

ALFREDO TANO, BALDOMERO TANO, DANILO TANO, ROMUALDO TANO, TEOCENES MIDELLO, ANGEL DE MESA, EULOGIO TREMOCHA, FELIPE ONGONION, JR., ANDRES LINIJAN, ROBERT LIM, VIRGINIA LIM, FELI...

G.R. No. 110249. August 21, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners caption their petition as one for “Certiorari, Injunction With Preliminary Mandatory Injunction, with Prayer for Temporary Restraining Order” and pray that this Court: (1) declare as unconstitutional: (a) Ordinance No. 15-92, dated 15 December 1992, of the Sangguniang Panlungsod of Puerto Princesa; (b) Office Order No. 23, Series of 1993, dated 22 January 1993, issued by Acting City Mayor Amado L. Lucero of Puerto Princesa City; and (c) Resolution No. 33, Ordinance No. 2, Series of 1993, dated 19 February 1993, of the Sangguniang Panlalawigan of Palawan; (2) enjoin the enforcement thereof; and (3) restrain respondents Provincial and City Prosecutors of Palawan and Puerto Princesa City and Judges of Regional Trial Courts, Metropolitan Trial Courts[1] and Municipal Circuit Trial Courts in Palawan from assuming jurisdiction over and hearing cases concerning the violation of the Ordinances and of the Office Order.

More appropriately, the petition is, and shall be treated as, a special civil action for certiorari and prohibition.

The following is petitioners’ summary of the factual antecedents giving rise to the petition:

1. On December 15, 1992, the Sangguniang Panlungsod ng Puerto Princesa City enacted Ordinance No. 15-92 which took effect on January 1, 1993 entitled: “AN ORDINANCE BANNING THE SHIPMENT OF ALL LIVE FISH AND LOBSTER OUTSIDE PUERTO PRINCESA CITY FROM JANUARY 1, 1993 TO JANUARY 1, 1998 AND PROVIDING EXEMPTIONS, PENALTIES AND FOR OTHER PURPOSES THEREOF”, the full text of which reads as follows:

“Section 1. Title of the Ordinance. - This Ordinance is entitled: AN ORDINANCE BANNING THE SHIPMENT OF ALL LIVE FISH AND LOBSTER OUTSIDE PUERTO PRINCESA CITY FROM JANUARY 1, 1993 TO JANUARY 1, 1998 AND PROVIDING EXEMPTIONS, PENALTIES AND FOR OTHER PURPOSES THEREOF.

Section 2. Purpose, Scope and Coverage. - To effectively free our City Sea Waters from Cyanide and other Obnoxious substance, and shall cover all persons and/or entities operating within and outside the City of Puerto Princesa who is are [sic] directly or indirectly in the business or shipment of live fish and lobster outside the City.

Section 3. Definition of terms. - For purpose of this Ordinance the following are hereby defined:

- A. SEA BASS - A kind of fish under the family of Centropomidae, better known as APAHAP;
- B. CATFISH - A kind of fish under the family of Plotosidae, better known as HITO-HITO;

C. MUDFISH - A kind of fish under the family of Orphicaphalisae better known as DALAG

D. ALL LIVE FISH - All alive, breathing not necessarily moving of all specie[s] use for food and for aquarium purposes.

E. LIVE LOBSTER - Several relatively, large marine crustaceans of the genus Homarus that are alive and breathing not necessarily moving.

Section 4. It shall be unlawful [for] any person or any business enterprise or company to ship out from Puerto Princesa City to any point of destination either via aircraft or seacraft of any live fish and lobster except SEA BASS, CATFISH, MUDFISH, AND MILKFISH FRIES.

Section 5. Penalty Clause. - Any person/s and or business entity violating this Ordinance shall be penalized with a fine of not more than P5,000.00 or imprisonment of not more than twelve (12) months, cancellation of their permit to do business in the City of Puerto Princesa or all of the herein stated penalties, upon the discretion of the court.

Section 6. If the owner and/or operator of the establishment found vilating the provisions of this ordinance is a corporation or a partnership, the penalty prescribed in Section 5 hereof shall be imposed upon its president and/or General Manager or Managing Partner and/or Manager, as the case maybe [sic].

Section 7. Any existing ordinance or any provision of any ordinance inconsistent to [sic] this ordinance is deemed repealed.

Section 8. This Ordinance shall take effect on January 1, 1993.

SO ORDERED.”

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2. To implement said city ordinance, then Acting City Mayor Amado L. Lucero issued Office Order No. 23, Series of 1993 dated January 22, 1993 which reads as follows:

“In the interest of public service and for purposes of City Ordinance No. PD426-14-74, otherwise known as ‘AN ORDINANCE REQUIRING ANY PERSON ENGAGED OR INTENDING TO ENGAGE IN ANY BUSINESS, TRADE, OCCUPATION, CALLING OR PROFESSION OR HAVING IN HIS POSSESSION ANY OF THE ARTICLES FOR WHICH A PERMIT IS REQUIRED TO BE HAD, TO OBTAIN FIRST A MAYOR’S PERMIT” and “City Ordinance No. 15-92, AN ORDINANCE BANNING THE SHIPMENT OF ALL LIVE FISH AND LOBSTER OUTSIDE PUERTO PRINCESA CITY FROM JANUARY 1, 1993 TO JANUARY 1, 1998, you are hereby authorized and directed to check or conduct necessary inspections on cargoes containing live fish and lobster being shipped out from the Puerto Princesa Airport, Puerto Princesa Wharf or at any port within the jurisdiction of the City to any point of destinations [sic] either via aircraft or seacraft.

The purpose of the inspection is to ascertain whether the shipper possessed the required Mayor’s Permit issued by this Office and the shipment is covered by invoice or clearance issued by the local office of the Bureau of Fisheries and Aquatic Resources and as to compliance with all other existing rules and regulations on the matter.

Any cargo containing live fish and lobster without the required documents as stated herein must be held for proper disposition.

In the pursuit of this Order, you are hereby authorized to coordinate with the PAL Manager, the PPA Manager, the local PNP Station and other offices concerned for the needed support and cooperation. Further, that the usual

courtesy and diplomacy must be observed at all times in the conduct of the inspection.

Please be guided accordingly.”

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3. On February 19, 1993, the Sangguniang Panlalawigan, Provincial Government of Palawan enacted Resolution No. 33 entitled: “A RESOLUTION PROHIBITING THE CATCHING, GATHERING, POSSESSING, BUYING, SELLING AND SHIPMENT OF LIVE MARINE CORAL DWELLING AQUATIC ORGANISMS, TO WIT: FAMILY: SCARIDAE (MAMENG), EPINE PHELUS FASCIATUS (SUNO). CROMILEPTES ALTIVELIS (PANTHER OR SENORITA), LOBSTER BELOW 200 GRAMS AND SPAWNING, TRADACNA GIGAS (TAKLOBO), PINCTADA MARGARITEFERA (MOTHER PEARL, OYSTERS, GIANT CLAMS AND OTHER SPECIES), PENAEUS MONODON (TIGER PRAWN-BREEDER SIZE OR MOTHER), EPINEPHELUS SUILLUS (LOBA OR GREEN GROUPE) AND FAMILY: BALISTIDAE (TROPICAL AQUARIUM FISHES) FOR A PERIOD FIVE (5) YEARS IN AND COMING FROM PALAWAN WATERS”, the full text of which reads as follows:

“WHEREAS, scientific and factual researches [sic] and studies disclose that only five (5) percent of the corals of our province remain to be in excellent condition as [a] habitat of marine coral dwelling aquatic organisms;

WHEREAS, it cannot be gainsaid that the destruction and devastation of the corals of our province were principally due to illegal fishing activities like dynamite fishing, sodium cyanide fishing, use of other obnoxious substances and other related activities;

WHEREAS, there is an imperative and urgent need to protect and preserve the existence of the remaining excellent corals and allow the devastated ones to reinvigorate and regenerate themselves into vitality within the span of five (5) years;

WHEREAS, Sec. 468, Par. 1, Sub-Par. VI of the [sic] R.A. 7160 otherwise known as the Local Government Code of 1991 empowers the Sangguniang Panlalawigan to protect the environment and impose appropriate penalties [upon] acts which endanger the environment such as dynamite fishing and other forms of destructive fishing, among others.

NOW, THEREFORE, on motion by Kagawad Nelson P. Peneyra and upon unanimous decision of all the members present;

Be it resolved as it is hereby resolved, to approve Resolution No. 33, Series of 1993 of the Sangguniang Panlalawigan and to enact Ordinance No. 2 for the purpose, to wit:

ORDINANCE NO. 2

Series of 1993

BE IT ORDAINED BY THE SANGGUNIANG PANLALAWIGAN IN SESSION ASSEMBLED:

Section 1. TITLE - This Ordinance shall be known as an “Ordinance Prohibiting the catching, gathering, possessing, buying, selling and shipment of live marine coral dwelling aquatic organisms, to wit: 1. Family: Scaridae (Mameng), 2. Epinephelus Fasciatus (Sunu), 3. Cromileptes altivelis (Panther or Senorita), lobster below 200 grams and spawning), 4. Tridacna Gigas (Taklobo), 5. Pinctada Margaretefera (Mother Pearl, Oysters, Giant Clams and other species), 6. Penaeus Monodon (Tiger Prawn-breeder size or mother), 7. Epinephelus Suillus (Loba or Green Grouper) and 8. Family: Balistidae (Topical Aquarium Fishes) for a period of five (5) years in and coming from Palawan Waters.

Section II. PRELIMINARY CONSIDERATIONS

1. Sec. 2-A (Rep. Act 7160). It is hereby declared, the policy of the state that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for [a] more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities and resources.
2. Sec. 5-A (R.A. 7160). Any provision on a power of [a] local Government Unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower government units. "Any fair and reasonable doubts as to the existence of the power shall be interpreted in favor of the Local Government Unit concerned."
3. Sec. 5-C (R.A. 7160). The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.
4. Sec. 16 (R.A. 7160). General Welfare. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance; and those which are essential to the promotion of the general welfare.

Section III. DECLARATION OF POLICY. - It is hereby declared to be the policy of the Province of Palawan to protect and conserve the marine resources of Palawan not only for the greatest good of the majority of the present generation but with [the] proper perspective and consideration of [sic] their prosperity, and to attain this end, the Sangguniang Panlalawigan henceforth declares that is [sic] shall be unlawful for any person or any business entity to engage in catching, gathering, possessing, buying, selling and shipment of live marine coral dwelling aquatic organisms as enumerated in Section 1 hereof in and coming out of Palawan Waters for a period of five (5) years;

Section IV. PENALTY CLAUSE. - Any person and/or business entity violating this Ordinance shall be penalized with a fine of not more than Five Thousand Pesos (P5,000.00), Philippine Currency, and/or imprisonment of six (6) months to twelve (12) months and confiscation and forfeiture of paraphernalias [sic] and equipment in favor of the government at the discretion of the Court;

Section V. SEPARABILITY CLAUSE. - If for any reason, a Section or provision of this Ordinance shall be held as unconditional [sic] or invalid, it shall not affect the other provisions hereof.

Section VI. REPEALING CLAUSE. - Any existing Ordinance or a provision of any ordinance inconsistent herewith is deemed modified, amended or repealed.

Section VII. EFFECTIVITY. - This Ordinance shall take effect ten (10) days after its publication.

SO ORDAINED."

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4. The respondents implemented the said ordinances, Annexes "A" and "C" hereof thereby depriving all the fishermen of the whole province of Palawan and the City of Puerto Princesa of their only means of livelihood and the petitioners Airline Shippers Association of Palawan and other marine merchants from performing their lawful occupation and trade;
5. Petitioners Alfredo Tano, Baldomero Tano, Teocenes Midello, Angel de Mesa, Eulogio Tremocha, and Felipe

Ongonion, Jr. were even charged criminally under criminal case no. 93-05-C in the 1st Municipal Circuit Trial Court of Cuyo-Agutaya-Magsaysay, an original carbon copy of the criminal complaint dated April 12, 1993 is hereto attached as Annex “D”; while xerox copies are attached as Annex “D” to the copies of the petition;

6. Petitioners Robert Lim and Virginia Lim, on the other hand, were charged by the respondent PNP with the respondent City Prosecutor of Puerto Princesa City, a xerox copy of the complaint is hereto attached as Annex “E”;

Without seeking redress from the concerned local government units, prosecutor’s office and courts, petitioners directly invoked our original jurisdiction by filing this petition on 4 June 1993. In sum, petitioners contend that:

First, the Ordinances deprived them of due process of law, their livelihood, and unduly restricted them from the practice of their trade, in violation of Section 2, Article XII and Sections 2 and 7 of Article XIII of the 1987 Constitution.

Second, Office Order No. 23 contained no regulation nor condition under which the Mayor’s permit could be granted or denied; in other words, the Mayor had the absolute authority to determine whether or not to issue permit.

Third, as Ordinance No. 2 of the Province of Palawan “altogether prohibited the catching, gathering, possession, buying, selling and shipping of live marine coral dwelling organisms, without any distinction whether it was caught or gathered through lawful fishing method,” the Ordinance took away the right of petitioners-fishermen to earn their livelihood in lawful ways; and insofar as petitioners-members of Airline Shippers Association are concerned, they were unduly prevented from pursuing their vocation and entering “into contracts which are proper, necessary, and essential to carry out their business endeavors to a successful conclusion.”

Finally, as Ordinance No. 2 of the Sangguniang Panlalawigan is null and void, the criminal cases based thereon against petitioners Tano and the others have to be dismissed.

In the Resolution of 15 June 1993 we required respondents to comment on the petition, and furnished the Office of the Solicitor General with a copy thereof.

In their comment filed on 13 August 1993, public respondents Governor Socrates and Members of the Sangguniang Panlalawigan of Palawan defended the validity of Ordinance No.2, Series of 1993, as a valid exercise of the Provincial Government’s power under the general welfare clause (Section 16 of the Local Government Code of 1991 [hereafter, LGC]), and its specific power to protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing under Section 447 (a) (1) (vi), Section 458 (a) (1) (vi), and Section 468 (a) (1) (vi), of the LGC. They claimed that in the exercise of such powers, the Province of Palawan had “the right and responsibility... to insure that the remaining coral reefs, where fish dwells [sic], within its territory remain healthy for the future generation.” The Ordinance, they further asserted, covered only live marine coral dwelling aquatic organisms which were enumerated in the ordinance and excluded other kinds of live marine aquatic organisms not dwelling in coral reefs; besides the prohibition was for only five (5) years to protect and preserve the pristine coral and allow those damaged to regenerate.

Aforementioned respondents likewise maintained that there was no violation of due process and equal protection clauses of the Constitution. As to the former, public hearings were conducted before the enactment of the Ordinance which, undoubtedly, had a lawful purpose and employed reasonable means; while as to the latter, a substantial distinction existed “between a fisherman who catches live fish with the intention of selling it live, and a fisherman who catches live fish with no intention at all of selling it live,” i.e., “the former uses sodium cyanide

while the latter does not.” Further, the Ordinance applied equally to all those belonging to one class.

On 25 October 1993 petitioners filed an Urgent Plea for the Immediate Issuance of a Temporary Restraining Order claiming that despite the pendency of this case, Branch 50 of the Regional Trial Court of Palawan was bent on proceeding with Criminal Case No. 11223 against petitioners Danilo Tano, Alfredo Tano, Eulogio Tremocha, Romualdo Tano, Baldomero Tano, Andres Lemihan and Angel de Mesa for violation of Ordinance No. 2 of the Sangguniang Panlalawigan of Palawan. Acting on said plea, we issued on 11 November 1993 a temporary restraining order directing Judge Angel Miclat of said court to cease and desist from proceeding with the arraignment and pre-trial of Criminal Case No. 11223.

On 12 July 1994, we excused the Office of the Solicitor General from filing a comment, considering that as claimed by said office in its Manifestation of 28 June 1994, respondents were already represented by counsel.

The rest of the respondents did not file any comment on the petition.

In the resolution of 15 September 1994, we resolved to consider the comment on the petition as the Answer, gave due course to the petition and required the parties to submit their respective memoranda.[2]

On 22 April 1997 we ordered impleaded as party respondents the Department of Agriculture and the Bureau of Fisheries and Aquatic Resources and required the Office of the Solicitor General to comment on their behalf. But in light of the latter’s motion of 9 July 1997 for an extension of time to file the comment which would only result in further delay, we dispensed with said comment.

After due deliberation on the pleadings filed, we resolved to dismiss this petition for want of merit, on 22 July 1997, and assigned it to the ponente for the writing of the opinion of the Court.

I

There are actually two sets of petitioners in this case. The first is composed of Alfredo Tano, Baldomero Tano, Danilo Tano, Romualdo Tano, Teocenes Midello, Angel de Mesa, Eulogio Tremocha, Felipe Ongonion, Jr., Andres Linijan, and Felimon de Mesa, who were criminally charged with violating Sangguniang Panlalawigan Resolution No. 33 and Ordinance No. 2, Series of 1993, of the Province of Palawan, in Criminal Case No. 93-05-C of the 1st Municipal Circuit Trial Court (MCTC) of Palawan;^[3] and Robert Lim and Virginia Lim who were charged with violating City Ordinance No. 15-92 of Puerto Princesa City and Ordinance No. 2, Series of 1993, of the Province of Palawan before the Office of the City Prosecutor of Puerto Princesa.^[4] All of them, with the exception of Teocenes Midello, Felipe Ongonion, Jr., Felimon de Mesa, Robert Lim and Virginia Lim, are likewise the accused in Criminal Case No. 11223 for the violation of Ordinance No. 2 of the Sangguniang Panlalawigan of Palawan, pending before Branch 50 of the Regional Trial Court of Palawan.^[5]

The second set of petitioners is composed of the rest of the petitioners numbering seventy-seven (77), all of whom, except the Airline Shippers Association of Palawan -- an alleged private association of several marine merchants -- are natural persons who claim to be fishermen.

The primary interest of the first set of petitioners is, of course, to prevent the prosecution, trial and determination of the criminal cases until the constitutionality or legality of the Ordinances they allegedly violated shall have been resolved. The second set of petitioners merely claim that they being fishermen or marine merchants, they would be adversely affected by the ordinances.

As to the first set of petitioners, this special civil for certiorari must fail on the ground of prematurity amounting to a lack of cause of action. There is no showing that the said petitioners, as the accused in the criminal cases, have filed motions to quash the informations therein and that the same were denied. The ground available for such

motions is that the facts charged therein do not constitute an offense because the ordinances in question are unconstitutional.[6] It cannot then be said that the lower courts acted without or in excess of jurisdiction or with grave abuse of discretion to justify recourse to the extraordinary remedy of certiorari or prohibition. It must further be stressed that even if the petitioners did file motions to quash, the denial thereof would not forthwith give rise to a cause of action under Rule 65 of the Rules of Court. The general rule is that where a motion to quash is denied, the remedy therefrom is not certiorari, but for the party aggrieved thereby to go to trial without prejudice to reiterating special defenses involved in said motion, and if, after trial on the merits of adverse decision is rendered, to appeal therefrom in the manner authorized by law.[7] And, even where in an exceptional circumstance such denial may be the subject of a special civil action for certiorari, a motion for reconsideration must have to be filed to allow the court concerned an opportunity to correct its errors, unless such motion may be dispensed with because of existing exceptional circumstances.[8] Finally, even if a motion for reconsideration has been filed and denied, the remedy under Rule 65 is still unavailable absent any showing of the grounds provided for in Section 1 thereof.[9] For obvious reasons, the petition at bar does not, and could not have, alleged any of such grounds.

As to the second set of petitioners, the instant petition is obviously one for DECLARATORY RELIEF, i.e., for a declaration that the Ordinances in question are a “nullity ... for being unconstitutional.”[10] As such, their petition must likewise fail, as this Court is not possessed of original jurisdiction over petitions for declaratory relief even if only questions of law are involved,[11] it being settled that the Court merely exercises appellate jurisdiction over such petitions.[12]

II

Even granting *arguendo* that the first set of petitioners have a cause of action ripe for the extraordinary writ of certiorari, there is here a clear disregard of the hierarchy of courts, and no special and important reason or exceptional or compelling circumstance has been adduced why direct recourse to us should be allowed. While we have concurrent jurisdiction with Regional Trial courts and with the Court of Appeals to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence gives petitioners no unrestricted freedom of choice of court forum, so we held in *People v. Cuaresma*: [13]

This concurrence of jurisdiction is not... to be taken as according to parties seeking any of the writs an absolute unrestrained freedom of choice of the court to which application therefor will be directed. There is after all hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level (“inferior”) courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court’s original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy necessary to prevent inordinate demands upon the Court’s time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court’s docket....

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land....

In *Santiago v. Vasquez*, [14] this Court forcefully expressed that the propensity of litigants and lawyers to disregard the hierarchy of courts must be put to a halt, not only because of the imposition upon the precious time

of this Court, but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court, the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We reiterated “the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of [its] primary jurisdiction.”

III

Notwithstanding the foregoing procedural obstacles against the first set of petitioners, we opt to resolve this case on its merits considering that the lifetime of the challenged Ordinances is about to end. Ordinance No. 15-92 of the City of Puerto Princesa is effective only up to 1 January 1998, while Ordinance No. 2 of the Province of Palawan, enacted on 19 February 1993, is effective for only five (5) years. Besides, these Ordinances were undoubtedly enacted in the exercise of powers under the new LGC relative to the protection and preservation of the environment and are thus novel and of paramount importance. No further delay then may be allowed in the resolution of the issues raised.

It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality.[15] To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt.[16] Where doubt exists, even if well founded, there can be no finding of unconstitutionality. To doubt is to sustain.[17]

After a scrutiny of the challenged Ordinances and the provisions of the Constitution petitioners claim to have been violated, we find petitioners’ contentions baseless and so hold that the former do not suffer from any infirmity, both under the Constitution and applicable laws.

Petitioners specifically point to Section 2, Article XII and Sections 2 and 7, Article XIII of the Constitution as having been transgressed by the Ordinances.

The pertinent portion of Section 2 of Article XII reads:

SEC. 2. x x x

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

Sections 2 and 7 of Article XIII provide:

Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

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SEC. 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion.

Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources

There is absolutely no showing that any of the petitioners qualifies as a subsistence or marginal fisherman. In their petition, petitioner Airline Shippers Association of Palawan is described as “a private association composed of Marine Merchants”; petitioners Robert Lim and Virginia Lim, as “merchants;” while the rest of the petitioners claim to be “fishermen,” without any qualification, however, as to their status.

Since the Constitution does not specifically provide a definition of the terms “subsistence” or “marginal” fishermen,[18] they should be construed in their general and ordinary sense. A marginal fisherman is an individual engaged in fishing whose margin of return or reward in his harvest of fish as measured by existing price levels is barely sufficient to yield a profit or cover the cost of gathering the fish,[19] while a subsistence fisherman is one whose catch yields but the irreducible minimum for his livelihood.[20] Section 131(p) of the LGC (R.A. No. 7160) defines a marginal farmer or fisherman as “an individual engaged in subsistence farming or fishing which shall be limited to the sale, barter or exchange of agricultural or marine products produced by himself and his immediate family.” It bears repeating that nothing in the record supports a finding that any petitioner falls within these definitions.

Besides, Section 2 of Article XII aims primarily not to bestow any right to subsistence fishermen, but to lay stress on the duty of the State to protect the nation’s marine wealth. What the provision merely recognizes is that the State may allow, by law, cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. Our survey of the statute books reveals that the only provision of law which speaks of the preferential right of marginal fishermen is Section 149 of the LGC of 1991 which pertinently provides:

SEC. 149. Fishery Rentals, Fees and Charges. -- x x x

(b) The sangguniang bayan may:

(1) Grant fishery privileges to erect fish corrals, oyster, mussels or other aquatic beds or bangus fry areas, within a definite zone of the municipal waters, as determined by it: Provided, however, That duly registered organizations and cooperatives of marginal fishermen shall have preferential right to such fishery privileges

In a Joint Administrative Order No. 3, dated 25 April 1996, the Secretary of the Department of Agriculture and the Secretary of the Department of Interior and Local Government prescribed the guidelines on the preferential treatment of small fisherfolk relative to the fishery right mentioned in Section 149. This case, however, does not involve such fishery right.

Anent Section 7 of Article XIII, it speaks not only of the use of communal marine and fishing resources, but of their protection, development, and conservation. As hereafter shown, the ordinances in question are meant precisely to protect and conserve our marine resources to the end that their enjoyment by the people may be guaranteed not only for the present generation, but also for the generations to come.

The so-called “preferential right” of subsistence or marginal fishermen to the use of marine resources is not at all absolute. In accordance with the Regalian Doctrine, marine resources belong to the State, and, pursuant to the first paragraph of Section 2, Article XII of the Constitution, their “exploration, development and utilization ... shall be under the full control and supervision of the State.” Moreover, their mandated protection, development, and conservation as necessarily recognized by the framers of the Constitution, imply certain restrictions on whatever right of enjoyment there may be in favor of anyone. Thus, as to the curtailment of the preferential treatment of marginal fisherman, the following exchange between Commissioner Francisco Rodrigo and Commissioner Jose

F.S. Bengzon, Jr., took place at the plenary session of the Constitutional Commission:

MR. RODRIGO:

Let us discuss the implementation of this because I would not raise the hopes of our people, and afterwards fail in the implementation. How will this be implemented? Will there be a licensing or giving of permits so that government officials will know that one is really a marginal fisherman? Or if policeman say that a person is not a marginal fisherman, he can show his permit, to prove that indeed he is one.

MR. BENGZON:

Certainly, there will be some mode of licensing insofar as this is concerned and this particular question could be tackled when we discuss the Article on Local Governments -- whether we will leave to the local governments or to Congress on how these things will be implemented. But certainly, I think our Congressmen and our local officials will not be bereft of ideas on how to implement this mandate.

x x x

MR. RODRIGO:

So, once one is licensed as a marginal fisherman, he can go anywhere in the Philippines and fish in any fishing grounds.

MR. BENGZON:

Subject to whatever rules and regulations and local laws that may be passed, may be existing or will be passed.[21] (underscoring supplied for emphasis).

What must likewise be borne in mind is the state policy enshrined in the Constitution regarding the duty of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[22] On this score, in *Oposa v. Factoran*,[23] this Court declared:

While the right to balanced and healthful ecology is to be found under the Declaration of Principles the State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation - aptly and fittingly stressed by the petitioners - the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come - generations which stand to inherit nothing but parched earth incapable of sustaining life.

The right to a balanced and healthful ecology carries with it a correlative duty to refrain from impairing the environment ...

The LGC provisions invoked by private respondents merely seek to give flesh and blood to the right of the people to a balanced and healthful ecology. In fact, the General Welfare Clause, expressly mentions this right:

SEC. 16. General Welfare.-- Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the

preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (underscoring supplied).

Moreover, Section 5(c) of the LGC explicitly mandates that the general welfare provisions of the LGC “shall be liberally interpreted to give more powers to the local government units in accelerating economic development and upgrading the quality of life for the people of the community.”

The LGC vests municipalities with the power to grant fishery privileges in municipal waters and to impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws.[24] Further, the sangguniang bayan, the sangguniang panlungsod and the sangguniang panlalawigan are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, inter alia, ordinances that “[p]rotect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing ... and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or of ecological imbalance.”[25]

Finally, the centerpiece of LGC is the system of decentralization[26] as expressly mandated by the Constitution.[27] Indispensable thereto is devolution and the LGC expressly provides that “[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned,”[28] Devolution refers to the act by which the National Government confers power and authority upon the various local government units to perform specific functions and responsibilities.[29]

One of the devolved powers enumerated in the section of the LGC on devolution is the enforcement of fishery laws in municipal waters including the conservation of mangroves.[30] This necessarily includes enactment of ordinances to effectively carry out such fishery laws within the municipal waters.

The term “municipal waters,” in turn, include not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves, or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen kilometers from it.[31] Under P.D. No. 704, the marine waters included in municipal waters is limited to three nautical miles from the general coastline using the above perpendicular lines and a third parallel line.

These “fishery laws” which local government units may enforce under Section 17(b), (2), (i) in municipal waters include: (1) P.D. No. 704; (2) P.D. No. 1015 which, inter alia, authorizes the establishment of a “closed season” in any Philippine water if necessary for conservation or ecological purposes; (3) P.D. No. 1219 which provides for the exploration, exploitation, utilization, and conservation of coral resources; (4) R.A. No. 5474, as amended by B.P. Blg. 58, which makes it unlawful for any person, association, or corporation to catch or cause to be caught, sell, offer to sell, purchase, or have in possession any of the fish specie called gobiidae or “ipon” during closed season; and (5) R.A. No. 6451 which prohibits and punishes electrofishing, as well as various issuances of the BFAR.

To those specifically devolved insofar as the control and regulation of fishing in municipal waters and the protection of its marine environment are concerned, must be added the following:

1. Issuance of permits to construct fish cages within municipal waters;
2. Issuance of permits to gather aquarium fishes within municipal waters;
3. Issuance of permits to gather kapis shells within municipal waters;
4. Issuance of permits to gather/culture shelled mollusks within municipal waters;
5. Issuance of licenses to establish seaweed farms within municipal waters;
6. Issuance of licenses to establish culture pearls within municipal waters;
7. Issuance of auxiliary invoice to transport fish and fishery products; and
8. Establishment of “closed season” in municipal waters.

These functions are covered in the Memorandum of Agreement of 5 April 1994 between the Department of Agriculture and the Department of Interior and Local Government.

In light then of the principles of decentralization and devolution enshrined in the LGC and the powers granted to local government units under Section 16 (the General Welfare Clause), and under Sections 149, 447 (a) (1) (vi), 458 (a) (1) (vi) and 468 (a) (1) (vi), which unquestionably involve the exercise of police power, the validity of the questioned Ordinances cannot be doubted.

Parenthetically, we wish to add that these Ordinances find full support under R.A. No. 7611, otherwise known as the Strategic Environmental Plan (SEP) for Palawan Act, approved on 19 July 1992. This statute adopts a “comprehensive framework for the sustainable development of Palawan compatible with protecting and enhancing the natural resources and endangered environment of the province,” which “shall serve to guide the local government of Palawan and the government agencies concerned in the formulation and implementation of plans, programs and projects affecting said province.”[32]

At this time then, it would be appropriate to determine the relation between the assailed Ordinances and the aforesaid powers of the Sangguniang Panlungsod of the City of Puerto Princesa and the Sangguniang Panlalawigan of the Province of Palawan to protect the environment. To begin, we ascertain the purpose of the Ordinances as set forth in the statement of purposes or declaration of policies quoted earlier.

It is clear to the Court that both Ordinances have two principal objectives or purposes: (1) to establish a “closed season” for the species of fish or aquatic animals covered therein for a period of five years, and (2) to protect the corals of the marine waters of the City of Puerto Princesa and the Province of Palawan from further destruction due to illegal fishing activities.

The accomplishment of the first objective is well within the devolved power to enforce fishery laws in municipal waters, such as P.D. No. 1015, which allows the establishment of “closed seasons.” The devolution of such power has been expressly confirmed in the Memorandum of Agreement of 5 April 1994 between the Department of Agriculture and the Department of Interior and Local Government.

The realization of the second objective falls within both the general welfare clause of the LGC and the express mandate thereunder to cities and provinces to protect the environment and impose appropriate penalties for acts which endanger the environment.[33]

The destruction of the coral reefs results in serious, if not irreparable, ecological imbalance, for coral reefs are

among the nature's life-support systems.[34] They collect, retain, and recycle nutrients for adjacent nearshore areas such as mangroves, seagrass beds, and reef flats; provide food for marine plants and animals; and serve as a protective shelter for aquatic organisms.[35] It is said that "[e]cologically, "the reefs are to the oceans what forests are to continents: they are shelter and breeding grounds for fish and plant species that will disappear without them." [36]

The prohibition against catching live fish stems, in part, from the modern phenomenon of live-fish trade which entails the catching of so-called exotic tropical species of fish not only for aquarium use in the West, but also for "the market for live banquet fish [which] is virtually insatiable in ever more affluent Asia.[37] These exotic species are coral-dwellers, and fishermen catch them by "diving in shallow water with coralline habitats and squirting sodium cyanide poison at passing fish directly or onto coral crevices; once affected the fish are immobilized [merely stunned] and then scooped by hand." [38] The diver then surfaces and dumps his catch into a submerged net attached to the skiff . Twenty minutes later, the fish can swim normally. Back on shore, they are placed in holding pens, and within a few weeks, they expel the cyanide from their system and are ready to be hauled. Then they are placed in saltwater tanks or packaged in plastic bags filled with seawater for shipment by air freight to major markets for live food fish.[39] While the fish are meant to survive, the opposite holds true for their former home as "[a]fter the fisherman squirts the cyanide, the first thing to perish is the reef algae, on which fish feed. Days later, the living coral starts to expire. Soon the reef loses its function as habitat for the fish, which eat both the algae and invertebrates that cling to the coral. The reef becomes an underwater graveyard, its skeletal remains brittle, bleached of all color and vulnerable to erosion from the pounding of the waves." [40] It has been found that cyanide fishing kills most hard and soft corals within three months of repeated application.[41]

The nexus then between the activities barred by Ordinance No. 15-92 of the City of Puerto Princesa and the prohibited acts provided in Ordinance No. 2, Series of 1993 of the Province of Palawan, on one hand, and the use of sodium cyanide, on the other, is painfully obvious. In sum, the public purpose and reasonableness of the Ordinances may not then be controverted.

As to Office Order No. 23, Series of 1993, issued by Acting City Mayor Amado L. Lucero of the City of Puerto Princesa, we find nothing therein violative of any constitutional or statutory provision. The Order refers to the implementation of the challenged ordinance and is not the Mayor's Permit.

The dissenting opinion of Mr. Justice Josue N. Bellosillo relies upon the lack of authority on the part of the Sangguniang Panlungsod of Puerto Princesa to enact Ordinance No. 15, Series of 1992, on the theory that the subject thereof is within the jurisdiction and responsibility of the Bureau of Fisheries and Aquatic Resources (BFAR) under P.D. No. 704, otherwise known as the Fisheries Decree of 1975; and that, in any event, the Ordinance is unenforceable for lack of approval by the Secretary of the Department of Natural Resources (DNR), likewise in accordance with P.D. No. 704.

The majority is unable to accommodate this view. The jurisdiction and responsibility of the BFAR under P. D. no. 704, over the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country is not all-encompassing. First, Section 4 thereof excludes from such jurisdiction and responsibility municipal waters, which shall be under the municipal or city government concerned, except insofar as fishpens and seaweed culture in municipal in municipal centers are concerned. This section provides, however, that all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary of the Department of Natural Resources for appropriate action and shall have full force and effect only upon his approval.[42]

Second, it must at once be pointed out that the BFAR is no longer under the Department of Natural Resources

(now Department of Environment and Natural Resources). Executive Order No. 967 of 30 June 1984 transferred the BFAR from the control and supervision of the Minister (formerly Secretary) of Natural Resources to the Ministry of Agriculture and Food (MAF) and converted it into a mere staff agency thereof, integrating its functions with the regional offices of the MAF.

In Executive Order No. 116 of 30 January 1987, which reorganized the MAF, the BFAR was retained as an attached agency of the MAF. And under the Administrative Code of 1987,[43] the BFAR is placed under the Title concerning the Department of Agriculture.[44]

Therefore, it is incorrect to say that the challenged Ordinance of the City of Puerto Princesa is invalid or unenforceable because it was not approved by the Secretary of the DENR. If at all, the approval that should be sought would be that of the Secretary of the Department of Agriculture (not DENR) of municipal ordinances affecting fishing and fisheries in municipal waters has been dispensed with in view of the following reasons:

(1) Section 534 (Repealing Clause) of the LGC expressly repeals or amends Section 16 and 29 of P.D. No. 704[45] insofar that they are inconsistent with the provisions of the LGC.

(2) As discussed earlier, under the general welfare clause of the LGC, local government units have the power, inter alia, to enact ordinances to enhance the right of the people to a balanced ecology. It likewise specifically vests municipalities with the power to grant fishery privileges in municipal waters, and impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing; and to prosecute other methods of fishing; and to prosecute any violation of the provisions of applicable fishing laws.[46] Finally, it imposes upon the sangguniang bayan, the sangguniang panlungsod, and the sangguniang panlalawigan the duty to enact ordinances to “[p]rotect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing... and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or of ecological imbalance.”[47]

In closing, we commend the Sangguniang Panlungsod of the City of Puerto Princesa and Sangguniang Panlalawigan of the Province of Palawan for exercising the requisite political will to enact urgently needed legislation to protect and enhance the marine environment, thereby sharing in the herculean task of arresting the tide of ecological destruction. We hope that other local government units shall now be roused from their lethargy and adopt a more vigilant stand in the battle against the decimation of our legacy to future generations. At this time, the repercussions of any further delay in their response may prove disastrous, if not, irreversible.

WHEREFORE, the instant petition is DISMISSED for lack of merit and the temporary restraining order issued on 11 November 1993 is LIFTED.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Padilla, Vitug, Panganiban, and Torres, Jr., JJ., concur.

Romero, Melo, Puno, and Francisco, JJ., joined the ponencias of Justices Davide and Mendoza. Bellosillo, J., see dissenting opinion. Kapunan and Hermosisima, Jr., JJ., join Justice Bellosillo in his dissenting opinion.

Mendoza, see concurring opinion.

Regalado, J., on official leave.

[1] None, however, exists in Puerto Princesa City.

[2] Petitioners filed their Memorandum on 24 October 1994. Respondents City Mayor Hagedorn and Members of the Sangguniang Panlungsod of the City of Puerto Princesa filed their Memorandum on 25 January 1995, while respondents Governor Socrates and Members of the Sangguniang Panlalawigan of Palawan filed their Memorandum on 31 January 1995.

[3] Annex “D” of Petition, Rollo, 35.

[4] Annex “E” of Petition; id, 36.

[5] Annex “A” to “A-5” inclusive of Urgent Plea for the Immediate Issuance of Temporary Restraining Order, Rollo, 86 et seq.

[6] VICENTE J. FRANCISCO, *The Revised Rules of Court in the Philippines, Criminal Procedure*, 582 (2nd ed. 1969), citing *U.S. v. Pompeya*, 31 Phil. 245 [1915].

[7] *Acharon v. Purisima*, 13 SCRA 309, 311 [1965]; *Cruz v. Court of Appeals*, 194 SCRA 145, 152-153 [1991]; *Yap v. Intermediate Appellate Court*, 220 SCRA 245, 253 [1993]; *People v. Bans*, supra note 7.

[8] *Liberty Insurance Corporation v. Court of Appeals*, 222 SCRA 37 [1993]; *Lasco v. United Nations Revolving Fund for Natural Resources Exploration*, 241 SCRA 681, 684 [1995].

[9] See *Mendoza v. Court of Appeals*, 201 SCRA 343 [1991]; *People v. Bans*, supra note 7.

[10] Rollo, 25.

[11] *Macasiano v. National Housing Authority*, 224 SCRA 236, 243 [1993], citing *Remotigue v. Osmeña*, 21 SCRA 837 [1967]; *Rural Bank of Olongapo v. Commissioner of Land Registration*, 102 SCRA 794 [1981]; and *Allied Broadcasting Center v. Republic of the Philippines*, 190 SCRA 782 [1990].

[12] *Philnabank Employees Association v. Hon. Estanislao*, 227 SCRA 804, 811 [1993].

[13] 172 SCRA 415, 423-424 [1989], reiterated in *Manalo v. Gloria*, 236 SCRA 130, 138-139 [1994].

[14] 217 SCRA 633, 652 [1993].

[15] *La Union Electric Cooperative Inc. v. Yaranon*, 179 SCRA 828, 836 [1989]; *Francisco v. Permskul*, 173 SCRA 324, 333 [1989].

[16] See *Peralta v. Commission on Elections*, 82 SCRA 30, 55 [1978].

[17] *Paredes v. Executive Secretary*, 128 SCRA 6, 11 [1984], citing *Yu Cong Eng v. Trinidad*, 47 Phil. 385 [1925]. See also *Aris(Phil.) Inc. v. NLRC*, 200 SCRA 246, 255-256 [1991].

[18] Although the intent of the framers was to have the terms refer to those “who lived a hand-to-mouth existence.,” JOAQUIN G. BERNAS, *THE INTENT OF THE 1986 CONSITUTION WRITERS* 964 (1995).

[19] *Webster's Third New International Dictionary* 1381 [1993].

[20] *Webster's*, supra., 2279.

[21] III Record of the Constitutional Commission, 50.

[22] Section 16, Article II.

[23] 224 SCRA 792, 804-805 [1993].

[24] Section 149.

[25] Section 447 [a] [1] [vi]; Section 458 [a] [1] [vi]; Section 468 [a] [1] [vi].

[26] Section 2(a).

[27] Section 3, Article X.

[28] Section 5(a).

[29] Section 17 (e).

[30] Section 17 [b] [2] [I].

[31] Section 131 [r], LGC.

[32] Sec. 4, R.A. No. 7611.

[33] Section 458 [a] [1] [vi]; Section 468 [a] [1] [vi].

[34] Section 3[3], R.A. No. 7611.

[35] Jay Batongbacal, The Coastal Environment and the Small-Scale Fisherfolk: Advocacy for Community-Based Coastal Zone Management, 66 Philippine Law Journal [December 1991].

[36] Anthony Spaeth, Reef Killers, TIME Magazine, 3 June 1996, 49,50.

[37] Anthony Spaeth, Reef Killers, TIME Magazine, 3 June 1996, 49,50.

[38] Batongbacal, 168.

[39] Spaeth, 51.

[40] Id.

[41] Batongbacal, 168.

[42] Said section reads:

SEC. 4. Jurisdiction of the Bureau.--- The Bureau shall have jurisdiction and responsibility in the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country except municipal waters which shall be under the municipal or city government concerned: Provided, That fishpens and seaweed culture in municipal centers shall be under the jurisdiction of the Bureau: Provided, further That all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary for appropriate action and shall have full force and effect only upon his approval. The Bureau shall also have authority to regulate and supervise the production, capture and gathering of fish and fishery/aquatic products.

The Bureau shall prepare and implement, upon approval of the Fishery Industry Development Council, a Fishery Industry Development Program.

[43] Executive Order No. 292.

[44] Section 20, Chapter 4, Title IV, Book IV.

[45] These sections read as follows:

SEC. 16. License, lease, and permit.--- No person shall exploit, occupy, produce, culture, capture or gather fish, or fry or fingerling of any species of fish or fishery/aquatic products, or engage in any fishery activity in Philippine or municipal waters without a license, lease or permit: Provided, That when due to destruction wrought upon fishponds, fishpens or fish nurseries, by typhoon, floods and other fortuitous events, or due to speculation, monopolistic and other pernicious practices which tend to create an artificial shortage of fry and/or fingerling, the supply of fish and fishery/aquatic products can reasonably be expected to fall below the usual demand therefor and the price thereof, to increase, the Secretary, upon recommendation of the Director, is hereby authorized to fix a fair and reasonable price for fry and fingerling of any species of fish, and in so doing and when necessary, fix different price levels for various areas or regions taking into account such variable factors as availability, accessibility to transportation facilities, packing and crating, and to regulate the movement, shipment and transporting of such fry and fingerling: Provided, Further, That the price so fixed shall guarantee the gatherers of fry a just and equitable return for their labor: Provided, Finally, That any administrative order issued by the Secretary to implement the foregoing shall take effect immediately, the provisions of Section 7 hereof to the contrary notwithstanding.

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C. MUNICIPAL FISHERIES

SEC. 29. Grant of fishery privileges.--- A municipal or city council, conformably with an ordinance duly approved by the Secretary pursuant to Section 4 hereof may:

a. grant to the highest qualified bidder the exclusive privilege of constructing and operating fish corrals, oyster culture beds, or of gathering of “bangus” fry, or the fry of other species, in municipal waters for a period not exceeding five (5) years: Provided, That in the zoning and classification of municipal waters for purposes of awarding, through public bidding, areas for the construction or operation of fish corrals, oyster culture bed, or the gathering of fry, the municipal or city council shall set aside not more than one-fifth (1/5) of the area, earmarked for the gathering of fry, as may be designated by the Bureau, as government “bangus” fry reservation: Provided, Further, That no fish corral shall be constructed within two hundred (200) meters of another fish corral in marine fisheries, or one hundred (100) meters in freshwater fisheries, unless they belong to the same licensee, but in no case shall the distance be less than sixty (60) meters, except in waters less than two (2) meters deep at low tide, or unless previously approved by the Secretary;

b. authorize the issuance to qualified persons of license for the operation of fishing boats three (3) gross tons or less, or for the privilege of fishing in municipal waters with nets, traps or other fishing gear: Provided, That it shall be beyond the power of the municipal or city council to impose a license for the privilege of gathering marine mollusca or the shells thereof, for pearling boats and pearl divers, or for prospecting, collecting or gathering spongers or other aquatic products, or for the culture of fishery/aquatic products: Provided, Further, That a licensee under this paragraph shall not operate within two hundred (200) meters of any fish corral licensed by the municipality except when the licensee is the owner or operator of the fish corral but in no case within sixty (60) meters of said corral. The municipal or city council shall furnish the Bureau, for statistical purposes, on forms which shall be furnished by the Bureau, such information and data on fishery matters as are reflected in such forms.

[46] Section 149.

[47] Section 447 [a] [1] [vi]; Section 458 [a] [1] [vi]; Section 468 [a] [1] [vi].

DISSENTING OPINION

BELLOSILLO, J.:

It is settled rule that where the provisions of the law are clear and unambiguous there is no room for interpretation. The duty of the court is only to apply the law. The exception to such rule cannot be justified on the sole basis of good motives or noble objectives. For it is also basic that the end does not justify the means.

The petition raises significant constitutional questions. While petitioners apparently instituted the action to enjoin their criminal prosecution, the issue boils down to whether the subject ordinances of Palawan and Puerto Princesa are valid and enforceable as to authorize the criminal prosecution of those charged with violation thereof.

Notwithstanding the procedural limitations strictly applied in the majority opinion to render the petition dismissible on grounds of prematurity and lack of real interest in the controversy, the case clearly falls under the exceptions allowed by law. The petition, I submit, can be properly treated as a special civil action for certiorari and prohibition under Rule 65 of the Rules of Court to correct errors of jurisdiction committed by the lower court arising from the implementation of a void ordinance. Even if the purpose of the petition is for declaratory relief, if the petition has far-reaching implication and raises questions that should be resolved as they involve national interest, it may be treated as a special civil action under Rule 65.[1] The mere absence of a prior motion to quash the Information in the trial court should not prevent the accused, petitioners herein, from seeking to render null and void the criminal proceedings below.

In criminal cases, when the constitutionality or validity of a law or ordinance is essentially involved, the same may be raised at any stage of the proceedings. It can also be considered by the appellate court at any time if it involves the jurisdiction of the lower court.[2] Further, under Sec. 8, Rule 117, of the Rules on Criminal Procedure, the failure of the accused to assert any ground of a motion to quash before he pleads to the Complaint or Information either because he did not file a motion to quash or failed to allege the same in the motion shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy.

Petitioners are proper parties to set aside the proceedings in the trial court. A proper party is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of. Petitioners have been criminally charged and arrested for alleged violation of the ordinances in question. Consequently, unless the trial court is enjoined from continuing with the proceedings, petitioners are in danger of being convicted and punished under ordinances which they allege to be invalid and ineffective. In fact this Court initially recognized the real interest of petitioners in instituting the action when it issued a restraining order directing Judge Angel R. Miclat to cease and desist until further orders from proceeding with the arraignment and pre-trial of *People v. Alfredo Tano, et al.*, Crim. Case No. 11223, for violation of Resolution No. 2-93 of the Sangguniang Panlalawigan of Palawan, and Ordinance No. 15-92 of the Sangguniang Panlungsod of Puerto Princesa City.

The question to be resolved is whether Resolution No. 2-93, Office Order No. 23 and Ordinance No. 15-92 are constitutional, valid and enforceable. By considering the purpose and objective of the ordinances as laudable, the majority adopts the affirmative view in consonance with the general welfare clause and principle of devolution well-rooted in the Local Government Code of 1991.

While I agree with the majority that the local leaders of Palawan and Puerto Princesa City be commended for their efforts to uplift and protect the environment and natural resources within their areas, the general welfare clause is not the sole criterion to determine the validity or constitutionality of the ordinances. In *Magtajas v. Pryce Properties Corporation*,[3] we reiterated that the well-established tests of a valid ordinance are: (a) It must not

contravene the Constitution or any statute; (b) It must not be unfair or oppressive; (c) It must not be partial or discriminatory; (d) It must not prohibit but may regulate trade; (e) It must be general and consistent with public policy; and, (f) It must not be unreasonable.

As admitted by the majority, among our existing statutes on fishing and fishery or aquatic resources are P.D. Nos. 704, 1015 and 1219. P.D. No. 704 is titled “Revising and Consolidating All Laws and Decrees Affecting Fishing and Fisheries.” With the enactment of the Local Government Code of 1991, only Secs.16 and 29 of P.D. No. 704 were expressly repealed. All the rest of the provisions of P.D. No. 704 remain valid and effective, Sec. 4 of which is enlightening—

SEC. 4. Jurisdiction of the Bureau (of Fisheries and Aquatic Resources).--- The Bureau shall have jurisdiction and responsibility in the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country except municipal waters which shall be under the municipal or city government concerned: Provided, That fishpens and seaweed culture in municipal centers shall be under the jurisdiction of the Bureau: Provided, further, That all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary for appropriate action and shall have full force and effect only upon his approval. The Bureau shall also have authority to regulate and supervise the production, capture and gathering of fish and fishery/aquatic products.

There is no doubt that under P.D. No. 704 fishing, fishery and aquatic resources in municipal waters are under the jurisdiction of the municipal or city government concerned. However, the same decree imposes a mandatory requirement directing municipal or city governments to submit ordinances enacted pertinent to fishing and fishery resources to the Secretary of Agriculture who now has control and supervision over the Bureau of Fisheries and Aquatic Resources (BFAR). The ordinances will attain full force and effect only upon the approval of the Secretary of Agriculture.

Ordinance 15-92 of Puerto Princesa City, admittedly, was not submitted to the Secretary of Agriculture through the BFAR for approval. Such failure of compliance with the law prevented it from becoming valid and effective. Consequently, Office Order No. 23 of the Mayor of Puerto Princesa City which seeks to implement and enforce Ordinance No. 15-92 is also ineffective as there is nothing to implement.

To say that Sec. 4 of P.D. No. 704 was impliedly repealed by the Local Government Code is gratuitous. For, if it was the intention of the legislature to dispense the requirement of prior approval by the Secretary of Agriculture of ordinances pertinent to fishery resources, it would have expressly repealed Sec. 4 when, in fact, it did so with Secs. 16 and 29 of P.D. No. 704. Cases abound holding that a repeal by implication is not presumed or favored considering that the legislature is presumed to be aware of existing laws; ordinarily, if it intends to revoke a statute it would manifest such intention in express terms.[4] Before such a repeal is deemed to exist it should be shown that the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnancy clear and convincing in character. The language used in the latter statute must be such as to render it irreconcilable with what has been formerly enacted. An inconsistency that falls short of that standard does not suffice. In fact, there is no inconsistency between the Local Government Code and P.D. No. 704 as amended. While the Local Government Code vests power upon the local government to enact ordinances for the general welfare of its inhabitants, such power is subject to certain limitations imposed by the Code itself and by other statutes. When the legislature failed to repeal Sec. 4 of P.D. No. 704 it accepted and recognized a limitation on the power of the local government to enact ordinances relative to matters affecting fishery and aquatic resources. A reading of particular provisions of the Local Government Code itself will reveal that devolution on the powers of the local government pertaining to the protection of environment is limited and not all-encompassing, as will be discussed in the succeeding paragraphs.

Further, while the Local Government Code is a general law on the powers, responsibilities and composition of different local government units, P.D. No. 704 is a special law dealing with the protection and conservation of fishing and aquatic resources including those in the municipal waters. Hence, the special law should prevail over the general law.

There is also P.D. No. 1015 which vests upon the Secretary of Agriculture the authority to establish closed seasons. Another existing law on fisheries which has not been repealed by the Local Government Code is P.D. No. 1219, which provides for the exploration, exploitation, utilization and conservation of coral resources. Section 4 thereof provides that the decree shall be implemented by the Secretary of Environment and Natural Resources who shall have jurisdiction and responsibility in the exploration, exploitation, utilization and conservation of coral resources. Section 6 authorizes the Secretary to issue special permit to any person or institution to gather in limited quantities any coral for scientific or educational purposes. Section 10 empowers the Secretary to promulgate rules and regulations for the implementation of this law.

It is true that police power can be exercised through the general welfare clause. But, while police power is inherent in a state, it is not so in municipal corporations or local governments. In order that a local government may exercise police power, there must be a legislative grant which necessarily sets the limits for the exercise of power.[5] In this case, Congress has enacted the Local Government Code which provides the standards as well as the limitations in the exercise of the police power by the local government unit.

Section 2 of the Local Government Code provides for a system of decentralization whereby local government units are given more powers, authority, responsibilities and resources, and the process shall proceed from the national government to the local government units. However, under Sec. 3, par. (i), of the Local Government Code, the operative principles of decentralization upon the environment and natural resources are not absolute when it is provided therein that “local government units shall share with the national government the responsibility in the management and maintenance of ecological balance within their territorial jurisdiction, subject to the provisions of this Code and national policies.” The national policies mentioned here refer to existing policies which the DENR and other government agencies concerned with the environment may implement at any given moment. The national policies are embodied in existing laws, rules and regulations pertaining to environment and natural resources, such as P.D. Nos. 704 and 1219 relating to fishery resources. The above provision was crafted to make sure that local government enactments do not supplant or negate national government policies on environment.[6] This is precisely the reason why the Local Government Code did not repeal Sec. 4 of P.D. No. 704 requiring prior submission to and approval by the Secretary of Agriculture of ordinances relative to fishery and aquatic resources. Needless to stress, the approval of the Secretary is necessary in order to ensure that these ordinances are in accordance with the laws on fisheries and national policies. Likewise, the jurisdiction of the Secretary of Environment and Natural Resources over coral resources under P.D. No. 1219 remains.

The core of the devolution adopted by the Local Government Code is found in Sec. 17 thereof which reiterates the basic services and facilities to be rendered by the local governments. With respect to the protection and conservation of fisheries, Sec. 17, par. 2 (I), specifically provides that the municipality shall conduct “extension and on-site research services and facilities related to agriculture and fishery activities which include dispersal of livestock and poultry, fingerlings and other seeding materials for aquaculture xxxx and enforcement of fishery laws in municipal waters including the conservation of mangroves xxxx” The power devolved upon the municipality under the Local Government Code is the enforcement of existing fishery laws of the State and not the enactment thereof. While a local government unit may adopt ordinances upon subjects covered by law or statute, such ordinances should be in accordance with and not repugnant to the law.[7] In view thereof, ordinances

which may be enacted by the municipality or city should be pursuant to the provisions of P.D. Nos. 704, 1015 and 1219. Thus, under the provisions of Secs. 447, par. 1 (vi), 458, par. 1 (vi) and 468, par. 1 (vi), the municipality, city and province respectively may approve ordinances protecting the environment by specifically penalizing only those acts which endanger the environment such as dynamite fishing and other forms of destructive fishing which are already prohibited under P.D. Nos. 704 and 1219, and other laws on illegal fishing.[8]

The questioned ordinances may also be struck down for being not only a prohibitory legislation but also an unauthorized exercise of delegation of powers. An objective, however worthy or desirable it may be, such as the protection and conservation of our fisheries in this case, can be attained by a measure that does not encompass too wide a field. The purpose can be achieved by reasonable restrictions rather than by absolute prohibition. Local governments are not possessed with prohibitory powers but only regulatory powers under the general welfare clause.[9] They cannot therefore exceed the powers granted to them by the Code by altogether prohibiting fishing and selling for five (5) years all live fishes through Ordinance No. 15-92 and coral organisms through Ordinance No. 2-93 involving even lawful methods of fishing.

These prohibitions are tantamount to the establishment of a closed season for fish and aquatic resources which authority is not among those powers vested by the Local Government Code to the local government units. For the authority to establish a closed season for fisheries is vested upon the Secretary of Agriculture by virtue of P.D. Nos. 704 and 1015 and in the Secretary of Environment and Natural Resources pursuant to P.D. No. 1219 in relation to coral resources. The power of the local governments is confined and limited to ensuring that these national fishery laws are implemented and enforced within their territorial jurisdictions. Hence, any memorandum of agreement which might have been executed by the Department of Agriculture or Department of Environment and Natural Resources granting additional powers and functions to the local governments which are not vested upon the latter by the Local Government Code because such powers are covered by existing statutes, is an undue delegation of power and, consequently, null and void.

The majority also cites R.A. No. 7611, otherwise known as the Strategic Environmental Plan (SEP) for Palawan Act, as proof of the power of the local governments of Palawan and Puerto Princesa City to issue the assailed ordinances. Although the objectives of R.A. No. 7611 and of the ordinances are one and the same, i.e., the protection, conservation and development of natural resources, the former does not grant additional powers to the local governments pertaining to the environment. In fact, the law adopts a comprehensive framework which shall serve to direct and guide local governments and national government agencies in the implementation of programs and projects affecting Palawan. With the enactment of this Act, the local governments are mandated to coordinate and align their developmental plans, projects and budgets in accord with the framework of the SEP. It can be said that this is another limitation on the exercise of police power by the local governments of Palawan and Puerto Princesa City because the governance, implementation and policy direction of the SEP shall be exercised by the Palawan Council for Sustainable Development (PCSD) which is under the Office of the President.

Finally, I find reasonable Resolution No. 2-93 of Palawan and Ordinance No. 15-92 of Puerto Princesa City. The prohibitions set forth are not germane to the accomplishment of their goals. Ordinance No. 15-92 is aimed to free effectively the marine resources of Puerto Princesa from cyanide and other obnoxious substances. But the means to achieve this objective borders on the excessive and irrational, for the edict would absolutely ban the shipment of live fishes and lobsters out of the city for a period of five (5) years without prohibiting cyanide fishing itself which is the professed goal of the ordinance. The purpose of the Resolution No. 2-93, on the other hand, is to protect and preserve all marine coral-dwelling organisms from devastation and destruction by illegal fishing activities, e.g., dynamite fishing, sodium cyanide fishing, and the use of other obnoxious substances. But in absolutely prohibiting the catching, gathering, buying and shipment of live fishes and marine coral resources by

any means including those lawfully executed or done in the pursuit of legitimate occupation, the ordinance overstepped the reasonable limits and boundaries of its *raison d'être*. This I cannot help viewing as plain arbitrariness masquerading as police power. For the consequent deprivation of the main source of livelihood of the people of Palawan can only be regarded as utter deprivation of this awesome power of the State.

For all the foregoing, I vote to grant the petition.

[1] *Alliance of Government Workers v. Minister of Labor*, G.R. No. 60403, 3 August 1983, 124 SCRA 1.

[2] *San Miguel Brewery, Inc. v. Magno*, No. L-2187, 29 September 1967, 21 SCRA 292.

[3] G.R. No. 111097, 20 July 1994, 234 SCRA 255.

[4] *Almeda v. Florentino*, No. –23800, 21 December 1965, 15 SCRA 514.

[5] *Martin, Ruperto G.*, *Public Corporations*, Rev. Ed., p. 46, citing *Elliot Municipal Corporations*, p. 33.

[6] *Pimentel, Aquilino*, *The Local Government Code of 1991, Key to National Development*, 1993, p. 19.

[7] See Note 5, p. 69, citing *U.S. v. Chan Tienco*, 25 Phil. 89 (1913).

[8] See Note 6, p. 73.

[9] *Cruz v. Paras*, Nos. L-42571-72, 25 July 1983, 123 SCRA 569.

CONCURRING OPINION

MENDOZA, J.,

I fully concur in the opinion of the Court written by Justice Davide. I write separately to emphasize two points which I believe are important. The first is the need to uphold the presumption of validity of the ordinances in this case in view of the total absence of evidence to undermine their factual basis. The second is the need not to allow shortcircuiting of the normal process of adjudication on the mere plea that unless we take cognizance of petitions like this, by-passing the trial courts, alleged violations of constitutional rights will be left unprotected, when the matter can very well be looked into by trial courts and in fact should be brought there.

The ordinances in question in this case are conservation measures which the local governments of Palawan have adopted in view of the widespread destruction caused by cyanide fishing of corals within their territorial waters. At the very least, these ordinances must be presumed valid in the absence of evidence to show that the necessary factual foundation for their enactment does not exist. Their invalidation at this point can result in the untimely exoneration of otherwise guilty parties on the basis of doubtful constitutional claims.

Ordinance No. 2-93, which the Sangguniang Panlalawigan of Palawan adopted in 1993, prohibits, for a period of five years, the “catching, gathering, possessing, buying, selling and shipment” of live fish and lobsters. As originally enacted, the prohibition applied to eight species of fish and lobsters caught in the waters of Palawan, namely, “1. Family: Scaridae (Mameng), 2. *Epinephelus Fasciatus* (Suno), 3. *Cromileptes altivelis* (Panther or Señorita), lobster (below 200 grams and spawning), 4. *Tridacna Gigas* (Giant Clams or Taklobo and other species), 5. *Pinctada Margaritifera* (Mother Pearl Oysters), 6. *Penaeus Monodon* (Tiger Prawn- breeder size or mother), 7. *Epinephelus Suillus* (Loba or Green Grouper) and 8. Family: Balistidae (Tropical Aquarium Fishes).”[1] Later, however, the ordinance was amended to limit the ban to three species only, namely: mameng (scaridae), panther or señorita (*cromileptes altivelis*) and ornamental or aquarium fishes (balistidae). Violation of

the ordinance is punishable by a fine of P5,000.00 and/or imprisonment of not less than 6 nor more than 12 months and confiscation of the paraphernalia and equipment used in the commission of the offense.[2]

Ordinance No. 2-93 was adopted by the Sangguniang Panlalawigan on the basis of a 1992 study submitted by the Department of Agriculture,[3] showing that, as a result of the use of cyanide and other noxious substances for fishing, only 5% of the coral reefs in the Province of Palawan remained in excellent condition as fish sanctuaries and habitats, while 75% was heavily damaged.

The rampant use of cyanide has been encouraged by the lucrative trade in live fishes which are shipped not only to Manila but also abroad, principally to Hongkong, Taiwan and Malaysia. The fishes are sold to gourmet restaurants because of the great demand for exotic food, to aquariums and to pet shops. In its issue of July 19, 1993, Time Magazine[4] reported that the illicit trade in live animals is the third biggest contraband business in the world, after drugs and arms, and identified the Philippines as a major source of tropical fishes for the global traffic in live fishes.

The use of cyanide enables fishermen to catch fish alive and in commercial quantity in a way not possible with the use of such traditional methods as hook and line, fish traps, baklad and the like, which allows only limited catch and often results in injuries to fishes and the loss of their scales, thereby reducing their survival for transportation abroad.[5] Cyanide does not kill fish but only stuns them. The stunned creatures are then scooped up and placed in containers ready for shipment across borders, national and transnational. What cyanide does, however, is poison the fragile reefs and cause them to die and cease as fish habitats.[6]

Concern over the use of cyanide in fishing all its ill effect on the marine environment also prompted the Sangguniang Panlungsod of Puerto Princesa to pass Ordinance No. 15-92, which makes it unlawful for any person or business enterprise or company “to ship out from Puerto Princesa City to any point of destinations either via aircraft or seacraft of any live fish and lobster except SEA BASS, CATFISH, MUDFISH and MILKFISH FRIES.”[7] The ban is for five years, from January 1, 1993 to January 1, 1998. The penalty for violation of the ordinance is a fine of not more than P5,000.00 or imprisonment of not more than 12 months.[8]

To enforce the ordinance, the mayor of Puerto Princesa ordered the inspection of cargoes of live fish and lobsters leaving the city by air or sea. Inspectors are to ascertain if the shipper has a permit issued by the office of the city mayor. Any cargo of live fish and lobster without a permit from the mayor’s office will be “held for proper disposition.”[9]

The ordinances in question are police power measures, enacted by the Province of Palawan and the City of Puerto Princesa, pursuant to the Local Government Code of 1991 which makes it in fact their duty to enact measures to “protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing...”[10] There is no basis for the claim in the dissenting opinion that the subject of these ordinances lies within the competence of the national government. For the matter concerns a local problem, namely, the destruction of aquatic resources in the Province of Palawan. For this reason the Solicitor General asked for leave to withdraw from this case. On the other hand, the Department of Agriculture submitted its report on the extent of the devastation of coral reefs caused by illegal fishing to the Sangguniang Panlalawigan of Palawan and thereby left the solution of the problem to be worked out by the local authorities. It would therefore set back the policy of decentralization were this Court to sustain such a claim.

Indeed, petitioners’ challenge to the validity of the ordinances does not rest on the claim that the ordinances are beyond the power of local governments to enact but on the ground that they deprive petitioners of their means of livelihood and occupation and for that reason violate the Constitution of the Philippines. For support, petitioners invoke the following constitutional provisions:

ART. XII, §2....

The state shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays and lagoons.

ART. XIII, §1: The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good.

Id., §7: The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

I cannot see how these provisions can, in any way, lend support to petitioners' contention that the ordinances violate the Constitution. These provisions refer to the duty of the State to protect the nation's marine resources for the exclusive use and enjoyment of Filipino citizens, to the preferential right of subsistence fishermen in the use of such communal marine resources, and to their right to be protected, even in offshore fishing grounds, against foreign intrusion. There is no question here of Filipino preference over aliens in the use of marine resources. What is in issue is the protection of marine resources in the Province of Palawan. It was precisely to implement Art. XII, §2 that the ordinances in question were enacted. For, without these marine resources, it would be idle to talk of the rights of subsistence fishermen to be preferred in the use of these resources.

It has been held that "as underlying question of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute." [11] No evidence has been presented by petitioners to overthrow the factual basis of the ordinances--- that, as a result of the use of cyanide and other noxious substances for fishing, only 5% of the coral reefs in Palawan was in excellent condition, that 75% had been heavily destroyed, and that because of the thriving market for live fish and lobster here and abroad there was rampant illicit trade in live fish.

Nor has it been shown by petitioners that the local legislation here involved is arbitrary or unreasonable. It has been held: "if the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio... With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the court are both incompetent and unauthorized to deal..." [12]

It is contended that neither Provincial Ordinance No. 2-93 nor City Ordinance No. 15-92 prohibits cyanide fishing and therefore the prohibition against catching certain species of fish and their transportation is "excessive and irrational." It is further argued that the ban is unreasonable because it is not limited to cyanide fishing but includes even legitimate fishing.

The ban on the use of cyanide and other noxious substances is already provided for in other legislation. P.D. No. 534, §2 punishes fishing by means of "explosives, obnoxious or poisonous substances or by the use of electricity." Consequently, the ordinances in question can be seen as a necessary corollary of the prohibition against illegal fishing contained in this Decree. By prohibiting the catching of certain fishes and lobsters,

Ordinance No. 2-93 in effect discourages cyanide fishing because, as already stated, cyanide is preferred in catching fishes because it does not kill but only stuns them and thus preserves them for export to the world market.

On the other hand, the claim that the ordinance sweeps overboardly by “absolutely prohibit[ing] the catching, gathering, buying and shipment of live fishes and marine coral resources by any and all means including those lawfully executed or done in the pursuit of legitimate occupation” misconceives the principal purpose of the ordinance, which is not so much to prohibit the use of cyanide for fishing as to rebuild corals because of their destruction by cyanide fishing. This is clear from the “whereas” clauses of Resolution No. 33, accompanying Ordinance No. 2-93:

WHEREAS, scientific and factual researches and studies disclose that only five (5) percent of the corals of our province remain to be in excellent condition as habitat of marine coral dwelling aquatic organisms;

WHEREAS, it cannot be gainsaid that the destruction and devastation of the corals of our province where principally due to illegal fishing activities like dynamite fishing, sodium cyanide fishing, use of other obnoxious substances and other related activities;

WHEREAS, there is an imperative and urgent need to protect and preserve the existence of the remaining excellent corals and allow the devastated ones to reinvigorate and regenerate themselves into vitality within the span of five (5) years;

WHEREAS, Sec. 468, Par. 1, Sub-Par. VI of R.A. 7160 otherwise known as the Local Government Code of 1991 empowers the Sangguniang Panlalawigan to protect the environment and impose appropriate penalties [for] acts which endanger the environment such as dynamite fishing and other forms of destructive fishing among others;

The principal aim of the ordinance is thus the preservation and rehabilitation of the corals. Only indirectly is it also concerned with prohibiting the use of cyanide. That this is the aim of the ordinance can also be inferred from the fact that the ban imposed by it on the catching and gathering of fishes is for a limited period (5 years) calculated to be the time needed for the growth and regeneration of the corals. Were the purpose of the ordinance the prohibition of the use of cyanide for fishing, the ban would not be for a limited period only but for all time.

I am not much moved by the plea that the ordinances deprive small fishermen of their means of livelihood and occupation. The ban imposed by Ordinance No. 2-93, as amended, covers only three species, i.e., mameng (scaridae), panther or señorita (cromileptes altivelis) and ornamental aquarium fishes (balistidae), which are prized in the black market. With respect to other species, it is open season for legitimate fishermen. On the other hand, the ban imposed by Ordinance No. 15-92 allows the transportation and shipment of sea bass, catfish, mudfish and milkfish fries. The ban imposed by the two ordinances is limited to five years. It is thus limited both as to scope and as to period of effectivity. There is, on the other hand, the imperative necessity for measures to prevent the extinction of certain species of fish.

Indeed, the burden of showing that there is no reasonable relation between the end and the means adopted in this case is not on the local governments but on petitioners because of the presumption that a regulatory statute is valid in the absence of factual evidence to the contrary. As held in *United States v. Salaveria*,^[13] The presumption is all in favor of validity. ... The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject, and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to well being of the people... The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.”

Finally, petitioners question office Order no. 23, s. of 1993, of the city mayor of Puerto Princesa, for being allegedly vague. This order prohibits the transportation of fish outside the city without permit from the mayor's office. Petitioners contend that the order does not state under what condition a permit may be granted and, consequently, leaves it to the absolute discretion of the mayor when to grant and when to deny a permit. The questioned paragraph of the order states:

The purpose of the inspection is to ascertain whether the shipper possessed the requires Mayor's permit issued by this Office and the shipment id covered by invoice or clearance issued by the local office of the Bureau of Fisheries and Aquatic Resources and as to compliance with all other existing rules and regulations on the matter.

This contention is untenable. As the office order is intended to implement City Ordinance No. 15-92, resort must be made to the ordinance in order to determine the scope of such office order. As already noted, the ordinance prohibits the shipment out of Puerto Princesa of live fish and lobsters, with the exception of catfish, mudfish and milkfish fries.

Consequently, a permit may be denied if it is for the transportation of fishes which are covered by the ban, but not for those not covered by it. This is the common sense meaning of the office order in question. Criminal laws must be precisely drawn, but, as Justice Holmes once said, "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean." [14]

One final point. This case was brought to this Court on the bare bones of the ordinances, on the mere claim of the petitioner Alfredo Tano and his 83 copetitioners that they are subsistence fishermen. The constitutional protection refers to small fishermen who depend on the sea for their existence. Ten of the petitioners, led by Alfredo Tano, are accused in the Municipal Circuit Trial Court of possession of the species covered by Provincial Ordinance No. 2-93, While two, Roberto Lim and Virginia Lim, are charged with violation of the two ordinances in the City Prosecutor's Office. There is no telling from the records of this case whether petitioners are subsistence fishermen or simply impecunious individuals selling their catch to the big businessmen. The other petitioners are admittedly fish traders, members of the association of airline shippers, to whom the constitutional provisions obviously do not apply.

The judicial invalidation of the ordinances in this case could undermine the on-going trial of some of petitioners. Instead of leaving the determination of the validity of the ordinances to the trial court, where some of petitioners are facing charges, this Court will be shortcircuiting the criminal process by prematurely passing upon the constitutional questions and directly on the criminal liability of some of the petitioners. This is a task which should await the development of evidence of record.

Indeed because of the unsatisfactory abstractness of the record, this case should not have been brought here. The mere fact that some of petitioners are facing prosecution for validation of the ordinances is no reason for entertaining their suit. Our jurisdiction is limited to cases and controversies. Who are the petitioners? What is the impact of the ordinance on their economic situation? Are the factual bases of the two ordinances supported by evidence? These questions must be raised in the criminal trial or in a suit brought in the trial court so that facts necessary to adjudicate the constitutional questions can be presented. Nothing can take place of the flesh and blood of litigation to assess the actual operation of a statute and thus ground the judicial power more firmly.

Petitioners justify the filing of present action in this Court on the ground that constitutional questions must be raised at the earliest time. That is true, but it does not mean that the questions should be presented to the Supreme Court first hand. Moreover, the rule is not absolute. Constitutional questions like those invoked by petitioners can

be raised any time, even in a motion for reconsideration, if their resolution is necessary to the decision of an actual case or controversy, as our recent resolution[15]of the constitutionality of R.A. No. 7659, reimposing the death penalty, amply demonstrates.

[1] §§I and III.

[2] §IV.

[3] Quoted in Respondent's Comment on the Petition, p. 7.

[4] Toufexis, All God's Creatures Priced to Sell, Time, July 19, 1993, p. 32.

[5] Supra note 3 at p. 8.

[6] Supra note 4 at p. 34.

[7] §4.

[8] §5.

[9] Office Order No. 33, s. 1993.

[10] R.A. No. 7160, §458 (a) (1) (vi) and §468 (a) (1) (vi).

[11] Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor, 20 SCRA 849, 857 (1967), citing O'Gozman & Young v. Hartford Fire Ins. Co., 282 U.S. 255, 257, 75 L. Ed. 324, 328 (1931).

[12] Nebbia v. New York, 291 U.S. 502 (1934). See also Lansang v. Garcia, 42 SCRA 448, 481 (1971); People v. Ferrer, 48 SCRA 382 (1972).

[13] 39 Phil. 102, 111 (1918).

[14] Roschen v. Ward, 279 U.S. 337, 339, 73 L. Ed. 722, 728 (1929), quoted by this Court in Ermita-Malate Hotel and Motel Operators Ass'n v. City Mayor, 20 SCRA at 867.

[15] People v. Echegaray, G.R. No. 117472, Feb. 7, 1997 (death penalty statute valid).

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