

TAN SENG HOO Y OTROS, RECURRENTES Y APELANTES, CONTRA MANUEL DE LA FUENTE, ALCALDE DE LA CIUDAD DE MANILA, Y OTROS, RECURRIDOS Y APELADOS.

G .R. no. L-3624. December 28, 1951

Ponente: PABLO, J.

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PABLO, J.:

Los recurrentes son ciudadanos chinos y ocupantes de puestos (market stalls) en los mercados p[ub]licos de la ciudad de Manila, con licencia expedida de acuerdo con la Ley de la Republica No. 37 y la orden del Departamento de Hacienda No. 32. Se les concedieron dichos puestos porque no habla solicitantes filipinos.

El 26 de mayo de 1949, cada uno de ellos redbió una notificación en virtud de la cual se les requería que dejaran sus puestos dentro del término de 24 horas, con la advertencia de que la ciudad se valdría de la policía para lanzarles de allí si no dejaban dichos puestos de acuerdo con la orden. En el mismo día los recurrentes presentaron un recurso de "prohibition", causa civil No. 8180, en el Juzgado de Primera Instancia de Manila, pidiendo que se prohibiese al Alcalde y a sus agentes a echarles de sus puestos. En 30 de mayo del mismo año el Juzgado expidió, a moción debidamente presentada, una orden de interdicto preliminar.

En 6 de enero de 1950 y después de la vista correspondiente, el Juzgado de Primera Instancia dió una decisión sobreseyendo la solicitud de interdicto prohibitorio, de la que fueron notificados el 23 del enero de 1950.

Al siguiente día el Tesorero de la Ciudad, obrando de acuerdo con la orden del Alcalde, dirigió cartas a los recurrentes, ordenándoles que vacasen sus puestos dentro de cinco días.

En 24 de enero el abogado de los recurrentes envió una carta al Alcalde de la Ciudad, pidiendo que se suspendiese la orden hasta que la decisión hubiese quedado firme.

En 26 de enero apelaron contra la decisión. El 30 del mismo mes se transmitió el expediente al Tribunal de Apelación, y el mismo día el abogado de los apelantes presentó una moción en dicho tribunal pidiendo que el expediente fuese cursado al Tribunal Supremo porque solamente trataba de suscribir cuestiones de ley.

El 31 de enero se envió el expediente a este Tribunal.

La moción de los recurrentes en el Juzgado de Primera Instancia, en que se pedía un interdicto preliminar mientras estaba pendiente la apelación, fue* denegada.

El 31 de enero de 1950, alegando que el tribunal inferior abuso de su discreción, los recurrentes presentaron a este Tribunal una moción urgente pidiendo una orden de interdicto preliminar, que fue* denegada en 3 de febrero del mismo año.

En 21 del mismo mes presentaron una moción de reconsideración que fue* denegada en 24 de febrero.

El "Annex B" de la solicitud, con fecha 6 de enero de 1949) es un documento en que consta que Tan Ko Lok,

residente en la calle de Legarda No. 502, Sampaloc, ha pagado al Tesorero de la ciudad la cantidad de P1 como impuesto de licencia (license fee) para ocupar por un año desde el 1.º de enero hasta el 31 de diciembre de 1949, el puesto 443 (Stall 443, 2nd class) del mercado de Sampaloc. Los demás recurrentes ocupan 7 han obtenido sus respectivos puestos bajo las mismas condiciones en que Tan Ko Lok ocupa el suyo.

Cuando se dictó por el Juzgado de Primera Instancia de Manila su decisión en 6 de enero de 1950, los recurrentes ya habían perdido automáticamente su derecho a permanecer en sus puestos. Con todo, pidieron ante este Tribunal la expedición de un interdicto prohibitorio preliminar: eso demuestra que querían aun permanecer en sus puestos sabiendo que su licencia ya había expirado.

Los recurrentes contendían que, bajo la licencia expedida a su favor (parecida al Annex "B"), tienen derecho a permanecer en sus respectivos puestos como los filipinos pueden continuar ocupando los suyos. Esta contienda es insostenible. Después de expirado el plazo de un año, ni el chino, ni el filipino pueden permanecer en su puesto a menos que se haya renovado su licencia. Si, por el simple hecho de haber obtenido su puesto, el ocupante puede permanecer por todo el tiempo que quiera, entonces sería innecesario poner en la licencia el plazo de un año. La fijación del plazo sería una redundancia.

Los recurrentes contendían que, bajo la Ley No. 37, el ciudadano filipino tiene preferencia al puesto si lo solicitante un filipino y un extranjero; pero si no hay ningún solicitante filipino, el extranjero tiene derecho al puesto. La preferencia que se da al extranjero es solamente un acto de condescendencia o gracia, y su tenencia es precaria. Esa ocupación no es de estricto derecho; puede ser cancelada en cualquier tiempo por las autoridades de la ciudad. En el caso de que no haya solicitante filipino, puede provisionalmente concederse el puesto a un extranjero para que produzca la renta necesaria para la ciudad. El ocupar un puesto en un mercado público está reservado para los nacionales, es un privilegio concedido al filipino por disposición constitucional. No es un derecho inalienable que tiene todo ser humano, como el derecho a la vida, la libertad de pensar, etc.

El Estado de New Jersey prohíbe, por medio de una ley, a los extranjeros utilizar red para la pesca. 2 C. S. (New Jersey), p. 2521, par. 92.

El Estado de New Jersey prohíbe por una ley a los extranjeros dedicarse a la caza sin licencia. 2 C. S. (New Jersey), p. 252S, pars. 134, 138.

Se prohíbe en Filipinas conceder a los extranjeros la contratación de obras públicas, (Ley No. 4239) y las leyes del Commonwealth Nos. 108 y 421 castigan la evasión de las leyes de nacionalización de ciertos derechos de franquicias y privilegios.

Las leyes de los estados de Washington y Nebraska que prohíben a los extranjeros ejercer la profesión de abogado fueron declaradas legales en *In re Xamashita*, 70 Pac., 462 y en *In re Admission to Bar*, 4 N. W., 611.

En Filipinas no se permite al extranjero ejercer la profesión de abogado, y este Tribunal ha denegado varias solicitudes presentadas por ciudadanos americanos.

En *Gizzarelli vs. Presbrey*, 117 Atl. Rep., 359, el Tribunal Supremo de Rhode Island declaró que la ordenanza que prohíbe a un extranjero operar un "bus" de carga y pasaje en las calles de la ciudad no es discriminatoria, no viola la Enmienda 14.^a de la Constitución.

En *Morin contra Nunan*, (103 Atl.-Rep., 378), se declaró constitucional la ordenanza de la ciudad de Weehawken, New Jersey, que prohíbe la operación por extranjeros de vehículos de motor para pasaje.

Fue declarada constitucional que no viola la enmienda 14^a de la Constitución Americana la ley del Estado de Massachusetts, que restringe para los ciudadanos americanos la expedición de licencia para la ocupación de

buhonero. (Commonwealth vs. Hana, 81 N. E., 149.)

La ley del Estado de Pennsylvania que prohíbe a los extranjeros matar pajaros o animales silvestres, excepto en defensa propia y de su propiedad, fue declarada constitucional por el Tribunal Supremo de los Estados Unidos en *Patsone vs. Commonwealth*, 232 U. S., 13d; 58 L. ed., 539).

Las leyes que no permiten la expedición de licencia para la venta de licores por extranjereros fueron declaradas constitucionales por el Tribunal de Apelación de Maryland en *Trageser vs. Gray*, 20 Atl. Rep., 905; por el Tribunal Supremo de Ohio en *Bloomfield vs. State*, 99 N. E., 309; y por el Tribunal Supremo de Texas en *De Grazier vs. Stephens*, 105 S. W., 992.

En *People vs. Lowndes*, 29 N. E., 751, la Corte de Apelación de Nueva York declaró que el artículo 441 del Código Penal, que castiga con prisión y multa a la recolección o cultivo de ostras en las aguas del estado de Nueva York por uno que no es residente del mismo, se ha dictado con el fin de proteger a los residentes con exclusión de los no residentes; y es, según el Tribunal Supremo de los Estados Unidos, en *McCready vs. Virginia*, 94 U. S. 391, "un ejercicio legal del Poder Legislativo sobre la propiedad común de los ciudadanos del estado."

Las leyes y decisiones citadas son medidas que fueron adoptadas para proteger al nacional. Las barreras arancelarias son otras medidas encaminadas a proteger los recursos nacionales, como la agricultura y la industria. No son armas de mala ley; son remedios que utilizan las naciones cuando son necesarios. No deben resentirse los extranjeros si con su adopción en Filipinas quedan afectados.

Si el Gobierno, por necesidad, tuviera que ceder a un extranjero una contrata de obras públicas por no haber ningún filipino que quiera hacerse cargo de ella, eso no es razón para que después el extranjero reclame, como de estricto derecho, la obtención de otras contratas.

Si, a falta de abogado o persona competente, un Juzgado nombra a un abogado extranjero para encargarse de la defensa de un acusado, eso no es razón para que el abogado extranjero reclame después, como de estricto derecho, el privilegio de ejercer la profesión ante los tribunales de Filipinas. Los recurrentes, que obtuvieron licencia para ocupar un puesto en un mercado público a falta de solicitantes filipinos, deben comprender que por cortesía se les concedió dicho puesto, y no porque tienen derecho a él; no deben reclamar si se les echa del puesto porque lo ocupan en contravención de la prohibición constitucional.

La nacionalización de los mercados públicos ha quedado definitivamente establecida al aprobarse la Constitución.

En *Co Chiong y otros contra Hon. Miguel Cuademo, Sr., y otros*, (46 O. G., 4833), este Tribunal dijo:

"Public markets are public services or utilities * * *. Under the Constitution, the operation of all public services are reserved to Filipino citizens and to corporations or associations sixty per centum of the capital of which belongs to Filipino citizens.

* * * * *

"Foodstuffs sold in public markets demand, at least, as much official control and supervision as the commodities sold and distributed in other public utilities. They affect the life and health of the people, the safeguarding of which is one of the basic obligations of a constituted government. Official control and supervision can be exercised more effectively if public market stalls are occupied by citizens rather than by aliens."

En el asunto de *The Aranque Market Extension Chinese Vendors Association contra Hon. Manuel de la Fuente, etc. y otros* (48 Off. Gaz., 94)[*], este Tribunal dijo:

"Petitioners alleged that the Aranque Market Extension is not a public market within the meaning of all laws, ordinances, orders and regulations governing public markets because said market stands on private property and its building was erected with private funds. This contention is not well taken. A market is a 'public market' when it is dedicated to the service of the general public and is operated under government control and supervision as a public utility, whether it be owned by the government or any instrumentality thereof or by any private individual. It is settled doctrine that "public market may be the object of individual ownership or lease, subject to municipal supervision and control." (43 C. J.p. 394) Thus, if a market has been permitted to operate under government license for service to the general public, it is a 'public market' whether the building that houses it or the land upon which it is built be of private or public ownership. This is not different from public vehicles or vehicles of public utility which are so classified whether they be owned by private individuals or by government instrumentalities. The factors determining a 'public market', therefore, are the purpose or use to which such a market is dedicated and the authority under which it operates, and not the fact or status of ownership."

Y es porque el artículo 3, título XIII, dispone así:

"No se concederá franquicia alguna, certificado u otra forma de autorización para operar un servicio público, excepto a ciudadanos filipinos o a corporaciones u otras entidades organizadas según las leyes de Filipinas, el sesenta por ciento de cuyo capital sea de la propiedad de ciudadanos filipinos; 7 tales franquicia, certificado o autorización no tendrá carácter exclusivo ni servirá para un período mayor de cincuenta años. No se concederá franquicia o derecho alguno a cualesquier individuo, razón social o corporación excepto bajo la condición de que tal franquicia o derecho estarán sujetos a enmienda, modificación o derogación por la Asamblea Nacional cuando el interés público así lo requiera."

Se contiene que un "stall" o un puesto en un mercado público puede ser ocupado por un extranjero de la misma manera como éste puede ocupar un "taxicab". No existe similitud en los dos casos. El que usa un "taxicab" es un comprador del servicio de transportación. El que ocupa un "stall" no es un comprador: explota el negocio de vender en un mercado público, que es lo que se prohíbe precisamente. El extranjero puede comprar efectos de un "stall" como puede ser pasajero de un "taxicab"; pero no puede ocupar el "stall" para dedicarse al negocio de vender, como no puede, directa ni indirectamente, explotar el negocio de transportar pasajeros por medio de un "taxicab". Un extranjero que paga determinada cantidad al Yellow Taxicab Co., por ejemplo, para que bajo el nombre de esta por medio de un taxi de su propiedad explote el negocio de transportar pasajeros, indirectamente infringe la ley.

Si un "stall" puede ser ocupado por un extranjero, todos los "stalls" podrán serlo igualmente por extranjeros. Entonces la nacionalización de los mercados públicos sería una verdadera ironía. Es evidente que no se nacionalizó la administración de los mercados públicos porque va a cargo de los gobiernos municipales; lo que se nacionalizó es el negocio al por menor que se realiza en los "stalls".

Ese negocio es rudimentario, es comercio en su estado embrionario; apenas se emplea un capital de veinte o treinta pesos; es migaja de pan comparado con los comercios en que hay concurrencia libre de nacionales y extranjeros. Si se encomendó a los ciudadanos filipinos la explotación de los "stalls" en los mercados públicos es porque se deseaba evitar que en las transacciones que se hacen precipitadamente por exigencias del momento se sirviera al público gato por liebre. No hay racionales y mis celosos guardianes de la salud del pueblo que los mismos nacionales. Así razonaron los varios tribunales supremos de los Estados Unidos al sostener la constitucionalidad de las varias leyes proteccionistas que fueron impugnadas de nulas.

Se confirma la decisión apelada con costas contra los apelantes.

Bengzon, y Jugo, MM., están conformes.

Paras, Pres., Feria, Padilla, y Buatista Angelo, MM., conformes con el resultado.

DISSENTING

TUASON, J.,

The main basis of this Court's decision is Annex "B", a sample of the licenses issued to the petitioners. The decision holds that these licenses being for one year, ending December 31, 1949, the petitioners had already lost automatically their rights to their stalls when the trial was held."Con todo—says the decision pidieron—ante este Tribunal la expedición de un interdicto prohibitorio preliminary eso demuestra que querían atin permanecer en sus puestos sabiendo que su licencia ya había expirado."

This statement takes for granted several things none of which the court below or the City Fiscal himself has dared insinuate. Nor do the petitioners contend, that "bajo la licencia expedida a su favor (parecida al Annex fB), tienen derecho a permanecer en sus respectivos puestos como los filipinos pueden continuar ocupando los suyos." Neither the court below in its decision, nor the City Fiscal in his brief, nor the petitioners in their brief so much as mention Annex "B".

But inasmuch as this Court has dwelt on Annex "B" I am going to explain what I think this annex is.

To begin, the petitioners' asserted right to keep their respective stalls is not founded on Annex B; it is the lease, with which the decision of this Court seems to confound the license, that is the petitioners' cause of action. The licenses of which Annex B is one, are provided for in Ordinance No. 2995, as amended by Ordinance No. 3051, and are nothing more than a sort of tax on business. Sections 1 and 3 of Ordinance No. 2995 as amended reads

"Section 1. License.—No stallholder shall engage or conduct his business in the City public markets without first having obtained a license therefor from the City Treasurer.

"Section 3, Fees.— There shall be paid in advance to the City Treasurer for every license granted under the provision of this ordinance an annual fee as enumerated below."

Such licenses or license fees are classified by Section 8, depending on the markets and the kinds of merchandise sold. They vary in amount from as low as P0.10 to P1.50 a year.

It is hardly necessary to remind ourselves that these license fees are not different, except perhaps as to amount, from license fees imposed on all similar businesses outside the markets. They are paid yearly as a matter of convenience; they can be divided into monthly, quarterly, or semi-annual installments. We also know that the period to which a license fee corresponds is not the measure of the time the licensee may run a business. The business continues as long as the business man is willing to pay the necessary license fee. In a special sense, the license follows the business and not vice versa.

What are closely related to the points at issue, though also undecisive thereof, are the rentals on market stalls. The rentals are fixed in Section 25 of the Market Code, Ordinance No. 2898, as amended, and there is another schedule of payments different from that of license fees both as to amount and interval. Thus Section 4 of Ordinance No. 2995, as amended by Ordinance No. 3051, stipulates that "in addition to the license fee provided in the preceding section, each licensee or stallholder shall pay the rental fees provided in Section 35 (337) of Ordinance No. 2898, known as the Market Code as amended." These rentals are payable daily, and graduated at rates which range from P0.10 in the Pandacan market to P0.50 in the Divisoria market.

The collection of rentals daily, like the collection of license fees annually, was devised as a matter of

ex-Jpediency. The stallholder might abandon his stall; he might die without leaving any heir, or be expelled for cause before the end of the year, quarter or month. By no means is the daily collection of rentals intended to be the duration of the lease. Otherwise, and under the theory of this Court's decision, the stallholders would be subject to ejectment at the close of each day. It should be observed that the rentals may be paid in advance for a longer period at the stallholder's option. And so may the licensee pay the license fee in advance for more than a year if the system of accounting permits.

The duration or term of the lease of a market stall is treated in Section 25 of the Market Code and Section 8 of Ordinance No. 2995. According to these sections the lease is "continuous" and permanent, and by the firstmentioned section a regular lease of a market stall may be revoked by the City Mayor only "for any reasonable or just cause, or for any violation of the provisions of this or any other ordinance, or any rules and regulations relating to the administration of the public markets." The permanent character of the lease is more particularly emphasized by the fact that the leasehold is made hereditary; under Section 20 of the Market Code, upon the death of the lawful stallholder, or in case of his physical disability for work, the surviving spouse or the eldest legitimate son or daughter, as the case may be, is entitled to succeed the deceased or incapacitated stallholder to the lease.

These ordinances partake of the nature of a contract between the city and the stallholder, and it would take strong reasons of national policy, as declared by the legislature, and public welfare, for even the City Council to impair its (contract's) obligations. At any rate, the City Mayor can only execute the provisions of the above ordinances; he has no express or implied power to eject any stallholder except for any of the causes specified in those ordinances. This rule is" elementary, too familiar to all students of constitutional and municipal governments to be elaborated upon.

The next question that naturally crops up is, have the appellants violated any of the provisions of the Market Code or of the rules and regulations governing the administration of public markets? Not in the least. It is alleged by the petitioners, and the allegation is expressly admitted by the respondents, that "the petitioners had always been pursuing peacefully and lawfully their business in said stalls, complying with all lawful orders and regulations above mentioned plus their paying the required daily stall fees."

The leases under consideration were terminated for no other reason than that the stallholders are aliens and markets are public utilities. Indeed it is suggested that this is only an ostensible reason, the true reason being politics. Our attentions drawn to the coincidence that the ousting was carried out, and in a peremptory and summary manner, few months before the 1949 elections.

But let us brush aside this little burst of cynicism and confine the discussion with the territory of the respondents¹ and this Court's argument.

It is said that, as aliens are prohibited by the Constitution from operating public utilities and markets are public utilities, therefore aliens may not occupy market stalls. To begin with, I dissented from this Court's decisions holding that markets are public utilities, and I still do adhere to this belief. Public utilities are enumerated in Section 13(a) of Commonwealth Act No. 146. Public markets are not included in the list. Turning to American definitions of public utility I find no characteristic of public markets that comes within the description.

But for the present purposes of this dissent, I may and do assume that public markets are public utilities; so what? I still maintain that the majority confuses public markets with stallholders. Stallholders are not public utilities simply because they do business in public markets not any more than a person is a public utility who rides in a public bus or hires a vehicle from a public utility company for his exclusive and personal use. By the same token a retail merchant is not a market. The largest department store on the Escolta is not a market, and that store would

not be a market if it were moved into a market compound. A market in the sense in which the term is used in Republic Act No. 37 and the Market Code means "the territorial area in which goods are bought and sold or the gathering of such area for the purpose of buying or selling goods. (26 Words and Phrases 530.)

Assuming, as I do for the sake of argument, that markets are public utilities, the governmental agency or instrumentality charged with regulating public utilities would deal with the owner or owners of the place, prescribe how and where the stalls should be arranged, how much should be charged for each stall, etc. It would not deal with individual stallholders or stallowners just as it does not deal with individual passengers of public service vehicles, or with hirers of public busses for private use. On the contrary, the regulations would have an eye single to the convenience and protection of stallholders and the prevention of discrimination against applicants for stalls. It is the interest of the merchants wherewith the Public Service Commission would be concerned. The prices of commodities, the fitness of merchandise for human consumption, and the like are matters for other agencies of the government to look into.

We have seen that Republic Act No. 37 excludes with some exceptions, aliens from the privilege of renting stalls in public markets. This exclusion is not in obedience to any constitutional mandate but is predicated upon entirely different considerations. Proof of this is that the exclusion is not absolute but conditional on lack of Filipino bidders for stalls. Incidentally, this permission, although conditional, for aliens to occupy market stalls is an illustration of the belief, at least, of Congress that individual merchants in or outside public markets are not public utilities. At any rate, the Congress has spoken, and the Mayor whose position was created by Congress is duty bound to respect legislative enactments. This Court has not declared Act No. 37 unconstitutional and does not pretend to do so in this case.

The passage quoted from this Court's decisions and relied upon now by this Court, by the court below, and by the respondents, to the effect that governmental functions and privileges may be denied to aliens, is correct. There can be no doubt that those functions and privileges may be confined to Filipinos by the Legislature and most of them are as a matter of fact. But so may the Congress allow aliens to enjoy and exercise any of them, And as already stated, the Congress does allow by incontrovertible implication if not by express provisions of Act No. 37 aliens to hold public market stalls. The control over the functions and privileges referred to is derived from the principle of sovereignty and not from the fact that they are public utilities, for no one would claim that they are.

From what has been said there stand out these, unassailable facts, which in reality are the only factors that matter in this case. The Congress has authorized the lease to aliens of stalls which Filipinos don't want. The City Council by ordinance has followed suit. And the petitioners were awarded the stalls in question because these are in remote and dark corners of the market and no Filipinos were interested in them. The validity of Act No. 37, of the ordinance, or of the lease is unchallenged.

How can we get around these facts? The Court has found a way out and here it is a *wLa preferencia que se da al extranjero es solamente un acto de condescendencia o gracia, y su tenencia es precaria. Esa ocupación no es estricto derecho; puede ser cancelada en cualquier tiempo por las autoridades de la ciudad. En el caso de que no haya solicitante filipino, puede provisionalmente concederse el puesto a un extranjero para que produzca la renta necesaria para la ciudad. El ocupar un puesto en un mercado publico esta reservado para los nacionales, es un privilegio concedido al filipino por disposicion constitucional. No es un derecho inalienable que tiene todo ser humano, como el derecho a la vida, la libertad de pensar, etc*

But this theory runs headlong against the express provision of the Market Code, that, subject to the exceptions specified in that by-law, the lease is not only for life but hereditary. Aside from these specific provisions, common sense positively abhors the idea that the Mayor, the City Treasurer or even the City Council itself could bring the

lease to an end at will. Moreover, no sensible merchant would think of bidding for a space or stall in a public market, investing capital and making other preparations to set up business, with the knowledge that the next day, next month, next year, or on the approach of the next election he might be ousted.

The decision meets this observation, which was made in the course of the deliberations, with this one; "Ese negocio es rudimentario, es comercio en su estado embrionario; apenas se emplearfa un capital de veinte o treinta pesos; es migaja de pan comparado con los comercios en que hay concurrencia libre de naci onales y extrageros."

One thing I am certain I understand in this remark is that only 20 or 30 pesos is needed for capital to operate a store in a market. My reply is that from common observation the figures given are an extreme understatement, to say the least, unless we are thinking of peddlers who bring to market on their head fruits, greens or vegetables from their yards.

This is not a brief for aliens or against nationalization of industries and the retail trade. That is the concern of Congress, Courts are constituted for another and distinct purpose; to interpret the law and administer justice according to law» Over and above race, creed and nationalism, are law, humanity, and decent respect for the sanctity of contracts and commitments.

Wherefore, I dissent.

DISSENTING

REYES, J.,

On October 1, 1946, Congress passed Republic Act No. 37 to take effect January 1, 1947, giving citizens of the Philippines preference in the lease of public market stalls and empowering the Secretary of Finance to promulgate necessary rules to carry out its purpose. In the exercise of this power, the Secretary of Finance, on November 26, 1946, issued Department of Finance Order No. 32, declaring all stalls and booths in public markets vacated as of January 1, 1947, so that they may thereafter be leased to Filipino applicants, and providing that "only in the absence of a Filipino applicant" may the award be made to an alien.

Because of the enforcement of the aforementioned Department Order, the herein petitioners, who were Chinese citizens holding stalls in different markets of the city of Manila, were ousted from their stalls on or about January 12, 1948. But, as authorized in the same Department Order and the Republic Act above mentioned, they were later awarded other stalls not applied for by any Filipino.

Sometime in May, 1949, however, petitioners were officially notified that pursuant to a special order of the Mayor, they were to vacate their stalls within 24 hours or face forcible ejectment by the police. Considering the order illegal, petitioners sought to restrain its enforcement by bringing the present action for prohibition in the Court of First Instance of Manila against the Mayor, the Treasurer, and the market administrators of the city. The court dismissed the action, holding that it had no reason to interfere with city officials in the anforcement of Republic Act No. 37. From this decision petitioners have appealed to this Court.

It is admitted that petitioners have not violated any provision of the Market Code or any regulation governing the occupancy of market stalls to warrant revocation of their lease. And it is not disputed that the stalls in question were awarded to the petitioners because there were no Filipino applicants for them. The sole issue is whether petitioners may be barred from the market stalls for no other reason than that they are aliens.

The Government has already established a national policy with respect to the leasing of stalls in public markets.

As enunciated in Republic Act No. 37, the policy is to give Filipino citizens preference in the lease of those stalls but not to bar aliens therefrom. Consistently with that policy, the Department Order implementing the Act permits the award of a stall to an alien "in the absence of any Filipino applicant." The policy received judicial sanction in the case of *Co Chiong et al. vs. Miguel Cuaderno et al.*, 46 O. G. 4333.

I understand it to be the first duty of every public officer to obey the law, and I cannot conceive how this Court could sanction a violation of that duty by giving validity to the challenged order of the city executive issued in defiance of the terms of a statute which for our purposes must be presumed valid because this Court has not declared it unconstitutional.

I, therefore, dissent from the opinion of the majority.

[1] 83 Phil., 242.

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