95 Phil. 46

[G.R. No. L-4817. May 26, 1954]

SILVESTRE M. PUNSALAN, ET AL., PLAINTIFFS AND APPELLANTS VS. THE MUNICIPAL BOARD OF THE CITY OF MANILA, ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

REYES, J.:

This suit was commenced in the Court of First Instance of Manila by two lawyers, a medical practitioner, a public accountant, a dental surgeon and a pharmacist, purportedly "in their own behalf and in behalf of other professionals practicing in the City of Manila who may desire to join it." Object of the suit is the annulment of Ordinance No. 3398 of the City of Manila together with the provision of the Manila charter authorizing it and the refund of taxes collected under the ordinance but paid under protest.

The ordinance in question, which was approved by the municipal board of the City of Manila on July 25, 1950, imposes a municipal occupation tax on persons exercising various professions in the city and penalizes non-payment of the tax "by a fine of not more than two hundred pesos or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court." Among the professions taxed were those to which plaintiffs belong. The ordinance was enacted pursuant to paragraph (1) of section 18 of the Revised Charter of the City of Manila (as amended by Republic Act No. 409), which empowers the Municipal Board of said city to impose a municipal occupation tax, not to exceed P50 *per annum*, on persons engaged in the various professions above referred to.

Having already paid their occupation tax under section 201 of the National Internal Revenue Code, plaintiffs, upon being required to pay

the additional tax prescribed in the ordinance, paid the same under protest and then brought the present suit for the purpose already stated. The lower court upheld the validity of the provision of law authorizing the enactment of the ordinance but declared the ordinance itself illegal and void on the ground that the penalty therein provided for non-payment of the tax was not legally authorized. From this decision both parties appealed to this Court, and the only question they have presented for our determination is whether this ruling is correct or not, for though the decision is silent on the refund of taxes paid plaintiffs make no assignment of error on this point.

To begin with defendants' appeal, we find that the lower court was in error in saying that the imposition of the penalty provided for in the ordinance was without the authority of law. The last paragraph (*kk)* of the very section that authorizes the enactment of this tax ordinance (section 18 of the Manila Charter) in express terms also empowers the Municipal Board *"to fix penalties for the violation of ordinances which shall not exceed to (sic) two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense"* Hence, the pronouncement below that the ordinance in question is illegal and void because it imposes a penalty not authorized by law is clearly without basis.

As to plaintiffs' appeal, the contention in substance is that this ordinance and the law authorizing it constitute class legislation, are unjust and oppressive, and authorize what amounts to double taxation.

In raising the hue and cry of "class legislation", the burden of plaintiffs' complaint is not that the professions to which they respectively belong have been singled out for the imposition of this municipal occupation tax; and in any event, the Legislature may, in its discretion, select what occupations shall be taxed, and in the exercise of that discretion it may tax all, or it may select for taxation certain classes and leave the others untaxed. (Cooley on Taxation, Vol. 4, 4th ed., pp. 3393-3395.) Plaintiffs' complaint is that while the law has authorized the City of Manila to impose the said tax, it has withheld that authority from other chartered cities, not to mention

municipalities. We do not think it is for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it. Moreover, as the seat of the National Government and with a population and volume of trade many times that of any other Philippine city or municipality, Manila, no doubt, offers a more lucrative field for the practice of the professions, so that it is but fair that the professionals in Manila be made to pay a higher occupation tax than their brethren in the provinces.

Plaintiffs brand the ordinance unjust and oppressive because they say that it creates discrimination within a class in that while professionals with offices in Manila have to pay the tax, outsiders who have no offices in the city but practice their profession therein are not subject to the tax. Plaintiffs make a distinction that is not found in the ordinance. The ordinance imposes the tax upon every person "exercising" or "pursuing"—in the City of Manila naturally—any one of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination.

The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city (1 Cooley on Taxation, 4th ed., p. 492), it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof. (51 Am. Jur., 341.)

In view of the foregoing, the judgment appealed from is reversed in so far as it declares Ordinance No. 3398 of the City of Manila illegal and void and affirmed in so far as it holds the validity of the provision of the Manila charter authorizing it. With costs against plaintiffs-appellants.

Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

DISSENTING

PARAS, C. J.:

I am constrained to dissent from the decision of the majority upon the ground that the Municipal Board of Manila cannot outlaw what Congress of the Philippines has already authorized. The plaintiffs-appellants—two lawyers, a physician, an accountant, a dentist and a pharmacist—had already paid the occupation tax under section 201 of the National Internal Revenue Code and are there- by duly licensed to practice their respective professions throughout the Philippines; and yet they had been required to pay another occupation tax under Ordinance No. 3398 for practising in the City ,of Manila. This is a glaring example of contradiction—the license granted by the National Government is in effect withdrawn by the City in case of non-payment of the tax under the ordinance. If it be argued that the national occupation tax is collected to allow the professional residing in Manila to pursue his calling in other places in the Philippines, it should then be exacted only from professionals practising simultaneously in and outside of Manila. At any rate, we are confronted with the following situation: Whereas the professionals elsewhere pay only one occupation tax, in the City of Manila they have to pay two, although all are on equal footing insofar as opportunities for earning money out of their pursuits are concerned. The statement that practice in Manila is more lucrative than in the provinces, may be true perhaps with reference only to a limited few, but certainly not to the general mass of practitioners in any field. Again, provincial residents who have occasional or isolated practice in Manila may have to pay the city tax. This obvious discrimination or lack of uniformity cannot be brushed aside or justified by any trite pronouncement that double taxation is legitimate or that legislation may validly affect certain classes.

My position is that a professional who has paid the occupation tax

under the National Internal Revenue Code should be allowed to practice in Manila even without paying the similar tax imposed by Ordinance No. 3398. The City cannot give what said professional already has. I would not say that this Ordinance, enacted by the Municipal Board pursuant to paragraph 1 of section 18 of the Revised Charter of Manila, as amended by Republic Act No. 409, empowering the Board to impose a municipal occupation tax not to exceed P50 per annum, is invalid; but that only one tax, either under the Internal Revenue Code or under Ordinance No. 3398, should be imposed upon a practitioner in Manila.

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