

AMERICAN MAIL LINE, ET AL., PLAINTIFFS AND APPELLEES, VS. CITY OF BASILAN, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12647. May 31, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Manila "declaring illegal and void Ordinance No. 180, Series of 1955, of the City of Basilan, and dismissing defendants' counterclaim for lack of merit.

On September 12, 1955 the City Council of Basilan City enacted Ordinance No. 180, Series of 1955, (Exh. B) amending Title IV, Ordinance No. 7, Series of 1948 (Exh. A) by adding thereto Section 1 (D) and Sections 2 (C) and (D). The first reads as follows:

"SECTION 1. Article IV of Ordinance numbered seven entitled, 'The Port Area Ordinance', is hereby amended to read as follows:

"ARTICLE IV. REGULATIONS FOR BERTHING, MOORING, DOCKING AND ANCHORING AT PIERS OR WHARVES AT ANY POINT WITHIN THE CITY OF BASILAN AND FOR ANCHORING AT ANY OPEN BAY, CHANNEL OR ANY OTHER POINT WITHIN THE TERRITORIAL WATERS OF THE CITY OF BASILAN."

"SEC. 2. Section 1 of Ordinance No. 7 is hereby amended and adding thereto a new paragraph to be known as Section 1(D), to read as follows:

"Section 1(D). Any foreign vessel engaged in coastwise trade which may anchor at any open bay, channel, or any loading point within the territorial waters of the City of Basilan for the purpose of loading or unloading logs or passengers and other cargoes shall pay an anchorage fee of 1/2 centavo (P.005) per registered gross ton of the vessel for the first twenty-four (24) hours, or part thereof, and for succeeding hours, or part thereof, PROVIDED, that maximum charge shall not exceed, seventy-five pesos (P75.00) per day, irrespective of the greater tonnage of the vessels."

Appellees are foreign shipping companies licensed to do business in the Philippines, with offices in Manila. Their vessels call at Basilan City and anchor in the bay or channel within its territorial waters. As the city treasurer assessed and attempted to collect from them the anchorage fees prescribed in the aforesaid amendatory ordinance, they filed the present action for Declaratory Relief to have the courts determine its validity. Upon their petition the lower court issued a writ of preliminary injunction restraining appellants from collecting or attempting to collect from them the fees prescribed therein.

After the denial of appellants' motion to dismiss the complaint on the ground of wrong venue, they filed their answer alleging therein that the City of Basilan had authority, through its city council, to enact the questioned ordinance in the exercise of either its revenue-raising power or of its police power. They also filed a counterclaim to recover alleged uncollected anchorage dues amounting to P7,500.00, and the sum of P2,000.00 for expenses

incurred in defending the suit.

The question to be resolved is whether the City of Basilan has the authority to enact Ordinance 180 and to collect the anchorage fees prescribed therein.

In support of the affirmative, appellant city relies upon the following provisions of its Charter (Republic Act 288):

"SEC. 14. General Powers and Duties of the Council.—Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Council shall have the following legislative powers:

(a) To levy and collect taxes for general and special purposes in accordance with law.

x x x x

(o) To enact ordinances for the maintenance and preservation of peace and good morals.

x x x x

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

Under paragraph (a) transcribed above, it is clear that the City of Basilan may only levy and collect taxes for general and special purposes in accordance with or as provided by law; in other words, the City of Basilan was not granted a blanket power of taxation. The use of the phrase "in accordance with law"—which, in our opinion, means the same as "as provided by law"—clearly discloses the legislative intent to limit the taxing power of the City.

The next point to be considered is whether the questioned ordinance may be upheld under the provisions of Section 14 (v) of Republic Act No. 288. After a careful consideration of the language employed therein, we have reached the conclusion that said provision does not authorize the City of Basilan to promulgate ordinances providing for the collection of "Anchorage" fees. This is clearly not included in the power granted by the provision under consideration "to fix the charges to be paid by all watercraft landing at or using public wharves, docks, levees or landing places". That this is so is shown by the need which the City of Basilan had to enact the amendatory ordinance.

Appellants also argue that the ordinance in question was validly enacted in the exercise of the city's police power and that the fees imposed therein are for purely regulatory purposes. In this connection it has been held that the power to regulate as an exercise of police power does not include the power to impose fees for revenue purposes (*Cu Unjieng vs. Patstone*, 42 Phil., 188; *Pacific Commercial Co. vs. Romualdez, etc., et al.*, 46 Phil., 917; *Arquiza etc. vs. Municipality of Zamboanga*, 55 Phil., 653). In the *Cu Unjieng* case it was held that fees for purely regulatory purposes "may only be of sufficient amount to include the expenses of issuing the license and the cost of the necessary inspection or police surveillance, taking into account not only the expense of direct regulation but also incidental expenses. In (*Manila Electric Co. vs. Auditor General*, 73 Phil., 129-135), it was also held that the regulatory fee "must be no more than sufficient to cover the actual cost of inspection or examination as nearly as the same can be estimated. If it were possible to prove in advance the exact cost, that would be the limit of the fee".

To support the claim that the fees imposed are merely regulatory it is said that the City of Basilan is an island with mountainous coasts and fringed by numerous coves and inland bays and islets, and may become a veritable haven for smugglers if the city has no funds or means to suppress their illegal activities, but we believe that, this notwithstanding, the fees required are intended for revenue purposes. In the first place, being based upon the tonnage of the vessels, the fees have no proper or reasonable relation to the cost of issuing the permits and the cost

of inspection or surveillance. In the second place, the fee imposed on foreign vessels—1/2 centavo per registered gross ton for the first 24 hours, and which shall not exceed P75.00 per day—exceeds even the harbor fee imposed by the National Government, which is only P50.00 for foreign vessels (Sec. 2702 of the Tariff and Customs Code, Republic Act No. 1937, taken from Sec. 2, Republic Act No. 1317 which was enacted by Congress to raise revenues for the Port Works Fund). Moreover, Mariano Mancao, Port Inspector of the City of Basilan, in his affidavit dated February 17, 1956 (Exh.C), states that were it not for the injunction issued by the lower court in this case, the city "would have collected considerable amounts from the plaintiffs for anchorage fees". All these circumstances point to the conclusion that the fees were intended for revenue purposes.

Lastly, appellant city's own contention that the questioned ordinance was enacted in the exercise of its power of taxation, makes it obvious that the fees imposed therein are not merely regulatory.

Wherefore, the decision appealed from is affirmed, and the preliminary injunction issued heretofore is made final. Without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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