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G.R. No. 203353 – (UNIVERSAL ROBINA CORPORATION, Petitioner, **v. DEPARTMENT OF TRADE AND INDUSTRY (DTI), THE DTI SECRETARY, ZENAIDA C. MAGLAYA, in her capacity as Undersecretary, AND VICTORIO MARIO A. DIMAGIBA, in his capacity as Director of DTI's Bureau of Trade and Regulations and Consumer Protection,** Respondent).

Promulgated:

February 14, 2023

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CONCURRENCE AND DISSENT

LAZARO-JAVIER, *J.*:

On May 25, 2010, Director Dimagiba of the Bureau of Trade Regulation and Consumer Protection of the Department of Trade and Industry (DTI), wrote Universal Robina Corporation (URC) to ask why its ex-mill flour prices had not been reduced despite the decrease in certain cost factors.[1] URC responded that the difference in the price of their flour reflected the price movement of wheat in the world market and covered other costs of operation, which included increased labor costs. Director Dimagiba noted that the price of wheat in the international market comprised of 75% of flour production while the operating cost and power was approximately 5% of the production cost. He thus instructed URC to reduce its ex-mill prices from PHP790.00 per bag of flour to PHP630.00 to PHP680 per bag of flour.[2]

Later on, Director Dimagiba filed a Complaint against URC for profiteering before the DTI. The Complaint alleged that URC's flour price at PHP790.00 per bag constituted profiteering under Republic Act No. 7581, or the Price Act, for not representing the true worth of the flour per bag. He prayed that URC be fined and ordered to sell its flour from PHP630.00 to PHP680.00 per bag. The Complaint was dismissed because of the absence of a certification against forum shopping.[3]

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1 Decision, p. 2.
2 *Id.*
3 *Id.* at 2-3.

Meanwhile, the DTI wrote URC, noticing that the company's ex-mill prices were higher than expected, and inviting it to meet regarding its prices. In response, URC filed a petition for declaratory relief before the trial court. It prayed, *inter alia*, that the provision in the Price Act prohibiting profiteering be declared invalid, as the Price Act failed to clearly define what profiteering was.[4] The trial court dismissed the petition because it found that no justiciable controversy existed and that the petition was prematurely filed.[5] Consequently, URC filed the present Petition for Review on Certiorari, on pure question of law.[6]

In the main, URC argues that there is an actual controversy here which calls for judicial review. It maintains that the dismissal of the profiteering case does not negate the existence of a conflict of legal rights. As the profiteering case was dismissed due to a technicality, the legal controversy created by public respondents' acts was not resolved by any competent authority, and therefore, remains an actual controversy.[7]

Even if the case did become moot, URC argues that the Court should nonetheless resolve the case considering: (1) there is grave violation of the Constitution; (2) paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the matter is capable of repetition yet evading review, as the profiteering case was dismissed without prejudice to its refiling.[8]

The *Majority Decision* penned by the esteemed Senior Associate Justice Marvic Mario Victor F. Leonen granted the petition and declared Section 5 (2) of the Price Act, penalizing the act of profiteering, unconstitutional. It held, thus:

- When the constitutionality of a statute is raised through a petition for declaratory relief, the standard rules of justiciability apply. There is an actual case and controversy when there are actual facts to enable courts to intelligently adjudicate the issues. There is also an actual case and controversy when there is a clear and convincing showing of a contrariety of rights. For the exercise of judicial review, actual facts resulting from the assailed law, as applied, may not be absolutely necessary in all cases. A clear and convincing showing of a contrariety of rights may suffice.[9]

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4 *Id.* at 3-4.
5 *Id.* at 4.
6 *Id.* at 5.
7 *Id.*
8 *Id.*
9 *Id.* at 9–11.

- As an exception to the requirement of actual facts, there are three instances when a facial review of the law is permissible. *First,* in cases involving freedom of expression and its cognates, a facial challenge of a law may be allowed. *Second,* judicial review is also proper, despite the absence of actual facts, when a violation of fundamental rights is involved—one so egregious or so imminent that judicial restraint would mean that such fundamental rights would be violated. *Third,* judicial review is proper despite the absence of actual facts when it involves a provision of the Constitution invoking emergency or urgent measures, and such review can potentially be mooted by the transitoriness of the emergency.[10]

- Therefore, declaratory relief as a remedy for constitutional challenge will succeed only when: (1) there is a clear and convincing contrariety of rights; or (2) in those instances when facial review is allowed. In this case, there is a clear and convincing showing that a contrariety of rights exists as between the DTI which maintains its authority to determine when profiteering has occurred, and URC, who maintains that the provision on profiteering is void for vagueness. Thus, notwithstanding the initial dismissal of the complaint filed against petitioner, there is still an actual case here. URC may not be currently charged for profiteering, but it was again invited to discuss its prices and to explain its ex-mill prices. This invitation shows that the intent of the DTI to hold the petitioner liable for profiteering under the Price Act.[11]

- This Court agrees with petitioner that the law forms an undue delegation of legislative powers as the concepts of "true worth" of a basic necessity and prime commodity, and "price grossly in excess" of that value, provide no standard for executive discretion. The phrase "price grossly in excess" is vague, because, as pointed out by petitioner, what is grossly excessive to one may be reasonable to another. The law therefore leaves open the question of whose standards should be used when determining whether a price is grossly excessive, and what an item's true worth is.[12]

- Although the purpose of the provision on profiteering is clear, and although individuals may have some ideas as to what might constitute profiteering, no guidelines or limitations are provided to determine the "true worth" of a given product, or what constitutes a price "grossly excessive" of that value. Thus, the Price Act failed to lay down a sufficient standard with regard to determining that profiteering has occurred. There is no abuse inherent to the provision. Nonetheless, because the law does not specify the limits of the implementing

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10 *Id.* at 1–12.
11 *Id.* at 13.
12 *Id.* at 14.

agency's authority in this provision, it may allow arbitrariness, and does not "prevent the delegation from running riot". Accordingly, it fails the sufficient standard test.[13]

I have my reservations in the procedural aspect of the case and I respectfully disagree with the result.

Under Rule 63 of the Rules of Court, courts have the discretionary[14] power to hear petitions for declaratory relief, *viz.*:

> Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or 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.
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> Section 5. Court action discretionary. — Except in actions falling under the second paragraph of section 1 of this Rule, the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances.

The *Majority Decision* clarified that declaratory relief is a viable remedy to challenge the constitutionality of a law, provided that it meets the requisites of justiciability. Before delving into the constitutionality of a law, the following requisites must be met:

> (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[15]

In *In re Obiles*,[16] the Court elaborated on the meaning of a justiciable controversy, *vis-à-vis* petitions for declaratory relief, *viz.*:[17]

> There is no allegation in the petition, however, that by reason of such registration **any official of the Government has taken steps, or is intending to take steps or threatening to take steps, to hold the**

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13 *Id.* at 15–16.

14 *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of appeals, Cebu City and Union Bank of the Philippines*, G.R. No. 194461, January 7, 2020.

15 Decision, pp. 9–11.

16 92 Phil. 864, 867 (1953).

17 Decision, p. 10.

> **petitioner to any obligation, responsibility, or liability**. As the petitioner himself candidly admits in his complaint, he is only afraid lest this registration might involve the loss of his Filipino citizenship. This supposed fear in the mind of the petitioner is not what the law considers as an actual controversy, or a justiciable controversy, which requires the intervention of the courts of justice in order that the rights, obligations, or liabilities arising therefrom may be predetermined. In effect, petitioner's allegations of fact in his petition are entitled to no more than an advisory opinion, because a ruling on the effect of the registration by petitioner involves no actual, genuine, live controversy affecting a definite legal relation. (Emphasis and underscoring supplied)

According to the facts, the government has, in this case, "taken steps, or is intending to take steps, or threatening to take steps" to hold URC liable under the Price Act. Indeed, Director Dimagiba of the DTI "filed Complaints against the local flour millers [including URC] for profiteering before the Department of Trade and Industry."[18] Further, URC only filed the petition for declaratory relief **in response**[19] to the actions initiated by the DTI. Stated differently, although there is no **actual case or controversy** between URC and DTI in the traditional sense (*i.e.,* there is no actual case before a court or tribunal), the definition in *In re Obiles* recognized that there actually is a contrariety of rights between them.

Although the complaint for profiteering before the DTI was dismissed, there remained a looming **threat** that URC would be subjected to another action for profiteering under the Price Act. This action for profiteering is a **separate cause of action—not barred by URC's petition for declaratory relief.** Clearly, URC had a right which **would have been** affected by the DTI's enforcement of the Price Act. As such, URC filed its petition for declaratory relief at the **most opportune time.** Had it filed its petition only after an action for profiteering was **instituted and resolved** against it, then its petition would have been moot.[20] Therefore, URC's petition for declaratory relief—in the sense provided under Rule 63—was *apropos*.

This notwithstanding, declaratory relief was **not** the proper remedy to assail the constitutionality of the Price Act. *Araullo v. Pres. Aquino III*[21] clarified that petitions for *certiorari* and prohibition are the appropriate remedies to raise constitutional issues and/or prohibit or nullify the acts of legislative and executive officials.[22]

Although URC availed of a wrong initiatory remedy, the need to finally resolve the issues involved far outweighs the rigid application of the rules.[23] In several cases, the Court has allowed this accommodation to settle issues

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18 *Id.* at 2.
19 *Id.* at 4.
20 *See* Aquino v. Municipality of Malay, Aklan, *et al.*, G.R. No. 211356, September 29, 2014.
21 737 Phil. 457, 531 (2014).
22 *Yaphockun, et al. v. Professional Regulation Commission, et al.*, G.R. No. 213314, March 23, 2021.
23 *Municipality of Tupi v. Faustino*, 866 Phil. 363, 375 (2019) citing *Department of Transportation, et al. v. Philippine Petroleum Sea Transport Association, et al.*, 837 Phil. 144, 165 (2018).

once and for all.[24] More so here, where the issues involved are of transcendental importance to the nation,[25] and relate to the price of basic and prime commodities that directly affect the lives of our citizenry.[26]

Thus, although I do not agree with the *Majority Decision* that the petition for declaratory relief is a proper remedy to challenge the constitutionality of the Price Act, the petition must still be given due course because it should be treated as a petition for *certiorari* and prohibition by reason of its transcendental importance.[27]

On the merits, however, I do not agree with the *Majority Decision* that the definition of profiteering in the Price Act is vague. In *Romualdez v. Sandiganbayan,*[28] the constitutionality of Section 5 of Republic Act No. 3019 was challenged for allegedly being vague and "impermissibly broad." Romualdez claimed that the term "intervene" was vague. The Court held that "the absence of a statutory definition of a term used in a statute will not render the law 'void for vagueness,' if the meaning can be determined through the judicial function of construction."[29]

Under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated.[30] Every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[31] In other words, when the law is unclear, it can be interpreted by going over its provisions and finding its meaning and effect.

Too, in *Estrada v. Sandiganbayan,*[32] we held:

> [A] statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in

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24 *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations*, G.R. No. 215801, January 15, 2020; *Association of International Shipping Lines, Inc., et al. v. Secretary of Finance, et al.*, G.R. No. 222239, January 15, 2020; *Municipality of Tupi v. Faustino*, 860 Phil. 363, 376 (2019) citing *Department of Transportation, et al. v. Philippine Petroleum Sec Transport Association, et al.*, 837 Phil. 144, 165 (2018).

25 Decision, p. 11; *Diocese of Bacolod v. COMELEC*, 789 Phil. 197 (2015).

26 Decision, pp. 20-21.

27 *See Municipality of Tupi v. Faustino*, 860 Phil. 363 (2019).

28 479 Phil. 265 (2004).

29 *Id.*

30 *Naga Plant v. Gomez*, 591 Phil. 642, 659 (2008).

31 *Chavez v. JBC*, 691 Phil. 173, 200-201 (2012).

32 421 Phil. 290, 347-348 (2001).

> the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act."

Applying this dictum, although the terms "true worth" and "price grossly in excess" under Section 5(2) have not been expressly defined under the Price Act, their meanings as intended by its legislators can easily be ascertained by resorting to the immediately succeeding sentences in the same provision which enumerate what constitute *prima facia* evidence of profiteering as when the product: "(a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month."

These instances are not conclusive as to the criminal liability of the sellers. The law allows them to overcome such presumption by explaining its price increases to the DTI. It cannot be said therefore that DTI has unbridled authority in determining whether a person or entity is liable for profiteering since the private sectors are given "avenues of communication" to justify its price increases.[33] More, it could not be held liable unless it has been notified and has had the opportunity to be heard. Thus, URC's right to due process would still be respected.

Respectfully submitted.

AMY C. LAZARO-JAVIER

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[33] Decision, p. 22.