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SECOND DIVISION

[G.R. No. 135928. July 6, 2007]

TEODORO BERDIN, VICENTE ALEGARBES, and ABELARDO DE VERA, in Their Personal Capacities and as Representatives of the TUBIGON MARKET VENDORS ASSOCIATION, *petitioners, vs.* **HON. EUFRACIO A. MASCARIÑAS, Municipal Mayor; CRESENCIANA L. BALATAYO, Municipal Treasurer; SAMUEL PURISIMA, INP Station Commander; THE MUNICIPAL COUNCIL and/or MUNICIPALITY OF TUBIGON, PROVINCE OF BOHOL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN; WHILE ACCESS TO OFFICIAL RECORDS MAY NOT BE PROHIBITED, IT MAY BE REGULATED; REQUIRING PETITIONERS TO PAY FOR THE COST OF REPRODUCTION OF TAX ORDINANCE NO. 88-11-36 IS REASONABLE CONSIDERING THAT THE ORDINANCE IS VOLUMINOUS CONSISTING OF MORE THAN A HUNDRED PAGES.— Petitioners' misgivings on the existence of Tax Ordinance No. 88-11-36 are baseless. The reason for the delay was adequately explained and was even attributed to petitioners' failure to pay for the cost of reproduction of the ordinance. The right of the people to information on matters of public concern is recognized under Sec. 7, Art. III of the 1987 Constitution and is subject to such limitations as may be provided by law. Thus, while access to official records may not be prohibited, it certainly may be regulated. The regulation may come either from statutory law and from the inherent power of an officer to control his office and the records under his custody and to exercise some discretion as to the manner in which persons desiring to inspect, examine, or copy the record may exercise their rights. The Municipal Treasurer in the case at bar exercised this discretion by requiring petitioners to pay for the cost of reproduction of Tax Ordinance No. 88-11-36. Such a requirement is reasonable

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under the circumstances considering that the ordinance is quite voluminous consisting of more than a hundred pages.

2. TAXATION; LOCAL TAX CODE; POWER TO IMPOSE A TAX OR FEE OF THE LOCAL BOARD OR COUNCIL; WHEN PUBLIC HEARING IS NECESSARY AND NOT NECESSARY.— The pertinent provisions of law on this matter are Secs. 49 and 50 of the Local Tax Code. A perusal of these provisions would yield a conclusion that the local board or council has the power to impose a tax or fee (1) on a tax base or subject specifically enumerated in the Local Tax code, (2) on a tax base similar to those authorized in the Local Tax Code but which may not have been specifically enumerated therein, and (3) on a tax base or tax subject which is not similar or comparable to any tax base or subject specifically mentioned or otherwise provided for in the Local Tax Code. Public hearing apparently is not necessary when the tax or fee is imposed on a tax base or subject specifically enumerated in the Local Tax Code. The basis for the above distinction is that when a tax base or subject is specifically enumerated in the Local Tax Code, the existence of the power to tax is beyond question as the same is expressly granted. Even in the determination of the rates of the tax, a public hearing, even if ideal, is not necessary because the law itself provides for a ceiling on such rates. The same does not obtain in a situation where what is about to be taxed is not specifically enumerated in the Local Tax Code because in such a situation, the issues of whether to tax or not and at what rate a tax is to be imposed are crucial. Consequently, a public hearing is necessary and vital.

3. ID.; ID.; ID.; TAX ORDINANCE NO. 88-11-36 BELONG TO THE CATEGORY OF TAXES OR FEES THAT MAY BE IMPOSED BY THE MUNICIPALITY THAT REQUIRE PUBLIC HEARING; TAX ORDINANCE NO. 89-10-49 DOES NOT REQUIRE ANY PUBLIC HEARING AS IT DOES NOT IMPOSE A TAX OR A FEE.— A scrutiny of the taxes or fees imposed by Tax Ordinance No. 88-11-36 shows that some of them belong to the second and third-categories of taxes or fees that may be imposed by a municipality that require public hearing. Petitioners are thus correct in saying that a public hearing is necessary for its enactment. With respect to Tax Ordinance No. 89-10-49, however, we hold that no public hearing is necessary as it does not impose any tax or fee. Said

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ordinance is actually a restatement, with illustrations, of the provisions of the Local Tax Code on civil remedies for the collection of the local taxes and fees imposed by Tax Ordinance No. 88-11-36.

4. ID.; ID.; ID.; THE VALIDITY OF TAX ORDINANCE NO. 88-11-36 IS UPHELD, ALTHOUGH A PUBLIC HEARING IS NECESSARY FOR ITS ENACTMENT, IN VIEW OF PETITIONER'S FAILURE TO PRESENT EVIDENCE TO SHOW THAT NO PUBLIC HEARING WAS CONDUCTED.— Although a public hearing is necessary for the enactment of Tax Ordinance No. 88-11-36, still we uphold its validly in view of petitioners' failure to present evidence to show that no public hearing was conducted. Petitioners, as the party asserting a negative allegation, had the burden of proving lack of public hearing. Although the *Sangguniang Bayan* had the control of records or the better means of proof regarding the facts alleged ad respondent public officials assumed an uncooperative stance to petitioners' request for copies of the Minutes of their deliberation, petitioners are not relieved from this burden. Petitioners could easily have resorted to the various modes of discovery under Rules 23 to 28 of the rules of Court. furthermore, petitioners could have compelled the production of these documents through a *subpoena duces tecum* or they could have required testimony on this issue by officials in custody of the documents through a *subpoena ad testificandum.* Hoever, petitioners made no such effort.

5. ID.; ID.; ID.; FINDINGS OF THE PROVINCIAL TREASURER, UPHELD; PRESUMPTION OF REGULARITY OF OFFICIAL CONDUCT WAS NOT OVERCOME BY PETITIONERS.— Petitioners next claim that the impositions contained in tax Ordinance No. 88-11-36 exceeded the maximum allowed by the Local Tax Code. In particular, petitioners assert that (1) the taxes imposed by the ordinance are not based on the taxpayers' ability to pay; (2) the taxes imposed are unjust, excessive, oppressive, discriminatory and confiscatory; (3) the ordinances are contrary to law, public policy and are in restraint of trade; (4) the ordinances violate the rule of a progressive system of taxation; and (5) the ordinances are contrary to the declared national policy. These questions have already been raised in their protest and resolved by the 27 December 1989 findings of the Provincial Treasurer. In fact, said official

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suspended some of the provisions of Tax Ordinance No. 88-11-36 for failure to comply with the rates prescribed by the Local Tax Code. Furthermore, the subsequent enactment of Municipal Revenue Ordinance No. 90-01-54 and its approval by the Provincial Treasurer correct this non-compliance with the Local Tax Code. The local legislative body's modification of Tax Ordinance No. 88-11-36 through Municipal Revenue Ordinance No. 90-01-54 is sanctioned by Sec. 44 of the Local Tax Code. Moreover, as the presumption of regularity of official conduct was not overcome by petitioners, the findings of the Provincial Treasurer must be upheld.

6. ID.; ID.; ID.; THE PROVINCIAL TREASURER WAS CORRECT IN RULING THAT THE FISHERY RENTAL FEES IN TAX ORDINANCE NO. 88-11-36 MAY BE GIVEN DUE COURSE PROVIDED THAT PRIOR APPROVAL FROM THE BUREAU OF FISHERIES AND AQUATIC RESOURCES HAS BEEN OBTAINED, PURSUANT TO PROVISIONS OF P.D. NO. 704, AS AMENDED.— There is likewise no merit in petitioners' contention that the Provincial Treasurer's finding on the fishery rental fees is flawed. The Local Tax Code provides in Sec. 21 thereof that municipalities, in the exercise of their authority to grant exclusive fishery rights and license individual fishing gears in municipal waters, may levy or fix rentals or fees therefore in accordance with said section and in conjunction with other operative laws and regulations on municipal fisheries. One such operative law is P.D. No. 704 which provides for the jurisdiction of the Bureau of Fisheries and Aquatic Resources in Sec. 4. Thus, it was correct for the Provincial Treasurer to rule that the fishery rental fees in Tax Ordinance No. 88-11-36 may be given due course provided that prior approval from the Bureau of Fisheries and Aquatic Resources has been obtained, pursuant to the provisions of P.D. No. 704, as amended.

7. ID.; ID.; ID.; SUBMISSION OF TAX ORDINANCE NO. 88-11-36 TO THE ASSISTANT REGIONAL DIRECTOR, DEPARTMENT OF FINANCE REGIONAL OFFICE NO. 7, CEBU CITY COMPLIED WITH THE REQUIREMENT OF REVIEW PURSUANT TO SECTIONS 49 AND 50 OF THE LOCAL TAX CODE, AS SAID OFFICIAL IS THE ALTER EGO OF THE SECRETARY OF FINANCE UNDER AN EXPANDED APPLICATION OF THE DOCTRINE OF

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QUALIFIED POLITICAL AGENCY.— We hold that the submission of Tax Ordinance No. 88-11-36 to the Assistant Regional Director, DOF Regional Office No. 7, Cebu City complied with the requirement of review pursuant to Secs. 49 and 50 of the Local Tax Code, as said official is the *alter ego* of the Secretary of Finance, under an expanded application of the doctrine of qualified political agency, where "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department."

8. ID.; ID.; ID.; PUBLICATION IS A CONDITION PRECEDENT TO THE EFFECTIVITY AND ENFORCEABILITY OF AN ORDINANCE TO INFORM THE PUBLIC OF ITS CONTENTS BEFORE RIGHTS ARE AFFECTED BY THE SAME.— It would seem that while lack of publication does not render a tax ordinance null and void, said requirement must still be complied with in order "to obviate abuses in the exercise of the taxing powers and preclude protests from the people adversely affected." Publication is thus a condition precedent to the effectivity and enforceability of an ordinance to inform the public of its contents before rights are affected by the same. The records are bereft of any indication that evidence was presented to prove petitioners' negative allegation that there was no publication. Neither is there a positive declaration on the part of respondents that there was publication or posting. Even the RTC and the CA decisions are silent on this issue. Consequently, an uncertainty exists on whether the ordinances were indeed published or not. We resolved this uncertainty in favor of petitioners and accordingly rule that the questioned tax ordinances must be published before the new tax rates imposed therein are to be collected from the affected taxpayers.

9. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; PETITIONERS' ACT SIMULTANEOUSLY PRAYING FOR THE SAME RELIEF OF SUSPENSION OF THE ORDINANCE IN FOUR DIFFERENT FORA IS NOTED WITH DISAPPROVAL.— While we partially grant this petition, we note with disapproval petitioners' commission of forum shopping prior to the filing of this petition. Petitioners simultaneously prayed for the same relief of suspension of the ordinance in four different fora. It should be remembered

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that petitioners initially filed a protest of Tax Ordinance No. 88-11-36 with the Municipal Mayor and the Municipal Treasurer on 11 January 1989. Even as this protest was unresolved, they elevated their request for a review and suspension of the same ordinance to the Provincial Treasurer on 17 February 1989. Again, in view of the threat of closure of their establishment, petitioners sent a letter to the DOF on 21 August 1989 praying for the same relief of suspension of the ordinance. Again, despite the pendency of the various requests, petitioners filed Civil Case No. 4577, again praying for a writ of preliminary injunction to restrain respondents from enforcing the ordinance, a prayer which is essentially a prayer for the suspension of the ordinance.

10. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; FOR FAILURE TO FILE A FORMAL PROTEST WITH THE SECRETARY OF FINANCE, OR A LEGAL QUESTION WITH THE PROVINCIAL FISCAL ON TAX ORDINANCE NO. 88-11-36'S VALIDITY, PETITIONERS CANNOT BE SAID TO HAVE EXHAUSTED ADMINISTRATIVE REMEDIES AVAILABLE TO THEM.— Petitioners did not formally protest Tax Ordinance No. 88-11-36 as the same may properly be brought not before the Provincial Treasurer but before the Secretary of Finance. What the Provincial Treasurer merely conducted was a review of Tax Ordinance No. 88-11-36 under Sec. 44 of the Local Tax Code, limiting itself to the issues proper for a review thereof. Thus, said official initially suspended some of the provisions of Tax Ordinance No. 88-11-36 for their failure to comply with the rates prescribed by the Local Tax Code and eventually decided in favor of its validity after the *Sanguniang Bayan* modified the objectionable provisions thereof via Municipal Revenue Ordinance No. 90-01-54. That what was filed before the Provincial Treasurer was merely a review is evident from the DOF's refusal to review the findings of the Provincial Treasurer, which, it said, was made pursuant to Sec. 44 of the Local Tax Code. Even if we were to consider petitioners' appeal with the Secretary if Finance as a formal protest, despite its unseasonableness, still, it would be unavailing since they did not offer proof on how and in what manner Tax Ordinance No. 88-11-36 could be invalid. In fact, the deputy Director

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and Officer-in-Charge of the Bureau of Local Government Finance, by authority of the Secretary of Finance, noted that petitioners' counsel "did not state the grounds of his protest as provided under Section 45 of the Local Tax Code, as s amended, in relation to Section 44 thereof. Verily, mere allegation that an ordinance is invalid on the grounds enumerated in Sec. 44 of the Local Tax Code will not work to rebut the presumption of the ordinance's validity. Clearly, for failure to file a formal protest with the Secretary of Finance, or a legal question with the Provincial Fiscal on Tax Ordinance No. 88-11-36's validity, petitioners cannot be said to have exhausted administrative remedies available to them.

11. ID.; ID.; ID.; UNDERLYING PRINCIPLE OF THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.— The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts-for reasons of law, comity, and convenience—will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.

APPEARANCES OF COUNSEL

Manolito L. Asok for petitioners.

Paulino G. Clarin for respondents.

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D E C I S I O N

TINGA, *J.*:

This is a petition[1] filed under Rule 45 seeking to review and set aside the 26 May 1998 Decision[2] of the Court of Appeals in CA-G.R. SP No. 39045 and to annul and set aside the 24 April 1995 Decision[3] of the Regional Trial Court (RTC), Branch 4, Bohol, in Civil Case No. 4577.

Petitioners Teodoro Berdin, Vicente Alegarbes, and Abelardo de Vera (petitioners), are the President, Vice President, and Adviser, respectively, of the Tubigon Market Vendors Association (Association), an association of vendors doing business in Tubigon, Bohol. Respondents Eufracio A. Mascariñas, Narcisa L. Balatayo, and Lt. Abner Catalla, on the other hand, were, at the time Civil Case No. 4577 was filed, the Municipal Mayor, Treasurer, and the INP Station Commander, respectively, of Tubigon, Bohol.

On 14 December 1988, the *Sangguniang Bayan* of Tubigon enacted Tax Ordinance No. 88-11-36[4] increasing the taxes and fees of the municipality, to take effect on 1 January 1989.

Petitioner Berdin, as President of the Association, wrote to respondent Municipal Treasurer requesting a copy of Tax Ordinance

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[1] *Rollo*, pp. 8-29.

[2] *Id.* at 454-461. Penned by Justice Hector L. Hofileña and concurred in by Justices Jesus M. Elbinias and Omar U. Amin.

[3] *Id.* at 428-435. Penned by Presiding Judge Achilles L. Melicor.

[4] *Id.* at 279-383. The taxes imposed by the ordinance are as follows:

Chapter II. Municipal Taxes
(A) Real Property Tax
(B) Business Tax, and
(C) Tax on Advertisements
Chapter III. Permit and Regulatory Fees
(A) Mayor's Permit Fees on Business
(B) Permit Fees for Gaffer, Referee, Bettaker, Promoter and Cashier
(C) Cart and Sledge Registration Fee
(D) Large Cattle Registration and Transfer Fees
(E) Registration/Permit Fees on Bicycles, Tricycles, Pedicabs and Motorcabs
(F) Poundage Fee

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No. 88-11-36.[5] The request was followed by the filing of a protest before respondents Municipal Mayor and Municipal Treasurer.[6] The Association also requested the suspension of the implementation of the ordinance pending final determination of its legality by

(G) Registration Fees on Fishing Boats and Motorboats
(H) Permit Fee on Parades
(I) Registration Fee on Calesa or Caretela
(J) Permit Fee on Film-Making and Video Tape Coverage, and
(K) Permit Fee on Agricultural Machineries and other Heavy Equipment

Chapter IV. Other Permit and Regulatory Fees

(A) Permit Fee on Sand and Gravel
(B) Building Permit Fees
(C) Permit Fee on Storage of Flammable, Combustible or Explosive Subtances
(D) Permit and Inspection Fees on Machineries and Engines
(E) Permit Fee for Excavation
(F) Permit Fee for Inspection and Verification of Subdivisions
(G) Permit Fee for the Use of Sidewalks, Alleys, Roads, Streets, Parks, Plazas, Public Structures and Buildings; Other Personal/ Real Owned by the State
(H) Permit Fee for Hunting
(I) Permit Fees for other activities

Chapter V. Service Fees

(A) Secretary's Fees
(B) Local Registry Fees
(C) Clearance, Certificatation and other Similar Fees
(D) Service Fee for Health Examination
(E) Sanitary Inspection Fee
(F) Service Charge for Garbage Collection

Chapter VI. Service Fees

(A) Market Fees
(B) Fishery Rentals or Fees
(C) Slaughter and Corral Fees
(D) Rental of Municipal Cemetery Lots
(E) Waterworks Fees
(F) Municipal Service Fees
(G) Parking Fees

[5] *Id*. at 39. Petitioner Berdin reiterated his request in another letter (*Id*. at 42). He also requested a copy of the Minutes of the deliberations of the *Sangguniang Bayan* on Tax Ordinance No. 88-11-36.

[6] *Id*. at 40-41.

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appropriate authorities. Thereafter, on 27 February 1989, petitioners elevated their request for a review and suspension of the ordinance to the Provincial Treasurer of Bohol.[7]

Acting on petitioners' request, Eufronio M. Pizarras, Provincial Treasurer, referred the letter of petitioner Berdin to the Municipal Treasurer on 15 March 1989, and requested the latter official to forward a copy of Tax Ordinance No. 88-11-36 to the Department of Finance (DOF), through the Provincial Treasurer, for review and approval pursuant to Sec. 8 of Executive Order (E.O.) No. 249 dated 25 July 1987.[8]

Meanwhile, on 29 March 1989, respondent Mayor submitted a corrected copy of Tax Ordinance No. 88-11-36 to Atty. Melchor P. Monreal, Assistant Regional Director, DOF Regional Office No. 7, Cebu City.[9]

Final Demand Letters were sent to petitioners de Vera and Berdin on 2 June 1989 for payment of outstanding rental fees and municipal business taxes due under the new tax ordinance, with a warning that their stores/establishments will be closed and padlocked.[10] Petitioners wrote the Municipal Treasurer on 13 June 1989 and

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[7] *Id*. at 43.

[8] See 1st Indorsement, *id*. at 44. Petitioners would subsequently write: (1) the Secretary of Finance, requesting said official to require the Provincial Treasurer to resolve their protest expeditiously (*Id.* at 210), and (2) the Provincial Treasurer, reminding him of the protest and requesting him for either a suspension of the ordinance or a determination of its validity (*Id*. at 209).

The Finance Service Chief of the Local Finance Policy Enforcement Service of the DOF would thereafter refer petitioners' letter to the Provincial Treasurer for comment within 10 days, with an inquiry on whether Tax Ordinance No. 88-11-36 had already been reviewed by the Provincial Treasurer, and with instructions that if the ordinance had already been reviewed, the Provincial Treasurer furnish his office with the results of the review (*Id*. at 211).

For his part, the Provincial Treasurer would again write the Municipal Treasurer for the latter official to transmit a copy of the ordinance so that the same may be reviewed and to comment and answer the protest of the Association (*Id*. at 212).

[9] *Id*. at 269. It appears that a copy of the ordinance had earlier been submitted to said official on 29 December 1988 for review.

[10] *Id*. at 204-207.

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requested said official to await the resolution of their protest before taking action on the Final Demand Letters.[11] Petitioners also sent a letter to the DOF on 21 August 1989 asking for the suspension of the ordinance pending resolution of their protest in view of the threat of closure of their stores/establishments.[12]

Thereafter, on 4 September 1989, petitioners filed a Complaint[13] with the RTC of Bohol against respondents Mayor, Treasurer, and INP Station Commander of Tubigon, Bohol, as well as the Municipal Council and/or Municipality of Tubigon, to enjoin respondents from enforcing Tax Ordinance No. 88-11-36, to declare the ordinance a nullity and, in the event said ordinance is found to be invalid, to order respondents to reimburse excess taxes paid by petitioners. The case was docketed as Civil Case No. 4577.[14]

Tax Ordinance No. 88-11-36 was amended by Tax Ordinance No. 89-10-49[15] dated 17 October 1989, by specifying that the civil remedies available include the "padlocking of the

[11] *Id*. at 208.

[12] *Id*. at 213.

[13] *Id*. at 32-38. The complaint in Civil Case No. 4577 was amended (with leave of Court) on 2 February 1990 (*Id*. at 75-81). The following allegations were added:

17. That in addition to the grounds set forth in their protest, the ordinance in question have [sic] been enacted without the mandatory public hearing which is a condition precedent under Secs. 49 and 50 of the Local Tax Code since the same refer to similar tax or fee not specifically enumerated and/or not provided by law; to the failure to comply with Sec. 5 of Executive Order No. 249 which took effect July 1987 impl[e]mented on Oct. 22, 1987, for the classification to be the basis for fixing the maximum tax ceilings imposable;

xxx xxx xxx

22. x x x Efforts were exerted to ascertain whether the ordinance was published in a newspaper of general circulation or posted as required by law, but Plaintiffs were not aware thereof; (*Id*. at 78-79.)

The complaint was further amended on 19 October 1991 with the inclusion of Cresenciana P. La Fuente and Samuel Purisima, incumbent Municipal Treasurer and INP Station Commander, respectively, as defendants.

[14] The RTC issued a writ of preliminary injunction on 11 March 1990 upon petitioners' filing of a bond in the amount of ₱10,000.00.

[15] *Rollo,* p. 147.

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establishment and/or seizure of property and revocation of the permit or license and/or eviction from public property and/or by legal action."[16] The Provincial Treasurer approved Tax Ordinance No. 89-10-49 on 8 January 1990 and held that it was within the power of the municipality to enact the ordinance pursuant to Secs. 60 to 63, Art. 3 of Presidential Decree (P.D.) No. 231, as amended, or the Local Tax Code.[17]

Even before the Provincial Treasurer approved of Tax Ordinance No. 89-10-49, petitioners had earlier referred Tax Ordinance No. 89-10-49 to the Provincial Prosecutor for review. The Provincial Prosecutor issued Opinion No. 90-1[18] dated 3 January 1990 and found Tax Ordinance No. 89-10-49 valid except insofar as it provided for the padlocking of establishments as among the civil remedies available against a delinquent taxpayer. Said official wrote the *Sangguniang Bayan* and suggested an amendment to Tax Ordinance No. 89-10-49 by deleting "padlocking of the establishment" as among the civil remedies.[19]

Meanwhile, on 27 December 1989, the Provincial Treasurer suspended some provisions of Tax Ordinance No. 88-11-36 for failure to conform to the rates prescribed by the Local Tax Code.[20] Thus, the *Sangguniang Bayan* enacted Municipal Revenue

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[16] Tax Ordinance No. 88-11-36 merely stated that "[t]he civil remedies available shall be by distraint of personal property and by legal action."

[17] *Rollo*, p. 272. The Local Tax Code, as amended by P.D. No. 426, became effective on 30 March 1974 and has been superseded by the Local Government Code.

[18] *Id*. at 221-223.

[19] *Id*. at 224.

[20] *Id*. at 253. Said official wrote the *Sangguniang Bayan.*

After careful review thereof, pursuant to Section 44 of P.D. 231, as amended, the imposition of permit and regulatory fees are within the taxing power of the Sangguniang Bayan and the rates are found to be just and reasonable as authorized under Section 36 of the Local Tax Code.

However the effectivity of the rates imposed under Section 2B.02 (1-15), (16-b-1-5) of Article B; Section 2C.01 (a-h) of Article C; Section 5A.01 (1-7) of Article A; Section 5B.01 (a-1) (b-c) of Article B; Section 5C.01 (a-e),(h-4) of Article C; Section 6C.01 (d-a) of Article C; and all other rates not allowed under P.D. 231, as amended, are hereby suspended pending the

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Ordinance No. 90-01-54[21] on 5 January 1990 to amend the suspended provisions of Tax Ordinance No. 88-11-36. The Provincial Treasurer found Municipal Revenue Ordinance No. 90-01-54 to be in conformity with the rates authorized under the Local Tax Code and accordingly lifted the suspension of the provisions of Tax Ordinance No. 88-11-36 that were previously suspended and declared that the same, as amended by Municipal Revenue Ordinance No. 90-01-54, may already be given force and effect.[22]

Thereafter, on 24 January 1990, the Provincial Treasurer wrote petitioners informing the latter of his findings that Tax Ordinance Nos. 88-11-36 and 89-10-49 were both in order and in accord with Art. 3 of P.D. No. 231 and further explaining that under Sec. 49 of P.D. No. 231, a public hearing is required only when "the local board or council may exercise the power to impose a tax or fee on a tax base or subject similar to those authorized in [the Local Tax Code] but which may not have been specifically enumerated herein," a fact not present in the case of the questioned ordinances.[23]

Petitioners wrote the Provincial Treasurer on 31 January 1990 informing the latter that the Provincial Fiscal already made a contrary ruling on Tax Ordinance No. 89-10-49 and that since the municipality did not appeal the said ruling, the same became final. Petitioners further requested the Provincial Treasurer to

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enactment of an amendatory ordinance by that Honorable Body in order to conform with the rates prescribed under the Local Tax Code.

Pursuant to Section 30 of P.D. 231, as amended, the rates fixed for the rentals of stalls, booths and block *tiendas* are also hereby approved it appearing that the same are reasonable.

The Fishery rental fees maybe [*sic*] given due course provided that prior approval from the Bureau of Fisheries and Aquatic Resources has been obtained, pursuant to the provisions of P.D. 704, as amended.

Therefore, the said ordinance maybe [*sic*] given force and effect not earlier than the date fixed for its effectivity, except those sections and articles which are declared to be suspended."

[21] *Id*. at 387-400.

[22] *Id*. at 401.

[23] *Id*. at 252.

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transmit all records to the DOF for purposes of appealing the ruling of the Provincial Treasurer and for a review of the questioned ordinances by a higher authority.[24]

Petitioners elevated the finding of the Provincial Treasurer to the Secretary of Finance on 31 January 1990. They also requested the suspension of the implementation of Tax Ordinance No. 88-11-36 pending its review by said office.[25] On 30 March 1990, Gregorio A. Barretto, Director III, Bureau of Local Government Finance of the DOF, referred the appeal to the Provincial Treasurer for comment and/or recommendation.[26] The Provincial Treasurer informed the DOF that his office reviewed and approved the ordinance after the rates have been found to be just and reasonable and that, for those rates initially found by him to have exceeded the maximum authorized by law, an amendatory ordinance was enacted to meet the objection.[27]

Thereafter, the Deputy Director and Officer-in-Charge of the Bureau of Local Government Finance, by authority of the Secretary of Finance, informed the Provincial Treasurer that their department cannot review Ordinance No. 88-11-36 as requested by petitioners.[28]

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[24] *Id*. at 254.

[25] *Id*. at 255.

[26] See 1st Indorsement, *id*. at 261.

[27] See 2nd Indorsement, *id*. at 260.

[28] See 3rd Indorsement, *id*. at 257-258. Said official wrote:

Apparently, it is the intention of Atty. Legaspi to raise a protest on the impositions prescribed under the said Ordinance. However, he did not state the grounds of his protest as provided for under Section 45 of the Local Tax Code, as amended, in relation to Section 44 thereof.

For emphasis and clarity, it is informed that tax ordinances of municipalities are reviewed by Provincial Treasurers pursuant to the provisions of Section 44 of the Code. The Provincial Treasurer, by virtue of its power to review, may suspend the ordinance in whole or in part on the ground that the tax or fee therein levied or imposed is unjust, excessive, oppressive, confiscatory, or not among those that a particular local government may impose or when the ordinance is contrary to declared national policy.

A formal protest against a tax ordinance may be filed based on the same grounds for suspending an ordinance pursuant to Section 45 of the Code. xxx

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The Provincial Treasurer transmitted a copy of this letter to petitioners.[29]

Four years later, on 24 April 1995, the RTC rendered a Decision[30] in Civil Case No. 4577, the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1 – declaring Municipal Revenue Ordinance No. 88-11-36, series of 1988, enacted by the Sangguniang Bayan of Tubigon, Bohol as valid and therefore the same can be enforced;
>
> 2 – declaring Municipal Ordinance No. 89-10-49 dated October 11, 1989 valid, except insofar as it provides for the "padlocking of the establishment" as the civil remedies available against a delinquent taxpayer;
>
> 3 – denying the prayer for *mandamus* and reimbursement;
>
> 4 – dissolving the injunctive order dated May 11, 1990 directing the defendants to desist from enforcing Municipal Ordinance No. 88-11-36;
>
> 5 – granting Final Injunction restraining defendants from padlocking the business establishments of the plaintiffs, thus making permanent the injunctive order of May 11, 1990 to that effect; and
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> 6 – dismissing defendants' counterclaim for insufficiency of evidence.
>
> Costs against the plaintiffs.
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> SO ORDERED.[31]

Petitioners filed a Notice of Appeal with the RTC,[32] which gave due course to the appeal and ordered the transmittal of the case records to the Court of Appeals (CA).[33]

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[29] See 4th Indorsement, *id.* at 256.

[30] *Id.* at 428-435.

[31] *Id.* at 435.

[32] *Id.* at 437.

[33] *Id.* at 439. The appeal was docketed as CA-G.R. SP No. 39045.

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On 26 May 1998, the Fifth Division of the CA rendered a Decision[34] affirming *in toto* the decision of the RTC. Their motion for reconsideration having been denied,[35] petitioners now come to this Court via this Petition for Review under Rule 45 of the Rules of Court.

The issues raised by petitioners in their Memorandum[36] may be summarized as follows: (1) whether the ordinances are valid and enforceable; (2) whether publication was necessary; and (3) whether there was exhaustion of administrative remedies.

The petition is meritorious but only in regard to the need for publication.

Petitioners adopt a three-level argument with regard to the validity and enforceability of Tax Ordinance No. 88-11-36. First, they assert the ordinance does not exist by virtue of respondent officials' delay in furnishing them with a copy of the questioned ordinance. Second, if Tax Ordinance No. 88-11-36 did exist, it was not validly enacted for failure to hold public hearings and to have the same published pursuant to Sec. 43 of the Local Tax Code. Finally, petitioners claim, even if Tax Ordinance No. 88-11-36 was validly enacted, the same contains objectionable provisions which would render it invalid and unenforceable.

Petitioners' misgivings on the existence of Tax Ordinance No. 88-11-36 are baseless. The reason for the delay was adequately explained and was even attributed to petitioners' failure to pay for the cost of reproduction of the ordinance.

The right of the people to information on matters of public concern is recognized under Sec. 7, Art. III of the 1987 Constitution[37] and is subject to such limitations as may be provided

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[34] *Id*. at 454-461. Penned by Justice Hector L. Hofileña, concurred in by Justices Jesus M. Elbinias and Omar U. Amin.

[35] See Resolution, *id*. at 467.

[36] *Id*. at 507-529.

[37] CONST., Art. III, Sec. 7 states: "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions,

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by law. Thus, while access to official records may not be prohibited, it certainly may be regulated. The regulation may come either from statutory law and from the inherent power of an officer to control his office and the records under his custody and to exercise some discretion as to the manner in which persons desiring to inspect, examine, or copy the record may exercise their rights.[38] The Municipal Treasurer in the case at bar exercised this discretion by requiring petitioners to pay for the cost of reproduction of Tax Ordinance No. 88-11-36. Such a requirement is reasonable under the circumstances considering that the ordinance is quite voluminous consisting of more than a hundred pages.

Petitioners then assail Tax Ordinance No. 88-11-36 and Tax Ordinance No. 90-10-49 for failure to hold public hearings pursuant to Sec. 50 of the Local Tax Code. Respondents, on the other hand, claim that a public hearing was no longer necessary considering that the ordinances in question were merely revisions of an existing tax ordinance and not new enactments.

The pertinent provisions of law on this matter are Secs. 49[39] and 50[40] of the Local Tax Code.

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as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

[38] See J.G. BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (First Ed., 1987), p. 265, citing *Subido v. Ozaeta*, 80 Phil. 383 (1948).

[39] SEC. 49. *Similar tax or fee not specifically enumerated.* – The local board or council may exercise the power to impose **a tax or fee on a tax base or subject similar to those authorized in this Code but which may not have been specifically enumerated** herein, the rate of which shall in no case exceed that fixed for the similar tax base or subject. **No ordinance, however, imposing such a tax or fee shall be enacted without any public hearing having been held for the purpose**. The Secretary of Finance shall within six months from the date of receipt of copy of the ordinance review the same and the tax or fee therein imposed shall accrue, should the ordinance be approved by the Secretary of Finance, at such date as may be determined and fixed by him. (As amended by P.D. No. 426) [Emphasis supplied]

[40] SEC. 50. *Tax or fee not provided for.* – **Where the tax base or tax subject is not similar or comparable to any tax base or subject specifically mentioned or otherwise provided for in this Code**, the local board or

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A perusal of these provisions would yield a conclusion that the local board or council has the power to impose a tax or fee (1) on a tax base or subject specifically enumerated in the Local Tax Code, (2) on a tax base similar to those authorized in the Local Tax Code but which may not have been specifically enumerated therein, and (3) on a tax base or tax subject which is not similar or comparable to any tax base or subject specifically mentioned or otherwise provided for in the Local Tax Code. Public hearing apparently is not necessary when the tax or fee is imposed on a tax base or subject specifically enumerated in the Local Tax Code.

The basis for the above distinction is that when a tax base or subject is specifically enumerated in the Local Tax Code, the existence of the power to tax is beyond question as the same is expressly granted. Even in the determination of the rates of the tax, a public hearing, even if ideal, is not necessary because the law itself provides for a ceiling on such rates. The same does not obtain in a situation where what is about to be taxed is not specifically enumerated in the Local Tax Code because in such a situation, the issues of whether to tax or not and at what rate a tax is to be imposed are crucial. Consequently, a public hearing is necessary and vital.

A scrutiny of the taxes or fees imposed by Tax Ordinance No. 88-11-36 shows that some of them belong to the second and third categories of taxes or fees that may be imposed by a municipality that require public hearing. Petitioners are thus correct in saying that a public hearing is necessary for its enactment. With respect to Tax Ordinance No. 89-10-49, however, we hold that no public hearing is necessary as it does not impose any tax or fee. Said ordinance is actually a restatement, with illustrations, of the provisions of the Local Tax Code on

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council may impose a tax, fee or other imposition thereon. **No ordinance, however, imposing such a tax or fee shall be enacted without any public hearing having been held for the purpose**. The Secretary of Finance shall within six months from the date or receipt of copy of the ordinance review the same and the tax or fee therein imposed shall accrue, should the ordinance be approved by the Secretary of Finance, at such date as may be determined and fixed by him. (As amended by P.D. No. 426) [Emphasis supplied]

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civil remedies for the collection of the local taxes and fees imposed by Tax Ordinance No. 88-11-36.

Although a public hearing is necessary for the enactment of Tax Ordinance No. 88-11-36, still we uphold its validity in view of petitioners' failure to present evidence to show that no public hearing was conducted.[41] Petitioners, as the party asserting a negative allegation, had the burden of proving lack of public hearing.[42] Although the *Sangguniang Bayan* had the control of records or the better means of proof regarding the facts alleged and respondent public officials assumed an uncooperative stance to petitioners' request for copies of the Minutes of their deliberation, petitioners are not relieved from this burden.[43] Petitioners could easily have resorted to the various modes of discovery under Rules 23 to 28 of the Rules of Court.[44] Furthermore, petitioners could have compelled the production of these documents through a *subpoena duces tecum* or they could have required testimony on this issue by officials in custody of the documents through a *subpoena ad testificandum.* However, petitioners made no such effort.

Petitioners next claim that the impositions contained in Tax Ordinance No. 88-11-36 exceeded the maximum allowed by the Local Tax Code. In particular, petitioners assert that (1) the taxes imposed by the ordinance are not based on the taxpayers' ability to pay; (2) the taxes imposed are unjust, excessive, oppressive, discriminatory and confiscatory; (3) the ordinances are contrary to law, public policy and are in restraint of trade; (4) the ordinances violate the rule of a progressive system of taxation; and (5) the ordinances are contrary to the declared national policy.

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[41] See *Reyes v. Court of Appeals*, 378 Phil. 232 (1999), citing *Figuerres v. Court of Appeals*, 364 Phil. 683 (1999).

[42] *Id*.

[43] See *Reyes v. Court of Appeals*, *supra* note 41 at 239, citing *People v. Pajenado*, 142 Phil. 702, 707 (1970).

[44] These modes of discovery are the following: (1) Depositions Pending Action, (2) Depositions Before Action or Pending Appeal, (3) Interrogatories to Parties, (4) Admission by Adverse Party, (5) Production or Inspection of Documents of Things, and (5) Physical and Mental Examination of Persons.

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These questions have already been raised in their protest and resolved by the 27 December 1989 findings of the Provincial Treasurer. In fact, said official suspended some of the provisions of Tax Ordinance No. 88-11-36 for failure to comply with the rates prescribed by the Local Tax Code. Furthermore, the subsequent enactment of Municipal Revenue Ordinance No. 90-01-54 and its approval by the Provincial Treasurer corrected this non-compliance with the Local Tax Code. The local legislative body's modification of Tax Ordinance No. 88-11-36 through Municipal Revenue Ordinance No. 90-01-54 is sanctioned by Sec. 44[45] of the Local Tax Code.

Moreover, as the presumption of regularity of official conduct was not overcome by petitioners, the findings of the Provincial Treasurer must be upheld.

There is likewise no merit in petitioners' contention that the Provincial Treasurer's finding on the fishery rental fees is flawed. The Local Tax Code provides in Sec. 21 thereof that municipalities, in the exercise of their authority to grant exclusive fishery rights and license individual fishing gears in municipal waters, may levy or fix rentals or fees therefore in accordance with said section and in conjunction with other operative laws and regulations on municipal fisheries. One such operative law is P.D. No. 704[46]

[45] SEC. 44. *Review and suspension of tax ordinance.* — xxx The xxx provincial treasurer x x x shall review and have the authority to suspend the effectivity of any tax ordinance within one hundred and twenty days after receipt of a copy thereof, if in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, confiscatory, or not among those that the particular local government may impose in the exercise of its power in accordance with this Code; or when the tax ordinance is, in whole or in part, contrary to declared national economic policy; or when the ordinance is discriminatory in nature on the conduct of business or calling or in restraint of trade.

When the x x x provincial treasurer x x x exercises this authority, the effectivity of such ordinance shall be suspended, either in part or, if necessary, *in toto.* **The local legislative body, within thirty days after receipt of the notice of suspension, may either modify the tax ordinance to meet the objections thereto or file an appeal with the proper court,** otherwise, the tax ordinance or the part or parts thereof declared suspended shall be considered as revoked. [Emphasis supplied]

[46] Entitled *"Revising and Consolidating All Laws and Decrees Affecting Fishing and Fisheries."*

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which provides for the jurisdiction of the Bureau of Fisheries and Aquatic Resources in Sec. 4.[47] Thus, it was correct for the Provincial Treasurer to rule that the fishery rental fees in Tax Ordinance No. 88-11-36 may be given due course provided that prior approval from the Bureau of Fisheries and Aquatic Resources has been obtained, pursuant to the provisions of P.D. No. 704, as amended.

Petitioners further fault the Municipal Treasurer for the latter's failure to furnish the Provincial Treasurer with a copy of Tax Ordinance No. 88-11-36 after its approval. By not furnishing the latter official with a copy of the tax ordinance, the Municipal Treasurer frustrated a review thereof.

In this regard, we hold that the submission of Tax Ordinance No. 88-11-36 to the Assistant Regional Director, DOF Regional Office No. 7, Cebu City complied with the requirement of review pursuant to Secs. 49 and 50 of the Local Tax Code, as said official is the *alter ego* of the Secretary of Finance, under an expanded application of the doctrine of qualified political agency, where "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department."[48]

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[47] The first paragraph of this provision states that: "The Bureau shall have jurisdiction and responsibility in the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country except municipal waters which shall be under the municipal or city government concerned: *Provided*, That fish pens and seaweed culture in municipal centers shall be under the jurisdiction of the Bureau: *Provided, further*, That **all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary for appropriate action and shall have full force and effect only upon his approval**. The Bureau shall also have authority to regulate and supervise the production, capture and gathering of fish and fishery/ aquatic products." [Emphasis supplied]

[48] See also *Constantino, Jr. v. Cuisia*, G.R. No. 106064, 13 October 2005, 472 SCRA 505; *Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290, 295-296; *De Leon v. Carpio*, G.R. No. 85243, 12 October 1989, 178 SCRA 457; *Lacson-Magallanes Co., Inc. v. Paño, et al.*, 129 Phil. 123 (1967); *Mondano v. Silvosa*, 97 Phil. 143 (1955); *Villena v. Secretary of Interior*, 67 Phil. 451 (1939).

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We now resolve the issue of exhaustion of administrative remedies.

A perusal of the applicable provisions of the Local Tax Code would show that there are three administrative remedies available to an aggrieved taxpayer. A tax ordinance may either be (1) reviewed or suspended by the Provincial Treasurer[49] or the Secretary of Finance,[50] (2) the subject of a formal protest with the Secretary of Finance,[51] or (3) questioned as to its legality and referred for opinion to the Provincial Fiscal.[52]

In the case at bar, petitioners question the validity of Tax Ordinance No. 88-11-36 for the following reasons: (1) no public hearing was conducted; (2) the taxes imposed therein are not based on the taxpayers' ability to pay; (3) the taxes imposed are unjust, excessive, oppressive, discriminatory and confiscatory; (4) the ordinances are contrary to law, public policy and are in restraint of trade; (5) the ordinances violate the rule of a progressive system of taxation; and (6) the ordinances are contrary to the declared national policy.

Of these issues, the first, second, fourth and fifth issues should have been referred for opinion to the Provincial Fiscal pursuant to Sec. 47[53] of the Local Tax Code, because they are not among

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[49] LOCAL TAX CODE (1974), Sec. 44.

[50] LOCAL TAX CODE (1974), Secs. 49 and 50.

[51] LOCAL TAX CODE (1974), Sec. 45.

[52] LOCAL TAX CODE (1974), Sec. 47.

[53] Sec. 47. *Question on the legality of a tax ordinance.* — Any question or issue raised against the legality of any tax ordinance, or portion thereof, on grounds other than those mentioned in Section 44 of this Code, shall be referred for opinion to the Provincial Fiscal, in the case of provincial, municipal and *barrio* tax ordinances, or to the City Fiscal, in the case of tax ordinances of the city and *barrios* within the city, whose opinion shall be rendered within a period of thirty days after receipt by him of the query or protest. The opinion of the Provincial or City Fiscal, as the case may be, shall be appealable to the Secretary of Justice who shall render an opinion on the matter within sixty days after receipt of the appeal. The decision of the Secretary of Justice shall be final and executory unless, within thirty days upon receipt thereof, the aggrieved party contests the same in a court of competent jurisdiction.

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those mentioned in Sec. 44[54] of the Local Tax Code. The other remaining issues, on the other hand, are proper subjects of a protest which should have been brought to the Secretary of Finance.

However, petitioners did not even bring the issues relative to the legality or validity of Tax Ordinance No. 88-11-36 to the Provincial Fiscal. What they brought for the consideration of the Provincial Fiscal was Tax Ordinance No. 89-10-49. Thus, in Opinion No. 90-1,[55] the Provincial Fiscal found said ordinance valid except insofar as it provided for the padlocking of the establishment as among the civil remedies available against a delinquent taxpayer. The ruling of the Provincial Treasurer declaring Tax Ordinance No. 89-10-49 valid and in order is of no moment because, under Sec. 47, the opinion of the Provincial Fiscal is appealable to the Secretary of Justice.

With respect to the remaining issues proper for a formal protest, petitioners did not bring the same to the Secretary of Finance. What they filed instead was a petition with the Municipal Mayor requesting for a suspension of the implementation of the ordinance "pending final determination of its legality by appropriate authorities." Petitioners thereafter went to the Provincial Treasurer reiterating their request for a review and suspension of the ordinance. In fact, the first time petitioners wrote the DOF was on 13 June 1989, when they merely requested said official to require the Provincial Treasurer to resolve their protest expeditiously.

Obviously, petitioners did not formally protest Tax Ordinance No. 88-11-36 as the same may properly be brought not before the Provincial Treasurer but before the Secretary of Finance. What the Provincial Treasurer merely conducted was a review of Tax Ordinance No. 88-11-36 under Sec. 44 of the Local

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[54] The grounds enumerated by Sec. 44 are the following: 1) the tax or fee therein levied or imposed is unjust, excessive, oppressive, confiscatory; (2) the tax is not among those that the particular local government may impose in accordance with the Local Tax Code; (3) the tax ordinance is, in whole or in part, contrary to declared national economic policy; or (4) the ordinance is discriminatory in nature on the conduct of business or calling or in restraint of trade.

[55] *Rollo,* pp. 221-223.

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Tax Code, limiting itself to the issues proper for a review thereof. Thus, said official initially suspended some of the provisions of Tax Ordinance No. 88-11-36 for their failure to comply with the rates prescribed by the Local Tax Code and eventually decided in favor of its validity after the *Sangguniang Bayan* modified the objectionable provisions thereof via Municipal Revenue Ordinance No. 90-01-54. That what was filed before the Provincial Treasurer was merely a review is evident from the DOF's refusal to review the findings of the Provincial Treasurer, which, it said, was made pursuant to Sec. 44 of the Local Tax Code.

Even if we were to consider petitioners' appeal with the Secretary of Finance as a formal protest, despite its unseasonableness, still, it would be unavailing since they did not offer proof on how and in what manner Tax Ordinance No. 88-11-36 could be invalid. In fact, the Deputy Director and Officer-in-Charge of the Bureau of Local Government Finance, by authority of the Secretary of Finance, noted that petitioners' counsel "did not state the grounds of his protest as provided under Section 45 of the Local Tax Code, as amended, in relation to Section 44 thereof."[56] Verily, mere allegation that an ordinance is invalid on the grounds enumerated in Sec. 44 of the Local Tax Code will not work to rebut the presumption of the ordinance's validity.

Clearly, for failure to file a formal protest with the Secretary of Finance, or a legal question with the Provincial Fiscal on Tax Ordinance No. 88-11-36's validity, petitioners cannot be said to have exhausted administrative remedies available to them.

The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.[57] There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and

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[56] See 3rd Indorsement, *id*. at 257-258.

[57] *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 747 (1997), citing *De los Santos v. Limbaga*, No. L-15976, 31 January 1962, 4 SCRA 224, 226.

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speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts—for reasons of law, comity, and convenience—will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[58]

From the above disquisitions, it follows that the validity of the questioned tax ordinances must be upheld. However, their enforceability is another matter that merits further deliberation considering the apparent lack of publication or posting of the questioned ordinances.

Petitioners assert that pursuant to Sec. 43 of the Local Tax Code, certified true copies of the ordinance should have been published for three (3) days in a newspaper or publication widely circulated within the jurisdiction of the local government, or posted in the local legislative hall or premises and two other conspicuous places within the territorial jurisdiction of the local government within ten (10) days after its approval.

Provincial Circular No. 22-73 states:

> All taxes, fees and charges authorized by the Code to be imposed by local governments, may only be collected by the treasurer concerned if an ordinance embodying the same has been duly enacted by the local board or council and approved in accordance with the provisions of the Code.
>
> Section 43 of the Code provides that within ten (10) days after their approval, certified true copies of all provincial, city, municipal and *barrio* ordinance levying or imposing taxes, fees or other charges shall be published for three (3) consecutive days in a newspaper or publication widely circulated within the jurisdiction of the local government, or posted in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. In either case, copies of all provincial,

[58] *University of the Philippines v. Hon. Catungal, supra,* citing R. *CORTES, PHILIPPINE ADMINISTRATIVE LAW, CASES AND MATERIALS* 394 (Rev. 2nd ed., 1984). See *Hon. Carale v. Hon. Abarintos,* 336 Phil. 126 (1997).

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city, municipal and *barrio* revenue ordinances shall be furnished the treasurers of the respective component and mother units of a local government for dissemination.

While non-compliance with the foregoing provisions of the Code will not render the tax or revenue ordinances null and void, still there must be publication and dissemination as provided in the Code to obviate abuses in the exercise of the taxing powers and preclude protests from the people adversely affected. Such publication and dissemination of tax ordinances will not only be in consonance with the objectives of the Code to secure fair, just and uniform local impositions but will also enhance the efficient collection of valid taxes, fees and other charges. [Emphasis supplied]

Thus, it would seem that while lack of publication does not render a tax ordinance null and void, said requirement must still be complied with in order "to obviate abuses in the exercise of the taxing powers and preclude protests from the people adversely affected." Publication is thus a condition precedent to the effectivity and enforceability of an ordinance to inform the public of its contents before rights are affected by the same.

The records are bereft of any indication that evidence was presented to prove petitioners' negative allegation that there was no publication. Neither is there a positive declaration on the part of respondents that there was publication or posting. Even the RTC and the CA decisions are silent on this issue. Consequently, an uncertainty exists on whether the ordinances were indeed published or not. We resolve this uncertainty in favor of petitioners and accordingly rule that the questioned tax ordinances must be published before the new tax rates imposed therein are to be collected from the affected taxpayers.

This does not mean however that the municipality is deprived of the income that would have been collected under the subject tax ordinances because taxes may still be collected at the old rates previously imposed.

While we partially grant this petition, we note with disapproval petitioners' commission of forum shopping prior to the filing of this petition. Petitioners simultaneously prayed for the same

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relief of suspension of the ordinance in four different fora. It should be remembered that petitioners initially filed a protest of Tax Ordinance No. 88-11-36 with the Municipal Mayor and the Municipal Treasurer on 11 January 1989. Even as this protest was unresolved, they elevated their request for a review and suspension of the same ordinance to the Provincial Treasurer on 17 February 1989. Again, in view of the threat of closure of their establishment, petitioners sent a letter to the DOF on 21 August 1989 praying for the same relief of suspension of the ordinance. Again, despite the pendency of the various requests, petitioners filed Civil Case No. 4577, again praying for a writ of preliminary injunction to restrain respondents from enforcing the ordinance, a prayer which is essentially a prayer for the suspension of the ordinance.

WHEREFORE, premises considered, the instant petition is *GRANTED IN PART*. The decision of the Court of Appeals in CA-G.R. SP No. 39045 is hereby *MODIFIED* in that the Sangguniang Bayan of Tubigon, Bohol is hereby *DIRECTED* to cause the publication of Tax Ordinance No. 88-11-36, Tax Ordinance No. 89-10-49, and Municipal Revenue Ordinance No. 90-01-54 for three (3) days in a newspaper or publication widely circulated within the jurisdiction of the local government, or their posting in the local legislative hall or premises and two other conspicuous places within the territorial jurisdiction of the local government. In all other respects, the decision of the Court of Appeals in CA-G.R. SP No. 39045 affirming the 26 May 1998 Decision of the Regional Trial Court in Civil Case No. 4577 is hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Carpio (Acting Chairperson), Carpio Morales, and *Velasco, Jr., JJ.,* concur.

Quisumbing, J. (Chairperson), on official leave.