REPRESENTATIVES GERARDO S. ESPINA, ORLANDO FUA, JR., PROSPERO AMATONG, ROBERT ACE S. BARBERS, RAUL M. GONZALES, PROSPERO PICHAY, JUAN MIGUEL ZUBIRI AND FRANKLIN BAUTISTA, PETITI...

G.R. No. 143855. September 21, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case calls upon the Court to exercise its power of judicial review and determine the constitutionality of the Retail Trade Liberalization Act of 2000, which has been assailed as in breach of the constitutional mandate for the development of a self-reliant and independent national economy effectively controlled by Filipinos.

The Facts and the Case

On March 7, 2000 President Joseph E. Estrada signed into law Republic Act (R.A.) 8762, also known as the Retail Trade Liberalization Act of 2000. It expressly repealed R.A. 1180, which absolutely prohibited foreign nationals from engaging in the retail trade business. R.A. 8762 now allows them to do so under four categories:

> Category A
>
> Less than US$2,500,000.00
>
> Exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.
>
> Category B
>
> US$2,500,000.00 up but less than US$7,500,000.00
>
> For the first two years of R.A. 8762's effectivity, foreign ownership is allowed up to 60%. After the two-year period, 100% foreign equity shall be allowed.
>
> Category C
>
> US$7,500,000.00 or more
>
> May be wholly owned by foreigners. Foreign investments for establishing a store in Categories B and C shall not be less than the equivalent in Philippine Pesos of US$830,000.00.
>
> Category D
>
> US$250,000.00 per store of foreign enterprises specializing in high-end or luxury products
>
> May be wholly owned by foreigners.

R.A. 8762 also allows natural-born Filipino citizens, who had lost their citizenship and now reside in the

Philippines, to engage in the retail trade business with the same rights as Filipino citizens.

On October 11, 2000 petitioners Magtanggol T. Gunigundo I,[*] Michael T. Defensor,[*] Gerardo S. Espina, Benjamin S. Lim,[*] Orlando Fua, Jr., Prospero Amatong, Sergio Apostol,[*] Robert Ace S. Barbers, Enrique Garcia, Jr.,[*] Raul M. Gonzales, Jaime Jacob,[*] Apolinario Lozada, Jr.,[*] Leonardo Montemayor,[*] Ma. Elena Palma-Gil,[*] Prospero Pichay, Juan Miguel Zubiri and Franklin Bautista, all members of the House of Representatives, filed the present petition, assailing the constitutionality of R.A. 8762 on the following grounds:

First, the law runs afoul of Sections 9, 19, and 20 of Article II of the Constitution which enjoins the State to place the national economy under the control of Filipinos to achieve equal distribution of opportunities, promote industrialization and full employment, and protect Filipino enterprise against unfair competition and trade policies.

Second, the implementation of R.A. 8762 would lead to alien control of the retail trade, which taken together with alien dominance of other areas of business, would result in the loss of effective Filipino control of the economy.

Third, foreign retailers like Walmart and K-Mart would crush Filipino retailers and sari-sari store vendors, destroy self-employment, and bring about more unemployment.

Fourth, the World Bank-International Monetary Fund had improperly imposed the passage of R.A. 8762 on the government as a condition for the release of certain loans.

Fifth, there is a clear and present danger that the law would promote monopolies or combinations in restraint of trade.

Respondents Executive Secretary Ronaldo Zamora, Jr., Trade and Industry Secretary Mar Roxas, National Economic and Development Authority (NEDA) Secretary Felipe Medalla, Bangko Sentral ng Pilipinas Gov. Rafael Buenaventura, and Securities and Exchange Commission Chairman Lilia Bautista countered that:

First, petitioners have no legal standing to file the petition. They cannot invoke the fact that they are taxpayers since R.A. 8762 does not involve the disbursement of public funds. Nor can they invoke the fact that they are members of Congress since they made no claim that the law infringes on their right as legislators.

Second, the petition does not involve any justiciable controversy. Petitioners of course claim that, as members of Congress, they represent the small retail vendors in their respective districts but the petition does not allege that the subject law violates the rights of those vendors.

Third, petitioners have failed to overcome the presumption of constitutionality of R.A. 8762. Indeed, they could not specify how the new law violates the constitutional provisions they cite. Sections 9, 19, and 20 of Article II of the Constitution are not self-executing provisions that are judicially demandable.

Fourth, the Constitution mandates the regulation but not the prohibition of foreign investments. It directs Congress to reserve to Filipino citizens certain areas of investments upon the recommendation of the NEDA and when the national interest so dictates. But the Constitution leaves to the discretion of the Congress whether or not to make such reservation. It does not prohibit Congress from enacting laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens.

The Issues Presented

Simplified, the case presents two issues:

- Whether or not petitioner lawmakers have the legal standing to challenge the constitutionality of R.A. 8762;

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and

- Whether or not R.A. 8762 is unconstitutional.

The Court's Ruling

One. The long settled rule is that he who challenges the validity of a law must have a standing to do so.[1] Legal standing or locus standi refers to the right of a party to come to a court of justice and make such a challenge. More particularly, standing refers to his personal and substantial interest in that he has suffered or will suffer direct injury as a result of the passage of that law.[2] To put it another way, he must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the law he complains of.[3]

Here, there is no clear showing that the implementation of the Retail Trade Liberalization Act prejudices petitioners or inflicts damages on them, either as taxpayers[4] or as legislators.[5] Still the Court will resolve the question they raise since the rule on standing can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when as in this case the public interest so requires or the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.[6]

Two. Petitioners mainly argue that R.A. 8762 violates the mandate of the 1987 Constitution for the State to develop a self-reliant and independent national economy effectively controlled by Filipinos. They invoke the provisions of the Declaration of Principles and State Policies under Article II of the 1987 Constitution, which read as follows:

> Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.
>
> x x x x
>
> Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.
>
> Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

Petitioners also invoke the provisions of the National Economy and Patrimony under Article XII of the 1987 Constitution, which reads:

> Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
>
> In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.
>
> The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.
>
> x x x x
>
> Section 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally

produced goods, and adopt measures that help make them competitive.

Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

But, as the Court explained in Tañada v. Angara,[7] the provisions of Article II of the 1987 Constitution, the declarations of principles and state policies, are not self-executing. Legislative failure to pursue such policies cannot give rise to a cause of action in the courts.

The Court further explained in Tañada that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.[8]

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.[9]

In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair.[10] The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.

The control and regulation of trade in the interest of the public welfare is of course an exercise of the police power of the State. A person's right to property, whether he is a Filipino citizen or foreign national, cannot be taken from him without due process of law. In 1954, Congress enacted the Retail Trade Nationalization Act or R.A. 1180 that restricts the retail business to Filipino citizens. In denying the petition assailing the validity of such Act for violation of the foreigner's right to substantive due process of law, the Supreme Court held that the law constituted a valid exercise of police power.[11] The State had an interest in preventing alien control of the retail trade and

R.A. 1180 was reasonably related to that purpose. That law is not arbitrary.

Here, to the extent that R.A. 8762, the Retail Trade Liberalization Act, lessens the restraint on the foreigners' right to property or to engage in an ordinarily lawful business, it cannot be said that the law amounts to a denial of the Filipinos' right to property and to due process of law. Filipinos continue to have the right to engage in the kinds of retail business to which the law in question has permitted the entry of foreign investors.

Certainly, it is not within the province of the Court to inquire into the wisdom of R.A. 8762 save when it blatantly violates the Constitution. But as the Court has said, there is no showing that the law has contravened any constitutional mandate. The Court is not convinced that the implementation of R.A. 8762 would eventually lead to alien control of the retail trade business. Petitioners have not mustered any concrete and strong argument to support its thesis. The law itself has provided strict safeguards on foreign participation in that business. Thus -

First, aliens can only engage in retail trade business subject to the categories above-enumerated; Second, only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade business; and Third, qualified foreign retailers shall not be allowed to engage in certain retailing activities outside their accredited stores through the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and sari-sari stores and such other similar retailing activities.

In sum, petitioners have not shown how the retail trade liberalization has prejudiced and can prejudice the local small and medium enterprises since its implementation about a decade ago.

WHEREFORE, the Court DISMISSES the petition for lack of merit. No costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.
Velasco, Jr.,Nachura, Leonardo-De Castro,andBrion, JJ., on official leave.
Sereno, J., on leave.

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[*] Ordered dropped as petitioners per Supreme Court En Banc Resolution dated August 2, 2005. Rollo, p. 170.

[1] Jumamil v. Cafe, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 486-487.

[2] Abaya v. Ebdane, Jr., G.R. No. 167919, February 14, 2007, 515 SCRA 720, 756.

[3] BAYAN (Bagong Alyansang Makabayan) v. Executive Secretary Zamora, 396 Phil. 623, 646-647 (2000).

[4] Public Interest Center, Inc. v. Roxas, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.

[5] Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008, 568 SCRA 402, 457; Bagatsing v. Committee on Privatization, PN[O]C, 316 Phil. 404, 419 (1995).

[6] Automotive Industry Workers Alliance (AIWA) v. Hon. Romulo, 489 Phil. 710, 719 (2005).

[7] 338 Phil. 546, 580-581 (1997).

[8] Id. at 584.

[9] Id. at 584-585.

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[10] Id. at 585.

[11] Ichong v. Hernandez, 101 Phil. 1155, 1191 (1957).

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