

**MISAEAL VERA, AS COMMISSIONER OF INTERNAL REVENUE;
EDUARDO ROMUALDEZ, AS SECRETARY OF FINANCE; AND RAFAEL
SALAS, AS EXECUTIVE SECRETARY, PETITIONERS, VS. HON. JUDGE
FRANCISCO ARC...**

G.R. No. L-25721. May 26, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

With the judiciary called upon to apply the law on the facts as found by it and with the supremacy of the Constitution as a cardinal postulate, the exercise of the power of judicial review by a court of justice, an inferior tribunal not excepted, is unavoidable.[1] There are times, and not infrequently either, when both a constitutional provision and a statute may govern the matter before it. In the event, therefore, that there is a contrariety or repugnancy between them, such delicate and awesome power comes into play. Even prior to adjudication, at the inception of a lawsuit, a party who seeks to annul such legislative act may pray for a writ of preliminary injunction so that its operation could be arrested.

So it was in this case, respondent Judge Francisco Arca, now retired, indulging the other respondents[2] in their plea for a preliminary injunction against the enforcement of the Tax Census Act.[3] Petitioners[4] through this special civil action of certiorari and prohibition would have the validity of such preliminary injunction tested. That is the initial issue before us. In the event that there was such an improvident exercise of the power to issue a writ of preliminary injunction, does a petition for certiorari and prohibition lie? That question, we must likewise resolve.

The other respondents, on February 4, 1966, started a special civil action for prohibition and injunction in the sale of respondent Judge, seeking to declare the Tax Census Act[5] as unconstitutional, illegal and in-valid. The respondents in that suit were the Commissioner of Internal Revenue, the Secretary of Finance and the Executive Secretary, now the petitioners before us.[6]

Reference was made to its first section, which would require of every resident of the Philippines over 18 years of age within the month of February, 1962 and thereafter within the same month every four years to file with the City of Municipal Treasurer in a form prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of Finance, a statement under oath containing such data as the name; age; sex; nationality (if alien, the number of the Alien Registration Certificate, and aliases used, or authorized to be used, if any); address; occupation; place of business; wife's or husband's name, age, sex, occupation and place of business; and the members of his family, age and sex[7] as well as real property owned, stating the nature thereof, location and assessed value thereof, and the annual gross income therefrom during the preceding year; property held under lease stating also the nature, location and assessed value thereof and the annual income during the preceding year; business subject to tax giving the nature and location thereof and the annual gross receipts or earnings during the preceding year; stocks in corporations or shares in partnerships or associations; inventories of assets particularly

machineries and buildings, merchandise on hand, unfinished goods and raw materials on hand, short and long term re-ceivables, and investments in stocks and bonds; professions or occupations, stating the kind and location thereof and the annual salaries or gross receipts or earnings during the preceding year; and personal properties except those worth less than five hundred pesos.[8] Two other sections were likewise cited in the petition.[9] It was then alleged that the Tax Census Act has been enforced and implemented since 1962 and that the parties who filed the suit, now respondents before us, "are required to make and file Sworn Statements of Assets, Income and Liabilities" in accordance with the Act.[10] It was likewise asserted that the then Senator Camilo Osias filed a bill to repeal such legislation and that the Secretary of Finance had admitted that it had not been able to produce the result expected from it, the information yielded not justifying the trouble caused not only to the public but also to the government.[11]

The main portion of the petition before respondent Judge dealt with the alleged infirmity of the Tax Census Act as being violative of the constitutional right to liberty, to the guarantee against self-incrimination and the protection against unreasonable searches and seizures with a citation from both Philippine and American cases in support of such a plea.[12] A writ of preliminary injunction was therein likewise sought, the argument being advanced that the other respondents before us in the petition before respondent Judge "would suffer great and irreparable damage arising from the non-filing of their Sworn Statement of Assets, Income and Liabilities, as they are subject to criminal prosecution under Section 5 of the Tax Census Law which is in clear violation of herein petitioners' aforesaid constitutional and legal rights and which would render the judgment in favor of herein petitioners ineffectual." [13]

The present petitioners, as respondents in such special civil action, in their answer filed on February 18, 1966, after denying specifically the allegations contained in the petition intended to establish the unconstitutionality of the Tax Census Act, emphasized in the special and affirmative defenses interposed that such an enactment was intended to implement the governmental function "for a just, equal and efficient system of collecting taxes." The purpose of Republic Act No. 2070, in the language of its authors, Senators Puyat and Roy, is to provide "for a national tax census and the keeping of national registers in every city and municipality of the Philippines, * * * to provide the Department of Finance and the Bureau of Internal Revenue with vital tax statistics upon which they can formulate sound policies and recommend reforms in the tax system and in revenue to achieve efficiency and honesty in the collection of taxes. * * * It is believed that the establishment of a national tax census will enhance revenue collection, minimize evasion of taxes, promote honesty and efficiency in revenue administration and, above all, give fair assurance that every citizen pays his just proportion of the public burden, and thus develop in this country tax consciousness which is vital to tax collection," * * * "[14] Stress was likewise laid on the undeniable power of Congress to enact such a measure. Then came an extended discussion to demonstrate that the right against self-incrimination as well as the right against unreasonable searches and seizures did not suffer any infringement as a result of the challenged legislation.[15] There was a vehement opposition to the plea for preliminary injunction.[16] The prayer was for a denial of the preliminary injunction and the dismissal of the petition.

Then came the order of respondent Judge of February 21, 1966, which is the basis of the present petition for certiorari and prohibition, noting that a hearing on the plea for the issuance of the writ for preliminary injunction took place on February 19, 1966 and ordering the issuance thereof upon the posting of a bond of P1,000.00, thus restraining petitioners before us from requiring the other respondents and other similarly situated to file their sworn statements of assets, income and liabilities under Republic Act No. 2070. Hence this petition for certiorari and prohibition, dated February 23, 1966.

Petitioners in this special civil action seek the setting aside of the writ of preliminary injunction issued by

respondent Judge and would restrain him perpetually from further hearing the suit for prohibition and injunction pending before him. Petitioners predicate their plea on the allegation that respondent Judge gravely abused his discretion in issuing the writ of preliminary injunction as the Tax Census Act is valid and constitutional, there being neither any self-incrimination feature nor unreasonable search and seizure taint, there being moreover a presumption of its conformity with the fundamental law and no grave and irreparable injury being suffered by the other respondents, petitioners before respondent Judge.[17] Petitioners likewise justify their contention that there was a grave abuse of discretion on the part of respondent Judge in the issuance of such writ of preliminary injunction due to his failure to consider the serious injury it would cause the paramount public interest, to realize that the enforcement of penal laws cannot thus be restrained and to take note that the other respondents as petitioners before him are guilty of laches.[18]

This Court, in a resolution dated February 25, 1966, gave due course to the foregoing petition for certiorari and prohibition and required respondents to file an answer within 10 days from notice.

Such an answer was filed on March 8, 1966, where-in after admitting the jurisdictional facts alleged as well as the statement of the case as set forth in the petition, respondents specifically denied the allegations in the petition to the effect that Republic Act No. 2070 is valid and constitutional, reference being made to the alleged violation right against unreasonable searches and seizures.[19] Then came the specific denial of that portion of the petition which pointed to the alleged grave abuse of discretion of respondent Judge in issuing the writ of preliminary injunction.[20] In their special and affirmative defenses respondents would reiterate their argument against the validity of the Act for the asserted transgression on the constitutional protection against self-incrimination and against unreasonable searches and seizures. They did likewise question its validity as being in excess of the State's taxing power, ignoring the fact that the Act is more properly a police power legislation.

At the hearing of the case scheduled for May 16, 1966, nobody appeared for any of the parties, petitioners however filing a motion, seeking a period of 30 days within which to submit a memorandum. With its filing on September 5, 1966, the arguments set forth in the petition to uphold the validity of the Tax Census Act being reiterated therein and the respondents' reply memorandum on December 27, 1966, the case was deemed submitted for decision.

1. The primary question before us then is whether respondent Judge ought to have issued the writ of preliminary injunction to restrain the enforcement of the Tax Census Act. The answer must be in the negative.

As far back as March 23, 1909, more than 60 years ago, this Court, in the leading case of *Devesa v. Arbes*,^[21] made the categorical pronouncement that the issuance of an injunction is addressed to the sound discretion of the Court, the exercise of which is controlled not so much by the then applicable sections of the Code of Civil Procedure, now the Rules of Court, but by the accepted doctrines, one of which is that it should not be granted while the rights between the parties are undetermined except in extraordinary cases where material and irreparable injury will be done. For it is an action in equity appropriate only when there can be no compensation in damages for the injury thus sustained and where no adequate remedy in law exists. Such a holding reflected the prevailing American doctrine that there is no power "the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or more dangerous in a doubtful case," being "the strong arm of equity, that never ought to be extended," except where the injury is great and irreparable.^[22]

We have remained committed to such an approach since then. Only last year, in *Palanan Lumber & Ply-wood Co. v. Arranz*,^[23] we emphasized: "It is not amiss to recall here that time and again this Court has had occasion to deplore the readiness of some judges to grant and issue injunctions ex parte against acts of public functionaries, ignoring the presumption of regularity and validity of official actuations, in disregard of the deference and

courtesy due to a co-ordinate branch of the government, and with no other guide than the far from impartial assertions in pleadings of interested parties, which a summary hearing would have shown to be either dubious or unfounded. The result has been that all too often, the public interest has been prejudiced through unnecessary delays. It bears repeating here that preliminary injunctions remain extraordinary remedies that should be dispensed with circumspection, and that both sides should be first heard whenever possible."

It is true that the evil of ex parte injunction was stressed in the above excerpt. It is equally true that a reminder was made of the extraordinary character of this remedy "to be dispensed with circumspection" to avoid its invocation by interested parties whose claims could be shown "to be either dubious or unfounded." What cannot be sufficiently pointed out is that a party seeking injunction must show that his right to it must be clear and unmistakable.[24] The propriety of its issuance, therefore, requires unmistakable proof "that the plaintiff is entitled to the relief demanded and only when his complaint shows fact entitling him to such relief." [25]

Whatever may be said of the original petition for prohibition and injunction filed by the other respondents before the respondent Judge, it cannot be plausibly asserted that facts have been alleged which would make manifest the violation of any of their constitutional rights. Instead of relying on facts, they contented themselves with the general allegation that for them the Tax Census Act was null. It was assailed for presumably violating the right to liberty, the protection against unreasonable searches and seizures and the prohibition against self-incrimination. What was thus being sought in effect was a declaration of invalidity based on the belief that its constitutional infirmity is apparent on its face.

Independently then of whether or not there has been an unwarranted departure from the governing principle that the power to issue a preliminary injunction is not to be availed of indiscriminately, the more specific and pivotal question is whether it could be exercised to restrain the enforcement of the Tax Census Act under the circumstances disclosed. The answer, to repeat, must be in the negative.

In the order granting the petition for the issuance of the writ of preliminary injunction,[26] it was stated that a hearing on the matter took place on February 19, 1966. Then came a summary of the legal arguments advanced both by the other respondents as petitioners and the then Solicitor General, now Justice, Antonio P. Barredo, on behalf of the petitioners before us, who were the parties proceeded against before the lower court.

It is apparent on the face of such order that respondent Judge took into consideration purely legal arguments, no evidence being introduced, both for and against the validity of the challenged statute. More-over, his attention was invited to the presumption of validity that every legislative act has in its favor as well as the doctrine that the task of suspending the operation of the law "is a matter of extreme delicacy because that is an interference with the official acts not only with the duly elected representatives of the people in Congress but also of the highest magistrate of the land." [27] Respondent Judge was deaf to the force of such cogent and persuasive constitutional law doctrines. He issued the preliminary injunction none-theless.

It is manifest that respondent judge did overstep the bounds of discretion that set limits to the authority he is entitled to exercise in the issuance of the preliminary injunction to restrain the enforcement of a statute. There can be no dissent from the proposition that where the action required of a lower court would be tantamount, even if only for a temporary period, to disregarding the clearly expressed will of the two branches of the government, the need for caution is greatest. Here, respondent Judge was apparently oblivious to such a need.

It might be said, of course, that the issuance of a preliminary injunction does not have the impress of finality. After a hearing on the merits, the legislative act could regain its full vigor and could then be enforced. There is much to be said though in favor of Cooley's approach in the exercise of what he referred to as the "high prerogative of declaring a legislative enactment void," a lower court, "conscious of the fallibility of human

judgment" being admonished to manifest the utmost reluctance.[28] That attitude should be displayed even at the stage of considering whether a pre-liminary injunction should issue. Had respondent Judge been of such a frame of mind, he would have arrived at a more acceptable conclusion. He would have refrained from indulging the other respondents in their plea for a preliminary injunction.

To borrow from the language of Justice Laurel, he was hardly conscious of the truism "that a becoming modesty of inferior courts demands conscious realization of the position they occupy in the interrelation and operation of the integrated judicial system of the nation." [29] For if note be taken of the rigorous re-quirement of a two-thirds vote for this Court to annul a statute,[30] the confidence displayed by respondent judge in thus restraining the enforcement of the act does indeed appear to be quite excessive, under all the circumstances disclosed by the record. Correspondingly, it could be interpreted as the failure to observe what Cooley referred to as "due caution and circumspection" and as well as "the respect due to the action and judgment of the lawmakers." [31]

It might have been different if at the hearing the attention of respondent Judge was invited to facts which would overcome the presumption of validity. Even with reference to municipal ordinances, Justice Malcolm so clearly emphasized that "the presumption is all in favor of validity." [32] In the recent decision of *Ermita Malate Hotel & Motel Operators Asso. v. City Mayor of Manila*, [33] we announced the view that as underlying questions of fact may condition the constitutionality of legislation, "the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute." It would appear clear, therefore, that the force of such a pre-sumption would preclude the issuance of a preliminary injunction, unless there be facts disclosed which would serve to weaken if not to defeat the presumption of validity. No such facts have even been alleged.

It could be argued, of course, that what was sought before the lower court was to declare the Tax Census Act void on its face which would do away with the re-quirement of a factual foundation to establish nullity. Considering that its operation would serve to curtail individual liberty as every resident of the Philippines above 18 years of age would be required to furnish cer-tain information even against his will, such a plea could indeed have been raised.[34] It could then be plausibly maintained that the need for a factual founda-tion for invalidity vanishes. Support for such a view may be furnished by the cardinal principle that on the whole the Bill of Rights does raise barriers to unwar-ranted intrusion and that in such a realm the primacy of liberty demands that the individual be left alone.[35]

That is so but it is equally undeniable that the liberty in its general sense enshrined by the Consti-tution does not rule out in appropriate cases legislative deprivation as long as due process is observed.[36] While courts should not relax its vigilance in assuring that no undue curtailment of liberty exists, still it is to be admitted that except in cases where the specific freedoms of belief whether religious or secular, of ex-pression, of assembly and of association are concerned,[37] a domain where Congress is forbidden to trespass except under the clear and present, danger doctrine,[38] the need for introducing evidence to counteract the assump-tion that a statute is valid may be unavoidable. So it was in this case. The absence thereof sufficed to cast on the issuance of the preliminary injunction, now challenged, the mark of a grave abuse of discretion.

Such a temporary injunction, in the language of Justice Black, "is in reality a suspension of an act, delaying the date selected by Congress to put its chosen policies into effect. [Judicial] power to stay an act of Congress, like judicial power to hold an act unconstitutional, is an awesome responsibility calling for the utmost circumspection in its exercise." [39] Respondent Judge was of a different persuasion.

2. Petitioners thus are clearly entitled to the writ of certiorari prayed for. Respondent Judge did possess discretion to issue or not to issue a preliminary in-junction. That discretion, however, according to the circumstances disclosed, was abused, and abused gravely. Even on a matter of less significance, this Court has not hesitated to

exercise its supervisory authority by correcting such failure to abide by controlling legal principles with a petition for certiorari as the appropriate remedy. We have made that clear in past pronouncements. Thus, in a 1919 decision:[40] "We are also of the opinion that the action of a Court of First Instance in exercising this power may, under certain conditions, amount to an abuse of discretion and constitute an irregularity so far in excess of the proper power of the court as to give rise to a right in the injured party to have relief by the writ of certiorari." So also in *Silen v. Vera*:[41] "Therefore, the respondent Judge acted in excess of his jurisdiction and abused his discretion in issuing the writ of preliminary injunction the nullity of which is sought, and the writ of certiorari applied for should be issued."

There is much greater reason for a writ of preliminary injunction being set aside in this case by the grant of the certiorari prayed for. It may serve to deter other inferior tribunals similarly minded. It may serve to induce the conviction on the part of a lower court judge that it is a matter of the utmost seriousness to stop the enforcement of an act after it has been enacted by a bicameral legislative body composed of the House and the Senate and approved by the President, two of the coordinate branches of the government. The greatest care should thus be taken before its operation is enjoined. Thereby, it would be manifesting not judicial timidity but judicial wisdom.

This is not to say that in no case should a writ of preliminary injunction issue. There are times the exercise of such an authority is appropriate. Thus when there is an invasion of the preferred freedoms of belief, of expression as well as the cognate rights to freedom of assembly and association, an affirmative response to a plea for preliminary injunction would indeed be called for. The primacy of the freedom of the mind is entitled to the highest respect. This is not such a case, however, and the writ of certiorari must be granted.

3. Petitioners likewise seek from us a writ of prohibition to restrain respondent Judge "from further hearing the petition before him filed by the other respondents to annul and declare invalid the Tax Census Act." Considering that as of now what had transpired was merely the hearing on the preliminary injunction, this particular prayer obviously poses a more difficult question than the plea for a writ of certiorari. There may be cases where at this particular stage reached, prohibition may be granted.[42] After due reflection, we feel that it is not one of them. To call a halt to any further proceeding before respondent Judge in connection with this particular suit before him to validate such legislative act might be to run the risk of acting prematurely. Since the lower court is possessed of the power to act in the premises, respect must be accorded such authority in the absence of any compelling reason justifying direct action on our part. It is our conclusion that under the circumstances disclosed, prohibition does not lie.

WHEREFORE, the writ of certiorari prayed for declaring null and void and setting aside the writ of preliminary injunction issued by respondent Judge on February 21, 1966 is granted. The writ of prohibition sought is denied. Without pronouncement as to costs.

Reyes, J.B.L., (Acting C.J.), Makalintal, Zaldivar, Sanchez, and Capistrano, JJ., concur.

Dizon, J., in the result.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Castro, J., on official leave.

[1] *J. M. Tuason and Co. v. Court of Appeals*, 3 SCRA 696 (1961).

[2] The other respondents are Mayor Antonio Villegas of the City of Manila, Gregorio Ejercito, Angel C. Cruz and Romeo L. Kahayon.

[3] Rep. Act No. 2070 as amended (1958).

[4] The petitioners are Misael Vera, as Commissioner of Internal Revenue, Eduardo Romualdez as Secretary of Finance, and Rafael Salas as Executive Secretary.

[5] Rep. Act No. 2070.

[6] Petition before Respondent Judge, Annex A to Petition, par. 2.

[7] Ibid, par. 3.

[8] Ibid.

[9] Section 5 would penalize any person who fails to file the statement required in this Act, or who intentionally gives false or fraudulent information. Section 6 was worded thus: "No information secured from the statement required in section one hereof shall be published, except in the form of tabulations or summaries having no reference to individuals: Provided, That any court of record by order or subpoena duces tecum may require the presentation of documents or information herein provided for the adjudication of the case at issue. Any such officer or employee who shall divulge to any unauthorized person information regarding the business, income, or inheritance of any taxpayer, the secrets, operation, style of work, or apparatus of any manufacturer or producer, or confidential information, knowledge of which was acquired by him in the discharge of his official duties under the provisions of this Act," is made punishable "except in such instances where the information regarding the business, income, or inheritance of any taxpayer, the secrets, operation, style of work, or apparatus of any manufacturer or producer or confidential information, constitutes prima facie evidence of the commission of a crime, or constitutes in itself a crime, in which case the obligation to reveal the same to any duly constituted investigating body shall exempt the officer or employee from any liability. Nothing contained in this section shall be construed to prevent courts of justice or the Congress or any legislative committee to require the production of any statement referred to herein when relevant to the issues or matters subject to judicial or legislative investigation.

[10] Petition before Respondent Judge, Annex A to Petition before Us, pars. 4 and 5.

[11] Ibid, pars. 6 and 7.

[12] Ibid, pars. 8 to 14.

[13] Ibid, par. 15.

[14] Answer to the Petition before Respondent Judge, Annex B of Petition before Us, par. 2.

[15] Ibid, pars. 4 to 10.

[16] Ibid, pars. 11 to 17.

[17] Petition, pars. 7 to 18.

[18] Ibid, pars. 19 to 22. There was likewise the allegation that respondent Judge acted without jurisdiction on the assumption that it is the Court of Tax Appeals and not be that is vested with the competence to hear and determine such an issue. This particular argument need not be considered further.

[19] Answer, pars. 1 to 5. There is likewise the rather all-embracing allegation that the validity of the Tax Census Act could be assailed on the ground of its being "oppressive, unjust, susceptible to abuse and misuse in a vindictive and oppressive manner and an insult to the personal and official integrity" of respondents.

[20] Ibid, pars. 7 to 10. There was likewise a denial as to the propriety of the laches being invoked against them.

- [21] 13 Phil. 273. Cf. Bacolod-Murcia Milling Co. v. Capitol Subdivision, Inc., 17 SCRA 731 (1966).
- [22] Truly v. Wanzer, 5 How. 140 (1847).
- [23] 22 SCRA 1186 (1968). Cf. Chief of the Philippine Constabulary v. Sabungan Bagong Silang, Inc., 16 SCRA 336 (1966).
- [24] Sangki v. Commission on Elections, 21 SCRA 1392 (1967).
- [25] Angela Estate, Inc. v. Court of First Instance, 24 SCRA 500 (1968).
- [26] Annex C of the Petition.
- [27] On this point, I Willoughby on the Cons-titution, 2d, p. 43 (1929) and Knox v. Lee, 12 Wall. 457 (1871) were cited.
- [28] Cf. 1 Cooley on Constitutional Limitations, 8th ed., p. 322 (1927).
- [29] People v. Vera, 65 Phil. 56 (1937).
- [30] Sect 10, Art. VIII, Constitution.
- [31] Cooley, op. cit, p. 335.
- [32] United States v. Salaveria, 39 Phil. 102 (1918).
- [33] 20 SCRA 849 (1967) citing O'Gorman & Young V. Hartford Fire Insurance Co., 282 US 251 (1931).
- [34] Near v. Minnesota, 283 US 697 (1931);
Lovell v. Griffin, 303 US 444 (1938);
Thornhill v. Alabama, 310 US 88 (1940);
Murdock v. Pennsylvania, 319 US 105
(1943); Saia v. New York, .334 US 558
(1948); Kunz v. New York, 340 US 290
(1951); Staub v. Boxley, 355 US 313
(1958); Smith v. California, 361 US 147
(1959); Talley v. California, 362 US 60
(1960); Cramp v. Board of Public Instruction, 368 US 278 (1961); Baggett v. Bullitt, 377 US 360 (1964);
Aptheker v. Secretary of State, 378 US 500 (1964).
- [35] Cf. Cox, Constitutional Adjudication and Promotion of Human Rights, 80 Harv. Law Rev. 91, 93 (1966).
- [36] Sec. I, Art. III, par. 1 Constitution.
- [37] Sec. I, Art. III, pars. 6, 7 & 8, Constitution
- [38] Primicias v. Fugoso, 80 Phil. 71 (1948); Cabansag v. Fernandez, 102 Phil. 152 (1957) and Gonzales v. Commission on Elections, L-27833, April 18, 1969.
- [39] Heart of Atlanta Motel v. United States, 379 US 241 (1964). Cf. Aetna Ins. Co. v. Hyde, 275 US 440 (1928);

Public Serv. Commission v. Great Northern Utilities Co., 289 US 130 (1933); Boyden's Farm Products Co., Inc. v. Baldwin, 293 US 194 (1934).

[40] Gordillo v. Del Rosario, 39 Phil. 829. Cf. Sabado V. Gonzales, 53 Phil. 770 (1928).

[41] 64 Phil. 868 (1937). Chua Ke v. Abeto, 63 Phil. 539 (1936) was likewise cited.

[42] Cf. Climaco v. Macadaeg, 4 SCRA 930 (1962).

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