

**THE UNIVERSITY OF THE PHILIPPINES, THE UP BOARD OF REGENTS
AND DEAN PATRICIO LAZARO, PETITIONERS, VS. HON. JUDGE
RUBEN AYSON, BR. VI, RTC-BAGUIO CITY, AND UP COLLEGE BAGUIO
HIGH...**

G.R. No. 88386. August 17, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari, with urgent prayer for the issuance of a temporary restraining order, seeking to annul the Orders of respondent Judge dated May 25, 1989 and June 14, 1989 in Civil case No. 1748-R entitled, "UP College Baguio High School Foundation, Inc., et al., v. The University of the Philippines, et al., "restraining petitioners from implementing the decision of the Board of Regents to phase out the UP College Baguio High School (UPCBHS) and the Memorandum of petitioner Dean Patricio Lazaro directing the principal of UPCBHS not to accept new incoming freshmen for the school year 1989-1990.

Sometime in 1972, the UP Board of Regents approved the establishment of UPCBHS as an integral part of the graduate program in education to serve, among others, as a laboratory and demonstration school for prospective teachers. Provided, however, that UPCBHS must be self-supporting and should not entail any subsidy from the budget of the UP.

In 1978, the Board of Regents provided for the establishment of a Division of Education in UP College Baguio (UPCB) which shall be composed of a Department of Professional Education and a High School Department. However, the Department of Professional Education was never organized, although the High School Department has been in continuous operation.

In 1981, the Committee to Review Academic Program recommended the abolition of the UPCBHS. In 1985, the Program Review Committee likewise asked the UPCB to look into the viability of its secondary education program on account of limited financial resources plus the fact that UPCBHS failed to serve as a laboratory school for teacher training program as UPCB does not offer programs in Education. Subsequently, various discussions were held on the proposed phase-out of the UPCBHS.

On January 30, 1989, the UP Board of Regents approved the proposed phase-out of UPCBHS on the grounds, inter alia, that only an insignificant number of UPCBHS graduates qualified for admission and actually enrolled in UPCB and that UPCBHS is not serving as a laboratory or demonstration school for prospective teachers much less a self-supporting unit. Subsequently, petitioner Dean Patricio Lazaro issued a memorandum directing the UPCBHS Principal not to accept new incoming high school freshmen for the school year 1989-1990.

On May 25, 1989, respondent UP College Baguio High School Foundation Inc., represented by its president, filed a petition with the Regional Trial Court of Baguio, Br. VI, presided by respondent Judge against herein petitioners, for Injunction with preliminary preventive and mandatory injunction with prayer for the issuance of a

temporary restraining order, docketed as Civil Case No. 1748-R, alleging among others, that the decision of the UP Board of Regents to phase out the UP CBHS is without legal basis and unconstitutional.

Thereafter, respondent Judge issued the assailed Orders restraining petitioners from implementing the Board's decision to phase out UP CBHS and the memorandum of Dean Patricio Lazaro. Petitioners' motion to dismiss Civil Case No. 1748-R was denied by respondent Judge.

Hence, this petition.

On June 27, 1989, this Court issued a Temporary Restraining Order enjoining the implementation of the assailed orders of respondent Judge.

Petitioners contend, among other things, that the decision of the UP Board of Regents to phase out the UP CBHS is an exercise of academic freedom guaranteed by the constitution (Art. XIV, Sec. 5, par. 2).

Respondents, on the other hand, take issue not with the exercise of academic freedom but rather on the right to quality education (Art. XIV, Sec. 1) and free public secondary education (Art. XIV, Sec. 2, par. 2) mandated by the Constitution and Rep. Act No. 6655, otherwise known as "Free Public Secondary Education Act of 1988". Respondents contend that the abolition of the UP CBHS would be violative of said rights.

The conflict of the present petition pits the concept of academic freedom as against the right to free public secondary education. Art. XIV, Section 2 [2] of the Constitution, provides: "The State shall establish and maintain a system of free public education in the elementary and high school levels. Without limiting the right of natural parents to rear their children, elementary education is compulsory for all children of school age." On the other hand, Art. XIV, Section 5 [2], provides: "Academic freedom shall be enjoyed in all institutions of higher learning."

Is secondary public education demandable in an institution of higher learning such as the University of the Philippines?

We rule in the negative.

It is beyond cavil that the UP, as an institution of higher learning, enjoys academic freedom -- the institutional kind.

In *Garcia v. The Faculty Admission Committee, Loyola School of Theology* (68 SCRA 277 [1975]), the Court had occasion to note the scope of academic freedom recognized by the Constitution as follows:

"(I)t is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent.

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" 'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the 'four essential freedoms' of a university --- to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study'" (Underscoring supplied; citing *Sinco*, Philippine Political Law, 491, (1962) and the concurring opinion of Justice Frankfurter in *Sweezy v. New Hampshire* (354 US 234 [1957])).

Rep. Act No. 6655, otherwise known as the "Free Public Secondary Education Act of 1988," includes in its coverage state colleges and universities (SCUs) offering secondary courses. Respondents contend that since a secondary course is being offered in UPCHS, petitioners cannot unilaterally withdraw therefrom, otherwise, the said Act would be nothing but a mere nullity for all other SCUs. Besides, respondents contend, petitioners already recognized the applicability of Rep. Act No. 6655 when they implemented the same at the UPCHS for School Year 1988-89 and petitioners' assertion that UPCHS was established only if it would be "self-supporting and should not entail any subsidy from the budget of UP" is but a lame excuse.

At this juncture, it must be pointed out that UPCHS was established subject to a number of conditionalities, e.g., it must be self-supporting, it can serve as a feeder for the UP at Baguio, it can serve as a laboratory and demonstration school for prospective teachers, failing in which the University can order its abolition on academic grounds, specially where the purposes for which it was established was not satisfied.

Specifically, the University of the Philippines was created under its Charter (Act No. 1870 [1908], as amended) to provide advanced tertiary education and not secondary education. Section 2 of said Act states that "the purpose of said University shall be to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training."

It is apparent that secondary education is not the mandated function of the University of the Philippines; consequently, the latter can validly phase out and/or abolish the UPCHS especially so when the requirements for its continuance have not been met, Rep. Act No. 6655 to the contrary notwithstanding. The findings of facts by the Board of Regents which led to its decision to phase out the UPCHS must be accorded respect, if not finality. Acts of an administrative agency within their areas of competence must not be casually overturned by the courts. It must be emphasized that UPCHS was established as a component of the tertiary level, i.e., the teacher/training program. As it turned out however, the latter program was not viable in UPCHS thereby necessitating the phasing out of UPCHS, the rationale being its reasons for existence no longer exists. On this score, UPCHS differs from the other UP high schools in Iloilo, Diliman, Cebu and Los Baños. The latter schools serve as laboratory schools for the College of Education in said areas, whereas, in Baguio, there is no College of Education.

A careful perusal of Rep. Act No. 6655 could not lend respondents a helping hand either. Said Act implements the policy of the State to provide free public secondary education (Sec. 4) and vests the formulation of a secondary public education curriculum (Sec. 5), the nationalization of public secondary schools (Sec. 7) and the implementation of the rules and regulations thereof (Sec. 9) upon the Secretary of the Department of Education, Culture and Sports (DECS). Rep. Act No. 6655 complements Sec. 2 (2), Article XIV of the Constitution which mandates that the State shall establish and maintain a system of free public secondary education. However, this mandate is not directed to institutions of higher learning like UP but to the government through the Department of Education, Culture and Sports (DECS). As an institution of higher learning enjoying academic freedom, the UP cannot be compelled to provide for secondary education. However, should UP operate a high school in the exercise of its academic freedom, Rep. Act No. 6655 requires that the students enrolled therein "shall be free from payment of tuition and other school fees."

In view of the foregoing, respondents do not have a clear legal right to UP secondary education.

ACCORDINGLY, the Court Resolved to Grant the petition. The assailed Orders of respondent Judge dated May 25, 1989 and June 14, 1989 are hereby Set Aside and respondent Judge is ordered to Dismiss Civil Case No. 1748-R. Secretary Lourdes Quisumbing of the Department of Education, Culture and Sports is requested to make arrangements with the other high schools in Baguio City for purposes of accommodating the students herein affected. The temporary restraining order issued is made permanent.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Gancayco, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., on leave.

Sarmiento, J., No part, I was a Regent of U.P. when this U.P.B.H.S. was set up.

Cortes, J., No part. Was Vice-President of U.P. when this matter was taken and earlier member of the Committee to Review Academic Program.

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