

THE COMMISSIONER OF CIVIL SERVICE AND THE COLLECTOR OF CUSTOMS, PORT OF MANILA, PETITIONERS VS. ANGEL C. CRUZ AND THE COURT OF APPEALS, RESPONDENTS.

G. R. No. L-21026. December 29, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari filed by the Commissioner of Civil Service and the Collector of Customs against the Court of Appeals and Angel C. Cruz.

Originally an action was brought by Angel C. Cruz in the Court of First Instance of Manila for prohibition, mandamus and injunction against the prohibition contained in the last part of Rule 30 of the Rules and Regulations of the Board of Examiners for Customs brokers, which provides:

"Any duly registered Customs Broker desiring to establish and operate a customs brokerage business at any port of entry in the Philippines shall apply for a license to the Collector of Customs of the port concerned. Customs brokerage firms, whether sole proprietorship, corporation, association or partnership shall engage only in one port of entry in the Philippines. A licensed customs broker shall not work in or represent more than one brokerage firm, corporation, association or partnership" (Italic supplied)

The above regulation was promulgated by the Collector of Customs upon the recommendation of the Commissioner of Civil Service. It is for this reason that the latter officer was made a party respondent.

As Angel C. Cruz, a member of the Bar, of good standing, has passed the examination for customs brokers since March 12, 1949, he challenged the validity of Rule 30, insofar as it prohibits any licensed broker to work in or represent more than one brokerage firm.

In view of the enforcement of this Rule 30, Angel C. Cruz, who was already representing the two brokerage firms, Delgado Brokerage Corporation, and Magpayo and Basa Company, was asked by Collector of Customs to indicate which of the two brokerage firms would he represent.

The Court of First Instance of Manila denied the petition of Cruz on the ground that the action was premature. On appeal, however, to the Court of Appeals, the said court reversed the said ruling on the ground that Rule 30 of the said Rules and Regulations not having been published in the Official Gazette, pursuant to Article 2 of the Civil Code, hence, the same is not valid. Art. 2 of the Civil Code provides:

"Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. The Code shall take effect one year after such publication."

Similar provision is contained in Section 551, Administrative Code.

Furthermore, in a case decided by this Court in *People vs. Que Po Lay*, 94 Phil., 640; 50 Off. Gaz., 4850 (March 29, 1954), regarding Circular No. 20 of the Central Bank, this Court held;

"However, section 11 of the Revised Administrative Code provides that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette. Article 2 of the new Civil Code (Rep. Act 386) equally provides that the laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. It is true that Circular No. 20 of the Central Bank is not a statute or law but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law according to settled jurisprudence. (See U.S. vs. Tupasi Molina, 20 Phil. 119 and authorities cited therein). Moreover, as a rule, circulars and regulations especially like the Circular No. 20 of the Central Bank in question which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation and circular must first be published and the people officially and specifically informed of said contents and its penalties." (See also *Lim Hoa Ting vs. Central Bank of the Philippines*, G. R. No. L-10666—September 24, 1958).

From the cases of *Ting* and *Po Lay*, *supra*, and from the provisions of Art. 2, Civil Code and Sec. 551 Administrative Code, it is clear that publication in the Official Gazette of questioned Rule 30 is necessary for its validity and application.

In view of the foregoing considerations, the decision of the Court of Appeals is hereby affirmed. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Decision affirmed.

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