

VICENTE DE LA CRUZ, RENATO ALIPIO, JOSE TORRES III, LEONCIO CORPUZ, TERESITA CALOT, ROSALIA FERNANDEZ, ELIZABETH VELASCO, NANETTE VILLANUEVA, HONORATO BUENAVENTURA, RUBEN DE CAS...

G.R. Nos. L-42571-72. July 25, 1983

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The crucial question posed by this certiorari proceeding is whether or not a municipal corporation, Bocaue, Bulacan, represented by respondents,[1] can prohibit the exercise of a lawful trade, the operation of night clubs, and the pursuit of a lawful occupation, such clubs employing hostesses. It is contended that the ordinance assailed as invalid is tainted with nullity, the municipality being devoid of power to prohibit a lawful business, occupation or calling, petitioners at the same time alleging that their rights to due process and equal protection of the laws were violated as the licenses previously given to them was in effect withdrawn without judicial hearing.[2]

The assailed ordinance[3] is worded as follows: "Section 1. - Title of Ordinance. - This Ordinance shall be known and may be cited as the [Prohibition and Closure Ordinance] of Bocaue, Bulacan. Section 2. - Definitions of Terms - (a) 'Night Club' shall include any place or establishment selling to the public food or drinks where customers are allowed to dance. (b) 'Cabaret' or 'Dance Hall' shall include any place or establishment where dancing is permitted to the public and where professional hostesses or hospitality girls and professional dancers are employed. (c) 'Professional hostesses' or 'hospitality girls' shall include any woman employed by any of the establishments herein defined to entertain guests and customers at their table or to dance with them. (d) 'Professional dancer' shall include any woman who dances at any of the establishments herein defined for a fee or remuneration paid directly or indirectly by the operator or by the persons she dances with. (e) 'Operator' shall include the owner, manager, administrator or any person who operates and is responsible for the operation of any night club, cabaret or dance hall. Section 3. - Prohibition in the Issuance and Renewal of Licenses. Permits. - Being the principal cause in the decadence of morality and because of their other adverse effects on this community as explained above, no operator of night clubs, cabarets or dance halls shall henceforth be issued permits/licenses to operate within the jurisdiction of the municipality and no license/permit shall be issued to any professional hostess, hospitality girls and professional dancer for employment in any of the aforementioned establishments. The prohibition in the issuance of licenses/permits to said persons and operators of said establishments shall include prohibition in the renewal thereof. Section 4. - Revocation of Permits and Licenses. - The licenses and permits issued to operators of night clubs, cabarets or dance halls which are now in operation including permits issued to professional hostesses, hospitality girls and professional dancers are hereby revoked upon the expiration of the thirty-day period given them as provided in Section 8 hereof and thenceforth, the operation of these establishments within the jurisdiction of the municipality shall be illegal. Section 5. - Penalty in case of violation. - Violation of any of the provisions of this Ordinance shall be punishable by imprisonment not exceeding three (3) months or a fine not exceeding P200.00 or both at the discretion of the Court. If the offense is

committed by a juridical entity, the person charged with the management and/or operation thereof shall be liable for the penalty provided herein. Section 6. - Separability Clause - If, for any reason, any section or provision of this Ordinance is held unconstitutional or invalid, no other section or provision hereof shall be affected thereby. Section 7. - Repealing Clause. - All ordinance, resolutions, circulars, memoranda or parts thereof that are inconsistent with the provisions of this Ordinance are hereby repealed. Section 8. - Effectivity. - This Ordinance shall take effect immediately upon its approval; provided, however, that operators of night clubs, cabarets and dance halls now in operation including professional hostesses, hospitality girls and professional dancers are given a period of thirty days from the approval hereof within which to wind up their businesses and comply with the provisions of this Ordinance."[4]

On November 5, 1975, two cases for prohibition with preliminary injunction were filed with the Court of First Instance of Bulacan.[5] The grounds alleged follow: "1. Ordinance No. 84 is null and void as a municipality has no authority to prohibit a lawful business, occupation or calling. 2. Ordinance No. 84 is violative of the petitioners' right to due process and the equal protection of the law, as the license previously given to petitioners was in effect withdrawn without judicial hearing. 3. That under Presidential Decree No. 189, as amended, by Presidential Decree No. 259, the power to license and regulate tourist-oriented businesses including night clubs, has been transferred to the Department of Tourism."[6] The cases were assigned to respondent Judge, now Associate Justice Paras of the Intermediate Appellate Court, who issued a restraining order on November 7, 1975. The answers were thereafter filed. It was therein alleged: "1. That the Municipal Council is authorized by law not only to regulate but to prohibit the establishment, maintenance and operation of night clubs invoking Section 2243 of the RAC, CA 601, Republic Acts Nos. 938, 978 and 1224. 2. The Ordinance No. 84 is not violative of petitioners' right to due process and the equal protection of the law, since property rights are subordinate to public interests. 3. That Presidential Decree No. 189, as amended, did not deprive Municipal Councils of their jurisdiction to regulate or prohibit night clubs."[7] There was the admission of the following facts as having been established: "1. That petitioners Vicente de la Cruz, et al. in Civil Case No. 4755-M had been previously issued licenses by the Municipal Mayor of Bocaue - petitioner Jose Torres III, since 1958; petitioner Vicente de la Cruz, since 1960; petitioner Renato Alipio, since 1961 and petitioner Leoncio Corpuz, since 1972; 2. That petitioners had invested large sums of money in their businesses; 3. That the night clubs are well-lighted and have no partitions, the tables being near each other; 4. That the petitioners owners/operators of these clubs do not allow the hospitality girls therein to engage in immoral acts and to go out with customers; 5. That these hospitality girls are made to go through periodic medical check-ups and not one of them is suffering from any venereal disease and that those who fail to submit to a medical check-up or those who are found to be infected with venereal disease are not allowed to work; 6. That the crime rate there is better than in other parts of Bocaue or in other towns of Bulacan."[8] Then came on January 15, 1976 the decision upholding the constitutionality and validity of Ordinance No. 84 and dismissing the cases. Hence this petition for certiorari by way of appeal.

In an exhaustive as well as scholarly opinion, the lower court dismissed the petitions. Its rationale is set forth in the opening paragraph thus: "Those who lust cannot last. This in essence is why the Municipality of Bocaue, Province of Bulacan, stigmatized as it has been by innuendos of sexual titillation, and fearful of what the awesome future holds for it, had no alternative except to order thru its legislative machinery, and even at the risk of partial economic dislocation, the closure of its night clubs and/or cabarets. This in essence is also why this Court, obedient to the mandates of good government, and cognizant of the categorical imperatives of the current legal and social revolution, hereby [upholds] in the name of police power the validity and constitutionality of Ordinance No. 84, Series of 1975, of the Municipal Council of Bocaue, Bulacan. The restraining orders heretofore issued in these two cases are therefore hereby lifted, effective the first day of February, 1976, the purpose of the grace period being to enable the petitioners herein to apply to the proper appellate tribunals for any contemplated

redress."[9] This Court is, however, unable to agree with such a conclusion and for reasons herein set forth, holds that reliance on the police power is insufficient to justify the enactment of the assailed ordinance. It must be declared null and void.

- Police power is granted to municipal corporations in general terms as follows: "General power of council to enact ordinances and make regulations.— The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein."[10] It is practically a reproduction of the former Section 39 of Municipal Code.[11] An ordinance enacted by virtue thereof, according to Justice Moreland, speaking for the Court in the leading case of *United States v. Abendan*[12] "is valid, unless it contravenes the fundamental law of the Philippine Islands, or an Act of the Philippine Legislature, or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right. Where the power to legislate upon a given subject, and the mode of its exercise and the details of such legislation are not prescribed, the ordinance passed pursuant thereto must be a reasonable exercise of the power, or it will be pronounced invalid."[13] In another leading case, *United States v. Salaveria*,[14] the ponente this time being Justice Malcolm, where the present Administrative Code provision was applied, it was stated by this Court: "The general welfare clause has two branches: One branch attaches itself to the main trunk of municipal authority, and relates to such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. With this class we are not here directly concerned. The second branch of the clause is much more independent of the specific functions of the council which are enumerated by law. It authorizes such ordinances 'as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein.' It is a general rule that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State." [15] If night clubs were merely then regulated and not prohibited, certainly the assailed ordinance would pass the test of validity. In the two leading cases above set forth, this Court had stressed reasonableness, consonant with the general powers and purposes of municipal corporations, as well as consistency with the laws or policy of the State. It cannot be said that such a sweeping exercise of a lawmaking power by Bocaue could qualify under the term reasonable. The objective of fostering public morals, a worthy and desirable end can be attained by a measure that does not encompass too wide a field. Certainly the ordinance on its face is characterized by overbreadth. The purpose sought to be achieved could have been attained by reasonable restrictions rather than by an absolute prohibition. The admonition in *Salaveria* should be heeded: "The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation." [16] It is clear that in the guise of a police regulation, there was in this instance a clear invasion of personal or property rights, personal in the case of those individuals desirous of patronizing those night clubs and property in terms of the investments made and salaries to be earned by those therein employed.

- The decision now under review refers to Republic Act No. 938 as amended.[17] It was originally enacted on June 20, 1953. It is entitled: "AN ACT GRANTING MUNICIPAL OR CITY BOARDS AND COUNCILS THE POWER TO REGULATE THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF CERTAIN PLACES OF AMUSEMENT WITHIN THEIR RESPECTIVE TERRITORIAL JURISDICTIONS." [18] Its first section insofar as pertinent reads: "The municipal or city board or council of each chartered city shall have the power to regulate by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing

schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction: . . .[19] Then on May 21, 1954, the first section was amended to include not merely "the power to regulate, but likewise "prohibit . . ."[20] The title, however, remained the same. It is worded exactly as Republic Act No. 938. It is to be admitted that as thus amended, if only the above portion of the Act were considered, a municipal council may go as far as to prohibit the operation of night clubs. If that were all, then the appealed decision is not devoid of support in law. That is not all, however. The title was not in any way altered. It was not changed one whit. The exact wording was followed. The power granted remains that of regulation, not prohibition. There is thus support for the view advanced by petitioners that to construe Republic Act No. 938 as allowing the prohibition of the operation of night clubs would give rise to a constitutional question. The Constitution mandates: "Every bill shall embrace only one subject which shall be expressed in the title thereof." [21] Since there is no dispute as the title limits the power to regulating, not prohibiting, it would result in the statute being invalid if, as was done by the Municipality of Bocaue, the operation of a night club was prohibited. There is a wide gap between the exercise of a regulatory power "to provide for the health and safety, promote the prosperity, improve the morals," [22] in the language of the Administrative Code, such competence extending to all "the great public needs," [23] to quote from Holmes, and to interdict any calling, occupation, or enterprise. In accordance with the well-settled principle of constitutional construction that between two possible interpretations by one of which it will be free from constitutional infirmity and by the other tainted by such grave defect, the former is to be preferred. A construction that would save rather than one that would affix the seal of doom certainly commends itself. We have done so before. We do so again. [24]

- There is reinforcement to the conclusion reached by virtue of a specific provision of the recently-enacted Local Government Code. [25] The general welfare clause, a reiteration of the Administrative Code provision, is set forth in the first paragraph of Section 149 defining the powers and duties of the sangguniang bayan. It read as follows: "(a) Enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein; . . ."[26] There are in addition provisions that may have a bearing on the question now before this Court. Thus the sangguniang bayan shall "(rr) Regulate cafes, restaurants, beer-houses, hotels, motels, inns, pension houses and lodging houses, except travel agencies, tourist guides, tourist transports, hotels, resorts, de luxe restaurants, and tourist inns of international standards which shall remain under the licensing and regulatory power of the Ministry of Tourism which shall exercise such authority without infringing on the taxing or regulatory powers of the municipality; (ss) Regulate public dancing schools, public dance halls, and sauna baths or massage parlors; (tt) Regulate the establishment and operation of billiard pools, theatrical performances, circuses and other forms of entertainment; . . ."[27] It is clear that municipal corporations cannot prohibit the operation of night clubs. They may be regulated, but not prevented from carrying on their business. It would be, therefore, an exercise in futility if the decision under review were sustained. All that petitioners would have to do is to apply once more for licenses to operate night clubs. A refusal to grant licenses, because no such businesses could legally open, would be subject to judicial correction. That is to comply with the legislative will to allow the operation and continued existence of night clubs subject to appropriate regulations. In the meanwhile, to compel petitioners to close their establishments, the necessary result of an affirmance, would amount to no more than a temporary termination of their business. During such time, their employees would undergo a period of deprivation. Certainly, if such an undesirable outcome can be avoided, it should be. The law should not be susceptible to the reproach that it displays less than sympathetic concern for the plight of those who, under a mistaken appreciation of a municipal power, were thus left without employment. Such a deplorable consequence is to be avoided. If it were not thus, then the element of arbitrariness enters the picture. That is to pay less, very much less, than full deference to the

due process clause with its mandate of fairness and reasonableness.

- The conclusion reached by this Court is not to be interpreted as a retreat from its resolute stand sustaining police power legislation to promote public morals. The commitment to such an ideal forbids such a backward step. Legislation of that character is deserving of the fullest sympathy from the judiciary. Accordingly, the judiciary has not been hesitant to lend the weight of its support to measures that can be characterized as falling within that aspect of the police power. Reference is made by respondents to *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*.^[28] There is a misapprehension as to what was decided by this Court. That was a regulatory measure. Necessarily, there was no valid objection on due process or equal protection grounds. It did not prohibit motels. It merely regulated the mode in which it may conduct business in order precisely to put an end to practices which could encourage vice and immorality. This is an entirely different case. What was involved is a measure not embraced within the regulatory power but an exercise of an assumed power to prohibit. Moreover, while it was pointed out in the aforesaid *Ermita-Malate Hotel and Motel Operators Association, Inc.* decision that there must be a factual foundation of invalidity, it was likewise made clear that there is no need to satisfy such a requirement if a statute were void on its face. That it certainly is if the power to enact such ordinance is at the most dubious and under the present Local Government Code non-existent.

WHEREFORE, the writ of certiorari is granted and the decision of the lower court dated January 15, 1976 reversed, set aside, and nullified. Ordinance No. 84, Series of 1975 of the Municipality of Bocaue is declared void and unconstitutional. The temporary restraining order issued by this Court is hereby made permanent. No costs.

Teehankee, Aquino, Concepcion Jr., Guerrero, Abad Santos, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur. Makasiar, J., reserves his right to file a dissent.

Melencio-Herrera and Vasquez, JJ., on official leave.

De Castro, J., on sick leave.

[1] Municipal Mayor Matias Ramirez and Municipal Vice-Mayor Mario Mendoza.

[2] Petition, 7. The other question raised was the jurisdiction of a municipal council to prohibit the operation of nightclubs, it being alleged that the power of regulating tourist-oriented businesses being granted to the then Department, now Ministry, of Tourism.

[3] Ordinance No. 84, Series of 1975.

[4] *Ibid.*

[5] *Vicente de la Cruz, et al. v. Matias Ramirez, et al., and Teresita Calot, et al. v. The Municipal Mayor*, docketed as Civil Cases Nos. 4755-M and 4756-M, respectively. On November 21, 1975, the petition in one of the above cases was amended to raise the further issue of lack of authority of respondent Municipal Officials to pass the ordinance in question, since the power to license, supervise and regulate night clubs has been transferred to the Department of Tourism by virtue of Presidential Decree No. 189, as amended.

[6] Petition, 7.

[7] *Ibid.*, 8.

[8] *Ibid.*, 8-9.

[9] Decision, Annex A to Petition, 1.

[10] Section 2238, Revised Administrative Code of the Philippines (1917).

[11] Act No. 82 (1901).

[12] 24 Phil. 165 (1913). *Abendan* is followed in *United States v. Tamparong*, 31 Phil. 321 (1915); *United States v. Gaspay*, 33 Phil. 96 (1915) and *Sarmiento v. Balderol*, 112 Phil. 394 (1961).

[13] *Ibid*, 168. Cf. *United States v. Ten Yu*, 24 Phil. 1 (1912); *Case v. Board of Health*, 24 Phil. 250 (1913).

[14] 39 Phil. 102 (1918).

[15] *Ibid*, 109-110.

[16] *Ibid*, 111. In *Salaveria* though the ordinance penalizing the playing of panguingue on days not Sundays or legal holidays was declared as valid.

[17] It was amended by Republic Act No. 979 and Republic Act No. 1224.

[18] Title of Republic Act No. 938 as amended.

[19] Republic Act No. 938, Section 1.

[20] Republic Act No. 979, Section 1.

[21] Article VIII, Section 19, par. 1 of the Constitution.

[22] Section 2238.

[23] *Otis v. Parker*, 187 US 606 (1902).

[24] Cf. *Nuñez v. Sandiganbayan*, G.R. Nos. 50581-50617, January 30, 1982, 111 SCRA 433. Separate opinion of Justice Makasiar. *De la Llana v. Alba*, G.R. No. 57883, March 12, 1982, 112 SCRA 294.

[25] *Batas Pambansa Blg. 337* (1983). Under Section 234 of the Code it took effect one month after its publication in the Official Gazette. It was published in the issue of February 14, 1983.

[26] *Ibid*, Section 149 (1) (a).

[27] *Ibid*, Section 149 (1) (rr, ss and tt).

[28] L-24693, 20 SCRA 849, July 31, 1967.

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