

EN BANC

[G.R. No. 100152, March 31, 2000]

ACEBEDO OPTICAL COMPANY, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, HON. MAMINDIARA MANGOTARA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, 12TH JUDICIAL REGION, BR. 1, ILIGAN CITY; SAMAHANG OPTOMETRIST SA PILIPINAS-ILIGAN CITY CHAPTER, LEO T. CAHANAP, CITY LEGAL OFFICER, AND HON. CAMILO P. CABILI, CITY MAYOR OF ILIGAN, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

At bar is a petition for review under Rule 45 of the Rules of Court seeking to nullify the dismissal by the Court of Appeals of the original petition for *certiorari*, prohibition and mandamus filed by the herein petitioner against the City Mayor and City Legal Officer of Iligan and the Samahang Optometrist sa Pilipinas - Iligan Chapter (*SOPI, for brevity*).

The antecedent facts leading to the filing of the instant petition are as follows:

Petitioner applied with the Office of the City Mayor of Iligan for a business permit. After consideration of petitioner's application and the opposition interposed thereto by local optometrists, respondent City Mayor issued Business Permit No. 5342 subject to the following conditions:

1. Since it is a corporation, Acebedo cannot put up an optical clinic but only a commercial store;
2. Acebedo cannot examine and/or prescribe reading and similar optical glasses for patients, because these are functions of optical clinics;
3. Acebedo cannot sell reading and similar eyeglasses without a prescription having first been made by an independent optometrist (*not its employee*) or independent optical clinic. Acebedo can only sell directly to the public, without need of a prescription, Ray-Ban and similar eyeglasses;
4. Acebedo cannot advertise optical lenses and eyeglasses, but can advertise Ray-Ban and similar glasses and frames;
5. Acebedo is allowed to grind lenses but only upon the prescription of an independent optometrist.^[1]

On December 5, 1988, private respondent Samahan ng Optometrist Sa Pilipinas (SOPI), Iligan Chapter, through its Acting President, Dr. Frances B. Apostol, lodged a complaint against the petitioner before the Office of the City Mayor, alleging that Acebedo had violated the conditions set forth in its business permit and requesting the cancellation and/or revocation of such permit.

Acting on such complaint, then City Mayor Camilo P. Cabili designated City Legal Officer Leo T. Cahanap to conduct an investigation on the matter. On July 12, 1989, respondent City Legal Officer submitted a report to the City Mayor finding the herein petitioner guilty of violating all the conditions of its business permit and recommending the disqualification of petitioner from operating its business in Iligan City. The report further advised that no new permit shall be granted to petitioner for the year 1989 and should only be given time to wind up its affairs.

On July 19, 1989, the City Mayor sent petitioner a Notice of Resolution and Cancellation of Business Permit effective as of said date and giving petitioner three (3) months to wind up its affairs.

On October 17, 1989, petitioner brought a petition for *certiorari*, prohibition and mandamus with prayer for restraining order/preliminary injunction against the respondents, City Mayor, City Legal Officer and Samahan ng Optometrists sa Pilipinas-Iligan City Chapter (SOPI), docketed as Civil Case No. 1497 before the Regional Trial Court of Iligan City, Branch I. Petitioner alleged that (1) it was denied due process because it was not given an opportunity to present its evidence during the investigation conducted by the City Legal Officer; (2) it was denied equal protection of the laws as the limitations imposed on its business permit were not imposed on similar businesses in Iligan City; (3) the City Mayor had no authority to impose the special conditions on its business permit; and (4) the City Legal Officer had no authority to conduct the investigation as the matter falls within the exclusive jurisdiction of the Professional Regulation Commission and the Board of Optometry.

Respondent SOPI interposed a Motion to Dismiss the Petition on the ground of non-exhaustion of administrative remedies but on November 24, 1989, Presiding Judge Mamindiara P. Mangotara deferred resolution of such Motion to Dismiss until after trial of the case on the merits. However, the prayer for a writ of preliminary injunction was granted. Thereafter, respondent SOPI filed its answer.

On May 30, 1990, the trial court dismissed the petition for failure to exhaust administrative remedies, and dissolved the writ of preliminary injunction it earlier issued. Petitioner's motion for reconsideration met the same fate. It was denied by an Order dated June 28, 1990.

On October 3, 1990, instead of taking an appeal, petitioner filed a petition for *certiorari*, prohibition and mandamus with the Court of Appeals seeking to set aside the questioned Order of Dismissal, branding the same as tainted with grave abuse of discretion on the part of the trial court.

On January 24, 1991, the Ninth Division^[2] of the Court of Appeals dismissed the petition for lack of merit. Petitioner's motion reconsideration was also denied in the Resolution dated May 15, 1991.

Undaunted, petitioner has come before this court via the present petition, theorizing that:

A.

THE RESPONDENT COURT, WHILE CORRECTLY HOLDING THAT THE RESPONDENT CITY MAYOR ACTED BEYOND HIS AUTHORITY IN IMPOSING THE SPECIAL CONDITIONS IN THE PERMIT AS THEY HAD NO BASIS IN ANY LAW OR ORDINANCE, ERRED IN HOLDING THAT THE SAID SPECIAL CONDITIONS NEVERTHELESS BECAME BINDING ON PETITIONER UPON ITS ACCEPTANCE THEREOF AS A PRIVATE AGREEMENT OR CONTRACT.

B.

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE CONTRACT BETWEEN PETITIONER AND THE CITY OF ILIGAN WAS ENTERED INTO BY THE LATTER IN THE PERFORMANCE OF ITS PROPRIETARY FUNCTIONS.

The petition is impressed with merit.

Although petitioner agrees with the finding of the Court of Appeals that respondent City Mayor acted beyond the scope of his authority in imposing the assailed conditions in subject business permit, it has excepted to the ruling of the Court of Appeals that the said conditions nonetheless became binding on petitioner, once accepted, as a private agreement or contract. Petitioner maintains that the said special conditions are null and void for being *ultra vires* and cannot be given effect; and therefore, the principle of estoppel cannot apply against it.

On the other hand, the public respondents, City Mayor and City Legal Officer, private respondent SOPI and the Office of the Solicitor General contend that as a valid exercise of police power, respondent City Mayor has the authority to impose, as he did, special conditions in the grant of business permits.

Police power as an inherent attribute of sovereignty is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people.^[3] The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation.^[4] This delegation of police power is embodied in the general welfare clause of the Local Government Code which provides:

SEC. 16. General Welfare. - *Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the*

preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.^[5]

The authority of city mayors to issue or grant licenses and business permits is beyond cavil. It is provided for by law.

SECTION 171, paragraph 2 (n) of Batas Pambansa Bilang 337 otherwise known as the Local Government Code of 1983, reads:

SEC. 171. The City Mayor shall:

x x x

n) Grant or refuse to grant, pursuant to law, city licenses or permits, and revoke the same for violation of law or ordinance or the conditions upon which they are granted.

However, the power to grant or issue licenses or business permits must always be exercised in accordance with law, with utmost observance of the rights of all concerned to due process and equal protection of the law.

Succinct and in point is the ruling of this Court, that:

"x x x While a business may be regulated, such regulation must, however, be within the bounds of reason, i. e., the regulatory ordinance must be reasonable, and its provision cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power. xxx

xxx xxx xxx

xxx The exercise of police power by the local government is valid unless it contravenes the fundamental law of the land or an act of the legislature, or unless it is against public policy or is unreasonable, oppressive, partial, discriminating or in derogation of a common right."^[6]

In the case under consideration, the business permit granted by respondent City Mayor to petitioner was burdened with several conditions. Petitioner agrees with the holding by the Court of Appeals that respondent City Mayor acted beyond his authority in imposing such special conditions in its permit as the same have no basis in the law or ordinance. Public respondents and private respondent SOPI, on the other hand, are one in saying that the imposition of said special conditions on petitioner's business permit is well within the authority of the City Mayor as a valid exercise of police power.

As aptly discussed by the Solicitor General in his Comment, the power to issue licenses and permits necessarily includes the corollary power to revoke, withdraw or cancel the same. And the power to revoke or cancel, likewise includes the power to restrict through the imposition of certain conditions. In the case of *Austin-Hardware, Inc. vs. Court of Appeals*,^[7] it was held that the power to license carries with it the authority to provide reasonable terms and conditions under which the licensed business shall be conducted. As the Solicitor General puts it:

"If the City Mayor is empowered to grant or refuse to grant a license, which is a broader power, it stands to reason that he can also exercise a lesser power that is reasonably incidental to his express power, i. e. to restrict a license through the imposition of certain conditions, especially so that there is no positive prohibition to the exercise of such prerogative by the City Mayor, nor is there any particular official or body vested with such authority"^[8]

However, the present inquiry does not stop there, as the Solicitor General believes. The power or authority of the City Mayor to impose conditions or restrictions in the business permit is indisputable. What petitioner assails are the conditions imposed in its particular case which, it complains, amount to a confiscation of the business in which petitioner is engaged.

Distinction must be made between the grant of a license or permit to do business and the issuance of a license to engage in the practice of a particular profession. The first is usually granted by the local authorities and the second is issued by the Board or Commission tasked to regulate the particular profession. A business permit authorizes the person, natural or otherwise, to engage in business or some form of commercial activity. A professional license, on the other hand, is the grant of authority to a natural person to engage in the practice or exercise of his or her profession.

In the case at bar, what is sought by petitioner from respondent City Mayor is a permit to engage in the business of running an optical shop. It does not purport to seek a license to engage in the practice of optometry as a corporate body or entity, although it does have in its employ, persons who are duly licensed to practice optometry by the Board of Examiners in Optometry.

The case of *Samahan ng Optometrists sa Pilipinas vs. Acebedo International Corporation*, G.R. No. 117097,^[9] promulgated by this Court on March 21, 1997, is in point. The factual antecedents of that case are similar to those of the case under