

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. COMMISSION ON
AUDIT AND PETRON CORPORATION, RESPONDENTS.***G.R. No. 91890. June 09, 1995*

Ponente: ROMERO, J.

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In this special civil action for certiorari and prohibition, petitioner Philippine Airlines, Inc. (PAL) seeks to review, annul and reverse Decision No. 1127 of the Commission on Audit (COA) dated January 5, 1990 and to prohibit, enjoin and prevent COA from enforcing or in any way implementing Department Order No. 19, s. 1974 of the then Department of General Services as implemented by COA Circular No. 78-84, Memorandum No. 498 and Memorandum No. 88-565. COA Decision No. 1127 required PAL to purchase its fuel requirements solely from Petron Corporation (Petron).

PAL is a domestic corporation duly organized and existing under Philippine laws, principally engaged in the air transport business, both domestic and international. At the time of the filing of the petition on February 8, 1990, majority of its shares of stock was owned by the Government Service Insurance System (GSIS), a government corporation.

To assure itself of continuous, reliable and cost-efficient supply of fuel, PAL adopted a system of bidding out its fuel requirements under a multiple supplier set-up whereby PAL awarded to the lowest bidder sixty percent (60%) of its fuel requirements and to the second lowest bidder the remaining forty percent (40%), provided it matched the price of the lowest bidder.

For the period September 1988 to August 1989, the fuel supply requirements of PAL were allocated among Petron, Caltex and Shell in the following proportions:

Total

Location

Petron

Shell

Caltex

Requirements

Mla. Int'l.

36,720[1] (60%)

24,480 (40%)

-

61,200

Mactan Int'l.

1,450 (100%)

--

1,450

Package A[2]

-

13,256 (40%)

19,884 (60%)

33,140

Package B[3]

7,450 (100%)

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7,450

OVERALL

45,620 (44%)

37,736 (37%)

19,884 (19%)

103,240

On August 17, 1989, COA wrote PAL a letter[4] stating:

"It has come to our attention that PAL international fuel supply contracts are expiring this August 31, 1989. In this connection, you are advised to desist from bidding the company's fuel supply contracts, considering that existing regulations require government-owned or controlled corporations and other agencies of government to procure their petroleum product requirements from PETRON Corporation."

The existing regulations referred to in the letter were Department Order No. 19 dated May 1, 1974 of the defunct Department of General Services, COA Office Memorandum No. 498 dated September 12, 1974 and COA Circular No. 78-84 dated August 1, 1978, which required strict compliance with said Department Order No. 19, as well as COA Memorandum No. 88-565 dated August 2, 1988, reiterating COA Circular No. 78-84 and COA

Office Memorandum No. 498. Department Order No. 19 reads as follows:

"SUBJECT :

PROCUREMENT OF PETROLEUM PRODUCTS BY GOVERNMENT.

TO :

All Heads of Departments and Chiefs of Bureaus, Offices and Agencies of the Government.

To give essence to the policy of preference to government resources in the filling of the needs of the government for supplies, it is hereby prescribed that all departments, bureaus, offices and/or agencies of the Philippine government, procure their petroleum product requirements (gasoline, diesel fuel, bunker fuel, jet fuel, aviation oil, marine oil, kerosene lubricants, greases and asphalt) from the PETROPHIL[5] Corporation, a government-owned corporation, whenever these commodities are adequately available and whenever practicable, at prices not exceeding those set by the Oil Industry Commission.

The PETROPHIL Corporation shall furnish copies of the price lists, showing points of delivery, to the Commission on Audit and all prospective government requisitioners.

For statistical purposes, the PETROPHIL Corporation shall render a quarterly report to the Bureau of Supply Coordination (BSC) of deliveries made during the quarter in accordance with the format prescribed by the BSC and to be submitted within forty five (45) days after the end of each quarter.

This Department Order shall take effect immediately.

(SGD.) CONSTANCIO E. CASTAÑEDA
Secretary"

PAL sought reconsideration of the August 17, 1989 advice, reiterating its reasons contained in an earlier letter, for preferring to bid out and secure its fuel supply from more than one supplier and for its contention that Department Order No. 19, s. 1974, as circularized by COA Office Memorandum No. 490, should not apply to PAL.[6]

In a letter[7] dated September 5, 1989, COA denied PAL's request for reconsideration, holding that Department Order No. 19 s. 1974 applied to government-owned or controlled corporations, including subsidiaries. It disposed of PAL's contention that competitive bidding ensured the best price by suggesting that "PAL negotiate with PETRON for the lowest possible price for its fuel requirements and to request PETRON to ensure adequate and continued fuel supply to PAL."

A final appeal for reconsideration was made by PAL in a letter[8] dated September 15, 1989, but this was denied in the now assailed COA Decision No. 1127, the essential portion of which states:

"In this regard, we obtained information from PETRON Corporation that it can easily supply PAL's total jet fuel requirements on a daily basis and that there is an existing Borrow and Loan Agreement (BLA) among oil companies whereby they assist each other during times of product shortfall conformably to industry practice. In view thereof, this Commission is unable to find merit in your justifications for the procurement of petroleum products by PAL from oil companies other than PETRON Corporation thru bidding as an exception to Department Order No. 19, s. 1974 of the then Department of General Services, as implemented by COA Memorandum No. 88-565. Your contention that PAL is not covered by subject department order has already been considered by this Commission when it rendered the decision in question."

Pursuant to Article IX(A), Section 7 of the Constitution, and there being no appeal or any other plain, speedy, adequate and effective remedy in the ordinary course of law from the aforementioned Decision, PAL instituted the present petition, alleging that:

"I

THE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN HOLDING THAT DEPARTMENT ORDER NO. 19 OF THE DEFUNCT DEPARTMENT OF GENERAL SERVICES APPLIES TO PAL

II

THE COA LIKEWISE EXCEEDED ITS JURISDICTION IN EXTENDING THE APPLICATION OF SAID DEPARTMENT ORDER TO PETITIONER

III

ASSUMING ARGUENDO THAT THE ORDER IN QUESTION WAS INTENDED TO COVER PAL, THE SAME CONSTITUTES AN ARBITRARY, CAPRICIOUS, AND WHIMSICAL REGULATION THAT DEPRIVES PETITIONER OF ITS RIGHTS UNDER THE CONSTITUTIONAL GUARANTEE OF SUBSTANTIVE DUE PROCESS."

On May 17, 1990, after COA, through the Office of the Solicitor General, had filed its Comment on the petition, the Court resolved "to dismiss the petition, there being no grave abuse of discretion committed by the respondent Commission on Audit in rendering the questioned decision." [9] PAL moved for reconsideration; whereupon, the Court resolved on July 10, 1990 to implead Petron Corporation as respondent in the case and to require both COA and Petron to comment on the motion for reconsideration. [10]

Respondents having filed their respective Comments and petitioner, its Reply to the Comments, the motion for reconsideration was set for hearing on November 13, 1990. Thereafter, the Court resolved to grant the motion for reconsideration, reinstate the petition, consider the respondent's comment as Answer to the petition, give due course to the petition and require the parties to file simultaneously their respective Memoranda. [11] The Court further resolved to issue a temporary restraining order directing the respondent COA, or any other officer or subordinate official thereof to cease and desist from enforcing its Decision No. 1127.

Once again, we find ourselves compelled to dismiss the petition. Pursuant to the government's privatization program, PAL's shares of stock were bidded out early this year, resulting in the acquisition by PR Holdings, a private corporation, of 67% of PAL's outstanding stocks. PAL, having ceased to be a government-owned or controlled corporation, is no longer under the audit jurisdiction of the COA. Accordingly, the question raised in this petition has clearly become moot and academic.

Had it not been for this supervening event, PAL would have obtained the relief sought in the instant petition. For although COA was correct in ruling that Department Order No. 19 applied to PAL as a government agency at the time, it nonetheless gravely abused its discretion in not exempting PAL therefrom.

The COA is clothed under Section 2(2), Article IX-D of the 1987 Constitution with the "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties." The authority granted under this constitutional provision, being broad and comprehensive enough, enables COA to adopt as its own, simply by reiteration or by reference, without the necessity of repromulgation, already existing rules and regulations. It may also expand the coverage thereof to agencies or instrumentalities under its audit jurisdiction. It is in this light that we view COA Memorandum No. 88-565 issued on August 1, 1988.

As asserted by the Solicitor General, while Memorandum No. 88-565 still referred to Office Memorandum No.

498, dated September 12, 1974 requiring strict compliance with Department Order No. 19 dated May 1, 1974, in restating in full said Department Order No. 19 in Memorandum No. 88-565, COA effectively adopted it as its own, thereby expanding its coverage to government-owned or controlled corporations. Such action was in consonance with its jurisdiction as defined under the 1987 Constitution, as follows,

"Sec. 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations with original charters and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law of the granting institution to submit to such audit as a condition of subsidy or equity. x x x"

as well as the settled legal meaning of the phrase "agency of the Government," as incorporated in Section 2, Chapter I, Subtitle B, of the Revised Administrative Code of 1987, thus:

"(8) 'Government agency' or 'agency of the government,' or 'agency' refers to any department, bureau or office of the National Government, or any of its branches and instrumentalities, or any political sub-division, as well as any government-owned or controlled corporation, including its subsidiaries or other self-governing board or commission of the Government."

As a corporation, the majority shares of stocks of which were owned by the GSIS at that time, PAL could not hope to escape the operation of Memorandum No. 88-565.

Be that as it may, it must be noted that Department Order No. 19 itself states that the procurement of petroleum product requirements from the then PETROPHIL, now PETRON Corporation, is prescribed "whenever these commodities are adequately available and whenever practicable, at prices not exceeding those set by the Oil Industry Commission."

In its letters of reconsideration addressed to COA, PAL stated the reasons why procuring all its fuel requirements from PETRON Corporation might not be practicable. One reason was that bidding gave the best and lowest prices. If compelled to purchase all of its fuel needs from PETRON, PAL stood to lose some P34,055,377.00; indeed, a considerable amount for a corporation trying to effect a financial turnabout, and consequently, an additional burden to the riding public which has to eventually shoulder the added operating costs.

Another reason given by PAL was that relying on a single fuel supplier would put into jeopardy the regularity of its services, as there were possible contingencies not within PETRON's control which could cause a disruption of fuel supply. In fact, during the pendency of the petition, PETRON gave notice to PAL of its inability at the time to serve PAL's requirement at Nichols/Cebu/Davao/Zamboanga and suggested that PAL arrange with its other suppliers for the balance of its needs by simply extending all of its existing contracts covering domestic fuels.

The reasons given by PAL for seeking exemption from the operation of Department Order No. 19 were, to our mind, meritorious. They far outweigh the policy enunciated in Department Order No. 19 of giving preference to government sources in the filling of the needs of the government for supplies. Thus, PAL'S bidding requirement conformed to the accepted policy of the government to subject every transaction/contract to public bidding in order to protect public interest by giving the public the best possible advantages thru open competition and to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[12]

Its multiple supplier set-up was designed precisely to meet every contingency that might disrupt its fuel supply. It

bespoke of foresight, careful planning and sound business judgment on the part of PAL. As a business operation heavily dependent on fuel supply, for PAL to rely solely on a single supplier would indeed be impracticable. To compel it to do so would amount to a grave abuse of discretion on its part as this might well lead to irregular, excessive or unconscionable expenditures, the very evil sought to be avoided in the creation of the COA.

This, however, is so much water under the bridge. PAL's corporate complexion having changed during the pendency of the instant petition from government-controlled to private ownership, we dismiss the petition for being moot and academic.

WHEREFORE, the petition is hereby DISMISSED for being moot and academic. No pronouncement as to costs.

SO ORDERED.

Regalado, Davide, Jr., Melo, Kapunan, and Francisco, JJ., concur.

Padilla, Puno, Vitug, and Mendoza, JJ., concur in the result.

Narvasa, C.J., Feliciano, Bellosillo, and Quason, JJ., on leave.

[1] All figures in Thousand U.S. Gallons.

[2] Nichols, Mactan Domestic, Davao, Zamboanga.

[3] Iloilo, Cagayan de Oro, Bacolod, Tacloban, Cotabato, Legazpi, Puerto Princesa, Tuguegarao, Laoag.

[4] Annex "C", Petition, Rollo, p. 34.

[5] Now PETRON.

[6] Annex "D", Ibid., Rollo, p. 35.

[7] Annex "E", Ibid., Rollo, pp. 36-37.

[8] Annex "F", Petition, Rollo, pp. 38-40.

[9] Rollo, p. 85.

[10] Resolution dated July 10, 1990, Rollo, p. 102-A.

[11] Resolution of November 13, 1990, Rollo, pp. 191-192.

[12] Danville Maritime, Inc. v. Commission on Audit, G.R. No. 85285, July 28, 1989, 175 SCRA 701.

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