



Republic of the Philippines
Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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**SOUTHERN LUZON DRUG
 CORPORATION,**

Petitioner,

G.R. No. 199669

Present:

- versus -

SERENO, *C.J.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,*
 MENDOZA,
 REYES,
 PERLAS-BERNABE,*
 LEONEN,
 JARDELEZA,*
 CAGUIOA,
 MARTIRES, and
 TIJAM, *JJ.*

**THE DEPARTMENT OF SOCIAL
 WELFARE AND DEVELOPMENT,
 THE NATIONAL COUNCIL FOR
 THE WELFARE OF DISABLED
 PERSONS, THE DEPARTMENT
 OF FINANCE, and THE BUREAU
 OF INTERNAL REVENUE,**

Respondents.

Promulgated:

April 25, 2017

[Handwritten Signature]

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DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated June 17, 2011 and Resolution³ dated November 25, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 102486, which dismissed the petition for prohibition filed by Southern Luzon Drug Corporation (petitioner) against the Department of Social Welfare and Development (DSWD), the National Council for the Welfare of Disabled Persons (NCWDP) (now National Council on Disability Affairs or NCDA), the Department of Finance (DOF) and the Bureau of Internal Revenue (collectively, the respondents), which sought to prohibit the implementation of Section 4(a) of Republic Act (R.A.) No. 9257, otherwise known as the “*Expanded Senior Citizens Act of 2003*” and Section 32 of R.A. No. 9442, which amends the “*Magna Carta for Disabled Persons*,” particularly the granting of 20% discount on the purchase of medicines by senior citizens and persons with disability (PWD), respectively, and treating them as tax deduction.

The petitioner is a domestic corporation engaged in the business of drugstore operation in the Philippines while the respondents are government agencies, office and bureau tasked to monitor compliance with R.A. Nos. 9257 and 9442, promulgate implementing rules and regulations for their effective implementation, as well as prosecute and revoke licenses of erring establishments.

Factual Antecedents

On April 23, 1992, R.A. No. 7432, entitled “*An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other Purposes*,” was enacted. Under the said law, a senior citizen, who must be at least 60 years old and has an annual income of not more than ₱60,000.00,⁴ may avail of the privileges provided in Section 4 thereof, one of which is 20% discount on the purchase of medicines. The said provision states:

¹ *Rollo*, pp. 11-78.

² Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Sesinando E. Villon concurring; *id.* at 79-93.

³ *Id.* at 94.

⁴ *R.A. No. 7432*, Section 2.

Sec. 4. Privileges for the Senior Citizen. – x x x:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit[.]**

x x x x (Emphasis ours)

To recoup the amount given as discount to qualified senior citizens, covered establishments can claim an equal amount as tax credit which can be applied against the income tax due from them.

On February 26, 2004, then President Gloria Macapagal-Arroyo signed R.A. No. 9257, amending some provisions of R.A. No. 7432. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. Further, R.A. No. 9257 modified the tax treatment of the discount granted to senior citizens, from tax credit to tax deduction from gross income, computed based on the net cost of goods sold or services rendered. The pertinent provision, as amended by R.A. No. 9257, reads as follows:

SEC. 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided, That the cost of the discount shall be allowed as deduction from gross income* for the same taxable year that the discount is granted. *Provided, further,* That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis ours)

On May 28, 2004, the DSWD issued the Implementing Rules and Regulations (IRR) of R.A. No. 9257. Article 8 of Rule VI of the said IRR provides:

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Article 8. *Tax Deduction of Establishments.* - The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments; Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted;** Provided, further, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF). (Emphasis ours)

The change in the tax treatment of the discount given to senior citizens did not sit well with some drug store owners and corporations, claiming it affected the profitability of their business. Thus, on January 13, 2005, Carlos Superdrug Corporation (Carlos Superdrug), together with other corporation and proprietors operating drugstores in the Philippines, filed a Petition for Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction before this Court, entitled *Carlos Superdrug Corporation v. DSWD*,⁵ docketed as G.R. No. 166494, assailing the constitutionality of Section 4(a) of R.A. No. 9257 primarily on the ground that it amounts to taking of private property without payment of just compensation. In a Decision dated June 29, 2007, the Court upheld the constitutionality of the assailed provision, holding that the same is a legitimate exercise of police power. The relevant portions of the decision read, thus:

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as “the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.” It is “[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.”

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to

⁵ 553 Phil. 120 (2007).

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general welfare.

x x x x

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.

WHEREFORE, the petition is *DISMISSED* for lack of merit.⁶
(Citations omitted)

On August 1, 2007, Carlos Superdrug filed a motion for reconsideration of the foregoing decision. Subsequently, the Court issued Resolution dated August 21, 2007, denying the said motion with finality.⁷

Meanwhile, on March 24, 1992, R.A. No. 7277 pertaining to the "*Magna Carta for Disabled Persons*" was enacted, codifying the rights and privileges of PWDs. Thereafter, on April 30, 2007, R.A. No. 9442 was enacted, amending R.A. No. 7277. One of the salient amendments in the law is the insertion of Chapter 8 in Title 2 thereof, which enumerates the other privileges and incentives of PWDs, including the grant of 20% discount on the purchase of medicines. Similar to R.A. No. 9257, covered establishments shall claim the discounts given to PWDs as tax deductions from the gross income, based on the net cost of goods sold or services rendered. Section 32 of R.A. No. 9442 reads:

CHAPTER 8. Other Privileges and Incentives

SEC. 32. Persons with disability shall be entitled to the following:

x x x x

(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

⁶ Id. at 132-135.

⁷ *Rollo*, p. 433.

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The establishments may claim the discounts granted in subsections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: *Provided, however,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: *Provided, further,* That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended. (Emphasis ours)

Pursuant to the foregoing, the IRR of R.A. No. 9442 was promulgated by the DSWD, Department of Education, DOF, Department of Tourism and the Department of Transportation and Communications.⁸ Sections 5.1 and 6.1.d thereof provide:

Sec. 5. *Definition of Terms.* For purposes of these Rules and Regulations, these terms are defined as follows:

5.1. ***Persons with Disability*** are those individuals defined under Section 4 of RA 7277, "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes." This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean: (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

X X X X

6.1.d ***Purchase of Medicine*** – At least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drug stores, hospital, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH.

On February 26, 2008, the petitioner filed a Petition for Prohibition with Application for TRO and/or Writ of Preliminary Injunction⁹ with the CA, seeking to declare as unconstitutional (a) Section 4(a) of R.A. No. 9257, and (b) Section 32 of R.A. No. 9442 and Section 5.1 of its IRR, insofar as

⁸ Id. at 434-435.

⁹ Id. at 100-158.

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these provisions only allow tax deduction on the gross income based on the net cost of goods sold or services rendered as compensation to private establishments for the 20% discount that they are required to grant to senior citizens and PWDs. Further, the petitioner prayed that the respondents be permanently enjoined from implementing the assailed provisions.

Ruling of the CA

On June 17, 2011, the CA dismissed the petition, reiterating the ruling of the Court in *Carlos Superdrug*¹⁰ particularly that Section 4(a) of R.A. No. 9257 was a valid exercise of police power. Moreover, the CA held that considering that the same question had been raised by parties similarly situated and was resolved in *Carlos Superdrug*, the rule of *stare decisis* stood as a hindrance to any further attempt to relitigate the same issue. It further noted that jurisdictional considerations also compel the dismissal of the action. It particularly emphasized that it has no original or appellate jurisdiction to pass upon the constitutionality of the assailed laws,¹¹ the same pertaining to the Regional Trial Court (RTC). Even assuming that it had concurrent jurisdiction with the RTC, the principle of hierarchy of courts mandates that the case be commenced and heard by the lower court.¹² The CA further ruled that the petitioner resorted to the wrong remedy as a petition for prohibition will not lie to restrain the actions of the respondents for the simple reason that they do not exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the questioned provisions. Also, the petition was wanting of the allegations of the specific acts committed by the respondents that demonstrate the exercise of these powers which may be properly challenged in a petition for prohibition.¹³

The petitioner filed its Motion for Reconsideration¹⁴ of the Decision dated June 17, 2011 of the CA, but the same was denied in a Resolution¹⁵ dated November 25, 2011.

Unyielding, the petitioner filed the instant petition, raising the following assignment of errors, to wit:

I

THE CA SERIOUSLY ERRED WHEN IT RULED THAT A PETITION FOR PROHIBITION FILED WITH THE CA IS AN IMPROPER REMEDY TO ASSAIL THE

¹⁰ Supra note 5.
¹¹ *Rollo*, p. 87.
¹² Id. at 89.
¹³ Id. at 91.
¹⁴ Id. at 335-383.
¹⁵ Id. at 94.

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CONSTITUTIONALITY OF THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs;

II

THE CA SERIOUSLY ERRED WHEN IT HELD THAT THE SUPREME COURT'S RULING IN *CARLOS SUPERDRUG* CONSTITUTES *STARE DECISIS*;

III

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs IS A VALID EXERCISE OF POLICE POWER. ON THE CONTRARY, IT IS AN INVALID EXERCISE OF THE POWER OF EMINENT DOMAIN BECAUSE IT FAILS TO PROVIDE JUST COMPENSATION TO THE PETITIONER AND OTHER SIMILARLY SITUATED DRUGSTORES;

IV

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE 20% SALES DISCOUNT FOR SENIOR CITIZENS AND PWDs DOES NOT VIOLATE THE PETITIONER'S RIGHT TO EQUAL PROTECTION OF THE LAW; *and*

V

THE CA SERIOUSLY ERRED ON A QUESTION OF SUBSTANCE WHEN IT RULED THAT THE DEFINITIONS OF DISABILITIES AND PWDs ARE NOT VAGUE AND DO NOT VIOLATE THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW.¹⁶

Ruling of the Court

Prohibition may be filed to question the constitutionality of a law

In the assailed decision, the CA noted that the action, although denominated as one for prohibition, seeks the declaration of the unconstitutionality of Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442. It held that in such a case, the proper remedy is not a special civil action but a petition for declaratory relief, which falls under the exclusive original jurisdiction of the RTC, in the first instance, and of the Supreme

¹⁶ Id. at 25.

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Court, on appeal.¹⁷

The Court clarifies.

Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.¹⁸ This is, however, not the lone office of an action for prohibition. In *Diaz, et al. v. The Secretary of Finance, et al.*,¹⁹ prohibition was also recognized as a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.²⁰ And, in a number of jurisprudence, prohibition was allowed as a proper action to assail the constitutionality of a law or prohibit its implementation.

In *Social Weather Stations, Inc. v. Commission on Elections*,²¹ therein petitioner filed a petition for prohibition to assail the constitutionality of Section 5.4 of R.A. No. 9006, or the “*Fair Elections Act*,” which prohibited the publication of surveys within 15 days before an election for national candidates, and seven days for local candidates. Included in the petition is a prayer to prohibit the Commission on Elections from enforcing the said provision. The Court granted the petition and struck down the assailed provision for being unconstitutional.²²

In *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*,²³ therein petitioner assailed the constitutionality of paragraphs (c), (d), (f) and (g) of Section 36 of R.A. No. 9165, otherwise known as the “*Comprehensive Dangerous Drugs Act of 2002*,” on the ground that they constitute undue delegation of legislative power for granting unbridled discretion to schools and private employers in determining the manner of drug testing of their employees, and that the law constitutes a violation of the right against unreasonable searches and seizures. It also sought to enjoin the Dangerous Drugs Board and the Philippine Drug Enforcement Agency from enforcing the challenged provision.²⁴ The Court partially granted the petition by declaring Section 36(f) and (g) of R.A. No. 9165 unconstitutional, and

¹⁷ Id. at 89.

¹⁸ *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189, 215 (2006).

¹⁹ 669 Phil. 371 (2011).

²⁰ Id. at 383.

²¹ 409 Phil. 571 (2001).

²² Id. at 592.

²³ 591 Phil. 393 (2008).

²⁴ Id. at 403.

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permanently enjoined the concerned agencies from implementing them.²⁵

In another instance, consolidated petitions for prohibitions²⁶ questioning the constitutionality of the Priority Development Assistance Fund were deliberated upon by this Court which ultimately granted the same.

Clearly, prohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

There is also no question regarding the jurisdiction of the CA to hear and decide a petition for prohibition. By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129,²⁷ the CA was granted “original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.” This authority the CA enjoys concurrently with RTCs and this Court.

In the same manner, the supposed violation of the principle of the hierarchy of courts does not pose any hindrance to the full deliberation of the issues at hand. It is well to remember that “the judicial hierarchy of courts is not an iron-clad rule. It generally applies to cases involving warring factual allegations. For this reason, litigants are required to [refer] to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties. Cases which depend on disputed facts for decision cannot be brought immediately before appellate courts as they are not triers of facts. Therefore, a strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions.”²⁸

Moreover, the principle of hierarchy of courts may be set aside for special and important reasons, such as when dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice.²⁹ Thus, when based on the good judgment of the court, the urgency and significance of the issues presented calls for its intervention, it should not hesitate to exercise its duty to resolve.

The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the

²⁵ Id. at 419.

²⁶ *Belgica, et al. v. Honorable Executive Secretary Ochoa, Jr., et al.*, 721 Phil. 416 (2013).

²⁷ THE JUDICIARY REORGANIZATION ACT OF 1980. Approved on August 14, 1981.

²⁸ *Mangaliag v. Judge Catubig-Pastoral*, 510 Phil. 637, 646-647 (2005).

²⁹ *Congressman Chong, et al. v. Hon. Dela Cruz, et al.*, 610 Phil. 725, 728 (2009).

resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

**The instant case is not barred by
*stare decisis***

The petitioner contends that the CA erred in holding that the ruling in *Carlos Superdrug* constitutes as *stare decisis* or law of the case which bars the relitigation of the issues that had been resolved therein and had been raised anew in the instant petition. It argues that there are substantial differences between *Carlos Superdrug* and the circumstances in the instant case which take it out from the operation of the doctrine of *stare decisis*. It cites that in *Carlos Superdrug*, the Court denied the petition because the petitioner therein failed to prove the confiscatory effect of the tax deduction scheme as no proof of actual loss was submitted. It believes that its submission of financial statements for the years 2006 and 2007 to prove the confiscatory effect of the law is a material fact that distinguishes the instant case from that of *Carlos Superdrug*.³⁰

The Court agrees that the ruling in *Carlos Superdrug* does not constitute *stare decisis* to the instant case, not because of the petitioner's submission of financial statements which were wanting in the first case, but because it had the good sense of including questions that had not been raised or deliberated in the former case of *Carlos Superdrug*, *i.e.*, validity of the 20% discount granted to PWDs, the supposed vagueness of the provisions of R.A. No. 9442 and violation of the equal protection clause.

Nonetheless, the Court finds nothing in the instant case that merits a reversal of the earlier ruling of the Court in *Carlos Superdrug*. Contrary to the petitioner's claim, there is a very slim difference between the issues in *Carlos Superdrug* and the instant case with respect to the nature of the senior citizen discount. A perfunctory reading of the circumstances of the two cases easily discloses marked similarities in the issues and the arguments raised by the petitioners in both cases that semantics nor careful play of words can hardly obscure.

In both cases, it is apparent that what the petitioners are ultimately questioning is not the grant of the senior citizen discount *per se*, but the manner by which they were allowed to recoup the said discount. In particular, they are protesting the change in the tax treatment of the senior

³⁰ *Rollo*, pp. 33-38.

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citizen discount from tax credit to being merely a deduction from gross income which they claimed to have significantly reduced their profits.

This question had been settled in *Carlos Superdrug*, where the Court ruled that the change in the tax treatment of the discount was a valid exercise of police power, thus:

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

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A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

SEC. 2. [R.A.] No. 7432 is hereby amended to read as follows:

SEC. 1. *Declaration of Policies and Objectives.*— Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: “The State shall provide social justice in all phases of national development.” Further, Article XIII, Section 11, provides: “The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children.” Consonant with these constitutional principles the following are the declared policies of this Act:

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x x x x

(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.³¹ (Citations omitted and emphasis in the original)

Verily, it is the bounden duty of the State to care for the elderly as they reach the point in their lives when the vigor of their youth has diminished and resources have become scarce. Not much because of choice, they become needing of support from the society for whom they presumably spent their productive days and for whose betterment they exhausted their energy, know-how and experience to make our days better to live.

In the same way, providing aid for the disabled persons is an equally important State responsibility. Thus, the State is obliged to give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society.³² This entails the creation of opportunities for them and according them privileges if only to balance the

³¹ *Carlos Superdrug Corp. v. DSWD*, supra note 5, at 129-132.

³² R.A. No. 7277, Section 2(a).

playing field which had been unduly tilted against them because of their limitations.

The duty to care for the elderly and the disabled lies not only upon the State, but also on the community and even private entities. As to the State, the duty emanates from its role as *parens patriae* which holds it under obligation to provide protection and look after the welfare of its people especially those who cannot tend to themselves. *Parens patriae* means parent of his or her country, and refers to the State in its role as “sovereign”, or the State in its capacity as a provider of protection to those unable to care for themselves.³³ In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation.

In *Gerochi v. Department of Energy*,³⁴ the Court passed upon one of the inherent powers of the state, the police power, where it emphasized, thus:

[P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to “regulate” means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.³⁵ (Citations omitted)

It is in the exercise of its police power that the Congress enacted R.A. Nos. 9257 and 9442, the laws mandating a 20% discount on purchases of medicines made by senior citizens and PWDs. It is also in further exercise of this power that the legislature opted that the said discount be claimed as tax deduction, rather than tax credit, by covered establishments.

The petitioner, however, claims that the change in the tax treatment of the discount is illegal as it constitutes taking without just compensation. It even submitted financial statements for the years 2006 and 2007 to support its claim of declining profits when the change in the policy was implemented.

The Court is not swayed.

³³ *Oliver v. Feldner*, 149 Ohio App. 3d 114, 2002 Ohio 3209, 776 N.E.2d 499 (Ct. App. 2002).

³⁴ 554 Phil. 563 (2007).

³⁵ *Id.* at 579-580.

To begin with, the issue of just compensation finds no relevance in the instant case as it had already been made clear in *Carlos Superdrug* that the power being exercised by the State in the imposition of senior citizen discount was its police power. Unlike in the exercise of the power of eminent domain, just compensation is not required in wielding police power. This is precisely because there is no taking involved, but only an imposition of burden.

In *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*,³⁶ the Court ruled that by examining the nature and the effects of R.A. No. 9257, it becomes apparent that the challenged governmental act was an exercise of police power. It was held, thus:

[W]e now look at the nature and effects of the 20% discount to determine if it constitutes an exercise of police power or eminent domain.

The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.

As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern. In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens.

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. x x x.³⁷ (Citations omitted)

³⁶ 722 Phil. 538 (2013).

³⁷ Id. at 578-579.

In the exercise of police power, “property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the State.”³⁸ Even then, the State’s claim of police power cannot be arbitrary or unreasonable. After all, the overriding purpose of the exercise of the power is to promote general welfare, public health and safety, among others. It is a measure, which by sheer necessity, the State exercises, even to the point of interfering with personal liberties or property rights in order to advance common good. To warrant such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.³⁹

The subjects of R.A. Nos. 9257 and 9442, *i.e.*, senior citizens and PWDs, are individuals whose well-being is a recognized public duty. As a public duty, the responsibility for their care devolves upon the concerted efforts of the State, the family and the community. In Article XIII, Section 1 of the Constitution, the State is mandated to give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. The more apparent manifestation of these social inequities is the unequal distribution or access to healthcare services. To abet in alleviating this concern, the State is committed to adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost, with priority for the needs of the underprivileged sick, elderly, disabled, women, and children.⁴⁰

In the same manner, the family and the community have equally significant duties to perform in reducing social inequality. The family as the basic social institution has the foremost duty to care for its elderly members.⁴¹ On the other hand, the community, which include the private sector, is recognized as an active partner of the State in pursuing greater causes. The private sector, being recipients of the privilege to engage business in our land, utilize our goods as well as the services of our people for proprietary purposes, it is only fitting to expect their support in measures that contribute to common good. Moreover, their right to own, establish and operate economic enterprises is always subject to the duty of the State to promote distributive justice and to intervene when the common good so

³⁸ *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457, 476 (2006).

³⁹ *Department of Education, Culture and Sports v. San Diego*, 259 Phil. 1016, 1021 (1989).

⁴⁰ 1987 CONSTITUTION, Article XIII, Section 11.

⁴¹ 1987 CONSTITUTION, Article XV, Section 4.

demands.⁴²

The Court also entertains no doubt on the legality of the method taken by the legislature to implement the declared policies of the subject laws, that is, to impose discounts on the medical services and purchases of senior citizens and PWDs and to treat the said discounts as tax deduction rather than tax credit. The measure is fair and reasonable and no credible proof was presented to prove the claim that it was confiscatory. To be considered confiscatory, there must be *taking* of property without just compensation.

Illuminating on this point is the discussion of the Court on the concept of *taking* in *City of Manila v. Hon. Laguio, Jr.*,⁴³ viz.:

There are two different types of taking that can be identified. A “possessory” taking occurs when the government confiscates or physically occupies property. A “regulatory” taking occurs when the government’s regulation leaves no reasonable economically viable use of the property.

x x x x

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was “a question of degree and therefore cannot be disposed of by general propositions.” On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. x x x.

What is crucial in judicial consideration of regulatory takings is that government regulation is a taking if it leaves no reasonable economically viable use of property in a manner that interferes with reasonable expectations for use. A regulation that permanently denies all economically beneficial or productive use of land is, from the owner’s point of view, equivalent to a “taking” unless principles of nuisance or property law that existed when the owner acquired the land make the use prohibitable. When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.

x x x x

A restriction on use of property may also constitute a “taking” if not reasonably necessary to the effectuation of a substantial public purpose or if it has an unduly harsh impact on the distinct investment-backed expectations of the owner.⁴⁴ (Citations omitted)

⁴² 1987 CONSTITUTION, Article XII, Section 6.

⁴³ 495 Phil. 289 (2005).

⁴⁴ Id. at 320-321.

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The petitioner herein attempts to prove its claim that the pertinent provisions of R.A. Nos. 9257 and 9442 amount to taking by presenting financial statements purportedly showing financial losses incurred by them due to the adoption of the tax deduction scheme.

For the petitioner's clarification, the presentation of the financial statement is not of compelling significance in justifying its claim for just compensation. What is imperative is for it to establish that there was taking in the constitutional sense or that, in the imposition of the mandatory discount, the power exercised by the state was eminent domain.

According to *Republic of the Philippines v. Vda. de Castellvi*,⁴⁵ five circumstances must be present in order to qualify "taking" as an exercise of eminent domain. *First*, the expropriator must enter a private property. *Second*, the entrance into private property must be for more than a momentary period. *Third*, the entry into the property should be under warrant or color of legal authority. *Fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. *Fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.⁴⁶

The first requirement speaks of entry into a private property which clearly does not obtain in this case. There is no private property that is invaded or appropriated by the State. As it is, the petitioner precipitately deemed future profits as private property and then proceeded to argue that the State took it away without full compensation. This seemed preposterous considering that the subject of what the petitioner supposed as taking was not even earned profits but merely an expectation of profits, which may not even occur. For obvious reasons, there cannot be taking of a contingency or of a mere possibility because it lacks physical existence that is necessary before there could be any taking. Further, it is impossible to quantify the compensation for the loss of supposed profits before it is earned.

The supposed taking also lacked the characteristics of permanence⁴⁷ and consistency. The presence of these characteristics is significant because they can establish that the effect of the questioned provisions is the same on all establishments and those losses are indeed its unavoidable consequence. But apparently these indications are wanting in this case. The reason is that the impact on the establishments varies depending on their response to the changes brought about by the subject provisions. To be clear, establishments are not prevented from adjusting their prices to accommodate the effects of

⁴⁵ 157 Phil. 329 (1974).

⁴⁶ Id. at 345-346.

⁴⁷ See Concurring Opinion of Associate Justice Lucas P. Bersamin in *Manila Memorial Park, Inc. et al. v. Secretary of the DSWD, et al.*, supra note 36, at 614.

the granting of the discount and retain their profitability while being fully compliant to the laws. It follows that losses are not inevitable because establishments are free to take business measures to accommodate the contingency. Lacking in permanence and consistency, there can be no taking in the constitutional sense. There cannot be taking in one establishment and none in another, such that the former can claim compensation but the other may not. Simply told, there is no taking to justify compensation; there is only poor business decision to blame.

There is also no ousting of the owner or deprivation of ownership. Establishments are neither divested of ownership of any of their properties nor is anything forcibly taken from them. They remain the owner of their goods and their profit or loss still depends on the performance of their sales.

Apart from the foregoing, covered establishments are also provided with a mechanism to recoup the amount of discounts they grant the senior citizens and PWDs. It is provided in Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No. 9442 that establishments may claim the discounts as "tax deduction based on the net cost of the goods sold or services rendered." Basically, whatever amount was given as discount, covered establishments may claim an equal amount as an expense or tax deduction. The trouble is that the petitioner, in protesting the change in the tax treatment of the discounts, apparently seeks tax incentive and not merely a return of the amount given as discounts. It premised its interpretation of *financial losses* in terms of the effect of the change in the tax treatment of the discount on its tax liability; hence, the claim that the measure was confiscatory. However, as mentioned earlier in the discussion, loss of profits is not the inevitable result of the change in tax treatment of the discounts; it is more appropriately a consequence of poor business decision.

It bears emphasizing that the law does not place a cap on the amount of mark up that covered establishments may impose on their items. This rests on the discretion of the establishment which, of course, is expected to put in the price of the overhead costs, expectation of profits and other considerations into the selling price of an item. In a simple illustration, here is *Drug A*, with acquisition cost of ₱8.00, and selling price of ₱10.00. Then comes a law that imposes 20% on senior citizens and PWDs, which affected Establishments 1, 2 and 3. Let us suppose that the approximate number of patrons who purchases *Drug A* is 100, half of which are senior citizens and PWDs. Before the passage of the law, all of the establishments are earning the same amount from profit from the sale of *Drug A*, viz.:

Before the passage of the law:

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Drug A	
Acquisition cost	₱8.00
Selling price	₱10.00
Number of patrons	100
Sales:	
	$100 \times \text{₱}10.00 = \text{₱}1,000.00$
Profit:	₱200

After the passage of the law, the three establishments reacted differently. Establishment 1 was passive and maintained the price of *Drug A* at ₱8.00 which understandably resulted in diminution of profits.

Establishment 1

Drug A	
Acquisition cost	₱8.00
Selling price	₱10.00
Number of patrons	100
Senior Citizens/PWD	50
Sales	
	$100 \times \text{₱}10.00 = \text{₱}1,000.00$
Deduction:	₱100.00
Profit:	₱100.00

On the other hand, Establishment 2, mindful that the new law will affect the profitability of the business, made a calculated decision by increasing the mark up of *Drug A* to ₱3.20, instead of only ₱2.00. This brought a positive result to the earnings of the company.

Establishment 2

Drug A	
Acquisition cost	₱8.00
Selling price	₱11.20
Number of patrons	100
Senior Citizens/PWD	50
Sales:	
	$100 \times \text{₱}11.20 = \text{₱}1,120.00$
Deduction:	₱112.00
Profit:	₱208.00

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For its part, Establishment 3 raised the mark up on *Drug A* to only ₱3.00 just to even out the effect of the law. This measure left a negligible effect on its profit, but Establishment 3 took it as a social duty to share in the cause being promoted by the government while still maintaining profitability.

Establishment 3

Drug A

Acquisition cost	₱8.00
Selling price	₱11.00

Number of patrons	100
Senior Citizens/PWD	50

Sales:

$100 \times \text{₱}11.00 = \text{₱}1,100.00$

Deduction: ₱110.00

Profit: ₱190.00

The foregoing demonstrates that it is not the law *per se* which occasioned the losses in the covered establishments but bad business judgment. One of the main considerations in making business decisions is the law because its effect is widespread and inevitable. Literally, anything can be a subject of legislation. It is therefore incumbent upon business managers to cover this contingency and consider it in making business strategies. As shown in the illustration, the better responses were exemplified by Establishments 2 and 3 which promptly put in the additional costs brought about by the law into the price of *Drug A*. In doing so, they were able to maintain the profitability of the business, even earning some more, while at the same time being fully compliant with the law. This is not to mention that the illustration is even too simplistic and not the most ideal since it dealt only with a single drug being purchased by both regular patrons and senior citizens and PWDs. It did not consider the accumulated profits from the other medical and non-medical products being sold by the establishments which are expected to further curb the effect of the granting of the discounts in the business.

It is therefore unthinkable how the petitioner could have suffered losses due to the mandated discounts in R.A. Nos. 9257 and 9442, when a fractional increase in the prices of items could bring the business standing at a balance even with the introduction of the subject laws. A level adjustment in the pricing of items is a reasonable business measure to take in order to adapt to the contingency. This could even make establishments earn more, as shown in the illustration, since every fractional increase in the price of

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covered items translates to a wider cushion to taper off the effect of the granting of discounts and ultimately results to additional profits gained from the purchases of the same items by regular patrons who are not entitled to the discount. Clearly, the effect of the subject laws in the financial standing of covered companies depends largely on how they respond and forge a balance between profitability and their sense of social responsibility. The adaptation is entirely up to them and they are not powerless to make adjustments to accommodate the subject legislations.

Still, the petitioner argues that the law is confiscatory in the sense that the State takes away a portion of its supposed profits which could have gone into its coffers and utilizes it for public purpose. The petitioner claims that the action of the State amounts to taking for which it should be compensated.

To reiterate, the subject provisions only affect the petitioner's right to profit, and not earned profits. Unfortunately for the petitioner, the right to profit is not a vested right or an entitlement that has accrued on the person or entity such that its invasion or deprivation warrants compensation. Vested rights are "fixed, unalterable, or irrevocable."⁴⁸ More extensively, they are depicted as follows:

Rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is **right** and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A **right** is not 'vested' unless it is more than a mere expectation based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a **right** must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x.⁴⁹
(Emphasis ours)

Right to profits does not give the petitioner the cause of action to ask for just compensation, it being only an inchoate right or one that has not fully developed⁵⁰ and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into existence. It is contingent as it only comes "into existence on an event or condition which may not happen or be performed until some other event

⁴⁸ *Luque, et al. v. Hon. Villegas, etc., et al.*, 141 Phil. 108, 118 (1969).

⁴⁹ *Cartwright v. Public Serv. Co.*, 66 N.M. 64, 1958-NMSC-134, 343 P.2d 654, 1959 N.M. LEXIS 944 (N.M. 1959).

⁵⁰ Concurring and Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, supra note 36, at 641.

may prevent their vesting.”⁵¹ Certainly, the petitioner cannot claim confiscation or taking of something that has yet to exist. It cannot claim deprivation of profit before the consummation of a sale and the purchase by a senior citizen or PWD.

Right to profit is not an accrued right; it is not fixed, absolute nor indefeasible. It does not come into being until the occurrence or realization of a condition precedent. It is a mere “contingency that might never eventuate into a right. It stands for a mere possibility of profit but nothing might ever be payable under it.”⁵²

The inchoate nature of the right to profit precludes the possibility of compensation because it lacks the quality or characteristic which is necessary before any act of taking or expropriation can be effected. Moreover, there is no yardstick fitting to quantify a contingency or to determine compensation for a mere possibility. Certainly, “taking” presupposes the existence of a subject that has a quantifiable or determinable value, characteristics which a mere contingency does not possess.

Anent the question regarding the shift from tax credit to tax deduction, suffice it is to say that it is within the province of Congress to do so in the exercise of its legislative power. It has the authority to choose the subject of legislation, outline the effective measures to achieve its declared policies and even impose penalties in case of non-compliance. It has the sole discretion to decide which policies to pursue and devise means to achieve them, and courts often do not interfere in this exercise for as long as it does not transcend constitutional limitations. “In performing this duty, the legislature has no guide but its judgment and discretion and the wisdom of experience.”⁵³ In *Carter v. Carter Coal Co.*,⁵⁴ legislative discretion has been described as follows:

Legislative congressional discretion begins with the choice of means, and ends with the adoption of methods and details to carry the delegated powers into effect. x x x [W]hile the powers are rigidly limited to the enumerations of the Constitution, the means which may be employed to carry the powers into effect are not restricted, save that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, the letter and spirit of the Constitution. x x x.⁵⁵ (Emphasis ours)

⁵¹ *Cartwright v. Public Serv. Co.*, supra note 49.

⁵² *Fredrick v. Chicago*, 221 A.D. 588, 224 N.Y.S. 629, 1927 N.Y. App. Div. LEXIS 6510.

⁵³ *United States v. Borromeo*, 23 Phil. 279, 288 (1912).

⁵⁴ 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160, 1936 U.S. LEXIS 950 (U.S. 1936).

⁵⁵ *Id.*

Corollary, whether to treat the discount as a tax deduction or tax credit is a matter addressed to the wisdom of the legislature. After all, it is within its prerogative to enact laws which it deems sufficient to address a specific public concern. And, in the process of legislation, a bill goes through rigorous tests of validity, necessity and sufficiency in both houses of Congress before enrolment. It undergoes close scrutiny of the members of Congress and necessarily had to surpass the arguments hurled against its passage. Thus, the presumption of validity that goes with every law as a form of deference to the process it had gone through and also to the legislature's exercise of discretion. Thus, in *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*,⁵⁶ the Court emphasized, thus:

It must not be overlooked, in the first place, that **the legislature**, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstances primarily **the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest.** x x x.⁵⁷ (Emphasis ours)

The legislature may also grant rights and impose additional burdens. It may also regulate industries, in the exercise of police power, for the protection of the public. R.A. Nos. 9257 and 9442 are akin to regulatory laws, the issuance of which is within the ambit of police power. The minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels and hotels, laws limiting the working hours to eight, and the like fall under this category.⁵⁸

Indeed, regulatory laws are within the category of police power measures from which affected persons or entities cannot claim exclusion or compensation. For instance, private establishments cannot protest that the imposition of the minimum wage is confiscatory since it eats up a considerable chunk of its profits or that the mandated remuneration is not commensurate for the work done. The compulsory nature of the provision for minimum wages underlies the effort of the State, as R.A. No. 6727⁵⁹ expresses it, to promote productivity-improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industry dispersal; and to allow business and industry reasonable returns on investment, expansion and growth, and as the Constitution expresses it, to affirm labor as a primary social economic force.⁶⁰

⁵⁶ 101 Phil. 1155 (1957).

⁵⁷ Id. at 1165-1166.

⁵⁸ *Manila Memorial Park, Inc., et al. v. Secretary of the DSWD, et al.*, supra note 36, at 586.

⁵⁹ Wage Rationalization Act, approved on June 9, 1989.

⁶⁰ *Employees Confederation of the Philippines v. National Wages and Productivity Commission*, 278 Phil. 747, 755 (1991).

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Similarly, the imposition of price control on staple goods in R.A. No. 7581⁶¹ is likewise a valid exercise of police power and affected establishments cannot argue that the law was depriving them of supposed gains. The law seeks to ensure the availability of basic necessities and prime commodities at reasonable prices at all times without denying legitimate business a fair return on investment. It likewise aims to provide effective and sufficient protection to consumers against hoarding, profiteering and cartels with respect to the supply, distribution, marketing and pricing of said goods, especially during periods of calamity, emergency, widespread illegal price manipulation and other similar situations.⁶²

More relevantly, in *Manila Memorial Park, Inc.*,⁶³ it was ruled that it is within the bounds of the police power of the state to impose burden on private entities, even if it may affect their profits, such as in the imposition of price control measures. There is no compensable taking but only a recognition of the fact that they are subject to the regulation of the State and that all personal or private interests must bow down to the more paramount interest of the State.

This notwithstanding, the regulatory power of the State does not authorize the destruction of the business. While a business may be regulated, such regulation must be within the bounds of reason, *i.e.*, the regulatory ordinance must be reasonable, and its provision cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation. A lawful business or calling may not, under the guise of regulation, be unreasonably interfered with even by the exercise of police power.⁶⁴ After all, regulation only signifies control or restraint, it does not mean suppression or absolute prohibition. Thus, in *Philippine Communications Satellite Corporation v. Alcuaz*,⁶⁵ the Court emphasized:

The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, foster, promote, preserve, and control with due regard for the interest, first and foremost, of the public, then of the utility and of its patrons. Any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringement of property rights is void, because it is repugnant to the constitutional guaranties of due process and equal protection of the laws.⁶⁶ (Citation omitted)

⁶¹ The Price Act, approved on May 27, 1992.

⁶² R.A. No. 7581 (1992), Section 2.

⁶³ Supra note 36.

⁶⁴ *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 970 (2000), citing *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II*, 246 Phil. 189, 204 (1988).

⁶⁵ 259 Phil. 707 (1989).

⁶⁶ Id. at 721-722.

Here, the petitioner failed to show that R.A. Nos. 9257 and 9442, under the guise of regulation, allow undue interference in an otherwise legitimate business. On the contrary, it was shown that the questioned laws do not meddle in the business or take anything from it but only regulate its realization of profits.

The subject laws do not violate the equal protection clause

The petitioner argues that R.A. Nos. 9257 and 9442 are violative of the equal protection clause in that it failed to distinguish between those who have the capacity to pay and those who do not, in granting the 20% discount. R.A. No. 9257, in particular, removed the income qualification in R.A. No. 7432 of ₱60,000.00 *per annum* before a senior citizen may be entitled to the 20% discount.

The contention lacks merit.

The petitioner's argument is dismissive of the reasonable qualification on which the subject laws were based. In *City of Manila v. Hon. Laguio, Jr.*,⁶⁷ the Court emphasized:

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.⁶⁸ (Citations omitted)

“The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another.”⁶⁹ For a classification to be valid, (1) it must be based upon substantial distinctions, (2) it must be germane to the purposes of the law, (3) it must not be limited to existing conditions only, and (4) it must apply equally to all members of the same class.⁷⁰

⁶⁷ 495 Phil. 289 (2005).

⁶⁸ Id. at 326.

⁶⁹ *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 560-561 (2004).

⁷⁰ *People v. Cayat*, 68 Phil. 12, 18 (1939).

To recognize all senior citizens as a group, without distinction as to income, is a valid classification. The Constitution itself considered the elderly as a class of their own and deemed it a priority to address their needs. When the Constitution declared its intention to prioritize the predicament of the underprivileged sick, elderly, disabled, women, and children,⁷¹ it did not make any reservation as to income, race, religion or any other personal circumstances. It was a blanket privilege afforded the group of citizens in the enumeration in view of the vulnerability of their class.

R.A. No. 9257 is an implementation of the avowed policy of the Constitution to enact measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities.⁷² Specifically, it caters to the welfare of all senior citizens. The classification is based on age and therefore qualifies all who have attained the age of 60. Senior citizens are a class of their own, who are in need and should be entitled to government support, and the fact that they may still be earning for their own sustenance should not disqualify them from the privilege.

It is well to consider that our senior citizens have already reached the age when work opportunities have dwindled concurrently as their physical health. They are no longer expected to work, but there are still those who continue to work and contribute what they can to the country. Thus, to single them out and take them out of the privileges of the law for continuing to strive and earn income to fend for themselves is inimical to a welfare state that the Constitution envisions. It is tantamount to penalizing them for their persistence. It is commending indolence rather than rewarding diligence. It encourages them to become wards of the State rather than productive partners.

Our senior citizens were the laborers, professionals and overseas contract workers of the past. While some may be well to do or may have the capacity to support their sustenance, the discretion to avail of the privileges of the law is up to them. But to instantly tag them as undeserving of the privilege would be the height of ingratitude; it is an outright discrimination.

The same ratiocination may be said of the recognition of PWDs as a class in R.A. No. 9442 and in granting them discounts. It needs no further explanation that PWDs have special needs which, for most, last their entire lifetime. They constitute a class of their own, equally deserving of government support as our elderlies. While some of them maybe willing to work and earn income for themselves, their disability deters them from

⁷¹ 1987 CONSTITUTION, Article XIII, Section 11.

⁷² 1987 CONSTITUTION, Article XIII, Section 1.

living their full potential. Thus, the need for assistance from the government to augment the reduced income or productivity brought about by their physical or intellectual limitations.

There is also no question that the grant of mandatory discount is germane to the purpose of R.A. Nos. 9257 and 9442, that is, to adopt an integrated and comprehensive approach to health development and make essential goods and other social services available to all the people at affordable cost, with special priority given to the elderlies and the disabled, among others. The privileges granted by the laws ease their concerns and allow them to live more comfortably.

The subject laws also address a continuing concern of the government for the welfare of the senior citizens and PWDs. It is not some random predicament but an actual, continuing and pressing concern that requires preferential attention. Also, the laws apply to all senior citizens and PWDs, respectively, without further distinction or reservation. Without a doubt, all the elements for a valid classification were met.

The definitions of “disabilities” and “PWDs” are clear and unequivocal

Undeterred, the petitioner claims that R.A. No. 9442 is ambiguous particularly in defining the terms “disability” and “PWDs,” such that it lacks comprehensible standards that men of common intelligence must guess at its meaning. It likewise bewails the futility of the given safeguards to prevent abuse since government officials who are neither experts nor practitioners of medicine are given the authority to issue identification cards that authorizes the granting of the privileges under the law.

The Court disagrees.

Section 4(a) of R.A. No. 7277, the precursor of R.A. No. 9442, defines “disabled persons” as follows:

(a) ***Disabled persons*** are those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being[.]

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On the other hand, the term “PWDs” is defined in Section 5.1 of the IRR of R.A. No. 9442 as follows:

5.1. **Persons with Disability** are those individuals defined under Section 4 of [R.A. No.] 7277 [or] An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes. This is defined as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

The foregoing definitions have a striking conformity with the definition of “PWDs” in Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities* which reads:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Emphasis and italics ours)

The seemingly broad definition of the terms was not without good reasons. It recognizes that “disability is an evolving concept”⁷³ and appreciates the “diversity of PWDs.”⁷⁴ The terms were given comprehensive definitions so as to accommodate the various forms of disabilities, and not confine it to a particular case as this would effectively exclude other forms of physical, intellectual or psychological impairments.

Moreover, in *Estrada v. Sandiganbayan*,⁷⁵ it was declared, thus:

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 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 x x x.⁷⁶ (Citation omitted)

⁷³ Preamble of the *United Nations Convention on the Rights of Persons with Disabilities*, Section (e).

⁷⁴ Preamble of the *United Nations Convention on the Rights of Persons with Disabilities*, Section (i).

⁷⁵ 421 Phil. 290 (2001).

⁷⁶ Id. at 347-348.

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At any rate, the Court gathers no ambiguity in the provisions of R.A. No. 9442. As regards the petitioner's claim that the law lacked reasonable standards in determining the persons entitled to the discount, Section 32 thereof is on point as it identifies who may avail of the privilege and the manner of its availment. It states:

Sec. 32. x x x

The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto:

(I) An identification card issued by the city or municipal mayor or the barangay captain of the place where the persons with disability resides;

(II) The passport of the persons with disability concerned; or

(III) Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP).

It is, however, the petitioner's contention that the foregoing authorizes government officials who had no medical background to exercise discretion in issuing identification cards to those claiming to be PWDs. It argues that the provision lends to the indiscriminate availment of the privileges even by those who are not qualified.

The petitioner's apprehension demonstrates a superficial understanding of the law and its implementing rules. To be clear, the issuance of identification cards to PWDs does not depend on the authority of the city or municipal mayor, the DSWD or officials of the NCDA (formerly NCWDP). It is well to remember that what entitles a person to the privileges of the law is his *disability*, the fact of which he must prove to qualify. Thus, in NCDA Administrative Order (A.O.) No. 001, series of 2008,⁷⁷ it is required that the person claiming disability must submit the following requirements before he shall be issued a PWD Identification Card:

1. Two "1×1" recent ID pictures with the names, and signatures or thumb marks at the back of the picture.
2. One (1) Valid ID
3. Document to confirm the medical or disability condition⁷⁸

⁷⁷ Guidelines on the Issuance of Identification Card Relative to R.A. No. 9442.

⁷⁸ NCDA A.O. No. 001, series of 2008, V(A).

To confirm his disability, the person must obtain a medical certificate or assessment, as the case maybe, issued by a licensed private or government physician, licensed teacher or head of a business establishment attesting to his impairment. The issuing entity depends on whether the disability is apparent or non-apparent. NCDA A.O. No. 001 further provides:⁷⁹

DISABILITY	DOCUMENT	ISSUING ENTITY
Apparent Disability	Medical Certificate	Licensed Private or Government Physician
	School Assessment	Licensed Teacher duly signed by the School Principal
	Certificate of Disability	<ul style="list-style-type: none"> • Head of the Business Establishment • Head of Non-Government Organization
Non-Apparent Disability	Medical Certificate	Licensed Private or Government Physician

To provide further safeguard, the Department of Health issued A.O. No. 2009-0011, providing guidelines for the availment of the 20% discount on the purchase of medicines by PWDs. In making a purchase, the individual must present the documents enumerated in Section VI(4)(b), to wit:

- i. PWD identification card x x x
- ii. Doctor's prescription stating the name of the PWD, age, sex, address, date, generic name of the medicine, dosage form, dosage strength, quantity, signature over printed name of physician, physician's address, contact number of physician or dentist, professional license number, professional tax receipt number and narcotic license number, if applicable. To safeguard the health of PWDs and to prevent abuse of [R.A. No.] 9257, a doctor's prescription is required in the purchase of over-the-counter medicines. x x x.
- iii. Purchase booklet issued by the local social/health office to PWDs for free containing the following basic information:
 - a) PWD ID number
 - b) Booklet control number
 - c) Name of PWD
 - d) Sex
 - e) Address
 - f) Date of Birth

⁷⁹ NCDA A.O. No. 001, series of 2008, IV(D).

- g) Picture
- h) Signature of PWD
- i) Information of medicine purchased:
 - i.1 Name of medicine
 - i.2 Quantity
 - i.3 Attending Physician
 - i.4 License Number
 - i.5 Servicing drug store name
 - i.6 Name of dispensing pharmacist
- j) Authorization letter of the PWD x x x in case the medicine is bought by the representative or caregiver of the PWD.

The PWD identification card also has a validity period of only three years which facilitate in the monitoring of those who may need continued support and who have been relieved of their disability, and therefore may be taken out of the coverage of the law.

At any rate, the law has penal provisions which give concerned establishments the option to file a case against those abusing the privilege. Section 46(b) of R.A. No. 9442 provides that “[a]ny person who abuses the privileges granted herein shall be punished with imprisonment of not less than six months or a fine of not less than Five Thousand pesos (₱5,000.00), but not more than Fifty Thousand pesos (₱50,000.00), or both, at the discretion of the court.” Thus, concerned establishments, together with the proper government agencies, must actively participate in monitoring compliance with the law so that only the intended beneficiaries of the law can avail of the privileges.

Indubitably, the law is clear and unequivocal, and the petitioner’s claim of vagueness to cast uncertainty in the validity of the law does not stand.

WHEREFORE, in view of the foregoing disquisition, Section 4(a) of Republic Act No. 9257 and Section 32 of Republic Act No. 9442 are hereby declared **CONSTITUTIONAL**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

Maria Lourdes P. A. Sereno

MARIA LOURDES P. A. SERENO
Chief Justice

De Dissenting Opinion
Antonio T. Carpio

ANTONIO T. CARPIO
Associate Justice

Presbitero J. Velasco, Jr.
PRESBITERO J. VELASCO, JR.
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DIOSDADO M. PERALTA
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LUCAS P. BERSAMIN
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(No part)
MARIANO C. DEL CASTILLO
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

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Associate Justice

De separate opinion
Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

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Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Samuel R. Martires
SAMUEL R. MARTIRES
Associate Justice

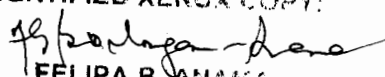

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:


FELIPA B. ANAYA
CLERK OF COURT IN CHARGE
SUPREME COURT