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[G.R. No. 132451, December 17, 1999]

CONGRESSMAN ENRIQUE T. GARCIA, PETITIONER, VS. HON. RENATO C. CORONA, IN HIS CAPACITY AS THE EXECUTIVE SECRETARY, HON. FRANCISCO VIRAY, IN HIS CAPACITY AS THE SECRETARY OF ENERGY, CALTEX PHILIPPINES INC., PILIPINAS SHELL PETROLEUM CORP. AND PETRON CORP., RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

On November 5, 1997, this Court in *Tatad v. Secretary of the Department of Energy* and *Lagman, et al., v. Hon. Ruben Torres, et al.,*[1] declared Republic Act No. 8180, entitled "An Act Deregulating the Downstream Oil Industry and For Other Purposes", unconstitutional, and its implementing Executive Order No. 392 void.

R.A. 8180 was struck down as invalid because three key provisions intended to promote free competition were shown to achieve the opposite result. More specifically, this Court ruled that its provisions on tariff differential, stocking of inventories, and predatory pricing inhibit fair competition, encourage monopolistic power, and interfere with the free interaction of the market forces.

While R.A. 8180 contained a separability clause, it was declared unconstitutional in its entirety since the three (3) offending provisions so permeated the law that they were so intimately the *esse* of the law. Thus, the whole statute had to be invalidated.

As a result of the *Tatad* decision, Congress enacted Republic Act No. 8479, a new deregulation law without the offending provisions of the earlier law. Petitioner Enrique T. Garcia, a member of Congress, has now brought this petition seeking to declare Section 19 thereof, which sets the time of full deregulation, unconstitutional. After failing in his attempts to have Congress incorporate in the law the economic theory he espouses, petitioner now asks us, in the name of upholding the Constitution, to undo a violation which he claims Congress has committed.

The assailed Section 19 of R.A. 8479 states in full:

> **SEC. 19.** ***Start of Full Deregulation.*** --- Full deregulation of the Industry shall start five (5) months following the effectivity of this Act: *Provided, however*, That when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the DOE and the Department of Finance (DOF) when the prices of crude oil and petroleum products in the world market are declining and the value of the peso in relation to the US dollar is stable, taking into account relevant trends and prospects; *Provided, further,*

That the foregoing provision notwithstanding, the five (5)-month Transition Phase shall continue to apply to LPG, regular gasoline and kerosene as socially-sensitive petroleum products and said petroleum products shall be covered by the automatic pricing mechanism during the said period.

Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:

a) Republic Act No. 6173, as amended;
b) Section 5 of Executive Order No. 172, as amended;
c) Letter of Instruction No. 1431, dated October 15, 1984;
d) Letter of Instruction No. 1441, dated November 20, 1984, as amended;
e) Letter of Instruction No. 1460, dated May 9, 1985;
f) Presidential Decree No. 1889; and
g) Presidential Decree No. 1956, as amended by Executive Order No. 137:

Provided, however, That in case full deregulation is started by the President in the exercise of the authority provided in this Section, the foregoing laws shall continue to be in force and effect with respect to LPG, regular gasoline and kerosene for the rest of the five (5)-month period.

Petitioner contends that Section 19 of R.A. 8479, which prescribes the period for the removal of price control on gasoline and other finished products and for the full deregulation of the local downstream oil industry, is patently contrary to public interest and therefore unconstitutional because within the short span of five months, the market is still dominated and controlled by an oligopoly of the three (3) private respondents, namely, Shell, Caltex and Petron.

The objective of the petition is deceptively simple. It states that if the constitutional mandate against monopolies and combinations in restraint of trade[2] is to be obeyed, there should be indefinite and open-ended price controls on gasoline and other oil products for as long as necessary. This will allegedly prevent the "Big 3" --- Shell, Caltex and Petron --- from price-fixing and overpricing. Petitioner calls the indefinite retention of price controls as "partial deregulation".

The grounds relied upon in the petition are:

A.

SECTION 19 OF R.A. NO. 8479 WHICH PROVIDES FOR FULL DEREGULATION FIVE (5) MONTHS OR EARLIER FOLLOWING THE EFFECTIVITY OF THE LAW, IS GLARINGLY PRO-OLIGOPOLY, ANTI-COMPETITION AND ANTI-PEOPLE, AND IS THEREFORE PATENTLY UNCONSTITUTIONAL FOR BEING IN GROSS AND CYNICAL CONTRAVENTION OF THE CONSTITUTIONAL POLICY AND COMMAND EMBODIED IN ARTCLE XII, SECTION 19 OF THE 1987 CONSTITUTION AGAINST MONOPOLIES AND

COMBINATIONS IN RESTRAINT OF TRADE.

B.

SAID SECTION 19 OF R.A. No. 8479 IS GLARINGLY PRO-OLIGOPOLY, ANTI-COMPETITION AND ANTI-PEOPLE, FOR THE FURTHER REASON THAT IT PALPABLY AND CYNICALLY VIOLATES THE VERY OBJECTIVE AND PURPOSE OF R.A. NO. 8479, WHICH IS TO ENSURE A TRULY COMPETITIVE MARKET UNDER A REGIME OF FAIR PRICES.

C.

SAID SECTION 19 OF R.A. No. 8479, BEING GLARINGLY PRO-OLIGOPOLY, ANTI-COMPETITION AND ANTI-PEOPLE, BEING PATENTLY UNCONSTITUTIONAL AND BEING PALPABLY VIOLATIVE OF THE LAW'S POLICY AND PURPOSE OF ENSURING A TRULY COMPETITIVE MARKET UNDER A REGIME OF FAIR PRICES, IS A VERY GRAVE AND GRIEVOUS ABUSE OF DISCRETION ON THE PART OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT.

D.

PREMATURE FULL DEREGULATION UNDER SECTION 19 OF R.A. NO. 8479 MAY AND SHOULD THEREFORE BE DECLARED NULL AND VOID EVEN AS THE REST OF ITS PROVISIONS REMAIN IN FORCE, SUCH AS THE TRANSITION PHASE OR PARTIAL DEREGULATION WITH PRICE CONTROLS THAT ENSURES THE PROTECTION OF THE PUBLIC INTEREST BY PREVENTING THE BIG 3 OLIGOPOLY'S PRICE-FIXING AND OVERPRICING.[3]

The issues involved in the deregulation of the downstream oil industry are of paramount significance. The ramifications, international and local in scope, are complex. The impact on the nation's economy is pervasive and far-reaching. The amounts involved in the oil business are immense. Fluctuations in the supply and price of oil products have a dramatic effect on economic development and public welfare. As pointed out in the *Tatad* decision, few cases carry a surpassing importance on the daily life of every Filipino. The issues affect everybody from the poorest wage-earners and their families to the richest entrepreneurs, from industrial giants to humble consumers.

Our decision in this case is complicated by the unstable oil prices in the world market. Even as this case is pending, the price of OPEC oil is escalating to record levels. We have to emphasize that our decision has nothing to do with worldwide fluctuations in oil prices and the counter-measures of Government each time a new development takes place.

The most important part of deregulation is freedom from price control. Indeed, the free play of market forces through deregulation and when to implement it represent one option to solve the problems of the oil-consuming public. There are other considerations which may be taken into account such as the reduction of taxes on oil

products, the reinstitution of an Oil Price Stabilization Fund, the choice between government subsidies taken from the regular taxpaying public on one hand and the increased costs being shouldered only by users of oil products on the other, and most important, the immediate repeal of the oil deregulation law as wrong policy. Petitioner wants the setting of prices to be done by Government instead of being determined by free market forces. His preference is continued price control with no fixed end in sight. A simple glance at the factors surrounding the present problems besetting the oil industry shows that they are economic in nature.

R.A. 8479, the present deregulation law, was enacted to implement Article XII, Section 19 of the Constitution which provides:

> The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

This is so because the Government believes that deregulation will eventually prevent monopoly. The simplest form of monopoly exists when there is only one seller or producer of a product or service for which there are no substitutes. In its more complex form, monopoly is defined as the joint acquisition or maintenance by members of a conspiracy, formed for that purpose, of the power to control and dominate trade and commerce in a commodity to such an extent that they are able, as a group, to exclude actual or potential competitors from the field, accompanied with the intention and purpose to exercise such power.[4]

Where two or three or a few companies act in concert to control market prices and resultant profits, the monopoly is called an oligopoly or cartel. It is a combination in restraint of trade.

The perennial shortage of oil supply in the Philippines is exacerbated by the further fact that the importation, refining, and marketing of this precious commodity are in the hands of a cartel, local but made up of foreign-owned corporations. Before the start of deregulation, the three private respondents controlled the entire oil industry in the Philippines.

It bears reiterating at the outset that the deregulation of the oil industry is a policy determination of the highest order. It is unquestionably a priority program of Government. The Department of Energy Act of 1992[5] expressly mandates that the development and updating of the existing Philippine energy program "shall include a policy direction towards deregulation of the power and energy industry."

Be that as it may, we are not concerned with whether or not there should be deregulation. This is outside our jurisdiction. The judgment on the issue is a settled matter and only Congress can reverse it. Rather, the question that we should address here is --- are the method and the manner chosen by Government to accomplish its cherished goal offensive to the Constitution? Is indefinite price control in the manner proposed by petitioner the only feasible and legal way to achieve it?

Petitioner has taken upon himself a most challenging task. Unquestionably, the direction towards which the nation's efforts at economic and social upliftment should be addressed is a function of Congress and the President. In the exercise of this

function, Congress and the President have obviously determined that speedy deregulation is the answer to the acknowledged dominion by oligopolistic forces of the oil industry. Thus, immediately after R.A. 8180 was declared unconstitutional in the *Tatad* case, Congress took resolute steps to fashion new legislation towards the objective of the earlier law. Invoking the Constitution, petitioner now wants to slow down the process.

While the Court respects the firm resolve displayed by Congress and the President, all departments of Government are equally bound by the sovereign will expressed in the commands of the Constitution. There is a need for utmost care if this Court is to faithfully discharge its duties as arbitral guardian of the Constitution. We cannot encroach on the policy functions of the two other great departments of Government. But neither can we ignore any overstepping of constitutional limitations. Locating the correct balance between legality and policy, constitutional boundaries and freedom of action, and validity and expedition is this Court's dilemma as it resolves the legitimacy of a Government program aimed at giving every Filipino a more secure, fulfilling and abundant life.

Our ruling in *Tatad* is categorical that the Constitution's Article XII, Section 19, is anti-trust in history and spirit. It espouses competition. We have stated that only competition which is fair can release the creative forces of the market. We ruled that the principle which underlies the constitutional provision is competition. Thus:

> Section 19, Article XII of our Constitution is anti-trust in history and in spirit. It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies. Competition is thus the underlying principle of section 19, Article XII of our Constitution which cannot be violated by R.A. No. 8180. We subscribe to the observation of Prof. *Gellhorn* that the objective of anti-trust law is "to assure a competitive economy, based upon the belief that through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services, and thus matches their desires with society's opportunity costs." He adds with appropriateness that there is a reliance upon "the operation of the `market' system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom the various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers to determine who will manufacture it."[6]

In his recital of the antecedent circumstances, petitioner repeats in abbreviated form the factual findings and conclusions which led the Court to declare R.A. 8180 unconstitutional. The foreign oligopoly or cartel formed by respondents Shell, Caltex and Petron, their indulging in price-fixing and overpricing, their blockade tactics which effectively obstructed the entry of genuine competitors, the dangers posed by the oil cartel to national security and economic development, and other prevailing sentiments are stated as axiomatic truths. They are repeated in capsulized context as the current background facts of the present petition.