EN BANC

G.R. No. 206486 – ***Republic of the Philippines v. Maria Basa Express, et. al.;***

G.R. No. 212604 – ***Angat Tsuper Samahan, et. al v. Hon. Abaya, et. al.;***

G.R. No. 212682 – ***Ximex Delivery Express v. Department of Transportation and Communication, et al.; and***

G.R. No. 212800 – ***Ernesto Cruz v. Department of Transportation and Communication, et. al.***

Promulgated:

August 16, 2022

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CONCURRENCE

LAZARO-JAVIER, *J.*:

Overall, I agree with the *ponencia* that Department Order (DO) No. 2008-39 and Joint Administrative Office (JAO) No. 2014-01 issued by the Department of Transportation and Communication (DOTC) through the Land Transportation Office (LTO) and Land Transportation Franchising and Regulatory Board (LTFRB) are constitutional.

First off, I agree that there is **no actual case or controversy** in the petitions initiated by the private parties. But there is one important point to this element of actual case or controversy. Should a petitioner wait for a **confrontation** with a State agent, either through a formal charge or a warning, before an actual case or controversy arises? It depends.

In **free speech** cases, the **mere** presence of the censorship law or subsequent punishment legislation and the chilling effect it brings upon the petitioner **generally** should be enough. This is because free speech is **infringed** once that **mental and emotional block to making a speech**, verbal or action, is there. A person who is unsure (*i.e.*, overbroad) or does not know (*i.e.*, vague) whether their speech constitutes a crime under an overbroad or vague law may **simply restrain themself from speaking** in order to avoid being charged of a crime. Hence, at this point of breach of free speech, there is already an actual case or controversy. There are **also other factors** to consider though. The **chill to free speech** as the core of an actual case or controversy about free speech restrictions is especially relevant to **those who ordinarily talk a lot**.

A journalist, for instance, would have more credibility and real stake to claim **chill** to free speech than one who does not make it their business or way of life to speak. As between a journalist, for instance, or a *balut* vendor, while both make speech their livelihood, content-wise restrictions would probably be more chilling to the former than the latter. If a lawyer has to choose between them as the template petitioner in a free speech case, the circumstances will point to the journalist as the likely plaintiff.

To illustrate further, where religious freedom is the impacted right, a Jehovah's Witness member would probably have an actual case or controversy in case the Court issues a circular declaring all non-marital relationships between already married employees as grossly immoral conduct punishable by dismissal upon affirmation by a single witness, **despite *bona fide* religious practice and belief to the contrary**. In this case, the concerned court employee need not wait for the formal charge or warning to take place before assailing the Court circular. This is because the circular **already infringes** the employee's religious freedom to practice the tenets of their faith – the mere existence of the Court circular, a declaration amounting to a bill of attainder, **coerces** or **compels** the employee to make a choice already, their religion or their employment, which itself **is already a violation of their religious freedom** *even if* the employee has **not yet made the choice** to abandon their faith.

Where a statute is passed prohibiting the praying of the Lord's Prayer inside government buildings, in private or otherwise, a religious adherent who prays this prayer is **already coerced** or **compelled to exercise** their fundamental right one way or the other. This **coercion** or **compulsion** satisfies the foundation for an actual case or controversy, because it is **itself an infringement of the right already**.

When it comes to fundamental rights **where mere intellectual or emotional coercion or compulsion** is **itself a breach** of these rights, we **do not have to wait** for an interaction with a State agent either by means of a formal charge or warning before we could say that *there is an actual case or controversy*. The mere coercion or compulsion is already the breach, a violation of a right has occurred, to constitute already a cause of action.

To summarize, I respectfully submit that **an actual case or controversy arises NOT** when **"evident clash of the parties' legal claims"** or the **"clear showing of conflicting legal rights"** exists, but **when rights have been violated, there is a *prima facie* showing of this violation**, and the **assailed State action is the cause of this violation**. This definition would also answer issues about the component of **standing**. Of course, the Court is left with the **discretion to reject** claims where the violation is ***de minimis*** or there are **questions of fact** that have yet to be resolved. The **remedy** in that

case would be **lodged elsewhere**, not the Court. The aggrieved party would have to consult a lawyer, and this is where lawyers would earn their living from the practice of law.

My respectful and good faith objection to the use of **"evident clash of the parties' legal claims"** or the **"clear showing of conflicting legal rights"** as identical standards of actual case or controversy is that it is **open-ended** and **over-expansive**. For instance, a feminist advocate would have a **genuine and evident legal claim** that clashes with Republic Act (RA) No. 11210 (2019) extending maternity leave to 105 days. This is because it leaves the burden of child care to the woman alone, which is contrary to the feminist advocate's principles and the *Family Code* obligation of joint parental responsibility. **But**, *does that grant the advocate an actual case or controversy to prohibit its implementation* and sue the government agency concerned and the advocate's employer and all other employers who are mandated to comply with RA 11210? I do **not** think so, because in the reality of things in a multi-cultural and multi-opinionated society such as ours, there will always be evident clashing of legal claims, legal rights and legal obligations.

Let us study the petitions filed by the private parties. I assume that all of them are professional drivers, that is, they earn their living from driving customers to and from pick-up points to destinations. They are represented by their respective organizations. These organizations have the standing to assert the concerns of its constituents.[1] On the other hand, respondents increased the penalties for driving violations. The drivers claim the fines are excessive and confiscatory, beyond their means to pay for in case of apprehension.

As stated, for one, the test is **not** whether there is **"evident clash of the parties' legal claims"** or the **"clear showing of conflicting legal rights."** In the nature of things, this clash or conflicting claims is to be ordinarily expected. The true test is, **whether rights have been violated, where there is a *prima facie* showing of this violation**, and **whether the assailed State action is the cause of this violation**.

Unlike free speech or freedom of religious thought and practice, the *chilling effect towards defensive* and *safe driving* is **not an infringement** of any right known to us. If the drivers follow the rules, why would they fear the harsh penalties? In other words, with only the **fear of apprehension** to hold on to, with only the **coercion**, **compulsion** or **chilling effects** to **drive safely** and **defensively**, not aggressively, to **operate only road-worthy** vehicles, to be **responsible** and **professional drivers**, there is **simply no right** breached by the assailed State issuances. In these circumstances, unlike free speech and free religion, such coercion, compulsion and chilling effects **do not produce** an actual case or controversy. There have been **no true breaches of any right** owned by the drivers or their respective organizations. All they have mustered

[1] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 50 (2004).

is a fear and distrust of traffic enforcers, but **in the absence of facts showing actual confrontations with traffic enforcers** in the form of traffic citations or **showing their inability to already practice their profession as drivers**, because currently they are still driving and operating public utility vehicles, there is **no actual case or controversy**.

Too, in framing the standards for the existence of an actual case or controversy, we should guard against over expanding it, otherwise, we might set the stage for advisory opinions, declaratory judgments before the Court, or reference matters, all anathema to the principle of an actual case or controversy.

Two. As held in *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*,[2] the prevailing doctrine limits overbreadth to "a **facial kind of challenge** and, owing to the given rationale of a **facial challenge**, applicable only to free speech cases," and, as held in *Spouses Romualdez v. Commission on Elections*, religious freedom and other fundamental rights. This is the case for overbreadth because –

> [b]y its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably **almost always under situations not before the court**, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

On the other hand, also in *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*, void-for-vagueness may be applied to cases beyond free speech if "examined in light of the specific facts of the case at hand and **not with regard to... facial validity**." In other words, vagueness challenges that **do not involve free speech must be examined as-applied** to the particular circumstances of specific defendants.

To explain, the argument of **void-for-vagueness** can be raised in a **facial challenge** against a **free speech law**, that is, the petitioner reads the law, believes sincerely that they cannot understand what it means, and **as a result, their free speech is shackled by this sword of vagueness hanging over their head**. Persons who do not know whether their speech constitutes a crime under a vague law **may simply restrain themselves from speaking** in order to avoid being charged of a crime. At this point, there are enough facts and the existence of an actual controversy for the courts to resolve the legal claim.

On the other hand, **void-for-vagueness** as an element of the due process right can be invoked against non-free speech matters **not facially** but only **as-applied** to the particular circumstances of the named petitioner. This is

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[2] 646 Phil 452, 492 (2010).

because, one, it is difficult really to determine with finality whether a statute is vague in **other circumstances** because there are **several probable permutations** of these circumstances where the law would **not** be vague, and two, it is **enough** that the law is **not vague** in **one instance** to uphold its validity. The fair procedure is therefore to limit the void-for-vagueness challenge to the **facts actually facing the petitioner and not to any other** when free speech is not being infringed.

The **overbreadth** argument can similarly be used to assail both free speech and non-free speech cases.

In a free speech case, a person who is **unsure whether their speech constitutes a crime** under an overbroad law may **just choose not to speak at all** to avoid being charged with a crime. The **overbreadth** doctrine assumes that individuals **will understand what a statute prohibits** and **will accordingly refrain** from that behavior, even **though some of it is protected**. In a free speech case, overbreadth may be raised either as a **facial** or an **as-applied** challenge. This doctrine allows the court to examine matters **not before it** in order **to determine** whether the law **also prohibits protected** speech. **As-applied**, the court may also look into the speech that the petitioner has been and/or will be making if it is also penalized by the law though it is protected; if the law does, then it could be overbroad.

In **non-free speech** matters, the challenge would only be **as-applied** to the petitioner's circumstances. Indigenous persons **already accused** of violating the *Revised Forestry Code* could probably invoke the indigenous peoples' right to harvest from their ancestral domains. The indigenous persons can claim that the criminal charge must be quashed for being **overbroad** as it also criminalizes the exercise of their rights as indigenous peoples.

In this example, could an indigenous community or an indigenous rights' advocate challenge the *Revised Forestry Code* or the *National Integrated Protected Area System* (NIPAs) law **even before** an indigenous person or indigenous community is prejudiced by either of them? I do **not** think that this **facial** challenge is allowed. Conservation laws **inherently** have an **in terrorem effect**. This is the **reason for their being**. Hence, this chilling and terrorizing impact is **never reason enough** to invalidate these laws. It is **their purpose to restrain** and **prevent**. Otherwise, if we were to allow challenges to their validity *solely because of* or *due to their effects* as such, the State would be **restricted from preventing** or **penalizing such socially harmful anti-conservation conduct**.

Such **facial overbreadth challenge** in **non-free speech** cases is **also inappropriate** since –

> ... it is likewise settled that "lawmakers have no positive constitutional or statutory duty to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act."[3]

A facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since **the challenges must establish that there can be no instance when the assailed law may be valid**. To be invalidated, the law must be **utterly vague on its face**, such that **it cannot be clarified by either a saving clause or by construction.**[4] This cannot happen in a **facial** challenge.

I now expound on my concurrence.

There is a valid delegation of legislative power by the President

In the exercise of her legislative power, then President Corazon C. Aquino issued Executive Order No. (EO) 125 and later EO 125-A which amended the former. EO 125, as amended, expressly delegated to the DOTC the power, among others, **to establish and prescribe rules and regulations for the enforcement of laws governing land transportation, including the penalties and violations thereof.**[5]

Subsequently, EO 202 and EO 266 were issued expressly conferring the foregoing delegated power to the LTFRB and LTO, respectively - both agencies being under the DOTC.

Under EO 202, the LTFRB was given the power to "determine, prescribe, and approve and periodically review and adjust reasonable fares, rates, and other charges relative to the operation of public land transportation services" as well as to "formulate, administer, implement, and enforce rules and regulations on land transportation public utilities." It was also given the power to issue, amend, revise, suspend, or even cancel Certificates of Public Convenience (CPC) provided to motorized vehicles. Meanwhile, EO 266 established two service units in the Office of the Assistant Secretary for Land

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3 *Perez v. LPG Refillers Association of the Philippines*, 558 Phil. 177, 180-181 (2007).

4 *People v. Nazario*, 247 Phil. 276, 286 (1988).

5 Sec. 1. Sections 5, 8, 9, 10 and 11 of Executive Order No. 125, otherwise known as the Reorganization Act of the Ministry of Transportation and Communications, are hereby amended to read as follows:
x x x x
Sec. 5. Powers and Functions. To accomplish its mandate, the Department shall have the following powers and functions:
(o) Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof

Transportation in the DOTC. One of the units is called the Traffic Adjudication Service which is empowered to issue rules and regulations governing land transportation and to impose fines and penalties.[6]

The subsequent Administrative Code of 1987 or EO 292, reiterated the delegated power of the DOTC, LTO, and LTFRB, conferring upon them broad rule-making powers.[7]

What are needed for a valid delegation are: (1) the completeness of the [executive order] making the delegation; and (2) the presence of a sufficient standard.[8]

To determine **completeness**, all of the terms and provisions of the law must leave nothing to the delegate except to implement it. "What only can be delegated is not the discretion to determine what the law shall be but the discretion to determine how the law shall be enforced." And as for the enforcement of a delegated power, the same may only be effected in conformity with a **sufficient standard**, which is used "to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot." The law must contain the limitations or guidelines to determine the scope of authority of the delegate.[9]

The rule-making power of the DOTC is found in Section 5 of EO 125, as amended by EO 125-A, *viz.*:

> Sec. 5. Powers and Functions. To accomplish its mandate, the Department shall have the following powers and functions:
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> (a) Formulate and recommend national policies and guidelines for the preparation and implementation of integrated and comprehensive transportation and communications systems at the national, regional and local levels;
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> (b) Establish and administer comprehensive and integrated programs for transportation and communications, and for this purpose, may call on any agency, corporation, or organization, whether public or private, whose development programs include transportation and communications as an integral part thereof, to participate and assist in the preparation and implementation of such program;

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6 *Ponencia*, pp. 30-31.

7 E.O. No. 292, Book IV, Title XV, Chapter 1, Sec. 3; E.O. No. 292, Book IV, Title XV, Chapter 2, Secs. 10-12; E.O. No. 292, Book IV, Title XV, Chapter 5, Sec. 19.

8 *Department of Trade and Industry v. Steelasia Manufacturing Corp.*, G.R. No. 238263, November 16, 2020, citing *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, 899 SCRA 492.

9 *Department of Trade and Industry v. Steelasia Manufacturing Corp.*, G.R. No. 238263, November 16, 2020, citing *Kilusang Mayo Uno v. Aquino III, supra.*

(c) Assess, review and provide direction to transportation and communication research and development programs of the government in coordination with other institutions concerned;

(d) Administer and enforce all laws, rules and regulations in the field of transportation and communications;

(e) Coordinate with the Department of Public Works and Highways in the design, location, development, rehabilitation, improvement, construction, maintenance and repair of all infrastructure projects and facilities of the Department. However, government corporate entities attached to the Department shall be authorized to undertake specialized telecommunications, ports, airports and railways projects and facilities as directed by the President of the Philippines or as provided by law;

(f) Establish, operate and maintain a nationwide postal system that shall include mail processing, delivery services, and money order services and promote the art of philately;

(g) Issue certificates of public convenience for the operation of public land and rail transportation utilities and services;

(h) Accredit foreign aircraft manufacturers and/or international organizations for aircraft certification in accordance with established procedures and standards;

(i) Establish and prescribe rules and regulations for identification of routes, zones and/or areas of operations of particular operators of public land services;

(j) Establish and prescribe rules and regulations for the establishment, operation and maintenance of such telecommunications facilities in areas not adequately served by the private sector in order to render such domestic and overseas services that are necessary with due consideration for advances in technology;

(k) Establish and prescribe rules and regulations for the operation and maintenance of a nationwide postal system that shall include mail processing, delivery services, money order services and promotion of philately;

(l) Establish and prescribe rules and regulations for issuance of certificates of public convenience for public land transportation utilities, such as motor vehicles, trimobiles and railways;

(m) Establish and prescribe rules and regulations for the inspection and registration of air and land transportation facilities, such as motor vehicles, trimobiles, railways and aircrafts;

(n) Establish and prescribe rules and regulations for the issuance of licenses to qualified motor vehicle drivers, conductors, and airmen;

(o) **Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof;**

(p) Determine, fix and/or prescribe charges and/or rates pertinent to the operation of public air and land transportation utility facilities and services, except such rates and/or charges as may be prescribed by the Civil Aeronautics Board under its charter, and, in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine government as the proper arbiter of such charges or rates;

(q) Establish and prescribe the rules, regulations, procedures and standards for the accreditation of driving schools;

(r) Administer and operate the Civil Aviation Training Center (CATC) and the National Telecommunications Training Institute (NTTI); and

(s) Perform such other powers and functions as may be prescribed by law, or as may be necessary, incidental, or proper to its mandate or as may be assigned from time to time by the President of the Republic of the Philippines. (emphasis supplied)

The standards relevant to this case are found in RA 4136,[10] as amended.

There is no question that the terms of RA 4136 are complete in itself. Among others, the law lays down the prohibited acts in the field of land transportation, as well as the corresponding penalties for their violations. Not only that, this law also contains sufficient standards which is to control the registration and operation of motor vehicles and the licensing of owners, dealers, conductors, drivers, and similar matters.

Similarly, Section 4 of EO 125 provides sufficient standards for the DOTC in the implementation of its delegated power, *viz.*:

> Sec. 4. Mandate. The [Department of Transportation and Communication] shall be the primary policy, planning, programming, coordinating, **implementing, regulating** and **administrative entity** of the Executive Branch of the government **in the promotion, development and regulation**

[10] Land Transportation and Traffic Code, Republic Act No. 4136, June 20, 1964.

> **of dependable and coordinated networks of transportation and communication systems as well as in the fast, safe, efficient and reliable postal, transportation and communications services. (emphasis supplied)**

In fine, the DOTC, and the agencies under it, the LTO and LTFRB in particular, do not have to do anything else except implement the provisions based on the standards and limitations provided by the foregoing statutory provisions. Verily, there was valid delegation of legislative power to the DOTC.

In *Alliance of Non-Life Insurance Workers of the Philippines v. Mendoza*,[11] the Court has already recognized the DOTC's delegated power. The Court traced the DOTC's power to regulate (DO 2007-28) insurance business, particularly Compulsory Third-Party Liability insurance, from its delegated legislative power under the same EO 125, as amended.

As for the challenge against the authority of the LTO and LTFRB to jointly issue JAO No. 201-01 by themselves, suffice it to state that while JAO No. 201-01 seems to have been jointly released by these two agencies, the release has not been established to be in the form of an official issuance. On the contrary, the document released by the LTO and LTFRB recognized the primary authority of the DOTC, manifested by their act of designating a space for its (DOTC) imprimatur. At most, the fact that JAO No. 201-01 was jointly initiated by the LTO and LTFRB can be taken as a mere recommendation to the DOTC. The same would not have taken any effect unless approved by it (DOTC).

There is valid exercise of Police Power

In imposing fines and penalties for violations of the land transportation law, the DOTC, LTO, and LTFRB, is merely exercising its power to regulate land transportation activities. The purpose is not to exact revenues but to regulate. More, DO No. 2008-39 and its successor JAO No. 2014-01 merely implements the concerned land transportation law. Both DO No. 2008-39 and JAO No. 2014-01 merely revised the existing outline of fees and penalties prior to their issuances.

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, **if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of**

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[11] G.R. No. 206159, August 26, 2020

the police power of the state, even though incidentally, revenue is generated.[12]

The use of public and private vehicles is a regulated activity that concerns public interest. From the fact itself that the use of motor vehicles on the road necessitates license, it is already apparent that driving of motor vehicles is a privilege and the exercise of which needs regulation for the safety and general welfare of the public.

The business of a common carrier holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation. (*Budd v. New York*, 143 U.S. 517, 533.) When private property is "affected with a public interest it ceases to be *Juris privati* only." Property becomes clothed with public interest when used in a manner to make it of public consequence and affect the community at large. "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and **must submit to be controlled by the public for the common good**, to the extent of the interest he has thus created. **He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control.**"[13]

In *Rizal Light & Ice Co., Inc. v. The Municipality of Morang, Rizal and The Public Service Commission*,[14] the Court acknowledged the need to protect and uphold public interest over that of private interest (of those granted a certificate of public convenience; in the cited case, to operate an electric service), *viz.*:

> It should be observed that Section 16(n) of Commonwealth Act No. 146, as amended, confers upon the Commission ample power and discretion to order the cancellation and revocation of any certificate of public convenience issued to an operator who has violated, or has willfully and contumaciously refused to comply with, any order, rule or regulation of the Commission or any provision of law. What matters is that there is evidence to support the action of the Commission. In the instant case, as shown by the evidence, the contumacious refusal of the petitioner since 1954 to comply with the directives, rules and regulations of the Commission, its violation of the conditions of its certificate and its incapability to comply with its commitment as shown by its inadequate service, were the circumstances that warranted the action of the Commission in not merely imposing a fine but in revoking altogether petitioner's certificate. **To allow petitioner to continue its operation would be to sacrifice public interest and convenience in favor of private interest.**
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> **A grant of a certificate of public convenience confers no property rights but is a mere license or privilege, and such privilege is forfeited**

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12 *Angeles University Foundation v. City of Angeles*, 689 Phil. 623, 638 (2012).

13 *Land Transportation Franchising and Regulatory Board v. G.V. Florida Transport, Inc.*, 811 Phil. 728, 743 (2017), citing *Luque v. Villegas*, 141 Phil. 108 (1969).

14 134 Phil. 232, 248-249 (1968).

> **when the grantee fails to comply with his commitments behind which lies the paramount interest of the public, for public necessity cannot be made to wait, nor sacrificed for private convenience.** (*Collector of Internal Revenue v. Estate of F. P. Buan, et al.*, L-11438 and *Santiago Sambrano, et al. v. PSC, et al.*, L-11439 & L- 11542-46, July 31, 1958)
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> (T)he Public Service Commission, . . . has the power to specify and define the terms and conditions upon which the public utility shall be operated, and to make reasonable rules and regulations for its operation and the compensation which the utility shall receive for its services to the public, and for any failure to comply with such rules and regulations or the violation of any of the terms and conditions for which the license was granted, **the Commission has ample power to enforce the provisions of the license or *even to revoke it, for any failure or neglect to comply with any of its terms and provisions.***
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> x x x x[15] (emphasis supplied)

To emphasize, "**[a] grant of a certificate of public convenience confers no property rights but is a mere license or privilege, and such privilege is forfeited when the grantee fails to comply with his commitments behind which lies the paramount interest of the public, for public necessity cannot be made to wait, nor sacrificed for private convenience.**"

To clarify, while DO No. 2008-39 would seem to have been issued for the purpose of increasing the revenue of the State as mandated by EO 218 by also increasing the prevailing fees and penalties for violation of land transportation law, the fact remains that the primary purpose of this imposition, from the onset, is the regulation of land transportation related activities. Too, it would not be accurate to conclude that the revised fines under DO No. 2008-39 were made primarily to generate revenue. As correctly observed in the *ponencia*, the increased fees and charges under DO No. 2008-39 only served to reimburse the cost of regulating the transport industry, and was not primarily intended to raise revenue, *viz.*:

> On this score, a further reading of the other whereas clauses and provisions would reveal that aside from the underlying consideration of regulating health, education, and the provision of social services for the benefit of the public, the increased fees and charges under D.O. No. 2008-39 only served to reimburse the cost of regulating the transport industry, and was not primarily intended to raise revenue:
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> > WHEREAS, since the cost of rendering government services or regulating certain activities has risen drastically and the government does not have sufficient resources to sustain, improve or expand these services, it is necessary that the rates of fees and charges be upgraded commensurately with the increase in the cost of their administration;

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[15] *Land Transportation Franchising and Regulatory Board v. G.V. Florida Transport, Inc.*, *supra* at 740.

x x x x

> Section 1. Guiding Principles. In revising the fees and charges, all department, bureaus, offices, units, and agencies including government-owned or controlled corporations shall be guided by the universal concept of user charges, which is to recover at least the full cost of services rendered. Fees and charges have to be reviewed from time to time in accordance with such concept. x x x[16]

Verily, it remains that the imposed fines and penalties are intended to primarily regulate land transportation activities, thus, a valid exercise of police power.

Notably, the challenge against the alleged oppressive etc. character of the fines and penalties under JAO No. 2014-01 is mainly anchored on the revised fines under it (JAO No. 2014-01) being equivalent to 300% to 1,000% of the fines under its predecessor DO No. 2008-39. Standing alone, however, this does not make the revised fines arbitrary, oppressive, and confiscatory. Whether these amounts are excessive does not depend on the financial capability of the person or entity upon whom or which the fine was imposed. Rather, it depends mainly on the violation committed, and the need to deter, if not completely eradicate, similar violations. As observed in the *ponencia*, the DOTC determined that it was high time to revise the provisions of DO No. 2008-39, as such meager amounts and lenient penalties, without more, could not altogether purge the proliferation of unlicensed vehicles plying the roads and streets.[17]

Another. The argument that the revised outline of fines under JAO No. 2014-01 is a curtailment of the public utility vehicle drivers and operators' right to earn a living, given what they supposedly earn in a day- implying a meager earning, is highly speculative. As to how much these drivers and operators earn in a day cannot be taken judicial notice of by the Court. The same must be established by evidence.

More, as found in the ponencia, petitioners were not unaware of the intention to revise the then prevailing rates of fines prior to the issuance of DO No. 2008-39 on October 6, 2008. Stakeholders that stand to be affected by the orders were engaged in open dialogue. Several public consultations with various groups from the transport sector all over the country were conducted. Series of consultations were also held prior to the issuance of JAO No. 2014-01 which provides stiffer fines and penalties. Conveniently, the proposed issuances were supported by groups of motor vehicle owners and operators. In particular, the groups recognized the proposed JAO No. 2014-

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16 *Ponencia*, pp. 46-47.

17 *Ponencia*, p. 42, citing Special Order No. 2012-20 entitled "Creation of a Technical Working Group for the Amendment of Department Order No. 2008-39 (Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations).

01 as a deterrent and a preventive measure to "stop or reduce likely violators" of land transportation law.[18]

Violators are not left without recourse after their apprehension. Under the general provisions of JAO No. 2014-01, citation for a violation may be questioned via a written contest, which shall be resolved by the LTO within five days from its receipt. Too, the issuance of a Temporary Operator's Permit (TOP) effective for a period of 72 hours will allow drivers to provisionally operate despite confiscation of their license. Similarly, JAO No. 2014-01 gives operators an opportunity to seek relief from any threat of suspension or revocation of their respective certificates or licenses. The operator, upon receipt of a show cause order (franchise violation), may file a verified explanation within a non-extendible period of five days from receipt. And when applicable, the operator may move for the reconsideration of the decision, and later appeal to the DOTC Secretary within a non-extendible period of ten days.[19]

Further, in less than a month after the implementation of JAO No. 2014-01, there were 6,862 new applications for the issuance of a CPC to operate truck for hire services, bringing the total number of applications for the issuance of CPCs to 26,570. This statistic demonstrates the positive effect of JAO No. 2014-01.[20]

No violation Equal Protection Clause

Finally, the void-for-vagueness and Overbreadth Doctrines find no application in this case for lack of claim of any transgression or curtailment of the right to free speech or any inhibition of speech-related conduct.[21] And as for the guarantee of equal protection, the same is not violated by a reasonable classification.[22]

I agree with the *ponencia* that substantial distinctions exist "between (1) a [Public Utility Vehicle (PUV)] operating under an expired CPC but with a pending application for extension and (2) a PUV applying for the first time, *viz.*:

> A PUV plying the roads with a pending, first time application is tantamount to operating without a CPC, an act in direct contravention to law. Evidently, a PUV under these circumstances cannot be considered as having the intention to comply with the terms and conditions of a CPC in good faith. In contrast, PUVs operating under an expired CPC but with a

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18 *Ponencia*, p. 43.
19 *Ponencia*, pp. 43-44.
20 *Ponencia*, p. 43.
21 *Ponencia*, p. 50.
22 *Ponencia*, p. 63.

> pending and timely filed application is differently situated, as it may continue operating on its authorized routes as explicitly provided in Section 18, Chapter III, Book VII of the Administrative Code xxx.

To add, it is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others.[23] Hence, it cannot be insisted that a PUV applying for license for the first time be treated the same way as a PUV operating under an expired CPC enjoying the continuous exercise of a privilege pending the concerned agency's action on their application for renewal of CPC, as provided under the Administrative Code.

On the other hand, a law or administrative issuance/order cannot make a distinction when there should be none. Here, there could be no distinction between PUVs servicing the riding public and those servicing private entities for the transport of their goods. There is no dispute that both operate as public utility vehicles. Both are bound to the same general rules and regulations affecting land transportation, registration, and licensing.

Accordingly, I agree that the petition should be dismissed, and the constitutionality of Department Order No. 2008-39 and Joint Administrative Order No. 2014-01, sustained.

AMY C. LAZARO-JAVIER
Associate Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

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[23] *De La Salle Araneta University v. Bernardo*, 805 Phil. 580 (2017).