

JOHN H. OSMEÑA, PETITIONER, VS. OSCAR ORBOS, IN HIS CAPACITY AS EXECUTIVE SECRETARY; JESUS ESTANIS-LAO, IN HIS CAPACITY AS SECRETARY OF FIN-ANCE; WENCESLAO DELA PAZ, IN HIS CA-P...

G.R. No. 99886. March 31, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The petitioner seeks the corrective,[1] prohibitive and coercive remedies provided by Rule 65 of the Rules of Court,[2] upon the following posited grounds, viz.: [3]

- 1) the invalidity of the "TRUST ACCOUNT" in the books of account of the Ministry of Energy (now, the Office of Energy Affairs), created pursuant to § 8, paragraph 1, of P. D. No. 1956, as amended, "said creation of a trust fund being contrary to Section 29 (3), Article VI of the ** Constitution;"[4]
- 2) the unconstitutionality of § 8, paragraph 1 (c) of P. D. No. 1956, as amended by Executive Order No. 137, for "being an undue and invalid delegation of legislative power ** to the Energy Regulatory Board;"[5]
- 3) the illegality of the reimbursements to oil companies, paid out of the Oil Price Stabilization Fund,[6] because it contravenes § 8, paragraph 2 (2) of P. D. 1956, as amended; and
- 4) the consequent nullity of the Order dated December 10, 1990 and the necessity of a rollback of the pump prices and petroleum products to the levels prevailing prior to the said Order.

It will be recalled that on October 10, 1984, President Ferdinand Marcos issued P. D. 1956 creating a Special Account in the General Fund, designated as the Oil Price Stabilization Fund (OPSF). The OPSF was designed to reimburse oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustments and from increases in the world market prices of crude oil.

Subsequently, the OPSF was reclassified into a "trust liability account," in virtue of E. O. 1024,[7] and ordered released from the National Treasury to the Ministry of Energy. The same Executive Order also authorized the investment of the fund in government securities, with the earnings from such placements accruing to the fund.

President Corazon C. Aquino, amended P. D. 1956. She promulgated Executive Order No. 137 on February 27, 1987, expanding the grounds for reimbursement to oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products, the amount of the underrecovery being left for determination by the Ministry of Finance.

Now, the petition alleges that the status of the OPSF as of March 31, 1991 showed a "Terminal Fund Balance deficit" of some P12.877 billion;[8] that to abate the worsening deficit, "the Energy Regulatory Board ** issued an Order on December 10, 1990, approving the increase in pump prices of petroleum products," and at the rate of recoupment, the OPSF deficit should have been fully covered in a span of six (6) months, but this notwithstanding, the respondents -- Oscar Orbos, in his capacity as Executive Secretary; Jesus Estanislao, in his

capacity as Secretary of Finance; Wenceslao de la Paz, in his capacity as Head of the Office of Energy Affairs; Chairman Rex V. Tantiogco and the Energy Regulatory Board -- "are poised to accept, process and pay claims not authorized under P. D. 1956." [9]

The petition further avers that the creation of the trust fund violates § 29 (3), Article VI of the Constitution, reading as follows:

"(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purposes only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government."

The petitioner argues that "the monies collected pursuant to ** P. D. 1956, as amended, must be treated as a 'SPECIAL FUND,' not as a 'trust account' or a 'trust fund,' and that "if a special tax is collected for a specific purpose, the revenue generated therefrom shall 'be treated as a special fund' to be used only for the purpose indicated, and not channeled to another government objective." [10] Petitioner further points out that since "a 'special fund' consists of monies collected through the taxing power of a State, such amounts belong to the State, although the use thereof is limited to the special purpose/objective for which it was created." [11]

He also contends that the "delegation of legislative authority" to the ERB violates § 28 (2), Article VI of the Constitution, viz.:

"(2) The Congress may, by law, authorize the President to fix, within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government";

and, inasmuch as the delegation relates to the exercise of the power of taxation, "the limits, limitations and restrictions must be quantitative, that is, the law must not only specify how to tax, who (shall) be taxed, (and) what the tax is for, but also impose a specific limit on how much to tax." [12]

The petitioner does not suggest that a "trust account" is illegal per se, but maintains that the monies collected, which form part of the OPSF, should be maintained in a special account of the general fund for the reason that the Constitution so provides, and because they are, supposedly, taxes levied for a special purpose. He assumes that the Fund is formed from a tax, undoubtedly because a portion thereof is taken from collections of ad valorem taxes and the increases thereon.

It thus appears that the challenge posed by the petitioner is premised primarily on the view that the powers granted to the ERB under P. D. 1956, as amended, partake of the nature of the taxation power of the State. The Solicitor General observes that the "argument rests on the assumption that the OPSF is a form of revenue measure drawing from a special tax to be expended for a special purpose." [13] The petitioner's perceptions are, in the Court's view, not quite correct.

To address this critical misgiving in the position of the petitioner on these issues, the Court recalls its holding in *Valmonte v. Energy Regulatory Board, et al.* [14]--

"The foregoing arguments suggest the presence of misconceptions about the nature and functions of the OPSF. The OPSF is a 'Trust Account' which was established 'for the purpose of minimizing the frequent price changes brought about by exchange rate adjustment and/or changes in world market prices of crude oil and imported petroleum products.' [15] Under P. D. No. 1956, as amended by Executive Order No. 137 dated 27 February 1987, this Trust Account may be funded from any of the following sources:

"a) Any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of

Finance in consultation with the Board of Energy;

- b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Minister of Finance in consultation with the Board of Energy;
- c) Any additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate Order that may be issued by the Board of Energy requiring payment of persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;
- d) Any resulting peso cost differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Board of Energy."

The fact that the world market prices of oil, measured by the spot market in Rotterdam, vary from day to day is of judicial notice. Freight rates for hauling crude oil and petroleum products from sources of supply to the Philippines may also vary from time to time. The exchange rate of the peso vis-a-vis the U. S. dollar and other convertible foreign currencies also changes from day to day. These fluctuations in world market prices and in tanker rates and foreign exchange rates would in a completely free market translate into corresponding adjustments in domestic prices of oil and petroleum products with sympathetic frequency. But domestic prices which vary from day to day or even only from week to week would result in a chaotic market with unpredictable effects upon the country's economy in general. The OPSF was established precisely to protect local consumers from the adverse consequences that such frequent oil price adjustments may have upon the economy. Thus, the OPSF serves as a pocket, as it were, into which a portion of the purchase price of oil and petroleum products paid by consumers as well as some tax revenues are inputted and from which amounts are drawn from time to time to reimburse oil companies, when appropriate situations arise, for increases in, as well as underrecovery of, costs of crude importation. The OPSF is thus a buffer mechanism through which the domestic consumer prices of oil and petroleum products are stabilized, instead of fluctuating every so often, and oil companies are allowed to recover those portions of their costs which they would not otherwise recover given the level of domestic prices existing at any given time. To the extent that some tax revenues are also put into it, the OPSF is in effect a device through which the domestic prices of petroleum products are subsidized in part. It appears to the Court that the establishment and maintenance of the OPSF is well within that pervasive and non-waivable power and responsibility of the government to secure the physical and economic survival and well-being of the community, that comprehensive sovereign authority we designate as the police power of the State. The stabilization, and subsidy of domestic prices of petroleum products and fuel oil -- clearly critical in importance considering, among other things, the continuing high level of dependence of the country on imported crude oil -- are appropriately regarded as public purposes."

Also of relevance is this Court's ruling in relation to the sugar stabilization fund the nature of which is not far different from the OPSF. In *Gaston v. Republic Planters Bank*,^[16] this Court upheld the legality of the sugar stabilization fees and explained their nature and character, viz.:

"The stabilization fees collected are in the nature of a tax, which is within the power of the State to impose for the promotion of the sugar industry (*Lutz v. Araneta*, 98 Phil. 148). * * * The tax collected is not in a pure exercise of the taxing power. It is levied with a regulatory purpose, to provide a means for the stabilization of the sugar industry. The levy is primarily in the exercise of the police power of the State (*Lutz v. Araneta*, *supra*).

* * * * *

"The stabilization fees in question are levied by the State upon sugar millers, planters and producers for a special purpose -- that of 'financing the growth and development of the sugar industry and all its components,

stabilization of the domestic market including the foreign market.' The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them state funds, even though they are held for a special purpose (*Lawrence v. American Surety Co.* 263 Mich. 586, 249 ALR 535, cited in 42 Am Jur Sec. 2, p. 718). Having been levied for a special purpose, the revenues collected are to be treated as a special fund, to be, in the language of the statute, 'administered in trust' for the purpose intended. Once the purpose has been fulfilled or abandoned, the balance if any, is to be transferred to the general funds of the Government. That is the essence of the trust intended (SEE 1987 Constitution, Article VI, Sec. 29(3), lifted from the 1935 Constitution, Article VI, Sec. 23[1].)[17]

"The character of the Stabilization Fund as a special kind of fund is emphasized by the fact that the funds are deposited in the Philippine National Bank and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law (1987) Constitution, Article VI, Sec. 29 (3), lifted from the 1935 Constitution, Article VI, Sec. 23(1)." (Italics supplied.)

Hence, it seems clear that while the funds collected may be referred to as taxes, they are exacted in the exercise of the police power of the State. Moreover, that the OPSF is a special fund is plain from the special treatment given it by E. O. 137. It is segregated from the general fund; and while it is placed in what the law refers to as a "trust liability account," the fund nonetheless remains subject to the scrutiny and review of the COA. The Court is satisfied that these measures comply with the constitutional description of a "special fund." Indeed, the practice is not without precedent.

With regard to the alleged undue delegation of legislative power, the Court finds that the provision conferring the authority upon the ERB to impose additional amounts on petroleum products provides a sufficient standard by which the authority must be exercised. In addition to the general policy of the law to protect the local consumer by stabilizing and subsidizing domestic pump rates, § 8(c) of P. D. 1956[18] expressly authorizes the ERB to impose additional amounts to augment the resources of the Fund.

What petitioner would wish is the fixing of some definite, quantitative restriction, or "a specific limit on how much to tax." [19] The Court is cited to this requirement by the petitioner on the premise that what is involved here is the power of taxation; but as already discussed, this is not the case. What is here involved is not so much the power of taxation as police power. Although the provision authorizing the ERB to impose additional amounts could be construed to refer to the power of taxation, it cannot be overlooked that the overriding consideration is to enable the delegate to act with expediency in carrying out the objectives of the law which are embraced by the police power of the State.

The interplay and constant fluctuation of the various factors involved in the determination of the price of oil and petroleum products, and the frequently shifting need to either augment or exhaust the Fund, do not conveniently permit the setting of fixed or rigid parameters in the law as proposed by the petitioner. To do so would render the ERB unable to respond effectively so as to mitigate or avoid the undesirable consequences of such fluidity. As such, the standard as it is expressed, suffices to guide the delegate in the exercise of the delegated power, taking account of the circumstances under which it is to be exercised.

For a valid delegation of power, it is essential that the law delegating the power must be (1) complete in itself, that is it must set forth the policy to be executed by the delegate and (2) it must fix a standard - limits of which are sufficiently determinate or determinable -- to which the delegate must conform.[20]

"* * *As pointed out in *Edu v. Ericta*: 'To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it.

It indicates the circumstances under which the legislative command is to be effected. It is the criterion by which the legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations. The standard may either be express or implied. If the former, the non-delegation objection is easily met. The standard though does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole.”[21]

It would seem that from the above-quoted ruling, the petition for prohibition should fail.

The standard, as the Court has already stated, may even be implied. In that light, there can be no ground upon which to sustain the petition, inasmuch as the challenged law sets forth a determinable standard which guides the exercise of the power granted to the ERB. By the same token, the proper exercise of the delegated power may be tested with ease. It seems obvious that what the law intended was to permit the additional imposts for as long as there exists a need to protect the general public and the petroleum industry from the adverse consequences of pump rate fluctuations. "Where the standards set up for the guidance of an administrative officer and the action taken are in fact recorded in the orders of such officer, so that Congress, the courts and the public are assured that the orders in the judgment of such officer conform to the legislative standard, there is no failure in the performance of the legislative functions."[22]

This Court thus finds no serious impediment to sustaining the validity of the legislation; the express purpose for which the imposts are permitted and the general objectives and purposes of the fund are readily discernible, and they constitute a sufficient standard upon which the delegation of power may be justified.

In relation to the third question -- respecting the illegality of the reimbursements to oil companies, paid out of the Oil Price Stabilization Fund, because allegedly in contravention of § 8, paragraph 2 (2) of P. D. 1956, as amended[23] -- the Court finds for the petitioner.

The petition assails the payment of certain items or accounts in favor of the petroleum companies (i.e., inventory losses, financing charges, fuel oil sales to the National Power Corporation, etc.) because not authorized by law. Petitioner contends that "these claims are not embraced in the enumeration in § 8 of P. D. 1956 ** since none of them was incurred 'as a result of the reduction of domestic prices of petroleum products,'"[24] and since these items are reimbursements for which the OPSF should not have responded, the amount of the P 12.877 billion deficit "should be reduced by P 5,277.2 million." [25] It is argued "that under the principle of ejusdem generis * * * the term 'other factors' (as used in § 8 of P. D. 1956) ** can only include such 'other factors' which necessarily result in the reduction of domestic prices of petroleum products." [26]

The Solicitor General, for his part, contends that "(t)o place said (term) within the restrictive confines of the rule of ejusdem generis would reduce (E. O. 137) to a meaningless provision."

This Court, in *Caltex Philippines, Inc. v. The Honorable Commissioner on Audit, et al.*, [27] passed upon the application of ejusdem generis to paragraph 2 of § 8 of P. D. 1956, viz.:

“The rule of ejusdem generis states that '[w]here words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are held to be as applying only to persons or things of the same kind or class as those specifically mentioned.' [28] A reading of subparagraphs (i) and (ii) easily discloses that they do not have a common characteristic. The first relates to price reduction as directed by the Board of Energy while the second refers to reduction in internal ad valorem taxes. Therefore, subparagraph (iii) cannot be limited by the enumeration in these subparagraphs. What should be considered for purposes of determining the 'other factors' in subparagraph (iii) is the first sentence of paragraph (2) of the Section which explicitly allows the cost underrecovery only if such were incurred as a result of the reduction of domestic prices of petroleum products.”

The Court thus holds, that the reimbursement of financing charges is not authorized by paragraph 2 of § 8 of P.D. 1956, for the reason that they were not incurred as a result of the reduction of domestic prices of petroleum products. Under the same provision, however, the payment of inventory losses is upheld as valid, being clearly a result of domestic price reduction, when oil companies incur a cost underrecovery for yet unsold stocks of oil in inventory acquired at a higher price.

Reimbursement for cost underrecovery from the sales of oil to the National Power Corporation is equally permissible, not as coming within the provisions of P. D. 1956, but in virtue of other laws and regulations as held in Caltex [29] and which have been pointed to by the Solicitor General. At any rate, doubts about the propriety of such reimbursements have been dispelled by the enactment of R. A. 6952, establishing the Petroleum Price Standby Fund, § 2 of which specifically authorizes the reimbursement of "cost underrecovery incurred as a result of fuel oil sales to the National Power Corporation."

Anent the overpayment refunds mentioned by the petitioner, no substantive discussion has been presented to show how this is prohibited by P. D. 1956. Nor has the Solicitor General taken any effort to defend the propriety of this refund. In fine, neither of the parties, beyond the mere mention of overpayment refunds, has at all bothered to discuss the arguments for or against the legality of the so-called overpayment refunds. To be sure, the absence of any argument for or against the validity of the refund cannot result in its disallowance by the Court. Unless the impropriety or illegality of the overpayment refund has been clearly and specifically shown, there can be no basis upon which to nullify the same.

Finally, the Court finds no necessity to rule on the remaining issue, the same having been rendered moot and academic. As of date hereof, the pump rates of gasoline have been reduced to levels below even those prayed for in the petition.

WHEREFORE, the petition is GRANTED insofar as it prays for the nullification of the reimbursement of financing charges, paid pursuant to E. O. 137, and DISMISSED in all other respects.

SO ORDERED.

Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.

Gutierrez, Jr., J., on terminal leave.

[1] The writ of certiorari is, of course, available only as against tribunals, boards or officers exercising judicial or quasi-judicial functions.

[2] The petition alleges separate causes or grounds for each extraordinary writ sought.

[3] Rollo, pp. 1 to 4.

[4] Rollo, p. 2.

[5] Id.

[6] When this petition was filed, the amount involved was P 5,277.4 million.

[7] Issued on 9 May 1985.

[8] Rollo, pp. 8-9.

[9] Rollo, p. 11; italics supplied.

[10] *Id.*, pp. 13-4.

[11] *Id.*, p. 15.

[12] Rollo, p. 17.

[13] Comment of the Respondents; Rollo, p. 63.

[14] G. R. Nos. L-79501-03 [23 June 1988] 162 SCRA 521; Decided jointly with *Citizen's Alliance for Consumer Protection v. Energy Regulatory Board et al.*, G. R. Nos. L- 78888-90, and *Kilusang Mayo Uno Labor Center v. Energy Regulatory Board, et al.*, G. R. Nos. L-79590-92; italics supplied.

[15] Citing E. O. No. 137, Sec. 1 (amending § 8 of P. D. 1956).

[16] 158 SCRA 626; italics supplied.

[17] "(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government." (1987 Constitution, Art. VI, Sec. 28[3]).

[18] *Supra*; see footnote 14 and related text

[19] Rollo, p. 17

[20] *SEE Vigan Electric Light Co., Inc. v. Public Service Commission*, G. R. No. L-19850, 30 January 1964 and *Pelaez v. Auditor General*, G. R. No. L-23825, 24 December 1965; see also *Gonzales, N. Administrative Law.-- A Text*, (1979) at 29.

[21] *De La Llana v. Alba*, 112 SCRA 294, citing *Edu v. Ericta*, 35 SCRA 481; Cf. *Agustin v. Edu* 88 SCRA 195.

[22] *Hirabayashi v. U.S.*, 390 U.S. 99

[23] When this petition was filed, the amount involved was P5,277.4 million.

[24] Rollo, p. 20.

[25] *Id.*, p. 21

[26] *Id.*, p. 20.

[27] *Caltex Philippines, Inc. v. The Honorable Commissioner on Audit, et al.*, G. R. No. 92585, 8 May 1992, En Banc. N. B. — The Solicitor General seems to have taken a different position in this case, with respect to the application of *ejusdem generis*.

[28] *Smith Bell and Co., Ltd. v. Register of Deeds of Davao*, 96 Phil. 53 [1954], citing *BLACK on Interpretation of Law*, 2nd ed. at 203; see also *Republic v. Migrino* 189 SCRA 289 [1990].

[29] *Supra* at note 25; SEE also *Maceda v. Hon. Catalino Macaraig, Jr., et al.*, G.R. No. 88291, 197 SCRA 771 (1991)

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