

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. REMIGIO B. CHAN, DEFENDANT AND APPELLEE.*G.R. No. 45435. June 17, 1938*

Ponente: CONCEPCION, J.

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The legal question involved in this appeal is whether a municipal ordinance which prohibits the sale by first run cinematographs of tickets in excess of their seating capacity, is discriminatory and, therefore, unconstitutional.

The accused Remigio B. Chan, as manager of the Capitol Theatre, a first class cinematograph located on the Escolta, Manila, was charged and sentenced in the municipal court to pay a fine for having sold to the public tickets in excess of the seating capacity of said cinematograph. From this judgment, he appealed to the Court of First Instance of Manila, and by virtue of a demurrer therein interposed. the information was dismissed on the ground that said ordinance is unconstitutional and void for being discriminatory. The fiscal appealed.

In the demurrer interposed by counsel for the accused, it is alleged that the discrimination in the ordinance is very obvious inasmuch as there is no reasonable or natural basis for the imposition of a burden on first run theatres and the exemption therefrom of those which are not thus classified.

It seems that this reasoning of the defense refutes itself. If it is admitted that the restriction on the sale of tickets is imposed on first run cinematographs only and that those cinematographs which are not so classified are exempted therefrom, then there can be no discrimination.

In the first place, it must be noted that there can be no doubt that the City of Manila exercises police power by delegation and that in the exercise of that power, it is authorized to enact ordinances for the regulation of the operation of theatres and cinematographs (sec. 2444 [m] and [ee] of the Revised Administrative Code; U. S. vs. Gomez Jesus, 31 Phil., 218; U. S. vs. Pompeya, 31 Phil., 245).

On April 17, 1935 Ordinance No. 2347 was approved. In section 1 it provides that all first run theatres or cinematographs should register their seating capacity with the City Treasurer, and in section 2 it prohibits the sale of tickets in said theatres or cinematographs in excess of their registered seating capacity.

Before the approval of Ordinance No. 2347, Ordinance No. 2188, approved on July 22, 1933, was in force, section 1 of which divides cinematographs into three different classes: first, second and third. The first class includes those located on certain and specified streets like Rosario, Escolta, etc., which exhibit films for the first time; those belonging to the second class are those which, not being located on said streets, also exhibit films for the first time. and those which, being located on said streets, regularly show films for the second time or which have the exclusive right to show second-hand films; and the third class comprehends all those which are not included in the first and second classes.

To the foregoing must be added, and this is of common knowledge, that the films which are shown for the first time attract a large attendance, and the theatre or cinematograph, whether it is first or second class, presenting

shows for the first time, would be suffocatingly overcrowded if the number of tickets were not limited. This is the reason for the prohibition of the sale of tickets in excess of the seating capacity. The prohibition applies with equal force wherever the same reason exists, that is, to first and second class theatres which show films for the first time.

"Class legislation discriminating against some and favoring others is prohibited. But classification on a reasonable basis, and not made arbitrarily or capriciously, is permitted. The rules governing classification are briefly as follows: The classification must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class." (Malcolm, Philippine Constitutional Law, 2d ed., page 343.) (Italics ours.)

A case similar to that now before us is that of *People vs. Gabriel* (43 Phil, 641), in which this court said:

"Section 749 of the Revised Ordinances of the City of Manila, as amended by Ordinance No. 938, which is intended to prohibit a crier or the use of a bell or other means of attracting bidders by noise or show within certain hours and on certain streets in the city, is a valid exercise of the police power, is not discriminatory or class legislation, and is not unconstitutional."

We have the other case of *Rubi vs. Provincial Board of Mindoro* (39 Phil., 660) in which the Manguianes had been ordered to live in a reservation made to that end and for purposes of cultivation under certain plans. The Manguianes are a Non-Christian tribe with a very low culture.

An application for habeas corpus was made on behalf of Rubi and other Manguianes of the province, alleging that by virtue of the resolution of the provincial board of Mindoro creating the reservation, they had been illegally deprived of their liberty. This court held that the resolution of the provincial board of Mindoro was neither discriminatory nor class legislation, and stated among other things:

"* * * one cannot hold that the liberty of the citizen is unduly interfered with when the degree of civilization of the Manguianes is considered. They are restrained for their own good and the general good of the Philippines. Nor can one say that due process of law has not been followed. To go back to our definition of due process of law and equal protection of the laws, there exists a law; the law seems to be reasonable; it is enforced according to the regular methods of procedure prescribed; and it applies alike to all of a class." (Id., page 718.)

In view of all the foregoing, the appealed order is hereby reversed and it is ordered that this case be remanded to the Court of First Instance of Manila for further proceedings. Without costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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