

WENCESLAO PASCUAL, IN HIS OFFICIAL CAPACITY AS PROVINCIAL GOVERNOR OF RIZAL, PETITIONER AND APPELLANT VS. THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, ET AL., RESPONDENTS A...

G.R. No. 10405. December 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, by petitioner Wenceslao Pascual, from a decision of the Court of First Instance of Rizal, dismissing the above entitled case and dissolving the writ of preliminary injunction therein issued, without costs.

On August 31, 1954, petitioner Wenceslao Pascual, as Provincial Governor of Rizal, instituted this action for declaratory relief, with injunction, upon the ground that Republic Act No. 920, entitled "An Act Appropriating Funds for Public Works", approved on June 20, 1953, contained, in section 1-C (a) thereof, an item (43 [h]) of P85,000.00, "for the construction, reconstruction, repair, extension and improvement" of "Pasig feeder road terminals (Gen. Roxas—Gen. Araneta—Gen. Lucban—Gen. Capinpin—Gen. Segundo—Gen. Delgado—Gen. Malvar—Gen. Lim)"; that, at the time of the passage and approval of said Act, the aforementioned feeder roads were "nothing but projected and planned subdivision roads, not yet constructed, * * * within the Antonio Subdivision * * * situated at * * * Pasig, Rizal" (according- to the tracings attached to the petition as Annexes A and B, near Shaw Boulevard, not far away from the intersection between the latter and Highway 54), which projected feeder roads "do not connect any government property or any important premises to the main highway"; that the aforementioned Antonio Subdivision (as well as the lands on which said feeder roads were to be constructed) were private properties of respondent Jose C. Zulueta, who, at the time of the passage and approval of said Act, was a member of the Senate of the Philippines; that on May 29, 1955, respondent Zulueta, addressed a letter to the Municipal Council of Pasig, Rizal, offering to donate said projected feeder roads to the municipality of Pasig, Rizal; that, on June 13, 1953, the offer was accepted by the council, subject to the condition "that the donor would submit a plan of the said roads and agree to change the names of two of them"; that no deed of donation in favor of the municipality of Pasig was, however, executed; that on July 10, 1953, respondent Zulueta wrote another letter to said council, calling attention to the approval of Republic Act No. 920, and the sum of P85,000.00 appropriated therein for the construction of the projected feeder roads in question; that the municipal council of Pasig endorsed said letter of respondent Zulueta to the District Engineer of Rizal, who, up to the present "has not made any endorsement thereon"; that inasmuch as the projected feeder roads in question were private property at the time of the passage and approval of Republic Act No. 920, the appropriation of P85,000.00 therein made, for the construction, reconstruction, repair, extension and improvement of said projected feeder roads, was "illegal and, therefore, void ab initio"; that said appropriation of P85,000.00 was made by Congress because its members were made to believe that the projected feeder roads in question were "public roads and not private streets of a private subdivision" ; that, "in order to give a semblance of legality, where there is absolutely none, to the aforementioned appropriation", respondent Zulueta executed, on December 12, 1953, while he was a member of

the Senate of the Philippines, an alleged deed of donation—copy of which is annexed to the petition—of the four (4) parcels of land constituting said projected feeder roads, in favor of the Government of the Republic of the Philippines; that said alleged deed of donation was, on the same date, accepted by the then Executive Secretary; that being-subject to an onerous condition, said donation partook of the nature of a contract; that, as such, said donation violated the provision of our fundamental law prohibiting members of Congress from being directly or indirectly financially interested in any contract with the Government, and, hence, is unconstitutional, as well as null and void ab initio, for the construction of the projected feeder roads in question with public funds would greatly enhance or increase the value of the aforementioned subdivision of respondent Zulueta, "aside from relieving him from the burden of constructing his subdivision streets or roads at his own expense"; that the construction of said projected feeder roads was then being undertaken by the Bureau of Public Highways; and that, unless restrained by the court, the respondents would continue to execute, comply with, follow and implement the aforementioned illegal provision of law, "to the irreparable damage, detriment and prejudice not only to the petitioner but to the Filipino nation."

Petitioner prayed, therefore, that the contested item of Republic Act No. 920 be declared null and void; that the alleged deed of donation of the feeder roads in question be "declared unconstitutional and, therefore, illegal"; that a writ of injunction be issued enjoining the Secretary of Public Works and Communications, the Director of the Bureau of Public Works, the Commissioner of the Bureau of Public Highways and Jose C. Zulueta from ordering or allowing the continuance of the above-mentioned feeder roads project, and from making and securing any new and further releases on the aforementioned item of Republic Act No. 920, and the disbursing officers of the Department of Public Works and Communications, the Bureau of Public Works and the Bureau of Public Highways from making any further payments out of said funds provided for in Republic Act No. 920; and that pending final hearing on the merits, a writ of preliminary injunction be issued enjoining the aforementioned parties respondent from making and securing any new and further releases on the aforesaid item of Republic Act No. 920 and from making any further payments out of said illegally appropriated funds.

Respondents moved to dismiss the petition upon the ground that petitioner had "no legal capacity to sue", and that the petition did "not state a cause of action". In support to this motion, respondent Zulueta alleged that the Provincial Fiscal of Rizal, not its provincial governor, should represent the Province of Rizal, pursuant to section 1683 of the Revised Administrative Code; that said respondent is "not aware of any law which makes illegal the appropriation of public funds for the improvement of * * * private property"; and that,, the constitutional provision invoked by petitioner is inapplicable to the donation in question, the same being a pure act of liberality, not a contract. The other respondents, in turn, maintained that petitioner could not assail the appropriation in question because "there is no actual bona fide case * * * in which the validity of Republic Act No. 920 is necessarily involved" and petitioner "has not shown that he has a personal and substantial interest" in said Act "and that its enforcement has caused or will cause him a direct injury".

Acting upon said motions to dismiss, the lower court rendered the aforementioned decision, dated October 29, 1953, holding that, since public interest is involved in this case, the Provincial Governor of Rizal and the provincial fiscal thereof who represents him therein, "have the requisite personalities" to question the constitutionality of the disputed item of Republic Act No. 920; that "the legislature is without power to appropriate public revenues for anything but a public purpose", that the construction and improvement of the feeder roads in question, if such roads were private property, would not be a public purpose; that, being subject to the following condition:

"The within donation is hereby made upon the condition that the Government of the Republic of the Philippines will use the parcels of land liereby donated for street purposes only and for no other purposes whatsoever; it being expressly understood that should the Government of the Kepublic of the Philippines

violate the condition hereby imposed upon it, the title to the land hereby donated shall, upon such violation, ipso facto revert to the Donor, Jose C. Zulueta." (Italics supplied.)

which is onerous, the donation in question is a contract; that said donation or contract is "absolutely forbidden by the Constitution" and consequently "illegal", for Article 1409 of the Civil Code of the Philippines, declares inexistent and void from the very beginning contracts "whose cause, object or purpose is contrary to law, morals * * * or public policy"; that the legality of said donation may not be contested, however, by petitioner herein because his "interests are not directly affected" thereby and that, accordingly, the appropriation in question "should be upheld" and the case dismissed.

At the outset, it should be noted that we are concerned with a decision granting the aforementioned motions to dismiss, which as such, are deemed to have admitted hypothetically the allegations of fact made in the petition of appellant herein. According to said petition, respondent Zulueta is the owner of several parcels of residential land, situated in Pasig, Rizal, and known as the Antonio Subdivision, certain portions of which had been reserved for the projected feeder roads aforementioned, which, admittedly, were private property of said respondent when Republic Act No. 920, appropriating P85,000.00 for the "construction, reconstruction, repair, extension and improvement" of said roads, was passed by Congress, as well as when it was approved by the President on June 20, 1953. The petition further alleges that the construction of said feeder roads, to be undertaken with the aforementioned appropriation of P85,000.00, would have the effect of relieving respondent Zulueta of the burden of constructing his subdivision streets or roads at his own expenses,[1] and would "greatly enhance or increase the value of the subdivision" of said respondent. The lower court held that under these circumstances, the appropriation in question was "clearly for a private, not a public purpose."

Respondents do not deny the accuracy of this conclusion, which is self-evident.[2] However, respondent Zulueta contended, in his motion to dismiss that:

"A law passed by Congress and approved by the President can never be illegal because Congress is the source of all laws * * *. Aside from the fact that the movant is not aware of any law which makes illegal the appropriatoin of public funds for the improvement of what we, in the meantime, may assume as private property * * *." (Record on Appeal, p. 33.)

The first proposition must be rejected most emphatically, it being inconsistent with the nature of the Government established under the Constitution of the Philippines and the system of checks and balances underlying our political structure. Moreover, it is refuted by the decisions of this Court invalidating legislative enactments deemed violative of the Constitution or organic laws.[3]

As regards the legal feasibility of appropriating public funds for a private purpose, the principle according to Ruling Case Law, is this:

"It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose. * * * It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. Incidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money." (25 R.L.C. pp. 398-400; Italics supplied.)

The rule is set forth in Corpus Juris Secundum in the following language:

"In accordance with the rule that the taxing power must be exercised for public purposes only, discussed supra sec. 14, money raised by taxation can be expended only for public purposes and not for the advantage of

private individuals." (85 C.J.S. pp. 645-646; italics supplied.)

Explaining the reason underlying said rule, *Corpus Juris Secundum* states:

"Generally, under the express or implied provisions of the constitution, public funds may be used only for a public purpose. The right of the legislature to appropriate funds is correlative with its right to tax, and, under constitutional provisions against taxation except for public purposes and prohibiting: the collection of a tax for one purpose and the devotion thereof to another purpose, no appropriation of state funds can be made for other than a public purpose. * * *

* * * * *

"The test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public interests, as opposed to the furtherance of the advantage of individuals, although each advantage to individuals might incidentally serve the public. * * * ." (81 C.J.S. p. 1147; italics supplied.)

Needless to say, this Court is fully in accord with the foregoing views which, apart from being patently sound, are a necessary corollary to our democratic system of government, which, as such,, exists primarily for the promotion of the general welfare. Besides, reflecting as they do, the established jurisprudence in the United States, after whose constitutional system ours has been patterned, said views and jurisprudence are, likewise, part and parcel of our own constitutional law.

This notwithstanding, the lower court felt constrained to uphold the appropriation in question, upon the ground that petitioner may not contest the legality of the donation above referred to because the same does not affect him directly. This conclusion is, presumably, based upon the following premises, namely: (1) that, if valid, said donation cured the constitutional infirmity of the aforementioned appropriation; (2) that the latter may not be annulled without a previous declaration of unconstitutionality of the said donation; and (3) that the rule set forth in Article 1421 of the Civil Code is absolute, and admits of no exception. We do not agree with these premises.

The validity of a statute depends upon the powers of Congress at the time of its passage or approval, not upon events occurring, or acts performed, subsequently thereto, unless the latter consist of an amendment of the organic law, removing, with retrospective operation, the constitutional limitation infringed by said statute. Referring to the P85,000.00 appropriation for the projected feeder roads in question, the legality thereof depended upon whether said roads were public or private property when the bill, which, later on, became Republic Act No. 920, was passed by Congress, or, when said bill was approved by the President and the disbursement of said sum became effective, or on June 20, 1953 (see section 13 of said Act). Inasmuch as the land on which the projected feeder roads were to be constructed belonged then to respondent Zulueta, the result is that said appropriation sought a private purpose, and, hence, was null and void.[4] The donation to the Government, over five (5) months after the approval and effectivity of said Act, made, according to the petition, for the purpose of giving a "semblance of legality", or legalizing, the appropriation in question, did not cure its aforementioned basic defect. Consequently, a judicial nullification of said donation need not precede the declaration of unconstitutionality of said appropriation.

Again, Article 1421 of our Civil Code, like many other statutory enactments, is subject to exceptions. For instance, the creditors of a party to an illegal contract may, under the conditions set forth in Article 1177 of said Code, exercise the rights and actions of the latter, except only those which are inherent in his person, including, therefore, his right to the annulment of said contract, even though such creditors are not affected by the same, except indirectly, in the manner indicated in said legal provision

Again, it is well settled that the validity of a statuia may be contested only by one who will sustain a direct injury in consequence of its enforcement. Yet, there are many decisions nullifying, at the instance of taxpayers, laws

providing for the disbursement of public funds,[5] upon the theory that "the expenditure of public funds by an officer of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds," which may be enjoined at the request of a taxpayer.[6] Although there are some decisions to the contrary,[7] the prevailing view in the United States is stated in the American Jurisprudence as follows:

"In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute the general rule is that not only persons individually affected, but also taxpayers, have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys." (11 Am. Jur. 761; italics supplied.)

However, this view was not favored by the Supreme Court of the U.S. in *Frothingham vs. Mellon* (262 U.S. 447), insofar as federal laws are concerned, upon the ground that the relationship of a taxpayer of the U.S. to its Federal Government is different from that of a taxpayer of a municipal corporation to its government. Indeed, under the composite system of government existing in the U.S., the states of the Union are integral part of the Federation from an international viewpoint, but, each state enjoys internally a substantial measure of sovereignty, subject to the limitations imposed by the Federal Constitution. In fact, the same was made by representatives of each state of the Union, not of the people of the U.S., except insofar as the former represented the people of the respective States, and the people of each State has, independently of that of the others, ratified said Constitution. In other words, the Federal Constitution and the Federal statutes have become binding upon the people of the U.S. in consequence of an act of, and, in this sense, through the respective states of the Union of which they are citizens. The peculiar nature of the relation between said people and the Federal Government of the U.S. is reflected in the election of its President, who is chosen directly, not by the people of the U.S., but by electors chosen by each State, in such manner as the legislature thereof may direct (Article II, section 2, of the Federal Constitution).

The relation between the people of the Philippines and its taxpayers, on the one hand, and the Republic of the Philippines, on the other, is not identical to that obtaining between the people and taxpayers of the U.S. and its Federal Government. It is closer, from a domestic viewpoint, to that existing between the people and taxpayers of each state and the government thereof, except that the authority of the Republic of the Philippines over the people of the Philippines is more fully direct than that of the states of the Union, insofar as the simple and unitary type of our national government is not subject to limitations analogous to those imposed by the Federal Constitution upon the states of the Union, and those imposed upon the Federal Government in the interest of the states of the Union. For this reason, the rule recognizing the right of taxpayers to assail the constitutionality of a legislation appropriating local or state public funds—which has been upheld by the Federal Supreme Court (*Crampton vs. Zabriskie*, 101 U.S. 601) — has greater application in the Philippines than that adopted with respect to acts of Congress of the United States appropriating federal funds.

Indeed, in the *Province of Tayabas vs. Perez* (56 Phil., 257), involving the expropriation of a land by the Province of Tayabas, two (2) taxpayers thereof were allowed to intervene for the purpose of contesting the price being paid to the owner thereof, as unduly exorbitant. It is true that in *Custodio vs. President of the Senate* (42 Off. Gaz., 1243), a taxpayer and employee of the Government was not permitted to question the constitutionality of an appropriation for backpay of members of Congress. However, in *Rodriguez vs. Treasurer of the Philippines* and *Barredo vs. Commission on Elections* (84 Phil., 368; 45 Off. Gaz., 4411), we entertained the action of taxpayers impugning the validity of certain appropriations of public funds, and invalidated the same. Moreover, the reason that impelled this Court to take such position in said two (2) cases—the importance of the issues therein raised—is present in the case at bar. Again, like the petitioners in the *Rodriguez* and *Barredo* cases, petitioner herein is not merely a taxpayer. The Province of Rizal, which he represents officially as its Provincial Governor, is our most populated political subdivision,[7] and, the taxpayers therein bear a substantial portion of the burden of taxation,

in the Philippines.

Hence, it is our considered opinion that the circumstances surrounding this case sufficiently justify petitioner's action in contesting the appropriation and donation in question; that this action should not have been dismissed by the lower court; and that the writ of preliminary injunction should have been maintained.

Wherefore, the decision appealed from is hereby reversed, and the records are remanded to the lower court for further proceedings not inconsistent with this decision, with the costs of this instance against respondent Jose C. Zulueta. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment reversed, records remanded to lower court for further proceedings.

[1] For, pursuant to section 19 (h.) of the existing rules and regulations of the Urban Planning Commission, the owner of a subdivision is under obligation "to improve, repair and maintain all streets, highways and other ways in his subdivision until their dedication to public use is accepted by the government."

[2] Ex parte Bagwell, 79 P. 2d. 395; Road District No. 4 Shelby County vs. Allred, 68 S-W 2d 164; State ex rel Thomson vs. Giessel, 53-N.W. 2d. 726, Attorney General vs. City of Eau Claire, 37 Wis. 400; State ex rel. Smith vs. Annuity Pension Board, 241 Wis. G2C, 6 N.W. 2d. 676; State vs. Smith, 293 N.W. 161; State t'fl. Dammann 280 N.W. 698; Sjostrum vs. State Highway Commission 228 P. 2d. 238; Hutton vs. Webb, 126 N.C. 897, 36 S.E. 341; Michigan Sugar Co. vs. Auditor General, 124 Mich. 674, 83 N.W. 625 Omard Beet Sugar Co. vs. State, 105 N.W. 716.

[3] Casanovas vs. Hord, 8 Phil., 120; McGirr vs. Hamilton, 30 Phil., 063; Compafiiia General de Tabacos vs. Board of Public Utility, 34 Phil., 136; Central Capiz vs. Ramirez, 40 Phil., 883; Concepcion vs. Paredes, 42 Phil., 599; U.S. vs. Ang Tang Ho, 43 Phil. 6; McDaniel vs. Apacible, 44 Phil., 248; People vs. Pomar, 46 Phil., 440; Agcaoili vs. Suguitan, 48 Phil., 676; Government of P.I. vs. Springer 50 Phil., 259; Manila Electric Co. vs. Pasay Transp. Co., 57 Phil., 600; People vs. Linsangan, 62 Phil., 464; People and Hongkong & Shanghai Banking Corp. vs. Jose O. Vera, 65 Phil. 56; People vs. Carlos, 78 Phil., 535; 44 Off. Gaz. 428; In re Cunanan, 94 Phil., 534; 50 Off. Gaz., 1602; City of Baguio vs. Nawasa 106 Phil., 144; City of Cebu vs. Nawasa, 107 Phil., 1112; Rutter vs. Esteban, 93 Phil. 68; 49 Off. Gaz., [5] 1807.

[4] In the language of the Supreme Court of Nebraska, "An unconstitutional statute is a legal still birth, which neither moves, nor breathes, nor holds out any sign of life. It is a form without one vital spark. It is wholly dead from the trmmment of conception, and, no right, either legal or equitable, arises from such inanimate thing." (Oxnartd Beat Sugar Co. vs. State, 102 N.W. 80.)

[5] See, among others, Livermore, vs. Waite, 102 Cal. 113, 25 L.K.A. 312, 36 P. 424; Crawford vs. Gilchrist, 64 Fla. 41, 59 So. 063; Lucas vs. American-Hawaiian Engineering & Constr. Co., 16 Haw. 80; Castle vs. Capena, 5 Haw. 27; Littler vs. Jayne, 124 III. 123, 16 N.E. 374; Burlce vs. Snively, 208 111. 328, 70 N.B. 327; Ellingham vs. Dye, 178 Ind. 336, 99 N.E. 1; Christmas vs. Warfield, 105 Md. 536; Sears vs. Steel, 55 Or. 544, 107 Pac. 3; State ex rel. Taylor vs. Pennoyer, 26 Or. 205, 37 Pac. 906; Carman vs. Woodruff, 10 Or. 123; MacKinney vs. Watson, 145 Pac. 266; Scars vs. James, 47 Or. 50, 82 Pac. 14; Mott vs. Pennsylvania R. Co., 30 Pa. 9, 72 Am. Dec. 664; Bradley vs. Power County, 37 Am. Dec. 563; Frost vs. Thomas, 26 Colo. 227, 77 Am- St. Rep. 259, 56 Pac. 899; Martin vs. Ingham, 38 Kan. 641, 17 Pac. 162; Martin vs. Lacy, 39 Kan. 703, 18 Pac 951; Smith vs. Mageurieh. 44 Ga. 163; Giddings vs. Blacker, 93 Mich. 1, 18 L.R.A. 402, 52 N.W. 944; Eippe vs. Becker, 56

Minn. 100, 57 N.W. 331; Auditor vs. Treasurer, i S.C. 311; McCullough vs. Urown, 31 S.C. 220, 19 S.E. 458; State ex rel. Lamb vs. CumminR-ham, 83 Wis. 90, 53 N.W. 35; State ex rel. Eosenhian vs. Frear, 138 Wis. 173. 119 N.W. 894.

[6] Rubs vs. Thompson, 56 N.E. 2d. 761; Reid vs. Smith, 375 111. 347, 30 N.E. 2d. 908; Fergus vs. Russel, 270 111. 304, 110 N.E.-130; Burke vs. Snively, 208 111. 328; Jones vs. Connell, 266 111. 443, 107 N.E. 731; Dudick vs. Baumann, 349 111. 46, 181 N.E. 690.

[7] Thompson vs. Canal Fund Comps., 2 Abb. Pr. 248; Shieffelin vs. Komfort, 212 N.Y. 520, 106 N.E. 675; Hutchison vs. Skinnier, 21 Misc. 729, 49 N.Y. Supp. 360; Long- vs. Johnson, 70 Misc. 308; 127 N.Y. Supp. 756; Whiteback vs. Hooker, 73 Misc. 573, 133 X.Y. Supp. 534; State ex rel. Cranmer vs. Thorson, 9 S.D. 149, 88 N.W. 202; Davenport vs. Elrod, 20 S.D. 567, 107 N-W. 833; Jones vs. Reed, 3 Wash. 57, 27 Pac. 1067; Birmingham vs. Cheetham, 19 Wash. 657, 54 Pac. 37; Tacoma vs. Bridges, 25 Wash. 221, 65 Pac. 186; Hilg-er us. State, 63 Wash. 457, 116 Pac. 19.

[7] It has 1,463,530 inhabitants.

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