

JOSE D. LINA, JR., PETITIONER, VS. ISIDRO D. CARINO, IN HIS CAPACITY AS SECRETARY OF EDUCATION, CULTURE AND SPORTS, RESPONDENT.

G.R. No. 100127. April 23, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is a Petition for Prohibition and Mandamus filed by petitioner Senator Jose D. Lina, Jr., principally as taxpayer, against respondent Isidro D. Carino, in the latter's capacity as the then Secretary of the Department of Education, Culture & Sports ("DECS"). Petitioner disputes the legal authority of respondent Carino to issue DECS Order No. 30, series of 1991, dated 11 March 1991, entitled "Guidelines on Tuition and/or other School Fees in Private Schools, Colleges and Universities for School Year 1991-1992." DECS Order No. 30 allows private schools to increase tuition and other school fees, subject to the guidelines there set out. The complete text of DECS Order No. 30 is reproduced here for ready reference:

"1. In response to the clamor from the regions for guidelines responsive to the needs and conditions peculiar to these areas, and in consideration of the regional wage orders, schools may increase their tuition fees as approved by the State Assistance Council (SAC) in accordance with the following guidelines:

a. Entering Freshmen. The tuition fee rates for entering freshmen in all levels may be determined by the school itself, subject to consultation. However, no consultation is required when the amount of increase will raise the tuition fee level to not more than P80.00 per unit for the tertiary schools and to not more than P1,500.00 per year for the elementary and secondary schools.

b. Upper Year Students. Schools may increase their tuition fees for the upper year students in accordance with the following prescribed rates:

:

Prescribed Tuition Fee Increase:

Religion

:

Per Unit

(Tertiary)

Per Year

(Elem. & Sec.)

I

:

6.50

158.00

II

:

5.50

135.00

III

:

7.50

180.00

IV

:

7.00

160.00

V

:

7.50

181.00

VI

:

7.00

175.00

VII

:

5.00

121.00

VIII

:

4.00

101.00

IX

:

5.50

132.00

X

:

6.00

141.00

XI

:

7.00

162.00

XII

:

6.50

157.00

NCR

:

9.50

226.50

CAR

:

5.50

133.00

Tuition fee increases within the prescribed rates above shall not require consultation and DECS approval provided that a notice of increase is submitted to the DECS regional office not later than April 30, 1991. Schools may increase up to a maximum rate of 25% for programs below Level II accreditation and up to a maximum of 30% for programs with Level II and Level III accreditation based on approved tuition fee rates in school year 1990-1991, subject to consultation.

c. Emergency Tuition Fee Assessment. To comply with the provisional emergency cost of living allowances mandated by the Regional Tripartite Wages and Productivity Boards of Regions VI, VII, VIII, IX, X, XI, XII and the NCR, schools in these regions may collect an emergency tuition fee assessment from both the entering freshmen and the upper year students in all levels in accordance with the following schedule:

(Schedule of Fees follows)

The above prescribed emergency tuition fee assessments shall be collected only in school year 1991-1992 and shall not form part of the approved tuition fee rates. Consultation and DECS approval shall not be required. However, a notice of collection shall be submitted to the DECS regional office not later than April 30, 1991.

(Note 1: The prescribed emergency tuition fee assessment for NCR will take effect only upon final resolution of a pending petition for exemption.)

d. Other Fees. Schools in all levels may increase the rates of other fees by not more than 10%. Consultation and DECS approval shall not be required provided that a notice of increase is submitted to the DECS regional office not later than April 30, 1991.

e. For schools desiring to increase their tuition and/or other fees beyond what are prescribed in sections a, b, and d but whose programs are below Level II accreditation, the following must be submitted to DECS regional offices for evaluation and approval/disapproval:

- (1) A certification by the school head, properly notarized, stating (a) that the 70% share of tuition fee increases collected in June 1990 was distributed to the teaching and non-teaching personnel in the form of salaries, wages; allowances, and other benefits in compliance with Section 5.2 c of R.A. 6728, and (b) that the P25.00 mandated wage order in 1989 and the applicable regional wage orders in November 1990 were implemented.
- (2) Schedule of tuition and other fees of the previous year.
- (3) Schedule of proposed increase of tuition and fees for the current school year.
- (4) Audited financial statements for two (2) years immediately preceding the current year.

No school may collect any increase in tuition and other fees prior to DECS approval. Deadline for filing of application is May 30, 1991.

f. Consultation. As defined in this Order, consultation shall mean a conference conducted by the school administration with duly organized parents-teachers associations and faculty associations with respect to elementary and secondary and with student governments or councils, alumni and faculty associations with respect to tertiary schools as provided for in Section 10 of R.A. 6728.

(1) The consultation process involves at least two weeks' notice to all the parties above-mentioned. A meeting of all sectors is held during which views and positions on or reactions to the proposed increase in tuition and other fees shall be discussed. Every sincere effort shall be exerted to allow all sectors concerned to express themselves freely in order to arrive at an acceptable compromise. However, consultation does not necessarily mean agreement.

(2) In case of disagreement, parties involved may choose the alumni association of the school or any other impartial body of their choice as arbiter.

(3) Any of the parties in disagreement with the decision of the arbiter may elevate the decision to DECS Central Office which shall make the final decision.

g. Sanctions. Sanctions as stipulated under DECS Order No. 50, s. 1990 still apply.

h. Government Tuition Fee Supplement. Financial assistance for tuition of students in private schools, colleges and universities shall be provided by the government as follows:

(1) For students enrolled in high schools which charge less than one thousand five hundred pesos (P1,500.00) per year in tuition and other fees during school year 1990-91, the government shall provide them with a voucher equal to two hundred ninety pesos (P290.00) provided that the student pays in school year 1991-1992 tuition and other fees equal to the tuition and other fees paid during the preceding academic year.

(2) For fourth and fifth year students enrolled in priority courses, as determined by DECS, in private schools, colleges and universities that charge an effective per unit tuition rate of eighty pesos (P80.00) or less in SY. 1990-91, the government shall provide each student with a voucher to cover the tuition increase, up to twelve pesos (P12.00) per unit.

2. Guidelines on tuition and/or other school fees for the pre-elementary program will be covered by a separate DECS Order.

3. This Order takes effect immediately and supersedes all other DECS issuances inconsistent herewith."

I

It is useful to summarize the positions taken respectively by the parties and the intervenors.

1. Petitioner

Petitioner basically denies the legal authority of respondent Secretary to issue DECS Order No. 30. It is the contention of petitioner that respondent Secretary at the time of issuing DECS Order No. 30, no longer possessed legal authority to do so, considering that authority to promulgate rules and regulations relating to the imposition of school fees had been transferred to the State Assistance Council ("SAC") by Republic Act No. 6728.[1]

Earlier, i.e. in 1987, the DECS Secretary issued an Order authorizing private schools to increase their school fees by as much as 10% to 15% of the preceding year's rates. The Philippine Consumers Foundation, Inc. initiated an action questioning the legal authority of the DECS Secretary to issue such Order on the ground that the power of the DECS Secretary to regulate school fees did not include the power to authorize an increase in school fees. In *Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture & Sports*,[2] the Court rejected the

argument of Philippine Consumers Foundation, Inc. ("Phil. Consumers") and held that since no other government agency was vested with the authority to fix maximum school fees, that power should be considered lodged with the DECS Secretary.

It is claimed by petitioner, however, that the ruling in Phil. Consumers was superseded by R.A. No. 6728 which expressly conferred authority to promulgate rules and regulations upon the SAC. Petitioner here relies on Section 14 of R.A. No. 6728 to sustain his position --

"Sec. 14. Program Administration-Rules and Regulations. -- The State Assistance Council shall be responsible for policy guidance and direction, monitoring and evaluation of new and existing programs, and the promulgation of rules and regulations, while the Department of Education, Culture & Sports shall be responsible for the day to day administration and program implementation. Likewise, it may engage the services and support of any qualified government or private entity for its implementation.

x x x x x x x x"

(Underscoring supplied)

Petitioner also contends that DECS Order No. 30 is inconsistent with Section 10 of R.A. No. 6728. In DECS Order No. 30 (Section 1 [d] *supra*), respondent Secretary exempted increases in school fees other than tuition fee (or "other school fees" as distinguished from "tuition fee") from application of the consultation requirement. Upon the other hand, Section 10 of R.A. No. 6728 provides:

"Sec. 10. Consultation. -- In any proposed increase in the rate of tuition fee, there shall be appropriate consultations conducted by the school administration with the duly organized parents and teachers associations and faculty associations with respect to secondary schools, and with student governments or councils, alumni and faculty associations with respect to colleges. For this purpose, audited financial statements shall be made available to authorized representatives of these sectors. Every effort shall be exerted to reconcile possible differences. In case of disagreement, the alumni association of the school or any other impartial body of their choosing shall act as arbitrator." (Underscoring supplied)

According to petitioner, Section 10 above notwithstanding its wording, covers increases in all types of school fees, which increases must first comply with the requirement of consultation before promulgation in order that prohibitive and burdensome fees (of any type) may be avoided.[3]

In fine, petitioner asks us to declare DECS Order No. 30 null and void on two (2) grounds: (1) that respondent Secretary does not have the legal authority to issue that Order, and (2) that DECS Order No. 30 violates Section 10 of R.A. No. 6728 which established a comprehensive requirement of consultation.

2. Respondent Secretary

The Solicitor General, representing respondent Secretary, maintains that the power to prescribe maximum tuition and other school fees granted under B.P. Blg. 232 was not withdrawn by R.A. No. 6728 and remains vested in the DECS Secretary. The Solicitor General rests his position here on the decision of this Court in the Phil. Consumers case. The Solicitor General concedes that R.A. No. 6728 granted unto the SAC the power to promulgate rules and regulations, but argues that only rules and regulations relevant to the purpose of that law, i.e. government assistance and subsidy to students and teachers in private schools, may be promulgated by the SAC. In essence, the rules which may be promulgated by the SAC are those involving a determination of the maximum rates of tuition fee in private schools payment of which would not disqualify students thereof from availing themselves of government assistance in the form of tuition fee supplements, and from access to the high school textbook assistance fund and to tuition fee waiver programs.

The Solicitor General further contends that DECS Order No. 30 conforms substantially with the consultation requirement of R.A. No. 6728, except item 1 (a) of DECS Order No. 30 which unqualifiedly allows private colleges and universities to raise the tuition fee in the tertiary level to not more than P80.00 per unit without prior consultation. He therefore urges that DECS Order No. 30 be upheld, save only paragraph 1(a) thereof which he considers to be inconsistent with the consultation requirement.[4]

3. Intervenor PACU.

Intervenor Philippine Association of Colleges and Universities (PACU) is an association of one hundred eleven (111) privately-owned educational institutions, both proprietary and non-proprietary in character. PACU filed, with leave granted by this Court on 13 August 1991, a Motion for Intervention and an accompanying Comment in Intervention, claiming that it would be affected by the outcome of the petition at bar.

Intervenor PACU does not deny the authority of the DECS Secretary to promulgate rules and regulations with respect to the collection, application and use of tuition fee increases as provided in B.P. Blg. 232. Like respondent Secretary, intervenor PACU asks us to affirm the ruling of the Court in *Phil. Consumers* (supra). Intervenor PACU does not believe that R.A. No. 6728 could have repealed B.P. Blg. 232 because these two (2) statutes deal with separate and independent subjects and were enacted for different purposes.

Intervenor PACU questions DECS Order No. 30 only with respect to paragraph 1 (a) which it perceives does not conform with the consultation requirement. Upon the other hand, intervenor PACU, traversing the position of petitioner, asserts that Section 10 of R.A. No. 6728 refers only to increases in tuition fees, and that accordingly, consultation does not apply to increases in other school fees, the latter kind of fees not being mentioned in Section 10.

4. Intervenor CEAP.

Intervenor Catholic Educational Association of the Philippines ("CEAP") is an organization of Catholic schools and universities with a total membership of 1,191 institutions. With leave granted by this Court also on 13 August 1991, the CEAP filed a Comment in Intervention.

Unlike intervenor PACU, intervenor CEAP relies on the ruling of the Court in *Cebu Institute of Technology v. Ople*.^[5] Relying principally on the following portion of the decision in the *Cebu Institute* case --

"The Court after comparing section 42 of B.P. Blg. 232 and Pres. Dec. No. 451, particularly section 3 (a) thereof, finds evident irreconcilable differences.

Under Pres. Dec. No. 451, the authority to regulate the imposition of tuition and other school fees or charges by private schools is lodged with the Secretary of Education and Culture (Sec. 1), whereas section 42 of B.P. Blg. 232 liberalized the procedure by empowering each private school to determine its rate of tuition and other school fees or charges,"^[6]

intervenor CEAP maintains that neither the DECS Secretary nor the SAC may fix maximum tuition and other school fees which private schools may lawfully charge. In the view of intervenor CEAP, the fixing of such fees is the exclusive prerogative of the private schools themselves. It therefore urges the Court to strike down DECS Order No. 30 as null and void in its entirety.

Intervenor CEAP, however, adheres to the view of intervenor PACU on consultation, that is, that the imposition of other school fees (non-tuition fees) is not subject to a consultation requirement.

II

The principal issues raised by the parties may be restated in the following manner:

- (1) Whether DECS Order No. 30 is valid, that is, whether respondent DECS Secretary has the legal authority to issue DECS Order No. 30 prescribing guidelines concerning increases in tuition and other school fees; and
- (2) Whether the consultation requirement in R.A. No. 6728 applies not only to increases in tuition fees but also to increases in other school fees.

In respect of the first issue, it may be instructive to recall the following brief historical note set out in the Court's Decision on the Cebu Institute case:

"x x x As early as March 10, 1917, the power 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 was granted to the then Secretary of Public Instruction by Act No. 2706 as amended by Act No. 3075 and Commonwealth Act No. 180. Republic Act No. 6139, enacted on August 31, 1970, provided for the regulation of tuition and other fees charged by private schools in order to discourage the collection of exorbitant and unreasonable fees. In an effort to simplify the 'cumbersome and time consuming' procedure prescribed under Rep. Act No. 6139 and 'to alleviate the sad plight of private schools,' Pres. Dec. No. 451 was enacted on May 11, 1974. While this later statute was being implemented, the legislative body envisioned a comprehensive legislation which would introduce changes and chart directions in the educational system, hence, the enactment of B.P. Blg. 232. x x x." [7]

Petitioner Lina and intervenor CEAP contend that DECS Order No. 30 is null and void. Upon the other hand, respondent Secretary and intervenor PACU insist that DECS Order No. 30 is valid.

P.D. No. 451, entitled "Authorizing the Secretary of Education and Culture to Regulate the Imposition of Tuition and Other School Fees, Repealing R.A. No. 6139, and For Other Purposes" and promulgated on 11 May 1974, explicitly authorized the DECS Secretary not only "to regulate" but also to fix the very tuition and other school fees to be charged by any particular private school. Section 1 of this statute provides as follows:

"Sec. 1. Authority of Secretary of Education and Culture. -- Within the limits and under the circumstances set forth in this Decree, the Secretary of Education and Culture shall have the authority to regulate the imposition of tuition and other school fees or charges by any and all private schools as defined under Act Numbered Two thousand seven hundred and six, as amended. No changes in the rates of tuition or other school fees or charges shall be effective without the prior approval of the Secretary of Education and Culture. New school fees or charges to be imposed by new or existing schools, whether for new courses or other matters, shall be at such reasonable rates as may be determined by the Secretary of Education and Culture based on the standard of such school." (Underscoring supplied)

B.P. Blg. 232, known as the "Education Act of 1982," was passed by the Batasan on 11 September 1982. The provisions of B.P. Blg. 232 pertinent for present purposes are the following:

"Sec. 42. Tuition and Other School Fees. -- Each private school shall determine its rate of tuition and other school fees or charges. The rates and charges adopted by schools pursuant to this provision shall be collectible, and their application or use authorized, subject to rules and regulations promulgated by the Ministry of Education Culture and Sports.

xxx xxx xxx

Sec. 57. Functions and Powers of the Ministry -- The Ministry shall:

1. Formulate general education objectives and policies, and adopt long-range educational plans;

2. Plan, develop and implement programs and projects in education and culture;
3. Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy;
4. Set up general objectives for the school system;
5. Coordinate the activities and functions of the school system and various cultural agencies under it;
6. Coordinate and work with agencies concerned with the educational and cultural development of the national cultural communities; and
7. Recommend and study legislation proposed for adoption."

xxx xxx xxx

Sec. 70. Rule-Making Authority. -- The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations." (Underscoring supplied)

In the Phil. Consumers case,[8] as earlier noted, in sustaining Department Order No. 37, the Court citing certain sections of B.P. Blg. 232 concluded that legal authority to issue that Department Order was vested in the DECS Secretary:

"We are not convinced by the argument that the power to regulate school fees 'does not always include the power to increase' such fees. Such 57 (3) of Batas Pambansa Blg. 232, otherwise known as The Education Act of 1982, vests the DECS with the power to regulate the educational system in the country, to wit:

'Sec. 57. Educations and powers of the Ministry. -- The Ministry shall:

x x x

(3) Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy.

x x x'

Section 70 of the same Act grants the DECS the power to issue rules which are likewise necessary to discharge its functions and duties under the law, to wit:

'Sec. 70. Rule-making Authority. -- The Minister of Education and Culture, charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.'

In the absence of a statute stating otherwise, this power includes the power to prescribe school fees. No other government agency has been vested with the authority to fix school fees and as such, the power should be considered lodged with the DECS if it is to properly and effectively discharge its functions and duties under the law."[9] (Underscoring supplied)

In the Cebu Institute case,[10] the Court said that Section 42 of B.P. Blg. 232 had amended P.D. No. 451. As already noted, this ruling in Cebu Institute had led intervenor CEAP to adopt the position -- and to urge the same upon us -- that under Section 42 of B.P. Blg. 232, private schools are authorized to fix and collect tuition and other school fees free from intervention by the DECS Secretary.

After careful examination of the provisions of both P.D. No. 451 and B.P. Blg. 232, and the opinions of the Court in the Phil. Consumer case and the Cebu Institute case, as well the lengthy pleadings filed by the parties and the intervenors, the Court considers that the legal authority of respondent DECS Secretary to set maximum

permissible rates or levels of tuition and other school fees, and to issue guidelines for the imposition and collection thereof, like DECS Order No. 30, must be sustained.

Firstly, we are unable to agree with intervenor CEAP that Cebu Institute had the effect of withdrawing from respondent DECS Secretary the power to regulate, and to promulgate rules and regulations relating to the imposition and collection of tuition and other school fees.

A close reading of the opinion of this Court in the Cebu Institute case shows that the Court did not rule that the power granted to the DECS Secretary to fix maximum permissible tuition and other school fees by Section 1 of P.D. No. 451 had been eliminated by Section 42 of B.P. Blg. 232. What the Court dealt with in the Cebu Institute case was the matter of the detailed allocation of the proceeds of increases in tuition and other school fees. In respect of this specific question, there is no dispute that Section 42 of B.P. Blg. 232 did modify P.D. No. 451 by authorizing the DECS Secretary to issue rules and regulations relating to the detailed allocation of funds raised by tuition and other fee increases to various categories of uses and expenditures. What the Court, through Cortes, J., did say in the Cebu Institute case was the following:

"x x x What then was the effect of B.P. Blg. 232 on Pres. Dec. No. 451?

The Court after comparing section 42 of B.P. Blg. 232 and Pres. Dec. No. 451, particularly section 3(a) thereof, finds evident irreconcilable differences.

Under Pres. Dec. No. 451, the authority to regulate the imposition of tuition and other school fees or charges by private schools is lodged with the Secretary of Education and Culture (Sec. 1), where section 42 of B.P. Blg. 232 liberalized private school to determine its rate of tuition and other school fees or charges.

Pres. Dec. No. 451 provides that 60% of the incremental proceeds of tuition fee increases shall be applied or used to augment the salaries and wages of members of the faculty and other employees of the school, while B.P. Blg. 232 provides that the increment shall be applied or used in accordance with the regulations promulgated by the MECS.

A closer look at these differences leads the Court to resolve the question in favor of repeal. As pointed out by the Solicitor General, three aspects of the disputes provisions of law support the above conclusion. First, the legislative authority under Pres. Dec. No. 451 retained the power to apportion the incremental proceeds of the tuition fee increases; such power is delegated to the Ministry of Education and Culture under B.P. Blg. 232. Second, Pres. Dec. No. 451 limits the application or use of the increment to salary or wage increase, institutional development, student assistance and extension services and return on investment, whereas B.P. Blg. 232 gives the MECS discretion to determine the application or use of the increments. Third, the extent of the application or use of the increment under Pres. Dec. 451 is fixed at the pre-determined percentage allocations: 60% for wage and salary increases, 12% for return in investment and the balance of 28% to institutional development, student assistance and extension services while under B.P. Blg. 232, the extent of the allocation or use of increment is likewise left to the discretion of the MECS.

The legislative intent to depart from the statutory limitations under Pres. Dec. No. 451 is apparent in the second sentence of section 42 of B.P. Blg. 232 Pres. Dec. No. 451 and section 42 of B.P. Blg. 232 which cover the same subject matter are so clearly inconsistent and incompatible with each other that there is no other conclusion but that the latter repeals the former in accordance with section 72 of B.P. Blg. 232 to wit:

x x x x x x x x

Having concluded that under B.P. Blg. 232 the Collection and application or use of tuition and other school fees are subject only to the limitations under the rules and regulations issued by the Ministry, the crucial point now shifts to the said implementing rules."[11] (Underscoring supplied)

Secondly, an examination of the precise language of Section 42 of B.P. Blg. 232 shows that there is really nothing in Section 42 which must be read as eliminating the power of the DECS Secretary in respect of the fixing of maximum tuition and other school fees vested in him by P.D. No. 451. Under Section 42, a private school may determine for itself in the first instance the rate of tuition and other school fees or charges that it deems appropriate. Such determination by the private school is not, however, binding and conclusive as against the Secretary of Education, Culture and Sports. The rates and charges adopted by such private school "shall be collectible, and their application or use authorized" provided that such rates and charges are in accord with rules and regulations promulgated by the DECS.

It is convenient to quote Section 42 again:

"Sec. 42. Tuition and Other School Fees. ---Each private school shall determine its rate of tuition and other school fees or charges. The rates and charges adopted by schools pursuant to this provision shall be collectible, and their application or use authorized, subject to rules and regulations promulgated by the Ministry of Education, Culture and Sports." (Underscoring supplied)

We do not read the first sentence of Section 42 as granting an unlimited power to private schools to establish any rate of tuition and other school fees and charges that it may desire and to enforce collection of such fees or charges from students. We think it entirely clear that the second sentence of Section 42 is a limiting provision, that is, a provision which, far from authorizing a private school to adopt any level of tuition and other school fees or charges no matter how exorbitant, subjects the schedule of rates and charges adopted by a particular school to the rules and regulations promulgated by the DECS. Thus, the rates and charges adopted by any given private school shall be "collectible", i.e., enforceable against the students and their parents to the extent that they are consistent with DECS rules and regulations. Put a little differently, the second sentence of Section 42 deals with two (2) distinguishable subjects: (a) the enforceability of rates of fees and charges adopted by private schools; and (b) the enforceability of proposed applications or uses of the proceeds of such school fees or charges -- and both are declared subject to rules and regulations promulgated by the DECS.

We turn to the argument of petitioner Lina that the DECS Secretary was divested of his authority to promulgate rules and regulations relating to the fixing of tuition and other school fees, by R.A. No. 6728, and that such authority has been transferred instead to the SAC. The Court is unable to agree with this contention. We do not see how R.A. No. 6728 could be regarded as vesting upon the SAC the legal authority to establish maximum permissible tuition and other school fees for private schools. As earlier noted, R.A. No. 6728 deals with government assistance to students and teachers in private schools; it does not, in other words, purport to deal at with the question of authority to fix maximum collectible tuition and other school fees. R.A. No. 6728 did authorize the SAC to issue rules and regulations; but the rules and regulations which may be promulgated by the SAC must relate to the authority granted by R.A. No. 6728 to the SAC. It is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.^[12] The SAC was authorized to define the classes of students who may be entitled to claim government financial assistance. Under the statute, students of schools charging tuition and other school fees in excess of certain identified rates or levels thereof shall not be entitled to claim government assistance or subsidies. The specification of such levels of tuition and other school fees for purposes of qualifying (or disqualifying) the students in such schools for government financial assistance is one thing; this is the task SAC was authorized to carry out through the promulgation of rules and regulations. The determination of the levels of tuition and other school fees which may lawfully be charged by any private school, is clearly another matter; this task is vested in respondent Secretary.

It is hardly necessary to add that the Court, in reaching the above conclusion is not saying that every paragraph

add sub-paragraph of DECS Order No. 30 is necessarily valid and consistent with the provisions of the enabling statute(s). We do not understand the parties to be asking us to validate or strike down every such paragraph and sub-paragraph.

In respect of the second principal issue, petitioner Lina contends that section 1(d) of DECS Order No. 30 is inconsistent with Section 10 of R.A. No. 6728. We have earlier pointed out that petitioner's stand is inconsistent with the very language used in Section 10 of R.A. No. 6728 which states in relevant part that: "in any proposed increase in the rate of tuition fees, there shall be appropriate consultations ---." Petitioner Lina's argument here is, however, essentially an invocation of "justice and equity." Petitioner argues that:

"x x x [T]here is no basis, legal or otherwise, for the respondent Secretary to view 'other fees' as separate and distinct from 'tuition fee rate' for purposes of the consultation requirement of the law. To exclude the imposition of 'other fees' from the consultation process would result in an anomalous situation whereby so-called 'other fees' may become so burdensome that the students and parents concerned may be deprived of the right of being heard or consulted on matter directly affecting their interest. Justice and equity demand that any increase in the tuition fee, tuition fee assessment or 'other fees' which in its totality increases the cost of education, should and must be subjected to consultation, as required in Section 10, R.A. No. 6728."¹⁴ (Underscoring supplied)

The Court believes that petitioner's argument -- cogent though it may be as a social and economic comment -- is most appropriately addressed, not to a court which must take the law as it is actually written, but rather to the legislative authority which can, if it wishes, change the language and content of the law. As Section 10 of R.A. No. 6728 now stands, we have no authority to strike down paragraph 1 (d) of DECS Order No. 30 as inconsistent with the requirements of Section 10.

Summarizing, the first issue we must answer in the affirmative. To the second issue, we must give a negative answer.

WHEREFORE, for all the foregoing, the Petition for Prohibition and Mandamus is hereby DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Cruz, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., no part.

[1] R.A. No. 6728 is entitled "An Act Providing Government Assistance to Students and Teachers in Private Education, and Appropriating Funds Therefor."

[2] 153 SCRA 626 (1987).

[3] Petition, p. 5; Rollo, p. 5.

[4] The Secretary of Justice has rendered an opinion (Opinion No. 156, Series of 1989) dealing with the inter-relations of the various provisions of R.A. No. 6728 and suggesting that Section 10 of R.A. No. 6728 does not apply to situations contemplated in Sections 5(1) (a) and 9 (a) of that law, but that Section 10 should apply only to Sections 5(1) (b), 9 (b), and 9 (c). Paragraph 1 (a) of DECS Order No. 30 allegedly falls under Section 9 (c) of R.A. No. 6728.

[5] 156 SCRA 629 (1987).

[6] 156 SCRA at 661.

[7] 156 SCRA at 660-661.

[8] 153 SCRA 622 (1987).

[9] 153 SCRA at 626-627.

[10] 156 SCRA 632 (1987).

[11] 156 SCRA at 661-662 and 663.

[12] *Abila v. Civil Service Commission*, 198 SCRA 102 (1991); *Chartered Bank Employees Association v. Ople*, 138 SCRA 273 (1985).

14 Petition, p. 8; Rollo, p. 8.

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