

**ABOITIZ SHIPPING CORPORATION; CARLOS A. GO MTHONG &
COMPANY; CEBU NAVIGATION COMPANY, INC.; CEBU-BOHOL
FERRY CO. INC.; COROMINAS, RICHARDS NAVIGATION CO., INC.;
PACIFIC LINES, I...***G. R. No. L-14526. March 31, 1965*

Ponente: MAKALINTAL, J.

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The principal question here, is whether or not under its charter, Commonwealth Act No. 58, the City of Cebu may provide by ordinance for the collection of wharfage shipping concerns whose vessels dock at the public wharves or piers located in said city but owned by the National Government. The ordinance, No. 207, was purportedly enacted by the Municipal Board on August 14, 1956 and approved by the City Mayor on the following August 27. Plaintiffs paid the wharfage charges under protest since September 1, 1966 and on May 8, 1957 filed this action in the Court of First Instance of Manila to have the said ordinance declared void, its enforcement enjoined in so far as the wharves, docks and other landing places belonging to the National Government were concerned, and all the amounts thus for collected by defendants refunded by them.

The court a quo dismissed the complaint after trial and the case has come to us on appeal by plaintiffs.

Appellants have raised some questions of fact, and in particular point out certain events and circumstances to show that ordinance No. 207 was not and could not have been enacted, as alleged by appellees, on August 14, 1956. This case, however, may be decided solely on the legal issue presented by the parties.

The Municipal Board's authority to pass the ordinance is claimed by appellees under section 17 (w) of the charter of the City of Cebu of which states:

"Section 17. General powers and duties of the Board.—Except at otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Boards shall have the following legislative powers:

x x x x

(w) To fix the charges to be paid by all watercraft landing at or using public wharves, docks, levees, or landing places."

The lower court ruled, upholding appellees' contention in this respect, that in using the terms "public wharves, dock, levees or landing places," the legislature made no distinction between those owned by the National Government and those owned by the City of Cebu and that consequently both fall within the scope of the power granted. Appellants assail this construction as erroneous, first in the light of the generally accepted meaning of "public wharf" as it may have a bearing on the right or authority to charge wharfage and, secondly, in view of other related provisions of the same city charter.

The word "public", as employed to describe a wharf, does not refer to its ownership either by the National

Government or by a province or municipality. It denotes rather the nature of its use. Thus public wharves have been held to be those used generally by the public, free of charge or for compensation, while a private wharf is one whose owner or lessee has exclusive enjoyment or use thereof (*Hamilton vs. Portland State Pier Site District*, 112 A. 836). Piers or landing places and wharves may be private or they may be, in their nature, public, although the property may be in an individual owner, where the latter is under obligation to concede to others the privilege of landing their goods or of mooring their vessels there, upon payment of a reasonable compensation as wharfage (*Duttoon vs. Strong*, 17 Law, Ed. 29, 1 Black 35, 66 U.S. 339). So a wharf may be public whether it belongs to the National Government, to a municipal corporation or to a private individual or concern.

Assuming the public character of a wharf by reason of its availability for public use, the right to impose wharfage dues rests on a different basis—that of ownership. For wharfage is a charge against the vessel by way of rent or compensation for its being allowed to lie alongside a wharf for the purpose of loading or unloading freight (*Phil. Sugar Centrals Agency vs. Insular Collector of Customs*, 51 Phil. 131, citing *Parkersburg*, 27 Law Ed. 584) and *River Transportation Co. vs. City of Parkersburg*, 27 Ed. 584) and, of course, for the use of the artificial facilities offered for that purpose (*City of Shreveport vs. B River and Coast lane*, 55 Am. Rep. 504). That the right to charge wharfage is based on ownership has been impliedly recognized by this Court in *Province of Mindoro vs. Cruz*, 74 Phil. 108, as follows: ". . . the subsequent classification of the port of Calapan as a national port did not, and was not intended to, divest the province of Mindoro of its part ownership of the wharf and, accordingly, of its right to collect wharfage for its use as it had theretofore done"; and "not until its complete ownership has become vested in the National Government by the mode of transfer provided by law may the province of Mindoro be divested of this right."

Under the foregoing test the right to collect the wharfage in question here belongs to the National Government, as in fact it has always collected the same from appellants. It is unreasonable to conclude that the legislature, simply because it employed the term "public wharves" in section 17 (w) of the charter of the City of Cebu, thereby authorized the latter to collect wharfage irrespective of the ownership of the wharves involved. The National Government did not surrender such ownership to the city; and there is no justifiable ground to read into the statute an intention to burden ship owners, such as appellants, with the obligation of paying twice for the same purpose.

Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule of statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus an apparently general provision may have a limited application if viewed together with other provisions.

Section 17 (w) of the charter of the City of Cebu is a case in point. It authorizes the Municipal Board to fix the charges to be paid by all watercraft landing at or using public wharves, docks, levees, or landing places. There is indeed no distinction therein between public wharves owned by the National Government and those owned by the city itself. But the subsection immediately preceding (v) impliedly establishes such a distinction. It empowers the Municipal Board "to provide for the construction and maintenance, and regulate the use, of public landing places, wharves, piers, docks and levees." It seems fairly evident that when the law-making body used the term "public wharves, etc." in subsection 2 it meant to refer to those mentioned in the preceding subsection, namely, the "public wharves, etc." constructed and therefore owned by the City of Cebu. Section 30 of the charter has a similar bearing on the question, in granting to the City Engineer "the care and custody of all public docks, wharves, piers, levees, and landing places, when erected" —undoubtedly referring to those constructed and owned by the city. For in so far as those belonging to the National Government are concerned they remain under the exclusive control, direction and management of the Bureau of Customs, according to section 1142 of the Revised

Administrative Code. And appellants have accordingly been paying to the National Government fees for the use of its wharves in Cebu, pursuant to law, particularly Republic Act No. 1371, which took effect on July 1, 1955 and was later on embodied in the new Tariff and Customs Code.

The court a quo ruled that Section 17(w) of the city charter is "plainly evincive of the power to tax for revenue purposes," and therefore the wharfage charges imposed by ordinance pursuant thereto are proper even the amounts actually collected are much more than h may be justified as license fees under the police power of regulation of "shipping offices" granted under section 17 (1) of the same charter. The power to tax is an attribute of sovereignty and for it to be exercised by municipal corporation requires a clear delegation of power by means of a charter grant or by a general enabling statute. The power is not inherent in a municipal corporation (*Saldaña vs. City of Iloilo*, 104 Phil, 28; 55 Off. Gaz., 10267), and if there is any doubt as to whether or not such power has been delegated to it the doubt must be resolved negatively (*We Wa Yu vs. City of Lipa*, 54 O.G. 4055).

But even if the wharfage dues authorized under Section 17 (w) be considered as taxes for revenue, such authority nevertheless is limited to public, wharves, docks, levees and other landing places belonging to the City of Cebu and not to those owned by the National Government under the exclusive supervision of the Bureau of Customs.

IN VIEW OF THE FOREGOING, the judgment appealed from is reversed; Ordinance No. 207 of the City of Cebu is declared null and void, and appellees are ordered to refund to appellants all amounts collected thereunder and to refrain from making such collection. Costs against appellees.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon J.P. and Zaldivar, JJ., concur.

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