SUPREME COURT DECISION OCCUPANCY OF PUBLIC MARKET STALLS A PRIVILEGE

(No. L-1891. March 31, 1949)

CO CHIONG ET AL., petitioners, vs. THE MAYOR OF MANILA, THE CITY TREASURER OF MANILA, THE MEMBERS OF THE MARKET COMMITTE OF THE CITY OF MANILA, THE MARKET MASTERS OF DIVISORIA, ARANQUE, QUINTA, OBRERO, BAMBANG, SAMPALOC, PACO, and OTHER MARKETS OF MANILA, respondents.

1. CONSTITUTIONAL LAW; PUBLIC MARKETS MAINTENANCE AND OPERATION OF, AS PUBLIC FUNCTIONS; OCCUPANCY OF PUBLIC MARKET STALLS AS A PRIVILEGE.—There is no question that the establishment, maintenance and operation of public markets are governmental in nature, being among the public functions of the state and, therefore, the opportunity of occupying stalls in public markets is a privilege that can be granted or withdrawn without impairing any one of the gurantees embodied in the Bill of Rights of the Constitution.

2. ID.; ORDINANCE NO. 3051. VALIDITY OF.—Ordinance No. 3051 offends neither the constitutional clause guaranteeing the obligation of contracts nor the guarantees of due process of law and equal protection of the laws. Neither does it violate any principle of international law nor any of the provisions of the Charter of the United Nations Organization. It does not impair any treaty commitment, as the treaties mentioned by petitioners have no binding effect upon the Republic of the Philippines which is bound only by treaties concluded and ratified in accordance with our Constitution. Ordinance No. 3051 of the City of Manila is valid.

DECISION

PERFECTO, J.:

Petitioners allege that they are lessees of public market stalls in the City of Manila by virtue of contracts of lease expressly understood to be of continuous duration until the City Mayor, for any reasonable or just cause or any violation of the provisions of the market code or any ordinance,or any rules relating to the administration of public markets , revokes the same; that on October 1, 1946, Republic Act No. 37 was promulgated and, to carry into effect its purposes, the Secretary of Finance issued Department Order No. 32 on November 29, 1946; that petitioners filed with the Court of First Instance of Manila a petition challenging the constitutionality of Republic Act No. 37 and of Department of Finance Order No. 32 and praying for injunction to restrain their ejection from the leased public market stalls, that on April 19, 1947, the trial court rendered judgment annulling Section 2 of Department of Finance Order No. 32 and commanding respondents to desist from enforcing the provisions thereof, from which decision respondents appealed to the Supreme Court; that on June 26, 1947, Ordinance No. 3051, amending Ordinance No. 2995, was promulgated, providing for the termination of the occupancy of public market stalls by the Chinese petitioners; that petitioners are entitled to a writ of

injunction to command respondents to desist from enforcing said Ordinance No. 3051 because it was returned by the mayor with a qualified approval which, therefore, operated as a veto and avoided the promulgation of a valid ordinance, as the mayor has no right to qualify his approval and thereby amend the ordinances adopted by the municipal board; that while Ordinance No. 3051 provided for the termination on June 30, 1947 of any existing permission granted for the occupancy of public market stalls, the mayor approved the same subject to his interpretation that licenses paid up to December 31, 1947 would not terminate until the later date; that Ordinance No. 3051 is null and void, being inconsistent with the public policy of the state as declared in Republic Act No. 37; that said ordinance is unconstitutional in that it impairs the obligation of contracts, it nullifies the substantial protection of due process, it denies petitioners and aliens the equal protection of the law, is unreasonable, unfair, oppressive, partial, and discriminatory, and is in conflict with common right, it prohibits trade by Chinese stallholders, is violative of the generally accepted principles of international law and of the treaty obligations of the Philippines with respect to commercial activities by Chinese and other aliens, and of the basic principles laid down in the United Nations Organization Charter; that said ordinance cannot be enforced while the question of the constitutionality of Republic Act No. 37 is pending before the courts; and that the ordinance is obviously an attempt by an inferior legislative body to evade the decision rendered by the trial court in civil case No. 1436.

Petitioners pray for the issuance of a writ of preliminary injunction which was denied on January 8,1948.

Petitioners filed an urgent petition for preliminary injunction and motion for reconsideration of said resolution of January 8, but they were also denied by resolution issued on January 21, 1948.

Respondents deny petitioners' allegation with respect to the conditions of the contracts of lease, conceding *arguendo* that petitioners were lessees for the occupancy of the public market stalls in question, and allege that the fees of stallholders were collected either daily, weekly or monthly and, therefore the contracts of lease which had no definite period had expired on December 31, 1947; that petitioners' claim, that said leases are of continuous and indefinite duration, is contrary to law and would nullify the purpose of Republic Act No. 37, as well as Ordinance No. 3051 independently intended to put into effect the provisions of said act; that Ordinance No. 3051 does not impair the obligation of contracts because the licenses granted to petitioners to occupy public market stalls were not contracts but lease privileges which may be withdrawn at will; that the establishment, maintenance and operation of market, admittedly governmental in nature, are non-separable from the regulation as regards the leasing thereof and the occupants have no such interest in the stall which a lessee of a store or dwelling has, and that the municipal corporation may provide for the termination of the permit or licenses; that petitioners are mere licensees and their licenses are not contracts which would create in their favor vested rights protected against future and subsequent enactments; that Ordinance No. 3051 does not deprive petitioners of the equal protection of law, which does not limit the police power of the state to legislate for the promotion of the general welfare and prosperity, and the nationalization of retail trade; that the ordinance is not unreasonable, unfair, oppressive, partial and discriminatory and it is not made the subject of civil case No. 1436 of the Court of First Instance of Manila and, by its nature, may be enforced independently of Republic Act No. 37; and that

no generally accepted principle in international law is violated by its enactment, while, on the other hand, the right of a state to self determination is respected by the Charter of the United Nations.

There is no question that the estblishment, maintenance and operation of public markets are governmental in nature, being among the public functions of the state and, therefore, the opportunity of occupying stalls in public markets is a privilege that can be granted or withdrawn without impairing any one of the guarantees embodied in the Bill of Rights of the Constitution. In the case of Co Chiong. et al. vs. Miguel Cuaderno, Sr. et al p 1440, we have already declared:

> "Public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all public services are reserved to Filipino citizens and to corporations or associations sixty *per centum* of the capital of which belongs to Filipino citizens.
>
> "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the public interest so requires.
>
> "Foodstuff sold in public markets demand at least, as much official control and supervision as the commodities sold and distributed in other public utilities.. They affect the life and health of the people, the safeguarding of which is one of the basic obligations of a constituted government. Official control and supervision can be exercised more effectively if public market stalls are occupied by citizens rather than by aliens.
>
> "In impugning the validity of Republic Act No. 37, appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, said guarantees have to give way to the specific provisions above quoted, which reserves to Filipino citizens the operation of public services or utilities.
>
> "Furthermore, the establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals.
>
> "Although foreigners are entitled to all the rights and privileges of friendly guests, they can not claim the rights to enjoy privileges which

by their nature belong exclusively to the hosts."

With the above pronouncements the whole controversy is disposed of against petitioners. Ordinance No. 3051 offends neither the constitutional clause guaranteeing the obligation of contracts nor the guarantees of due process of law and equal protection of the law. Neither does it violate any principle of international law nor any of the provisions of the Charter of the United Nations Organization. It does not impair any treaty commitment, as the treaties mentioned by petitioners have no binding effect upon the Republic of the Philippines, which is not a party to said treaties. The Philippines is bound only by treaties concluded and ratified in accordance with our Constitution. Ordinance No. 3051 of the City of Manila is valid.

Petition dismissed.

(Sgd.) G. PERFECTO

WE CONCUR:

(Sgd. MANUEL V. MORAN
" GUILLERMO F. PABLO
" CESAR BENGZON
" MANUEL C. BRIONES
" PEDRO TUASON

In the result.

(Sgd.) RICARDO PARAS

I concur in the result.

(Sgd.) F. R. FERIA

Ozaeta, *J.*, Montemayor and Reyes, *JJ.*, did not take part.

Supreme Court Decision—

SUPREME COURT

In Banc

JULIAN SEGUNDO MANANTAN, MARIA A. VDA. DE TALAVERA BEATRIZ TALAVERA MORALES accompanied by her husband JESUS MORALES, and DELFIN B. FLORES,

Petitioners-appellants,

versus

MUNICIPALITY OF LUNA, LA UNION; JOSE N. ANCHETA, Mayor; JOSE A. NUVAL, Councilor; AMBROSIO ARIPON, Councilor; HILARIO NAZAL, Councilor; ROMUALDO MULATO, Councilor; EULOGIO CASEM, Councilor; CATALINA RESURRECCION, Councilor; and TIMOTEO SANTAROMANA,

Respondents-appellees

G. R. No. L-2337

Present:

Moran, C. J.,
Paras,
Feria,
Pablo,
Perfecto,
Bengzon,
Briones,
Tuason,
Montemayor, and
Reyes, *JJ.*

Promulgated: Feb. 26, 1949

DECISION

REYES, J.:

This is an appeal from a judgment of the Court of First Instance of La Union.

The facts are not disputed.

On December 15, 1945, the municipal council of Luna, Province of La Union, passed its Resolution No. 32, series of 1945, for the purpose of offering at public auction on January 14, 1946, a lease of the privilege to catch "bangus" fry within a certain section of the municipal waters. The pertinent part of the resolution reads.

> "RESOLVED FURTHER, That said lease should be paid in cash by the successful bidder and that the minimum bid is hereby fixed to the minimum price of ONE THOUSAND PESOS (1,000.00) for one year, beginning January 1, 1946 up to and including December 31, 1946; that said lease can be extended for a period of from one to four years, to be paid in cash or by yearly instalments as this council may deem it profitable for the best interest of the government of this municipality."

Acting on the authority granted in said resolution, the municipal treasurer issued the necessary notices for the

auction wherein it was stated, among other things, that the fishing privileges in question would be leased "to the highest bidder ranging from ₱1,000.00 and up together with a deposit of 10 per cent of the amount so offered, for the period of one year from January 1, 1946," with the further statement that "Bids for more than one year but not more than four years can be offered. Prospective bidders may see the Municipal Secretary about the conditions of the lease for more than one year."

The auction was held on the date specified, and, of the five bids submitted, that of Julian Segundo Manantan and his associates was declared to be the best and highest. In official confirmation of this declaration, the municipal council passed Resolution No. 37, series of 1946, granting to Julian Segundo Manantan and his associates the fishing privilege in question and authorizing the municipal mayor to execute the corresponding contract of lease. In due time the contract was signed by the parties, and, conformably to the bid, the lease was to be for four years (from 1946 to 1949, inclusive) at the agreed price of ₱1,000.00 for the first year, payable immediately, and ₱2,400.00 for the suceeding three years, payable in a lump sum at the beginning of 1947 or in instalments at the discretion of the municipal council.

After paying the ₱1,000.00 corresponding to the first year of the lease, the lessees, began catching "bañgus" fry within the fishery zone in question. But on July 20, 1946, the municipal council, now composed of a new set of councilors headed by a new mayor, passed Resolution No. 2 series of 1946, requesting the Provincial Board of La Union to annul Resolution No. 32, series of 1945, and the fishing privilege granted thereunder to Julian Segundo Manantan and his partners, and the request having been granted, the said council on December 23, 1946 approved Resolution No. 23, series of 1946, providing for the auctioning of the fishing privilege for the year 1947 at the minimum price of ₱4,000.00. Upon learning of this proposed auction, Julian Segundo Manantan, later joined by his partners, commenced the present suit in the Court of First Instance of La Union to have the last mentioned resolution declared void and the municipal council enjoined from carrying out the auction. The municipal council, however, went ahead with the auction, and awarded the lease for the fishing privilege in question to Timoteo Santaromana, whose bid was declared to be the better of the two that were submitted. But the petitioners succeeded in having a writ of preliminary injunction issued on April 11, 1947, against the municipality, the municipal mayor, the municipal councilors, and Timoteo Santaromana enjoining them and their agents from preventing the petitioners from enjoying their privilege under the lease.

After trial, the Court of First Instance decided in favor of the respondents, holding Resolution No. 37, series of 1946, and the fishery lease contract granted thereunder to the petitioners to be null and void, and in consequence upholding the validity of the lease contract granted to Timateo Santaromana and requiring the petitioners to account for the value of the "bañgus fry caught by them from the date of the issuance of the preliminary injunction, less reasonable expenses.

From this decision, petitioners have appealed to this Court, contending that the lower court erred in holding Resolution No. 37 to be null and void, and in not declaring Resolution No. 23 null and void as violative of the constitutional provision prohibiting the passage of any law impairing the obligation of contracts.

It is obvious that the case hinges on the validity of Resolution No. 37 granting the fishing privilege to the petitioners. The learned trial Judge rightly held that Resolution No. 32 (the

one authorizing the first auction) was not invalidated by the fact that it was disapproved by the provincial board, since "the only ground upon which a provincial board may declare any municipal resolution x x x invalid is when such resoluton x x x is beyond the powers conferred upon the council x x x making the same." (Gabriel vs. Provincial Board of Pampanga, 30 Phil. 636, 692) and there is no question that Resolution No. 32 is within the powers granted to municipal councils by the Fishery Law (Section 67, Act No. 4003, as amended by Com. Act No. 471). His Honor, however, was in error in taking the view that Resolution No. 37 and the lease contract granted under it were null and void on the ground that when the municipal council by said resolution "accepted the four-year bid proposal of petitioners and declared them to (be) the best and highest bidders for the 1946-1947-1948-1949 fishing privilege, the municipal council in effect awarded to the petitioners the four-year fishing privilege without the intended benefits of public auction, in violation of section 69 of Act 4003, the Fishery Law, as amended by Commonwealth Act No. 471." The trial Judge thus proceeds on the assumption that Resolution No. 32, which authorized the first auction, did not authorize a lease for more than one year, so that the notice of public auction calling for bids for a longer period was unauthorized and, therefore, void. We don't think this assumption is justified by the terms of the resolution. It is true that the resolution fixes the minimum price for the lease at ₱1,000.00 for one year "beginning January 1, 1946, up to and including December 31, 1946." But nowhere does it say that the lease was to be for one year only. On the contrary, it expressly provides that the lease "can be extended for a period of from one to four years," thus indicating an intention not to limit the duration of the lease to one year. In accord with that intention, the municipal treasurer, in announcing the public auction, inserted in the notice a provision that "bids for more than one year but not more than four years can be offered," and the same municipal council which passed the resolution (No. 32) confirmed that intention by entertaining and accepting in its Resolution No. 37 the petitioners' bid for four years. It is a rule repeatedly followed by this Court that "the construction placed upon a law at the time by the officials incharge of enforcing it should be respected." [In re Allen, 2 Phil. 630; Government of the P. I. vs. Municipality of Binalonan, 32 Phil.634; Molina vs. Rafferty, 37 Phil. 545; Madrigal and Paterno vs. Rafferty and Concepcion 38 Phil. 414. (Guanio et al. vs. Fernandez et al., 55 Phil. 814, 819)]

As that part of the notice issued by the municipal treasurer which calls for a longer period than one year but not more than four years is in accord with the real intent of Resolution No. 32, as that intention was subsequently confirmed in Resolution No. 37 of the same municipal council, the said notice can not be deemed to be unauthorized and void, so that it is error to hold that the grant of the fishing privilege to the petitioners was null and void for lack of a valid notice of the public auction.

It results that the contract of lease entered into under the authority of Resolution No. 37 between the petitioners and the municipal govenrment of Luna is a valid and binding contract, and as such it is protected by the Constitution and can not, therefore, be impaired by a subsequent resolution which sets it aside and grants the fishing privilege to another party.

Wherefore the judgment appealed from is revoked and another one shall be entered declaring the contract entered into between the municipal government of Luna, province of La Union and Julian Segundo Manantan and his associates under the authority of Resolution No. 32, series of 1945 and No. 37 series of 1946 to be valid and Resolution No. 27 series of 1946,

(*Continued on page* 567)

(*Continued from page* 582)

change in public morality, obscure and mysterious in origin but laudable in character, is to miss the whole significance of British reforms. In the present-day politics of the United States, it is not so clear that the utility of patronage has disappeared; under the American system of separation of powers, patronage remains almost as useful as it was under the British constitution of the eighteenth century. And in any case, it is self-evident that the problem here lies in a distinctly different political and social setting from that of Victorian England.

Last, a successful administrative class rests upon the condition that such a group possesses the prestige of an elite; for unless the class has an elite status, it is in a poor position to compete against any other elite for the brains and abilities of the nation. It is one thing to offer a *career* in a merit service; it is quite another to insure that such a service has enough prestige to acquire the best of the nation's competence. The argument that the mere creation of an administrative class would be sufficient to endow that group with prestige in the United States may or may not be valid; it is certainly invalid to argue that this was the casual sequence in Britain. In assessing the ability of the British civil service to recruit the best products of the universities, one can scarcely overlook the profound significance of the fact that for centuries the public service was one of the few careers into which a member of the aristocracy could enter without loss of prestige. Like the church, the army, and politics, and unlike trade and commerce, public service was a profession in which the aristocracy could engage without violating the mores of the class. Even during the eighteenth century and the first half of the nineteenth, when the burden of incompetence and patronage in the public service was at its heaviest, government was a field into which the social elite could enter without a diminution of prestige, and often enough without even a loss in leisure. Throughout the age of patronage, the British public service suceeded in obtaining some of the best of Britain's abilities. The effect of the reforms after 1853 was to make more attractive a profession that already outranked business and industry in prestige values. In Britain, as in Germany, the psychic income accruing from a career in the civil service more than compensates for the smaller economic income. Contrast this with the United States, where since the Civil War prestige has largely accrued to acquisitive successes. It is small wonder that in the United States the problem of government competition with business for the abilities of the community should be much more acute.

If these remarks about the British administrative class are well founded, then these conclusions suggest themselves:

1. Generalizations derived from the operation of public administration in the environment of one nation-state cannot be universalized and applied to public administration in a different environment. A principle *may* be applicable in a different framewrok. But its applicability can be determined only after a study of that particular framework.

2. There can be no truly universal generalizations about public administration without a profound study of varying national and social characteristics impinging on public administration, to determine what aspects of public administration, if any, are truly independent of the national and social setting. Are there discoverable principles of *universal* validity, or are all principles valid only in terms of a special environment?

3. It follows that the study of public administration inevitably must become a much more broadly based discipline, resting not on a narrowly defined knowledge of techniques and processes, but rather extending to the varying historical, sociological, economic, and other conditioning factors that give public administration its peculiar stamp in each country.

— end —