

HON. JEJOMAR C. BINAY AND THE MUNICIPALITY OF MAKATI, PETITIONERS, VS. HON. EUFEMIO DOMINGO AND THE COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 92389. September 11, 1991

Ponente: PARAS, J.

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PARAS, J.:

The only pivotal issue before Us is whether or not Resolution No. 60, re-enacted under Resolution No. 243, of the Municipality of Makati is a valid exercise of police power under the general welfare clause.

The pertinent facts are:

On September 27, 1988, petitioner Municipality, through its Council, approved Resolution No. 60 which reads:

"A RESOLUTION TO CONFIRM AND/OR RATIFY THE ONGOING BURIAL ASSISTANCE PROGRAM INITIATED BY THE OFFICE OF THE MAYOR, OF EXTENDING FINANCIAL ASSISTANCE OF FIVE HUNDRED PESOS (P500.00) TO A BEREAVED FAMILY, FUNDS TO BE TAKEN OUT OF UNAPPROPRIATED AVAILABLE FUNDS EXISTING IN THE MUNICIPAL TREASURY." (Rollo, Annex "A", p. 39)

Qualified beneficiaries, under the Burial Assistance Program, are bereaved families of Makati whose gross family income does not exceed two thousand pesos (P2,000.00) a month. The beneficiaries, upon fulfillment of other requirements, would receive the amount of five hundred pesos (P500.00) cash relief from the Municipality of Makati. (Rollo, Annex "B", p. 41)

Metro Manila Commission approved Resolution No. 60. Thereafter, the municipal secretary certified a disbursement fund of four hundred thousand pesos (P400,000.00) for the implementation of the Burial Assistance Program. (Rollo, Annex "C", p. 43).

Resolution No. 60 was referred to respondent Commission on Audit (COA) for its expected allowance in audit. Based on its preliminary finding, respondent COA disapproved Resolution No. 60 and disallowed in audit the disbursement of funds for the implementation thereof. (Rollo, Annex "D", p. 44)

Two letters for reconsideration (Annexes "E" and "F", Rollo, pp. 45 and 48, respectively) filed by petitioners Mayor Jejomar Binay, were denied by respondent in its Decision No. 1159, in the following manner:

"Your request for reconsideration is predicated on the following grounds, to wit:

'1.

Subject Resolution No. 60, s. 1988, of the Municipal Council of Makati and the intended disbursements fall within the twin principles of 'police power' and 'parens patriae'; and

'2.

The Metropolitan Manila Commission (MMC), under a Certification, dated June 5, 1989, has already appropriated the amount of P400,000.00 to implement the said Resolution, and the only function of COA on the matter is to allow the financial assistance in question.'

"The first contention is believed untenable. Suffice it to state that:

'a statute or ordinance must have a real, substantial, or rational relation to the public safety, health, morals, or general welfare to be sustained as a legitimate exercise of the police power. The mere assertion by the legislature that a statute relates to the public healthy, safety, or welfare does not in itself bring the statute within the police power of a state for there must always be an obvious and real connection between the actual provisions of a police regulation and its avowed purpose, and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained.' 16 Am jur 2d, pp. 542-543; italics supplied).

Here, we see no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, supra, and the alleged public safety, general welfare, etc. of the inhabitants of Makati.

"Anent the second contention, let it be stressed that Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, i.e., that the disbursement of the amount of P500.00 as burial assistance to a bereaved family of the Municipality of Makati, or a total of P400,000.00 appropriated under the Resolution, should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case. On this point, 'government funds or property shall be spent or used solely for public purposes.'" (Cf. Section 4[2], P.D. 1445). (pp. 50-51, Rollo)

Bent on pursuing the Burial Assistance Program, the Municipality of Makati, through its Council, passed Resolution No. 243, reaffirming Resolution No. 60 (Rollo, Annex "H", p. 52).

However, the Burial Assistance Program has been stayed by COA Decision No. 1159. Petitioner, through its Mayor, was constrained to file this special civil action of certiorari praying that COA Decision No. 1159 be set aside as null and void.

The police power is a governmental function, an inherent attribute of sovereignty, which was born with civilized government. It is founded largely on the maxims, "Sic utere tuo et alienum non laedas" and "Salus populi est suprema lex." Its fundamental purpose is securing the general welfare, comfort and convenience of the people.

Police power is inherent in the state but not in municipal corporations (*Balacuit v. CFI of Agusan del Norte*, 163 SCRA 182). Before a municipal corporation may exercise such power, there must be a valid delegation of such power by the legislature which is the repository of the inherent powers of the State. A valid delegation of police power may arise from express delegation, or be inferred from the mere fact of the creation of the municipal corporation; and as a general rule, municipal corporations may exercise police powers within the fair intent and purpose of their creation which are reasonably proper to give effect to the powers expressly granted, and statutes conferring powers on public corporations have been construed as empowering them to do the things essential to the enjoyment of life and desirable for the safety of the people. (62 C.J.S., p. 277). The so-called inferred police powers of such corporations are as much delegated powers as are those conferred in express terms, the inference of their delegation growing out of the fact of the creation of the municipal corporation and the additional fact that the corporation can only fully accomplish the objects of its creation by exercising such powers. (*Crawfordsville vs. Braden*, 28 N.E. 849). Furthermore, municipal corporations, as governmental agencies, must have such measures of the power as are necessary to enable them to perform their governmental functions. The power is a continuing one, founded on public necessity. (62 C.J.S., p. 273) Thus, not only does the State effectuate its

purposes through the exercise of the police power but the municipality does also. (U.S. v. Salaveria, 39 Phil. 102).

Municipal governments exercise this power under the general welfare clause: pursuant thereto they are clothed with authority to "enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein." (Sections 91, 149, 177 and 208, BP 337). And under Section 7 of BP 337, "every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein."

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. It is the most essential, insistent, and illimitable of powers. In a sense it is the greatest and most powerful attribute of the government. It is elastic and must be responsive to various social conditions. (Sangalang, et al. vs. IAC, 176 SCRA 719). On it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, and it has been said to be the very foundation on which our social system rests. (16 C.J.S., p. 896) However, it is not confined within narrow circumstances of precedents resting on past conditions; it must follow the legal progress of a democratic way of life. (Sangalang, et al. vs. IAC, supra).

In the case at bar, COA is of the position that there is "no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, supra, and the alleged public safety, general welfare etc. of the inhabitants of Makati." (Rollo, Annex "G", p. 51).

Apparently, COA tries to redefine the scope of police power by circumscribing its exercise to "public safety, general welfare, etc. of the inhabitants of Makati."

In the case of Sangalang vs. IAC, supra, We ruled that police power is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensiveness. Its scope, over-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

The police power of a municipal corporation is broad, and has been said to be commensurate with, but not to exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private rights. It extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. It covers a wide scope of subjects, and, while it is especially occupied with whatever affects the peace, security, health, morals, and general welfare of the community, it is not limited thereto, but is broadened to deal with conditions which exist so as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity, and to everything worthwhile for the preservation of comfort of the inhabitants of the corporation (62 C.J.S. Sec. 128). Thus, it is deemed inadvisable to attempt to frame any definition which shall absolutely indicate the limits of police power.

COA's additional objection is based on its contention that "Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, xxx should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case." (Rollo, Annex "G", p. 51).

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. As correctly pointed out by the Office of the Solicitor General, "the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general welfare (Section 5, *ibid*) social justice (Section 10, *ibid*) as well as human dignity and respect for human rights (Section 11, *ibid*)." (Comment, p. 12)

The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police power in the promotion of the common good.

There is no violation of the equal protection clause in classifying paupers as subject of legislation. Paupers may be reasonably classified. Different groups may receive varying treatment. Precious to the hearts of our legislators, down to our local councilors, is the welfare of the paupers. Thus, statutes have been passed giving rights and benefits to the disabled, emancipating the tenant-farmer from the bondage of the soil, housing the urban poor, etc..

Resolution No. 60, re-enacted under Resolution No. 243, of the Municipality of Makati is a paragon of the continuing program of our government towards social justice. The Burial Assistance Program is a relief of pauperism, though not complete. The loss of a member of a family is a painful experience, and it is more painful for the poor to be financially burdened by such death. Resolution No. 60 vivifies the very words of the late President Ramon Magsaysay "those who have less in life, should have more in law." This decision, however must not be taken as a precedent, or as an official go-signal for municipal governments to embark on a philanthropic orgy of inordinate dole-outs for motives political or otherwise.

PREMISES CONSIDERED, and with the afore-mentioned caveat, this petition is hereby GRANTED and the Commission on Audit's Decision No. 1159 is hereby SET ASIDE.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado,, and Davide, Jr., JJ., concur.

Gutierrez, Jr. and Feliciano, JJ., on leave.

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