

CECILIO RAFAEL, DOING BUSINESS UNDER THE STYLE EL BARATO ALCE COMPANY, PETITIONER, VS. THE EMBROIDERY AND APPAREL CONTROL AND INSPECTION BOARD, ET AL., RESPONDENTS, THE EMBROIDE...

G.R. No. 19978. September 29, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In a letter dated January 9, 1961 petitioner, who was engaged in the manufacture of embroidery and apparel products for the purpose of exportation, using imported raw materials and doing business under the style "El Barato Alce Company", was authorized by the Collector of Customs, pursuant to the provisions of the Tariff and Customs Code (RA 1937 1937)+ to operate a manufacturing bonded warehouse located at Santolan, Tenejeros, Malabon, Rizal, known as Manufacturing Bonded Warehouse No. 88. By virtue of such authority petitioner imported raw materials exempt from duty and proceeded to manufacture them into finished products for export under the terms and conditions required and specified in the letter-authority.

Meanwhile, on June 17, 1961 Republic Act No. 3137 was enacted, creating "an embroidery and apparel control and inspection board covering control, issuance of entry permits, and inspection of conditionally tax-free raw material importations by local embroidery apparel manufacturers and the corresponding liquidation of re-exportations thereof as Philippine-made embroideries and apparels."

SECS. 1 and 2 of said Act provide:

"Section 1. No textile, leather gloves raw materials and/or supplies, of any kind relative thereto, may be imported into the Philippines as consigned goods to duly registered and organized Philippine embroidery and apparel firms without the necessary license issued in accordance with the provisions of this Act.

"Section 2. This license required hereof under Section One of this Act shall be duly issued by an Embroidery and Apparel Control and Inspection Board which is hereby created and hereinafter referred to as the Board, composed of: (1) A representative from the Bureau of Customs to act as Chairman, to be designated by the Secretary of Finance; (2) A representative from the Central Bank to be designated by its Governor; (3) A representative from the Department of Commerce and Industry to be designated by the Secretary of Commerce and Industry; (4) A representative from the National Economic Council to be designated by its Chairman; (5) A representative from the private sector coming from the Association of Embroidery and Apparel Exporters of the Philippines. The Board shall have the over-all control and shall administer the checks and counter-checks of consigned textile, leather gloves raw materials and/or supplies to embroidery and apparel manufacturers and corresponding counter-checks for liquidations of said goods prior to re-exportations. No other government instrumentality or agency shall be authorized to qualify or question the validity of license so issued by the Board questions of legality and interpretation of any license so issued shall be decided exclusively by the Board subject to appeal to courts of competent jurisdiction."

In compliance with these provisions the Apparel Control and Inspection Board (hereinafter referred to as the

Board) was subsequently Constituted with the representative from the Bureau of Customs as Chairman and the representatives from the Central Bank, the Department of Commerce and Industry, and the National Economic Council as members, each of them having been previously designated by their respective department heads.

Upon recommendation of the Philippine Association of Embroidery and Apparel Exporters, Inc., the Department of Finance named Quintin Santiago, association president, as the representative from the private sector. However, another organization, the Philippine Chamber of Embroidery and Apparel Producers, Inc., to which petitioner was affiliated, questioned the choice of Santiago, apparently because its own nominee to the Board had been rejected. In upholding its original choice, the Board made reference to a letter of Senator Alejandro D. Almendras, principal author of Republic Act 3137, stating that the association referred to in Section 2 of said Act was none other than the respondent association itself. On the basis of said letter the Board adopted on September 15, 1961 Resolution No. 2 (series of 1961) stating "that the Board entertains no doubt that the P.A.E.A. Inc. is the association referred to in Section 2 of Republic Act No. 3137 and that it is the only association entitled to representation in the Board from the private sector."

Presumably in the exercise of its powers, the Board, in a communication dated August 31, 1961, requested petitioner to "submit to (the Board) pertinent data called for in the attached form of application for license (EACIB Form No. 1) which should be duly accomplished before a notary public." In the same letter petitioner was "also requested to remit with the aforementioned application the amount of P200.00 either in cash or in a check drawn in favor of the Embroidery and Apparel Control Board. This amount will be charged against (petitioner's) future assessments as per Sec. 4, par. XVI of Republic Act No. 3137."

Unwilling to comply with the Board's request, petitioner filed an action for prohibition with preliminary injunction in the court a quo (Civil Case No. 49087) for the purpose of enjoining or restraining respondents from enforcing the provisions of Republic Act 3137. More particularly, petitioner prayed that:

"1. Pending final resolution of the petition for prohibition on the merits, a writ of preliminary injunction ex-parte be issued enjoining and restraining respondent Embroidery and Apparel Control and Inspection Board, the respondent Philippine Association of Embroidery and Apparel Exporters, Inc., and respondent Secretary of Finance from further enforcing the provisions of Republic Act 3137;

"2. After hearing on the merits, a decision be rendered declaring Republic Act No. 3137 unconstitutional and void ab-initio;

"3. In the alternative, assuming that Republic Act 3137 is declared valid, it is respectfully prayed that the following acts be declared null and void because they were done without jurisdiction and prohibiting the respondents from doing the same or similar act:

"(a) the act of the Secretary of Finance administering oath of office to the present members of the respondent Embroidery and Apparel Control and Inspection Board;

"(b) the act of the Chairman of respondent Embroidery and Apparel Control and Inspection Board requiring petitioner to pay P200.00 as condition precedent to the filing of petitioner's application for a license without stating the actual extent of petitioner's liability thereunder;

x x x "

Primarily on the basis of documentary evidence presented by the contending parties, the court a quo rendered judgment on March 31, 1962, the dispositive portion of which, reads:

"WHEREFORE, PREMISES CONSIDERED, the Court renders judgment –

"(a) declaring Section 2 of Republic Act No. 3137 unconstitutional;

"(b) declaring the respondent Board created pursuant thereto to be illegally constituted and, therefore, any and all acts and orders done and/or issued by said respondent are considered null and void;

"(c) and permanently enjoining respondents from enforcing the provisions of Section of Republic Act 3137.

"The counterclaim filed by the Respondent Philippine Association of Embroidery and Apparel Exporters, Inc. is hereby dismissed for insufficiency of evidence."

From this judgment both parties appealed. Petitioner maintains that the court a quo should not have nullified section 2 of Republic Act 3137 alone but should have declared the entire law null and void; respondents submit, on the other hand, that the trial court erred in declaring section 2 of the law invalid.

Petitioner points to several features of Republic Act 3137 to support his claim of invalidity. The first is found in section 2, providing for the composition of the Board. The argument is that while Congress may create an office it cannot specify who shall be appointed therein; that the members of the Board can only be appointed by the President in accordance with Article VII, Sec. 10, subsection 3+ of the Constitution; that since the Act prescribes that the chairman and members of the Board should come from specified offices, it is equivalent to a declaration by Congress as to who should be appointed, thereby infringing the constitutional power of the President to make appointments.

We find the argument untenable. An examination of section 2 of the questioned statute reveals that for the chairman and members of the Board to qualify they need only be designated by the respective department heads. With the exception of the representative from the private sector, they sit ex-officio. In order to be designated they must already be holding positions in the offices mentioned in the law. Thus, for instance, one who does not hold a previous appointment in the Bureau of Customs cannot, under the Act, be designated representative from that office. The same is true with respect to the representatives from the other offices. No new appointments are necessary. This is as it should be, because the representatives so designated merely perform duties in the Board in addition to those they already perform under their original appointments.

"x x x We do not think that, because additional duties germane to the offices already held by them were devolved upon them by the Act, it was necessary that they should be again appointed by the President x x x. It cannot be doubted, and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed." (Shoemaker vs. United States, 147 U.S. 170, 185)

Inasmuch as nothing in the Act, nor in the records of the case for that matter, suggests that the designated representatives to the Board will lose or forfeit their original appointments in their "parent" offices, it is evident that for purposes of their tenure on the Board they can be considered as merely on detail, subject to recall by their respective chiefs.

The arrangement envisioned in section 2 is in no wise incompatible with or violative of the established doctrine that "the appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited power to prescribe the qualifications to a given appointive office." (Manalang vs. Qutoriano, 94 Phil. 903, 911).

It is significant that Congress took care to specify that the representatives should come from the Bureau of Customs, Central Bank, Department of Commerce and Industry and the National Economic Council. The obvious reason must be because these departments and/or bureaus perform functions which have a direct relation to the

importation of raw materials, the manufacture thereof into embroidery and apparel products and their subsequent exportation abroad.

We see no attempt in Republic Act 3137 to deprive the President of his power to make appointments, and therefore on this point we rule that the law is not unconstitutional.

Another objection raised by petitioner to the validity of the Act is that it "constitutes class legislation and has deprived (him) of equal protection of the laws because Congress has vested the appointment of the representative of the private sector in respondent Board, a private non-governmental entity." More pointedly, petitioner attacks as null that part of the statute which requires that "a representative from the private sector coming from the Association of Embroidery and Apparel Exporters of the Philippines" shall sit as a member of the Board. Petitioner asserts that this particular provision is designed to favor one private organization to the exclusion of others.

The argument is without merit. Respondent P.A.E.A.E. was not singled out by the law in order to favor it over and above others, but rather because it is the dominant organization in the field. Under the law no privileges are accorded P.A.E.A.E. members which are not similarly given to non-members. Both are within the coverage of the Act. Non-membership in the P.A.E.A.E. does not mean that the benefits granted and the restrictions imposed by the Act shall not apply to those who choose to venture into the business independently.

"It is a general rule that legislation which affects alike all persons pursuing the same business under the same conditions is not such class legislation as is prohibited by constitutional provisions. The discrimination which are open to objections are those in which persons engaged in the same business are subjected to different privileges under the same conditions. Part of the liberty of a citizen consists in the enjoyment, upon terms of equality with all others in similar circumstances, of the privileges of pursuing an ordinary calling or trade x x x. The constitutional guarantee as to the equal protection of the laws, moreover, requires that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuit by others under similar circumstances and that no greater burden in engaging in a calling should be laid upon one than are laid upon others, in the same calling and condition. 12 Am. Jur. 187" (cited in *Tolentino vs. Board of Accountancy*, et al., 90 Phil. 83)

It is a settled rule in constitutional law that legislation which affects with equal force all persons of the same class and not those of another is not class legislation and does not infringe the constitutional guarantee of equal protection of the laws. (*Meralco vs. Public Utilities Employees, Assn.*, 79 Phil. 409)

Another objection is addressed to sec. 4, XVI, paragraph 2, of the Act, which provides:

"A special assessment shall be levied upon all persons, corporations, or firms engaged in the embroidery and apparel manufacturing industry in an amount to be fixed by the Board not exceeding one percent of the value of the labor, processing or finishing costs realized from the processed or finished goods exported. The funds collected hereunder shall accrue to the Board and shall be used exclusively for carrying out its functions and duties."

It is claimed that this section constitutes an undue delegation of legislative power because the Act does not provide sufficient standards under which the Board may base its assessment. We do not agree. The afore-cited second paragraph has a direct relation to the paragraph immediately preceding it, which reads:

"XVI. Notice of Export Shipments.- Every manufacturer who intends to remove manufactured products for export shall make a written request to the Board for exportation of the articles intended for removal, giving the kinds, quantity of yardage, the use gross and net weights, and the value of the articles to be exported and the number or numbers of Import Entry or entries involved. The Customs official assigned in the bonded manufacturing

warehouse shall undertake the sampling, inspection and classification of the embroidery in accordance with the rules or inspection and control promulgated by the Board. A certificate of inspection shall be issued for every lot of embroidered articles inspected. The certificate of inspection shall be attached to the application to be approved by the Board. The discovery of any such article in transit, in regards to which no notification has been received by the Board on goods packed without the presence of the detailed Customs official shall be deemed prima facie evidence of the illegal removal of same and shall subject them to seizure and forfeiture proceedings under the Customs laws." (underscoring supplied.)

Evidently the special assessment referred to in the second paragraph applies to manufactured products which a manufacturer intends to remove from the bonded warehouse for exportation. Far from empowering the Board to levy without sufficient standard, the law sets a reasonable basis under which the special assessment maybe imposed, to wit: (a) that such special assessment be levied on manufactured goods intended to be removed for exportation; (b) that such special assessment should not exceed one percent of the value of the labor, processing or finishing costs realized from the processed or finished goods exported.

The true distinction between delegation of the power to legislate and the conferring of authority or discretion as to the execution of the law consists in that the former necessarily involves a discretion as to what the law shall be, while in the latter the authority or discretion as to its execution has to be exercised under and in pursuance of the law. The first cannot be done; to the latter, no valid objection can be made. (*Araneta et al. vs. Gatmaitan, et al.*, 101 Phil. 328, 346) Tested under this score, We see no valid reason to object to the validity of Republic Act 3137.

The foregoing points relied upon by petitioner constitute the decisive issues in this case. In our opinion they should be resolved against petitioner. The other incidental issue presented, namely, the lack of appropriation with which to pay the per diems of the board members, has no material relevance to the question of constitutionality and cannot affect the conclusion herein reached.

IN VIEW OF THE FOREGOING, the judgment appealed from is hereby reversed. Republic Act No. 3137, particularly Section 2 thereof, is declared constitutional, and the permanent injunction issued by the court a quo is set aside. Costs against petitioner-appellant.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Bengzon, J., on leave.

+ SEC. 1903. Bonded warehouse Application to the establishment of bonded warehouses must be made in writing to the Collector, describing the premises, the location, and capacity of the same, and the purpose for which the building is to be used.

Upon receipt of such application, the Collector shall cause an examination of the premises to be made, with reference particularly to its location, construction and means provided for in the safekeeping of articles and if found satisfactory he may authorize its establishment, and accept a bond for its operation and maintenance.

x x x

Sec. 2004. Verification by the Commissioner. - A careful account shall be kept by the Collector of all articles delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs official in-charge, shall be made by the manufacturer containing a detailed statement of all imported articles used by, him in the manufacture of the exported articles.

Before commencing business the operator of any manufacturing warehouse shall file with the commissioner a list

of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

+ The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus x x x and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he maybe authorized by law to appoint; but Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments."

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