

CO CHIONG AND LIM CHIU GUAN, PETITIONERS, VS. RAFAEL DINGLASAN ET AL., RESPONDENTS.

G.R. No. L-1266. August 29, 1947

Ponente: FERIA, J.

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FERIA, J.:

In this petition for certiorari and mandamus filed by the petitioners on January 7, 1947, against the respondent judge who issued an order dissolving a writ of preliminary injunction issued by the same judge, which enjoined the other respondents to refrain from ejecting the petitioners from the market stalls, the petitioners ask this Court to annul the said order and command the respondent judge to forthwith reissue such writ, and that, pending final judgment in the instant proceedings, this Court issue ex-parte a writ of preliminary injunction ordering the respondent to refrain from ejecting the petitioners from the said market stalls.

This Court denied the petition ex-parte for a preliminary injunction during the pendency of this proceeding in this Court, and ordered the respondents to file their answer to the petition or complaint. On January 18, 1947, respondents filed their answer, and after the answer was filed the hearing of the petition was set for January 24, 1947. At the hearing both parties were granted permission to file their respective memoranda, and on February 10 the petitioners submitted their reply to the respondents' memorandum. Since that date February 10, 1947, this case was considered submitted to this Court for decision.

The respondent Secretary of Finance suspended motu proprio the operation of the Department of Finance Order No. 32, and for that reason the other respondents refrained from ejecting the petitioners from the market stalls, notwithstanding the above stated dissolution of the injunction by order of the respondent judge who had issued it and the denial by this Court of the petitioners' petition that this Court issue ex-parte a preliminary injunction during the pendency of this case in this Court.

On April 24, 1947 the petitioners filed with this Court a petition called Manifestation, which reads in part as follows:

"That the above-entitled special civil action was instituted by the petitioners for the purpose of annulling the order of the respondent judge of the Court of First Instance dissolving the writ of preliminary injunction granted in Civil Case No. 1436 of the Court of First Instance of Manila entitled 'Co Chiong et al. vs. Miguel Cuaderno et al.'; and

* * * * *

"Rule 39, section 4 of the Rules of Court provides as follows:

* * * * *

"If a petition for prohibition to restrain the enforcement of a law and/or administrative order can be considered as an action for injunction within the foregoing provision of the Rules of Court, then there is no longer any need to review and annul the interlocutory order of the respondent judge dissolving the preliminary injunction,

the same having been revoked and superseded by the said respondent judge's subsequent judgment. * * *

From a reading of the facts alleged in the petition filed with this Court, as well as in the complaint in the court below, it appears that the principal action of which the present is an incident is not a special civil action of prohibition, although it is so entitled, for the simple reason that the defendants or respondents do not exercise any judicial or ministerial functions, and there is no allegation in the complaint that they acted without or in excess of their jurisdiction for they have no specific jurisdiction granted by law, or with grave abuse of discretion since the law does not give them any discretion in the performance of the acts complained of. It is, in reality, an action of injunction filed by the plaintiffs against the defendants to restrain the latter from enforcing the provisions of the Republic Act No. 37 and Department of Finance Order No. 32, on the alleged ground that they are unconstitutional, and their enforcement will injuriously affect the enjoyment of their right to continue occupying the market stalls leased to them.

"The usual ground for asking injunctive relief against the enforcement of statutes is their invalidity, but that, of itself, is not sufficient to warrant the exercise by equity of its extraordinary injunctive power. In other words, the mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. Further circumstances must appear bringing the case under some recognized head of equity jurisdiction, and presenting some actual or threatened and irreparable injury to complainant's rights for which there is no adequate legal remedy. If it is apparent that the law can furnish all the relief to which the complainant is entitled, the injunction will be refused. It is recognized, however, that an injunction will lie to restrain the threatened enforcement of an invalid law where the lawful use and enjoyment of private property will be injuriously affected by its enforcement, or where the right of a person to conduct a lawful business or calling will be injuriously affected thereby * * *." (28 American Jurisprudence, pp. 369-371.)

In view of the foregoing, the question raised by the petitioners in this case has become a moot question, since it is no longer necessary for us to decide whether or not the petitioners are entitled to the relief demanded, and if they are to order the respondent judge to set aside the order dissolving the preliminary injunction and to reissue or revive the latter, in order to prevent the defendants from doing the acts complained of during the pendency of the suit. Because, aside from the fact that, as above stated, the Secretary of Finance has suspended the operation of the Department's Order No. 32, which the respondents were about to enforce, the principal action being an ordinary action of injunction, and the respondent judge having rendered since April 19, 1947 a judgment granting the injunction (called Prohibition), said judgment or order is effective and its operation was not stayed after the rendition and during the pendency of the appeal taken by the defendants to this Court, for the lower court did not order otherwise, in accordance with the provisions of section 4, Rule 39, which reads as follows:

"SEC. 4. Injunction, receivership and patent accounting, not stayed.—Unless otherwise ordered by the court a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

As to the necessity for this Court to decide as soon as possible the question as to the constitutionality of Republic Act No. 37, and Department of Finance Order No. 32, the proper time for deciding that question is when we decide on the merits the appeal pending before us. We cannot decide it now, because it is not necessary for this Court to do so in order to dispose of the present case. It is a well settled rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid unless such question is raised by the parties, and that when it is raised, if the record also presents some other ground upon which the court may rest its

judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable (Cooley's Constitutional Limitations, seventh edition, p. 231).

In view of all the foregoing, petitioners' petition for certiorari and mandamus, is dismissed without costs. So ordered.

Moran, C.J., Paras, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

By the petition filed with this Court on January 7, 1947, petitioners sought the issuance ex parte of a writ of preliminary injunction to refrain respondents from ejecting the petitioners from the stalls they are occupying in several public markets and that, after hearing, judgment be rendered annulling the order of the respondent judge dissolving the writ of preliminary injunction in case No. 1436, Co Chiong et al. vs. Cuaderno et al., and commanding him to forthwith re-issue such writ, praying further for such other remedy as the Court may deem just and equitable in the premises. Exhibits A to E, attached to the petition, are copies of proceedings and orders in the Manila case.

The main issue in the lower court centers on the validity of Republic Act No. 37 and of Department of Finance Order No. 32, petitioners contending that both are unconstitutional and void.

The question of the unconstitutionality of said act and department order is also necessarily the main issue raised by the petition, so much so that petitioners had reproduced in their petition all the ten grounds, alleged in their complaint below, upon which they rely in support of their attack against the validity of said act and department order.

Such was clearly understood by this Court when it denied the prayer for a writ of preliminary injunction but gave due course to the petition, by requiring respondents to answer it within five days from notice, by resolution we adopted on January 10, 1947. Everybody understood that we were ready to decide whether said act and department order are constitutional or not.

No other interpretation can be given to our resolution, adopted on January 10, 1947, as more explicitly expressed in the concurring and dissenting opinions accompanying the resolution which reads as follows:

"Considering the petition in L-1266, Co Chiong et als. vs. Judge Rafael Dinglasan et als., it is ordered that the prayer for a writ of preliminary injunction be denied, and that respondents answer the petition within 5 days from notice and receipt of copy thereof. Mr. Justice Paras concurs, notwithstanding the pendency of a case in the Court of First Instance of Manila, so as to expedite a decision on the merits. Mr. Justice Perfecto expressed his opinion as follows: 'We vote to dismiss the petition. The question whether stalls in public markets should be reserved to citizens is not new to us. More than one-fourth of a century ago, as Representative of Manila, we initiated the movement and campaign to nationalize said stalls, and before doing it we had to assure ourselves that it can be legally done. That conviction was strengthened by the embodying of nationalistic policy in the Constitution, being in fact one of its most striking essential characteristics. There is no doubt to our mind that Republic Act No. 37 and Department Order No. 32 issued by the Secretary of Finance in pursuance thereto are constitutionally valid and binding. Public markets form part of the means employed by the government to safeguard public health by a more effective supervision of the sale of perishable food, and, in that sense, sale in public markets partakes of a semi-official function. All official or semi-official functions,

as a matter of universal public policy, should exclusively be reserved to citizens. As there are several hundreds of public markets in the country, at least one in each city and municipality, it is necessary that we should decide without any delay the question of the validity of Republic Act No. 37 and Department Order No. 32 to stop further litigations which may unnecessarily crop out in the provinces'."

On January 18, 1947, respondents filed their answer and, meeting squarely, the main issues raised by petitioners, employed more than six pages to state concisely their reasons in support of the validity and constitutionality of Republic Act No. 37 and Department Order No. 32.

On January 21, 1947, we ordered the case to be set for hearing on January 24, at 9.30 a.m. At the hearing both parties were granted a few days' time within which to file their memoranda.

On January 29, petitioners filed an 18-page memorandum and respondents a 44-page memorandum, urging that Republic Act No. 37 and Department Order No. 32 be declared valid and constitutional.

On February 5, we granted petitioners an extension until February 10, to submit their rebuttal memorandum. On February 3, respondents filed their reply to petitioners' memorandum, reiterating their prayer that Republic Act No. 37 and Department Order No. 32 be declared valid and constitutional.

On February 10, petitioners filed a 115-page rebuttal memorandum, wherein petitioners objected to respondents' prayer for a final resolution on the constitutionality of Republic Act No. 37 and of Department Order No. 32, although almost three-fourths of the long memorandum, that is, 84 pages, are employed in an almost exhaustive discussion in support of their stand against the constitutionality of both act and department order.

Since the filing of said memorandum on February 10, 1947, the case has been submitted to us, ready for final decision.

More than two months later, that is, on April 25, 1947, petitioners filed a pleading entitled "Manifestation" wherein, among other things, they alleged that on April 19, 1947, the respondent judge rendered judgment, in civil case No. 1436, the allegation being in support of their opposition to the final resolution of the constitutionality of Republic Act No. 37 and Department Order No. 32.

On April 26, respondents answered to petitioners' manifestation, insisting that "it is to the public interest that the case be decided on the merits, the respondents in their memorandum discussing the constitutionality of Republic Act No. 37 and Department Order No. 32" and counsel for petitioners "in their rebuttal memorandum answered point by point the constitutional questions raised in respondents' memorandum." Respondents averred further that "it is expedient and imperative that this pressing national question be now decided 'so as to expedite a decision on the merit' as desired by Mr. Justice Paras in his concurring opinion to the resolution of this Honorable Court of January 10, 1947, since, according to Mr. Justice Perfecto, in his concurring opinion to the same resolution 'there are several hundreds of public markets in the country, at least one in each city and municipality, it is necessary that we should decide without any delay the question of the validity of Republic Act No. 37 and Department Order No. 32 to stop further litigations which may unnecessarily crop out in the provinces.' "

On April 30, this Court adopted a resolution denying petitioners' manifestation, filed on April 25, and our denial was an explicit reiteration of our desire of deciding this case on the merit and of passing upon the final question of the constitutionality of Republic Act No. 37 and Department Order No. 32, a desire clearly manifested when we adopted the resolution of January 10, 1947.

It must be remembered that in said resolution we denied petitioners' prayer for a writ of preliminary injunction. Although said denial had practically disposed of the petitioners' main purpose in filing the petition in this case, this Court decided to order respondents to answer the petition with the unmistakable purpose of deciding once and

for all the constitutional questions raised by petitioners.

Not only the parties in this case, but the public at large, were aware of the avowed purpose of this Court to pass upon said questions, and everybody had been waiting for our decision on said questions.

The belated and sudden reversal of that attitude cannot but produce a bitter disappointment to those who are directly interested in the case and to the people at large, and it will lead to irretrievable misunderstanding, nothing helpful to enhance the prestige and dignity of the highest tribunal of the land.

The reversal places this Court in a bad light. The reasons in support of the majority resolution have absolutely no weight. The allegation that the operation of Department Order No. 32 was suspended,—and it was suspended "until the constitutionality of Republic Act No. 37 has been determined by this Court,"—shows precisely the contrary of what is intended to be proved. It shows the necessity of deciding as soon as possible the question of the constitutionality of Republic Act No. 37, rather than indulgence in any delay or procrastination in rendering our decision on questions of urgent and pressing national importance.

The fact that the argument has been advanced by the majority upon their own initiative without any party mentioning the alleged suspension of the operation of Department Order No. 32, makes the resolution officious. This officiousness is emphasized by the fact that the resolution constitutes a reconsideration and reversal of our resolution of April 30, 1947, without any party moving for the reconsideration. The fact that petitioners themselves allowed to pass about three months since said resolution of April 30, 1947, was promulgated, shows that petitioners themselves were willing to abide by our resolution of deciding finally on the constitutionality of Republic Act No. 37 and Department Order No. 32.

Ever since January 10, 1947, when we stated the reasons for our dissent to the resolution giving due course to the petition and ordering respondents to answer it, we made known our opinion that Republic Act No. 37 and Department Order No. 32 do not violate, contrary to petitioners' claim, any provision of the Constitution.

Furthermore, we believe that both act and order are in perfect harmony with avowed main purposes of the government established by our fundamental law. According to the preamble, said government shall embody the ideals of the Filipino people, promote the general welfare, and secure to our people and their posterity, the blessings of independence. According to section 5 of Article II of the Constitution, "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the state," and there should not be any question that nationalization of public markets is one of the imperative measures for attaining the purpose. The operation of public utilities is reserved to citizens of the Philippines by section 8 of Article XIV of the fundamental law, and it is our opinion that public markets partake of the nature of a public utility, perhaps in greater measure than power and transportation services. Public markets are feeding the nation. Food is one of the elemental and indispensable necessities of human beings.

Considering the fact that petitioners belong to one of the most powerful, rich and influential social groups, well provided with means to attain their social and economic ends, while those who are supposed to be benefited by Republic Act No. 37 and Department Order No. 32 constitute a much weaker class, It is evident that nationalization of the public markets is one of the proper means to establish the economic equilibrium demanded by social justice.

Official duty, public policy, judicial statesmanship, proper administration of justice, all concur in demanding from us an unequivocal decision of the main legal issues, the real issues raised by the pleadings in this case. It is not enough that individual members of this Court, like us, should have expressed in unmistakable terms, their opinion in the controversy. It is not enough that a majority should have manifested their leanings in support of the same

opinion, as they did in the preliminary deliberations we had before adopting the resolution promulgated on January 10, 1947. It is necessary that a formal decision should be rendered.

This is so extremely simple that it may seem unbelievable and paradoxical. Sometimes it is hard to demonstrate what is evident. The elementals are easily forgotten. The most familiar things are not minded. The simplest ideas and feelings challenge expression. The modern mind is overburdened by complexities of its own making, by the weight of undiscerned authorities, by unanalyzed background and precedents, by overlapping technicalities, by information accumulated without method or logic, that its power of seeing and reasoning appears sometimes to be incapable of grasping what is self-evident in the same way that the hand cannot hold what is already in its palm because it is bent on catching what is far away. That is the tragedy of the gourmet who had lost taste for natural foods, of the futurists and cubists who pretend to be painters, of jazz and primitive syncopation devotees who can not enjoy the divine fugues of Bach.

Thousands all over the country are awaiting the result of the controversy. Many agencies of the government,—the Department of Finance, municipal councils, provincial boards, other officers in charge of public markets,—are awaiting the final settlement that could come only from the highest tribunal of the land. We can put an end to the worry in many minds. We must not fail them. Let us speak out our minds without hesitancy, without fear or favor to anyone. The administration of justice must be performed with the unconcern and aloofness of the decrees of destiny.

This Court is failing in its official duty by abstaining from deciding on the merits a case which has been awaiting decision more than six months ago. We cannot even remain silent at the peril that our silence be interpreted as consent or complicity, although there is imminent danger that this our attitude may not escape the blackout under the policy of concealment prevailing in this Court, and we will not be exempted, in the eyes of the people who will be kept ignorant of the true facts, of the blame for this Tribunal's refusal to administer justice in this case.

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