



Republic of the Philippines
COURT OF APPEALS
Manila

SPECIAL FIFTH DIVISION

**SOUTHERN
CORPORATION,**

LUZON

DRUG

CA-G.R. SP NO. 102486

Petitioner,

Members:

-versus-

***PERLAS-BERNABE, E.M.**
Acting Chairperson,
VILLON, S.E., and
LAZARO-JAVIER, A.C., JJ.

**THE DEPARTMENT OF SOCIAL
WELFARE AND DEVELOPMENT, THE
NATIONAL COUNCIL FOR THE
WELFARE OF DISABLED PERSONS,
THE DEPARTMENT OF FINANCE AND
THE BUREAU OF INTERNAL REVENUE,**
Respondents.

Promulgated:

June 17, 2011

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DECISION

LAZARO-JAVIER, A. C., J.:

In this special civil action for prohibition with application for temporary restraining order and/or writ of preliminary injunction, petitioner Southern Luzon Drug Corporation¹ seeks to:

- 1) invalidate Section 4 (a)² of The Expanded Senior Citizen's Act of 2003³ and its Implementing Rules and

* Per Office Order No. 180-11-ABR dated June 03, 2011.

¹ a company engaged in the sale and distribution of pharmaceutical products.

² Sec. 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

- (a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

³ Republic Act No. 7432 as amended by Republic Act No. 9257.

Regulations, Section 32⁴ of the Magna Carta for Persons with Disability,⁵ and Section 5.1 of its Implementing Rules and Regulations insofar as they allow business establishments to claim the 20% medicine discount given to senior citizens and persons with disability as mere tax deduction based on net cost of goods and/or services rendered; and

- 2) permanently enjoin respondents Department of Social Welfare and Development (DSWD), National Council for the Welfare of Disabled Persons (NCWDP), Department of Finance (DOF), and Bureau of Internal Revenue (BIR) from enforcing the assailed provisions.

Petitioner's challenge hinges on the following grounds:

One: The 20% discount is not a benefit derived directly from the State. It is rather enforced against private establishments

⁴ SEC. 32. Persons with disability shall be entitled to the following:

x x x

(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

x x x

The establishments may claim the discounts granted in sub-sections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: *provided, however*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: *provided, further*, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be Included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended.

⁵ Republic Act No. 7277, as amended by Republic Act No. 9442

which are required, under threat of criminal prosecution, to grant it to a specific class of the general public. This constitutes taking of private property for public use⁶. Payment of just compensation is, therefore, an absolute necessity⁷, as held in *Carlos Superdrug Corp. v. DSWD*⁸. The tax deduction scheme of 20% does not amount to just compensation for private establishments would only get a percentage of the total discount granted. The deduction is further based on the net cost of goods or services, and not on the actual amount of the 20% discount. For just compensation to exist, private establishments should be reimbursed with an amount equal to the discount extended⁹.

Two. The assailed provisions fail to make a substantial distinction between those who can afford to pay the full price of medicines and the underprivileged citizens who cannot afford to do so. The provisions, thus, discriminate against private establishments like petitioner whose right to equal protection of law is violated.¹⁰

Three: Section 4 of the Magna Carta for Persons with Disability fails to adequately define the term “persons with disability”. It is vague and violative of petitioner’s right to due process. Its definition of

⁶ Rollo, page 22.

⁷ Rollo, page 25.

⁸ 526 SCRA 130.

⁹ Rollo, pages 24-25.

¹⁰ Rollo, pages 35-36.

“persons with disability” lacks comprehensive standards that men of common intelligence must necessarily guess at its meaning and differ in its application. Its broad language poses serious problems in the implementation of the discount privilege as the definition of “disabled persons” is so general and all-encompassing as to cover any kind of ailment afflicting a person. For example, it is difficult to recognize a “mental” or “sensory” impairment which has no physical manifestation. Section 32 of the Magna Carta for Persons with Disability does not also provide reasonable standards in determining the class of disabled persons.¹¹

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Ellaine Rose Sanchez-Corro and State Solicitor Manelyn Caturla, ripostes:

First: The assailed provisions enjoy the presumption of constitutionality, being joint acts of the legislative and executive branches of government. The Expanded Senior Citizen’s Act of 2003 has already been declared constitutional by the Supreme Court in *Carlos Supedrug Corp. v. DSWD*¹². The assailed provisions constitute a valid exercise of police power.¹³

¹¹ Rollo, pages 47-51.

¹² supra.

¹³ Rollo, pages 91-186.

Second: The fundamental right to equal protection is subject to reasonable classification. The Expanded Senior Citizen's Act of 2003 aims to cater to the elderly members of society by providing programs of social security for their well-being. The Constitution itself recognizes that senior citizens are a special class of citizens deserving of special treatment¹⁴. The Magna Carta for Persons with Disability seeks to provide accessible, appropriate, acceptable, affordable, and timely health service to persons with disability. Like senior citizens, persons with disability form a class separate and distinct from other citizens of the country, thus, Congress may pass a law providing for a different treatment to persons with disability, compared to other citizens of the country¹⁵.

Third: The definition of disabled persons under RA 9442 is similar to the definition of "persons with disabilities" in the United Nations Convention on the Rights of Persons with Disabilities, viz:

- a. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others¹⁶.

¹⁴ Rollo, pages 111-114.

¹⁵ Rollo, page 114.

¹⁶ Rollo, page 116.

Likewise, the definition of disability set forth in the Americans with Disabilities Act of 1990 (ADA) does not distinguish between the type, severity, and duration of disability. It states:

The term 'disability' means with respect to an individual –

- (a) a physical or mental impairment that substantially limits one or more of the activities of such individual;
- (b) a record of such impairment; or
- (c) being regarded as having such impairment¹⁷

The definition given to persons with disability captures both the largest and broadest estimate of people with disabilities. After all, the rationale for the enactment of social legislation is to enable persons with disability to benefit therefrom. Section 32 of the Magna Carta for Persons with Disability itself sufficiently provides safeguards to prevent abuse of the 20% discount¹⁸.

The petition must fail.

In *Carlos Superdrug Corp. v. DSWD*¹⁹, the Supreme Court ruled that Section 4(a) of the Expanded Senior Citizens Act of 2003 was a valid exercise of police power, thus:

¹⁷ Rollo, page 117.

¹⁸ Rollo, pages 114-118.

¹⁹ 526 SCRA 130.

recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs. It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor²⁰.

²⁰ (emphasis supplied)

Stare decisis et non quieta. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue²¹. Adherence to precedents is founded on the necessity for securing certainty and stability in the law²². Hence, even on this ground alone, the petition should be dismissed.

But this is not all. Jurisdictional considerations similarly compel dismissal of the petition. This Court is devoid of original or appellate jurisdiction to pass upon the constitutionality of the laws in question. This jurisdiction exclusively belongs to the Regional Trial Court, at first instance, and to the Supreme Court, on appeal. The Constitution so ordains, thus:

Section 5. The Supreme Court shall have the following powers:

x x x

(2) **Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:**

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law,

²¹ J.M. Tuason & Corp. v. Mariano, 85 SCRA 644 [1978]

²² Pepsi Cola v. Espiritu, G.R. No. 150394, June 26, 2007

presidential decree, proclamation, order, instruction, ordinance, or regulation is in question²³.

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*Mirasol v. Court of Appeals*²⁴ further teaches:

On the *first issue*. It is settled that Regional Trial Courts have the authority and jurisdiction to consider the constitutionality of a statute, presidential decree, or executive order. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all Regional Trial Courts. In *J.M. Tuason and Co. v. Court of Appeals*, 3 SCRA 696 (1961) we held:

“Plainly, the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality happens to be in issue.”

Furthermore, B.P. Blg. 129 grants Regional Trial Courts the authority to rule on the conformity of laws or treaties with the Constitution, thus:

“SECTION 19. *Jurisdiction in civil cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation;”²⁵

²³ Article VIII of the 1987 Constitution.

²⁴ G.R. No. 128448, February 1, 2001.

²⁵ (emphasis supplied).

*PEMA v. Estanislao*²⁶ likewise clarified that in cases involving the constitutionality of a law, rule, or resolution, the proper remedy is not a special civil action, but declaratory relief:

Thirdly, while this case is styled as a petition for *certiorari*, there is, however, no denying the fact that, in essence, **it seeks the declaration by the court of the unconstitutionality and illegality of the questioned rule, thus partaking the nature, in reality, of one for declaratory relief over which this Court has only appellate, not original, jurisdiction**²⁷.

Be that as it may, even assuming that this Court had concurrent jurisdiction with the Regional Trial Court over the case at bar, the rule on hierarchy of courts still warrants its outright dismissal:

Fourthly, even in cases, where this Court is conferred with primary jurisdiction, starting with the case of *Santiago vs. Vasquez et al.*, we have stressed, thus —

We discern in the proceedings in this case a propensity on the part of the petitioner, and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original and concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as

²⁶ G.R. No. 104209 November 16, 1993.

²⁷ emphasis supplied.

the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction²⁸.

The rule on hierarchy of courts does not only apply to the trial courts in relation to the Supreme Court, but must likewise apply, with the same vigor, to the trial courts in relation to the Court of Appeals. There is no cogent reason to hold differently.

We now assess the propriety of the present petition in relation to Section 2, Rule 65²⁹ which reads:

SEC. 2. Petition for prohibition.—When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant

²⁸PEMA v. Estanislao, G.R. No. 104209, November 16, 1993.(Emphasis applied)

²⁹ Revised Rules of Court.

and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (2a)³⁰.

Undoubtedly, prohibition will not lie to restrain the actions of herein respondents DSWD, NCWDP, DOF and BIR for the simple reason that they had not exercised, nor would they ever exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the subject provisions. In fact, petitioner itself is completely silent on the specific acts of these agencies that would have otherwise fallen under these categories.

Also, petitioner has not shown that respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction vis-a-vis the subject provisions. Again, the petition itself is devoid of the requisite allegation on this score. Petitioner has not even attached certified true copies of a judgment, order, or resolution which respondents may have individually or collectively issued relevant to this case. Indeed, a petition is fatally defective if it fails to comply with Rule 65³¹ or to allege facts with certainty, or to attach certified true copies of the judgment, order or resolution sought to be annulled³².

³⁰ Emphasis supplied.

³¹ Revised Rules of Court.

³² *Iligan Concrete Products v. Magadan*, 157 SCRA 525.

Finally, petitioner has a plain, speedy, and adequate remedy in the ordinary course of law via Rule 63³³, viz:

SECTION 1. *Who may file petition.*—Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a **statute**, executive order or **regulation**, ordinance, or any other governmental regulation may, before breach or violation thereof, **bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder**³⁴.

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Petitioner should have availed of this remedy at first instance. Basic is the rule that the writ of prohibition is an extraordinary remedy to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. It is available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law³⁵. As it was, petitioner failed to establish facts showing that such other existing remedy is not plain, speedy, or adequate to justify its immediate resort to the present petition.

³³ Revised Rules of Court.

³⁴ emphasis supplied.

³⁵ Tan, et al v. CA, G.R. No. 164966, June 8, 2007.

ACCORDINGLY, the petition is **DISMISSED**.

SO ORDERED.

AMY C. LAZARO-JAVIER

Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE

Associate Justice

SESINANDO E. VILLON

Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ESTELA M. PERLAS-BERNABE

Associate Justice

Acting Chairperson

Special Fifth Division