

## **EN BANC**

**[ G.R. No. 133640, November 25, 2005 ]**

**RODOLFO S. BELTRAN, DOING BUSINESS UNDER THE NAME AND STYLE, OUR LADY OF FATIMA BLOOD BANK, FELY G. MOSALE, DOING BUSINESS UNDER THE NAME AND STYLE, MOTHER SEATON BLOOD BANK; PEOPLE'S BLOOD BANK, INC.; MARIA VICTORIA T. VITO, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, AVENUE BLOOD BANK; JESUS M. GARCIA, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, HOLY REDEEMER BLOOD BANK, ALBERT L. LAPITAN, DOING BUSINESS UNDER THE NAME AND STYLE, BLUE CROSS BLOOD TRANSFUSION SERVICES; EDGARDO R. RODAS, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, RECORD BLOOD BANK, IN THEIR INDIVIDUAL CAPACITIES AND FOR AND IN BEHALF OF PHILIPPINE ASSOCIATION OF BLOOD BANKS, PETITIONERS, VS. THE SECRETARY OF HEALTH, RESPONDENT.**

**[G.R. NO. 133661]**

**DOCTORS' BLOOD CENTER, PETITIONER, VS. DEPARTMENT OF HEALTH. RESPONDENT.**

**[G.R. NO. 139147]**

**RODOLFO S. BELTRAN, DOING BUSINESS UNDER THE NAME AND STYLE, OUR LADY OF FATIMA BLOOD BANK, FELY G. MOSALE, DOING BUSINESS UNDER THE NAME AND STYLE, MOTHER SEATON BLOOD BANK; PEOPLE'S BLOOD BANK, INC.; MARIA VICTORIA T. VITO, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, AVENUE BLOOD BANK; JESUS M. GARCIA, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, HOLY REDEEMER BLOOD BANK, ALBERT L. LAPITAN, DOING BUSINESS UNDER THE NAME AND STYLE, BLUE CROSS BLOOD TRANSFUSION SERVICES; EDGARDO R. RODAS, M.D., DOING BUSINESS UNDER THE NAME AND STYLE, RECORD BLOOD BANK, IN THEIR INDIVIDUAL CAPACITIES AND FOR AND IN BEHALF OF PHILIPPINE ASSOCIATION OF BLOOD BANKS, PETITIONERS, VS. THE SECRETARY OF HEALTH, RESPONDENT.**

## **D E C I S I O N**

**AZCUNA, J.:**

Before this Court are petitions assailing primarily the constitutionality of Section 7 of Republic Act No. 7719, otherwise known as the "National Blood Services Act of 1994," and the validity of Administrative Order (A.O.) No. 9, series of 1995 or the

## Rules and Regulations Implementing Republic Act No. 7719.

G.R. No. 133640,<sup>[1]</sup> entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank, et al., vs. The Secretary of Health" and G.R. No. 133661,<sup>[2]</sup> entitled "Doctors Blood Bank Center vs. Department of Health" are petitions for certiorari and mandamus, respectively, seeking the annulment of the following: (1) Section 7 of Republic Act No. 7719; and, (2) Administrative Order (A.O.) No. 9, series of 1995. Both petitions likewise pray for the issuance of a writ of prohibitory injunction enjoining the Secretary of Health from implementing and enforcing the aforementioned law and its Implementing Rules and Regulations; and, for a mandatory injunction ordering and commanding the Secretary of Health to grant, issue or renew petitioners' license to operate free standing blood banks (FSBB).

The above cases were consolidated in a resolution of the Court *En Banc* dated June 2, 1998.<sup>[3]</sup>

G.R. No. 139147,<sup>[4]</sup> entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank, et al., vs. The Secretary of Health," on the other hand, is a petition to show cause why respondent Secretary of Health should not be held in contempt of court.

This case was originally assigned to the Third Division of this Court and later consolidated with G.R. Nos. 133640 and 133661 in a resolution dated August 4, 1999.<sup>[5]</sup>

Petitioners comprise the majority of the Board of Directors of the Philippine Association of Blood Banks, a duly registered non-stock and non-profit association composed of free standing blood banks.

Public respondent Secretary of Health is being sued in his capacity as the public official directly involved and charged with the enforcement and implementation of the law in question.

The facts of the case are as follows:

Republic Act No. 7719 or the National Blood Services Act of 1994 was enacted into law on April 2, 1994. The Act seeks to provide an adequate supply of safe blood by promoting voluntary blood donation and by regulating blood banks in the country. It was approved by then President Fidel V. Ramos on May 15, 1994 and was subsequently published in the Official Gazette on August 18, 1994. The law took effect on August 23, 1994.

On April 28, 1995, Administrative Order No. 9, Series of 1995, constituting the Implementing Rules and Regulations of said law was promulgated by respondent Secretary of the Department of Health (DOH).<sup>[6]</sup>

Section 7 of R.A. 7719 <sup>[7]</sup> provides:

**"Section 7. Phase-out of Commercial Blood Banks** - All commercial blood banks shall be phased-out over a period of two (2) years after the

effectivity of this Act, extendable to a maximum period of two (2) years by the Secretary."

Section 23 of Administrative Order No. 9 provides:

**"Section 23. Process of Phasing Out.** -- The Department shall effect the phasing-out of all commercial blood banks over a period of two (2) years, extendable for a maximum period of two (2) years after the effectivity of R.A. 7719. The decision to extend shall be based on the result of a careful study and review of the blood supply and demand and public safety."<sup>[8]</sup>

Blood banking and blood transfusion services in the country have been arranged in four (4) categories: blood centers run by the Philippine National Red Cross (PNRC), government-run blood services, private hospital blood banks, and commercial blood services.

Years prior to the passage of the National Blood Services Act of 1994, petitioners have already been operating commercial blood banks under Republic Act No. 1517, entitled "An Act Regulating the Collection, Processing and Sale of Human Blood, and the Establishment and Operation of Blood Banks and Blood Processing Laboratories." The law, which was enacted on June 16, 1956, allowed the establishment and operation by licensed physicians of blood banks and blood processing laboratories. The Bureau of Research and Laboratories (BRL) was created in 1958 and was given the power to regulate clinical laboratories in 1966 under Republic Act No. 4688. In 1971, the Licensure Section was created within the BRL. It was given the duty to enforce the licensure requirements for blood banks as well as clinical laboratories. Due to this development, Administrative Order No. 156, Series of 1971, was issued. The new rules and regulations triggered a stricter enforcement of the Blood Banking Law, which was characterized by frequent spot checks, immediate suspension and communication of such suspensions to hospitals, a more systematic record-keeping and frequent communication with blood banks through monthly information bulletins. Unfortunately, by the 1980s, financial difficulties constrained the BRL to reduce the frequency of its supervisory visits to the blood banks.<sup>[9]</sup>

Meanwhile, in the international scene, concern for the safety of blood and blood products intensified when the dreaded disease Acute Immune Deficiency Syndrome (AIDS) was first described in 1979. In 1980, the International Society of Blood Transfusion (ISBT) formulated the Code of Ethics for Blood Donation and Transfusion. In 1982, the first case of transfusion-associated AIDS was described in an infant. Hence, the ISBT drafted in 1984, a model for a national blood policy outlining certain principles that should be taken into consideration. By 1985, the ISBT had disseminated guidelines requiring AIDS testing of blood and blood products for transfusion.<sup>[10]</sup>

In 1989, another revision of the Blood Banking Guidelines was made. The DOH issued Administrative Order No. 57, Series of 1989, which classified banks into primary, secondary and tertiary depending on the services they provided. The standards were adjusted according to this classification. For instance, floor area requirements varied according to classification level. The new guidelines likewise required Hepatitis B and HIV testing, and that the blood bank be headed by a

pathologist or a hematologist.<sup>[11]</sup>

In 1992, the DOH issued Administrative Order No. 118-A institutionalizing the National Blood Services Program (NBSP). The BRL was designated as the central office primarily responsible for the NBSP. The program paved the way for the creation of a committee that will implement the policies of the program and the formation of the Regional Blood Councils.

In August 1992, Senate Bill No. 1011, entitled "An Act Promoting Voluntary Blood Donation, Providing for an Adequate Supply of Safe Blood, Regulating Blood Banks and Providing Penalties for Violations Thereof, and for other Purposes" was introduced in the Senate.<sup>[12]</sup>

Meanwhile, in the House of Representatives, House Bills No. 384, 546, 780 and 1978 were being deliberated to address the issue of safety of the Philippine blood bank system. Subsequently, the Senate and House Bills were referred to the appropriate committees and subsequently consolidated.<sup>[13]</sup>

In January of 1994, the New Tropical Medicine Foundation, with the assistance of the U.S. Agency for International Development (USAID) released its final report of a study on the Philippine blood banking system entitled "*Project to Evaluate the Safety of the Philippine Blood Banking System.*" It was revealed that of the blood units collected in 1992, 64.4 % were supplied by commercial blood banks, 14.5% by the PNRC, 13.7% by government hospital-based blood banks, and 7.4% by private hospital-based blood banks. During the time the study was made, there were only twenty-four (24) registered or licensed free-standing or commercial blood banks in the country. Hence, with these numbers in mind, the study deduced that each commercial blood bank produces five times more blood than the Red Cross and fifteen times more than the government-run blood banks. The study, therefore, showed that the Philippines heavily relied on commercial sources of blood. The study likewise revealed that 99.6% of the donors of commercial blood banks and 77.0% of the donors of private-hospital based blood banks are paid donors. Paid donors are those who receive remuneration for donating their blood. Blood donors of the PNRC and government-run hospitals, on the other hand, are mostly voluntary.<sup>[14]</sup>

It was further found, among other things, that blood sold by persons to blood commercial banks are three times more likely to have any of the four (4) tested infections or blood transfusion transmissible diseases, namely, malaria, syphilis, Hepatitis B and Acquired Immune Deficiency Syndrome (AIDS) than those donated to PNRC.<sup>[15]</sup>

Commercial blood banks give paid donors varying rates around P50 to P150, and because of this arrangement, many of these donors are poor, and often they are students, who need cash immediately. Since they need the money, these donors are not usually honest about their medical or social history. Thus, blood from healthy, voluntary donors who give their true medical and social history are about three times much safer than blood from paid donors.<sup>[16]</sup>

What the study also found alarming is that many Filipino doctors are not yet fully trained on the specific indications for blood component transfusion. They are not aware of the lack of blood supply and do not feel the need to adjust their practices

and use of blood and blood products. It also does not matter to them where the blood comes from.<sup>[17]</sup>

On August 23, 1994, the National Blood Services Act providing for the phase out of commercial blood banks took effect. On April 28, 1995, Administrative Order No. 9, Series of 1995, constituting the Implementing Rules and Regulations of said law was promulgated by DOH.

The phase-out period was extended for two years by the DOH pursuant to Section 7 of Republic Act No. 7719 and Section 23 of its Implementing Rules and Regulations. Pursuant to said Act, all commercial blood banks should have been phased out by May 28, 1998. Hence, petitioners were granted by the Secretary of Health their licenses to open and operate a blood bank only until May 27, 1998.

On May 20, 1998, prior to the expiration of the licenses granted to petitioners, they filed a petition for certiorari with application for the issuance of a writ of preliminary injunction or temporary restraining order under Rule 65 of the Rules of Court assailing the constitutionality and validity of the aforementioned Act and its Implementing Rules and Regulations. The case was entitled "Rodolfo S. Beltran, doing business under the name and style, Our Lady of Fatima Blood Bank," docketed as G.R. No. 133640.

On June 1, 1998, petitioners filed an Amended Petition for Certiorari with Prayer for Issuance of a Temporary Restraining Order, writ of preliminary mandatory injunction and/or *status quo ante* order.<sup>[18]</sup>

In the aforementioned petition, petitioners assail the constitutionality of the questioned legal provisions, namely, Section 7 of Republic Act No. 7719 and Section 23 of Administrative Order No. 9, Series of 1995, on the following grounds: <sup>[19]</sup>

1. The questioned legal provisions of the *National Blood Services Act and its Implementing Rules* violate the equal protection clause for irrationally discriminating against free standing blood banks in a manner which is not germane to the purpose of the law;
2. The questioned provisions of the *National Blood Services Act and its Implementing Rules* represent undue delegation if not outright abdication of the police power of the state; and,
3. The questioned provisions of the *National Blood Services Act and its Implementing Rules* are unwarranted deprivation of personal liberty.

On May 22, 1998, the Doctors Blood Center filed a similar petition for mandamus with a prayer for the issuance of a temporary restraining order, preliminary prohibitory and mandatory injunction before this Court entitled "Doctors Blood Center vs. Department of Health," docketed as G.R. No. 133661. <sup>[20]</sup> This was consolidated with G.R. No. 133640.<sup>[21]</sup>

Similarly, the petition attacked the constitutionality of Republic Act No. 7719 and its implementing rules and regulations, thus, praying for the issuance of a license to operate commercial blood banks beyond May 27, 1998. Specifically, with regard to