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G.R. No. 88265. December 21, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a class suit filed by officers of the Philippine Medical Association, the national organization of medical doctors in the Philippines, on behalf of their professional brethren who are of kindred persuasion, wherein this Court is asked to declare as unconstitutional, hence, null and void, some provisions of the Generics Act of 1988 (Rep. Act No. 6675), and of the implementing Administrative Order No. 62 issued pursuant thereto, specifically:

(a) Section 6, Pars. (a) and (b) of the Generics Act which provide:

“(a) All government health agencies and their personnel as well as other government agencies shall use generic terminology or generic names in all transactions related to purchasing, prescribing, dispensing and administering of drugs and medicines.

“(b) All medical, dental and veterinary practitioners, including private practitioners, shall write prescriptions using the generic name. The brand name may be included if so desired.” (p. 6, Rollo.)

(b) Section 12, Pars. (b), (c) and (d) of the same law which provide:

“(b) For the second conviction, the penalty of fine in the amount of not less than two thousand pesos (P2,000.00) but not exceeding five thousand pesos (P5,000.00) at the discretion of the court.

“(c) For the third conviction, the penalty of fine in the amount of not less than five thousand pesos (P5,000.00) but not exceeding ten thousand pesos (P10,000.00) and suspension of his license to practice his profession for thirty (30) days at the discretion of the court.

“(d) For the fourth and subsequent convictions, the penalty of fine of not less than ten thousand pesos (P10,000.00) and suspension of his license to practice his profession for one year or longer at the discretion of the court.” (pp. 6-7, Rollo.) and

(c) Sections 4 and 7, Phase 3 of Administrative Order No. 62, Series of 1989 dated March 9, 1989, of the respondent Secretary of Health, which read as follows:

“Section 4. Violate, Erroneous and Impossible Prescriptions.

“4.1. Violative Prescriptions:

“4.1.1 Where the generic name is not written;

“4.1.2 Where the generic name is not legible and a brand name which is legible is written;

"4.1.3 Where the brand name is indicated and instructions added, such as the phase 'No Substitution' which tend to obstruct, hinder or prevent proper generic dispensing.

"4.2 What to do with Violative Prescriptions.

"Violative Prescriptions shall not be filled. They shall be kept and reported by the pharmacist of the drug outlet or any other interested party to the nearest DOH Officer for appropriate action. The pharmacist shall advise the prescriber of the problem and/or instruct the customer to get the proper prescription.

"4.3 Erroneous Prescriptions:

"4.3.1 When the brand name precedes the generic name.

"4.3.2 Where the generic name is the one in parenthesis.

"4.3.3 Where the brand name in (sic) not in parenthesis.

"4.3.4 Where more than one drug product is prescribed in one prescription form.

"4.4 What to do with erroneous prescriptions.

"Erroneous prescriptions shall be filled. Such prescriptions shall also be kept and reported by the pharmacist of the drug outlet or any other interested party to the nearest DOH Office for appropriate action.

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"Section 7. Timetable of Implementation.

"In order to give all affected parties adequate time for learning and adjustment, the implementation of these Rules and Regulations shall in three phases, as follows:

"Phase 1 Education Drive x x x

"Phase 2 Monitoring of Compliance x x x

"Phase 3 Implementation.

"Beginning September 1, 1989 the DOH and the other relevant agencies of government shall monitor compliance with these Rules and Regulations and all violations shall be subject to the appropriate sanctions and penalties provided for under these Rules and Regulations and the Generics Act of 1988." (pp. 7-9, Rollo.)

On March 15, 1989, the full text of Republic Act No. 6675 was published in two newspapers of general circulation in the Philippines. The law took effect on March 30, 1989, fifteen (15) days after its publication, as provided in Section 15 thereof.

Section 7, Phase 3 of Administrative Order No. 62 was amended by Administrative Order No. 76 dated August 28, 1989 by postponing to January 1, 1990 the effectivity of the sanctions and penalties for violations of the law, provided in Sections 6 and 12 of the Generics Act and Sections 4 and 7 of the Administrative Order.

The petitioners allege that "as of this date, there is no breach or violation yet" of the law (p. 9, Rollo), which took effect on March 30, 1989. However, as the penal provisions will only take effect on January 1, 1990, it would have been more accurate to state that "as of this date, no breaches or violations of the law have been punished yet" (p. 9, Rollo).

The petition is captioned as an action for declaratory relief, over which this Court does not exercise jurisdiction. Nevertheless, in view of the public interest involved, we decided to treat it as a petition for prohibition instead.

The petitioners' main argument against paragraphs (a) and (b), Section 6 of the law, is the alleged unequal treatment of government physicians, dentists, and veterinarians, on one hand, and those in private practice on the other hand, in the manner of prescribing generic drugs, for, while the former are allegedly required to use only generic terminology in their prescriptions, the latter may write the brand name of the drug in parenthesis below the generic name. The favored treatment of private doctors, dentists and veterinarians under the law is allegedly a specie of invalid class legislation.

There is no merit in that argument for it proceeds from a misreading and misinterpretation of the letter and intent of paragraphs (a) and (b), Section 6 of the Generics Act. Indeed, as explained by the public respondent:

"x x x while paragraph (a) enumerates the government transactions ('purchasing, prescribing, dispensing and administering of drugs and medicines') where the sole use of generic terminology has been required, the 'prescription' of drugs is further governed by paragraph (b). And the use of the word 'all' in the latter provision emphasizes the absence of any distinction between government and private physicians. In other words, in prescribing drugs, physicians, whether in government service or in private practice, are both governed by exactly the same rules, and thus, are both authorized to include the brand name in their respective prescriptions." (p. 44, Rollo.)

Furthermore, it may be observed that while paragraph (a) refers to "all government health agencies, and their personnel as well as other government agencies" (not necessarily physicians, dentists and veterinarians), paragraph (b) refers to "all medical, dental and veterinary practitioners, including private practitioners."

Petitioners concede that the requirement for doctors, dentists, and veterinarians to use the generic terminology in writing their prescriptions, followed by the brand name in parenthesis, is "well and good" (p. 12, Rollo). However, they complain that under paragraph (d) of the law which reads:

"(d) Drug outlets, including drugstores, hospital and non-hospital pharmacies and non-traditional outlets such as supermarkets and stores, shall inform any buyer about any and all other drug products having the same generic name, together with their corresponding prices so that the buyer may adequately exercise his option. Within one (1) year after approval of this Act, the drug outlets referred to herein, shall post in conspicuous places in their establishments, a list of drug products with the same generic name and their corresponding prices." (Annex A, p. 23, Rollo.)

the salesgirl at the drugstore counter is authorized to "substitute the prescribed medicine with another medicine belonging to the same generic group." Since doctors are not allowed to instruct the druggist not to substitute the prescription, or to "Dispense only as Prescribed" (per Sec. 4, Adm. Order No. 62), the petitioners argue that "the act of prescribing the correct medicine for the patient becomes the act of the salesgirl at the drugstore counter, no longer the act of the physician, dentist, or veterinarian" (p. 12, Rollo).

Here again, the petitioners have distorted the clear provisions of the law and the implementing administrative order. For it is plain to see that neither paragraph (d) of Section 6 of the Generics Act, nor Section 4 of Administrative Order No. 62, gives the salesgirl and/or druggist the discretion to substitute the doctor's prescription.

On the contrary, Section 4, par. 4.1, of Administrative Order No. 62 directs the pharmacist not to fill "violative prescriptions" (where the generic name is not written, or illegibly written, and the prescription of a brand name is accompanied by the doctor's instruction not to substitute it), as well as "impossible prescriptions" (par. 4.5). Even a doctor's "erroneous" prescriptions "shall be filled," not substituted (par. 4.3, Adm. Order No. 62). And, Sections 3 and 5 of Adm. Order No. 63 enjoin the drug outlets "not (to) favor or suggest" or "impose" a particular brand or product on the customer. The administrative order provides:

"In order to ensure the informed choice and use of drugs by the patient/buyer, the drug outlet is required to:

"3.1.1 Inform the patient/buyer of all available drug products generically equivalent to the one prescribed with their corresponding prices. In so doing, the drug outlet shall not favor or suggest any particular product so that the patient/buyer may fully and adequately exercise his option to choose (Sec. 3, Adm. Order No. 63 s. 1989).

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"The following acts or omissions are considered violations of these rules and regulations:

"5. 1 Imposing a particular brand or product on the buyer. x x x." (pp. 46-47, Rollo.)

The salesgirl at the drugstore counter merely informs the customer, but does not determine (for she is incompetent to do so), all the other drug products or brands that have the same generic name, and their corresponding prices. That information she may obtain from the list of drug products determined by the Bureau of Food and Drugs to have the same generic name, or which are the chemical, biological, and therapeutic equivalent of the generic drug. All drugstores or drug outlets are required by the law to post such list in a conspicuous place in their premises for the information of the customers, for the choice of whether to buy the expensive brand-name drug, or the less expensive generic, should be exercised by the customer alone.

The purpose of the Generics Act is to carry out the policy of the State:

"To promote, encourage and require the use of generic terminology in the importation, manufacture, distribution, marketing, advertising and promotion, prescription and dispensing of drugs;

"To ensure the adequate supply of drugs with generic names at the lowest possible cost and endeavor to make them available for free to indigent patients;

"To encourage the extensive use of drugs with generic names through a rational system of procurement and distribution;

"To emphasize the scientific basis for the use of drugs, in order that health professionals may become more aware and cognizant of their therapeutic effectiveness; and

"To promote drug safety by minimizing duplication in medications and/or use of drugs with potentially adverse drug interactions." (pp. 38--39, Rollo.)

or, as stated by the public respondent, "to promote and require the use of generic drug products that are therapeutically equivalent to their brand-name counterparts" (p. 39, Rollo) for "the therapeutic effect of a drug does not depend on its 'brand' but on the 'active ingredients' which it contains." The medicine that cures is the "active ingredient" of the drug, and not the brand name by which it has been baptized by the manufacturer.

The public respondent points out that the institution of generics in the Philippines will compel physicians to prescribe drugs based on their therapeutic or "active ingredient," instead of their well-known brand names. Multiple medications which may produce potentially adverse, even lethal, chemical reactions in the patient will thereby be avoided. Patients with limited means will be able to buy generic drugs that cost less but possess the same active ingredients, dosage form, and strength as brand names, many of which are priced beyond the reach of the common tao because the high costs of advertising, packaging, royalties, and other inputs of production determine their pricing for the market.

The Court has been unable to find any constitutional infirmity in the Generics Act. It, on the contrary, implements the constitutional mandate for the State "to protect and promote the right to health of the people" and "to make essential goods, health and other social services available to all the people at affordable cost" (Section 15, Art. II

and Section 11, Art. XIII, 1987 Constitution).

The prohibition against the use by doctors of "no substitution" and/or words of similar import in their prescription, is a valid regulation to prevent the circumvention of the law. It secures to the patient the right to choose between the brand name and its generic equivalent since his doctor is allowed to write both the generic and the brand name in his prescription form. If a doctor is allowed to prescribe a brand-name drug with "no substitution," the patient's option to buy a lower-priced, but equally effective, generic equivalent would thereby be curtailed. The law aims to benefit the impoverished (and often sickly) majority of the population in a still developing country like ours, not the affluent and generally healthy minority.

There is no merit in the petitioners' theory that the Generics Act impairs the obligation of contract between a physician and his patient, for no contract ever results from a consultation between patient and physician. A doctor may take in or refuse a patient, just as the patient may take or refuse the doctor's advice or prescription. As aptly observed by the public respondent, no doctor has ever filed an action for breach of contract against a patient who refused to take prescribed medication, undergo surgery, or follow a recommended course treatment by his doctor (p. 53, Rollo). In any event, no private contract between doctor and patient may be allowed to override the power of the State to enact laws that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community. This power can neither be abdicated nor bargained away. All contractual and property rights are held subject to its fair exercise (*Anglo-Fil Trading Corporation vs. Lazaro*, 124 SCRA 495).

Petitioners have also assailed Section 12, paragraphs b, c and d, of the Generics Act prescribing graduated penalties (ranging from a reprimand to a fine of not less than P10,000 and the suspension of the physician's license to practice his profession for one [1] year or longer, at the discretion of the court) for violations of its provisions. Petitioners' allegation that these penalties violate the constitutional guarantee against excessive fines and cruel and degrading punishment, has no merit. Penal sanctions are indispensable if the law is to be obeyed. They are the "teeth" of the law. Without them, the law would be toothless, not worth the paper it is printed on, for physicians, dentists and veterinarians may freely ignore its prescriptions and prohibitions. The penalty of suspension or cancellation of the physician's license is neither cruel, inhuman, or degrading. It is no different from the penalty of suspension or disbarment that this Court inflicts on lawyers and judges who misbehave or violate the laws and the Codes of Professional and Judicial Conduct.

We hold that the Generics Act and the implementing administrative orders of the Secretary of Health are constitutional. In light of its beneficial provisions, we cannot heed the petitioners' plea to kill it aborning, i.e., before it has had a chance to prove its value to our people as envisioned by its makers.

WHEREFORE, the petition is dismissed for lack of merit. Costs against the petitioners.

SO ORDERED.

Fernan, C.J., Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, J., in the result.

Gutierrez, Jr., J., concurs in the result only because of the failure to overcome the presumption of the constitutionality and not because the respondent's arguments are valid.

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