EN BANC

G.R. No. 215650 (***Augusto L. Syjuco, Jr.,*** *petitioner* ***vs. Joseph Emilio A. Abaya, et al.,*** *respondents*).

G.R. No. 215653 (***Bagong Alyansang Makabayan, et al.,*** *petitioners* ***vs. Joseph Emilio A. Abaya, et al.,*** *respondents*).

G.R. No. 215703 (***United Filipino Consumers and Commuters, Inc., et al.,*** *petitioners* ***vs. Joseph Emilio A. Abaya, et al.,*** *respondents*).

G.R. No. 215704 (***Bayan Muna Representative Neri Javier Colmenares, et al.,*** *petitioners* ***vs. Joseph Emilio A. Abaya, et al.,*** *respondents*).

G.R. No. 216735 (***Joseph Victor G. Ejercito, et al.,*** *petitioners* ***vs. Winston M. Ginez, et al.,*** *respondents*).

Promulgated: March 28, 2023

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CONCURRING OPINION

GESMUNDO, *C.J.*:

This case involves five consolidated petitions that assail the constitutionality of the Department of Transportation and Communications (*DOTC*) Department Order No. 2014-014 (*DO 2014-014*), which mandated the application of the user-pays principle and adopted a uniform base fare for the Light Rail Transit (*LRT*) Lines 1 and 2 and the Metro Rail Transit (*MRT*) Line 3.

I concur with the *ponencia* in upholding the validity of DO 2014-014. Nevertheless, I write this Opinion to expound on the actual case or controversy requirement. On the merits, I discuss the matter of public participation in a government agency's exercise of quasi-legislative function.

Actual case or controversies; grave abuse of discretion

Section 1, Article VIII of the Constitution defines traditional judicial power as the duty of the courts of justice "to settle actual controversies

involving rights which are legally demandable and enforceable," and expanded judicial power as the duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Case law provides that whether in the traditional or expanded mode, the exercise of judicial power requires the presence of an *actual case or controversy*.[1]

In view of the actual case or controversy requirement, courts decline to issue advisory opinions, resolve hypothetical or feigned problems, or mere academic questions. This limitation is anchored on the separation of powers principle and defines the role of the Judiciary in the government. It assures that courts will not intrude into areas reserved to other branches of government.[2]

To reiterate, the presence of *actual case or controversy* is required in both traditional or expanded modes of judicial review;[3] however, the concept may slightly vary depending on the mode used.

In the traditional sense, "an actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. To be justiciable, the case or controversy must present a **contrariety of legal rights** that can be interpreted and enforced on the basis of existing law and jurisprudence."[4]

Under the expanded mode, however, the requirement of an actual case or controversy is simplified as a ***prima facie* showing of grave abuse of discretion in the assailed governmental act**.[5] This was articulated in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association*,[6] *viz.*:

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1 The rationale for this requirement goes into the role of the Judiciary in the constitutional framework of government. (*Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 481 [2008]), which states that "[t]he limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government."

2 See *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra.

3 See note 1.

4 *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 782 (2018); see also *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, supra.

5 *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, id.

6 802 Phil. 116 (2016).

> The Court's expanded jurisdiction – *itself an exercise of judicial power* – does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively **simplifies** this requirement by merely requiring **a *prima facie* showing of grave abuse of discretion in the assailed governmental act.**[7] (Emphases supplied)

To recall, the expanded *certiorari* jurisdiction was an innovation under the 1987 Constitution. Under this mode of judicial review, courts are "empowered to determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion."[8] It has been held that the "Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended[,] it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels."[9] Such mechanism is the extraordinary mode of judicial review.

In the present case, the *ponencia* holds that there exists an actual case or controversy because there are polarizing views on the alleged nullity of DO 2014-014. On the one hand, petitioners argue that the assailed issuance violated their right to due process for having been issued without notice and hearing; on the other hand, respondents claim that the implementation of the fare adjustment scheme did not require notice and hearing.[10] Moreover, the *ponencia* underscores that the issue raised is not merely a policy question as to be beyond the scope of judicial review. Considering that the fare adjustment under DO 2014-014 involves rate-fixing, its issuance necessitates compliance with the requirements laid out by law.[11]

I agree that there is an actual case or controversy. Viewed from the lens of the expanded *certiorari* jurisdiction, this means that petitioners in the present case were able to show *prima facie* grave abuse of discretion on the part of respondents when the latter issued DO 2014-014 in contravention of the constitutional right to procedural due process (*i.e.*, lack of notice and hearing). To emphasize, grave abuse or violation is based not merely on a statutory requirement, but on a constitutional provision. Notably, Sec. 1, Art. III of the Constitution guarantees the right to due process. Alleging lack of notice and hearing, petitioners claim a violation of such right.

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7 Id. at 141.

8 *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1181-1182 (2019), citing *Araullo v. Aquino III*, 737 Phil. 457, 525 (2014).

9 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 879 (2003), citing *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936).

10 *Ponencia*, p. 29.

11 Id. at 27-28.

Notice and hearing requirement

On the merits, petitioners argue that DO 2014-014 is invalid for having been issued without notice and hearing.[12] Based on the facts presented, public consultations were held by the LRT Administrator in February 2011 and December 2013 for the rate increase that was supposed to be implemented either in 2011 or 2014, but the increase then did not materialize.[13] Petitioners posited that the public is entitled to a fresh round of notice and hearing since the fare increase under DO 2014-014 represents a "change in the withdrawal of the proposed fare hike in the previous years."[14]

The *ponencia* holds that the issuance of DO 2014-014 substantially complied with the requirements of notice and hearing.[15] It highlights that prior to the issuance of DO 2014-014, public consultations were already held in February 2011 and December 2013 after due notice. DO 2014-014 "even retained the initially proposed fare structure" back in 2010.[16] Hence, the fare hike in DO 2014-014 is a mere reiteration of the increase proposed in 2011 and 2013 for which public consultations were conducted.

I agree. I hasten to add that, to my mind, the time interval between the December 2013 consultation and the issuance of the assailed DO 2014-014 in December 2014 is reasonably short, which renders unnecessary the conduct of a new round of consultation. Besides, there is no showing of any drastic changes in social and economic conditions that have occurred between December 2013 and December 2014 as to radically alter the perspectives of those who attended the prior year's public consultation and other persons affected by the issuance. Notably, the travelers or commuters that use the LRT lines 1 and 2 are similar to those that use the MRT line 3 and have already been given opportunities to express their positions during the 2013 consultation. In my considered view, the public consultation in 2013 could sufficiently be deemed as the statutorily required hearing before the issuance of the new rates fixed under DO 2014-014.

To expound, "the fixing of rates is generally a legislative power, whether exercised by the legislature itself or delegated through an

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12 Id. at 57.
13 Id.
14 Id. at 59.
15 Id. at 56-59.
16 Id. at 58.

administrative agency."[17] Distinguishing between quasi-judicial and quasi-legislative acts of fixing rates, the Court has pronounced, thus:

> Where the rules and/or rates imposed by an administrative agency *apply exclusively to a particular party*, predicated upon a finding of fact, the agency performs a function partaking of a *quasi-judicial* character and prior notice and hearing are essential to the validity thereof.
>
> If the agency is in the exercise of its *legislative* functions or where the rates are meant to apply to *all enterprises of a given kind* throughout the country, however, the grant of **prior notice and hearing** to the affected parties is **not a requirement** of due process[,] **except where the legislature itself requires it**.[18] (Emphases supplied; italics in the original)

Therefore, based on prevailing jurisprudence on quasi-legislative functions, the general rule is that prior notice and hearing are not requirements of due process.[19] The exception is when a statute requires them, as in this case. Notably, Sec. 9, Chapter 2, Book VII of the Administrative Code of 1987 (*Administrative Code*) states, thus:

> Section 9. *Public Participation.* — x x x
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> x x x x
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> (2) **In the fixing of rates**, no rule or final order shall be valid unless the proposed rates shall have been **published** in a newspaper of general circulation at least two (2) weeks before the **first hearing** thereon. (Emphases supplied)

As observed by the *ponencia*, this statutory provision explicitly contains the requisite notice and hearing before the fixing of rates in a government agency's exercise of quasi-legislative functions.[20]

Based on the Administrative Code, the conduct of a prior hearing is mandatory. In *Manila International Airport Authority (MIAA) v. Airspan Corporation*,[21] the rate increases imposed by MIAA were invalidated for lack of notice and public hearing as required under the Administrative Code.

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17 *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, 494 Phil. 664, 676 (2005).

18 Id. at 676-677; see also *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, 533 Phil. 590, 606 (2006); *Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture, and Sports*, 237 Phil. 606, 611 (1987), citing *Abella, Jr. v. Civil Service Commission*, 485 Phil. 182, 207 (2004).

19 *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, supra.

20 See *ponencia*, p. 51.

21 486 Phil. 1136 (2004).

In that case, no public hearing was conducted at all prior to the issuance of the new rates. The Court also found the issuance *ultra vires* because it was not issued by the DOTC Secretary as the official authorized to increase the rates.

A reading of the above-quoted provision, however, shows that there is no required time difference between the hearing or public consultation *vis-à-vis* the issuance of the rates. To illustrate the point, the provision does not state that a lapse of say, one or two years, from the hearing date up to the issuance of the new rates would render the hearing ineffective and thus, necessitate a new notice and hearing.

In *Carbonilla v. Board of Airlines Representatives*,[22] the Bureau of Customs conducted several meetings for two years with the concerned agencies to discuss the proposed increase in the rate of overtime pay, in compliance with the Administrative Code provision on rate-fixing. Therein respondents participated in those meetings, and thus, they cannot claim denial of due process in the increase of the overtime rate. The facts show that the review of overtime pay started in April 2002, and after several meetings, the Customs Administrative Order was approved by the Secretary of Finance in February 2005 and became effective in March 2005. It bears pointing out that more than two years had lapsed from the time the review was initiated.

Based on the foregoing, no time interval between the hearing or public consultation is mandated under the Administrative Code and the issuance of the new fixed rates, as long as public hearing or consultation is conducted.

In the present case, the facts presented provide that public consultations were conducted back in February 2011 and in December 2013, but the rate increase discussed then did not materialize.[23] In my view, the issuance of the assailed DO 2014-014 constitutes the end product of the previous consultations despite the passage of one year. As the *ponencia* observes, "the basis and purpose for the proposed hike remained the same ever since – the reduction of government subsidy over the operation of the LRT and the MRT."[24]

To stress, the purpose of the public hearing requirement is to enable the government agencies and the affected members of the public to discuss

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22 *Carbonilla v. Board of Airlines Representatives*, 673 Phil. 413 (2011).
23 See *ponencia*, p. 58.
24 Id.

concerns in order to balance their interests.[25] This objective was achieved in this case when the 2013 public consultation was conducted. Notably, the oppositions to the proposed fare hike were heard, as statutorily required. In my view, the concerns expressed by the attendees can be deemed unchanged a year later, considering that there were no tectonic shifts in the social and economic conditions in the country from 2013 to 2014.

On these scores, it is my humble view that the required public hearing or consultation prior to the issuance of DO 2014-014 was adequately complied with.

As a final note, I am fully aware of the practical implication of the Court's Decision on the general commuting public who will have to contend with high fees in availing of the train system in the metropolitan area. It bears stressing that the role of the Court with respect to judicial review is not to look into the wisdom and good judgment of the other co-equal branches of government. Rather, its solemn duty is to ascertain whether the constitutionally-imposed boundaries against the executive and legislative branches are breached, which will result to grave abuse of discretion that must be remedied by the Court. Considering that the hearing requirement is met, the Court is duty-bound to uphold the constitutionality of the assailed issuance. I am steadfast that in rendering judgment, the Court does not dwell in the wisdom of the policy set forth by the executive branch of the government. Needless to say, the executive branch may reassess its rate-fixing policy to again take into account the concerns of the public.

WHEREFORE, I vote to **DISMISS** the petitions, and accordingly, uphold the validity of Department Order No. 2014-014 issued by the Department of Transportation and Communications.

ALEXANDER G. GESMUNDO
Chief Justice

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[25] *Manila International Airport Authority v. Airspan Corporation*, supra note 21, at 1147, which states: "Balancing of interests among the parties concerned, in a public hearing, is obviously called for."