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 ENERG...

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

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-132451/

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

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> 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.

The empirical existence of this deplorable situation was precisely the reason why Congress enacted the oil deregulation law. The evils arising from conspiratorial acts of monopoly are recognized as clear and present. But

the enumeration of the evils by our Tatad decision was not for the purpose of justifying continued government control, especially price control. The objective was, rather, the opposite. The evils were emphasized to show the need for free competition in a deregulated industry. And to be sure, the measures to address these evils are for Congress to determine, but they have to meet the test of constitutional validity.

The Court respects the legislative finding that deregulation is the policy answer to the problems. It bears stressing that R.A. 8180 was declared invalid not because deregulation is unconstitutional. The law was struck down because, as crafted, three key provisions plainly encouraged the continued existence if not the proliferation of the constitutionally proscribed evils of monopoly and restraint of trade.

In sharp contrast, the present petition lacks a factual foundation specifically highlighting the need to declare the challenged provision unconstitutional. There is a dearth of relevant, reliable, and substantial evidence to support petitioner's theory that price control must continue even as Government is trying its best to get out of regulating the oil industry. The facts of the petition are, in the main, a general dissertation on the evils of monopoly.

Petitioner overlooks the fact that Congress enacted the deregulation law exactly because of the monopoly evils he mentions in his petition. Congress instituted the lifting of price controls in the belief that free and fair competition was the best remedy against monopoly power. In other words, petitioner's facts are also the reasons why Congress lifted price controls and why the President accelerated the process. The facts adduced in favor of continued and indefinite price control are the same facts which supported what Congress believes is an exercise of wisdom and discretion when it chose the path of speedy deregulation and rejected Congressman Garcia's economic theory.

The petition states that it is using the very thoughts and words of the Court in its Tatad decision. Those thoughts and words, however, were directed against the tariff differential, the inventory requirement, and predatory pricing, not against deregulation as a policy and not against the lifting of price controls.

A dramatic, at times expansive and grandiloquent, reiteration of the same background circumstances narrated in Tatad does not squarely sustain petitioner's novel thesis that there can be deregulation without lifting price controls.

Petitioner may call the industry subject to price controls as deregulated. In enacting the challenged provision, Congress, on the other hand, has declared that any industry whose prices and profits are fixed by government authority remains a highly regulated one.

Petitioner, therefore, engages in a legal paradox. He fails to show how there can be deregulation while retaining government price control. Deregulation means the lifting of control, governance and direction through rule or regulation. It means that the regulated industry is freed from the controls, guidance, and restrictions to which it used to be subjected. The use of the word "partial" to qualify deregulation is sugar-coating. Petitioner is really against deregulation at this time.

Petitioner states that price control is good. He claims that it was the regulation of the importation of finished oil products which led to the exit of competitors and the consolidation and dominion of the market by an oligopoly, not price control. Congress and the President think otherwise.

The argument that price control is not the villain in the intrusion and growth of monopoly appears to be pure theory not validated by experience. There can be no denying the fact that the evils mentioned in the petition arose while there was price control. The dominance of the so-called "Big 3" became entrenched during the regime of price control. More importantly, the ascertainment of the cause and the method of dismantling the oligopoly thus created are a matter of legislative and executive choice. The judicial process is equipped to handle legality but not wisdom of choice and the efficacy of solutions.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Petitioner engages in another contradiction when he puts forward what he calls a self-evident truth. He states that a truly competitive market and fair prices cannot be legislated into existence. However, the truly competitive market is not being created or fashioned by the challenged legislation. The market is simply freed from legislative controls and allowed to grow and develop free from government interference. R.A. 8479 actually allows the free play of supply and demand to dictate prices. Petitioner wants a government official or board to continue performing this task. Indefinite and open-ended price control as advocated by petitioner would be to continue a regime of legislated regulation where free competition cannot possibly flourish. Control is the antithesis of competition. To grant the petition would mean that the Government is not keen on allowing a free market to develop. Petitioner's "self-evident truth" thus supports the validity of the provision of law he opposes.

New players in the oil industry intervened in this case. According to them, it is the free market policy and atmosphere of deregulation which attracted and brought the new participants, themselves included, into the market. The intervenors express their fear that this Court would overrule legislative policy and replace it with petitioner's own legislative program.

The factual allegations of the intervenors have not been refuted and we see no reason to doubt them. Their argument that the co-existence of many viable rivals create free market conditions induces competition in product quality and performance and makes available to consumers an expanded range of choices cannot be seriously disputed.

On the other hand, the pleadings of public and private respondents both put forth the argument that the challenged provision is a policy decision of Congress and that the wisdom of the provision is outside the authority of this Court to consider. We agree. As we have ruled in Morfe v. Mutuc[7]:

> (I)t is well to remember that this Court, in the language of Justice Laurel, "does not pass upon question or wisdom, justice or expediency of legislation." As expressed by Justice Tuason: "It is not the province of the courts to supervise legislation and keep it within the bounds of propriety and common sense. That is primarily and exclusively a legislative concern." There can be no possible objection then to the observation of Justice Montemayor: "As long as laws do not violate any Constitutional provision, the Courts merely interpret and apply them regardless of whether or not they are wise or salutary." For they, according to Justice Labrador, "are not supposed to override legitimate policy and x x x never inquire into the wisdom of the law."
>
> It is thus settled, to paraphrase Chief Justice Concepcion in Gonzales v. Commission on Elections, that only congressional power or competence, not the wisdom of the action taken, may be the basis for declaring a statute invalid. This is as it ought to be. The principle of separation of powers has in the main wisely allocated the respective authority of each department and confined its jurisdiction to such a sphere. There would then be intrusion not allowable under the Constitution if on a matter left to the discretion of a coordinate branch, the judiciary would substitute its own. If there be adherence to the rule of law, as there ought to be, the last offender should be the courts of justice, to which rightly litigants submit their controversy precisely to maintain unimpaired the supremacy of legal norms and prescriptions. The attack on the validity of the challenged provision likewise insofar as there may be objections, even if valid and cogent, on its wisdom cannot be sustained.

In this petition, Congressman Garcia seeks to revive the long settled issue of the timeliness of full deregulation, which issue he had earlier submitted to this Court by way of a Partial Motion for Reconsideration in the Tatad case. In our Resolution dated December 3, 1997, which has long become final and executory, we stated:

> We shall first resolve petitioner Garcia's linchpin contention that the full deregulation decreed by R.A. No. 8180 to start at the end of March 1997 is unconstitutional. For prescinding from this premise, petitioner suggests that "we simply go back to the transition period, price control will be revived through the automatic pricing mechanism based on Singapore Posted Prices. The Energy Regulatory Board x x x would play a

> limited and ministerial role of computing the monthly price ceiling of each and every petroleum fuel product, using the automatic pricing formula. While the OPSF would return, this coverage would be limited to monthly price increases in excess of P0.50 per liter."
>
> We are not impressed by petitioner Garcia's submission. Petitioner has no basis in condemning as unconstitutional per se the date fixed by Congress for the beginning of the full deregulation of the downstream oil industry. Our Decision merely faulted the Executive for factoring the depletion of OPSF in advancing the date of full deregulation to February 1997. Nonetheless, the error of the Executive is now a non-issue for the full deregulation set by Congress itself at the end of March 1997 has already come to pass. March 1997 is not an arbitrary date. By that date, the transition period has ended and it was expected that the people would have adjusted to the role of market forces in shaping the prices of petroleum and its products. The choice of March 1997 as the date of full deregulation is a judgment of Congress and its judgment call cannot be impugned by this Court.[8]

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.

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.[9]

We repeat that what petitioner decries as unsuccessful is not a final result. It is only a beginning. The Court is not inclined to stifle deregulation as enacted by Congress from its very start. We leave alone the program of deregulation at this stage. Reasonable time will prove the wisdom or folly of the deregulation program for which Congress and not the Court is accountable.

Petitioner argues further that the public interest requires price controls while the oligopoly exists, for that is the only way the public can be protected from monopoly or oligopoly pricing. But is indefinite price control the only feasible and legal way to enforce the constitutional mandate against oligopolies?

Article 186 of the Revised Penal Code, as amended, punishes as a felony the creation of monopolies and combinations in restraint of trade. The Solicitor General, on the other hand, cites provisions of R.A. 8479 intended to prevent competition from being corrupted or manipulated. Section 11, entitled "Anti-Trust Safeguards", defines and prohibits cartelization and predatory pricing. It penalizes the persons and officers involved with imprisonment of three (3) to seven (7) years and fines ranging from One million to Two million pesos. For this purpose, a Joint Task Force from the Department of Energy and Department of Justice is created under Section 14 to investigate and order the prosecution of violations.

Sections 8 and 9 of the Act, meanwhile, direct the Departments of Foreign Affairs, Trade and Industry, and Energy to undertake strategies, incentives and benefits, including international information campaigns, tax holidays and various other agreements and utilizations, to invite and encourage the entry of new participants. Section 6 provides for uniform tariffs at three percent (3%).

Section 13 of the Act provides for "Remedies", under which the filing of actions by government prosecutors and the investigation of private complaints by the Task Force is provided. Sections 14 and 15 provide how the Department of Energy shall monitor and prevent the occurrence of collusive pricing in the industry.

It can be seen, therefore, that instead of the price controls advocated by the petitioner, Congress has enacted anti-trust measures which it believes will promote free and fair competition. Upon the other hand, the disciplined,

determined, consistent and faithful execution of the law is the function of the President. As stated by public respondents, the remedy against unreasonable price increases is not the nullification of Section 19 of R.A. 8479 but the setting into motion of its various other provisions.

For this Court to declare unconstitutional the key provision around which the law's anti-trust measures are clustered would mean a constitutionally interdicted distrust of the wisdom of Congress and of the determined exercise of executive power.

Having decided that deregulation is the policy to follow, Congress and the President have the duty to set up the proper and effective machinery to ensure that it works. This is something which cannot be adjudicated into existence. This Court is only an umpire of last resort whenever the Constitution or a law appears to have been violated. There is no showing of a constitutional violation in this case.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Bellosillo, Melo, Puno, Kapunan, Mendoza, Purisima, Pardo, Buena, and De Leon, Jr., JJ., concur.
Quisumbing, J., see concurring opinion.
Panganiban, J., see separate opinion.
Davide, Jr., C.J., in the result and also joins J. Panganiban in his separate opinion.
Vitug, J., in the result.
Gonzaga-Reyes, J., no part. Spouse with counsel for intervenor.

---

[1] 281 SCRA 330 (1997).

[2] CONSTITUTION, Article XII, Section 19.

[3] Rollo, pp. 15-16.

[4] American Tobacco Co. v. United States, 328 U.S. 781; 90 L. Ed. 1575.

[5] Republic Act No. 7638.

[6] supra., at 358; citing Gellhorn, Anti Trust Law and Economics in a Nutshell, 1986 ed., p. 45.

[7] 22 SCRA 424, at 450-51 (1968); citations omitted.

[8] Tatad v. Secretary of the Department of Energy, 282 SCRA 337, 353 (1997).

[9] Coleman v. Miller 307 U.S. 433; 59 S. Ct. 972; 83 L. Ed. 1385 (1939).

SEPARATE OPINION

PANGANIBAN, J.:

In essence, deregulation shifts the burden of price control from the government to the "market forces" in order (1) to eliminate government intervention that may "do more harm than good"[1] and (2) to achieve a truly competitive market of fair prices.[2] It is also aimed at removing government abuse and corruption in price-setting. At bottom, deregulation is supposed to provide the best goods and services at the cheapest prices.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The policy, however, is not an infallible cure to abuse, for the evil sought to be avoided may well pass on to the market players, particularly when they combine to restrain trade or engage in unfair competition. In the words of Prof. Romulo L. Neri of the Asian Institute of Management, "[t]he market is motivated by price and profits (and sadly, not by moral values [or public interest]). The market does not automatically supply those who need (no matter how badly they need it) but only those who have the money to buy."[3]

The buzz words of the third millenium are "deregulation," "globalization" and "liberalization." Territorial frontiers are virtually erased by these schemes, as goods and services are exchanged across borders unhampered by traditional tariffs, taxes, currency controls, quantitative restrictions and other protective barriers. Thus, states and governments tend to surrender some of their authorities and powers to the "market" and to the renewed energy of laissez faire, such that the threats to civil liberties and human rights, including economic rights, may shift from government abuses to the more bedeviling market forces that transcend boundaries and sovereignties. In developing countries more than in developed ones, such threats are real and ever present.

Judicial Review
to Check Abuses

This is where the power of judicial review comes in -- to examine the legal effects of these new economic paradigms and, in the present controversy, to check whether the present Oil Deregulation Law (RA 8479) restrains rather than promotes free trade, in contravention of the Constitution. True, the President and Congress, not this Court, have the power and the prerogative to determine whether to adopt such market policies and, if so, under what conditions and circumstances. However, all such policies and their ramifications must conform to the Constitution. Otherwise, this Court has the duty to strike them down, not because they are unwise or inconvenient, but because they are constitutionally impermissible.

Doctrinally, policies and acts of the political departments of government may be voided by this Court on either of two grounds -- infringement of the Constitution or grave abuse of discretion.[4] An infringement may be proven by demonstrating that the words of the law directly contradict a provision of the fundamental law, or by presenting proof that the law authorizes or enables the respondents to violate the Constitution.

Petitioner Garcia's Thesis on
Unconstitutionality Concerns Policy

Having set down the doctrinal legal parameters, let me now discuss the petitioner's thesis. Petitioner Enrique T. Garcia anchors his position on the alleged unconstitutionality of Section 19 of RA 8479,[5] which sets the full deregulation of the oil industry five months from the effectivity of the law, on the argument that said provision directly violates Section 19, Article XII of the Constitution, which reads as follows:

> "Sec. 19. 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."

He maintains that once Section 19 of RA 8479 is struck down, the government will be able to fix and lower petroleum prices indefinitely while awaiting the advent of "real" competition in the market.

Petitioner contends that the three largest oil companies (the "Big Three") comprise an oligopoly of the downstream oil industry. Oligopolies, he claims, "negate free market competition and fair prices." He submits that "regulation through price control x x x is patently required by the public interest [and] the failure to regulate the oligopoly through price control is patently inimical to the national interest and patently negates, circumvents and contravenes Section 19, Article XII of the Constitution."

In Tatad v. Secretary of the Department of Energy,[6] this Court defined a monopoly and a combination in

restraint of trade as follows:

> "A monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service. On the other hand, a combination in restraint of trade is an agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company, or other form of association, for the purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity, controlling its production, distribution and price, or otherwise interfering with freedom of trade without statutory authority. Combination in restraint of trade refers to the means, while monopoly refers to the end."

In that case, RA 8180, the predecessor of RA 8479, was struck down by this Court for being contrary to section 19, Article XII of the Constitution. We took this action because we found that its provisions on (1) tariff differential, (2) minimum inventory and (3) predatory pricing "inhibit fair competition, encourage monopolistic power and interfere with the free interaction of market forces." We concluded, "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."

In my Concurring Opinion in Tatad, I labeled RA 8180 as "a pseudo deregulation law which in reality restrains free trade and perpetuates a cartel, an oligopoly" because of the aforecited three provisions, and because petitioners therein demonstrated to the Court "that the Big Three oil companies were producing and processing almost identical products which they were selling to the general public at identical prices. When one company adjusted its prices upwards or downwards, the other two followed suit at the same time and by the same amount."[7]

In his present Petition, petitioner persistently alleges that "[I]t is self-evident truth that public interest requires the prevention of monopolistic/oligopolistic pricing x x x," and that such "monopolistic/oligopolistic pricing may be prevented only through price control during the regime of monopoly/oligopoly or through a truly competitive market under a regime of fair prices." In support of his allegations, he cites "self-evident truths [which] have x x x been officially recognized and implemented during more than 20 years of price control before the passage of the two oil deregulation laws" and which "have also been recognized and upheld by no less than the Supreme Court En Banc in the Tatad and Lagman cases x x x." He contends that "the Big 3 remain as strong and dominant as ever."

In other words, petitioner believes that there is no valid reason to lift price control at this time when allegedly there still exists an oligopoly in the industry. He proposes instead that government control should stand for an indefinite period until the new players are able to capture a substantial part of the market.

Unfortunately, however, the foregoing thematic statements and economic theory of Petitioner Garcia are policy in nature and are arguments supporting the wisdom of interim government price control. Indeed, "self-evident truths," economic theories, deeply-held beliefs, speculative assumptions and generalizations may be the bases of legislative and executive actions, but they cannot be substitutes for evidence and legal arguments in a judicial proceeding. Considered judgment calls of the legislative and the executive departments are the issues of whether the country should adopt the policy of complete or partial deregulation, and when such policy should take effect and over what products or services. These issues come within judicial determination only when there is clear and substantial proof that said policy and its concomitant variations are violative of the Constitution or are made by those agencies in grave abuse of their discretion.

The Legal Issue Is Whether Petitioner

Has Submitted Sufficient Proof That the
Big Three Have Violated the Constitution

To be more specific, the pivotal issue before this Court is not whether it is wiser and more beneficial to empower the government to fix fuel prices; rather, it is whether petitioner has submitted enough factual bases to justify the legal conclusion that the Big Three -- Petron, Shell and Caltex -- have combined themselves "in restraint of trade or [to cause] unfair competition," to such an extent as to legally justify a striking down of Section 19 of RA 8479. The task of proving this issue is not easy; in fact, it is formidable and daunting. This is because laws are prima facie presumed constitutional and, unless clearly shown to be infirm, they will always be upheld.[8] So, too, regularity in the performance of official functions is the postulate, and any allegation of grave abuse or irregularity must be proven cogently.

Deregulation per se Is
Not Constitutionally Infirm

A close perusal of the assailed Section 19 of RA 8479 and Section 19 of Article XII of the Constitution does not readily reveal their irreconcilability. Indeed, even petitioner admits that the deregulation policy per se is not contrary to the Constitution. Neither could it be successfully argued that the implementation of such policy within the five-month phase-in period is per se anathema to our fundamental law. It is his imperative task therefore to adduce before the Court factual and legal bases to demonstrate clearly and cogently the unconstitutionality of the acts of Congress and the President in adopting and implementing full deregulation of petroleum prices at this time.

In this context, I have pored over the records of this case and searched long and wide for such factual and legal bases but, other than presumptions and generalizations that are unsupported by hard evidence, I could not find any. Petitioner fails to substantiate his allegations that the three oil giants have engaged, directly or indirectly, in an unholy alliance to fix prices and restrain trade.

True, retail prices of petroleum products have been increased, to the consternation of the public, but petitioner has not shown by specific fact or clear proof how the questioned provision of RA 8479 has been used to transgress the Constitution. He has not demonstrated that the Big Three arbitrarily dictate and corrupt the price of oil in a manner violative of the Constitution.

Petitioner merely resurrects and relies heavily on the arguments, the statistics and the proofs he submitted two years ago in the first oil deregulation case, Tatad v. Secretary of the Department of Energy. Needless to state, those reasons were taken into consideration in said case, and they indeed helped show the unconstitutionality of RA 8180. But exactly the same old grounds cannot continue to support petitioner's present allegation that the major oil companies -- Petron, Shell and Caltex -- persist to this date in their oligopolistic practices, as a consequence of the current Oil Deregulation Law and in violation of the Constitution. In brief, the legal cause and effect relationship has not been amply shown.

Petitioner Has Not Proven
Arbitrariness or Despotism

Petitioner harps at the five-month period of transition from price control to full deregulation provided under Section 19 of RA 8479. He claims that such short period is not enough to ensure a "truly competitive market" in the supposed oligopoly of the oil industry. Again, his statement is not backed up by evidentiary basis. He offers no substantial proof that Congress, in deciding to lift price controls five months from the effectivity of RA 8475, gravely abused its discretion. To repeat, it is not within the province of the judiciary to determine whether five

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

months is indeed short and, for that matter, what length of time is adequate. That is a matter of legislation addressed to the discretion of our policy makers.

It is basic to our form of government that the Court cannot inquire into the wisdom or expediency of the acts of the executive or the legislative department, unless there is a clear showing of constitutional infirmity or grave abuse of discretion amounting to lack or excess of jurisdiction.[9] "By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[10] These jurisprudential elements of arbitrariness, despotism, passion and hostility have not been shown to exist under the present circumstances.

Market Share of New Players
Has Increased Under RA 8479

Historically, deregulation as a policy in the downstream oil industry was begun in 1996 when new players started to set up and operate their businesses in the country. That was practically a full three years of operations, the last two of which saw no significant barriers in terms of tariff differential, minimum inventory or predatory pricing.

Obviously, the conditions prevailing when the court struck down RA 8180 two years ago have not been proven to be prevalent at present. In 1996, the new players had a market share of barely one percent.[11] The new players have since expanded or increased in number (46 as of June 30, 1999), and they now have about nine percent share of the market.[12] Significantly, these new players have intervened in this case in defense of the law. These are the little Davids who claim that with RA 8479 as their slingshot, they can, given enough time, fight and win against the three erstwhile unbeatable Goliaths. Indeed, they believe that the questioned provision has given them the impetus to compete and thereby eventually show the benefits of deregulation; namely, the best products at the cheapest prices.

With this factual backdrop and in the dire absence of contrary proof, it would be specious to conclude that under the aegis of Section 19 of RA 8479, the Big Three have restrained trade or unduly restricted competition.

Moreover, the three provisions in RA 8180 which were adjudged abhorrent to the fundamental principles of free enterprise are no longer found in RA 8479. The depletion of the Oil Price Stabilization Fund, the extraneous factor that was considered by the President in accelerating the implementation of full deregulation under RA 8180, was no longer taken into account in the present milieu. The Court's reasons for declaring the unconstitutionality of RA 8180 are, therefore, not germane to the validity of RA 8479. The petitioner cannot rely on the same rationale for the purpose of successfully assailing RA 8479. Indeed, he admits that "the Tatad and Lagman cases x x x did not consider and adjudicate on the lifting of price control per se, under RA 8180, as an issue."

Epilogue
In sum, I make no secret of my sympathy for petitioner's frustration at the inability of our government to arrest the spiraling cost of fuel and energy.[13] I hear the cry of the poor that life has become more miserable day by day. I feel their anguish, pain and seeming hopelessness in securing their material needs.

However, the power to lower petroleum prices through the adoption or the rejection of viable economic policies or theories does not lie in the Court or its members. Furthermore, absent sufficient factual evidence and legal moorings, I cannot vote to declare a law or any provision thereof to be unconstitutional simply because,

theoretically, such action may appear to be wise or beneficial or practical. Neither can I attribute grave abuse of discretion to another branch of government without an adequate showing of patent arbitrariness, whim or caprice. Should I do so, I myself will be gravely abusing my discretion, the very evil that petitioner attributes to the legislature.

WHEREFORE, I vote to DISMISS the Petition.

---

[1] See public respondent's Memorandum, p. 19, citing Samuelson and Nordhaus, Economics, 1992 ed., p. 341.

[2] § 2, RA 8479.

[3] Neri, Economics and Public Policy, 1999 ed., p. 23. Parentheses in original but brackets supplied.

[4] Tañada v. Angara, 272 SCRA 18, May 2, 1997; Tatad v. Secretary of the Department of Energy, infra; Santiago v. Guingona Jr., GR No. 134577, November 18, 1998.

[5] "Sec. 19. Start of Full Deregulation. -- Full deregulation of the [Downstream Oil] 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 x x x."

[6] 281 SCRA 330, 355; November 5, 1997; per Puno, J.

[7] This quote is taken from a comment I made in Battles in the Supreme Court, 1998 ed., p. 121.

[8] Lim v. Pacuing, 240 SCRA 649, January 27, 1995; Tano v. Socrates, 278 SCRA 154, 1997; Tan v. People, 290 SCRA 117, May 19, 1998.

[9] Tañada v. Angara, supra; Santiago v. Guingona Jr., supra. See also Garcia v. Comelec, 227 SCRA 100, October 5, 1993; Tañada v. Cuenco, 103 Phil 1051, February 28, 1957; Magtajas v. Pryce Properties Corp., 223 SCRA 255, July 20, 1994.

[10] Tañada v. Angara, supra, citing Zarate v. Olegario, 260 SCRA 1; October 7, 1996; San Sebastain College v. Court of Appeals, 197 SCRA 138, 144, May 15, 1991; Commissioner of Internal Revenue v. Court of Tax Appeals, 195 SCRA 444, 458, March 20, 1991; Simon v. Civil Service Commission, 215 SCRA 410, November 5, 1992; Bustamante v. Commissionaer on Audit, 216 SCRA 134, 136, November 27, 1992.

[11] Solicitor general's Memorandum, p. 44.

[12] Ibid.

[13] During the Oral Argument on July 13, 1999, I compared petitioner to a Don Quixote bravely battling petroleum-powered windmills. If only for his gutsy Quixotic quest, I have, like many members of the Court, lent a sympathetic ear to petitioner, not only in this case but also in the earlier Tatad in which I wrote a Concurring Opinion to the Court's Decision striking down RA 8180, the Oil Deregulation Law then.

CONCURRING OPINION

QUISUMBING, J.:

I fully concur in the ponencia of Justice Consuelo Ynares-Santiago. What I would like to stress here and now is that, contrary to certain ill-informed comments in media, petitioner's pleadings were thoroughly dissected at the hearing where he and his counsel as well as the respondents amply presented their arguments. Questions of law and policy were also illuminated from different perspectives in sessions and in memoranda internally exchanged by members of the Court. Right away, it must be added, no delay attended the resolution of this petition. For while the Constitution allows two years, this case was decided en banc in less than half that period, from the time of submission of the parties' memoranda. Below is a full presentation of my view on the controversy generated by petitioner's insistence that the Court overturn an act passed by his own branch of government and approved by the Chief Executive.

At issue in this special civil action for certiorari under Rule 65 is the constitutionality of Sec. 19 of Republic Act No. 8479,[1] entitled "An Act Deregulating the Downstream Oil Industry and for other Purposes". The law was enacted pursuant to the policy of the State to liberalize and deregulate the downstream oil industry. R.A. 8479 is the remedial legislation passed by Congress to cure the infirmities found in Republic Act No. 8180, the first oil industry deregulation law, otherwise known as the "Downstream Oil Industry Deregulation Act of 1996".

In a banc decision promulgated on November 5, 1997, the Court declared R.A. 8180 unconstitutional for having transgressed the constitutional prohibition against monopolies and combinations in restraint of trade, specifically mandated in Section 19, Article XII of the Constitution. Consequently, Executive Order No. 392 (E.O. 392) implementing the provision of said law was voided. On December 3, 1997, the motions for reconsideration were denied for utter lack of merit.

Now before us is a challenge to the second oil industry deregulation law, R.A. 8479. The relevant factual and procedural antecedents of the present petition are as follows:

In 1992, the Philippine government welcomed more liberal economic policies and started the ground work for privatization of some government-owned or controlled corporations and deregulation of the oil industry. In due time, Congress enacted Republic Act No. 7638 on December 9, 1992. It created the Department of Energy (DOE). Among others, it was tasked, at the end of four years from the effectivity of R.A. No. 7638 and upon approval of the President, to institute the "programs and the timetable for the deregulation of appropriate projects and activities of the energy industry."[2]

Following the intent of R.A. 7638, the Philippine National Oil Company (PNOC) sold 40% of its equity in Petron Corporation to the Aramco Overseas Company.

Sometime in March 1996, Congress made that daring step towards the realization of liberating the oil industry from government regulation and enacted R.A. 8180. On February 8, 1997, President Fidel V. Ramos issued E.O. 392, which signaled the implementation or start of deregulation in the oil industry.

Senator Francisco Tatad and Congressmen Enrique Garcia, Edcel Lagman, Joker Arroyo and Wigberto Tañada, among others, filed separate petitions docketed as G.R. Nos. 124360 and 127867, before the Court. The petitioners contended that some of the provisions of R.A. No. 8180 violated Section 19 of Article XII of the 1987 Constitution, which 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."

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The challenged provisions in R.A. 8180 were:

> (1) the provision on tariff differential found in Section 5 (b) which states:
> "Section 5 (b) - Any law to the contrary notwithstanding and starting with the effectivity of this Act, tariff duty shall be imposed and collected on imported crude oil at the rate of three percent (3%) and imported refined petroleum products at the rate of seven percent (7%), except fuel oil and LPG, the rate for which shall be the same as that for imported crude oil: Provided, that beginning on January 1, 2004 the tariff rate on imported crude oil and refined petroleum products shall be the same. Provided, further, That this provision may be amended only by an Act of Congress."

(2) the minimum inventory clause, in Section 6 which provides:

> "Section 6 - To ensure the security and continuity of petroleum crude and products supply, the DOE shall require the refiners and importers to maintain a minimum inventory equivalent to ten percent (10%) of their respective annual sales volume or forty (40) days of supply, whichever is lower."

(3) the predatory pricing scheme in Section 9:

> "Section 9 - To ensure fair competition and prevent cartels and monopolies in the downstream oil industry, the following acts shall be prohibited:
>
> x x x
> "(b) Predatory pricing which means selling or offering to sell any product at a price unreasonably below the industry average cost so as to attract customers to the detriment of competitors."

In declaring provisions of R.A. 8180 unconstitutional, the Court held:

> ". . . Petron, Shell and Caltex stand as the only major league players in the oil market. . . . The tariff differential of 4% therefore works to their immense benefit. . . . New players that intend to equalize the market power of Petron, Shell and Caltex by building refineries of their own will have to spend billions of pesos. Those who will not build refineries but compete with them will suffer the huge disadvantage of increasing their product cost by 4%. They will be competing on an uneven field.
>
> "The provision on inventory widens the balance of advantage of Petron, Shell and Caltex against prospective new players. Petron, Shell and Caltex can easily comply with the inventory requirement of R.A. No. 8180 in view of their existing storage facilities. Prospective competitors again will find compliance with this requirement difficult as it will entail a prohibitive cost. . . .
>
> "Finally, we come to the provision on predatory pricing which is defined as `. . . selling or offering to sell any product at a price unreasonably below the industry average cost so as to attract customers to the detriment of competitors.'. . . The ban on predatory pricing cannot be analyzed in isolation. Its validity is interlocked with the barriers imposed by R.A. No. 8180 on the entry of new players."[3]

That decision came under sharp attack by critics who accused the Court of improvidently intervening in the economic affairs of the State. Economists and businessmen remarked that the decision was a major blow to economic reforms and an additional burden to the government's already huge budget deficit as it would require reinstating a subsidy on oil products.[4] Pertinent portions of the Decision decreed:

> "With this Decision, some circles will chide the Court for interfering with an economic decision of Congress. Such criticism is charmless for the Court is annulling R.A. No. 8180 not because it disagrees with deregulation as an economic policy but because as cobbled by Congress in its present form, the law violates the Constitution. The right call therefor should be for Congress to write a new oil deregulation law that conforms with the Constitution and not for this Court to shirk its duty of striking down a law that offends the Constitution. . . . Indeed when confronted by a law violating the Constitution, the Court has no option but to

> strike it down dead. . . . Hence, for as long as the Constitution reigns supreme so long will this Court be vigilant in upholding the economic rights of our people especially from the onslaught of the powerful. Our defense of the people's economic rights may appear heartless because it cannot be half-hearted.
>
> IN VIEW WHEREOF, the petitions are granted. R.A. No. 8180 is declared unconstitutional and E.O. No. 372 [392] void."[5]

Public respondents filed their consolidated motion for reconsideration. Some of the new players, in the industry: Eastern Petroleum Corp., Seaoil Petroleum Corp., Subic Bay Distribution, Inc., TWA, Inc., and Dubphil Gas moved to intervene and aired their stand against the total nullification of R.A. 8180. They also averred that they were in favor of declaring the three offensive provisions unconstitutional. Petitioner Enrique T. Garcia, likewise, filed a partial motion for reconsideration and pushed for a return only to partial deregulation in which the main features of deregulation would be allowed free reign, but the retail price of oil products would still be regulated through the Energy Regulatory Board.

The Court found no merit in the motion for reconsideration, motion for intervention, and partial motion for reconsideration. Despite the separability clause, the Court ruled that the three questioned provisions cannot be struck down alone, for they were the ones intended to carry out the policy of the law as embodied in Section 2.[6]

On the question of the validity of E.O. 392, the Court held that the Executive Department failed to follow faithfully the standards set by R.A. 8180 when it considered the extraneous factor of depletion of the Oil Price Stabilization Fund (OPSF) fund, instead of limiting the basis for the acceleration of full deregulation of the industry to only two factors, viz: (1) the time when the prices of crude oil and petroleum products in the world market are declining, and (2) the time when the exchange rate of the peso in relation to the US dollar is stable.[7] By considering another factor, the Executive Department rewrote the standards set forth in R.A. 8180.[8] In light of the uncertainty of the consideration given by the Executive department to the depletion of the OPSF fund for the full deregulation of the oil industry, we ruled that E.O. 392 constituted a misapplication of R.A. 8180. In sum, the implementing order was found void, while the basic law was held unconstitutional.

On reconsideration, our December 3, 1997 Resolution stressed that R.A. 8180 is unconstitutional because (1) it gave more power to an already powerful oil oligopoly; (2) it blocked the entry of effective competitors; and (3) it will sire an even more powerful oligopoly whose unchecked power will prejudice the interest of the consumers and compromise the general welfare.[9] The Court reiterated, however, that there was no impediment in re-enacting R.A. 8180 minus the provisions which are anti-competition.

Consequently, Congress fast-tracked a new oil deregulation law, R.A. 8479, which was approved and duly signed on February 10, 1998. It took effect on February 12, 1998 upon the completion of its publication in a newspaper of general circulation.

Dissatisfied with the amendments incorporated into the new law by his own colleagues in Congress, Honorable Enrique T. Garcia filed the instant petition.

The Court is the ultimate guardian of our Constitution. By virtue of its power of judicial review, it is duty-bound in an appropriate case to ascertain whether a law is free from constitutional flaws. While favoring free competition in the oil industry, the Court struck down R.A. 8180 because of provisions therein that contravened the basic law, our Constitution. Before dwelling into the issues now raised by the petitioner, we must determine whether R.A. 8479 truly cured the invalid portions of R.A. 8180. When we advocated vigilance in upholding the economic rights of our people, we truly hoped that Congress would address the defects of R.A. 8180 and not re-enact R.A. 8180 through the guise of R.A. 8479.

It bears recalling, however, that when the Supreme Court mediates to allocate constitutional boundaries or invalidates the acts of a coordinate body, what it is upholding is not its own supremacy but the supremacy of the Constitution. With this in mind, we now focus on the provisions of R.A. 8479, in particular the 4% tariff differential, minimum inventory level, and predatory pricing provisions, which aim to prevent the big three oil companies from taking advantage of deregulation as a means of cartelizing their operations, and thereby result in monopolistic and oligopolistic practices condemned by the basic law of the land.

First, the 4% tariff differential. On December 31, 1997, after the Court declared with finality that R.A. 8180 is unconstitutional, President Ramos issued Executive Order No. 461. The Order imposed a three percent (3%) import duty on petroleum products enumerated therein. The President's move avoided the revival of the old tariff rates of 10% on crude oil and 20% on refined oil while the legislative department was in the process of crafting a new oil deregulation law. Noteworthy, Sec. 6 of R.A. 8479 imposed the same tariff treatment on petroleum products. Section 6 reads:

> "SEC. 6 - a) Any law to the contrary notwithstanding and starting with the effectivity of this Act, a single and uniform tariff duty shall be imposed and collected both on imported crude oil and imported refined petroleum products at the rate of three percent (3%): Provided, however, That the President of the Philippines may, in the exercise of his powers, reduce such tariff rate when on his judgment such reduction is warranted, pursuant to Republic Act No. 1937, as amended, otherwise known as the "Tariff and Customs Code": Provided, further, That beginning January 1, 2004 or upon implementation of the Uniform Tariff Program under the World Trade Organization and ASEAN Free Trade Area commitments, the tariff rate shall be automatically adjusted to the appropriate level notwithstanding the provisions under this Section."

Second, the minimum inventory level requirement. R.A. 8479 eliminated the provision in R.A. 8180 requiring the refiners and importers to maintain a minimum inventory equivalent to ten percent (10%) of their respective annual sales volume or forty (40) days' supply. The minimum inventory requirement was removed, giving the new entrants opportunities to use their resources to be more competitive.

Third, predatory pricing. In the December 3, 1997 Resolution of the Court in G.R. Nos. 124360 and 127867, we expressed the view that the definition of predatory pricing was too loose to be a real deterrent.[10] Congressman Dante O. Tinga acknowledged in his explanatory note of House Bill 10057 (H.B. 10057) that the definition of predatory pricing needed specificity, particularly with respect to the definitive benchmark price and the express anti-competitive intent. He suggested the Areeda-Turner test and proposed to redefine predatory pricing. Section 11 par. (b) of R.A. 8479 adopted Congressman Tinga's recommendation, to wit:

> "b) Predatory pricing which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: Provided, however, That pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this prohibition, `variable cost' as distinguished from `fixed cost', refers to costs such as utilities or raw materials, which vary as the output increases or decreases and `average variable cost' refers to the sum of all variable costs divided by the number of units of outputs."

To strengthen the anti-trust safeguards of R.A. 8479, respondents argue that there are enough provisions to encourage entry of new participants. For instance, R.A. 8479 allows for active participation of the private sector and cooperatives in the retail of petroleum through joint ventures to establish gasoline stations. Moreover, R.A. 8479 requires initial public offering of shares equivalent to 10% of the capital investments by oil companies. Respondents also cite that the enforcement of monitoring activities by the DOE encourages consumer vigilance over unwarranted increase in the prices of petroleum products. Another safeguard against collusion among

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

oligopolists is the creation of a task force with members from the DOE and the Department of Justice (DOJ) to investigate complaints for violations of R.A. 8479. They assert that the mere dominance of Petron, Pilipinas Shell, and Caltex, is not per se a combination in restraint of trade. Combination in restraint of trade, they claim, is the means to achieve monopoly.

Petitioner Garcia adverts to oil deregulation in phases. The new oil deregulation law has two phases: (1) the transition phase and (2) the full deregulation phase.

During the transition period, all non-pricing aspects were lifted. Although the Oil Price Stabilization Fund was abolished, a buffer fund[11] was created to cover increases in the prices of petroleum products, except premium gasoline. The Automatic Oil Pricing Mechanism was maintained to approximate the domestic prices of petroleum products in the international market. The Energy Regulatory Board (ERB) approved a market-oriented formula to determine the Wholesale Posted Price of petroleum products based solely on the changes of either the Singapore Posting of refined petroleum products, the Singapore Import Parity or the crude landed cost.

After the transition phase comes full deregulation as provided by Sec. 19 of R.A. 8479, which reads thus:

> "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 Department of Energy (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."[12]

Note that the abovecited transition phase of five months could be abbreviated when public interest so requires. The President's power to accelerate the start of full deregulation, however, depended upon the recommendation of the Departments of Energy and Finance.

Accordingly as recommended, on March 14, 1998, President Ramos issued E.O. 471 to accelerate the implementation of full deregulation. Pertinently this E.O., which implements R.A. 8479, provides:

> "WHEREAS, Republic Act No. 7638, otherwise known as the `Department of Energy Act of 1992,' provides that, `at the end of four years from its effectivity last December 1992, the Department [of Energy] shall, upon approval of the President, institute the programs and timetable of deregulation of appropriate energy projects and activities of the energy sector;'
>
> "WHEREAS, Section 19 of Republic Act No. 8479, otherwise known as the `Downstream Oil Industry Deregulation Act of 1998,' provides that [T]that `when the public interest so requires, the President may accelerate the start of full deregulation upon the recommendation of the Department of Energy (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;'
>
> "WHEREAS, pursuant to the joint recommendation of the Department of Energy and the Department of Finance, and in the interest of the consuming public, recent developments favor the acceleration of the start of full deregulation of the downstream oil industry because: (i) the prices of crude oil and petroleum products in the world market are beginning to be stable and on a downtrend since January 1998; and (ii) the exchange rate of the peso in relation to the US dollar has been stable for the past three months, averaging at around P40.00 to

one US dollar;

"WHEREAS, Executive Order No. 377 dated 31 October 1996 provides for an institutional framework for the administration of the deregulated industry by defining the functions and responsibilities of various government agencies;

"WHEREAS, pursuant to Republic Act No. 8479, the deregulation of the industry will foster a truly competitive market which can better achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally-clean and high quality petroleum products;

"NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by the powers vested in me by law, do hereby declare the full deregulation of the downstream oil industry; provided, however, that LPG, regular gasoline and kerosene shall be covered by the Automatic Pricing Formula pursuant to R.A. No. 8479."[13]

The implementing guidelines for the acceleration of full deregulation of the industry, set forth in E.O. 471, required the concurrence of two conditions, viz.: (1) the downtrend of prices of oil and petroleum products, and (2) stability of exchange rate of peso in relation to US dollar, taking into account relevant trends and prospects.

However, E.O. 471 carried an additional proviso, the transition phase was continued for LPG, regular gas and kerosene. These socially sensitive products continued to be covered by the automatic pricing mechanism until July of 1998. Only then was full deregulation of the industry effected, and the automatic pricing mechanism was also lifted for LPG, regular gas and kerosene.

Turning now to herein petition, Congressman Enrique Garcia raised the following issues to assail the provision implementing full deregulation of the oil industry:

I. 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 Article XII, Section 19 of the 1987 Constitution against monopolies and combinations in restraint of trade.

II.

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.

III. 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.

IV. 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.

These issues may be synthesized into one: Whether or not the full implementation of deregulating the downstream

oil industry as provided in Section 19 of R.A. 8479 violates the Constitutional mandate of free competition in a liberalized oil industry under Section 19, Article XII of the 1987 Philippine Constitution?

Petitioner Garcia principally faults Section 19 of the new R.A. 8479 as well as E.O. 471 now for violating the constitutional prohibition against monopoly, and being anti-competition.

Petitioner claims that there was a premature full deregulation under Section 19 of R.A. 8479. He protests the acceleration of the full implementation of deregulation decreed under E.O. 471. Petitioner insists that the short transition period is pro-oligopoly, anti-competition and anti-people and is patently unconstitutional because the period is too short to establish true competition in the local oil industry. True competition, he claims, exists only when there can be a sizable number of players, and at present, the new players comprise only 3% of the market share which does not put up real competition against the "Big Three" oil companies (Caltex, Shell and Petron). What he suggests is to prolong the transition phase or partial deregulation with price controls while the big oil companies are still dominating the market, to ensure the protection of the public interest and prevent the big three oligopolies from fixing the price or overpricing. He further contends that the automatic oil pricing mechanism will enable the domestic price of petroleum products to approximate and promptly reflect the price of oil in the international market. He also stressed that new players may come under an indefinite or open-ended transition phase.

Commenting on the petition, respondents claim that the propriety of full deregulation involves the wisdom of Congress and is therefore, a non-justiciable issue. They counter petitioner's arguments by pointing out that the shortening of the transition period and acceleration of full deregulation were decreed pursuant to the joint recommendation of the DOE and DOF, based on the concurring conditions of a downtrend of crude oil in world market and the stability of the exchange rate of P40.00 to US$1.

The respondents argue that the short transition period is not violative of the Constitution because the new players were given until July 1998 to set up their businesses as they have in fact, and they have captured at least 3% of the total oil market.

Respondent Petron asserts that full deregulation protects the public from the greed and exploitation of business. Petron further contends that competition can be ushered in only with the certainty of price deregulation and the short transition period would guarantee the investors that within a manageable period, they would be able to set prices, taking into account their investment and operating costs. It claims an indefinite transition period would discourage new investors because the new players had hoped that within a reasonable time, price regulation would be lifted.

The Solicitor General filed a comment on behalf of the public respondents, interposing economic arguments that price regulation reduces economic efficiency and is prejudicial to the public.[14] Public respondents assert that the acceleration of full deregulation is based on existing conditions and sound economic theory.

Respondent Shell filed a rejoinder, stating that to prolong the transition period will revive the automatic pricing mechanism which means that it will only replace the mode of price regulation by still another regulatory scheme. It argues that if Sec. 19 of R.A. 8479 were to be struck down, full deregulation will never take place and it would render the entire law different from what was passed by Congress.

Petitioner counters that he is questioning the constitutionality rather than the wisdom of Sec. 19 of R.A. 8479; it is pro-oligopoly, hence patently unconstitutional. Petitioner further avers that condemnation against monopolies and combination in restraint of trade should be given legal sanction by the Court. Petitioner maintains that the nullification of Sec. 19 of R.A. 8479 will result in partial deregulation, where there will be no regulation as

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

regards the importation of petroleum products and the establishment of gas station, but oil pricing would be regulated based on the Automatic Pricing Mechanism.

Note that during the review of R.A. 8180 by the Court in G.R. No. 127867, petitioners Edcel C. Lagman, Arroyo, et al., likewise questioned the constitutionality of Section 15 of R.A. No. 8180[15] as well as E.O. No. 392[16] which provided for the implementation of full deregulation. The Court decreed thus:

> ". . . Full deregulation at the end of March 1997 is mandatory and the Executive has no discretion to postpone it for any purported reason. Thus, the law is complete on the question of the final date of full deregulation. The discretion given to the President is to advance the date of full deregulation before the end of March 1997. Section 15 lays down the standard to guide the judgment of the President --- he is to time it as far as practicable when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable.
>
> x x x
>
> "It ought to follow that the argument that E.O. No. 392 is null and void as it was based on indeterminate standards set by R.A. 8180 must likewise fail. If that were all to the attack against the validity of E.O. No. 392, the issue need not further detain our discourse."[17]

In G.R. No. 127867, Congressman Garcia filed an Urgent Motion for Partial Reconsideration from the November 5, 1997, decision of the Court. He sought to strike down only the premature full deregulation but maintain partial deregulation under R.A. No. 8180 with price controls and price mechanism based on Singapore Posted Prices. The Court resolved the issue this way:

> "We shall first resolve petitioner Garcia's linchpin contention that the full deregulation decreed by R.A. No. 8180 to start at the end of March 1997 is unconstitutional. For prescinding from this premise petitioner suggests that `we simply go back to the transition period under R.A. No. 8180.' Under the transition period, price control will be revived through the automatic pricing mechanism based on Singapore Posted Prices. The Energy Regulatory Board x x x would play a limited and ministerial role of computing the monthly price ceiling of each and every petroleum fuel product, using the automatic pricing formula. x x x
>
> We are not impressed by petitioner Garcia's submission. Petitioner has no basis in condemning as unconstitutional per se the date fixed by Congress for the beginning of the full deregulation of the downstream oil industry. x x x The choice of March 1997 as the date of full deregulation is a judgment of Congress and its judgment call cannot be impugned by this Court."[18]

Now in the present petition, Garcia insists on his old plea for a return only to partial deregulation of the downstream oil industry, wherein the main features of deregulation would be permitted but the retail prices of oil products would still be regulated through an Automatic Pricing Mechanism.

However, I find his contentions to be lacking legal basis, even if his proposal appears to be expedient, or even beneficial, especially to the poor. As the Court said in Tañada vs. Tuvera,[19] "[T]his Court is not called upon to rule on the wisdom of the law or to repeal it or modify it if we find it impractical. That is not our function. That function belongs to the legislator. Our task is merely to interpret and apply the law as conceived and approved by the political departments of the government in accordance with the prescribed procedure."[20]

For if we allow an open-ended transition period to maintain government pricing regulation, we would have suspended the much-needed liberalization of the downstream oil industry. It would certainly run counter to the government's policy of allowing free interplay of market forces, with minimal government supervision. In fact, it could defeat full deregulation to ensure fair competition in the downstream oil industry, where new and prospective players are on even level playing field with the Big Three.

Furthermore, to base the implementation of full deregulation on the presence of a sizable number of new investors, as petitioner would want us to do, would be to legislate a floating provision dependent on the happening of a contingent event. To do so, would be to undermine the very purpose of the law, which is to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.

Consequently, to heed the petitioner's prayer, this Court would have to legislate, a power granted only to Congress. The operation of a statute may be duly suspended only by authority of the legislature.[21] Indeed, a suspension of a valid statute must rest upon legislative action;[22] it may not be effected solely by a judicial act.[23] Clearly it is a policy decision of the legislative and executive departments in whose turf we must not tread, under the principle of separation of powers. The term "political question" connotes what it means in ordinary parlance, namely, a question of policy.[24] It refers 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 the government."[25] It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.[26] The judiciary does not directly settle policy issues. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all state powers.[27]

In PLDT vs. National Telecommunications Commission,[28] the ultimate considerations cited in matters affecting vital industries, are the public need, public interest, and the common good. In that case, the Court said:

> "Free competition in the industry may also provide the answer to a much-desired improvement in the quality and delivery of this type of public utility, to improved technology, fast and handy mobile service, and reduced user dissatisfaction."[29]

Similarly, the above-mentioned considerations could undergird the nation's energy and other economic policies. The liberalization of the oil industry is a reform program initiated by Congress to free the government from the obligation of infusing funds to subsidize increases in the prices of oil products. Such funds may now be utilized for other much needed programs with a public purpose.

Well-established is the principle that every law has in its favor the presumption of constitutionality.[30] To declare a law unconstitutional, the repugnancy of that law to the Constitution must be clear and unequivocal. But we recognize that even if a law is aimed at the attainment of some public good, still its provisions cannot infringe upon constitutional rights.[31] That infringement, however, must be proved and established persuasively to invalidate a provision of a law, if not the entire law itself.

Petitioner ought to have demonstrated the need for the extension of the transition period. But, in fact, he could not downplay the DOE report that new players accounted for a sizable share of the market, some 18.1 percent of the total product imports, and competing companies are keen in joining the Philippine oil industry since the full implementation of deregulation. And, as stressed by the public respondents in the rejoinder dated January 7, 1999:

> "Since 1996, new players have taken a significant share in the market, to wit: (a) seven (7) new players have entered the downstream oil industry before RA No. 8180; (b) during the effectivity of RA No. 8180, twenty eight (28) new players have engaged in a number of downstream oil industry activities; and (c) three (3) new players have engaged in fuel bulk marketing, while two (2) new players have started to establish gasoline service stations immediately before and during the effectivity of RA No. 8479. At the same time, many more companies have indicated their intention to enter the downstream oil industry business."[32]

The new players, according to industry experts, are gradually making a dent in the local market and their share is expected to surge in a few years when their retail stations are established.[33]

However, the presence or entry of numerous players in the oil industry is not a condition precedent before a full deregulated petroleum industry could be had. But we recognize that it is precisely the implementation of full deregulation that would serve to entice new players to compete against the so-called Big Three. Hopefully, this move would prevent the powerful oil companies from manipulating prices, to the prejudice of the consumers and the public in general.

The petitioner strongly manifested his fears concerning pernicious consequences of total lifting of price control in the oil industry. His main concern is that the government might be helpless in case the Big 3 (Shell, Petron and Caltex) overprice their petroleum products. But the people are not without legal recourse. The public can manifest outright objections to overpricing and report to the Department of Energy any unreasonable increase in the prices of these oil products. The monitoring power of the DOE is embodied in Sec. 14 of R.A. 8479, and its implementing rule, Section 18 of DOE Circular No. 98-03-004, thus:

> "R.A. 8479, Sec. 14 -- Powers and Functions of the DOE and DOE Secretary:
>
> "Monitoring -
>
> "a) The DOE shall monitor and publish daily international crude oil prices, as well as follow the movements of domestic oil prices. It shall likewise monitor the quality of petroleum products and stop the operation of business involved in the sale of petroleum products which do not comply with the national standards of quality that are aligned with the national standards/protocols of quality. . . .
>
> x x x
> "d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstances: Provided that nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency motu propio."
>
> Department Circular No. 98-03-004, Sec. 18 -- Powers and Functions of the DOE and DOE Secretary
>
> "Monitoring --
>
> "The DOE shall monitor the following pursuant to Section 14 of the Act. Any misrepresentation, mislabeling, concealment or fraud, shall be subject to penalties under existing applicable laws.
>
> a. Prices
>
> "The DOE shall monitor and publish international oil prices as well as follow the movement of domestic oil prices.
> (1) Price Display Boards
>
> For the convenience of the public, all retailers of petroleum products shall display the prices of each type of petroleum product sold in gasoline stations in prominently installed price display boards with backgrounds preferably conforming to the color coding scheme for the product, such as : green for Unleaded Premium Gasoline, red for Premium Low Lead Gasoline, orange for Regular Gasoline, yellow for Diesel Fuel, and white for Kerosene. In the case of LPG (which has no product color), the price display board may be light blue in color. The numeric entries in these boards shall be at least six (6) inches in height.
>
> The price display boards shall be properly installed and labeled not later than June 30, 1998. Failure to comply with this requirements shall be penalized pursuant to Section 24 of the Act.
>
> (2) Unreasonable Rise in Prices

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon by the DOE-DOJ Task Force in accordance with Section 17 of this IRR. The said Task force shall determine within thirty (30) days the merits of the report and shall initiate the necessary actions warranted under the circumstances."

A calculus of fear and pessimism, however, does not justify the remedy petitioner seeks: that we now overturn a law enacted by Congress and approved by the Chief Executive. The Court must act on valid legal reasons that will explain why we should interfere with vital legislation.[34] To strike down a provision of law we need a clear showing that what the Constitution prohibits, the statute has allowed to be done.[35] Since there is no clear showing that Section 19 of R.A. 8479 has violated the constitutional prohibition against monopolies and combinations in restraint of trade, I vote that the present petition be DISMISSED.

---

[1] Rollo, pp. 40-47.

[2] Section 5 [b] of R.A. 7638.

[3] Tatad vs. Secretary of the Department of Energy, 281 SCRA 330, 359 - 360 (1997).

[4] See Philippine Star issue of Dec. 4, 1997.

[5] Supra, note 3 at 370.

[6] Tatad vs. Secretary of the Department of Energy, 282 SCRA 337, 354 (1997).

[7] Supra, note 3, at 353.

[8] Ibid.

[9] Supra, note 6, at 358.

[10] Supra, see note 6 at 345.

[11] Section 17 of Republic Act Number 8479 - Buffer Fund: The President may, when the interest of the consumers so requires, taking into account the rise in the domestic prices of petroleum products, use the "Reserve Control Account" as a buffer fund in the amount not exceeding Two billion nine hundred million pesos (2,900,000,000.00) to cover increases in the prices of petroleum products, except premium gasoline, during the Transition Phase over the prices prevailing as of the date of the effectivity of this Act. x x x.

[12] Rollo, p. 46.

[13] "Annex 2" of Public Respondent's Comment.

[14] See David Weimer and Aidan Vining, "Policy Analysis: Concepts and Practice, 1992 ed., pp. 124, 126-Comment - Solicitor General for Public Respondents p. 15-16. According to the article, there have been two major lines of criticism to the use of price regulation (1) regulators are quickly captured by the firms that they regulate and (2) such regulation induces inefficient and wasteful behavior. The outcome of such incentives are inefficiency and overuse of capital under rate of return regulation.

[15] Sec. 15. Implementation of Full Deregulation. - Pursuant to Section 5(e) of Republic Act No. 7638, the DOE shall, upon approval of the President, implement the full deregulation of the downstream oil industry not later than March, 1997. As far as practicable, the DOE shall time the full deregulation when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable. Upon the implementation of the full deregulation as provided herein, the transition phase is

deemed terminated and the following laws are deemed repealed:
x x x

[16] x x x

"WHEREAS, Section 15 of Republic Act No. 8180, otherwise known as the `Downstream Oil Industry Deregulation Act of 1996,' provides that `the DOE shall, upon approval of the President, implement the full deregulation of the downstream oil industry not later than March, 1997. As far as practicable, the DOE shall time the full deregulation when the prices of crude oil and petroleum products in the world market are declining and when the exchange rate of the peso in relation to the US dollar is stable;"

"WHEREAS, pursuant to the recommendation of the Department of Energy, there is an imperative need to implement the full deregulation of the downstream oil industry because of the following recent developments: (i) depletion of the buffer fund on or about 7 February 1997 pursuant to the Energy Regulatory Board's Order dated 16 January 1997; (ii) the prices of crude oil had been stable at $21-$23 per barrel since October 1996 while prices of petroleum products in the world market had been stable since mid-December of last year. Moreover, crude oil prices are beginning to soften for the last few days while prices of some petroleum products had already declined' and (iii) the exchange rate of the peso in relation to the US dollar has been stable for the past twelve (12) months, averaging at around P26.20 to ONE US dollar;
x x x

[17] Supra, note 3, at 352-353.

[18] Supra, note 6, at 353.

[19] 146 SCRA 446 (1986).

[20] Id., at 455, 456.

[21] 73 Am. Jur. 2d. Sec. 374.

[22] Id., citing Winslow v. Fleischner, 112 Or 23, 228 P 101, 34 ALR 826.

[23] Id., citing King v. State, 87 Tenn 304, 10 SW 509.

[24] Daza vs. Singson 180 SCRA 496, 500 (1989); citing Tanada vs. Cuenco, 103 Phil. 1051 (1957), Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform, 175 SCRA 343, 377 (1989).

[25] Ibid.

[26] Ibid.

[27] Valmonte vs. Belmonte, Jr., 170 SCRA 256, 268 (1989).

[28] 190 SCRA 717 (1990).

[29] Id. at 737.

[30] Basco vs. Phil. Amusements and Gaming Corporation, 197 SCRA 52, 68 (1991); citing Yu Cong Eng vs. Trinidad,, 47 Phil. 385 (1925); Salas vs. Jarencio, 46 SCRA 734 (1972); Peralta vs. COMELEC, 82 SCRA 30 (1978); Abbas vs. COMELEC, 179 SCRA 287 (1989).

[31] Salas vs. Jarencio, 46 SCRA 734, 749 (1972).

[32] Public respondents' Rejoinder, p. 7.

[33] The Philippine Star, November 23, 1998 issue.

[34] Tolentino vs. Secretary of Finance, 235 SCRA 630, 674 (1994); citing Alalayan vs. National Power Corp., 24 SCRA 172 (1968); Cordero vs. Cabatuando, 6 SCRA 418 (1962); Sumulong vs. COMELEC, 73 Phil. 288 (1941). As of December 10, 1999, Philippine Star, p. 26, reports that "the deregulation of the oil industry under Republic Act (RA) 8479 has resulted in the entry of 53 new players, 10 of which are foreign players...Their entry has forced the industry to offer more competitive prices and products."

[35] Morfe vs. Mutuc, 22 SCRA 424, 435 (1968).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.