

## THIRD DIVISION

[ G.R. No. 122241, July 30, 1996 ]

**BOARD OF OPTOMETRY, REPRESENTED BY ITS CHAIRMAN, DR. PRIMITIVA Y. PEREZ-SISON, PROFESSIONAL REGULATION COMMISSION, REPRESENTED BY ITS COMMISSIONER, HERMOGENES P. POBRE, DEPARTMENT OF HEALTH, REPRESENTED BY ITS SECRETARY, DR. HILARION M. RAMIRO, BUREAU OF FOODS AND DRUGS, REPRESENTED BY ITS DIRECTOR, DR. QUINTIN L. KINTANAR, DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY ITS SECRETARY, SALVADOR M. ENRIQUEZ, JR., AND BUREAU OF HIGHER EDUCATION, REPRESENTED BY ITS DIRECTOR, MONA D. VALISNO, PETITIONERS, VS. HON. ANGEL B. COLET, PRESIDING JUDGE, REGIONAL TRIAL COURT OF MANILA, BRANCH 29, ACEBEDO OPTICAL COMPANY, INC., REPRESENTED BY ITS PRESIDENT AND CHAIRMAN OF THE BOARD, MIGUEL P. ACEBEDO, OPTOMETRY PRACTITIONERS ASSOCIATION OF THE PHILIPPINES (OPAP), REPRESENTED BY ITS PRESIDENT, DR. MIRIAM F. LLAVE, CENEVIS OPTOMETRIST ASSOCIATION (COA), REPRESENTED BY ITS PRESIDENT, DR. ROBERTO RODIS, JR., ASSOCIATION OF CHRISTIAN-MUSLIM OPTOMETRIST (ACMO), REPRESENTED BY ITS PRESIDENT, DR. CYRIL CORALES, SOUTHERN MINDANAO OPTOMETRIST ASSOCIATION OF THE PHILS., INC. (SMOAP), REPRESENTED BY ITS PRESIDENT, DR. ELMER VILLAROSA, AND REPUBLICA A. PANOL, NO. 9 GEN. MALVAR ST., ARANETA CENTER, CUBAO, QUEZON CITY, RESPONDENTS.**

## D E C I S I O N

**DAVIDE, JR., J.:**

Petitioners seek to annul and set aside for having been rendered with grave abuse of discretion the order of 25 August 1995 issued by public respondent Judge Angel V. Colet in Civil Case No. 95-74770 which granted a writ of preliminary injunction restraining, enjoining, and prohibiting the petitioners herein "from undertaking in any form or manner, the enforcement or implementation of the Revised Optometry Law [R.A. No. 8050] or any regulations or Code of Ethics issued thereunder."

The background facts are not disputed.

R.A. No. 8050,<sup>[1]</sup> entitled "*An Act Regulating the Practice of Optometry Education, Integrating Optometrists, and for Other Purposes*," otherwise known as the Revised Optometry Law of 1995, was a consolidation of House Bill (HB) No. 14100<sup>[2]</sup> and Senate Bill (SB) No. 1998,<sup>[3]</sup> which were respectively approved by both Houses and, thereafter, reconciled by the Bicameral Conference Committee.<sup>[4]</sup> The Reconciled

Bill<sup>[5]</sup> was then separately ratified by both the Senate and the House of Representatives<sup>[6]</sup> and approved into law by the President on 7 June 1995.

On 31 July 1995, the private respondents filed with the Regional Trial Court (RTC) of Manila a petition for declaratory relief and for prohibition and injunction, with a prayer for a temporary restraining order.<sup>[7]</sup> As grounds for their petition, the private respondents alleged that:

1. There were surreptitious and unauthorized insertion and addition of provisions in the Reconciled Bill which were made without the knowledge and conformity of the Senate panel, thereby derogating the orderly procedure essential to the legislative process and vitiating legislative consent;
2. R.A. No. 8050 derogates and violates the fundamental right of every Filipino to reasonable safeguards against deprivation of life, liberty and property without due process of law in that it authorizes optometrists to engage in acts of practice within the zone of medical practice through permitted use in certain kinds of diagnostic pharmaceutical agents thereby exposing and subjecting those who avail of the services of optometrists to definite hazards which would inflict upon them impairment of vision, resultant blindness, or possible loss of life;
3. R.A. No. 8050 derogates and violates the principle against undue delegation of legislative power when it provides for a penalty of imprisonment for a maximum of eight years and a fine not exceeding P40,000.00 upon any person found violating any rule or regulation promulgated pursuant to said law;
4. R.A. No. 8050 suppresses truthful advertising concerning optical goods and services in violation of the guaranty of freedom of speech and press; and
5. R.A. No. 8050 employs vague ambiguous terms in defining prohibitions and restrictions, hence, it falls within the ambit of void-for-vagueness doctrine which safeguards the guaranty of due process of law.

They then prayed that after due notice and hearing, an order be issued granting a writ of preliminary injunction enjoining, restraining, restricting, and forbidding the respondents therein (herein petitioners), their agents, officers, and employees from performing or undertaking any act in implementation or enforcement of R.A. No. 8050, or any of its provisions, or its Code of Ethics, during the pendency of the case, until further orders of the court; and that after trial on the merits, judgment be rendered: (a) declaring R.A. No. 8050 and its Code of Ethics null and void due to constitutional violations and transgressions; (b) granting a writ of prohibition against all the respondents therein enjoining and restraining them from enforcing or implementing R.A. No. 8050 or its Code of Ethics in whole or in part; and (c) making permanent the writ of preliminary injunction.

An examination of the petition, docketed as Civil Case No. 95-74770 in Branch 29 of the RTC of Manila, disclosed that among the petitioners included in the caption of the petition were Acebedo Optical Co., Inc.; Optometry Practitioner Association of

the Philippines (OPAP); Cenevis Optometrist Association (COA); Association of Christian-Muslim Optometrist (ACMO); and Southern Mindanao Optometrist Association of the Philippines (SMOAP) "each allegedly represented by its president. The body of the petition, however, gave no details as to the juridical personality and addresses of these alleged associations, save for Acebedo Optical Co., Inc. It merely listed the names of the alleged presidents as well as their profession and home addresses.

As likewise disclosed in the petitioners' Compliance<sup>[8]</sup> filed with the trial court on 18 August 1995, the names of Miguel Acebedo, representing Acebedo Optical Co., Inc.; Miriam F. Llave, representing the OPAP; and Republica A. Panol, another petitioner in Civil Case No. 95-74770, did not appear in the registration books of the Board of Optometry to be authorized optometry practitioners in the Philippines, as evidenced by certifications issued by the Professional Regulation Commission (PRC). Private respondents COA and ACMO were neither registered with the Securities and Exchange Commission (SEC), as evidenced by the certifications issued by the latter.

On 1 August 1995, the trial court, per respondent Judge Angel V. Colet, issued a Temporary Restraining Order<sup>[9]</sup> enjoining the respondents from enforcing or implementing R.A. No. 8050 or its Code of Ethics, until further orders of the court; directing that summons, with a copy of the petition and of the temporary restraining order, be served immediately; and setting the application for a writ of preliminary injunction for hearing on 15 August 1995.

On 11 August 1995, the petitioners herein, as respondents below, filed an Opposition<sup>[10]</sup> to the application for preliminary injunction and alleged that:

- (1) No proper ground exists to warrant the issuance of a writ as
  - (a) petitioners therein do not possess the requisite right as would entitle them to the relief demanded;
  - (b) petitioners have unquestionably not shown their legal existence or capacity to file the case, much less their authority to file it in a representative capacity; and
  - (c) petitioners have misled the court into believing that an act is being done in the implementation of R.A. No. 8050 tending to make the judgment ineffectual;
- (2) The implementation of R.A. No. 8050 carries no injurious effect; and
- (3) Petitioners failed to overcome the presumption of constitutionality in favor of R.A. No. 8050.

At the hearing of the application for a writ of preliminary injunction, the parties indicated their intention to present witnesses in support of their respective positions. Nevertheless, the trial court, finding such procedure "not [to be] conducive to the summary procedure appropriate to the auxiliary remedy of preliminary injunction," merely directed the parties to submit their other arguments in writing with supporting evidence, after which the application for a writ of preliminary injunction would be deemed submitted for resolution.<sup>[11]</sup> The parties complied therewith.

On 25 August 1995, the trial court issued the challenged order,<sup>[12]</sup> the dispositive portion of which reads as follows:

PREMISES CONSIDERED, the Court grants the writ of preliminary injunction prayed for until further orders of the Court, respondents and their officials, agents and employees, are restrained, enjoined, and prohibited from undertaking in any form or manner, the enforcement or implementation of the Revised Optometry Law [R.A. 8050] or any regulation or Code of Ethics issued thereunder.

Let the writ issue upon filing with this Court a bond in the amount of ONE HUNDRED THOUSAND [P100,000.00] PESOS in favor of respondents, conditioned upon payment of damages sustained by respondents in case the writ is later adjudged to have been improvidently or improperly issued.

We quote its ratiocinations to support the above disposition:

Viewing the petition as a whole, which is duly verified, particularly the constitutional infirmities alleged by the petitioners, and the supporting exhibits, the court is inclined to find *prima facie*, that petitioners have legal rights affected by the Revised Optometry Law, and that in its operation, said Law is likely to inflict serious and irreparable injury to such legal rights.

There is clear public right that laws enacted for the governance of citizens should be the product of the untrammelled will of the people's representatives in Congress. Petitioners contend and have adduced at least sufficient evidence to support this order that, in the Revised Optometry Law, approved by the two Houses of Congress, there is a showing that at least one major paragraph imposing penalties on corporate officers, was surreptitiously "smuggled" into the measure, because the clear tenor and the content of the provision (Sec. 33) as agreed upon in the Bicameral Conference Committee, duly reflected in its Minutes (Exhs. "S" and "T") did not include such paragraph. The fraud upon the legislative process thus practiced through surreptitious and insidious tampering, manifestly contravenes and violates said public right, which violation petitioners as members of the Philippine body politic, have the status and standing to vindicate by the present petition for extraordinary legal remedies. (See the rulings in *Tanada v. Tuvera*, 136 SCRA 27, particularly pp. 36-37, citing *Severino v. Governor-General*, Phil. 366, 378).

Similarly, there is likewise a public right that the laws enacted for the public good should in truth and in fact promote the public good. Such public right would be negated and violated if, as petitioners allege, the Revised Optometry Law which is intended to provide our people with better opportunities and better facilities for better vision, institutes a practice which in its actual operation, exposes persons availing of optometric services to serious risk of impairment of vision, possible loss of sight and even possible loss of life, through administration by

optometrists of DPA's. If this be true, the law under question violates that public right, because it permits inflicting of serious injury upon our people using services of optometrists. After examining the different exhibits submitted by petitioners, in which trained experts in our government agencies themselves attest to the dire consequences that persons on whom DPA's are used may suffer, the Court finds prima facie basis for danger of irreparable injury to public health, which the Court should forestall in the exercise of prudence by a preliminary writ of injunction, pending full inquiry and thorough determination after trial. Apart from the public rights, which petitioners are entitled to assert in this action, there are also private individual rights of petitioners which the Revised Optometry Law tends to injure, and which would be injured irreparably with the actual operation of said law.

Hardest hit in this regard are the optometrists, whose vested right to continue in the practice is virtually bludgeoned by the Revised Optometrist Law, as virtually admitted by respondents in their Opposition. On the one hand, the revised concept of the practice of optometry [Sec. 4] mandates as standard, the use of DPA's in optometric examination. For this reason, said Law authorizes virtual suspension of the licenses of the present crop of optometrists, until after they shall have re-trained and qualified to use DPA's [Sec. 31]. In case such optometrists insist on practicing without the mandatory training, their practice could be viewed as substandard if they would avoid use of DPA's [Sec. 4]. Alternatively, if they use DPA's before they are qualified through mandatory training, they could incur criminal liability [Secs. 32 and 33]. In either case, their use of DPA's without or after qualifying training, would expose them to malpractice suits from persons who might have sustained injury through the use of DPA's. Again, they might not have the option of refraining from the use of DPA's, since they could face an ethics charge for substandard practice in not using DPA's in their practice.

Finally, even petitioner Acebedo Co. would suffer injury in its operations because its activities, based on the affidavits submitted as exhibits, would surely touch the boundaries of conduct prohibited and penalized in the Revised Optometry Law. For one thing, its right to continue in employment, the optometrists working in its optical shop clinics [including affiant petitioners] might be injured through a criminal charge that such employment constitutes a prohibited indirect practice of optometry within the strictures of Section 5 in relation to Sec. 32. Or its advertising of optical goods and wares, which is its right under the general law and the Constitution, could be charged as an offense under Section 32 and subjected to penalty under Section 33. These restraints, which could seriously prejudice existing legal rights, entitle the petitioner corporation to the extraordinary remedy of declaratory relief, and to preliminary injunction pending the holding of a trial on the merits. The Court understands that petitioner could have adduced more evidence than what appears especially on the matter of the jeopardy to public health as a result of changes of optometric practice introduced by the Revised Optometry Law. But as the Court understands it, preponderance is not required for evidentiary support for the grant of preliminary injunction. As the rule stands, a "sampling" of relevant evidence is