

**ERMITA-MALATE HOTEL AND MOTEL OPERATORS ASSOCIATION,
INC., HOTEL DEL MAR, INC. AND GO CHIU,
PETITIONERS-APPELLEES, VS. THE HONORABLE CITY MAYOR OF
MANILA, RESPONDENT-APPELLANT, ...**

G.R. No. 24693. October 23, 1967

Ponente: FERNANDO, J.

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FERNANDO, J.:

A Motion for the reconsideration of our decision of July 31, 1967 was filed by petitioners, followed by a Motion for new trial. As the Motion for, reconsideration is clearly without merit, there is no occasion for this sought for new trial. Consequently, both motions are denied.

(1) No merit in the Motion for reconsideration. -

In the decision of this Court of July 31, 1967, sought to be reconsidered, its basis was categorically set forth in the following language:

"As noted at the outset, the judgment must be reversed. A decent regard for constitutional doctrines of a fundamental character ought to have admonished the lower court against such a sweeping condemnation of the challenged ordinance. Its decision cannot be allowed to stand, consistently with what has hitherto been the accepted standards constitutional adjudication, in both procedural and substantive aspects.

"Primarily what call's for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance. As was expressed categorically by Justice Malcolm: The presumption is all in favor of validity. *** The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitates action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential the well being of the people. *** The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.

"It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here. The principle has been nowhere better expressed than in the leading case of *O' Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: 'The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some, factual foundation of record for overthrowing the statute.' No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside."

The O' Gorman principle^[1] fails to meet the approval of counsel of petitioners. They would restrain unduly and unjustifiably its operation. In the language of the motion for reconsideration: "The U. S. Supreme Court was not laying down as a general rule in constitutional cases that there must be a factual foundation of record to affect the presumption of constitutionality of any and every law."

To paraphrase Justice Brandeis, this interpretation is without support in authority or reason and rests upon a misconception. It is to betray an almost total lack of awareness of the import and significance of the O' Gorman doctrine in American constitutional law. Authorities on the subject of proven competence and knowledge flatly reject such a view. Dodd,^[2]Dowling,^[3]Freund, Sutherland, De Wolfe Howe, and Brown,^[4]and Kauper^[5]in their standard casebooks quote the same excerpt from O' Gorman vs. Hartford Fire Ins. Co. appearing in the opinion of this Court. Dodd entertained no doubt: "The accepted view is that stated by Mr. Justice Brandeis in the O' Gorman case."^[6]

Frankfurter and Landis were equally explicit in their appreciation of what the O' Gorman dictum means. "As doctrine, there is nothing new in the avowal of a need for concreteness in passing judgment upon the legislative judgment. But perhaps last term marks a more sedulous attention to its observance. Certainly the procedure followed by the Court in O' Gorman & Young v. Hartford Fire Ins. Co., if regularly observed, will affect not a little the fate of legislation. If insisted upon, it will compel the bar to argue questions of legislative validity in the perspective of the circumstances which gave rise to a particular statute."^[7]

The late Professor Hamilton of the Yale Law School, one of the most distinguished constitutionalists, would have been appalled by the unorthodoxy of the view of counsel of petitioners. For him, the O' Gorman opinion was a manifestation of the jurist's art at its best:

"If the jurists have the feelings of other men Monday, the fifth of January nineteen hundred and thirty-one, must have been a day of consequence in the life, of Mr. Justice Brandeis. On that day he headed down the judgment of the United States Supreme Court in the O' Gorman case. The cause was a simple suit in contract: the result depended upon the validity of a New Jersey statute regulating the commissions to be paid by insurance companies to their agents for securing business. The more general question was the tolerance to be accorded to legislative price-fixing under the Fourteenth Amendment. And, as the fortunes of litigation broke, the issue came to be the intellectual procedure by which the constitutionality of the acts which make up the public control of business are to be determined. Upon that day the views of Brandeis became 'the opinion of the court,' and a new chapter in judicial history began to be written.

" * * *

"In form 'the opinion of the court' is a very simple and unpretentious document. It begins with a statement of the issue and a history of the case, continues with a brief summary of the reasons for the statute and a statement that 'the business of insurance is so affected with a public interest that the state may regulate the rates,' and concludes with a declaration of the test for validity. As 'underlying questions of fact may condition the constitutionality of legislation of this character,' it follows that the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It did not appear 'upon the face of the statute, or from any facts of which the court must take judicial notice' that in New Jersey 'evils did not exist,' for which the statute was an appropriate remedy. Accordingly the court was compelled to declare the statute valid; in fact it was left with no alternative.

"Yet the simple lines of a short opinion present a superb example of the jurist's art. * * *."^[8]

This is not to discount the possibility of a situation where the nullity of a statute, executive order, or ordinance may not be readily apparent but the threat to constitutional rights, especially those involving the freedom of the mind, present and ominous. That in such an event there should not be a rigid insistence on the requirement that

evidence be presented does not argue against the force of the above excerpt on the weight to be accorded the O'Gorman doctrine in this case,

The prop here failing, is there anything else in the Motion for reconsideration that calls for a modification of the decision of this Court? The answer must be in the negative. It ought not to have escaped petitioners that the opinion of the Court after noting the lack of factual foundation to offset the presumption of constitutionality went on to discuss the due process aspect to make clear that on its face, the Ordinance cannot be considered void.

"Nor may petitioners assert with plausibility that on its face the ordinance is fatally defective as being repugnant to the due process clause of the Constitution. The mantle of protection associated with the due process guaranty does not cover petitioners. This particular manifestation of a police power measure being specifically aimed to safeguard public morals is immune from such imputation of nullity resting purely on conjecture and unsupported by anything of substance. To hold otherwise would be to unduly restrict and narrow the scope of police power which has been properly characterized as the most essential, insistent and the least limitable of powers, extending as it does 'to all the great public needs.' It would be, to paraphrase another leading decision, to destroy the very purpose of the state if it could be deprived or allowed itself to be deprived of its competence to promote public health, public morals, public safety and the general welfare. Negatively put, police power is 'that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society.'

"There is no question but that the challenged ordinance was precisely enacted to minimize certain practices hurtful to public morals. The explanatory note of the then Councilor Herminio Astorga included as annex to the stipulation of facts speaks of the alarming increase in the rate of prostitution, adultery and fornication in Manila, traceable in great part to the existence of motels, which 'provide a necessary atmosphere for clandestine entry, presence and exit' and thus become the 'ideal haven for prostitutes and thrill-seekers.' The challenged ordinance then proposes to check the clandestine harboring of transients and guests of these establishments by requiring these transients and guests to fill up a registration form, prepared for the purpose, in a lobby open to public view at all times, and by introducing several other amendatory provisions calculated to shatter the privacy that characterizes the registration of transients and guests. Moreover, the increase in the license fees was intended to discourage 'establishments of the kind from operating for purpose other than legal' and at the same time, to increase 'the income of the city government.' It would appear therefore that the stipulation of facts, far from sustaining any attack against the validity of the ordinance, argues eloquently for it."

There is nothing in the Motion for reconsideration that in any wise affects adversely or impairs the force of the above conclusion. The task of proving that the challenged Ordinance is void on its face is one attended with difficulty. Nonetheless, with the persistence worthy of a better cause, petitioners would cite as fatal infirmity the alleged invasion of the rights against unreasonable search and seizure, to liberty, and to property.

As the unchallenged rule, to paraphrase Laurel, is that unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance,[9] he has no standing, the invocation of petitioners as motel operators of their alleged right to being free from unreasonable search and seizure need not be taken seriously. Nor does their claim of the alleged infringement of their liberty deserve any further thought, its implausibility being self-evident, except perhaps as to the liberty to contract, which is part and parcel of their right to property. Unfortunately for them, in this jurisdiction the liberty to contract, except in the Pomar[10] case as noted in the decision, has never stood in the way of the enactment of police power measures when called for by circumstances such as undoubtedly exist in this case. The same is true in the United States, where such a concept has definitely fallen from its previously high state under the impact of the *Nebbia*,[11] *West Coast Hotel Co.*[12] and *Olsen* decisions.[13]

That leaves only the alleged grievance that there was an unconstitutional invasion of property rights. It goes without saying that petitioners themselves cannot ignore that one could, consistently with the fundamental law, be deprived of his property as long as due process is observed. The decision makes clear that such indeed was the case as far as this Ordinance was concerned. To that aspect, a considerable portion of the opinion was devoted, citing a number of applicable decisions of this Court, all tending to demonstrate what there was no due process infraction. The Motion for reconsideration is conspicuously barren of any attempt to show that under our previous decisions referred to, the challenged Ordinance could be successfully assailed. It would follow then that this reiteration of an argument, previously shown to be far from persuasive, is deserving of a similar fate.

That is all there is to the Motion for reconsideration. That and what Justice Cardozo aptly referred to as reference to "grotesque or fanciful situations," which if they would arise could then be appropriately dealt with. As the famed jurist aptly noted: "That they are conceivable though improbable ought not to govern our construction." [14] That is not the way then to impugn the validity of an ordinance. Neither could it be rightfully looked upon as laying a foundation for setting aside a decision. The Motion for reconsideration, to repeat, is palpably lacking in merit.

2. No occasion for new trial. -

Subsequently, a supplemental Motion for new trial dated September 25, 1967, was filed the same day. As earlier pointed out, with the Motion for reconsideration having been shown to be devoid of merit, the supplemental Motion for new trial should likewise be denied. In the main, what was so unsuccessfully put forth by counsel for petitioners was adhered to. Additional counsel would bring in new points, namely, the alleged denial of equal protection and the repugnancy to "the laissez faire principle underlying our economic system, as it would substantially reduce return on the investment." Neither suffices to justify any modification of the decision, much less its reconsideration. A new trial would therefore be an exercise in futility.

The alleged denial of equal protection was predicated on the greater advantages that the motels in the suburbs of Manila would enjoy as against those within the city limits. On its face, such argument is clearly unfounded. If the legislative power of the Municipal Board of the City of Manila were not limited to its boundaries, if it could apply to the suburban area, then perhaps plausibility could be imparted to such a claim. Since, as is undeniable, the challenged Ordinance applies to all the motels in Manila, an assertion that there is denial of equal protection would, to put it at its mildest, be extremely far-fetched.

Nor does the invocation of the laissez faire concept as bar against the enactment of regulatory measures, which undoubtedly would result in the diminution of income and the loss of business, occasion any misgiving as to the conformity of the decision arrived at by this Court with controlling constitutional law principles. Did not petitioners take note of the view announced by Justice Laurel quoted in the decision to the effect that the policy "of laissez faire has to some extent given way to the assumption by the government of the right of intervention even in contractual relations affected with public interest." The decision likewise cited this jurist, speaking for the Court in *Calalang v. Williams*: [15] "Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations. Persons and property may be subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state * * *. To this fundamental aim of our Government the rights of the individual are subordinated." That was in 1940. Then in 1955, came *Co Kiam v. City of Manila*, [16] where Justice Reyes, A., for the unanimous Court categorically declared: "And surely, the mere fact that some individuals in the community may be deprived of their present business or a particular mode of earning a living can not prevent the exercise of the police power. As was said in a case, persons licensed to pursue occupations which may in the public need and interest be affected by the exercise of the police power embark in those

occupations subject to the disadvantages which may result from the legal exercise of that power. (City of New Orleans v. Stafford, 27 L. Ann. 417)."

Nor does the reference by new counsel to American state court decisions call for a different conclusion. The United States Supreme Court in the leading case of West Virginia State Board of Education v. Barnette,[17] decided in 1943, was equally explicit, saying "the laissez-faire concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls." Two names of great repute, Freund and Learned Hand, were cited by petitioners. Neither, if properly understood, could help their cause at all. According to Freund: "In short, when freedom of the mind is imperiled by law, it is freedom that commands a momentum of respect, when property is imperiled, it is the lawmakers' judgment that commands respect. This dual standard may not precisely reverse the presumption of constitutionality in civil liberties cases, but obviously it does set up a hierarchy of values within the due process clause." [18] The illustrious Learned Hand writing on Chief Justice Stone's concept of the judicial function had occasion to note the "discredited attitude" of what he referred to "as the old apostles of the institution of property * * *." [19]

What then is left? Clearly nothing to call for the reconsideration of our decision at July 31, 1967. Nor is there the least justification for a new trial and reception of evidence.

WHEREFORE, the Motion for reconsideration of petitioners of September 16, 1967 and supplemental Motion for new trial of September 25, 1967, are denied.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Justice Brandeis in *Pacific States Box v. White* (1935) 296 US 176, 185, further elaborated on the above doctrine: "The order here in question deals with a subject clearly within the scope of the police power. See *Turner v. Maryland*, 107 US 38, 27 L. ed. 370, 2 S. Ct. 44. When such legislative action is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary." *Borden's Farm Products Co. v. Baldwin*, 293 US 194, 209, 79 L. ed. 281, 288, 55 S. Ct. 187. Their burden is not sustained by making allegations 'which are merely the general conclusions of law or fact. See *Public Service Commission v. Great Northern Utilities Co.*, 289 US 130, 136, 137, 77 L. ed. 1080, 1085, 1086, 53 S. Ct. 546. Facts relied upon to rebut the presumption of constitutionality must be specifically set forth. See *Aetna Ins. Co. v. Hyde*, 275 US 440, 72 L. ed. 357, 48 S. Ct. 174; *O'Gorman & Young v. Hartford F. Ins. Co.*, 282 US 251, 75 L. ed. 324, 51 S. Ct. 130, 72 A.L.R. 1163; *liegeman Farms Corp. v. Baldwin*, 293 US 163, 79 L. ed. 259, 55 S. Ct. 130. Outside of the *Pacific States Box* case, the *O'Gorman* decision has been cited with approval in *Osborn v. Orlin* (1940) 310 US 53; *Carolene Products Co. v. United States* (1944) 323 US 18; *California Auto Assn. v. Maloney* (1951) 341 US 105; and *Seagram and Sons v. Hostetter* (1966) 16 L. ed. 336. Referring to the *O'Gorman* doctrine, it has been said: "The propriety of such a change in the method of approach to constitutional questions, even though it may involve overruling previously decided cases, has been recognized since the days of *Taney*." (Comment, 42 *Yale Law Journal* 1258 [1933].

[2] *Dodd*, *Cases on Constitutional Law* (1949) 4th ed., p. 86.

[3] *Dowling*, *Cases on Constitutional Law* (1950) 4th ed., p. 769.

[4] Freund, Sutherland, De Wolfe Howe, and Brown, Constitutional Law: Cases and Other Problems 1954), p. 122

[5] Kauper, Constitutional Law Cases and Materials (1960) p.62.

[6] Dodd, op. cit., p. 87.

[7] Frankfurter and Landis, The Business a of the Supreme Court at October Term, 1930. (193) 45 Marv. Law Rev., 271, 325.

[8] Hamilton, The Jurist's Art (1931), 31 Col. Law Rev. 1073-1075.

[9] People v. Vera (1937) 65 Phil. 56, 89.

[10] 46 Phil. 440 (1924).

[11] 291 US 502(1934).

[12] 300 US 379 (1937).

[13] 313 US 1305 (1942).

[14] Gaines v. City of New York (1915) 109 N. E. 594, 596.

[15] 70 Mil. 726, 733.

[16] 96 Phil. 649, 654.

[17] 319 US 624.

[18] Freund, On Understanding the Supreme Court (1950) p. 11.

[19] 46 Columbia Law Rev. 698 (1946).

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