

EN BANC

[G.R. No. 190431, January 31, 2017]

BAYAN MUNA PARTY-LIST REPRESENTATIVE SATUR C. OCAMPO, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVE LIZA L. MAZA, BAYAN MUNA PARTY-LIST REPRESENTATIVE TEODORO A. CASIÑO, ANAKPAWIS PARTY-LIST REPRESENTATIVE JOEL B. MAGLUNSOD, PAGKAKAISA NG MGA SAMAHAN NG TSUPER AT OPERATOR NATIONWIDE (PISTON), REPRESENTED BY ITS SECRETARY GENERAL GEORGE F. SAN MATEO, PETITIONERS,

AUTOMOBILE ASSOCIATION OF THE PHILIPPINES, GLICERIO M. MANZANO, JR., RAUL M. CONSUNJI, AND LYN C. BRONTE, PETITIONERS-IN-INTERVENTION, VS. LEANDRO R. MENDOZA SECRETARY OF DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; ARTURO C. LOMIBAO, CHIEF OF THE LAND TRANSPORTATION OFFICE, AND STRADCOM CORPORATION, RESPONDENTS.

FEDERATION OF JEEPNEY OPERATORS AND DRIVERS ASSOCIATION OF THE PHILIPPINES (FEJODAP) REPRESENTED BY ZENAIDA "MARANAN" DE CASTRO, ALLIANCE OF TRANSPORT OPERATORS AND DRIVERS ASSOCIATIONS OF THE PHILIPPINES (ALTODAP) REPRESENTED BY MELENCIO "BOY" VARGAS, LAND TRANSPORTATION ORGANIZATION OF THE PHILIPPINES (LTOP) REPRESENTED BY ORLANDO MARQUEZ, NTUTRANSPORTER REPRESENTED BY ALEJO SAYASA, PASANG-MASDA NATIONWIDE, INC., REPRESENTED BY ROBERTO "OBET" MARTIN, ALLIANCE OF CONCERNED TRANSPORT ORGANIZATIONS (ACTO) REPRESENTED BY EFREN DE LUNA, OPPOSITORS-INTERVENORS,

D E C I S I O N

SERENO, C.J.:

This is a Petition for Certiorari and Prohibition under Rule 65 with application for temporary restraining order and/or preliminary injunction filed on 16 December 2009 by four party-list representatives and taxpayers (with petitioners Ocampo and Maza also suing as motor vehicle owners) and the Pagkakaisa ng mga Samahan ng Tsuper at Operator Nationwide (PISTON). The Petition seeks to annul and set aside the Radio Frequency Identification (RFID) Project as implemented by Department of Transportation and Communications (DOTC) Circular No. 2009-06, Land Transportation Office (LTO) Memorandum Circular No. ACL-2009-1199, as well as the pertinent Memorandum of Agreement (RFID MOA) dated 16 June 2009 entered into between DOTC, LTO and Stradcom Corporation (Stradcom).

STATEMENT OF THE FACTS AND OF THE CASE

Background Facts

On 15 December 1997, DOTC/LTO awarded to Stradcom a contract for the construction and operation of an information technology structure called the LTO IT Project Build-Own-Operate Agreement (BOO Agreement), making Stradcom the exclusive information technology provider of DOTC/LTO.

The LTO IT Project is a long-term strategic plan to modernize the land transportation systems. It covers the development of a System Integrated Information Technology Solution Infrastructure, which will interconnect LTO's district offices nationwide, enable online transaction processing and integrate its mission critical business processes.^[1]

On 26 September 2007, Stradcom presented to the LTO the Radio Frequency Identification (RFID) Project as an enhancement to the current motor vehicle registration system.^[2]

Basically, RFID technology is an automatic identification technology whereby digital data encoded in an RFID tag or "smart label" are captured by a reader using radio waves. Put simply, RFID is similar to bar code technology, but uses radio waves to capture data from tags, rather than optically scanning the bar codes on a label.

In RFID technology, information is sent to and read from RFID tags by a reader using radio waves. In passive systems, an RFID Reader transmits an energy field that "wakes up" the tag and provides the power for the tag to respond to the reader.^[3] Data collected from tags are then passed through communication interfaces (cable or wireless) to host computer systems in the same manner that data scanned from bar code labels are captured and passed to computer systems for interpretation, storage, and action.

Generally, RFID systems comprise three main components: (1) the RFID Tag, or transponder, which is located on the object to be identified and is the data carrier in the RFID system; (2) the RFID Reader or transceiver, which may be able to both read data from and write data to a transponder; and (3) the data processing subsystem which utilizes the data obtained from the transceiver in some useful manner.^[4]

On 6 May 2009, the DOTC issued Circular No. 2009-06^[5] entitled Rules and Regulations on the Implementation of the Radio Frequency Identification Tag for All Motor Vehicles Required to be Registered under the Land Transportation and Traffic Code, as Amended (DOTC RFID Rules). The DOTC RFID Rules state that the RFID Project covers the "enhancement of the LTO IT Project's systems, particularly its Motor Vehicle Registration System and Law Enforcement and Traffic Adjudication System," as well as the integration of RFID technology into the Private Emission Testing Center (PETC) system. These rules required all motor vehicles to have an RFID tag "as a prerequisite to registration or reregistration."^[6] It also provided that after 1 August 2009, no motor vehicle shall be permitted registration without first having an RFID tag, for which a fee of P350 shall be collected. In case of damage to or destruction of the RFID tag, a new one shall be attached upon payment of the

same fee. RFID readers shall be deployed to LTO District and Extension Offices, PETCs, and motor vehicle inspection centers.

On 16 June 2009, the RFID Memorandum of Agreement (RFID MOA)^[7] was entered into between DOTC/LTO and Stradcom. The RFID MOA provided that fees due to Stradcom shall be collected and deposited by the LTO in a government depository bank account designated by and in the name of Stradcom.^[8] Of the total amount of P350 to be collected for each RFID tag, the base amount exclusive of VAT was P312.50.

This P312.50^[9] was broken down as follows: P20.43 shall be given to DOTC/LTO,^[10] P259.14 shall be due to Stradcom,^[11] and P32.73 for each RFID Tag payment shall go to the IT Training Fund to assist the DOTC/LTO in improving its service to the public; and this fund "shall be deposited in a bank account under the sole control" of Stradcom.^[12]

On 7 August 2009, the LTO issued Memorandum Circular No. ACL-2009-1199,^[13] entitled "Implementing Rules and Regulations for the Radio Frequency Identification Tag for all Motor Vehicles Required to be registered Under the Land Transportation and Traffic Code, as Amended" (LTO RFID IRR). The LTO RFID IRR provided that the commencement date of RFID tagging shall be 1 October 2009. It also provided that the RFID Tag, which has a shelf life of up to 10 years, is composed of two portions: (1) Write Once, which would contain the Unique ID (UID) number only and could not be changed during the life of the RFID tag; and (2) Write Many, which may save certain information that would be made available to authorized personnel with the use of the RFID Reader.^[14]

The information which may be saved in the RFID Tag includes the following: (1) motor vehicle file number, (2) engine number, (3) chassis number, (4) plate number, (5) motor vehicle type, (6) color, (7) make, (8) series, (9) year model, (10) body type, (11) motor vehicle classification, (12) franchise, (13) route, (14) owner's name, (15) last registration date, (16) alarms (settled and unsettled), and (17) other data deemed necessary.^[15]

In a letter dated 7 August 2009,^[16] entitled "Undertaking for the RFID Project" and addressed to the LTO, Stradcom additionally undertook to (1) provide a performance bond of 1% of the RFID fee^[17] for every day of delay in the RFID tagging of a motor vehicle resulting from the unavailability of stock or inventory of the RFID Tag; (2) submit to the LTO a regular month-end inventory report of RFID Tags and Readers; (3) continuously maintain and/or source at least two suppliers of RFID tags and readers; and (4) mutually agree with DOTC/LTO to a just revenue share that may be due to the government in the event the database of the RFID system and/or the LTO IT project is used by third parties in consideration of a fee.

Because of various stakeholders' concerns and requests, on 30 September 2009, the LTO issued Memorandum Circular No. ACL-2009-1220 deferring the mandatory implementation of the RFID Project to 4 January 2010.

The Present Petition

On 16 December 2009, the present Petition was filed with this Court on the following grounds:

I.

THE DOTC/LTO IN IMPLEMENTING THE RFID PROJECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND VIOLATED REPUBLIC ACT 9184 AND REPUBLIC ACT NO. 6957.

II.

THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME WERE ISSUED IN USURPATION OF THE LEGISLATIVE POWER OF CONGRESS DUE TO THE ABSENCE OF A LAW PROVIDING FOR THE INSTALLATION OF RADIO FREQUENCY IDENTIFICATION TAG ON ALL MOTOR VEHICLES AS A PRE-REQUISITE FOR THE REGISTRATION OR RE-REGISTRATION THEREOF.

III.

THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME FAIL TO PRESENT COMPELLING INTEREST OR INTERESTS AND ARE ABSENT OF SUFFICIENT SAFEGUARDS AND WELL-DEFINED STANDARDS TO PREVENT IMPERMISSIBLE INTRUSIONS ON THE RIGHT TO PRIVACY.

Essentially, petitioners claim that, *first*, in implementing the RFID Project, the DOTC/LTO committed grave abuse of discretion amounting to lack or excess of jurisdiction and violated Republic Act No. (R.A.) 9184, or the Government Procurement Reform Act; and R.A. 6954, as amended by R.A. 7718, or the Build Operate Transfer (BOT) Law. The RFID Project was subject to competitive public bidding, which it failed to undergo. Neither did it undergo any of the processes required by the Government Procurement Reform Act for alternative methods of procurement.

The RFID Project is distinct from the existing BOO Agreement between DOTC/LTO and Stradcom. Hence, DOTC/LTO cannot justify the implementation of the RFID Project on the basis thereof. The RFID Project is not part of the BOO Agreement; otherwise, the Project would have already been included in the negotiation concluded in 1998 between LTO and Stradcom. The RFID Project also entailed new or additional costs that needed the approval of the National Economic and Development Authority (NEDA), as required under NEDA Circular No. 01-2007 and as reiterated in NEDA Circular No. 01-2008.^[18]

Second, the assailed executive issuances are unconstitutional for having been issued in usurpation of the legislative power of Congress. The circulars cite R.A. 4136 or the Land Transportation and Traffic Code (LTTTC) as the source of their authority. Section 4 of the LTTTC gives the Commissioner the power "to issue rules and regulations not in conflict with the provisions of this Act, prescribing the procedure for xxx the registration and re-registration of motor vehicles xxx."

However, the circulars added a registration and re-registration requirement which is not present in the LTTC. Thus, the imposition of a mandatory installation of the RFID tag as a pre-requisite for registration is beyond the authority vested by the LTTC to the DOTC and the LTO.

Third, the assailed executive issuances are unconstitutional, as they neither present compelling interest nor contain sufficient safeguards and well-defined standards to prevent impermissible intrusions on the right to privacy. There is a potential for the misuse of the data contained in the RFID tag, especially because DOTC/LTO or Stradcom may open the use of the database to third persons in consideration of a fee.

Petitioners pray that an order be issued nullifying the RFID Project; declaring the DOTC RFID Rules, LTO RFID IRR and the RFID MOA as null and void; and prohibiting and enjoining public respondents from the implementation of the RFID Project.

Petitioners also sought the issuance of a TRO and/or a Preliminary

Injunction to restrain respondents from implementing the RFID Project.

On 8 January 2010, Stradcom filed a Motion for Leave to File Opposition to Petitioners' Application for Temporary Restraining Order. In its Opposition, it alleged that it was the BOT Law, and not the Government Procurement Reform Act, that would apply to the RFID Project. Bidding was not required, because it was merely an enhancement or an increase in scope of the existing LTO project, the BOO Agreement. Only a "change order" was needed to implement it, together with an "impact study" investigating the price, timetable, statement of work, specifications and relevant obligations under the original contract. This is provided for under the Information Technology and Electronic Commerce Council (ITECC) Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing under R.A. 6957, as amended by R.A. 7718 (ITECC Guidelines). The Change Request Form for the RFID Project was submitted to the Joint Change Control Board (JCCB) and Joint Finance Committee of the LTO, which recommended its approval.^[19]

Stradcom alleges that NEDA Circular No. 01-2008 applies only to fees and charges imposed by government agencies to recover the cost of services they have rendered. The said NEDA circular does not apply, since the RFID services will be provided, not by government, but by Stradcom.

Stradcom argues that there is limited information to be stored in the RFID Project, even less than the proposed ID system in *Kilusang Mayo Uno v. The Director General*,^[20] which National ID System had been upheld by this Court. The RFID system will contain only information that is already publicly available; and the only difference from the National ID System would be that, with the use of an RFID Reader, the authorized user does not have to physically go to the LTO to request the said information. The RFID reader can only retrieve data from a tagged vehicle within a 10-meter radius. The limited scope and application of the RFID Project is consistent with the LTO's continuing authority under the LTTC to examine and inspect motor vehicles in determining compliance with registration laws. The Project also serves a sufficiently compelling state interest by contributing to the overall