

GREGORIO AGLIPAY, PETITIONER, VS. JUAN RUIZ, RESPONDENT.*G. R. No. 45459. March 13, 1937*

Ponente: LAUREL, J.

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The petitioner, Mons. Gregorio Aglipay, Supreme Head of the Philippine Independent Church, seeks the issuance from this court of a writ of prohibition to prevent the respondent Director of Posts from issuing and selling postage stamps commemorative of the Thirty-third International Eucharistic Congress.

In May, 1936, the Director of Posts announced in the dailies of Manila that he would order the issuance of postage stamps commemorating the celebration in the City of Manila of the Thirty-third International Eucharistic Congress, organized by the Roman Catholic Church. The petitioner, in the fulfillment of what he considers to be a civic duty, requested Vicente Sotto, Esq., member of the Philippine Bar, to denounce the matter to the President of the Philippines. In spite of the protest of the petitioner's attorney, the respondent publicly announced having sent to the United States the designs of the postage stamps for printing as follows:

"In the center is a chalice, with grape vine and stalks of wheat as border design. The stamps are blue, green, brown, cardinal red, violet and orange, 1 inch by 1.094 inches. The denominations are for 2, 6, 16, 20, 36 and 50 centavos." The said stamps were actually issued and sold though the greater part thereof, to this day, remains unsold. The further sale of the stamps is sought to be prevented by the petitioner herein.

The Solicitor-General contends that the writ of prohibition is not the proper legal remedy in the instant case, although he admits that the writ may properly restrain ministerial functions. While, generally, prohibition as an extraordinary legal writ will not issue to restrain or control the performance of other than judicial or quasi-judicial functions (50 C. J., 658), its issuance and enforcement are regulated by statute and in this jurisdiction may issue to "* * * inferior tribunals, corporations, boards, or persons, whether exercising functions judicial or ministerial, which are without or in excess of the jurisdiction of such tribunal, corporation, board, or person * * *." (Sees. 516 and 226, Code of Civil Procedure.) The terms "judicial" and "ministerial" used with reference to "functions" in the statute are undoubtedly comprehensive and include the challenged act of the respondent Director of Posts in the present case, which act because alleged to be violative of the Constitution is a fortiori "without or in excess of * * * jurisdiction." The statutory rule, therefore, in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, "the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions." (*Dimayuga and Fajardo vs. Fernandez* [1923], 43 Phil., 304, 307.)

The more important question raised refers to the alleged violation of the Constitution by the respondent in issuing and selling postage stamps commemorative of the Thirty-third International Eucharistic Congress. It is alleged that this action of the respondent is violative of the provisions of section 13, subsection 3, Article VI, of the Constitution of the Philippines, which provides as follows:

"No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution,, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium."

The prohibition herein expressed is a direct corollary of the principle of separation of church and state. Without the necessity of adverting to the historical background of this principle in our country, it is sufficient to say that our history, not to speak of the history of mankind, has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims. The Malolos Constitution recognized this principle, of separation of church and state in the early stages of our constitutional development; it was inserted in the Treaty of Paris between the United States and Spain of December 10, 1898, reiterated in President McKinley's Instructions to the Philippine Commission, reaffirmed in the Philippine Bill of 1902 and in the Autonomy Act of August 29, 1916, and finally embodied in the Constitution of the Philippines as the supreme expression of the Filipino people. It is almost trite to say now that in this country we enjoy both religious and civil freedom. All the officers of the Government, from the highest to the lowest, in taking their oath to support and defend the Constitution, bind themselves to recognize and respect the constitutional guarantee of religious freedom, with its inherent limitations and recognized implications. It should be stated that what is guaranteed by our Constitution is religious liberty, not mere religious toleration.

Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored "the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. 4, Ordinance appended thereto; Assessment Law, sec. 344, par. [c], Adm. Code). Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium (sec. 13, subsec. 3, Art. VI, Constitution of the Philippines). Optional religious instruction in the public schools is by constitutional mandate allowed, (sec. 5, Art. XIII, Constitution of the Philippines, in relation to sec. 928, Adm. Code). Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conducive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state (see arts. 132 and 133, Revised Penal Code).

In the case at bar, it appears that the respondent Director of Posts issued the postage stamps in question under the provisions of Act No. 4052 of the Philippine Legislature. This Act is as follows:

"No. 4052.—AN ACT APPROPRIATING THE SUM OF SIXTY THOUSAND PESOS AND MAKING THE SAME AVAILABLE OUT OF ANY FUNDS IN THE INSULAR TREASURY NOT OTHERWISE APPROPRIATED FOR THE COST OF PLATES AND PRINTING OF POSTAGE STAMPS WITH NEW

DESIGNS, AND FOR OTHER PURPOSES.

"Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

"Section 1. The sum of sixty thousand pesos is hereby appropriated and made immediately available out of any funds in the Insular Treasury not otherwise appropriated, for the cost of plates and printing of postage stamps with new designs, and other expenses incident thereto.

"SEC. 2. The Director of Posts, with the approval of the Secretary of Public Works and Communications, is hereby authorized to dispose of the whole or any portion of the amount herein appropriated in the manner indicated and as often as may be deemed advantageous to the Government.

"SEC. 3. This amount or any portion thereof not otherwise expended shall not revert to the Treasury.

"SEC. 4. This act shall take effect on its approval.

"Approved, February 21, 1933."

It will be seen that the Act appropriates the sum of sixty thousand pesos for the cost of plates and printing of postage stamps with new designs and other expenses incident thereto, and authorizes the Director of Posts,, with the approval of the Secretary of Public Works and Communications, to dispose of the amount appropriated in the manner indicated and "as often as may be deemed advantageous to the Government". The printing and issuance of the postage stamps in question appears to have been approved by authority of the President of the Philippines in a letter dated September 1, 1936, made part of the respondent's memorandum as Exhibit A. The respondent alleges that the Government of the Philippines would suffer losses if the writ prayed for is granted. He estimates the revenue to be derived from the sale of the postage stamps in question at P1,618,179.10 and states that there still remain to be sold stamps worth P1,402,279.02.

Act No. 4052 contemplates no religious purpose in view. What it gives the Director of Posts is the discretionary power to determine when the issuance of special postage stamps would be "advantageous to the Government." Of course, the phrase "advantageous to the Government" does not authorize the violation of the Constitution. It does not authorize the appropriation, use or application of public money or property for the use, benefit or support of a particular sect or church. In the present case, however, the issuance of the postage stamps in question by the Director of Posts and the Secretary of Public Works and Communications was not inspired by any sectarian feeling to favor a particular church or religious denomination. The stamps were not issued and sold for the benefit of the Roman Catholic Church. Nor were money derived from the sale of the stamps given to that church. On the contrary, it appears from the letter of the Director of Posts of June 5, 1936, incorporated on page 2 of the petitioner's complaint, that the only purpose in issuing and selling the stamps was "to advertise the Philippines and attract more tourists to this country." The officials concerned merely took advantage of an event considered of international importance "to give publicity to the Philippines and its people" (Letter of the Undersecretary of Public Works and Communications to the President of the Philippines, June 9, 1936; p. 3, petitioner's complaint). It is significant to note that the stamps as actually designed and printed (Exhibit 2), instead of showing a Catholic Church chalice as originally planned, contains a map of the Philippines and the location of the City of Manila, and an inscription as follows: "Seat XXXIII International Eucharistic Congress, Feb. 3-7, 1937." What is emphasized is not the Eucharistic Congress itself but Manila, the capital of the Philippines, as the seat of that congress. It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is

one which could legitimately be undertaken by appropriate legislation. The main purpose should not be frustrated by its subordination to mere-incidental results not contemplated. (Vide *Bradfield vs. Roberts*, 175 U. S., 295; 20 Sup. Ct. Rep., 121; 44 Law. ed., 168.)

We are much impressed with the vehement appeal of counsel for the petitioner to maintain inviolate the complete separation of church and state and curb any attempt to infringe by indirection a constitutional inhibition. Indeed, in the Philippines, once the scene of religious intolerance and persecution, care should be taken that at this stage of our political development nothing is done by the Government or its officials that may lead to the belief that the Government is taking sides or favoring a particular religious sect or institution. But, upon very serious reflection, examination of Act No. 4052, and scrutiny of the attending circumstances, we have come to the conclusion that there has been no constitutional infraction in the case at bar. Act No. 4052 grants the Director of Posts, with the approval of the Secretary of Public Works and Communications, discretion to issue postage stamps with new designs "as often as may be deemed advantageous to the Government." Even if we were to assume that these officials made use of a poor judgment in issuing and selling the postage stamps in question still, the case of the petitioner would fail to take in weight. Between the exercise of a poor judgment and the unconstitutionality of the step taken, a gap exists which is yet to be filled to justify the court in setting aside the official act assailed as coming within a constitutional inhibition.

The petition for a writ of prohibition is hereby denied, without pronouncement as to costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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