

94 Phil. 621

[G.R. No. L-5656. March 24, 1954]

JUAN G. FELICIANO, ET AL., PETITIONERS AND APPELLANTS, VS. MARIANO ALIPIO, ET AL., RESPONDENTS AND APPELLEES.

D E C I S I O N

JUGO, J.:

On September 21, 1951, the Director of Public Schools issued Circular No. 20, series of 1951, which reads as follows:

“PUBLIC SCHOOL PUPILS AND STUDENTS MAY BE REQUIRED TO SALUTE THE FLAG”

To Division Superintendents:

“1. Quoted in the inclosure to this Circular for the information and guidance of school officials and teachers, is Opinion No. 370, series of 1951, of the Honorable, the Secretary of Justice, ‘regarding the power of the Director of Public Schools to require all pupils and students in public schools to salute the flag, on pain of being barred from admission to, or expelled from, such schools.’

“This Circular revokes Circular No. 33, series of 1948.

“(Sgd.) BENITO PANGILINAN
“*Director of Public Schools*”

The petitioners filed before the Court of First Instance of Tarlac a petition for declaratory relief and mandatory injunction, praying that the above circular be declared null and void, and that preliminary injunction be issued prohibiting the respondents Mariano Alipio and

other teachers of the Malacampa Elementary School, and the Director of Public Schools, from carrying out the provisions of said circular, and that, after trial, the preliminary injunction be made permanent.

The Provincial Fiscal of Tarlac filed a motion to dismiss the petition on the ground that under section 2, Rule 66, it was not a case in which a declaratory judgment could be rendered. The court dismissed the case. Hence, the petitioners have appealed to this Court.

It is not necessary to decide whether the petition for declaratory judgment may be granted in this case, because in the petition presented in the court below, in addition to the declaratory judgment, the petitioners prayed for the issuance of a permanent injunction, which is equivalent to an action for prohibition against public officers, and as such we consider it, without passing at this stage of the proceedings on the merits of said action.

In the present case, we cannot consider the question as to the constitutionality of the circular as this will be decided after the regular hearing.

In view of the foregoing, the order of the court dismissing the petition is reversed, and the case returned to the Court of First Instance of Tarlac for further proceedings as in an action for prohibition, without costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.