

CONRADO L. TIU, JUAN T. MONTELIBANO JR. AND ISAGANI M. JUNGCO, PETITIONERS, VS. COURT OF APPEALS, HON. TEOFISTO T. GUINGONA JR., BASES CONVERSION AND DEVELOPMENT AUTHORITY, SUBI...

G.R. No. 127410. January 20, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The constitutional right to equal protection of the law is not violated by an executive order, issued pursuant to law, granting tax and duty incentives only to businesses and residents within the “secured area” of the Subic Special Economic Zone and denying them to those who live within the Zone but outside such “fenced-in” territory. The Constitution does not require absolute equality among residents. It is enough that all persons under like circumstances or conditions are given the same privileges and required to follow the same obligations. In short, a classification based on valid and reasonable standards does not violate the equal protection clause.

The Case

Before us is a petition for review under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals’ Decision[1] promulgated on August 29, 1996, and Resolution[2] dated November 13, 1996, in CA-GR SP No. 37788.[3] The challenged Decision upheld the constitutionality and validity of Executive Order No. 97-A (EO 97-A), according to which the grant and enjoyment of the tax and duty incentives authorized under Republic Act No. 7227 (RA 7227) were limited to the business enterprises and residents within the fenced-in area of the Subic Special Economic Zone (SSEZ).

The assailed Resolution denied the petitioners’ motion for reconsideration.

The Facts

On March 13, 1992, Congress, with the approval of the President, passed into law RA 7227 entitled “An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.” Section 12 thereof created the Subic Special Economic Zone and granted thereto special privileges, as follows:

“SEC. 12. Subic Special Economic Zone. -- Subject to the concurrence by resolution of the sangguniang panlungsod of the City of Olongapo and the sangguniang bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the Office of the President.

Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the zone as provided herein.

“The abovementioned zone shall be subject to the following policies:

“(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

“(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

“(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

“In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

“(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and future shall be allowed and maintained in the Subic Special Economic Zone;

“(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operations of banks and other financial institutions within the Subic Special Economic Zone;

“(f) Banking and finance shall be liberalized with the establishment of foreign currency depository units of local commercial banks and offshore banking units of foreign banks with minimum Central Bank regulation;

“(g) Any investor within the Subic Special Economic Zone whose continuing investment shall not be less than two hundred fifty thousand dollars (\$250,000), his/her spouse and dependent children under twenty-one (21) years of age, shall be granted permanent resident status within the Subic Special Economic Zone. They shall have the freedom of ingress and egress to and from the Subic Special Economic Zone without any need of special authorization from the Bureau of Immigration and Deportation. The Subic Bay Metropolitan Authority referred to in Section 13 of this Act may also issue working visas renewable every two (2) years to foreign executives and other aliens possessing highly technical skills which no Filipino within the Subic Special Economic Zone possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent residence status and working visas by the Subic Bay Metropolitan Authority shall be reported to the Bureau of Immigration and Deportation within thirty (30) days after issuance thereof;

“(h) The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own security and fire-fighting forces; and

“(i) Except as herein provided, the local government units comprising the Subic Special Economic Zone shall retain their basic autonomy and identity. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991.”

On June 10, 1993, then President Fidel V. Ramos issued Executive Order No. 97 (EO 97), clarifying the application of the tax and duty incentives thus:

“Section 1. On Import Taxes and Duties -- Tax and duty-free importations shall apply only to raw materials, capital goods and equipment brought in by business enterprises into the SSEZ. Except for these items, importations of other goods into the SSEZ, whether by business enterprises or resident individuals, are subject to taxes and duties under relevant Philippine laws.

“The exportation or removal of tax and duty-free goods from the territory of the SSEZ to other parts of the Philippine territory shall be subject to duties and taxes under relevant Philippine laws.

“Section 2. On All Other Taxes. -- In lieu of all local and national taxes (except import taxes and duties), all business enterprises in the SSEZ shall be required to pay the tax specified in Section 12(c) of R.A. No. 7227.”

Nine days after, on June 19, 1993, the President issued Executive Order No. 97-A (EO 97-A), specifying the area within which the tax-and-duty-free privilege was operative, viz.:

“Section 1.1. The Secured Area consisting of the presently fenced-in former Subic Naval Base shall be the only completely tax and duty-free area in the SSEFPZ [Subic Special Economic and Free Port Zone]. Business enterprises and individuals (Filipinos and foreigners) residing within the Secured Area are free to import raw materials, capital goods, equipment, and consumer items tax and duty-free. Consumption items, however, must be consumed within the Secured Area. Removal of raw materials, capital goods, equipment and consumer items out of the Secured Area for sale to non-SSEFPZ registered enterprises shall be subject to the usual taxes and duties, except as may be provided herein”

On October 26, 1994, the petitioners challenged before this Court the constitutionality of EO 97-A for allegedly being violative of their right to equal protection of the laws. In a Resolution dated June 27, 1995, this Court referred the matter to the Court of Appeals, pursuant to Revised Administrative Circular No. 1-95.

Incidentally, on February 1, 1995, Proclamation No. 532 was issued by President Ramos. It delineated the exact metes and bounds of the Subic Special Economic and Free Port Zone, pursuant to Section 12 of RA 7227.

Ruling of the Court of Appeals

Respondent Court held that “there is no substantial difference between the provisions of EO 97-A and Section 12 of RA 7227. In both, the ‘Secured Area’ is precise and well-defined as ‘xxx the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.’” The appellate court concluded that such being the case, petitioners could not claim that EO 97-A is unconstitutional, while at the same time maintaining the validity of RA 7227.

The court a quo also explained that the intention of Congress was to confine the coverage of the SSEZ to the “secured area” and not to include the “entire Olongapo City and other areas mentioned in Section 12 of the law.” It relied on the following deliberations in the Senate:

“Senator Paterno. Thank you, Mr. President. My first question is the extent of the economic zone. Since this will be a free port, in effect, I believe that it is important to delineate or make sure that the delineation will be quite precise[. M]y question is: Is it the intention that the entire of Olongapo City, the Municipality of Subic

and the Municipality of Dinalupihan will be covered by the special economic zone or only portions thereof?

“Senator Shahani. Only portions, Mr. President. In other words, where the actual operations of the free port will take place.

“Senator Paterno. I see. So, we should say, ‘COVERING THE DESIGNATED PORTIONS OR CERTAIN PORTIONS OF OLONGAPO CITY, SUBIC AND DINALUPIHAN’ to make it clear that it is not supposed to cover the entire area of all of these territories.

“Senator Shahani. So, the Gentleman is proposing that the words ‘CERTAIN AREAS’ ...

“The President. The Chair would want to invite the attention of the Sponsor and Senator Paterno to letter ‘C,’ which says: ‘THE PRESIDENT OF THE PHILIPPINES IS HEREBY AUTHORIZED TO PROCLAIM, DELINEATE AND SPECIFY THE METES AND BOUNDS OF OTHER SPECIAL ECONOMIC ZONES WHICH MAY BE CREATED IN THE CLARK MILITARY RESERVATIONS AND ITS EXTENSIONS.’

“Probably, this provision can be expanded since, apparently, the intention is that what is referred to in Olongapo as Metro Olongapo is not by itself ipso jure already a special economic zone.

“Senator Paterno. That is correct.

“The President. Someone, some authority must declare which portions of the same shall be the economic zone. Is it the intention of the author that it is the President of the Philippines who will make such delineation?

“Senator Shahani. Yes, Mr. President.”

The Court of Appeals further justified the limited application of the tax incentives as being within the prerogative of the legislature, pursuant to its “avowed purpose [of serving] some public benefit or interest.” It ruled that “EO 97-A merely implements the legislative purpose of [RA 7227].”

Disagreeing, petitioners now seek before us a review of the aforecited Court of Appeals Decision and Resolution.

The Issue

Petitioners submit the following issue for the resolution of the Court:

“[W]hether or not Executive Order No. 97-A violates the equal protection clause of the Constitution. Specifically the issue is whether the provisions of Executive Order No. 97-A confining the application of R.A. 7227 within the secured area and excluding the residents of the zone outside of the secured area is discriminatory or not.”[4]

The Court’s Ruling

The petition[5] is bereft of merit.

Main Issue:

The Constitutionality of EO 97-A

Citing Section 12 of RA 7227, petitioners contend that the SSEZ encompasses (1) the City of Olongapo, (2) the Municipality of Subic in Zambales, and (3) the area formerly occupied by the Subic Naval Base. However, EO 97-A, according to them, narrowed down the area within which the special privileges granted to the entire zone would apply to the present “fenced-in former Subic Naval Base” only. It has thereby excluded the residents of the first two components of the zone from enjoying the benefits granted by the law. It has effectively discriminated against them, without reasonable or valid standards, in contravention of the equal protection guarantee.

On the other hand, the solicitor general defends, on behalf of respondents, the validity of EO 97-A, arguing that Section 12 of RA 7227 clearly vests in the President the authority to delineate the metes and bounds of the SSEZ.

He adds that the issuance fully complies with the requirements of a valid classification.

We rule in favor of the constitutionality and validity of the assailed EO. Said Order is not violative of the equal protection clause; neither is it discriminatory. Rather, we find real and substantive distinctions between the circumstances obtaining inside and those outside the Subic Naval Base, thereby justifying a valid and reasonable classification.

The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.[6] The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.[7] Explaining the nature of the equal protection guarantee, the Court in *Ichong v. Hernandez*[8] said:

“The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either [by] the object to which it is directed or by [the] territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.”

Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.[9]

We first determine the purpose of the law. From the very title itself, it is clear that RA 7227 aims primarily to accelerate the conversion of military reservations into productive uses. Obviously, the “lands covered under the 1947 Military Bases Agreement” are its object. Thus, the law avows this policy:

“SEC. 2. Declaration of Policies. -- It is hereby declared the policy of the Government to accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic military reservations and their extensions (John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station and Capas Relay Station), to raise funds by the sale of portions of Metro Manila military camps, and to apply said funds as provided herein for the development and conversion to productive civilian use of the lands covered under the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended.”

To undertake the above objectives, the same law created the Bases Conversion and Development Authority, some of whose relevant defined purposes are:

“(b) To adopt, prepare and implement a comprehensive and detailed development plan embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;

“(c) To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses;”

Further, in creating the SSEZ, the law declared it a policy to develop the zone into a “self-sustaining, industrial, commercial, financial and investment center.”[10]

From the above provisions of the law, it can easily be deduced that the real concern of RA 7227 is to convert the

lands formerly occupied by the US military bases into economic or industrial areas. In furtherance of such objective, Congress deemed it necessary to extend economic incentives to attract and encourage investors, both local and foreign. Among such enticements are:[11] (1) a separate customs territory within the zone, (2) tax-and-duty-free importations, (3) restructured income tax rates on business enterprises within the zone, (4) no foreign exchange control, (5) liberalized regulations on banking and finance, and (6) the grant of resident status to certain investors and of working visas to certain foreign executives and workers.

We believe it was reasonable for the President to have delimited the application of some incentives to the confines of the former Subic military base. It is this specific area which the government intends to transform and develop from its status quo ante as an abandoned naval facility into a self-sustaining industrial and commercial zone, particularly for big foreign and local investors to use as operational bases for their businesses and industries. Why the seeming bias for big investors? Undeniably, they are the ones who can pour huge investments to spur economic growth in the country and to generate employment opportunities for the Filipinos, the ultimate goals of the government for such conversion. The classification is, therefore, germane to the purposes of the law. And as the legal maxim goes, “The intent of a statute is the law.”[12]

Certainly, there are substantial differences between the big investors who are being lured to establish and operate their industries in the so-called “secured area” and the present business operators outside the area. On the one hand, we are talking of billion-peso investments and thousands of new jobs. On the other hand, definitely none of such magnitude. In the first, the economic impact will be national; in the second, only local. Even more important, at this time the business activities outside the “secured area” are not likely to have any impact in achieving the purpose of the law, which is to turn the former military base to productive use for the benefit of the Philippine economy. There is, then, hardly any reasonable basis to extend to them the benefits and incentives accorded in RA 7227. Additionally, as the Court of Appeals pointed out, it will be easier to manage and monitor the activities within the “secured area,” which is already fenced off, to prevent “fraudulent importation of merchandise” or smuggling.

It is well-settled that the equal-protection guarantee does not require territorial uniformity of laws.[13] As long as there are actual and material differences between territories, there is no violation of the constitutional clause. And of course, anyone, including the petitioners, possessing the requisite investment capital can always avail of the same benefits by channeling his or her resources or business operations into the fenced-off free port zone.

We believe that the classification set forth by the executive issuance does not apply merely to existing conditions. As laid down in RA 7227, the objective is to establish a “self-sustaining, industrial, commercial, financial and investment center” in the area. There will, therefore, be a long-term difference between such investment center and the areas outside it.

Lastly, the classification applies equally to all the resident individuals and businesses within the “secured area.” The residents, being in like circumstances or contributing directly to the achievement of the end purpose of the law, are not categorized further. Instead, they are all similarly treated, both in privileges granted and in obligations required.

All told, the Court holds that no undue favor or privilege was extended. The classification occasioned by EO 97-A was not unreasonable, capricious or unfounded. To repeat, it was based, rather, on fair and substantive considerations that were germane to the legislative purpose.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision and Resolution are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Martinez, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 20-37.

[2] Ibid., pp. 39-55.

[3] Decided by the Special Thirteenth Division, composed of Associate Justices Artemon D. Luna (chairman and ponente), Ramon A. Barcelona and Salvador J. Valdez Jr.

[4] Petition, p. 3; rollo, p. 6.

[5] This case was deemed submitted for resolution upon receipt of Respondent BCDA's Memorandum on September 7, 1998.

[6] *Dumlao v. Comelec*, 95 SCRA 392, 404, January 22, 1980; *Himagan v. People*, 237 SCRA 538, October 7, 1994. See also *JMM Promotion and Management, Inc. v. Court of Appeals*, 260 SCRA 319, 331-332, August 5, 1996; *Conference of Maritime Manning Agencies, Inc. v. POEA*, 243 SCRA 666, 677, April 21, 1995; *Ceniza v. Comelec*, 95 SCRA 763, 772, January 28, 1980; *Vera v. Cuevas*, 90 SCRA 379, May 31, 1979; *Tolentino v. Secretary of Finance*, 235 SCRA 630, August 25, 1994.

[7] *Dumlao v. Comelec*, *ibid.*, p. 405; citing *Peralta v. Comelec*, 82 SCRA 30 (1978); *Rafael v. Embroidery and Apparel Control and Inspection Board*, 21 SCRA 336 (1967); and *Ichong v. Hernandez*, 101 Phil 1155 (1957). See also *JMM Promotion and Management, Inc. v. Court of Appeals*, *ibid.*; *Philippine Judges Association v. Prado*, 227 SCRA 703, November 11, 1993; *Villegas v. Hiu Chiong Tsai Pao Ho*, 86 SCRA 270, 275 (1978).

[8] *Ibid.*, p. 1164, per Labrador, J.; citing 2 Cooley, *Constitutional Limitations*, 824-825. See further discussion on pp. 1175-1180.

[9] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 124; quoting *People v. Cayat*, 68 Phil 12, 18 (1939).

[10] § 12 (a), RA 7227.

[11] § 12 (b, c, d, e & f).

[12] *Philippine National Bank v. Office of the President*, 252 SCRA 5, January 18, 1996; *Eugenio v. Drilon*, 252 SCRA 106, January 22, 1996.

[13] Bernas, *supra*, p. 132.

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