

HON. FRANKLIN M. DRILON, IN HIS CAPACITY AS SECRETARY OF JUSTICE, PETITIONER, VS. MAYOR ALFREDO S. LIM, VICE-MAYOR JOSE L. ATIENZA, CITY TREASURER ANTHONY ACEVEDO, SANGGUNIANG P...

G.R. No. 112497. August 04, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

The principal issue in this case is the constitutionality of Section 187 of the Local Government Code reading as follows:

Procedure For Approval And Effectivity Of Tax Ordinances And Revenue Measures; Mandatory Public Hearings. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof; Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Pursuant thereto, the Secretary of Justice had, on appeal to him of four oil companies and a taxpayer, declared Ordinance No. 7794, otherwise known as the Manila Revenue Code, null and void for non-compliance with the prescribed procedure in the enactment of tax ordinances and for containing certain provisions contrary to law and public policy.[1]

In a petition for certiorari filed by the City of Manila, the Regional Trial Court of Manila revoked the Secretary's resolution and sustained the ordinance, holding inter alia that the procedural requirements had been observed. More importantly, it declared Section 187 of the Local Government Code as unconstitutional because of its vesture in the Secretary of Justice of the power of control over local governments in violation of the policy of local autonomy mandated in the Constitution and of the specific provision therein conferring on the President of the Philippines only the power of supervision over local governments.[2]

The present petition would have us reverse that decision. The Secretary argues that the annulled Section 187 is constitutional and that the procedural requirements for the enactment of tax ordinances as specified in the Local Government Code had indeed not been observed.

Parenthetically, this petition was originally dismissed by the Court for non-compliance with Circular 1-88, the Solicitor General having failed to submit a certified true copy of the challenged decision.[3] However, on motion for reconsideration with the required certified true copy of the decision attached, the petition was reinstated in

view of the importance of the issues raised therein.

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, BP 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation,[4] even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5 (2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.[5]

It is also emphasized that every court, including this Court, is charged with the duty of a purposeful hesitation before declaring a law unconstitutional, on the theory that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved. To doubt is to sustain. The presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

In the case before us, Judge Rodolfo C. Palattao declared Section 187 of the Local Government Code unconstitutional insofar as it empowered the Secretary of Justice to review tax ordinances and, inferentially, to annul them. He cited the familiar distinction between control and supervision, the first being "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter," while the second is "the power of a superior officer to see to it that lower officers perform their functions in accordance with law." [6] His conclusion was that the challenged section gave to the Secretary the power of control and not of supervision only as vested by the Constitution in the President of the Philippines. This was, in his view, a violation not only of Article X, specifically Section 4 thereof,[7] and of Section 5 on the taxing powers of local governments,[8] and the policy of local autonomy in general.

We do not share that view. The lower court was rather hasty in invalidating the provision.

Section 187 authorizes the Secretary of Justice to review only the constitutionality or legality of the tax ordinance and, if warranted, to revoke it on either or both of these grounds. When he alters or modifies or sets aside a tax ordinance, he is not also permitted to substitute his own judgment for the judgment of the local government that enacted the measure. Secretary Drilon did set aside the Manila Revenue Code, but he did not replace it with his own version of what the Code should be. He did not pronounce the ordinance unwise or unreasonable as a basis for its annulment. He did not say that in his judgment it was a bad law. What he found only was that it was illegal. All he did in reviewing the said measure was determine if the petitioners were performing their functions in

accordance with law, that is, with the prescribed procedure for the enactment of tax ordinances and the grant of powers to the city government under the Local Government Code. As we see it, that was an act not of control but of mere supervision.

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed. In the opinion of the Court, Secretary Drilon did precisely this, and no more nor less than this, and so performed an act not of control but of mere supervision.

The case of *Taule v. Santos*[9] cited in the decision has no application here because the jurisdiction claimed by the Secretary of Local Governments over election contests in the *Katipunan ng Mga Barangay* was held to belong to the Commission on Elections by constitutional provision. The conflict was over jurisdiction, not supervision or control.

Significantly, a rule similar to Section 187 appeared in the Local Autonomy Act, which provided in its Section 2 as follows:

A tax ordinance shall go into effect on the fifteenth day after its passage, unless the ordinance shall provide otherwise: Provided, however, That the Secretary of Finance shall have authority to suspend the effectivity of any ordinance within one hundred and twenty days after receipt by him of a copy thereof, if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, or confiscatory, or when it is contrary to declared national economy policy, and when the said Secretary exercises this authority the effectivity of such ordinance shall be suspended, either in part or as a whole, for a period of thirty days within which period the local legislative body may either modify the tax ordinance to meet the objections thereto, or file an appeal with a court of competent jurisdiction; otherwise, the tax ordinance or the part or parts thereof declared suspended, shall be considered as revoked. Thereafter, the local legislative body may not reimpose the same tax or fee until such time as the grounds for the suspension thereof shall have ceased to exist.

That section allowed the Secretary of Finance to suspend the effectivity of a tax ordinance if, in his opinion, the tax or fee levied was unjust, excessive, oppressive or confiscatory. Determination of these flaws would involve the exercise of judgment or discretion and not merely an examination of whether or not the requirements or limitations of the law had been observed; hence, it would smack of control rather than mere supervision. That power was never questioned before this Court but, at any rate, the Secretary of Justice is not given the same latitude under Section 187. All he is permitted to do is ascertain the constitutionality or legality of the tax measure, without the right to declare that, in his opinion, it is unjust, excessive, oppressive or confiscatory. He has no discretion on this matter. In fact, Secretary Drilon set aside the Manila Revenue Code only on two grounds, to wit, the inclusion therein of certain *ultra vires* provisions and non-compliance with the prescribed procedure in its enactment. These grounds affected the legality, not the wisdom or reasonableness, of the tax measure.

The issue of non-compliance with the prescribed procedure in the enactment of the Manila Revenue Code is another matter.

In his resolution, Secretary Drilon declared that there were no written notices of public hearings on the proposed Manila Revenue Code that were sent to interested parties as required by Art. 276(b) of the Implementing Rules of the Local Government Code nor were copies of the proposed ordinance published in three successive issues of a newspaper of general circulation pursuant to Art. 276(a). No minutes were submitted to show that the obligatory

public hearings had been held. Neither were copies of the measure as approved posted in prominent places in the city in accordance with Sec. 511(a) of the Local Government Code. Finally, the Manila Revenue Code was not translated into Pilipino or Tagalog and disseminated among the people for their information and guidance, conformably to Sec. 59(b) of the Code.

Judge Palattao found otherwise. He declared that all the procedural requirements had been observed in the enactment of the Manila Revenue Code and that the City of Manila had not been able to prove such compliance before the Secretary only because he had given it only five days within which to gather and present to him all the evidence (consisting of 25 exhibits) later submitted to the trial court.

To get to the bottom of this question, the Court acceded to the motion of the respondents and called for the elevation to it of the said exhibits. We have carefully examined every one of these exhibits and agree with the trial court that the procedural requirements have indeed been observed. Notices of the public hearings were sent to interested parties as evidenced by Exhibits G-1 to 17. The minutes of the hearings are found in Exhibits M, M-1, M-2, and M-3. Exhibits B and C show that the proposed ordinances were published in the Balita and the Manila Standard on April 21 and 25, 1993, respectively, and the approved ordinance was published in the July 3, 4, 5, 1993 issues of the Manila Standard and in the July 6, 1993 issue of Balita, as shown by Exhibits Q, Q-1, Q-2, and Q-3.

The only exceptions are the posting of the ordinance as approved but this omission does not affect its validity, considering that its publication in three successive issues of a newspaper of general circulation will satisfy due process. It has also not been shown that the text of the ordinance has been translated and disseminated, but this requirement applies to the approval of local development plans and public investment programs of the local government unit and not to tax ordinances.

We make no ruling on the substantive provisions of the Manila Revenue Code as their validity has not been raised in issue in the present petition.

WHEREFORE, the judgment is hereby rendered REVERSING the challenged decision of the Regional Trial Court insofar as it declared Section 187 of the Local Government Code unconstitutional but AFFIRMING its finding that the procedural requirements in the enactment of the Manila Revenue Code have been observed. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

[1] Annex "E," rollo, pp. 37-55.

[2] Annex "A," rollo, pp. 27-36.

[3] Rollo, p. 256.

[4] Sec. 19(1).

[5] Art. VIII, Sec. 4(2), Constitution.

[6] Mondano v. Silvosa, 97 Phil. 143; Hebron v. Reyes, 104 Phil. 175; Tecson v. Salas, 34 SCRA 282.

[7] Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces

with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

[8] Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

[9] 200 SCRA 512.

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