

EN BANC

[G.R. No. 231896, August 20, 2019]

**MUNICIPALITY OF TUPI, REPRESENTED BY ITS MUNICIPAL
MAYOR REYNALDO S. TAMAYO, JR., PETITIONER, V. HERMINIO
B. FAUSTINO, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

PREFATORY

Does the end justify the means? Petitioner Municipality of Tupi enacted a speed limit ordinance which in practice reduced the number of accidents at the covered roads but unfortunately did not comply with legal requirements. Are we going to strike down this local government enactment due to its legal infirmities or uphold it as a successful measure of general welfare?

Antecedents

Petitioner Municipality of Tupi, represented by its Municipal Mayor Reynaldo S. Tamayo, Jr., noted a high rate of accidents along the national highway starting from Crossing Barangay Polonuling all the way up to Crossing Barangay Cebuano. To address the problem, the Sangguniang Bayan of the Municipality of Tupi, Province of South Cotabato, on March 3, 2014, enacted Ordinance No. 688, Series of 2014, known as the "Speed Limit Ordinance."^[1] It prescribes speed limits for all types of vehicles traversing this stretch of the national highway, viz:^[2]

<u>NAME OF HIGHWAY</u>	<u>MAXIMUM SPEED</u>
Crossing Polonuling to Crossing Acmonan	: 80 kph
Crossing Acmonan to Crossing Cebuano	: 40 kph

The Ordinance further prescribes penalties^[3] for violations, i.e. a fine of P1,000.00 for the first offense, P1,500.00 for the second offense, and fine of Php2,000.00 or thirty (30) day imprisonment or both for the third offense.^[4]

On October 6, 2014, respondent Atty. Herminio B. Faustino was flagged down by local traffic enforcers for over speeding. He was running at seventy kilometers per hour (70 kph) along the expanse of the highway bordering Crossing Acmonan to Crossing Cebuano which had a maximum speed set of 40 kph per the Ordinance. He was fined Php1,000.00 which he paid under protest.^[5]

Two (2) days later, on October 8, 2014, respondent filed before the Regional Trial Court-Branch 39, Polomolok, South Cotabato, a petition for *declaratory relief*,

annulment of the Speed Limit Ordinance, and damages, with prayer for temporary restraining order^[6] entitled *Herminio B. Faustino v. Municipality of Tupi* and docketed as Special Civil Action No. 104-14.

Respondent averred that the Ordinance was unconstitutional because it was not published in a newspaper of general circulation in violation of the due process clause of the *Constitution*, the *Local Government Code*, the *Tax Code*, and Republic Act (RA) No. 4136 or the *Land Transportation and Traffic Code*.^[7] He prayed that the Ordinance be declared unconstitutional; the fines he and the others paid be refunded to them; and for the shame, besmirched reputation, wounded feelings, and social humiliation he suffered by reason of his apprehension under the unconstitutional ordinance, moral damages be granted him.^[8]

On the other hand, petitioner countered that the present action for declaratory relief was unavailing because the Ordinance had already been breached. It was in accord with Section 36 of RA No. 4136, pertaining to the prescriptions on speed limit, viz:
^[9]

MAXIMUM ALLOWABLE SPEEDS	Passengers Cars and Motorcycle	Motor trucks and buses
1. On open country roads, with no "blinds corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no "blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through streets."	30 km. per hour	30 km. per hour
4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationery, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

An 80 kph speed limit on vehicles moving along the whole stretch from Crossing Polonuling to Crossing Acmonan (an open country road with no "blinds corners" not closely bordered by habitations); and 40kph, from Crossing Acmonan to Crossing Cebuano (a "through street" or boulevard, clear of traffic, with no "blind corners") - - are both in harmony with RA No. 4136.

The Office of the Solicitor General (OSG) filed its comment through the Provincial Prosecutor of South Cotabato. The OSG noted that the Ordinance imposed stiffer penalties than those imposed by RA No. 4136 specifically on the 30-day imprisonment. The OSG further observed that violation of the Ordinance authorized

the confiscation of driver's license and issuance of Temporary Operator's Permit (TOP), which only a deputized Land Transportation Office (LTO) personnel can legally do.^[10]

The OSG submitted that the Ordinance did not conform with RA No. 4136 which itself enjoined all local government units: (a) to enact or enforce ordinances fixing maximum allowable speeds other than those provided in Section 35 of RA No. 4136; (b) classify public highways for traffic purposes and make appropriate signs therefor; and (c) submit a certification to the LTO Commissioner of the names, locations, and limits of all "through streets" designated as such.^[11]

The Trial Court's Ruling

By Decision dated January 20, 2016, the trial court declared the Ordinance void *ab initio*.^[12] It further ordered petitioner to refund all the fines thus far collected by virtue of the Ordinance. Its dispositive portion reads:

IN LIGHT OF THE FOREGOING, the **PETITION** is **GIVEN DUE COURSE** and the Court hereby **DECLARES** Municipal Ordinance No. 688, Series of 2014 of respondent Municipality of Tupi to be **INVALID** and **VOID ab initio**. Respondent Municipality is hereby **PERMANENTLY ENJOINED** from enforcing and implementing said ordinance. Further, it is **DIRECTED** to **IMMEDIATELY REFUND** all the accrued-collected fines imposed in the implementation thereof.

SO ORDERED.^[13]

The trial court opined that prior breach of the Ordinance did not prevent respondent from questioning its validity because its further implementation would anyway result in future violations. It pronounced that future violations of the Ordinance are inevitable because there would always be people driving at an average of 80 kph per hour along a national highway which although in accordance with RA No. 4136 is at the same time in violation of the 40 kph enjoined by the Ordinance.^[14]

While the trial court sustained petitioner's authority under its ordinance making power, it found that the Ordinance here have contravened RA No. 4136 because:^[15]

- 1) There was no prior classification of, nor markings and signages on, public highway, nor a certificate thereof submitted to the LTO; and
- 2) The Ordinance which imposed uniform speed limits for all types of motor vehicles passing petitioner's jurisdiction contradicted RA No. 4136 which classifies the types of vehicles into "passenger cars and motorcycles" and "motor trucks and buses" and prescribes different speed limit on each classification of vehicles.

The trial court, however, did not declare the Ordinance unconstitutional in view of the alleged lack of any supporting evidence or argument to warrant such declaration.^[16]

Both petitioner and respondent filed their respective motions for reconsideration. Respondent pressed for a judicial declaration of unconstitutionality and for the grant of his claim for damages. For its part, petitioner maintained that a petition for

declaratory relief was not proper in this case and that the trial court's directive for refund of all the collected fines was devoid of basis.

Under its Omnibus Order dated May 15, 2017,^[17] the trial court denied the motions for reconsideration. At the same time, it granted respondent's motion for execution which means halting the implementation of the Ordinance.

The Present Petition

Petitioner now urges the Court to exercise its power of judicial review on a pure question of law.^[18] Claiming that the Ordinance is valid, petitioner argues, in the main:^[19]

(1) The Ordinance was enacted in accordance with RA No. 4136.^[20] The speed limits prescribed under the Ordinance are within the maximum allowable speeds under Section 35, RA No. 4136.^[21]

(2) The speed limit of 80 kph for vehicles traversing the national highway along Crossing Polonuling to Crossing Acmonan conforms with Section 35 of RA No. 4136 which considers this speed limit applicable to "open country roads, with no 'blinds corners' not closely bordered by habitations." There are few residential houses and industrial buildings in the area. These are the characteristics of the whole stretch for Crossing Polonuling to Crossing Acmonan.^[22]

(3) The speed limit of 40 kph for vehicles traversing the national highway along Crossing Acmonan to Crossing Cebuano is consistent with Section 35 of RA 4136 which considers this limit suitable for "on through streets" or boulevards, clear of traffic, with no 'blind corners,' when so designated." The road is closely bordered by habitations due to the presence of establishments such as churches, schools, businesses, residential houses, and the Municipal Hall and Municipal Plaza.^[23]

(4) The Ordinance substantially complies with the command of Section 38, RA No. 4136 pertaining to the classification of public highways. The Land Transportation Office (LTO) is the agency tasked to approve the classification of streets submitted by the local government units. The LTO, therefore, bears the requisite legal personality to question the Ordinance if truly it does not comply with RA No. 4136. Notably, the LTO here issued Deputation Orders authorizing the Philippine National Police (PNP) and petitioner's local traffic enforcers to implement the provisions of the Ordinance.^[24]

(5) The trial court's order of refund is devoid of basis. The Ordinance should have been upheld as valid and constitutional. Respondent filed the petition in his personal capacity and not on behalf of a class. If at all, petitioner may only be required to refund the amount which respondent had paid but not those paid by persons who are not before the court.^[25]

(6) RA No. 4136 was enacted purposely to protect the commuters and drivers from road accidents. The Ordinance is a concrete measure to reduce the number of, if not, to totally eradicate, accidents occurring within its jurisdiction. In fact, for the period the Ordinance was being implemented, the number of accidents within the covered areas was drastically reduced.^[26]

(7) As for the publication issue, the trial court already stated that the Ordinance is to be presumed valid.^[27]

Respondent's Comment

In his Comment dated July 27, 2017,^[28] respondent substantially ripostes:

(a) The Ordinance contravenes Section 36 of RA No. 4136 directing that no local government unit should enact or enforce any ordinance prescribing speed limits different from those provided in the law itself. The Ordinance has failed to classify the types of roads and vehicles which it covers.^[29]

(b) The Ordinance did not comply with the publication requirement in violation of Section 59 of the Local Government Code of 1991.^[30]

Issues

1. Is a petition for declaratory relief the proper remedy at the first instance to assail the validity of Municipal Ordinance No. 688, Series of 2014?
2. Did Municipal Ordinance No. 688, Series of 2014 comply with the, publication requirement under the Local Government Code of 1991?
3. Does Municipal Ordinance No. 688, Series of 2014 violate RA No. 4136?
4. Is the trial court's directive for refund of all fines thus far collected pursuant to Municipal Ordinance No. 688, Series of 2014 proper?

Ruling

Declaratory relief is not the proper remedy to assail the validity of Ordinance No. 688.

The petition for declaratory relief initiated by respondent below is not the proper remedy to challenge the validity of Municipal Ordinance No. 688, Series of 2014. For the Ordinance has already been enforced and the penalty for its violation imposed against respondent. ***Aquino v. Municipality of Malay, Aklan, et al.***^[31] decreed:

- a. Declaratory relief no longer viable

Resolving first the procedural aspect of the case, We find merit in petitioner's contention that the special writ of certiorari, and not declaratory relief, is the proper remedy for assailing EO 10. As provided under Sec. I, Rule 63 of the Rules of Court:

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. x x x (Emphasis in the original)