43 Phil. 259

[G. R. No. 18740. March 29, 1922]

WALTER E. OLSEN & CO., INC., PETITIONER, VS. VICENTE ALDANESE, AS INSULAR COLLECTOR OF CUSTOMS, AND W. TRINIDAD, AS COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

STATEMENT

The plaintiff is a duly licensed domestic corporation with its principal office and place of business in the city of Manila and engaged in the manufacture and export of cigars made of tobacco grown in the Philippine Islands.

The defendant, Vicente Aldanese, is the Insular Collector of Customs, and the defendant, W. Trinidad, is the Collector of Internal Revenue of the Philippine Islands.

As grounds for its petition, plaintiff alleges that, under the law of Congress of October 3, 1913, known as the Tariff Act, it had the legal right to export from the Philippine Islands into the United States cigars which it manufactured from tobacco grown in the Philippine Islands, quoting paragraph C of section 4, and paragraph F of subsection 1 of the Act. That on February 4, 1916, the Philippine Legislature enacted Law No. 2613 entitled "An Act to improve the methods of production and the quality of tobacco in the Philippines and to develop the export trade therein," quoting sections 6,1, and 11 of the Act. It is then alleged that on March 1, 1918, the Collector of Internal Revenue promulgated Administrative Order No. 35, known as "Tobacco Inspection Regulations," quoting section 9. The petition then quotes sections 1 and 8 of article 1 of the Constitution of the United States, and section 10 of the Act of Congress of August 29, 1916, known as "The Jones Law," which provides as follows:

"That while this Act provides that the Philippine Government shall have the

> authority to enact a Tariff Law the trade relations between the Islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States."

It is also alleged "that large quantities of tobacco are grown in the provinces of La Union, Pangasinan, and other provinces of the Philippine Islands which are manufactured by the petitioner and by other cigar factories of the Philippines into wholesome and sanitary long filler and short filler cigars, and that machine made short filler cigars of sanitary, wholesome and excellent quality are manufactured by petitioner from a blend of tobacco grown in the provinces of Cagayan, Isabela, Nueva Vizcaya, La Union, and Pangasinan."

It is further alleged that so much of clause B of section 6 of Act No. 2613 as empowers the Collector of Internal Revenue to establish rules defining the standard and the type of leaf and manufactured tobacco which may be exported into the United States, and that portion of section 7 of said Act which provides: "No leaf tobacco or manufactured tobacco shall be exported from the Philippine Islands to the United States until it shall have been inspected by the Collector of Internal Revenue, etc.," and all that portion of section 11 of the Act, which requires the certificate of origin of the Collector of Internal Revenue to show that the tobacco to be exported is standard, and which limits the required certificate of origin to be standard, and that portion of section 9 of Administrative Order No. 35, which limits the exportation into the United States of Philippine cigars to those manufactured from long filler tobacco exclusively the product of the provinces of Cagayan, Isabela, or Nueva Vizcaya, are unconstitutional and void, for six different specified reasons.

It is further alleged that, after the elimination of such provisions, Act No. 2613 specially enjoins it as a duty devolving upon the Internal Revenue Collector to certify to the Insular Collector that any tobacco or cigars offered for export to the United States, which comply with the Act of Congress of October 3,1913, and the growth and product of the Philippine Islands, to issue a certificate of origin which will insure the speedy admission of such cigars into the United States free of customs duty, and to permit the exportation to the United States of all cigars manufactured of material and tobacco, 80 per cent or more of which is the growth and product of the Philippine Islands.

That on February 6, 1922, the petitioner applied to the Collector of Internal Revenue for such a certificate to the Insular Collector of Customs for a consignment of 10,000 cigars manufactured by it from tobacco grown and produced in the Philippine Islands, which was

then and there offered for export to the United States, and was submitted for inspection and the issuance of the proper certificate of origin. That the consignment was packed and stamped as required by the regulations contained in Administrative Order No. 35, and in all things and respects complied with the requirements of the Act of Congress of October 3, 1913, and with the Act No. 2613 of the Philippine Legislature, after the elimination of the void portions of Act No. 2613 and of the Administrative Order.

That the Collector of Internal Revenue wrongfully and unlawfully refused to issue such certificate of origin "on the ground that said cigars were not manufactured of long filler tobacco produced exclusively in the provinces of Cagayan, Isabela or Nueva Vizcaya."

That, notwithstanding such refusal, about February 24, 1922, the petitioner applied to the Insular Collector of Customs for the certificate of origin, and that officer wrongfully and unlawfully refused to issue such certificate "on the ground that the petitioner had not obtained and presented with the application the certificate of the said respondent Collector of Internal Revenue."

That, by reason of such refusal, the petitioner was deprived of the right of exporting the cigars to the United States. That the petitioner has no "other plain, speedy and adequate remedy in the ordinary course of law," and prays for a peremptory writ of mandamus.

An order to show cause was made by this court, and on March 4, the Manila Tobacco Association, through its attorneys, applied for, and was granted, leave to appear as *amicus curiæ*.

February 6, a demurrer was filed "on the ground that the facts stated in the said petition do not entitle the petitioner to the relief demanded, in that—

> "1. Act No. 2613 and the executive regulations issued in accordance therewith do not contravene any provision of the fundamental law of the Philippine Islands;
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> "2. It does not appear from the facts stated in the said petition that the respondents unlawfully neglected the performance of an act specially enjoined upon them by law as a duty, or unlawfully exclude the petitioner from the use and enjoyment of a right granted by law."

The case was argued in bane on March 9, 1922.

The defendants [respondents] contend that the portions of Act No. 2613 in question are not in. violation of any constitutional right or any act of Congress; that the Philippine Legislature is empowered to enact what is known as "inspection laws;" and that they are not in conflict with paragraph 2, section 10 of article 1 of the Constitution of the United States, which provides:

> "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, *except what may be absolutely necessary for executing its inspection laws;* and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress." And also that, under its police power, the Legislature has authority to enact such a law, and that it was enacted in the interest of the public welfare and to promote an important industry, and that it was not a delegation of legislative power.

Johns, J.:

Many important legal questions have been presented in the able and exhaustive briefs of opposing counsel.

There is a legal presumption that any law enacted by the Legislature is valid, and we must assume that it was not the intention of the Legislature to enact a void law.

It is also the duty of courts to sustain the constitutionality of a legislative act when it can be done without violating an express provision of the organic law.

It is also a general rule that regardless of the question whether a law is or is not constitutional, the courts will not pass upon its constitutionality, unless it is necessary to the decision.

The important question here involved is the construction of sections 6, 7, and 11 of Act No. 2613 of the Philippine Legislature, and section 9 of the "Tobacco Inspection Regulations," promulgated by Administrative Order No. 35. It must be conceded that the authority of the Collector of Internal Revenue to make any rules and regulations must be founded upon some legislative act, and that they must follow and be within the scope and purview of the act.

Clause A of section 6 of Act No. 2613 provides:

> "To establish general and local rules respecting the classification, marking, and packing of tobacco for domestic sale or for exportation to the United States so far as may be necessary to secure leaf tobacco of good quality and to secure its handling under sanitary conditions and to the end that leaf tobacco be not mixed, packed, and marked as of the same quality when it is not of the same class and origin."

It will be noted that the power of the Collector of Internal Revenue to make rules and regulations is confined to the making of rules and regulations for the classification, marking, and packing of tobacco, and that such power is further limited to the making of such rules for the classification, marking, and packing of tobacco as may be necessary to secure leaf tobacco of good quality and its handling under sanitary conditions. It is for such purpose only that the Collector of Internal Revenue is authorized to make any rules or regulations. The power is further limited "to the end that leaf tobacco be not mixed, packed, and marked as of the same quality when it is not of the same class and origin." It is only for such defined purposes that he is authorized to make any rules or regulations. Hence, it must follow that any rules or regulations which are not within the scope of the Act are null and void. Clause B provides:

> "To establish from time to time adequate rules defining the standard and the .type of leaf and manufactured tobacco which may be exported to the United States, as well also as the manner in which standard tobacco for export, whether it be leaf tobacco or manufactured tobacco, shall be packed. Before establishing the rules above specified, the Collector of Internal Revenue shall give due notice of the proposed rules or amendments to those interested and shall give them an opportunity to present their objections to such rules or amendments."

Clause B of section 6 should be construed with, and is limited by, the terms and provisions of clause A.

Here, again, the Legislature has not defined what shall be the standard or the type of leaf or manufactured tobacco which may be exported to the United States, or even specified how or upon what basis the Collector of Internal Revenue should fix or determine the standard. All

of that power is delegated to the Collector of Internal Revenue.

Assuming, without deciding, that the Legislature could delegate such power, the "rules and regulations" promulgated should be confined to, and limited by, the power conferred by the legislative act. Among other things, section 9 of the rules and regulations, promulgated by Administrative Order No. 35, provides:

> "To be classed as standard, cigars must be manufactured under sanitary conditions from good, clean, selected tobacco, properly cured and seasoned, of a crop which has been harvested at least six months, exclusively the product of the provinces of Cagayan, Isabela, or Nueva Vizcaya. The cigars must be well made, with suitable spiral wrapper and with long filler from which must have been removed all stems, dust, scraps, or burnt tobacco; net weight of cigars to be not less than five kilograms per thousand * * *. By color is meant the color of the wrapper and not the filler * * *.
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> "In passing on the quality of cigars, the article will be required to come up to a high standard as to workmanship, burn, aroma, and taste. The actual price at which the cigars are sold will also be given due weight, and when it is found that cigars are sold at such a low price that the cost of production with materials of the quality required in these regulations leaves no reasonable margin of profits, such fact may be considered as corroborative evidence in determining whether the cigars in question are standard."

Analyzing the power conferred, it will be found that the provisions of the legislative act are not limited to the provinces of Cagayan, Isabela, or Nueva Vizcaya, or to any province, and that there is no limitation as to the place where the tobacco should be grown in the Philippine Islands. The only power conferred is to establish general and local rules for the classification, marking, and packing of tobacco and the standard and the type of tobacco which may be exported to the United States.

Neither the Collector of Internal Revenue nor the Legislature itself has any power to discriminate in favor of one province against another in the production of tobacco or of any other product of the Islands. The purpose and intent of the Legislature was that a proper standard of the quality of tobacco should be fixed and defined, and that all of those who produce tobacco of the same standard should have equal rights and opportunities. It was

never intended that a standard should be fixed which would limit the manufacture of cigars for export to certain provinces of the Islands, or that the tobacco produced in one province should be measured by another and different standard than the tobacco produced in any other province. That would amount to discrimination and class legislation, which, even the Legislature, would not have the power to enact. Again, the legislative Act does not say anything about the "filler," or whether it should be short or long. Neither does it say anything about the weight of the cigar. It is a matter of common knowledge that standard cigars are of different sizes, weights, and lengths, and that the purity and standard of the cigar does not depend upon either.

The defendants [respondents] rely upon the case of Buttfield vs. Stranahan (192 U. S., 525), known as the tea case, where it was held that an act of Congress providing for the inspection of imported tea was riot a delegation of legislative power, a violation of "due process of law or foreign commerce." That case is good law, but there is a very important distinction between the Act of Congress there and of the Philippine Legislature here. The Act of Congress is entitled "An Act to prevent the importation of impure and unwholesome tea," and section 1 provides:

> "It shall be unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards provided in section three of this act, and the importation of all such merchandise is hereby prohibited."

Section 2 provides:

> "That immediately after the passage of this act, * * * the Secretary of the Treasury shall appoint a board, to consist of seven members, each of whom shall be an expert in teas, and who shall prepare and submit to him standard samples of tea, etc." Section 3 provides:
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> "That the Secretary of the Treasury, upon the recommendation of the said board, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, etc. All teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be deemed within the prohibition of the first

section hereof."

In that case eight packages of "Country green teas," number 7 on the list of standards, were presented. The tea was rejected as "inferior standard in quality," and the owner applied to the court for mandamus, to compel its admission. Under the rules and regulations, the "Country green teas" were arranged in their order of quality, No. 1 being the highest grade, and No. 17 the lowest. The evidence for the plaintiff tended to show that the tea in controversy was grade No. 7, and that of the Government grade No. 11, "& tea of a decidedly low grade, * * * a pure tea, but of low quality," and the admission of the tea was refused. It will be noted that the Act of Congress makes it unlawful to import into the United States any tea which is inferior "in purity, quality and fitness for consumption to the standards provided in section three of this act." That after its passage, the Secretary of the Treasury shall appoint a board of seven members, each of whom shall be expert in teas, and who shall prepare and submit to him standard samples of tea, etc., and that, upon the recommendation of the said board, he "shall fix and establish uniform standards of purity, quality and fitness for consumption of all kinds of teas imported into the United States."

Act No. 2613 does not contain any such provisions. It does not provide the basis for a standard or how and in what manner it should be ascertained. The Act of Congress prohibits the importation of tea, "which is inferior tea in purity, quality and fitness for consumption to the standards," and section 3 enacts that the Secretary of the Treasury shall fix and establish uniform standards of purity, quality, and fitness upon the recommendation of the board of seven members. It specifically prohibits the importation of tea, which is inferior in purity, quality, and fitness for consumption, based on certain standards which are to be ascertained and determined by a board of seven members, each of whom shall prepare and submit standard samples of tea, and based upon the recommendation of the board, the Secretary of the Treasury shall then fix and establish a uniform standard of purity, quality, and fitness, etc. The Act of Congress within itself provides the scope and purview of the standards and the method, how and by whom they shall be ascertained.

The distinguished counsel for the Tobacco Association apparently recognizing this defect in their brief say:

> "The fact that Act No. 2613 creates no such board of experts to fix such standard is completely immaterial. Moreover, it is to be supposed that the Collector of Internal Revenue acted, as in fact he did, upon the advice of experts, such as are

> the tobacco manufacturers, whose opinion was consulted by that officer as required by the law to such an extent that the conditions fixed by him for standard cigar met with the complete approval of said manufacturers."

That may all be true, but the fact remains that there is no such provision in the law, and that the validity of a law is not tested by what is done under it, but what may be done, a forcible example of which appears from the record.

Again, one law was enacted by Congress to prohibit the importation of tea into the United States which is inferior in purity, quality and fitness for consumption by the people of the United States. Act No. 2613 was intended "to improve the methods of production and the quality of tobacco in the Philippines and to develop the export trade therein," and "to establish general and local rules respecting the classification, marking, and packing of tobacco for domestic sale or for exportation to the United States," and "to establish from time to time adequate rules defining the standard and the type of leaf and manufactured tobacco which may be exported to the United States." That is to say, that the Act of Congress was designed to prohibit the importing of inferior tea into the United States, and Act No. 2613 is apparently designed to prevent the exporting of a certain class of cigars from the Philippine Islands into the United States. The law of Congress was designed to regulate imports to the United States, and Act No. 2613 was designed to regulate the exporting of tobacco from the Philippine Islands into the United States.

Under our view of the case, it is not necessary to pass on any other of the important questions so ably discussed by opposing counsel.

The petition states a cause of action, all the material allegations of which are admitted by the defendants' plea. The demurrer is overruled. Five days will be allowed from the promulgation of this opinion in which to file an answer, and, for any failure to do so, the peremptory writ will be issued as prayed for in the petition.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

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