

B.F. GOODRICH PHILIPPINES, INC., PETITIONER, VS. HON. TEOFILO REYES, SR., IN HIS CAPACITY AS SECRETARY OF COMMERCE AND INDUSTRY, RESPONDENT.*G.R. No. L-30067. April 19, 1983*

Ponente: FERNANDO, C.J.

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Relying on the equal protection clause^[1] as interpreted in the leading case of *Ichong v. Hernandez*,^[2] petitioner B.F. Goodrich Philippines, Inc. contends in this declaratory relief proceeding, with the then Secretary of Commerce and Industry Teofilo Reyes, Sr. as respondent, that it does not fall within the ban. It is engaged in the business of manufacturing and selling rubber products, principally automotive tires and tubes, batteries, conveyor belts, heels and soles for shoes and tiles to dealers who in turn sells it to others.^[3] Under the statute, it cannot engage in retail business, namely to sell direct to the general public, merchandise, commodities or goods for consumption.^[4] It admitted that it sold directly to the government and all its instrumentalities and/or agencies; public utilities; agricultural enterprises; logging, mining, and natural resources exploration firms; automotive assembly plants who buy its products in large bulk; industrial enterprises; and employees and officers of its company.^[5]

There was a plea for a preliminary injunction. It was set for hearing. Upon its being heard, the Office of the Solicitor General manifested that it was not ready to formulate its stand on the matter in view of the fact that the question involved was of great importance. Accordingly, a restraining order was issued. Subsequently, the answer was duly filed, the principal affirmative defenses being that the petitioner should not be considered exempt as it is not a corporation wholly owned by citizens of the Philippines and that even on the assumption that such was the case, it being alleged in the petition that only 1.46% of its capital stock was owned by aliens, non-Filipinos or non-Americans, the Parity Amendment being still in force and effect at the time of the filing of this petition, still Republic Act 1180 is quite clear as to its not being applicable to petitioner considering the allegations of the petition. The plea was for dismissal.

In the stipulation of facts, the allegations set forth above were admitted as to its selling to dealers and distributors primarily but likewise selling directly to certain entities and individuals named. Paragraph XX of the stipulation of facts made mention of the opinion of the then Secretary of Justice, Pedro Tuason, who ruled that a corporation whose capital stock was 99.99% Filipino and 0.01% alien was exempt from the provisions of Republic Act No. 1180, based on the doctrine of "de minimis non curat lex"; hence, the said corporation could retail.^[6]

On such stipulation of facts, the lower court rendered its decision making permanent the restraining order issued although holding that petitioner is not exempt from the provisions of Republic Act No. 1180. The reason for such a decision was set forth thus: "It has been stipulated that the rubber products of the petitioner desired to be sold in bulk to automotive assembly plants will be resold by the latter to their own customers at a profit without changing the form of said rubber products, together with assembled units which are being sold; that the rubber products

desired to be sold by the petitioner to public utilities, power and communication companies, agricultural enterprises, proprietary planters, agricultural processing plants, agricultural cooperatives, industrial and commercial enterprises, logging, mining and persons engaged in the exploitation of natural resources are to be used by the latter in their operations to produce and to render goods and services to third parties and to the general public; and that the other products desired to be sold to the Government and all its instrumentalities and/or agencies, public utilities, agricultural enterprises, proprietary planters, agricultural processing plants, agricultural cooperatives, logging, mining, and other entities and persons engaged in the exploitation of natural resources, and industrial and commercial enterprises are to be sold at prices lower than at which they are sold to the general consuming public by dealers and distributors of said rubber products. An examination of the types or classes of customers to which the petitioner desires to sell its rubber products will reveal that in the great majority of such customers, the sale to them may not be classified as the sale of consumer goods or merchandise for the satisfaction of human, personal or household wants so as to be considered as retail in the sense already discussed above. Nonetheless, it is observed that some of the listed customers would easily fall within the purview of a final consumer of the product who buys the same for the satisfaction of a personal want. Among these customers are 'proprietary planters,' 'persons engaged in the exploitation of natural resources,' and 'employees and officers of the petitioner.'"[7]

Both petitioner and respondent appealed to this Court. A ruling on the question raised as to the precise meaning of retail business is obviated by the issuance of Presidential Decree No. 714[8] amending Republic Act No. 1180. Under the former, which took effect without presidential approval on June 19, 1954, the term "retail business" covers "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include: (a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or (b) a farmer or agriculturist selling the product of his farm." [9] Under the aforesaid Presidential Decree, which took effect on May 28, 1975, two more paragraphs were included. They are: "(c) a manufacturer or processor selling to the industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or to produce or manufacture goods which are in turn sold to them; (d) a hotel-owner or keeper operating a restaurant irrespective of the amount of capital, provided that the restaurant is necessarily included in, or incidental to, the hotel business." [10] It is clear from the above that proprietary planters and persons engaged in the exploration of natural resources are included within the aforesaid amendment. The lower court decision, however, is in accordance with law insofar as employees and officers of petitioner are concerned. As thus modified, the decision calls for affirmance.

In view of the above, there is no need to pass upon the allegation that there is a denial of equal protection. At any rate, the ponencia of the late Justice Labrador in *Ichong v. Hernandez*, [11] upholding the validity of Republic Act No. 1180, both scholarly and comprehensive, leaves no room for doubt as to the futility of relying on the equal protection guarantee. This Act was conceived and is being implemented conformably to the nationalistic spirit which underlies both the 1935 and the present Constitutions.

WHEREFORE, the lower court decision is affirmed declaring that petitioner is not engaged in retail business within the purview of Section 4 of Republic Act No. 1180 in accordance with Presidential Decree No. 714, except as to its sales to its employees and officers. The restraining order issued is likewise made permanent but subject to the above modification. No costs.

Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Relova, JJ., concur.

Teehankee and Abad Santos, JJ., reserve their votes.

Makasiar and Vasquez, JJ., took no part.

Aquino and Gutierrez, Jr., JJ., are on leave.

[1] According to Article IV, Section 1 of the Constitution: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[2] 101 Phil. 1155 (1957).

[3] Record on Appeal, Petition, par. V.

[4] Ibid, par. IV.

[5] Ibid, par. V.

[6] Stipulation of Facts, Record on Appeal, par. XX.

[7] Decision, Record on Appeal, pp. 140-141.

[8] (1975).

[9] Section 4, Republic Act No. 1180.

[10] Presidential Decree No. 714, Section 4, pars. (c) and (d).

[11] 101 Phil. 1155 (1957).

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