

**CEFERINO PADUA, PETITIONER, VS. HON. SANTIAGO RANADA,  
PRESIDING JUDGE OF MAKATI, RTC, BRANCH 137, PHILIPPINE  
NATIONAL CONSTRUCTION CORP., TOLL REGULATORY BOARD,  
DEPARTMENT OF PU...**

*G.R. No. 141949. October 14, 2002*

Ponente: SANDOVAL-GUTIERREZ, J.

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**SANDOVAL-GUTIERREZ, J.:**

The focal point upon which these two consolidated cases converge is whether Resolution No. 2001-89 issued by the Toll Regulatory Board (TRB) is valid.

A brief narration of the factual backdrop is imperative, thus:

On November 9, 2001, the TRB issued Resolution No. 2001-89 authorizing provisional toll rate adjustments at the Metro Manila Skyway, effective January 1, 2002,[1]thus:

“NOW THEREFORE, it is RESOLVED, as it is hereby RESOLVED:

1. That in view of urgent public interest, the Board hereby GRANTS to the Metro Manila Skyway Project, Provisional Relief in accordance with Rule 10, Section 3 of the Rules of Practice and Procedure Governing Hearing before the Toll Regulatory Board which states, among others “that the Board may grant (provisional relief)...in its own initiative...without prejudice to the final decision after completion of the hearing...;”

2. That the Provisional Relief shall be in form of an interim toll rate adjustment in accordance with Section 7.04(3) of the Supplemental Toll Operation Agreement, dated November 27, 1995, referring to Interim Adjustments in Toll Rates upon the occurrence of a significant currency devaluation:

“Be APPROVED, as it is hereby APPROVED.

“RESOLVED FURTHER, as it is hereby RESOLVED:

“That the Provisional Toll Rates, which are not to exceed the following:

Section

Unrounded Toll Rates

Toll Rates for Implementation

CLASS 1

CLASS 2

CLASS 3

Elevated Portion

75.00

75.00

150.00

225.00

At-Grade Portion

Magallanes to Bicutan

19.35

19.50

38.50

58.00

Bicutan to Sucat

11.21

11.00

22.50

34.00

Sucat to Alabang

10.99

11.00

21.00

32.50

\* includes C5 entry/exit and Merville exit.

“For implementation starting January 1, 2002 after its publication once a week for three (3) consecutive weeks in a newspaper of general circulation and that said Provisional Toll Rate Increase shall remain in effect until such time that the TRB Board has determined otherwise:

“Be APPROVED as it is hereby APPROVED.

“RESOLVED FURTHERMORE, as it is hereby RESOLVED that the Provisional Toll Rates be implemented in two (2) stages in accordance with the following schedule:

Section

Unrounded Toll Rates as  
Maximum for One (1) Year

Toll Rates for Implementation  
For Class 1 as Reference

JANUARY 1, 2002 to JUNE 30, 2002

JULY 1, 2002 to DECEMBER 31, 2002

Elevated Portion

75.00

65.00

75.00

At-Grade Portion

Magallanes to Bicutan

19.35

15.00

20.00

Bicutan to Sucat

11.21

9.00

11.00

Sucat to Alabang

10.99

9.00

11.00

“PROVIDED that the recovery of the sum from the interim rate adjustment shall be applied starting the year 2003.

“APPROVED as it is hereby APPROVED.”

On December 17, 24 and 31, 2001, the above Resolution approving provisional toll rate adjustments was published in the newspapers of general circulation.[2]

Tracing back the events that led to the issuance of the said Resolution, it appears that on February 27, 2001 the Citra Metro Manila Tollways Corporation (CITRA) filed with the TRB an application for an interim adjustment of the toll rates at the Metro Manila Skyway Project – Stage 1.[3] CITRA moored its petition on the provisions of the “Supplemental Toll Operation Agreement” (STOA),[4] authorizing it, as the investor, to apply for and if warranted, to be granted an interim adjustment of toll rates in the event of a “significant currency devaluation.” The relevant portions of the STOA read:

- The Investor and/or the Operator shall be entitled to apply for and if warranted, to be granted an interim adjustment of Toll Rates upon the occurrence of any of the following events:

x x x x x x

(ii) a significant currency devaluation

x x x x x x

(i) A currency devaluation shall be deemed “significant” if it results in a depreciation of the value of the Philippine peso relative to the US dollar by at least 10%. For purposes hereof the exchange rate between the Philippine peso and the US dollar which shall be applicable shall be the exchange rate between the above mentioned currencies in effect as of the date of approval of the prevailing preceding Toll Rate.

(ii) The Investor’s right to apply for an interim Toll Rate adjustment under section 7.04 (3) (a) (ii) shall be effective only while any Financing is outstanding and have not yet been paid in full.

x x x x x

(iv) An interim adjustment in Toll Rate shall be considered such amount as may be required to provide interim relief to the Investor from a substantial increase in debt-service burden resulting from the devaluation.”[5]

Claiming that the peso exchange rate to a U.S. dollar had devaluated from P26.1671 in 1995 to P48.00 in 2000, CITRA alleged that there was a compelling need for the increase of the toll rates to meet the loan obligations of the Project and the substantial increase in debt-service burden.

Due to heavy opposition, CITRA’s petition remained unresolved. This prompted CITRA to file on October 9, 2001 an “Urgent Motion for Provisional Approval,”[6] this time, invoking Section 3, Rule 10 of the “Rules of Practice and Procedure Governing Hearing Before the Toll Regulatory Board” (TRB Rules of Procedure) which provides:

“SECTION 3. Provisional Relief. – Upon the filing of an application or petition for the approval of the initial toll rate or toll rate adjustment, or at any stage, thereafter, the Board may grant on motion of the pleader or in its own initiative, the relief prayed for without prejudice to a final decision after completion of the hearing should the Board find that the pleading, together with the affidavits and supporting documents attached thereto and such additional evidence as may have been requested and presented, substantially support the provisional order; Provided: That the Board may, *motu proprio*, continue to issue orders or grant relief in the exercise of its powers of general supervision under existing laws. Provided: Finally, that pending finality of the decision, the Board may require the Petitioner to deposit in whole or in part in escrow the provisionally approved adjustment or initial toll rates.” (Emphasis supplied)

On October 30, 2001, CITRA moved to withdraw[7] its “Urgent Motion for Provisional Approval” without prejudice to its right to seek or be granted provisional relief under the above-quoted provisions of the TRB Rules of Procedure, obviously, referring to the power of the Board to act on its own initiative.

On November 7, 2001, CITRA wrote a letter[8] to TRB expressing its concern over the undue delay in the proceeding, stressing that any further setback would bring the Project’s financial condition, as well as the Philippine banking system, to a total collapse. CITRA recounted that out of the US\$354 million funding from creditors, two-thirds (2/3) thereof came from the Philippine banks and financial institutions, such as the Landbank of the Philippines and the Government Service Insurance Services. Thus, CITRA requested TRB to find a timely solution to its predicament.

On November 9, 2001, TRB granted CITRA’s motion to withdraw[9]the Urgent Motion for Provisional Approval and, at the same time, issued Resolution No. 2001-89,[10] earlier quoted.

Hence, petitioners Ceferino Padua and Eduardo Zialcita assail before this Court the validity and legality of TRB Resolution No. 2001-89.

Petitioner Ceferino Padua, as a toll payer, filed an “Urgent Motion for a Temporary Restraining Order to Stop Arbitrary Toll Fee Increases”[11] in G.R. No. 141949,[12] a petition for mandamus earlier filed by him. In that petition, Padua seeks to compel respondent Judge Santiago Ranada of the Regional Trial Court, Branch 137,

Makati City, to issue a writ of execution for the enforcement of the Court of Appeals' Decision dated August 4, 1989 in CA-G.R. SP No. 13235. In its Decision, the Court of Appeals ordered the exclusion of certain portions of the expressways (from Villamor Air Base to Alabang in the South, and from Balintawak to Tabang in the North) from the franchise of the PNCC.

In his urgent motion, petitioner Padua claims that: (1) Resolution No. 2001-89 was issued without the required publication and in violation of due process; (2) alone, TRB Executive Director Jaime S. Dumlao, Jr., could not authorize the provisional toll rate adjustments because the TRB is a collegial body; and (3) CITRA has no standing to apply for a toll fee increase since it is an "investor" and not a "franchisee-operator."

On January 4, 2002, petitioner Padua filed a "Supplemental Urgent Motion for a TRO against Toll Fee Increases,"[13]arguing further that: (1) Resolution 2001-89 refers exclusively to the Metro Manila Skyway Project, hence, there is no legal basis for the imposition of the increased rate at the at-grade portions; (2) Resolution No. 2001-89 was issued without basis considering that while it was signed by three (3) of the five members of the TRB, none of them actually attended the hearing; and (3) the computation of the rate adjustment under the STOA is inconsistent with the rate adjustment formula under Presidential Decree No. 1894.[14]

On January 10, 2002, the Office of the Solicitor General (OSG) filed, in behalf of public respondent TRB, Philippine National Construction Corporation (PNCC), Department of Public Works and Highways (DPWH) and Judge Ranada, a "Consolidated Comment"[15] contending that: (1) the TRB has the exclusive jurisdiction over all matters relating to toll rates; (2) Resolution No. 2001-89 covers both the Skyway and the at-grade level of the South Luzon Expressway as provided under the STOA; (3) that while Resolution No. 2001-89 does not mention any factual basis to justify its issuance, however, it does not mean that TRB's finding of facts is not supported by evidence; and (4) petitioner Padua cannot assail the validity of the STOA because he is not a party thereto.

Upon the other hand, on January 9, 2002, petitioner Eduardo Zialcita, as a taxpayer and as Congressman of Parañaque City, filed the present petition for prohibition[16]with prayer for a temporary restraining order and/or writ of preliminary injunction against TRB and CITRA, docketed as G.R. No. 151108, impugning the same Resolution No. 2001-89.

Petitioner Zialcita asserts that the provisional toll rate adjustments are exorbitant and that the TRB violated its own Charter, Presidential Decree No. 1112,[17] when it promulgated Resolution No. 2001-89 without the benefit of any public hearing. He also maintains that the TRB violated the Constitution when it did not express clearly and distinctly the facts and the law on which Resolution No. 2001-89 was based. And lastly, he claims that Section 3, Rule 10 of the TRB Rules of Procedure is not sanctioned by P.D. No. 1112.

Private respondent CITRA, in its comment[18] on Congressman Zialcita's petition, counters that: (1) the TRB has primary administrative jurisdiction over all matters relating to toll rates; (2) prohibition is an inappropriate remedy because its function is to restrain acts about to be done and not acts already accomplished; (3) Resolution No. 2001-89 was issued in accordance with law; (4) Section 3, Rule 10 of the TRB Rules is constitutional; and (5) private respondent and the Republic of the Philippines would suffer more irreparable damages than petitioner.

The TRB, through the OSG, filed a separate comment[19] reiterating the same arguments raised by private respondent CITRA.

On January 11, 2002, this Court resolved to consolidate the instant petitions, G.R. No. 141949 and G.R. No. 151108.[20]

We rule for the respondents.

In assailing Resolution No. 2001-89, petitioners came to us via two unconventional remedies – one is an urgent motion for a TRO to stop arbitrary toll fee increases; and the other is a petition for prohibition. Unfortunately, both are procedurally impermissible.

## I

Petitioner Padua's motion is a leap to a legal contest of different dimension. As previously stated, G.R. No. 141949 is a petition for mandamus seeking to compel respondent Judge Ranada to issue a writ of execution for the enforcement of the Court of Appeal's Decision dated August 4, 1989 in CA-G.R. SP No. 13235. The issue therein is whether the application for a writ of execution should be by a mere motion or by an action for revival of judgment. Thus, for petitioner Padua to suddenly interject in the same petition the issue of whether Resolution No. 2001-89 is valid is to drag this Court to his web of legal convolution. Courts cannot, as a case progresses, resolve the intrinsic merit of every issue that comes along its way, particularly those which bear no relevance to the resolution of the case.

Certainly, petitioner Padua's recourse in challenging the validity of TRB Resolution No. 2001-89 should have been to institute an action, separate and independent from G.R. No. 141949.

## II

The remedy of prohibition initiated by petitioner Zialcita in G.R. No. 151108 also suffers several infirmities. Initially, it violates the twin doctrine of primary administrative jurisdiction and non-exhaustion of administrative remedies.

P.D. No. 1112 explicitly provides that "the decisions of the TRB on petitions for the increase of toll rate shall be appealable to the Office of the President within ten (10) days from the promulgation thereof." [21] P.D. No. 1894 reiterates this instruction and further provides:

"SECTION 9. The GRANTEE shall have the right and authority to adjust any existing toll being charged the users of the Expressways under the following guidelines:

x x x x x

c) Any interested Expressways user shall have the right to file, within a period of ninety (90) days after the date of publication of the adjusted toll rate (s), a petition with the Toll Regulatory Board for a review of the adjusted toll rate (s); provided, however, that notwithstanding the filing of such petition and the pendency of the resolution thereof, the adjusted toll shall be enforceable and collectible by the GRANTEE effective on the first day of January in accordance with the immediately preceding paragraph.

x x x x x

e) Decisions of the Toll Regulatory Board on petitions for review of adjusted toll shall be appealable to the Office of the President within ten (10) days from the promulgation thereof."

These same provisions are incorporated in the TRB Rules of Procedure, particularly in Section 6, Rule 5 and Section 1, Rule 12 thereof. [22]

Obviously, the laws and the TRB Rules of Procedure have provided the remedies of an interested Expressways user. [23] The initial proper recourse is to file a petition for review of the adjusted toll rates with the TRB. The need for a prior resort to this body is with reason. The TRB, as the agency assigned to supervise the collection of toll fees and the operation of toll facilities, has the necessary expertise, training and skills to judiciously decide matters of this kind. As may be gleaned from the petition, the main thrust of petitioner Zialcita's argument is that

the provisional toll rate adjustments are exorbitant, oppressive, onerous and unconscionable. This is obviously a question of fact requiring knowledge of the formula used and the factors considered in determining the assailed rates. Definitely, this task is within the province of the TRB.

We take cognizance of the wealth of jurisprudence on the doctrine of primary administrative jurisdiction and exhaustion of administrative remedies. In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review in case of grave abuse of discretion, is indispensable. Between the power lodged in an administrative body and a court, the unmistakable trend is to refer it to the former.”[24] In *Industrial Enterprises, Inc. vs. Court of Appeals*,[25] we ruled:

“x x x, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.”

Moreover, petitioner Zialcita’s resort to prohibition is intrinsically inappropriate. It bears stressing that the office of this remedy is not to correct errors of judgment but to prevent or restrain usurpation of jurisdiction or authority by inferior tribunals and to compel them to observe the limitation of their jurisdictions. G.R. No. 151108, while designated as a petition for prohibition, has for its object the setting aside of Resolution No. 2001-89 on the ground that it was issued without prior notice, hearing and publication and that the provisional toll rate adjustments are exorbitant. This is not the proper subject of prohibition because as long as the inferior court, tribunal or board has jurisdiction over the person and subject matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment. And even in cases of encroachment, usurpation, and improper assumption of jurisdiction, the writ will not issue where an adequate and applicable remedy by appeal, writ or error, certiorari, or other prescribed methods of review are available.[26] In this case, petitioner Zialcita should have sought a review of the assailed Resolution before the TRB.

### III

Even granting that petitioners’ recourse to the instant remedies is in order, still, we cannot rule in their favor.

For one, it is not true that the provisional toll rate adjustments were not published prior to its implementation on January 1, 2002. Records show that they were published on December 17, 24 and 31, 2001[27] in three newspapers of general circulation, particularly the *Philippine Star*, *Philippine Daily Inquirer* and *The Manila Bulletin*. Surely, such publications sufficiently complied with Section 5 of P.D. No. 1112 which mandates that “no new rates shall be collected unless published in a newspaper of general publication at least once a week for three consecutive weeks.” At any rate, it must be pointed out that under Letter of Instruction No. 1334-A,[28] the TRB may grant and issue ex-parte to any petitioner, without need of notice, publication or hearing, provisional authority to collect, pending hearing and decision on the merits of the petition, the increase in rates prayed for or such lesser amount as the TRB may in its discretion provisionally grant. That LOI No. 1334-A has the force and effect of law finds support in a catena of cases decreeing that “all proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the former President (Ferdinand E. Marcos) are part of the law of the land, and shall remain valid, legal, binding, and effective, unless modified, revoked or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the President.”[29] In *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*,[30] this Court held:

“The Court wryly observes that during the past dictatorship, every presidential issuance, by whatever name it

was called, had the force and effect of law because it came from President Marcos. Such are the ways of despots. Hence, it is futile to argue, as the petitioners do in G.R. No. 79744, that LOI 474 could not have repealed P.D. No. 27 because the former was only a letter of instruction. The important thing is that it was issued by President Marcos, whose word was law during that time.” (Emphasis supplied)

For another, it is not true that it was TRB Executive Director Dumlao, Jr. alone who issued Resolution No. 2001-89. The Resolution itself contains the signature of the four TRB Directors, namely, Simeon A. Datumanong, Emmanuel P. Bonoan, Ruben S. Reinoso, Jr. and Mario K. Espinosa.[31] Petitioner Padua would argue that while these Directors signed the Resolution, none of them personally attended the hearing. This argument is misplaced. Under our jurisprudence, an administrative agency may employ other persons, such as a hearing officer, examiner or investigator, to receive evidence, conduct hearing and make reports, on the basis of which the agency shall render its decision. Such a procedure is a practical necessity.[32] Thus, in *Mollaneda vs. Umacob*,[33] we ruled:

“x x x At any rate, it cannot be gainsaid that the term “administrative body or agency” includes the subordinate officials upon whose hand the body or agency delegates a portion of its authority. Included therein are the hearing officers through whose eyes and ears the administrative body or agency observes the demeanor, conduct and attitude of the witnesses and listens to their testimonies.

“It must be emphasized that the appointment of competent officers to hear and receive evidence is commonly resorted to by administrative bodies or agencies in the interest of an orderly and efficient disposition of administrative cases. x x x

“x x x Corollarily, in a catena of cases, this Court laid down the cardinal requirements of due process in administrative proceedings, one of which is that “the tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate.” Thus, it is logical to say that this mandate was rendered precisely to ensure that in cases where the hearing or reception of evidence is assigned to a subordinate, the body or agency shall not merely rely on his recommendation but instead shall personally weigh and assess the evidence which the said subordinate has gathered.”

Be that as it may, we must stress that the TRB’s authority to grant provisional toll rate adjustments does not require the conduct of a hearing. Pertinent laws and jurisprudence support this conclusion.

It may be recalled that Former President Ferdinand E. Marcos promulgated P.D. No. 1112 creating the TRB on March 31, 1977. The end in view was to authorize the collection of toll fees for the use of certain public improvements in order to attract private sector investment in the government infrastructure projects. The TRB was tasked to supervise the collection of toll fees and the operation of toll facilities. One of its powers is to “issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof.”[34]

To clarify the intent of P.D. No. 1112 as to the extent of the TRB’s power,[35] Former President Marcos further issued LOI No. 1334-A expressly allowing the TRB to grant ex-parte provisional or temporary increase in toll rates, thus:

“NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby direct, order and instruct the Toll Regulatory Board to grant and issue ex-parte to any petitioner, without need of notice, publication or hearing, provisional authority to collect, pending hearing of and decision on the merits of such petition, the increase in rates prayed for or such lesser amount as the Board may in its discretion provisionally grant, upon (a) a finding that the said petition is sufficient in form and substance, (b) the submission of an affidavit by the petitioner showing that the increase in rates substantially conforms to the formula, if any stipulated in the franchise or toll operation

agreement/certificate of the petitioner and that failure to immediately impose and collect the increase in rates would result in outright delay or stoppage of urgently needed improvements, expansion or repairs of toll facilities and/or in great irreparable injury to the petitioner, and (c) the submission by the petitioner to the Board of a bond, in such amount and from such surety or sureties and under such terms and conditions as the Board shall fix, to guarantee the refund of the increase in rates to the affected toll payers in case it is finally determined, after notice and hearing, that the petitioner is not entitled, in whole or in part, to the same. Any provisional toll rate increases shall be effective immediately upon approval without need of publication.”

Thereafter, the TRB promulgated as part of its Rules of Procedure, the following provision:

“RULE 5

PROCEDURE FOR APPROVAL OF TOLL RATE

“Section 2. Provisional Relief – Upon initial findings of the Board that the Petition for the approval of initial toll rate or the petition for toll rate adjustment is in accordance with Sections 1 and 2 of Rule 2, Section 2 of Rule 3 and Section 1 of Rule 4 hereof, the Board within a reasonable time after the filing of the Petition, may in an en banc decision provisionally approve the initial toll rate or toll rate adjustment, without the necessity of any notice and hearing.”

From the foregoing, it is clear that a hearing is not necessary for the grant of provisional toll rate adjustment. The language of LOI No. 1334-A is not susceptible of equivocation. It “directs, orders and instructs” the TRB to issue provisional toll rates adjustment ex-parte without the need of notice, hearing and publication. All that is necessary is that it be issued upon (1) a finding that the main petition is sufficient in form and substance; (2) the submission of an affidavit showing that the increase in rates substantially conforms to the formula, if any is stipulated in the franchise or toll operation agreement, and that failure to immediately impose and collect the increase in rates would result in great irreparable injury to the petitioner; and (3) the submission of a bond. Again, whether or not CITRA complied with these requirements is an issue that must be addressed to the TRB.

The practice is not something peculiar. We have ruled in a number of cases that an administrative agency may be empowered to approve provisionally, when demanded by urgent public need, rates of public utilities without a hearing. The reason is easily discerned from the fact that provisional rates are by their nature temporary and subject to adjustment in conformity with the definitive rates approved after final hearing.[36] In *Maceda vs. Energy Regulatory Board*,[37] we ruled that while the ERB is not precluded from conducting a hearing on the grant of provisional authority – which is of course, the better procedure – however, it can not be stigmatized if it failed to conduct one. Citing *Citizens’ Alliance for Consumer Protection vs. Energy Regulatory Board*,[38] this Court held:

In the light of Section 8 quoted above, public respondent Board need not even have conducted formal hearings in these cases prior to issuance of its Order of 14 August 1987 granting a provisional increase of prices. The Board, upon its own discretion and on the basis of documents and evidence submitted by private respondents, could have issued an order granting provisional relief immediately upon filing by private respondents of their respective applications. In this respect, the Court considers the evidence presented by private respondents in support of their applications – i.e., evidence showing that importation costs of petroleum products had gone up; that the peso had depreciated in value; and that the Oil Price Stabilization Fund (OPSF) had been depleted – as substantial and hence constitutive of at least prima facie basis for issuance by the Board of a provisional relief order granting an increase in the prices of petroleum products.

Anent petitioner Padua’s contention that CITRA has no standing to apply for a toll fee increase, suffice it to say that CITRA’s right stems from the STOA which was entered into by no less than the Republic of the Philippines and by the PNCC. Section 7.04 of the STOA provides that the Investor, CITRA, and/or the Operator, PNCC, shall be entitled to apply for and if warranted, to be granted an interim adjustment of toll rates in case of force majeure

and a significant currency valuation.[39] Now, unless set aside through proper action, the STOA has the force and effect of law between the contracting parties, and is entitled to recognition by this Court.[40] On the same breath, we cannot sustain Padua's contention that the term "Metro Manila Skyway" Project excludes the at-grade portions of the South Luzon Expressway considering that under the same STOA the "Metro Manila Skyway" includes: "(a) the South Metro Manila Skyway, coupled with the rehabilitated at-grade portion of the South Luzon Expressway, from Alabang to Quirino Avenue; (b) the Central Metro Manila Skyway, from Quirino Avenue to A. Bonifacio Avenue; x x x." [41]

Petitioner Zialcita faults the TRB for not stating the facts and the law on which Resolution No. 2001-89 is based. Petitioner is wrong. Suffice it to state that while Section 14, Article VIII of the 1987 Constitution provides that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," this rule applies only to a decision of a court of justice, not TRB.[42]

At this point, let it be stressed that we are not passing upon the reasonableness of the provisional toll rate adjustments. As we have earlier mentioned, this matter is best addressed to the TRB.

#### IV

In fine, as what we intimated in *Philippine National Construction Corp. vs. Court of Appeals*, [43] we commend petitioners for devoting their time and effort on a matter so imbued with public interest as in this case. But we can do no better than to brush aside their chief objections to the provisional toll rate adjustments, for a different approach would lead this Court astray into the field of factual conflict where its pronouncements would not rest on solid grounds. Time and again, we have impressed that this Court is not a trier of facts, more so, in the consideration of an extraordinary remedy of prohibition where only questions of lack or excess of jurisdiction or grave abuse of discretion is to be entertained.

And to accord the main petition for mandamus in G.R. No. 141949 the full deliberation it deserves, we deem it appropriate to discuss its merit on another occasion. Anyway, G.R. No. 141949 was consolidated with G.R. No. 151108 only by reason of petitioner Padua's deviant motion assailing Resolution 2001-89. As we have previously said, the main petition in G.R. No. 141949 presents an entirely different issue and is set on a different factual landscape.

WHEREFORE, petitioner Padua's "Urgent Motion for Temporary Restraining Order to Stop Arbitrary Toll Fee Increases" is DENIED and petitioner Zialcita's "Petition for Prohibition" is DISMISSED.

#### SO ORDERED.

Puno (Chairman), Corona, and Carpio-Morales, JJ., concur.  
Panganiban, J., please see separate opinion.

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[1] Rollo of G.R. No. 141949, pp. 576 –578.

[2] Rollo of G.R. No. 151108, pp. 22-24. See also Rollo of G.R. No. 141949, p. 589.

[3] On December 12, 2000, CITRA filed a Petition praying that the proposed toll rates adjustment be approved. In an Order dated February 23, 2001, CITRA was directed to amend the Petition in order to enable the public and/or the Oppositors to file their comment/opposition. On February 29, 2001, CITRA filed an Amended Petition. Rollo of G.R. No. 151108, pp. 93-100.

[4] Entered into on November 27, 1995 by and among the Republic of the Philippines, as grantor, the Philippine

National Construction Corporation (PNCC), as operator, and the CITRA, as investor, wherein CITRA was vested “the primary and exclusive privilege, responsibility and obligation” to design, construct and finance the South Metro Manila Skyway Project and PNCC was vested the primary and exclusive privilege, responsibility and obligation to operate and finance the said Project. Rollo of G.R. No. 141949, pp. 237-505.

[5] Ibid., pp. 280-281.

[6] Rollo of G.R. No. 151108, pp. 118-124.

[7] Ibid., p. 125.

[8] Rollo of G.R. No. 141949, pp. 627-628.

[9] Ibid., p. 570.

[10] Supra.

[11] Dated December 27, 2001, Rollo of G.R. No. 141949, pp. 557-567.

[12] Dated March 20, 2001, *ibid.*, pp. 8-32.

[13] Ibid., pp. 571-575.

[14] AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TO CONSTRUCT, MAINTAIN AND OPERATE TOLL FACILITIES IN THE NORTH LUZON AND SOUTH LUZON EXPRESSWAYS TO INCLUDE THE METRO MANILA EXPRESSWAY TO SERVE AS AN ADDITIONAL ARTERY IN THE TRANSPORTATION OF TRADE AND COMMERCE IN THE METRO MANILA AREA.

[15] Rollo of G.R. No. 141949, pp. 584-595.

[16] Rollo of G.R. No. 151108, pp. 3-13.

[17] Otherwise known as the “Toll Operation Decree,” O.G., Vol. 73, No. 24, pp. 5123, 5125.

[18] Rollo of G.R. No. 151108, pp. 61-81.

[19] Ibid., pp. 251-263.

[20] Ibid., pp. 28-29.

[21] Section 3 of P.D. No. 1112.

[22] Section 6. Opposition – Any interested Expressways user shall have the right to file within a period of ninety (90) days after the date of publication of the initial or adjusted toll rate(s), a petition with the Toll Regulatory Board for a review of the adjusted toll rate(s); provided, however, that, notwithstanding the filing of such petition and the pendency of the resolution thereof, the adjusted toll shall be enforceable and collectible on the date specified in Section 5 above on the provisional approval unless otherwise provided by the Board. (Rule 5)

Section 1. Mode and Period – A party adversely affected by any decision, order, ruling or resolution of the Board may, within a period of ten (10) days from notice thereof or within ten (10) days following the denial of a motion for reconsideration filed within the period to appeal, petition the Office of the President to review said decision, order, ruling or resolution under Rule 44 of the Rules of Court. In proper cases, the aggrieved party may avail himself of the petition for certiorari under Rule 65 of the Rules of Court. (Rule 12)

[23] To inform the public of the appropriate recourse, the published notice of the provisional toll rates adjustment

carries with it a note stating that the Expressways users has the right to file a petition for review with the TRB within 90 days after the date of publication. Rollo of G.R. No. 151108, pp. 22-24.

[24] Abejo vs. De la Cruz, 149 SCRA 654 (1987).

**[25] 184 SCRA 426 (1990).**

[26] Herrera, Remedial Law, 1996 Edition, p. 173; Vergara vs. Rogue, 78 SCRA 312 (1977).

[27] Supra.

[28] Issued by Former President Ferdinand E. Marcos on June 21, 1983.

[29] People vs. Gacott, Jr., 242 SCRA 514 (1995); Legaspi vs. Minister of Finance, 115 SCRA 418 (1982); Aquino vs. Comelec, 62 SCRA 275 (1975).

**[30] 175 SCRA 343 (1989).**

[31] Rollo of G.R. No. 141949, p. 578.

[32] Lupo vs. Administrative Action Board, 190 SCRA 69 (1990).

[33] G.R. No. 140128, June 6, 2001; See also 67 SCRA 287 (1975); Skyworld Condominium Owners Association, Inc. vs. Securities and Exchange Commission, 211 SCRA 565 (1992); National Union of Printing Workers vs. Asia Printing, et al., 99 Phil 589 (1956); Cebu Transit Co. vs. Jereza, 58 Phil 760 (1933).

[34] Section 3 of P.D. No. 1112.

[35] The Whereas Clause of LOI No. 1334-A reads:

"WHEREAS, the Toll Regulatory Board was established pursuant to Presidential Decree No. 1112 to closely supervise and regulate the operation of toll facilities by the private sector and the collection of toll fees;

WHEREAS, the Toll Regulatory Board is empowered, among others, to issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing to approve or disapprove petitions for the increase thereof;

WHEREAS, there is an urgent need to clarify the intent of Presidential Decree No. 1112 since it does not expressly grant the Toll Regulatory Board authority to grant ex-parte provisional or temporary increases in toll rates pending notice and hearing of the petition filed with it for increases in toll rates;

WHEREAS, it is the intent of Presidential Decree No. 1112 that the Toll Regulatory Board shall have the power and authority to grant ex-parte provisional toll rate increases, pending hearing of and decision on the merits of the petition for toll rate increases, and that said provisional toll rate increases shall be effective immediately;

WHEREAS, consistent with the aforesaid intent of Presidential Decree No. 1112, it is in the interest of motorists in particular and the public in general to provide for a plain, speedy and adequate legal remedy in cases where, in order to prevent delay or stoppage of urgent improvements or expansion of toll facilities or to expedite necessary repairs of toll facilities, reasonable adjustments in existing toll rates need to be immediately implemented."

[36] Radio Communications of the Philippines vs. National Telecommunications Commission, 184 SCRA 517 (1990).

**[37] 192 SCRA 363 (1990).**

**[38] 162 SCRA 521 (1988).**

[39] STOA, pp. 38-39, Rollo of G.R. No. 141949, pp. 280-281.

[40] Article 1159 of the Civil Code; Vitug, Compendium of Civil Law and Jurisprudence, 1993 Edition, p. 536.

[41] STOA, Section 1 (24), p. 7, Rollo of G.R. No. 141949, p. 249.

[42] Cruz, Philippine Political Law, 1996 Edition, pp. 269, 273; See also Buscayno vs. Enrile, 102 SCRA 7 (1981); Mangca vs. Commission on Elections, 112 SCRA 273; and Dadubo vs. Civil Service Commission, 223 SCRA 747 (1993).

**[43] 228 SCRA 565 (1993).**

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### **SEPARATE OPINION**

**PANGANIBAN, J.:**

I vote to deny the Petitions but only on the procedural grounds discussed in Items I and II, pages 11-15 of the ponencia of Justice Gutierrez. However, I reserve my vote on the validity and the reasonability of the toll rate increases if and when the appropriate proceedings are brought to this Court in due course.

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