

**TERESITA TABLARIN, MA. LUZ CIRIACO, MA. NIMFA B. ROVIRA,
EVANGELINA S. LABAO, IN THEIR BEHALF AND IN BEHALF OF
APPLICANTS FOR ADMISSION INTO THE MEDICAL COLLEGES
DURING THE SCHOO...**

G.R. No. 78164. July 31, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

The petitioners sought admission into colleges or schools of medicine for the school year 1987-1988. However, the petitioners either did not take or did not successfully take the National Medical Admission Test (NMAT) required by the Board of Medical Education, one of the public respondents, and administered by the private respondent, the Center for Educational Measurement (CEM).

On 5 March 1987, the petitioners filed with the Regional Trial Court, National Capital Judicial Region, a Petition for Declaratory Judgment and Prohibition with a prayer for Temporary Restraining Order and Preliminary Injunction. The petitioners sought to enjoin the Secretary of Education, Culture and Sports, the Board of Medical Education and the Center for Educational Measurement from enforcing Section 5 (a) and (f) of Republic Act No. 2382, as amended, and MECS Order No. 52, series of 1985, dated 23 August 1985 and from requiring the taking and passing of the NMAT as a condition for securing certificates of eligibility for admission, from proceeding with accepting applications for taking the NMAT and from administering the NMAT as scheduled on 26 April 1987 and in the future. After hearing on the petition for issuance of preliminary injunction, the trial court denied said petition on 20 April 1987. The NMAT was conducted and administered as previously scheduled.

Petitioners accordingly filed this Special Civil Action for Certiorari with this Court to set aside the Order of the respondent judge denying the petition for issuance of a writ of preliminary injunction.

Republic Act 2382, as amended by Republic Acts Nos. 4224 and 5946, known as the "Medical Act of 1959" defines its basic objectives in the following manner:

"Section 1. Objectives. - This Act provides for and shall govern (a) the standardization and regulation of medical education; (b) the examination for registration of physicians; and (c) the supervision, control and regulation of the practice of medicine in the Philippines."

(Underscoring supplied)

The statute, among other things, created a Board of Medical Education which is composed of (a) the Secretary of Education, Culture and Sports or his duly authorized representative, as Chairman; (b) the Secretary of Health or his duly authorized representative; (c) the Director of Higher Education or his duly authorized representative; (d) the Chairman of the Medical Board or his duly authorized representative; (e) a representative of the Philippine Medical Association; (f) the Dean of the College of Medicine, University of the Philippines; (g) a representative of the Council of Deans of Philippine Medical Schools; and (h) a representative of the Association of Philippine

Medical Colleges, as members. The functions of the Board of Medical Education specified in Section 5 of the statute include the following:

- "(a) To determine and prescribe requirements for admission into a recognized college of medicine;
- (b) To determine and prescribe requirements for minimum physical facilities of colleges of medicine, to wit: buildings, including hospitals, equipment and supplies, apparatus, instruments, appliances, laboratories, bed capacity for instruction purposes, operating and delivery rooms, facilities for outpatient services, and others, used for didactic and practical instruction in accordance with modern trends;
- (c) To determine and prescribe the minimum number and minimum qualifications of teaching personnel, including student-teachers ratio;
- (d) To determine and prescribe the minimum required curriculum leading to the degree of Doctor of Medicine;
- (e) To authorize the implementation of experimental medical curriculum in a medical school that has exceptional faculty and instructional facilities. Such an experimental curriculum may prescribe admission and graduation requirements other than those prescribed in this Act; Provided, That only exceptional students shall be enrolled in the experimental curriculum;
- (f) To accept applications for certification for admission to a medical school and keep a register of those issued said certificate; and to collect from said applicants the amount of twenty-five pesos each which shall accrue to the operating fund of the Board of Medical Education;
- (g) To select, determine and approve hospitals or some departments of the hospitals for training which comply with the minimum specific physical facilities as provided in subparagraph (b) hereof; and
- (h) To promulgate and prescribe and enforce the necessary rules and regulations for the proper implementation of the foregoing functions." (Underscoring supplied)

Section 7 prescribes certain minimum requirements for applicants to medical schools:

"Admission requirements. - The medical college may admit any student who has not been convicted by any court of competent jurisdiction of any offense involving moral turpitude and who presents (a) a record of completion of a bachelor's degree in science or arts; (b) a certificate of eligibility for entrance to a medical school from the Board of Medical Education; (c) a certificate of good moral character issued by two former professors in the college of liberal arts; and (d) birth certificate. Nothing in this act shall be construed to inhibit any college of medicine from establishing, in addition to the preceding, other entrance requirements that may be deemed admissible.

x x x"

(Underscoring supplied)

MECS Order No. 52, s. 1985, issued by the then Minister of Education, Culture and Sports and dated 23 August 1985, established a uniform admission test called the National Medical Admission Test (NMAT) as an additional requirement for issuance of a certificate of eligibility for admission into medical schools of the Philippines, beginning with the school year 1986-1987. This Order goes on to state that:

"2. The NMAT, an aptitude test, is considered as an instrument toward upgrading the selection of applicants for admission into the medical schools and is calculated to improve the quality of medical education in the country. The cutoff score for the successful applicants, based on the scores on the NMAT, shall be determined every year by the Board of Medical Education after consultation with the Association of Philippine Medical Colleges. The NMAT rating of each applicant, together with the other admission requirements as presently called for under existing rules, shall serve as a basis for the issuance of the prescribed certificate of eligibility

for admission into the medical colleges.

3. Subject to the prior approval of the Board of Medical Education, each medical college may give other tests for applicants who have been issued a corresponding certificate of eligibility for admission that will yield information on other aspects of the applicant's personality to complement the information derived from the NMAT.

x x x

8. No applicant shall be issued the requisite Certificate of Eligibility for Admission (CEA), or admitted for enrollment as first year student in any medical college, beginning the school year, 1986-87, without the required NMAT qualification as called for under this Order." (Underscoring supplied)

Pursuant to MECS Order No. 52, s. 1985, the private respondent Center conducted NMATs for entrance to medical colleges during the school year 1986-1987. In December 1986 and in April 1987, respondent Center conducted the NMATs for admission to medical colleges during the school year 1987-1988.

Petitioners raise the question of whether or not a writ of preliminary injunction may be issued to enjoin the enforcement of Section 5 (a) and (f) of Republic Act No. 2382, as amended, and MECS Order No. 52, s. 1985, pending resolution of the issue of constitutionality of the assailed statute and administrative order. We regard this issue as entirely peripheral in nature. It scarcely needs documentation that a court would issue a writ of preliminary injunction only when the petitioner assailing a statute or administrative order has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of constitutionality, aside from showing a clear legal right to the remedy sought. The fundamental issue is of course the constitutionality of the statute or order assailed.

1. The petitioners invoke a number of provisions of the 1987 Constitution which are, in their assertion, violated by the continued implementation of Section 5 (a) and (f) of Republic Act 2381, as amended, and MECS Order No. 52, s. 1985. The provisions invoked read as follows:

(a) Article II, Section 11: "The state values the dignity of every human person and guarantees full respect of human rights."

(b) Article II, Section 13: "The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs."

(c) Article II, Section 17: "The State shall give priority to education, science and technology, arts, culture and sports to foster patriotism and nationalism, accelerate social progress and to promote total human liberation and development."

(d) Article XIV, Section 1: "The State shall protect and promote the right of all citizens to quality education at all levels and take appropriate steps to make such education accessible to all."

(e) Article XIV, Section 5 (3): "Every citizen has a right to select a profession or course of study, subject to fair, reasonable and equitable admission and academic requirements."

Article II of the 1987 Constitution sets forth in its second half certain "State policies" which the government is enjoined to pursue and promote. The petitioners here have not seriously undertaken to demonstrate to what extent or in what manner the statute and the administrative order they assail collide with the State policies embodied in Sections 11, 13 and 17. They have not, in other words, discharged the burden of proof which lies upon them. This burden is heavy enough where the constitutional provision invoked is relatively specific, rather than abstract, in character and cast in behavioral or operational terms. That burden of proof becomes of necessity heavier where

the constitutional provision invoked is cast, as the second portion of Article II is cast, in language descriptive of basic policies, or more precisely, of basic objectives of State policy and therefore highly generalized in tenor. The petitioners have not made their case, even a prima facie case, and we are not compelled to speculate and to imagine how the legislation and regulation impugned as unconstitutional could possibly offend the constitutional provisions pointed to by the petitioners.

Turning to Article XIV, Section 1, of the 1987 Constitution, we note that once more, petitioners have failed to demonstrate that the statute and regulation they assail in fact clash with that provision. On the contrary, we may note -- in anticipation of discussion infra -- that the statute and the regulation which petitioners attack are in fact designed to promote "quality education" at the level of professional schools. When one reads Section 1 in relation to Section 5 (3) of Article XIV, as one must, one cannot but note that the latter phrase of Section 1 is not to be read with absolute literalness. The State is not really enjoined to take appropriate steps to make quality education "accessible to all" who might for any number of reasons wish to enroll in a professional school, but rather merely to make such education accessible to all who qualify under "fair, reasonable and equitable admission and academic requirements".

2. In the trial court, petitioners had made the argument that Section 5 (a) and (f) of Republic Act No. 2382, as amended, offend against the constitutional principle which forbids the undue delegation of legislative power, by failing to establish the necessary standard to be followed by the delegate, the Board of Medical Education. The general principle of non-delegation of legislative power, which both flows from and reinforces the more fundamental rule of the separation and allocation of powers among the three great departments of government,[1] must be applied with circumspection in respect of statutes which, like the Medical Act of 1959, deal with subjects as obviously complex and technical as medical education and the practice of medicine in our present day world. Mr. Justice Laurel stressed this point 47 years ago in *Pangasinan Transportation Co., Inc. vs. the Public Service Commission*:[2]

"One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of delegatus non potest delegare or delegati potestas non potest delegare, adopted this practice (*Delegibus et Consuetudinibus Anglia* edited by G.E. Woodbine, Yale University Press, 1922, Vol. 2, p. 167) but which is also recognized in principle in the Roman Law (d.17.18.3) has been made to adapt itself to the complexities of modern government, giving rise to the adoption, within certain limits, of the principle of 'subordinate legislation', not only in the United States and England but in practically all modern governments. (*People vs. Rosenthal and Osmena* [68 Phil. 318, 1939]. Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater power by the legislature, and toward the approval of the practice by the courts."[3]

The standards set for subordinate legislation in the exercise of rule making authority by an administrative agency like the Board of Medical Education are necessarily broad and highly abstract. As explained by then Mr. Justice Fernando in *Edu v. Ericta*[4] -?

"The standard may be either expressed or implied. If the former, the non-delegation objection is easily met. The standard though does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole. In the *Reflector Law*, clearly the legislative objective is public safety. What is sought to be attained as in *Calalang v. Williams* is 'safe transit upon the roads'."[5]

We believe and so hold that the necessary standards are set forth in Section 1 of the 1959 Medical Act: "the standardization and regulation of medical education" and in Sections 5 (a) and 7 of the same Act, the body of the statute itself, and that these considered together are sufficient compliance with the requirements of the non-delegation principle.

3. The petitioners also urge that the NMAT prescribed in MECS Order No. 52, s. 1985, is an "unfair, unreasonable and inequitable requirement", which results in a denial of due process. Again, petitioners have failed to specify just what factors or features of the NMAT render it "unfair" and "unreasonable" or "inequitable". They appear to suggest that passing the NMAT is an unnecessary requirement when added on top of the admission requirements set out in Section 7 of the Medical Act of 1959, and other admission requirements established by internal regulations of the various medical schools, public or private. Petitioners' arguments thus appear to relate to utility and wisdom or desirability of the NMAT requirement. But constitutionality is essentially a question of power or authority: this Court has neither commission nor competence to pass upon questions of the desirability or wisdom or utility of legislation or administrative regulation. Those questions must be addressed to the political departments of the government, not to the courts.

There is another reason why the petitioners' arguments must fail: the legislative and administrative provisions impugned by them constitute, to the mind of the Court, a valid exercise of the police power of the state. The police power, it is commonplace learning, is the pervasive and non-waivable power and authority of the sovereign to secure and promote all the important interests and needs -- in a word, the public order -- of the general community.[6] An important component of that public order is the health and physical safety and well being of the population, the securing of which no one can deny is a legitimate objective of governmental effort and regulation.[7]

Perhaps the only issue that needs some consideration is whether there is some reasonable relation between the prescribing of passing the NMAT as a condition for admission to medical school on the one hand, and the securing of the health and safety of the general community, on the other hand. This question is perhaps most usefully approached by recalling that the regulation of the practice of medicine in all its branches has long been recognized as a reasonable method of protecting the health and safety of the public.[8] That the power to regulate and control the practice of medicine includes the power to regulate admission to the ranks of those authorized to practice medicine, is also well recognized. Thus, legislation and administrative regulations requiring those who wish to practice medicine first to take and pass medical board examinations have long ago been recognized as valid exercises of governmental power.[9] Similarly, the establishment of minimum medical educational requirements -- i.e., the completion of prescribed courses in a recognized medical school -- for admission to the medical profession, has also been sustained as a legitimate exercise of the regulatory authority of the state.[10] What we have before us in the instant case is closely related: the regulation of access to medical schools. MECS Order No. 52, s. 1985, as noted earlier, articulates the rationale of regulation of this type: the improvement of the professional and technical quality of the graduates of medical schools, by upgrading the quality of those admitted to the student body of the medical schools. That upgrading is sought by selectivity in the process of admission, selectivity consisting, among other things, of limiting admission to those who exhibit in the required degree the aptitude for medical studies and eventually for medical practice. The need to maintain, and the difficulties of maintaining, high standards in our professional schools in general, and medical schools in particular, in the current stage of our social and economic development, are widely known.

We believe that the government is entitled to prescribe an admission test like the NMAT as a means for achieving its stated objective of "upgrading the selection of applicants into [our] medical schools" and of "improv[ing] the quality of medical education in the country". Given the widespread use today of such admission tests in, for instance, medical schools in the United States of America (the Medical College Admission Test [MCAT])[11] and quite probably in other countries with far more developed educational resources than our own, and taking into account the failure or inability of the petitioners to even attempt to prove otherwise, we are entitled to hold that the NMAT is reasonably related to the securing of the ultimate end of legislation and regulation in this area. That end, it is useful to recall, is the protection of the public from the potentially deadly effects of incompetence and

ignorance in those who would undertake to treat our bodies and minds for disease or trauma.

4. Petitioners have contended, finally, that MECS Order No. 52, s. 1985, is in conflict with the equal protection clause of the Constitution. More specifically, petitioners assert that that portion of the MECS Order which provides that

"the cutoff score for the successful applicants, based on the scores on the NMAT, shall be determined every year by the Board of Medical Education after consultation with the Association of Philippine Medical Colleges." (Underscoring supplied)

infringes the requirements of equal protection. They assert, in other words, that students seeking admission during a given school year, e.g., 1987-1988, when subjected to a different cutoff score than that established for an, e.g., earlier school year, are discriminated against and that this renders the MECS Order "arbitrary and capricious". The force of this argument is more apparent than real. Different cutoff scores for different school years may be dictated by differing conditions obtaining during those years. Thus, the appropriate cutoff score for a given year may be a function of such factors as the number of students who have reached the cutoff score established the preceding year; the number of places available in medical schools during the current year; the average score attained during the current year; the level of difficulty of the test given during the current year, and so forth. To establish a permanent and immutable cutoff score regardless of changes in circumstances from year to year, may well result in an unreasonable rigidity. The above language in MECS Order No. 52, far from being arbitrary or capricious, leaves the Board of Medical Education with the measure of flexibility needed to meet circumstances as they change.

We conclude that prescribing the NMAT and requiring certain minimum scores therein as a condition for admission to medical schools in the Philippines, do not constitute an unconstitutional imposition.

WHEREFORE, the Petition for Certiorari is DISMISSED and the Order of the respondent trial court denying the petition for a writ of preliminary injunction is AFFIRMED. Costs against petitioners.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] See *People v. Vera*, 65 Phil. 56 (1937) and *Pelaez v. Auditor General*, 15 SCRA 569 (1965).

[2] 70 Phil. 221 (1940).

[3] 70 Phil., at 229; underscoring supplied.

[4] 35 SCRA 481 (1970).

[5] 35 SCRA, at 497; underscoring supplied. At this point, Mr. Justice Fernando dropped a useful footnote of the following tenor:

"This Court has considered as sufficient standards, 'public welfare', *Municipality of Cardona v. Binangonan*, 36 Phil. 547 (1917); 'necessary in the interest of law and order', *Rubi v. Provincial Board*, 39 Phil. 660 (1919); 'public interest', *People v. Rosenthal*, 68 Phil. 328 (1939); and 'justice and equity and substantial merits of the case', *International Hardwood v. Pangil Federation of Labor*, 70 Phil. 602 (1940)."

In *People v. Exconde*, 101 Phil. 1125 (1957), Mr. Justice J.B.L. Reyes said:

"It is well established in this jurisdiction that, while the making of laws is a non-delegable activity that corresponds exclusively to Congress, nevertheless, the latter may constitutionally delegate authority and promulgate rules and regulations to implement a given legislation and effectuate its policies, for the reason that the legislature often finds it impracticable (if not impossible) to anticipate and provide for the multifarious and complex situations that may be met in carrying the law into effect. All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it, but conform to the standards that the law prescribes ---." (101 Phil., at 1129; underscoring supplied).

[6] E.g., *U.S. v. Toribio*, 15 Phil. 85 (1910); *Ermita?Malate Hotel and Motel Operators Association, Inc. v. Mayor of Manila*, 20 SCRA 849 (1967) and *Morfe v. Mutuc*, 22 SCRA 424 (1968).

[7] E.g., *Case v. Board of Health*, 24 Phil. 256 (1913); *People vs. Witte*, 146 NE 178 (1925) and *Lorenzo v. Director of Health*, 50 Phil. 595 (1927).

[8] *Barsky v. Board of Regents*, 347 US 442, 98 L.Ed. 829, 74 SCt. 650 (1954); *Louisiana State Board of Medical Examiners v. Beatty*, 220 La. 1, 55 So2d. 761 (1951) and *Reisinger v. Com., State Board of Medical Education and Licensure, et al.*, 399 A2d 1160 (1979).

[9] *Dent v. West Virginia*, 129 US 114, 32 L.Ed. 623, 9 SCt. 231 (1889); *State v. Bair*, 112 Iowa 466, 84 NW 532 (1900).

[10] *People v. Love*, 298 Ill 304, 131 NE 809, 16 ALR 703 (1921); *Collins v. Texas*, 223 US 288, 56 L.Ed. 439, 32 SCt. 286 (1912).

[11] See, e.g., *McDonald v. Hogness, et al.*, 92 Wash. 431, 598 P 2d. 707 (1979).

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