

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 CA...

G.R. No. L-32166. October 18, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

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 'senso' 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 current 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 penalized because electric current is not an obnoxious or poisonous substance as contemplated in section 11 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 less 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:

"SUBJECT: PROHIBITING ELECTRO FISHING IN ALL WATERS OF THE PHILIPPINES.

"Pursuant to Section 4 of Act No. 4003, as amended, and Section 4(h) of R.A. No. 3512, the following rules and regulations regarding the prohibition of electro fishing in all waters of the Philippines are hereby promulgated for the information and guidance of all concerned.

"SECTION 1. - Definition. - Words and terms used in this Order shall be construed as follows:

"(a) 'Philippine waters or territorial waters of the Philippines' includes all waters of the Philippine Archipelago, as defined in the treaties 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 any 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 exceeding 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 sixty (60) days after its publication in the Official 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 imprisonment for not more than six months, or both, in the discretion of the court".

That assumption is incorrect because section 3 of the aforementioned Administrative Order No. 84 imposes a fine of not exceeding P500 on a person engaged in electro fishing, which amount exceeds the maximum fine of P200

fixed in section 83. It seems that the Department Secretary and the Commissioner of Fisheries prescribed their own penalty for electro fishing, which penalty is less than the severe penalty imposed in section 76 and which is not identical to the light penalty imposed in section 83.

Had Administrative Order No. 84 adopted the lighter penalty prescribed in section 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, 1976, 73 SCRA 23).

We have discussed this preliminary point, not raised in the briefs, because it is obvious that the crime of electro fishing, which is punishable with a fine 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 dismissal rendered by that municipal court was directly appealable to this 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-25922, 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 jurisdiction. 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 Law, Act No. 4003, and under the law creating 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 explosives in fishing; (2) unlawful fishing in deep-sea fisheries; (3) unlawful taking of marine mollusca, (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 falls 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 a criminal 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. 1125, citing 11 Am. Jur. 965 on p. 1132).

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 circumstance 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 regulation 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:

"SEC. 33. - Illegal fishing, dealing in illegally caught fish or fishery/aquatic products. - It shall be 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: x x x."

The decree repealed Act No. 4003, as amended, Republic Acts Nos. 428, 3048, 3512 and 3586, Presidential Decrees Nos. 43, 534 and 553, and all Decrees, 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 in the old Fisheries Law, is now found in section 3(d) of the decree. Note further that the decree penalizes electro fishing by "imprisonment from two (2) to four (4) years", a punishment which is more severe than the penalty of a fine of not exceeding 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 exceeded his authority in penalizing electro fishing by means of an administrative order.

Administrative agencies 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 objects 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. Muñoz*, 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 nondelegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern 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 Osmeña*, 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 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 vs. Board of Tax Appeals*, 93 Phil. 376, 382, citing 12 C. J. 845-46. As to invalid regulations, see *Collector of Internal Revenue vs. Villafior*, 69 Phil. 319; *Wise & Co. vs. Meer*, 78 Phil. 655, 676; *Del Mar vs. Phil. Veterans Administration*, 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 necessary and proper to carry into effect the provisions thereof". That power is now vested in the Secretary of Natural Resources by section 7 of the Revised Fisheries Law, Presidential Decree No. 704.

Section 4(h) of Republic Act No. 3512 empowers the Commissioner 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 to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary 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 (*Valerio vs. Secretary of Agriculture 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 bounds 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 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. 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 *Victorias 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 Corregidor 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 dismissed.

A penal statute is strictly construed. While an administrative agency has the right to make rules 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 SE 2d 534; See 2 Am. Jur. 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 exercise of the rule-making power but constitute an attempt by an administrative body to legislate (*State vs. Miles*, 5 Wash. 2d 322; 105 Pac. 2d 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 especial 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-dollar cash prize to the person displaying the largest deer in his store during the open season 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.

Barredo, (Acting Chairman), Concepcion, Jr., Santos, and Guerrero, JJ., concur.
Fernando and Antonio, JJ., did not take part.

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