THE COMMISSION ON AUDIT OF THE PROVINCE OF CEBU, REPRESENTED BY PROVINCIAL AUDITOR ROY L. URSAL, PETITIONER, VS. PROVINCE OF CEBU, REPRESENTED BY GOVERNOR PABLO P. GARCIA, RESPO...

G.R. No. 141386. November 29, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

May the salaries and personnel-related benefits of public school teachers appointed by local chief executives in connection with the establishment and maintenance of extension classes; as well as the expenses for college scholarship grants, be charged to the Special Education Fund (SEF) of the local government unit concerned?

The instant petition for review, which raises a pure question of law, seeks to annul and set aside the decision[1] of the Regional Trial Court of Cebu, Branch 20, in a petition for declaratory relief, docketed as Civil Case No. CEB-24422.

The provincial governor of the province of Cebu, as chairman of the local school board, under Section 98 of the Local Government Code, appointed classroom teachers who have no items in the DECS plantilla to handle extension classes that would accommodate students in the public schools.

In the audit of accounts conducted by the Commission on Audit (COA) of the Province of Cebu, for the period January to June 1998, it appeared that the salaries and personnel-related benefits of the teachers appointed by the province for the extension classes were charged against the provincial SEF. Likewise charged to the SEF were the college scholarship grants of the province. Consequently, the COA issued Notices of Suspension to the province of Cebu,[2] saying that disbursements for the salaries of teachers and scholarship grants are not chargeable to the provincial SEF.

Faced with the Notices of Suspension issued by the COA, the province of Cebu, represented by its governor, filed a petition for declaratory relief with the trial court.

On December 13, 1999, the court a quo rendered a decision declaring the questioned expenses as authorized expenditures of the SEF. The dispositive portion thereof reads:

> WHEREFORE, in view of all the foregoing premises considered, judgment is hereby rendered giving due course to this instant petition for declaratory relief declaring and confirming that petitioner is vested with the authority to disburse the proceeds from the Special Educational Fund [SEF] for the payment of salaries, allowances or honoraria for teachers and non-teaching personnel in the public schools in the Province of Cebu and its component cities, and, municipalities, as well as the expenses for scholarship grants of petitioners specially to poor but deserving students therein.
>
> Declaring, further, respondent's audit findings on pages 36 and 37 in the Annual Audit Report on the Province of Cebu for the year ending December 31, 1999 as null and void.[3]

Hence, the instant petition by the Commission on Audit.

The Special Education Fund was created by virtue of R. A. No. 5447, which is An act creating a special education fund to be constituted from the proceeds of an additional real property tax and a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco, defining the activities to be financed, creating school boards for the purpose, and appropriating funds therefrom, which took effect on January 1, 1969. Pursuant thereto, P.D. No. 464, also known as the Real Property Tax Code of the Philippines, imposed an annual tax of 1% on real property which shall accrue to the SEF.[4]

Under R. A. No. 5447, the SEF may be expended exclusively for the following activities of the DECS

> (a)
>
> the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including the creation of positions of classroom teachers, head teachers and principals for such extension classes x x x;
>
> (b)
>
> the programming of the construction and repair of elementary school buildings, acquisition of sites, and the construction and repair of workshops and similar buildings and accessories thereof to house laboratory, technical and similar equipment and apparatus needed by public schools offering practical arts, home economics and vocational courses, giving priority to elementary schools on the basis of the actual needs and total requirements of the country x x x;
>
> (c)
>
> the payment and adjustment of salaries of public school teachers under and by virtue of Republic Act Numbered Five Thousand One Hundred Sixty-Eight and all the benefits in favor of public school teachers provided under Republic Act Numbered Four Thousand Six Hundred Seventy;
>
> (d)
>
> preparation, printing and/or purchase of textbooks, teacher's guides, forms and pamphlets x x x;
>
> (e)
>
> the purchase and/or improvement, repair and refurbishing of machinery, laboratory, technical and similar equipment and apparatus, including spare parts needed by the Bureau of Vocational Education and secondary schools offering vocational courses;
>
> (f)
>
> the establishment of printing plant to be used exclusively for the printing needs of the Department of Education and the improvement of regional printing plants in the vocational schools;
>
> (g)
>
> the purchase of teaching materials such as work books, atlases, flip charts, science and mathematics teaching aids, and simple laboratory devices for elementary and secondary classes;
>
> (h)
>
> the implementation of the existing program for citizenship development in barrio high schools, folk schools and adult education classes;
>
> (i)

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the undertaking of education research, including that of the Board of National Education;

(j)

the granting of government scholarships to poor but deserving students under Republic Act Numbered Four Thousand Ninety; and

(k)

the promotion of physical education, such as athletic meets. (Emphasis supplied)

With the effectivity of the Local Government Code of 1991, petitioner contends that R.A. No. 5447 was repealed, leaving Sections 235, 272 and 100 (c) of the Code to govern the disposition of the SEF, to wit:

SEC. 235. Additional Levy on Real Property for the Special Education Fund (SEF). - A province or city or a municipality within the Metropolitan Manila Area, may levy and collect an annual tax of one percent (1%) on the assessed value of real property which shall be in addition to the basic real property tax. The proceeds thereof shall exclusively accrue to the Special Education Fund (SEF).

SEC. 272. Application of Proceeds of the Additional One Percent SEF Tax. - The proceeds from the additional one percent (1%) tax on real property accruing to the SEF shall be automatically released to the local school boards: Provided, That, in case of provinces, the proceeds shall be divided equally between the provincial and municipal school boards: Provided, however, That the proceeds shall be allocated for the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the local school board. (Emphasis supplied)

SEC. 100. Meeting and Quorum; Budget

x x x x x x x x x

(c)

The annual school board budget shall give priority to the following:

(1)

Construction, repair, and maintenance of school buildings and other facilities of public elementary and secondary schools;

(2)

Establishment and maintenance of extension classes where necessary; and

(3)

Sports activities at the division, district, municipal, and barangay levels. (Emphasis supplied)

Invoking the legal maxim "expressio unius es exclusio alterius," petitioner alleges that since salaries, personnel-related benefits and scholarship grants are not among those authorized as lawful expenditures of the SEF under the Local Government Code, they should be deemed excluded therefrom.

Moreover, petitioner claims that since what is allowed for local school boards to determine under Section 99[5] of the Local Government Code is only the "annual supplementary budgetary needs for the operation and maintenance of public schools," as well as the "supplementary local cost to meet such needs," the budget of the local school boards for the establishment and maintenance of extension classes should be construed to refer only

to the upkeep and maintenance of public school buildings, facilities and similar expenses other than personnel-related benefits. This is because, petitioner argued, the maintenance and operation of public schools pertain principally to the DECS.

The contentions are without merit. It is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute.[6] In this connection, the following portions of the deliberations of the Senate on the second reading of the Local Government Code on July 30, 1990 are significant:

> Senator Guingona. Mr. President.
>
> The President. Senator Guingona is recognized.
>
> Senator Guingona. Just for clarification, Mr. President. In this transfer, will it include everything eventually -- lock, stock and barrel, including curriculum?
>
> Senator Pimentel. Mr. President, our stand in the Committee is to respect the decision of the National Government in terms of curriculum.
>
> Senator Guingona. But, supposing the Local Education Board wishes to adopt a certain curriculum for that particular region?
>
> Senator Pimentel. Mr. President, pursuant to the wording of the proposed transfer of this elementary school system to local government units, what are specifically covered here are merely the construction, repair, and maintenance of elementary school buildings and other structures connected with public elementary school education, payment of salaries, emoluments, allowances et cetera, procurement of books, other teaching materials and equipment needed for the proper implementation of the program. There is nothing here that will indicate that the local government will have any right to alter the curriculum. (Emphasis supplied)
>
> Senator Guingona. Thank you, Mr. President.

Similarly instructive are the foregoing deliberations in the House of Representatives on August 16, 1990:

> INTERPELLATION OF MS. RAYMUNDO
> (Continuation)
>
> Continuing her interpellation, Ms. Raymundo then adverted to subsection 4 of Section 101 [now Section 100, paragraph (c)] and asked if the budget is limited only to the three priority areas mentioned. She also asked what is meant by the phrase "maintenance of extension classes."
>
> In response, Mr. De Pedro clarified that the provision is not limited to the three activities, to which may be added other sets of priorities at the proper time. As to extension classes, he pointed out that the school boards may provide out of its own funds, for additional teachers or other requirements if the national government cannot provide funding therefor. Upon Ms. Raymundo's query, Mr. de Pedro further explained that support for teacher tools could fall under the priorities cited and is covered by certain circulars.

Undoubtedly, the aforecited exchange of views clearly demonstrates that the legislature intended the SEF to answer for the compensation of teachers handling extension classes.

Furthermore, the pertinent portion of the repealing clause of the Local Government Code, provides:

> SEC. 534. Repealing Clause. - x x x
>
> (c) The provisions of . . . Sections 3, a (3) and b (2) of Republic Act No. 5447, regarding the Special Education Fund ... are hereby repealed and rendered of no force and effect.

Evidently, what was expressly repealed by the Local Government Code was only Section 3, of R.A. No. 5447,

which deals with the "Allocation of taxes on Virginia type cigarettes and duties on imported leaf tobacco." The legislature is presumed to know the existing laws, such that whenever it intends to repeal a particular or specific provision of law, it does so expressly. The failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws.[7] Hence, the provisions allocating funds for the salaries of teachers under Section 1, of R.A. No. 5447, which are not inconsistent with Sections 272 and 100 (c) of the Local Government Code, remain in force and effect.

Even under the doctrine of necessary implication, the allocation of the SEF for the establishment and maintenance of extension classes logically implies the hiring of teachers who should, as a matter of course be compensated for their services. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis.[8] Verily, the services and the corresponding compensation of these teachers are necessary and indispensable to the establishment and maintenance of extension classes.

Indeed, the operation and maintenance of public schools is lodged principally with the DECS. This is the reason why only salaries of public school teachers appointed in connection with the establishment and maintenance of extension classes, inter alia, pertain to the supplementary budget of the local school boards. Thus, it should be made clear that not every kind of personnel-related benefits of public school teachers may be charged to the SEF. The SEF may be expended only for the salaries and personnel-related benefits of teachers appointed by the local school boards in connection with the establishment and maintenance of extension classes. Extension classes as referred to mean additional classes needed to accommodate all children of school age desiring to enter in public schools to acquire basic education.[9]

With respect, however, to college scholarship grants, a reading of the pertinent laws of the Local Government Code reveals that said grants are not among the projects for which the proceeds of the SEF may be appropriated. It should be noted that Sections 100 (c) and 272 of the Local Government Code substantially reproduced Section 1, of R.A. No. 5447. But, unlike payment of salaries of teachers which falls within the ambit of "establishment and maintenance of extension classes" and "operation and maintenance of public schools," the "granting of government scholarship to poor but deserving students" was omitted in Sections 100 (c) and 272 of the Local Government Code. Casus omissus pro omisso habendus est. A person, object, or thing omitted from an enumeration in a statute must be held to have been omitted intentionally. It is not for this Court to supply such grant of scholarship where the legislature has omitted it.[10]

In the same vein, however noble the intention of the province in extending said scholarship to deserving students, we cannot apply the doctrine of necessary implication inasmuch as the grant of scholarship is neither necessary nor indispensable to the operation and maintenance of public schools. Instead, such scholarship grants may be charged to the General Funds of the province.

Pursuant to Section 1, Rule 63[11] of the 1997 Rules of Civil Procedure, a petition for declaratory relief may be filed before there is a breach or violation. The Solicitor General claims that the Notices of Suspension issued by the COA to the respondent province amounted to a breach or violation, and therefore, the petition for declaratory relief should have been denied by the trial court.

We are not convinced. As held in Shell Company of the Philippines, Ltd. v. Municipality of Sipocot,[12] any breach of the statute subject of the controversy will not affect the case; the action for declaratory relief will prosper because the applicability of the statute in question to future transactions still remains to be resolved.

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Absent a definite ruling in the instant case for declaratory relief, doubts as to the disposition of the SEF will persist. Hence, the trial court did not err in giving due course to the petition for declaratory relief filed by the province of Cebu.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Cebu City, Branch 20, in Civil Case No. CEB-24422, is AFFIRMED with MODIFICATION. The salaries and personnel-related benefits of the teachers appointed by the provincial school board of Cebu in connection with the establishment and maintenance of extension classes, are declared chargeable against the Special Education Fund of the province. However, the expenses incurred by the provincial government for the college scholarship grants should not be charged against the Special Education Fund, but against the General Funds of the province of Cebu.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., on official leave.

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[1] Penned by Judge Ferdinand J. Marcos.

[2] Annex "1" - "1-h", Records, pp. 31-39 and Annex "8", Records, p. 64.

[3] Rollo, p. 38.

[4] Sec. 41. An additional one percent tax on real property for the Special Education Fund. -- There is hereby imposed an annual tax of one percent of real property to accrue to the Special Education Fund created under Republic Act No. 5447, which shall be in addition to the real property tax which local governments are authorized to levy, assess and collect under this Code; x x x.

[5] SEC. 99. Function of Local School Boards. - The provincial city or municipal school board shall:

(a) Determine, in accordance with the criteria set by the Department of Education, Culture and Sports, the annual supplementary budgetary needs for the operation and maintenance of public schools within the province, city, or municipality, as the case may be, and the supplementary local costs of meeting such needs x x x.

[6] National Tobacco Administration v. Commission on Audit, 311 SCRA 755, 769 [1999].

[7] R. Agpalo, Statutory Construction, 314-315 [1995]; citing Mecano v. Commission on Audit, 216 SCRA 500 [1992].

[8] Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor, 312 SCRA 104, 117 [1999].

[9] Joint Circular No. 01 s. 1998 of the Department of Education Culture and Sports, the Department of Budget and Management, and the Department of Interior and Local Government.

[10] S. Alcantara, Statutes, 67 [1993].

[11] Section 1. Who may file petition. -- Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder x x x.

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[12] Vol. III, O. Herrera, Remedial Law, 109 [1991]; citing 105 Phil. 1263 [1959].

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