

PASTOR M. ENDENCIA AND FERNANDO JUGO, PLAINTIFFS AND APPELLEES, VS. SATURNINO DAVID, AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. Nos. L-6355-56. August 31, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a joint appeal from the decision of the Court of First Instance of Manila declaring section 13 of Republic Act No. 590 unconstitutional, and ordering the appellant Saturnino David as collector of Internal Revenue to refund to Justice Pastor M. Endencia the sum of P1,744.45 representing the income tax collected on his salary as Associate Justice of the Court of Appeals in 1951, and to Justice Fernando Jugo the amount of P2,345.46, representing the income tax collected on his salary from January 1, 1950 to October 19, 1950, as Presiding Justice of the Court of Appeals, and from October 20, 1950 to December 31, 1950, as Associate Justice of the Supreme Court, without special pronouncement as to costs.

Because of the similarity of the two cases, involving as they do the same question of law, they were jointly submitted for determination in the lower court. Judge Higinio B. Macadaeg presiding, in a rather exhaustive and well considered decision found and held that under the doctrine laid down by this Court in the case of *Perfecto vs. Meer*, 85 Phil., 552, the collection of income taxes from the salaries of Justice Jugo and Justice Endencia was a diminution of their compensation and therefore was in violation of the Constitution of the Philippines, and so ordered the refund of said taxes.

We see no profit and necessity in again discussing and considering the proposition and the arguments pro and con involved in the case of *Perfecto vs. Meer*, supra, which are raised, brought up and presented hers. In that case, we have held despite the ruling enunciated by the United States Federal Supreme Court in the case of *O'Malley vs. Woodrought* 307 U. S., 277, that taxing the salary of a judicial officer in the Philippines is a diminution of such salary and so violates the Constitution. We shall now confine ourselves to a discussion and determination of the remaining question of whether or not Republic Act No. 590, particularly section 13, can justify and legalize the collection of income tax on the salary of judicial officers.

According to the brief of the Solicitor General on behalf of appellant Collector of Internal Revenue, our decision in the case of *Perfecto vs. Meer*, supra, was not received favorably by Congress, because immediately after its promulgation, Congress enacted Republic Act No. 590. To bring home his point, the Solicitor General reproduces what he considers the pertinent discussion in the Lower House of House Bill No. 1127 which became Republic Act No. 590.

For purpose of reference, we are reproducing section 9, Article VIII of our Constitution:

"SEC. 9. The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may fixed by law, which shall not be diminished during their

continuance in office. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, fifteen thousand pesos."

As already stated construing and applying the above constitutional provision, we held in the Perfecto case that judicial officers are exempt from the payment of income tax on their salaries, because the collection thereof by the Government was a decrease or diminution of their salaries during their continuance in office, a thing which is expressly prohibited by the Constitution. Thereafter, according to the Solicitor General, because Congress did not favorably receive the decision in the Perfecto case, Congress promulgated Republic Act No. 590, if not to counteract the ruling in that decision, at least now to authorize and legalize the collection of income tax on the salaries of judicial officer. We quote section 13 of Republic Act No. 590:

"SEC. 13. No salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is hereby declared not to be a diminution of his compensation fixed by the Constitution or by law."

So we have this situation. The Supreme Court in a decision interpreting the Constitution, particularly section 9, Article VIII, has held that judicial officers are exempt from payment of income tax on their salaries, because the collection thereof was a diminution of such salaries, specifically prohibited by the Constitution. Now comes the Legislature and in section 13, Republic Act No. 590, says that "no salary wherever received by any public officer of the Republic (naturally including a judicial officer) shall be considered as exempt from the income tax," and proceeds to declare that payment of said income tax is not a diminution of his compensation. Can the Legislature validly do this? May the Legislature lawfully declare the collection of income tax on the salary of a public official, specially a judicial officer, not a decrease of his salary, after the Supreme Court has found and decided otherwise? To determine this question, we shall have to go back to the fundamental principles regarding separation of powers.

Under our system of constitutional government, the Legislative department is assigned the power to make and enact laws. The Executive department is charged with the execution or carrying out of the provisions of said laws. But the interpretation and application of said laws belong exclusively to the Judicial department. And this authority to interpret and apply the laws extends to the Constitution. Before the courts can determine whether a law is constitutional or not, it will have to interpret and ascertain the meaning not only of said law, but also of the pertinent portion of the Constitution in order to decide whether there is a conflict between the two, because if there is, then the law will have to give way and has to be declared invalid and unconstitutional.

"Defining and interpreting the law is a judicial function and the legislative branch may not limit or restrict the power granted to the courts by the constitution." (Brandy vs. Mickelson et al., 44 N. W. 2nd 341, 342.)

"When it is clear that a statute transgresses the authority vested in the legislature by the Constitution, it is the duty of the courts to declare the act unconstitutional because they cannot shrink from it without violating their oaths of office. This duty of the courts to maintain the Constitution as the fundamental law of the state is imperative and unceasing; and, as Chief Justice Marshall said, whenever a statute is in violation of the fundamental law, the courts must so adjudge and thereby give effect to the Constitution. Any other course would lead to the destruction of the Constitution. Since the question as to the constitutionality of a statute is a judicial matter, the courts will not decline the exercise of jurisdiction upon the suggestion that action might be taken by political agencies in disregard of the judgment of the judicial tribunals." (11 Am. Jur., 714-715).

"Under the American system of constitutional government, among the most important functions intrusted to the judiciary are the interpreting of Constitutions and, as a closely connected power, the determination of whether laws and acts of the legislature are or are not contrary to the provisions of the Federal and state Constitutions." (11 Am. Jur., 905.)

By legislative fiat as enunciated in section 13, Republic Act No. 590, Congress says that taxing the salary of a judicial officer is not a decrease of compensation. This is a clear example of interpretation or ascertainment of the meaning of the phrase "which shall not be diminished during their continuance in office," found in section 9, Article VIII of the Constitution, referring to the salaries of judicial officers. This act of interpreting the Constitution or any part thereof by the Legislature is an invasion of the well-defined and established province and jurisdiction of the Judiciary.

"The rule is recognized elsewhere that the legislature cannot pass any declaratory act, or declaratory of what the law was before its passage, so as to give it any binding weight with the courts. A legislative definition of a word as used in a statute is not conclusive of its meaning as used elsewhere; otherwise, the legislature would be usurping a judicial function in defining a term. (11 Am. Jur., 914, italics supplied).

"The legislature cannot, upon passing a law which violates a constitutional provision, validate it so as to prevent an attack thereon in the courts, by a declaration that it shall be so construed as not to violate the constitutional inhibition." (11 Am. Jur., 919, italics supplied).

We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the Legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertain its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law or of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental principles of our constitutional system of government, particularly those governing the separation of powers.

So much for the constitutional aspect of the case. Considering the practical side thereof, we believe that the collection of income tax on a salary is an actual and evident diminution thereof. Under the old system where the income tax was paid at the end of the year or sometime thereafter, the decrease may not be so apparent and clear. All that the official who had previously received his full salary was called upon to do, was to fulfill his obligation and to exercise his privilege of paying his income tax on his salary. His salary fixed by law was received by him in full, and when he later pays his income tax, especially when the amount of said tax comes from his other sources of income, he may not fully realize the fact that his salary had been decreased in the amount of said income tax. But under the present system of withholding the income tax at the source, where the full amount of the income tax corresponding to his salary is computed in advance and divided into equal portions corresponding to the number of paydays during the year and actually deducted from his salary corresponding to each payday, said official actually does not receive his salary in full, because the income tax is deducted therefrom every payday, that is to say, twice a month. Let us take the case of Justice Endencia. As Associate Justice of the Court of Appeals, his salary is fixed at P12,000 a year, that is to say, he should receive P1,000 a month or P500 every payday,—fifteenth and end of month. In the present case, the amount collected by the Collector of Internal Revenue on said salary is P1,744.45 for one year. Divided by twelve (months) we shall have P145.37 a month. And further dividing it by two paydays will bring it down to P72.685, which is the income tax deducted from and collected on his salary each half month. So, if Justice Endencia's salary as a judicial officer were not exempt from payment of the income tax, instead of receiving P500 every payday, he would be actually receiving P427.31 only, and instead of receiving P12,000 a year, he would be receiving but P10,255.55. Is it not therefore clear that every payday, his salary is actually decreased by P72.685 and every year is decreased by P1,744.45?

Reading the discussion in the lower House in connection with House Bill No. 1127, which became Republic Act No. 590, it would seem that one of the main reasons behind the enactment of the law was the feeling among certain legislators that members of the Supreme Court should not enjoy any exemption and that as citizens, out of patriotism and love for their country, they should pay income tax on their salaries. It might be stated in this connection that the exemption is not enjoyed by the members of the Supreme Court alone but also by all judicial officers including Justices of the Court of Appeals and judges of inferior courts. The exemption also extends to other constitutional officers, like the President of the Republic, the Auditor General, the members of the Commission on Elections, and possibly members of the Board of Tax Appeals, commissioners of the Public Service Commission, and judges of the Court of Industrial Relations. Compared to the number of all these officials, that of the Supreme Court Justices is relatively insignificant. There are more than 990 other judicial officers enjoying the exemption, including 15 Justices of the Court of Appeals, about 107 Judges of First Instance, 38 Municipal Judges and about 830 Justices of the Peace. The reason behind the exemption in the Constitution, as interpreted by the United States Federal Supreme Court and this Court, is to preserve the independence of the Judiciary, not only of this High Tribunal but of the other courts, whose present membership number more than 990 judicial officials.

The exemption was not primarily intended to benefit judicial officers, but was grounded on public policy. As said by Justice Van Devanter of the United States Supreme Court in the case of *Evans vs. Gore* (253 U. S., 245):

"The primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations and pervading principles of the Constitution and to the administration of justice without respect to persons and with equal concern for the poor and the rich. Such being its purpose, it is to be construed, not as a private grant, but as a limitation imposed in the public interest; in other words, not restrictively, but in accord with its spirit and the principle on which it proceeds."

Having in mind the limited number of judicial officers in the Philippines enjoying this exemption, especially when the great bulk thereof are justices of the peace, many of them receiving as low as P200 a month, and considering further the other exemptions allowed by the income tax law, such as P3,000 for a married person and P600 for each dependent, the amount of national revenue to be derived from income tax on the salaries of judicial officers, were it not for the constitutional exemption, could not be large or substantial. But even if it were otherwise, it should not affect, much less outweigh the purpose and the consideration that prompted the establishment of the constitutional exemption. In the same case of *Evans vs. Gore*, supra, the Federal Supreme Court declared "that they (fathers of the Constitution) regarded the independence of the judges as of far greater importance than any revenue that could come from taxing their salaries."

When a judicial officer assumes office, he does not exactly ask for exemption from payment of income tax on his salary as a privilege. It is already attached to his office, provided and secured by the fundamental law, not primarily for his benefit, but based on public interest, to secure and preserve his independence of judicial thought and action. When we come to the members of the Supreme Court, this exemption to them is relatively of short duration. Because of the limited membership in this High Tribunal, eleven, and due to the high standards of experience, practice and training required, one generally enters its portals and comes to join its membership quite late in life, on the average, around his sixtieth year, and being required to retire at seventy, assuming that he does not die or become incapacitated earlier, naturally he is not in a position to receive the benefit of exemption for long. It is rather to the justices of the peace that the exemption can give more benefit. They are relatively more numerous, and because of the meager salary they receive, they can less afford to pay the income tax on it and its diminution by the amount of the income tax if paid would be real, substantial and onerous.

Considering exemption in the abstract, there is nothing unusual or abhorrent in it, as long as it is based on public policy or public interest. While all other citizens are subject to arrest when charged with the commission of a crime, members of the Senate and House of Representatives except in cases of treason, felony and breach of the peace are exempt from arrest, during their attendance in the session of the Legislature; and while all other citizens are generally liable for any speech, remark or statement, oral or written, tending to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead, Senators and Congressmen in making such statements during their sessions are extended immunity and exemption.

And as to tax exemption, there are not a few citizens who enjoy this exemption. Persons, natural and juridical, are exempt from taxes on their lands, buildings and improvements thereon when used exclusively for educational purposes, even if they derive income therefrom. (Art. VI, Sec. 22[3].) Holders of government bonds are exempted from the payment of taxes on the income or interest they receive therefrom (sec 29 (b) [4], National Internal Revenue Code as amended by Republic Act No. 566). Payments or income received by any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration are exempt from taxation. (Republic Act No. 360). Funds received by officers and enlisted men of the Philippine Army who served in the Armed Forces of the United States, allowances earned by virtue of such services corresponding to the taxable years 1942 to 1945, inclusive, are exempted from income tax. (Republic Act No. 210). The payment of wages and allowances of officers and enlisted men of the Armed Forces of the Philippines sent to Korea are also exempted from taxation. (Republic Act No. 815). New and necessary industries are also exempted from taxation for a certain number of years. (Republic Act No. 35). In other words, for reasons of public policy and public interest, a citizen may justifiably by constitutional provision or statute be exempted from his ordinary obligation of paying taxes on his income. Under the same public policy and perhaps for the same it not higher considerations, the framers of the Constitution deemed it wise and necessary to exempt judicial officers from paying taxes on their salaries so as not to decrease their compensation, thereby insuring the independence of the Judiciary.

In conclusion we reiterate the doctrine laid down in the case of *Perfecto vs. Meer*, supra, to the effect that the collection of income tax on the salary of a judicial officer is a diminution thereof and so violates the Constitution. We further hold that the interpretation and application of the Constitution and of statutes is within the exclusive province and jurisdiction of the Judicial department, and that in enacting a law, the Legislature may not legally provide therein that it be interpreted in such a way that it may not violate a Constitutional prohibition, thereby tying the hands of the courts in their task of later interpreting said statute, specially when the interpretation sought and provided in said statute runs counter to a previous interpretation already given in a case by the highest court of the land.

In view of the foregoing considerations, the decision appealed from is hereby affirmed, with no pronouncement as to costs.

Pablo, Bengzon, Padilla, Tuason, Reyes and Labrador, JJ., concur.

CONCURRING

BAUTISTA ANGELO, J.,

Without expressing any opinion on the doctrine laid down by this Court in the case of *Perfecto vs. Meer*, G. R. No. L-2314, in view of the part I had in that case as former Solicitor General, I wish however to state that I concur in the opinion of the majority to the effect that section 13, Republic Act No. 590, in so far as it provides that

taxing of the salary of a judicial officer shall be considered "not to be a diminution of his compensation fixed by the Constitution or by law", constitutes an invasion of the province and jurisdiction of the judiciary. In this sense, I am of the opinion that said section is null and void, it being a transgression of the fundamental principle underlying the separation of powers.

CONCURRING AND DISSENTING

PARAS, C. J.,

I dissent for the same reasons stated in the dissenting opinion of Mr. Justice Ozaeta in *Perfecto vs. Meer*, 85 Phil., 552, in which I concurred. But I disagree with the majority in ruling that no legislation may provide that it be held valid although against a provision of the Constitution.

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