There is an important distinction between the Supreme Court as an entity and the members of the Supreme Court. A board of arbitrators is not a "court" in any

proper sense of the term, and possesses none of the jurisdiction which the Organic Act contemplates shall be exercised by the Supreme Court.

In the last judicial paper from the pen of Chief Justice Taney, it was said: "The power conferred on this court is exclusively judicial, and it cannot be required or authorized to exercise any other. * * * Its jurisdiction and powers and duties being demed in the organic law of the government, and being all strictly judicial, Congress cannot require or authorize the court to exercise any other jurisdiction or power, or perform any other duty. * * * The award of execution is a part, and an essential part of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties, unless Congress should at some future time sanction it, and pass a law authorizing the court to carry its opinion into effect. Such is not the judicial power confided to this court, in the exercise of its appellate jurisdiction; yet it is the whole power that the court is allowed to exercise under this act of Congress. * * * And while it executes firmly all the judicial powers entrusted to it, the court will carefully abstain from exercising any power that is not strictly judicial in its character, and which is not clearly confided to it by the Constitution. * * *" (Gordon vs. United States [1864], 2 Wall., 561; 117 U. S., 697, Appendix.)

Confining the decision to the basic question at issue, the Supreme Court holds that section 11 of Act No. 1446 contravenes the maxims which guide the operation of a democratic government constitutionally established, and that it would be improper and illegal for the members of the Supreme Court, sitting as a board of arbitrators, the decision of a majority of whom shall be final, to act on the petition of the Manila Electric Company. As a result, the members of the Supreme Court decline to proceed further in the matter.

Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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