

EN BANC

[G.R. No. 127410, January 20, 1999]

CONRADO L. TIU, JUAN T. MONTELIBANO JR. AND ISAGANI M. JUNGCO, PETITIONERS, VS. COURT OF APPEALS, HON. TEOFISTO T. GUINGONA JR., BASES CONVERSION AND DEVELOPMENT AUTHORITY, SUBIC BAY METROPOLITAN AUTHORITY, BUREAU OF INTERNAL REVENUE, CITY TREASURER OF OLONGAPO AND MUNICIPAL TREASURER OF SUBIC, ZAMBALES, RESPONDENTS.

DECISION

PANGANIBAN, J.:

The constitutional right to equal protection of the law is not violated by an executive order, issued pursuant to law, granting tax and duty incentives only to businesses and residents within the "secured area" of the Subic Special Economic Zone and denying them to those who live within the Zone but outside such "fenced-in" territory. The Constitution does not require absolute equality among residents. It is enough that all persons under like circumstances or conditions are given the same privileges and required to follow the same obligations. In short, a classification based on valid and reasonable standards does not violate the equal protection clause.

The Case

Before us is a petition for review under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals' Decision^[1] promulgated on August 29, 1996, and Resolution^[2] dated November 13, 1996, in CA-GR SP No. 37788.^[3] The challenged Decision upheld the constitutionality and validity of Executive Order No. 97-A (EO 97-A), according to which the grant and enjoyment of the tax and duty incentives authorized under Republic Act No. 7227 (RA 7227) were limited to the business enterprises and residents within the fenced-in area of the Subic Special Economic Zone (SSEZ).

The assailed Resolution denied the petitioners' motion for reconsideration.

The Facts

On March 13, 1992, Congress, with the approval of the President, passed into law RA 7227 entitled "An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes." Section 12 thereof created the Subic Special Economic Zone and granted thereto special privileges, as follows:

"SEC. 12. Subic Special Economic Zone. -- Subject to the concurrence by resolution of the sangguniang panlungsod of the City of Olongapo and the sangguniang bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the Office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the zone as provided herein.

"The abovementioned zone shall be subject to the following policies:

"(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

"(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

"(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

"In case of conflict between national and local laws with respect to tax

exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

"(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and future shall be allowed and maintained in the Subic Special Economic Zone;

"(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operations of banks and other financial institutions within the Subic Special Economic Zone;

"(f) Banking and finance shall be liberalized with the establishment of foreign currency depository units of local commercial banks and offshore banking units of foreign banks with minimum Central Bank regulation;

"(g) Any investor within the Subic Special Economic Zone whose continuing investment shall not be less than two hundred fifty thousand dollars (\$250,000), his/her spouse and dependent children under twenty-one (21) years of age, shall be granted permanent resident status within the Subic Special Economic Zone. They shall have the freedom of ingress and egress to and from the Subic Special Economic Zone without any need of special authorization from the Bureau of Immigration and Deportation. The Subic Bay Metropolitan Authority referred to in Section 13 of this Act may also issue working visas renewable every two (2) years to foreign executives and other aliens possessing highly technical skills which no Filipino within the Subic Special Economic Zone possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent residence status and working visas by the Subic Bay Metropolitan Authority shall be reported to the Bureau of Immigration and Deportation within thirty (30) days after issuance thereof;

"(h) The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own security and fire-fighting forces; and

"(i) Except as herein provided, the local government units comprising the Subic Special Economic Zone shall retain their basic autonomy and identity. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991."

On June 10, 1993, then President Fidel V. Ramos issued Executive Order No. 97 (EO 97), clarifying the application of the tax and duty incentives thus:

"Section 1. *On Import Taxes and Duties* -- Tax and duty-free importations shall apply only to raw materials, capital goods and equipment brought in by business enterprises into the SSEZ. Except for these items, importations of other goods into the SSEZ, whether by business enterprises or resident individuals, are subject to taxes and duties under relevant Philippine laws.

"The exportation or removal of tax and duty-free goods from the territory of the SSEZ to other parts of the Philippine territory shall be subject to duties and taxes under relevant Philippine laws.

"Section 2. On All Other Taxes. -- In lieu of all local and national taxes (except import taxes and duties), all business enterprises in the SSEZ shall be required to pay the tax specified in Section 12(c) of R.A. No. 7227."

Nine days after, on June 19, 1993, the President issued Executive Order No. 97-A (EO 97-A), specifying the area within which the tax-and-duty-free privilege was operative, viz.:

"Section 1.1. The *Secured Area* consisting of the presently fenced-in former Subic Naval Base shall be the only completely tax and duty-free area in the SSEFPZ [Subic Special Economic and Free Port Zone]. Business enterprises and individuals (Filipinos and foreigners) residing within the *Secured Area* are free to import raw materials, capital goods, equipment, and consumer items tax and duty-free. Consumption items, however, must be consumed within the Secured Area. Removal of raw materials, capital goods, equipment and consumer items out of the Secured Area for sale to non-SSEFPZ registered enterprises shall be subject to the usual taxes and duties, except as may be provided herein"

On October 26, 1994, the petitioners challenged before this Court the constitutionality of EO 97-A for allegedly being violative of their right to equal protection of the laws. In a Resolution dated June 27, 1995, this Court referred the matter to the Court of Appeals, pursuant to Revised Administrative Circular No. 1-95.

Incidentally, on February 1, 1995, Proclamation No. 532 was issued by President Ramos. It delineated the exact metes and bounds of the Subic Special Economic and Free Port Zone, pursuant to Section 12 of RA 7227.

Ruling of the Court of Appeals

Respondent Court held that "there is no substantial difference between the provisions of EO 97-A and Section 12 of RA 7227. In both, the 'Secured Area' is precise and well-defined as 'xxx the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.'" The appellate court concluded that such being the case, petitioners could not claim that EO 97-A is unconstitutional, while at the same time maintaining the validity of RA 7227.

The court *a quo* also explained that the intention of Congress was to confine the coverage of the SSEZ to the "secured area" and not to include the "entire Olongapo City and other areas mentioned in Section 12 of the law." It relied on the following deliberations in the Senate:

"Senator Paterno. Thank you, Mr. President. My first question is the extent of the economic zone. Since this will be a free port, in effect, I

believe that it is important to delineate or make sure that the delineation will be quite precise[. M]y question is: Is it the intention that the entire of Olongapo City, the Municipality of Subic and the Municipality of Dinalupihan will be covered by the special economic zone or only portions thereof?

“Senator Shahani. Only portions, Mr. President. In other words, where the actual operations of the free port will take place.

“Senator Paterno. I see. So, we should say, ‘COVERING THE DESIGNATED PORTIONS OR CERTAIN PORTIONS OF OLONGAPO CITY, SUBIC AND DINALUPIHAN’ to make it clear that it is not supposed to cover the entire area of all of these territories.

“Senator Shahani. So, the Gentleman is proposing that the words ‘CERTAIN AREAS’ ...

“The President. The Chair would want to invite the attention of the Sponsor and Senator Paterno to letter ‘C,’ which says: ‘THE PRESIDENT OF THE PHILIPPINES IS HEREBY AUTHORIZED TO PROCLAIM, DELINEATE AND SPECIFY THE METES AND BOUNDS OF OTHER SPECIAL ECONOMIC ZONES WHICH MAY BE CREATED IN THE CLARK MILITARY RESERVATIONS AND ITS EXTENSIONS.’

“Probably, this provision can be expanded since, apparently, the intention is that what is referred to in Olongapo as Metro Olongapo is not by itself ipso jure already a special economic zone.

“Senator Paterno. That is correct.

“The President. Someone, some authority must declare which portions of the same shall be the economic zone. Is it the intention of the author that it is the President of the Philippines who will make such delineation?

“Senator Shahani. Yes, Mr. President.”

The Court of Appeals further justified the limited application of the tax incentives as being within the prerogative of the legislature, pursuant to its “avowed purpose [of serving] some public benefit or interest.” It ruled that “EO 97-A merely implements the legislative purpose of [RA 7227].”

Disagreeing, petitioners now seek before us a review of the aforecited Court of Appeals Decision and Resolution.

The Issue

Petitioners submit the following issue for the resolution of the Court:

“[W]hether or not Executive Order No. 97-A violates the equal protection clause of the Constitution. Specifically the issue is whether the provisions of Executive Order No. 97-A confining the application of R.A. 7227 within the secured area and excluding the residents of the zone