

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**MAXIMO CALALANG,
*Petitioner,***

-versus-

**G.R. No. 47800
December 2, 1940**

**A. D. WILLIAMS, ET AL.,
*Respondents.***

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DECISION

LAUREL, J.:

Maximo Calalang, in his capacity as a private citizen and as a taxpayer of Manila, brought before this court this petition for a writ of prohibition against the respondents, A. D. Williams, as Chairman of the National Traffic Commission; Vicente Fragante, as Director of Public Works; Sergio Bayan, as Acting Secretary of Public Works and Communications; Eulogio Rodriguez, as Mayor of the City of Manila; and Juan Dominguez, as Acting Chief of Police of Manila.

It is alleged in the petition that the National Traffic Commission, in its resolution of July 17, 1940, resolved to recommend to the Director of Public Works and to the Secretary of Public Works and Communications that animal-drawn vehicles be prohibited from passing along Rosario Street extending from Plaza Calderon de la

Barca to Dasmariñas Street, from 7:30 a.m. to 12:30 p.m. and from 1:30 p.m. to 5:30 p.m.; and along Rizal Avenue extending from the railroad crossing at Antipolo Street to Echague Street, from 7 a.m. to 11 p.m., from a period of one year from the date of the opening of the Colgante Bridge to traffic; that the Chairman of the National Traffic Commission, on July 18, 1940 recommended to the Director of Public Works the adoption of the measure proposed in the resolution aforementioned, in pursuance of the provisions of Commonwealth Act No. 548 which authorizes said Director of Public Works, with the approval of the Secretary of Public Works and Communications, to promulgate rules and regulations to regulate and control the use of and traffic on national roads; that on August 2, 1940, the Director of Public Works, in his first indorsement to the Secretary of Public Works and Communications, recommended to the latter the approval of the recommendation made by the Chairman of the National Traffic Commission as aforesaid, with the modification that the closing of Rizal Avenue to traffic to animal-drawn vehicles be limited to the portion thereof extending from the railroad crossing at Antipolo Street to Azcarraga Street; that on August 10, 1940, the Secretary of Public Works and Communications, in his second indorsement addressed to the Director of Public Works, approved the recommendation of the latter that Rosario Street and Rizal Avenue be closed to traffic of animal-drawn vehicles, between the points and during the hours as above indicated, for a period of one year from the date of the opening of the Colgante Bridge to traffic; that the Mayor of Manila and the Acting Chief of Police of Manila have enforced and caused to be enforced the rules and regulations thus adopted; that as a consequence of such enforcement, all animal-drawn vehicles are not allowed to pass and pick up passengers in the places above-mentioned to the detriment not only of their owners but of the riding public as well.

It is contended by the petitioner that Commonwealth Act No. 548 by which the Director of Public Works, with the approval of the Secretary of Public Works and Communications, is authorized to promulgate rules and regulations for the regulation and control of the use of and traffic on national roads and streets is unconstitutional because it constitutes an undue delegation of legislative power. This contention is untenable. As was observed by this court in *Rubi vs. Provincial Board of Mindoro* (39 Phil, 660, 700), "The rule has

nowhere been better stated than in the early Ohio case decided by Judge Ranney, and since followed in a multitude of cases, namely: 'The true distinction therefore is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.' (Cincinnati, W. & Z. R. Co. vs. Comm'rs. Clinton County, 1 Ohio St., 88.) Discretion, as held by Chief Justice Marshall in Wayman vs. Southard (10 Wheat., 1) may be committed by the Legislature to an executive department or official. The Legislature may make decisions of executive departments or subordinate officials thereof, to whom it has committed the execution of certain acts, final on questions of fact. (U.S. vs. Kinkead, 248 Fed., 141.) The growing tendency in the decisions is to give prominence to the 'necessity' of the case."

Section 1 of Commonwealth Act No. 548 reads as follows:

"SECTION 1. To promote safe transit upon, and avoid obstructions on, roads and streets designated as national roads by acts of the National Assembly or by executive orders of the President of the Philippines, the Director of Public Works, with the approval of the Secretary of Public Works and Communications, shall promulgate the necessary rules and regulations to regulate and control the use of and traffic on such roads and streets. Such rules and regulations, with the approval of the President, may contain provisions controlling or regulating the construction of buildings or other structures within a reasonable distance from along the national roads. Such roads may be temporarily closed to any or all classes of traffic by the Director of Public Works and his duly authorized representatives whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public convenience and interest, or for a specified period, with the approval of the Secretary of Public Works and Communications."

The above provisions of law do not confer legislative power upon the Director of Public Works and the Secretary of Public Works and Communications. The authority therein conferred upon them and

under which they promulgated the rules and regulations now complained of is not to determine what public policy demands but merely to carry out the legislative policy laid down by the National Assembly in said Act, to wit, “to promote safe transit upon and avoid obstructions on, roads and streets designated as national roads by acts of the National Assembly or by executive orders of the President of the Philippines” and to close them temporarily to any or all classes of traffic “whenever the condition of the road or the traffic makes such action necessary or advisable in the public convenience and interest.” The delegated power, if at all, therefore, is not the determination of what the law shall be, but merely the ascertainment of the facts and circumstances upon which the application of said law is to be predicated. To promulgate rules and regulations on the use of national roads and to determine when and how long a national road should be closed to traffic, in view of the condition of the road or the traffic thereon and the requirements of public convenience and interest, is an administrative function which cannot be directly discharged by the National Assembly. It must depend on the discretion of some other government official to whom is confided the duty of determining whether the proper occasion exists for executing the law. But it cannot be said that the exercise of such discretion is the making of the law. As was said in *Locke’s Appeal* (72 Pa. 491): “To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.” The proper distinction the court said was this: “The Legislature cannot delegate its power to make the law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and, must, therefore, be a subject of inquiry and determination outside of the halls of legislation.” (*Field vs. Clark*, 143 U. S. 649, 694; 36 L. Ed. 294.)

In the case of *People vs. Rosenthal and Osmeña*, G.R. Nos. 46076 and 46077, promulgated June 12, 1939, and in *Pangasinan Transportation vs. The Public Service Commission*, G.R. No. 47065, promulgated

June 26, 1940, this Court had occasion to observe that the principle of separation of powers has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of “subordinate legislation,” not only in the United States and England but in practically all modern governments. Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers has, to a large extent, been relaxed by permitting the delegation of greater powers by the legislative and vesting a larger amount of discretion in administrative and executive officials, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest.

The petitioner further contends that the rules and regulations promulgated by the respondents pursuant to the provisions of Commonwealth Act No. 548 constitute an unlawful interference with legitimate business or trade and abridge the right to personal liberty and freedom of locomotion. Commonwealth Act No. 548 was passed by the National Assembly in the exercise of the paramount police power of the state.

Said Act, by virtue of which the rules and regulations complained of were promulgated, aims to promote safe transit upon and avoid obstructions on national roads, in the interest and convenience of the public. In enacting said law, therefore, the National Assembly was prompted by considerations of public convenience and welfare. It was inspired by a desire to relieve congestion of traffic, which is, to say the least, a menace to public safety. Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations. Persons and property may be subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state (U.S. vs. Gomez Jesus, 31 Phil., 218). To this fundamental aim of our Government the rights of the individual are subordinated. Liberty is a blessing without which life is a misery, but liberty should not be made to prevail over authority because then society will fall into anarchy. Neither should authority be made to prevail over liberty because then

the individual will fall into slavery. The citizen should achieve the required balance of liberty and authority in his mind through education and personal discipline, so that there may be established the resultant equilibrium, which means peace and order and happiness for all. The moment greater authority is conferred upon the government, logically so much is withdrawn from the residuum of liberty which resides in the people. The paradox lies in the fact that the apparent curtailment of liberty is precisely the very means of insuring its preservation.

The scope of police power keeps expanding as civilization advances. As was said in the case of *Dobbins vs. Los Angeles* (195 U.S. 223, 238; 49 L. ed. 169), “the right to exercise the police power is a continuing one, and a business lawful today may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good.” And in *People vs. Pomar* (46 Phil., 440), it was observed that “advancing civilization is bringing within the police power of the state today things which were not thought of as being within such power yesterday. The development of civilization, the rapidly increasing population, the growth of public opinion, with an increasing desire on the part of the masses and of the government to look after and care for the interests of the individuals of the state, have brought within the police power many questions for regulation which formerly were not so considered.”

The petitioner finally avers that the rules and regulations complained of infringe upon the constitutional precept regarding the promotion of social justice to insure the well-being and economic security of all the people. The promotion of social justice, however, is to be achieved not through a mistaken sympathy towards any given group. Social justice is “neither communism, nor despotism, nor atomism, nor anarchy,” but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally,

through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about “the greatest good to the greatest number.”

IN VIEW OF THE FOREGOING, the Writ of Prohibition Prayed for is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C.J., Imperial, Diaz and Horrilleno, JJ., concur.