

YAP TAK WING & CO., INC., ET AL., PETITIONERS AND APPELLANTS, VS. THE MUNICIPAL BOARD, JUAN POSADAS, JR., AS MAYOR OF THE CITY OF MANILA, AND VICTOR ALFONSO, AS CITY TREASURER, ...

G.R. No. 46602. September 22, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal taken by the herein petitioners, Yap Tak Wing & Co., Inc., et al., from a judgment of the Court of First Instance of Manila, rendered upon an agreed stipulation of facts, the dispositive part of which judgment reads as follows: "The court is of the opinion that the ordinance under consideration is valid. Having arrived at this conclusion, the court refrains, as unnecessary, from passing upon the question of procedure raised by the defendants. Suffice it to say that it would seem that injunction is a proper remedy to enjoin the collection of a tax under an illegal ordinance.

"The petition is dismissed and the temporary injunction heretofore issued is hereby dissolved with the costs against the petitioners."

In accordance with sections 748, 749, and 750 of the Revised Ordinances of the City of Manila, the petitioners paid for a period of one year (from November 15, 1935 to November 15, 1936) the required license fees for the operation of their restaurants, cafes, or public eating places or establishments in the City of Manila. On or about January 13, 1936, the City of Manila, through its board and mayor, enacted and approved City Ordinance No. 2375, amending sections 748, 749, and 750, providing for a reclassification of panciterias, restaurants, cafes, carinderias, and other public eating places within the City of Manila, and imposing increased rates of license fees or taxes. The twenty-nine petitioners refused to pay the license fees under the new law and instead filed a petition to have the ordinance nullified.

Petitioners-appellants claim that as Ordinance No. 2375 was enacted under its police power to regulate the establishments mentioned, the City of Manila had no power to enact the same in its present form, and that the power to regulate does not include the power to impose taxes for revenue purposes. We find, however, that the challenged ordinance here was enacted pursuant to section 2444 of the Administrative Code, as amended by Act No. 3669, which in part reads:

"General powers and duties of the Board.—Except as provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

* * * * *

" '(m) To tax, fix the license fee and regulate the business of hotels, restaurants, refreshment places, cafes, lodging houses, and boarding houses, * * *."

The ordinance in question is a revenue measure enacted in pursuance of the delegated power of taxation of the

City of Manila. "Restaurant" is a term commonly used to denote a place where food is served or a place where one retires to eat. Panciterias, under section 3 of Ordinance No. 2375, are defined as places where Chinese dishes are prepared and served. From the wording of subsection (m) of section 2444 of the Administrative Code, as amended by Act No. 3669, panciterias are clearly included in the general term "restaurants".

It is next contended that City Ordinance No. 2375 is unreasonable, arbitrary, oppressive, and discriminatory, in that the amount of the license fees or taxes provided in the ordinance are much greater than those provided in section 748 of the Revised Ordinances, which it amended; that the amounts in the scale contained in the amendatory ordinance have been so increased as to drive the petitioners out of business; that it is in restraint of trade; and that it denies equal protection of the laws, because it is intended to operate against a group of persons residing in the Philippines engaged in that kind of business. This contention may be disposed of by recurrence to the accepted rule that where a municipal corporation is vested under its charter with the power to tax, it may change, alter, reduce, or increase rates already in existence, provided it does not contravene any provision of its charter, the Constitution or the general law. We find that the ordinance in question reclassifies "panciterias" into classes based on the volume of business and the number of persons who may be accommodated in the establishment. There is no legal objection to this mode of classification. It is true that one group is required to pay a rate of tax different from what is exacted from those belonging to other groups, but it is clear that the ordinance is not aimed against any particular group but applies as well to all persons or group of persons included in one group, irrespective of the nationality of such persons or group of persons.

The judgment of the lower court is affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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