

NATIONAL ECONOMIC PROTECTIONISM ASSOCIATION, ELIZALDE D. DIAZ, JULIO LOGARTA, JR., ENRIQUE ANGELES, ALFREDO DE LEON AND GEORGE SIBAL, PETITIONERS, VS. THE HONORABLE ROBERTO V. O...

G.R. No. 67752. April 10, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for prohibition with preliminary injunction praying that: (a) Presidential Decree No. 1789 otherwise known as the "Omnibus Investment Code," dated January 16, 1981, the 1981 Investment Priorities Plan and Executive Order No. 676 which approved the said plan dated April 10, 1981; and (b) Presidential Decree No. 1892 which allowed an increase in foreign equity participation in preferred areas of investment effective for one (1) year dated December 4, 1983, all be declared unconstitutional.

As gathered from the records, the factual background of this case, is as follows:

On January 16, 1981 or one day before President Ferdinand E. Marcos signed Proclamation No. 2045 announcing the lifting of Martial Law in the Philippines, he, pursuant to his legislative or decree-making power under both the 1935 Constitution and the transitory provisions of the 1973 Constitution, issued P.D. No. 1789 otherwise known as the Omnibus Investment Code, revising, modifying and amending R.A. No. 5186 and R.A. No. 6135, both enacted by the Congress of the Philippines.

Shortly thereafter or on December 4, 1983, President Marcos issued P.D. No. 1892, suspending for a period of one year from date of its effectivity the nationality requirement of at least 60% Philippine Nationals for non-pioneer industries entitled to registration under aforementioned P.D. No. 1789.

Petitioner NEPA, suing as citizens of the Philippines, taxpayers, businessmen, officers and members of said association, who allegedly stand to be adversely affected by the enforcement or continued enforcement of the aforementioned presidential decrees (Rollo, pp. 1-4) filed the instant petition in this Court, seeking to enjoin public respondents from enforcing said decrees as well as "The Investment Priorities Plan" actually a memorandum of the Minister of Trade to the President, consisting of preferred areas of economic activity that are entitled to investment incentives under P.D. 1789 and Executive Order No. 676, entitled "Approving the 1981 Investment Priorities Plan," on the ground that they are unconstitutional; and after hearing declare them as such.

Petitioners maintain the position that the President of the Philippines has no absolute legislative power during martial law but only limited to the decree-making power relative to the suppression and prevention of the ground for its imposition which is manifestly evident from Section 26, Article VI of the 1935 Constitution (Section 15 of the 1973 Constitution) (Rollo, p. 8).

In their amended and/or supplemental petition, petitioners assail the legal ambiguity of the following statutory provisions:

"Article 34. Qualifications of Producer under Investment Priorities Plan. - To be entitled to registration under the Investment Priorities Plan, an applicant must satisfy the Board that:

(1) He is a citizen of the Philippines, in case the applicant is a natural person, or in case of a partnership or any other association, it is organized under Philippine laws and that at least sixty per cent (60%) of its capital is owned and controlled by citizens of the Philippines; or in case of a corporation or a cooperative, it is organized under Philippine laws and that at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine nationals as defined under Article 14 of this Code, and at least sixty per cent (60%) of the members of the Board of Directors are citizens of the Philippines. If it does not possess the required degree of ownership as mentioned above by Philippine nationals, the following circumstances must be satisfactorily established:

(a) x x x

(b) That it obligates itself to attain the status of a Philippine national, as defined in Article 14, within thirty (30) years from the date of registration or within such longer period as the Board may require taking into account the export potential of the project: Provided, That a registered export producer which exports one hundred per cent (100%) of its total production need not comply with the requirement; xxx xxx (Presidential Decree 1789)

"SECTION 1. Notwithstanding the provisions of Article 34 (1) of Presidential Decree No. 1789, as amended, otherwise known as the Omnibus Investment Code, the nationality requirement of at least 60% Philippine nationals for non-pioneer industries to be entitled to registration under Book One of the Omnibus Investment Code shall be suspended for a period of one (1) year; Provided, that foreign investors fulfill the other requirements provided in the aforementioned article, particularly Article 34 (1) (b), and such other conditions provided in Book One of the Omnibus Investment Code; and Provided, further, that foreign investors will not engage in activities reserved by the Constitution and existing laws to Philippine nationals and corporations and other juridical entities owned and controlled by Philippine nationals.

"SEC. 2. x x x

"SEC. 3. This Decree shall take effect immediately and shall remain in force for a period of one (1) year from effectivity hereof, provided, that upon expiration of the one-year period, the suspended provisions of the Omnibus Investment Code shall resume to be in force and effect without in anyway affecting the status of investments approved during the suspension of the provision. (Presidential Decree No.1892).

The Solicitor General for the respondents filed his separate comments on the petition, on August 7, 1984 (Rollo, p. 57) and on the amended and/or supplemental petition on September 12, 1984 (Ibid., p. 98) in compliance with the resolutions dated June 26, 1984 (Ibid., p. 24-a) and July 31, 1984 (Ibid., p. 53-a). The Court, after considering the pleadings filed and deliberating on the issues raised in the petition for prohibition with preliminary injunction with prayer for a restraining order and on the amended and/or supplemental petition as well as the respondents' separate comments on the petition and on the amended and/or supplemental petition, gave due course to the petition on August 27, 1985 (Rollo, p. 148). The parties were required to file simultaneous memoranda in the resolution dated January 16, 1986 (Ibid., p. 152). The Solicitor General filed a manifestation in lieu of memorandum (Ibid., p. 155), which the Court noted on April 3, 1986 (Ibid., p. 158), while petitioner's memorandum was filed on December 8, 1986 (Ibid., p. 175).

Petitioners raised the following issues:

1. With respect to P.D. 1789, they claim that while it was issued during martial law, the subject matter of the decree does not relate to the emergencies of invasion, insurrection, rebellion or imminent danger thereof, which are the only situations where the President's martial law legislative power may be exercised. Conversely, even assuming that it was issued pursuant to Amendment No. 6 of the Constitution still, the pre-conditions for

the exercise of legislative power by the President did not exist.

2. With respect to P.D. 1892, the pre-conditions for the exercise of legislative power by the President, under Amendment No. 6 were similarly absent aside from the fact that it violates due process and equal protection clauses of the Constitution and is repugnant to the nationalistic and conserving spirit of the Constitution.

3. With respect to the Investment Priorities Plan and Executive Order No. 676 which approves it, they claim that said plan and order offend Sections 8 and 9 of Article XIV of the Constitution. (Rollo, pp. 58-59)

On the other extreme, the Solicitor General for the respondents contend that petitioners have no personality and standing to sue in the absence of an actual controversy concerning the enforcement of the Presidential Decrees in question. Said laws are valid as they were issued Pursuant to Amendment No. 6 of the 1973 Constitution, the preconditions for their issuance were present and neither does P.D. 1892 violate the due process and equal protection clause of the Constitution, nor does it extend the Parity Amendment and the Laurel-Langley Agreement; the 1981 Investment Priorities Plan and Executive Order No. 676 do not offend Sections 8 and 9, Article XIV, of the 1973 Constitution (Rollo, pp. 59-79).

The petition is devoid of merit.

It is a well-settled rule that no constitutional question will be heard and resolved unless the following requisites of a judicial inquiry are present: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case (People v. Vera, 65 Phil. 56 [1937]; Dumlao v. COMELEC, 95 SCRA 400 [1980]).

Petitioners merely complied with the third requisite, that of raising the issue of constitutionality at the earliest instance in their pleadings. The petition is deficient as to the other three criteria. Otherwise stated, the power of judicial review is limited to the determination of actual cases and controversies, which are obviously absent in the instant case.

Petitioners question the constitutionality of Sections 1 and 3 of P.D. 1892 in relation to P. D. 1789, the 1981 Investment Priorities Plan and Executive Order No. 676 quoted earlier, as being violative of the due process and equal protection clauses of the 1973 Constitution as well as Sections 8 and 9 of Article XIV thereof, and seek to prohibit respondent Minister of Finance from implementing said laws. Yet, not even one of the petitioners has been adversely affected by the application of those provisions. No actual conflict has been alleged wherein the petitioner could validly and possibly say that the increase in foreign equity participation in non-pioneer areas of investment from the period of December 2, 1983 to December 4, 1984 had any direct bearing on them, such as considerable rise in unemployment, real increase in foreign investment, unfair competition with Philippine nationals, exploitation of the country's natural resources by foreign investors under the decrees. Petitioners advance an abstract, hypothetical issue which is in effect a petition for an advisory opinion from this Court.

As a general rule, the constitutionality of a statute will be passed upon only if, and to the extent that it is directly and necessarily involved in justiciable controversy and is essential to the protection of the rights of the parties concerned.

More specifically, this Court has ruled:

"The power of courts to declare a law unconstitutional arises only when the interests of litigants require the use of that judicial authority for their protection against actual interference, a hypothetical threat being insufficient." (United Public Works vs. Mitchell, U.S. 75; 91 L. Ed., 754).

"Bona fide suit. Judicial power is limited to the decision of actual cases and controversies. The authority to

pass on the validity of statutes is incidental to the decision of such cases where conflicting claims under the Constitution and under a legislative act assailed as contrary to the Constitution are raised. It is legitimate only in the last resort, and as necessity in the determination of real, earnest, and vital controversy between litigants." (Tanada & Fernando, Constitution of the Philippines, p. 1138; PACU v. Sec. of Education, 97 Phil. 809-810 [1955]).

The unchallenged rule is that the person who impugned the validity of a statute must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement (People v. Vera, supra; Dumlao v. COMELEC, supra, p. 402).

In the case of petitioners, not one of them has averred to have been adversely affected by the operation of the statutory provisions they assail as unconstitutional. They have no personal nor substantial interest at stake. In the absence of any legal conflict, they can claim no locus standi in seeking judicial redress especially so, as the challenged laws do not relate to appropriation measures that constitute misappropriation of public funds (Pascual v. Secretary of Public Works & Communications, 110 Phil. 331[1960]; Dumlao v. COMELEC, supra, p. 403). Courts will not pass upon the constitutionality of a law upon the complaint of one who fails to show that he is injured by its operation (PACU v. Sec. of Education, supra, p. 810).

The constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented (People v. Vera, supra; Dumlao v. Comelec, supra, p. 403).

The 1981 Investment Priorities Plan which is an overall plan prepared by the Board of Investments is simply an analysis, synthesis and projection of data collected by the Board from public and private sources which are measurements and indicators in areas of production, production capacities and possibilities in areas of economic activities from which investors might select (Article 28, P.D. 1789), while Executive Order No. 676 is but an approval of said plan. They are by no means violative of the Constitution nor were they successfully shown to be inimical to public interest. But more than that, it will be noted that P.D. 1892 ipso jure ceased its effectivity on December 4, 1984, while P.D. 1789 has been expressly repealed by Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987.

In fine, it bears reiteration that in interpreting statutes, that which will avoid a finding of unconstitutionality is to be preferred (Paredes v. Executive Secretary, 128 SCRA 6 [1984]).

PREMISES CONSIDERED, the petition is DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Gutierrez, Jr., in the result.

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