

CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. PACIFIC COMMERCIAL COMPANY, DEFENDANT AND APPELLANT.

G. R. No. 41219. October 31, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The material facts of the case have been stipulated by the parties as follows:

"1. That plaintiff is a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands with principal office and place of business therein in the City of Manila and with power to sue and be sued;

"2. That defendant is a private corporation duly organized and existing under and by virtue of the laws of the Philippine Islands and having its principal office and place of business therein in the City of Manila;

"3. That on or about July 1, 1934 and for sometime prior and subsequent thereto, defendant established, conducted and maintained in the City of Manila, three different establishments or places of business, namely:

" (a) For the sale of general merchandise at the National City Bank Building;

" (b) For the sale of hardware at No. 101 Calle Echague; and

" (c) For the sale of automobiles and accessories at No. 2 Isla de Romero;

" 4. That during the year 1931 defendant made the following amounts of sales in each of the above establishments, to wit:

Location of establishment Sales

Sales

National City Bank Building.....

P11,663,492.69

101 Echague

789,102.88

2 Isla de Romero.....

641,990.22

"5. That plaintiff, in pursuance of the provisions of Ordinance No. 1925 of the said City, as amended, demanded of defendant to pay the license fees for the period from July 1, 1932 to June 30, 1933, on the establishments mentioned in paragraph 3 hereof, based on the amounts of sales for each and all of the said establishments during the year 1931, in the total sum of P1,000 computed as follows:

Location of establishment

(1931) Sales

Business classification

License fee

National City Bank Building.

11,663,492.69

Gr. I-A, Class-A

250

101 Echague.....

789,102.88

.....do.....

250

Isla de Romero.....

641,990.22

Gr. I.....

600

Total

.....

.....

1,000

plus the further sum of P100 alleged to be a fine of 10 per cent of the license fees due as above-mentioned, in view of the alleged failure of defendant to pay the total amount of said license fees before commencing business in the aforesaid establishments for the period from July 1, 1932 to June 30, 1933;

"6. That defendant, before commencing business for the period of July 1, 1932 to June 30, 1933, paid to plaintiff the sum of P500 alleging that this sum is the maximum amount which said defendant is legally bound to pay to plaintiff for license fees for the said period, on the establishments mentioned in paragraph 3 hereof, in view of the provisions of section 2444 of the Revised Administrative Code, as amended by Act No. 3669 of the Philippine Legislature ;

"7. That the parties hereby submit this stipulation for decision of this Honorable Court without taking further evidence, after the parties have filed their respective memoranda within the time which may be allowed by this Honorable Court."

The plaintiff brought this action to recover from the defendant license fees in the sum of P1,000, which the latter's three establishments should pay during the year beginning with July 1, 1932, and ending with June 30, 1933.

The defendant appealed from the judgment which declared it liable for the license fees claimed in the complaint and ordered it to pay the sum of P500, having already paid P500, plus the penalty in the sum of P60, with costs.

In brief, the question raised and submitted for resolution is whether the defendant is bound to pay license fees for each of its establishments situated and conducted at different places within the City of Manila, or merely an amount not exceeding P500 a year, in the same concept.

Section 1453 of the Revised Administrative Code of 1917 created privilege taxes on business and occupation, as follows:

"SEC. 1453. Privilege taxes on business and occupation.— A privilege tax must be paid before any business or occupation hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid.

"The occupation tax must be paid by each individual engaged in a calling subject thereto; the tax on a business, by the persons, firm, or company conducting the same."

Based upon said legal provision, the City of Manila, in 1927, approved section 585 of the Revised Ordinances which reads:

"No person shall conduct more than one kind of business requiring a license, or conduct business at more than one place during the term of license, without obtaining a separate license for each business and place of business so licensed. All licenses shall be strictly limited to the time, place, and person or thing named therein."

Section 2 of Act No. 3669 of the Philippine Legislature amended section 2444 of the Revised Administrative Code, which empowered the City of Manila to collect license fees from dealers in specific articles or merchandise, as follows:

"SEC. 2. Two new subsections are hereby inserted between subsections (m and n) of section twenty-four hundred forty-four of the Revised Administrative Code, which shall be known as subsections (m-1) and (m-2) and shall read as follows:

"(m-1) To tax and fix the license fee of tailor shops, milliners, manufacturers of embroideries, sails or awnings or both, rope, paper, slippers or sandals or both, harness or valises or bags or any of them, textiles, shell lamps or lamp shades or both, statuettes or tomb stones or both, sacks, rattan goods, wire or brass beds or both, men's shirts, hats, printers or bookbinders or both, eye-glasses or optical goods or both, dyes, bottles or glasswares or both, salted or dried fish or both, fertilizer, nails, and buttons."

"Manufacturers above mentioned shall not be subject to the payment of any municipal tax or license fee as retail dealers of their own wares otherwise therein specified: Provided, That no tax shall be imposed upon any occupation or manufacturer enumerated under this subsection in excess of two hundred pesos per annum: And provided, further, That any manufacturing conducted solely by the immediate members of a family at their own home shall not be subject to any tax or license fee.

"(m-2) To tax and fix the license fee on (a) dealers in new automobiles or accessories or both, and (b) retail dealers in new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax.

"For the purpose of taxation, these retail dealers shall be classified as (1) retail dealers in general merchandise and (2) retail dealers exclusively engaged in the sale of (a) textiles including knitted wares, (b) hardwares including glasswares, cooking utensils, electrical goods and construction materials, (c) groceries including

toilet articles except perfumery, (d) drugs including medicines and perfumeries, (e) books, including stationery, paper and office supplies, (f) jewelry, (g) slippers, (k) arms, ammunitions, and sporting goods: Provided, however, That the combined total tax of any dealer, or manufacturer, or both, enumerated under these subsections (m-1) and (m-2) whether dealing in one or all of the articles mentioned herein, shall not be in excess of five hundred pesos per annum."

In pursuance of said Act, the City of Manila promulgated Ordinance No. 1925, as amended, under which the defendant, by reason of the amount of its sales, was bound to pay P250 on its business conducted in the National City Bank Building, P250 on that on Echague Street and P500 on that on Isla de Romero Street.

The defendant contends that under the saving clause contained in the last paragraph of section 2 of Act No. 3669, it is bound to pay only the sum of P500 as combined license fees for its three establishments. It contends that according to the language of the law, the fees are imposed upon dealers irrespective of the number of articles or merchandise in which they deal, or the number of their establishments or business. This court is of the opinion that that is not the meaning of the law. The law clearly grants the benefit or privilege of combined fees to the articles or merchandise enumerated therein, but not to the business or establishments created and conducted in different places, although they belong to the same dealer. In other words, the privilege is based not on the plurality of business or establishments but on the variety of articles or merchandise. For this reason, this court is of the opinion and so declares that section 585 of the Revised Ordinances and Ordinance No. 1925, as amended, are not in conflict with, and should not be understood as contrary to, Act No. 3669.

The judgment orders the defendant to pay a penalty of P60, having failed to pay the fees on time. The law authorizes the imposition of a penalty of only ten per cent (10%). The sum to which the plaintiff is entitled in this concept cannot exceed P50.

Wherefore, it being understood that the defendant shall pay a penalty of only P50 instead of P60, the appealed judgment is affirmed in all other respects, with the costs of this instance against the defendant. So ordered.

Avancena, C. J., Street, Malcolm, Villa-Real, Abad Santos, and Vickers, JJ., concur.

GODDARD, J., with whom concurs BUTTE, J., dissenting:

I dissent.

Section 585 of the Revised Ordinances of the City of Manila was enacted in the year 1927.

Act No. 3669 of the Philippine Legislature was enacted December 8, 1929, and amends section 2444 of Chapter X of the Revised Administrative Code. Chapter X is the Charter of the City of Manila.

The authorities agree that a municipal corporation is a creature of granted powers and that as such it can exercise only such powers as fall within the scope of, and not in conflict with its charter.

"The charter of the city of St. Louis is the fundamental law thereof, and all ordinances of the city, which are in conflict therewith, or violative of its mandates, are null and void, upon the same principle that a statute which contravenes the Constitution must fall." (*Asphalt & Granitoid Const. Co. vs. Hauessler*, 201 Mo., 400; 100 S1. W., 14, 16.)

"Hence a city ordinance which does not comply with the city charter is as invalid as a statute which does not conform to the requirements of the state constitution. The charter of every municipal corporation, or the statute by which it is created, is its organic act; and the corporation cannot do any act not authorized by such charter, or by some legislative act applicable thereto. 'All acts beyond the scope of the powers granted are void. 1 Dill. Mun. Corp. (4th ed.), p. 146, sec. 89.'" (*People vs. Mount*, 58 N. E., 360, 363.)

See also *Kemp vs. Monett*, 95 Mo. A., 452; 69 S. W., 31, 32; *Miller vs. Burch*, 32 Tex., 208; 5 Am. R., 242; *Angell and Ames on Corporations*, 97; *Sedgwick on Stat. and Cons. Law*, p. 466.

In view of the above it follows that if there is a conflict between section 585 of the Revised Ordinances of the City of Manila and Act No. 3669 of the Philippine Legislature the provisions of the latter must control.

Section 585, Revised Ordinances, reads:

"No person shall conduct more than one kind of business requiring a license, or conduct business at more than one place during the term of license, without obtaining a separate license for each business and place of business so licensed. All licenses shall be strictly limited to the time, place, and person or thing named therein."

Subsection (m-2) of section 2 of Act No. 3669 reads:

"To tax and fix the license fee on (a) dealers in new automobiles or accessories or both, and (b) retail dealers in new (not yet used) merchandise, which dealers are not yet subject to the payment of any municipal tax.

"For the purpose of taxation, these retail dealers shall be classified as (1) retail dealers in general merchandise and (2) retail dealers exclusively engaged in the sale of (a) textiles including knitted wares, (b) hardwares including glasswares, cooking utensils, electrical goods and construction materials, (c) groceries including toilet articles except perfumery, (d) drugs including medicines and perfumeries, (e) books, including stationery, paper and office supplies, (f) jewelry, (g) slippers, (h) arms, ammunitions, and sporting goods: Provided, however, That the combined total tax of any dealer, or manufacturer, or both, enumerated under these subsections (m-1) and (m-2) whether dealing in one or all of the articles mentioned herein, shall not be in excess of five hundred pesos per annum."

Under Ordinance 1925 of the City of Manila, which purports to have been enacted in pursuance of Act No. 3669, that city insists that it is entitled, in view of section 585 of its Revised Ordinances, to require the defendant to procure a license for each of its three establishments and, if the sales at each one of its places of business reach a certain amount, that it is also entitled to collect as much as P500 from each establishment.

Act No. 3669 was adopted for the purpose of authorizing the municipal board of the City of Manila to impose a tax on dealers, classified therein according to the articles of merchandise sold by them to the public. The Legislature deemed it necessary to limit that authority. This limitation appears in the last clause of subsection (m-2), quoted above, which provides that "the combined total tax of any dealer, * * * enumerated under these subsections (m-1) and (m-2), whether dealing in one or all of the articles mentioned herein, shall not be in excess of five hundred pesos per annum."

If the Philippine Legislature had added to the clause quoted above the following "for each place of business or establishment of such dealer" the majority opinion would be correct. As the Legislature did not see fit to modify the clear meaning of the last clause of subsection (mr-2) of section 2 of Act No. 3669 I cannot agree to what I consider a judicial amendment to that subsection.

It will be noted that section 585 of the Revised Ordinances of the City of Manila provides for "a separate license for each business and place of business so licensed" but is silent as to the amount of the tax to be imposed, while subsection (m-2) of Act No. 3669 fixes P500 as maximum tax to be paid by each dealer whether he deals in one or all of the articles mentioned in subsections (m-1) and (m-2) and regardless of the number of his places of business.

Granting that the City of Manila may require a dealer to secure a separate license under section 585 for each and every one of his places of business, it is evident, under the last clause of subsection (m-2) of Act No. 3669, that

said city has no right to require such dealer to pay more than a maximum license fee of more than P500.

The trial court erred in holding that the defendant may be required to pay license fees in excess of P500 and in not dismissing the complaint in this case. The judgment should be reversed.

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