

THE ZAMBOANGA TRANSPORTATION CO., PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF ZAMBOANGA, DEFENDANT AND APPELLANT.

G. R. No. 17005. December 12, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff is a corporation engaged in the business of transportation by means of motor vehicles exclusively. The defendant municipality enacted an ordinance (No. 61, series of 1918), requiring transportation companies and agencies to pay a license. Under and by virtue of said municipal ordinance the defendant demanded of the plaintiff, and the latter paid under protest, the sum of P445 as license fees.

The present action was instituted to recover the said sum of P445, with legal interest thereon, upon the theory that the same had been wrongfully and unlawfully collected. From a judgment of the lower court granting the prayer of the complaint an appeal was taken to this court by the defendant municipality.

The pretension of the plaintiff is based upon section 13 of Act No. 2587, which provides as follows:

"SEC. 13. All motor vehicles under this Act shall be exempted from any local or municipal taxation."

Plaintiff contends that inasmuch as it pays a license fee for its automobiles and trucks, as required by said Act No. 2587, the defendant municipality, by virtue of said section 13, has no right nor authority to tax, or require a license fee for its business as a transportation company.

The defendant bases its right to collect the license fee in question upon section 2625 (d) of Act No. 2711, as amended by section 11 of Act No. 2819, which provides as follows:

"SEC. 2625. The municipal council; powers.—The municipal council shall have power by ordinance or resolution:

* * * * *

"(d) Licenses and license fee.—To issue licenses fixing the amount of the license fee for the following:

"* * * transportation companies and agencies, etc." The lower court held that the above-quoted provision of section 2625 of the Administrative Code is applicable only to transportation companies and agencies which are not operated exclusively by means of motor vehicles.

Apparently, the lower court believed that the automobile or motor vehicle license required by Act No. 2587 and the municipal license required by section 2625 (d) of Act No. 2711 of transportation companies using motor vehicles, are the same. In this respect we think the lower court was in error. A motor vehicle license is not a license to do business as a transportation company—as a common carrier. The former is paid to the Insular Government; the latter, to the local or municipal government. The former is a license to own motor vehicles; the

latter is a license to operate those motor vehicles as a common carrier or transportation company. In other words, the former is a tax on the motor vehicles, while the latter is a tax on the business of the transportation company operating those motor vehicles. The municipal government is prohibited by section 13 of Act No. 2587 from imposing the former, but it is expressly authorized by section 2625 (d) of Act No. 2711 to impose the latter. The license provided by said section of the Administrative Code (sec. 2625 [d]) partakes of the nature of regulation. The municipal government may prescribe certain regulations governing transportation companies which operate within its territorial jurisdiction, for the purpose of securing the health and safety of its inhabitants, and may exact compliance therewith as a condition to the granting of the license. It may refuse to issue the license, or may revoke the same, for failure of the licensee to comply with such regulations. Hence, we believe that the Legislature did not mean nor intend that a license to own motor vehicles should be in itself a license to do business as a common carrier or transportation company.

Wherefore, the judgment of the lower court is hereby revoked and the defendant is hereby absolved from all liability under the complaint, with the costs of both instances against the plaintiff. So ordered.

Araullo, C. J., Street, Malcolm, Avancena. Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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