34 Phil. 136

[G.R. No. 11216. March 06, 1916]

COMPANIA GENERAL DE TABACOS DE FILIPINAS, PETITIONER, VS. THE BOARD OF PUBLIC UTILITY COMMISSIONERS, RESPONDENT.

D E C I S I O N

MORELAND, J.:

This is an appeal from, or a petition for review of, an order of the Board of Public Utility Commissioners of the Philippine Islands, requiring the petitioner to file a detailed report of its finances and operations in the form set forth in the petition.

The petitioner alleges that it is a foreign corporation organized under the laws of Spain and engaged in business in the Philippine Islands as a common carrier of passengers and merchandise by water; that on or about the 7th day of June, 1915, the Board of Public Utility Commissioners issued and caused to be served on petitioner an order to show cause why petitioner should not be required to present detailed annual reports respecting its finances and operations respecting the vessels owned and operated by it, in the form and containing the matters indicated by the model attached to the petition; that after a hearing the Board of Public Utility Commissioners dictated an order in the following terms: "The respondent is therefore ordered to present annually on or before March first of each year a detailed report of finances and operations of such vessels as are operated by it as a common carrier within the Philippine Islands, in the form and containing the matters indicated in the model of annual report which accompanied the order to show cause herein." The model referred to is made a part of this opinion and may be found in an appendix thereto.

On its return to the order to show cause before the Board of Public Utility Commissioners the petitioner denied the authority of the board to require the report asked for on the ground that the provision of Act No. 2307 relied on by said board as authority for such requirement was, if construed as conferring such power, invalid as constituting an unlawful attempt on the part of the Legislature to delegate legislative power to the board. The

petitioner also answered that the requirements of the board with respect to the proposed report were "cumbersome and unnecessarily prolix and that the preparation of the same would entail an immense amount of clerical work."

The case coming here under the provision of section 37 of said Act No. 2307, the petitioner raises the same questions that it presented to the Board of Public Utility Commissioners in its answer to the order to show cause.

The section of Act No. 2307 under which the Board of Public Utility Commissioners relies for its authority, so far as pertinent to the case at hand, reads as follows:

> "Sec. 16. The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:
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> * * * * * * *
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> "(*e*) To furnish annually a detailed report of finances and operations, in such form and containing such matters as the Board may from time to time by order prescribe."

As is apparent at a glance the provision conferring authority on the board is very general. It is also very comprehensive. It calls for a detailed report of the finances and operations of the petitioning steamship company. That, it would seem, covers substantially everything; for there is very little to a steamship company but its finances and operations. It would have been practically the same if the statute had given the Board of Public Utility Commissioners power "to require every public utility to furnish annually a detailed report." Such provision would have been but little broader and little less general than the present provision. It is clear that a statute which authorizes a Board of Public Utility Commissioners to require detailed reports from 'public utilities, leaving the nature of the report, the contents thereof, the general lines which it shall follow, the principle upon which it shall proceed, indeed, all other matters whatsoever, to the exclusive discretion of the board, is not expressing its own will or the will of the State with respect to the public utilities to which it refers. Such a provision does not declare, or set out, or indicate what information the State requires, what is valuable to it, what it needs in order to impose correct and just taxation, supervision or

control, or the facts which the State must have in order to deal justly and equitably with such public utilities and to require them to deal justly and equitably with the State. The Legislature seems simply to have authorized 'the Board of Public Utility Commissioners to require what information *the board* wants. It would seem that the Legislature, by the provision in question, delegated to the Board of Public Utility Commissioners all of its powers over a given subject-matter in a manner almost absolute and without laying down a rule or even making a suggestion by which that power is to be directed, guided or applied.

In the case of Cincinnati, W. & Z. R. R. Co. *vs.* Clinton County Comrs. (1 Ohio St., 77), the court, dealing with the question of whether a power is strictly legislative, or administrative, or merely relates to the execution of the law, said:

> "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

This principle was applied in the case of Dowling *vs.* Lancashire Insurance Co. (92 Wis., 63). In that case the statute provided that the insurance commissioner shall prepare, approve and adopt a printed form of fire insurance policy to conform as nearly as might be to that used in the State of New York. The Wisconsin Supreme Court held that to be a delegation of legislative power saying:

> "The act, in our judgment, wholly fails to provide definitely and clearly what the standard policy should contain, so that it could be put in use as a uniform policy required to take the place of all others, without the determination of the insurance commissioner in respect to matters involving the exercise of a legislative discretion that could not be delegated, and without which the act could not possibly be put in use, as an act in conformity to which all fire insurance policies were required to be issued."

The court also said:

> "The result of all the cases on this subject is that a law must be complete, in all

> its terms and provisions, when it leaves the legislative branch of the government, and nothing must be left to the judgment of the electors or other appointee or delegate of the legislature, so that, in form and substance, it is a law in all its details, *in presenti*, but which may be left to take effect *in futuro*, if necessary, upon the ascertainment of any prescribed fact or event."

In the case of Birdsall *vs.* Clark (73 N. 3f., 73), the court said:

> "If discretion and judgment are to be exercised, either as to time or manner, the body or officer intrusted with the duty must exercise it, and cannot delegate it to any other officer or person."

See also King *vs.* Concordia Fire Insurance Co. (140 Mich., 268); O'Neil *vs.* Fire Insurance Co. (166 Pa. St., 72) ; Anderson *vs.* Manchester Fire Assurance Co. (59 Minn., 182).

In the case of State *ex rel.* Adams *vs.* Burdge (95 Wis., 390), a statute authorizing1 the state board of health "to make rules and regulations, and to take such measures as may in its judgment be necessary for the protection of the people of the state from Asiatic cholera, or other dangerous contagious diseases" and declaring that the term "dangerous and contagious diseases," as used in the act, "shall be construed and understood to mean such diseases as the state board of health shall designate as contagious and dangerous to the public health," was held to "import and include an absolute delegation of the legislative power over the entire subject here involved," and was therefore declared unconstitutional.

In the case of Merchants Exchange *vs.* Knott (212 Mo., 616), in declaring unconstitutional, on the ground of delegation of legislative power, a statute authorizing the Board of Railroad and Warehouse Commissioners to establish state inspection of grain "at such places or in such territory * * * as in their opinion may be necessary," the court said:

> "It is obvious that the foregoing grant of power is given without statutory landmark, compass, map, guide-post or corner-stone in one whit controlling its exercise or prescribing its channel, or indicative of any certain intendment of the legislative mind, beyond the mere grant. In essence it is the power of pure and simple despotism."

Commenting on the statute, the court further said:

> "True, the act was passed by the General Assembly, approved by the Chief Executive and stands published as authenticated law, but to all intents and purposes it is only a barren ideality, having such life as is thereafter breathed into it from an unconstitutional source. No Missourian may know whether it applies to him or his concerns, as a rule of civil conduct, or will ever apply until in the 'opinion' of the commissioners it 'may be' considered 'necessary'.
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> "The General Assembly may not clip itself of one iota of its lawmaking power by a voluntary delegation of any element of it—by putting its constitutional prerogatives, its conscience and wisdom, 'into commission'."

In the case of Schaezlein *vs.* Cabaniss (135 Cal., 466), the question before the court was the validity of the following provision of the state law of California;

> "If in any factory or workshop any process or work is carried on by which dust, filaments, or injurious gases are generated or produced that are liable to be inhaled by the persons employed therein, and it appears to the commissioner * * * that such inhalation could, to a great extent, be prevented by the use of some mechanical contrivance, he shall direct that such contrivance shall be provided, and within a reasonable time it shall be so provided and used."

Another section of the same act made it a misdemeanor for any person to violate any of the provisions of the act including those above quoted. Respecting the validity of the act the court said:

> "The manifest objection to this law is, that upon the commission has been imposed not the duty to enforce a law of the legislature, but the power to make a law for the individual, and to enforce such rules of conduct as he may prescribe. It is thus arbitrary, special legislation, and violative of the constitution."

The decision in the case of Interstate Commerce Commission *vs.* Goodrich Transit Co. (224 U. S., 194) seems, by implication at least, to bear out the theory on which we are deciding

this case. The question there involved the validity of an act authorizing the Interstate Commerce Commission to prescribe the form of accounts, records and memorandums to be kept by carriers, and to require such carriers to make annual reports to the commission with respect to certain information defined in the act. One of the questions raised by the steamship company was that section 20 constituted an invalid delegation of legislative power to the commission. The Supreme Court held that there was no delegation of legislative power, but said:

> "The Congress may not delegate its purely legislative powers to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress. * * *
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> "In section 20 (of the Commerce Act), Congress has authorized the commission to require annual reports. *The act itself prescribes in detail what those reports shall contain.* * * * In other words, Congress has laid down general rules for the guidance of the Commission, leaving to it *merely the carrying out of details* in the exercise of the power so conferred. This, we think, is not a delegation of legislative authority."

In another part of the same decision the court said with reference to the form of reports called for by the Interstate Commerce Commission:

> "But such report is no broader than the annual report of such carriers, as prescribed by section 20 of the Act."

See also Field *vs.* Clark (143 U. S., 649); State *vs.* Great Northern Ry. Co. (100 Minn., 445).

The Attorney-General lays great stress on the case of Kansas City So. Ry. Co. *vs.* United State (231 U. S., 423). That case, however, so far as it touched the question of delegation of legislative power, was decided on the principles governing the case of Interstate Commerce Commission *vs.* Goodrich Transit Co., *supra*. Section 20 of the Act referred to in that and in the Goodrich case sets out in detail the form which the accounts shall take and the matters they shall contain, and even goes into considerable detail with regard to the classification of

the carriers' accounts. In that case the court said:

> "It amounts, after all, to no more than laying down the general rules of action under which the Commission shall proceed, and leaving it to the Commission to apply those rules to particular situations and circumstances by the establishment and enforcement of administrative regulations."

In the case at bar the provision complained of does not lay "down the general rules of action under which the commission shall proceed," nor does it itself prescribe in detail what those reports shall contain. Practically everything is left to the judgment and discretion of the Board of Public Utility Commissioners, which is unrestrained as to when it shall act, why it shall act, how it shall act, to what extent it shall act, or what it shall act upon.

We believe that the Legislature, by the provision in question, has abdicated its powers and functions in favor of the Board of Public Utility Commissioners with respect to the matters therein referred to, and that such Act is in violation of the Act of Congress of July 1, 1902. We believe that the Legislature, by the provision referred to, has not asked for the information which the *State* wants but has authorized the board to obtain the information which the *board* wants.

The order appealed from is set aside and the cause is returned to the Board of Public Utility Commissioners with instructions to dismiss the proceeding. So ordered.

Arellano, C. J., Torres and *Araullo, JJ.,* concur.
Carson and *Trent, JJ.,* dissent.

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