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# MISAEL P. VERA, AS COMMISSIONER OF INTERNAL REVENUE, AND THE FAIR TRADE BOARD, PETITIONERS, VS. HON. SERAFIN R. CUEVAS, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH...

*G.R. Nos. L-33693-94. May 31, 1979*

Ponente: DE CASTRO, J.

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**DE CASTRO, J.:**

This is a petition for certiorari with preliminary injunction to review the decision rendered by respondent judge, in Civil Case No. 52276 and in Special Civil Action No. 52383 both of the Court of First Instance of Manila.

Plaintiffs, in Civil Case No. 52276 private respondents herein, are engaged in the manufacture, sale and distribution of filled milk products throughout the Philippines. The products of private respondent, Consolidated Philippines Inc. are marketed and sold under the brand "Darigold;" whereas those of private respondent, General Milk Company (Phil.), Inc., under the brand "Liberty;" and those of private respondent, Milk Industries Inc., under the brand "Dutch Baby." Private respondent, Institute of Evaporated Filled Milk Manufacturers of the Philippines, is a corporation organized for the principal purpose of upholding and maintaining at its highest the standards of local filled milk industry, of which all the other private respondents are members.

Civil Case No. 52276 is an action for declaratory relief with ex-parte petition for preliminary injunction wherein plaintiffs pray for an adjudication of their respective rights and obligations in relation to the enforcement of Section 169 of the Tax Code against their filled milk products.

The controversy arose from the order of defendant, Commissioner of internal Revenue now petitioner herein, requiring plaintiffs-private respondents to withdraw from the market all of their filled milk products which do not bear the inscription required by Section 169 of the Tax Code within fifteen (15) days from receipt of the order with the explicit warning that failure of plaintiffs-private respondents to comply with said order will result in the institution of the necessary action against any violation of the aforesaid order. Section 169 of the Tax Code reads as follows:

> "Section 169. Inscription to be placed on skimmed milk. - All condensed skimmed milk and all milk in whatever form, from which the fatty part has been removed totally or in part, sold or put on sale in the Philippines shall be clearly and legibly marked on its immediate containers, and in all the language in which such containers are marked, with the words, "This milk is not suitable for nourishment for infants less than one year of age," or with other equivalent words."

The Court issued a writ of preliminary injunction dated February 16, 1963 restraining the Commissioner of Internal Revenue from requiring plaintiffs-private respondents to print on the labels of their filled milk products the words, "This milk is not suitable for nourishment for infants less than one year of age or words of similar import," as directed by the above-quoted provision of law, and from taking any action to enforce the above legal provision against the plaintiffs-private respondents in connection with their filled milk products, pending the final



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determination of the case, Civil Case No. 52276, on the merits.

On July 25, 1969, however, the Office of the Solicitor General brought an appeal from the said order by way of certiorari to the Supreme Court.[1] In view thereof, the respon-dent court in the meantime suspended disposition of these cases but in view of the absence of any injunction or restraining order from the Supreme Court, it resumed action on them until their final disposition therein.

Special Civil Action No. 52383, on the other hand, is an action for prohibition and injunction with a petition for preliminary injunction. Petitioners therein pray that the respondent Fair Trade Board desist from further proceeding with FTB I.S. No. 1, entitled "Antonio R. de Joya vs. Institute of Evaporated Milk Manufacturers of the Philippines, etc." pending final determination of Civil Case No. 52276. The facts of this special civil action show that on December 7, 1962, Antonio R. de Joya and Sufronio Carrasco, both in their individual capacities and in their capacities as Public Rela-tions Counsel and President of the Philippine Association of Nutrition, respectively, filed FTB I.S. No. 1 with Fair Trade Board for misleading advertisement, mislabeling and/or mis-branding. Among other things, the complaint filed include the charge of omitting to state in their labels any statement sufficient to identify their filled milk products as "imitation milk" or as an imitation of genuine cows milk, and omitting to mark the immediate containers of their filled milk products with the words: "This milk is not suitable for nourishment for infants less than one year of age or with other equivalent words," as required under Section 169 of the Tax Code. The Board proceeded to hear the complaint until it received the writ of preliminary injunction issued by the Court of First Instance on March 19, 1963.

Upon agreement of the parties, Civil Case No. 52276 and Special Civil Action No. 52383 were heard jointly being intimately related with each other, with common facts and issues being also involved therein.

On April 16, 1971, the respondent court issued its decision, the dispositive part of which reads as follows:

> '"Wherefore, judgment is hereby rendered:
>
> In Civil Case No. 52276:
>
> (a) Perpetually restraining the defendant, Commissioner of Internal Revenue, his agents, or employees from requiring plaintiffs to print on the labels of their filled milk products the words: "This milk is not suitable for nourishment for infants less than one year of age" or words with equivalent import and declaring as null and void and without authority in law, the order of said defendant dated September 28, 1961, Annex A of the complaint, and the Ruling of the Secretary of Finance, dated November 12, 1962, Annex G of the complaint; and
>
> In Special Civil Action No. 52383:
>
> (b) Restraining perpetually the respondent Fair Trade Board, its agents or employees from continuing in the investigation of the complaints against petitioners docketed as FTB I.S. No. 2, or any charges related to the manufacture or sale by the petitioners of their filled milk products and declaring as null the proceedings so far undertaken by the respondent Board on said complaints." (pp. 20-21, Rollo).

From the above decision of the respondent court, the Commissioner of Internal Revenue and the Fair Trade Board joined together to file the present petition for certiorari with preliminary injunction, assigning the following errors:

> I. THE LOWER COURT ERRED IN RULING THAT SECTION 169 OF THE TAX CODE HAS BEEN REPEALED BY IMPLICATION.
>
> II. THE LOWER COURT ERRED IN RULING THAT SECTION 169 OF THE TAX CODE HAS LOST ITS TAX PURPOSE, AND THAT COMMISSIONER NECESSARILY LOST HIS AUTHORITY TO ENFORCE


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> THE SAME AND THAT THE PROPER AUTHORITY TO PROMOTE THE HEALTH OF INFANTS IS THE FOOD AND DRUG ADMINISTRATION, THE SECRETARY OF HEALTH AND THE SECRETARY OF JUSTICE, AS PROVIDED FOR IN RA 3720, NOT THE COMMISSIONER OF INTERNAL REVENUE.
>
> III. THE LOWER COURT ERRED IN RULING THAT THE POWER TO INVESTIGATE AND TO PROSECUTE VIOLATIONS OF FOOD LAWS IS ENTRUSTED TO THE FOOD AND DRUG INSPECTION, THE FOOD AND DRUG ADMINISTRATION, THE SECRETARY OF HEALTH AND THE SECRETARY OF JUSTICE, AND THAT THE FAIR TRADE BOARD IS WITHOUT JURISDICTION TO INVESTIGATE AND PROSECUTE ALLEGED MIS-BRANDING, MISLABELLING AND/OR MISLEADING ADVERTISEMENT OF FILLED MILK PRODUCTS. (pp. 4-5, Rollo).

The lower court did not err in ruling that Section 169 of the Tax Code has been repealed by implication. Section 169 was enacted in 1939, together with Section 141 (which imposed a specific tax on skimmed milk) and Section 177 (which penalized the sale of skimmed milk without payment of the specific tax and without the legend required by Section 169). However, Section 141 was expressly repealed by Section 1 of Republic Act No. 344, and Section 177, by Section 1 of Republic Act No. 463. By the express repeal of Sections 141 and 177, Section 169 became a merely declaratory provision, without a tax purpose, or a penal sanction.

Moreover, it seems apparent that Section 169 of the Tax Code does not apply to filled milk. The use of the specific and qualifying terms "skimmed milk" in the headnote and "condensed skimmed milk" in the text of the cited section, would restrict the scope of the general clause "all milk, in whatever form, from which the fatty part has been removed totally or in part." In other words, the general clause is restricted by the specific term "skimmed milk" under the familiar rule of ejusdem generis that general and unlimited terms are restrained and limited by the particular terms they follow in the statute.

Skimmed milk is different from filled milk. According to the "Definitions, Standards of Purity, Rules and Regula-tions of the Board of Food Inspection," skimmed milk is milk in whatever form from which the fatty part has been removed. Filled milk, on the other hand, is any milk, whether or not condensed, evaporated concentrated, powdered, dried, dessicated, to which has been added or which has been blended or compounded with any fat or oil other than milk fat, so that the resulting product is an imitation or semblance of milk cream or skim milk." The difference, therefore, between skimmed milk and filled milk is that in the former, the fatty part has been removed while in the latter, the fatty part is likewise removed but is substituted with refined coconut oil or corn oil or both. It cannot then be readily or safely assumed that Section 169 applies both to skimmed milk and filled milk.

The Board of Food Inspection way back in 1961 rendered an opinion that filled milk does not come within the purview of Section 169, it being a product distinct from those specified in the said Section since the removed fat portion of the milk has been replaced with coconut oil and Vitamins A and D as fortifying substances (p. 58, Rollo). This opinion bolsters the Court's stand as to its interpretation of the scope of Section 169. Opinions and rulings of officials of the government called upon to execute or implement administrative laws command much respect and weight. (Astu-rias Sugar Central Inc. vs. Commissioner of Customs, G. R. No. L-19337, September 30, 1969, 29 SCRA 617; Tan, et. al. vs. The Municipality of Pagbilao, et. al., L-14264, April 30, 1963, 7 SCRA 887; Grapilon vs. Municipal Council of Carigara, L-12347, May 30, 1961, 2 SCRA 103).

This Court is, likewise, induced to the belief that filled milk is suitable for nourishment for infants of all ages. The petitioners themselves admitted that: "the filled milk products of the petitioners (now private respondents) are safe, nutritious, wholesome and suitable for feeding infants of all ages" (p. 44, Rollo) and that "up to the present, Filipino infants fed since birth with filled milk have not suffered any defects, illness or disease attributable to their having been fed with filled milk." (p. 45, Rollo).

There would seem, therefore, to be no dispute that filled Milk is suitable for feeding infants of all ages. Being so, the declaration required by Section 169 of the Tax Code that filled milk is not suitable for nourishment for infants less than one year of age would, in effect, constitute a deprivation of property without due process of law.

Section 169 is being enforced only against respondent manufacturers of filled milk product and not as against manufacturers, distributors or sellers of condensed skimmed milk such as SIMILAC, SMA, BREMIL, ENFAMIL, OLAC, in which, as admitted by the petitioner, the fatty part has been removed and substituted with vegetable or corn oil. The enforcement of Section 169 against the private respondents only but not against other persons similarly situated as the private respondents amounts to an unconstitutional denial of the equal protection of the laws, for the law, if not equally enforced, would similarly offend against the Constitution. (Yick Wo vs. Hopkins, 118 U.S. 356, 30 L. ed. 220).

As stated in the early part of this decision, with the repeal of Sections 141 and 177 of the Tax Code, Section 169 has lost its tax purpose. Since Section 169 is devoid of any tax purpose, petitioner Commissioner necessarily lost his authority to enforce the same. This was so held by his predecessor immediately after Sections 141 and 177 were re-pealed in General Circular No. V-85 as stated in paragraph IX of the Partial Stipulation of facts entered into by the par-ties, to wit:

> "x x x As the act of selling skimmed milk without first paying the specific tax thereon is no longer unlawful and the enforcement of the requirement in re-gard to the placing of the proper legend on its immediate containers is a subject which does not come within the jurisdiction of the Bureau of Internal Revenue, the penal provisions of Section 177 of the said Code having been repealed by Republic Act No. 463." (p. 102, Rollo).

Petitioner's contention that he still has jurisdiction to enforce Section 169 by virtue of Section 3 of the Tax Code which provides that the Bureau of Internal Revenue shall also "give effect to and administer the supervisory and police power conferred to it by this Code or other laws" is untenable. The Bureau of Internal Revenue may claim police power only when necessary in the enforcement of its principal powers and duties consisting of the "collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith." The enforcement of Section 169 entails the promotion of the health of the nation and is thus unconnected with any tax purpose. This is the exclusive function of the Food and Drug Administration of the Department of Health as provided for in Republic Act No. 3720. In parti-cular, Republic Act No. 3720 provides:

> "Section 9. x x x It shall be the duty of the Board (Food and Drug Inspection), conformably with the rules and regulations, to hold hearings and conduct investigations relative to matters touching the Administration of this Act, to investigate processes of food, drug and cosmetic manufacture and to submit reports to the Food and Drug Administrator, recommending food and drug standards for adoption. Said Board shall also perform such additional functions, properly within the scope of the administration thereof, as maybe assigned to it by the Food and Drug Administrator. The decisions of the Board shall be advisory to the Food and Drug Administrator."
>
> "Section 26. x x x
>
> x x x
>
> (c) Hearings authorized or required by this Act shall be conducted by the Board of Food and Drug Inspection which shall submit recommendation to the Food and Drug Administrator.
>
> (d) When it appears to the Food and Drug Administrator from the reports of the Food and Drug Laboratory that any article of food or any drug or cosmetic secured pursuant to Section 28 of this Act is adulterated or


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misbranded, he shall cause notice thereof to be given to the person or persons concerned and such person or persons shall be given an opportunity to submit evidence impeaching the correctness of the finding or charge in question.

(e) When a violation of any provisions of this Act comes to the knowledge of the Food and Drug Administrator of such character that a criminal prosecution ought to be instituted against the offender, he shall certify the facts to the Secretary of Justice through the Secretary of Health, together with the chemists' report, the findings of the Board of Food and Drug Inspection, or other documentary evidence on which the charge is based.

(f) Nothing in this Act shall be construed as requiring the Food and Drug Administrator to certify for prosecution pursuant to sub-paragraph (e) hereof, minor violations of this Act whenever he believes that public interest will be adequately served by a suitable written notice or warning.

The aforequoted provisions of law clearly show that petitioners, Commissioner of Internal Revenue and the Fair Trade Board, are without jurisdiction to investigate and to prosecute alleged misbranding, mislabeling and/or misleading advertisements of filled milk. The jurisdiction on the matters cited is vested upon the Board of Food and Drug Inspection and the Food and Drug Administrator, with the Secretary of Health and the Secretary of Justice, also intervening in case criminal prosecution has to be instituted. To hold that the petitioners have also jurisdiction as would be the result were their instant petition granted, would only cause overlapping of powers and functions likely to produce confusion and conflict of official action which is neither practical nor desirable.

WHEREFORE, the decision appealed from is hereby affirmed en toto. No costs.

**SO ORDERED.**

Teehankee, (Chairman), Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Makasiar, J., no part.

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[1] G. R. No. L-30793-94.


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