HON. JOSE D. LINA, JR., SANGGUNIANG PANLALAWIGAN OF LAGUNA, AND HON. CALIXTO CATAQUIZ, PETITIONERS, VS. HON. FRANCISCO DIZON PAÑO AND TONY CALVENTO, RESPONDENTS.

G.R. No. 129093. August 30, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For our resolution is a petition for review on certiorari seeking the reversal of the decision[1] dated February 10, 1997 of the Regional Trial Court of San Pedro, Laguna, Branch 93, enjoining petitioners from implementing or enforcing Kapasiyahan Bilang 508, Taon 1995, of the Sangguniang Panlalawigan of Laguna and its subsequent Order[2] dated April 21, 1997 denying petitioners' motion for reconsideration.

On December 29, 1995, respondent Tony Calvento was appointed agent by the Philippine Charity Sweepstakes Office (PCSO) to install Terminal OM 20 for the operation of lotto. He asked Mayor Calixto Cataquiz, Mayor of San Pedro, Laguna, for a mayor's permit to open the lotto outlet. This was denied by Mayor Cataquiz in a letter dated February 19, 1996. The ground for said denial was an ordinance passed by the Sangguniang Panlalawigan of Laguna entitled Kapasiyahan Blg. 508, T. 1995 which was issued on September 18, 1995. The ordinance reads:

> ISANG KAPASIYAHAN TINUTUTULAN ANG MGA "ILLEGAL GAMBLING" LALO NA ANG LOTTO SA LALAWIGAN NG LAGUNA
>
> SAPAGKA'T, ang sugal dito sa lalawigan ng Laguna ay talamak na;
>
> SAPAGKA'T, ang sugal ay nagdudulot ng masasamang impluwensiya lalo't higit sa mga kabataan;
>
> KUNG KAYA'T DAHIL DITO, at sa mungkahi nina Kgg. Kgd. Juan M. Unico at Kgg. Kgd. Gat-Ala A. Alatiit, pinangalawahan ni Kgg. Kgd. Meliton C. Larano at buong pagkakaisang sinangayunan ng lahat ng dumalo sa pulong;
>
> IPINASIYA, na tutulan gaya ng dito ay mahigpit na TINUTUTULAN ang ano mang uri ng sugal dito sa lalawigan ng Laguna lalo't higit ang Lotto;
>
> IPINASIYA PA RIN na hilingin tulad ng dito ay hinihiling sa Panlalawigang pinuno ng Philippine National Police (PNP) Col. [illegible] na mahigpit na pag-ibayuhin ang pagsugpo sa lahat ng uri ng illegal na sugal sa buong lalawigan ng Laguna lalo na ang "Jueteng".[3]

As a result of this resolution of denial, respondent Calvento filed a complaint for declaratory relief with prayer for preliminary injunction and temporary restraining order. In the said complaint, respondent Calvento asked the Regional Trial Court of San Pedro Laguna, Branch 93, for the following reliefs: (1) a preliminary injunction or temporary restraining order, ordering the defendants to refrain from implementing or enforcing Kapasiyahan Blg. 508, T. 1995; (2) an order requiring Hon. Municipal Mayor Calixto R. Cataquiz to issue a business permit for the operation of a lotto outlet; and (3) an order annulling or declaring as invalid Kapasiyahan Blg. 508, T. 1995.

On February 10, 1997, the respondent judge, Francisco Dizon Paño, promulgated his decision enjoining the petitioners from implementing or enforcing resolution or Kapasiyahan Blg. 508, T. 1995. The dispositive portion of said decision reads:

> WHEREFORE, premises considered, defendants, their agents and representatives are hereby enjoined from implementing or enforcing resolution or kapasiyahan blg. 508, T. 1995 of the Sangguniang Panlalawigan ng Laguna prohibiting the operation of the lotto in the province of Laguna.
>
> SO ORDERED.[4]

Petitioners filed a motion for reconsideration which was subsequently denied in an Order dated April 21, 1997, which reads:

> Acting on the Motion for Reconsideration filed by defendants Jose D. Lina, Jr. and the Sangguniang Panlalawigan of Laguna, thru counsel, with the opposition filed by plaintiff's counsel and the comment thereto filed by counsel for the defendants which were duly noted, the Court hereby denies the motion for lack of merit.
>
> SO ORDERED.[5]

On May 23, 1997, petitioners filed this petition alleging that the following errors were committed by the respondent trial court:

> I
>
> THE TRIAL COURT ERRED IN ENJOINING THE PETITIONERS FROM IMPLEMENTING KAPASIYAHAN BLG. 508, T. 1995 OF THE SANGGUNIANG PANLALAWIGAN OF LAGUNA PROHIBITING THE OPERATION OF THE LOTTO IN THE PROVINCE OF LAGUNA.
>
> II
>
> THE TRIAL COURT FAILED TO APPRECIATE THE ARGUMENT POSITED BY THE PETITIONERS THAT BEFORE ANY GOVERNMENT PROJECT OR PROGRAM MAY BE IMPLEMENTED BY THE NATIONAL AGENCIES OR OFFICES, PRIOR CONSULTATION AND APPROVAL BY THE LOCAL GOVERNMENT UNITS CONCERNED AND OTHER CONCERNED SECTORS IS REQUIRED.

Petitioners contend that the assailed resolution is a valid policy declaration of the Provincial Government of Laguna of its vehement objection to the operation of lotto and all forms of gambling. It is likewise a valid exercise of the provincial government's police power under the General Welfare Clause of Republic Act 7160, otherwise known as the Local Government Code of 1991.[6] They also maintain that respondent's lotto operation is illegal because no prior consultations and approval by the local government were sought before it was implemented contrary to the express provisions of Sections 2 (c) and 27 of R.A. 7160.[7]

For his part, respondent Calvento argues that the questioned resolution is, in effect, a curtailment of the power of the state since in this case the national legislature itself had already declared lotto as legal and permitted its operations around the country.[8] As for the allegation that no prior consultations and approval were sought from the sangguniang panlalawigan of Laguna, respondent Calvento contends this is not mandatory since such a requirement is merely stated as a declaration of policy and not a self-executing provision of the Local Government Code of 1991.[9] He also states that his operation of the lotto system is legal because of the authority given to him by the PCSO, which in turn had been granted a franchise to operate the lotto by Congress.[10]

The Office of the Solicitor General (OSG), for the State, contends that the Provincial Government of Laguna has no power to prohibit a form of gambling which has been authorized by the national government.[11] He argues

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that this is based on the principle that ordinances should not contravene statutes as municipal governments are merely agents of the national government. The local councils exercise only delegated legislative powers which have been conferred on them by Congress. This being the case, these councils, as delegates, cannot be superior to the principal or exercise powers higher than those of the latter. The OSG also adds that the question of whether gambling should be permitted is for Congress to determine, taking into account national and local interests. Since Congress has allowed the PCSO to operate lotteries which PCSO seeks to conduct in Laguna, pursuant to its legislative grant of authority, the province's Sangguniang Panlalawigan cannot nullify the exercise of said authority by preventing something already allowed by Congress.

The issues to be resolved now are the following: (1) whether Kapasiyahan Blg. 508, T. 1995 of the Sangguniang Panlalawigan of Laguna and the denial of a mayor's permit based thereon are valid; and (2) whether prior consultations and approval by the concerned Sanggunian are needed before a lotto system can be operated in a given local government unit.

The entire controversy stemmed from the refusal of Mayor Cataquiz to issue a mayor's permit for the operation of a lotto outlet in favor of private respondent. According to the mayor, he based his decision on an existing ordinance prohibiting the operation of lotto in the province of Laguna. The ordinance, however, merely states the "objection" of the council to the said game. It is but a mere policy statement on the part of the local council, which is not self-executing. Nor could it serve as a valid ground to prohibit the operation of the lotto system in the province of Laguna. Even petitioners admit as much when they stated in their petition that:

> 5.7. The terms of the Resolution and the validity thereof are express and clear. The Resolution is a policy declaration of the Provincial Government of Laguna of its vehement opposition and/or objection to the operation of and/or all forms of gambling including the Lotto operation in the Province of Laguna.[12]

As a policy statement expressing the local government's objection to the lotto, such resolution is valid. This is part of the local government's autonomy to air its views which may be contrary to that of the national government's. However, this freedom to exercise contrary views does not mean that local governments may actually enact ordinances that go against laws duly enacted by Congress. Given this premise, the assailed resolution in this case could not and should not be interpreted as a measure or ordinance prohibiting the operation of lotto.

The game of lotto is a game of chance duly authorized by the national government through an Act of Congress. Republic Act 1169, as amended by Batas Pambansa Blg. 42, is the law which grants a franchise to the PCSO and allows it to operate the lotteries. The pertinent provision reads:

> Section 1. The Philippine Charity Sweepstakes Office.- The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine, as amended, and shall have the authority:
>
> A. To hold and conduct charity sweepstakes races, lotteries, and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.

This statute remains valid today. While lotto is clearly a game of chance, the national government deems it wise and proper to permit it. Hence, the Sangguniang Panlalawigan of Laguna, a local government unit, cannot issue a resolution or an ordinance that would seek to prohibit permits. Stated otherwise, what the national legislature expressly allows by law, such as lotto, a provincial board may not disallow by ordinance or resolution.

In our system of government, the power of local government units to legislate and enact ordinances and

resolutions is merely a delegated power coming from Congress. As held in Tatel vs. Virac,[13] ordinances should not contravene an existing statute enacted by Congress. The reasons for this is obvious, as elucidated in Magtajas v. Pryce Properties Corp.[14]

> Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.
>
> Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature (citing Clinton vs. Ceder Rapids, etc. Railroad Co., 24 Iowa 455).

Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.

> The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.[15]

Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization". It does not make local governments sovereign within the state or an "imperium in imperio".[16]

To conclude our resolution of the first issue, respondent mayor of San Pedro, cannot avail of Kapasiyahan Bilang 508, Taon 1995, of the Provincial Board of Laguna as justification to prohibit lotto in his municipality. For said resolution is nothing but an expression of the local legislative unit concerned. The Board's enactment, like spring water, could not rise above its source of power, the national legislature.

As for the second issue, we hold that petitioners erred in declaring that Sections 2 (c) and 27 of Republic Act 7160, otherwise known as the Local Government Code of 1991, apply mandatorily in the setting up of lotto outlets around the country. These provisions state:

> Section 2. Declaration of Policy. x x x
>
> (c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.
>
> Section 27. Prior Consultations Required. No project or program shall be implemented by government

> authorities unless the consultations mentioned in Section 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained; Provided, that occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

From a careful reading of said provisions, we find that these apply only to national programs and/or projects which are to be implemented in a particular local community. Lotto is neither a program nor a project of the national government, but of a charitable institution, the PCSO. Though sanctioned by the national government, it is far fetched to say that lotto falls within the contemplation of Sections 2 (c) and 27 of the Local Government Code.

Section 27 of the Code should be read in conjunction with Section 26 thereof.[17] Section 26 reads:

> Section 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, range-land, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Thus, the projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Section 26 and 27, to wit, those that: (1) may cause pollution; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented. Obviously, none of these effects will be produced by the introduction of lotto in the province of Laguna.

Moreover, the argument regarding lack of consultation raised by petitioners is clearly an afterthought on their part. There is no indication in the letter of Mayor Cataquiz that this was one of the reasons for his refusal to issue a permit. That refusal was predicated solely but erroneously on the provisions of Kapasiyahan Blg. 508, Taon 1995, of the Sangguniang Panlalawigan of Laguna.

In sum, we find no reversible error in the RTC decision enjoining Mayor Cataquiz from enforcing or implementing the Kapasiyahan Blg. 508, T. 1995, of the Sangguniang Panlalawigan of Laguna. That resolution expresses merely a policy statement of the Laguna provincial board. It possesses no binding legal force nor requires any act of implementation. It provides no sufficient legal basis for respondent mayor's refusal to issue the permit sought by private respondent in connection with a legitimate business activity authorized by a law passed by Congress.

WHEREFORE, the petition is DENIED for lack of merit. The Order of the Regional Trial Court of San Pedro, Laguna enjoining the petitioners from implementing or enforcing Resolution or Kapasiyahan Blg. 508, T. 1995, of the Provincial Board of Laguna is hereby AFFIRMED. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 18-20.

[2] Id. at 21.

[3] Records, pp. 8-8-A.

[4] Rollo, p. 20.

[5] Id. at 21.

[6] Id. at 13.

[7] Section 2. Declaration of Policy. x x x

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

Section 27. Prior Consultations Required. No project or program shall be implemented by government authorities unless the consultations mentioned in Section 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained; Provided, that occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

[8] Rollo, p. 25.

[9] Id. at. 27.

[10] Id. at 28.

[11] Id. at 58-61.

[12] Id. at 13.

[13] 207 SCRA 157, 161 (1992).

[14] Magtajas vs. Pryce Properties Corp., 234 SCRA 255, 272-273 (1994).

[15] Id. at 273.

[16] Basco vs. Phil. Amusement and Gaming Corporation, 197 SCRA 52, 65 (1991).

[17] Aquilino Q. Pimentel, Jr., The Local Government Code of 1991, p. 124.

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