

KILUSANG MAYO UNO LABOR CENTER, PETITIONER, VS. HON. JESUS B. GARCIA, JR., THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, AND THE PROVINCIAL BUSES OPERATORS ASSOCIATI...*G.R. No. 115381. December 23, 1994*

Ponente: KAPUNAN, J.

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Public utilities are privately owned and operated businesses whose services are essential to the general public. They are enterprises which specially cater to the needs of the public and conduce to their comfort and convenience. As such, public utility services are impressed with public interest and concern. The same is true with respect to the business of common carrier which holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation when private properties are affected with public interest, hence, they cease to be *juris privati* only. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect grants to the public an interest in that use, and must submit to the control by the public for the common good, to the extent of the interest he has thus created.[1]

An abdication of the licensing and regulatory government agencies of their functions as the instant petition seeks to show, is indeed lamentable. Not only is it an unsound administrative policy but it is inimical to public trust and public interest as well.

The instant petition for certiorari assails the constitutionality and validity of certain memoranda, circulars and/or orders of the Department of Transportation and Communications (DOTC) and the Land Transportation Franchising and Regulatory Board (LTFRB)[2] which, among others, (a) authorize provincial bus and jeepney operators to increase or decrease the prescribed transportation fares without application therefor with the LTFRB and without hearing and approval thereof by said agency in violation of Sec. 16(c) of Commonwealth Act No. 146, as amended, otherwise known as the Public Service Act, and in derogation of LTFRB's duty to fix and determine just and reasonable fares by delegating that function to bus operators, and (b) establish a presumption of public need in favor of applicants for certificates of public convenience (CPC) and place on the oppositor the burden of proving that there is no need for the proposed service, in patent violation not only of Sec. 16(c) of CA 146, as amended, but also of Sec. 20(a) of the same Act mandating that fares should be "just and reasonable." It is, likewise, violative of the Rules of Court which places upon each party the burden to prove his own affirmative allegations.[3] The offending provisions contained in the questioned issuances pointed out by petitioner, have resulted in the introduction into our highways and thoroughfares thousands of old and smoke-belching buses, many of which are right-hand driven, and have exposed our consumers to the burden of spiraling costs of public transportation without hearing and due process.

The following memoranda, circulars and/or orders are sought to be nullified by the instant petition, viz: (a) DOTC Memorandum Order No. 90-395, dated June 26, 1990 relative to the implementation of a fare range scheme for

provincial bus services in the country; (b) DOTC Department Order No. 92-587, dated March 30, 1992, defining the policy framework on the regulation of transport services; (c) DOTC Memorandum dated October 8, 1992, laying down rules and procedures to implement Department Order No. 92-587; (d) LTFRB Memorandum Circular No. 92-009, providing implementing guidelines on the DOTC Department Order No. 92-587; and (e) LTFRB Order dated March 24, 1994 in Case No. 94-3112.

The relevant antecedents are as follows:

On June 26, 1990, then Secretary of DOTC, Oscar M. Orbos, issued Memorandum Circular No. 90-395 to then LTFRB Chairman, Remedios A.S. Fernando allowing provincial bus operators to charge passengers rates within a range of 15% above and 15% below the LTFRB official rate for a period of one (1) year. The text of the memorandum order reads in full:

One of the policy reforms and measures that is in line with the thrusts and the priorities set out in the Medium-Term Philippine Development Plan (MTPDP) 1987--1992) is the liberalization of regulations in the transport sector. Along this line, the Government intends to move away gradually from regulatory policies and make progress towards greater reliance on free market forces.

Based on several surveys and observations, bus companies are already charging passenger rates above and below the official fare declared by LTFRB on many provincial routes. It is in this context that some form of liberalization on public transport fares is to be tested on a pilot basis.

In view thereof, the LTFRB is hereby directed to immediately publicize a fare range scheme for all provincial bus routes in country (except those operating within Metro Manila). Transport Operators shall be allowed to charge passengers within a range of fifteen percent (15%) above and fifteen percent (15%) below the LTFRB official rate for a period of one year.

Guidelines and procedures for the said scheme shall be prepared by LTFRB in coordination with the DOTC Planning Service.

The implementation of the said fare range scheme shall start on 6 August 1990.

For compliance. (Underscoring ours).

Finding the implementation of the fare range scheme "not legally feasible," Remedios A.S. Fernando submitted the following memorandum to Oscar M. Orbos on July 24, 1990, to wit:

With reference to DOTC Memorandum Order No. 90-395 dated 26 June 1990 which the LTFRB received on 19 July 1990, directing the Board 'to immediately publicize a fare range scheme for all provincial bus routes in the country (except those operating within Metro Manila)' that will allow operators 'to charge passengers within a range of fifteen percent (15%) above and fifteen percent (15%) below the LTFRB official rate for a period of one year' the undersigned is respectfully adverting the Secretary's attention to the following for his consideration:

1. Section 16 (c) of the Public Service Act prescribes the following for the fixing and determination of rates - (a) the rates to be approved should be proposed by public service operators; (b) there should be a publication and notice to concerned or affected parties in the territory affected; (c) a public hearing should be held for the fixing of the rates; hence, implementation of the proposed fare range scheme on August 6 without complying with the requirements of the Public Service Act may not be legally feasible.
2. To allow bus operators in the country to charge fares fifteen (15%) above the present LTFRB fares in the wake of the devastation, death and suffering caused by the July 16 earthquake will not be socially warranted and will be politically unsound; most likely public criticism against the DOTC and the LTFRB be triggered by the untimely

motu proprio implementation of the proposal by the mere expedient of publicizing the fare range scheme without calling a public hearing, which scheme many as early as during the Secretary's predecessor know through newspaper reports and columnists' comments to be Asian Development Bank and World Bank inspired.

3. More than inducing a reduction in bus fares by fifteen percent (15%) the implementation of the proposal will instead trigger an upward adjustment in bus fares by fifteen percent (15%) at a time when hundreds of thousands of people in Central and Northern Luzon, particularly in Central Pangasinan, La Union, Baguio City, Nueva Ecija, and the Cagayan Valley are suffering from the devastation and havoc caused by the recent earthquake.

4. In lieu of the said proposal, the DOTC with its agencies involved in public transportation can consider measures and reforms in the industry that will be socially uplifting, especially for the people in the areas devastated by the recent earthquake.

In view of the foregoing considerations, the undersigned respectfully suggests that the implementation of the proposed fare range scheme this year be further studied and evaluated.

On December 5, 1990, private respondent Provincial Bus Operators Association of the Philippines, Inc. (PBOAP) filed an application for fare rate increase. An across-the-board increase of eight and a half centavos (P0.085) per kilometer for all types of provincial buses with a minimum-maximum fare range of fifteen (15%) percent over and below the proposed basic per kilometer fare rate, with the said minimum-maximum fare range applying only to ordinary, first class and premium class buses and a fifty-centavo (P0.50) minimum per kilometer fare for aircon buses, was sought.

On December 6, 1990, private respondent PBOAP reduced its applied proposed fare to an across-the-board increase of six and a half (P0.065) centavos per kilometer for ordinary buses. The decrease was due to the drop in the expected price of diesel.

The application was opposed by the Philippine Consumers Foundation, Inc. and Perla C. Bautista alleging that the proposed rates were exorbitant and unreasonable and that the application contained no allegation on the rate of return of the proposed increase in rates.

On December 14, 1990, public respondent LTFRB rendered a decision granting the fare rate increase in accordance with the following schedule of fares on a straight computation method, viz:

AUTHORIZED FARES

LUZON

MIN. OF 5 KMS. SUCCEEDING KM.

REGULAR P 1.50 P 0.37

STUDENT P 1.15 P 0.28

VISAYAS/MINDANAO

REGULAR P 1.60 P 0.375

STUDENT P 1.20 P 0.285

FIRST CLASS (PER KM.)

LUZON P 0.385

VISAYAS/

MINDANAO P 0.395

PREMIERE CLASS (PER KM.)

LUZON P 0.395

VISAYAS/

MINDANAO P 0.405

AIRCON (PER KM.) P 0.415.[4]

On March 30, 1992, then Secretary of the Department of Transportation and Communications Pete Nicomedes Prado issued Department Order No. 92-587 defining the policy framework on the regulation of transport services. The full text of the said order is reproduced below in view of the importance of the provisions contained therein:

WHEREAS, Executive Order No. 125 as amended, designates the Department of Transportation and Communications (DOTC) as the primary policy, planning, regulating and implementing agency on transportation;

WHEREAS, to achieve the objective of a viable, efficient, and dependable transportation system, the transportation regulatory agencies under or attached to the DOTC have to harmonize their decisions and adopt a common philosophy and direction;

WHEREAS, the government proposes to build on the successful liberalization measures pursued over the last five years and bring the transport sector nearer to a balanced longer term regulatory framework;

NOW THEREFORE, pursuant to the powers granted by laws to the DOTC, the following policies and principles in the economic regulation of land, air, and water transportation services are hereby adopted:

1. Entry into and exit out of the industry. Following the Constitutional dictum against monopoly, no franchise holder shall be permitted to maintain a monopoly on any route. A minimum of two franchise holders shall be permitted to operate on any route.

The requirements to grant a certificate to operate, or certificate of public convenience, shall be: proof of Filipino citizenship, financial capability, public need, and sufficient insurance cover to protect the riding public.

In determining public need, the presumption of need for a service shall be deemed in favor of the applicant. The burden of proving that there is no need for a proposed service shall be with the oppositor(s).

In the interest of providing efficient public transport services, the use of the 'prior operator' and the 'priority of filing' rules shall be discontinued. The route measured capacity test or other similar tests of demand for vehicle/vessel fleet on any route shall be used only as a guide in weighing the merits of each franchise application and not as a limit to the services offered.

Where there are limitations in facilities, such as congested road space in urban areas, or at airports and ports, the use of demand management measures in conformity with market principles may be considered.

The right of an operator to leave the industry is recognized as a business decision, subject only to the filing of appropriate notice and following a phase-out period, to inform the public and to minimize disruption of services.

2. Rate and Fare Setting. Freight rates shall be freed gradually from government controls. Passenger fares shall also be deregulated, except for the lowest class of passenger service (normally third class passenger transport) for which the government will fix indicative or reference fares. Operators of particular services may fix their

own fares within a range 15% above and below the indicative or reference rate.

Where there is lack of effective competition for services, or on specific routes, or for the transport of particular commodities, maximum mandatory freight rates or passenger fares shall be set temporarily by the government pending actions to increase the level of competition.

For unserved or single operator routes, the government shall contract such services in the most advantageous terms to the public and the government, following public bids for the services. The advisability of bidding out the services or using other kinds of incentives on such routes shall be studied by the government.

3. Special Incentives and Financing for Fleet Acquisition. As a matter of policy, the government shall not engage in special financing and incentive programs, including direct subsidies for fleet acquisition and expansion. Only when the market situation warrants government intervention shall programs of this type be considered. Existing programs shall be phased out gradually.

The Land Transportation Franchising and Regulatory Board, the Civil Aeronautics Board, the Maritime Industry Authority are hereby directed to submit to the Office of the Secretary, within forty-five (45) days of this Order, the detailed rules and procedures for the Implementation of the policies herein set forth. In the formulation of such rules, the concerned agencies shall be guided by the most recent studies on the subjects, such as the Provincial Road Passenger Transport Study, the Civil Aviation Master Plan, the Presidential Task Force on the Inter-island Shipping Industry, and the Inter-island Liner Shipping Rate Rationalization Study.

For the compliance of all concerned. (Underscoring ours).

On October 8, 1992, public respondent Secretary of the Department of Transportation and Communications Jesus B. Garcia, Jr. issued a memorandum to the Acting Chairman of the LTFRB suggesting swift action on the adoption of rules and procedures to implement above-quoted Department Order No. 92-587 that laid down deregulation and other liberalization policies for the transport sector. Attached to the said memorandum was a revised draft of the required rules and procedures covering (i) Entry Into and Exit Out of the Industry and (ii) Rate and Fare Setting, with comments and suggestions from the World Bank incorporated therein. Likewise, resplendent from the said memorandum is the statement of the DOTC Secretary that the adoption of the rules and procedures is a pre-requisite to the approval of the Economic Integration Loan from the World Bank.[5]

On February 17, 1993, the LTFRB issued Memorandum Circular No. 92-009 promulgating the guidelines for the implementation of DOTC Department Order No. 92-587. The Circular provides, among others, the following challenged portions:

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IV. Policy Guidelines on the Issuance of Certificate of Public Convenience.

The issuance of a Certificate of Public Convenience is determined by public need. The presumption of public need for a service shall be deemed in favor of the applicant, while burden of proving that there is no need for the proposed service shall be the oppositor's.

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V. Rate and Fare Setting

The control in pricing shall be liberalized to introduce price competition complementary with the quality of service, subject to prior notice and public hearing. Fares shall not be provisionally authorized without public hearing.

A. On the General Structure of Rates

1. The existing authorized fare range system of plus or minus 15 percent for provincial buses and jeepneys shall be widened to 20% and -25% limit in 1994 with the authorized fare to be replaced by an indicative or reference rate as the basis for the expanded fare range.
2. Fare systems for aircon buses are liberalized to cover first class and premier services.

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(Underscoring ours).

Sometime in March, 1994, private respondent PBOAP, availing itself of the deregulation policy of the DOTC allowing provincial bus operators to collect plus 20% and minus 25% of the prescribed fare without first having filed a petition for the purpose and without the benefit of a public hearing, announced a fare increase of twenty (20%) percent of the existing fares. Said increased fares were to be made effective on March 16, 1994.

On March 16, 1994, petitioner KMU filed a petition before the LTFRB opposing the upward adjustment of bus fares.

On March 24, 1994, the LTFRB issued one of the assailed orders dismissing the petition for lack of merit. The dispositive portion reads:

PREMISES CONSIDERED, this Board after considering the arguments of the parties, hereby DISMISSES FOR LACK OF MERIT the petition filed in the above-entitled case. This petition in this case was resolved with dispatch at the request of petitioner to enable it to immediately avail of the legal remedies or options it is entitled under existing laws.

SO ORDERED.[6]

Hence, the instant petition for certiorari with an urgent prayer for issuance of a temporary restraining order.

The Court, on June 20, 1994, issued a temporary restraining order enjoining, prohibiting and preventing respondents from implementing the bus fare rate increase as well as the questioned orders and memorandum circulars. This meant that provincial bus fares were rolled back to the levels duly authorized by the LTFRB prior to March 16, 1994. A moratorium was likewise enforced on the issuance of franchises for the operation of buses, jeepneys, and taxicabs.

Petitioner KMU anchors its claim on two (2) grounds. First, the authority given by respondent LTFRB to provincial bus operators to set a fare range of plus or minus fifteen (15%) percent, later increased to plus twenty (20%) and minus twenty-five (-25%) percent, over and above the existing authorized fare without having to file a petition for the purpose, is unconstitutional, invalid and illegal. Second, the establishment of a presumption of public need in favor of an applicant for a proposed transport service without having to prove public necessity, is illegal for being violative of the Public Service Act and the Rules of Court.

In its Comment, private respondent PBOAP, while not actually touching upon the issues raised by the petitioner, questions the wisdom and the manner by which the instant petition was filed. It asserts that the petitioner has no legal standing to sue or has no real interest in the case at bench and in obtaining the reliefs prayed for.

In their Comment filed by the Office of the Solicitor General, public respondents DOTC Secretary Jesus B. Garcia, Jr. and the LTFRB asseverate that the petitioner does not have the standing to maintain the instant suit. They further claim that it is within DOTC and LTFRB's authority to set a fare range scheme and establish a presumption of public need in applications for certificates of public convenience.

We find the instant petition impressed with merit.

At the outset, the threshold issue of locus standi must be struck. Petitioner KMU has the standing to sue.

The requirement of locus standi inheres from the definition of judicial power. Section 1 of Article VIII of the Constitution provides:

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Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.

In *Lamb v. Phipps*,^[7] we ruled that judicial power is the power to hear and decide causes pending between parties who have the right to sue in the courts of law and equity. Corollary to this provision is the principle of locus standi of a party litigant. One who is directly affected by, and whose interest is immediate and substantial in the controversy has the standing to sue. The rule therefore requires that a party must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant an invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers in his behalf.^[8]

In the case at bench, petitioner, whose members had suffered and continue to suffer grave and irreparable injury and damage from the implementation of the questioned memoranda, circulars and/or orders, has shown that it has a clear legal right that was violated and continues to be violated with the enforcement of the challenged memoranda, circulars and/or orders. KMU members, who avail of the use of buses, trains and jeepneys everyday, are directly affected by the burdensome cost of arbitrary increase in passenger fares. They are part of the millions of commuters who comprise the riding public. Certainly, their rights must be protected, not neglected nor ignored.

Assuming arguendo that petitioner is not possessed of the standing to sue, this court is ready to brush aside this barren procedural infirmity and recognize the legal standing of the petitioner in view of the transcendental importance of the issues raised. And this act of liberality is not without judicial precedent. As early as the Emergency Powers Cases, this Court had exercised its discretion and waived the requirement of proper party. In the recent case of *Kilosbayan, Inc., et al. v. Teofisto Guingona, Jr., et al.*,^[9] we ruled in the same lines and enumerated some of the cases where the same policy was adopted, viz:

xxx A party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised. In the landmark Emergency Powers Cases, [G.R. No. L-2044 (*Araneta v. Dinglasan*); G.R. No. L-2756 (*Araneta v. Angeles*); G.R. No. L-3054 (*Rodriguez v. Tesorero de Filipinas*); G.R. No. L-3055 (*Guerrero v. Commissioner of Customs*); and G.R. No. L-3056 (*Barredo v. Commission on Elections*), 84 Phil. 368 (1949)], this Court brushed aside this technicality because 'the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure. (*Avelino vs. Cuenco*, G.R. No. L-2621).' Insofar as taxpayers' suits are concerned, this Court had declared that it 'is not devoid of discretion as to whether or not it should be entertained,' (*Tan v. Macapagal*, 43 SCRA 677, 680 [1972]) or that it 'enjoys an open discretion to entertain the same or not.' [*Sanidad v. COMELEC*, 73 SCRA 333 (1976)].

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In line with the liberal policy of this Court on locus standi, ordinary taxpayers, members of Congress, and even association of planters, and non-profit civic organizations were allowed to initiate and prosecute actions before this Court to question the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities. Among such cases were those assailing the constitutionality of (a) R.A. No. 3836 insofar as it allows retirement gratuity and commutation of vacation and sick leave to Senators and Representatives and to elective officials of both Houses of Congress (*Philippine Constitution Association,*

Inc. v. Gimenez, 15 SCRA 479 [1965]); (b) Executive Order No. 284, issued by President Corazon C. Aquino on 25 July 1987, which allowed members of the cabinet, their undersecretaries, and assistant secretaries to hold other government offices or positions (Civil Liberties Union v. Executive Secretary, 194 SCRA 317 [1991]); (c) the automatic appropriation for debt service in the General Appropriations Act (Guingona v. Carague, 196 SCRA 221 [1991]); (d) R.A. No. 7056 on the holding of desynchronized elections (Osmena v. Commission on Elections, 199 SCRA 750 [1991]); (e) P.D. No. 1869 (the charter of the Philippine Amusement and Gaming Corporation) on the ground that it is contrary to morals, public policy, and order (Basco v. Philippine Gaming and Amusement Corp., 197 SCRA 52 [1991]); and (f) R.A. No. 6975, establishing the Philippine National Police. (Carpio v. Executive Secretary, 206 SCRA 290 [1992]).

Other cases where we have followed a liberal policy regarding locus standi include those attacking the validity or legality of (a) an order allowing the importation of rice in the light of the prohibition imposed by R.A. No. 3452 (Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, 13 SCRA 377 [1965]); (b) P.D. Nos. 991 and 1033 insofar as they proposed amendments to the Constitution and P.D. No. 1031 insofar as it directed the COMELEC to supervise, control, hold, and conduct the referendum-plebiscite on 16 October 1976 (Sanidad v. Commission on Elections, supra); (c) the bidding for the sale of the 3,179 square meters of land at Roppongi, Minato-ku, Tokyo, Japan (Laurel v. Garcia, 187 SCRA 797 [1990]); (d) the approval without hearing by the Board of Investments of the amended application of the Bataan Petrochemical Corporation to transfer the site of its plant from Bataan to Batangas and the validity of such transfer and the shift of feedstock from naphtha only to naphtha and/or liquefied petroleum gas (Garcia v. Board of Investments, 177 SCRA 374 [1989]; Garcia v. Board of Investments, 191 SCRA 288 [1990]); (e) the decisions, orders, rulings, and resolutions of the Executive Secretary, Secretary of Finance, Commissioner of Internal Revenue, Commissioner of Customs, and the Fiscal Incentives Review Board exempting the National Power Corporation from indirect tax and duties (Maceda v. Macaraig, 197 SCRA 771 [1991]); (f) the orders of the Energy Regulatory Board of 5 and 6 December 1990 on the ground that the hearings conducted on the second provisional increase in oil prices did not allow the petitioner substantial cross-examination; (Maceda v. Energy Regulatory Board, 199 SCRA 454 [1991]); (g) Executive Order No. 478 which levied a special duty of P0.95 per liter of imported oil products (Garcia v. Executive Secretary, 211 SCRA 219 [1992]); (h) resolutions of the Commission on Elections concerning the apportionment, by district, of the number of elective members of Sanggunians (De Guia vs. Commission on Elections, 208 SCRA 420 [1992]); and (i) memorandum orders issued by a Mayor affecting the Chief of Police of Pasay City (Pasay Law and Conscience Union, Inc. v. Cuneta, 101 SCRA 662 [1980]).

In the 1975 case of Aquino v. Commission on Elections (62 SCRA 275 [1975]), this Court, despite its unequivocal ruling that the petitioners therein had no personality to file the petition, resolved nevertheless to pass upon the issues raised because of the far-reaching implications of the petition. We did no less in De Guia v. COMELEC (Supra) where, although we declared that De Guia 'does not appear to have locus standi, a standing in law, a personal or substantial interest,' we brushed aside the procedural infirmity 'considering the importance of the issue involved, concerning as it does the political exercise of qualified voters affected by the apportionment, and petitioner alleging abuse of discretion and violation of the Constitution by respondent.'

Now on the merits of the case.

On the fare range scheme.

Section 16 (c) of the Public Service Act, as amended, reads:

SEC. 16. Proceedings of the Commission, upon notice and hearing. - The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

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(c) To fix and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as

commutation, mileage kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates. (Underscoring ours).

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Under the foregoing provision, the Legislature delegated to the defunct Public Service Commission the power of fixing the rates of public services. Respondent LTFRB, the existing regulatory body today, is likewise vested with the same under Executive Order No. 202 dated June 19, 1987. Section 5 (c) of the said executive order authorizes LTFRB "to determine, prescribe, approve and periodically review and adjust, reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles."

Such delegation of legislative power to an administrative agency is permitted in order to adapt to the increasing complexity of modern life. As subjects for governmental regulation multiply, so does the difficulty of administering the laws. Hence, specialization even in legislation has become necessary. Given the task of determining sensitive and delicate matters as route-fixing and rate-making for the transport sector, the responsible regulatory body is entrusted with the power of subordinate legislation. With this authority, an administrative body and in this case, the LTFRB, may implement broad policies laid down in a statute by "filling in" the details which the Legislature may neither have time or competence to provide. However, nowhere under the aforesaid provisions of law are the regulatory bodies, the PSC and LTFRB alike, authorized to delegate that power to a common carrier, a transport operator, or other public service.

In the case at bench, the authority given by the LTFRB to the provincial bus operators to set a fare range over and above the authorized existing fare, is illegal and invalid as it is tantamount to an undue delegation of legislative authority. *Potestas delegata non delegari potest*. What has been delegated cannot be delegated. This doctrine is based on the ethical principle that such a delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[10] A further delegation of such power would indeed constitute a negation of the duty in violation of the trust reposed in the delegate mandated to discharge it directly.[11] The policy of allowing the provincial bus operators to change and increase their fares at will would result not only to a chaotic situation but to an anarchic state of affairs. This would leave the riding public at the mercy of transport operators who may increase fares every hour, every day, every month or every year, whenever it pleases them or whenever they deem it "necessary" to do so. In *Panay Autobus Co. v. Philippine Railway Co.*,[12] where respondent Philippine Railway Co. was granted by the Public Service Commission the authority to change its freight rates at will, this Court categorically declared that:

In our opinion, the Public Service Commission was not authorized by law to delegate to the Philippine Railway Co. the power of altering its freight rates whenever it should find it necessary to do so in order to meet the competition of road trucks and autobuses, or to change its freight rates at will, or to regard its present rates as maximum rates, and to fix lower rates whenever in the opinion of the Philippine Railway Co. it would be to its advantage to do so.

The mere recital of the language of the application of the Philippine Railway Co. is enough to show that it is untenable. The Legislature has delegated to the Public Service Commission the power of fixing the rates of public services, but it has not authorized the Public Service Commission to delegate that power to a common carrier or other public service. The rates of public services like the Philippine Railway Co. have been approved

or fixed by the Public Service Commission, and any change in such rates must be authorized or approved by the Public Service Commission after they have been shown to be just and reasonable. The public service may, of course, propose new rates, as the Philippine Railway Co. did in case No. 31827, but it cannot lawfully make said new rates effective without the approval of the Public Service Commission, and the Public Service Commission itself cannot authorize a public service to enforce new rates without the prior approval of said rates by the commission. The commission must approve new rates when they are submitted to it, if the evidence shows them to be just and reasonable, otherwise it must disapprove them. Clearly, the commission cannot determine in advance whether or not the new rates of the Philippine Railway Co. will be just and reasonable, because it does not know what those rates will be.

In the present case the Philippine Railway Co. in effect asked for permission to change its freight rates at will. It may change them every day or every hour, whenever it deems it necessary to do so in order to meet competition or whenever in its opinion it would be to its advantage. Such a procedure would create a most unsatisfactory state of affairs and largely defeat the purposes of the public service law.[13] (Underscoring ours).

One veritable consequence of the deregulation of transport fares is a compounded fare. If transport operators will be authorized to impose and collect an additional amount equivalent to 20% over and above the authorized fare over a period of time, this will unduly prejudice a commuter who will be made to pay a fare that has been computed in a manner similar to those of compounded bank interest rates.

Picture this situation. On December 14, 1990, the LTFRB authorized provincial bus operators to collect a thirty-seven (P0.37) centavo per kilometer fare for ordinary buses. At the same time, they were allowed to impose and collect a fare range of plus or minus 15% over the authorized rate. Thus P0.37 centavo per kilometer authorized fare plus P0.05 centavos (which is 15% of P0.37 centavos) is equivalent to P0.42 centavos, the allowed rate in 1990. Supposing the LTFRB grants another five (P0.05) centavo increase per kilometer in 1994, then, the base or reference for computation would have to be P0.47 centavos (which is P0.42 + P0.05 centavos). If bus operators will exercise their authority to impose an additional 20% over and above the authorized fare, then the fare to be collected shall amount to P0.56 (that is, P0.47 authorized LTFRB rate plus 20% of P0.47 which is P0.29). In effect, commuters will be continuously subjected, not only to a double fare adjustment but to a compounding fare as well. On their part, transport operators shall enjoy a bigger chunk of the pie. Aside from fare increase applied for, they can still collect an additional amount by virtue of the authorized fare range. Mathematically, the situation translates into the following:

Year* LTFRB Fare Range Fare to be

Authorized collected

rate** per kilometer

1990 P0.37 15% (P0.05) P0.42

1994 P0.42 + 0.05 20% (P0.09) P0.56

= 0.47

1998 P0.56 + 0.05 20% (P0.12) P0.73

= 0.61

2002 P0.73 + 0.05 20% (P0.16) P0.94

= 0.78

Moreover, rate making or rate fixing is not an easy task. It is a delicate and sensitive government function that requires dexterity of judgment and sound discretion with the settled goal of arriving at a just and reasonable rate acceptable to both the public utility and the public. Several factors, in fact, have to be taken into consideration before a balance could be achieved. A rate should not be confiscatory as would place an operator in a situation where he will continue to operate at a loss. Hence, the rate should enable public utilities to generate revenues sufficient to cover operational costs and provide reasonable return on the investments. On the other hand, a rate which is too high becomes discriminatory. It is contrary to public interest. A rate, therefore, must be reasonable and fair and must be affordable to the end user who will utilize the services.

Given the complexity of the nature of the function of rate-fixing and its far-reaching effects on millions of commuters, government must not relinquish this important function in favor of those who would benefit and profit from the industry. Neither should the requisite notice and hearing be done away with. The people, represented by reputable oppositors, deserve to be given full opportunity to be heard in their opposition to any fare increase.

The present administrative procedure,[14] to our mind, already mirrors an orderly and satisfactory arrangement for all parties involved. To do away with such a procedure and allow just one party, an interested party at that, to determine what the rate should be, will undermine the right of the other parties to due process. The purpose of a hearing is precisely to determine what a just and reasonable rate is.[15] Discarding such procedural and constitutional right is certainly inimical to our fundamental law and to public interest.

On the presumption of public need.

A certificate of public convenience (CPC) is an authorization granted by the LTFRB for the operation of land transportation services for public use as required by law. Pursuant to Section 16 (a) of the Public Service Act, as amended, the following requirements must be met before a CPC may be granted, to wit: (i) the applicant must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, at least 60 per centum of its stock or paid-up capital must belong entirely to citizens of the Philippines; (ii) the applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation; and (iii) the applicant must prove that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner. It is understood that there must be proper notice and hearing before the PSC can exercise its power to issue a CPC.

While adopting in toto the foregoing requisites for the issuance of a CPC, LTFRB Memorandum Circular No. 92-009, Part IV, provides for yet incongruous and contradictory policy guideline on the issuance of a CPC. The guideline states:

The issuance of a Certificate of Public Convenience is determined by public need. The presumption of public need for a service shall be deemed in favor of the applicant, while the burden of proving that there is no need for the proposed service shall be the oppositor's. (Underscoring ours).

The above-quoted provision is entirely incompatible and inconsistent with Section 16(c)(iii) of the Public Service Act which requires that before a CPC will be issued, the applicant must prove by proper notice and hearing that the operation of the public service proposed will promote public interest in a proper and suitable manner. On the contrary, the policy guideline states that the presumption of public need for a public service shall be deemed in favor of the applicant. In case of conflict between a statute and an administrative order, the former must prevail.

By its terms, public convenience or necessity generally means something fitting or suited to the public need.[16] As one of the basic requirements for the grant of a CPC, public convenience and necessity exists when the

proposed facility or service meets a reasonable want of the public and supply a need which the existing facilities do not adequately supply. The existence or non-existence of public convenience and necessity is therefore a question of fact that must be established by evidence, real and/or testimonial; empirical data; statistics and such other means necessary, in a public hearing conducted for that purpose. The object and purpose of such procedure, among other things, is to look out for, and protect, the interests of both the public and the existing transport operators.

Verily, the power of a regulatory body to issue a CPC is founded on the condition that after full-dress hearing and investigation, it shall find, as a fact, that the proposed operation is for the convenience of the public.[17] Basic convenience is the primary consideration for which a CPC is issued, and that fact alone must be consistently borne in mind. Also, existing operators in subject routes must be given an opportunity to offer proof and oppose the application. Therefore, an applicant must, at all times, be required to prove his capacity and capability to furnish the service which he has undertaken to render.[18] And all this will be possible only if a public hearing were conducted for that purpose.

Otherwise stated, the establishment of public need in favor of an applicant reverses well-settled and institutionalized judicial, quasi-judicial and administrative procedures. It allows the party who initiates the proceedings to prove, by mere application, his affirmative allegations. Moreover, the offending provisions of the LTFRB memorandum circular in question would in effect amend the Rules of Court by adding another disputable presumption in the enumeration of 37 presumptions under Rule 131, Section 5 of the Rules of Court. Such usurpation of this Court's authority cannot be countenanced as only this Court is mandated by law to promulgate rules concerning pleading, practice and procedure.[19]

Deregulation, while it may be ideal in certain situations, may not be ideal at all in our country given the present circumstances. Advocacy of liberalized franchising and regulatory process is tantamount to an abdication by the government of its inherent right to exercise police power, that is, the right of government to regulate public utilities for protection of the public and the utilities themselves.

While we recognize the authority of the DOTC and the LTFRB to issue administrative orders to regulate the transport sector, we find that they committed grave abuse of discretion in issuing DOTC Department Order No. 92-587 defining the policy framework on the regulation of transport services and LTFRB Memorandum Circular No. 92-009 promulgating the implementing guidelines on DOTC Department Order No. 92-587, the said administrative issuances being amendatory and violative of the Public Service Act and the Rules of Court. Consequently, we rule that the twenty (20%) per centum fare increase imposed by respondent PBOAP on March 16, 1994 without the benefit of a petition and a public hearing is null and void and of no force and effect. No grave abuse of discretion however was committed in the issuance of DOTC Memorandum Order No. 90-395 and DOTC Memorandum dated October 8, 1992, the same being merely internal communications between administrative officers.

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED and the challenged administrative issuances and orders, namely: DOTC Department Order No. 92-587, LTFRB Memorandum Circular No. 92-009, and the order dated March 24, 1994 issued by respondent LTFRB are hereby DECLARED contrary to law and invalid insofar as they affect provisions therein (a) delegating to provincial bus and jeepney operators the authority to increase or decrease the duly prescribed transportation fares; and (b) creating a presumption of public need for a service in favor of the applicant for a certificate of public convenience and placing the burden of proving that there is no need for the proposed service to the oppositor.

The Temporary Restraining Order issued on June 20, 1994 is hereby MADE PERMANENT insofar as it enjoined

the bus fare rate increase granted under the provisions of the aforementioned administrative circulars, memoranda and/or orders declared invalid.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] *Pantranco v. Public Service Commission*, 70 Phil. 221.

[2] The 20th century ushered in the birth and growth of public utility regulation in the country. After the Americans introduced public utility regulation at the turn of the century, various regulatory bodies were created. They were the Coastwise Rate Commission under Act No. 520 passed by the Philippine Commission on November 17, 1902; the Board of Rate Regulation under Act No. 1779 dated October 12, 1907; the Board of Public Utility Commission under Act No. 2307 dated December 19, 1913; and the Public Utility Commission under Act No. 3108 dated March 19, 1923.

During the Commonwealth period, the National Assembly passed a more comprehensive public utility law. This was Commonwealth Act No. 146, as amended or the Public Service Act, as amended. Said law created a regulatory and franchising body known as the Public Service Commission (PSC). The Commission (PSC) existed for thirty-six (36) years from 1936 up to 1972.

On September 24, 1972, Presidential Decree No. 1 was issued and declared "part of the law of the land." The same effected a major revamp of the executive department. Under Article III, Part X of P.D. No. 1, the Public Service Commission (PSC) was abolished and replaced by three (3) specialized regulatory boards. These were the Board of Transportation, the Board of Communications, and the Board of Power and Waterworks.

The Board of Transportation (BOT) lasted for thirteen (13) years. On March 20, 1985, Executive Order No. 1011 was issued abolishing the Board of Transportation and the Bureau of Land Transportation. Their powers and functions were merged into the Land Transportation Commission (LTC).

Two (2) years later, LTC was abolished by Executive Order Nos. 125 dated January 30, 1987 and 125-A dated April 13, 1987 which reorganized the Department of Transportation and Communications. On June 19, 1987, the Land Transportation Franchising and Regulatory Board (LTFRB) was created by Executive Order No. 202. The LTFRB, successor of LTC, is the existing franchising and regulatory body for overland transportation today.

[3] Sec. 1, Rule 131, Rules of Court.

[4] Decision of LTFRB in Case No. 90-4794, p. 4; Rollo, p. 59.

[5] Rollo, p. 42.

[6] Order of LTFRB, p. 4; Rollo, p. 55.

[7] 22 Phil. 456 [1912].

[8] *Warth v. Seldin*, 422 U.S. 490, 498-499, 45 L.Ed. 2d 343, 95 S. Ct. 2197 [1975]; *Guzman v. Marrero*, 180 U.S. 81, 45 L.Ed. 436, 21 S.Ct. 293 [1901]; *McMicken v. United States*, 97 U.S. 204, 24 L.Ed. 947 [1978]; *Silver Star Citizens' Committee v. Orlando Fla.* 194 So. 2d 681 [1967]; *In Re Kenison's Guardianship*, 72 S.D. 180, 31 N.W. 2d 326 [1948].

[9] G.R. No. 113375, May 5, 1994.

[10] *United States v. Barrias*, 11 Phil. 327, 330 [1908]; *People v. Vera*, 65 Phil. 56,113 [1937].

[11] Cruz, *Philippine Political Law*, 1991 Edition, p. 84.

[12] 57 Phil. 872 [1933].

[13] *Id.*, at pp. 878-879.

* Assume a four-year interval in fare adjustment as a constant.

** Assume further a constant P0.0.5 centavo increase in fare every four (4) years.

[14] Steps in the Filing of Petition for Rate Increase:

A Petition For Adjustment of Rate (either for increase or reduction) may be filed only by a grantee of a CPC. Therefore, when franchise/CPC grantees or existing public utility operators foresee that the new oil price increase, wage hikes or similar factors would threaten the survival and viability of their operations, they may then institute a petition for increase of rates. Thus in the case of public utilities engaged in transportation, telecommunications, energy supply (electricity) and others, the following steps are usually undertaken in seeking, particularly upwards adjustments of rates:

1. Filing of formal Petition for Rate Increase.- This petition alleges therein among others, the present schedule of rates, the reasons why the same is no longer economically viable and the revised schedule of rates it proposes to charge. Attached to said Petition for financial statements, projections/studies showing possible losses from oil price or wage hikes under the old or existing rates and the possible margin of profit (which should be within the 12% allowable limit) under the new or revised rates;
2. After the petition is docketed, a date is set for hearing for which a Notice of Hearing is issued, the same to be published in a newspaper of general circulation in the area;
3. The parties affected by the application are required to be furnished copies of the petition and the Notice of Hearing usually by registered mail with return card. The Solicitor General is also separately notified since he is the counsel for the Government;
4. The Technical Staff of the regulatory body concerned evaluates the documentary evidence attached to the petition to determine whether there is warrant to the request for rate revision;
5. Then the Commission of Audit (COA) is requested by the regulatory body to conduct an audit and examination of the books of accounts and other pertinent financial records of the public utility operator seeking the rate revision; if the applicants/petitioners are numerous, a representative number for examination purposes would do; and the period of operation covered usually ranges from six (6) months to one (1) year;

COA audit report is compared with that of the regulatory body. Copies of these audit reports are furnished the petitioners and oppositors may submit their exceptions or objections thereto.

6. Then hearings are conducted. The petitioners may present accountants or such rate experts to explain their plea for rate revision. Oppositors are also allowed to rebut such evidence-in-chief with their own witnesses and documents. After the hearings, the corresponding resolution is issued.

To obviate protracted hearings, the parties may agree to submit their respective Position Papers in lieu of oral testimonies.

[15] *Ynchausti Steamship Co. v. Public Utility Commissioner*, 42 Phil. 621, 631 [1922]).

[16] *Black's Law Dictionary*, 5th Edition, p. 1105.

[17] *Batangas Transportation Co. v. Orlanes*, 52 Phil. 455 [1928]).

[18] *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 825 [1932]; Please see also *Raymundo Transportation v. Perez*, 56 Phil. 274 [1931]; *Pampanga Bus Co. v. Enriquez*, 38 O.G. 374; *Dela Rosa v. Corpus*, 38 O.G. 2069.

[19] Article VIII, Section 6, 1987 Constitution.

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