

VICTORIAS MILLING CO., INC., PETITIONER, VS. OFFICE OF THE PRESIDENTIAL ASSISTANT FOR LEGAL AFFAIRS AND PHILIPPINE PORTS AUTHORITY, RESPONDENTS.

G.R. No. 73705. August 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the July 27, 1984 Decision of the Office of the Presidential Assistant For Legal Affairs dismissing the appeal from the adverse ruling of the Philippine Ports Authority on the sole ground that the same was filed beyond the reglementary period.

On April 28, 1981, the Iloilo Port Manager of respondent Philippine Ports Authority (PPA for short) wrote petitioner Victorias Milling Co., requiring it to have its tugboats and barges undergo harbor formalities and pay entrance/clear-ance fees as well as berthing fees effective May 1, 1981. PPA, likewise, required petitioner to secure a permit for cargo handling operations at its Da-an Banua wharf and remit 10% of its gross income for said operations as the government's share.

To these demands, petitioner sent two (2) letters, both dated June 2, 1981, wherein it maintained that it is exempt from paying PPA any fee or charge because: (1) the wharf and all its facilities were built and installed in its land; (2) repair and maintenance thereof were and solely paid by it; (3) even the dredging and maintenance of the Malijao River Channel from Guimaras Strait up to said private wharf are being done by petitioner's equipment and personnel; and (4) at no time has the government ever spent a single centavo for such activities. Petitioner further added that the wharf was being used mainly to handle sugar purchased from district planters pursuant to existing milling agreements.

In reply, on November 3, 1981, PPA Iloilo sent petitioner a memorandum of PPA's Executive Officer, Maximo Dumlao, which justified the PPA's demands. Further request for recon-sideration was denied on January 14, 1982.

On March 29, 1982, petitioner served notice to PPA that it is appealing the case to the Court of Tax Appeals; and accordingly, on March 31, 1982, petitioner filed a Petition for Review with the said Court, entitled "Victorias Milling Co., Inc. v. Philippine Ports Authority," and docketed therein as CTA Case No. 3466.

On January 10, 1984, the Court of Tax Appeals dismissed petitioner's action on the ground that it has no jurisdiction. It recommended that the appeal be addressed to the Office of the President.

On January 23, 1984, petitioner filed a Petition for Review with this Court, docketed as G.R. No. 66381, but the same was denied in a Resolution dated February 29, 1984.

On April 2, 1984, petitioner filed an appeal with the Office of the President, but in a Decision dated July 27, 1984 (Record, p. 22), the same was denied on the sole ground that it was filed beyond the reglementary period. A Motion for Reconsideration was filed, but in an Order dated December 16, 1985, the same was denied (Ibid., pp.

3-21). Hence, the instant petition.

The Second Division of this Court, in a Resolution dated June 2, 1986, resolved to require the respondents to comment (Ibid., p. 45); and in compliance therewith, the Solicitor General filed his Comment on June 4, 1986 (Ibid., pp. 50--59).

In a Resolution of July 2, 1986, petitioner was required to file a reply (Ibid., p. 61) but before receipt of said resolution, the latter filed a motion on July 1, 1986 praying that it be granted leave to file a reply to respondents' Comment, and an extension of time up to June 30, 1986 within which to file the same. (Ibid., p. 62).

On July 18, 1986, petitioner filed its reply to respondents' Comment (Ibid., pp. 68-76).

The Second Division of this Court, in a Resolution dated August 25, 1986, resolved to give due course to the petition and to require the parties to file their respective simultaneous memoranda (Ibid., p. 78).

On October 8, 1986, the Solicitor General filed a Manifestation and Rejoinder, stating, among others, that respondents are adopting en toto their Comment of June 3, 1986 as their memorandum; with the clarification that the assailed PPA Administrative Order No. 13-77 was duly published in full in the nationwide circulated newspaper, "The Times Journal", on November 9, 1977 (Ibid., pp. 79-81).

The sole legal issue raised by the petitioner is -

WHETHER OR NOT THE 30-DAY PERIOD FOR APPEAL UNDER SECTION 131 of PPA ADMINISTRATIVE ORDER NO. 13-77 WAS TOLLED BY THE PENDENCY OF THE PETITIONS FILED FIRST WITH THE COURT OF TAX APPEALS, AND THEN WITH THIS HONORABLE TRIBUNAL.

The instant petition is devoid of merit.

Petitioner, in holding that the recourse first to the Court of Tax Appeals and then to this Court tolled the period to appeal, submits that it was guided, in good faith, by considerations which lead to the assumption that procedural rules of appeal then enforced still hold true. It contends that when Republic Act No. 1125 (creating the Court of Tax Appeals) was passed in 1955, PPA was not yet in existence; and under the said law, the Court of Tax Appeals had exclusive appellate jurisdiction over appeals from decisions of the Commissioner of Customs regarding, among others, custom duties, fees and other money charges imposed by the Bureau under the Tariff and Customs Code. On the other hand, neither in Presidential Decree No. 505, creating the PPA on July 11, 1974 nor in Presidential Decree No. 857, revising its charter (said Decrees, among others, merely transferred to the PPA the powers of the Bureau of Customs to impose and collect customs duties, fees and other money charges concerning the use of ports and facilities thereat) is there any provision governing appeals from decisions of the PPA on such matters, so that it is but reasonable to seek recourse with the Court of Tax Appeals. Petitioner, likewise, contends that an analysis of Presidential Decree No. 857, shows that the PPA is vested merely with corporate powers and duties (Sec. 6), which do not and can not include the power to legislate on procedural matters, much less to effectively take away from the Court of Tax Appeals the latter's appellate jurisdiction.

These contentions are untenable for while it is true that neither Presidential Decree No. 505 nor Presidential Decree No. 857 provides for the remedy of appeal to the Office of the President, nevertheless, Presidential Decree No. 857 empowers the PPA to promulgate such rules as would aid it in accomplishing its purpose. Section 6 of the said Decree provides -

"Sec. 6. Corporate Powers and Duties ?

"a. The corporate duties of the Authority shall be:

"x x x x x x x x."

"(III) To prescribe rules and regulations, procedures, and guidelines governing the establishment, construction, maintenance, and operation of all other ports, including private ports in the country.

"x x x x x x x x x x".

Pursuant to the aforequoted provision, PPA enacted Administrative Order No. 13-77 precisely to govern, among others, appeals from PPA decisions. It is now finally settled that administrative rules and regulations issued in accordance with law, like PPA Administrative Order No. 13-77, have the force and effect of law (*Valerio vs. Secretary of Agriculture and Natural Resources*, 7 SCRA 719; *Antique Sawmills, Inc. vs. Zayco, et al.*, 17 SCRA 316; and *Macailing vs. Andrada*, 31 SCRA 126), and are binding on all persons dealing with that body.

As to petitioner's contention that Administrative Order No. 13-77, specifically its Section 131, only provides for appeal when the decision is adverse to the government, worth mentioning is the observation of the Solicitor General that petitioner misleads the Court. Said Section 131 provides -

"Sec. 131. Supervisory Authority of General Manager and PPA Board. - If in any case involving assessment of port charges, the Port Manager/OIC renders a decision adverse to the government, such decision shall automatically be elevated to, and reviewed by, the General Manager of the authority; and if the Port Manager's decision would be affirmed by the General Manager, such decision shall be subject to further affirmation by the PPA Board before it shall become effective; Provided, however, that if within thirty (30) days from receipt of the record of the case by the General Manager, no decision is rendered, the decision under review shall become final and executory; Provided further, that any party aggrieved by the decision of the General Manager as affirmed by the PPA Board may appeal said decision to the Office of the President within thirty (30) days from receipt of a copy thereof." (Underscoring supplied).

From a cursory reading of the aforequoted provision, it is evident that the above contention has no basis.

As to petitioner's allegation that to its recollection there had been no prior publication of said PPA Administrative Order No. 13-77, the Solicitor General correctly pointed out that said Administrative Order was duly published in full in the nationwide newspaper, "The Times Journal", on November 9, 1977.

Moreover, it must be stated that as correctly observed by the Solicitor General, the facts of this case show that petitioner's failure to appeal to the Office of the President on time stems entirely from its own negligence and not from a purported ignorance of the proper procedural steps to take. Petitioner had been aware of the rules governing PPA procedures. In fact, as embodied in the December 16, 1985 Order of the Office of the President, petitioner even assailed the PPA's rule making powers at the hearing before the Court of Tax Appeals.

It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law (*United CMC Textile Workers Union vs. Clave*, 137 SCRA 346, citing the cases of *Bello vs. Fernando*, 4 SCRA 138; *Aguila vs. Navarro*, 55 Phil. 898; and *Santiago vs. Valenzuela*, 78 Phil. 397).

Furthermore, even if petitioner's appeal were to be given due course, the result would still be the same as it does not present a substantially meritorious case against the PPA.

Petitioner maintains and submits that there is no basis for the PPA to assess and impose the dues and charges it is collecting, since the wharf is private, constructed and maintained at no expense to the government, and that it exists primarily so that its tugboats and barges may ferry the sugar-cane of its Panay planters.

As correctly stated by the Solicitor General, the fees and charges PPA collects are not for the use of the wharf that

petitioner owns but for the privilege of navigating in public waters, of entering and leaving public harbors and berthing on public streams or waters. (Rollo, pp. 056-057).

Im Compania General de Tabacos de Filipinas vs. Actg. Commissioner of Customs (23 SCRA 600), this Court laid down the rule that berthing charges against a vessel are collectible regardless of the fact that mooring or berthing is made from a private pier or wharf. This is because the government maintains bodies of water in navigable condition and it is to support its operations in this regard that dues and charges are imposed for the use of piers and wharves regardless of their ownership.

As to the requirement to remit 10% of the handling charges, Section 6b-(ix) of the Presidential Decree No. 857 authorized the PPA "To levy dues, rates, or charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority, or any organization concerned with port operations." This 10% government share of earnings of arrastre and stevedoring operators is in the nature of contractual compensation to which a person desiring to operate arrastre service must agree as a condition to the grant of the permit to operate.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

Teehankee, C.J., Narvasa, and Gancayco, JJ., concur.

Cruz, J., in the result.

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