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[G.R. No. L-29646. November 10, 1978]

MAYOR ANTONIO J. VILLEGAS, *petitioner, vs.* **HIU CHIONG TSAI PAO HO and JUDGE FRANCISCO ARCA,** *respondents.*

SYLLABUS

1. **PUBLIC CORPORATIONS; MUNICIPAL CORPORATIONS; POWER OF TAXATION; REQUIRING AN ALIEN TO SECURE AN EMPLOYMENT PERMIT FROM THE MAYOR FOR A FEE IS A REVENUE MEASURE UNDER THE GUISE OF REGULATION.** — A city ordinance which requires that an alien shall first secure an employment permit from the mayor before being employed or engaging in any occupation or business and requiring the payment of ₱50.00 as employee's fee is not regulatory but a revenue measure. There is no logic or justification in exacting ₱50.00 from aliens who have been cleared for employment. The purpose of the ordinance is to raise money under the guise of regulation.

2. **CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION AND DUE PROCESS; DEEMED VIOLATED WHERE ALIEN WAS REQUIRED TO SECURE EMPLOYMENT PERMIT.**— Requiring an alien before he can be employed to get a permit from the City Mayor who may withhold or refuse it at will is tantamount to denying him the basic right of the people in the Philippines to engage in a means of livelihood. While it is true that the Philippines as a state is not obliged to admit aliens within its territory, once an alien is admitted, he cannot be deprived of life without due process of law. This guarantee includes the means of livelihood. The shelter of protection under the due process and equal protection clause is given to all person, both aliens and citizens.

3. **ID.; ID.; EQUAL PROTECTION OF LAW; CLASIFICATION; SHOULD BE BASED ON REAL SUBSTANTIAL DIFFERENCE.** — An ordinance providing that the amount of ₱50 shall be collected from every employed alien, whether he is casual or permanent, part time or full time or whether he is a lowly

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employee or a highly paid executive is unconstitutional because it violates the due process and equal protection rule of the Constitution; and the amount collected is unreasonable not only because it is excessive but because it fails to consider valid substantial differences in situation among individual aliens who are required to pay it. Although the equal protection clause of the Constitution does not forbid classification, it is imperative that the classification should be based on real substantial difference having a reasonable relation to the subject of the particular legislation.

4. **PUBLIC CORPORATIONS; MUNICIPAL CORPORATION; ORDINANCE REQUIRING A PERMIT MUST STATE THE POLICY AND GUIDING STANDARD.** — Where an ordinance of a municipality fails to state any policy or to set up any standard to guide the mayor's action, expresses no purpose to be attained by requiring permit, enumerates on conditions for its grant or refusal, and entirely lacks standards, thus conferring upon the mayor arbitrary and unrestricted power to deny the issuance of permits, such ordinance is invalid, being an undefined and unlimited delegation of power to allow or prevent and activity *per se* lawful.

5. **ID.; ID.; POWER OF MAYOR TO GRANT AND REFUSE PERMIT, SUBJECT TO LIMITATION.** — The authority and discretion to grant and refuse permits of all classes conferred upon the Mayor of Manila by the Revised Charter of Manila is not uncontrolled discretion to be exercised within the limits of the law.

APPEARANCES OF COUNSEL

Angel C. Cruz, Gregorio A. Ejercito, Felix C. Chaves & Jose Laureta for petitioner.

Sotero H. Laurel for respondents.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition for *certiorari* to review the decision dated September 17, 1968 of respondent Judge Francisco Arca of

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the Court of First Instance of Manila, Branch I, in Civil Case No. 72797, the dispositive portion of which reads:

"Wherefore, judgment is hereby rendered in favor of the petitioner and against the respondents, declaring Ordinance No. 6537 of the City of Manila null and void. The preliminary injunction is hereby made permanent. No pronouncement as to cost.

SO ORDERED.

Manila, Philippines, September 17, 1968.

(SGD.) FRANCISCO ARCA
Judge"[1]

The controverted Ordinance No. 6537 was passed by the Municipal Board of Manila on February 22, 1968 and signed by the herein petitioner Mayor Antonio J. Villegas of Manila on March 27, 1968.[2]

City Ordinance No. 6537 is entitled:

"AN ORDINANCE MAKING IT UNLAWFUL FOR ANY PERSON NOT A CITIZEN OF THE PHILIPPINES TO BE EMPLOYED IN ANY PLACE OF EMPLOYMENT OR TO BE ENGAGED IN ANY KIND OF TRADE, BUSINESS OR OCCUPATION WITHIN THE CITY OF MANILA WITHOUT FIRST SECURING AN EMPLOYMENT PERMIT FROM THE MAYOR OF MANILA; AND FOR OTHER PURPOSES."[3]

Section 1 of said Ordinance No. 6537[4] prohibits aliens from being employed or to engage or participate in any position or occupation or business enumerated therein, whether permanent,

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[1] Annex "F", Petition, *Rollo*, p. 64.

[2] Petition, *Rollo*, p. 28.

[3] Annex "A" of Petition, *Rollo*, pp. 37-38.

[4] Section 1. It shall be unlawful for any person not a citizen of the Philippines to be employed in any kind of position or occupation or allowed directly or indirectly to participate in the functions, administration or management in any office, corporation, store, restaurant, factory, business firm, or any other place of employment either as consultant, adviser, clerk, employee, technician, teacher, actor, actress, acrobat, singer or other theatrical performer, laborer, cook, etc., whether temporary, casual, permanent or

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temporary or casual, without first securing an employment permit from the Mayor of Manila and paying the permit fee of ₱50.00 except persons employed in the diplomatic or consular missions of foreign countries, or in the technical assistance programs of both the Philippine Government and any foreign government, and those working in their respective households, and members of religious orders or congregations, sect or denomination, who are not paid monetarily or in kind.

Violations of this ordinance is punishable by an imprisonment of not less than three (3) months to six (6) months or fine of not less than ₱100.00 but not more than ₱200.00 or both such fine and imprisonment, upon conviction.[5]

On May 4, 1968, private respondent Hiu Chiong Tsai Pao Ho, who was employed in Manila, filed a petition with the Court of First Instance of Manila, Branch I, denominated as Civil Case No. 72797, praying for the issuance of the writ of preliminary injunction and restraining order to stop the enforcement of Ordinance No. 6537 as well as for a judgment declaring said Ordinance No. 6537 null and void.[6]

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otherwise and irrespective of the source or origin of his compensation or number of hours spent in said office, store, restaurant, factory, corporation or any other place of employment, or to engage in any kind of business and trade within the City of Manila, without first securing an employment permit from the Mayor of Manila, and paying the necessary fee therefor to the City Treasurer: PROVIDED, HOWEVER, That persons employed in diplomatic and consular missions of foreign countries and in technical assistance programs agreed upon by the Philippine Government and any foreign government, and those working in their respective households, and members of different congregations or religious orders of any religion, sect or denomination, who are not paid either monetarily or in kind shall be exempted from the provisions of this Ordinance.

[5] Section 4. Any violation of this Ordinance shall, upon conviction, be punished by imprisonment of not less than three (3) months but not more than six (6) months or by a fine of not less than one hundred pesos (₱100.00) but not more than two hundred pesos (₱200.00), or by both such fine and imprisonment, in the discretion of the Court: PROVIDED, HOWEVER, That in case of juridical persons, the President, the Vice President or the person in charge shall be liable.

[6] Annex "B ", Petition, *Rollo*, p. 39.

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In this petition, Hiu Chiong Tsai Pao Ho assigned the following as his grounds for wanting the ordinance declared null and void:

1) As a revenue measure imposed on aliens employed in the City of Manila, Ordinance No. 6537 is discriminatory and violative of the rule of the uniformity in taxation;

2) As a police power measure, it makes no distinction between useful and non-useful occupations, imposing a fixed ₱50.00 employment permit, which is out of proportion to the cost of registration and that it fails to prescribe any standard to guide and/or limit the action of the Mayor, thus, violating the fundamental principle on illegal delegation of legislative powers:

3) It is arbitrary, oppressive and unreasonable, being applied only to aliens who are thus, deprived of their rights to life, liberty and property and therefore, violates the due process and equal protection clauses of the Constitution.[7]

On May 24, 1968, respondent Judge issued the writ of preliminary injunction and on September 17, 1968 rendered judgment declaring Ordinance No. 6537 null and void and making permanent the writ of preliminary injunction.[8]

Contesting the aforecited decision of respondent Judge, then Mayor Antonio J. Villegas filed the present petition on March 27, 1969. Petitioner assigned the following as errors allegedly committed by respondent Judge in the latter's decision of September 17, 1968: [9]

"I.

THE RESPONDENT JUDGE COMMITTED A SERIOUS AND PATENT ERROR OF LAW IN RULING THAT ORDINANCE NO. 6537 VIOLATED THE CARDINAL RULE OF UNIFORMITY OF TAXATION.

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[7] *Ibid.*

[8] Annex "F", Petition, *Rollo*, pp. 75-83.

[9] Petition, *Rollo*, p. 31.

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II.

RESPONDENT JUDGE LIKEWISE COMMITTED A GRAVE AND PATENT ERROR OF LAW IN RULING THAT ORDINANCE NO. 6537 VIOLATED THE PRINCIPLE AGAINST UNDUE DESIGNATION OF LEGISLATIVE POWER.

III.

RESPONDENT JUDGE FURTHER COMMITTED A SERIOUS AND PATENT ERROR OF LAW IN RULING THAT ORDINANCE NO. 6537 VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION."

Petitioner Mayor Villegas argues that Ordinance No. 6537 cannot be declared null and void on the ground that it violated the rule on uniformity of taxation because the rule on uniformity of taxation applies only to purely tax or revenue measures and that Ordinance No. 6537 is not a tax or revenue measure but is an exercise of the police power of the state, it being principally a regulatory measure in nature.

The contention that Ordinance No. 6537 is not a purely tax or revenue measure because its principal purpose is regulatory in nature has no merit. While it is true that the first part which requires that the alien shall secure an employment permit from the Mayor involves the exercise of discretion and judgment in the processing and approval or disapproval of applications for employment permits and therefore is regulatory in character the second part which requires the payment of ₱50.00 as employee's fee is not regulatory but a revenue measure. There is no logic or justification in exacting ₱50.00 from aliens who have been cleared for employment. It is obvious that the purpose of the ordinance is to raise money under the guise of regulation.

The ₱50.00 fee is unreasonable not only because it is excessive but because it fails to consider valid substantial differences in situation among individual aliens who are required to pay it. Although the equal protection clause of the Constitution does not forbid classification, it is imperative that the classification, should be based on real and substantial differences having a reasonable relation to the subject of the particular legislation.

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The same amount of ₱50.00 is being collected from every employed alien, whether he is casual or permanent, part time or full time or whether he is a lowly employee or a highly paid executive.

Ordinance No. 6537 does not lay down any criterion or standard to guide the Mayor in the exercise of his discretion. It has been held that where an ordinance of a municipality fails to state any policy or to set up any standard to guide or limit the mayor's action, expresses no purpose to be attained by requiring a permit, enumerates no conditions for its grant or refusal, and entirely lacks standard, thus conferring upon the Mayor arbitrary and unrestricted power to grant or deny the issuance of building permits, such ordinance is invalid, being an undefined and unlimited delegation of power to allow or prevent an activity *per se* lawful.[10]

In *Chinese Flour Importers Association vs. Price Stabilization Board*,[11] where a law granted a government agency power to determine the allocation of wheat flour among importers, the Supreme Court ruled against the interpretation of uncontrolled power as it vested in the administrative officer an arbitrary discretion to be exercised without a policy, rule, or standard from which it can be measured or controlled.

It was also held in *Primicias vs. Fugoso*[12] that the authority and discretion to grant and refuse permits of all classes conferred upon the Mayor of Manila by the Revised Charter of Manila is not uncontrolled discretion but legal discretion to be exercised within the limits of the law.

Ordinance No. 6537 is void because it does not contain or suggest any standard or criterion to guide the mayor in the exercise of the power which has been granted to him by the ordinance.

The ordinance in question violates the due process of law and equal protection rule of the Constitution.

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[10] *People vs. Fajardo*, 104 Phil. 443, 446.

[11] 89 Phil. 439, 459-460.

[12] 80 Phil. 71, 86.

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Requiring a person before he can be employed to get a permit from the City Mayor of Manila who may withhold or refuse it at will is tantamount to denying him the basic right of the people in the Philippines to engage in a means of livelihood. While it is true that the Philippines as a State is not obliged to admit aliens within its territory, once an alien is admitted, he cannot be deprived of life without due process of law. This guarantee includes the means of livelihood. The shelter of protection under the due process and equal protection clause is given to all persons, both aliens and citizens.[13]

The trial court did not commit the errors assigned.

WHEREFORE, the decision appealed from is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Barredo, Makasiar, Muñoz Palma, Santos, and *Guerrero, JJ.,* concur.

Castro, C.J., Antonio and *Aquino, JJ.*, concur in the result.

Fernando, J., concurring in the result, relies primarily on the the *ultra vires* character of the ordinance and expresses conformity with the concurring opinion of Justice Teehankee.

Teehankee, J., concurs in a separate opinion.

Concepcion Jr., J., took no part.

TEEHANKEE, *J., concurring*:

I concur in the decision penned by Mr. Justice Fernandez which affirms the lower court's judgment declaring Ordinance No. 6537 of the City of Manila null and void for the reason that the employment of aliens within the country is a matter of national policy and regulation, which properly pertain to the national government officials and agencies concerned and not to local

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[13] *Kwong Sing vs. City of Manila*, 41 Phil. 103.

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governments, such as the City of Manila, which after all are mere creations of the national government.

The national policy on the matter has been determined in the statutes enacted by the legislature, *viz*, the various Philippine nationalization laws which on the whole recognize the right of aliens to obtain gainful employment in the country with the exception of certain specific fields and areas. Such national policies may not be interfered with, thwarted or in any manner negated by any local government or its officials since they are not separate from and independent of the national government.

As stated by the Court in the early case of *Phil. Coop. Livestock Ass'n. vs. Earnshaw,* 59 Phil. 129: "The City of Manila is a subordinate body to the Insular (National Government . . .). When the Insular (National) Government adopts a policy, a municipality is without legal authority to nullify and set at naught the action of the superior authority." Indeed, "not only must all municipal powers be exercised within the limits of the organic laws, but they must be consistent with the general law and public policy of the particular state . . . " (I McQuillin, *Municipal Corporations*, 2nd sec. 367, p. 1011).

With more reason are such national policies binding on local governments when they involve our foreign relations with other countries and their nationals who have been lawfully admitted here, since in such matters the views and decisions of the Chief of State and of the legislature must prevail over those of subordinate and local governments and officials who have no authority whatever to take official acts to the contrary.