FIRST DIVISION

[G.R. No. 124043. October 14, 1998]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* COURT OF APPEALS, COURT OF TAX APPEALS and YOUNG MENS CHRISTIAN ASSOCIATION OF THE PHILIPPINES, INC., *respondents.*

D E C I S I O N

PANGANIBAN, *J.*:

Is the income derived from rentals of real property owned by the Young Mens Christian Association of the Philippines, Inc. (YMCA) established as a welfare, educational and charitable non-profit corporation -- subject to income tax under the National Internal Revenue Code (NIRC) and the Constitution?

The Case

This is the main question raised before us in this petition for review on *certiorari* challenging two Resolutions issued by the Court of Appeals[1] on September 28, 1995[2] and February 29, 1996[3] in CA-GR SP No. 32007. Both Resolutions affirmed the Decision of the Court of Tax Appeals (CTA) allowing the YMCA to claim tax exemption on the latters income from the lease of its real property.

The Facts

The Facts are undisputed.[4] Private Respondent YMCA is a non-stock, non-profit institution, which conducts various programs and activities that are beneficial to the public, especially the young people, pursuant to its religious, educational and charitable objectives.

In 1980, private respondent earned, among others, an income of P676,829.80 from leasing out a portion of its premises to small shop owners, like restaurants and canteen operators, and P44,259.00 from parking fees collected from non-members. On July 2, 1984, the commissioner of internal revenue (CIR) issued an assessment to private respondent, in the total amount of P415,615.01 including surcharge and interest, for deficiency income tax, deficiency expanded withholding taxes on rentals and professional fees and deficiency withholding tax on wages. Private respondent formally protested the assessment and, as a supplement to its basic protest, filed a letter dated October 8, 1985. In reply, the CIR denied the claims of YMCA.

Contesting the denial of its protest, the YMCA filed a petition for review at the Court if Tax Appeals (CTA) on March 14, 1989. In due course, the CTA issued this ruling in favor of the YMCA:

xxx [T]he leasing of private respondents facilities to small shop owners, to restaurant and canteen operators and the operation of the parking lot are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the [private respondents]. It appears from the testimonies of the witnesses for the [private respondent] particularly Mr. James C. Delote, former accountant of YMCA, that these facilities were leased to members and that they have to service the needs of its members and their guests. The Rentals were minimal as for example, the barbershop was only charged P300 per month.He also testified that there was actually no lot devoted for parking space but the parking was done at the sides of the building. The parking was primarily for members with stickers on the windshields of their cars and they charged P.50 for non-members. The rentals and parking fees were just enough to cover the costs of operation and maintenance only. The earning[s] from these rentals and parking charges including those from lodging and other charges for the use of the recreational facilities constitute [the] bulk of its income which [is] channeled to support its many activities and attainment of its objectives. As pointed out earlier, the membership dues are very insufficient to support its program. We find it reasonably necessary therefore for [private respondent] to make [the] most out [of] its existing facilities to earn some income. It would have been different if under the circumstances, [private respondent] will purchase a lot and convert it to a parking lot to cater to the needs of the general public for a fee, or construct a building and lease it out to the highest bidder or at the market rate for commercial purposes, or should it invest its funds in the buy and sell of properties, real or personal. Under these circumstances, we could conclude that the activities are already profit oriented, not incidental and reasonably necessary to the pursuit of the objectives of the association and therefore, will fall under the last paragraph of section 27 of the Tax Code and any income derived therefrom shall be taxable.

Considering our findings that [private respondent] was not engaged in the business of operating or contracting [a] parking lot, we find no legal basis also for the imposition of [a] deficiency fixed tax and [a] contractors tax in the amount[s] of P353.15 and P3,129.73, respectively.

x x x x x x x x x

WHEREFORE, in view of all the foregoing, the following assessments are hereby dismissed for lack of merit:

1980 Deficiency Fixed Tax P353,15;

1980 Deficiency Contractors Tax P3,129.23;

1980 Deficiency Income Tax P372,578.20.

While the following assessments are hereby sustained:

1980 Deficiency Expanded Withholding Tax P1,798.93;

1980 Deficiency Withholding Tax on Wages P33,058.82

plus 10% surcharge and 20% interest per annum from July 2, 1984 until fully paid but not to exceed three (3) years pursuant to Section 51 (e)(2) & (3) of the National Internal Revenue Code effective as of 1984.[5]

Dissatisfied with the CTA ruling, the CIR elevated the case to the Court of Appeals (CA). In its Decision of February 16, 1994, the CA[6] initially decided in favor of the CIR and disposed of the appeal in the following manner:

Following the ruling in the afore-cited cases of Province of Abra *vs*. Hernando and Abra Valley College Inc. *vs*. Aquino, the ruling of the respondent Court of Tax Appeals that the leasing of petitioners (herein respondent) facilities to small shop owners, to restaurant and canteen operators and the operation of the parking lot are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the petitioners,' and the income derived therefrom are tax exempt, must be reversed.

WHEREFORE, the appealed decision is hereby REVERSED in so far as it dismissed the assessment for:

1980 Deficiency Income Tax P 353.15

1980 Deficiency Contractors Tax P 3,129.23, &

1980 Deficiency Income Tax P372,578.20,

but the same is AFFIRMED in all other respect.[7]

Aggrieved, the YMCA asked for reconsideration based on the following grounds:

I

The findings of facts of the Public Respondent Court of Tax Appeals being supported by substantial evidence [are] final and conclusive.

II

The conclusions of law of [p]ublic [r]espondent exempting [p]rivate [r]espondent from the income on rentals of small shops and parking fees [are] in accord with the applicable law and jurisprudence.[8]

Finding merit in the Motion for Reconsideration filed by the YMCA, the CA reversed itself and promulgated on September 28, 1995 its first assailed Resolution which, in part, reads:

The Court cannot depart from the CTAs findings of fact, as they are supported by evidence beyond what is considered as substantial.

x x x x x x x x x

The second ground raised is that the respondent CTA did not err in saying that the rental from small shops and parking fees do not result in the loss of the exemption. Not even the petitioner would hazard the suggestion that YMCA is designed for profit. Consequently, the little income from small shops and parking fees help[s] to keep its head above the water, so to speak, and allow it to continue with its laudable work.

The Court, therefore, finds the second ground of the motion to be meritorious and in accord with law and jurisprudence.

WHEREFORE, the motion for reconsideration is GRANTED; the respondent CTAs decision is AFFIRMED *in toto*.[9]

The internal revenue commissioners own Motion for Reconsideration was denied by Respondent Court in its second assailed Resolution of February 29, 1996. Hence, this petition for review under Rule 45 of the Rules of Court. [10]

The Issues

Before us, petitioner imputes to the Court of Appeals the following errors:

I

In holding that it had departed from the findings of fact of Respondent Court of Tax Appeals when it rendered its Decision dated February 16, 1994; and

II

In affirming the conclusion of Respondent Court of Tax Appeals that the income of private respondent from rentals of small shops and parking fees [is] exempt from taxation.[11]

This Courts Ruling

The Petition is meritorious.

First Issue:

Factual Findings of the CTA

Private respondent contends that the February 16, 1994 CA Decision reversed the factual findings of the CTA. On the other hand, petitioner argues that the CA merely reversed the ruling of the CTA that the leasing of private respondents facilities to small shop owners, to restaurant and canteen operators and the operation of parking lots are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the private respondent and that the income derived therefrom are tax exempt.[12] Petitioner insists that what the appellate court reversed was the legal conclusion, *not the factual finding*, of the CTA.[13] The commissioner has a point.

Indeed, it is a basic rule in taxation that the factual findings of the CTA, when supported by substantial evidence, will not be disturbed on appeal unless it is shown that the said court committed gross error in the appreciation of facts.[14] In the present case, this Court finds that the February 16, 1994 Decision of the CA did not deviate from this rule. The latter merely applied the law to the facts as found by the CTA and ruled on the issue raised by the CIR: Whether or not the collection or earnings of rental income from the lease of certain premises and income earned from parking fees shall fall under the last paragraph of Section 27 of the National Internal Revenue Code of 1977, as amended.[15]

Clearly, the CA did not alter any fact or evidence. It merely resolved the aforementioned issue, as indeed it was expected to. That it did so in a manner different from that of the CTA did not necessarily imply a reversal of factual findings.

The distinction between a question of law and a question of fact is clear-cut. It has been held that [t]here is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[16] In the present case, the CA did not doubt, much less change, the facts narrated by the CTA. It merely applied the law to the facts. That its interpretation or conclusion is different from that of the CTA is not irregular or abnormal.

Second Issue:

Is the Rental Income of the YMCA Taxable?

We now come to the crucial issue: Is the rental income of the YMCA from its real estate subject to tax? At the outset, we set forth the relevant provision of the NIRC:

SEC. 27. *Exemptions from tax on corporations.* -- The following organizations shall not be taxed under this Title in respect to income received by them as such --

x x x x x x x x x

(g) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(h) Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

x x x x x x x x x

Notwithstanding the provision in the preceding paragraphs, the income of whatever kind and character of the foregoing organization from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income, shall be subject to the tax imposed under this Code. (as amended by Pres. Decree No. 1457)

Petitioners argues that while the income received by the organizations enumerated in Section 27 (now Section 26) of the NIRC is, as a rule, exempted from the payment of tax in respect to income received by them as such, the exemption does not apply to income derived xxx from any if their properties, real or personal, or from any of their activities conducted for profit, regardless, of the disposition made of such income xxx.

Petitioner adds that rented income derived by a tax-exempt organization from the lease of its properties, real or personal, [is] not, therefore, exempt from income taxation, even if such income [is] exclusively used for the accomplishment of its objectives.[17] We agree with the commissioner.

Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions.[18] Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption must expressly be granted in a statute stated in a language too clear to be mistaken.[19]

In the instant case, the exemption claimed by the YMCA is expressly disallowed by the very wording of the last paragraph of then Section 27 of the NIRC which mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal, be subject to the imposed by the same Code. Because the last paragraph of said section unequivocally subjects to tax the rent income f the YMCA from its rental property,[20] the Court is duty-bound to abide strictly by its literal meaning and to refrain from resorting to any convoluted attempt at construction.

It is axiomatic that where the language of the law is clear and unambiguous, its express terms must be applied.[21] Parenthetically, a consideration of the question of construction must not even begin, particularly when such question is on whether to apply a strict construction or a literal one on statutes that grant tax exemptions to religious, charitable and educational propert[ies] or institutions.[22]

The last paragraph of Section 27, the YMCA argues, should be subject to the qualification that the income from the properties must arise from activities conducted for profit before it may be considered taxable.[23] This argument is erroneous. As previously stated, a reading of said paragraph ineludibly shows that the income from any property of exempt organizations, as well as that arising from any activity it conducts for profit, is taxable. The phrase any of their activities conducted for profit does not qualify the word properties. This makes income from the property of the organization taxable, regardless of how that income is used -- whether for profit or for lofty non-profit purposes.

Verba legis non est recedendum. Hence, Respondent Court of Appeals committed reversible error when it allowed, on reconsideration, the tax exemption claimed by YMCA on income it derived from renting out its real property, on the solitary but unconvincing ground that the said income is not collected for profit but is merely incidental to its operation. The law does not make a distinction. The rental income is taxable regardless of whence such income is derived and how it used or disposed of. Where the law does not distinguish, neither should we.

Constitutional Provisions

on Taxation

Invoking not only the NIRC but also the fundamental law, private respondent submits that Article VI, Section 28 of par. 3 of the 1987 Constitution,[24] exempts charitable institutions from the payment not only of property taxes but also of income tax from any source.[25] In support of its novel theory, it compares the use of the words charitable institutions, actually and

directly in the 1973 and the 1987 Constitutions, on the hand; and in Article VI Section 22, par. 3 of the 1935 Constitution, on the other hand.[26]

Private respondent enunciates three points. *First*, the present provision is divisible into two categories: (1) [c]haritable institutions, churches and parsonages or convents appurtenant thereto, mosques and non-profit cemeteries, the incomes of which are, from whatever source, all tax-exempt; [27] and (2) [a]ll lands, buildings and improvements actually and directly used for religious, charitable or educational purposes, which are exempt only from property taxes.[28] *Second*, *Lladoc v. Commissioner of Internal Revenue*, [29] which limited the exemption only to the payment of property taxes, referred to the provision of the 1935 Constitution and not to its counterparts in the 1973 and the 1987 Constitutions.[30] *Third*, the phrase actually, directly and exclusively used for religious, charitable or educational purposes refers not only to all lands, buildings and improvements, but also to the above-quoted first category which includes charitable institutions like the private respondent.[31]

The Court is not persuaded. The debates, interpellations and expressions of opinion of the framers of the Constitution reveal their intent which, in turn, may have guided the people in ratifying the Charter.[32] Such intent must be effectuated.

Accordingly, Justice Hilario G. Davide, Jr., a former constitutional commissioner, who is now a member of this Court, stressed during the Concom debates that xxx what is exempted is not the institution itself xxx; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes.[33] Father Joaquin G. Bernas, an eminent authority on the Constitution and also a member of the Concom, adhered to the same view that the exemption created by said provision pertained only to property taxes.[34]

In his treatise on taxation, Mr. Justice Jose C. Vitug concurs, stating that [t]he tax exemption covers *property* taxes only."[35] Indeed, the income tax exemption claimed by private respondent finds no basis in Article VI, Section 28, par. 3 of the Constitution.

Private respondent also invokes Article XIV, Section 4, par. 3 of the Charter, [36] claiming that the YMCA is a non-stock, non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income.[37] We reiterate that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.

As previously discussed, laws allowing tax exemption are construed *strictissimi juris*. Hence, for the YMCA to be granted the exemption it claims under the aforecited provision, it must prove with substantial evidence that (1) it falls under the classification *non-stock, non-profit educational institution*; and (2) the income it seeks to be exempted from taxation is *used actually, directly, and exclusively for educational purposes*. However, the Court notes that not a scintilla of evidence was submitted by private respondent to prove that it met the said requisites.

Is the YMCA an *educational* institution within the purview of Article XIV, Section 4, par.3 of the Constitution? We rule that it is not. The term educational institution or institution of learning has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant.[38] Under the Education Act of 1982, such term refers to schools.[39] The school system is synonymous with formal education, [40] which refers to the hierarchically structured and chronological graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels.[41] The Court has examined the Amended Articles of Incorporation[42] and By-Laws[43] of the YMCA, but found nothing in them that even hints that it is a school or an educational institution.[44]

Furthermore, under the Education Act of 1982, even non-formal education is understood to be school-based and private auspices such as foundations and civic-spirited organizations are ruled out.[45] It is settled that the term educational institution, when used in laws granting tax exemptions, refers to a xxx school seminary, college or educational establishment xxx. [46] Therefore, the private respondent cannot be deemed one of the educational institutions covered by the constitutional provision under consideration.

xxx Words used in the Constitution are to be taken in their ordinary acceptation. While in its broadest and best sense education embraces all forms and phrases of instruction, improvement and development of mind and body, and as well of religious and moral sentiments, yet in the common understanding and application it means a place where systematic instruction in any or all of the useful branches of learning is given by methods common to schools and institutions of learning. That we conceive to be the true intent and scope of the term [educational institutions,] as used in the Constitution. [47]

Moreover, without conceding that Private Respondent YMCA is an educational institution, the Court also notes that the former did not submit proof of the proportionate amount of the subject income that was actually, directly and exclusively used for educational purposes. Article XIII, Section 5 of the YMCA by-laws, which formed part of the evidence submitted, is patently insufficient, since the same merely signified that [t]he net income derived from the rentals of the commercial buildings shall be apportioned to the Federation and Member Associations as the National Board may decide. [48] In sum, we find no basis for granting the YMCA exemption from income tax under the constitutional provision invoked

Cases Cited by Private

Respondent Inapplicable

The cases[49] relied on by private respondent do not support its cause. *YMCA of Manila v. Collector of Internal Revenue*[50] and *Abra Valley College, Inc. v. Aquino*[51] are not applicable, because the controversy in both cases involved exemption from the payment of property tax, not income tax. *Hospital de San Juan de Dios, Inc. v. Pasay City*[52] is not in point either, because it involves a claim for exemption from the payment of regulatory fees, specifically electrical inspection fees, imposed by an ordinance of Pasay City -- an issue not at all related to that involved in a claimed exemption from the payment if income taxes imposed on property leases. In *Jesus Sacred Heart College v. Com. Of Internal Revenue*,[53] the party therein, which claimed an exemption from the payment of income tax, was an educational institution which submitted substantial evidence that the income subject of the controversy had been devoted or used solely for educational purposes. On the other hand, the private respondent in the present case had not given any proof that it is an educational institution, or that of its rent income is actually, directly and exclusively used for educational purposes.

Epilogue

In deliberating on this petition, the Court expresses its sympathy with private respondent. It appreciates the nobility its cause. However, the Courts power and function are limited merely to applying the law fairly and objectively. It cannot change the law or bend it to suit its sympathies and appreciations. Otherwise, it would be overspilling its role and invading the realm of legislation.

We concede that private respondent deserves the help and the encouragement of the government. It needs laws that can facilitate, and not frustrate, its humanitarian tasks. But the Court regrets that, given its limited constitutional authority, it cannot rule on the wisdom or propriety of legislation. That prerogative belongs to the political departments of government. Indeed, some of the member of the Court may even believe in the wisdom and prudence of granting more tax exemptions to private respondent. But such belief, however well-meaning and sincere, cannot bestow upon the Court the power to change or amend the law.

WHEREFORE, the petition is ***GRANTED***. The Resolutions of the Court of Appeals dated September 28, 1995 and February 29, 1996 are hereby dated February 16, 1995 is ***REVERSED*** and ***SET ASIDE***. The Decision of the Court of Appeals dated February 16, 1995 is ***REINSTATED***, insofar as it ruled that the income tax. No pronouncement as to costs.

SO ORDERED.

FIRST DIVISION

[G.R. No. 116356. June 29, 1998]

EASTERN SHIPPING LINES, INC., *petitioner*, *vs.* COURT OF APPEALS and DAVAO PILOTS ASSOCIATION, *respondents.*

D E C I S I O N

PANGANIBAN, *J.*

In *Philippine Interisland Shipping Association of the Philippines vs. Court of Appeals*,[1] the Court, *en banc*, ruled that Executive Order 1088[2] was not unconstitutional. We adhere to said ruling in this case.

The Case

This is a petition for *certiorari* under Rule 45, assailing the Decision[3] of the Court of Appeals[4] in CA-GR CV No. 34487 promulgated on July 18, 1994, the dispositive portion of which reads:

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby *AFFIRMED in toto*. With costs against defendant-appellant.

The Decision affirmed by Respondent Court disposed as follows:

WHEREFORE, judgment is rendered directing the defendant:

1. To pay plaintiff the sum of P602,710.04 with legal rate of interest commencing from the filing of the complaint representing unpaid pilotage fees;

2. To pay attorneys fees in the sum of P50,000.00;

3. And costs.

SO ORDERED.

Hence, this appeal.[5]

The Facts

As found by the trial court, these are the undisputed facts:

On September 25, 1989, plaintiff [herein private respondent] elevated a complaint against defendant [herein petitioner] for sum of money and attorneys fees alleging that plaintiff had rendered pilotage services to defendant between January 14, 1987 to July 22, 1989 with total unpaid fees of P703,290.18. Despite repeated demands, defendant failed to pay and prays that the latter be directed to pay P703,290.18 with legal rate of interest from the filing of the complaint; attorneys fees equivalent to 25% of the principal obligation and such other relief.

On November 18, 1989 defendant answered vigorously disputing the claims of plaintiff. It assailed the constitutionality of the Executive Order 1088 upon which plaintiff bases its claims; alleged that there is a pending case before the Court of Appeals elevated by the United Harbor Pilots Association of the Philippines of which plaintiff is a member[;] whereas defendant is a member of the Chamber of Maritime Industries of the Philippine[s] which is an Intervenor in CA-G.R. SP No. 18072; that there therefore is *lis pendens* by Section 1 (e), Rule 16 of the Rules; that the subject of the complaint falls within the scope and authority of the Philippine Ports Authority by virtue of PD No. 857 dated December 23, 1975; that Executive Order No. 1088 is an unwarranted repeal or modification of the Philippine Ports Authority Charter; that the fees charged by plaintiff are arbitrary and confiscatory; and the basis of the Executive Order 1088 is offensive, sourced from Amendment No. 6 of the 1973 Constitution and rendered inoperative by the Freedom Constitution of March 25, 1986 and the present Constitution; and that the only agency vested by law to prescribe such rates, charges or fees for services rendered by any private organization like the plaintiff within a Port District is governed by Section 20 of PD 857. As regular patron of plaintiff, defendant has never been remiss in paying plaintiffs claim for pilotage fees and the present complaint under the foregoing circumstances is without legal foundation. Defendant prays that plaintiff be advised to await the final outcome of the identical issues already elevated to and pending before the Court of Appeals as CA-G.R. SP No. 18072. Defendant prays for an award of damages, attorneys fees, litigation expense and costs.

At the Pre-Trial Conference, the only issue raised by plaintiff is whether the defendant is liable to the plaintiff for the money claims alleged in the complaint.

The defendant on the other hand raised the following issues:

1. Whether or not Executive Order 1088 is constitutional;

2. Whether or not Executive Order 1088 is illegal;

3. Whether or not the plaintiff may *motu proprio* and independently of the Public Estates Authority enforce Executive Order 1088 and collect the pilotage fees prescribed thereunder;

4. Assuming Executive Order 1088 is constitutional, valid and self-executory, whether or not the defendant is liable; and if so, to what extent and for what particular items; and

5. Whether or not the plaintiff is liable under the counterclaims (p. 102, *Expediente*).

On September 5, 1990, plaintiff presented witness Capt. Felix N. Galope, in the course of which testimony identified among others EXHIBITS B to E-2 and J to to I-2 consisting of documents related to the collection of the unpaid pilotage fees; basis for such computations; Statement of Accounts; demand letter and official recipients of payment made.

On September 6, 1990, Simplicio Barao, plaintiffs Billing Clerk testified among others on the records of plaintiffs Captains Certificate/Pilotage Chits and Bills/Statements of Accounts on the claims against defendant (EXHIBITS G to H-48-A) and the details of the outstanding accounts in favor of plaintiff. The records show defendant raised no objection thereto and by virtue of which all of plaintiffs documentary exhibits were admitted. (Order dated January 14, 1991, p. 277 *Expediente*).

On March 14, 1991, defendant presented Celso Occidental, employee of defendant shipping company, in the course of which testimony submitted EXHIBITS 1 to 1-D which is plaintiffs Billing Rate, both old and new with a payment of P79,585.64; and 2 to 2-G representing plane ticket paid for by defendant for transportation expenses of its counsel and cost of stenographic transcripts.

Defendants last witness, Capt. Jose Dubouzet, Jr. and a Harbor Pilot was briefly presented.[6]

After due trial, the trial court rendered its ruling, *viz*.:

Plaintiffs evidence as to the unpaid pilotage services due from defendant duly supported by voluminous documentary exhibits has not been refuted nor rebutted by defendant. On the contrary, when plaintiffs documentary exhibits were formally offered, defendant did not raise any objection thereby leaving the documents unchallenged and undisputed.

Upon the other hand, while the records show that defendant raised no less than five (5) issues the evidence fails to show any proof to sustain defendants posture. On the contrary, neither of defendants two witnesses appear to have even grazed the outer peripheries of what could have been interesting issues with far-reaching consequences if resolved.[7]

The factual antecedents of the controversy are simple. Petitioner insists on paying pilotage fees prescribed under PPA circulars. Because EO 1088 sets a higher rate, petitioner now assails its constitutionality.

Public Respondents Ruling

As stated earlier, Respondent Court of Appeals affirmed the trial courts decision. Respondent Court pointed out that petitioner, during the pre-trial, limited the issues to whether: (1) EO 1088 is unconstitutional; (2) EO 1088 is illegal; (3) private respondent itself may enforce and collect fees under EO 1088; and (4) petitioner is liable and, if EO 1088 is legal, to what extent.It then affirmed the factual findings and conclusion of the trial court that petitioner fail[ed] to show any proof to support its position. Parenthetically, Respondent Court also noted two other cases decided by the Court of Appeals, upholding the constitutionality of EO 1088.[8]

The Issue

In sum, petitioner raises this main issue: whether Executive Order 1088 is unconstitutional.[9]

The Courts Ruling

The petition is unmeritorious.

EO 1088 Is Valid

Petitioner contends that EO 1088[10] is unconstitutional, because (1) its interpretation and application are left to private respondent, a private person, [11] and (2) it constitutes an undue delegation of powers. Petitioner insists that it should pay pilotage fees in accordance with and on the basis of the memorandum circulars issued by the PPA, the administrative body vested under PD 857[12] with the power to regulate and prescribe pilotage fees. In assailing the constitutionality of EO 1088, the petitioner repeatedly asks: Is the private respondent vested with power to interpret Executive Order No. 1088?[13]

The Court is not persuaded. The pertinent provisions of EO 1088 read:

SECTION 1. The following shall be the rate of pilotage fees or charges based on tonnage for services rendered to both foreign and coastwise vessels:

For Foreign Vessels Rate in US$ &/or its

Peso Equivalent

Less than 500GT $ 30.00

500GT to 2,500GT 43.33

2,500GT to 5,000GT 71.33

5,000GT to 10,000GT 133.67

10,000GT to 15,000GT 181.67

15,000GT to 20,000GT 247.00

20,000GT to 30,000GT 300.00

30,000GT to 40,000GT 416.67

40,000GT to 60,000GT 483.33

60,000GT to 80,000GT 550.00

80,000GT to 100,000GT 616.67

100,000GT to 120,000GT 666.67

120,000GT to 130,000GT 716.67

130,000GT to 140,000GT 766.67

Over 140,000 gross tonnage $0.05 or its peso equivalent every excess tonnage. Rate for docking and undocking anchorage, conduction and shifting other related special services is equal to 100%. Pilotage services shall be compulsory in government and private wharves or piers.

For Coastwise Vessels Regular

100 and under 500 gross tons P 41.70

500 and under 600 gross tons 55.60

600 and under 1,000 gross tons 69.60

1,000 and under 3,000 gross tons 139.20

3,000 and under 5,000 gross tons 300.00

5,000 and over gross tons

SEC. 2. With respect to foreign vessels, payment of pilotage services shall be made in dollars or in pesos at the prevailing exchange rate.

SEC. 3. All orders, letters of instructions, rules, regulations and other issuances inconsistent with this Executive Order are hereby repealed or amended accordingly.

SEC. 4. This Executive Order shall take effect immediately.

In *Philippine Interisland Shipping Association of the Philippines vs. Court of Appeals*,[14] the Supreme Court, through Mr. Justice Vicente V. Mendoza, upheld the validity and constitutionality of Executive Order 1088 in no uncertain terms. We aptly iterate our pronouncement in said case, *viz*.:

It is not an answer to say that E.O. No. 1088 should not be considered a statute because that would imply the withdrawal of power from the

PPA. What determines whether an act is a law or an administrative issuance is not its form but its nature. Here as we have already said, the power to fix the rates of charges for services, including pilotage service, has always been regarded as legislative in character.

x x x x x x x x x

It is worthy to note that E.O. NO. 1088 provides for adjusted pilotage service rates without withdrawing the power of the PPA to impose, prescribe, increase or decrease rates, charges or fees. The reason is because E.O. No. 1088 is not meant simply to fix new pilotage rates. Its legislative purpose is the rationalization of pilotage service charges, through the imposition of uniform and adjusted rates for foreign and coastwise vessels in all Philippine ports.

x x x x x x x x x

We conclude that E.O. No. 1088 is a valid statute and that the PPA is duty bound to comply with its provisions. The PPA may increase the rates but it may not decrease them below those mandated by E.O. No. 1088. x x x.[15]

We see no reason to depart from this ruling. The Courts holding clearly debunks petitioners insistence on paying its pilotage fees based on memorandum circulars issued by the PPA.[16] Because the PPA circulars are inconsistent with EO 1088, they are void and ineffective. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.[17] As stated by this Court in *Land Bank of the Philippines vs. Court of Appeals*,[18] [t]he conclusive effect of administrative construction is not absolute. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, a grave abuse of power or lack of jurisdiction, or grave abuse of discretion clearly conflicting with either the letter or spirit of the law.[19] It is axiomatic that an administrative agency, like the PPA, has no discretion whether to implement the law or not. Its duty is to enforce it. Unarguably, therefore, if there is any conflict between the PPA circular and a law, such as EO 1088, the latter prevails.[20]

Based on the foregoing, petitioner has no legal basis to refuse payment of pilotage fees to private respondent, as computed according to the rates set by EO 1088. Private respondent cannot be faulted for relying on the clear and unmistakable provisions of EO 1088. In fact, EO 1088 leaves no room for interpretation, thereby unmistakably showing the duplicity of petitioners query: Is the private respondent vested with power to interpret Executive Order No. 1088?

WHEREFORE, the petition is hereby *DENIED* and the assailed Decision of the Court of Appeals is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

EN BANC

[G.R. No. 127685. July 23, 1998]

BLAS F. OPLE, *petitioner*, *vs.* RUBEN D. TORRES, ALEXANDER AGUIRRE, HECTOR VILLANUEVA, CIELITO HABITO, ROBERT BARBERS, CARMENCITA REODICA, CESAR SARINO, RENATO VALENCIA, TOMAS P. AFRICA, HEAD OF THE NATIONAL COMPUTER CENTER *and* CHAIRMAN OF THE COMMISSION ON AUDIT, *respondents*.

D E C I S I O N

PUNO, J.:

The petition at bar is a commendable effort on the part of Senator Blas F. Ople to prevent the shrinking of the right to privacy, which the revered Mr. Justice Brandeis considered as "the most comprehensive of rights and the right most valued by civilized men."[1] Petitioner Ople prays that we invalidate Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" on two important constitutional grounds, viz: one, it is a usurpation of the power of Congress to legislate, and two, it impermissibly intrudes on our citizenry's protected zone of privacy. We grant the petition for the rights sought to be vindicated by the petitioner need stronger barriers against further erosion.

A.O. No. 308 was issued by President Fidel V. Ramos on December 12, 1996 and reads as follows:

"ADOPTION OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM

WHEREAS, there is a need to provide Filipino citizens and foreign residents with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities;

WHEREAS, this will require a computerized system to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations;

WHEREAS, a concerted and collaborative effort among the various basic services and social security providing agencies and other government instrumentalities is required to achieve such a system;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby direct the following:

SECTION 1. *Establishment of a National Computerized Identification Reference System*. A decentralized Identification Reference System among the key basic services and social security providers is hereby established.

SEC. 2 *Inter-Agency Coordinating Committee*. An Inter-Agency Coordinating Committee (IACC) to draw-up the implementing guidelines and oversee the implementation of the System is hereby created, chaired by the Executive Secretary, with the following as members:

Head, Presidential Management Staff

Secretary, National Economic Development Authority

Secretary, Department of the Interior and

Local Government

Secretary, Department of Health

Administrator, Government Service Insurance

System,

Administrator, Social Security System, Administrator, National Statistics Office Managing Director, National Computer Center.

SEC. 3. *Secretariat*. The National Computer Center (NCC) is hereby designated as secretariat to the IACC and as such shall provide administrative and technical support to the IACC.

SEC. 4. *Linkage Among Agencies*. The Population Reference Number (PRN) generated by the NSO shall serve as the common reference number to establish a linkage among concerned agencies. The IACC Secretariat

shall coordinate with the different Social Security and Services Agencies to establish the standards in the use of Biometrics Technology and in computer application designs of their respective systems.

SEC. 5. *Conduct of Information Dissemination Campaign*. The Office of the Press Secretary, in coordination with the National Statistics Office, the GSIS and SSS as lead agencies and other concerned agencies shall undertake a massive tri-media information dissemination campaign to educate and raise public awareness on the importance and use of the PRN and the Social Security Identification Reference.

SEC. 6. *Funding*. The funds necessary for the implementation of the system shall be sourced from the respective budgets of the concerned agencies.

SEC. 7. *Submission of Regular Reports*. The NSO, GSIS and SSS shall submit regular reports to the Office of the President, through the IACC, on the status of implementation of this undertaking.

SEC. 8. *Effectivity*. This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 12th day of December in the year of Our Lord, Nineteen Hundred and Ninety-Six.

(SGD.) FIDEL V. RAMOS"

A.O. No. 308 was published in four newspapers of general circulation on January 22, 1997 and January 23, 1997. On January 24, 1997, petitioner filed the instant petition against respondents, then Executive Secretary Ruben Torres and the heads of the government agencies, who as members of the Inter-Agency Coordinating Committee, are charged with the implementation of A.O. No. 308. On April 8, 1997, we issued a temporary restraining order enjoining its implementation.

Petitioner contends:

"**A**. THE ESTABLISHMENT OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM REQUIRES A LEGISLATIVE ACT. THE ISSUANCE OF A.O. NO. 308 BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES IS, THEREFORE, AN UNCONSTITUTIONAL USURPATION OF THE LEGISLATIVE POWERS OF THE CONGRESS OF THE REPUBLIC OF THE PHILIPPINES.

B. THE APPROPRIATION OF PUBLIC FUNDS BY THE PRESIDENT FOR THE IMPLEMENTATION OF A.O. NO. 308 IS AN UNCONSTITUTIONAL USURPATION OF THE EXCLUSIVE RIGHT OF CONGRESS TO APPROPRIATE PUBLIC FUNDS FOR EXPENDITURE.

C. THE IMPLEMENTATION OF A.O. NO. 308 INSIDIOUSLY LAYS THE GROUNDWORK FOR A SYSTEM WHICH WILL VIOLATE THE BILL OF RIGHTS ENSHRINED IN THE CONSTITUTION."[2]

Respondents counter-argue:

A. THE INSTANT PETITION IS NOT A JUSTICIABLE CASE AS WOULD WARRANT A JUDICIAL REVIEW;

B. A.O. NO. 308 [1996] WAS ISSUED WITHIN THE EXECUTIVE AND ADMINISTRATIVE POWERS OF THE PRESIDENT WITHOUT ENCROACHING ON THE LEGISLATIVE POWERS OF CONGRESS;

C. THE FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE IDENTIFICATION REFERENCE SYSTEM MAY BE SOURCED FROM THE BUDGETS OF THE CONCERNED AGENCIES;

D. A.O. NO. 308 [1996] PROTECTS AN INDIVIDUAL'S INTEREST IN PRIVACY.[3]

We now resolve.

I

As is usual in constitutional litigation, respondents raise the threshold issues relating to the standing to sue of the petitioner and the justiciability of the case at bar. More specifically, respondents aver that petitioner has no legal interest to uphold and that the implementing rules of A.O. No. 308 have yet to be promulgated.

These submissions do not deserve our sympathetic ear. Petitioner Ople is a distinguished member of our Senate. As a Senator, petitioner is possessed of the requisite standing to bring suit raising the issue that the issuance of

A.O. No. 308 is a usurpation of legislative power.[4] As taxpayer and member of the Government Service Insurance System (GSIS), petitioner can also impugn the legality of the misalignment of public funds and the misuse of GSIS funds to implement A.O. No. 308.[5]

The ripeness for adjudication of the petition at bar is not affected by the fact that the implementing rules of A.O. No. 308 have yet to be promulgated. Petitioner Ople assails A.O. No. 308 as invalid per se and as infirmed on its face. His action is not premature for the rules yet to be promulgated cannot cure its fatal defects. Moreover, the respondents themselves have started the implementation of A.O. No. 308 without waiting for the rules. As early as January 19, 1997, respondent Social Security System (SSS) caused the publication of a notice to bid for the manufacture of the National Identification (ID) card.[6] Respondent Executive Secretary Torres has publicly announced that representatives from the GSIS and the SSS have completed the guidelines for the national identification system.[7] All signals from the respondents show their unswerving will to implement A.O. No. 308 and we need not wait for the formality of the rules to pass judgment on its constitutionality. In this light, the dissenters insistence that we tighten the rule on standing is not a commendable stance as its result would be to throttle an important constitutional principle and a fundamental right.

II

We now come to the core issues. Petitioner claims that A.O. No. 308 is not a mere administrative order but a law and hence, beyond the power of the President to issue.He alleges that A.O. No. 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates their right to privacy.

Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a **stricter scrutiny** by this Court.

The line that delineates Legislative and Executive power is not indistinct. **Legislative power** is "the authority, under the Constitution, to make laws, and to alter and repeal them."[8] The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines.[9] The grant of legislative power to Congress is broad, general and comprehensive.[10] The legislative body possesses plenary power for all purposes of civil government.[11] Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere.[12] In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.[13]

While Congress is vested with the power to enact laws, **the President executes the laws**.[14] The executive power is vested in the President.[15] It is generally defined as the power to enforce and administer the laws.[16] It is the power of carrying the laws into practical operation and enforcing their due observance.[17]

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department.[18] He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials.[19] Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted **administrative power** over bureaus and offices under his control to enable him to discharge his duties effectively.[20]

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.[21] It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents.[22] To this end, he can issue administrative orders, rules and regulations.

Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:

"Sec. 3. *Administrative Orders*.-- Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."[23]

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. **It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.**[24] **We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987**. The Code is a general law and "incorporates in a unified document the major structural, functional and procedural principles of governance"[25] and "embodies changes in administrative structures and procedures designed to serve the people."[26] The Code is divided into seven (7) Books: Book I deals with Sovereignty and General Administration, Book II with the Distribution of Powers of the three branches of Government, Book III on the Office of the President, Book IV on the Executive Branch, Book V on the Constitutional Commissions, Book VI on National Government Budgeting, and Book VII on Administrative Procedure. These Books contain provisions on the organization, powers and general administration of the executive, legislative and judicial branches of government, the organization and administration of departments, bureaus and offices under the executive branch, the organization and functions of the Constitutional Commissions and other constitutional bodies, the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers. The Code covers both the internal administration of government, i.e, internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government. [27]

It cannot be simplistically argued that A.O. No. 308 merely implements the Administrative Code of 1987. It establishes for the first time a National Computerized Identification Reference System. Such a System requires a delicate adjustment of various contending state policies-- the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. Indeed, the dissent of Mr. Justice Mendoza states that the A.O. No. 308 involves the all-important freedom of thought. As said administrative order redefines the parameters of some basic rights of our citizenry vis-a-vis the State as well as the line that separates the administrative power of the President to make rules and the legislative power of Congress, it ought to be evident that it deals with a subject that should be covered by law.

Nor is it correct to argue as the dissenters do that A.O. No. 308 is not a law because it confers no right, imposes no duty, affords no protection, and creates no office. Under A.O. No. 308, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated identification card. No citizen will refuse to get this identification card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges.Given this reality, the contention that A.O. No. 308 gives no right and imposes no duty cannot stand.

Again, with due respect, the dissenting opinions unduly expand the limits of administrative legislation and consequently erodes the plenary power of Congress to make laws. This is contrary to the established approach defining the traditional limits of administrative legislation. As well stated by Fisher: "x x x **Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws."**[28]

III

Assuming, arguendo, that A.O. No. 308 need not be the subject of a law, still it cannot pass constitutional muster as an administrative legislation because facially itviolates the right to privacy. The essence of privacy is the "right to be let alone."[29] In the 1965 case of **Griswold v. Connecticut**,[30] the United States Supreme Court gave more substance to the right of privacy when it ruled that the right has a constitutional foundation. It held that there is a right of privacy which can be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments,[31] viz:

"Specific guarantees in the Bill of Rights have penumbras formed by emanations from these guarantees that help give them life and substance x x x. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers `in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the `right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: `The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'"

In the 1968 case of **Morfe v. Mutuc**,[32] we adopted the **Griswold** ruling that **there is a constitutional right to privacy**. Speaking thru Mr. Justice, later Chief Justice, Enrique Fernando, we held:

"xxx

The Griswold case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." It has wider implications though.The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection.The language of Prof. Emerson is particularly apt: 'The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual--has become increasingly important as modern society has developed. All the forces of a technological age --industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.'"

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution.[33] It is expressly recognized in Section 3(1) of the Bill of Rights:

"*Sec. 3*. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the **Bill of Rights**, viz:[34]

"*Sec. 1*. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

x x x.

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

x x x.

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself."

Zones of privacy are likewise recognized and protected in our **laws**. The **Civil Code** provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another.[35] It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person,[36] and recognizes the privacy of letters and other private communications.[37] The**Revised Penal Code** makes a crime the violation of secrets by an officer,[38] the revelation of trade and industrial secrets,[39] and trespass to dwelling.[40] Invasion of privacy is an offense in**special laws** like the Anti-Wiretapping Law,[41] the Secrecy of Bank Deposit Act[42] and the Intellectual Property Code.[43] The **Rules of Court** on privileged communication likewise recognize the privacy of certain information.[44]

Unlike the dissenters, we prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. **But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger**.

The **heart of A.O. No. 308** lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs."

Biometry or biometrics is "the science of the application of statistical methods to biological facts; a mathematical analysis of biological data."[45] **The term "biometrics" has now evolved into a broad category of technologies which provide precise confirmation of an individual's identity through the use of the individual's own physiological and behavioral characteristics.[46] A physiological characteristic** is a relatively stable physical characteristic such as a fingerprint, retinal scan, hand geometry or facial features. A**behavioral characteristic** is influenced by the individual's personality and includes voice print, signature and keystroke.[47] Most biometric identification systems use a card or personal identification number (PIN) for initial identification. The biometric measurement is used to verify that the individual holding the card or entering the PIN is the legitimate owner of the card or PIN.[48]

A most **common form** of biological encoding is **finger-scanning** where technology scans a fingertip and turns the unique pattern therein into an individual number which is called a biocrypt. The **biocrypt** is stored in computer data banks[49] and becomes a means of identifying an individual using a service. This technology requires one's fingertip to be scanned every time service or access is provided.[50] Another method is the **retinal scan**. Retinal scan technology employs optical technology to map the capillary pattern of the retina of the eye. This technology produces a unique print similar to a finger print.[51] Another biometric method is known as the **"artificial nose."** This device chemically analyzes the unique combination of substances excreted from the skin of people.[52] The latest on the list of biometric achievements is the **thermogram**. Scientists have found that by taking pictures of a face using infra-red cameras, a unique heat distribution pattern is seen. The different densities of bone, skin, fat and blood vessels all contribute to the individual's personal "heat signature."[53]

In the last few decades, technology has progressed at a galloping rate. Some science fictions are now science facts. **Today, biometrics is no longer limited to the use of fingerprint to identify an individual**. It is a new science that uses various technologies in encoding any and all biological characteristics of an individual for identification. **It is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage.Considering the banquet of options**

available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless.

A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes. In fact, the Solicitor General claims that the adoption of the Identification Reference System will contribute to the "generation of population data for development planning."[54] This is an admission that the PRN will not be used solely for identification but for the generation of other data with remote relation to the avowed purposes of A.O. No. 308.**Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN**.

The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed as the dissenters do. Pursuant to said administrative order, an individual must present his PRN everytime he deals with a government agency to avail of basic services and security. His transactions with the government agency will necessarily be recorded--whether it be in the computer or in the documentary file of the agency. The individual's file may include his transactions for loan availments, income tax returns, statement of assets and liabilities, reimbursements for medication, hospitalization, etc. **The more frequent the use of the PRN, the better the chance of building a huge and formidable information base through the electronic linkage of the files.[55] The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist**.[56]

We can even grant, arguendo, that the computer data file will be limited to the name, address and other basic personal information about the individual.[57] Even that hospitable assumption will not save A.O. No. 308 from constitutional infirmity **for again said order does not tell us in clear and categorical terms how these information gathered shall be handled. It does not provide who shall control and access the data, under what circumstances and for what purpose**. These factors are essential to safeguard the privacy and guaranty the integrity of the information.[58] Well to note, the computer linkage gives other government agencies access to the information. **Yet, there are no controls to guard against leakage of information**. When the access code of the control programs of the particular computer system is broken, an intruder, without fear of sanction or penalty, can make use of the data for whatever purpose, or worse, manipulate the data stored within the system.[59]

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for **unequivocally specified purposes**.[60] The lack of proper safeguards in this regard of A.O. No. 308 may interfere with the individual's liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures.[61] **The possibilities of abuse and misuse of the PRN, biometrics and computer technology are accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded.[62] They threaten the very abuses that the Bill of Rights seeks to prevent**.[63]

The ability of a sophisticated data center to generate a comprehensive **cradle-to-grave dossier** on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution.[64] The computer is capable of producing a comprehensive dossier on individuals out of information given at different times and for varied purposes.[65] It can continue adding to the stored data and keeping the information up to date. Retrieval of stored data is simple. When information of a privileged character finds its way into the computer, it can be extracted together with other data on the subject.[66] Once extracted, the information is putty in the hands of any person. The end of privacy begins.

Though A.O. No. 308 is undoubtedly not narrowly drawn, the dissenting opinions would dismiss its danger to the right to privacy as speculative and hypothetical. Again, we cannot countenance such a laidback posture. The Court will not be true to its role as the ultimate guardian of the people's liberty if it would not immediately smother the sparks that endanger their rights but would rather wait for the fire that could consume them.

We reject the argument of the Solicitor General that an individual has a reasonable expectation of privacy with regard to the National ID and the use of biometrics technology as it stands on quicksand. The reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable.[67] The factual circumstances of the case determines the reasonableness of the expectation.[68] However, other factors, such as customs, physical surroundings and practices of a particular activity, may serve to create or diminish this expectation.[69] The use of biometrics and computer technology in A.O. No. 308 does not assure the individual of a reasonable expectation of privacy.[70] As technology advances, the level of reasonably expected privacy decreases.[71] The measure of protection granted by the reasonable expectation diminishes as relevant technology becomes more widely accepted.[72] The security of the computer data file depends not only on the physical inaccessibility of the file but also on the advances in hardware and software computer technology. **A.O. No. 308 is so widely drawn that a minimum standard for a reasonable expectation of privacy, regardless of technology used, cannot be inferred from its provisions**.

The rules and regulations to be drawn by the IACC cannot remedy this fatal defect. Rules and regulations merely implement the policy of the law or order. On its face, A.O. No. 308 gives the IACC virtually unfettered discretion to determine the metes and bounds of the ID System.

Nor do our present laws provide adequate safeguards for a reasonable expectation of privacy. Commonwealth Act No. 591 penalizes the disclosure by any person of data furnished by the individual to the NSO with imprisonment and fine.[73] Republic Act No. 1161 prohibits public disclosure of SSS employment records and reports.[74] These laws, however,apply to records and data with the NSO and the SSS. It is not clear whether they may be applied to data with the other government agencies forming part of the National ID System. The need to clarify the penal aspect of A.O. No. 308 is another reason why its enactment should be given to Congress.

Next, the Solicitor General urges us to validate A.O. No. 308's abridgment of the right of privacy by using the **rational relationship test**.[75] He stressed that the purposes of A.O. No.308 are: (1) to streamline and speed up the implementation of basic government services, (2) eradicate fraud by avoiding duplication of services, and (3) generate population data for development planning. He concludes that these purposes justify the incursions into the right to privacy for the means are rationally related to the end.[76]

We are not impressed by the argument. In **Morfe v. Mutuc**,[77] we upheld the constitutionality of R.A. 3019, the Anti-Graft and Corrupt Practices Act, as a valid police power measure. We declared that the law, in compelling a public officer to make an annual report disclosing his assets and liabilities, his sources of income and expenses, did not infringe on the individual's right to privacy. The law was enacted to promote morality in public administration by curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.[78]

The same circumstances do not obtain in the case at bar. For one, R.A. 3019 is a statute, not an administrative order. Secondly, R.A. 3019 itself is sufficiently detailed. The law is clear on what practices were prohibited and penalized, and it was narrowly drawn to avoid abuses. In the case at bar, A.O. No. 308 may have been impelled by a worthy purpose, but, it cannot pass constitutional scrutiny for it is not narrowly drawn. **And we now hold that when the integrity of a fundamental right is at stake, this court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is itenough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interests and that the law, rule, or regulation is narrowly drawn to preclude abuses**. This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.

The case of **Whalen v. Roe**[79] cited by the Solicitor General is also off-line. In **Whalen**, the United States Supreme Court was presented with the question of whether the State of New York could keep a centralized

computer record of the names and addresses of all persons who obtained certain drugs pursuant to a doctor's prescription. The New York State Controlled Substances Act of 1972 required physicians to identify patients obtaining prescription drugs enumerated in the statute, i.e., drugs with a recognized medical use but with a potential for abuse, so that the names and addresses of the patients can be recorded in a centralized computer file of the State Department of Health. The plaintiffs, who were patients and doctors, claimed that some people might decline necessary medication because of their fear that the computerized data may be readily available and open to public disclosure; and that once disclosed, it may stigmatize them as drug addicts.[80] The plaintiffs alleged that the statute invaded a constitutionally protected zone of privacy, i.e, the individual interest in avoiding disclosure of personal matters, and the interest in independence in making certain kinds of important decisions. The U.S. Supreme Court held that while an individual's interest in avoiding disclosure of personal matters is an aspect of the right to privacy, the statute did not pose a grievous threat to establish a constitutional violation. The Court found that the statute was necessary to aid in the enforcement of laws designed to minimize the misuse of dangerous drugs. **The patient-identification requirement was a product of an orderly and rational legislative decision made upon recommendation by a specially appointed commission which held extensive hearings on the matter. Moreover, the statute was narrowly drawn and contained numerous safeguards against indiscriminate disclosure**. The statute laid down the procedure and requirements for the gathering, storage and retrieval of the information. It enumerated who were authorized to access the data. It also prohibited public disclosure of the data by imposing penalties for its violation. In view of these safeguards, the infringement of the patients' right to privacy was justified by a valid exercise of police power. As we discussed above, A.O. No. 308 lacks these vital safeguards.

Even while we strike down A.O. No. 308, we spell out in neon that the Court is not per se against the use of computers to accumulate, store, process, retrieve and transmit data to improve our bureaucracy. Computers work wonders to achieve the efficiency which both government and private industry seek. Many information systems in different countries make use of the computer to facilitate important social objectives, such as better law enforcement, faster delivery of public services, more efficient management of credit and insurance programs, improvement of telecommunications and streamlining of financial activities.[81] Used wisely, data stored in the computer could help good administration by making accurate and comprehensive information for those who have to frame policy and make key decisions.[82] The benefits of the computer has revolutionized information technology. It developed the internet,[83] introduced the concept of cyberspace[84] and the information superhighway where the individual, armed only with his personal computer, may surf and search all kinds and classes of information from libraries and databases connected to the net.

In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused[85] and a compelling interest justify such intrusions.[86] Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny. The reason for this stance was laid down in **Morfe v. Mutuc**, to wit:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual-- has become increasingly important as modern society has developed. All the forces of a technological age-- industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[87]

IV

The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources-- governments, journalists, employers, social scientists, etc.[88] In the case at

bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. **Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens**. It is timely to take note of the well-worded warning of Kalvin, Jr., "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget."[89] Oblivious to this counsel, the dissents still say we should not be too quick in labelling the right to privacy as a fundamental right. We close with the statement that the right to privacy was not engraved in our Constitution for flattery.

IN VIEW WHEREOF, the petition is granted and Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" declared null and void for being unconstitutional.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. Nos. L-32370 & 32767 April 20, 1983

SIERRA MADRE TRUST, petitioner,
vs.
HONORABLE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, DIRECTOR OF MINES, JUSAN TRUST MINING COMPANY, and J & S PARTNERSHIP, respondents.

Lobruga Rondoz & Cardenas Law Offices for petitioner.

Fortunato de Leon for respondents.

ABAD SANTOS, *J.:*

This is a petition to review a decision of the Secretary of Agriculture and Natural Resources dated July 8, 1970, in DANR Cases Numbered 3502 and 3502-A. The decision affirmed a decision of the Director of Mines dated November 6, 1969.

The appeal was made pursuant to Sec. 61 of the Mining Law (C.A. No. 137, as amended) which provides: "... Findings of facts in the decision or order of the Director of Mines when affirmed by the Secretary of Agriculture and Natural Resources shall be final and conclusive, and the aggrieved party or parties desiring to appeal from such decision or order shall file in the Supreme Court a petition for review wherein only questions of law may be raised."

The factual background is given in the brief of the petitioner-appellant which has not been contradicted by the respondents-appellees and is as follows:

On July 26, 1962, the Sierra Madre Trust filed with the Bureau of Mines an Adverse Claim against LLA No. V-7872 (Amd) of the Jusan Trust Mining Company over six (6) lode mineral claims, viz.: (1) Finland 2, (2) Finland 3, (3) Finland 5, (4) Finland 6, (5) Finland 8 and (6) Finland 9, all registered on December 11, 1964 with the office of the Mining Recorder of Nueva Vizcaya, and all situated in Sitio Maghanay, Barrio Abaca Municipality of Dupax, Province of Nueva Vizcaya.

The adverse claim alleged that the aforementioned six (6) lode minerals claims covered by LLA No. V-7872 (Amd) encroached and overlapped the eleven (11) lode mineral claims of the herein petitioner Sierra Madre Trust, viz., (1) A-12, (2) H-12, (3) JC-11, (4) W-11, (5) JN-11, (6)WM-11, (7) F-10, (8) A-9, (9) N-9, (10) W-8, and (11) JN-8, all situated in Sitio Taduan Barrio of Abaca, Municipality of Dupax, Province of Nueva Vizcaya, and duly registered with the office of the Mining Recorder at Bayombong, Nueva Vizcaya on May 14, 1965.

The adverse claim prayed for an order or decision declaring the above-mentioned six (6) lode mineral claims of respondent Jusan Trust Mining Company, null, void, and illegal; and denying lode lease application LLA No. V-7872 over said claims. Further, the adverse claimant prayed for such other reliefs and remedies available in the premises.

This adverse claim was docketed in the Bureau of Mines as Mines Administrative Case No. V-404, and on appeal to the Department of Agriculture and Natural Resources as DANR Case No. 3502.

Likewise, on the same date July 26, 1966, the same Sierra Madre Trust filed with the Bureau of Mines an Adverse Claim against LLA No. V-9028 of the J & S Partnership over six (6) lode mineral claims viz.: (1) A-19, (2) A-20, (3) A-24, (4) A-25, (5) A-29, and (6) A-30, all registered on March 30, 1965 and amended August 5, 1965, with the office of the Mining Recorder of Nueva Vizcaya, and situated in Sitio Gatid, Barrio of Abaca Municipality of Dupax, Province of Nueva Vizcaya.

The adverse claim alleged that the aforementioned six (6) lode mineral claim covered by LLA No. V-9028, encroached and overlapped the thirteen (13) lode mineral claims of herein petitioner Sierra Madre Trust, viz.: (1) Wm-14, (2) F-14, (3) A-13, (4) H-12 (5) Jc-12, (6) W-12, (7) Jn-11, (8) Wm-11, (9) F-11, (10) Wm-11, (11) F-11; (12) H-9 and (13) Jc-9, all situated in Sitio Taduan, Barrio of Abaca Municipality of Dupax, Province of Nueva Vizcaya and duly registered with the office of the Mining Recorder at Bayombong, Nueva Vizcaya, on May 14,1965.

The adverse claim prayed for an order or decision declaring the above-mentioned six (6) claims of respondent J & S Partnership, null void, and illegal; and denying lode lease application LLA No. V-9028 over the said claims. Further, the adverse claimant prayed for such other reliefs and remedies available in the premises.

This adverse claim was docketed in the Bureau of Mines as Mines Administrative Case No. V-404, and on appeal to the Department of Agriculture and Natural Resources as DANR Case No. 3502A.

These two (2) adverse claims, MAC Nos. V-403 and V-404 were jointly heard in the Bureau of Mines, and also jointly considered in the appeal in the Department of Agriculture and Natural Resources.

The dispositive portion of the decision rendered by the Director of Mines reads:

IN VIEW OF THE FOREGOING, this Office believes and so holds that the respondents have the preferential right over their "Finland-2", "Finland- 3", "Finland-5", "Finland-6", "Finland-8", "Finland-9", "A-19", "A-20", "A-24", "A-25", "A-29" and "A-30" mining claims. Accordingly, the protests (adverse claims) filed by protestant Sierra Madre Trust should be, as hereby they are, DISMISSED.

And that of the Secretary of Agriculture and Natural Resources reads:

IN THE LIGHT OF ALL THE FOREGOING, the appeal interposed by the appellant, Sierra Madre Trust is hereby dismissed and the decision of the Director of Mines dated November 6, 1969, affirmed. "

The adverse claims of Sierra Madre Trust against Jusan Trust Mining Company and J and S Partnership were based on the allegation that the lode lease applications (LLA) of the latter "encroached and overlapped" the former's mineral claims, However, acting on the adverse claims, the Director of Mines found that, "By sheer force of evidence, this Office is constrained to believe that there exists no conflict or overlapping between the protestant's and respondents' mining claims." And this finding was affirmed by the Secretary of Agriculture and Natural Resources thus: "Anent the first allegation, this Office finds that the Director of Mines did not err when he found that the twelve (12) claims of respondents Jusan Trust Mining Company and J & S Partnership did not encroach and overlap the eighteen (18) lode mineral claims of the appellant Sierra Madre Trust. For this fact has been incotrovertibly proven by the records appertaining to the case."

It should be noted that according to the Director of Mines in his decision, "during the intervening period from the 31st day after the discovery [by the respondents] to the date of location nobody else located the area covered thereby. ... the protestant [petitioner herein] did not establish any intervening right as it is our findings that their mining claims do not overlap respondents' mining claims."

After the Secretary of Agriculture and Natural Resources had affirmed the factual findings of the Director of Mines to the effect that there was no overlapping of claims and which findings were final and conclusive, Sierra Madre Trust should have kept its peace for obviously it suffered no material injury and had no pecuniary interest to protect. But it was obstinate and raised this legal question before Us: "May there be a valid location of mining claims after the lapse of thirty (30) days from date of discovery, in contravention to the mandatory provision of Section 33 of the New Mining Law (Com. Act No. 137, as amended)?" It also raised ancillary questions.

We see no reason why We have to answer the questions in this petition considering that there is no justiciable issue between the parties. The officers of the Executive Department tasked with administering the Mining Law have found that there is neither encroachment nor overlapping in respect of the claims involved. Accordingly, whatever may be the answers to the questions will not materially serve the interests of the petitioner. In closing it is useful to remind litigation prone individuals that the interpretation by officers of laws which are entrusted to their administration is entitled to great respect.' In his decision, the Secretary of Agriculture and Natural Resources said: "This Office is in conformity with the findings of the Director of Mines that the mining claims of the appellees were validly located, surveyed and registered."

Finally, the petitioner also asks: "May an association and/or partnership registered with the Mining Recorder of a province, but not registered with the Securities and Exchange Commission, be vested with juridical personality to enable it to locate and then lease mining claims from the government?" Suffice it to state that this question was not raised before the Director of Mines and the Secretary of Agriculture and Natural Resources. There is also

nothing in the record to indicate whether or not the appellees are registered with the Securities and Exchange Commission. For these reasons, even assuming that there is a justiciable issue between the parties, this question cannot be passed upon.

WHEREFORE, the petition for review is hereby dismissed for lack of merit. Costs against the petitioner.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 95832 August 10, 1992

MAYNARD R. PERALTA, petitioner,
vs.
CIVIL SERVICE COMMISSION, respondent.

Tranquilino F. Meris Law Office for petitioner.

PADILLA, *J.:*

Petitioner was appointed Trade-Specialist II on 25 September 1989 in the Department of Trade and Industry (DTI). His appointment was classified as "Reinstatement/Permanent". Before said appointment, he was working at the Philippine Cotton Corporation, a government-owned and controlled corporation under the Department of Agriculture.

On 8 December 1989, petitioner received his initial salary, covering the period from 25 September to 31 October 1989. Since he had no accumulated leave credits, DTI deducted from his salary the amount corresponding to his absences during the covered period, namely, 29 September 1989 and 20 October 1989, *inclusive of Saturdays and Sundays*. More specifically, the dates of said absences for which salary deductions were made, are as follows:

1. 29 September 1989 — Friday

2. 30 September 1989 — Saturday

3. 01 October 1989 — Sunday

4. 20 October 1989 — Friday

5. 21 October 1989 — Saturday

6. 22 October 1989 — Sunday

Petitioner sent a memorandum to Amando T. Alvis (Chief, General Administrative Service) on 15 December 1989 inquiring as to the law on salary deductions, if the employee has no leave credits.

Amando T. Alvis answered petitioner's query in a memorandum dated 30 January 1990 citing Chapter 5.49 of the Handbook of Information on the Philippine Civil Service which states that "when an employee is on leave without pay on a day before or on a day immediately preceding a Saturday, Sunday or Holiday, such Saturday, Sunday, or Holiday shall also be without pay (CSC, 2nd Ind., February 12, 1965)."

Petitioner then sent a latter dated 20 February 1990 addressed to Civil Service Commission (CSC) Chairman Patricia A. Sto. Tomas raising the following question:

Is an employee who was on leave of absence without pay on a day before or on a day time immediately preceding a Saturday, Sunday or Holiday, also considered on leave of absence without pay on such Saturday, Sunday or Holiday? [1]

Petitioner in his said letter to the CSC Chairman argued that a reading of the General Leave Law as contained in the Revised Administrative Code, as well as the old Civil Service Law (Republic Act No. 2260), the Civil Service Decree (Presidential Decree No. 807), and the Civil Service Rules and Regulation fails to disclose a specific provision which supports the CSC rule at issue. That being the case, the petitioner contented that he cannot be deprived of his pay or salary corresponding to the intervening Saturdays, Sundays or Holidays (in the factual situation posed), and that the withholding (or deduction) of the same is tantamount to a deprivation of property without due process of law.

On 25 May 1990, respondent Commission promulgated Resolution No. 90-497, ruling that the action of the DTI in deducting from the salary of petitioner, a part thereof corresponding to six (6) days (September 29, 30, October 1, 20, 21, 22, 1989) is in order. [2] The CSC stated that:

In a 2nd Indorsement dated February 12, 1965 of this Commission, which embodies the policy on leave of absence without pay incurred on a Friday and Monday, reads:

Mrs. Rosalinda Gonzales is not entitled to payment of salary corresponding to January 23 and 24, 1965, Saturday and Sunday, respectively, it appearing that she was present on Friday, January 22, 1965 but was on leave without pay beginning January 25, the succeeding Monday. *It is the view of this Office that an employee who has no more leave credit in his favor is not entitled to the payment of salary on Saturdays, Sundays or holidays unless such non-working days occur within the period of service actually rendered*. (Emphasis supplied)

The rationale for the above ruling which applies only to those employees who are being paid on monthly basis, rests on the assumption that having been absent on either Monday or Friday, one who has no leave credits, could not be favorably credited with intervening days had the same been working days. Hence, the above policy that for an employee on leave without pay to be entitled to salary on Saturdays, Sundays or holidays, the same must occur between the dates where the said employee actually renders service. To rule otherwise would allow an employee who is on leave of absent (*sic*) without pay for a long period of time to be entitled to payment of his salary corresponding to Saturdays, Sundays or holidays. It also discourages the employees who have exhausted their leave credits from absenting themselves on a Friday or Monday in order to have a prolonged weekend, resulting in the prejudice of the government and the public in general. [3]

Petitioner filed a motion for reconsideration and in Resolution No. 90-797, the respondent Commission denied said motion for lack of merit. The respondent Commission in explaining its action held:

The Primer on the Civil Service dated February 21, 1978, embodies the Civil Service Commission rulings to be observed whenever an employee of the government who has no more leave credits, is absent on a Friday and/or a Monday is enough basis for the deduction of his salaries corresponding to the intervening Saturdays and Sundays. What the Commission perceived to be without basis is the demand of Peralta for the payment of his salaries corresponding to Saturdays and Sundays when he was *in fact* on leave of absence *without pay* on a Friday *prior* to the said days. A reading of Republic Act No. 2260 (*sic*) does not show that a government employee who is on leave of absence without pay on a day before or immediately preceding Saturdays, Sunday or legal holiday is entitled to payment of his salary for said days. Further, a reading of Senate Journal No. 67 dated May 4, 1960 of House Bill No. 41 (Republic Act No. 2625) reveals that while the law excludes Saturdays, Sundays and holidays in the computation of leave credits, it does not, however, include a case where the leave of absence is without pay. Hence, applying the principle of *inclusio unius est exclusio alterius*, the claim of Peralta has no merit. Moreover, to take a different posture would be in effect giving more premium to employees who are frequently on leave of absence without pay, instead of discouraging them from incurring further absence without pay. [4]

Petitioner's motion for reconsideration having been denied, petitioner filed the present petition.

What is primarily questioned by the petitioner is the validity of the respondent Commission's policy mandating salary deductions corresponding to the intervening Saturdays, Sundays or Holidays where an employee without leave credits was absent on the immediately preceding working day.

During the pendency of this petition, the respondent Commission promulgated Resolution No. 91-540 dated 23 April 1991 amending the questioned policy, considering that employees paid on a monthly basis are not required to work on Saturdays, Sunday or Holidays. In said amendatory Resolution, the respondent Commission resolved "to adopt the policy that when an employee, regardless of whether he has leave credits or not, is absent without pay on day immediately preceding or succeeding Saturday, Sunday or holiday, he shall not be considered absent on those days." Memorandum Circular No. 16 Series of 1991 dated 26 April 1991, was also issued by CSC Chairman Sto. Tomas adopting and promulgating the new policy and directing the Heads of Departments, Bureaus and Agencies in the national and local governments, including government-owned or controlled corporations with original charters, to oversee the strict implementation of the circular.

Because of these developments, it would seem at first blush that this petition has become moot and academic since the very CSC policy being questioned has already been amended and, in effect, Resolutions No. 90-

497 and 90-797, subject of this petition for *certiorari*, have already been set aside and superseded. *But the issue of whether or not the policy that had been adopted and in force since 1965 is valid or not, remains unresolved*. Thus, for reasons of public interest and public policy, it is the duty of the Court to make a formal ruling on the validity or invalidity of such questioned policy.

The Civil Service Act of 1959 (R.A. No. 2260) conferred upon the Commissioner of Civil Service the following powers and duties:

Sec. 16 (e) with the approval by the President to prescribe, amend and enforce suitable rules and regulations for carrying into effect the provisions of this Civil Service Law, and the rules prescribed pursuant to the provisions of this law shall become effective thirty days after publication in the Official Gazette;

xxx xxx xxx

(k) To perform other functions that properly belong to a central personnel agency. [5]

Pursuant to the foregoing provisions, the Commission promulgated the herein challenged policy. Said policy was embodied in a 2nd Indorsement dated 12 February 1965 of the respondent Commission involving the case of a Mrs. Rosalinda Gonzales. The respondent Commission ruled that an employee who has no leave credits in his favor is not entitled to the payment of salary on Saturdays, Sundays or Holidays unless such non-working days occur within the period of service actually rendered. The same policy is reiterated in the Handbook of Information on the Philippine Civil Service. [6] Chapter Five on leave of absence provides that:

5.51. When intervening Saturday, Sunday or holiday considered as leave without pay — when an employee is on leave without pay on a day before or on a day immediately preceding a Saturday, Sunday or holiday, such Saturday, Sunday or holiday shall also be without pay. (CSC, 2nd Ind., Feb. 12, 1965).

It is likewise illustrated in the Primer on the Civil Service [7] in the section referring to Questions and Answers on Leave of Absences, which states the following:

27. How is leave of an employee who has no more leave credits computed if:

(1) he is absent on a Friday and the following Monday?

(2) if he is absent on Friday but reports to work the following Monday?

(3) if he is absent on a Monday but present the preceding Friday?

- (1) He is considered on leave without pay for 4 days covering Friday to Monday;

- (2) He is considered on leave without pay for 3 days from Friday to Sunday;

- (3) He is considered on leave without pay for 3 days from Saturday to Monday.

When an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law; and the administrative interpretation of the law is at best advisory, for it is the courts that finally determine what the law means. **8** It has also been held that interpretative regulations need not be published. [9]

In promulgating as early as 12 February 1965 the questioned policy, the Civil Service Commission interpreted the provisions of Republic Act No. 2625 (which took effect on 17 June 1960) amending the Revised Administrative Code, and which stated as follows:

Sec. 1. Sections two hundred eighty-four and two hundred eighty-five-A of the Administrative Code, as amended, are further amended to read as follows:

Sec. 284. After at least six months' continues (*sic*) faithful, and satisfactory service, the President or proper head of department, or the chief of office in the case of municipal employees may, in his discretion, grant to an employee or laborer, whether permanent or temporary, of the national government, the provincial government, the government of a chartered city, of a municipality, of a municipal district or of government-owned or controlled corporations other than those mentioned in Section two hundred sixty-eight, two hundred seventy-one and two hundred seventy-four hereof, fifteen days

vacation leave of absence with full pay, exclusive of Saturdays, Sundays and holidays, for each calendar year of service.

Sec. 285-A. In addition to the vacation leave provided in the two preceding sections each employee or laborer, whether permanent or temporary, of the national government, the provincial government, the government of a chartered city, of a municipality or municipal district in any regularly and specially organized province, other than those mentioned in Section two hundred sixty-eight, two hundred seventy-one and two hundred seventy-four hereof, shall be entitled to fifteen days of sick leave for each year of service with full pay, exclusive of Saturdays, Sundays and holidays: *Provided, That* such sick leave will be granted by the President, Head of Department or independent office concerned, or the chief of office in case of municipal employees, only on account of sickness on the part of the employee or laborer concerned or of any member of his immediate family.

The Civil Service Commission in its here questioned Resolution No. 90-797 construed R.A. 2625 as referring only to government employees who have earned leave credits against which their absences may be charged with pay, as its letters speak only of *leaves of absence with full pay*. The respondent Commission ruled that a reading of R.A. 2625 does not show that a government employee who is on leave of absence *without pay* on a day before or immediately preceding a Saturday, Sunday or legal holiday is entitled to payment of his salary for said days.

Administrative construction, if we may repeat, is not necessarily binding upon the courts. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, or abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment. [10]

We find this petition to be impressed with merit.

As held in *Hidalgo vs. Hidalgo*: [11]

. . . . where the true intent of the law is clear that calls for the application of the cardinal rule of statutory construction that such intent or spirit must prevail over the letter thereof, for whatever is within the spirit of a statute is within the statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.

The intention of the legislature in the enactment of R.A. 2625 may be gleaned from, among others, the sponsorship speech of Senator Arturo M. Tolentino during the second reading of House Bill No. 41 (which became R.A. 2625). He said:

The law actually provides for sick leave and vacation leave of 15 days each year of service to be with full pay. But under the present law, in computing these periods of leaves, Saturday, Sunday and holidays are included in the computation so that if an employee should become sick and absent himself on a Friday and then he reports for work on a Tuesday, in the computation of the leave the Saturday and Sunday will be included, so that he will be considered as having had a leave of Friday, Saturday, Sunday and Monday, or four days.

The purpose of the present bill is to exclude from the computation of the leave those days, Saturdays and Sundays, as well as holidays, because actually the employee is entitled not to go to office during those days. And it is unfair and unjust to him that those days should be counted in the computation of leaves. [12]

With this in mind, the construction by the respondent Commission of R.A. 2625 is not in accordance with the legislative intent. R.A. 2625 specifically provides that government employees are *entitled* to fifteen (15) days vacation leave of absence with full pay and fifteen (15) days sick leave with full pay, *exclusive of Saturdays, Sundays and Holidays in both cases*. Thus, the law speaks of the granting of a right and the law does not provide for a distinction between those who have accumulated leave credits and those who have exhausted their leave credits in order to enjoy such right. *Ubi lex non distinguit nec nos distinguere debemus.* The fact remains that government employees, whether or not they have accumulated leave credits, are not required by law to work on Saturdays, Sundays and Holidays and thus they can not be declared absent on such non-working days. They cannot be or are not considered absent on non-working days; they cannot and should not be deprived of their salary corresponding to said non-working days just because they were absent without pay on the day immediately prior to, or after said non-working days. A different rule would constitute a deprivation of property without due process.

Furthermore, before their amendment by R.A. 2625, Sections 284 and 285-A of the Revised Administrative Code applied to all government employee without any distinction. It follows that the effect of the amendment similarly applies to all employees enumerated in Sections 284 and 285-A, whether or not they have accumulated leave credits.

As the questioned CSC policy is here declared invalid, we are next confronted with the question of what effect such invalidity will have. Will all government employees on a monthly salary basis, deprived of their salaries corresponding to Saturdays, Sundays or legal holidays (as herein petitioner was so deprived) since 12 February 1965, be entitled to recover the amounts corresponding to such non-working days?

The general rule *vis-a-vis* legislation is that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed. [13]

But, as held in *Chicot County Drainage District vs. Baxter State Bank*: [14]

. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such determination is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular relations, individual and corporate; and particular conduct, private and official.

To allow all the affected government employees, similarly situated as petitioner herein, to claim their deducted salaries resulting from the past enforcement of the herein invalidated CSC policy, would cause quite a heavy financial burden on the national and local governments considering the length of time that such policy has been effective. Also, administrative and practical considerations must be taken into account if this ruling will have a strict restrospective application. The Court, in this connection, calls upon the respondent Commission and the Congress of the Philippines, if necessary, to handle this problem with justice and equity to all affected government employees.

It must be pointed out, however, that after CSC Memorandum Circular No. 16 Series of 1991 — amending the herein invalidated policy — was promulgated on 26 April 1991, deductions from salaries made after said date in contravention of the new CSC policy must be restored to the government employees concerned.

WHEREFORE, the petition is GRANTED, CSC Resolutions No. 90-497 and 90-797 are declared NULL and VOID. The respondent Commission is directed to take the appropriate action so that petitioner shall be paid the amounts previously but unlawfully deducted from his monthly salary as above indicated. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon and Bellosillo, JJ., concur.

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. L-51353 June 27, 1988

SHELL PHILIPPINES, INC., plaintiff-appellee,
vs.
CENTRAL BANK OF THE PHILIPPINES, defendant-appellant.

Picazo, Agcaoile, Santayana, Reyes and Tayao for plaintiff-appellee.

F.E. Evangelista, A.L. Bautista & Juan P. Adcaura and Albamento Bisquera for defendant- appellant.

GUTIERREZ, JR., *J.:*

This case comes to us on a Court of Appeals resolution certifying the controversy as one which involves a pure question of law. The resolution states the factual background of the case.

On May 1, 1970, Congress approved the Act imposing a stabilization tax on consignments abroad (RA 6125). Section 1 of the statute, in part, provided as follows:

Section 1. There shall be imposed, assessed and collected a stabilization tax on the gross F.O.B. peso proceeds, based on the rate of exchange prevailing at the time of receipt of such proceeds, whether partial or total, of any exportation of the following schedule:

a. In the case of logs, copra, centrifugal sugar, and copper ore and concentrates;

Ten per centum of the F.O.B. peso proceeds of exports received on or after the date of effectivity of this Act to June thirty, nineteen hundred seventy-one;

Eight per centum of the F.O.B. peso proceeds of exports received from July first, nineteen hundred seventy-one to June thirty, nineteen hundred seventy-two.

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"Any export products the aggregate annual F.O.B. value of which shall exceed five million United States dollars in any one calendar year during the effectivity of this Act shall likewise be subject to the rates of tax in force during the fiscal years following its reaching the said aggregate value."

In August, 1970, the Central Bank, through its Circular No. 309 provided that:

The stabilization tax shall begin to apply on January 1st following the calendar year during which such export products shall have reached the aggregate F.O.B. value of more than US $5 million, and the applicable tax rates shall be the rates prescribed in Schedule (b) of Section 1 of Republic Act No. 6125 for the fiscal year following the reaching of the said aggregate value.

During 1971, appellee Shell, Philippines, Inc. exported seria residues, a by-product of petroleum refining, to an extent reaching $5 million. On January 7, 1972, the Monetary Board issued its Resolution No. 47 "subjecting petroleum pitch and other petroleum residues" to the stabilization tax effective January 1, 1972. Under the Central Bank Circular No. 309, implemented by Resolution No. 47, appellee had to pay the stabilization tax beginning January 1, 1972, which it did under protest.

On September 14, 1972, appellee filed suit against the Central Bank before the Court of First Instance of Manila, praying that Monetary Board Resolution No. 47 be declared null and void, and that Central Bank be ordered to refund the stabilization tax it paid during the first semester of 1972. Its position was that, pursuant to the provisions of RA 6125, it had to pay the stabilization tax only from July 1, 1972.

The lower court sustained appellee, and it declared Monetary Board Resolution No. 47 as void and it ordered refund of the stabilization tax paid by appellee during the period January 1 to June 30, 1972. Central Bank has appealed from the judgment. (Rollo, pp. 47-49)

The trial court opined:

Note that the law mentions both calendar year and fiscal year. Calendar year refers to one year starting from January to December. Fiscal year, as it is usually and commonly used, refers to the period covered between July 1 of a year to June 30 of the following year. In using these two terms, it is the considered opinion of this Court that they should be taken in the meaning where they are commonly and usually understood. So that when an export product reaches an aggregate F.O.B. value of more than $5,000,000.00 in a calendar year it becomes subject to the rates of tax in force during the fiscal year following its reaching the said aggregate value.

The statute is clear and free from ambiguity so that an interpretation even becomes unnecessary ... . (Brief for Defendant-Appellant, pp. 34-35)

The Central Bank appeals from the above cited decision alleging that the trial court erred in regarding the deliberations of the Senate on the stabilization tax in favor of Shell Philippines, Inc. and in failing to consider the authority granted to the appellant to promulgate rules and regulations in the implementation of the stabilization tax law.

It should be mentioned, however, that on July 1, 1973, Presidential Decree No. 230 took effect. This law entitled

Amending the Tariff and Customs Code, creating Title III in Book — I Export Tariff," expressly repealed Section 1 of Republic Act No. 6125 and transferred the assessment and collection of the export duty from the Central Bank to the Bureau of Customs by ordering the Commissioner of Customs to promulgate rules and regulations necessary for the implementation of the decree, subject to the approval of the Secretary of Finance (Section 2 of the Decree).

Notwithstanding this fact, the issue raised must be resolved on the merits as an affirmative relief was granted to the appellee.

First, the petitioner's allegation that the trial court gave undue weight to the deliberations of the Senate on the stabilization tax law is not supported by either the records or the decision itself. It is clear in the decision that the trial court found no ambiguity in the provision of law governing the dispute and accordingly applied it in its ordinary sense. The cited Senate deliberations merely corroborated the fact that the tax commences on the following fiscal year after the aggregate value is reached. However, even if the lower court was influenced by the Senate deliberations, we see nothing wrong in courts' examining and following the intent of the legislature when an act of Congress has to be interpreted.

Second, while it is true that under the same law the Central Bank was given the authority to promulgate rules and regulations to implement the statutory provision in question, we reiterate the principle that this authority is limited only to carrying into effect what the law being implemented provides.

In *People v. Maceren* (79 SCRA 450, 458 and 460), this Court ruled that:

Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. (U.S. v. Tupasi Molina, *supra*). An administrative agency cannot amend an act of Congress (Santos v. Estenzo, 109 Phil. 419, 422; Teoxon v. Members of the Board of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel v. General Auditing Office, L-28952, December 29, 1971,42 SCRA 660; Deluao v. Casteel, L-21906, August 29, 1969, 29 SCRA 350).

The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (University of Santo Tomas v. Board of Tax Appeals, 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see Collector of Internal Revenue v. Villamor, 69 Phil. 319; Wise & Co. v. Meer, 78 Phil. 665, 676; Del Mar v. Phil. Veterans Administration, L-27299, June 27, 1973, 51 SCRA 340, 349).

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... The rule or regulation should be within the scope of the statutory authority granted by the legislature to the administrative agency. (Davis, Administrative Law, p. 194, 197, cited in Victorias Milling Co., Inc. v. Social Security Commission, 114 Phil. 555, 558).

In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (People v. Lim, 108 Phil. 1091)

Considering the foregoing, we rule that the trial court was correct in declaring that "Monetary Board Resolution No. 47 is void insofar as it imposes the tax mentioned in Republic Act No. 6125 on the export seria residue of (plaintiff) the aggregate annual F.O.B., value of which reached five million United States dollars in 1971 effective on January 1, 1972." The said resolution runs counter to the provisions of R.A. 6125 which provides that "(A)ny export product the aggregate annual F.O.B. value of which shall exceed five million United States dollars in any one calendar year during the effectivity of this Act shall likewise be subject to the rates of tax in force during the fiscal year following its reaching the said aggregate value."

We note that under the same provision of law the tax accrues when the aggregate annual F.O.B. value of the export product has exceeded five million United States dollars during any calendar year. The imposition of the tax is only deferred until the "fiscal year following its reaching the said aggregate value." It is only then that the rates in force are ascertained.

In this case, there is no question that in 1971, the appellee exported seria residue with an F.O.B. value of more than five million US dollars. The appellee's objection lies in the collection of the tax thereon as of January 1972 rather than in July 1972.

It is, therefore, undeniable that the respondent was liable to pay the tax and that the Central Bank merely collected the said tax prematurely. There is likewise no controversy over the rate of tax in force when payment became due. Thus, the tax refund granted by the trial court was not proper because the tax paid was in fact, and in law due to the government at the correct time.

We decline to grant to the respondent an amount equivalent to the interest on the prematurely collected tax because of the well entrenched rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to the taxpayer, the Government cannot be required to pay interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness (Atlas Fertilizer Corp. v. Commission on Internal Revenue, 100 SCRA 556). There is no indication of arbitrariness in the questioned act of the appellant.

WHEREFORE, in view of the foregoing, the assailed decision is hereby AFFIRMED but MODIFIED to the effect that the tax refund granted by the trial court is ordered retained by or reverted to, as the case may be, the Central Bank.

SO ORDERED.

[G.R. No. 125955. June 19, 1997]

WILMER GREGO, *petitioner, vs*. COMMISSION ON ELECTIONS and HUMBERTO BASCO, *respondents.*

D E C I S I O N

ROMERO, *J.*:

The instant special civil action for *certiorari* and prohibition impugns the resolution of the Commission on Elections (COMELEC) *en banc* in SPA No. 95-212 dated July 31, 1996, dismissing petitioners motion for reconsideration of an earlier resolution rendered by the COMELECs First Division on October 6, 1995, which also dismissed the petition for disqualification[1] filed by petitioner Wilmer Grego against private respondent Humberto Basco.

The essential and undisputed factual antecedents of the case are as follows:

On October 31, 1981, Basco was removed from his position as Deputy Sheriff by no less than this Court upon a finding of serious misconduct in an administrative complaint lodged by a certain Nena Tordesillas. The Court held:

WHEREFORE, FINDING THE RESPONDENT DEPUTY SHERIFF HUMBERTO BASCO OF THE CITY COURT OF MANILA GUILTY OF SERIOUS MISCONDUCT IN OFFICE FOR THE SECOND TIME, HE IS HEREBY DISMISSED FROM THE SERVICE WITH FORFEITURE OF ALL RETIREMENT BENEFITS AND WITH PREJUDICE TO REINSTATEMENT TO ANY POSITION IN THE NATIONAL OR LOCAL GOVERNMENT, INCLUDING ITS AGENCIES AND INSTRUMENTALITIES, OR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS.

x x x x x x x x x[2]

Subsequently, Basco ran as a candidate for Councilor in the Second District of the City of Manila during the January 18, 1988, local elections. He won and, accordingly, assumed office.

After his term, Basco sought re-election in the May 11, 1992 synchronized national elections. Again, he succeeded in his bid and he was elected as one of the six (6) City Councilors.However, his victory this time did not remain unchallenged. In the midst of his successful re-election, he found himself besieged by lawsuits of his opponents in the polls who wanted to dislodge him from his position.

One such case was a petition for *quo warranto*[3] filed before the COMELEC by Cenon Ronquillo, another candidate for councilor in the same district, who alleged Bascos ineligibility to be elected councilor on the basis of the Tordesillas ruling. At about the same time, two more cases were also commenced by Honorio Lopez II in the Office of the Ombudsman and in the Department of Interior and Local Government.[4] All these challenges were, however, dismissed, thus, paving the way for Bascos continued stay in office.

Despite the odds previously encountered, Basco remained undaunted and ran again for councilor in the May 8, 1995, local elections seeking a third and final term. Once again, he beat the odds by emerging sixth in a battle for six councilor seats. As in the past, however, his right to office was again contested. On May 13, 1995, petitioner Grego, claiming to be a registered voter of Precinct No. 966, District II, City of Manila, filed with the COMELEC a petition for disqualification, praying for Bascos disqualification, for the suspension of his proclamation, and for the declaration of Romualdo S. Maranan as the sixth duly elected Councilor of Manilas Second District.

On the same day, the Chairman of the Manila City Board of Canvassers (BOC) was duly furnished with a copy of the petition. The other members of the BOC learned about this petition only two days later.

The COMELEC conducted a hearing of the case on May 14, 1995, where it ordered the parties to submit simultaneously their respective memoranda.

Before the parties could comply with this directive, however, the Manila City BOC proclaimed Basco on May 17, 1995, as a duly elected councilor for the Second District of Manila, placing sixth among several candidates who vied for the seats.[5] Basco immediately took his oath of office before the Honorable Ma. Ruby Bithao-Camarista, Presiding Judge, Metropolitan Trial Court, Branch I, Manila.

In view of such proclamation, petitioner lost no time in filing an Urgent Motion seeking to annul what he considered to be an illegal and hasty

proclamation made on May 17, 1995, by the Manila City BOC. He reiterated Bascos disqualification and prayed anew that candidate Romualdo S. Maranan be declared the winner. As expected, Basco countered said motion by filing his Urgent Opposition to: Urgent Motion (with Reservation to Submit Answer and/or Motion to Dismiss Against Instant Petition for Disqualification with Temporary Restraining Order).

On June 5, 1995, Basco filed his Motion to Dismiss Serving As Answer pursuant to the reservation he made earlier, summarizing his contentions and praying as follows:

Respondent thus now submits that the petitioner is not entitled to relief for the following reasons:

1. The respondent cannot be disqualified on the ground of Section 40 paragraph b of the Local Government Code because the Tordesillas decision is barred by laches, prescription, res judicata, lis pendens, bar by prior judgment, law of the case and stare decisis;

2. Section 4[0] par. B of the Local Government Code may not be validly applied to persons who were dismissed prior to its effectivity. To do so would make it ex post facto, bill of attainder, and retroactive legislation which impairs vested rights. It is also a class legislation and unconstitutional on the account.

3. Respondent had already been proclaimed. And the petition being a preproclamation contest under the Marquez v. Comelec Ruling, supra, it should be dismissed by virtue of said pronouncement.

4. Respondents three-time election as candidate for councilor constitutes implied pardon by the people of previous misconduct (Aguinaldo v. Comelec G.R. 105128; Rice v. State 161 SCRA 401; Montgomery v. Newell 40 SW 2d 4181; People v. Bashaw 130 P. 2nd 237, etc.).

5. As petition to nullify certificate of candidacy, the instant case has prescribed; it was premature as an election protest and it was not brought by a proper party in interest as such protest.:

PRAYER

WHEREFORE it is respectfully prayed that the instant case be dismissed on instant motion to dismiss the prayer for restraining order denied (sic). If this Honorable Office is not minded to dismiss, it is respectfully prayed that instant motion be considered as respondents answer. All other reliefs and remedies just and proper in the premises are likewise hereby prayed for.

After the parties respective memoranda had been filed, the COMELECs First Division resolved to dismiss the petition for disqualification on October 6, 1995, ruling that the administrative penalty imposed by the Supreme Court on respondent Basco on October 31, 1981 was wiped away and condoned by the electorate which elected him and that on account of Bascos proclamation on May 17, 1965, as the sixth duly elected councilor of the Second District of Manila, the petition would no longer be viable.[6]

Petitioners motion for reconsideration of said resolution was later denied by the COMELEC *en banc* in its assailed resolution promulgated on July 31, 1996.[7] Hence, this petition.

Petitioner argues that Basco should be disqualified from running for any elective position since he had been removed from office as a result of an administrative case pursuant to Section 40 (b) of Republic Act No. 7160, otherwise known as the Local Government Code (the Code), which took effect on January 1, 1992.[8]

Petitioner wants the Court to likewise resolve the following issues, namely:

1. Whether or not Section 40 (b) of Republic Act No. 7160 applies retroactively to those removed from office before it took effect on January 1, 1992;

2. Whether or not private respondents election in 1988, 1992 and in 1995 as City Councilor of Manila wiped away and condoned the administrative penalty against him;

3. Whether or not private respondents proclamation as sixth winning candidate on May 17, 1995, while the disqualification case was still pending consideration by COMELEC, is void *ab initio*; and

4. Whether or not Romualdo S. Maranan, who placed seventh among the candidates for City Councilor of Manila, may be declared a winner pursuant to Section 6 of Republic Act No. 6646.

While we do not necessarily agree with the conclusions and reasons of the COMELEC in the assailed resolution, nonetheless, we find no grave abuse of discretion on its part in dismissing the petition for disqualification. The instant petition must, therefore, fail.

We shall discuss the issues raised by petitioner *in seriatim*.

I. *Does Section 40 (b) of Republic Act No. 7160 apply retroactively to those removed from office before it took effect on January 1, 1992?*

Section 40 (b) of the Local Government Code under which petitioner anchors Bascos alleged disqualification to run as City Councilor states:

SEC. 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(b) Those removed from office as a result of an administrative case;

x x x x x x x x x.

In this regard, petitioner submits that although the Code took effect only on January 1, 1992, Section 40 (b) must nonetheless be given retroactive effect and applied to Bascos dismissal from office which took place in 1981. It is stressed that the provision of the law as worded does not mention or even qualify the date of removal from office of the candidate in order for disqualification thereunder to attach. Hence, petitioner impresses upon the Court that as long as a candidate was once removed from office due to an administrative case, regardless of whether it took place during or prior to the effectivity of the Code, the disqualification applies.[9] To him, this interpretation is made more evident by the manner in which the provisions of Section 40 are couched. Since the past tense is used in enumerating the grounds for disqualification, petitioner strongly contends that the provision must have also referred to removal from office occurring prior to the effectivity of the Code.[10]

We do not, however, subscribe to petitioners view. Our refusal to give retroactive application to the provision of Section 40 (b) is already a settled issue and there exist no compelling reasons for us to depart therefrom. Thus, in Aguinaldo vs. COMELEC,[11] reiterated in the more recent cases of Reyes vs. COMELEC[12] and Salalima vs. Guingona, Jr.,[13] we ruled, thus:

The COMELEC applied Section 40 (b) of the Local Government Code (Republic Act 7160) which provides:

Sec. 40. The following persons are disqualified from running for any elective local positions:

x x x x x x x x x

(b) Those removed from office as a result of an administrative case.

Republic Act 7160 took effect only on January 1, 1992.

The rule is:

x x x x x x x x x

x x x Well-settled is the principle that while the Legislature has the power to pass retroactive laws which do not impair the obligation of contracts, or affect injuriously vested rights, it is equally true that statutes are not to be construed as intended to have a retroactive effect so as to affect pending proceedings, unless such intent is expressly declared or clearly and necessarily implied from the language of the enactment. x x x (Jones vs. Summers, 105 Cal. App. 51, 286 Pac. 1093; U.S. vs. Whyel 28 (2d) 30; Espiritu v. Cipriano, 55 SCRA 533 [1974], cited in Nilo vs. Court of Appeals, 128 SCRA 519 [1974]. See also Puzon v. Abellera, 169 SCRA 789 [1989]; Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission, et al., G.R. No. 100599, April 8, 1992).

There is no provision in the statute which would clearly indicate that the same operates retroactively.

It, therefore, follows that [Section] 40 (b) of the Local Government Code is not applicable to the present case. (Underscoring supplied).

That the provision of the Code in question does not qualify the date of a candidates removal from office and that it is couched in the past tense should not deter us from the applying the law prospectively. The basic tenet in legal hermeneutics that laws operate only prospectively and not retroactively provides the qualification sought by petitioner. A statute, despite the generality in its language, must not be so construed as to overreach acts, events or matters which transpired before its passage. *Lex prospicit, non respicit.* The law looks forward, not backward.[14]

II. *Did private respondents election to office as City Councilor of Manila in the 1988, 1992 and 1995 elections wipe away and condone the administrative penalty against him, thus restoring his eligibility for public office?*

Petitioner maintains the negative. He quotes the earlier ruling of the Court in Frivaldo v. COMELEC[15] to the effect that a candidates disqualification cannot be erased by the electorate alone through the instrumentality of the ballot. Thus:

x x x (T)he qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified. x x x

At first glance, there seems to be a *prima facie* semblance of merit to petitioners argument. However, the issue of whether or not Bascos triple election to office cured his alleged ineligibility is actually beside the point because the argument proceeds on the assumption that he was in the first place disqualified when he ran in the three previous elections. This assumption, of course, is untenable considering that Basco was NOT subject to any disqualification at all under Section 40 (b) of the Local Government Code which, as we said earlier, applies only to those removed from office on or after January 1, 1992. In view of the irrelevance of the issue posed by petitioner, there is no more reason for the Court to still dwell on the matter at length.

Anent Bascos alleged circumvention of the prohibition in Tordesillas against reinstatement to any position in the national or local government, including its agencies and instrumentalities, as well as government-owned or controlled corporations, we are of the view that petitioners contention is baseless. Neither does petitioners argument that the term any position is broad enough to cover without distinction both appointive and local positions merit any consideration.

Contrary to petitioners assertion, the Tordesillas decision did not bar Basco from running for any elective position. As can be gleaned from the decretal portion of the said decision, the Court couched the prohibition in this wise:

x x x AND WITH PREJUDICE TO REINSTATEMENT TO ANY POSITION IN THE NATIONAL OR LOCAL GOVERNMENT, INCLUDING ITS AGENCIES AND INSTRUMENTALITIES, OR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS.

In this regard, particular attention is directed to the use of the term reinstatement. Under the former Civil Service Decree,[16] the law applicable at the time Basco, a public officer, was administratively dismissed from office, the term reinstatement had a technical meaning, referring only to an appointive position. Thus:

ARTICLE VIII. PERSONNEL POLICIES AND STANDARDS.

SEC. 24. Personnel Actions. -

x x x x x x x x x

(d) Reinstatement. - Any person who has been permanently APPOINTED to a position in the career service and who has, through no delinquency or misconduct, been separated therefrom, may be reinstated to a position in the same level for which he is qualified.

x x x x x x x x x.

(Emphasis and underscoring supplied).

The Rules on Personnel Actions and Policies issued by the Civil Service Commission on November 10, 1975,[17] provides a clearer definition. It reads:

RULE VI. OTHER PERSONNEL ACTIONS.

SEC. 7. Reinstatement is the REAPPOINMENT of a person who was previously separated from the service through no delinquency or misconduct

on his part from a position in the career service to which he was permanently appointed, to a position for which he is qualified. (Emphasis and underscoring supplied).

In light of these definitions, there is, therefore, no basis for holding that Basco is likewise barred from running for an elective position inasmuch as what is contemplated by the prohibition in Tordesillas is reinstatement to an appointive position.

III. *Is private respondents proclamation as sixth winning candidate on May 17, 1995, while the disqualification case was still pending consideration by COMELEC, void ab initio?*

To support its position, petitioner argues that Basco violated the provisions of Section 20, paragraph (i) of Republic Act No. 7166, Section 6 of Republic Act No. 6646, as well as our ruling in the cases of Duremdes v. COMELEC,[18] Benito v. COMELEC[19] and Aguam v. COMELEC.[20]

We are not convinced. The provisions and cases cited are all misplaced and quoted out of context. For the sake of clarity, let us tackle each one by one.

Section 20, paragraph (i) of Rep. Act 7166 reads:

SEC. 20. Procedure in Disposition of Contested Election Returns.-

x x x x x x x x x

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

x x x x x x x x x.

The inapplicability of the abovementioned provision to the present case is very much patent on its face considering that the same refers only to a void proclamation in relation to contested returns and NOT to contested qualifications of a candidate.

Next, petitioner cites Section 6 of Rep. Act 6646 which states:

SEC. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidatewhenever the evidence of his guilt is strong. (Underscoring supplied).

This provision, however, does not support petitioners contention that the COMELEC, or more properly speaking, the Manila City BOC, should have suspended the proclamation. The use of the word may indicates that the suspension of a proclamation is merely directory and permissive in nature and operates to confer discretion.[21] What is merely made mandatory, according to the provision itself, is the continuation of the trial and hearing of the action, inquiry or protest. Thus, in view of this discretion granted to the COMELEC, the question of whether or not evidence of guilt is so strong as to warrant suspension of proclamation must be left for its own determination and the Court cannot interfere therewith and substitute its own judgment unless such discretion has been exercised whimsically and capriciously.[22] The COMELEC, as an administrative agency and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall,[23] has more than enough expertise in its field that its findings or conclusions are generally respected and even given finality.[24] The COMELEC has not found any ground to suspend the proclamation and the records likewise fail to show any so as to warrant a different conclusion from this Court. Hence, there is no ample justification to hold that the COMELEC gravely abused its discretion.

It is to be noted that Section 5, Rule 25 of the COMELEC Rules of Procedure[25] states that:

SEC. 5. Effect of petition if unresolved before completion of canvass. - x x x (H)is proclamation shall be suspended notwithstanding the fact that he received the winning number of votes in such election.

However, being merely an implementing rule, the same must not override, but instead remain consistent with and in harmony with the law it seeks to apply and implement.Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.[26] Thus, in Miners Association of the Philippines, Inc. v. Factoran, Jr.,[27] the Court ruled that:

We reiterate the principle that the power of administrative officials to promulgate rules and regulations in the implementation of a statute is necessarily limited only to carrying into effect what is provided in the legislative enactment. The principle was enunciated as early as 1908 in the case of *United States v. Barrias*. The scope of the exercise of such rule-making power was clearly expressed in the case of*United States v. Tupasi Molina*, decided in 1914, thus: Of course, the regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself can not be extended. So long, however, as the regulations relate solely to carrying into effect the provision of the law, they are valid.

Recently, the case of *People v. Maceren* gave a brief delineation of the scope of said power of administrative officials:

Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended (U.S. v. Tupasi Molina, supra). An administrative agency cannot amend an act of Congress (*S*antos v. Estenzo, 109 Phil. 419, 422; Teoxon vs. Members of the Board of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel vs. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao vs. Casteel*,*L-21906, August 29, 1969, 29 SCRA 350).

The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned (University of Santo Tomas v. Board of Tax Appeals, 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see Collector of Internal Revenue v. Villaflor, 69 Phil. 319; Wise & Co. v. Meer, 78 Phil. 655, 676*;* Del Mar v. Phil. Veterans Administration, L-27299, June 27, 1973, 51 SCRA 340, 349).

x x x x x x x x x

x x x The rule or regulations should be within the scope of the statutory authority granted by the legislature to the administrative agency (Davis, Administrative Law, p. 194, 197, cited in Victorias Milling Co., Inc. v. Social Security Commission, 114 Phil. 555, 558).

In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulations cannot go beyond the terms and provisions of the basic law (People v. Lim, 108 Phil. 1091).

Since Section 6 of Rep. Act 6646, the law which Section 5 of Rule 25 of the COMELEC Rules of Procedure seeks to implement, employed the word may, it is, therefore, improper and highly irregular for the COMELEC to have used instead the word shall in its rules.

Moreover, there is no reason why the Manila City BOC should not have proclaimed Basco as the sixth winning City Councilor. Absent any determination of irregularity in the election returns, as well as an order enjoining the canvassing and proclamation of the winner, it is a mandatory and ministerial duty of the Board of Canvassers concerned to count the votes based on such returns and declare the result. This has been the rule as early as in the case of Dizon v. Provincial Board of Canvassers of Laguna[28] where we clarified the nature of the functions of the Board of Canvassers, viz.:

The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting. All other questions are to be tried before the court or other tribunal for contesting elections or in quo warranto proceedings. (9 R.C.L., p. 1110)

To the same effect is the following quotation:

x x x Where there is no question as to the genuineness of the returns or that all the returns are before them, the powers and duties of canvassers are limited to the mechanical or mathematical function of

ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. (20 C.J., 200-201) [Underscoring supplied]

Finally, the cases of Duremdes, Benito and Aguam, supra, cited by petitioner are all irrelevant and inapplicable to the factual circumstances at bar and serve no other purpose than to muddle the real issue. These three cases do not in any manner refer to void proclamations resulting from the mere pendency of a disqualification case.

In Duremdes, the proclamation was deemed void *ab initio* because the same was made contrary to the provisions of the Omnibus Election Code regarding the suspension of proclamation in cases of contested election returns.

In Benito, the proclamation of petitioner Benito was rendered ineffective due to the Board of Canvassers violation of its ministerial duty to proclaim the candidate receiving the highest number of votes and pave the way to succession in office. In said case, the candidate receiving the highest number of votes for the mayoralty position died but the Board of Canvassers, instead of proclaiming the deceased candidate winner, declared Benito, a mere second-placer, the mayor.

Lastly, in Aguam, the nullification of the proclamation proceeded from the fact that it was based only on advanced copies of election returns which, under the law then prevailing, could not have been a proper and legal basis for proclamation.

With no precedent clearly in point, petitioners arguments must, therefore, be rejected.

IV. *May Romualdo S. Maranan, a seventh placer, be legally declared a winning candidate?*

Obviously, he may not be declared a winner. In the first place, Basco was a duly qualified candidate pursuant to our disquisition above. Furthermore, he clearly received the winning number of votes which put him in sixth place. Thus, petitioners emphatic reference to Labo v. COMELEC,[29] where we laid down a possible exception to the rule that a second placer may be declared the winning candidate, finds no application in this case. The exception is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidates disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate. Both assumptions, however, are absent in this case. Petitioners allegation that Basco was well-known to have been disqualified in the small community where he ran as a candidate is purely speculative and conjectural, unsupported as it is by any convincing facts of record to show notoriety of his alleged disqualification.[30]

In sum, we see the dismissal of the petition for disqualification as not having been attended by grave abuse of discretion. There is then no more legal impediment for private respondents continuance in office as City Councilor for the Second District of Manila.

WHEREFORE, the instant petition for *certiorari* and prohibition is hereby DISMISSED for lack of merit. The assailed resolution of respondent Commission on Elections (COMELEC) is SPA 95-212 dated July 31, 1996 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 108524 November 10, 1994

MISAMIS ORIENTAL ASSOCIATION OF COCO TRADERS, INC., petitioner,
vs.
DEPARTMENT OF FINANCE SECRETARY, COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR), AND REVENUE DISTRICT OFFICER, BIR MISAMIS ORIENTAL, respondents.

Damasing Law Office for petitioner.

MENDOZA, *J.:*

This is a petition for prohibition and injunction seeking to nullify Revenue Memorandum Circular No. 47-91 and enjoin the collection by respondent revenue officials of the Value Added Tax (VAT) on the sale of copra by members of petitioner organization. [1]

Petitioner Misamis Oriental Association of Coco Traders, Inc. is a domestic corporation whose members, individually or collectively, are engaged in the buying and selling of copra in Misamis Oriental. The petitioner alleges that prior to the issuance of Revenue Memorandum Circular 47-91 on June 11, 1991, which implemented VAT Ruling 190-90, copra was classified as agricultural food product under $ 103(b) of the National Internal Revenue Code and, therefore, exempt from VAT at all stages of production or distribution.

Respondents represent departments of the executive branch of government charged with the generation of funds and the assessment, levy and collection of taxes and other imposts.

The pertinent provision of the NIRC states:

Sec. 103. *Exempt Transactions*. — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural, marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

(b) Sale or importation in their original state of agricultural and marine food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption, and breeding stock and genetic material therefor;

Under §103(a), as above quoted, the sale of agricultural non-food products in their original state is exempt from VAT only if the sale is made by the primary producer or owner of the land from which the same are produced. The sale made by any other person or entity, like a trader or dealer, is not exempt from the tax. On the other hand, under §103(b) the sale of agricultural food products in their original state is exempt from VAT at all stages of production or distribution regardless of who the seller is.

The question is whether copra is an agricultural food or non-food product for purposes of this provision of the NIRC. On June 11, 1991, respondent Commissioner of Internal Revenue issued the circular in question, classifying copra as an agricultural non-food product and declaring it "exempt from VAT only if the sale is made by the primary producer pursuant to Section 103(a) of the Tax Code, as amended." [2]

The reclassification had the effect of denying to the petitioner the exemption it previously enjoyed when copra was classified as an agricultural food product under §103(b) of the NIRC. Petitioner challenges RMC No. 47-91 on various grounds, which will be presently discussed although not in the order raised in the petition for prohibition.

First. Petitioner contends that the Bureau of Food and Drug of the Department of Health and not the BIR is the competent government agency to determine the proper classification of food products. Petitioner cites the opinion of Dr. Quintin Kintanar of the Bureau of Food and Drug to the effect that copra should be considered "food" because it is produced from coconut which is food and 80% of coconut products are edible.

On the other hand, the respondents argue that the opinion of the BIR, as the government agency charged with the implementation and interpretation of the tax laws, is entitled to great respect.

We agree with respondents. In interpreting §103(a) and (b) of the NIRC, the Commissioner of Internal Revenue gave it a strict construction consistent with the rule that tax exemptions must be strictly construed against the taxpayer and liberally in favor of the state. Indeed, even Dr. Kintanar said that his classification of copra as food was based on "the broader definition of food which includes agricultural commodities and other components used in the manufacture/processing of food." The full text of his letter reads:

10 April 1991

Mr. VICTOR A. DEOFERIO, JR.
Chairman VAT Review Committee
Bureau of Internal Revenue
Diliman, Quezon City

Dear Mr. Deoferio:

This is to clarify a previous communication made by this Office about copra in a letter dated 05 December 1990 stating that copra is not classified as food. The statement was made in the context of BFAD's regulatory responsibilities which focus mainly on foods that are processed and packaged, and thereby copra is not covered.

However, in the broader definition of food which include agricultural commodities and other components used in the manufacture/ processing of food, it is our opinion that copra should be classified as an agricultural food product since copra is produced from coconut meat which is food and based on available information, more than 80% of products derived from copra are edible products.

Very truly yours,

QUINTIN L. KINTANAR, M.D., Ph.D.
Director
Assistant Secretary of Health for Standards and Regulations

Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under § 245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws,*including rulings on the classification of articles for sales tax and similar purposes*."

Second. Petitioner complains that it was denied due process because it was not heard before the ruling was made. There is a distinction in administrative law between legislative rules and interpretative rules. [3] There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule. But it is not. It is a mere interpretative rule.

The reason for this distinction is that a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:

Public Participation. — If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed. [4]

In addition such rule must be published. [5] On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

Accordingly, in considering a legislative rule a court is free to make three inquiries: (i) whether the rule is within the delegated authority of the administrative agency; (ii) whether it is reasonable; and (iii) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. In the case of an

interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule. [6]

In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an "agricultural food product" within the meaning of § 103(b) of the NIRC. As the Solicitor General contends, "copra *per se* is not food, that is, it is not intended for human consumption. Simply stated, nobody eats copra for food." That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. [7] To the contrary, the overruling of decisions is inherent in the interpretation of laws.

Third. Petitioner likewise claims that RMC No. 47-91 is discriminatory and violative of the equal protection clause of the Constitution because while coconut farmers and copra producers are exempt, traders and dealers are not, although both sell copra in its original state. Petitioners add that oil millers do not enjoy tax credit out of the VAT payment of traders and dealers.

The argument has no merit. There is a material or substantial difference between coconut farmers and copra producers, on the one hand, and copra traders and dealers, on the other. The former *produce and sell* copra, the latter *merely sell* copra. The Constitution does not forbid the differential treatment of persons so long as there is a reasonable basis for classifying them differently. [8]

It is not true that oil millers are exempt from VAT. Pursuant to § 102 of the NIRC, they are subject to 10% VAT on the sale of services. Under § 104 of the Tax Code, they are allowed to credit the input tax on the sale of copra by traders and dealers, but there is no tax credit if the sale is made directly by the copra producer as the sale is VAT exempt. In the same manner, copra traders and dealers are allowed to credit the input tax on the sale of copra by other traders and dealers, but there is no tax credit if the sale is made by the producer.

Fourth. It is finally argued that RMC No. 47-91 is counterproductive because traders and dealers would be forced to buy copra from coconut farmers who are exempt from the VAT and that to the extent that prices are reduced the government would lose revenues as the 10% tax base is correspondingly diminished.

This is not so. The sale of agricultural non-food products is exempt from VAT only when made by the primary producer or owner of the land from which the same is produced, but in the case of agricultural food products their sale in their original state is exempt at all stages of production or distribution. At any rate, the argument that the classification of copra as agricultural non-food product is counterproductive is a question of wisdom or policy which should be addressed to respondent officials and to Congress.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 92174 December 10, 1993

BOIE-TAKEDA CHEMICALS, INC., petitioner,
vs.

HON. DIONISIO DE LA SERNA, Acting Secretary of the Department of Labor and Employment, respondent.

G.R. No. L-102552 December 10, 1993

PHILIPPINE FUJI XEROX CORP., petitioner,
vs.

CRESENCIANO B. TRAJANO, Undersecretary of the Department of Labor and Employment, and PHILIPPINE FUJI XEROX EMPLOYEES UNION, respondents.

Herrera, Laurel, De los Reyes, Roxas & Teehankee for Boie-Takeda Chemicals, Inc. and Phil Xerox Corp.

The Solicitor General for public respondents.

NARVASA, *C.J.:*

What items or items of employee remuneration should go into the computation of thirteenth month pay is the basic issue presented in these consolidated petitions. Otherwise stated, the question is whether or not the respondent labor officials in computing said benefit, committed "grave abuse of discretion amounting to lack of jurisdiction," by giving effect to Section 5 of the Revised Guidelines on the implementation of the Thirteenth Month Pay (Presidential Decree No. 851) promulgated by then Secretary of Labor and Employment, Hon. Franklin Drilon, and overruling petitioner's contention that said provision constituted a usurpation of legislative power because not justified by or within the authority of the law sought to be implemented besides being violative of the equal protection of the law clause of the Constitution.

Resolution of the issue entails, first, a review of the pertinent provisions of the laws and implementing regulations.

Sections 1 and 2 of Presidential Decree No. 851, the Thirteenth Month Pay Law, read as follows:

Sec 1. All employees are hereby required to pay all their employees receiving basic salary of not more than P1,000.00 a month, regardless of the nature of the employment, a 13th month pay not later than December 24 of every year.

Sec. 2. Employers already paying their employees a 13th month pay or its equivalent are not covered by this Decree.

The Rules and Regulations Implementing P.D. 851 promulgated by then Labor Minister Blas Ople on December 22, 1975 contained the following relevant provisions relative to the concept of "thirteenth month pay" and the employers exempted from giving it, to wit:

Sec. 2. Definition of certain terms. — . . .

a) "Thirteenth month pay" shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

b) "Basic Salary" shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost of living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

Sec. 3. Employers covered. — . . . (The law applies) to all employers except to:

xxx xxx xxx

c) Employers already paying their employers a 13-month pay or more in calendar year or is equivalent at the time of this issuance;

xxx xxx xxx

e) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned.

xxx xxx xxx

The term "its equivalent" as used in paragraph (c) shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employee's basic salary, the employer shall pay the difference.

Supplementary Rules and Regulations implementing P.D. 851 were subsequently issued by Minister Ople which*inter alia* set out items of compensation not included in the computation of the 13th month pay, *viz*.:

Sec. 4. Overtime pay, earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th month pay.

On August 13, 1986, President Corazon C. Aquino promulgated Memorandum Order No. 28, which contained a single provision modifying Presidential Decree No. 851 by removing the salary ceiling of P1,000.00 a month set by the latter, as follows:

Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24, of every year.

Slightly more than a year later, on November 16, 1987, Revised Guidelines on the Implementation of the 13th Month Pay Law were promulgated by then Labor Secretary Franklin Drilon which, among other things, defined with particularity what remunerative items were and were not embraced in the concept of 13th month pay, and specifically dealt with employees who are paid a fixed or guaranteed wage plus commission. The relevant provisions read:

4. Amount and payment of 13th Month Pay.

xxx xxx xxx

The basic salary of an employee for the purpose of computing the 13th month pay shall include all remunerations or earnings paid by the employer for services rendered but does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

xxx xxx xxx

5. 13th Month Pay for Certain Types of Employees.

(a) Employees Paid by Results. — Employees who are paid on piece work basis are by law entitled to the 13th month pay.

Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the mandated 13th month pay based on their total earnings during the calendar year, *i.e*., on both their fixed or guaranteed wage and commission.

This was the state of the law when the controversies at bar arose out of the following antecedents:

(*RE G.R. No. 92174*) A routine inspection was conducted on May 2, 1989 in the premises of petitioner Boie-Takeda Chemicals, Inc. by Labor and Development Officer Reynaldo B. Ramos under Inspection Authority No. 4-209-89. Finding that Boie-Takeda had not been including the commissions earned by its medical representatives in the computation of their 13th month pay, Ramos served a Notice of Inspection Results [1] on Boie-Takeda through its president, Mr. Benito Araneta, requiring Boie-Takeda within ten (10) calendar days from notice to effect restitution or correction of "the underpayment of 13th month pay for the year(s) 1986, 1987 and 1988 of Med Rep (Revised Guidelines on the Implementation of 13th month pay # 5) in the total amount of P558,810.89."

Boie-Takeda wrote the Labor Department contesting the Notice of Inspection Results, and expressing the view "that the commission paid to our medical

representatives are not to be included in the computation of the 13th month pay . . . (since the) law and its implementing rules speak of REGULAR or BASIC salary and therefore exclude all other remunerations which are not part of the REGULAR salary." It pointed out that, "if no sales is (sic) made under the effort of a particular representative, there is no commission during the period when no sale was transacted, so that commissions are not and cannot be legally defined as regular in nature. [2]

Regional Director Luna C. Piezas directed Boie-Takeda to appear before his Office on June 9 and 16, 1989. On the appointed dates, however, and despite due notice, no one appeared for Boie-Takeda, and the matter had perforce to be resolved on the basis of the evidence at hand. On July 24, 1989, Director Piezas issued an Order [3]directing Boie-Takeda:

. . . to pay . . . (its) medical representatives and its managers the total amount of FIVE HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED FORTY SIX AND FORTY SEVEN CENTAVOS (P565,746.47) representing underpayment of thirteenth (13th) month pay for the years 1986, 1987, 1988, inclusive, pursuant to the . . . revised guidelines within ten (10) days from receipt of this Order.

A motion for reconsideration [4] was seasonably filed by Boie-Takeda under date of August 3, 1989. Treated as an appeal, it was resolved on January 17, 1990 by then Acting Labor Secretary Dionisio de la Serna, who affirmed the July 24, 1989 Order with modification that the sales commissions earned by Boie-Takeda's medical representatives before August 13, 1989, the effectivity date of Memorandum Order No. 28 and its Implementing Guidelines, shall be excluded in the computation of their 13th month pay. [5]

Hence the petition docketed as G.R. No. 92174.

(*RE G.R. No. 102552*) A similar Routine Inspection was conducted in the premises of Philippine Fuji Xerox Corp. on September 7, 1989 pursuant to Routine Inspection Authority No. NCR-LSED-RI-494-89. In his Notice of Inspection Results, [6] addressed to the Manager, Mr. Nicolas O. Katigbak, Senior Labor and Employment Officer Nicanor M. Torres noted the following violation committed by Philippine Fuji Xerox Corp., to wit:

Underpayment of 13th month pay of 62 employees, more or less — pursuant to Revised Guidelines on the Implementation of the 13th month pay law for the period covering 1986, 1987 and 1988.

Philippine Fuji Xerox was requested to effect rectification and/or restitution of the noted violation within five (5) working days from notice.

No action having been taken thereon by Philippine Fuji Xerox, Mr. Eduardo G. Gonzales, President of the Philxerox Employee Union, wrote then Labor Secretary Franklin Drilon requesting a follow-up of the inspection findings. Messrs. Nicolas and Gonzales were summoned to appear before Labor Employment and Development Officer Mario F. Santos, NCR Office, Department of Labor for a conciliation conference. When no amicable settlement was reached, the parties were required to file their position papers.

Subsequently, Regional Director Luna C. Piezas issued an Order dated August 23, 1990, [7] disposing as follows:

WHEREFORE, premises considered, Respondent PHILIPPINE FUJI XEROX is hereby ordered to restitute to its salesmen the portion of the 13th month pay which arose out of the non-implementation of the said revised guidelines, ten (10) days from receipt hereof, otherwise, MR. NICANOR TORRES, the SR. LABOR EMPLOYMENT OFFICER is hereby Ordered to proceed to the premises of the Respondent for the purpose of computing the said deficiency (sic) should respondent fail to heed his Order.

Philippine Fuji Xerox appealed the aforequoted Order to the Office of the Secretary of Labor. In an Order dated October 120, 1991, Undersecretary Cresenciano B. Trajano denied the appeal for lack of merit. Hence, the petition in G.R. No. 102552, which was ordered consolidated with G.R. No. 92174 as involving the same issue.

In their almost identically-worded petitioner, petitioners, through common counsel, attribute grave abuse of discretion to respondent labor officials Hon. Dionisio dela Serna and Undersecretary Cresenciano B. Trajano in issuing the questioned Orders of January 17, 1990 and October 10, 1991, respectively. They maintain that under P.D. 851, the 13th month pay is based solely on basic salary. As defined by the law itself and clarified by the

implementing and Supplementary Rules as well as by the Supreme Court in a long line of decisions, remunerations which do not form part of the basic or regular salary of an employee, such as commissions, should not be considered in the computation of the 13th month pay. This being the case, the Revised Guidelines on the Implementation of the 13th Month Pay Law issued by then Secretary Drilon providing for the inclusion of commissions in the 13th month pay, were issued in excess of the statutory authority conferred by P.D. 851. According to petitioners, this conclusion becomes even more evident when considered in light of the opinion rendered by Labor Secretary Drilon himself in "In Re: Labor Dispute at the Philippine Long Distance Telephone Company" which affirmed the contemporaneous interpretation by then Secretary Ople that commissions are excluded from the basic salary. Petitioners further contend that assuming that Secretary Drilon did not exceed the statutory authority conferred by P.D. 851, still the Revised Guidelines are null and void as they violate the equal protection of the law clause.

Respondents through the Office of the Solicitor General question the propriety of petitioners' attack on the constitutionality of the Revised Guidelines in a petition for *certiorari* which, they contend, should be confined purely to the correction of errors and/or defects of jurisdiction, including matters of grave abuse of discretion amounting to lack or excess of jurisdiction and not extend to a collateral attack on the validity and/or constitutionality of a law or statute. They aver that the petitions do not advance any cogent reason or state any valid ground to sustain the allegation of grave abuse of discretion, and that at any rate, P.D. No. 851, otherwise known as the 13th Month Pay Law has already been amended by Memorandum Order No. 28 issued by President Corazon C. Aquino on August 13, 1986 so that commissions are now imputed into the computation of the 13th Month Pay. They add that the Revised Guidelines issued by then Labor Secretary Drilon merely clarified a gray area occasioned by the silence of the law as to the nature of commissions; and worked no violation of the equal protection clause of the Constitution, said Guidelines being based on reasonable classification. Respondents point to the case of *Songco vs. National Labor Relations Commission*, 183 SCRA 610, wherein the Court declared that Article 97(f) of the Labor Code is explicit that commission is included in the definition of the term "wage".

We rule for the petitioners.

Contrary to respondents' contention, Memorandum Order No. 28 did not repeal, supersede or abrogate P.D. 851. As may be gleaned from the language of the Memorandum Order No. 28, it merely "modified" Section 1 of the decree by removing the P1,000.00 salary ceiling. The concept of 13th Month Pay as envisioned, defined and implemented under P.D. 851 remained unaltered, and while entitlement to said benefit was no longer limited to employees receiving a monthly basic salary of not more than P1,000.00, said benefit was, and still is, to be computed on the basic salary of the employee-recipient as provided under P.D. 851. Thus, the interpretation given to the term "basic salary" as defined in P.D. 851 applies equally to "basic salary" under Memorandum Order No. 28.

In the case of *San Miguel Corp. vs. Inciong*, 103 SCRA 139, this Court delineated the coverage of the term "basic salary" as used in P.D. 851. We said at some length:

Under Presidential Decree 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13th month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.

Under the Rules and Regulations implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:

a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instructions No. 174;

b) Profit-sharing payments;

c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 Presidential Decree 851 issued by then Labor Secretary Blas Ople, overtime pay, earnings and other remunerations are excluded as part of the basic salary and in the computation of the 13th month pay.

The exclusion of the cost-of-living allowances under Presidential Decree 525 and Letter of Instructions No. 174, and profit-sharing payments indicate the intention to strip basic salary of other payments which are properly considered as "fringe" benefits. Likewise, the catch-all exclusionary phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary" shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or "fringe" benefits.

Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th-month pay.

While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include all remunerations or earnings paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically exclude from the definitions of basic salary earnings and other remunerations paid by an employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

The all embracing phrase "earnings and other remunerations" which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pays for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not excluded, it is hard to find any "earnings and other remunerations" expressly excluded in the computation of the 13th month pay. Then the exclusionary provision would prove to be idle and with no purpose.

This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions:

Art. 87. Overtime Work. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof.

It is clear that overtime pay is an additional compensation other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851.

In Article 93 of the same Code, paragraph

c) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee.

It is likewise clear the premiums for special holiday which is at least 30% of the regular wage is an*additional pay* other than and added to the regular wage or basic salary. For similar reason, it shall not be considered in the computation of the 13th month pay.

Quite obvious from the foregoing is that the term "basic salary" is to be understood in its common, generally-accepted meaning, *i.e*., as a rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime. [8] This is how the term was also understood in the case of *Pless v*. *Franks*, 308 S.W. 2nd. 402, 403, 202 Tenn. 630, which held that in statutes providing that pension should not less than 50 percent of "basic salary" at the time of retirement, the quoted words meant the salary that an employee (e.g., a policeman) was receiving at the time he retired without taking into consideration any extra compensation to which he might be entitled for extra work. [9]

In remunerative schemes consisting of a fixed or guaranteed wage plus commission, the fixed or guaranteed wage is patently the "basic salary" for this is what the employee receives for a standard work period. Commissions are given for extra efforts exerted in consummating sales or other related transactions. They are, as such, additional pay, which this Court has made clear do not form part of the "basic salary."

Respondents would do well to distinguish this case from *Songco vs. National Labor Relations Commission, supra*, upon which they rely so heavily. What was involved therein was the term "salary" without the restrictive adjective "basic". Thus, in said case, we construed the term in its generic sense to refer to all types of "direct remunerations for services rendered," including commissions. In the same case, we also took judicial notice of the fact "that some salesmen do not receive any basic salary but depend on commissions and allowances or commissions alone, although an employer-employee relationship exists," which statement is quite significant in that it speaks of a "basic salary" apart and distinct from "commissions" and "allowances". Instead of supporting respondents' stand, it would appear that *Songco* itself recognizes that commissions are not part of "basic salary."

In including commissions in the computation of the 13th month pay, the second paragraph of Section 5(a) of the Revised Guidelines on the Implementation of the 13th Month Pay Law unduly expanded the concept of "basic salary" as defined in P.D. 851. It is a fundamental rule that implementing rules cannot add to or detract from the provisions of the law it is designed to implement. Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law they are intended to carry into effect. They cannot widen its scope. An administrative agency cannot amend an act of Congress. [10]

Having reached this conclusion, we deem it unnecessary to discuss the other issues raised in these petitions.

WHEREFORE, the consolidated petitions are hereby GRANTED. The second paragraph of Section 5 (a) of the Revised Guidelines on the Implementation of the 13th Month Pay Law issued on November 126, 1987 by then Labor Secretary Franklin M. Drilon is declared null and void as being violative of the law said Guidelines were issued to implement, hence issued with grave abuse of discretion correctible by the writ of prohibition and*certiorari*. The assailed Orders of January 17, 1990 and October 10, 1991 based thereon are SET ASIDE.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 82849 August 2, 1989

CEBU OXYGEN & ACETYLENE CO., INC. (COACO) petitioner,
vs.

SECRETARY FRANKLIN M. DRILON OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, ASSISTANT REGIONAL DIRECTOR CANDIDO CUMBA OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, REGIONAL OFFICE NO. 7 AND CEBU OXYGEN-ACETYLENE & CENTRAL VISAYAS EMPLOYEES ASSOCIATION (COACVEA) respondents.

Michael L. Rama for petitioner.

Armando M. Alforque for private respondent.

GANCAYCO, *J.;*

The principal issue raised in this petition is whether or not an Implementing Order of the Secretary of Labor and Employment (DOLE) can provide for a prohibition not contemplated by the law it seeks to implement.

The undisputed facts are as follows:

Petitioner and the union of its rank and file employees, Cebu Oxygen, Acetylene and Central Visayas Employees Association (COAVEA) entered into a collective bargaining agreement (CBA) covering the years 1986 to 1988. Pursuant thereto, the management gave salary increases as follows:

ARTICLE IV — SALARIES/RICE RATION

Section 1. The COMPANY agrees that for and during the three (3) year effectivity of this AGREEMENT, it will grant to all regular covered employees the following salary increases:

Salaries:

1) For the first year which will be paid on January 14, 1986 — P200 to each covered employee.

IT IS HEREBY EXPRESSLY AGREED AND UNDERSTOOD THAT THIS PAY INCREASE SHALL BE CREDITED AS PAYMENT TO ANY MANDATED GOVERNMENT WAGE ADJUSTMENT OR ALLOWANCE INCREASES WHICH MAY BE ISSUED BY WAY OF LEGISLATION, DECREE OR PRESIDENT

2) For the second year which will be paid on January 16, 1987-P 200 to each covered employee.

IT IS HEREBY EXPRESSLY AGREED AND UNDERSTOOD THAT THIS PAY INCREASE SHALL BE CREDITED AS PAYMENT TO ANY DATED GOVERNMENT WAGE ADJUSTMENT OR ALLOWANCE INCREASES WHICH MAY BE ISSUED BY WAY OF LEGISLATION, DECREE OR PRESIDENTIAL EDICT COUNTED FROM THE ABOVE DATE TO THE NEXT INCREASE.

3) For the third year which will be paid on January 16, 1988 — P300 to each covered employee.

IT IS HEREBY EXPRESSLY AGREED AND UNDERSTOOD THAT THIS PAY INCREASE SHALL BE CREDITED AS PAYMENT TO ANY MANDATED GOVERNMENT WAGE ADJUSTMENT OR ALLOWANCE INCREASES WHICH MAY BE ISSUED BY WAY OF LEGISLATION, DECREE OR PRESIDENTIAL EDICT COUNTED FROM THE ABOVE DATE TO THE NEXT INCREASE.

IF THE WAGE ADJUSTMENT OF ALLOWANCE INCREASES DECREED BY LAW, LEGISLATION OR PRESIDENTIAL qqqEDICT IN ANY PARTICULAR YEAR SHALL BE HIGHER THAN THE FOREGOING INCREASES IN THAT PARTICULAR YEAR, THEN THE COMPANY SHALL PAY THE DIFFERENCE.

On December 14, 1987, Republic Act No. 6640 was passed increasing the minimum wage, as follows:

Sec. 2. The statutory minimum wage rates of workers and employees in the private sector, whether agricultural or non-agricultural, shall be increased by ten pesos (P10.00) per day, except non-agricultural workers and employees outside Metro Manila who shall receive an increase of eleven pesos (P11.00) per day: Provided, that those already receiving above the minimum wage up to one hundred pesos (Pl 00.00 shall receive an increase of ten pesos (Pl 0.00) per day. Excepted from the provisions of this Act are domestic helpers and persons employed in the personal service of another.

The Secretary of Labor issued the pertinent rules implementing the provisions of Republic Act No. 6640. Section 8 thereof provides:

Section 8. *Wage Increase Under Individual/Collective Agreements.* — No wage increase shall be credited as compliance with the increase prescribed herein unless expressly provided under valid individual written/collective agreements; and, provided further, that such wage increase was granted in anticipation of the legislated wage increase under the act. Such increases shall not include anniversary wage increases provided on collective agreements.

In sum, Section 8 of the implementing rules prohibits the employer from crediting anniversary wage increases negotiated under a collective bargaining agreement against such wage increases mandated by Republic Act No. 6640.

Accordingly, petitioner credited the first year increase of P200.00 under the CBA and added the difference of P61.66 (rounded to P62.00) and P31.00 to the monthly salary and the 13th month pay, respectively, of its employees from the effectivity of Republic Act No. 6640 on December 14,1987 to February 15, 1988.

On February 22, 1988, a Labor and Employment Development Officer, pursuant to Inspection Authority No. 058-88, commenced a routine inspection of petitioner's establishment. Upon completion of the inspection on March 10, 1988, and based on payrolls and other records, he found that petitioner committed violations of the law as follows:

1. Under payment of Basic Wage per R.A. No. 6640 covering the period of two (2) months representing 208 employees who are not receiving wages above P100/day prior to the effectivity of R.A. No. 6640 in the aggregate amount of EIGHTY THREE THOUSAND AND TWO HUNDRED PESOS (P83,200.00); and

2. Under payment of 13th month pay for the year 1987, representing 208 employees who are not receiving wages above P 100/day prior to the effectivity of R.A. No. 6640 in the aggregate amount of FORTY EIGHT THOUSAND AND FORTY EIGHT PESOS (P48,048.00).

On April 7, 1988, respondent Assistant Regional Director, issued an Order instructing petitioner to pay its 208 employees the aggregate amount of P 131,248.00, computed as follows:

Computation sheet of differentials due to COACO-Cebu Workers.

Salary Differentials:

a) From December 14/87 to February 15/88

= P200.00/mo x 2 months

= P400.00

= P400 x 208 employees (who are not receiving above P100/day as wages before the effectivity of R.A. No. 6640)

=P 83,200.00

b) 13th month pay differentials of the year 1987:

= P231.00 x 208 employees (who are not receiving above P100/day as wages before the effectivity of RA. No. 6640)

=P48,048.00

Total = P131,248.00

In sum, the Assistant Regional Director ordered petitioner to pay the deficiency of P200.00 in the monthly salary and P 231.00 in the 13th month pay of its employees for the period stated. Petitioner protested the Order of the Regional Director on the ground that the anniversary wage increases under the CBA can be credited against the wage increase mandated by Republic Act No. 6640. Hence, petitioner contended that inasmuch as it had credited the first year increase negotiated under the CBA, it was liable only for a salary differential of P 62.00 and a 13th month pay differential of P31.00. Petitioner argued that the payment of the differentials constitutes full compliance with Republic Act No. 6640. Apparently, the protest was not entertained. Petitioner brought the case immediately to this Court without appealing the matter to the Secretary of Labor and Employment. On May 9,1988, this Court issued a temporary restraining order enjoining the

Assistant Regional Director from enforcing his Order dated April 7, 1988.[1] The thrust of the argument of petitioner is that Section 8 of the rules implementing the provisions of Republic Act No. 6640 particularly the provision excluding anniversary wage increases from being credited to the wage increase provided by said law is null and void on the ground that the same unduly expands the provisions of the said law.

This petition is impressed with merit.

Public respondents aver that petitioner should have first appealed to the Secretary of Labor before going to court. It is fundamental that in a case where only pure questions of law are raised, the doctrine of exhaustion of administrative remedies cannot apply because issues of law cannot be resolved with finality by the administrative officer. Appeal to the administrative officer of orders involving questions of law would be an exercise in futility since administrative officers cannot decide such issues with finality.[2] The questions raised in this petition are questions of law. Hence, the failure to exhaust administrative remedies cannot be considered fatal to this petition.

As to the issue of the validity of Section 8 of the rules implementing Republic Act No. 6640, which prohibits the employer from crediting the anniversary wage increases provided in collective bargaining agreements, it is a fundamental rule that implementing rules cannot add or detract from the provisions of law it is designed to implement. The provisions of Republic Act No. 6640, do not prohibit the crediting of CBA anniversary wage increases for purposes of compliance with Republic Act No. 6640. The implementing rules cannot provide for such a prohibition not contemplated by the law. Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. The law itself cannot be expanded by such regulations. An administrative agency cannot amend an act of Congress. [3] Thus petitioner's contention that the salary increases granted by it pursuant to the existing CBA including anniversary wage increases should be considered in determining compliance with the wage increase mandated by Republic Act No. 6640, is correct. However, the amount that should only be credited to petitioner is the wage increase for 1987 under the CBA when the law took effect. The wage increase for 1986 had already accrued in favor of the employees even before the said law was enacted.

Petitioner therefor correctly credited its employees P62.00 for the differential of two (2) months increase and P31.00 each for the differential in 13th month pay, after deducting the P200.00 anniversary wage increase for 1987 under the CBA. Indeed, it is stipulated in the CBA that in case any wage adjustment or allowance increase decreed by law, legislation or presidential edict in any particular year shall be higher than the foregoing increase in that particular year, then the company (petitioner) shall pay the difference.

WHEREFORE, the petition is hereby GRANTED. The Order of the respondent Assistant Regional Director dated April 7, 1988 is modified in that petitioner is directed to pay its 208 employees so entitled the amount of P62.00 each as salary differential for two (2) months and P31.00 as 13th month pay differential in full compliance with the provisions of Republic Act No. 6640. Section 8 of the rules implementing Republic 6640, is hereby declared null and void in so far as it excludes the anniversary wage increases negotiated under collective bargaining agreements from being credited to the wage increase provided for under Republic Act No. 6440. This decision is immediately executory.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 132601 January 19, 1999

LEO ECHEGARAY, petitioner,
vs.
SECRETARY OF JUSTICE, *ET AL*., respondents.

R E S O L U T I O N

PUNO, *J.:*

For resolution are public respondents' Urgent Motion for Reconsideration of the Resolution of this Court dated January 4, 1990 temporarily restraining the execution of petitioner and Supplemental Motion to Urgent Motion for Reconsideration. It is the submission of public respondents that:

1. The Decision in this case having become final and executory, its execution enters the exclusive ambit of authority of the executive authority. The issuance of the TRO may be construed as trenching on that sphere of executive authority;

2. The issuance of the temporary restraining order . . . creates dangerous precedent as there will never be an end to litigation because there is always a possibility that Congress may repeal a law.

3. Congress had earlier deliberated extensively on the death penalty bill. To be certain, whatever question may now be raised on the Death Penalty Law before the present Congress within the 6-month period given by this Honorable Court had in all probability been fully debated upon . . .

4. Under the time honored *maxim lex futuro*, *judex praeterito*, the law looks forward while the judge looks at the past, . . . the Honorable Court in issuing the TRO has transcended its power of judicial review.

5. At this moment, certain circumstances/supervening events transpired to the effect that the repeal or modification of the law imposing death penalty has become nil, to wit:

    a. The public pronouncement of President Estrada that he will veto any law imposing the death penalty involving heinous crimes.

    b. The resolution of Congressman Golez, *et al*., that they are against the repeal of the law;

    c. The fact that Senator Roco's resolution to repeal the law only bears his signature and that of Senator Pimentel.

In their Supplemental Motion to Urgent Motion for Reconsideration, public respondents attached a copy of House Resolution No. 629 introduced by Congressman Golez entitled "Resolution expressing the sense of the House of Representative to reject any move to review Republic Act No. 7659 which provided for the re-imposition of death penalty, notifying the Senate, the Judiciary and the Executive Department of the position of the House of Representative on this matter, and urging the President to exhaust all means under the law to immediately implement the death penalty law." The Resolution was concurred in by one hundred thirteen (113) congressman.

In their Consolidated Comment, petitioner contends: (1) the stay order. . . is within the scope of judicial power and duty and does not trench on executive powers nor on congressional prerogatives; (2) the exercise by this Court of its power to stay execution was reasonable; (3) the Court did not lose jurisdiction to address incidental matters involved or arising from the petition; (4) public respondents are estopped from challenging the Court's jurisdiction; and (5) there is no certainty that the law on capital punishment will not be repealed or modified until Congress convenes and considers all the various resolutions and bills filed before it.

Prefatorily, the Court likes to emphasize that the instant motions concern matters that are not incidents in G.R. No. 117472, where the death penalty was imposed on petitioner on automatic review of his conviction by this Court. The instant motions were filed in this case, G.R. No. 132601, where the constitutionality of R.A. No. 8177 (Lethal Injection Law) and its

implementing rules and regulations was assailed by petitioner. For this reason, the Court in its Resolution of January 4, 1999 merely noted the Motion to Set Aside of Rodessa "Baby" R. Echegaray dated January 7, 1999 and Entry of Appearance of her counsel dated January 5, 1999. Clearly, she has no legal standing to intervene in the case at bar, let alone the fact that the interest of the State is properly represented by the Solicitor General.

We shall now resolve the basic issues raised by the public respondents.

I

First. We do not agree with the sweeping submission of the public respondents that this Court lost its jurisdiction over the case at bar and hence can no longer restrain the execution of the petitioner. Obviously, public respondents are invoking the rule that final judgments can no longer be altered in accord with the principle that "it is just as important that there should be a place to end as there should be a place to begin litigation." [1] To start with, the Court is not changing even a comma of its final Decision. It is appropriate to examine with precision the metes and bounds of the Decision of this Court that became final. These metes and bounds are clearly spelled out in the Entry of Judgment in this case, *viz*:

ENTRY OF JUDGMENT

This is to certify that on *October 12*, *1998* a decision rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:

WHEREFORE, the petition is DENIED insofar as petitioner seeks to declare the assailed statute (Republic Act No. 8177) as unconstitutional; but GRANTED insofar as Sections 17 and 19 of the Rules and Regulations to Implement Republic Act No. 8177 are concerned, which are hereby declared INVALID because (a) Section 17 contravenes Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659; and (b) Section 19 fails to provide for review and approval of the Lethal Injection Manual by the Secretary of Justice, and unjustifiably makes the manual confidential, hence unavailable to interested parties including the accused/convict and counsel. Respondents are hereby enjoined from enforcing and implementing Republic Act No. 8177 until the aforesaid Sections 17 and 19 of the Rules and Regulations to Implement Republic Act No. 8177 are appropriately amended, revised and/or corrected in accordance with this Decision.

SO ORDERED.

and that the same has, on *November* 6, *1988* become final and executory and is hereby recorded in the Book of Entries of Judgment.

Manila, Philippine.

Clerk of Court

By: (SGD) TERESITA G. DIMAISIP

Acting Chief

Judicial Records Office

The records will show that before the Entry of Judgment, the Secretary of Justice, the Honorable Serafin Cuevas, filed with this Court on October 21, 1998 a Compliance where he submitted the Amended Rules and Regulations implementing R.A. No. 8177 in compliance with our Decision. On October 28, 1998, Secretary Cuevas submitted a Manifestation informing the Court that he has caused the publication of the said Amended Rules and Regulations as required by the Administrative Code. It is crystalline that the Decision of this Court that became final and unalterable mandated: (1) that R.A. No. 8177 is not unconstitutional; (2) that sections 17 and 19 of the Rules and Regulations to Implement R.A. No. 8177 are invalid, and (3) R.A. No. 8177 cannot be enforced and implemented until sections 17 and 19 of the Rules and Regulations to Implement R.A. No. 8177 are amended. It is also daylight clear that this Decision was not altered a whit by this Court. Contrary to the submission of the Solicitor General, the rule on finality of judgment cannot divest this Court of its jurisdiction to execute and enforce the same judgment. Retired Justice Camilo Quiason synthesized the well established jurisprudence on this issue as follows: [2]

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the finality of a judgment does not mean that the Court has lost all its powers nor the case. By the finality of the judgment, what the court loses is its

jurisdiction to amend, modify or alter the same. Even after the judgment has become final the court retains its jurisdiction to execute and enforce it. [3]There is a difference between the jurisdiction of the court to execute its judgment and its jurisdiction to amend, modify or alter the same. The former continues even after the judgment has become final for the purpose of enforcement of judgment; the latter terminates when the judgment becomes final. [4] . . . For after the judgment has become final facts and circumstances may transpire which can render the execution unjust or impossible.[5]

In truth, the arguments of the Solicitor General has long been rejected by this Court. As aptly pointed out by the petitioner, as early as 1915, this Court has unequivocably ruled in the case of *Director of Prisons v. Judge of First Instance*, [6] *viz*:

This Supreme Court has repeatedly declared in various decisions, which constitute jurisprudence on the subject, that in criminal cases, after the sentence has been pronounced and the period for reopening the same cannot change or alter its judgment, as its jurisdiction has terminated . . . When in cases of appeal or review the cause has been returned thereto for execution, in the event that the judgment has been affirmed, it performs a ministerial duty in issuing the proper order. But it does not follow from this cessation of functions on the part of the court with reference to the ending of the cause that the judicial authority terminates by having then passed completely to the Executive. The particulars of the execution itself, which are certainly not always included in the judgment and writ of execution, in any event are absolutely under the control of the judicial authority, while the executive has no power over the person of the convict except to provide for carrying out of the penalty and to pardon.

Getting down to the solution of the question in the case at bar, which is that of execution of a capital sentence, it must be accepted as a hypothesis that postponement of the date can be requested. There can be no dispute on this point. It is a well-known principle that notwithstanding the order of execution and the executory nature thereof on the date set or at the proper time, the date therefor can be postponed, even in sentences of death. Under the common law this postponement can be ordered in three ways: (1) By command of the King; (2) by discretion (*arbitrio*) of the court; and (3) by mandate of the law. It is sufficient to state this principle of the common law to render impossible that assertion in absolute terms that after the convict has once been placed in jail the trial court can not reopen the case to investigate the facts that show the need for postponement. If one of the ways is by direction of the court, it is acknowledged that even after the date of the execution has been fixed, and notwithstanding the general rule that after the (court) has performed its ministerial duty of ordering the execution . . . and its part is ended, if however a circumstance arises that ought to delay the execution, and there is an imperative duty to investigate the emergency and to order a postponement. Then the question arises as to whom the application for postponing the execution ought to be addressed while the circumstances is under investigation and so to who has jurisdiction to make the investigation.

The power to control the execution of its decision is an essential aspect of jurisdiction. It cannot be the subject of substantial subtraction for our Constitution [7] vests the entirety of judicial power in one Supreme Court and in such lower courts as may be established by law. To be sure, the important part of a litigation, whether civil or criminal, is the process of execution of decisions where supervening events may change the circumstance of the parties and compel courts to intervene and adjust the rights of the litigants to prevent unfairness. It is because of these unforseen, supervening contingencies that courts have been conceded the inherent and necessary power of control of its processes and orders to make them conformable to law and justice. [8] For this purpose, Section 6 of Rule 135 provides that "when by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules." It bears repeating that what the Court restrained temporarily is the execution of its own Decision to give it reasonable time to check its fairness in light of supervening events in Congress as alleged by petitioner. The Court, contrary to popular misimpression, did not restrain the effectivity of a law enacted by Congress.*1âwphi1.nêt*

The more disquieting dimension of the submission of the public respondents that this Court has no jurisdiction to restrain the execution of petitioner is that it can diminish the independence of the judiciary. Since the implant of republicanism in our soil, our courts have been conceded the jurisdiction to

enforce their final decisions. In accord with this unquestioned jurisdiction, this Court promulgated rules concerning pleading, practice and procedure which, among others, spelled out the rules on execution of judgments. These rules are all predicated on the assumption that courts have the inherent, necessary and incidental power to control and supervise the process of execution of their decisions. Rule 39 governs execution, satisfaction and effects of judgments in civil cases. Rule 120 governs judgments in criminal cases. It should be stressed that the power to promulgate rules of pleading, practice and procedure was granted by our Constitutions to this Court to enhance its independence, for in the words of Justice Isagani Cruz "without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice." [9] Hence, our Constitutions continuously vested this power to this Court for it enhances its independence. Under the 1935 Constitution, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement. Thus, its Section 13, Article VIII provides:

Sec.13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

The said power of Congress, however, is not as absolute as it may appear on its surface. In In re Cunanan [10]Congress in the exercise of its power to amend rules of the Supreme Court regarding admission to the practice of law, enacted the Bar Flunkers Act of 1953 [11] which considered as a passing grade, the average of 70% in the bar examinations after July 4, 1946 up to August 1951 and 71% in the 1952 bar examinations. This Court struck down the law as unconstitutional. In his *ponencia*, Mr. Justice Diokno held that " . . . the disputed law is not a legislation; it is a judgment — a judgment promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may do so. Any attempt on the part of these department would be a clear usurpation of its function, as is the case with the law in question." [12] The venerable jurist further ruled: "It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs exclusively to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license." By its ruling, this Court qualified the absolutist tone of the power of Congress to "repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.

The ruling of this Court in In re Cunanan was not changed by the 1973 Constitution. For the 1973 Constitution reiterated the power of this Court "to promulgate rules concerning pleading, practice and procedure in all courts, . . . which, however, may be repealed, altered or supplemented by the Batasang Pambansa . . . ." More completely, Section 5(2)5 of its Article X provided:

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Sec.5. The Supreme Court shall have the following powers.

xxx xxx xxx

(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Well worth noting is that the 1973 Constitution further strengthened the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar. [13]

The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. Its Section 5(5), Article VIII provides:

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Sec. 5. The Supreme Court shall have the following powers:

xxx xxx xxx

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. If the manifest intent of the 1987 Constitution is to strengthen the independence of the judiciary, it is inutile to urge, as public respondents do, that this Court has no jurisdiction to control the process of execution of its decisions, a power conceded to it and which it has exercised since time immemorial.

To be sure, it is too late in the day for public respondents to assail the jurisdiction of this Court to control and supervise the implementation of its decision in the case at bar. As aforestated, our Decision became final and executory on November 6, 1998. The records reveal that after November 6, 1998, or on December 8, 1998, no less than the Secretary of Justice recognized the jurisdiction of this Court by filing a Manifestation and Urgent Motion to compel the trial judge, the Honorable Thelma A. Ponferrada, RTC, Br. 104, Quezon City to provide him ". . . a certified true copy of the Warrant of Execution dated November 17, 1998 bearing the designated execution day of death convict Leo Echegaray and allow (him) to reveal or announce the contents thereof, particularly the execution date fixed by such trial court to the public when requested." The relevant portions of the Manifestation and Urgent Motion filed by the Secretary of Justice beseeching this Court "to provide the appropriate relief" state:

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5. Instead of filing a comment on Judge Ponferrada's Manifestation however, herein respondent is submitting the instant Manifestation and Motion (a) to stress, *inter alia*, that the non-disclosure of the date of execution deprives herein respondent of vital information necessary for the exercise of his statutory powers, as well as renders nugatory the constitutional guarantee that recognizes the people's right to information of public concern, and (b) to ask this Honorable Court to provide the appropriate relief.

6. The non-disclosure of the date of execution deprives herein respondent of vital information necessary for the exercise of his power of supervision and control over the Bureau of Corrections pursuant to Section 39, Chapter 8, Book IV of the Administrative Code of 1987, in relation to Title III, Book IV of such Administrative Code, insofar as the enforcement of Republic Act No. 8177 and the Amended Rules and Regulations to Implement Republic Act No. 8177 is concerned and for the discharge of the mandate of seeing to it that laws and rules relative to the execution of sentence are faithfully observed.

7. On the other hand, the willful omission to reveal the information about the precise day of execution limits the exercise by the President of executive clemency powers pursuant to Section 19, Article VII (Executive Department) of the 1987 Philippine Constitution and Article 81 of the Revised Penal Code, as amended, which provides that the death sentence shall be carried out "without prejudice to the exercise by the President of his executive powers *at all times*." (Emphasis supplied) For instance, the President cannot grant reprieve, *i.e.*, postpone the execution of a sentence to a day certain (People v. Vera, 65 Phil. 56, 110 [1937]) in the absence of a precise date to reckon with. The exercise of such clemency power, at this time, might even work to the prejudice of the convict and defeat the purpose of the Constitution and the applicable statute as when the date at execution set by the President would be earlier than that designated by the court.

8. Moreover, the deliberate non-disclosure of information about the date of execution to herein respondent and the public violates Section 7, Article III

(Bill of Rights) and Section 28, Article II (Declaration of Principles and State Policies) of the 1987 Philippine Constitution which read:

Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development shall, be afforded the citizen, subject to such limitations as may be provided by law.

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all transactions involving public interest.

9. The "right to information" provision is self-executing. It supplies "the rules by means of which the right to information may be enjoyed (Cooley, A Treatise on the Constitutional Limitations, 167 [1972]) by guaranteeing the right and mandating the duty to afford access to sources of information. Hence, the fundamental right therein recognized may be asserted by the people upon the ratification of the Constitution without need for any ancillary act of the Legislature (*Id*., at p. 165) What may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest (Constitution, Art. II, Sec. 28). However, it cannot be overemphasized that whatever limitation may be prescribed by the Legislature, the right and the duty under Art. III, Sec. 7 have become operative and enforceable by virtue of the adoption of the New Charter." (Decision of the Supreme Court *En Banc* in Legaspi v. Civil Service Commission, 150 SCRA 530, 534-535 [1987].

The same motion to compel Judge Ponferrada to reveal the date of execution of petitioner Echegaray was filed by his counsel, Atty. Theodore Te, on December 7, 1998. He invoked his client's right to due process and the public's right to information. The Solicitor General, as counsel for public respondents, did not oppose petitioner's motion on the ground that this Court has no more jurisdiction over the process of execution of Echegaray. This Court granted the relief prayed for by the Secretary of Justice and by the counsel of the petitioner in its Resolution of December 15, 1998. There was not a whimper of protest from the public respondents and they are now estopped from contending that this Court has lost its jurisdiction to grant said relief. The jurisdiction of this Court does not depend on the convenience of litigants.

II

Second. We likewise reject the public respondents' contention that the "decision in this case having become final and executory, its execution enters the exclusive ambit of authority of the executive department . . .. By granting the TRO, the Honorable Court has in effect granted reprieve which is an executive function." [14] Public respondents cite as their authority for this proposition, Section 19, Article VII of the Constitution which reads:

Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures after conviction by final judgment. He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the Congress.

The text and tone of this provision will not yield to the interpretation suggested by the public respondents. The provision is simply the source of power of the President to grant reprieves, commutations, and pardons and remit fines and forfeitures after conviction by final judgment. It also provides the authority for the President to grant amnesty with the concurrence of a majority of all the members of the Congress. The provision, however, cannot be interpreted as denying the power of courts to control the enforcement of their decisions after their finality. In truth, an accused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts. For instance, a death convict who become insane after his final conviction cannot be executed while in a state of insanity. [15] As observed by Antieau, "today, it is generally assumed that due process of law will prevent the government from executing the death sentence upon a person who is insane at the time of execution." [16] The suspension of such a death sentence is undisputably an exercise of judicial power. It is not a usurpation of the presidential power of reprieve though its effects is the same — the temporary suspension of the execution of the death convict. In the same vein, it cannot be denied that Congress can at any time amend R.A. No. 7659 by reducing the penalty of death to life imprisonment. The effect of such an amendment is like that of commutation of sentence. But by no stretch of the imagination can the exercise by Congress of its plenary power to amend laws be considered as a violation of

the power of the President to commute final sentences of conviction. The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life. Indeed, in various States in the United States, laws have even been enacted expressly granting courts the power to suspend execution of convicts and their constitutionality has been upheld over arguments that they infringe upon the power of the President to grant reprieves. For the public respondents therefore to contend that only the Executive can protect the right to life of an accused after his final conviction is to violate the principle of co-equal and coordinate powers of the three branches of our government.

III

Third. The Court's resolution temporarily restraining the execution of petitioner must be put in its proper perspective as it has been grievously distorted especially by those who make a living by vilifying courts. Petitioner filed his Very Urgent Motion for Issuance of TRO on December 28, 1998 at about 11:30 p.m. He invoked several grounds, *viz*: (1) that his execution has been set on January 4, the first working day of 1999; (b) that members of Congress had either sought for his executive clemency and/or review or repeal of the law authorizing capital punishment; (b.1) that Senator Aquilino Pimentel's resolution asking that clemency be granted to the petitioner and that capital punishment be reviewed has been concurred by thirteen (13) other senators; (b.2) Senate President Marcelo Fernan and Senator Miriam S. Defensor have publicly declared they would seek a review of the death penalty law; (b.3) Senator Paul Roco has also sought the repeal of capital punishment, and (b.4) Congressman Salacrib Baterina, Jr., and thirty five (35) other congressmen are demanding review of the same law.

When the Very Urgent Motion was filed, the Court was already in its traditional recess and would only resume session on January 18, 1999. Even then, Chief Justice Hilario Davide, Jr. called the Court to a Special Session on January 4, 1991 [17] at 10. a.m. to deliberate on petitioner's Very Urgent Motion. The Court hardly had five (5) hours to resolve petitioner's motion as he was due to be executed at 3 p.m. Thus, the Court had the difficult problem of resolving whether petitioner's allegations about the moves in Congress to repeal or amend the Death Penalty Law are mere speculations or not. To the Court's majority, there were good reasons why the Court should not immediately dismiss petitioner's allegations as mere speculations and surmises. They noted that petitioner's allegations were made in a pleading under oath and were widely publicized in the print and broadcast media. It was also of judicial notice that the 11th Congress is a new Congress and has no less than one hundred thirty (130) new members whose views on capital punishment are still unexpressed. The present Congress is therefore different from the Congress that enacted the Death Penalty Law (R.A. No. 7659) and the Lethal Injection Law (R.A. No. 8177). In contrast, the Court's minority felt that petitioner's allegations lacked clear factual bases. There was hardly a time to verify petitioner's allegations as his execution was set at 3 p.m. And verification from Congress was impossible as Congress was not in session. Given these constraints, the Court's majority did not rush to judgment but took an extremely cautious stance by temporarily restraining the execution of petitioner. The suspension was temporary — "until June 15, 1999, coeval with the constitutional duration of the present regular session of Congress, unless it sooner becomes certain that no repeal or modification of the law is going to be made." The extreme caution taken by the Court was compelled, among others, by the fear that any error of the Court in not stopping the execution of the petitioner will preclude any further relief for all rights stop at the graveyard. As life was at, stake, the Court refused to constitutionalize haste and the hysteria of some partisans. The Court's majority felt it needed the certainty that the legislature will not petitioner as alleged by his counsel. It was believed that law and equitable considerations demand no less before allowing the State to take the life of one its citizens.

The temporary restraining order of this Court has produced its desired result, *i.e.*, the crystallization of the issue whether Congress is disposed to review capital punishment. The public respondents, thru the Solicitor General, cite posterior events that negate beyond doubt the possibility that Congress will repeal or amend the death penalty law. He names these supervening events as follows:

xxx xxx xxx

a. The public pronouncement of President Estrada that he will veto any law imposing the death penalty involving heinous crimes.

b. The resolution of Congressman Golez, *et al*., that they are against the repeal of the law;

c. The fact that Senator Roco's resolution to repeal the law only bears his signature and that of Senator Pimentel. [18]

In their Supplemental Motion to Urgent Motion for Reconsideration, the Solicitor General cited House Resolution No. 629 introduced by Congressman Golez entitled "Resolution expressing the sense of the House of Representatives to reject any move to review R.A. No. 7659 which provided for the reimposition of death penalty, notifying the Senate, the Judiciary and the Executive Department of the position of the House of Representative on this matter and urging the President to exhaust all means under the law to immediately implement the death penalty law." The Golez resolution was signed by 113 congressman as of January 11, 1999. In a marathon session yesterday that extended up 3 o'clock in the morning, the House of Representative with minor, the House of Representative with minor amendments formally adopted the Golez resolution by an overwhelming vote. House Resolution No. 25 expressed the sentiment that the House ". . . does not desire at this time to review Republic Act 7659." In addition, the President has stated that he will not request Congress to ratify the Second Protocol in review of the prevalence of heinous crimes in the country. In light of these developments, the Court's TRO should now be lifted as it has served its legal and humanitarian purpose.

A last note. In 1922, the famous Clarence Darrow predicted that ". . . the question of capital punishment had been the subject of endless discussion and will probably never be settled so long as men believe in punishment." [19] In our clime and time when heinous crimes continue to be unchecked, the debate on the legal and moral predicates of capital punishment has been regrettably blurred by emotionalism because of the unfaltering faith of the pro and anti-death partisans on the right and righteousness of their postulates. To be sure, any debate, even if it is no more than an exchange of epithets is healthy in a democracy. But when the debate deteriorates to discord due to the overuse of words that wound, when anger threatens to turn the majority rule to tyranny, it is the especial duty of this Court to assure that the guarantees of the Bill of Rights to the minority fully hold. As Justice Brennan reminds us ". . . it is the very purpose of the Constitution — and particularly the Bill of Rights — to declare certain values transcendent, beyond the reach of temporary political majorities."[20] Man has yet to invent a better hatchery of justice than the courts. It is a hatchery where justice will bloom only when we can prevent the roots of reason to be blown away by the winds of rage. The flame of the rule of law cannot be ignited by rage, especially the rage of the mob which is the mother of unfairness. The business of courts in rendering justice is to be fair and they can pass their litmus test only when they can be fair to him who is momentarily the most hated by society. [21]

IN VIEW WHEREOF, the Court grants the public respondents' Urgent Motion for Reconsideration and Supplemental Motion to Urgent Motion for Reconsideration and lifts the Temporary Restraining Order issued in its Resolution of January 4, 1999.

The Court also orders respondent trial court judge (Hon. Thelma A. Ponferrada, Regional Trial Court, Quezon City, Branch 104) to set anew the date for execution of the convict/petitioner in accordance with applicable provisions of law and the Rules of Court, without further delay.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-63915 April 24, 1985

LORENZO M. TAÑADA, ABRAHAM F. SARMIENTO, and MOVEMENT OF ATTORNEYS FOR BROTHERHOOD, INTEGRITY AND NATIONALISM,

INC. [MABINI], petitioners,
vs.
HON. JUAN C. TUVERA, in his capacity as Executive Assistant to the President, HON. JOAQUIN VENUS, in his capacity as Deputy Executive Assistant to the President , MELQUIADES P. DE LA CRUZ, in his capacity as Director, Malacañang Records Office, and FLORENDO S. PABLO, in his capacity as Director, Bureau of Printing, respondents.

ESCOLIN, *J.*:

Invoking the people's right to be informed on matters of public concern, a right recognized in Section 6, Article IV of the 1973 Philippine Constitution, [1] as well as the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated, petitioners seek a writ of mandamus to compel respondent public officials to publish, and/or cause the publication in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders.

Specifically, the publication of the following presidential issuances is sought:

a] Presidential Decrees Nos. 12, 22, 37, 38, 59, 64, 103, 171, 179, 184, 197, 200, 234, 265, 286, 298, 303, 312, 324, 325, 326, 337, 355, 358, 359, 360, 361, 368, 404, 406, 415, 427, 429, 445, 447, 473, 486, 491, 503, 504, 521, 528, 551, 566, 573, 574, 594, 599, 644, 658, 661, 718, 731, 733, 793, 800, 802, 835, 836, 923, 935, 961, 1017-1030, 1050, 1060-1061, 1085, 1143, 1165, 1166, 1242, 1246, 1250, 1278, 1279, 1300, 1644, 1772, 1808, 1810, 1813-1817, 1819-1826, 1829-1840, 1842-1847.

b] Letter of Instructions Nos.: 10, 39, 49, 72, 107, 108, 116, 130, 136, 141, 150, 153, 155, 161, 173, 180, 187, 188, 192, 193, 199, 202, 204, 205, 209, 211-213, 215-224, 226-228, 231-239, 241-245, 248, 251, 253-261, 263-269, 271-273, 275-283, 285-289, 291, 293, 297-299, 301-303, 309, 312-315, 325, 327, 343, 346, 349, 357, 358, 362, 367, 370, 382, 385, 386, 396-397, 405, 438-440, 444- 445, 473, 486, 488, 498, 501, 399, 527, 561, 576, 587, 594, 599, 600, 602, 609, 610, 611, 612, 615, 641, 642, 665, 702, 712-713, 726, 837-839, 878-879, 881, 882, 939-940, 964,997,1149-1178,1180-1278.

c] General Orders Nos.: 14, 52, 58, 59, 60, 62, 63, 64 & 65.

d] Proclamation Nos.: 1126, 1144, 1147, 1151, 1196, 1270, 1281, 1319-1526, 1529, 1532, 1535, 1538, 1540-1547, 1550-1558, 1561-1588, 1590-1595, 1594-1600, 1606-1609, 1612-1628, 1630-1649, 1694-1695, 1697-1701, 1705-1723, 1731-1734, 1737-1742, 1744, 1746-1751, 1752, 1754, 1762, 1764-1787, 1789-1795, 1797, 1800, 1802-1804, 1806-1807, 1812-1814, 1816, 1825-1826, 1829, 1831-1832, 1835-1836, 1839-1840, 1843-1844, 1846-1847, 1849, 1853-1858, 1860, 1866, 1868, 1870, 1876-1889, 1892, 1900, 1918, 1923, 1933, 1952, 1963, 1965-1966, 1968-1984, 1986-2028, 2030-2044, 2046-2145, 2147-2161, 2163-2244.

e] Executive Orders Nos.: 411, 413, 414, 427, 429-454, 457- 471, 474-492, 494-507, 509-510, 522, 524-528, 531-532, 536, 538, 543-544, 549, 551-553, 560, 563, 567-568, 570, 574, 593, 594, 598-604, 609, 611- 647, 649-677, 679-703, 705-707, 712-786, 788-852, 854-857.

f] Letters of Implementation Nos.: 7, 8, 9, 10, 11-22, 25-27, 39, 50, 51, 59, 76, 80-81, 92, 94, 95, 107, 120, 122, 123.

g] Administrative Orders Nos.: 347, 348, 352-354, 360- 378, 380-433, 436-439.

The respondents, through the Solicitor General, would have this case dismissed outright on the ground that petitioners have no legal personality or standing to bring the instant petition. The view is submitted that in the absence of any showing that petitioners are personally and directly affected or prejudiced by the alleged non-publication of the presidential issuances in question [2] said petitioners are without the requisite legal personality to institute this mandamus proceeding, they are not being "aggrieved parties" within the meaning of Section 3, Rule 65 of the Rules of Court, which we quote:

SEC. 3. *Petition for Mandamus*.—When any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use a rd enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with

certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to Protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant.

Upon the other hand, petitioners maintain that since the subject of the petition concerns a public right and its object is to compel the performance of a public duty, they need not show any specific interest for their petition to be given due course.

The issue posed is not one of first impression. As early as the 1910 case of *Severino vs. Governor General*, [3] this Court held that while the general rule is that "a writ of mandamus would be granted to a private individual only in those cases where he has some private or particular interest to be subserved, or some particular right to be protected, independent of that which he holds with the public at large," and "it is for the public officers exclusively to apply for the writ when public rights are to be subserved [Mithchell vs. Boardmen, 79 M.e., 469]," nevertheless, "when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws [High, Extraordinary Legal Remedies, 3rd ed., sec. 431].

Thus, in said case, this Court recognized the relator Lope Severino, a private individual, as a proper party to the mandamus proceedings brought to compel the Governor General to call a special election for the position of municipal president in the town of Silay, Negros Occidental. Speaking for this Court, Mr. Justice Grant T. Trent said:

We are therefore of the opinion that the weight of authority supports the proposition that the relator is a proper party to proceedings of this character when a public right is sought to be enforced. If the general rule in America were otherwise, we think that it would not be applicable to the case at bar for the reason 'that it is always dangerous to apply a general rule to a particular case without keeping in mind the reason for the rule, because, if under the particular circumstances the reason for the rule does not exist, the rule itself is not applicable and reliance upon the rule may well lead to error'

No reason exists in the case at bar for applying the general rule insisted upon by counsel for the respondent. The circumstances which surround this case are different from those in the United States, inasmuch as if the relator is not a proper party to these proceedings no other person could be, as we have seen that it is not the duty of the law officer of the Government to appear and represent the people in cases of this character.

The reasons given by the Court in recognizing a private citizen's legal personality in the aforementioned case apply squarely to the present petition. Clearly, the right sought to be enforced by petitioners herein is a public right recognized by no less than the fundamental law of the land. If petitioners were not allowed to institute this proceeding, it would indeed be difficult to conceive of any other person to initiate the same, considering that the Solicitor General, the government officer generally empowered to represent the people, has entered his appearance for respondents in this case.

Respondents further contend that publication in the Official Gazette is not a sine qua non requirement for the effectivity of laws where the laws themselves provide for their own effectivity dates. It is thus submitted that since the presidential issuances in question contain special provisions as to the date they are to take effect, publication in the Official Gazette is not indispensable for their effectivity. The point stressed is anchored on Article 2 of the Civil Code:

Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided, ...

The interpretation given by respondent is in accord with this Court's construction of said article. In a long line of decisions, [4] this Court has ruled that publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date-for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication-but not when the law itself provides for the date when it goes into effect.

Respondents' argument, however, is logically correct only insofar as it equates the effectivity of laws with the fact of publication. Considered in the light of other statutes applicable to the issue at hand, the conclusion is easily reached that said Article 2 does not preclude the requirement of publication

in the Official Gazette, even if the law itself provides for the date of its effectivity. Thus, Section 1 of Commonwealth Act 638 provides as follows:

Section 1. There shall be published in the Official Gazette [1] all important legisiative acts and resolutions of a public nature of the, Congress of the Philippines; [2] all executive and administrative orders and proclamations, except such as have no general applicability; [3] decisions or abstracts of decisions of the Supreme Court and the Court of Appeals as may be deemed by said courts of sufficient importance to be so published; [4] such documents or classes of documents as may be required so to be published by law; and [5] such documents or classes of documents as the President of the Philippines shall determine from time to time to have general applicability and legal effect, or which he may authorize so to be published. ...

The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.

Perhaps at no time since the establishment of the Philippine Republic has the publication of laws taken so vital significance that at this time when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the Batasan Pambansa—and for the diligent ones, ready access to the legislative records—no such publicity accompanies the law-making process of the President. Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees. As the Supreme Court of Spain ruled: "Bajo la denominacion generica de leyes, se comprenden tambien los reglamentos, Reales decretos, Instrucciones, Circulares y Reales ordines dictadas de conformidad con las mismas por el Gobierno en uso de su potestad. [5]

The very first clause of Section I of Commonwealth Act 638 reads: "There shall be published in the Official Gazette ... ." The word "shall" used therein imposes upon respondent officials an imperative duty. That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the Official Gazette. Such listing, to our mind, leaves respondents with no discretion whatsoever as to what must be included or excluded from such publication.

The publication of all presidential issuances "of a public nature" or "of general applicability" is mandated by law. Obviously, presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden or. the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned. [6]

It is needless to add that the publication of presidential issuances "of a public nature" or "of general applicability" is a requirement of due process. It is a rule of law that before a person may be bound by law, he must first be officially and specifically informed of its contents. As Justice Claudio Teehankee said in *Peralta vs. COMELEC* [7]:

In a time of proliferating decrees, orders and letters of instructions which all form part of the law of the land, the requirement of due process and the Rule of Law demand that the Official Gazette as the official government repository promulgate and publish the texts of all such decrees, orders and instructions so that the people may know where to obtain their official and specific contents.

The Court therefore declares that presidential issuances of general application, which have not been published, shall have no force and effect. Some members of the Court, quite apprehensive about the possible unsettling effect this decision might have on acts done in reliance of the validity of those presidential decrees which were published only during the pendency of this petition, have put the question as to whether the Court's declaration of invalidity apply to P.D.s which had been enforced or implemented prior to their publication. The answer is all too familiar. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* [8] to wit:

The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. Norton v. Shelby County, 118 U.S. 425, 442; Chicago, 1. & L. Ry. Co. v. Hackett, 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects-with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Consistently with the above principle, this Court in *Rutter vs. Esteban* [9] sustained the right of a party under the Moratorium Law, albeit said right had accrued in his favor before said law was declared unconstitutional by this Court.

Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is "an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration ... that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified."

From the report submitted to the Court by the Clerk of Court, it appears that of the presidential decrees sought by petitioners to be published in the Official Gazette, only Presidential Decrees Nos. 1019 to 1030, inclusive, 1278, and 1937 to 1939, inclusive, have not been so published. [10] Neither the subject matters nor the texts of these PDs can be ascertained since no copies thereof are available. But whatever their subject matter may be, it is undisputed that none of these unpublished PDs has ever been implemented or enforced by the government. In *Pesigan vs. Angeles*, [11] the Court, through Justice Ramon Aquino, ruled that "publication is necessary to apprise the public of the contents of [penal] regulations and make the said penalties binding on the persons affected thereby. " The cogency of this holding is apparently recognized by respondent officials considering the manifestation in their comment that "the government, as a matter of policy, refrains from prosecuting violations of criminal laws until the same shall have been published in the Official Gazette or in some other publication, even though some criminal laws provide that they shall take effect immediately.

WHEREFORE, the Court hereby orders respondents to publish in the Official Gazette all unpublished presidential issuances which are of general application, and unless so published, they shall have no binding force and effect.

SO ORDERED.

EN BANC

[G.R. No. 109023. August 12, 1998]

RODOLFO S. DE JESUS, EDELWINA DE PARUNGAO, VENUS M. POZON AND other similarly situated personnel of the LOCAL WATER UTILITIES ADMINISTRATION (LWUA), *petitioners, vs.* COMMISSION ON AUDIT AND LEONARDO L. JAMORALIN in his capacity as COA-LWUA Corporate Auditor *respondents.*

DECISION

PURISIMA, *J.:*

The pivotal issue raised in this petition is whether or not the petitioners are entitled to the payment of honoraria which they were receiving prior to the effectivity of Rep. Act 6758.

Petitioners are employees of the Local Water Utilities Administration (LWUA). Prior to July 1, 1989, they were receiving honoraria as designated members of the LWUA Board Secretariat and the Pre-Qualification, Bids and Awards Committee.

On July 1, 1989, Republic Act No. 6758 *(Rep. Act 6758),* entitled An Act Prescribing A Revised Compensation and Position Classification System in the Government and For Other Purposes, took effect. Section 12 of said law provides for the consolidation of allowances and additional compensation into standardized salary rates. Certain additional compensations, however, were exempted from consolidation.

Section 12, Rep. Act 6758, reads -

Sec. 12. - Consolidation of Allowances and Compensation.- Allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign services personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be *authorized.*[1](Underscoring supplied)

To implement Rep. Act 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10), discontinuing without qualification effective November 1, 1989, all allowances and fringe benefits granted on top of basic salary.

Paragraph 5.6 of DBM-CCC No. 10 provides :

Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, xxx shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.[2]

Pursuant to the aforesaid Law and Circular, respondent Leonardo Jamoralin, as corporate auditor, disallowed on post audit, the payment of honoraria to the herein petitioners.

Aggrieved, petitioners appealed to the COA, questioning the validity and enforceability of DBM-CCC No. 10. More specifically, petitioners contend that DBM-CCC No. 10 is inconsistent with the provisions of Rep. Act *6758 (the law it is supposed to implement)* and, therefore, void. And it is without force and effect because it was not published in the Official Gazette; petitioners stressed.

In its decision dated January 29, 1993, the COA upheld the validity and effectivity of DBM-CCC No. 10 and sanctioned the disallowance of petitioners honoraria.[3]

Undaunted, petitioners found their way to this court via the present petition, posing the questions:

(1) Whether or not par. 5.6 of DBM-CCC No. 10 can supplant or negate the express provisions of Sec. 12 of Rep. Act 6758 which it seeks to implement; and

(2) Whether or not DBM-CCC No. 10 is legally effective despite its lack of publication in the Official Gazette. Petitioners are of the view that par. 5.6 of DBM-CCC No. 10 prohibiting fringe benefits and allowances effective November 1, 1989, is violative of Sec. 12 of Rep. Act 6758 which authorizes payment of additional compensation not integrated into the standardized salary which incumbents were enjoying prior to July 1, 1989.

To buttress petitioners stance, the Solicitor General presented a Manifestation and Motion in Lieu of Comment, opining that Sec. 5.6 of DBM-CCC No. 10 is a nullity for being inconsistent with and repugnant to the very law it is intended to implement. The Solicitor General theorized, that:

xxx following the settled principle that implementing rules must necessarily adhere to and not depart from the provisions of the statute it seeks to implement, it is crystal clear that Section 5.6 of DBM-CCC No. 10 is a patent nullity. An implementing rule can only be declared valid if it is in harmony with the provisions of the legislative act and for the sole purpose of carrying into effect its general provisions. When an implementing rule is inconsistent or repugnant to the provisions of the statute it seeks to interpret, the mandate of the statute must prevail and must be followed.[4]

Respondent COA, on the other hand, pointed out that to allow honoraria without statutory, presidential or DBM authority, as in this case, would run counter to Sec. 8, Article IX-B of the Constitution which proscribes payment of additional or double compensation, unless specifically authorized by law. Therefore, the grant of honoraria or like allowances requires a specific legal or statutory authority. And DBM-CCC No. 10 need not be published for it is merely an interpretative regulation of a law already published[5]; COA concluded.

In his Motion for Leave to intervene, the DBM Secretary asserted that the honoraria in question are considered included in the basic salary, for the reason that they are not listed as exceptions under Sec. 12 of Rep. Act 6758.

Before resolving the other issue - whether or not Paragraph 5.6 of DBM-CCC No. 10 can supplant or negate the pertinent provisions of Rep. Act 6758 which it seeks to implement, we have to tackle first the other question whether or not DBM-CCC No. 10 has legal force and effect notwithstanding the absence of publication thereof in the Official Gazette. This should take precedence because should we rule that publication in the Official Gazette or in a newspaper of general circulation in the Philippines[6] is *sine qua non* to the effectiveness or enforceability of DBM-CCC No. 10, resolution of the first issue posited by petitioner would not be necessary.

The applicable provision of law requiring publication in the Official Gazette is found in Article 2 of the New Civil Code of the Philippines, which reads:

Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.

In *Tanada v. Tuvera*, 146 SCRA 453, 454, this Court succinctly construed the aforecited provision of law in point, thus:

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, deirectly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

Accordingly, even the charter of a city must be published notwithstanding that it applies to only a portion of the national territory and directly affects only the inhabitants of that place. All presidential decrees must be published, including even, say, those naming a public place after a favored individual or exempting him from certain prohibitions or requirements. The circulars issued by the Monetary Board must be published if they are meant not merely to interpret but to fill in the details of the Central Bank Act which that body is supposed to enforce.(Italics ours)

The same ruling was reiterated in the case of *Philippine Association of Service Exporters, Inc. vs. Torres*, 212 SCRA 299 [1992].

On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciated in Tanada, publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated

differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in anewspaper of general circulation in the Philippines - to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

In light of the foregoing disquisition on the ineffectiveness of DBM-CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country,as required by law, resolution of the other issue at bar is unnecessary.

WHEREFORE, the Petition is hereby GRANTED, the assailed Decision of respondent Commission on Audit is SET ASIDE, and respondents are ordered to pass on audit the honoraria of petitioners. No pronouncement as to costs.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 108310 September 1, 1994

RUFINO O. ESLAO, in his capacity as President of Pangasinan State University, petitioner,

vs.
COMMISSION ON AUDIT, respondent.

Mehol K. Sadain for petitioner.

FELICIANO, *J.:*

In this Petition for Certiorari, Rufino O. Eslao in his capacity as President of the Pangasinan State University ("PSU") asks us to set aside Commission on Audit ("COA") Decisions Nos. 1547 (1990) and 2571 (1992) which denied *honoraria* and *per diems* claimed under National Compensation Circular No. 53 by certain PSU personnel including petitioner.

On 9 December 1988, PSU entered into a Memorandum of Agreement ("MOA") [1] with the Department of Environment and Natural Resources ("DENR") for the evaluation of eleven (11) government reforestation operations in Pangasinan. [2] The evaluation project was part of the commitment of the Asian Development Bank ("ADB") under the ADB/OECF Forestry Sector Program Loan to the Republic of the Philippines and was one among identical project agreements entered into by the DENR with sixteen (16) other state universities.

On 9 December 1988, a notice to proceed [3] with the review and evaluation of the eleven (11) reforestation operations was issued by the DENR to PSU. The latter complied with this notice and did proceed.

On 16 January 1989, per advice of the PSU Auditor-in-Charge with respect to the payment of *honoraria* and *per diems* of PSU personnel engaged in the review and evaluation project, PSU Vice President for Research and Extension and Assistant Project Director Victorino P. Espero requested the Office of the President, PSU, to have the University's Board of Regents ("BOR") confirm the appointments or designations of involved PSU personnel including the rates of *honoraria* and *per diems* corresponding to their specific roles and functions. [4]

The BOR approved the MOA on 30 January 1989 [5] and on 1 February 1989, PSU issued Voucher No. 8902007 [6]representing the amount of P70,375.00 for payment of *honoraria* to PSU personnel engaged in the project. Later, however, the approved *honoraria* rates were found to be somewhat higher than the rates provided for in the guidelines of National Compensation Circular ("NCC") No. 53. Accordingly, the amounts were adjusted downwards to conform to NCC No. 53. Adjustments were made by deducting amounts from subsequent disbursements of *honoraria*. By June 1989, NCC No. 53 was being complied with. [7]

On 6 July 1989, Bonifacio Icu, COA resident auditor at PSU, alleging that there were excess payments of*honoraria*, issued a "Notice of Disallowance" [8] disallowing P64,925.00 from the amount of P70,375.00 stated in Voucher No. 8902007, mentioned earlier. The resident auditor based his action on the premise that Compensation Policy Guidelines ("CPG") No. 80-4, dated 7 August 1980, issued by the Department of Budget and Management which provided for lower rates than NCC No. 53 dated 21 June 1988, also issued by the Department of Budget and Management, was the schedule for *honoraria* and *per diems* applicable to work done under the MOA of 9 December 1988 between the PSU and the DENR.

On 18 October 1989, a letter [9] was sent by PSU Vice President and Assistant Project Director Espero to the Chairman of the COA requesting reconsideration of the action of its resident auditor. In the meantime, the Department of Budget and Management ("DBM"), upon request by PSU, issued a letter [10] clarifying that the basis for the project's *honoraria* should *not*be CPG No. 80-4 which pertains to locally funded projects but rather NCC No. 53 which pertains to foreign-assisted projects. A copy of this clarification was sent to the COA upon request by PSU.

On 18 September 1990, COA Decision No. 1547 [11] was issued denying reconsideration of the decision of its resident auditor. The COA ruled that CPG. No. 80-4 is the applicable guideline in respect of the *honoraria* as CPG No. 80-4 does not distinguish between projects locally funded and projects funded or assisted with monies of foreign-origin.

PSU President Eslao sent a letter [12] dated 20 March 1991 requesting reconsideration of COA Decision No. 1547 (1990) alleging that (a) COA had erred in applying CPG No. 80-4 and not NCC No. 53 as the project was foreign-assisted and (b) the decision was discriminatory — *honoraria* based on NCC No. 53 having been approved and granted by COA resident auditors in two (2) other state universities engaged in the same reforestation project.

PSU then submitted to the COA (a) a certification [13] from the DENR to the effect that the DENR evaluation project was foreign- assisted and (b) the letter of the DBM quoted in the margin *supra.*

On 16 November 1992, COA Decision No. 2571 (1992) [14] was issued denying reconsideration.

In the meantime, in December 1990, the DENR informed petitioner of its acceptance of the PSU final reports on the review and evaluation of the government reforestation projects. [15] Subsequently, *honoraria* for the period from January 1989 to January 1990 were disbursed in accordance with NCC No. 53. A Certificate of Settlement and Balances (CSB No. 92-0005-184 [DENR]) [16] was then issued by the COA resident auditor of PSU showing disallowance of alleged excess payment of *honoraria* which petitioner was being required to return.

The instant Petition prays that (a) COA Decision Nos. 1547 (1990) and 2571 (1992) be set aside; (b) the COA be ordered to pass in audit the grant of *honoraria* for the entire duration of the project based on the provisions and rates contained in NCC No. 53; and (c) the COA be held liable for actual damages as well as petitioner's legal expenses and attorney's fees.

The resolution of the dispute lies in the determination of the circular or set of provisions applicable in respect of the *honoraria* to be paid to PSU personnel who took part in the evaluation project, i.e., *NCC No. 53* or *CPG No. 80-4*.

In asserting that NCC No. 53 supplies the applicable guideline and that the COA erred in applying CPG No. 80-4 as the pertinent standard, petitioner contends that:

(a) CPG No. 80-4 applies to "special projects" the definition and scope of which do not embrace the evaluation project undertaken by petitioner for the DENR;

(b) NCC No. 53 applies to foreign-assisted projects ("FAPs") while CPG No. 80-4 applies to locally-funded projects as no reference to any foreign component characterizing the projects under its coverage is made;

(c) the DENR evaluation project is a foreign-assisted project per certification and clarification of the DENR and DBM respectively as well as the implied admission of the COA in its Comment; and

(d) the DBM's position on the matter should be respected since the DBM is vested with authority to (i) classify positions and determine appropriate salaries for specific position classes, (ii) review the compensation benefits programs of agencies and (iii) design job evaluation programs.

The Office of the Solicitor General, in lieu of a Comment on the Petition, filed a Manifestation [17] stating that (a) since, per certification of the DENR and Letter/Opinion of the DBM that the project undertaken by PSU is foreign-assisted, NCC No. 53 should apply; and (b) respondent COA's contention that CPG No. 80-4 does not distinguish between projects which are foreign-funded from locally-funded projects deserves no merit, since NCC No. 53, a special guideline, must be construed as an exception to CPG No. 80-4, a general guideline. The Solicitor General, in other words, agreed with the position of petitioner.

Upon the other hand, respondent COA filed its own comment, asserting that:

(a) while the DBM is vested with the authority to issue rules and regulations pertaining to compensation, this authority is regulated by Sec. 2 (2) of Art. IX-D of the 1987 Constitution which vests respondent COA with the power to "promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties;

(b) the Organizational Arrangement and Obligations of the Parties sections of the MOA clearly show that the evaluation project is an "inter-agency activity" between the DENR and PSU and therefore a "special project";

(c) the issue as to whether the evaluation project is in fact a "special project" has become moot in view of the DBM's clarification/ruling that the evaluation project is foreign-assisted and therefore NCC No. 53, not CPG No. 80-4 which applies only to locally-funded projects, should apply;

(d) the DBM issuance notwithstanding, respondent COA applied CPG No. 80-4 to effectively rationalize the rates of additional compensation assigned

to or detailed in "special projects" as its application is without distinction as to the source of funding and any payment therefore in excess of that provided by CPG No. 80-4 is unnecessary, excessive and disadvantageous to the government;

(e) respondent COA's previous allowance of payment of *honoraria* based on NCC No. 53 or the fact that a full five years had already elapsed since NCC No. 53's issuance does not preclude COA from assailing the circular's validity as "it is the responsibility of any public official to rectify every error he encounters in the performance of his function" and "he is not duty- bound to pursue the same mistake for the simple reason that such mistake had been continuously committed in the past";

(f) the DBM ruling classifying the evaluation project as foreign-assisted does not rest on solid ground since loan proceeds, regardless of source, eventually become public funds for which the government is accountable, hence, any project under the loan agreement is to be considered locally-funded;

(g) the DBM ruling constitutes an unreasonable classification, highly discriminatory and violative of the equal protection clause of the Constitution; and

(h) granting *arguendo* NCC No. 53 is the applicable criterion, petitioner received *honoraria* in excess of what was provided in the MOA.

We consider the Petition meritorious.

Sec. 2.1 of CPG No. 80-4 defines "special project" as

an inter-agency or inter-committee *activity* or an *undertaking by a composite group of officials/employees from various agencies* which [activity or undertaking] is not among the regular and primary functions of the agencies involved. (Emphasis and brackets supplied)

Respondent COA maintains that the sections of the MOA detailing the "Organizational Arrangement and Obligations of the Parties" clearly show that the evaluation project is an "inter-agency activity." The pertinent sections of the MOA are as follows:

ORGANIZATIONAL ARRANGEMENTS

A Coordinating Committee shall be created which shall be responsible for the overall administration and coordination of the evaluation, to be chaired by a senior officer of the DENR. The Committee shall [be] composed [of] the following:

Chairman : Undersecretary for Planning,
Policy and Project Management
[DENR]

Co-Chairman : Vice-President for Research
and Development [PSU]

Members : Director of FMB
Dean, PSU Infanta Campus
Associate Dean, PSU Infanta
Campus
Chief, Reforestation
Division
Project Director of the ADB
Program Loan for Forestry
Sector

OBLIGATIONS OF THE PARTIES

Obligations of DENR:

The DENR shall have the following obligations:

1. Provide the funds necessary for the review and reevaluation of eleven (11) reforestation projects.

xxx xxx xxx

2. Undertake the monitoring of the study to ascertain its progress and the proper utilization of funds in conformity with the agreed work and financial plan.

3. Reserve the right to accept or reject the final report and in the latter case, DENR may request PSU to make some revisions/modifications on the same.

Obligations of the PSU:

The PSU shall have the following obligations:

1. Undertake the review and evaluation of the eleven (11) DENR-funded reforestation projects in accordance with the attached TOR;

2. Submit regularly to DENR financial status reports apart from the progress report required to effect the second release of funds;

3. Submit the final report to DENR fifteen (15) days after the completion of the work. The report should at least contain the information which appears in Annex D;

4. Return to DENR whatever balance is left of the funds after the completion of work.

Simply stated, respondent COA argues that since the Coordinating Committee is composed of personnel from the DENR and PSU, the evaluation project is an "inter-agency activity" within the purview of the definition of a "special project".

We are unable to agree with respondent COA.

Examination of the definition in CPG No. 80-4 of a "special project" reveals that definition has two (2) components: firstly, there should be an inter-agency or inter-committee activity or undertaking by a group of officials or employees who are drawn from various agencies; and secondly, the activity or undertaking involved is not part of the "regular or primary" functions of the participating agencies. Examination of the MOA and its annexes reveals that two (2) groups were actually created. The first group consisted of the *coordinating committee*, the membership of which was drawn from officials of the DENR and of the PSU; and the second, the *evaluation project team* itself which was, in contrast, *composed exclusively of PSU personnel*. [18] We believe that the first component of the CPU No. 80-4's definition of "special project" is applicable in respect of the group which is charged with the actual carrying out of the project itself, rather than to the body or group which coordinates the task of the operating or implementing group. To construe the administrative definition of "special project" otherwise would create a situation, which we deem to be impractical and possibly even absurd, under which any undertaking entered into between the senior officials of government agencies would have to be considered an "inter-agency or inter-committee activity," even though the actual undertaking or operation would be carried out not by the coordinating body but rather by an separate group which might not (as in the present case) be drawn from the agencies represented in the coordinating group. In other words, an "inter-agency or inter-committee activity or . . . undertaking" must be one which is actually carried out by a composite group of officials and employees from the two (2) or more participating agencies.

As already noted, in the case at hand, the *project team* actually tasked with carrying out the evaluation of the DENR reforestation activity is *composed exclusively of personnel from PSU*; the project team's responsibility and undertaking are quite distinct from the responsibilities of the coordinating [DENR and PSU] committee. Thus, the project team is not a "composite group" as required by the definition of CPG No. 80-4 of "special projects." It follows that the evaluation projects here involved do not fall within the ambit of a "special project" as defined and regulated by CPG No. 80-4.

We do not consider it necessary to rule on whether the project at hand involved an undertaking "which is not among the regular and primary functions of the agencies involved" since the reforestation activity evaluation group is not, as pointed out above, a "special project" within the meaning of CPG No. 80-4. In any case, this particular issue was not raised by any of the parties here involved.

It is true, as respondent COA points out, that the provisions of CPG No. 80-4 do not distinguish between "a special project" which is funded by monies of local or Philippine origin and "a special project" which is funded or assisted by monies originating from international or foreign agencies. As earlier noted, CPG No. 80-4 was issued by the Department of Budget and Management back in 7 August 1980. Upon the other hand, NCC No. 53 was issued also by the Department of Budget and Management more than eight (8) years later, i.e., 9 December 1988. Examination of the provisions of NCC No. 53 makes it crystal clear that the circular is applicable to foreign-assisted projects only. The explicit text of NCC No. 53 states that it was issued to

prescribe/authorize the classification and compensation rates of *positions in foreign-assisted projects*(FAPs) including *honoraria* rates for *personnel*

detailed to FAPs and guidelines in the implementation thereof pursuant to Memorandum No. 173 dated 16 May 1988 [19] (Emphasis supplied)

and which apply to all positions in foreign-assisted projects only. Clearly, NCC No. 53 amended the earlier CPG No. 80-4 by carving out from the subject matter originally covered by CPG No. 80-4 all "foreign-assisted [special] projects." CPG No. 80-4 was, accordingly, modified so far as "foreign-assisted [special] projects (FAPs)" are concerned. It is this fact or consequence of NCC No. 53 that respondent COA apparently failed to grasp. Thus, CPG No. 80-4 does not control, nor even relate to, the DENR evaluation project for at least two (2) reasons: firstly, the evaluation project was not a "special project" within the meaning of CPG No. 80-4; secondly, that same evaluation project was a Foreign-Assisted Project to which NCC No. 53 is specifically applicable.

That the instant evaluation project is a Foreign-Assisted Project is borne out by the records: (a) the MOA states that the project is "part of the commitment with the Asian Development Bank (ADB) under the Forestry Sector Program Loan"; (b) the certification issued by the DENR certifies that

. . . the review and evaluation of DENR reforestation projects undertaken by State Universities and Colleges, one of which is Pangasinan State University, is one of the components of the ADB/OECF Forestry Sector Program Loan which is funded by the loan. *It is therefore a foreign-assisted project* (Underscoring supplied); and

(c) the clarification issued by the DBM stating that

The *honoraria* rates of the detailed personnel should not be based on Compensation Policy Guidelines No. 80-4, which pertains to locally funded projects. Since the funding source for this activity come from loan proceeds, National Compensation Circular No. 53 should apply.

Even in its Comment respondent COA submits that

. . . the issue as to whether or not the project was special already became moot in the face of the opinion/ruling of the DBM that since it (the project) is "foreign-assisted" NCC 53 should apply, for CPG No. 80-4 applies only to "locally-funded projects. [20]

Under the Administration Code of 1987, the Compensation and Position Classification Bureau of the DBM "shall classify positions and determine appropriate salaries for specific position classes and review appropriate salaries for specific position classes and review the compensation benefits programs of agencies and shall design job evaluation programs." [21] In *Warren Manufacturing Workers Union (WMWU) v. Bureau of Labor Relations*, [22] the Court held that "administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect." It is difficult for the Court to understand why, despite these certifications, respondent COA took such a rigid and uncompromising posture that CPG No. 80-4 was the applicable criterion for *honoraria* to be given members of the reforestation evaluation project team of the PSU.

Respondent COA's contention that the DBM clarification is unconstitutional as that ruling does not fulfill the requisites of a valid classification [23] is, in the Court's perception, imaginative but nonetheless an after-thought and a futile attempt to justify its action. As correctly pointed out by petitioner, the constitutional arguments raised by respondent COA here were never even mentioned, much less discussed, in COA Decisions Nos. 1547 (1990) and 2571 (1992) or in any of the proceedings conducted before it.

Petitioner also argues that the project's duration stipulated in the MOA was implicitly extended by the parties. The DENR's acceptance, without any comment or objection, of PSU's (a) letter explaining the delay in its submission of the final project report and (b) the final project report itself brought about, according to petitioner, an implied agreement between the parties to extend the project duration. It is also contended that by the very nature of an evaluation project, the project's duration is difficult to fix and as in the case at bar, the period fixed in the MOA is merely an initial estimate subject to extension. Lastly, petitioner argues that whether the project was impliedly extended is an inconsequential consideration; the material consideration being that the project stayed within its budget. The project having been extended, petitioner concludes that the evaluation team should be paid*honoraria* from the time it proceeded with the project and up to the time the DENR accepted its final report.

Mindful of the detailed provisions of the MOA and Project Proposal governing project duration and project financing as regulated by NCC No.

53, the Court is not persuaded that petitioner can so casually assume implicit consent on the part of the DENR to an extension of the evaluation project's duration.

The "Duration of Work" clause of the MOA provides that

PSU shall commence the work 10 days from receipt of the Notice to Proceed and *shall be completed five months thereafter*. (Emphasis supplied)

On 9 December 1988, the DENR advised PSU President Rufino Eslao that PSU "may now proceed with the review and reevaluation as stipulated" in the MOA. The Notice to Proceed further stated that

Your institution is required to complete the work within five months starting ten (10) days upon receipt of this notice. (Emphasis supplied)

In respect of the financial aspects of the project, the MOA provides that

The DENR shall have the following obligations:

1. Provide the *funds* necessary for the review and reevaluation of the eleven (11) reforestation projects . . . in the amount not more than FIVE HUNDRED SIX THOUSAND TWO HUNDRED TWENTY FOUR PESOS (P506,224.00) which *shall be spent in accordance with the work and financial plan which attached as Annex C*. Fund remittances shall be made on a staggered basis with the following schedule:

a. FIRST RELEASE

Twenty percent (20%) of the total cost to be remitted *within fifteen (15) working days upon submission of work plan*;

b. SECOND RELEASE

Forty percent of the total cost *upon submission of a progress report* of the activities that were so far undertaken;

c. THIRD RELEASE

Thirty percent (30%) of the total amount *upon submission of the draft final report*;

d. FOURTH RELEASE

Ten percent of the total amount [*upon submission] of the final report*. (Underscoring supplied)

Annex "C" referred to in the MOA is the Project Proposal. Per the Proposal's "Budget Estimate," P175,000.00 and P92,500.00 were allotted for "Expert Services" and "Support Services" respectively itemized as follows:

PERSONAL SERVICES
EXPERT SERVICES

Duration

Expert of Service Rate/ Total

(mo.) mo.

1. Ecologist 4 P5,000 P20,000

2. Silviculturist 3 -do- 15,000

3. Forestry Economist 4 -do- 20,000

4. Soils Expert 2 -do- 10,000

5. Social Forestry Expert 4 -do- 20,000

6. Management Expert 2 -do- 10,000

7. Horticulturist 2 -do- 10,000

8. Agricultural Engineer 2 -do- 10,000

9. Systems Analysts/Programer 2 -do- 10,000

10. Statistician 2 -do- 10,000

11. Shoreline Resources Expert 2 -do- 10,000

12. Animal Science Specialist 2 -do- 10,000

13. Policy/Administrative 4 -do- 20,000

Expert

T O T A L P175,000

Support Services

Research Associates (2) P8,000
Honorarium P1,000/mo. for 4 months
Special Disbursing Officer (1) 4,000
Honorarium P1,000/mo. for 4 months
Enumerators/Data Gatheres 36,000
360 mandays at P100/manday
including COLA
Coders/Encoders 30,000
300 mandays at P100/manday
including COLA
Cartographer/Illustrator 5,000
50 mandays at P100/manday
including COLA
Documentalist 4,500
45 mandays at P100/manday
including COLA
Typist 5,000
50 mandays at P100/manday
including COLA

T O T A L P92,500

———

In addition, the Proposal already provided a list of identified experts:

EXPERTS

1. Dr. Victorino P. Espero Enviromental Science
2. Dean Antonio Q. Repollo Silviculture
3. Prof. Artemio M. Rebugio Forestry Economics
4. Ms. Naomenida Olermo Soils
5. Dr. Elvira R. Castillo Social Forestry
6. Dr. Alfredo F. Aquino Management
7. Dr. Lydio Calonge Horticulture
8. Engr. Manolito Bernabe Engineering
9. Dr. Elmer C. Vingua Animal Science
10. Prof. Rolando J. Andico Systems Analysts Programming
11. Dr. Eusebio Miclat, Jr. Statistics/ Instrumentation
12. Dr. Porferio Basilio Shoreline Resources
13. Dr. Rufino O. Eslao Policy Administration

who, together with six (6) staff members namely Henedina M. Tantoco, Alicia Angelo Yolanda Z. Sotelo, Gregoria Q. Calela, Nora A. Caburnay and Marlene S. Bernebe composed the evaluation project team. At this point, it should be pointed out that the " Budget Estimate even provides a duration for the participation of each and every person whether rendering expert or support services.

On the other hand, NCC No. 53 provides:

3.3.1 The approved 0rganization and staffing shall be valid up to project completion except for modifications deemed necessary by the Project Manager. The Project Manager shall be given the flexibility to determine the timing of hiring personnel *provided the approved man-years for a given position for the duration of the project is not exceeded*.

xxx xxx xxx

3.6 A regular employee who may detailed to any FAPs on a part-time basis shall be entitled to receive *honoraria in accordance with the schedule shown in Attachment II hereof*.

xxx xxx xxx

3.7 Payment of *honoraria* shall be made out of *project funds* and *in no case shall payment thereof be made out of regular agency fund*.

xxx xxx xxx

3.10 *The total amount of compensation to be paid shall not exceed the original amount allocated for personal services* of the individual foreign-assisted projects. *Any disbursement in excess of the original amount allotted for personal services* of the individual projects *shall be the personal liability and responsibility of the officials and employees authorizing or making such payment*. (Underscoring supplied)

Attachment II of NCC No. 53 prescribes the monthly rates allowed for officials/employees on assignment to foreign- assisted special projects:

A. *Position Level* — Project Manager/Project Director

Responsibility — . . .

Parttime — P2,000.00

B. *Position Level* — Assistant Project Director

Responsibility — . . .

Parttime — P1,500.00

C. *Position Level* — Project Consultant

Responsibility — . . .

Parttime — P1,000.00

D. *Position Level* — Supervisor/Senior Staff Member

Responsibility — . . .

Parttime — P1,000.00

E. *Position Level* — Staff Member

Responsibility — . . .

Parttime — P700.00

Administrative and Clerical Support

A. *Position Level* — Administrative Assistant

Responsibility — . . .

Parttime — P500.00

B. *Position Level* — Administrative Support Staff

Responsibility — . . .

Parttime — P400.00

From the clear and detailed provisions of the MOA and Project Proposal in relation to NCC No. 53, consent to any extension of the evaluation project, in this instance, must be more concrete than the alleged silence or lack of protest on the part of the DENR. Although tacit acceptance is recognized in our jurisdiction, [24] as a rule, silence is not equivalent to consent since its ambiguity lends itself to error. And although under the Civil Code there are instances when silence amounts to consent, [25] these circumstances are wanting in the case at bar. Furthermore, as correctly pointed out by the respondent COA, the date when the DENR accepted the final project report is by no means conclusive as to the terminal date of the evaluation project. Examination of the MOA (quoted earlier on pages 19-20) reveals that the submission of reports merely served to trigger the phased releases of funds. There being no explicit agreement between PSU and the DENR to extend the duration of the evaluation project, the MOA's "Budget Estimate" which, among others, provides in detail the duration of service for each member of the evaluation project as amended by the rates provided by NCC No. 53 must be the basis of the *honoraria* due to the evaluation team.

The other arguments of respondent COA appear to us to be insubstantial and as, essentially, afterthoughts. The COA apparently does not agree with the policy basis of NCC No. 53 in relation to CPG No. 80-4 since COA argues that loan proceeds regardless of source eventually become public funds for which the government is accountable. The result would be that any

provisions under any [foreign] loan agreement should be considered locally-funded. We do not consider that the COA is, under its constitutional mandate, authorized to substitute its own judgment for any applicable law or administrative regulation with the wisdom or propriety of which, however, it does not agree, at least not before such law or regulation is set aside by the authorized agency of government — i.e., the courts — as unconstitutional or illegal and void. The COA, like all other government agencies, must respect the presumption of legality and constitutionality to which statutes and administrative regulations are entitled [26] until such statute or regulation is repealed or amended, or until set aside in an appropriate case by a competent court (and ultimately this Court).

Finally, we turn to petitioner's claim for moral damages and reimbursement of legal expenses. We consider that this claim cannot be granted as petitioner has failed to present evidence of bad faith or tortious intent warranting an award thereof. The presumption of regularity in the performance of duty must be accorded to respondent COA; its action should be seen as its effort to exercise (albeit erroneously, in the case at bar) its constitutional power and duty in respect of uses of government funds and properties.

WHEREFORE, for all the foregoing, the Petition for *Certiorari* is hereby GRANTED. COA Decisions Nos. 1547 and 2571, respectively dated 18 September 1990 and 16 November 1992, are hereby SET ASIDE. The instant evaluation project being a Foreign-Assisted Project, the following PSU personnel involved in the project shall be paid according to the Budget Estimate schedule of the MOA as aligned with NCC No. 53:

A. A. For Experts

Expert	Duration of Service	Rate/ month	Total (NCC No. 53)
1. Dr. Rufino O. Eslao	Policy/Admi-nistrative expert*-	4 (mo.)	P2,000 P8,000
2. Dr. Victorino P. Espero	Ecologist**	4	1,500 6,000
3. Dean Antonio Q. Repollo	Silvicul-turist***	3	1,000 3,000
4. Prof. Artemio M. Rebugio	Forestry Economist	4	1,000 4,000
5. Ms. Naomenida Olermo	Soils Expert	2	1,000 2,000
6. Dr. Elvira R. Castillo	Social Forestry Expert	4	1,000 4,000
7. Dr. Alfredo F. Aquino	Management Expert	2	1,000 2,000
8. Dr. Lydio Calonge	Horticul turist	2	1,000 2,000
9. Engr. Manolito Bernabe	Agricultural Engineer	2	1,000 2,000
10. Prof. Rolando J. Andico	Systems Analysts/ Programmer	2	1,000 2,000
11. Dr. Eusebio Miclat, Jr.	Statistician	2	1,000 2,000
12. Dr. Porferio Basilio	Shoreline Resources Expert	2	1,000 2,000
13. Dr. Elmer C. Vingua	Animal Science Specialist	2	1,000 2,000
			41,000

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* Project Manager/ Project Director
** Assistant Project Director
*** Project Consultants

B. For Support Staff

Expert	Duration of Service	Rate/ month	Total (NCC No. 53)
1 Henedina M. Tantoco	Research Associate**	4	700 2,800
2 Alicia Angelo	Research	4	700 2,800

3 Yolanda Z. Sotelo Documentalist 2.04 700 1,428
4 Gregoria Q. Calela Special 4 700 2,800
Disbursing
Officer
5 Nora A. Caburnay Typist 2.27 500 1,135
6 Marlene S. Bernebe Cashier 2.27 500 1,135

_____
12,098

* Per Attachment to DBM Clarification dated 10 November 1989, *Rollo*, p. 59.
** Staff Member
*** Administrative Assistants.

No pronouncement as to costs.

SO ORDERED.

Narvasa, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan and Mendoza, JJ., concur.

Cruz, Bidin, on leave.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. Nos. L-8895 and L-9191 April 30, 1957

SALVADOR A. ARANETA, ETC., ET AL., petitioners,
vs.
THE HON. MAGNO S. GATMAITAN, ETC., ET AL., respondents.

EXEQUIEL SORIANO, ET AL., petitioners-appellees,
vs.
SALVADOR ARANETA, ETC., ET AL., respondents-appellants.

Office of the Solicitor General Ambrosio Padilla, Assistant Solicitor General Jose G. Bautista and Solicitor Troadio T. Quiazon for petitioners.
San Juan, Africa and Benedicto for respondents.

FELIX, *J.*:

San Miguel Bay, located between the provinces of Camarines Norte and Camarines Sur, a part of the National waters of the Philippines with an extension of about 250 square miles and an average depth of approximately 6 fathoms (Otter trawl explorations in Philippine waters p. 21, Exh. B), is considered as the most important fishing area in the Pacific side of the Bicol region. Sometime in 1950, trawl[1] operators from Malabon, Navotas and other places migrated to this region most of them settling at Sabang, Calabanga, Camarines Sur, for the purpose of using this particular method of fishing in said bay. On account of the belief of sustenance fishermen that the operation of this kind of gear caused the depletion of the marine resources of that area, there arose a general clamor among the majority of the inhabitants of coastal towns to prohibit the operation of trawls in San Miguel Bay. This move was manifested in the resolution of December 18, 1953 (Exh. F), passed by the Municipal Mayors' League condemning the operation of trawls as the cause of the wanton destruction of the shrimp specie and resolving to petition the President of the Philippines to regulate fishing in San Miguel Bay by declaring it closed for trawl fishing at a certain period of the year. In another resolution dated March 27, 1954, the same League of Municipal Mayor, prayed the President to protect them and the fish resources of San Miguel Bay by banning the operation of trawls therein (Exh. 4). The Provincial Governor also made proper presentations to this effect and petitions in behalf of the non-trawl fishermen were likewise presented to the President by social and civic organizations as the NAMFREL (National Movement for Free Elections) and the COMPADRE (Committee for Philippine Action in Development, Reconstruction and Education), recommending the cancellation of the licenses of trawl operators after investigation, if such inquiry would substantiate the charges that the operation of said fishing method was detrimental to the welfare of the majority of the inhabitants (Exh. 2).

In response to these pleas, the President issued on April 5, 1954, Executive Order No. 22 (50 Off. Gaz., 1421) prohibiting the use of trawls in San Miguel Bay, but said executive order was amended by Executive Order No. 66, issued on September 23, 1954 (50 Off. Gaz., 4037), apparently in answer to a resolution of the Provincial Board of Camarines Sur recommending the allowance of trawl fishing during the typhoon season only. On November 2, 1954, however, Executive Order No. 80 (50 Off. Gaz., 5198) was issued reviving Executive Order No. 22, to take effect after December 31, 1954.

A group of Otter trawl operators took the matter to the court by filing a complaint for injunction and/or declaratory relief with preliminary injunction with the Court of First Instance of Manila, docketed as Civil Case No. 24867, praying that a writ of preliminary injunction be issued to restrain the Secretary of Agriculture and Natural Resources and the Director of Fisheries from enforcing said executive order; to declare the same null and void, and for such other relief as may be just and equitable in the premises.

The Secretary of Agriculture and Natural Resources and the Director of Fisheries, represented by the Legal Adviser of said Department and a Special Attorney of the Office of the Solicitor General, answered the complaint alleging, among other things, that of the 18 plaintiff (Exequiel Soriano, Teodora Donato, Felipe Concepcion, Venancio Correa, Santo Gaviana, Alfredo General, Constancio Gutierrez, Arsenio de Guzman, Pedro Lazaro, Porfirio Lazaro, Deljie de Leon, Jose Nepomuceno, Bayani Pingol, Claudio Salgado, Porfirio, San Juan, Luis Sioco, Casimiro Villar and Enrique Voluntad), only 11 were issued license to operate fishing boats for the year 1954 (Annex B, petition — L-8895); that the executive orders in question were issued accordance with law; that the encouragement by the Bureau of Fisheries of the use of Otter trawls should not be construed to mean that the general welfare of the public could be disregarded, and set up the defenses that since plaintiffs question the validity of the executive orders issued by the President, then the Secretary of Agriculture and Natural Resources and the Director of Fisheries were not the real parties in interest; that said executive orders do not constitute a deprivation of property without due process of law, and therefore prayed that the complaint be dismissed (Exh. B, petition, L-8895).

During the trial of the case, the Governor of Camarines Sur appearing for the municipalities of Siruma, Tinambac, Calabanga, Cabusao and Sipocot, in

said province, called the attention of the Court that the Solicitor General had not been notified of the proceeding. To this manifestation, the Court ruled that in view of the circumstances of the case, and as the Solicitor General would only be interested in maintaining the legality of the executive orders sought to be impugned, section 4 of Rule 66 could be interpreted to mean that the trial could go on and the Solicitor General could be notified before judgement is entered.

After the evidence for both parties was submitted and the Solicitor General was allowed to file his memorandum, the Court rendered decision on February 2, 1955, the last part of which reads as follows:

The power to close any definite area of the Philippine waters, from the fact that Congress has seen fit to define under what conditions it may be done by the enactment of the sections cited, in the mind of Congress must be of transcendental significance. It is primarily within the fields of legislation not of execution: for it goes far and says who can and who can not fish in definite territorial waters. The court can not accept that Congress had intended to abdicate its inherent right to legislate on this matter of national importance. To accept respondents' view would be to sanction the exercise of legislative power by executive decrees. If it is San Miguel Bay now, it may be Davao Gulf tomorrow, and so on. That may be done only by Congress. This being the conclusion, there is hardly need to go any further. Until the trawler is outlawed by legislative enactment, it cannot be banned from San Miguel Bay by executive proclamation. The remedy for respondents and population of the coastal towns of Camarines Sur is to go to the Legislature. The result will be to issue the writ prayed for, even though this be to strike at public clamor and to annul the orders of the President issued in response therefor. This is a task unwelcome and unpleasant; unfortunately, courts of justice use only one measure for both the rich and poor, and are not bound by the more popular cause when they give judgments.

IN VIEW WHEREOF, granted; Executive Order Nos. 22, 66 and 80 are declared invalid; the injunction prayed for is ordered to issue; no pronouncement as to costs.

Petitioners immediately filed an ex-parte motion for the issuance of a writ of injunction which was opposed by the Solicitor General and after the parties had filed their respective memoranda, the Court issued an order dated February 19, 1955, denying respondents' motion to set aside judgement and ordering them to file a bond in the sum of P30,000 on or before March 1, 1955, as a condition for the non-issuance of the injunction prayed for by petitioners pending appeal. The Solicitor General filed a motion for reconsideration which was denied for lack of merit, and the Court, acting upon the motion for new trial filed by respondents, issued another order on March 3, 1965, denying said motion and granting the injunction prayed for by petitioners upon the latter's filing a bond for P30,000 unless respondents could secure a writ of preliminary injunction from the Supreme Court on or before March 15, 1955. Respondents, therefore, brought the matter to this Court in a petition for prohibition and *certiorari* with preliminary injunction, docketed as G.R. No. L-8895, and on the same day filed a notice to appeal from the order of the lower court dated February 2, 1955, which appeal was docketed in this Court as G.R. No. L-9191.

In the petition for prohibition and *certiorari*, petitioners (respondents therein) contended among other things, that the order of, the respondent Judge requiring petitioners Secretary of Agriculture and Natural Resources and the Director of Fisheries to post a bond in the sum of P30,000 on or before March 1, 1955, had been issued without jurisdiction or in excess thereof, or at the very least with grave abuse of discretion, because by requiring the bond, the Republic of the Philippines was in effect made a party defendant and therefore transformed the suit into one against the Government which is beyond the jurisdiction of the respondent Judge to entertain; that the failure to give the Solicitor General the opportunity to defend the validity of the challenged executive orders resulted in the receipt of objectionable matters at the hearing; that Rule 66 of the Rules of Court does not empower a court of law to pass upon the validity of an executive order in a declaratory relief proceeding; that the respondent Judge did not have the power to grant the injunction as Section 4 of Rule 39 does not apply to declaratory relief proceedings but only to injunction, receivership and patent accounting proceedings; and prayed that a writ of preliminary injunction be issued to enjoin the respondent Judge from enforcing its order of March 3, 1955, and for such other relief as may be deem just and equitable in the premises. This petition was given due course and the hearing on the merits was set by this Court for April 12, 1955, but no writ of preliminary injunction was issued.

Meanwhile, the appeal (G.R. No. L-9191) was heard on October 3, 1956, wherein respondents-appellants ascribed to the lower court the commission of the following errors:

1. In ruling that the President has no authority to issue Executive Orders Nos. 22, 66 and 80 banning the operation of trawls in San Miguel Bay;

2. In holding that the power to declare a closed area for fishing purposes has not been delegated to the President of the Philippines under the Fisheries Act;

3. In not considering Executive Orders Nos. 22, 66 and 80 as declaring a closed season pursuant to Section 7, Act 4003, as amended, otherwise known as the Fisheries Act;

4. In holding that to uphold the validity of Executive Orders Nos. 22 and 80 would be to sanction the exercise of legislative power by executive decrees;

5. In its suggestion that the only remedy for respondents and the people of the coastal towns of Camarines Sur and Camarines Norte is to go to the Legislature; and

6. In declaring Executive Orders Nos. 22, 66 and 80 invalid and in ordering the injunction prayed for to issue.

As Our decision in the prohibition and *certiorari* case (G.R. No. L-8895) would depend, in the last analysis, on Our ruling in the appeal of the respondents in case G.R. No. L-9191, We shall first proceed to dispose of the latter case.

It is indisputable that the President issued Executive Orders Nos. 22, 66 and 80 in response to the clamor of the inhabitants of the municipalities along the coastline of San Miguel Bay. They read as follows:

EXECUTIVE ORDER No. 22

PROHIBITING THE USE OF TRAWLS IN SAN MIGUEL BAY

In order to effectively protect the municipal fisheries of San Miguel Bay, Camarines Norte and Camarines Sur, and to conserve fish and other aquatic resources of the area, I, RAMON MAGSAYSAY, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that:

1. Fishing by means of trawls (utase, otter and/or perenzella) of any kind, in the waters comprised within San Miguel Bay, is hereby prohibited.

2. Trawl shall mean, for the purpose of this Order, a fishing net made in the form of a bag with the mouth kept open by a device, the whole affair being towed, dragged, trailed or trawled on the bottom of the sea to capture demersal, ground or bottom species.

3. Violation of the provisions of this Order shall subject the offender to the penalty provided under Section 83 of Act 4993, or more than six months, or both, in the discretion of the Court.

Done in the City of Manila, this 5th day of April, nineteen hundred and fifty-four and of the Independence of the Philippines, the eighth. (50 Off. Gaz. 1421)

EXECUTIVE ORDER No. 66

AMENDING EXECUTIVE ORDER No. 22, DATED APRIL 5, 1954, ENTITLED "PROHIBITING THE USE OF TRAWLS IN SAN MIGUEL BAY"

By virtue of the powers voted in me by law, I, RAMON MAGSAYSAY, President of the Philippines, do hereby amend Executive Order No. 22, dated April 5, 1954, so as to allow fishing by means of trawls, as defined in said Executive Order, within that portion of San Miguel Bay north of a straight line drawn from Tacubtacuban Hill in the Municipality of Tinambac, Province of Camarines Sur. Fishing by means of trawls south of said line shall still be absolutely prohibited.

Done in the City of Manila, this 23rd day of September, in the year of our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth." (50 Off. Gaz. 4037).

EXECUTIVE ORDER No. 80.

FURTHER AMENDING EXECUTIVE ORDER No. 22, DATED APRIL 5, 1954, AS AMENDED BY EXECUTIVE ORDER No. 66, DATED SEPTEMBER 23, 1954.

By virtue of the powers vested in me by law, I, RAMON MAGSAYSAY, President of the Philippines, do hereby amend Executive Order No. 66 dated September 23, 1954, so as to allow fishing by means of trawls, as defined in Executive Order No. 22, dated April 5, 1954, within the portion of San Miguel

Bay North of a straight line drawn from Tacubtacuban Hill in the Municipality of Mercedes, Province of Camarines Norte to Balocbaloc Point in the Municipality of Tinambac, Province of Camarines Sur, until December 31, 1954, only.

Thereafter, the provisions of said Executive Order No. 22 absolutely prohibiting fishing by means of trawls in all the waters comprised within the San Miguel Bay shall be revived and given full force and effect as originally provided therein.

Done in the City of Manila, this 2nd day of November, in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the ninth. (50 Off. Gaz. 5198)

It is likewise admitted that petitioners assailed the validity of said executive orders in their petition for a writ of injunction and/or declaratory relief filed with the Court of First Instance of Manila, and that the lower court, upon declaring Executive Orders Nos. 22, 66 and 80 invalid, issued an order requiring the Secretary of Agriculture and Natural Resources and the Director of Fisheries to post a bond for P30,000 if the writ of injunction restraining them from enforcing the executive orders in question must be stayed.

The Solicitor General avers that the constitutionality of an executive order cannot be ventilated in a declaratory relief proceeding. We find this untenable, for this Court taking cognizance of an appeal from the decision of the lower court in the case of *Hilado vs. De la Costa, et al*., 83 Phil., 471, which involves the constitutionality of another executive order presented in an action for declaratory relief, in effect accepted the propriety of such action.

This question being eliminated, the main issues left for Our determination with respect to defendants' appeal (G.R. No. L-9191), are:

(1) Whether the Secretary of an Executive Department and the Director of a Bureau, acting in their capacities as such Government officials, could lawfully be required to post a bond in an action against them;

(2) Whether the President of the Philippines has authority to issue Executive Orders Nos. 22, 66 and 80, banning the operation of trawls in San Miguel Bay, or, said in other words, whether said Executive Orders Nos. 22, 66 and 80 were issued in accordance with law; and.

(3) Whether Executive Orders Nos. 22, 66 and 80 were valid, for the issuance thereof was not in the exercise of legislative powers unduly delegated to the President.

Counsel for both parties presented commendable exhaustive defenses in support of their respective stands. Certainly, these cases deserve such efforts, not only because the constitutionality of an act of a coordinate branch in our tripartite system of Government is in issue, but also because of the number of inhabitants, admittedly classified as "subsistence fishermen", that may be affected by any ruling that We may promulgate herein.

I. As to the first proposition, it is an elementary rule of procedure that an appeal stays the execution of a judgment. An exception is offered by section 4 of Rule 39 of the Rules of Court which provides that:

SEC. 4. INJUNCTION, RECEIVERSHIP AND PATENT ACCOUNTING, NOT STAYED. — Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letter patent, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgement granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of an appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party.

This provision was the basis of the order of the lower court dated February 19, 1955, requiring the filing by the respondents of a bond for P30,000 as a condition for the non-issuance of the injunction prayed for by plaintiffs therein, and which the Solicitor General charged to have been issued in excess of jurisdiction. The State's counsel, however, alleges that while judgment could be stayed in injunction, receivership and patent accounting cases and although the complaint was styled "Injunction, and/or Declaratory Relief with Preliminary Injunction", the case is necessarily one for declaratory relief, there being no allegation sufficient to convince the Court that the plaintiffs intended it to be one for injunction. But aside from the title of the complaint, We find that plaintiffs pray for the declaration of the nullity

of Executive Order Nos. 22, 66 and 80; the issuance of a writ of preliminary injunction, and for such other relief as may be deemed just and equitable. This Court has already held that there are only two requisites to be satisfied if an injunction is to issue, namely, the existence of the right sought to be protected, and that the acts against which the injunction is to be directed are violative of said right (North Negros Sugar Co., Inc. *vs.* Serafin Hidalgo, 63 Phil., 664). There is no question that at least 11 of the complaining trawl operators were duly licensed to operate in any of the national waters of the Philippines, and it is undeniable that the executive enactment's sought to be annulled are detrimental to their interests. And considering further that the granting or refusal of an injunction, whether temporary or permanent, rests in the sound discretion of the Court, taking into account the circumstances and the facts of the particular case (Rodulfa *vs.* Alfonso, 76 Phil,, 225, 42 Off. Gaz., 2439), We find no abuse of discretion when the trial Court treated the complaint as one for injunction and declaratory relief and executed the judgment pursuant to the provisions of section 4 of Rule 39 of the Rules of Court.

On the other hand, it shall be remembered that the party defendants in Civil Case No. 24867 of the Court of First Instance of Manila are Salvador Araneta, as Secretary of Agriculture and Natural Resources, and, Deogracias Villadolid, as Director of Fisheries, and were sued in such capacities because they were the officers charged with duty of carrying out the statutes, orders and regulations on fishing and fisheries. In its order of February 19, 1955, the trial court denied defendants' motion to set aside judgment and they were required to file a bond for P30,000 to answer for damages that plaintiffs were allegedly suffering at that time, as otherwise the injunction prayed for by the latter would be issued.

Because of these facts, We agree with the Solicitor General when he says that the action, being one against herein petitioners as such Government officials, is essentially one against the Government, and to require these officials to file a bond would be indirectly a requirement against the Government for as regards bonds or damages that may be proved, if any, the real party in interest would be the Republic of the Philippines (L. S. Moon and Co.*vs.* Harrison, 43 Phi., 39; Salgado *vs.* Ramos, 64 Phil., 724-727, and others). The reason for this pronouncement is understandable; the State undoubtedly is always solvent (Tolentino *vs.* Carlos 66 Phil., 140; Government of the P. I. *vs.* Judge of the Court of First Instance of Iloilo, 34 Phil., 167, cited in Joaquin Gutierrez et al. *vs.* Camus et al. * G.R. No. L-6725, promulgated October 30, 1954). However, as the records show that herein petitioners failed to put up the bond required by the lower court, allegedly due to difficulties encountered with the Auditor General's Office (giving the impression that they were willing to put up said bond but failed to do so for reasons beyond their control), and that the orders subjects of the prohibition and *certiorari* proceedings in G.R. No. L-8895, were enforced, if at all,[2] in accordance with section 4 of Rule 39, which We hold to be applicable to the case at bar, the issue as to the regularity or adequacy of requiring herein petitioners to post a bond, becomes moot and academic.

II. Passing upon the question involved in the second proposition, the trial judge extending the controversy to the determination of which between the Legislative, and Executive Departments of the Government had "the power to close any definite area of the Philippine waters" instead of limiting the same to the real issue raised by the enactment of Executive Orders No. 22, 26 and 80, especially the first and the last "*absolutely prohibiting fishing by means trawls* in all the waters comprised within the San Miguel Bay", ruled in favor of Congress had not intended to abdicate its power to legislate on the matter, he maintained as stated before, that "until the trawler is outlawed by legislative enactment, it cannot be banned from San Miguel Bay by executive proclamation", and that "the remedy for respondents and population of the coastal towns of Camarines Sur is to go to Legislature," and thus declared said Executive Orders Nos. 22, 66 and 80 invalid".

The Solicitor General, on the contrary, asserts that the President is empowered by law to issue the executive enactment's in question.

Sections 6, 13 and 75 of Act No. 4003, known as the Fisheries Law, the latter two sections as amended by section 1 of Commonwealth Act No. 471, read as follows:

SEC. 6. WORDS AND PHRASES DEFINED. —Words and terms used in this Act shall be construed as follows:

x x x x x x x x x

TAKE or TAKING includes pursuing, shooting, killing, capturing, trapping, snaring, and netting fish and other aquatic animals, and all lesser acts, such as *disturbing*, wounding, stupefying; or placing, setting, drawing, or using

any net or other device commonly used to take or collect fish and other aquatic animals,*whether they result in taking or not*, and includes every attempt to take and every act of assistance to every other person in taking or attempting to take or collect fish and other aquatic animals: PROVIDED, That whenever taking is allowed by law, reference is had to taking by lawful means and in lawful manner.

x x x x x x x x x

SEC. 13. PROTECTION OF FRY OR FISH EGGS. — Except for scientific or educational purpose or for propagation, *it shall be unlawful* to take or catch fry or fish eggs and the small fish, not more than three (3) centimeters long, known as *siliniasi*, in the territorial waters of the Philippines. *Towards this end, the Secretary of Agriculture and Commerce shall be authorized to provide by regulations such restrictions as may be deemed necessary to be imposed on THE USE OF ANY FISHING NET OR FISHING DEVICE FOR THE PROTECTION OF FRY OR FISH EGGS; Provided, however*, That the Secretary of Agriculture and Commerce shall permit the taking of young of certain species of fish known as hipon under such restrictions as may be deemed necessary.

SEC. 75. FISH REFUGEES AND SANCTUARIES. — Upon the recommendation of the officer or chief of the bureau, office or service concerned, the Secretary of Agriculture and Commerce may set aside and establish fishery reservation or fish refuges and sanctuaries to be administered in the manner to be prescribed by him. All streams, ponds and waters within the game refuge, birds, sanctuaries, national parks, botanical gardens, communal forest and communal pastures are hereby declared fishing refuges and sanctuaries. *It shall be unlawful for any person, to take, destroy or kill in any of the places aforementioned, or in any manner disturb or drive away or take therefrom, any fish fry or fish eggs*.

Act No. 4003 further provides as follows:

SEC. 83. OTHER VIOLATIONS. — Any other violation of the provisions of this Act or any rules and regulations promulgated thereunder shall subject the offender to a fine of not more than two hundred pesos, or imprisonment for not more than six months, or both, in the discretion of the Court.

As may be seen from the just quoted provisions, the law declares unlawful and fixes the penalty for the taking (except for scientific or educational purposes or for propagation), destroying or killing of any fish fry or fish eggs, and the Secretary of Agriculture and Commerce (now the Secretary of Agriculture and Natural Resources) is authorized to promulgate regulations restricting the use of any fish net or fishing device (which includes the net used by trawl fishermen) for the protection of fry or fish eggs, as well as to set aside and establish fishery reservations or fish refuges and sanctuaries to be administered in the manner prescribed by him, from which no person could lawfully take, destroy or kill in any of the places aforementioned, or in any manner disturb or drive away or take therefrom any small or immature fish, fry or fish eggs. It is true that said section 75 mentions certain streams, ponds and waters *within* the game refuges, . . . communal forest, etc., which the law itself declares fish refuges and sanctuaries, but this enumeration of places does not curtail the general and unlimited power of the Secretary of Agriculture and Natural Resources in the first part of section 75, to set aside and establish fishery reservations or fish refuges and sanctuaries, which naturally include seas or bays, like the San Miguel Bay in Camarines.

From the resolution passed at the Conference of Municipal Mayors held at Tinambac, Camarines Sur, on December 18, 1953 (Exh. F), the following manifestation is made:

WHEREAS, the continuous operation of said trawls even during the close season as specified in said Executive Order No. 20 caused the wanton destruction of the mother shrimps laying their eggs and the millions of eggs laid and the inevitable extermination of the shrimps specie; in order to save the shrimps specie from eventual extermination and in order to conserve the shrimps specie for posterity;

In the brief submitted by the NAMFREL and addressed to the President of the Philippines (Exh. 2), in support of the petition of San Miguel Bay fishermen (allegedly 6, 175 in number), praying that trawlers be banned from operating in San Miguel Bay, it is stated that:

The trawls ram and destroy the fish corrals. The heavy trawl nets dig deep into the ocean bed. They destroy the fish foods which lies below the ocean floor. Their daytime catches net millions of shrimps scooped up from the mud. In their nets they bring up the life of the sea: algea, shell fish and star fish . . .

The absence of some species or the apparent decline in the catch of some fishermen operating in the bay may be due to several factors, namely: the *indiscriminate catching of fry and immature sizes of fishes*, the wide-spread use of explosives inside as well as at the mouth and approaches of the bay, *and the extensive operation of* the trawls. (p.9, Report of Santos B. Rasalan, Exh. A)

Extensive Operation of Trawls: — The strenuous effect of the operations of the 17 *TRAWLS of the demersal fisheries of San Miguel Bay* is better appreciated when we consider the fact that out of its about 850 square kilometers area, only about 350 square kilometers of 5 fathoms up could be trawled. With their continuous operation, is greatly strained. This is shown by the fact that in view of the non-observance of the close season from May to October, each year, *majority of their catch are immature*. If their operation would continue unrestricted, the supply would be greatly depleted. (p. 11), Report of Santos B. Rasalan, Exh. A)

San Miguel Bay — *can sustain 3 to 4 small trawlers* (Otter Trawl Explorations in Philippine Waters, Research Report 25 of the Fish and Wildlife Service, United States Department of the Interior, p. 9 Exhibit B).

According to Annex A of the complaint filed in the lower court in Civil Case No. 24867 — G.R. No. L-9191 (Exh. D, p. 53 of the folder of Exhibits), the 18 plaintiffs-appellees operate 29 trawling boats, and their operation must be in a big scale considering the investments plaintiffs have made therefore, amounting to P387,000 (Record on Appeal, p. 16-17).

In virtue of the aforementioned provisions of law and the manifestation just copied, We are of the opinion that with or without said Executive Orders, the restriction and banning of trawl fishing from all Philippine waters come, under the law, within the powers of the Secretary of Agriculture and Natural Resources, who in compliance with his duties may even cause the criminal prosecution of those who in violation of his instructions, regulations or orders are caught fishing with trawls in the Philippine waters.

Now, if under the law the Secretary of Agriculture and Natural Resources has authority to regulate or ban the fishing by trawl which, it is claimed, obnoxious for it carries away fish eggs and fry's which should be preserved, can the President of the Philippines exercise that same power and authority? Section 10(1), Article VII of the Constitution of the Philippines prescribes:

SEC. 10 (1). The President shall have *control* of all the executive departments, bureaus or offices, exercises general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

Section 63 of the Revised Administrative Code reads as follows:

SEC. 63. EXECUTIVE ORDERS AND EXECUTIVE PROCLAMATION. — Administrative acts and commands of the President of the Philippines touching the organization or mode of operation of the Government or rearranging or readjusting any of the district, divisions, parts or ports of the Philippines, and all acts and commands *governing the general performance of duties by public employees or disposing of issues of general concern shall be made in executive orders*.

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Regarding department organization Section 74 of the Revised Administrative Code also provides that:

All executive functions of the government of the Republic of the Philippines shall be directly under the Executive Departments subject to the supervision and control of the President of the Philippines in matters of general policy. The Departments are established for the proper distribution of the work of the Executive, for the performance of the functions expressly assigned to them by law, and in order that each branch of the administration may have a chief responsible for its direction and policy. Each Department Secretary shall assume the burden of, and responsibility for, all activities of the Government *under his control and supervision*.

For administrative purposes the President of the Philippines shall be considered the Department Head of the Executive Office.

One of the executive departments is that of Agriculture and Natural Resources which by law is placed under the direction and control of the Secretary, who exercises its functions subject to the general supervision and control of the President of the Philippines (Sec. 75, R. A. C.). Moreover, "executive orders, regulations, decrees and proclamations relative to matters under the supervision or jurisdiction of a Department, the promulgation whereof is expressly assigned by law to the President of the Philippines,

shall as a general rule, be issued upon proposition and recommendation of the respective Department" (Sec. 79-A, R.A.C.), and there can be no doubt that the promulgation of the questioned Executive Orders was upon the proposition and recommendation of the Secretary of Agriculture and Natural Resources and that is why said Secretary, who was and is called upon to enforce said executive Orders, was made a party defendant in one of the cases at bar (G.R. No. L-9191).

For the foregoing reasons We do hesitate to declare that Executive Orders Nos. 22, 66 and 80, series of 1954, of the President, are valid and issued by authority of law.

III. But does the exercise of such authority by the President constitute and undue delegation of the powers of Congress?

As already held by this Court, the true distinction between delegation of the power to legislate and the conferring of authority or discretion as to the execution of law consists in that the former necessary involves a discretion as to what the law shall be, wile 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 (Cruz *vs.*Youngberg, 56 Phil., 234, 239. See also Rubi, et al. *vs.* The Provincial Board of Mindoro, 39 Phil., 660).

In the case of *U. S. vs. Ang Tang Ho*, 43 Phil. 1, We also held:

THE POWER TO DELEGATE. — The Legislature cannot delegate legislative power to enact any law. If Act No. 2868 is a law unto itself, and it does nothing more than to authorize the Governor-General to make rules and regulations to carry it into effect, then the Legislature created the law. There is no delegation of power and it is valid. On the other hand, if the act within itself does not define a crime and is not complete, and some legislative act remains to be done to make it a law or a crime, the doing of which is vested in the Governor-General, the act is delegation of legislative power, is unconstitutional and void.

From the provisions of Act No. 4003 of the Legislature, as amended by Commonwealth Act No. 471, which have been aforequoted, We find that Congress (a) declared it unlawful "to take or catch fry or fish eggs in the territorial waters of the Philippines; (b) towards this end, it authorized the Secretary of Agriculture and Natural Resources to provide by the regulations such restrictions as may be deemed necessary to be imposed *on the use of any fishing net or fishing device for the protection of fish fry or fish eggs* (Sec. 13); (c) it authorized the Secretary of Agriculture and Natural Resources to set aside and establish fishery reservations or fish refuges and sanctuaries to be administered in the manner to be prescribed by him and *declared it unlawful for any person to take, destroy or kill in any of said places, or, in any manner disturb or drive away or take therefrom, any fish fry or fish eggs*(See. 75); and (d) it penalizes the execution of such acts declared unlawful and in violation of this Act (No. 4003) or of any rules and regulations promulgated thereunder, making the offender subject to a fine of not more than P200, or imprisonment for not more than 6 months, or both, in the discretion of the court (Sec. 83).

From the foregoing it may be seen that in so far as the protection of fish fry or fish egg is concerned, the Fisheries Act is complete in itself, leaving to the Secretary of Agriculture and Natural Resources the promulgation of rules and regulations to carry into effect the legislative intent. It also appears from the exhibits on record in these cases that fishing with trawls causes "a wanton destruction of the mother shrimps laying their eggs and the millions of eggs laid and the inevitable extermination of the shrimps specie" (Exh. F), and that, "the trawls ram and destroy the fish corrals. The heavy trawl nets dig deep into the ocean bed. They destroy the fish food which lies below the ocean floor. Their daytime catches net millions of shrimps scooped up from the mud. In their nets they bring up the life of the sea" (Exh- 2).

In the light of these facts it is clear to Our mind that for the protection of fry or fish eggs and small and immature fishes, Congress intended with the promulgation of Act No. 4003, to prohibit the use of any fish net or fishing device like trawl nets that could endanger and deplete our supply of sea food, and to that end authorized the Secretary of Agriculture and Natural Resources to provide by regulations such restrictions as he deemed necessary in order to preserve the aquatic resources of the land. Consequently, when the President, in response to the clamor of the people and authorities of Camarines Sur issued Executive Order No. 80 absolutely prohibiting fishing by means of trawls in all waters comprised within the San Miguel Bay, he did nothing but show an anxious regard for the welfare of the inhabitants of said coastal province and dispose of issues of general

concern (Sec. 63, R.A.C.) which were in consonance and strict conformity with the law.

Wherefore, and on the strength of the foregoing considerations We render judgement, as follows:

(a) Declaring that the issues involved in case G.R. No. L-8895 have become moot, as no writ of preliminary injunction has been issued by this Court the respondent Judge of the Court of First Instance of Manila Branch XIV, from enforcing his order of March 3, 1955; and

(b) Reversing the decision appealed from in case G. R. No. L-9191; dissolving the writ of injunction prayed for in the lower court by plaintiffs, if any has been actually issued by the court *a quo*; and declaring Executive Orders Nos. 22, 66 and 80, series of 1954, valid for having been issued by authority of the Constitution, the Revised Administrative Code and the Fisheries Act.

Without pronouncement as to costs. It is so ordered.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-32166 October 18, 1977

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant,
vs.
HON. MAXIMO A. MACEREN CFI, Sta. Cruz, Laguna, JOSE BUENAVENTURA, GODOFREDO REYES, BENJAMIN REYES, NAZARIO AQUINO and CARLO DEL ROSARIO, accused-appellees.

Office of the Solicitor General for appellant.

Rustics F. de los Reyes, Jr. for appellees.

AQUINO, *J.:têñ.£îhqwâ£*

This is a case involving the validity of a 1967 regulation, penalizing electro fishing in fresh water fisheries, promulgated by the Secretary of Agriculture and Natural Resources and the Commissioner of Fisheries under the old Fisheries Law and the law creating the Fisheries Commission.

On March 7, 1969 Jose Buenaventura, Godofredo Reyes, Benjamin Reyes, Nazario Aquino and Carlito del Rosario were charged by a Constabulary investigator in the municipal court of Sta. Cruz, Laguna with having violated Fisheries Administrative Order No. 84-1.

It was alleged in the complaint that the five accused in the morning of March 1, 1969 resorted to electro fishing in the waters of Barrio San Pablo Norte, Sta. Cruz by "using their own motor banca, equipped with motor; with a generator colored green with attached dynamo colored gray or somewhat white; and electrocuting device locally known as sensored with a somewhat webbed copper wire on the tip or other end of a bamboo pole with electric wire attachment which was attached to the dynamo direct and with the use of these devices or equipments catches fish thru electric current, which destroy any aquatic animals within its cuffed reach, to the detriment and prejudice of the populace" (Criminal Case No. 5429).

Upon motion of the accused, the municipal court quashed the complaint. The prosecution appealed. The Court of First Instance of Laguna affirmed the order of dismissal (Civil Case No. SC-36). The case is now before this Court on appeal by the prosecution under Republic Act No. 5440.

The lower court held that electro fishing cannot be penalize because electric current is not an obnoxious or poisonous substance as contemplated in section I I of the Fisheries Law and that it is not a substance at all but a form of energy conducted or transmitted by substances. The lower court further held that, since the law does not clearly prohibit electro fishing, the executive and judicial departments cannot consider it unlawful.

As legal background, it should be stated that section 11 of the Fisheries Law prohibits "the use of any obnoxious or poisonous substance" in fishing.

Section 76 of the same law punishes any person who uses an obnoxious or poisonous substance in fishing with a fine of not more than five hundred pesos nor more than five thousand, and by imprisonment for not less than six months nor more than five years.

It is noteworthy that the Fisheries Law does not expressly punish .electro fishing." Notwithstanding the silence of the law, the Secretary of Agriculture and Natural Resources, upon the recommendation of the Commissioner of Fisheries, promulgated Fisheries Administrative Order No. 84 (62 O.G. 1224), prohibiting electro fishing in all Philippine waters. The order is quoted below: *ñé+.£ªwph!1*

SUBJECT: PROHIBITING ELECTRO FISHING IN ALL WATERS *ñé+.£ªwph!1*

OF THE PHILIPPINES.

Pursuant to Section 4 of Act No. 4003, as amended, and Section 4 of R.A. No. 3512, the following rules and regulations regarding the prohibition of electro fishing in all waters of the Philippines are promulgated for the information and guidance of all concerned.*ñé+.£ªwph!1*

SECTION 1. — *Definition*. — Words and terms used in this Order 11 construed as follows:

(a) Philippine waters or territorial waters of the Philippines' includes all waters of the Philippine Archipelago, as defined in the t between the United States and Spain, dated respectively the tenth of December, eighteen hundred ninety eight and the seventh of November, nineteen hundred. For the purpose of this order, rivers, lakes and other bodies of fresh waters are included.

(b) *Electro Fishing*. — Electro fishing is the catching of fish with the use of electric current. The equipment used are of many electrical devices which may be battery or generator-operated and from and available source of electric current.

(c) 'Persons' includes firm, corporation, association, agent or employee.

(d) 'Fish' includes other aquatic products.

SEC. 2. — *Prohibition*. — It shall be unlawful for any person to engage in electro fishing or to catch fish by the use of electric current in any portion of

the Philippine waters except for research, educational and scientific purposes which must be covered by a permit issued by the Secretary of Agriculture and Natural Resources which shall be carried at all times.

SEC. 3. — *Penalty*. — Any violation of the provisions of this Administrative Order shall subject the offender to a fine of not exceeding five hundred pesos (P500.00) or imprisonment of not extending six (6) months or both at the discretion of the Court.

SEC. 4. — *Repealing Provisions*. — All administrative orders or parts thereof inconsistent with the provisions of this Administrative Order are hereby revoked.

SEC. 5. — *Effectivity*. — This Administrative Order shall take effect six (60) days after its publication in the Office Gazette.

On June 28, 1967 the Secretary of Agriculture and Natural Resources, upon the recommendation of the Fisheries Commission, issued Fisheries Administrative Order No. 84-1, amending section 2 of Administrative Order No. 84, by restricting the ban against electro fishing to *fresh water fisheries* (63 O.G. 9963).

Thus, the phrase "in any portion of the Philippine waters" found in section 2, was changed by the amendatory order to read as follows: "in *fresh water fisheries* in the Philippines, such as rivers, lakes, swamps, dams, irrigation canals and other bodies of fresh water."

The Court of First Instance and the prosecution (p. 11 of brief) assumed that electro fishing is punishable under section 83 of the Fisheries Law (not under section 76 thereof), which provides that any other violation of that law "or of any rules and regulations promulgated thereunder shall subject the offender to a fine of not more than two hundred pesos (P200), or in t for not more than six months, or both, in the discretion of the court."

That assumption is incorrect because 3 of the aforequoted Administrative Order No. 84 imposes a fm of not exceeding P500 on a person engaged in electro fishing, which amount the 83. It seems that the Department of Fisheries prescribed their own penalty for swift fishing which penalty is less than the severe penalty imposed in section 76 and which is not Identified to the at penalty imposed in section 83.

Had Administrative Order No. 84 adopted the fighter penalty prescribed in on 83, then the crime of electro fishing would be within the *exclusive original jurisdiction* of the inferior court (Sec. 44 [f], Judiciary Law; People vs. Ragasi, L-28663, September 22,

We have discussed this pre point, not raised in the briefs, because it is obvious that the crime of electro fishing which is punishable with a sum up to P500, falls within the *concurrent original jurisdiction* of the inferior courts and the Court of First instance (People vs. Nazareno, L-40037, April 30, 1976, 70 SCRA 531 and the cases cited therein).

And since the instant case was filed in the municipal court of Sta. Cruz, Laguna, a provincial capital, the order of d rendered by that municipal court was directly appealable to the Court, not to the Court of First Instance of Laguna (Sec. 45 and last par. of section 87 of the Judiciary Law; Esperat vs. Avila, L-25992, June 30, 1967, 20 SCRA 596).

It results that the Court of First Instance of Laguna had no appellate jurisdiction over the case. Its order affirming the municipal court's order of dismissal is void for lack of motion. This appeal shall be treated as a direct appeal from the municipal court to this Court. (See People vs. Del Rosario, 97 Phil. 67).

In this appeal, the prosecution argues that Administrative Orders Nos. 84 and 84-1 were not issued under section 11 of the Fisheries Law which, as indicated above, punishes fishing by means of an obnoxious or poisonous substance. This contention is not well-taken because, as already stated, the Penal provision of Administrative Order No. 84 implies that electro fishing is penalized as a form of fishing by means of an obnoxious or poisonous substance under section 11.

The prosecution cites as the legal sanctions for the prohibition against electro fishing in fresh water fisheries (1) the rule-making power of the Department Secretary under section 4 of the Fisheries Law; (2) the function of the Commissioner of Fisheries to enforce the provisions of the Fisheries Law and the regulations Promulgated thereunder and to execute the rules and regulations consistent with the purpose for the creation of the Fisheries Commission and for the development of fisheries (Sec. 4[c] and [h] Republic Act No. 3512; (3) the declared national policy to encourage, Promote and conserve our fishing resources (Sec. 1, Republic Act No. 3512), and (4)

section 83 of the Fisheries Law which provides that "any other violation of" the Fisheries Law or of any rules and regulations promulgated thereunder "shall subject the offender to a fine of not more than two hundred pesos, or imprisonment for not more than six months, or both, in the discretion of the court."

As already pointed out above, the prosecution's reference to section 83 is out of place because the penalty for electro fishing under Administrative order No. 84 is not the same as the penalty fixed in section 83.

We are of the opinion that the Secretary of Agriculture and Natural Resources and the Commissioner of Fisheries exceeded their authority in issuing Fisheries Administrative Orders Nos. 84 and 84-1 and that those orders are not warranted under the Fisheries Commission, Republic Act No. 3512.

The reason is that the Fisheries Law does not expressly prohibit electro fishing. As electro fishing is not banned under that law, the Secretary of Agriculture and Natural Resources and the Commissioner of Fisheries are powerless to penalize it. In other words, Administrative Orders Nos. 84 and 84-1, in penalizing electro fishing, are devoid of any legal basis.

Had the lawmaking body intended to punish electro fishing, a penal provision to that effect could have been easily embodied in the old Fisheries Law.

That law punishes (1) the use of obnoxious or poisonous substance, or explosive in fishing; (2) unlawful fishing in deepsea fisheries; (3) unlawful taking of marine molusca, (4) illegal taking of sponges; (5) failure of licensed fishermen to report the kind and quantity of fish caught, and (6) other violations.

Nowhere in that law is electro fishing specifically punished. Administrative Order No. 84, in punishing electro fishing, does not contemplate that such an offense fails within the category of "other violations" because, as already shown, the penalty for electro fishing is the penalty next lower to the penalty for fishing with the use of obnoxious or poisonous substances, fixed in section 76, and is not the same as the penalty for "other violations" of the law and regulations fixed in section 83 of the Fisheries Law.

The lawmaking body cannot delegate to an executive official the power to declare what acts should constitute an offense. It can authorize the issuance of regulations and the imposition of the penalty provided for in the law itself. (People vs. Exconde 101 Phil. 11 25, citing 11 Am. Jur. 965 on p. 11 32).

Originally, Administrative Order No. 84 punished electro fishing in all waters. Later, the ban against electro fishing was confined to *fresh water fisheries*. The amendment created the impression that electro fishing is not condemnable per se. It could be tolerated in marine waters. That circumstances strengthens the view that the old law does not eschew all forms of electro fishing.

However, at present, there is no more doubt that electro fishing is punishable under the Fisheries Law and that it cannot be penalized merely by executive revolution because Presidential Decree No. 704, which is a revision and consolidation of all laws and decrees affecting fishing and fisheries and which was promulgated on May 16, 1975 (71 O.G. 4269), expressly punishes electro fishing in fresh water and salt water areas.

That decree provides: *ñé+.£ªwph!1*

SEC. 33. — Illegal fishing, dealing in illegally caught fish or fishery/aquatic products. — It shall he unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (1), (m) and (d), respectively, of Section 3 hereof: ...

The decree Act No. 4003, as amended, Republic Acts Nos. 428, 3048, 3512 and 3586, Presidential Decrees Nos. 43, 534 and 553, and all , Acts, Executive Orders, rules and regulations or parts thereof inconsistent with it (Sec. 49, P. D. No. 704).

The inclusion in that decree of provisions defining and penalizing electro fishing is a clear recognition of the deficiency or silence on that point of the old Fisheries Law. It is an admission that a mere executive regulation is not legally adequate to penalize electro fishing.

Note that the definition of electro fishing, which is found in section 1 (c) of Fisheries Administrative Order No. 84 and which is not provided for the old

Fisheries Law, is now found in section 3(d) of the decree. Note further that the decree penalty electro fishing by "imprisonment from two (2) to four (4) years", a punishment which is more severe than the penalty of a time of not excluding P500 or imprisonment of not more than six months or both fixed in section 3 of Fisheries Administrative Order No. 84.

An examination of the rule-making power of executive officials and administrative agencies and, in particular, of the Secretary of Agriculture and Natural Resources (now Secretary of Natural Resources) under the Fisheries Law sustains the view that he ex his authority in penalizing electro fishing by means of an administrative order.

Administrative agent are clothed with rule-making powers because the lawmaking body finds it impracticable, if not impossible, to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law. All that is required is that the regulation should be germane to the defects and purposes of the law and that it should conform to the standards that the law prescribes (People vs. Exconde 101 Phil. 1125; Director of Forestry vs. Muñ;oz, L-24796, June 28, 1968, 23 SCRA 1183, 1198; Geukeko vs. Araneta, 102 Phil. 706, 712).

The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute (U.S. vs. Tupasi Molina, 29 Phil. 119, 125, citing U.S. vs. Grimaud 220 U.S. 506; Interprovincial Autobus Co., Inc. vs. Coll. of Internal Revenue, 98 Phil. 290, 295-6).

The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondeleption of legislative, powers. Administrative regulations or "subordinate legislation calculated to promote the public interest are necessary because of "the growing complexity of modem life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law" Calalang vs. Williams, 70 Phil. 726; People vs. Rosenthal and Osmeñ;a, 68 Phil. 328).

Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. (U.S. vs. Tupasi Molina, supra). An administrative agency cannot amend an act of Congress (Santos vs. Estenzo, 109 Phil. 419, 422; Teoxon vs. Members of the d of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel vs. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao vs. Casteel, L-21906, August 29, 1969, 29 SCRA 350).

The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it his been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (University of Santo Tomas vs. Board of Tax A 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see of Internal Revenue vs. Villaflor 69 Phil. 319, Wise & Co. vs. Meer, 78 Phil. 655, 676; Del March vs. Phil. Veterans Administrative, L-27299, June 27, 1973, 51 SCRA 340, 349).

There is no question that the Secretary of Agriculture and Natural Resources has rule-making powers. Section 4 of the Fisheries law provides that the Secretary "shall from time to time issue instructions, orders, and regulations consistent" with that law, "as may be and proper to carry into effect the provisions thereof." That power is now vested in the Secretary of Natural Resources by on 7 of the Revised Fisheries law, Presidential December No. 704.

Section 4(h) of Republic Act No. 3512 empower the Co of Fisheries "to prepare and execute upon the approval of the Secretary of Agriculture and Natural Resources, forms instructions, rules and regulations consistent with the purpose" of that enactment "and for the development of fisheries."

Section 79(B) of the Revised Administrative Code provides that "the Department Head shall have the power to promulgate, whenever he may see fit do so, all rules, regulates, orders, memorandums, and other instructions,*not contrary to law*, to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; but none of said rules or orders shall prescribe penalties for the violation thereof, except as expressly authorized by law."

Administrative regulations issued by a Department Head in conformity with law have the force of law (Valerie vs. Secretary of culture and Natural

Resources, 117 Phil. 729, 733; Antique Sawmills, Inc. vs. Zayco, L- 20051, May 30, 1966, 17 SCRA 316). As he exercises the rule-making power by delegation of the lawmaking body, it is a requisite that he should not transcend the bound demarcated by the statute for the exercise of that power; otherwise, he would be improperly exercising legislative power in his own right and not as a surrogate of the lawmaking body.

Article 7 of the Civil Code embodies the basic principle that administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

As noted by Justice Fernando, "except for constitutional officials who can trace their competence to act to the fundamental law itself, a public office must be in the statute relied upon a grant of power before he can exercise it." "department zeal may not be permitted to outrun the authority conferred by statute." (Radio Communications of the Philippines, Inc. vs. Santiago, L-29236, August 21, 1974, 58 SCRA 493, 496-8).

"Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are oftentimes left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law." The rule or regulation should be within the scope of the statutory authority granted by the legislature to the administrative agency. (Davis, Administrative Law, p. 194, 197, cited in Victories Milling Co., Inc. vs. Social Security Commission, 114 Phil. 555, 558).

In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (People vs. Lim, 108 Phil. 1091).

This Court in its decision in the Lim case, *supra*, promulgated on July 26, 1960, called the attention of technical men in the executive departments, who draft rules and regulations, to the importance and necessity of closely following the legal provisions which they intend to implement so as to avoid any possible misunderstanding or confusion.

The rule is that the violation of a regulation prescribed by an executive officer of the government in conformity with and based upon a statute authorizing such regulation constitutes an offense and renders the offender liable to punishment in accordance with the provisions of the law (U.S. vs. Tupasi Molina, 29 Phil. 119, 124).

In other words, a violation or infringement of a rule or regulation validly issued can constitute a crime punishable as provided in the authorizing statute and by virtue of the latter (People vs. Exconde 101 Phil. 1125, 1132).

It has been held that "to declare what shall constitute a crime and how it shall be punished is a power vested exclusively in the legislature, and it may not be delegated to any other body or agency" (1 Am. Jur. 2nd, sec. 127, p. 938; Texas Co. vs. Montgomery, 73 F. Supp. 527).

In the instant case the regulation penalizing electro fishing is not strictly in accordance with the Fisheries Law, under which the regulation was issued, *because the law itself does not expressly punish electro fishing*.

The instant case is similar to *People vs. Santos*, 63 Phil. 300.
The *Santos* case involves section 28 of Fish and Game Administrative Order No. 2 issued by the Secretary of Agriculture and Natural Resources pursuant to the aforementioned section 4 of the Fisheries Law.

Section 28 contains the proviso that a fishing boat not licensed under the Fisheries Law and under the said administrative order may fish within three kilometers of the shoreline of islands and reservations over which jurisdiction is exercised by naval and military reservations authorities of the United States only upon receiving written permission therefor, which permission may be granted by the Secretary upon recommendation of the military or naval authorities concerned. A violation of the proviso may be proceeded against under section 45 of the Federal Penal Code.

Augusto A. Santos was prosecuted under that provision in the Court of First Instance of Cavite for having caused his two fishing boats to fish, loiter and

anchor without permission from the Secretary within three kilometers from the shoreline of Corrigidor Island.

This Court held that the Fisheries Law does not prohibit boats not subject to license from fishing within three kilometers of the shoreline of islands and reservations over which jurisdiction is exercised by naval and military authorities of the United States, without permission from the Secretary of Agriculture and Natural Resources upon recommendation of the military and naval authorities concerned.

As the said law does not penalize the act mentioned in section 28 of the administrative order, the promulgation of that provision by the Secretary "is equivalent to legislating on the matter, a power which has not been and cannot be delegated to him, it being expressly reserved" to the lawmaking body. "Such an act constitutes not only an excess of the regulatory power conferred upon the Secretary but also an exercise of a legislative power which he does not have, and therefore" the said provision "is null and void and without effect". Hence, the charge against Santos was dismiss.

A penal statute is strictly construed. While an administrative agency has the right to make ranks and regulations to carry into effect a law already enacted, that power should not be confused with the power to enact a criminal statute. An administrative agency can have only the administrative or policing powers expressly or by necessary implication conferred upon it. (Glustrom vs. State, 206 Ga. 734, 58 Second 2d 534; See 2 Am. Jr. 2nd 129-130).

Where the legislature has delegated to executive or administrative officers and boards authority to promulgate rules to carry out an express legislative purpose, the rules of administrative officers and boards, which have the effect of extending, or which conflict with the authority granting statute, do not represent a valid precise of the rule-making power but constitute an attempt by an administrative body to legislate (State vs. Miles, Wash. 2nd 322, 105 Pac. 2nd 51).

In a prosecution for a violation of an administrative order, it must clearly appear that the order is one which falls within the scope of the authority conferred upon the administrative body, and the order will be scrutinized with special care. (State vs. Miles *supra*).

The *Miles* case involved a statute which authorized the State Game Commission "to adopt, promulgate, amend and/or repeal, and enforce reasonable rules and regulations governing and/or prohibiting the *taking* of the various classes of game.

Under that statute, the Game Commission promulgated a rule that "it shall be unlawful to offer, pay or receive any reward, prize or compensation for the hunting, pursuing, taking, killing or *displaying* of any game animal, game bird or game fish or any part thereof."

Beryl S. Miles, the owner of a sporting goods store, regularly offered a ten-down cash prize to the person displaying the largest deer in his store during the open for hunting such game animals. For that act, he was charged with a violation of the rule Promulgated by the State Game Commission.

It was held that there was no statute penalizing the *display* of game. What the statute penalized was the taking of game. If the lawmaking body desired to prohibit the display of game, it could have readily said so. It was not lawful for the administrative board to extend or modify the statute. Hence, the indictment against Miles was quashed. The Miles case is similar to this case.

WHEREFORE, the lower court's decision of June 9, 1970 is set aside for lack of appellate jurisdiction and the order of dismissal rendered by the municipal court of Sta. Cruz, Laguna in Criminal Case No. 5429 is affirmed. Costs *de oficio*.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-46158 November 28, 1986

TAYUG RURAL BANK, plaintiff-appellee,
vs.
CENTRAL BANK OF THE PHILIPPINES, defendant-appellant.

Bengzon, Bengzon, Villaroman & De Vera Law Office for plaintiff-appellee.

Evangelista, Bautista & Valdehuesa Law Office for defendant-appellant.

PARAS, *J.:p*

Submitted on May 20, 1977 for decision by this Court is this appeal from the decision dated January 6, 1971 rendered by the Court of First Instance of Manila, Branch III in Civil Case No. 76920, the decretal portion of which states as follows:

WHEREFORE, judgment is rendered for the plaintiff on the complaint and the defendant is ordered to further credit the plaintiff the amounts collected

as 10% penalty in the sum of P19,335.88 or up to July 15, 1969 and to refrain from collecting the said 10% penalty on the remaining past due loans of plaintiff with the defendant.

With respect to defendant's counterclaim, judgment is hereby rendered against the plaintiff and the defendant is ordered to pay the Central Bank of the Philippines the outstanding balance of its past overdue accounts in the sum of P444,809,45 plus accrued interest at the rate of 1/2 of 1 % per annum with respect to the promissory notes (Annexes 1 to 1-E of defendant's Answer) and 2-1/2% per annum with respect to the promissory notes (Annexes 1-f to 1-i of the Answer). From this amount shall be deducted the sum of P19,335.88 collected as 10% penalty.

The facts of the case based on the parties' stipulation of facts (Record on Appeal p. 67), are as follows:

Plaintiff-Appellee, Tayug Rural Bank, Inc., is a banking corporation in Tayug, Pangasinan. During the period from December 28, 1962 to July 30, 1963, it obtained thirteen (13) loans from Defendant-Appellant, Central Bank of the Philippines, by way of rediscounting, at the rate of 1/2 of 1% per annum from 1962 to March 28, 1963 and thereafter at the rate of 2-1/2% per anum. The loans, amounting to P813,000.00 as of July 30, 1963, were all covered by corresponding promissory notes prescribing the terms and conditions of the aforesaid loans (Record on Appea, pp. 15-53). As of July 15, 1969, the outstanding balance was P 444,809.45 (Record on Appeal, p. 56).

On December 23, 1964, Appellant, thru the Director of the Department of Loans and Credit, issued Memorandum Circular No. DLC-8, informing all rural banks that an additional penalty interest rate of ten per cent (10%) per annum would be assessed on all past due loans beginning January 4, 1965. Said Memorandum Circular was actually enforced on all rural banks effective July 4, 1965.

On June 27, 1969, Appellee Rural Bank sued Appellant in the Court of First Instance of Manila, Branch III, to recover the 10% penalty imposed by Appellant amounting to P16,874.97, as of September 27, 1968 and to restrain Appellant from continuing the imposition of the penalty. Appellant filed a counterclaim for the outstanding balance and overdue accounts of Appellee in the total amount of P444,809.45 plus accrued interest and penalty at 10% per annum on the outstanding balance until full payment. (Record on Appeal, p. 13). Appellant justified the imposition of the penalty by way of affirmative and special defenses, stating that it was legally imposed under the provisions of Section 147 and 148 of the Rules and Regulations Governing Rural Banks promulgated by the Monetary Board on September 5, 1958, under authority of Section 3 of Republic Act No. 720, as amended (Record on Appeal, p. 8, Affirmative and Special Defenses Nos. 2 and 3).

In its answer to the counterclaim, Appellee prayed for the dismissal of the counterclaim, denying Appellant's allegations stating that if Appellee has any unpaid obligations with Appellant, it was due to the latter's fault on account of its flexible and double standard policy in the granting of rediscounting privileges to Appellee and its subsequent arbitrary and illegal imposition of the 10% penalty (Record on Appeal, p. 57). In its Memorandum filed on November 11, 1970, Appellee also asserts that Appellant had no basis to impose the penalty interest inasmuch as the promissory notes covering the loans executed by Appellee in favor of Appellants do not provide for penalty interest rate of 10% per annum on just due loans beginning January 4, 1965 (Record on Appeal p. 96).

The lower court, in its Order dated March 3, 1970, stated that "only a legal question has been raised in the pleadings" and upholding the stand of plaintiff Rural Bank, decided the case in its favor. (Rollo, p. 34).

Appellant appealed the decision of the trial court to the Court of Appeals, for determination of questions of facts and of law. However, in its decision promulgated April 13, 1977, the Court of Appeals, finding no controverted facts and taking note of the statement of the lower court in its pre-trial Order dated March 3, 1970 that only a legal question has been raised in the pleadings, (Record on Appeal, p. 61), ruled that the resolution of the appeal will solely depend on the legal issue of whether or not the Monetary Board had authority to authorize Appellant Central Bank to impose a penalty rate of 10% per annum on past due loans of rural banks which had failed to pay their accounts on time and ordered the certification of this case to this Court for proper determination (Rollo, pp. 34-35).

On April 20, 1977, the entire record of the case was forwarded to this Court (Rollo, p. 36). In the resolution of May 20, 1977, the First Division of this Court, ordered the case docketed and as already stated declared the same submitted for decision (Rollo, p. 38).

In its Brief, Appellant assigns the following errors:

I. THE LOWER COURT ERRED IN HOLDING THAT IT IS BEYOND THE REACH OF THE MONETARY BOARD TO METE OUT PENALTIES ON PAST DUE LOANS OF RURAL BANKS ESPECIALLY SINCE NO PENAL CLAUSE HAS BEEN INCLUDED IN THE PROMISSORY NOTES.

II. THE LOWER COURT ERRED IN HOLDING THAT THE IMPOSITION OF THE PENALTY IS AN IMPAIRMENT OF THE OBLIGATION OF CONTRACT WITHOUT DUE PROCESS.

III. THE LOWER COURT ERRED IN NOT FINDING JUDGMENT AGAINST PLAINTIFF FOR 10% COST OF COLLECTION OF THE PROMISSORY NOTE AS PROVIDED THEREIN.

It is undisputed that no penal clause has been included in the promissory notes. For this reason, the trial court is of the view that Memorandum Circular DLC-8 issued on December 23, 1964 prescribing retroactive effect on all past due loans, impairs the obligation of contract and deprives the plaintiff of its property without due process of law. (Record on Appel, p. 40).

On the other hand appellant without opposing appellee's right against impairment of contracts, contends that when the promissory notes were signed by appellee, it was chargeable with knowledge of Sections 147 and 148 of the rules and regulations authorizing the Central Bank to impose additional reasonable penalties, which became part of the agreement. (*ibid*).

Accordingly, the issue is reduced to the sole question as to whether or not the Central Bank can validly impose the 10% penalty on Appellee's past overdue loans beginning July 4, 1965, by virtue of Memorandum Circular No. DLC-8 dated December 23, 1964.

The answer is in the negative.

Memorandum Circular No. DLC-8 issued by the Director of Appellant's Department of Loans and Credit on December 23, 1964, reads as follows:

Pursuant to Monetary Board Resolution No. 1813 dated December 18, 1964, and in consonance with Section 147 and 148 of the Rules and Regulations Governing Rural Banks concerning the responsibility of a rural bank to remit immediately to the Central Bank payments received on papers rediscounted with the latter including the loan value of rediscounted papers as they mature, and to liquidate fully its maturing loan obligations with the Central Bank, personal checks, for purposes of repayment, shall considered only after such personal checks shall have been honored at clearing.

In addition, rural banks which shall default in their loan obligations, thus incurring past due accounts with the Central Bank, shall be assessed an additional penalty interest rate of ten per cent (10%) per annum on such past due accounts with the Central Bank over and above the customary interest rate(s) at which such loans were originally secured from the Central Bank. (Record on Appeal, p. 135).

The above-quoted Memorandum Circular was issued on the basis of Sections 147 and 148 of the Rules and Regulations Governing Rural Banks of the Philippines approved on September 5, 1958, which provide:

Section 147. *Duty of Rural Bank to turn over payment received for papers discounted or used for collateral.* — A Rural Bank receiving any payment on account of papers discounted or used for collateral must turn the same over to the creditor bank before the close of the banking day next following the receipt of payment, as long as the aggregate discounting on loan amount is not fully paid, unless the Rural Bank substitutes the same with another eligible paper with at least the same or earlier maturity and the same or greater value.

A Rural Bank failing to comply with the provisions of the preceding paragraph shall ipso facto lose its right to the rediscounting or loan period, without prejudice to the Central Bank imposing additional reasonable penalties, including curtailment or withdrawal of financial assistance.

Sec. 148. *Default and other violations of obligation by Rural Bank, effect.* — A Rural Bank becomes in default upon the expiration of the maturity period of its note, or that of the papers discounted or used as collateral, without the necessity of demand.

A Rural Bank incurring default, or in any other manner, violating any of the stipulations in its note, shall suffer the consequences provided in the second paragraph of the preceding section. (Record on Appeal, p. 136.)

The "Rules and Regulations Governing Rural Banks" was published in the Official Gazette, 55 O.G., on June 13, 1959, pp. 5186-5289. It is by virtue of these same Rules that Rural Banks re-discount their loan papers with the Central Bank at 2-1/2% interest per annum and in turn lend the money to the public at 12% interest per annum (Defendant's Reply to Plaintiff's Memorandum, Record on Appeal, p. 130).

Appellant maintains that it is pursuant to Section 3 of R.A. No. 720, as amended, that the Monetary Board has adopted the set of Rules and Regulations Governing Rural Banks. It reads:

SEC. 3. In furtherance of this policy, the Monetary Board of the Central Bank of the Philippines shall formulate the necessary rules and regulations governing the establishment and operatives of Rural Banks for the purpose of providing adequate credit facilities to small farmers and merchants, or to cooperatives of such farmers or merchants and to supervise the operation of such banks.

The specific provision under the law claimed as basis for Sections 147 and 148 of the Rules and Regulations Governing Rural Banks, that is, on Appellant's authority to extend loans to Rural Banks by way of rediscounting is Section 13 of R.A. 720, as amended, which provides:

SEC. 13. In an emergency or when a financial crisis is imminent the Central Bank may give a loan to any Rural Bank against assets of the Rural Bank which may be considered acceptable by a concurrent vote of at least, five members of the Monetary Board.

In normal times, the Central Bank may re-discount against papers evidencing a loan granted by a Rural Bank to any of its customers which can be liquefied within a period of two hundred and seventy days: PROVIDED, HOWEVER, That for the purpose of implementing a nationwide program of agricultural and industrial development, Rural Banks are hereby authorized under such terms and conditions as the Central Bank shall prescribe to borrow on a medium or long term basis, funds that the Central Bank or any other government financing institutions shall borrow from the International Bank for Reconstruction and Development or other international or foreign lending institutions for the specific purpose of financing the above stated agricultural and industrial program. Repayment of loans obtained by the Central Bank of the Philippines or any other government financing institution from said foreign lending institutions under this section shall be guaranteed by the Republic of the Philippines.

As to the supervising authority of the Monetary Board of the Central Bank over Rural Banks, the same is spelled-out under Section 10 of R.A. 720, as follows:

SEC. 10. The power to supervise the operation of any Rural Bank by the Monetary Board of the Central Bank as herein indicated, shall consist in placing limits to the maximum credit allowed any individual borrower; in prescribing the interest rate; in determining the loan period and loan procedure; in indicating the manner in which technical assistance shall be extended to Rural Banks; in imposing a uniform accounting system and manner of keeping the accounts and records of the Rural Banks; in undertaking regular credit examination of the Rural Banks: in instituting periodic surveys of loan and lending procedures, audits, test check of cash and other transactions of the Rural Banks; in conducting training courses for personnel of Rural Banks; and, in general in supervising the business operation of the Rural Banks.

Nowhere in any of the above-quoted pertinent provisions of R.A. 720 nor in any other provision of R.A. 720 for that matter, is the monetary Board authorized to mete out on rural banks an additional penalty rate on their past due accounts with Appellant. As correctly stated by the trial court, while the Monetary Board possesses broad supervisory powers, nonetheless, the retroactive imposition of administrative penalties cannot be taken as a measure supervisory in character. (Record on Appeal, p. 141).

Administrative rules and regulations have the force and effect of law (Valerio v. Hon. Secretary of Agriculture and Natural Resources, 7 SCRA 719; Commissioner of Civil Service v. Cruz, 15 SCRA 638; R.B. Industrial Development Company, Ltd. v. Enage, 24 SCRA 365; Director of Forestry v. Munoz, 23 SCRA 1183; Gonzalo Sy v. Central Bank of the Philippines, 70 SCRA 570).

There are, however, limitations to the rule-making power of administrative agencies. A rule shaped out by jurisprudence is that when Congress authorizes promulgation of administrative rules and regulations to implement given legislation, all that is required is that the regulation be not in contradiction with it, but conform to the standards that the law prescribes

(Director of Forestry v. Munoz, 23 SCRA 1183). The rule delineating the extent of the binding force to be given to administrative rules and regulations was explained by the Court in *Teoxon v. Member of the Board of Administrators* (33 SCRA 588), thus: "The recognition of the power of administrative officials to promulgate rules in the implementation of the statute, as necessarily limited to what is provided for in the legislative enactment, may be found as early as 1908 in the case of *United States v. Barrias* (11 Phil. 327) in 1914 *U.S. v. Tupasi Molina* (29 Phil. 119), in 1936 *People v. Santos* (63 Phil. 300), in 1951 *Chinese Flour Importers Ass. v. Price Stabilization Board* (89 Phil. 439), and in 1962 *Victorias Milling Co., Inc. v. Social Security Commission* (4 SCRA 627). The Court held in the same case that "A rule is binding on the courts so long as the procedure fixed for its promulgation is followed and its scope is within the statute granted by the legislature, even if the courts are not in agreement with the policy stated therein or its innate wisdom ...." On the other hand, "administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means." Indeed, it cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. No lesser administrative, executive office, or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. Necessarily, it is bound to observe the constitutional mandate. There must be strict compliance with the legislative enactment. The rule has prevailed over the years, the latest restatement of which was made by the Court in the case *of Bautista v. Junio* (L-50908, January 31, 1984, 127 SCRA 342).

In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (People v. Lim, 108 Phil. 1091). Rules that subvert the statute cannot be sanctioned (University of St. Tomas v. Board of Tax Appeals, 93 Phil. 376; Del Mar v. Phil. Veterans Administration, 51 SCRA 340). Except for constitutional officials who can trace their competence to act to the fundamental law itself, a public official must locate in the statute relied upon a grant of power before he can exercise it. Department zeal may not be permitted to outrun the authority conferred by statute (Radio Communications of the Philippines, Inc. v. Santiago, L-29236, August 21, 1974, 58 SCRA 493).

When promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, the rules and regulations partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law (Victorias Milling Co., Inc. v. Social Security Commission, 114 Phil. 555; People v. Maceren, L-32166, October 18, 1977, 79 SCRA 462; Daza v. Republic, L-43276, September 28, 1984, 132 SCRA 267). Conversely, the rule is likewise clear. Hence an administrative agency cannot impose a penalty not so provided in the law authorizing the promulgation of the rules and regulations, much less one that is applied retroactively.

The records show that DLC Form No. 11 (Folder of Exhibits, p. 16) was revised December 23, 1964 to include the penal clause, as follows:

In the event that this note becomes past due, the undersigned shall pay a penalty at the rate of _____ per cent ( ) per annum on such past due account over and above the interest rate at which such loan was originally secured from the Central Bank.

Such clause was not a part of the promissory notes executed by Appellee to secure its loans. Appellant inserted the clause in the revised DLC Form No. 11 to make it a part of the contractual obligation of rural banks securing loans from the Central Bank, after December 23, 1964. Thus, while there is now a basis for the imposition of the 10% penalty rate on overdue accounts of rural banks, there was none during the period that Appellee contracted its loans from Appellant, the last of which loan was on July 30, 1963. Surely, the rule cannot be given retroactive effect.

Finally, on March 31, 1970, the Monetary Board in its Resolution No. 475 effective April 1, 1970, revoked its Resolution No. 1813, dated December 18, 1964 imposing the questioned 10% per annum penalty rate on past due loans of rural banks and amended sub-paragraph (a), Section 10 of the existing guidelines governing rural banks' applications for a loan or rediscount, dated May 7, 1969 (Folder of Exhibits, p. 19). As stated by the trial court, this move on the part of the Monetary Board clearly shows an admission that it has no power to impose the 10% penalty interest through its rules and regulations but only through the terms and conditions of the promissory notes executed by the borrowing rural banks. Appellant evidently hoped that the defect could be adequately accomplished by the revision of DLC Form No. 11.

The contention that Appellant is entitled to the 10% cost of collection in case of suit and should therefore, have been awarded the same by the court below, is well taken. It is provided in all the promissory notes signed by Appellee that in case of suit for the collection of the amount of the note or any unpaid balance thereof, the Appellee Rural Bank shall pay the Central Bank of the Philippines a sum equivalent to ten (10%) per cent of the amount unpaid not in any case less than five hundred (P500.00) pesos as attorney's fees and costs of suit and collection. Thus, Appellee cannot be allowed to come to Court seeking redress for an wrong done against it and then be allowed to renege on its corresponding obligations.

PREMISES CONSIDERED, the decision of the trial court is hereby AFFIRMED with modification that Appellee Rural Bank is ordered to pay a sum equivalent to 10% of the outstanding balance of its past overdue accounts, but not in any case less than P500.00 as attorney's fees and costs of suit and collection.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 27484 September 1, 1927

ANGEL LORENZO, petitioner-appellant,
vs.
THE DIRECTOR OF HEALTH, respondent-appelle.

Gregorio for appellant.
Attorney-General Jaranilla for appellee.

MALCOLM, *J.:*

The purpose of this appeal is to induce the court to set aside the judgment of the Court of First Instance of Manila sustaining the law authorizing the segregation of lepers, and denying the petition for *habeas corpus*, by requiring the trial court to receive evidence to determine if leprosy is or is not a contagious disease.

The petition for the writ of *habeas corpus* was in the usual form. Therein it was admitted that the applicant was a leper. It was, however, alleged that his confinement in the San Lazaro Hospital in the City of Manila was in violation of his constitutional rights. The further allegation was made that leprosy is not an infectious disease. The return of the writ stated that the leper was confined in the San Lazaro Hospital in conformity with the provisions of

section 1058 of the Administrative Code. But to this was appended, for some unknown reason, the averment that each and every fact of the petition not otherwise admitted by the return was denied. Although counsel for the appellant makes mention of the form which the return of the writ of *habeas corpus* took, so as not to complicate matters unnecessarily, we prefer to give attention only to so much of the return as is contemplated by law and to disregard the rest as surplusage. The petitioner not having traversed the return, the only issue is whether the facts stated in the return as a matter of law authorized the restraint (Code of Civil Procedure, chap. XXVI; Code of Criminal Procedure, secs. 77 et seq.).

The Philippine law pertaining to the segregation of lepers is found in article XV of chapter 37 of the Administrative Code. Codal section 1058 empowers the Director of Health and his authorized agents "to cause to be apprehended, and detained, isolated, or confined, all leprous persons in the Philippine Islands. "In amplification of this portion of the law are found provisions relating to arrest of suspected lepers, medical inspection and diagnostic procedure, confirmation of diagnosis by bacteriological methods, establishment of hospitals, detention camps, and a leper colony, etc.

In its simplest aspects, therefore, we have this situation presented: A leper confined in the San Lazaro Hospital by the health authorities in conformity with law, but with counsel for the leper contending that the said law is unconstitutional, and advancing as the basis for that contention the theory to be substantiated by proof that human beings are not incurable with leprosy, and that the disease may not be communicated by contact.

Section 1058 of the Administrative Code was enacted by the legislative body in the legitimate exercise of the police power which extends to the preservation of the public health. It was place on the statute books in recognition of leprosy as a grave health problem. The methods provided for the control of leprosy plainly constitute due process of law. The assumption must be that if evidence was required to establish the necessity for the law, that it was before the legislature when the act was passed. In the case of a statute purporting the have been enacted in the interest of the public health, all questions relating to the determination of matters of fact are for the legislature. If there is probable basis for sustaining the conclusion reached, its findings are not subject to judicial review. Debatable questions are for the Legislature to decide. The courts do not sit to resolve the merits of conflicting theories. (1 Cooley's Constitutional Limitations, 8th ed., pp. 379, 380; R. C. L., pp. 111 et seq.; Jacobson *vs.* Massachusetts [1904], 197 U. S., 11 Segregation of Lepers [1884], V Hawaiian, 162; People *vs.*Durston [N. Y.] [1890], 7 L. R. A., 715; Blue *vs.* Beach [Ind.] [1900], 50 L. R. A., 64; Nelson *vs.* Minneapolis [Minn.] [1910], 29 L. R. A., N. S., 260.)

Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease of supported by high scientific authority (See Osler and McCrea, The Principles and Practice of Medicine, 9th ed., p. 153.) Upon this view, laws for the segregation of lepers have been provided the world over. Similarly, the local legislature has regarded leprosy as a contagious disease and has authorized measures to control the dread scourge. To that forum must the petitioner go to reopen the question. We are frank to say that it would require a much stronger case than the one at bar for us to sanction admitting the testimony of expert or other witnesses to show that a law of this character may possibly violate some constitutional provision.

For more reasons than one, we think that Judge Concepcion took exactly the correct stand in deciding this test case, and that consequently his decision should be upheld.

Judgment affirmed, with costs.

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. L-64279 April 30, 1984

ANSELMO L. PESIGAN and MARCELINO L. PESIGAN, petitioners,
vs.
JUDGE DOMINGO MEDINA ANGELES, Regional Trial Court, Caloocan City Branch 129, acting for REGIONAL TRIAL COURT of Camarines Norte, now presided over by JUDGE NICANOR ORIÑO, Daet Branch 40; DRA. BELLA S. MIRANDA, ARNULFO V. ZENAROSA, ET AL., respondents.

Quiazon, De Guzman Makalintal and Barot for petitioners.

The Solicitor General for respondents.

AQUINO, *J.:ñé+.£ªwph!1*

At issue in this case is the enforceability, before publication in the Official Gazette of *June 14, 1982,* of Presidential Executive Order No. 626-A dated *October 25, 1980,* providing for the *confiscation and forfeiture* by the government of carabaos transported from one province to another.

Anselmo L. Pesigan and Marcelo L. Pesigan, carabao dealers, transported in an Isuzu ten-wheeler truck in the evening of April 2, 1982 twenty-six

carabaos and a calf from Sipocot, Camarines Sur with Padre Garcia, Batangas, as the destination.

They were provided with (1) a health certificate from the provincial veterinarian of Camarines Sur, issued under the Revised Administrative Code and Presidential Decree No. 533, the Anti-Cattle Rustling Law of 1974; (2) a permit to transport large cattle issued under the authority of the provincial commander; and (3) three certificates of inspection, one from the Constabulary command attesting that the carabaos were not included in the list of lost, stolen and questionable animals; one from the LIvestock inspector, Bureau of Animal Industry of Libmanan, Camarines Sur and one from the mayor of Sipocot.

In spite of the permit to transport and the said four certificates, the carabaos, while passing at Basud, Camarines Norte, were confiscated by Lieutenant Arnulfo V. Zenarosa, the town's police station commander, and by Doctor Bella S. Miranda, provincial veterinarian. The confiscation was basis on the aforementioned Executive Order No. 626-A which provides "that henceforth, no carabao, regardless of age, sex, physical condition or purpose and no carabeef *shall be transported from one province to another.* The carabaos or carabeef transported in violation of this Executive Order as amended shall be subject to *confiscation and forfeiture* by the government to be distributed ... to deserving farmers through dispersal as the Director of Animal Industry may see fit, in the case of carabaos" (78 OG 3144).

Doctor Miranda distributed the carabaos among twenty-five farmers of Basud, and to a farmer from the Vinzons municipal nursery (Annex 1).

The Pesigans filed against Zenarosa and Doctor Miranda an action for replevin for the recovery of the carabaos allegedly valued at P70,000 and damages of P92,000. The replevin order could not be executed by the sheriff. In his order of April 25, 1983 Judge Domingo Medina Angeles, who heard the case at Daet and who was later transferred to Caloocan City, dismissed the case for lack of cause of action.

The Pesigans appealed to this Court under Rule 45 of the Rules of Court and section 25 of the Interim Rules and pursuant to Republic Act No. 5440, a 1968 law which superseded Rule 42 of the Rules of Court.

We hold that the said executive order should not be enforced against the Pesigans on *April 2, 1982* because, as already noted, it *is a penal regulation* published more than two months later in the Official Gazette dated *June 14, 1982.* It became effective only fifteen days thereafter as provided in article 2 of the Civil Code and section 11 of the Revised Administrative Code.

The word "laws" in article 2 (article 1 of the old Civil Code) includes circulars and regulations which prescribe penalties. Publication is necessary to apprise the public of the contents of the regulations and make the said penalties binding on the persons affected thereby. (People vs. Que Po Lay, 94 Phil. 640; Lim Hoa Ting vs. Central Bank of the Phils., 104 Phil. 573; Balbuna vs. Secretary of Education, 110 Phil. 150.)

The Spanish Supreme Court ruled that "bajo la denominacion generica de leyes, se comprenden tambien los reglamentos, Reales decretos, Instrucciones, Circulares y Reales ordenes dictadas de conformidad con las mismas por el Gobierno en uso de su potestad (1 Manresa, Codigo Civil, 7th Ed., p. 146.)

Thus, in the *Que Po Lay* case, a person, convicted by the trial court of having violated Central Bank Circular No. 20 and sentenced to six months' imprisonment and to pay a fine of P1,000, was *acquitted* by this Court because the circular was published in the Official Gazette *three months after his conviction.* He was not bound by the circular.

That ruling applies to a violation of Executive Order No. 626-A because its *confiscation and forfeiture provision or sanction makes it a penal statute.* Justice and fairness dictate that the public must be informed of that provision by means of publication in the Gazette before violators of the executive order can be bound thereby.

The cases of *Police Commission vs. Bello*, L-29960, January 30, 1971, 37 SCRA 230 and *Philippine Blooming Mills vs. Social Security System*, 124 Phil. 499, cited by the respondents, do not involve the enforcement of any penal regulation.

Commonwealth Act No. 638 requires that all Presidential executive orders having general applicability should be published in the Official Gazette. It

provides that "every order or document which shag prescribe a penalty shall be deemed to have general applicability and legal effect."

Indeed, the practice has always been to publish executive orders in the Gazette. Section 551 of the Revised Administrative Code provides that even bureau "regulations and orders shall become effective only when approved by the Department Head and published in the Official Gazette or otherwise publicly promulgated". (See Commissioner of Civil Service vs. Cruz, 122 Phil. 1015.)

In the instant case, the livestock inspector and the provincial veterinarian of Camarines Norte and the head of the Public Affairs Office of the Ministry of Agriculture were unaware of Executive Order No. 626-A. The Pesigans could not have been expected to be cognizant of such an executive order.

It results that they have a cause of action for the recovery of the carabaos. The summary confiscation was not in order. The recipients of the carabaos should return them to the Pesigans. However, they cannot transport the carabaos to Batangas because they are now bound by the said executive order. Neither can they recover damages. Doctor Miranda and Zenarosa acted in good faith in ordering the forfeiture and dispersal of the carabaos.

WHEREFORE, the trial court's order of dismissal and the confiscation and dispersal of the carabaos are reversed and set aside. Respondents Miranda and Zenarosa are ordered to restore the carabaos, with the requisite documents, to the petitioners, who as owners are entitled to possess the same, with the right to dispose of them in Basud or Sipocot, Camarines Sur. No costs.

SO ORDERED.*1äwphï1.ñ*

EN BANC

[G.R. No. 111953. December 12, 1997]

HON. RENATO C. CORONA, in his capacity as Assistant Secretary for Legal Affairs, HON. JESUS B. GARCIA, in his capacity as Acting Secretary, Department of Transportation and Communications, and ROGELIO A. DAYAN, in his capacity as General Manager of Philippine Ports Authority,*petitioners*, *vs*. UNITED HARBOR PILOTS ASSOCIATION OF THE PHILIPPINES and MANILA PILOTS ASSOCIATION, *respondents*.

D E C I S I O N

ROMERO, *J.*:

In issuing Administrative Order No. 04-92 (PPA-AO No. 04-92), limiting the term of appointment of harbor pilots to one year subject to yearly renewal or cancellation, did the Philippine Ports Authority (PPA) violate respondents right to exercise their profession and their right to due process of law?

The PPA was created on July 11, 1974, by virtue of Presidential Decree No. 505. On December 23, 1975, Presidential Decree No. 857 was issued revising the PPAs charter. Pursuant to its power of control, regulation, and supervision of pilots and the pilotage profession, [1] the PPA promulgated PPA-AO-03-85 [2] on March 21, 1985, which embodied the Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports. These rules mandate, *inter alia*, that aspiring pilots must be holders of pilot licenses[3] and must train as probationary pilots in

outports for three months and in the Port of Manila for four months. It is only after they have achieved satisfactory performance [4] that they are given permanent and regular appointments by the PPA itself [5] to exercise harbor pilotage until they reach the age of 70, unless sooner removed by reason of mental or physical unfitness by the PPA General Manager. [6] Harbor pilots in every harbor district are further required to organize themselves into pilot associations which would make available such equipment as may be required by the PPA for effective pilotage services. In view of this mandate, pilot associations invested in floating, communications, and office equipment. In fact, every new pilot appointed by the PPA automatically becomes a member of a pilot association and is required to pay a proportionate equivalent equity or capital before being allowed to assume his duties, as reimbursement to the association concerned of the amount it paid to his predecessor.

Subsequently, then PPA General Manager Rogelio A. Dayan issued PPA-AO No. 04-92 [7] on July 15, 1992, whose avowed policy was to instill effective discipline and thereby afford better protection to the port users through the improvement of pilotage services. This was implemented by providing therein that all existing regular appointments which have been previously issued either by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only and that all appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to yearly renewal or cancellation by the Authority after conduct of a rigid evaluation of performance.

On August 12, 1992, respondents United Harbor Pilots Association and the Manila Pilots Association, through Capt. Alberto C. Compas, questioned PPA-AO No. 04-92 before the Department of Transportation and Communication, but they were informed by then DOTC Secretary Jesus B. Garcia that the matter of reviewing, recalling or annulling PPAs administrative issuances lies exclusively with its Board of Directors as its governing body.

Meanwhile, on August 31, 1992, the PPA issued Memorandum Order No. 08-92 [8] which laid down the criteria or factors to be considered in the reappointment of harbor pilots, viz.: (1) Qualifying Factors: [9] safety record and physical/mental medical exam report and (2) Criteria for Evaluation: [10] promptness in servicing vessels, compliance with PPA Pilotage Guidelines, number of years as a harbor pilot, average GRT of vessels serviced as pilot, awards/commendations as harbor pilot, and age.

Respondents reiterated their request for the suspension of the implementation of PPA-AO No. 04-92, but Secretary Garcia insisted on his position that the matter was within the jurisdiction of the Board of Directors of the PPA. Compas appealed this ruling to the Office of the President (OP), reiterating his arguments before the DOTC.

On December 23, 1992, the OP issued an order directing the PPA to hold in abeyance the implementation of PPA-AO No. 04-92. In its answer, the PPA countered that said administrative order was issued in the exercise of its administrative control and supervision over harbor pilots under Section 6-a (viii), Article IV of P. D. No. 857, as amended, and it, along with its implementing guidelines, was intended to restore order in the ports and to improve the quality of port services.

On March 17, 1993, the OP, through then Assistant Executive Secretary for Legal Affairs Renato C. Corona, dismissed the appeal/petition and lifted the restraining order issued earlier.[11] He concluded that PPA-AO No. 04-92 applied to all harbor pilots and, for all intents and purposes, was not the act of Dayan, but of the PPA, which was merely implementing Section 6 of P.D. No. 857, mandating it to control, regulate and supervise pilotage and conduct of pilots in any port district.

On the alleged unconstitutionality and illegality of PPA-AO No. 04-92 and its implementing memoranda and circulars, Secretary Corona opined that:

The exercise of ones profession falls within the constitutional guarantee against wrongful deprivation of, or interference with, property rights without due process. In the limited context of this case, PPA-AO 04-92 does not constitute a wrongful interference with, let alone a wrongful deprivation of, the property rights of those affected thereby. As may be noted, the issuance aims no more than to improve pilotage services by limiting the appointment to harbor pilot positions to one year, subject to renewal or cancellation after a rigid evaluation of the appointees performance.

PPA-AO 04-92 does not forbid, but merely regulates, the exercise by harbor pilots of their profession in PPAs jurisdictional area. (Emphasis supplied)

Finally, as regards the alleged absence of ample prior consultation before the issuance of the administrative order, Secretary Corona cited Section 26 of P.D. No. 857, which merely requires the PPA to consult with relevant Government agencies. Since the PPA Board of Directors is composed of the Secretaries of the DOTC, the Department of Public Works and Highways, the Department of Finance, and the Department of Environment and Natural Resources, as well as the Director-General of the National Economic Development Agency, the Administrator of the Maritime Industry Authority (MARINA), and the private sector representative who, due to his knowledge and expertise, was appointed by the President to the Board, he concluded that the law has been sufficiently complied with by the PPA in issuing the assailed administrative order.

Consequently, respondents filed a petition for certiorari, prohibition and injunction with prayer for the issuance of a temporary restraining order and damages, before Branch 6 of the Regional Trial Court of Manila, which was docketed as Civil Case No. 93-65673. On September 6, 1993, the trial court rendered the following judgment: [12]

WHEREFORE, for all the foregoing, this Court hereby rules that:

1. Respondents (herein petitioners) have acted in excess of jurisdiction and with grave abuse of discretion and in a capricious, whimsical and arbitrary manner in promulgating PPA Administrative Order 04-92 including all its implementing Memoranda, Circulars and Orders;

2. PPA Administrative Order 04-92 and its implementing Circulars and Orders are declared null and void;

3. The respondents are permanently enjoined from implementing PPA Administrative Order 04-92 and its implementing Memoranda, Circulars and Orders.

No costs.

SO ORDERED.

The court *a quo* pointed out that the Bureau of Customs, the precursor of the PPA, recognized pilotage as a profession and, therefore, a property right under Callanta *v.* Carnation Philippines, Inc. [13] Thus, abbreviating the term within which that privilege may be exercised would be an interference with the property rights of the harbor pilots. Consequently, any withdrawal or alteration of such property right must be strictly made in accordance with the constitutional mandate of due process of law. This was apparently not followed by the PPA when it did not conduct public hearings prior to the issuance of PPA-AO No. 04-92; respondents allegedly learned about it only after its publication in the newspapers. From this decision, petitioners elevated their case to this Court on *certiorari*.

After carefully examining the records and deliberating on the arguments of the parties, the Court is convinced that PPA-AO No. 04-92 was issued in stark disregard of respondents right against deprivation of property without due process of law. Consequently, the instant petition must be denied.

Section 1 of the Bill of Rights lays down what is known as the due process clause of the Constitution, *viz*.:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, x x x.

In order to fall within the aegis of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, however, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process refers to the method or manner by which the law is enforced, while substantive due process requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just. [14] PPA-AO No. 04-92 must be examined in light of this distinction.

Respondents argue that due process was not observed in the adoption of PPA-AO No. 04-92 allegedly because no hearing was conducted whereby relevant government agencies and the pilots themselves could ventilate their views. They are obviously referring to the procedural aspect of the enactment. Fortunately, the Court has maintained a clear position in this regard, a stance it has stressed in the recent case of Lumiqued *v.* Hon. Exevea, [15] where it declared that (a)s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed

satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.

In the case at bar, respondents questioned PPA-AO No. 04-92 no less than four times [16] before the matter was finally elevated to this Tribunal. Their arguments on this score, however, fail to persuade. While respondents emphasize that the Philippine Coast Guard, which issues the licenses of pilots after administering the pilots examinations, was not consulted,[17] the facts show that the MARINA, which took over the licensing function of the Philippine Coast Guard, was duly represented in the Board of Directors of the PPA. Thus, petitioners correctly argued that, there being no matters of naval defense involved in the issuance of the administrative order, the Philippine Coast Guard need not be consulted.[18]

Neither does the fact that the pilots themselves were not consulted in any way taint the validity of the administrative order. As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its quasi-judicial function. In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing.[19]

Upon the other hand, it is also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots is a settled issue. Respondents aver that said right has become vested and can only be withdrawn or shortened by observing the constitutional mandate of due process of law. Their argument has thus shifted from the procedural to one of substance. It is here where PPA-AO No. 04-92 fails to meet the condition set by the organic law.

There is no dispute that pilotage as a profession has taken on the nature of a property right. Even petitioner Corona recognized this when he stated in his March 17, 1993, decision that (t)he exercise of ones profession falls within the constitutional guarantee against wrongful deprivation of, or interference with, property rights without due process. [20] He merely expressed the opinion that (i)n the limited context of this case, PPA-AO 04-92 does not constitute a wrongful interference with, l*et al*one a wrongful deprivation of, the property rights of those affected thereby, and that PPA-AO 04-92 does not forbid, but merely regulates, the exercise by harbor pilots of their profession. As will be presently demonstrated, such supposition is gravely erroneous and tends to perpetuate an administrative order which is not only unreasonable but also superfluous.

Pilotage, just like other professions, may be practiced only by duly licensed individuals. Licensure is the granting of license especially to practice a profession. It is also the system of granting licenses (as for professional practice) in accordance with established standards. [21] A license is a right or permission granted by some competent authority to carry on a business or do an act which, without such license, would be illegal. [22]

Before harbor pilots can earn a license to practice their profession, they literally have to pass through the proverbial eye of a needle by taking, not one but five examinations, each followed by actual training and practice. Thus, the court *a quo* observed:

Petitioners (herein respondents) contend, and the respondents (herein petitioners) do not deny, that here (sic) in this jurisdiction, before a person can be a harbor pilot, he must pass five (5) government professional examinations, namely, (1) For Third Mate and after which he must work, train and practice on board a vessel for at least a year; (2) For Second Mate and after which he must work, train and practice for at least a year; (3) For Chief Mate and after which he must work, train and practice for at least a year; (4) For a Master Mariner and after which he must work as Captain of vessels for at least two (2) years to qualify for an examination to be a pilot; and finally, of course, that given for pilots.

Their license is granted in the form of an appointment which allows them to engage in pilotage until they retire at the age 70 years. This is a vested right. Under the terms of PPA-AO No. 04-92, (a)ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only, and (a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Authority after conduct of a rigid evaluation of performance.

It is readily apparent that PPA-AO No. 04-92 unduly restricts the right of harbor pilots to enjoy their profession before their compulsory retirement. In the past, they enjoyed a measure of security knowing that after passing five examinations and undergoing years of on-the-job training, they would have a

license which they could use until their retirement, unless sooner revoked by the PPA for mental or physical unfitness. Under the new issuance, they have to contend with an annual cancellation of their license which can be temporary or permanent depending on the outcome of their performance evaluation. Veteran pilots and neophytes alike are suddenly confronted with one-year terms which *ipso facto* expire at the end of that period. Renewal of their license is now dependent on a rigid evaluation of performance which is conducted only after the license has already been cancelled. Hence, the use of the term renewal. It is this pre-evaluation cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is a deprivation of property without due process of law.

The Court notes that PPA-AO No. 04-92 and PPA-MO No. 08-92 are already covered by PPA-AO No. 03-85, which is still operational. Respondents are correct in pointing out that PPA-AO No. 04-92 is a surplusage [23] and, therefore, an unnecessary enactment. PPA-AO 03-85 is a comprehensive order setting forth the Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports. It provides, *inter alia*, for the qualification, appointment, performance evaluation, disciplining and removal of harbor pilots - matters which are duplicated in PPA-AO No. 04-92 and its implementing memorandum order. Since it adds nothing new or substantial, PPA-AO No. 04-92 must be struck down.

Finally, respondents insinuation that then PPA General Manager Dayan was responsible for the issuance of the questioned administrative order may have some factual basis; after all, power and authority were vested in his office to propose rules and regulations. The trial courts finding of animosity between him and private respondents might likewise have a grain of truth. Yet the number of cases filed in court between private respondents and Dayan, including cases which have reached this Court, cannot certainly be considered the primordial reason for the issuance of PPA-AO No. 04-92. In the absence of proof to the contrary, Dayan should be presumed to have acted in accordance with law and the best of professional motives. In any event, his actions are certainly always subject to scrutiny by higher administrative authorities.

WHEREFORE, the instant petition is hereby DISMISSED and the assailed decision of the court *a quo* dated September 6, 1993, in Civil Case No. 93-65673 is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 119761 August 29, 1996

COMMISSIONER OF INTERNAL REVENUE, petitioner,
vs.
HON. COURT OF APPEALS, HON. COURT OF TAX APPEALS and FORTUNE TOBACCO CORPORATION,respondents.

VITUG, *J.:p*

The Commissioner of Internal Revenue ("CIR") disputes the decision, dated 31 March 1995, of respondent Court of Appeals [1] affirming the 10th August 1994 decision and the 11th October 1994 resolution of the Court of Tax Appeals [2]("CTA") in C.T.A. Case No. 5015, entitled "Fortune Tobacco Corporation vs. Liwayway Vinzons-Chato in her capacity as Commissioner of Internal Revenue."

The facts, by and large, are not in dispute.

Fortune Tobacco Corporation ("Fortune Tobacco") is engaged in the manufacture of different brands of cigarettes.

On various dates, the Philippine Patent Office issued to the corporation separate certificates of trademark registration over "Champion," "Hope," and "More" cigarettes. In a letter, dated 06 January 1987, of then Commissioner of Internal Revenue Bienvenido A. Tan, Jr., to Deputy Minister Ramon Diaz of the Presidential Commission on Good Government, "the initial position of the Commission was to classify 'Champion,' 'Hope,' and 'More' as foreign brands since they were listed in the World Tobacco Directory as belonging to foreign companies. However, Fortune Tobacco changed the names of 'Hope' to 'Hope *Luxury'* and 'More' to '*Premium* More,' thereby removing the said brands from the foreign brand category. Proof was also submitted to the Bureau (of Internal Revenue ['BIR']) that 'Champion' was an original Fortune Tobacco Corporation register and therefore a local brand." [3] *Ad Valorem* taxes were imposed on these brands, [4] at the following rates:

BRAND *AD VALOREM* TAX RATE
E.O. 22 and E.O. 273 RA 6956
06-23-86 07-25-87 06-18-90
07-01-86 01-01-88 07-05-90

Hope Luxury M. 100's
Sec. 142, (c), (2) 40% 45%
Hope Luxury M. King
Sec. 142, (c), (2) 40% 45%
More Premium M. 100's
Sec. 142, (c), (2) 40% 45%
More Premium International
Sec. 142, (c), (2) 40% 45%
Champion Int'l. M. 100's
Sec. 142, (c), (2) 40% 45%
Champion M. 100's
Sec. 142, (c), (2) 40% 45%
Champion M. King
Sec. 142, (c), last par. 15% 20%
Champion Lights
Sec. 142, (c), last par. 15% 20% [5]

A bill, which later became Republic Act ("RA") No. 7654, [6] was enacted, on 10 June 1993, by the legislature and signed into law, on 14 June 1993, by the President of the Philippines. The new law became effective on 03 July 1993. It amended Section 142(c)(1) of the National Internal Revenue Code ("NIRC") to read; as follows:

Sec. 142. Cigars and Cigarettes. —

xxx xxx xxx

(c) Cigarettes packed by machine. — There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher:

(1) On locally manufactured cigarettes which are *currently classified and taxed at fifty-five percent (55%)* or the exportation of which is not authorized by contract or otherwise, fifty-five (55%) provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack.

(2) On *other locally manufactured cigarettes, forty-five percent (45%)* provided that the minimum tax shall not be less than Three Pesos (P3.00) per pack.

xxx xxx xxx

When the registered manufacturer's wholesale price or the actual manufacturer's wholesale price whichever is higher of existing brands of cigarettes, including the amounts intended to cover the taxes, of cigarettes packed in twenties does not exceed Four Pesos and eighty centavos (P4.80) per pack, the rate shall be twenty percent (20%). [7] (Emphasis supplied)

About a month *after* the enactment and two (2) days *before* the effectivity of RA 7654, Revenue Memorandum Circular No. 37-93 ("RMC 37-93"), was issued by the BIR the full text of which expressed:

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

July 1, 1993

REVENUE MEMORANDUM CIRCULAR NO. 37-93

SUBJECT: Reclassification of Cigarettes Subject to Excise Tax

TO: All Internal Revenue Officers and Others Concerned.

In view of the issues raised on whether "HOPE," "MORE" and "CHAMPION" cigarettes which are locally manufactured are appropriately considered as locally manufactured cigarettes bearing a foreign brand, this Office is compelled to review the previous rulings on the matter.

Section 142 (c)(1) National Internal Revenue Code, as amended by R.A. No. 6956, provides:

On locally manufactured cigarettes bearing a foreign brand, fifty-five percent (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern.

Under the foregoing, the test for imposition of the 55% *ad valorem* tax on cigarettes is that the locally manufactured cigarettes bear a foreign brand regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. The brand must be originally owned by a foreign manufacturer or producer. If ownership of the cigarette brand is, however, not definitely determinable, ". . . the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern. . . ."

"HOPE" is listed in the World Tobacco Directory as being manufactured by (a) Japan Tobacco, Japan and (b) Fortune Tobacco, Philippines. "MORE" is listed in the said directory as being manufactured by: (a) Fills de Julia Reig, Andorra; (b) Rothmans, Australia; (c) RJR-Macdonald Canada; (d) Rettig-Strenberg, Finland; (e) Karellas, Greece; (f) R.J. Reynolds, Malaysia; (g) Rothmans, New Zealand; (h) Fortune Tobacco, Philippines; (i) R.J. Reynolds, Puerto Rico; (j) R.J. Reynolds, Spain; (k) Tabacalera, Spain; (l) R.J. Reynolds, Switzerland; and (m) R.J. Reynolds, USA. "Champion" is registered in the said directory as being manufactured by (a) Commonwealth Bangladesh; (b) Sudan, Brazil; (c) Japan Tobacco, Japan; (d) Fortune Tobacco, Philippines; (e) Haggar, Sudan; and (f) Tabac Reunies, Switzerland.

Since there is no showing who among the above-listed manufacturers of the cigarettes bearing the said brands are the real owner/s thereof, then it follows that the same shall be considered foreign brand for purposes of determining the *ad valorem* tax pursuant to Section 142 of the National Internal Revenue Code. As held in BIR Ruling No. 410-88, dated August 24, 1988, "in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not, resort to the World Tobacco Directory should be made."

In view of the foregoing, the aforesaid brands of cigarettes, *viz*: "HOPE," "MORE" and "CHAMPION" being manufactured by Fortune Tobacco Corporation are hereby considered locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes.

Any ruling inconsistent herewith is revoked or modified accordingly.

(SGD) LIWAYWAY VINZONS-CHATO
Commissioner

On 02 July 1993, at about 17:50 hours, BIR Deputy Commissioner Victor A. Deoferio, Jr., sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On 15 July 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93.

In a letter, dated 19 July 1993, addressed to the appellate division of the BIR, Fortune Tobacco requested for a review, reconsideration and recall of RMC 37-93. The request was denied on 29 July 1993. The following day, or on 30 July 1993, the CIR assessed Fortune Tobacco for *ad valorem* tax deficiency amounting to P9,598,334.00.

On 03 August 1993, Fortune Tobacco filed a petition for review with the CTA. [8]

On 10 August 1994, the CTA upheld the position of Fortune Tobacco and adjudged:

WHEREFORE, Revenue Memorandum Circular No. 37-93 reclassifying the brands of cigarettes, *viz*: "HOPE," "MORE" and "CHAMPION" being manufactured by Fortune Tobacco Corporation as locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes is found to be defective, invalid and unenforceable, such that when R.A. No. 7654 took effect on July 3, 1993, the brands in question were not CURRENTLY CLASSIFIED AND TAXED at 55% pursuant to Section 1142(c)(1) of the Tax Code, as amended by R.A. No. 7654 and were therefore still classified as other locally manufactured cigarettes and taxed at 45% or 20% as the case may be.

Accordingly, the deficiency *ad valorem* tax assessment issued on petitioner Fortune Tobacco Corporation in the amount of P9,598,334.00, exclusive of surcharge and interest, is hereby canceled for lack of legal basis.

Respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency tax assessment made and issued on petitioner in relation to the implementation of RMC No. 37-93.

SO ORDERED. [9]

In its resolution, dated 11 October 1994, the CTA dismissed for lack of merit the motion for reconsideration.

The CIR forthwith filed a petition for review with the Court of Appeals, questioning the CTA's 10th August 1994 decision and 11th October 1994 resolution. On 31 March 1993, the appellate court's Special Thirteenth Division affirmed in all respects the assailed decision and resolution.

In the instant petition, the Solicitor General argues: That —

I. RMC 37-93 IS A RULING OR OPINION OF THE COMMISSIONER OF INTERNAL REVENUE INTERPRETING THE PROVISIONS OF THE TAX CODE.

II. BEING AN INTERPRETATIVE RULING OR OPINION, THE PUBLICATION OF RMC 37-93, FILING OF COPIES THEREOF WITH THE UP LAW CENTER AND PRIOR HEARING ARE NOT NECESSARY TO ITS VALIDITY, EFFECTIVITY AND ENFORCEABILITY.

III. PRIVATE RESPONDENT IS DEEMED TO HAVE BEEN NOTIFIED OR RMC 37-93 ON JULY 2, 1993.

IV. RMC 37-93 IS NOT DISCRIMINATORY SINCE IT APPLIES TO ALL LOCALLY MANUFACTURED CIGARETTES SIMILARLY SITUATED AS "HOPE," "MORE" AND "CHAMPION" CIGARETTES.

V. PETITIONER WAS NOT LEGALLY PROSCRIBED FROM RECLASSIFYING "HOPE," "MORE" AND "CHAMPION" CIGARETTES BEFORE THE EFFECTIVITY OF R.A. NO. 7654.

VI. SINCE RMC 37-93 IS AN INTERPRETATIVE RULE, THE INQUIRY IS NOT INTO ITS VALIDITY, EFFECTIVITY OR ENFORCEABILITY BUT INTO ITS CORRECTNESS OR PROPRIETY; RMC 37-93 IS CORRECT. [10]

In fine, petitioner opines that RMC 37-93 is merely an interpretative ruling of the BIR which can thus become effective without any prior need for notice and hearing, nor publication, and that its issuance is not discriminatory since it would apply under similar circumstances to all locally manufactured cigarettes.

The Court must sustain both the appellate court and the tax court.

Petitioner stresses on the wide and ample authority of the BIR in the issuance of rulings for the effective implementation of the provisions of the National Internal Revenue Code. Let it be made clear that such authority of the Commissioner is not here doubted. Like any other government agency, however, the CIR may not disregard legal requirements or applicable principles in the exercise of its quasi-legislative powers.

Let us first distinguish between two kinds of administrative issuances — a *legislative rule* and an*interpretative rule*.

In M*isamis Oriental Association of Coco Traders, Inc*., *vs. Department of Finance Secretary*, [11] the Court expressed:

. . . a legislative rule is in the *nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof . In the same way that laws must have the benefit of public hearing, it is generally required*

that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:

Public Participation. — If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

In addition such rule must be published. On the other hand, *interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing*. [12]

It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

A reading of RMC 37-93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654. Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which *at the time of its effectivity* were not so classified as bearing foreign brands. Prior to the issuance of the questioned circular, "Hope Luxury," "Premium More," and "Champion" cigarettes were in the category of locally manufactured cigarettes *not* bearing foreign brand subject to 45% *ad valorem* tax. Hence, without RMC 37-93, the enactment of RA 7654, would have had no new tax rate consequence on private respondent's products. Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued. In so doing, the BIR not simply intrepreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.

Indeed, the BIR itself, in its RMC 10-86, has observed and provided:

RMC NO. 10-86
Effectivity of Internal Revenue Rules and Regulations

It has been observed that one of the problem areas bearing on compliance with Internal Revenue Tax rules and regulations is lack or insufficiency of due notice to the tax paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light of the constitutional provision on "due process of law" and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (Sec. 1, Art. IV, Constitution; Art. 2, New Civil Code).

In order that there shall be a just enforcement of rules and regulations, in conformity with the basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:

(1) This Circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) Revenue Memorandum Circulars and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.

(2) Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed.

Due notice of the said issuances may be fairly presumed only after the following procedures have been taken;

xxx xxx xxx

(5) Strict compliance with the foregoing procedures is enjoined. [13]

Nothing on record could tell us that it was either impossible or impracticable for the BIR to observe and comply with the above requirements before giving effect to its questioned circular.

Not insignificantly, RMC 37-93 might have likewise infringed on uniformity of taxation.

Article VI, Section 28, paragraph 1, of the 1987 Constitution mandates taxation to be uniform and equitable. Uniformity requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities. [14] Thus, all taxable articles or kinds of property of the same class must be taxed at the same rate [15] and the tax must operate with the same force and effect in every place where the subject may be found.

Apparently, RMC 37-93 would only apply to "Hope Luxury," "Premium More" and "Champion" cigarettes and, unless petitioner would be willing to concede to the submission of private respondent that the circular should, as in fact my esteemed colleague Mr. Justice Bellosillo so expresses in his separate opinion, be considered *adjudicatory* in nature and thus violative of due process following the *Ang Tibay* [16] doctrine, the measure suffers from lack of uniformity of taxation. In its decision, the CTA has keenly noted that other cigarettes bearing foreign brands have not been similarly included within the scope of the circular, such as —

1. Locally manufactured by ALHAMBRA INDUSTRIES, INC.

(a) "PALM TREE" is listed as manufactured by office of Monopoly, Korea (Exhibit "R")

2. Locally manufactured by LA SUERTE CIGAR and CIGARETTE COMPANY

(a) "GOLDEN KEY" is listed being manufactured by United Tobacco, Pakistan (Exhibit "S")

(b) "CANNON" is listed as being manufactured by Alpha Tobacco, Bangladesh (Exhibit "T")

3. Locally manufactured by LA PERLA INDUSTRIES, INC.

(a) "WHITE HORSE" is listed as being manufactured by Rothman's, Malaysia (Exhibit "U")

(b) "RIGHT" is listed as being manufactured by SVENSKA, Tobaks, Sweden (Exhibit "V-1")

4. Locally manufactured by MIGHTY CORPORATION

(a) "WHITE HORSE" is listed as being manufactured by Rothman's, Malaysia (Exhibit "U-1")

5. Locally manufactured by STERLING TOBACCO CORPORATION

(a) "UNION" is listed as being manufactured by Sumatra Tobacco, Indonesia and Brown and Williamson, USA (Exhibit "U-3")

(b) "WINNER" is listed as being manufactured by Alpha Tobacco, Bangladesh; Nangyang, Hongkong; Joo Lan, Malaysia; Pakistan Tobacco Co., Pakistan; Premier Tobacco, Pakistan and Haggar, Sudan (Exhibit "U-4"). [17]

The court quoted at length from the transcript of the hearing conducted on 10 August 1993 by the Committee on Ways and Means of the House of Representatives; *viz*:

THE CHAIRMAN. So you have specific information on Fortune Tobacco alone. You don't have specific information on other tobacco manufacturers. Now, there are other brands which are similarly situated. They are locally manufactured bearing foreign brands. And may I enumerate to you all these brands, which are also listed in the World Tobacco Directory . . . Why were these brand not reclassified at 55 if your want to give a level playing filed to foreign manufacturers?

MS. CHATO. Mr. Chairman, *in fact, we have already prepared a Revenue Memorandum Circular that was supposed to come after RMC No. 37-93 which have really named specifically the list of locally manufactured cigarettes bearing a foreign brand for excise tax purposes and includes all these brands that you mentioned at 55 percent* except that at that time, when we had to come up with this, we were forced to study the brands of Hope, More and Champion because we were given documents that would indicate the that these brands were actually being claimed or patented in other countries because we went by Revenue Memorandum Circular 1488 and we wanted to give some rationality to how it came about but we couldn't find the rationale there. And we really found based on our own interpretation that the only test that is given by that existing law would be registration in the World Tobacco Directory. So we came out with this proposed revenue memorandum circular which we forwarded to the Secretary of Finance except that at that point in time, we went by the Republic Act 7654 in Section 1 which amended Section 142, C-1, it said, that on locally manufactured cigarettes which are currently classified and taxed at 55 percent. *So we were saying that when this law took effect in July 3 and if we are going to come up with this revenue circular thereafter, then I think our action would really be subject to question* but we feel that . . . Memorandum Circular Number 37-93 would really cover even similarly situated brands. *And in fact, it was really because of the study, the short time that we were given to study the matter that we could not include all the rest of the other brands that would have been really classified as foreign brand if we went by the law itself*. I am sure that by the reading of the law, you would without that ruling by Commissioner Tan they would really have been included in the definition or in the classification of foregoing brands. These brands that you referred to or just read to us and in fact just for your information, *we really came out with a proposed revenue memorandum circular for those brands*. (Emphasis supplied)

(Exhibit "FF-2-C," pp. V-5 TO V-6, VI-1 to VI-3).

xxx xxx xxx

MS. CHATO. . . . But I do agree with you now that it cannot and in fact that is why I felt that we . . . *I wanted to come up with a more extensive coverage and precisely why I asked that revenue memorandum circular that would cover all those similarly situated would be prepared but because of the lack of time and I came out with a study of RA 7654, it would not have been possible to really come up with the reclassification or the proper classification of all brands that are listed there*. . .(emphasis supplied) (Exhibit "FF-2d," page IX-1)

xxx xxx xxx

HON. DIAZ. But did you not consider that there are similarly situated?

MS. CHATO. That is precisely why, Sir, after we have come up with this Revenue Memorandum Circular No. 37-93, the other brands came about the would have also clarified RMC 37-93 by I was saying really because of the fact that I was just recently appointed and the lack of time, the period that was allotted to us to come up with the right actions on the matter, we were really caught by the July 3 deadline. *But in fact, We have already prepared a revenue memorandum circular clarifying with the other . . . does not yet, would have been a list of locally manufactured cigarettes bearing a foreign brand for excise tax purposes which would include all the other brands that were mentioned by the Honorable Chairman*. (Emphasis supplied) (Exhibit "FF-2-d," par. IX-4). [18]

All taken, the Court is convinced that the hastily promulgated RMC 37-93 has fallen short of a valid and effective administrative issuance.

WHEREFORE, the decision of the Court of Appeals, sustaining that of the Court of Tax Appeals, is AFFIRMED. No costs.

SO ORDERED.

EN BANC

[G.R. Nos. 95203-05 : December 18, 1990.]

192 SCRA 363

SENATOR ERNESTO MACEDA*, Petitioner, vs.* ENERGY REGULATORY BOARD (ERB);

[G.R. Nos. 95119-21 : December 18, 1990.]

192 SCRA 363

D E C I S I O N

SARMIENTO, *J.:*

The petitioners pray for injunctive relief, to stop the Energy Regulatory Board (Board hereinafter) from implementing its Order, dated September 21, 1990, mandating a provisional increase in the prices of petroleum and petroleum products, as follows:

PRODUCTS IN PESOS PER LITER

OPSF

Premium Gasoline 1.7700

Regular Gasoline 1.7700

Avturbo 1.8664

Kerosene 1.2400

Diesel Oil 1.2400

Fuel Oil 1.4900

Feedstock 1.4900

LPG 0.8487

Asphalts 2.7160

Thinners 1.7121 1

It appears that on September 10, 1990, Caltex (Philippines), Inc., Pilipinas Shell Petroleum Corporation, and Petron Corporation proferred separate applications with the Board for permission to increase the wholesale posted prices of petroleum products, as follows:

Caltex P3.2697 per liter

Shell 2.0338 per liter

Petron 2.00 per liter 2

and meanwhile, for provisional authority to increase temporarily such wholesale posted prices pending further proceedings.:-cralaw

On September 21, 1990, the Board, in a joint (on three applications) Order granted provisional relief as follows:

WHEREFORE, considering the foregoing, and pursuant to Section 8 of Executive Order No. 172, this Board hereby grants herein applicants' prayer for provisional relief and, accordingly, authorizes said applicants a weighted average provisional increase of ONE PESO AND FORTY-TWO CENTAVOS (P1.42) per liter in the wholesale posted prices of their various petroleum products enumerated below, refined and/or marketed by them locally. 3

The petitioners submit that the above Order had been issued with grave abuse of discretion, tantamount to lack of jurisdiction, and correctible by *Certiorari*.

The petitioner, Senator Ernesto Maceda, 4 also submits that the same was issued without proper notice and hearing in violation of Section 3, paragraph (e), of Executive Order No. 172; that the Board, in decreeing an increase, had created a new source for the Oil Price Stabilization Fund (OPSF), or otherwise that it had levied a tax, a power vested in the legislature, and/or that it had "re-collected", by an act of taxation, ad valorem taxes on oil which Republic Act No. 6965 had abolished.

The petitioner, Atty. Oliver Lozano, 5 likewise argues that the Board's Order was issued without notice and hearing, and hence, without due process of law.

The intervenor, the Trade Union of the Philippines and Allied Services (TUPAS/FSM)-W.F.T.U., 6 argues on the other hand, that the increase cannot be allowed since the respondents oil companies had not exhausted their existing oil stock which they had bought at old prices and that they cannot be allowed to charge new rates for stock purchased at such lower rates.

The Court set the cases (in G.R. Nos. 95203-05) for hearing on October 25, 1990, in which Senator Maceda and his counsel, Atty. Alexander Padilla, argued. The Solicitor General, on behalf of the Board, also presented his arguments, together with Board Commissioner Rex Tantiangco. Attys. Federico Alikpala, Jr. and Joselia Poblador represented the oil firms (Petron and Caltex, respectively).

The parties were thereafter required to submit their memorandums after which, the Court considered the cases submitted for resolution.

On November 20, 1990, the Court ordered these cases consolidated.

On November 27, 1990, we gave due course to both petitions.

The Court finds no merit in these petitions.

Senator Maceda and Atty. Lozano, in questioning the lack of a hearing, have overlooked the provisions of Section 8 of Executive Order No. 172, which we quote:

"SECTION 8. Authority to Grant Provisional Relief . — The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.: nad

As the Order itself indicates, the authority for provisional increase falls within the above provision.

There is no merit in the Senator's contention that the "applicable" provision is Section 3, paragraph (e) of the Executive Order, which we quote:

(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.

What must be stressed is that while under Executive Order No. 172, a hearing is indispensable, it does not preclude the Board from ordering, ex parte, a provisional increase, as it did here, subject to its final disposition of whether or not: (1) to make it permanent; (2) to reduce or increase it further; or (3) to deny the application. Section 37 paragraph (e) is akin to a temporary restraining order or a writ of preliminary attachment issued by the courts, which are given ex parte, and which are subject to the resolution of the main case.

Section 3, paragraph (e) and Section 8 do not negate each other, or otherwise, operate exclusively of the other, in that the Board may resort to one but not to both at the same time. Section 3(e) outlines the jurisdiction of the Board and the grounds for which it may decree a price adjustment, subject to the requirements of notice and hearing. Pending that, however, it may order, under Section 8, an authority to increase provisionally, without need of a hearing, subject to the final outcome of the proceeding. The Board, of course, is not prevented from conducting a hearing on the grant of provisional authority — which is of course, the better procedure — however, it cannot be stigmatized later if it failed to conduct one. As we held in Citizens' Alliance for Consumer Protection v. Energy Regulatory Board. 7

In the light of Section 8 quoted above, public respondent Board need not even have conducted formal hearings in these cases prior to issuance of its Order of 14 August 1987 granting a provisional increase of prices. The Board, upon its own discretion and on the basis of documents and evidence submitted by private respondents, could have issued an order granting provisional relief immediately upon filing by private respondents of their respective applications. In this respect, the Court considers the evidence presented by private respondents in support of their applications — i.e., evidence showing that importation costs of petroleum products had gone up; that the peso had depreciated in value; and that the Oil Price Stabilization Fund (OPSF) had by then been depleted — as substantial and hence constitutive of at least prima facie basis for issuance by the Board of a provisional relief order granting an increase in the prices of petroleum products. 8

We do not therefore find the challenged action of the Board to have been done in violation of the due process clause. The petitioners may contest however, the applications at the hearings proper.

Senator Maceda's attack on the Order in question on premises that it constitutes an act of taxation or that it negates the effects of Republic Act No. 6965, cannot prosper. Republic Act No. 6965 operated to lower taxes on petroleum and petroleum products by imposing specific taxes rather than ad valorem taxes thereon; it is, not, however, an insurance against an "oil hike", whenever warranted, or is it a price control mechanism on petroleum and petroleum products. The statute had possibly forestalled a larger hike, but it operated no more.: nad

The Board Order authorizing the proceeds generated by the increase to be deposited to the OPSF is not an act of taxation. It is authorized by Presidential Decree No. 1956, as amended by Executive Order No. 137, as follows:

SECTION 8. There is hereby created a Trust Account in the books of accounts of the Ministry of Energy to be designated as Oil Price Stabilization Fund (OPSF) for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or changes in world market prices of crude oil and imported petroleum products. The Oil Price Stabilization Fund (OPSF) may be sourced from any of the following:

a) Any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;

b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Minister of Finance in consultation with the Board of Energy;

c) Any additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate Order that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;

d) Any resulting peso cost differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rates as fixed by the Board of Energy.

Anent claims that oil companies cannot charge new prices for oil purchased at old rates, suffice it to say that the increase in question was not prompted alone by the increase in world oil prices arising from tension in the Persian Gulf. What the Court gathers from the pleadings as well as events of which it takes judicial notice, is that: (1) as of June 30, 1990, the OPSF has incurred a deficit of P6.1 Billion; (2) the exchange rate has fallen to P28.00 to $1.00; (3) the country's balance of payments is expected to reach $1 Billion; (4) our trade deficit is at $2.855 Billion as of the first nine months of the year.

Evidently, authorities have been unable to collect enough taxes necessary to replenish the OPSF as provided by Presidential Decree No. 1956, and hence, there was no available alternative but to hike existing prices.

The OPSF, as the Court held in the aforecited CACP cases, must not be understood to be a funding designed to guarantee oil firms' profits although as a subsidy, or a trust account, the Court has no doubt that oil firms make money from it. As we held there, however, the OPSF was established precisely to protect the consuming public from the erratic movement of oil prices and to preclude oil companies from taking advantage of fluctuations occurring every so often. As a buffer mechanism, it stabilizes domestic prices by bringing about a uniform rate rather than leaving pricing to the caprices of the market.

In all likelihood, therefore, an oil hike would have probably been imminent, with or without trouble in the Gulf, although trouble would have probably aggravated it.: nad

The Court is not to be understood as having prejudged the justness of an oil price increase amid the above premises. What the Court is saying is that it thinks that based thereon, the Government has made out a prima facie case to justify the provisional increase in question. Let the Court therefore make clear that these findings are not final; the burden, however, is on the petitioners' shoulders to demonstrate the fact that the present economic picture does not warrant a permanent increase.

There is no doubt that the increase in oil prices in question (not to mention another one impending, which the Court understands has been under consideration by policy-makers) spells hard(er) times for the Filipino people. The Court can not, however, debate the wisdom of policy or the logic behind it (unless it is otherwise arbitrary), not because the Court agrees with policy, but because the Court is not the suitable forum for debate. It is a question best judged by the political leadership which after all, determines policy, and ultimately, by the electorate, that stands to be better for it or worse off, either in the short or long run.

At this point, the Court shares the indignation of the people over the conspiracy of events and regrets its own powerlessness, if by this Decision it has been powerless. The constitutional scheme of things has simply left it with no choice.

In fine, we find no grave abuse of discretion committed by the respondent Board in issuing its questioned Order.

WHEREFORE, these petitions are DISMISSED. No costs.

SO ORDERED.

Republic of the Philippines
SUPREME COURT
Manila

G.R. No. 76185 March 30, 1988

WARREN MANUFACTURING WORKERS UNION (WMWU), petitioner,
vs.
THE BUREAU OF LABOR RELATIONS; PHILIPPINE AGRICULTURAL, COMMERCIAL AND INDUSTRIAL WORKERS UNION (PACIWU); and SAMAHANG MANGGAGAWA SA WARREN MANUFACTURING CORP.-ALLIANCE OF NATIONALIST AND GENUINE LABOR ORGANIZATIONS (SMWMC-ANGLO), respondents.

PARAS, *J.:*

This is a petition for review on certiorari with prayer for a preliminary injunction and/or the issuance of a restraining order seeking to set aside: (1) Order of the Med-Arbiter dated August 18,1986, the dispositive portion of which reads:

WHEREFORE, premises considered, a certification election is hereby ordered conducted to determine the exclusive bargaining representative of all the rank and file employees of Warren Manufacturing Corporation, within 20 days from receipt of this Order, with the following choices:

1. Philippine Agricultural, Commercial and Industry Workers Union (PACIWU);

2. Warren Mfg. Workers Union;

3. Samahan ng Manggagawa sa Warren Mfg. Corporation petition-ANGLO; and

4. No Union.

The representation Officer is hereby directed to call the parties to a pre-election conference to thresh out the mechanics for the conduct of the actual election.

SO ORDERED. (Rollo, p. 15).

and (2) the Resolution dated October 7, 1986 of the Officer-in-Charge of the Bureau of Labor dismissing the appeals of Warren Manufacturing Corporation and herein petitioner (Annex "B", Rollo, pp. 16-18).

This certification case had its inception in an intra-union rivalry between the petitioner and the respondent Philippine Agricultural, Commercial and Industrial Workers Union (PACIWU for short) since 1985.

The undisputed facts of this case as found by the Med-Arbiter of the Bureau of Labor Relations are as follows:

On June 13,1985, PACIWU filed a petition for certification election, alleging compliance with the jurisdictional requirements.

On July 7, 1985, respondent thru counsel filed a motion to dismiss the petition on the ground that there exist a C.BA between the respondent and the Warren Mfg. Union which took effect upon its signing on July 16, 1985 and to expire on July 31, 1986.

While the petition was under hearing, PACIWU filed a Notice of Strike and on conciliation meeting, a Return-to-Work Agreement was signed on July 25,1985, stipulating, among others, as follows:

To resolve the issue of union representation at Warren Mfg- Corp. parties have agreed to the holding of a consent election among the rank and file on August 25, 1985 at the premises of the company to be supervised by MOLE. ...

It is cleanly understood that the certified union in the said projected election shall respect and administer the existing CBA at the company until its expiry date on July 31, 1986.

On 12 August 1985, an Order was issued by this Office, directing that a consent election be held among the rank and file workers of the company, with the following contending unions:

1. Philippine Agricultural, Commercial and Industrial Workers Union (PACIWU)

2. Warren Mfg. Workers Union;

3. No Union.

On August 25, 1985, said consent election was held, and yielded the following results:

PACIWU----------94

WMWU----------193

Feeling aggrieved, however, PACIWU filed an Election Protest.

In December, 1985 a Notice of Strike was again filed by the union this time with the Valenzuela branch office of this Ministry, and after conciliation, the parties finally agreed, among others, to wit:

In consideration of this payment, ... individual complaints and PACIWU hereby agree and covenant that the following labor complaints/disputes are considered amicably settled and withdrawn/dismissed, to wit: ...

On the basis of a Joint Motion to Dismiss filed by the parties, the Election Protest filed by the PACIWU was ordered dismissed. (Rollo, pp. 12-13).

On June 5, 1986, the PACIWU filed a petition for certification election followed by the filing of a petition for the same purposes by the Samahan ng Manggagawa sa Warren Manufacturing Corporation-Alliance of Nationalist and Genuine Labor Organizations (Anglo for short) which petitions were both opposed by Warren Manufacturing Corporation on the grounds that neither petition has 30% support; that both are barred by the one-year no

certification election law and the existence of a duly ratified CBA. The therein respondent, therefore, prayed that the petitions for certification election be dismissed. (Rollo, pp. 11-12).

As above stated, the Med-Arbiter of the National Capital Region, Ministry of Labor and Employment, ordered on August 8, 't 986 the holding of a certification election within twenty 20) days from receipt to determine the exclusive bargaining representative of all the rank and file employees of the Warren se Manufacturing Corporation, with the above-mentioned choices.

Both Warren Manufacturing Corporation and petitioner herein filed separate motions, treated as appeals by the Bureau of Labor Relations, which dismissed the same for lack of merit.

Hence, this petition.

This petition was filed solely by the Warren Manufacturing Workers Union, with the company itself opting not to appeal.

The Second Division of this Court in the resolution of November 3, 1986 without giving due course to the petition, required the respondents to comment and issued the temporary, restraining order prayed for (Rollo, pp. 18-20).

The comment of the respondent PACIWU was filed on November 27, 1986 (*Ibid.,* pp. 29-32). The public respondent through the Hon. Solicitor General filed its Comment to the petition on December 10, 1986 (*Ibid*., pp. 34-43) and private respondent ANGLO, filed its comment on December 16, 1986 (*Ibid.*, pp. 45- 51). The petitioner with leave of court filed its reply to comment entitled a rejoinder on January 6,1987 (*Ibid.*, pp. 52-62).

In the resolution of January 26, 1987, the petition was given due course and the parties were required to submit their respective memoranda (*Ibid*., p. 76).

Memorandum for public respondent was filed on February 20,1987 (*Ibid*., p. 82-88). Respondent PACIWU's memorandum was filed on March 18, 1987 (*Ibid.*, pp. 95-99). SMWMCANGLO'S Memorandum was filed on March 23,1987 (*Ibid*., pp. 100-1 09) and the petitioner's memorandum was filed on March 31,1987 (*Ibid*., pp. 110-120).

In its memorandum, petitioner raised the following issues:

A. The holding of a certification election at the bargaining unit is patently premature and illegal.

B. The petition filed by private respondents do not have the statutory 30% support requirement.

C. Petitioner was denied administrative due process when excluded from med-arbitration proceedings.

The petition is devoid of merit.

A.

Petitioner's contention is anchored on the following grounds:

Section 3, Rule V of the Implementing Rules and Regulations of the Labor Code provides, among others:

... however no certification election may be held within one (1) year from the date of the issuance of the declaration of a final certification result.

and

Article 257, Title VII, Book V of the Labor Code provides:

No certification election issue shall be entertained by the Bureau in any Collective Bargaining Agreement existing between the employer and a legitimate labor organization.

Otherwise stated, petitioner invoked the one-year no certification election rule and the principle of the Contract Bar Rule.

This contention is untenable.

The records show that petitioner admitted that what was held on August 25,1985 at the Company's premises and which became the root of this controversy, was a consent election and not a *certification election* (Emphasis supplied). As correctly distinguished by private respondent, a consent election is an agreed one, its purpose being merely to

determine the issue of majority representation of all the workers in the appropriate collective bargaining unit while a certification election is aimed at determining the sole and exclusive bargaining agent of all the employees in an appropriate bargaining unit for the purpose of collective bargaining. From the very nature of consent election, it is a separate and distinct process and has nothing to do with the import and effect of a certification election. Neither does it shorten the terms of an existing CBA nor entitle the participants thereof to immediately renegotiate an existing CBA although it does not preclude the workers from exercising their right to choose their sole and exclusive bargaining representative after the expiration of the sixty (60) day freedom period. In fact the Med-Arbiter in the Return to Work Agreement signed by the parties emphasized the following:

To resolve the issue of union representation at Warren Mfg. Corp., parties have agreed to the holding of a consent election among the rank and file on August 25,1985 at the premises of the company to be supervised by the Ministry of Labor and Employment .....

It is clearly understood that the certified union in the said projected election shall respect and administer the existing CBA at the company until its expiry date on July 31, 1986. (Rollo, pp. 46, 48-49).

It is, therefore, unmistakable that the election thus held on August 25, 1985 was not for the purpose of determining which labor union should be the bargaining representative in the negotiation for a collective contract, there being an existing collective bargaining agreement yet to expire on July 31, 1986; but only to determine which labor union shag administer the said existing contract.

Accordingly, the following provisions of the New Labor Code apply:

ART. 254. *Duty to bargain collectively when there exists a collective bargaining agreement*.—When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

Corollary to the above, Article 257 of the New Labor Code expressly states that No certification election issue shall be entertained if a collective agreement which has been submitted in accordance with Article 231 of this Code exists between the employer and a legitimate labor organization except within sixty (60) days prior to the expiration of the life of such certified collective bargaining agreement." (Rollo, pp. 83-84)

Thus, as stated by this Court in General Textiles Allied Workers Association v. the Director of the Bureau of labor Relations (84 SCRA 430 [19781) "there should be no obstacle to the right of the employees to petition for a certification election at the proper time. that is, within 60 days prior to the expiration of the three year period ...

Finally, such premature agreement entered into by the petitioner and the Company on June 2, 1986 does not adversely affect the petition for certification election filed by respondent PACIWU (Rollo, p. 85).

Section 4, Rule V, Book V of the Omnibus Rules Implementing the Labor Code clearly provides:

Section 4. *Effect of Early Agreement*.—There representation case shall not, however, be adversely affected by a collective agreement submitted before or during the last sixty days of a subsisting agreement or during the pendency of the representation case.

Apart from the fact that the above Rule is clear and explicit, leaving no room for construction or interpretation, it is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law and are entitled to great respect (Espanol v. Philippine Veterans Administration, 137 SCRA 314 [1985)).

As aforestated, the existing collective bargaining agreement was due to expire on July 31, 1 986. The Med-Arbiter found that a sufficient number of employees signified their consent to the filing of the petition and 107 employees authorized intervenor to file a motion for intervention. Otherwise stated, he found that the petition and intervention were supported by more than 30% of the members of the bargaining unit. In the light of these facts, Article 258 of the Labor Code makes it mandatory for the Bureau of Labor Relations to conduct a certification election (Samahang Manggagawa ng

Pacific Mills, Inc. v. Noriel, et al., 134 SCRA 152 [1985]). In the case of Federation of Free Workers (Bisig ng Manggagawa sa UTEX v. Noriel etc., et al., 86 SCRA 132 [1978]), this Court was even more specific when it stated "No administrative agency can ignore the imperative tone of the above article. The language used is one of command. Once it has been verified that the petition for certification election has the support of at least 30% of the employees in the bargaining unit, it must be granted, The specific word used can yield no other meaning. It becomes under the circumstances, "mandatory"..."

The finality of the findings of fact of the Med-Arbiter that the petition and intervention filed in the case at bar were supported by 30% of the members of the workers is clear and definite.

WHEREFORE, the instant Petition is DISMISSED,

SO ORDERED.

Taxicab Operators v. BOT case digest

TAXICAB OPERATORS V. BOT

Police Power

Petitioner Taxicab Operators of Metro Manila, Inc. (TOMMI) is a domestic corporation composed of taxicab operators, who are grantees of Certificates of Public Convenience to operate taxicabs within the City of Manila and to any other place in Luzon accessible to vehicular traffic.

On October 10, 1977, respondent Board of Transportation (BOT) issued Memorandum Circular No. 77-42 which reads:

SUBJECT: Phasing out and Replacement of Old and Dilapidated Taxis

On January 27, 1981, petitioners filed a Petition with the BOT, docketed as Case No. 80-7553, seeking to nullify MC No. 77-42 or to stop its implementation; to allow the registration and operation in 1981 and subsequent years of taxicabs of model 1974, as well as those of earlier models which were phased-out, provided that, at the time of registration, they are roadworthy and fit for operation.

ISSUES:

A. Did BOT and BLT promulgate the questioned memorandum circulars in accord with the manner required by Presidential Decree No. 101, thereby safeguarding the petitioners' constitutional right to procedural due process?

B. Granting arguendo, that respondents did comply with the procedural requirements imposed by Presidential Decree No. 101, would the implementation and enforcement of the assailed memorandum circulars violate the petitioners' constitutional rights to.

(1) Equal protection of the law;

(2) Substantive due process; and

(3) Protection against arbitrary and unreasonable classification and standard?

HELD

As enunciated in the preambular clauses of the challenged BOT Circular, the overriding consideration is the safety and comfort of the riding public from the dangers posed by old and dilapidated taxis. The State, in the exercise of its police power, can prescribe regulations to promote the health, morals, peace, good order, safety and general welfare of the people. It can prohibit all things hurtful to comfort, safety and welfare of society. It may also regulate property rights. In the language of Chief Justice Enrique M. Fernando "the necessities imposed by public welfare may justify the exercise of governmental authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded".

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 78385 August 31, 1987

PHILIPPINE CONSUMERS FOUNDATION, INC., petitioner,
vs.
THE SECRETARY OF EDUCATION, CULTURE AND SPORTS, respondent.

GANCAYCO, *J.:*

This is an original Petition for prohibition with a prayer for the issuance of a writ of preliminary injunction.

The record of the case discloses that the herein petitioner Philippine Consumers Foundation, Inc. is a non-stock, non-profit corporate entity duly organized and existing under the laws of the Philippines. The herein respondent Secretary of Education, Culture and Sports is a ranking cabinet member who heads the Department of Education, Culture and Sports of the Office of the President of the Philippines.

On February 21, 1987, the Task Force on Private Higher Education created by the Department of Education, Culture and Sports (hereinafter referred to as the DECS) submitted a report entitled "Report and Recommendations on a Policy for Tuition and Other School Fees." The report favorably recommended to the DECS the following courses of action with respect to

the Government's policy on increases in school fees for the schoolyear 1987 to 1988 —

(1) Private schools may be allowed to increase its total school fees by not more than 15 per cent to 20 per cent without the need for the prior approval of the DECS. Schools that wish to increase school fees beyond the ceiling would be subject to the discretion of the DECS;

(2) Any private school may increase its total school fees in excess of the ceiling, provided that the total schools fees will not exceed P1,000.00 for the schoolyear in the elementary and secondary levels, and P50.00 per academic unit on a semestral basis for the collegiate level. **1**

The DECS took note of the report of the Task Force and on the basis of the same, the DECS, through the respondent Secretary of Education, Culture and Sports (hereinafter referred to as the respondent Secretary), issued an Order authorizing, *inter alia*, the 15% to 20% increase in school fees as recommended by the Task Force. The petitioner sought a reconsideration of the said Order, apparently on the ground that the increases were too high. [2] Thereafter, the DECS issued Department Order No. 37 dated April 10, 1987 modifying its previous Order and reducing the increases to a lower ceiling of 10% to 15%, accordingly. [3] Despite this reduction, the petitioner still opposed the increases. On April 23, 1987, the petitioner, through counsel, sent a telegram to the President of the Philippines urging the suspension of the implementation of Department Order No. 37. [4] No response appears to have been obtained from the Office of the President.

Thus, on May 20, 1987, the petitioner, allegedly on the basis of the public interest, went to this Court and filed the instant Petition for prohibition, seeking that judgment be rendered declaring the questioned Department Order unconstitutional. The thrust of the Petition is that the said Department Order was issued without any legal basis. The petitioner also maintains that the questioned Department Order was issued in violation of the due process clause of the Constitution in asmuch as the petitioner was not given due notice and hearing before the said Department Order was issued.

In support of the first argument, the petitioner argues that while the DECS is authorized by law to regulate school fees in educational institutions, the power to regulate does not always include the power to increase school fees. [5]

Regarding the second argument, the petitioner maintains that students and parents are interested parties that should be afforded an opportunity for a hearing before school fees are increased. In sum, the petitioner stresses that the questioned Order constitutes a denial of substantive and procedural due process of law.

Complying with the instructions of this Court, [6] the respondent Secretary submitted a Comment on the Petition. [7] The respondent Secretary maintains, *inter alia*, that the increase in tuition and other school fees is urgent and necessary, and that the assailed Department Order is not arbitrary in character. In due time, the petitioner submitted a Reply to the Comment. [8] Thereafter, We considered the case submitted for resolution.

After a careful examination of the entire record of the case, We find the instant Petition devoid of merit.

We are not convinced by the argument that the power to regulate school fees "does not always include the power to increase" such fees. Section 57 (3) of Batas Pambansa Blg. 232, otherwise known as The Education Act of 1982, vests the DECS with the power to regulate the educational system in the country, to wit:

SEC. 57. Educations and powers of the Ministry. The Ministry shall:

xxx xxx xxx

(3) Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy.

xxx xxx xxx [9]

Section 70 of the same Act grants the DECS the power to issue rules which are likewise necessary to discharge its functions and duties under the law, to wit:

SEC. 70. *Rule-making Authority*. — The Minister of Education and Culture, charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

In the absence of a statute stating otherwise, this power includes the power to prescribe school fees. No other government agency has been vested with the authority to fix school fees and as such, the power should be considered lodged with the DECS if it is to properly and effectively discharge its functions and duties under the law.

We find the remaining argument of the petitioner untenable. The petitioner invokes the due process clause of the Constitution against the alleged arbitrariness of the assailed Department Order. The petitioner maintains that the due process clause requires that prior notice and hearing are indispensable for the Department Order to be validly issued.

We disagree.

The function of prescribing rates by an administrative agency may be either a legislative or an adjudicative function. If it were a legislative function, the grant of prior notice and hearing to the affected parties is not a requirement of due process. As regards rates prescribed by an administrative agency in the exercise of its *quasi*-judicial function, prior notice and hearing are essential to the validity of such rates. When the rules and/or rates laid down by an administrative agency are meant to apply to all enterprises of a given kind throughout the country, they may partake of a legislative character. Where the rules and the rates imposed apply exclusively to a particular party, based upon a finding of fact, then its function is *quasi*-judicial in character. **[9]a**

Is Department Order No. 37 issued by the DECS in the exercise of its legislative function? We believe so. The assailed Department Order prescribes the maximum school fees that may be charged by *all private schools in the country* for schoolyear 1987 to 1988. This being so, prior notice and hearing are not essential to the validity of its issuance.

This observation notwithstanding, there is a failure on the part of the petitioner to show clear and convincing evidence of such arbitrariness. As the record of the case discloses, the DECS is not without any justification for the issuance of the questioned Department Order. It would be reasonable to assume that the report of the Task Force created by the DECS, on which it based its decision to allow an increase in school fees, was made judiciously. Moreover, upon the instance of the petitioner, as it so admits in its Petition, the DECS had actually reduced the original rates of 15% to 20% down to 10% to 15%, accordingly. Under the circumstances peculiar to this case, We cannot consider the assailed Department Order arbitrary.

Under the Rules of Court, it is presumed that official duty has been regularly performed. **10** In the absence of proof to the contrary, that presumption prevails. This being so, the burden of proof is on the party assailing the regularity of official proceedings. In the case at bar, the petitioner has not successfully disputed the presumption.

We commend the petitioner for taking the cudgels for the public, especially the parents and the students of the country. Its zeal in advocating the protection of the consumers in its activities should be lauded rather than discouraged. But a more convincing case should be made out by it if it is to seek relief from the courts some time in the future. Petitioner must establish that respondent acted without or in excess of her jurisdiction; or with grave abuse of discretion, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law before the extraordinary writ of prohibition may issue. **11**

This Court, however, does not go to the extent of saying that it gives its judicial *imprimatur* to future increases in school fees. The increases must not be unreasonable and arbitrary so as to amount to an outrageous exercise of government authority and power. In such an eventuality, this Court will not hesitate to exercise the power of judicial review in its capacity as the ultimate guardian of the Constitution.

WHEREFORE, in view of the foregoing, the instant Petition for prohibition is hereby DISMISSED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

FACTS

This is a petition for Mandamus filed by petitioner Senator Lina, Jr., who disputes the legal authority of respondent Cariño to issue DECS Order No. 30. It is entitled “Guidelines on Tuition and/or other School Fees in Private Schools, Colleges and Universities for SY 1991-1992.” which allows private schools to increase tuition and other school fees, subject to certain guidelines set out in said order. Respondent Secretary contends its validity by citing PD 451; conversely, petitioner Lina contends that Order No. 30 is invalid for being contrary to BP 232 and RA 6782.

ISSUE

W/N respondent Secretary had authority to issue DECS Order No. 30. (Was it within the scope of the law?)

HELD

YES. PD 451, promulgated on 1974, authorizes the Secretary of Education and Culture to fix the tuition and other school fees charged by private schools. BP 232, passed on 1982 states that each private school shall determine its rate of tuition and other school fees, subject to rules and regulations promulgated by the Ministry of Education, Culture and Sports. RA 6782 deals with government assistance to students and teachers in private schools, not with the question of authority to fix tuition and school fees. Hence, Order No. 30 in seeking to fix tuition and other school fees is valid pursuant to PD 451; it is not invalidated by BP 232 since the latter authorizes public schools to determine its tuition rate subject to rules promulgated by the Ministry of Education, Culture, and Sports; and it is not invalidated by RA 6782 since it confers authority to the State Assistance Council (SAC) to give government assistance to students, and not the authority to fix tuition and other school fees. DECS Order No. 30 is valid.