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[G.R. No. 157584, April 02, 2009]

CONGRESSMAN ENRIQUE T. GARCIA OF THE 2ND DISTRICT OF BATAAN, PETITIONER, VS. THE EXECUTIVE SECRETARY, THE SECRETARY OF THE DEPARTMENT OF ENERGY, CALTEX PHILIPPINES, INC., PETRON CORPORATION, AND PILIPINAS SHELL CORPORATION, RESPONDENTS.

D E C I S I O N

BRION, J.:

For the second time, petitioner Enrique T. Garcia, Jr. (*petitioner Garcia*) asks this Court to examine the constitutionality of Section 19 of Republic Act No. 8479 (*R.A. No. 8479*), otherwise known as the Oil Deregulation Law of 1998) through this petition for *certiorari*.[1] He raises once again before us the propriety of implementing full deregulation by removing the system of price controls in the local downstream oil industry - a matter that we have ruled upon in the past.

THE FACTS

After years of imposing significant controls over the downstream oil industry in the Philippines, the government decided in March 1996 to pursue a policy of deregulation by enacting Republic Act No. 8180 (*R.A. No. 8180*) or the "Downstream Oil Industry Deregulation Act of 1996."

R.A. No. 8180, however, met strong opposition, and rightly so, as this Court concluded in its November 5, 1997 decision in *Tatad v. Secretary of Department of Energy*.[2] We struck down the law as invalid because the three key provisions intended to promote free competition were shown to achieve the opposite result; contrary to its intent, R.A. No. 8180's provisions on tariff differential, inventory requirements, and predatory pricing inhibited fair competition, encouraged monopolistic power, and interfered with the free interaction of market forces. We declared:

> R.A. No. 8180 needs provisions to vouchsafe free and fair competition. The need for these vouchsafing provisions cannot be overstated. **Before deregulation**, PETRON, SHELL and CALTEX had no real competitors but did not have a free run of the market because government controls both the pricing and non-pricing aspects of the oil industry. **After deregulation**, PETRON, SHELL and CALTEX remain unthreatened by real competition yet are no longer subject to control by government with respect to their pricing and non-pricing decisions. The aftermath of R.A. No. 8180 is a deregulated market where competition can be corrupted and where market forces can be manipulated by oligopolies.[3]

Notwithstanding the existence of a separability clause among its provisions, we struck down R.A. No. 8180 in its entirety because its offensive provisions permeated the whole law and were the principal tools to carry deregulation into effect.

Congress responded to our Decision in *Tatad* by enacting on February 10, 1998 a new oil deregulation law, R.A. No. 8479. This time, Congress excluded the offensive provisions found in the invalidated law. Nonetheless, petitioner Garcia again sought to declare the new oil deregulation law unconstitutional on the ground that it violated Article XII, Section 19 of the Constitution.[4] He specifically objected to Section 19 of R.A. No. 8479 which, in essence, prescribed the period for removal of price control on gasoline and other finished petroleum products and set the time for the full deregulation of the local downstream oil industry. The assailed provision reads:

> **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.
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> Upon the implementation of full deregulation as provided herein, the Transition Phase is deemed terminated and the following laws are repealed:
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> a) Republic Act No. 6173, as amended;
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> b) Section 5 of Executive Order No. 172, as amended;
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> c) Letter of Instruction No. 1431, dated October 15, 1984;
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> d) Letter of Instruction No. 1441, dated November 20, 1984, as amended;
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> e) Letter of Instruction No. 1460, dated May 9, 1985;
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> f) Presidential Decree No. 1889; and
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> g) Presidential Decree No. 1956, as amended by Executive Order No. 137:
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> *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 Garcia contended that implementing full deregulation and removing price control at a time when the market is still dominated and controlled by an oligopoly[5] would be contrary to public interest, as it would only provide an opportunity for the Big 3 to engage in price-fixing and overpricing. He averred that Section 19 of R.A. No. 8479 is "glaringly pro-oligopoly, anti-competition, and anti-people," and thus asked the Court to declare the provision unconstitutional.

On December 17, 1999, in *Garcia v. Corona (1999 Garcia case)*,[6] we denied petitioner Garcia's plea for nullity. We declined to rule on the constitutionality of Section 19 of R.A. No. 8479 as we found the question replete with policy considerations; in the words of Justice Ynares-Santiago, the *ponente* of the *1999 Garcia case*:

> 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 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."
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> **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.**
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> xxx xxx xxx
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> Reduced to its basic arguments, it can be seen that the challenge in this petition is not against the legality of deregulation. Petitioner does not expressly challenge deregulation. **The issue, quite simply, is the timeliness or the wisdom of the date when full deregulation should be effective.**
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> **In this regard, what constitutes reasonable time is not for judicial determination.** Reasonable time involves the appraisal of a great variety of relevant conditions, political, social and economic. They are not within the appropriate range of evidence in a court of justice. It would be an extravagant extension of judicial authority to assert judicial notice as the basis for the determination. [Emphasis supplied.]
>
> Undaunted, petitioner Garcia is again before us in the present petition for *certiorari* seeking a categorical declaration from this Court of the unconstitutionality of Section 19 of R.A. No. 8479.

THE PETITION

Petitioner Garcia does not deny that the present petition for *certiorari* raises the same issue of the constitutionality of Section 19 of R.A. No. 8479, which was already the subject of the *1999 Garcia case*. He disagrees, however, with the allegation that the prior rulings of the Court in the two oil deregulation cases[7] amount to *res judicata* that would effectively bar the resolution of the present petition. He reasons that *res judicata* will not apply, as the earlier cases did not

completely resolve the controversy and were not decided on the merits. Moreover, he maintains that the present case involves a matter of overarching and overriding importance to the national economy and to the public and cannot be sacrificed for technicalities like *res judicata.*[8]

To further support the present petition, petitioner Garcia invokes the following additional grounds to nullify Section 19 of R.A. No. 8479:

1. Subsequent events after the lifting of price control in 1997 have confirmed the continued existence of the Big 3 oligopoly and its overpricing of finished petroleum products;
2. The unabated overpricing of finished petroleum products by the Big 3 oligopoly is gravely and undeniably detrimental to the public interest;
3. No longer may the bare and blatant constitutionality of the lifting of price control be glossed over through the expediency of legislative wisdom or judgment call in the face of the Big 3 oligopoly's characteristic, definitive, and continued overpricing;
4. To avoid declaring the lifting of price control on finished petroleum products as unconstitutional is to consign to the dead letter dustbin the solemn and explicit constitutional command for the regulation of monopolies/oligopolies.[9]

THE COURT'S RULING

We resolve to dismiss the petition.

In asking the Court to declare Section 19 of R.A. No. 8479 as unconstitutional for contravening Section 19, Article XII of the Constitution, petitioner Garcia invokes the exercise by this Court of its power of judicial review, which power is expressly recognized under Section 4(2), Article VIII of the Constitution.[10] The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution.[11] Through such power, the judiciary enforces and upholds the supremacy of the Constitution.[12] For a court to exercise this power, certain requirements must first be met, namely:

> (1) an actual case or controversy calling for the exercise of judicial power;
> (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
> (3) the question of constitutionality must be raised at the earliest possible opportunity; and
> (4) the issue of constitutionality must be the very *lis mota* of the case.[13]

Actual Case Controversy Susceptible of Judicial Determination

The petition fails to satisfy the very first of these requirements - the existence of an actual case or controversy calling for the exercise of judicial power. An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims *susceptible of judicial resolution*; ***the case must not be*** moot or academic or ***based on extra-legal or other similar considerations not cognizable by a court of justice.*** Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of

review; more importantly, the issue involved must be susceptible of judicial determination. Excluded from these are questions of policy or wisdom, otherwise referred to as political questions:

> As *Tañada v. Cuenco* puts it, political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full discretionary authority has been delegated to the legislative or executive branch of government*." Thus, ***if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question***. In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or ***a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;*** or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."[14] [Emphasis supplied.]

Petitioner Garcia's issues fit snugly into the political question mold, as he insists that by adopting a policy of full deregulation through the removal of price controls at a time when an oligopoly still exists, Section 19 of R.A. No. 8479 contravenes the Constitutional directive to regulate or prohibit monopolies[15] under Article XII, Section 19 of the Constitution. This Section states:

> 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.

Read correctly, this constitutional provision does not declare an outright prohibition of monopolies. It simply allows the State to act "*when public interest so requires*"; even then, no outright prohibition is mandated, as the State may choose to regulate rather than to prohibit. Two elements must concur before a monopoly may be regulated or prohibited:

1. There in fact exists a monopoly or an oligopoly, and
2. Public interest requires its regulation or prohibition.

Whether a monopoly exists is a question of fact. On the other hand, the questions of (1) what public interest requires and (2) what the State reaction shall be essentially require the exercise of discretion on the part of the State.

Stripped to its core, what petitioner Garcia raises as an issue is the propriety of immediately and fully deregulating the oil industry. Such determination essentially dwells on the soundness or wisdom of the timing and manner of the deregulation Congress wants to implement through R.A. No. 8497. Quite clearly, the issue is not for us to resolve; we cannot rule on when and to what extent deregulation should take place without passing upon the wisdom of the policy of deregulation that