

SALVADOR M. MISON, IN HIS CAPACITY AS COMMISSIONER OF CUSTOMS, PETITIONER, VS. COMMISSION ON AUDIT, CHAN CHIU, AND CHEUNG I, RESPONDENTS.

G.R. No. 91429. July 13, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In Customs Case No. 813, the Commissioner of Customs rendered a decision on August 11, 1969, declaring illegal the seizure by elements of the Philippine Navy of the M/V "Hyojin Maru" a vessel of Japanese registry, and ordered the release of the vessel and its cargo to the claimants, Chan Chiu On and Cheung I.[1] Return of the cargo as thus ordered was effected pursuant to a directive of the Secretary of Finance dated February 5, 1970.[2] Release of the vessel, however, was never effected; it sank while yet in the custody of the Bureau of Customs, and requests by the Bureau to the Philippine Navy and the CADA to refloat or salvage the ship could not be complied with for lack of funds.[3]

Chan Chiu On and Cheung I then filed a claim with the Commission on Audit for the payment of the value of the vessel.[4] Acting thereon "(b)y authority of the Acting Chairman," Mr. Rogelio B. Espiritu, Manager, Technical Service Office of the COA, denied the claim for the reasons set forth in his registered letter to the claimants' lawyer dated November 3, 1977 -- captioned "Decision No. 77-142." [5] Another letter, dated December 9, 1977, this time signed by Acting COA Chairman Francisco S. Tantuico, was also sent to claimants' counsel, Atty. Juan David, enclosing "a copy of Decision No. 77-142 of this Commission, contained in a letter dated November 3, 1977, which is self-explanatory." [6]

Atty. David moved for reconsideration by letter dated February 6, 1978. Acting COA Chairman Tantuico denied the motion, in his own letter dated April 17, 1978 on the ground that it had been filed beyond the reglementary period of 30 days from the date of receipt of a copy of the subject Decision which, in consequence, had "already become final and executory." [7] In a letter dated May 10, 1978, Mr. David replied that said Decision No. 77-142 -- rendered only by the Manager, Technical Service Office of the COA, and "not (by) the Acting Chairman, much less ** the Commission on Audit" -- was void because the matter could validly be acted upon only by "the Commission on Audit duly constituted, by the appointment and qualification of its Chairman and two Commissioners," "as specifically provided by Section 2, Article XII-D of the (1973) Constitution." [8] Commissioner Tantuico wrote back on August 24, 1978 informing Mr. David that "this Commission finds no cogent reason that would justify a reversal of its stand on the matter." [9]

Again Atty. David moved for reconsideration, by letter dated April 5, 1979, reiterating the view that Acting Chairman Tantuico lacked constitutional authority to act on the claim on its merits, and requesting that "the same be submitted for resolution by the Commission on Audit, after the appointment of the two (2) commissioners thereof, as required by Section 2, Article XII-D of the Constitution." [10] In another communication dated April 20, 1981, Mr. David reiterated his request that his application for reconsideration be acted on, considering that "a

Commissioner has (already) been appointed as member of said Commission." It does not appear that either letter was acted on.[11]

On November 17, 1986, the Commission on Audit having been fully constituted with the appointment of the Chairman and two (2) members, Mr. David wrote still another letter to it,[12] drawing attention once again to his clients' claim for payment of the "nominal depreciated value ** (of their vessel) in the sum of US\$50,000.00, plus the amount corresponding to legal interest." An acceptable alternative based on "established practice," according to David, would be the conveyance to his clients by the Bureau of Customs of "forfeited merchandise, the value of which shall correspond to the nominal depreciated value of said vessel, plus legal interest * * ."

In a 4th Indorsement dated June 22, 1987 addressed "to the Auditor, Bureau of Customs," Chairman Eufemio C. Domingo, acting "FOR THE COMMISSION," reconsidered Decision No. 77-142 of Acting Commissioner of Audit Tantuico, supra. He declared that the vessel sank while in illegal custody of the Bureau of Customs, which "should have pre-eminently taken adequate measures to preserve" it but did not; hence, he declared that "this Commission will interpose no objection" to the instant claim, subject to the usual auditing and accounting requirements."[13]

Petitioner Mison sought clarification of "the legal implication of the 4th Indorsement dated June 22, 1987," in two (2) letters dated November 8, 1988 and November 16, 1988.[14] The response was a letter dated May 19, 1989, entitled "COA Decision No. 992," signed by "the full complement of three (3) members of the Commission on Audit." [15] Said COA Decision No. 992 pointed out that the earlier decision, No. 77-142, was "open to question and cannot be recognized by the present Commission" because signed merely by the then Manager of the Technical Service Office," who evidently "was not acting for the Commission but only for the then Acting Chairman." It therefore held that the 4th Indorsement dated June 22, 1987 should be "deemed for all legal intents and purposes as the final decision on the matter * * ." This letter --- Decision No. 992 -- was received by the Bureau of Customs on June 22, 1989.[16]

The petitioner filed a motion for reconsideration on August 30, 1989.[17] The motion was denied by letter dated October 20, 1989, denominated "COA Decision No. 1053," also signed by the Chairman and the two (2) Members of the Commission, notice of which was received by the petitioner on December 4, 1989.[18]

Petitioner seasonably filed with this Court a petition for certiorari to nullify said COA Decisions No. 992 and 1053, pursuant to Section 7, Article IX of the 1987 Constitution.[19]

1. The first point that the petitioner would make is that COA Decision No. 77-142, although signed only by the Manager, Technical Service Office of the COA, was ratified or made valid because it "was adopted in toto as a decision of the COA in the letters dated December 9, 1977, April 17, 1978, and August 24, 1978 of then COA Chairman Francisco T. Tantuico, Jr. to Atty. Juan T. David." The point cannot be conceded.

In the first place the "Espiritu decision" was void ab initio. As manager of the COA Technical Service Office, Mr. Espiritu obviously had no power whatever to render and promulgate a decision of or for the Commission. Indeed, even the Chairman, alone, had not that power. As clearly set out in the Constitution then in force, the power was lodged in the Commission on Audit, "composed of a Chairman and two Commissioners." [20] It was the Commission, as a collegial body, which then as now, had the jurisdiction to "(d)ecide any case brought before it within sixty days from the date of its submission for resolution," subject to review by the Supreme Court on certiorari.[21]

Hence, the adoption or ratification of the Espiritu decision by the Acting COA Chairman was inconsequential. Ratification cannot validate an act void ab initio because done absolutely without authority. The act has to be

done anew by the person or entity duly endowed with authority to do so.

Moreover, even conceding the contrary, no proper ratification or validation could have been effected by the Acting Chairman since he was not the Commission, and he himself had no power to decide any case brought before the Commission, that power, to repeat, being lodged only in the Commission itself, as a collegial body.

Parenthetically, the proposition advocated in this connection that Chairman Domingo may no longer question the validity of the Espiritu Decision" (No. 77-142) because in assailing it, he had referred to it as "a decision of the Commission on Audit and not merely of its then Acting Chairman," is so patently unmeritorious as to deserve scant consideration.

2. The petitioner argues that to sanction the foregoing principle would result in the invalidation of "hundreds of decisions and orders signed by or signed by authority of the Acting Chairman Tantuico (alone)," considering that there was an appreciable interval during which only an Acting Chairman had been designated and no other Commissioner had been appointed or was otherwise acting as such. It suffices to rule, as this Court has already had occasion to in an analogous case, that the principle should logically apply only to those particular instances where there was a timely and specific challenge to the authority of the Acting COA Chairman to exercise the power of adjudication or decision; it should not affect all other cases where the parties expressly or by implication accepted the adjudicative authority of the Chairman.[22]

3. The petitioner next contends that the objection -- that the "Espiritu Decision" was "technically invalid due to ** lack of collegiality" -- was waived by failure of Atty. David to raise it in his motion for reconsideration, in which motion he confined his arguments to the merits of the decision, and additionally, by his failure, after denial of his motion for reconsideration, to appeal to the Supreme Court, with the result that the judgment became final and executory as of October 7, 1978.

The contention is also without merit. The record shows --- although the petition does not allege[23] -- that in a letter dated May 10, 1978, Mr. David did dispute Decision No. 77-142 because rendered only by the Manager, Technical Service Office of the COA, and "not (by) the Acting Chairman, much less ** the Commission on Audit" "duly constituted, by the appointment and qualification of its Chairman and two Commissioners," "as specifically provided by Section 2, Article XII-D of the (1973) Constitution." He reiterated the challenge to Acting Chairman Tantuico's constitutional authority to act on the claim on its merits, in his letter dated April 5, 1979, and requested that "the same be submitted for resolution by the Commission on Audit, after the appointment of the two (2) commissioners thereof, as required by Section 2, Article XII-D of the Constitution." [24] And in another communication dated April 20, 1981, Mr. David once more requested that his application for reconsideration be acted on collegially, considering that "a Commissioner has (already) been appointed as member of said Commission."

Furthermore, it must be made clear that the Espiritu Decision was not merely "technically invalid," as the petitioner describes it. It was substantively void ab initio, because rendered without jurisdiction. It had an essential inherent defect that could not be cured or waived.

5. The petitioner also maintains that if the Espiritu Decision, or Decision No. 77-142 be held void because adopted and signed only by Acting COA Chairman Tantuico, then the decision embodied in the 4th Indorsement dated June 22, 1987, signed only by incumbent COA Chairman Domingo, should also be pronounced void. There is no parity in situation. In the first place, when Decision No. 77-142 was rendered, there was no commissioner in the Commission on Audit except the Acting Chairman himself. On the other hand, when the 4th Indorsement dated June 22, 1987 was rendered, there were two (2) members of the Commission: the Chairman, and Commissioner Fernandez, clearly a number sufficient to satisfy the constitutional requirement for collegial action.

Moreover, it is made clear in said 4th Indorsement that the decision therein embodied was that of the Commission, composed of Chairman Domingo and Commissioner Fernandez. The phrase therefore, by which Chairman Domingo describes the capacity in which he acted, i.e., "FOR THE COMMISSION," must be taken as entirely accurate, not only because of the familiar presumption of regularity of performance of official functions, but because the records do show Commissioner Fernandez' full concurrence with the decision in said indorsement. Besides, said 4th Indorsement was ratified and reaffirmed by "COA Decision No. 992" of May 19, 1989 signed by "the full complement of three (3) members of the Commission on Audit,"[25] to the effect inter alia that the 4th Indorsement dated June 22, 1987 (of Chairman Domingo and Commissioner Fernandez) should be "deemed for all legal intents and purposes as the final decision on the matter * * ."

It thus appears that not only does the petition fail to show any grave abuse of discretion on the part of the respondent Commission in the rendition of its decision embodied in the 4th Indorsement dated June 22, 1987 and its Decision No. 992 of May 19, 1989, but that those judgments are in fact in accord with the relevant facts and applicable legal principles.

WHEREFORE, the petition is DISMISSED for lack of merit, without pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Rollo, p. 10

[2] Id., pp. 10, 116

[3] Id., pp. 10, 116-117

[4] Id., pp. 10, 117

[5] Id., pp. 10-13, 117-118

[6] Id., pp. 13, 118

[7] Id., pp. 13-14, 118

[8] Id., pp. 14, 119

[9] Id., pp. 15, 119-120

[10] Id., pp. 120-121

[11] Id., pp. 121-122

[12] Id., pp. 122-124

[13] Id., pp. 15-16, 124-125

[14] Id., pp. 16-17, 125

[15] Id., pp. 17-18, 125-126

[16] Id., p. 126

[17] Id., pp. 18, 126

[18] *Id.*, p. 1

[19] " * * . Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission (Civil Service Commission, Commission on Elections or Commission on Audit) may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

[20] Sec. 1, XII-D, 1973 Constitution

[21] Sec. 2, XII-D, 1973 Constitution. N.B. Under the 1987 Constitution, the COA en banc, like the other constitutional commissions (Civil Service Commission and the COMELEC) is granted express authority to promulgate its own rules concerning pleadings and practice before it or before any of its offices (Sec. 6, ART. IX), and "shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution," subject to review by the Supreme Court on certiorari (Sec. 7, *id.*) (emphasis supplied).

[22] In *Zaldivar v. Sandiganbayan*, G.R. Nos. 79690-707, and *Zaldivar v. Gonzales*, G.R. No. 80578, May 19, 1988, the Court decreed that its ruling that the officer then exercising the office and functions of the Tanodbayan was a usurper, having no authority to conduct preliminary investigations, "shall apply (only) prospectively to cases filed in Court after the promulgation of its ruling but shall not apply to cases filed in Court prior to said resolution and pending trial nor to convictions or acquittals pronounced therein. The exception is where there has been a timely and specific challenge (to such lack of authority)."

[23] SEE page 2, *supra*

[24] *Id.*, pp. 120-121

[25] *Id.*, pp. 17-18, 125-126

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