

BENJAMIN P. GOMEZ, PETITIONER-APPELLEE, VS. ENRICO PALOMAR, IN HIS CAPACITY AS POSTMASTER GENERAL; HON. BRIGIDO R. VALENCIA, IN HIS CAPACITY AS SECRETARY OF PUBLIC WORKS AND COM...

G.R. No. L-23645. October 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This appeal puts in issue the constitutionality of Republic Act 1635,[1] as amended by Republic Act 2631,[2] which provides as follows:

"To help raise funds for the Philippine Tuberculosis Society, the Director of Posts shall order for the period from August nineteen to September thirty every year the printing and issue of semi-postal stamps of different denominations with face value showing the regular postage charge plus the additional amount of five centavos for the said purpose, and during the said period, no mail matter shall be accepted in the mails unless it bears such semi-postal stamps: Provided, That no such additional charge of five centavos shall be imposed on newspapers. The additional proceeds realized from the sale of the semi-postal stamps shall constitute a special fund and be deposited with the National Treasury to be expended by the Philippine Tuberculosis Society in carrying out its noble work to prevent and eradicate tuberculosis."

The respondent Postmaster General, in implementation of the law, thereafter issued four (4) administrative orders numbered 3 (June 20, 1958), 7 (August 9, 1958), 9 (August 28, 1958), and 10 (July 15, 1960). All these administrative orders were issued with the approval of the respondent Secretary of Public Works and Communications.

The pertinent portions of Adm. Order 3 read as follows:

"Such semi-postal stamps could not be made available during the period from August 19 to September 30, 1957, for lack of time. However, two denominations of such stamps, one at '5 + 5' centavos and another at '10 + 5' centavos, will soon be released for use by the public on their mails to be posted during the same period starting with the year 1958.

x x x

"During the period from August 19 to September 30 each year starting in 1958, no mail matter of whatever class, and whether domestic or foreign, posted at any Philippine Post Office and addressed for delivery in this country or abroad, shall be accepted for mailing unless it bears at least one such semi-postal stamp showing the additional value of five centavos intended for the Philippine Tuberculosis Society.

"In the case of second-class mails and mails prepaid by means of mail permits or impressions of postage meters, each piece of such mail shall bear at least one such semi-postal stamp if posted during the period above stated starting with the year 1958, in addition to being charged the usual postage prescribed by existing regulations. In the case of business reply envelopes and cards mailed during said period, such stamp should be

collected from the addressees at the time of delivery. Mails entitled to franking privilege like those from the office of the President, members of Congress, and other offices to which such privilege has been granted, shall each also bear one such semi-postal stamp if posted during the said period.

"Mails posted during the said period starting in 1958, which are found in street or post-office mail boxes without the required semi-postal stamp, shall be returned to the sender, if known, with a notation calling for the affixing of such stamp. If the sender, is unknown, the mail matter shall be treated as nonmailable and forwarded to the Dead Letter Office for proper disposition."

Adm. Order 7, amending the fifth paragraph of Adm. Order 3, reads as follows:

"In the case of the following categories of mail matter and mails entitled to franking privilege which are not exempted from the payment of the five centavos intended for the Philippine Tuberculosis Society, such extra charge may be collected in cash, for which official receipt (General Form No. 13, A) shall be issued, instead of affixing the semi-postal stamp in the manner hereinafter indicated:

"1. Second-class mails. - Aside from the postage at the second-class rate, the extra charge of five centavos for the Philippine Tuberculosis Society shall be collected on each separately-addressed piece of second class mail matter, and the total sum thus collected shall be entered in the same official receipt to be issued for the postage at the second-class rate. In making such entry, the total number of pieces of second-class mail posted shall be stated, thus: 'Total charge for TB Fund on 100 pieces. . P5.00.' The extra charge shall be entered separate from the postage in both of the official receipt and the Record of Collections.

"2. First-class and third-class mail permits. - Mails to be posted without postage affixed under permits issued by this Bureau shall each be charged the usual postage, in addition to the five centavo extra charge intended for said society. The total extra charge thus received shall be entered in the same official receipt to be issued for the postage collected, as in subparagraph 1.

"3. Metered mails. - For each piece of mail matter impressed by postage meter under metered mail permit issued by this Bureau, the extra charge of five centavos for said society shall be collected in cash, and an official receipt issued for the total sum thus received, in the manner indicated in subparagraph 1.

"4. Business reply cards and envelopes. - Upon delivery of business reply cards and envelopes to holders of business reply permits, the five-centavo charge intended for said society shall be collected in cash on each reply card or envelope delivered, in addition to the required postage which may also be paid in cash. An official receipt shall be issued for the total postage and total extra charge received, in the manner shown in subparagraph 1.

"5. Mails entitled to franking privilege. - Government agencies, officials, and other persons entitled to the franking privilege under existing laws may pay in cash such extra charge intended for said society, instead of affixing the semi-postal stamps to their mails, provided that such mails are presented at the post-office window, where the five-centavo extra charge for said society shall be collected on each piece of such mail matter. In such case, an official receipt shall be issued for the total sum thus collected, in the manner stated in subparagraph 1.

"Mails under permits, metered mails and franked mails not presented at the post-office window shall be affixed with the necessary semi-postal stamps. If found in mail boxes without such stamps, they shall be treated in the same way as herein provided for other mails."

Adm. Order 9, amending Adm. Order 3, as amended, exempts "Government and its Agencies and Instrumentalities Performing Governmental Functions." Adm. Order 10, amending Adm. Order 3, as amended, exempts "copies of periodical publications received for mailing under any class of mail matter, including newspapers and magazines admitted as second-class mail."

The FACTS. On September 15, 1963 the petitioner Benjamin P. Gomez mailed a letter at the post office in San Fernando, Pam-panga. Because this letter, addressed to a certain Agustin Aquino of 1014 Dagohoy Street, Singalong, Manila did not bear the special anti-TB stamp required by the statute, it was returned to the petitioner.

In view of this development, the petitioner brought this suit for declaratory relief in the Court of First Instance of Pampanga, to test the constitutionality of the statute, as well as the implementing administrative orders issued, contending that it violates the equal protection clause of the Constitution as well as the rule of uniformity and equality of taxation. The lower court declared the statute and the orders unconstitutional; hence this appeal by the respondent pos-tal authorities.

For the reasons set out in this opinion, the judgment appealed from must be reversed.

I

Before reaching the merits, we deem it necessary to dispose of the respondents' contention that declaratory relief is unavail-ing because this suit was filed after the petitioner had committed a breach of the statute. While conceding that the mailing by the petiti-ner of a letter without the additional anti-TB stamp was a violation of Republic Act 1635, as amended, the trial court nevertheless re-fused to dismiss the action on the ground that under section 6 of Rule 64 of the Rules of Court, "If before the final termination of the case a breach or violation of . . . a statute . . . should take place, the action may thereupon be converted into an ordinary action."

The prime specification of an action for declaratory relief is that it must be brought "before breach or violation" of the statute has been committed. Rule 64, section 1 so provides. Section 6 of the same rule, which allows the court to treat an action for decla-ratory relief as an ordinary action, applies only if the breach or violation occurs after the filing of the action but before the termination thereof.[3]

Hence, if, as the trial court itself admitted, there had been a breach of the statute before the filing of this action, then indeed the remedy of declaratory relief cannot be availed of, much less can the suit be converted into an ordinary action.

Nor is there merit in the petitioner's argument that the mailing of the letter in question did not constitute a breach of the statute because the statute appears to be addressed only to postal authorities. The statute, it is true, in terms provides that "no mail matter shall be accepted in the mails unless it bears such semi-postal stamps." It does not follow, however, that only postal authorities can be guilty of violating it by accepting mails with-out the payment of the anti-TB stamp. It is obvious that they can be guilty of violating the statute only if there are people who use the mails without paying for the additional anti-TB stamp. Just as in bribery the mere offer constitutes a breach of the law, so in the matter of the anti-TB stamp the mere attempt to use the mails without the stamp constitutes a violation of the statute. It is not required that the mail be accepted by postal authorities. That re-quirement is relevant only for the purpose of fixing the liability of postal officials.

Nevertheless, we are of the view that the petitioner's choice of remedy is correct because this suit was filed not only with res-pect to the letter which he mailed on September 15, 1963, but also with regard to any other mail that he might send in the future. Thus, in his complaint, the petitioner prayed that due course be given to "other mails without the semi-postal stamps which he may deliver for mailing . . . if any, during the period covered by Republic Act 1635, as amended, as well as other mails hereafter to be sent by or to other mailers which bear the required postage, without collection of additional charge of five centavos prescribed by the said Republic Act." As one whose mail was returned, the petitioner is certainly interested in a ruling on the validity of the statute requir-ing the use of additional stamps.

II.

We now consider the constitutional objections raised against the statute and the implementing orders.

1. It is said that the statute is violative of the equal protection clause of the Constitution. More specifically the claim is made that it constitutes mail users into a class for the purpose of the tax while leaving untaxed the rest of the population and that even among postal patrons the statute discriminatorily grants exemption to newspapers while Administrative Order 9 of the respondent Postmaster General grants a similar exemption to offices performing governmental functions.

The five centavo charge levied by Republic Act 1635, as amended, is in the nature of an excise tax, laid upon the exercise of a privilege, namely, the privilege of using the mails. As such the objections levelled against it must be viewed in the light of applicable principles of taxation.

To begin with, it is settled that the legislature has the inherent power to select the subjects of taxation and to grant exemptions.[4] This power has aptly been described as "of wide range and flexibility." [5] Indeed, it is said that in the field of taxation, more than in other areas, the legislature possesses the greatest freedom in classification.[6] The reason for this is that traditionally, classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden.[7]

That legislative classifications must be reasonable is of course undenied. But what the petitioner asserts is that statutory classification of mail users must bear some reasonable relationship to the end sought to be attained, and that absent such relationship the selection of mail users is constitutionally impermissible. This is altogether a different proposition. As explained in *Commonwealth v. Life Assurance Co.*, [8]

"While the principle that there must be a reasonable relationship between classification made by the legislation and its purpose is undoubtedly true in some contexts, it has no application to a measure whose sole purpose is to raise revenue. . . So long as the classification imposed is based upon some standard capable of reasonable comprehension, be that standard passed upon ability to produce revenue or some other legitimate distribution, equal protection of the law has been afforded. See *Allied Stores of Ohio, Inc. v. Bowers*, supra 338 U.S. at 527, 79 S. Ct. at 441; *Brown-Forman Co. v. Commonwealth of Kentucky*, 217 U.S. 563, 573, 60 S. Ct. 573, 588 (1910)."

We are not wont to invalidate legislation on equal protection grounds except by the clearest demonstration that it sanctions invidious discrimination, which is all that the Constitution forbids. The remedy for unwise legislation must be sought in the legislature. Now, the classification of mail users is not without any reason. It is based on ability to pay, let alone the enjoyment of a privilege, and on administrative convenience. In the allocation of the tax burden, Congress must have concluded that the contribution to the anti-TB fund can best be assured by those who can afford the use of the mails.

The classification is likewise based on considerations of administrative convenience. For it is now a settled principle of law that "considerations of practical administrative convenience and cost in the administration of tax laws afford adequate grounds for imposing a tax on a well recognized and defined class." [9] In the case of the anti-TB stamp, undoubtedly, the single most important and influential, consideration that led the legislature to select mail users as subjects of the tax is the relative ease and convenience of collecting the tax through the post offices. The small amount of five centavos does not justify the great expense and inconvenience of collecting through the regular means of collection. On the other hand, by placing the duty of collection on postal authorities the tax was made almost self-enforcing, with as little cost and as little inconvenience as possible.

And then of course it is not accurate to say that the statute constituted mail users into a class. Mail users were

already a class by themselves even before the enactment of the statute and all that the legislature did was merely to select their class. Legislation is essentially empiric and Republic Act 1635, as amended, no more than reflects a distinction that exists in fact. As Mr. Justice Frankfurter said, "to recognize differences that exist in fact is living law; to disregard [them] and concentrate on some abstract identities is lifeless logic." [10]

Granted the power to select the subject of taxation, the State's power to grant exemption must likewise be conceded as a necessary corollary. Tax exemptions are too common in the law; they have never been thought of as raising issues under the equal protection clause.

It is thus erroneous for the trial court to hold that because certain mail users are exempted from the levy the law and administrative officials have sanctioned an invidious discrimination offensive to the Constitution. The application of the lower court's theory would require all mail users to be taxed, a conclusion that is hardly tenable in the light of differences in status of mail users. The Constitution does not require this kind of equality.

As the United States Supreme Court has said, the legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficent enterprise. [11] This is the case of newspapers which, under the amendment introduced by Republic Act 2631, are exempt from the payment of the additional stamp.

As for the Government and its instrumentalities, their exemption rests on the State's sovereign immunity from taxation. The State cannot be taxed without its consent and such consent, being in derogation as its sovereignty, is to be strictly construed. [12] Administrative Order 9 of the respondent Postmaster General, which lists the various offices and instrumentalities of the Government exempt from the payment of the anti-TB stamp, is but a restatement of this well-known principle of constitutional law.

The trial court likewise held the law invalid on the ground that it singles out tuberculosis to the exclusion of other diseases, which, it is said, are equally a menace to public health. But it is never a requirement of equal protection that all evils of the same genus be eradicated or none at all. [13] As this Court has had occasion to say, "if the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." [14]

2. The petitioner further argues that the tax in question is invalid, first, because it is not levied for a public purpose as no special benefits accrue to mail users as taxpayers, and second, because it violates the rule of uniformity in taxation.

The eradication of a dreaded disease is a public purpose, but if by public purpose the petitioner means benefit to a taxpayer as a return for what he pays, then it is sufficient answer to say that the only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them and would involve the abandonment of the most fundamental principle of government - that it exists primarily to provide for the common good. [15]

Nor is the rule of uniformity and equality of taxation infringed by the imposition of a flat rate rather than a graded tax. A tax need not be measured by the weight of the mail or the extent of the service rendered. We have said that considerations of administrative convenience and cost afford an adequate ground for classification. The same considerations may induce the legislature to impose a flat tax which in effect is a charge for the transaction, operating equally on all persons with the class regardless of the amount involved. [16] As Mr. Justice Holmes said in sustaining the validity of a stamp act which imposed a flat rate of two cents on every \$100 face value of stock transferred,

"One of the stocks was worth \$30.75 a share of the face value of \$100, the other \$172. The inequality of the tax, so far as actual values are concerned, is manifest. But, here again equality in this sense has to yield to practical considerations and usage. There must be a fixed and indisputable mode of ascertaining a stamp tax. In another sense, more-over, there is equality. When the taxes on two sales are equal, the same number of shares is sold in each case; that is to say, the same privi-lege is used to the same extent. Valuation is not the only thing to be considered. As was pointed out by the court of appeals, the familiar stamp tax of 2 cents on checks, irrespective of income or earning capacity, and many others, illustrate the necessity and practice of sometimes substituting count for weight. . . ."[17]

According to the trial court, the money raised from the sales of the anti-TB stamps is spent for the benefit of the Philippine Tuberculosis Society, a private organization, without appropriation by law. But as the Solicitor General points out, the Society is not really the beneficiary but only the agency through which the State acts in carrying out what is essentially a public function. The money is treated as a special fund and as such need not be appropriated by law.[18]

3. Finally, the claim is made that the statute is so broadly drawn that to execute it the respondents had to issue administrative orders far beyond their powers. Indeed, this is one of the grounds on which the lower court invalidated Republic Act 1631, as amended, namely, that it constitutes an undue delegation of legislative power.

Administrative Order 3, as amended by Administrative Orders 7 and 10, provides that for certain classes of mail matters (such as mail permits, metered mails, business reply cards, etc.), the five-centavo charge may be paid in cash instead of the purchase of the anti-TB stamp. It further states that mails deposited during the period August 19 to September 30 of each year in mail boxes without the stamp should be returned to the sender, if known, otherwise they should be treated as nonmailable.

It is true that the law does not expressly authorize the collection of five centavos except through the sale of anti-TB stamps, but such authority may be implied in so far as it may be necessary to prevent a failure of the undertaking. The authority given to the Postmaster General to raise funds through the mails must be liberally construed, consistent with the principle that where the end is required the appropriate means are given.[19]

The anti-TB stamp is a distinctive stamp which shows on its face not only the amount of the additional charge but also that of the regular postage. In the case of business reply cards, for instance, it is obvious that to require mailers to affix the anti-TB stamp on their cards would be to make them pay much more because the cards likewise bear the amount of the regular postage.

It is likewise true that the statute does not provide for the disposition of mails which do not bear the anti-TB stamp, but a declaration therein that "no mail matter shall be accepted in the mails unless it bears such semi-postal stamp" is a declaration that such mail matter is nonmailable within the meaning of section 1952 of the Administrative Code. Administrative Order 7 of the Postmaster General is but a restatement of the law for the guidance of postal officials and employees. As for Administrative Order 9, we have already said that in listing the offices and entities of the Government exempt from the payment of the stamp, the respondent Postmaster General merely observed an established principle, namely, that the Government is exempt from taxation.

ACCORDINGLY, the judgment a quo is reversed, and the complaint is dismissed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Angeles, and Capistrano, JJ., concur.
Fernando, J., concurs in a separate opinion.
Zaldivar, J., on leave.

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- [1] Approved on June 30, 1957.
- [2] Approved on June 18, 1960.
- [3] See 3 M. Moran, Comments on the Rules of Court 138 (6th ed., 1963).
- [4] Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937); Lutz v. Araneta, 98 Phil. 148 (1955).
- [5] Louisville Gas & B. Co v. Coleman, 277 U.S. 32 (1928).
- [6] Madden v. Kentucky, 309 U.S. 83 (1940); Citizens' Teleph. Co. v. Fuller, 229 U.S. 322 (1913).
- [7] Madden v. Kentucky, *supra*, note 6.
- [8] 419 Pa. 370, 214 A.2d 209, 214-15 (1965), appeal dismissed, Life Assur. Co. v. Pennsylvania, 348 U.S. 268 (1966).
- [9] Fernandez v. Wiener, 327 U.S. 340, 360 (1945); accord, Carmichael v. Southern Coal & Coke Co., *supra*, note 4; Weber v. City of New York, 195 N.Y.S. 2d 269 (1959).
- [10] Morey v. Doud, 354 U.S. 457, 472 (1957) (dissent).
- [11] Carmichael v. Southern Coal & Coke Co., *supra*, note 4, at 512.
- [12] Cf. Town of Indian Lake v. State Bd. of E. & A., 45 Misc. 2d 463, 257 N.Y.S. 2d 301 (1965).
- [13] Railway Express Agency v. New York, 336 U.S. 106 (1949).
- [14] Lutz v. Araneta, 98 Phil. 148, 153 (1955); accord, McLaunlin v. Florida, 379 U.S. 184 (1964).
- [15] Carmichael v. Southern Coal & Coke Co., *supra*, note 4 at 522-523.
- [16] See Weber v. City of New York, *supra*, note 9; North Am. Co. v. Green, 120 So. 2d 603 (1960).
- [17] New York ex rel. Hatch v. Reardon, 204 U.S. 152, 159-160 (1907).
- [18] Const, art. VI, sec. 23(1).
- [19] See Lo Cham v. Ocampo, 77 Phil. 635 (1946); Rev. Adm. Code, Code, sec. 551.
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CONCURRING OPINION

FERNANDO, J.:

I join fully the rest of my colleagues in the decision upholding Republic Act No. 1635 as amended by Republic Act No. 2631 and the majority opinion expounded with Justice Castro's usual vigor and lucidity subject to one qualification. With all due recognition of its inherently persuasive character, it would seem to me that the same result could be achieved if reliance be had on police power rather than the attribute of taxation, as the

constitutional basis for the challenged legislation.

1. For me, the statute in question is an exercise of the regulatory power connected with the performance of the public service. I refer of course to the government postal function, one of respectable and ancient lineage. The United States Constitution of 1787 vests in the federal government acting through Congress the power to establish post offices.[1] The first act providing for the organization of government departments in the Philippines, approved Sept. 6, 1901, provided for the Bureau of Post Offices in the Department of Commerce and Police.[2] Its creation is thus a manifestation of one of the many services in which the government may engage for public convenience and public interest. Such being the case, it seems that any legislation that in effect would require increase cost, of postage is well within the discretionary authority of the government.

It may not be acting in a proprietary capacity but in fixing the fees that it collects for the use of the mails, the broad discretion that it enjoys is undeniable. In that sense, the principle announced in *Esteban v. Cabanatuan City*,[3] in an opinion by our Chief Justice, while not precisely controlling furnishes for me more than ample support for the validity of the challenged legislation. Thus: "Certain exactions, imposable under an authority other than police power, are not subject, however, to qualification as to the amount chargeable, unless the Constitution or the pertinent laws provide otherwise. For instance, the rates of taxes, whether national or municipal, need not be reasonable, in the absence of such constitutional or statutory limitation. Similarly, when a municipal corporation fixes the fees for the use of its properties, such as public markets, it does not wield the police power, or even the power of taxation. Neither does it assert governmental authority. It exercises merely a proprietary function. And, like any private owner, it is - in the absence of the aforementioned limitation, which does not exist in the Charter of Cabanatuan City (Republic Act No. 526) - free to charge such sums as it may deem best, regardless of the reasonableness of the amount fixed, for the prospective lessees are free to enter into the corresponding contract of lease, if they are agreeable to the terms thereof, or, otherwise, not enter into such contract."

2. It would appear likewise that an expression of one's personal views both as to the attitude and awareness that must be displayed by inferior tribunals when the "delicate and awesome" power of passing on the validity of statute would not be in-appropriate. "The Constitution is the supreme law, and statutes are written and enforced in submission to its commands." [4] It is likewise common place in constitutional law that a party adversely affected could, again to quote from Cardozo, "invoke, when constitutional immunities are threatened, the judgment of the courts." [5]

Since the power of judicial review flows logically from the judicial function of ascertaining the facts and applying the law and since obviously the Constitution is the highest law before which statutes must bend, then inferior tribunals can, in the discharge of their judicial functions, nullify legislative acts. As a matter of fact, in clear cases, such is not only their power but their duty. In the language of the present Chief Justice: "In fact, whenever the conflicting claims of the parties to a litigation, cannot properly be settled without inquiring into the validity of an act of Congress or of either House thereof the courts have, not only jurisdiction to pass upon said issue, but, also, the duty to do so, which cannot be evaded without violating the fundamental law and paving the way to its eventual destruction." [6]

Nonetheless, the admonition of *Cooley*, specially addressed to inferior tribunals, must ever kept in mind. Thus: "It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility." [7]

There must be a caveat however to the above *Cooley* pronouncement. Such should not be the case, to paraphrase

Freund, when the challenged legislation imperils freedom of the mind and of the person, for given such an undesirable situation, "it is freedom that commands a momentum of respect." Here then, fidelity to the great ideal of liberty enshrined in the Constitution may require the judiciary to take an uncompromising and militant stand. As phrased by us in a recent decision, "if the liberty involved were freedom of the mind or the person, the standard for its validity of governmental acts is much more rigorous and exacting." [8]

So much for the appropriate judicial attitude. Now on the question of awareness of the controlling constitutional doctrines.

There is nothing I can add to the enlightening discussion of the equal protection aspect as found in the majority opinion. It may not be amiss to recall to mind, however, the language of Justice Laurel in the leading case of *People v. Vera*, [9] to the effect that the basic individual right of equal protection "is a restraint on all the three grand departments of our government and on the subordinate instrumentalities and subdivisions thereof, and on many constitutional powers, like the police power, taxation and eminent domain." [10] Nonetheless, no jurist was more care-ful in avoiding the dire consequences to what the legislative body might have deemed necessary to promote the ends of public welfare if the equal protection guaranty were made to constitute an insurmountable obstacle.

A similar sense of realism was invariably displayed by Justice Frankfurter, as is quite evident from the various citations from his pen found in the majority opinion. For him, it would be a misreading of the equal protection clause to ignore actual conditions and settled practices. Not for him the at times academic and sterile approach to constitutional problems of this sort. Thus: "It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guaranties, but it can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains are often tougher and truer law than the dead words of the written text." [11] This too, from the same distinguished jurist: "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." [12]

Now, as to non-delegation. It is to be admitted that the problem of non-delegation of legislative power at times occasions difficulties. Its strict view has been announced by Justice Laurel in the aforecited case in *People v. Vera* in this language. Thus: "In testing whether a statute constitutes an undue delegation of legislative power nor not, it is usual to inquire whether the statute was complete in all its terms and provisions when it left the hands of the legislature so that nothing was left to the judgment of any other appointee or delegate of the legislature. * * *. In *United States v. Ang Tang Ho* * * *, this court adhered to the foregoing rule it held an act of the legislature void in so far as it undertook to authorize the Governor-General, in his discretion, to issue a proclamation fixing the price of rice and to make the sale of it in violation of the proclamation a crime." [13]

Only recently, the present Chief Justice reaffirmed the above view in *Pelaez v. Auditor General*, [14] specially where the dele-gation deals not with an administrative function but one essentially and eminently legislative in character. What could properly be stigmatized though, to quote Justice Cardozo, is delegation of authority that is "unconfined and vagrant, one not canalized within banks which keep it froth overflowing." [15]

This is not the situation as it presents itself to us. What was delegated was power not legislative in character. Justice Laurel himself, in a later case, *People v. Rosenthal*, [16] admitted that within certain limits, there being a need for coping with the more intricate problem of society, the principle of "subordinate legislation" has been accepted, not only in the United States and England, but, in practically all modern govern-ments. This view was reiterated by him in a 1940 decision, *Pangasinan Transportation Co., Inc. v. Public Service Com-mission*. [17]

Thus: "Accordingly, with the growing complexity of modern life, the multiplication of the subjects of govern-mental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts."

In the light of the above views of eminent jurists, authori-tative in character, of both the equal protection clause and the non-delegation principle, it is apparent how far the lower court departed from the path of constitutional orthodoxy in nullifying Republic Act No. 1635 as amended. Fortunately, the Matter has been set right with the reversal of its decision, the opinion of the Court, manifesting its fealty to constitutional law precepts, which have been reiterated time and time again and for the soundest of reasons.

[1] Section 8, par. 7, Article 1.

[2] Section 2, Act No. 222.

[3] L-13662, May 30, 1960.

[4] Cardozo, J., *Municipal Gas Co. v. Public Service Commission*, 121 NE 772, 774 (1919).

[5] *Ibid*, p. 774.

[6] *Tañada v. Cuenco*, 103 Phil. 1051, 1061-1062 (1957).

[7] *Cooley on Constitutional Limitations*, Vol. 1, 8th ed., 332 (1927).

[8] *Ermita-Malate Hotel Assn. v. Mayor of Manila*, L-24693, July 31, 1967.

[9] 65 Phil. 56 (1937).

[10] *Ibid*, 125.

[11] *Nashville, C. & St. L. Railway v. Browning*, 84 L ed, 1254, 1258 (1940).

[12] *Tigner v. Texas*, 84 L ed. 1124, 1128 (1940).

[13] 65 Phil. 56, 115. (1937).

[14] L-23825, December 24, 1965.

[15] Cardozo, J., concurring, *Schenchter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935).

[16] 68 Phil. 328 (1939).

[17] 70 Phil. 221, 229 (1940).

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