

FILIPINAS COMPANIA DE SEGUROS, ET AL., PETITIONERS AND APPELLEES, VS. HON. FRANCISCO Y. MANDANAS, IN HIS CAPACITY AS INSURANCE COMMISSIONER, RESPONDENT AND APPELLANT AGRICULTURA...

G. R. No. 19638. June 20, 1966

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is a special civil action for a declaratory relief. Thirty-nine (39) non-life insurance companies instituted it, in the Court of First Instance of Manila, to secure a declaration of legality of Article 22 of the Constitution of the Philippine Rating Bureau, of which they are members, inasmuch as respondent Insurance Commissioner assails its validity upon the ground that it constitutes an illegal or undue restraint of trade. Subsequently to the filing of the petition, twenty (20) other non-life insurance companies, likewise, members of said Bureau, were allowed to intervene in support of the petition. After appropriate proceedings, said court rendered judgment declaring that the aforementioned Article 22 is neither contrary to law nor against public policy, and that, accordingly, petitioners herein, as well as the intervenors and other members of the aforementioned Bureau, may lawfully observe and enforce said Article, and are bound to comply with the provisions thereof, without special pronouncement as to costs. Hence this appeal by respondent Insurance Commissioner, who insists that the Article in question constitutes an illegal or undue restraint of trade and, hence, null and void.

The record discloses that on March 11, 1960, respondent wrote to said Bureau, a communication expressing his doubts of the validity of said Article 22, reading:

"In respect to the classes of insurance specified in the Objects of the Bureau[1] and for Philippine business only, the members of this Bureau agree not to represent nor to effect reinsurance with, nor to accept reinsurance from, any Company, Body, or Underwriter licensed to do business in the Philippines not a Member in good standing of this Bureau".

and requesting that said provision, be, accordingly, repealed. On April 11, 1960, respondent wrote another letter to the Bureau inquiring on the action taken on the subject-matter of his previous communication. In reply thereto, the Bureau advised respondent that the suggestion to delete said Article 22 was still under consideration by a committee of said Bureau. Soon thereafter, or on May 9, 1961, the latter was advised by respondent that, being an illegal agreement or combination in restraint of trade, said Article should not be given force and effect; that failure to comply with this requirement would compel respondent to suspend the license issued to the Bureau; and that the latter should circularize all of its members on this matter and advise them that "violation of this requirement by any member of the Bureau" would also compel respondent "to suspend the certificate of authority of the company concerned to do business in the Philippines". Thereupon, or on May 16, 1961, the present action was commenced.

Briefly, appellant maintains that, since, in the aforementioned Article 22, members of the Bureau "agree not to represent nor to effect reinsurance with, nor to accept reinsurance from any company, body, or underwriter,

licensed to do business in the Philippines not a member in good standing of the Bureau", said provision is illegal as a combination in restraint of trade. As early as August 10, 1916, this Court had had occasion to declare that the test on whether a given agreement constitutes an unlawful machination or a combination in restraint of trade

**** is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable." (Ferrazini vs. Gsell, 34 Phil. 697, 712-13.)

This view was reiterated in *Ollendorf vs. Abrahamson* (38 Phil., 585) and *Red Line Transportation Co. vs. Bachrach Motor Co.* (67 Phil., 77), in the following language:

**** The general tendency, we believe, of modern authority, is to make the test whether the restraint is reasonably necessary for the protection of the contracting parties. If the contract is reasonably necessary to protect the interest of the parties, it will be upheld.

* * * * *

**** we adopt the modern rule that the validity of restraints upon trade or employment is to be determined by the intrinsic reasonableness of the restriction in each case, rather than by any fixed rule, and that such restrictions may be upheld when not contrary to the public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed". (*Ollendorf vs. Abrahamson*, 38 Phil., 585.)

**** The test of validity is whether under the particular circumstances of the case and considering the nature of the particular contract involved^ public interest and welfare are not involved and the restraint is not only reasonably necessary for the protection of the contracting parties but will not affect public interest or service". (*Red Line Transportation Co. vs. Bachrach Motor Co.*, 67 Phil. 77.) (See, also, *Del Castillo vs. Richmond*, 45 Phil. 483.)

The issue in the case at bar hinges, therefore, on the purpose or effect of the disputed provision. The only evidence on this point is the uncontradicted testimony of Salvador Estrada, Chairman of the Bureau when it was first organized and when he took the witness stand. Briefly stated, he declared that the purpose of Article 22 is to maintain a high degree or standard of ethical practice, so that insurance companies may earn and maintain the respect of the public, because the intense competition between the great number of non-life insurance companies operating in the Philippines is conducive to unethical practices, oftentimes taking the form of underrating; that to achieve this purpose it is highly desirable to have cooperative action between said companies in the compilation of their total experience in the business, so that the Bureau could determine more accurately the proper rate of premium to be charged from the insured; that, several years ago, the very Insurance Commissioner had indicated to the Bureau the necessity of doing something to combat underrating, for, otherwise, he would urge the amendment of the law so that appropriate measures could be taken therefor by his office; that much of the work of the Bureau has to do with rate-making and policy wording; that rate-making is actually dependent very much on statistics; that, unlike life insurance companies, which have tables of mortality to guide them in the fixing of rates, non-life insurance companies have, as yet, no such guides; that, accordingly, non-life insurance companies need an adequate record of losses and premium collections that will enable them to determine the amount of risk involved in each type of risk and, hence, to determine the rates or premiums that should be charged in insuring every type of risk; that this information cannot be compiled without full cooperation on the part of the companies concerned, which cannot be expected from non-members of the Bureau, over which the latter has no control; and that, in addition to submitting information about their respective experience, said Bureau members must, likewise, share in the rather appreciable expenses entailed in compiling the aforementioned data and in analyzing the same.

We find nothing unlawful, or immoral, or unreasonable, or contrary to public policy either in the objectives thus sought to be attained by the Bureau, or in the means availed of to achieve said objectives, or in the consequences

of the accomplishment thereof. The purpose of said Article 22 is not to eliminate competition, but to promote ethical practices among non-life insurance companies, although, incidentally, it may discourage, and, hence, eliminate unfair competition, through underrating, which, in itself, is eventually injurious to the public. Indeed, in the words of Mr. Justice Brandeis:

"*** the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that Question the court toust ordinarily consider the facts peculiar to the baalness to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable." (Board of Trade of Chicago vs. U.S., 246 U.S.231, 62-Led. 683 [1918].)

Thus, in *Sugar Institute, Inc. vs. U.S.* (297 U.S. 553), the Federal Supreme Court added:

"The restrictions imposed by the Sherman Act are not mechanical or artificial. We have repeatedly said that they set up the essential standard of reasonableness. *Standard Oil Co. vs. United States*, 221 U.S. 1, 55 L. ed. 619, 31 S. Ct. 502, 34 L.R.A. (N.S.) 834, Ann. Cas. 1912D, 734, *United States vs. American Tobacco Co.*, 221 U.S. 106, 55 L. ed. 663, 31 S. Ct. 632. They are aimed at contracts and combinations which by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restraining competition or unduly obstructing the course of trade.' *Nash vs. United States*, 229 U.S. 373, 376, 57 L. ed. 1232, 1235, 33 S. Ct. 780; *United States vs. American Linseed oil Co.*, 262 U.S. 371, 388, 389, 67 L. ed. 1035, 1040, 1041, 43 S. ct. 607. Designed to frustrate unreasonable restraints, they do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law".

Hence, the City Fiscal of Manila refused to prosecute criminally the Manila Fire Insurance Association for following a policy analogous to that incorporated in the provision disputed in this case and the action of said official was sustained by the Secretary of Justice, upon the ground that:

"*** combinations among insurance companies or their agents to fix and control rates of insurance do not constitute indictable conspiracies, provided no unlawful means are used in accomplishing their purpose (41 C.J. 161; *Aetna Ins. Co. vs. Commonwealth*, 106 Ky. 664, 51 SW 624; *Queen Ins. Co. vs. State*, 86 Tex. 250, 24 SW 397; *I Joyce on Insurance*, par. 329-a)".

Indeed, Mr. Estrada's testimony shows that the limitation upon reinsurance contained In the aforementioned Article 22 does not affect the public at all, for, whether there is reinsurance or not, the liability of the insurer in favor of the insured is the same. Besides, there are sufficient foreign reinsurance companies operating in the Philippines from which non-members of the Bureau may secure reinsurance. What is more, whatever the Bureau may do in the matter of rate-fixing is not decisive insofar as the public is concerned, for no insurance company in the Philippines may charge a rate of premium that has not been approved by the, Insurance Commissioner.

In fact, respondent's Circular No. 54, dated February 26, 1954, provides:

"II. Non-life Insurance company or Group Association of such companies.

"Every non-life insurance company or group or association of such companies doing business in the Philippines shall file with the Insurance Commissioner for approval general basic schedules showing the premium rates on all classes of risk except marine, as distinguished from inland marine, insurable by such insurance company or association of insurance companies in this country.

* * * * *

"An insurance company or group of such companies may satisfy its obligation to make such filings by becoming a member of or subscriber to a rating organization which makes such filing and by authorizing the insurance commissioner to accept such filings of the rating organization on such company's or group's behalf.

"III. Requiring Previous Application to and Approval by the Insurance Commissioner before any Change in the Rates Schedules filed with Him Shall Take Effect.

"No change in the schedules filed in compliance with the requirements of the next preceding paragraph shall be made except upon application duly filed with and approved by the Insurance Commissioner. Said application shall state the changes proposed and the date of their effectivity; all changes finally approved by the Insurance Commissioner shall be incorporated in the old schedules or otherwise indicated as new in the new schedules.

"IV. Empowering the Insurance Commissioner to Investigate All Non-Life Insurance Rates.

"The Insurance Commissioner shall have power to examine any or all rates established by non-life insurance companies or group or association of such insurance companies in the country. Should any rate appear, in the opinion of the Insurance Commissioner, unreasonably high or not adequate to the financial safety or soundness to the company charging same, or prejudicial to policy-holders, the Commissioner shall, in such case, hold a hearing and/or conduct an investigation . Should the result of such hearing and/or investigation show that the rate is unreasonably high or so low that it is not adequate to the financial safety and soundness of the company charging same, or is prejudicial to policy-holders, the Insurance Commissioner shall direct a revision of the said rate in accordance with his findings. Any insurance company or group or association of insurance companies may be required to publish the schedule of rates which may have been revised in accordance herewith.

"The decision of the Insurance Commissioner shall be appealable within thirty days after it has been rendered to the Secretary of Finance.

"V. Prohibiting Non-life Insurance Companies and their Agents from Insuring Any Property in this Country at a Rate Different from that in the Schedules; Unethical Practices.

"No insurance company shall engage or participate in the insurance of any property located in the Philippines *** unless the schedule of rates under which such property is insured has been filed and approved in accordance with the provisions of this Circular, ***." (Italics ours.)

On the same date, the Constitution of the Bureau, containing a provision substantially identical to the one now under consideration, was approved. Article 2 of said Constitution reads:

"2. OBJECTS

The objects of the Bureau shall be:

"a. To establish rates in respect of Fire, Earthquake, Riot and Civil Commotion, Automobile and Workmen's Compensation, and whenever applicable, Marine Insurance business.

"c. To file the rates referred to above, tariff rules, and all other conditions or data which may in any way affect premium rates with the Office of the Insurance Commissioner on behalf of members for approval." (Italics ours.)

In compliance with the aforementioned Circular No. 54, in April, 1954, the Bureau applied for the license required therein, and submitted with its application a copy of said Constitution. On April 28, 1954, respondent's office

issued to the Bureau the license applied for, certifying, not only that it had complied with the requirements of Circular No. 54, but, also, that the License empowered it "to engage in the making of rates or policy conditions to be used by insurance companies in the Philippines". Subsequently, thereafter, the Bureau applied for and was granted yearly the requisite license to operate in accordance with the provisions of its Constitution. During all this time, respondents office did not question, but impliedly acknowledged, the legality of Article 22. It was not until March 11, 1960, that it assailed its validity.

Respondent's contention is anchored mainly on *Paramount Famous Lasky Corp. vs. U.S.*, 282 U.S. 30, but the same is not in point, not only because it refers to the conditions under which movie film producers and distributors determine the terms under which theaters or exhibitors may be allowed to run movie films - thereby placing the exhibitors under the control of the producers or distributors and giving the exhibitors, in effect, no choice as to what films and whose films they will show - but, also, because there is, in the film industry, no agency or officer with poweffi or functions comparable to those in the Insurance Commissioner, as regards the re3ulation of the business concerned and of the transactions involved therein.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, without costs. it is so ordered.

Concepcion, C.J., Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Sanchez, JJ., concur.

[1] Fire, earthquake, riot and civil commotion, automobile, Workmen's Compensation and Marine Insurance.

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