TELENGTAN BROTHERS & SONS, INC., DOING BUSINESS UNDER THE NAME AND STYLE LA SUERTE CIGAR AND CIGARETTE FACTORY, PLAINTIFF-APPELLEE, VS. THE HON. SECRETARY OF HEALTH ENRIQUE T. O...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal by plaintiffs-appellants Secretary of Health, Enrique T. Ona, and the Department of Health from the decision[1] dated September 8, 2010 of the Regional Trial Court of Parañaque City, Branch 196 which declared Administrative Order No. 2010-0013 issued by the Department of Health null and void.

The facts of the case are as follows:

On June 23, 2003, Republic Act (RA) No. 9211, otherwise known as “An Act Regulating the Packaging, Use, Sale, Distribution and Advertisements of Tobacco Products and for other Purposes” was enacted into law. The Philippines, together with other States, participated in and signed the Framework Convention on Tobacco Control (FCTC), which is a public health treaty initiated by the World Health Organization (WHO). The FCTC requires state parties to adopt a comprehensive range of measures designed to reduce the devastating health and economic impacts of tobacco.

On September 4, 2005, following its ratification through concurrence of two-thirds of the Philippine Senate in accordance with the Constitution, the FCTC was transformed into municipal law. In November 2008, the Conference of the Parties to the Convention adopted the Guidelines for Implementation of Article 11 of the FCTC on “Packaging and labeling of tobacco products to assist Parties in meeting their obligations under Article 11 of the Convention and propose measures that Parties can use to increase the effectiveness of their packaging and labeling measures.”

On May 25, 2010, then Secretary of Health, Dr. Esperanza I. Cabral issued Administrative Order (AO) No. 2010-0013 directing tobacco manufacturers, importers, exporters, wholesalers, distributors, retailers, concessionaires and other sellers of tobacco products, among others, to comply with the following:

a) the requirement to place graphic health information on tobacco product packages; and

b) the prohibition on the use of misleading descriptors or information.

AO No. 2010-0013 requires tobacco products for sale, distribution or importation within the country to bear large, clear, visible and legible full-color graphic health information, which the AO defines as statements, and/or other information, accompanied by related full-color pictures or pictograms, which inform about the contents and substances of tobacco products as well as health dangers and other problems related to tobacco products, tobacco

consumption, exposure to tobacco smoke, or other effects of tobacco use. The AO also prohibits: 1) the use of misleading descriptors and misleading information on tobacco products for sale, distribution or importation within the country; 2) use by tobacco companies of means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign or any package or product design feature that may create the false impression that one brand is less harmful than another. Covered by the prohibition are terms such as “low tar”, “light”, “ultra light”, “mild”, “extra”, “ultra”, and similar terms, as well as the use of corresponding symbols or colors signifying the same; and 3) information that may imply that one variant or brand is safer than the other, such as statements indicating that the tobacco product contains “reduced levels” of contents, substances and emissions.

On June 23, 2010, plaintiff-appellee Telengtan Brothers & Sons, Inc., doing business under the name and style La Suerte Cigar and Cigarette Factory filed a petition for declaratory relief with application for preliminary injunction[2], which sought the following reliefs:

> “1. Upon filing of the petition, that its application for preliminary injunction be immediately set for hearing;
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> 2. Upon hearing of the application for preliminary injunction, a writ of preliminary injunction be issued enjoining respondent from implementing and enforcing Administrative Order No. 2010-0013;
>
> 3. And thereafter, to declare Administrative Order No. 2010- 0013 null and void.
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> Other relief just or equitable is likewise prayed for.”[3]

On July 22, 2010, the trial court issued an Order[4] denying plaintiff-appellee's application for the issuance of a writ of preliminary injunction for lack of merit.

On July 27, 2010, defendant-appellant filed a Motion to Dismiss.[5]

On July 28, 2010, plaintiff-appellee filed its amended petition for declaratory relief with preliminary injunction[6] impleading DOH Secretary Enrique T. Ona as respondent in the case.

On August 19, 2010, the trial court ordered the admission of the amended petition for declaratory action. Plaintiff-appellee caused the withdrawal of its Motion for Reconsideration[7] while defendant-appellant caused the withdrawal of its Motion to Dismiss.

On August 20, 2010, defendant-appellant filed a Comment[8] on plaintiff-appellee's amended petition.

On September 8, 2010, after the conduct of hearing on plaintiff-appellee's application for the issuance of a writ of preliminary injunction, the trial court issued an Order[9], which granted the petition for declaratory relief and declared AO No. 2010-0013 null and void, the dispositive portion of which reads:

> “WHEREFORE, premises considered, this court finds the issuance by public respondent, the Department of Health of Administrative Order No. 2010-0013 dated May 12, 2010 to have been made in violation of existing law, and having been issued in excess of authority, for which, the Petition dated July 27, 2010 of Telengtan

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> Brothers & Sons, Inc. is GRANTED, and Administrative Order No. 2010-0013 dated May 12, 2010 issued by Public Respondent Department of Health is declared NULL and VOID."[10]

On September 21, 2010, plaintiff-appellee filed a Motion for Reconsideration, which was denied in an Order[11] dated October 21, 2010.

Hence, this appeal.

The appeal is premised on the following assigned errors:

> "I.
>
> THE TRIAL COURT ERRED IN RULING THAT ADMINISTRATIVE ORDER NO. 2010-0013 IS NULL AND VOID ON THE GROUND THAT THE REVISED ADMINISTRATIVE CODE DID NOT EXPRESSLY GRANT THE DOH THE AUTHORITY TO ISSUE REGULATION TO IMPLEMENT THE COVENANT OF THE FCTC.
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> II.
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> THE TRIAL COURT ERRED IN RULING THAT THE FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC) IS NOT A SELF-EXECUTING TREATY.
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> III.
>
> THE TRIAL COURT ERRED IN RULING THAT ADMINISTRATIVE ORDER NO. 2010-0013 WAS ISSUED BEYOND THE AUTHORITY OF THE DOH. "[12]

Defendants-appellants contend that the Department of Health (DOH) was authorized in issuing Administrative Order No. 2010-0013, which sought to regulate labeling of tobacco products to include pictographs while proposing to delete particular descriptors; that the Framework Convention On Tobacco Control (FCTC) is a self-executing treaty; and that the Revised Administrative Code granted the DOH the authority to issue regulation to implement the covenant of the FCTC.

The appeal is bereft of merit.

The Framework Convention on Tobacco Control (FCTC) is not a self-implementing law. The fact that Congress ratified it signifies that the Philippines abides by the FCTC's policies in good faith. Significantly, the provisions of the FCTC are subject to the national law of the Philippines, the relevant provisions are quoted below for reference:

> Article 5. General obligations

3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

Article 8. Protection from exposure to tobacco smoke

2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

Article 10. Regulation of tobacco product disclosures

Each party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.

Article 11. Packaging and labelling of tobacco products

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that: xxx

Article 15. Illicit trade in tobacco products

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including

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smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.

2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status.

xxx

6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.

Article 16. Sales to and by minors

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen.

Article 19. Liability

1. For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.

3. The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements, afford one another assistance in legal proceedings relating to civil and criminal liability consistent with this Convention.

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Article 20. Research, surveillance and exchange of information

> 4. The Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention, and in so doing shall take into account and address the special needs of developing country Parties and Parties with economies in transition.

Based on the foregoing, the enactment of a law is necessary in order to implement the provisions of the FCTC. Further, the enactment must be in accordance with the national law of the Philippines. Legislation is necessary to transform the provisions of the FCTC into domestic law. The provisions of the FCTC cannot be considered as part of the law of the land that can be implemented by the Department of Health (DOH) without the need of a law enacted by the legislature.[13] Through Republic Act No. 9211, otherwise known as the "Tobacco Regulation Act of 2003", the provisions of the FCTC were incorporated in Philippines' domestic law.

Among the purposes enumerated by Republic Act No. 9211, otherwise known as the "Tobacco Regulation Act of 2003" are to regulate the labeling of tobacco products[14] and to create an Inter-Agency Committee on Tobacco (IAC-Tobacco) to oversee the implementation of the provision of said Act.[15]

In this regard, Section 29 of Republic Act No. 9211, provides:

> Section 29. Implementing Agency. - An Inter-Agency Committee-Tobacco (IAC-Tobacco), which shall have the exclusive power and function to administer and implement the provisions of this Act, is hereby created. The IAC-Tobacco shall be chaired by the Secretary of the Department of Trade and Industry (DTI) with the Secretary of the Department of Health (DOH) as Vice Chairperson.
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> The IAC-Tobacco shall have the following members:
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> a. Secretary of the Department of Agriculture (DA);
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> b. Secretary of the Department of Justice (DOJ);
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> c. Secretary of the Department of Environment and Natural Resources (DENR);
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> d. Secretary of the Department of Science and Technology (DOST);
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> e. Secretary of the Department of Education (DepEd);

f. Administrator of the National Tobacco Administration (NTA);

g. A representative from the Tobacco Industry to be nominated by the legitimate and recognized associations of the industry; and

h. A representative from a nongovernment organization (NGO) involved in public health promotion nominated by DOH in consultation with the concerned NGO's;

The Department Secretaries may designate their Undersecretaries as their authorized representatives to the IAC.

Clearly, the power to regulate the labeling of tobacco products is under the exclusive power and function of the IAC-Tobacco. Thus, the Department of Health exceeded its authority when it issued Administrative Order (AO) No. 2010-0013. It should be emphasized that Section 29 of R.A. No. 9211 is a delimitation of the authority of the Department of Health to undertake policy formulation and plan activities for tobacco regulation under Section 3.1 Chapter I of Title IX of Executive Order 292.

The DOH Secretary as the Vice-Chairperson of the IAC-Tobacco and the DOH as an active member thereof should help implement the Tobacco Regulation Act of 2003 and not to supplant it. When the DOH issued AO No. 2010-0013, it arrogated to itself the authority given to IAC-Tobacco and compelled tobacco companies to change the labels of their products by incorporating therein graphic health information with specific measurements and position[16], removing from the labels various descriptors[17] and imposing penalty for failure to do so[18]. This is contrary to the mandate of R.A. No. 9211, particularly Section 13(g) thereof, which states that “No other printed warnings, except the health warning and the message required in this Section, paragraph F shall be placed on cigarette packages.” Further, administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the constitution pursuant to Article 7 of the Civil Code of the Philippines.

Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws. Agency rule-making must rest on authority granted directly or indirectly by Congress.[19] Moreover, although an administrative agency is authorized to exercise its discretion in the exercise of its power of subordinate legislation, nevertheless, no similar authority exists to validate an arbitrary or capricious enactment of rules and regulations.[20] Rules which have the effect of extending or conflicting with the authority-granting statute do not represent a valid exercise of rule-making power but constitute an attempt by the agency to legislate. In such a situation, it is said that the issuance becomes void not only for being ultra vires but also for being unreasonable. The law therefore prevails over the administrative issuance.[21]

WHEREFORE, the appeal is DENIED. The decision dated September 8, 2010 of the Regional Trial Court of Parañaque City, Branch 196 is AFFIRMED.

SO ORDERED.

Lampas Peralta, (Chairman), and Acosta, JJ., concur.

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[1] Rollo, pp. 8-41.

[2]Records, pp. 2-32.

[3] Records, pp. 26-27.

[4] Records, pp. 157-158.

[5] Records, pp. 330-366.

[6] Records, pp. 161-191.

[7] Records, pp. 445-468.

[8] Records, pp. 488-537.

[9] Rollo, pp. 8-41.

[10] Rollo, p. 39.

[11] Rollo, p. 42.

[12] Rollo, p. 49.

[13] Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Francisco Duque III, et al., G.R. No. 173034, October 9, 2007.

[14] Section 3(d), R.A. No. 9211.

[15] Section 3(g), R.A. No. 9211.

[16] Paragraph V(A), A.O. No. 2010-0013; Records, pp. 37-38.

[17] Paragraph V(B), A.O. No. 2010-0013; Records, p. 39.

[18] Paragraph VII, A.O. No. 2010-0013; Records, p. 42.

[19] Re:Entitlement To Hazard Pay Of SC Medical And Dental Clinic Personnel, A.M. No. 03-9-02-SC, November 27, 2008.

[20] Ibid.

[21] Re:Entitlement To Hazard Pay Of SC Medical And Dental Clinic Personnel, A.M. No. 03-9-02-SC, November 27, 2008.

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