

EN BANC

[G.R. NO. 118127, April 12, 2005]

CITY OF MANILA, HON. ALFREDO S. LIM AS THE MAYOR OF THE CITY OF MANILA, HON. JOSELITO L. ATIENZA, IN HIS CAPACITY AS VICE-MAYOR OF THE CITY OF MANILA AND PRESIDING OFFICER OF THE CITY COUNCIL OF MANILA, HON. ERNESTO A. NIEVA, HON. GONZALO P. GONZALES, HON. AVELINO S. CAILIAN, HON. ROBERTO C. OCAMPO, HON. ALBERTO DOMINGO, HON. HONORIO U. LOPEZ, HON. FRANCISCO G. VARONA, JR., HON. ROMUALDO S. MARANAN, HON. NESTOR C. PONCE, JR., HON. HUMBERTO B. BASCO, HON. FLAVIANO F. CONCEPCION, JR., HON. ROMEO G. RIVERA, HON. MANUEL M. ZARCAL, HON. PEDRO S. DE JESUS, HON. BERNARDITO C. ANG, HON. MANUEL L. QUIN, HON. JHOSEP Y. LOPEZ, HON. CHIKA G. GO, HON. VICTORIANO A. MELENDEZ, HON. ERNESTO V.P. MACEDA, JR., HON. ROLANDO P. NIETO, HON. DANILO V. ROLEDA, HON. GERINO A. TOLENTINO, JR., HON. MA. PAZ E. HERRERA, HON. JOEY D. HIZON, HON. FELIXBERTO D. ESPIRITU, HON. KARLO Q. BUTIONG, HON. ROGELIO P. DELA PAZ, HON. BERNARDO D. RAGAZA, HON. MA. CORAZON R. CABALLES, HON. CASIMIRO C. SISON, HON. BIENVINIDO M. ABANTE, JR., HON. MA. LOURDES M. ISIP, HON. ALEXANDER S. RICAFORT, HON. ERNESTO F. RIVERA, HON. LEONARDO L. ANGAT, AND HON. JOCELYN B. DAWIS, IN THEIR CAPACITY AS COUNCILORS OF THE CITY OF MANILA, PETITIONERS, VS. HON. PERFECTO A.S. LAGUIO, JR., AS PRESIDING JUDGE, RTC, MANILA AND MALATE TOURIST DEVELOPMENT CORPORATION, RESPONDENTS.

D E C I S I O N

TINGA, J.:

I know only that what is moral is what you feel good after and what is immoral is what you feel bad after.

**Ernest Hemingway
Death in the Afternoon, Ch. 1**

It is a moral and political axiom that any dishonorable act, if performed by oneself, is less immoral than if performed by someone else, who would be well-intentioned in his dishonesty.

**J. Christopher Gerald
Bonaparte in Egypt, Ch. I**

The Court's commitment to the protection of morals is secondary to its fealty to the fundamental law of the land. It is foremost a guardian of the Constitution but not

the conscience of individuals. And if it need be, the Court will not hesitate to "make the hammer fall, and heavily" in the words of Justice Laurel, and uphold the constitutional guarantees when faced with laws that, though not lacking in zeal to promote morality, nevertheless fail to pass the test of constitutionality.

The pivotal issue in this *Petition*^[1] under Rule 45 (then Rule 42) of the Revised Rules on Civil Procedure seeking the reversal of the *Decision*^[2] in Civil Case No. 93-66511 of the Regional Trial Court (RTC) of Manila, Branch 18 (lower court),^[3] is the validity of Ordinance No. 7783 (the *Ordinance*) of the City of Manila.^[4]

The antecedents are as follows:

Private respondent Malate Tourist Development Corporation (MTDC) is a corporation engaged in the business of operating hotels, motels, hostels and lodging houses.^[5] It built and opened Victoria Court in Malate which was licensed as a motel although duly accredited with the Department of Tourism as a hotel.^[6] On 28 June 1993, MTDC filed a *Petition for Declaratory Relief with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order*^[7] (RTC *Petition*) with the lower court impleading as defendants, herein petitioners City of Manila, Hon. Alfredo S. Lim (Lim), Hon. Joselito L. Atienza, and the members of the City Council of Manila (City Council). MTDC prayed that the *Ordinance*, insofar as it includes motels and inns as among its prohibited establishments, be declared invalid and unconstitutional.^[8]

Enacted by the City Council^[9] on 9 March 1993 and approved by petitioner City Mayor on 30 March 1993, the said *Ordinance* is entitled-

AN ORDINANCE PROHIBITING THE ESTABLISHMENT OR OPERATION OF BUSINESSES PROVIDING CERTAIN FORMS OF AMUSEMENT, ENTERTAINMENT, SERVICES AND FACILITIES IN THE ERMITA-MALATE AREA, PRESCRIBING PENALTIES FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES.^[10]

The *Ordinance* is reproduced in full, hereunder:

SECTION 1. Any provision of existing laws and ordinances to the contrary notwithstanding, **no person, partnership, corporation or entity shall, in the Ermita-Malate area** bounded by Teodoro M. Kalaw Sr. Street in the North, Taft Avenue in the East, Vito Cruz Street in the South and Roxas Boulevard in the West, pursuant to P.D. 499 **be allowed or authorized to contract and engage in, any business providing certain forms of amusement, entertainment, services and facilities where women are used as tools in entertainment and which tend to disturb the community, annoy the inhabitants, and adversely affect the social and moral welfare of the community,** such as but not limited to:

1. Sauna Parlors
2. Massage Parlors
3. Karaoke Bars
4. Beerhouses

5. Night Clubs
6. Day Clubs
7. Super Clubs
8. Discotheques
9. Cabarets
10. Dance Halls
11. Motels
12. Inns

SEC. 2 The City Mayor, the City Treasurer or any person acting in behalf of the said officials are prohibited from issuing permits, temporary or otherwise, or from granting licenses and accepting payments for the operation of business enumerated in the preceding section.

SEC. 3. Owners and/or operator of establishments engaged in, or devoted to, the businesses enumerated in Section 1 hereof are hereby **given three (3) months from the date of approval of this ordinance within which to wind up business operations or to transfer to any place outside of the Ermita-Malate area or convert said businesses to other kinds of business allowable within the area**, such as but not limited to:

1. Curio or antique shop
2. Souvenir Shops
3. Handicrafts display centers
4. Art galleries
5. Records and music shops
6. Restaurants
7. Coffee shops
8. Flower shops
9. Music lounge and sing-along restaurants, with well-defined activities for wholesome family entertainment that cater to both local and foreign clientele.
10. Theaters engaged in the exhibition, not only of motion pictures but also of cultural shows, stage and theatrical plays, art exhibitions, concerts and the like.
11. Businesses allowable within the law and medium intensity districts as provided for in the zoning ordinances for Metropolitan Manila, except new warehouse or open-storage depot, dock or yard, motor repair shop, gasoline service station, light industry with any machinery, or funeral establishments.

SEC. 4. Any person violating any provisions of this ordinance, shall upon conviction, be punished by imprisonment of one (1) year or fine of FIVE THOUSAND (P5,000.00) PESOS, or both, at the discretion of the Court, PROVIDED, that in case of juridical person, the President, the General Manager, or person-in-charge of operation shall be liable thereof; PROVIDED FURTHER, that in case of subsequent violation and conviction, the premises of the erring establishment shall be closed and padlocked permanently.

SEC. 5. This ordinance shall take effect upon approval.

Enacted by the City Council of Manila at its regular session today, March 9, 1993.

Approved by His Honor, the Mayor on March 30, 1993. (Emphasis supplied)

In the *RTC Petition*, MTDC argued that the *Ordinance* erroneously and improperly included in its enumeration of prohibited establishments, motels and inns such as MTDC's Victoria Court considering that these were not establishments for "amusement" or "entertainment" and they were not "services or facilities for entertainment," nor did they use women as "tools for entertainment," and neither did they "disturb the community," "annoy the inhabitants" or "adversely affect the social and moral welfare of the community."^[11]

MTDC further advanced that the *Ordinance* was invalid and unconstitutional for the following reasons: (1) The City Council has no power to prohibit the operation of motels as Section 458 (a) 4 (iv)^[12] of the Local Government Code of 1991 (the Code) grants to the City Council only the power to regulate the establishment, operation and maintenance of hotels, motels, inns, pension houses, lodging houses and other similar establishments; (2) The *Ordinance* is void as it is violative of Presidential Decree (P.D.) No. 499^[13] which specifically declared portions of the Ermita-Malate area as a commercial zone with certain restrictions; (3) The *Ordinance* does not constitute a proper exercise of police power as the compulsory closure of the motel business has no reasonable relation to the legitimate municipal interests sought to be protected; (4) The *Ordinance* constitutes an *ex post facto* law by punishing the operation of Victoria Court which was a legitimate business prior to its enactment; (5) The *Ordinance* violates MTDC's constitutional rights in that: (a) it is confiscatory and constitutes an invasion of plaintiff's property rights; (b) the City Council has no power to find as a fact that a particular thing is a nuisance *per se* nor does it have the power to extrajudicially destroy it; and (6) The *Ordinance* constitutes a denial of equal protection under the law as no reasonable basis exists for prohibiting the operation of motels and inns, but not pension houses, hotels, lodging houses or other similar establishments, and for prohibiting said business in the Ermita-Malate area but not outside of this area.^[14]

In their *Answer*^[15] dated 23 July 1993, petitioners City of Manila and Lim maintained that the City Council had the power to "prohibit certain forms of entertainment in order to protect the social and moral welfare of the community" as provided for in Section 458 (a) 4 (vii) of the Local Government Code,^[16] which reads, thus:

Section 458. Powers, Duties, Functions and Compensation. (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

. . . .

(4) Regulate activities relative to the use of land, buildings and structures within the city in order to promote the general welfare and for said purpose shall:

. . . .

(vii) Regulate the establishment, operation, and maintenance of any entertainment or amusement facilities, including theatrical performances, circuses, billiard pools, public dancing schools, public dance halls, sauna baths, massage parlors, and other places for entertainment or amusement; regulate such other events or activities for amusement or entertainment, particularly those which tend to disturb the community or annoy the inhabitants, or require the suspension or suppression of the same; or, prohibit certain forms of amusement or entertainment in order to protect the social and moral welfare of the community.

Citing *Kwong Sing v. City of Manila*,^[17] petitioners insisted that the power of regulation spoken of in the above-quoted provision included the power to control, to govern and to restrain places of exhibition and amusement.^[18]

Petitioners likewise asserted that the *Ordinance* was enacted by the City Council of Manila to protect the social and moral welfare of the community in conjunction with its police power as found in Article III, Section 18(kk) of Republic Act No. 409,^[19] otherwise known as the Revised Charter of the City of Manila (Revised Charter of Manila)^[20] which reads, thus:

ARTICLE III THE MUNICIPAL BOARD

. . .

Section 18. Legislative powers. - The Municipal Board shall have the following legislative powers:

. . .

(kk) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this chapter; and to fix penalties for the violation of ordinances which shall not exceed two hundred pesos fine or six months' imprisonment, or both such fine and imprisonment, for a single offense.

Further, the petitioners noted, the *Ordinance* had the presumption of validity; hence, private respondent had the burden to prove its illegality or unconstitutionality.^[21]

Petitioners also maintained that there was no inconsistency between P.D. 499 and the *Ordinance* as the latter simply disauthorized certain forms of businesses and