Supreme Court E-Library

EN BANC

[G.R. No. 71977. February 27, 1987]

DEMETRIO G. DEMETRIA, M.P., AUGUSTO S. SANCHEZ, M.P., ORLANDO S. MERCADO, M.P., HONORATO Y. AQUINO, M.P., ZAFIRO L. RESPICIO, M.P., DOUGLAS R. CAGAS, M.P., OSCAR F. SANTOS, M.P., ALBERTO G. ROMULO, M.P., CIRIACO R. ALFELOR, M.P., ISIDORO E. REAL, M.P., EMIGDIO L. LINGAD, M.P., ROLANDO C. MARCIAL, M.P., PEDRO M. MARCELLANA, M.P., VICTOR S. ZIGA, M.P., and ROGELIO V. GARCIA, M.P., *petitioners, vs.* **HON. MANUEL ALBA in his capacity as the MINISTER OF THE BUDGET and VICTOR MACALINGCAG in his capacity as the TREASURER OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROPER PARTY; ISSUE OF CONSTITUTIONALITY OF STATUTES MAY BE RAISED AT THE INSTANCE OF A TAXPAYER.— The case of *Pascual v. Secretary of Public Works, et al.*, 110 Phil. 331 is authority in support of petitioners' *locus standi*. Thus: "Again, it is well-settled that the validity of a statute may be contested only by one who will sustain a direct injury in consequence of its enforcement. Yet, there are many decisions nullifying at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that 'the expenditure of public funds by an officer of the state for the purpose of administering an *unconstitutional act* constitute a *misapplication* of such funds' which may be enjoined at the request of a taxpayer. Moreover, in *Tan v. Macapagal*, 43 SCRA 677 and *Sanidad v. Comelec*, 73 SCRA 333, We said that as regards taxpayers' suits, this Court enjoys that open discretion to entertain the same or not.

Supreme Court E-Library

2. **CONSTITUTIONAL LAW; NATIONAL ASSEMBLY; TRANSFER OF APPROPRIATION; LIMITATIONS.**— The prohibition to transfer an appropriation for one item to another was explicit and categorical under the 1973 Constitution. However, to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation of the government branch or constitutional body concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, *i.e.* transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body.

3. **ID.; PAR. 1, SEC. 44 OF PRESIDENTIAL DECREE NO. 1177 EMPOWERING THE PRESIDENT TO INDISCRIMINATELY TRANSFER FUNDS DECLARED UNCONSTITUTIONAL.**— Paragraph 1 of Section 44 of P.D. 1177 unduly over-extends the privilege granted under said Section 16 [5]. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, without regard as to whether or not funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. Indeed, such constitutional infirmities render the provision in question null and void.

4. **ID.; SUPREME COURT; MAY ISSUE WRIT OF PROHIBITION AGAINST A COORDINATE BRANCH ACTING BEYOND THE SCOPE OF ITS CONSTITUTIONAL POWERS.**— Another theory advanced by public respondents is that prohibition will not lie from one branch of the government against a coordinate branch to enjoin the performance of duties within the latter's

Supreme Court E-Library

sphere of responsibility. Where the legislature or the executive branch is acting within the limits of its authority, the judiciary cannot and ought not to interfere with the former. But where the legislature or the executive acts beyond the scope of its constitutional powers, it becomes the duty of the judiciary to declare what the other branches of the government had assumed to do as void. This is the essence of judicial power conferred by the Constitution "in one Supreme Court and in such lower courts as may be established by law" and which power this Court has exercised in many instances. Public respondents are being enjoined from acting under a provision of law which We have earlier mentioned to be constitutionally infirm. The general principle relied upon cannot therefore accord them the protection sought as they are not acting within their "sphere of responsibility" but without it.

D E C I S I O N

FERNAN, *J.*:

Assailed in this petition for prohibition with prayer for a writ of preliminary injunction is the constitutionality of the first paragraph of Section 44 of Presidential Decree No. 1177, otherwise known as the "Budget Reform Decree of 1977."

Petitioners, who filed the instant petition as concerned citizens of this country, as members of the National Assembly/Batasan Pambansa representing their millions of constituents, as parties with general interest common to all the people of the Philippines, and as taxpayers whose vital interests may be affected by the outcome of the reliefs prayed for"[1] listed the grounds relied upon in this petition as follows:

"A. SECTION 44 OF THE 'BUDGET REFORM DECREE OF 1977' INFRINGES UPON THE FUNDAMENTAL LAW BY AUTHORIZING THE ILLEGAL TRANSFER OF PUBLIC MONEYS.

---

[1] Petition, p. 3, *Rollo*.

Supreme Court E-Library

"B. SECTION 44 OF PRESIDENTIAL DECREE NO. 1177 IS REPUGNANT TO THE CONSTITUTION AS IT FAILS TO SPECIFY THE OBJECTIVES AND PURPOSES FOR WHICH THE PROPOSED TRANSFER OF FUNDS ARE TO BE MADE.

"C. SECTION 44 OF PRESIDENTIAL DECREE NO. 1177 ALLOWS THE PRESIDENT TO OVERRIDE THE SAFEGUARDS, FROM AND PROCEDURE PRESCRIBED BY THE CONSTITUTION IN APPROVING APPROPRIATIONS.

"D. SECTION 44 OF THE SAME DECREE AMOUNTS TO AN UNDUE DELEGATION OF LEGISLATIVE POWERS TO THE EXECUTIVE.

"E. THE THREATENED AND CONTINUING TRANSFER OF FUNDS BY THE PRESIDENT AND THE IMPLEMENTATION THEREOF BY THE BUDGET MINISTER AND THE TREASURER OF THE PHILIPPINES ARE WITHOUT OR IN EXCESS OF THEIR AUTHORITY AND JURISDICTION."[2]

Commenting on the petition in compliance with the Court resolution dated September 19, 1985, the Solicitor General, for the public respondents, questioned the legal standing of petitioners, who were allegedly merely begging an advisory opinion from the Court, there being no justiciable controversy fit for resolution or determination. He further contended that the provision under consideration was enacted pursuant to Section 16[5], Article VIII of the 1973 Constitution; and that at any rate, prohibition will not lie from one branch of the government to a coordinate branch to enjoin the performance of duties within the latter's sphere of responsibility.

On February 27, 1986, the Court required the petitioners to file a Reply to the Comment. This, they did, stating, among others, that as a result of the change in the administration, there is a need to hold the resolution of the present case in abeyance "until developments arise to enable the parties to concretize their respective stands."[3]

---

[2] pp. 6-7, *Rollo*.

[3] p. 169, *Rollo*.

Supreme Court E-Library

Thereafter, We required public respondents to file a rejoinder. The Solicitor General filed a rejoinder with a motion to dismiss, setting forth as ground therefor the abrogation of Section 16[5], Article VIII of the 1973 Constitution by the Freedom Constitution of March 25, 1986, which has allegedly rendered the instant petition moot and academic. He likewise cited the "seven pillars" enunciated by Justice Brandeis in *Ashwander v. TVA*, 297 U.S. 288 (1936)[4] as basis for the petition's dismissal.

---

[4] The relevant portions read as follows:

"The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

"1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.' *Chicago & Grand Trunk Ry, v. Wellman*, 143 U.S. 339, 345.

"2. The Court will not 'anticipate question of constitutional law in advance of the necessity of deciding it.' *Liverpool. N.Y. & P.S.S. Co. v. Emigration Commissioners*, 113 U.S. 33, 39 . . . 'It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' *Burton v. United States*. 196 U.S. 283, 295.

"3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Liverpool, N.Y. & P.S.S. Co. v. Emigration Commissioners, supra.*

"4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. *Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175, 191; *Light v. United States*, 220 U.S. 523, 538. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. *Berea College v. Kentucky*, 211 U.S. 45, 53.

Supreme Court E-Library

In the case of *Evelio B. Javier v. The Commission on Elections and Arturo F. Pacificador*, G.R. Nos. 68379-81, September 22, 1986, We stated that:

"The abolition of the Batasang Pambansa and the disappearance of the office in dispute between the petitioner and the private respondents — both of whom have gone their separate way-could be a convenient justification for dismissing the case. But there are larger issues involved that must be resolved now, once and for all, not only to dispel the legal ambiguities here raised. The more important purpose is to manifest in the clearest possible terms that this Court will not disregard and in effect condone wrong on the simplistic and tolerant pretext that the case has become moot and academic.

"The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future."

"5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. *Tyler v. The Judges*, 179 U.S. 405; *Hendrick v. Maryland*, 235 U.S. 610, 621. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained . . . In *Fairchild v. Hughes*, 258 U.S. 126, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, 262 U.S. 447, the challenge of the federal Maternity Act was not entertained although made by the Commonwealth on behalf of all its citizens.

"6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. *Great Falls Mfg. Co. v. Attorney General*, 124, U.S. 581 . . .

"7. 'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.' *Crowell v. Benson*, 22, 62." [pp. 176-177, *Rollo*].

Supreme Court E-Library

It is in the discharge of our role in society, as above-quoted, as well as to avoid great disservice to national interest that We take cognizance of this petition and thus deny public respondents' motion to dismiss. Likewise noteworthy is the fact that the new Constitution, ratified by the Filipino people in the plebiscite held on February 2, 1987, carries verbatim Section 16[5], Article VIII of the 1973 Constitution under Section 24[5], Article VI. And while Congress has not officially reconvened, We see no cogent reason for further delaying the resolution of the case at bar.

The exception taken to petitioners' legal standing deserves scant consideration. The case of *Pascual v. Secretary of Public Works, et al.*, 110 Phil. 331, is authority in support of petitioners' *locus standi*. Thus:

"Again, it is well-settled that the validity of a statute may be contested only by one who will sustain a direct injury in consequence of its enforcement. Yet, there are many decisions nullifying at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that 'the expenditure of public funds by an officer of the state for the purpose of administering an *unconstitutional act* constitutes a *misapplication* of such funds, which may be enjoined at the request of a taxpayer. Although there are some decisions to the contrary, the prevailing view in the United States is stated in the American Jurisprudence as follows:

> 'In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but also *taxpayers have sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring* expenditure of public moneys. [11 Am. Jur. 761, Italics supplied.]'"

Moreover, in *Tan v. Macapagal*, 43 SCRA 677 and *Sanidad v. Comelec*, 73 SCRA 333, We said that as regards taxpayers' suits, this Court enjoys that open discretion to entertain the same or not.

The conflict between paragraph 1 of Section 44 of Presidential Decree No. 1177 and Section 16[5], Article VIII of the 1973

Supreme Court E-Library

Constitution is readily perceivable from a mere cursory reading thereof. Said paragraph 1 of Section 44 provides:

"The President shall have the authority to transfer any fund, appropriated for the different departments, bureaus, offices and agencies of the Executive Department, which are included in the General Appropriations Act, to any program, project or activity of any department, bureau, or office included in the General Appropriations Act or approved after its enactment."

On the other hand, the constitutional provision under consideration reads as follows:

"Sec. 16[5]. No law shall be passed authorizing any transfer of appropriations, however, the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of constitutional commissions may by law be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."

The prohibition to transfer an appropriation for one item to another was explicit and categorical under the 1973 Constitution. However, to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation of the government branch or constitutional body concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, *i.e.,* transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body.

Paragraph 1 of Section 44 of P.D. No. 1177 unduly over-extends the privilege granted under said Section 16[5]. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, without regard as to whether or

Supreme Court E-Library

not the funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. Indeed, such constitutional infirmities render the provision in question null and void.

"For the love of money is the root of all evil: x x x" and money belonging to no one in particular, *i.e.*, public funds, provide an even greater temptation for misappropriation and embezzlement. This, evidently, was foremost in the minds of the framers of the constitution in meticulously prescribing the rules regarding the appropriation and disposition of public funds as embodied in Sections 16 and 18 of Article VIII of the 1973 Constitution. Hence, the conditions on the release of money from the treasury [Sec. 18(1)]; the restrictions on the use of public funds for public purpose [Sec. 18(2)]; the prohibition to transfer an appropriation for an item to another [Sec. 16(5) and the requirement of specifications [Sec. 16(2)], among others, were all safeguards designed to forestall abuses in the expenditure of public funds. Paragraph 1 of Section 44 puts all these safeguards to naught. For, as correctly observed by petitioners, in view of the unlimited authority bestowed upon the President, "x x x Pres. Decree No. 1177 opens the floodgates for the enactment of unfounded appropriations, results in uncontrolled executive expenditures, diffuses accountability for budgetary performance and entrenches the pork barrel system as the ruling party may well expand [*sic*] public money not on the basis of development priorities but on political and personal expediency."[5] The contention of public respondents that paragraph 1 of Section 44 of P.D. 1177 was enacted pursuant to Section 16(5) of Article VIII of the 1973 Constitution must perforce fall flat on its face.

Another theory advanced by public respondents is that prohibition will not lie from one branch of the government against

[5] p. 14, *Rollo*.

Supreme Court E-Library

a coordinate branch to enjoin the performance of duties within the latter's sphere of responsibility.

Thomas M. Cooley in his "*A Treatise on the Constitutional Limitations*," Vol. I, Eightth Edition, Little, Brown and Company, Boston, explained:

"x x x The legislative and judicial are coordinate departments of the government, of equal dignity; each is alike supreme in the exercise of its proper functions, and cannot directly or indirectly, while acting within the limits of its authority, be subjected to the control or supervision of the other, without an unwarrantable assumption by that other of power which, by the Constitution, is not conferred upon it. The Constitution apportions the powers of government, but it does not make any one of the three departments subordinate to another, when exercising the trust committed to it. The courts may declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative. Being required to declare what the law is in the cases which come before them, they must enforce the Constitution, as the paramount law, whenever a legislative enactment comes in conflict with it. But the courts sit, not to review or revise the legislative action, but to enforce the legislative will, and it is only where they find that the legislature has failed to keep within its constitutional limits, that they are at liberty to disregard its action; and in doing so, they only do what every private citizen may do in respect to the mandates of the courts when the judges assume to act and to render judgments or decrees without jurisdiction. 'In exercising this high authority, the judges claim no judicial supremacy; they are only the administrators of the public will. If an act of the legislature is held void, it is not because the judges have any control over the legislative power, but because the act is forbidden by the Constitution, and because the will of the people, which is therein declared, is paramount to that of their representatives expressed in any law.' [*Lindsay v. Commissioners, & c.*, 2 Bay, 38, 61; *People v. Rucker*, 5 Col. 5; *Russ v. Com.*, 210 Pa. St. 544; 60 Atl. 169, 1 L.R.A. [N.S.] 409, 105 Am. St. Rep. 825]" (pp. 332-334).

Indeed, where the legislature or the executive branch is acting within the limits of its authority, the judiciary cannot and ought not to interfere with the former. But where the legislature or the executive acts beyond the scope of its constitutional powers,

Supreme Court E-Library

it becomes the duty of the judiciary to declare what the other branches of the government had assumed to do as void. This is the essence of judicial power conferred by the Constitution "in one Supreme Court and in such lower courts as may be established by law" [Art. VIII, Section 1 of the 1935 Constitution; Art. X, Section 1 of the 1973 Constitution and which was adopted as part of the Freedom Constitution, and Art. VIII, Section 1 of the 1987 Constitution and which power this Court has exercised in many instances.*

Public respondents are being enjoined from acting under a provision of law which We have earlier mentioned to be constitutionally infirm. The general principle relied upon cannot therefore accord them the protection sought as they are not acting within their "sphere of responsibility" but without it.

The nation has not recovered from the shock, and worst, the economic destitution brought about by the plundering of the Treasury by the deposed dictator and his cohorts. A provision which allows even the slightest possibility of a repetition of this sad experience cannot remain written in our statute books.

WHEREFORE, the instant petition is granted. Paragraph 1 of Section 44 of Presidential Decree No. 1177 is hereby declared null and void for being unconstitutional.

SO ORDERED.

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

---

* *Casanovas vs. Hord*, 8 Phil. 125; *McGirr vs. Hamilton*, 30 Phil. 563; *Compañia General de Tabacos vs. Board of Public Utility*, 34 Phil. 136; *Central Capiz vs. Ramirez*, 40 Phil. 883; *Concepcion vs. Paredes*, 42 Phil 599; *US vs. Ang Tang Ho*, 43 Phil. 6; *Mc Daniel vs. Apacible*, 44 Phil. 248; *People vs. Pomar*, 46 Phil. 440; *Agcaoili vs. Suguitan*, 48 Phil. 676; *Government of P.I. vs. Springer*, 50 Phil. 259; *Manila Electric Co. vs. Pasay Transp. Co.*, 57 Phil. 600; *People vs. Linsangan*; 62 Phil. 464; *People and Hongkong & Shanghai Banking Corp. vs. Jose O. Vera*, 65 Phil. 56; *People vs. Carlos*, 78 Phil. 535; *City of Baguio vs. Nawasa*, 106 Phil. 144; *City of Cebu vs. Nawasa*, 107 Phil. 1112; *Rutter vs. Esteban*, 93 Phil. 68.