

RODOLFO S. BELTRAN, DOING BUSINESS UNDER THE NAME AND STYLE, OUR LADY OF FATIMA BLOOD BANK, FELY G. MOSALE, DOING BUSINESS UNDER THE NAME AND STYLE, MOTHER SEATON BLOOD BANK; PE...

G.R. No. 133640. November 25, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before this Court are petitions assailing primarily the constitutionality of Section 7 of Republic Act No. 7719, otherwise known as the "National Blood Services Act of 1994," and the validity of Administrative Order (A.O.) No. 9, series of 1995 or the Rules and Regulations Implementing Republic Act No. 7719.

G.R. No. 133640,[1] entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank, et al., vs. The Secretary of Health" and G.R. No. 133661,[2] entitled "Doctors Blood Bank Center vs. Department of Health" are petitions for certiorari and mandamus, respectively, seeking the annulment of the following: (1) Section 7 of Republic Act No. 7719; and, (2) Administrative Order (A.O.) No. 9, series of 1995. Both petitions likewise pray for the issuance of a writ of prohibitory injunction enjoining the Secretary of Health from implementing and enforcing the aforementioned law and its Implementing Rules and Regulations; and, for a mandatory injunction ordering and commanding the Secretary of Health to grant, issue or renew petitioners' license to operate free standing blood banks (FSBB).

The above cases were consolidated in a resolution of the Court En Banc dated June 2, 1998.[3]

G.R. No. 139147,[4] entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank, et al., vs. The Secretary of Health," on the other hand, is a petition to show cause why respondent Secretary of Health should not be held in contempt of court.

This case was originally assigned to the Third Division of this Court and later consolidated with G.R. Nos. 133640 and 133661 in a resolution dated August 4, 1999.[5]

Petitioners comprise the majority of the Board of Directors of the Philippine Association of Blood Banks, a duly registered non-stock and non-profit association composed of free standing blood banks.

Public respondent Secretary of Health is being sued in his capacity as the public official directly involved and charged with the enforcement and implementation of the law in question.

The facts of the case are as follows:

Republic Act No. 7719 or the National Blood Services Act of 1994 was enacted into law on April 2, 1994. The Act seeks to provide an adequate supply of safe blood by promoting voluntary blood donation and by regulating blood banks in the country. It was approved by then President Fidel V. Ramos on May 15, 1994 and was subsequently published in the Official Gazette on August 18, 1994. The law took effect on August 23, 1994.

On April 28, 1995, Administrative Order No. 9, Series of 1995, constituting the Implementing Rules and Regulations of said law was promulgated by respondent Secretary of the Department of Health (DOH).[6]

Section 7 of R.A. 7719 [7] provides:

"Section 7. Phase-out of Commercial Blood Banks - All commercial blood banks shall be phased-out over a period of two (2) years after the effectivity of this Act, extendable to a maximum period of two (2) years by the Secretary."

Section 23 of Administrative Order No. 9 provides:

"Section 23. Process of Phasing Out. -- The Department shall effect the phasing-out of all commercial blood banks over a period of two (2) years, extendible for a maximum period of two (2) years after the effectivity of R.A. 7719. The decision to extend shall be based on the result of a careful study and review of the blood supply and demand and public safety."[8]

Blood banking and blood transfusion services in the country have been arranged in four (4) categories: blood centers run by the Philippine National Red Cross (PNRC), government-run blood services, private hospital blood banks, and commercial blood services.

Years prior to the passage of the National Blood Services Act of 1994, petitioners have already been operating commercial blood banks under Republic Act No. 1517, entitled "An Act Regulating the Collection, Processing and Sale of Human Blood, and the Establishment and Operation of Blood Banks and Blood Processing Laboratories." The law, which was enacted on June 16, 1956, allowed the establishment and operation by licensed physicians of blood banks and blood processing laboratories. The Bureau of Research and Laboratories (BRL) was created in 1958 and was given the power to regulate clinical laboratories in 1966 under Republic Act No. 4688. In 1971, the Licensure Section was created within the BRL. It was given the duty to enforce the licensure requirements for blood banks as well as clinical laboratories. Due to this development, Administrative Order No. 156, Series of 1971, was issued. The new rules and regulations triggered a stricter enforcement of the Blood Banking Law, which was characterized by frequent spot checks, immediate suspension and communication of such suspensions to hospitals, a more systematic record-keeping and frequent communication with blood banks through monthly information bulletins. Unfortunately, by the 1980s, financial difficulties constrained the BRL to reduce the frequency of its supervisory visits to the blood banks.[9]

Meanwhile, in the international scene, concern for the safety of blood and blood products intensified when the dreaded disease Acute Immune Deficiency Syndrome (AIDS) was first described in 1979. In 1980, the International Society of Blood Transfusion (ISBT) formulated the Code of Ethics for Blood Donation and Transfusion. In 1982, the first case of transfusion-associated AIDS was described in an infant. Hence, the ISBT drafted in 1984, a model for a national blood policy outlining certain principles that should be taken into consideration. By 1985, the ISBT had disseminated guidelines requiring AIDS testing of blood and blood products for transfusion.[10]

In 1989, another revision of the Blood Banking Guidelines was made. The DOH issued Administrative Order No. 57, Series of 1989, which classified banks into primary, secondary and tertiary depending on the services they provided. The standards were adjusted according to this classification. For instance, floor area requirements varied according to classification level. The new guidelines likewise required Hepatitis B and HIV testing, and that the blood bank be headed by a pathologist or a hematologist.[11]

In 1992, the DOH issued Administrative Order No. 118-A institutionalizing the National Blood Services Program (NBSP). The BRL was designated as the central office primarily responsible for the NBSP. The program paved

the way for the creation of a committee that will implement the policies of the program and the formation of the Regional Blood Councils.

In August 1992, Senate Bill No. 1011, entitled "An Act Promoting Voluntary Blood Donation, Providing for an Adequate Supply of Safe Blood, Regulating Blood Banks and Providing Penalties for Violations Thereof, and for other Purposes" was introduced in the Senate.[12]

Meanwhile, in the House of Representatives, House Bills No. 384, 546, 780 and 1978 were being deliberated to address the issue of safety of the Philippine blood bank system. Subsequently, the Senate and House Bills were referred to the appropriate committees and subsequently consolidated.[13]

In January of 1994, the New Tropical Medicine Foundation, with the assistance of the U.S. Agency for International Development (USAID) released its final report of a study on the Philippine blood banking system entitled "Project to Evaluate the Safety of the Philippine Blood Banking System." It was revealed that of the blood units collected in 1992, 64.4 % were supplied by commercial blood banks, 14.5% by the PNRC, 13.7% by government hospital-based blood banks, and 7.4% by private hospital-based blood banks. During the time the study was made, there were only twenty-four (24) registered or licensed free-standing or commercial blood banks in the country. Hence, with these numbers in mind, the study deduced that each commercial blood bank produces five times more blood than the Red Cross and fifteen times more than the government-run blood banks. The study, therefore, showed that the Philippines heavily relied on commercial sources of blood. The study likewise revealed that 99.6% of the donors of commercial blood banks and 77.0% of the donors of private-hospital based blood banks are paid donors. Paid donors are those who receive remuneration for donating their blood. Blood donors of the PNRC and government-run hospitals, on the other hand, are mostly voluntary.[14]

It was further found, among other things, that blood sold by persons to blood commercial banks are three times more likely to have any of the four (4) tested infections or blood transfusion transmissible diseases, namely, malaria, syphilis, Hepatitis B and Acquired Immune Deficiency Syndrome (AIDS) than those donated to PNRC.[15]

Commercial blood banks give paid donors varying rates around P50 to P150, and because of this arrangement, many of these donors are poor, and often they are students, who need cash immediately. Since they need the money, these donors are not usually honest about their medical or social history. Thus, blood from healthy, voluntary donors who give their true medical and social history are about three times much safer than blood from paid donors.[16]

What the study also found alarming is that many Filipino doctors are not yet fully trained on the specific indications for blood component transfusion. They are not aware of the lack of blood supply and do not feel the need to adjust their practices and use of blood and blood products. It also does not matter to them where the blood comes from.[17]

On August 23, 1994, the National Blood Services Act providing for the phase out of commercial blood banks took effect. On April 28, 1995, Administrative Order No. 9, Series of 1995, constituting the Implementing Rules and Regulations of said law was promulgated by DOH.

The phase-out period was extended for two years by the DOH pursuant to Section 7 of Republic Act No. 7719 and Section 23 of its Implementing Rules and Regulations. Pursuant to said Act, all commercial blood banks should have been phased out by May 28, 1998. Hence, petitioners were granted by the Secretary of Health their licenses to open and operate a blood bank only until May 27, 1998.

On May 20, 1998, prior to the expiration of the licenses granted to petitioners, they filed a petition for certiorari

with application for the issuance of a writ of preliminary injunction or temporary restraining order under Rule 65 of the Rules of Court assailing the constitutionality and validity of the aforementioned Act and its Implementing Rules and Regulations. The case was entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank," docketed as G.R. No. 133640.

On June 1, 1998, petitioners filed an Amended Petition for Certiorari with Prayer for Issuance of a Temporary Restraining Order, writ of preliminary mandatory injunction and/or status quo ante order.[18]

In the aforementioned petition, petitioners assail the constitutionality of the questioned legal provisions, namely, Section 7 of Republic Act No. 7719 and Section 23 of Administrative Order No. 9, Series of 1995, on the following grounds: [19]

- The questioned legal provisions of the National Blood Services Act and its Implementing Rules violate the equal protection clause for irrationally discriminating against free standing blood banks in a manner which is not germane to the purpose of the law;
- The questioned provisions of the National Blood Services Act and its Implementing Rules represent undue delegation if not outright abdication of the police power of the state; and,
- The questioned provisions of the National Blood Services Act and its Implementing Rules are unwarranted deprivation of personal liberty.

On May 22, 1998, the Doctors Blood Center filed a similar petition for mandamus with a prayer for the issuance of a temporary restraining order, preliminary prohibitory and mandatory injunction before this Court entitled "Doctors Blood Center vs. Department of Health," docketed as G.R. No. 133661. [20] This was consolidated with G.R. No. 133640.[21]

Similarly, the petition attacked the constitutionality of Republic Act No. 7719 and its implementing rules and regulations, thus, praying for the issuance of a license to operate commercial blood banks beyond May 27, 1998. Specifically, with regard to Republic Act No. 7719, the petition submitted the following questions[22] for resolution:

- Was it passed in the exercise of police power, and was it a valid exercise of such power?
- Does it not amount to deprivation of property without due process?
- Does it not unlawfully impair the obligation of contracts?
- With the commercial blood banks being abolished and with no ready machinery to deliver the same supply and services, does R.A. 7719 truly serve the public welfare?

On June 2, 1998, this Court issued a Resolution directing respondent DOH to file a consolidated comment. In the same Resolution, the Court issued a temporary restraining order (TRO) for respondent to cease and desist from implementing and enforcing Section 7 of Republic Act No. 7719 and its implementing rules and regulations until further orders from the Court.[23]

On August 26, 1998, respondent Secretary of Health filed a Consolidated Comment on the petitions for certiorari and mandamus in G.R. Nos. 133640 and 133661, with opposition to the issuance of a temporary restraining order.[24]

In the Consolidated Comment, respondent Secretary of Health submitted that blood from commercial blood banks is unsafe and therefore the State, in the exercise of its police power, can close down commercial blood banks to protect the public. He cited the record of deliberations on Senate Bill No. 1101 which later became Republic Act

No. 7719, and the sponsorship speech of Senator Orlando Mercado.

The rationale for the closure of these commercial blood banks can be found in the deliberations of Senate Bill No. 1011, excerpts of which are quoted below:

Senator Mercado: I am providing over a period of two years to phase out all commercial blood banks. So that in the end, the new section would have a provision that states:

"ALL COMMERCIAL BLOOD BANKS SHALL BE PHASED OUT OVER A PERIOD OF TWO YEARS AFTER THE EFFECTIVITY OF THIS ACT. BLOOD SHALL BE COLLECTED FROM VOLUNTARY DONORS ONLY AND THE SERVICE FEE TO BE CHARGED FOR EVERY BLOOD PRODUCT ISSUED SHALL BE LIMITED TO THE NECESSARY EXPENSES ENTAILED IN COLLECTING AND PROCESSING OF BLOOD. THE SERVICE FEE SHALL BE MADE UNIFORM THROUGH GUIDELINES TO BE SET BY THE DEPARTMENT OF HEALTH."

I am supporting Mr. President, the finding of a study called "Project to Evaluate the Safety of the Philippine Blood Banking System." This has been taken note of. This is a study done with the assistance of the USAID by doctors under the New Tropical Medicine Foundation in Alabang.

Part of the long-term measures proposed by this particular study is to improve laws, outlaw buying and selling of blood and legally define good manufacturing processes for blood. This goes to the very heart of my amendment which seeks to put into law the principle that blood should not be subject of commerce of man.

...

The Presiding Officer [Senator Aquino]: What does the sponsor say?

Senator Webb: Mr. President, just for clarity, I would like to find out how the Gentleman defines a commercial blood bank. I am at a loss at times what a commercial blood bank really is.

Senator Mercado: We have a definition, I believe, in the measure, Mr. President.

The Presiding Officer [Senator Aquino]: It is a business where profit is considered.

Senator Mercado: If the Chairman of the Committee would accept it, we can put a provision on Section 3, a definition of a commercial blood bank, which, as defined in this law, exists for profit and engages in the buying and selling of blood or its components.

Senator Webb: That is a good description, Mr. President.

...

Senator Mercado: I refer, Mr. President, to a letter written by Dr. Jaime Galvez-Tan, the Chief of Staff, Undersecretary of Health, to the good Chairperson of the Committee on Health.

In recommendation No. 4, he says:

"The need to phase out all commercial blood banks within a two-year period will give the Department of Health enough time to build up government's capability to provide an adequate supply of blood for the needs of the nation...the use of blood for transfusion is a medical service and not a sale of commodity."

Taking into consideration the experience of the National Kidney Institute, which has succeeded in making the hospital 100 percent dependent on voluntary blood donation, here is a success story of a hospital that does not buy blood. All those who are operated on and need blood have to convince their relatives or have to get volunteers who would donate blood...

If we give the responsibility of the testing of blood to those commercial blood banks, they will cut corners

because it will protect their profit.

In the first place, the people who sell their blood are the people who are normally in the high-risk category. So we should stop the system of selling and buying blood so that we can go into a national voluntary blood program.

It has been said here in this report, and I quote:

"Why is buying and selling of blood not safe? This is not safe because a donor who expects payment for his blood will not tell the truth about his illnesses and will deny any risky social behavior such as sexual promiscuity which increases the risk of having syphilis or AIDS or abuse of intravenous addictive drugs. Laboratory tests are of limited value and will not detect early infections. Laboratory tests are required only for four diseases in the Philippines. There are other blood transmissible diseases we do not yet screen for and there could be others where there are no tests available yet.

A blood bank owner expecting to gain profit from selling blood will also try his best to limit his expenses. Usually he tries to increase his profit by buying cheaper reagents or test kits, hiring cheaper manpower or skipping some tests altogether. He may also try to sell blood even though these have infections in them. Because there is no existing system of counterchecking these, the blood bank owner can usually get away with many unethical practices.

The experience of Germany, Mr. President is illustrative of this issue. The reason why contaminated blood was sold was that there were corners cut by commercial blood banks in the testing process. They were protecting their profits.[25]

The sponsorship speech of Senator Mercado further elucidated his stand on the issue:

...

Senator Mercado: Today, across the country, hundreds of poverty-stricken, sickly and weak Filipinos, who, unemployed, without hope and without money to buy the next meal, will walk into a commercial blood bank, extend their arms and plead that their blood be bought. They will lie about their age, their medical history. They will lie about when they last sold their blood. For doing this, they will receive close to a hundred pesos. This may tide them over for the next few days. Of course, until the next bloodletting.

This same blood will travel to the posh city hospitals and urbane medical centers. This same blood will now be bought by the rich at a price over 500% of the value for which it was sold. Between this buying and selling, obviously, someone has made a very fast buck.

Every doctor has handled at least one transfusion-related disease in an otherwise normal patient. Patients come in for minor surgery of the hand or whatever and they leave with hepatitis B. A patient comes in for an appendectomy and he leaves with malaria. The worst nightmare: A patient comes in for a Caesarian section and leaves with AIDS.

We do not expect good blood from donors who sell their blood because of poverty. The humane dimension of blood transfusion is not in the act of receiving blood, but in the act of giving it...

For years, our people have been at the mercy of commercial blood banks that lobby their interests among medical technologists, hospital administrators and sometimes even physicians so that a proactive system for collection of blood from healthy donors becomes difficult, tedious and unrewarding.

The Department of Health has never institutionalized a comprehensive national program for safe blood and for voluntary blood donation even if this is a serious public health concern and has fallen for the linen of commercial blood bankers, hook, line and sinker because it is more convenient to tell the patient to buy blood.

Commercial blood banks hold us hostage to their threat that if we are to close them down, there will be no blood supply. This is true if the Government does not step in to ensure that safe supply of blood. We cannot allow commercial interest groups to dictate policy on what is and what should be a humanitarian effort. This cannot and will never work because their interest in blood donation is merely monetary. We cannot expect commercial blood banks to take the lead in voluntary blood donation. Only the Government can do it, and the Government must do it....[26]

On May 5, 1999, petitioners filed a Motion for Issuance of Expanded Temporary Restraining Order for the Court to order respondent Secretary of Health to cease and desist from announcing the closure of commercial blood banks, compelling the public to source the needed blood from voluntary donors only, and committing similar acts "that will ultimately cause the shutdown of petitioners' blood banks." [27]

On July 8, 1999, respondent Secretary filed his Comment and/or Opposition to the above motion stating that he has not ordered the closure of commercial blood banks on account of the Temporary Restraining Order (TRO) issued on June 2, 1998 by the Court. In compliance with the TRO, DOH had likewise ceased to distribute the health advisory leaflets, posters and flyers to the public which state that "blood banks are closed or will be closed." According to respondent Secretary, the same were printed and circulated in anticipation of the closure of the commercial blood banks in accordance with R.A. No. 7719, and were printed and circulated prior to the issuance of the TRO.[28]

On July 15, 1999, petitioners in G.R. No. 133640 filed a Petition to Show Cause Why Public Respondent Should Not be Held in Contempt of Court, docketed as G.R. No. 139147, citing public respondent's willful disobedience of or resistance to the restraining order issued by the Court in the said case. Petitioners alleged that respondent's act constitutes circumvention of the temporary restraining order and a mockery of the authority of the Court and the orderly administration of justice.[29] Petitioners added that despite the issuance of the temporary restraining order in G.R. No. 133640, respondent, in his effort to strike down the existence of commercial blood banks, disseminated misleading information under the guise of health advisories, press releases, leaflets, brochures and flyers stating, among others, that "this year [1998] all commercial blood banks will be closed by 27 May. Those who need blood will have to rely on government blood banks." [30] Petitioners further claimed that respondent Secretary of Health announced in a press conference during the Blood Donor's Week that commercial blood banks are "illegal and dangerous" and that they "are at the moment protected by a restraining order on the basis that their commercial interest is more important than the lives of the people." These were all posted in bulletin boards and other conspicuous places in all government hospitals as well as other medical and health centers.[31]

In respondent Secretary's Comment to the Petition to Show Cause Why Public Respondent Should Not Be Held in Contempt of Court, dated January 3, 2000, it was explained that nothing was issued by the department ordering the closure of commercial blood banks. The subject health advisory leaflets pertaining to said closure pursuant to Republic Act No. 7719 were printed and circulated prior to the Court's issuance of a temporary restraining order on June 21, 1998.[32]

Public respondent further claimed that the primary purpose of the information campaign was "to promote the importance and safety of voluntary blood donation and to educate the public about the hazards of patronizing blood supplies from commercial blood banks." [33] In doing so, he was merely performing his regular functions and duties as the Secretary of Health to protect the health and welfare of the public. Moreover, the DOH is the main proponent of the voluntary blood donation program espoused by Republic Act No. 7719, particularly Section 4 thereof which provides that, in order to ensure the adequate supply of human blood, voluntary blood donation shall be promoted through public education, promotion in schools, professional education, establishment of blood services network, and walking blood donors.

Hence, by authority of the law, respondent Secretary contends that he has the duty to promote the program of voluntary blood donation. Certainly, his act of encouraging the public to donate blood voluntarily and educating the people on the risks associated with blood coming from a paid donor promotes general health and welfare and which should be given more importance than the commercial businesses of petitioners.[34]

On July 29, 1999, interposing personal and substantial interest in the case as taxpayers and citizens, a Petition-in-Intervention was filed interjecting the same arguments and issues as laid down by petitioners in G.R. No. 133640 and 133661, namely, the unconstitutionality of the Acts, and, the issuance of a writ of prohibitory injunction. The intervenors are the immediate relatives of individuals who had died allegedly because of shortage of blood supply at a critical time.[35]

The intervenors contended that Republic Act No. 7719 constitutes undue delegation of legislative powers and unwarranted deprivation of personal liberty.[36]

In a resolution, dated September 7, 1999, and without giving due course to the aforementioned petition, the Court granted the Motion for Intervention that was filed by the above intervenors on August 9, 1999.

In his Comment to the petition-in-intervention, respondent Secretary of Health stated that the sale of blood is contrary to the spirit and letter of the Act that "blood donation is a humanitarian act" and "blood transfusion is a professional medical service and not a sale of commodity (Section 2[a] and [b] of Republic Act No. 7719). The act of selling blood or charging fees other than those allowed by law is even penalized under Section 12." [37]

Thus, in view of these, the Court is now tasked to pass upon the constitutionality of Section 7 of Republic Act No. 7719 or the National Blood Services Act of 1994 and its Implementing Rules and Regulations.

In resolving the controversy, this Court deems it necessary to address the issues and/or questions raised by petitioners concerning the constitutionality of the aforesaid Act in G.R. No. 133640 and 133661 as summarized hereunder:

I

WHETHER OR NOT SECTION 7 OF R.A. 7719 CONSTITUTES UNDUE DELEGATION OF LEGISLATIVE POWER;

II

WHETHER OR NOT SECTION 7 OF R.A. 7719 AND ITS IMPLEMENTING RULES AND REGULATIONS VIOLATE THE EQUAL PROTECTION CLAUSE;

III

WHETHER OR NOT SECTION 7 OF R.A. 7719 AND ITS IMPLEMENTING RULES AND REGULATIONS VIOLATE THE NON-IMPAIRMENT CLAUSE;

IV

WHETHER OR NOT SECTION 7 OF R.A. 7719 AND ITS IMPLEMENTING RULES AND REGULATIONS CONSTITUTE DEPRIVATION OF PERSONAL LIBERTY AND PROPERTY;

V

WHETHER OR NOT R.A. 7719 IS A VALID EXERCISE OF POLICE POWER; and,

VI

WHETHER OR NOT SECTION 7 OF R.A. 7719 AND ITS IMPLEMENTING RULES AND REGULATIONS TRULY SERVE PUBLIC WELFARE.

As to the first ground upon which the constitutionality of the Act is being challenged, it is the contention of petitioners that the phase out of commercial or free standing blood banks is unconstitutional because it is an improper and unwarranted delegation of legislative power. According to petitioners, the Act was incomplete when it was passed by the Legislature, and the latter failed to fix a standard to which the Secretary of Health must conform in the performance of his functions. Petitioners also contend that the two-year extension period that may be granted by the Secretary of Health for the phasing out of commercial blood banks pursuant to Section 7 of the Act constrained the Secretary to legislate, thus constituting undue delegation of legislative power.

In testing whether a statute constitutes an undue delegation of legislative power or not, it is usual to inquire whether the statute was complete in all its terms and provisions when it left the hands of the Legislature so that nothing was left to the judgment of the administrative body or any other appointee or delegate of the Legislature.[38] Except as to matters of detail that may be left to be filled in by rules and regulations to be adopted or promulgated by executive officers and administrative boards, an act of the Legislature, as a general rule, is incomplete and hence invalid if it does not lay down any rule or definite standard by which the administrative board may be guided in the exercise of the discretionary powers delegated to it.[39]

Republic Act No. 7719 or the National Blood Services Act of 1994 is complete in itself. It is clear from the provisions of the Act that the Legislature intended primarily to safeguard the health of the people and has mandated several measures to attain this objective. One of these is the phase out of commercial blood banks in the country. The law has sufficiently provided a definite standard for the guidance of the Secretary of Health in carrying out its provisions, that is, the promotion of public health by providing a safe and adequate supply of blood through voluntary blood donation. By its provisions, it has conferred the power and authority to the Secretary of Health as to its execution, to be exercised under and in pursuance of the law.

Congress may validly delegate to administrative agencies the authority to promulgate rules and regulations to implement a given legislation and effectuate its policies.[40] The Secretary of Health has been given, under Republic Act No. 7719, broad powers to execute the provisions of said Act. Section 11 of the Act states:

"SEC. 11. Rules and Regulations. – The implementation of the provisions of the Act shall be in accordance with the rules and regulations to be promulgated by the Secretary, within sixty (60) days from the approval hereof..."

This is what respondent Secretary exactly did when DOH, by virtue of the administrative body's authority and expertise in the matter, came out with Administrative Order No.9, series of 1995 or the Rules and Regulations Implementing Republic Act No. 7719. Administrative Order. No. 9 effectively filled in the details of the law for its proper implementation.

Specifically, Section 23 of Administrative Order No. 9 provides that the phase-out period for commercial blood banks shall be extended for another two years until May 28, 1998 "based on the result of a careful study and review of the blood supply and demand and public safety." This power to ascertain the existence of facts and conditions upon which the Secretary may effect a period of extension for said phase-out can be delegated by Congress. The true distinction between the power to make laws and discretion as to its execution is illustrated by the fact that the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.[41]

In this regard, the Secretary did not go beyond the powers granted to him by the Act when said phase-out period

was extended in accordance with the Act as laid out in Section 2 thereof:

"SECTION 2. Declaration of Policy – In order to promote public health, it is hereby declared the policy of the state:

a)

to promote and encourage voluntary blood donation by the citizenry and to instill public consciousness of the principle that blood donation is a humanitarian act;

b)

to lay down the legal principle that the provision of blood for transfusion is a medical service and not a sale of commodity;

c)

to provide for adequate, safe, affordable and equitable distribution of blood supply and blood products;

d)

to inform the public of the need for voluntary blood donation to curb the hazards caused by the commercial sale of blood;

e)

to teach the benefits and rationale of voluntary blood donation in the existing health subjects of the formal education system in all public and private schools as well as the non-formal system;

f)

to mobilize all sectors of the community to participate in mechanisms for voluntary and non-profit collection of blood;

g)

to mandate the Department of Health to establish and organize a National Blood Transfusion Service Network in order to rationalize and improve the provision of adequate and safe supply of blood;

h)

to provide for adequate assistance to institutions promoting voluntary blood donation and providing non-profit blood services, either through a system of reimbursement for costs from patients who can afford to pay, or donations from governmental and non-governmental entities;

i)

to require all blood collection units and blood banks/centers to operate on a non-profit basis;

j)

to establish scientific and professional standards for the operation of blood collection units and blood banks/centers in the Philippines;

k)

to regulate and ensure the safety of all activities related to the collection, storage and banking of blood; and,

l)

to require upgrading of blood banks/centers to include preventive services and education to control spread of blood transfusion transmissible diseases."

Petitioners also assert that the law and its implementing rules and regulations violate the equal protection clause enshrined in the Constitution because it unduly discriminates against commercial or free standing blood banks in a manner that is not germane to the purpose of the law.[42]

What may be regarded as a denial of the equal protection of the laws is a question not always easily determined. No rule that will cover every case can be formulated. Class legislation, discriminating against some and favoring others is prohibited but classification on a reasonable basis and not made arbitrarily or capriciously is permitted. The classification, however, to be reasonable: (a) must be based on substantial distinctions which make real differences; (b) must be germane to the purpose of the law; (c) must not be limited to existing conditions only; and, (d) must apply equally to each member of the class.[43]

Republic Act No. 7719 or The National Blood Services Act of 1994, was enacted for the promotion of public health and welfare. In the aforementioned study conducted by the New Tropical Medicine Foundation, it was revealed that the Philippine blood banking system is disturbingly primitive and unsafe, and with its current condition, the spread of infectious diseases such as malaria, AIDS, Hepatitis B and syphilis chiefly from blood transfusion is unavoidable. The situation becomes more distressing as the study showed that almost 70% of the blood supply in the country is sourced from paid blood donors who are three times riskier than voluntary blood donors because they are unlikely to disclose their medical or social history during the blood screening.[44]

The above study led to the passage of Republic Act No. 7719, to instill public consciousness of the importance and benefits of voluntary blood donation, safe blood supply and proper blood collection from healthy donors. To do this, the Legislature decided to order the phase out of commercial blood banks to improve the Philippine blood banking system, to regulate the supply and proper collection of safe blood, and so as not to derail the implementation of the voluntary blood donation program of the government. In lieu of commercial blood banks, non-profit blood banks or blood centers, in strict adherence to professional and scientific standards to be established by the DOH, shall be set in place.[45]

Based on the foregoing, the Legislature never intended for the law to create a situation in which unjustifiable discrimination and inequality shall be allowed. To effectuate its policy, a classification was made between

nonprofit blood banks/centers and commercial blood banks.

We deem the classification to be valid and reasonable for the following reasons:

One, it was based on substantial distinctions. The former operates for purely humanitarian reasons and as a medical service while the latter is motivated by profit. Also, while the former wholly encourages voluntary blood donation, the latter treats blood as a sale of commodity.

Two, the classification, and the consequent phase out of commercial blood banks is germane to the purpose of the law, that is, to provide the nation with an adequate supply of safe blood by promoting voluntary blood donation and treating blood transfusion as a humanitarian or medical service rather than a commodity. This necessarily involves the phase out of commercial blood banks based on the fact that they operate as a business enterprise, and they source their blood supply from paid blood donors who are considered unsafe compared to voluntary blood donors as shown by the USAID-sponsored study on the Philippine blood banking system.

Three, the Legislature intended for the general application of the law. Its enactment was not solely to address the peculiar circumstances of the situation nor was it intended to apply only to the existing conditions.

Lastly, the law applies equally to all commercial blood banks without exception.

Having said that, this Court comes to the inquiry as to whether or not Republic Act No. 7719 constitutes a valid exercise of police power.

The promotion of public health is a fundamental obligation of the State. The health of the people is a primordial governmental concern. Basically, the National Blood Services Act was enacted in the exercise of the State's police power in order to promote and preserve public health and safety.

Police power of the state is validly exercised if (a) the interest of the public generally, as distinguished from those of a particular class, requires the interference of the State; and, (b) the means employed are reasonably necessary to the attainment of the objective sought to be accomplished and not unduly oppressive upon individuals.[46]

In the earlier discussion, the Court has mentioned of the avowed policy of the law for the protection of public health by ensuring an adequate supply of safe blood in the country through voluntary blood donation. Attaining this objective requires the interference of the State given the disturbing condition of the Philippine blood banking system.

In serving the interest of the public, and to give meaning to the purpose of the law, the Legislature deemed it necessary to phase out commercial blood banks. This action may seriously affect the owners and operators, as well as the employees, of commercial blood banks but their interests must give way to serve a higher end for the interest of the public.

The Court finds that the National Blood Services Act is a valid exercise of the State's police power. Therefore, the Legislature, under the circumstances, adopted a course of action that is both necessary and reasonable for the common good. Police power is the State authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare.[47]

It is in this regard that the Court finds the related grounds and/or issues raised by petitioners, namely, deprivation of personal liberty and property, and violation of the non-impairment clause, to be unmeritorious.

Petitioners are of the opinion that the Act is unconstitutional and void because it infringes on the freedom of choice of an individual in connection to what he wants to do with his blood which should be outside the domain of State intervention. Additionally, and in relation to the issue of classification, petitioners asseverate that, indeed,

under the Civil Code, the human body and its organs like the heart, the kidney and the liver are outside the commerce of man but this cannot be made to apply to human blood because the latter can be replenished by the body. To treat human blood equally as the human organs would constitute invalid classification. [48]

Petitioners likewise claim that the phase out of the commercial blood banks will be disadvantageous to them as it will affect their businesses and existing contracts with hospitals and other health institutions, hence Section 7 of the Act should be struck down because it violates the non-impairment clause provided by the Constitution.

As stated above, the State, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations. Thus, persons may be subjected to certain kinds of restraints and burdens in order to secure the general welfare of the State and to this fundamental aim of government, the rights of the individual may be subordinated.[49]

Moreover, in the case of *Philippine Association of Service Exporters, Inc. v. Drilon*,[50] settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the government. The right granted by this provision must submit to the demands and necessities of the State's power of regulation. While the Court understands the grave implications of Section 7 of the law in question, the concern of the Government in this case, however, is not necessarily to maintain profits of business firms. In the ordinary sequence of events, it is profits that suffer as a result of government regulation.

Furthermore, the freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity.[51] This doctrine was reiterated in the case of *Vda. de Genuino v. Court of Agrarian Relations*[52] where the Court held that individual rights to contract and to property have to give way to police power exercised for public welfare.

As for determining whether or not the shutdown of commercial blood banks will truly serve the general public considering the shortage of blood supply in the country as proffered by petitioners, we maintain that the wisdom of the Legislature in the lawful exercise of its power to enact laws cannot be inquired into by the Court. Doing so would be in derogation of the principle of separation of powers.[53]

That, under the circumstances, proper regulation of all blood banks without distinction in order to achieve the objective of the law as contended by petitioners is, of course, possible; but, this would be arguing on what the law may be or should be and not what the law is. Between is and ought there is a far cry. The wisdom and propriety of legislation is not for this Court to pass upon.[54]

Finally, with regard to the petition for contempt in G.R. No. 139147, on the other hand, the Court finds respondent Secretary of Health's explanation satisfactory. The statements in the flyers and posters were not aimed at influencing or threatening the Court in deciding in favor of the constitutionality of the law.

Contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence in defiance of the court.[55] There is nothing contemptuous about the statements and information contained in the health advisory that were distributed by DOH before the TRO was issued by this Court ordering the former to cease and desist from distributing the same.

In sum, the Court has been unable to find any constitutional infirmity in the questioned provisions of the National Blood Services Act of 1994 and its Implementing Rules and Regulations.

The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a

statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.[56] Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.

Based on the grounds raised by petitioners to challenge the constitutionality of the National Blood Services Act of 1994 and its Implementing Rules and Regulations, the Court finds that petitioners have failed to overcome the presumption of constitutionality of the law. As to whether the Act constitutes a wise legislation, considering the issues being raised by petitioners, is for Congress to determine.[57]

WHEREFORE, premises considered, the Court renders judgment as follows:

- In G.R. Nos. 133640 and 133661, the Court UPHOLDS THE VALIDITY of Section 7 of Republic Act No. 7719, otherwise known as the National Blood Services Act of 1994, and Administrative Order No. 9, Series of 1995 or the Rules and Regulations Implementing Republic Act No. 7719. The petitions are DISMISSED. Consequently, the Temporary Restraining Order issued by this Court on June 2, 1998, is LIFTED.

- In G.R. No. 139147, the petition seeking to cite the Secretary of Health in contempt of court is DENIED for lack of merit.

No costs.

SO ORDERED.

Davide, C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, and Garcia, JJ., concur.
Chico-Nazario, J., on leave.

[1] Petition for Certiorari with Prayer for the Issuance of Writ of Preliminary Prohibitory Injunction or Temporary Restraining Order, dated May 20, 1998, and later an Amended Petition, dated June 1, 1998 under Rule 65 of the Rules of Court.

[2] Petition for Mandamus with Prayer for the Issuance of Temporary Restraining Order, Preliminary Prohibitory and Mandatory Injunction, dated May 22, 1998.

[3] Rollo (G.R. No. 133640), p. 106; Rollo (G.R. No. 133661), p. 69.

[4] Petition, dated July 15, 1999.

[5] Rollo (G.R. No. 139147), p. 34.

[6] Rollo (G.R. No. 133640), pp. 7-8.

[7] Annex "G" of Petition, Rollo (G.R. No. 133640), p. 79.

[8] Annex "H" of Petition, Rollo (G.R. No. 133640), p. 86.

[9] Rollo (G.R. No. 133640), pp. 42-43.

[10] Id. at 46-47.

[11] Id. at 43.

[12] Rollo (G.R. No. 133661), p. 99.

- [13] Id. at 100.
- [14] Id. at 49-51.
- [15] Rollo (G.R. No. 133640), p. 59.
- [16] Id.
- [17] Id.
- [18] Rollo (G.R. No. 133640), p. 112.
- [19] Rollo (G.R. No. 133640), p. 120.
- [20] Rollo (G.R. No.133661), p. 3
- [21] Rollo (G.R. No. 133640), p. 106.
- [22] Rollo (G.R. No.133661), pp. 7-8.
- [23] Rollo (G.R. No. 133640), pp. 107-108.
- [24] Rollo (G.R. No. 133661), p. 98.
- [25] Record of the Senate, Vol. IV, No. 59, pp. 286-287; rollo (G.R. No 133661), pp.115-120.
- [26] Record of the Senate, Volume 1, No. 13, pp. 434-436; rollo (G.R. No. 133661), pp. 121-123.
- [27] Rollo (G.R. No. 133640), pp. 227-232.
- [28] Id. at pp. 406-408.
- [29] Rollo (G.R. No. 139147), p. 9.
- [30] Rollo (G.R. No. 139147), pp. 5-6; Annexes "A" to "C-3," pp. 14-33.
- [31] Rollo (G.R. No. 139147), p. 6.
- [32] Id. at 49-50.
- [33] Id. at 50.
- [34] Id. at 50-51.
- [35] Id. at 435-495.
- [36] Rollo (G.R. No. 133640), pp. 467-468.
- [37] Rollo (G.R. No. 133640), pp. 685-686.
- [38] See *United States v. Ang Tang Ho*, 43 Phil. 1 (1922).
- [39] *People v. Vera*, 65 Phil 56 (1937).
- [40] *Vda. de Pineda v. Peña*, G.R. No. 57665, July 2, 1990, 187 SCRA 22.
- [41] Id. citing *Cincinnati, W. & Z.R. Co. v. Clinton County Comrs*, 1 Ohio St., 77, 88 (1852).; *Cruz v. Youngberg*, 56 Phil. 234 (1931).
- [42] Rollo (G.R. No. 133640), p. 120; Rollo (G.R. No.133661), p. 105.

[43] *People v. Vera*, supra.

[44] A Final Report on the Project to Evaluate the Safety of the Philippine Blood Banking System conducted on September 28, 1993 – January 15, 1994, Rollo (G.R. No. 133640), Annex "A," p. 41.

[45] Rollo (G.R. No.133661), pp. 115-124.

[46] Department of Education, Culture and Sports (DECS) and Director of Center for Educational Measurement v. Roberto Rey C. San Diego and Judge Teresita Dizon-Capulong, G.R. No. 89572, December 21, 1989, 180 SCRA 533.

[47] *Pita v. Court of Appeals*, G.R. No. 80806, October 5, 1989, 178 SCRA 362.

[48] Rollo (G.R. No.133661), p. 12.

[49] *Patalinghug v. Court of Appeals*, G.R. No. 104786, January 27, 1994, 229 SCRA 554.

[50] No. L-81958, June 30, 1988, 163 SCRA 386.

[51] *Ongsiako v. Gamboa*, 86 Phil. 50 (1950).

[52] No. L-25035, February 26, 1968, 22 SCRA 792.

[53] *Misolas v. Panga*, G.R. No. 83341, January 30, 1990, 181 SCRA 648.

[54] *People v. Vera*, supra.

[55] *People v. Maceda*, G.R. Nos. 89591-96, August 13, 1990, 188 SCRA 532.

[56] *Basco v. Philippine Amusements and Gaming Corporation (PAGCOR)*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, citing *Peralta v. Comelec*, 82 SCRA 30.; *Yu Cong Eng v. Trinidad*, 47 Phil 387.

[57] *Basco v. PAGCOR*, supra.

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