

**HON. RICHARD J. GORDON, IN HIS CAPACITY AS CITY MAYOR OF
OLONGAPO, PETITIONER, VS. JUDGE REGINO T. VERIDIANO II AND
SPOUSES EDUARDO AND ROSALINDA YAMBAO, RESPONDENTS.***G.R. No. 55230, November 08, 1988*

Ponente: CRUZ, J.

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The issue before the Court is the conflict between the Food and Drug Administration and the mayor of Olongapo City over the power to grant and revoke licenses for the operation of drug stores in the said city. While conceding that the FDA possesses such power, the mayor claims he may nevertheless, in the exercise of his own power, prevent the operation of drug stores previously permitted by the former.

There are two drug stores involved in this dispute, to wit, the San Sebastian Drug Store and the Olongapo City Drug Store, both owned by private respondent Rosalinda Yambao.[1] They are located a few meters from each other in the same building on Hospital Road, Olongapo City.[2] They were covered by Mayor's Permits Nos. 1954 and 1955, respectively, issued for the year 1980,[3] and licenses to operate issued by the FDA for the same year.[4]

This case arose when on March 21, 1980, at about 5:00 o'clock in the afternoon, a joint team composed of agents from the FDA and narcotics agents from the Philippine Constabulary conducted a "test buy" at San Sebastian Drug Store and was sold 200 tablets of Valium, 10 mg. worth P410.00 without a doctor's prescription.[5]

A report on the operation was submitted to the petitioner, as mayor of Olongapo City, on April 9, 1980.[6] On April 17, 1980, he issued a letter summarily revoking Mayor's Permit No. 1954, effective April 18, 1980, "for rampant violation of R.A. 5921, otherwise known as the Pharmacy Law and R.A. 6425 or the Dangerous Drugs Act of 1972." [7] Later, when the petitioner went to Singapore, Vice-Mayor Alfredo T. de Perio, Jr. caused the posting of a signboard at the San Sebastian Drug Store announcing its permanent closure.[8]

Acting on the same investigation report of the "test-buy," and after hearing, FDA Administrator Arsenio Regala, on April 25, 1980, directed the closure of the drug store for three days and its payment of a P100.00 fine for violation of R.A. No. 3720. He also issued a stern warning to Yambao against a repetition of the infraction.[9] On April 29, 1980, the FDA lifted its closure order after noting that the penalties imposed had already been discharged and allowed the drug store to resume operations.[10]

On April 30, 1980, Yambao, through her counsel, wrote a letter to the petitioner seeking reconsideration of the revocation of Mayor's Permit No. 1954.[11] On May 7, 1980, having received no reply, she and her husband filed with the Regional Trial Court of Olongapo City a complaint for mandamus and damages, with a prayer for a writ of preliminary injunction, against the petitioner and Vice-Mayor de Perio.[12]

On the same date, Yambao requested permission from the FDA to exchange the locations of the San Sebastian Drug Store and the Olongapo City Drug Store for reasons of "business preference." [13] The request was

granted.[14] But when informed of this action, the petitioner, in a letter to the private respondent dated May 13, 1980, disapproved the transfers and suspended Mayor's Permit No. 1955 for the Olongapo City Drug Store.[15]

The Yambaos then filed on May 15, 1980, a supplemental complaint questioning the said suspension and praying for the issuance of a preliminary writ of prohibitory injunction.[16] On the same day, the respondent judge issued an order directing the maintenance of the status quo with respect to the Olongapo City Drug Store pending resolution of the issues.[17]

On May 21, 1980, the petitioner wrote the FDA requesting reconsideration of its order of April 29, 1980, allowing resumption of the operation of the San Sebastian Drug Store.[18] The request was denied by the FDA in its reply dated May 27, 1980.[19]

A motion for reconsideration of the status quo order had earlier been filed on May 19, 1980 by the petitioner. After a joint hearing and an exchange of memoranda thereon, the respondent judge issued an order on July 16, 1980,[20] the dispositive portion of which read as follows:

"WHEREFORE, the defendants' motion for reconsideration of the status quo order dated May 15, 1980, is hereby DENIED and the letter of the defendant city mayor dated April 17, 1980, for the revocation of Mayor's Permit No. 1954 for the San Sebastian Drug Store is declared null and void.

"Accordingly, a writ of preliminary prohibitory injunction is heretofore issued enjoining defendants from doing acts directed towards the closure of the San Sebastian Drug Store and the suspension of the Olongapo City Drug Store both situated at Hospital Road, Olongapo City. Further, the signboard posted at San Sebastian Drug Store by the defendants is ordered removed in order that the said drug store will resume its normal business operation.

"The hearing of the main petition for damages is set on August 14, 1980, at 1:30 o'clock in the afternoon."

The petitioner's motion for reconsideration of the above-stated order was denied in an order dated September 4, 1980.[21] The petitioner thereupon came to this Court in this petition for certiorari and prohibition with preliminary injunction, to challenge the aforesaid orders.

We issued a temporary restraining order against the respondent judge on October 27, 1980,[22] but lifted it on December 10, 1980, for failure of the petitioner to file his comment on the private respondents' motion to lift the said order and/or for issuance of a counter restraining order. [23]

First, let us compare the bases of the powers and functions respectively claimed by the FDA and the petitioner as mayor of Olongapo City.

The task of drug inspection was originally lodged with the Board of Pharmaceutical Examiners pursuant to Act 2762, as amended by Act 4162. By virtue of Executive Order No. 392 dated January 1, 1951 (mandating reorganization of various departments and agencies), this was assumed by the Department of Health and exercised through an office in the Bureau of Health known as the Drug Inspection Section. This section was empowered "to authorize the opening of pharmacies, drug stores and dispensaries, and similar establishments after inspection by persons authorized by law."

The Food and Drug Administration was created under R.A No. 3720 (otherwise known as the Food, Drug and Cosmetic Act), approved on June 22, 1963, and vested with all drug inspection functions in line with "the policy of the State to insure safe and good quality supply of food, drug and cosmetics, and to regulate the production, sale and traffic of the same to protect the health of the people." Section 5 of this Act specifically empowers it:

"(e) to issue certificates of compliance with technical requirements to serve as basis for the issuance of license

and spotcheck for compliance with regulations regarding operation of food, drug and cosmetic manufacturers and establishments."

For a more effective exercise of this function, the Department of Health issued on March 5, 1968, Administrative Order No. 60, series of 1968, laying down the requirements for the application to be filed with the FDA for authorization to operate or establish a drug establishment. The order provides that upon approval of the application, the FDA shall issue to the owner or administrator of the drug store or similar establishment a "License to Operate" which "shall be renewed within the first 3 months of each year upon payment of the required fees." This license contains the following reservation:

"However, should during the period of issue, a violation of any provisions of the Food, Drug and Cosmetic Act and/or the regulations issued thereunder be committed, this License shall be subject to suspension or revocation."

When the drug addiction problem continued to aggravate, P.D. No. 280 was promulgated on August 27, 1973, to give more teeth to the powers of the FDA, thus:

"Section 1. Any provision of law to the contrary notwithstanding, the Food and Drug Administrator is hereby authorized to order the closure, or suspend or revoke the license of any drug establishment which after administrative investigation is found guilty of selling or dispensing drugs, medicines and other similar substances in violation of the Food, Drug and Cosmetic Act, and Dangerous Drugs Act of 1972, or other laws regulating the sale or dispensation of drugs, or rules and regulations issued pursuant thereto.

"Sec. 2. The administrative investigation shall be summary in character. The owner of the drug store shall be given an opportunity to be heard." (P.D. 280, emphasis supplied.)

For his part, the petitioner, traces his authority to the charter of Olongapo City, R.A. No. 4645, which inter alia empowers the city mayor under Section 10 thereof:

"k. to grant or refuse municipal licenses to operate or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or city ordinances are being committed under protection of such licenses or in the premises in which the business for which the same have been granted is carried on, or for any other good reason of general interest."

The charter also provides, in connection with the powers of the city health officer, that:

"Sec. 6(k). He and his representatives shall have the power to arrest violators of health laws, ordinances, rules and regulations and to recommend the revocation or suspension of the permits of the different establishments to the City Mayor for violation of health laws, ordinances, rules and regulations." (Emphasis supplied.)

An application to establish a drug store in Olongapo City must be filed with the Office of the Mayor and must show that the applicant has complied with the existing ordinances on health and sanitation, location or zoning, fire or building, and other local requirements. If the application is approved, the applicant is granted what is denominated a "Mayor's Permit" providing inter alia that it "is valid only at the place stated above and until (date), unless sooner revoked for cause." [24]

Courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government. It is this policy the Court will apply in arriving at the interpretation of the laws above-cited and the conclusions that should follow therefrom.

A study of the said laws will show that the authorization to operate issued by the FDA is a condition precedent to the grant of a mayor's permit to the drug store seeking to operate within the limits of the city. This requirement is imperative. The power to determine if the opening of the drug store is conformable to the national policy and the laws on the regulation of drug sales belongs to the FDA. Hence, a permit issued by the mayor to a drug store not previously cleared with and licensed by the said agency will be a nullity.

This is not to say, however, that the issuance of the mayor's permit is mandatory once it is shown that the FDA has licensed the operation of the applicant drug store. This is not a necessary consequence. For while it may appear that the applicant has complied with the pertinent national laws and policies, this fact alone will not signify compliance with the particular conditions laid down by the local authorities like zoning, building, health, sanitation, and safety regulations, and other municipal ordinances enacted under the general welfare clause. This compliance still has to be ascertained by the mayor if the permit is to be issued by his office. Should he find that the local requirements have not been observed, the mayor must then, in the exercise of his own authority under the charter, refuse to grant the permit sought.

The power to approve a license includes by implication, even if not expressly granted, the power to revoke it. By extension, the power to revoke is limited by the authority to grant the license, from which it is derived in the first place. Thus, if the FDA grants a license upon its finding that the applicant drug store has complied with the requirements of the general laws and the implementing administrative rules and regulations, it is only for their violation that the FDA may revoke the said license. By the same token, having granted the permit upon his ascertainment that the conditions thereof as applied particularly to Olongapo City have been complied with, it is only for the violation of such conditions that the mayor may revoke the said permit.

Conversely, the mayor may not revoke his own permit on the ground that the compliance with the conditions laid down and found satisfactory by the FDA when it issued its license is in his own view not acceptable. This very same principle also operates on the FDA. The FDA may not revoke its license on the ground that the conditions laid down in the mayor's permit have been violated notwithstanding that no such finding has been made by the mayor.

In the present case, the closure of the San Sebastian Drug Store was ordered by the FDA for violation of its own conditions, which it certainly had the primary power to enforce. By revoking the mayor's permit on the same ground for which the San Sebastian Drug Store had already been penalized by the FDA, the mayor was in effect reversing the decision of the latter on a matter that came under its jurisdiction. As the infraction involved the pharmacy and drug laws which the FDA had the direct responsibility to execute, the mayor had no authority to interpose his own findings on the matter and substitute them for the decision already made by the FDA.

It would have been different if the offense condoned by the FDA was a violation of, say, a city ordinance requiring buildings to be provided with safety devices or equipment, like fire extinguishers. The city executive may ignore such condonation and revoke the mayor's permit just the same. In this situation, he would be acting properly because the enforcement of the city ordinance is his own prerogative. In the present case, however, the condition allegedly violated related to a national law, not to a matter of merely local concern, and so came under the jurisdiction of the FDA.

Settled is the rule that the factual findings of administrative authorities are accorded great respect because of their acknowledged expertise in the fields of specialization to which they are assigned.^[25] Even the courts of justice, including this Court, are concluded by such findings in the absence of a clear showing of a grave abuse of discretion, which is not present in the case at bar. For all his experience in the enforcement of city ordinances, the petitioner cannot claim the superior aptitudes of the FDA in the enforcement of the pharmacy and drug addiction

laws. He should therefore also be prepared, like the courts of justice themselves, to accept its decisions on this matter.

The petitioner magnifies the infraction committed by the San Sebastian Drug Store but the FDA minimizes it. According to the FDA Administrator, valium is not even a prohibited drug, which is why the penalty imposed was only a 3-day closure of the drug store and a fine of P100.00.[26] Notably, the criminal charges filed against the private respondent for the questioned transaction were dismissed by the fiscal's office.[27]

It is also worth noting that the San Sebastian Drug Store was penalized by the FDA only after a hearing held on April 25, 1980, at which private respondent Yambao, assisted by her lawyer-husband, appeared and testified.[28] By contrast, the revocation of the mayor's permit was communicated to her in a letter[29] reading simply as follows:

April 17, 1980

Rosalinda Yambao
c/o San Sebastian Drug Store
Hospital Road, Olongapo City

Madame:

Based on a report submitted by PC Major Virtus V. Gil, Chief 3 RFO, Dis. B, Task Force 'Bagong Buhay,' you are rampantly violating the provisions of Republic Act 5921 otherwise known as the 'Pharmacy Law.'

Aside from this, there is evidence that you are dispensing regulated drugs contrary to the provisions of R.A. 6425 otherwise known as the Dangerous Drugs Act of 1972.

In view of the above, Mayor's Permit No. 1954 heretofore issued in your name for the operation of a drug store (San Sebastian) at the Annex Building of the Fil-Am (IYC), along Hospital Road, this City, is REVOKED effective April 18, 1980.

PLEASE BE GUIDED ACCORDINGLY.

Very truly yours,
(SGD.) RICHARD J. GORDON
City Mayor

If only for the violation of due process which is manifest from this letter, the mayor's arbitrary action can be annulled.

The indefinite suspension of the mayor's permit for Olongapo City Drug Store was based on the transfer thereof to the site of the San Sebastian Drug Store as approved by the FDA but without permission from the petitioner. On this matter, the Court believes that the final decision rested with the mayor. The condition violated related more to the location in Olongapo City of business establishments in general than to the regulation of drug stores in particular. It therefore came under the petitioner's jurisdiction.

The FDA would have the right to disapprove the site of the drug store only if it would impair the health or other interests of the customers in contravention of the national laws or policies, as where the drug store is located in an unsanitary site. But the local executive would have reason to object to the location, even if approved by the FDA, where it does not conform to, say, a zoning ordinance intended to promote the comfort and convenience of the city residents.

The reason given by the petitioner in disapproving the transfer was violation of Mayor's Permit No. 1955, which

by its terms was valid only at the place stated therein. In the letter of May 13, 1980,[30] the private respondent was clearly informed that for violation of the condition of Mayor's Permit No. 1955 granting her the privilege of operating the Olongapo City Drug Store at No. 1-B Fil-Am Bldg., Hospital Road, the said permit was "hereby suspended." We find that that reason was valid enough. The permit clearly allowed the drug store to operate in the address given and not elsewhere. No hearing was necessary because the transfer without the mayor's permission is not disputed and was in fact impliedly admitted by the private respondent.

If the private respondent wanted to transfer her drug store, what she should have done was to secure the approval not only of the FDA but also, and especially, of the mayor. Merely notifying the petitioner of the change in the location of her drug stores as allowed by the FDA was not enough. The FDA had no authority to revoke that particular condition of the mayor's permits indicating the sites of the two drug stores as approved by the mayor in the light of the needs of the city. Only the mayor could.

We assume that Mayor's Permit No. 1954 could also have been validly suspended for the same reason (as the sites of the two drug stores were exchanged without amendment of their respective permits) were it not for the fact that such permit was revoked by the petitioner on the more serious ground of violation of the Pharmacy Law and the Dangerous Drugs Act of 1972.

It is understood, however, that the suspension should be deemed valid only as long as the two drug stores have not returned to their original sites as specified in their respective permits. Indefinite suspension will amount to a permanent revocation, which will not be a commensurate penalty with the degree of the violation being penalized.

The Court adds that denial of the request for transfer, if properly made by the private respondents, may not be validly denied by the judge in the absence of a clear showing that the transfer sought will prejudice the residents of the city. As the two drug stores are only a few meters from each other, and in the same building, there would seem to be no reason why the mere exchange of their locations should not be permitted. Notably, the location of the two drug stores had previously been approved in Mayor's Permits Nos. 1954 and 1955.

Our holding is that the petitioner acted invalidly in revoking Mayor's Permit No. 1954 after the FDA had authorized the resumption of operations of the San Sebastian Drug Store following the enforcement of the penalties imposed upon it. However, it was competent for the petitioner to suspend Mayor's Permit No. 1955 for the transfer of the Olongapo City Drug Store in violation of the said permit. Such suspension should nevertheless be effective only pending the return of the drug store to its authorized original site or the eventual approval by the mayor of the requested transfer if found to be warranted.

The petitioner is to be commended for his zeal in the promotion of the campaign against drug addiction, which has sapped the vigor and blighted the future of many of our people, especially the youth. The legal presumption is that he acted in good faith and was motivated only by his concern for the residents of Olongapo City when he directed the closure of the first drug store and the suspension of the permit of the other drug store. It appears, though, that he may have overreacted and was for this reason properly restrained by the respondent judge.

WHEREFORE, the challenged Orders of July 6, 1980, and September 4, 1980 are MODIFIED in the sense that the suspension of Mayor's Permit No. 1955 shall be considered valid but only until the San Sebastian Drug Store and the Olongapo City Drug Store return to their original sites as specified in the FDA licenses and the mayor's permits or until the request for transfer, if made by the private respondents, is approved by the petitioner. The rest of the said Orders are AFFIRMED, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 47.

[2] Ibid.

[3] Id.

[4] Id., p. 96.

[5] Id., pp. 48, 15.

[6] Id.

[7] Id., p. 23.

[8] Id., p. 48.

[9] Id., pp. 24-26.

[10] Id., p. 26.

[11] Id., pp. 27-28.

[12] Id., pp. 14-21.

[13] Id., p. 34.

[14] Id.

[15] Id., pp. 36-37.

[16] Id., pp. 29-33.

[17] Id., p. 38.

[18] Id., pp. 98-100.

[19] Id., p. 104.

[20] Id., pp. 47-54.

[21] Id., p. 64.

[22] Id., pp. 65-67.

[23] Id., pp. 160-162.

[24] Id., p. 211.

[25] Tagum Doctors Enterprises v. Gregorio Apsay, et al., G.R. No. 81188, August 30, 1988; Antonio de Leon v. Heirs of Gregorio Reyes, et al., 152 SCRA 584; Liangga Bay Logging Co., Inc. v. Hon. Enage, et al., 152 SCRA 80; Packaging Products Corp. v. NLRC, 152 SCRA 210, and the cases cited therein; Ateneo de Manila University v. CA, 145 SCRA 100.

[26] Rollo, p. 25.

[27] Ibid., pp. 234-242.

[28] Id., p. 14.

[29] Id., p. 23.

[30] Id., p. 36.

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