

PHILIPPINE ASSOCIATION OF COLLEGES AND UNIVERSITIES, ETC., PETITIONER, VS. SECRETARY OF EDUCATION AND THE BOARD OF TEXTBOOKS, RESPONDENTS.

G.R. No. L-5279. October 31, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioning colleges and universities request that Act No. 2706 as amended by Act No. 3075 and Commonwealth Act No. 180 be declared unconstitutional, because: A. They deprive owners of schools and colleges as well as teachers and parents of liberty and property without due process of law; B. They deprive parents of their natural right and duty to rear their children for civic efficiency; and C. Their provisions conferring on the Secretary of Education unlimited power and discretion to prescribe rules and standards constitute an unlawful delegation of legislative power.

A printed memorandum explaining their position in extenso is attached to the record.

The Government's legal representative submitted a mimeographed memorandum contending that, (1) the matter constitutes no justiciable controversy exhibiting unavoidable necessity of deciding the constitutional questions; (2) petitioners are in estoppel to challenge the validity of the said acts; and (3) the Acts are constitutionally valid.

Petitioners submitted a lengthy reply to the above arguments.

Act No. 2706 approved in 1917 is entitled, "An Act making the inspection and recognition of private schools and colleges obligatory for the Secretary of Public Instruction." Under its provisions, the Department of Education has, for the past 37 years, supervised and regulated all private schools in this country apparently without audible protest, nay, with the general acquiescence of the general public and the parties concerned.

It should be understandable, then, that this Court should be doubly reluctant to consider petitioner's demand for avoidance of the law aforesaid, specially where, as respondents assert, petitioners suffered no wrong—nor allege any— from the enforcement of the criticized statute.

"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." (Cooley Constitutional Limitations, 8th Ed., Vol. I, p. 332.)

When a law has been long treated as constitutional and important rights have become dependent thereon, the Court may refuse to consider an attack on its validity. (C. J. S. 16, p. 204.)

As a general rule, the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned. (16 C. J. S., p. 207.)

In support of their first proposition petitioners contend that the right of a citizen to own and operate a school is guaranteed by the Constitution, and any law requiring previous governmental approval or permit before such person could exercise said right, amounts to censorship of previous restraint, a practice abhorrent to our system of law and government. Petitioners obviously refer to section 3 of Act No. 2706 as amended which provides that before a private school may be opened to the public it must first obtain a permit from the Secretary of Education. The Solicitor General on the other hand points out that none of petitioners has cause to present this issue, because all of them have permits to operate and are actually operating by virtue of their permits.[1] And they do not assert that the respondent Secretary of Education has threatened to revoke their permits. They have suffered no wrong under the terms of the law—and, naturally need no relief in the form they now seek to obtain.

"It is an established principle that to entitle a private individual immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is interest common to all members of the public." (Ex parte Levitt, 302 U. S. 633 82 L. Ed. 493.)

"Courts will not pass upon the constitutionality of a law" upon the complaint of one who fails to show that he is injured by its operation. (Tyler vs. Judges, 179 U. S. 405; Hendrick vs. Maryland, 235 U. S. 610; Coffman vs. Breeze Corp., 323 U. S. 316-325.)

"The power of courts to declare a law unconstitutional arises only when the interests of litigants require the use of that judicial authority for their protection against actual interference, a hypothetical threat being insufficient." (United Public Works vs. Mitchell, 330 U. S. 75; 91 L. Ed. 754.)

"Bona fide suit.—Judicial power is limited to the decision of actual cases and controversies. The authority to pass on the validity of statutes is incidental to the decision of such cases where conflicting claims under the Constitution and under a legislative act assailed as contrary to the Constitution are raised. It is legitimate only in the last resort, and as necessity in the determination of real, earnest, and vital controversy between litigants." (Tañada and Fernando, Constitution of the Philippines, p. 1138.)

Mere apprehension that the Secretary of Education might under the law withdraw the permit of one of petitioners does not constitute a justiciable controversy. (Cf. Com. ex rel Watkins vs. Winchester Waterworks (Ky.) 197 S. W. 2d. 771.)

An action, like this, is brought for a positive purpose, nay, to obtain actual and positive relief. (Salonga vs. Warner Barnes, L-2245, January, 1951.) Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest therein, however intellectually solid the problem may be. This is specially true where the issues "reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision 'of constitutional issues unless avoidance becomes evasion.'" (Rice vs. Sioux City, U. S. Sup. Ct. Adv. Rep., May 23, 1955, Law Ed., Vol. 99, p. 511.)

The above notwithstanding, in view of the several decisions of the United States Supreme Court quoted by petitioners, apparently outlawing censorship of the kind objected to by them, we have decided to look into the matter, lest they may allege we refused to act even in the face of clear violation of fundamental personal rights of liberty and property.

Petitioners complain that before opening a school the owner must secure a permit from the Secretary of Education. Such requirement was not originally included in Act No. 2706. It was introduced by Commonwealth Act No. 180 approved in 1936. Why?

In March 1924 the Philippine Legislature approved Act No. 3162 creating a Board of Educational Survey to make a study and survey of education in the Philippines and of all educational institutions, facilities and agencies

thereof. A Board chairmaned by Dr. Paul Munroe, Columbia University, assisted by a staff of carefully selected technical members performed the task, made a five-month thorough and impartial examination of the local educational system, and submitted a report with recommendations, printed as a book of 671 pages. The following paragraphs are taken from such report:

"PRIVATE-ADVENTURE SCHOOLS

There is no law or regulation in the Philippine Islands today to prevent a person, however disqualified by ignorance, greed, or even immoral character, from opening a school to teach the young. It is true that in order to post over the door 'Recognized by the Government,' a private adventure school must first be inspected by the proper Government official, but a refusal to grant such recognition does not by any means result in such a school ceasing to exist. As a matter of fact, there are more such nonrecognized private schools than of the recognized variety. How many, no one knows, as the Division of Private Schools keeps records only of the recognized type."

Conclusion.—An unprejudiced consideration of the fact presented under the caption Private Adventure Schools leads but to one conclusion, viz.: the great majority of them from primary grade to university are money-making devices for the profit of those who organize and administer them. The people whose children and youth attend them are not getting what they pay for. It is obvious that the system constitutes a great evil. That it should be permitted to exist with almost no supervision is indefensible. The suggestion has been made with the reference to the private institutions of university grade that some board of control be organized under legislative control to supervise their administration. The Commission believes that the recommendations it offers at the end of this chapter are more likely to bring about the needed reforms.

Recommendations.—The Commission recommends that legislation be enacted to prohibit the opening of any school by an individual or organization without the permission of the Secretary of Public Instruction. That before granting such permission the Secretary assure himself that such school measures up to proper standards in the following respects, and that the continued existence of the school be dependent upon its continuing to conform to these conditions:

- (1) The location and construction of the buildings, the lighting and ventilation of the rooms, the nature of the lavatories, closets, water supply, school furniture and apparatus, and methods of cleaning shall be such as to insure hygienic conditions for both pupils and teachers.
- (2) The library and laboratory facilities shall be adequate to the needs of instruction in the subjects taught.
- (3) The classes shall not show an excessive number of pupils per teacher. The Commission recommends 40 as a maximum.
- (4) The teachers shall meet qualifications equal to those of teachers in the public schools of the same grade.

* * * * *

In view of these findings and recommendations, can there be any doubt that the Government in the exercise of its police power to correct "a great evil" could validly establish the "previous permit" system objected to by petitioners? This is what differentiates our law from the other statutes declared invalid in other jurisdictions. And if any doubt still exists, recourse may now be had to the provision of our Constitution that "All educational institutions shall be under the supervision and subject to regulation by the State." (Art. XIV, sec. 5.) The power to regulate establishments or business occupations implies the power to require a permit or license. (53 C. J. S. 4.)

What goes for the "previous permit" naturally goes for the power to revoke such permit on account of violation of rules or regulations of the Department.

II. This brings us to the petitioners' third proposition that the questioned statutes "conferring on the Secretary of Education unlimited power and discretion to prescribe rules and standards constitute an unlawful delegation of legislative power."

This attack is specifically aimed at section 1 of Act No. 2706 which, as amended, provides:

"It shall be the duty of the Secretary of Public Instruction to maintain a general standard of efficiency in all private schools and colleges of the Philippines so that the same shall furnish adequate instruction to the public, in accordance with the class and grade of instruction given in them, and for this purpose said Secretary or his duly authorized representative shall have authority to advise, inspect, and regulate said schools and colleges in order to determine the efficiency of instruction given in the same,"

"Nowhere in this Act" petitioners argue "can one find any description, either general or specific, of what constitutes a 'general standard of efficiency.' Nowhere in this Act is there any indication of any basis or condition to ascertain what is 'adequate instruction to the public' Nowhere in this Act is there any statement of conditions, acts, or factors, which the Secretary of Education must take into account to determine the 'efficiency of instruction.' "

The attack on this score is also extended to section 6 which provides:

"The Department of Education shall from time to time prepare and publish in pamphlet form the minimum standards required of primary, intermediate, and high schools, and colleges granting the degrees of Bachelor of Arts, Bachelor of Science, or any other academic degree. It shall also from time to time prepare and publish in pamphlet form the minimum standards required of law, medical, dental, pharmaceutical, engineering, agricultural and other medical or vocational schools or colleges giving instruction of a technical, vocational or professional character."

Petitioners reason out, "this section leaves everything to the uncontrolled discretion of the Secretary of Education or his department. The Secretary of Education is given the power to fix the standard. In plain language, the statute turns over to the Secretary of Education the exclusive authority of the legislature to formulate standard. * * *."

It is quite clear the two sections empower and require the Secretary of Education to prescribe rules fixing minimum standards of adequate and efficient instruction to be observed by all such private schools and colleges as may be permitted to operate. The petitioners contend that as the legislature has not fixed the standards, "the provision is extremely vague, indefinite and uncertain"—and for that reason constitutionality objectionable. The best answer is that despite such alleged vagueness the Secretary of Education has fixed standards to ensure adequate and efficient instruction, as shown by the memoranda fixing or revising curricula, the school calendars, entrance and final examinations, admission and accreditation of students etc.; and the system of private education has, in general, been satisfactorily in operation for 37 years. Which only shows that the Legislature did and could, validly rely upon the educational experience and training of those in charge of the Department of Education to ascertain and formulate minimum requirements of adequate instruction as the basis of government recognition of any private school.

At any rate, petitioners do not show how these standards have injured any of them or interfered with their operation. Wherefore, no reason exists for them to assail the validity of the power nor the exercise of the power by the Secretary of Education.

True, the petitioners assert that, the Secretary has issued rules and regulations "whimsical and capricious" and that such discretionary power has produced arrogant inspectors who "bully heads and teachers of private schools." Nevertheless, their remedy is to challenge those regulations specifically, and/or to ring those inspectors to book, in proper administrative or judicial proceedings—not to invalidate the law. For it needs no argument, to show that

abuse by the officials entrusted with the execution of a statute does not per se demonstrate the unconstitutionality of such statute.

Anyway, we find the defendants' position to be sufficiently sustained by the decision in *Alegre vs. Collector of Customs*, 53 Phil., 394 upholding the statute that authorized the Director of Agriculture to "designate standards for the commercial grades of abaca, maguey and sisal" against vigorous attacks on the ground of invalid delegation of legislative power.

Indeed "adequate and efficient instruction" should be considered sufficient, in the same way as "public welfare" "necessary in the interest of law and order" "public interest" and "justice and equity and substantial merits of the case" have been held sufficient as legislative standards justifying delegation of authority to regulate. (See *Tañada and Fernando*, *Constitution of the Philippines*, p. 793, citing Philippine cases.)

On this phase of the litigation we conclude that there has been no undue delegation of legislative power.

In this connection, and to support their position that the law and the Secretary of Education have transcended the governmental power of supervision and regulation, the petitioners appended a list of circulars and memoranda issued by the said Department. However they failed to indicate which of such official documents was constitutionally objectionable for being "capricious," or plain "nuisance"; and it is one of our decisional practices that unless a constitutional point is specifically raised, insisted upon and adequately argued, the court will not consider it. (*Santiago vs. Far Eastern*, 73 Phil., 408.)

We are told that such list will give an idea of how the statute has placed in the hands of the Secretary of Education complete control of the various activities of private schools, and why the statute should be struck down as unconstitutional. It is clear in our opinion that the statute does not in express terms give the Secretary complete control. It gives him powers to inspect private schools, to regulate their activities, to give them official permits to operate under certain conditions, and to revoke such permits for cause. This does not amount to complete control. If any of such Department circulars or memoranda issued by the Secretary go beyond the bounds of regulation and seeks to establish complete control, it would surely be invalid. Conceivably some of them are of this nature, but besides not having before us the text of such circulars, the petitioners have omitted to specify. In any event with the recent approval of Republic Act No. 1124 creating the National Board of Education, opportunity for administrative correction of the supposed anomalies or encroachments is amply afforded herein petitioners. A more expeditious and perhaps more technically competent forum exists, wherein to discuss the necessity, convenience or relevancy of the measures criticized by them. (See also Republic Act No. 176.)

If however the statutes in question actually give the Secretary control over private schools, the question arises whether the power of supervision and regulation granted to the State by section 5 Article XIV was meant to include control of private educational institutions. It is enough to point out that local educators and writers think the Constitution provides for control of Education by the State. (See *Tolentino*, *Government of the Philippines* (1950), p. 401; *Aruego*, *Framing of the Philippine Constitution*, Vol. II, p. 615; *Benitez*, *Philippine Social Life and Progress*, p. 335.)

The Constitution (it) "provides for state control of all all educational institutions" even as it enumerates certain fundamental objectives of all education to wit, the development of moral character, personal discipline, civic conscience and vocational efficiency, and instruction in the duties of citizenship. (*Malcolm & Laurel*, *Philippine Constitutional Law*, 1936.)

The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was

intended by the organic law. It is significant to note that the Constitution grants power to supervise and to regulate. Which may mean greater power than mere regulation.

III. Another grievance of petitioners—probably the most significant—is the assessment of 1 per cent levied on gross receipts of all private schools for additional Government expenses in connection with their supervision and regulation. The statute is section 11-A of Act No. 2706 as amended by Republic Act No. 74 which reads as follows:

"Sec. 11-A. The total annual expense of the Office of Private Education shall be met by the regular amount appropriated in the annual Appropriation Act: Provided, however, That for additional expenses in the supervision and regulation of private schools, colleges and universities and in the purchase of textbooks to be sold to students of said schools, colleges and universities the President of the Philippines may authorize the Secretary of Instruction to levy an equitable assessment from each private educational institution equivalent to one percent of the total amount accruing from tuition and other fees: * * * and non-payment of the assessment herein provided by any private school, college or university shall be sufficient cause for the cancellation by the Secretary of Instruction of the permit for recognition granted to it."

Petitioners maintain that this is a tax on the exercise of a constitutional right—the right to open a school, the liberty to teach etc. They claim this is unconstitutional, in the same way that taxes on the privilege of selling religious literature or of publishing a newspaper—both constitutional privileges—have been held, in the United States, to be invalid as taxes on the exercise of a constitutional right.

The Solicitor General on the other hand argues that insofar as petitioners' action attempts to restrain the further collection of the assessment, courts have no jurisdiction to restrain the collection of taxes by injunction, and in so far as they seek to recover fees already paid the suit, it is one against the State without its consent. Anyway he concludes, the action involving "the legality of any tax impost or assessment" falls within the original jurisdiction of Courts of First Instance.

There are good grounds in support of the Government's position. If this levy of 1 per cent is truly a mere fee— and not a tax—to finance the cost of the Department's duty and power to regulate and supervise private schools, the exaction may be upheld; but such point involves investigation and examination of relevant data, which should best be carried out in the lower courts. If on the other hand it is a tax, petitioners' issue would still be within the original jurisdiction of the Courts of First Instance.

The last grievance of petitioners relates to the validity of Republic Act No. 139 which in its section 1 provides:

"The textbooks to be used in the private schools recognized or authorized by the government shall be submitted to the Board (Board of Textbooks) which shall have the power to prohibit the use of any of said textbooks which it may find to be against the law or to offend the dignity and honor of the government and people of the Philippines, or which it may find to be against the general policies of the government, or which it may deem pedagogically unsuitable."

This power of the Board, petitioners aver, is censorship in "its baldest form". They cite two U. S. cases (Miss. and Minnesota) outlawing statutes that impose previous restraints upon publication of newspapers, or curtail the right of individuals to disseminate teachings critical of government institutions or policies.

Herein lies another important issue submitted in the cause. The question is really whether the law may be enacted in the exercise of the State's constitutional power (Art. XIV, sec. 5) to supervise and regulate private schools. If that power amounts to control of private schools, as some think it is, maybe the law is valid. In this connection we do not share the belief that section 5 has added new power to what the State inherently possesses by virtue of the police power. An express power is necessarily more extensive than a mere implied power.[2] For instance, if there

is conflict between an express individual right^[3] and the express power to control private education it cannot off-hand be said that the latter must yield to the former— conflict of two express powers. But if the power to control education is merely implied from the police power, it is feasible to uphold the express individual right, as was probably the situation in the two decisions brought to our attention, of Mississippi and Minnesota, states where constitutional control of private schools is not expressly produced.

However, as herein previously noted, no justiciable controversy has been presented to us. We are not informed that the Board on Textbooks has prohibited this Gr that text, or that the petitioners refused or intend to refuse to submit some textbooks, and are in danger of losing substantial privileges or rights for so refusing.

The average lawyer who reads the above quoted section of Republic Act 139 will fail to perceive anything objectionable. Why should not the State prohibit the use of textbooks that are illegal, or offensive to the Filipinos or adverse to governmental policies or educationally improper? What's the power of regulation and supervision for? But those trained to the investigation of constitutional issues are likely to apprehend the danger to civil liberties, of possible educational dictatorship or thought control, as petitioners' counsel foresee with obvious alarm. Much depends, however, upon the execution and implementation of the statute. Not that constitutionality depends necessarily upon the law's effects. But if the Board on Textbooks in its actuations strictly adheres to the letter of the section and wisely steers a middle course between the Scylla of "dictatorship" and the Charybdis of "thought control", no cause for complaint will arise and no occasion for judicial review will develop. Anyway, and again, petitioners now have a more expeditious remedy thru an administrative appeal to the National Board of Education created by Republic Act 1124.

Of course it is unnecessary to assure herein petitioners, that when and if, the dangers they apprehend materialize and judicial intervention is suitably invoked, after all administrative remedies are exhausted, the courts will not shrink from their duty to delimit constitutional boundaries and protect individual liberties.

IV. For all the foregoing considerations, reserving to the petitioners the right to institute in the proper court, and at the proper time, such actions as may call for decision of the issues herein presented by them, this petition for prohibition will be denied. So ordered.

Paras, C. J., Padilla, Montemayor, Reyes, A., and Jugo, JJ., concur.

[1] Courts will not pass upon the validity of statute at the instance of one who has availed itself of its benefits. (Fahey vs. Mallonee, 322 U. S. 245; 91 L. Ed. 2030; Phil. Scrappers Inc. vs. Auditor-General, 96 Phil., 449.)

[2] Cf. Montenegro vs. Castañeda, 48 Off. Gaz, (8) 3392.

[3] It should be observed that petitioners may not assert complete liberty to teach, in their schools, as or what they please; because the Constitution says "All schools shall aim to develop moral character, personal discipline, civil conscience and vocational efficiency and to teach the duties of citizenship," (Art. XIV, Sec. 5.) Would petitioners assert that pursuant to their civil liberties under the Bill of Rights they may refuse to teach in their schools the duties of citizenship or that they may authorize the broadcast therein of immoral doctrines?

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