

CHAMBER OF FILIPINO RETAILERS, INC., NATIONAL MARKET VENDORS ASSOCIATION, INC., AMBROSIO ILAO, AND CRISPIN DE GUZMAN, PETITIONERS AND APPELLANTS, VS. HON. ANTONIO J. VILLEGAS, A...

G.R. No. L-29819. April 14, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal, on pure questions of law, from the decision of the Court of First Instance of Manila (Branch XIV), upholding the validity of Ordinance No. 6767 of the City of Manila (in its Civil Case No. 73902), for prohibition with preliminary injunction instituted by the petitioners Chamber of Filipino Retailers, Inc., National Market Vendors Association, Inc., Ambrosio Ilaog and Crispin de Guzman to prohibit the respondents Antonio Villegas, Mayor of the City of Manila, City Treasurer and the City of Manila from enforcing the said ordinance.

The facts of the case, which was submitted for decision on the pleadings, are recited in the appealed decision, as follows:

"On July 25, 1968, City Ordinance No. 6696 was approved raising the Market Stall fees to be charged in all City Markets. Petitioners brought action questioning the legality of this ordinance on the ground that the City Charter of Manila only authorizes the collection of 'fees' and the rise in market stall fees would make this a source of revenue. On October 4, 1968, while this case was pending, the Municipal Board approved Ordinance No. 6767 lowering the market stall fees as provided for by Ordinance No. 6696, but still much higher than the old rate.

"By Supplemental Petition, the legality of this new Ordinance No. 6767 is now the subject of the same attack. When this case was filed and before the raffle of the same, the Executive Judge issued a restraining order against Respondents from enforcing the ordinance in question. This Court, after the raffle, maintained this restraining order on the ground that a resolution of the same would go into the merits of the case. This case was submitted on the pleadings and Petitioners and Respondents given ample time to file their respective memoranda."

The primary issue here, per the first-assigned error, is whether the enactment of Ordinance No. 6767 was in the exercise of the government or the proprietary function of the city, it being agreed by the parties that if the enactment was "governmental", the city may only collect such fees as would cover supervision of the market stalls, but, if "proprietary", the city may charge said fees for revenue purposes.

The language of Section 18 (cc) of the Charter of the City of Manila (Republic Act No. 409), which provides, as follows:

"Sec. 18. Legislative powers. – The Municipal Board shall have the following legislative powers;

"* * * * *

"(cc) Subject to the provisions of ordinances issued by the Department of Health in accordance with law, to provide for the establishment and maintenance and fix the fees for the use of, and regulate public stables, laundries; and baths, and publicmarkets and slaughterhouses, and prohibit or permit the establishment or operation within the city limits of public markets * * * by any person, entity, association or corporation other than the city." (Italics supplied)

is pointed out by the appellants as expressly indicative of the governmental nature of the power of the city to charge fees for the use of public markets. The words "legislative powers," "establishment and maintenance and fix the fees for the use of" and "regulate" are said to show such classification of the power of the city.

We see no merit in this appeal. For assuming, *adarguendo*, the correctness of appellant's view that under its section 18 (cc) the Manila Charter only authorizes the City of Manila to charge reasonable fees for the use of public markets, in an amount sufficient to cover the cost of supervision, maintenance, and regulation, still this power was broadened by the subsequent Republic Act No. 2264 (the so-called Local Autonomy Act) section 2 of which grants all chartered cities, municipalities and municipal districts -

"authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privileges in chartered cities, municipalities or municipal districts * * *"

Since it is not deniable that persons selling in public markets are engaged therein in occupation or business (in the sense of engaging in human activity for gain), it becomes plain that the city can impose at present upon market vendors or retailers fees designed to obtain revenue for the city, above or in addition to the amount needed to reimburse it for strictly supervisory services. This was pointed out in *Nin Bay Mining Co. vs. Municipality of Roxas* (L-20125, 20 July 1965, 14 SCRA p. 660).

In the second place, there is a clear difference between the license to sell within the premises of public markets and the privilege of doing business at a definite location or stall in said market for a definite period of time. The permit to exercise the latter privilege partakes of the nature of a lease of the area occupied by the market stall, which is patrimonial property of the City of Manila. The character of the transaction between the City and the stall occupant is acknowledged by section 52, paragraph 2, of the Manila City Charter, to the effect that -

"The city treasurer * * * shall collect all taxes and assessments due the city, all licenses authorized by law or ordinance, and allrentsdue for lands, markets, and other property owned by the city: * * *." (Italics supplied)

The renting by the City of its private property is a patrimonial activity or proprietary function, and in this sphere, as pointed out by this Court in *Esteban vs. City of Cabanatuan*, 108 Phil. 374, by Justice Concepcion (now Chief Justice), the city -

"like any private owner, it is * * * free to charge such sums as it may deem best, regardless of the reasonableness of the amount fixed, for the prospective lessees are free to enter into the corresponding contract of lease, if they are agreeable to the terms thereof, or, otherwise, not enter into such contract."

Of course, in the absence of a stipulated lease period, its duration is fixed by the period for which the fee is paid; from day to day if the rent is to be paid daily; or from month to month if the rent is payable monthly (See Article 1687 of the Civil Code of the Philippines, Republic Act No. 386).

And it is idle for appellants to contend that public markets are for public use, hence not patrimonial property susceptible of lease. It is not certainly for public use so far as the appellant stall market vendors are concerned, the city charter authorizing a charge for their use of public markets (*ante*).

The other error assigned in the present appeal is that the lower court allegedly erred in holding that the City of Manila can charge fees for the use of its public markets without the approval of the Public Service Commission.

The appellants' argument is that a public market is a public service or public utility, and, pursuant to Section 20 of the Public Service Act, it is

"unlawful for any public service or for the owner, lessee or operator thereof without the approval of the Commission previously had * * * (a) To adopt, establish, impose, maintain, collect or carry into effect any individual or joint rates, commutation, mileage or other special rate, toll, fare, charge, classification or itinerary."

While a public market is a public service or utility,[1] it is not one that falls under the jurisdiction of the Public Service Commission, not being ejusdem generis with those public services enumerated in Section 13 (b) of the Public Service Act[2] over which the Commission has jurisdiction. Hence the approval by the Commission of the fees fixed by the City of Manila for the use of its markets is not covered by Section 20 of the Public Service Act. And even if appellants had cited (which they did not) Republic Act 2677, amending the Public Service Act, by exempting any instrumentality of the National Government from securing a certificate of public convenience and necessity, but affirming the Commission's power of regulation over public utilities operated by government entities, except with respect to fixing of rates,[3] the amendatory statute could not have helped the theory of the appellants (that Manila cannot fix fees for the use of its public markets without the approval of the Commission), for the reason that public markets are not among (or not similar to) those utilities over which the Commission was vested with jurisdiction.

FOR THE FOREGOING REASONS, the appealed decision is hereby affirmed, with the costs against the petitioners-appellants.

Concepcion, C. J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

Makalintal, J., took no part.

[1] *Co Chiong vs. Cuaderno*, 83 Phil. 242; *Salgado vs. De la Fuente*, 87 Phil. 343.

[2] " 'b) The term 'public service' includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway traction railway, subway motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship, line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services.' "

[3] See *Surigao Electric Co. vs. Mun. of Surigao*, L-22766, 30 August 1968. 24 SCRA 898.

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