

AMADEO MATUTE, PETITIONER, VS. JAIME HERNANDEZ, AUDITOR-GENERAL OF THE COMMONWEALTH OF THE PHILIPPINES, RESPONDENT.

G.R. No. 46028. August 08, 1938

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for mandamus to compel the respondent Auditor-General of the Commonwealth of the Philippines to sign a treasury warrant, issued by the Director of Prisons in favor of petitioner Amadeo Matute.

Petitioner entered into a contract on December 24, 1936 with the Commonwealth of the Philippines, through its Purchasing Agent, with the consent and approval of the Secretary of Finance, whereby petitioner would supply the Government from January 1, 1937 to June 30, of the same year, with fresh meat at the following prices:

Hindquarters

per kilo

P0.37

Brisket, boneless

do

.38

As the City of Manila had raised the fees in the municipal slaughter house from two to three and a half centavos per kilo, petitioner asked the Purchasing Agent that the price per kilo of each class of meat be increased by one and a half centavos, or P0.38½ per kilo for the hindquarters and P0.39½ per kilo for the brisket, boneless. By letter dated March 2, 1937 C. E. Unson, technical adviser to the President and Acting Purchasing Agent, granted this request with the approval of the Undersecretary of Finance Guillermo Gomez.

During the period from March 1 to 15, 1937 petitioner supplied and delivered hindquarters fresh meat to the Bureau of Prisons. On May 31, 1937 the Director of Prisons, with the approval of the said Acting Purchasing Agent, made and signed a treasury warrant for the amount of P330.73, value of the meat supplied the Bureau of Prisons during the period above-mentioned. Said treasury warrant was sent to the respondent Auditor-General to be countersigned by him, but he refused to do so and ordered its return to the Director of Prisons to be cancelled. Hence, the present petition for mandamus.

In his answer the respondent Auditor-General, through the Solicitor-General, alleged, among other things, that the

conformity given by the Acting Purchasing Agent, with the approval of the Undersecretary of Finance, to the increase in price per kilo of meat as requested by petitioner, was and is illegal and null and void for lack of valuable consideration and because no public bidding had been held for that purpose. Furthermore, neither the respondent Auditor-General nor the Secretary of Justice had been consulted, nor was the approval of His Excellency, the President of the Philippines, obtained before or after said conformity of the Purchasing Agent had been given.

Petitioner raises two questions, to wit:

- Whether the Auditor-General, under the law, has the right and power to judge the merits and legality of any contract for supplies entered into by the Commonwealth of the Philippines through the Purchasing Agent.
- Whether the amendment of the contract of December 24, 1936 raising the price of meat to be delivered to the Government by one and a half centavos, is illegal and null and void.

One of the duties of the Auditor-General, according to section 2, Article X of the Constitution, is to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

On the other hand, Executive Order No. 16, dated February 3, 1936, of His Excellency, the President of the Philippines, enjoined "that no contract for public service already in force or to be entered into for the first time by the Philippine Government or any of its branches, subdivisions, agencies, or instrumentalities shall be renewed or entered into without public bidding except for very extraordinary reasons and then only after the Auditor-General, the Secretary of Justice, and the Secretary of the Department concerned have been consulted and my approval has been secured beforehand."

Now, then, may the Auditor-General refuse to countersign the treasury warrant in question? If, according to section 2, Article X of the Constitution, the Auditor-General has the right and duty to examine, audit and settle all accounts pertaining to the revenues and receipts * * * and to audit, in accordance with law, all expenditures of funds pertaining to the Government * * * and to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant, then it is logical to conclude therefrom that the act of countersigning the treasury warrant with his signature is not a merely ministerial duty of the Auditor-General, but a discretionary power authorizing him to determine whether or not the expenditure in question is irregular, unnecessary, excessive, or extravagant.

In the instant case petitioner attempted to cash the warrant issued by the Director of Prisons for the value of the meat supplied that office during the period from March 1 to 15, 1937. According to the admitted facts above set out, petitioner bases his right upon the renewal of his contract with the Government. Said renewal, however, or the increase in the price of the meat allowed by the Acting Purchasing Agent was not effected in accordance with the requirements of Executive Order No. 16 as no public bidding had been held for that purpose, nor were the Auditor-General, the Secretary of Justice or the corresponding Secretary of Department at any time consulted in connection therewith, nor was the approval of His Excellency, the President of the Philippines, obtained. For lack of compliance with said Executive Order No. 16, the disbursement of money required by the treasury warrant issued by the Director of Prisons could not be legally authorized.

The increase in the price of meat allowed the petitioner by the Acting Purchasing Agent undoubtedly constitutes a novation of the contract of December 24, 1936 entered into between the Government and petitioner after a public bidding had been held.

According to article 1203 of the Civil Code:

"Obligations may be modified:

"1. By the change of their object or their principal conditions.

"2. * * * * *

"3. * * * * *

The price of the supply of meat to the Government was one of the principal conditions of the contract. Therefore, in order that the renewal thereof may be valid it was necessary to comply with Executive Order No. 16 which was amended by another Executive Order No. 98, defining what is meant by His Excellency, the President, by the words "contract of public service", used in Executive Order No. 16, because in said Executive Order No. 98 it is ordered "that no contract for public service or for furnishing supplies, materials and equipment to the Government already in force or to be entered, etc." The underlined portions show what should be understood by "public service."

The petition is denied with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

RESOLUTION

October 28, 1938

CONCEPCION, J.:

By motion we are asked to reconsider our decision promulgated on August 8th last whereby we deny petitioner's petition that we order the respondent Auditor-General to countersign a treasury warrant issued in favor of the petitioner by the Director of Prisons.

In the decision which is sought to be reconsidered, a recital of the facts is made, which briefly are as follows: That through a public bidding petitioner was awarded a contract to supply the government with fresh meat for a certain period of time and for a fixed price. During the existence of the contract the City of Manila raised the fees in the municipal slaughter house. In view thereof petitioner asked for and obtained from the Purchasing Agent, with the approval of the Undersecretary of Finance, an increase in the price of meat without previous bidding. Neither was the Auditor-General nor the Secretary of Justice consulted on the matter, nor was the approval of His Excellency, the President of the Philippines, obtained, thus violating Executive Order No. 16. For this reason the Auditor-General refused to countersign the warrant issued by the Director of Prisons for the payment of the increased price of meat delivered during a certain period.

We have held in the decision that, according to section 2, Article X of the Constitution, the Auditor-General has, in the present case, discretionary power to ascertain, before countersigning the aforesaid warrant, whether the disbursement in question is illegal or not (*Ynchausti & Co. vs. Wright*, 47 Phil., 866).

We have likewise held that said increase in the price of meat does not represent a valid obligation on the part of the government for the reason that being a novation of the contract, it was not awarded through a public bidding nor was the consent of the Auditor-General and of the Secretary of Justice first obtained together with the approval of His Excellency, the President of the Philippines, in accordance with the requirements of Executive Order No. 16.

It is insisted in the motion for reconsideration that said Executive Orders Nos. 16 and 98, dated February 3, 1936

and April 24, 1937, respectively, are not applicable to the instant case because the first of said orders refers only to public services, while the second is later than the grant of the increase in the price in question.

Petitioner further contends that said orders are illegal and void for the reason that they constitute an unlawful usurpation of the powers and functions of the Legislature inasmuch as section 12 of Act No. 4007 confers upon the Purchasing Agent the power and discretion to adjust the terms of the contracts which should be entered into for the supply and delivery of goods to the government. The petitioner says that granting for the sake of argument that Executive Order No. 16 is applicable to contracts for supplies, the requirements therein imposed are a limitation or a restriction upon the discretion conferred by law upon the Purchasing Agent and constitute an addition or amendment to the provisions of said Act No. 4007.

That Executive Order No. 16 is applicable to the present case is beyond doubt, for in the letter of His Excellency, the President of the Philippines, to the Secretary of Finance of February 3, 1936, on which date said executive order was issued, he said that it would be a mistake for the government to renew contracts without another public bidding. The failure to do so, said His Excellency, would place the government and the public officials concerned in a vulnerable position, giving rise to the charge, which is of course baseless, that the government is guided by favoritisms, or that the public officials concerned allow themselves to be influenced by considerations other than the public interest. As may be seen, it has been the intention of His Excellency, the President, in issuing Executive Order No. 16 aforementioned, to make regulations governing the renewal not only of contracts of public service but also of all contracts in general, and this becomes more evident from Executive Order No. 98 which, notwithstanding that it is of a later date than the renewal of petitioner's contract to supply meat, truly interprets the meaning of the words "contracts for public service" used in said Executive Order No. 16, in ordering that "no contract for public service or for furnishing supplies, materials, and equipment to the government or in force or to be entered into for the first time by the Philippine Government * * * shall be renewed or entered into without public bidding except for very extraordinary reasons and then only after the Auditor-General, the Secretary of Justice, and the Secretary of Department concerned have been consulted and my approval has been secured beforehand."

As to the contention that the executive orders abovementioned are void for the reason that they constitute a usurpation of the powers conferred by the Legislature on the Purchasing Agent, it must be said in answer thereto that, according to section 11 (1) of Article VII of the Constitution, the President of the Philippines shall have control of all the executive departments, bureaus, or offices, exercise general supervision over, all local governments as may be provided by law, and take care that the laws be faithfully executed. In the exercise of these constitutional powers, His Excellency, the President, as Chief Executive of the Government, may issue regulations for the enforcement and execution of the laws, and Executive Orders Nos. 16 and 98 have been issued, not for the purpose of amending or adding something to the law relating to contracts of supplies for the Government, but to better assure compliance therewith and to avoid even suspicions of favoritism or anomalies in the execution or renewal of said contracts.

The motion is denied. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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