

INTERNATIONAL OIL FACTORY (CHENG BAN YEK CO., INC.) ET AL., PETITIONERS AND APPELLEES, VS. THE DIRECTOR OF HEALTH, ET AL., RESPONDENTS AND APPELLANTS. PHILIPPINE REFINING CO., A...

G.R. No. 13438. May 31, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Manila declaring Food and Drugs Act Administrative Decisions Nos. 268 and 269 null and void and permanently enjoining the respondents from enforcing the same.

This is an action for prohibition and preliminary injunction to restrain the enforcement of said Food and Drugs Act Administrative Decisions, hereinafter referred to as FDAD, which provide that hydrogenated vegetable lard and hydrogenated vegetable oil "shall have no more than 25% air content" to be determined in the manner stated in FDAD No. 268—issued by respondent Director of Health, upon the recommendation of the Board of Food Inspection and with the approval of respondent Secretary of Health—upon the ground that the regulation therein contained is null and void, it being in excess of the authority vested in said officers by the provisions of the Food and Drugs Act, pursuant to which they purported to act.

Aside from asserting that said regulation is illegal, petitioners herein, namely, International Oil Factory (Cheng Ban Yek Co., Inc.), Central Vegetable Oil Manufacturing Co., Royal Oil Products, Inc., and Liberty Oil Products, Inc., alleged in their petition that they manufacture hydrogenated vegetable lard and hydrogenated vegetable oil, which are not adulterated, misbranded, deleterious or harmful upon human health, and are being sold in containers which have clearly printed thereon the net weights of their contents, on which the prices are based; that the enforcement of said regulation will cause irreparable injury, without due process of law, to their properties, business and rights, for they will have to change their formulas for the manufacture of their vegetable land and vegetable oil, order new containers, discard their present stock of containers, and the dealers who have purchased such manufactured lard and oil will return their unsold stock to petitioners, whose production and sales schedules would, accordingly, be adversely affected thereby; that the enforcement of said regulation would, likewise, prejudice, not only over 1,000 employees and laborers that petitioners would have to lay off, but, also, the dependents of said employees and laborers, numbering over 5,000, aside from the industries from, which petitioners derive their materials for the production of their vegetable lard and vegetable oil; fend that said regulation would merely benefit some competitors of petitioners herein, who, accordingly, prayed that, apart from declaring said regulation null and void, a writ of preliminary injunction restraining its enforcement be issued pendente lite.

Upon the filing of a bond in the sum of P20,000, the Court of First Instance of Manila issued the writ of preliminary injunction prayed for.

In their answer, respondents Director of Health, Commissioner of Customs, Collector of Internal Revenue and Secretary of Health alleged that the regulation in question had been issued in conformity with law and within the

scope of their authority, because the maximum of 25% aeration for hydrogenated vegetable lard and hydrogenated vegetable oil, is much more than what is necessary—from 10% to 12%—to produce the whitish appearance desired in food shortenings; because said maximum of 25% will be beneficial, not only to the consuming public, but, also, to the manufacturers, for the lesser aeration will involve lesser bulk and, hence, better quality, as well as smaller containers and, consequently, lesser cost of production, lower prices and greater margin of profits; and because said regulation minimizes deception upon ignorant and unsuspecting consumers.

The Philippine Refining Co., Inc. and the Philippine Manufacturing Co. intervened in the case and filed an answer sustaining the legality of the regulation in question, and alleging that the same was adopted after due hearing held by the Board of Food Inspection.

After due trial, at which the parties introduced their respective evidence, and after the submission by them of extensive memoranda, the lower court rendered the aforementioned decision in favor of the petitioners. Hence, this appeal by the respondents.

The reason for the introduction of air into vegetable lard and vegetable oil intended for shortening was explained by Mrs. Pesigan, Chief Research Chemist of the Public Health Research Laboratory of the Department of Health. Her explanation is summed up in appellants' brief as follows:

"* * * the only reason why air is introduced into shortening is to make it appear and give it a white color, thus making it more attractive to the consumer. She pointed to the authoritative book on Industrial Oils and Fats by Alton Bailey, wherein it is stated on page 920 (Exhibit 19, p. 237, rec.) that an air content of 10-12% in shortening serves to give it a sufficient white and opaque, rather than a translucent appearance (pp. 479-480, t.s.n.). She assured the court that the samples she had examined with air content ranging from 18% to 54% were all white and there was practically no difference in whiteness (p. 480, t.s.n.). She said that, weight for weight, one brand of shortening which contains say 50% air will appear more voluminous compared to a similar quantity of shortening with less air and the public is likely to be deceived because purchasers usually judge quantity by size (pp. 470-471, t.s.n.)."

Moreover, the lower court found, and the accuracy of this finding is not assailed, that:

"There is conflict in the evidence as to whether a high aeration in shortening would facilitate dispensing and hand packing thereof, give more body to the product, require less time in beating the mixture for making bread and ooze harder than shortening with lower aeration. However, there is no dispute that air has no weight; that shortening is sold by petitioners and two American firms interested in upholding the questioned decision and other manufacturers by the net weight, and not by the volume; that air is introduced into shortening in order to give it the appearance of opaqueness instead of translucent; that air introduced into shortening has no deleterious effect on the human body or health; that petitioners sell their shortening in containers which have clearly printed thereon the net weights of their contents. Air in shortening does not reduce or lower or injuriously affect its quality or strength, nor is air substituted in part for shortening within the purview of section 1115(c), first and second cases, Revised Administrative Code".

The question for determination is whether the contested regulation falls within the powers delegated under section 1121 of the Revised Administrative Code, reading:

"With the approval of the Secretary of (Public Instruction) Education, the Director of Health, the (Insular Collector of Customs) Commissioner of Customs, and the Collector of Internal Revenue shall make and promulgate regulations for the enforcement of the Food and Drugs Act. In such regulations provisions shall be made for the collection of samples of foods and drugs for examination".

Respondents admit that the regulatory powers referred to in said section 1121 are limited to those which are "for the enforcement of the Food and Drugs Act", particularly, insofar as this case is concerned, section 1115 of the

Revised Administrative Code, which we quote:

"When article deemed to be adulterated.—For the purpose hereof, an article shall be deemed to be 'adulterated':

* * * * *

"In case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Secondly. If any substance has been substituted wholly or in part for the article.

Thirdly. If any valuable constituent of the article has been wholly or in part abstracted.

Fourthly. If it can be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifthly. If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health; but when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this article shall be construed as applying only when said products are ready for consumption.

Sixthly. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

It is, likewise, conceded that the regulation in question does seek to proscribe cases falling under the third, fourth, fifth and sixth subdivisions of paragraph (c) of said section 1115. They maintain, that the regulation is sanctioned by the first and second subdivisions of said paragraph (c), pursuant to which food is adulterated:

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Secondly. If any substance has been substituted wholly or in part for the article."

The issue hinges, therefore, on whether an air content of more than 25% "reduces", or "lowers", or "injuriously affects" the "quality or strength" of vegetable lard or vegetable oil, or whether, in consequence thereof, "any substance has been substituted wholly or in part" for such vegetable lard or vegetable oil.

Upon a review of the record, we are satisfied that the answer must be in the negative. As a matter of fact, respondents-appellants do not claim that aeration in excess of 25% will "reduce" the "quality or strength" of said product, or either "lower" the same, or "injuriously affect" it. Neither is it contended that when the air content exceeds 25%, "any substance" is "substituted wholly or partly for the article" in question, which is vegetable lard or vegetable oil. Indeed, to substitute is to put in the place of, change for, make way for, take the place of another. It implies that something is taken away or removed and that something else is placed in lieu thereof. Thus, the case of *Barren Country Canning & Pickle Co. vs. Niana Pure Food Co.* (211 N. W. 764), relied upon by respondents, involved the substitution of peas by brine, which took the place of a substantial portion of the contents of canned peas, and thus reduced the amount of peas contained in each can. Similar was the situation in the case of *Houston v. St. Louis Independent Packing Co.* (63 L. ed. 717)—likewise cited by respondents—which referred to a regulation limiting the amount of cereal and water that may be contained in or added to sausages. Considering that sausages consist mainly of beef and pork placed inside limited containers, it is clear that any

amount of cereals and/or water added thereto would reduce the amount of beef and pork contained in the sausage, and, hence, take its place or substitute it in part, aside from affecting its weight.

These two (2) cases have no parity with the one at bar. Aeration in the case of shortening, eliminates, removes or takes away no lard or oil. All of it remains in the shortening. Air does not take, the place of any lard or oil. It merely makes it more opaque and more bulky. But the weight of the vegetable lard or vegetable oil is not changed, because air has no weight. In other words, the degree of aeration prohibited by FDAD No. 268 does not involve a case of substitution falling under the second subdivision of paragraph (c) of said section 1115.

The main argument of respondents is that aeration in excess of 25% has a deceptive effect insofar as "quantity" is concerned, referring evidently to "volume", not to weight, because, "weight for weight, shortening containing more air will appear bigger in volume than one with less air" (Appellants' brief, p. 7). Realizing, however, that petitioners sell shortening by the weight, and that the containers of petitioners' shortenings have clearly printed thereon the net weight of its contents, respondents allege that the regulation in question seeks to avoid deception upon the public, for greater aeration or hydrogenation results in a greater bulk, and the unsuspecting buyers, particularly those purchasing by the slice or scoop ("tingi") are likely to believe erroneously that they get more lard when buying petitioners' products than when they purchase those of other producers.

At the outset, it should be noted, however, that the issue is, not whether Congress, in the exercise of the police power of the state, could have validly issue the disputed regulation, but whether the same is within the powers delegated to respondents herein by section 1121, in relation to the first two (2) subdivisions of paragraph (c) of section 1115 of the Revised Administrative Code. Secondly, under the aforementioned subdivisions, a food is not adulterated merely because it has greater bulk than another of similar kind. Thirdly, although all forms of adulteration connote some kind of deception, not every deception results in adulteration. Under the aforementioned section 1115, a given food is adulterated if it falls under the forms of deception therein enumerated. As a consequence, other forms of deception with respect to food do not adulterate the same within the purview of the Food and Drugs Act, although Congress may include therein such other forms of deception if it wishes to do so. Fourthly, aside from the fact that petitioners' shortenings are sold by net weight, which is clearly printed on the containers thereof, it has been proven that petitioner International Oil Factory sells shortenings even in small packages containing 20 grams at P0.05 each package. Fifthly, as pointed out in the decision appealed from:

"* * * It is noteworthy that manufacturers have no hand in the disposition by retail stores of their products. If regulation on the matter be necessary, the remedy lies with the legislature or municipal council to require retailers to give appropriate and prominent notice of aeration of shortening they are selling."

Lastly, there is every reason to believe that deception, as regards "quantity" of the food is concerned was not really meant to be considered a case of adulteration governed by section 1115, for the pertinent rule is found in section 1116, from which we quote:

"When article deemed to be misbranded.—'Misbranded', as herein used, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which is false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"For the purposes hereof, an article shall also be deemed to be misbranded:

* * * * *

"(b) In case of food.

* * * * *

Thirdly. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; but reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by proper regulations."

In conclusion, we hold that the Food and Drugs Act Administrative Decisions Nos. 268 and 269 were rendered or issued in excess of the powers delegated by law to respondents herein, and, accordingly, the decision appealed from is hereby affirmed, without special pronouncement as to costs. It is so ordered.

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

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