# JAMES MIRASOL, RICHARD SANTIAGO, AND LUZON MOTORCYCLISTS FEDERATION, INC., PETITIONERS, VS. DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AND TOLL REGULATORY BOARD, RESPONDENTS.

*G.R. NO. 158793. June 08, 2006*

Ponente: CARPIO, J.

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**CARPIO, J.:**

This petition for review on certiorari[1] seeks to reverse the Decision dated 10 March 2003 of the Regional Trial Court, Branch 147, Makati City (RTC) in Civil Case No. 01-034, as well as the RTC's Order dated 16 June 2003 which denied petitioners' Motion for Reconsideration. Petitioners assert that Department of Public Works and Highways' (DPWH) Department Order No. 74 (DO 74), Department Order No. 215 (DO 215), and the Revised Rules and Regulations on Limited Access Facilities of the Toll Regulatory Board (TRB) violate Republic Act No. 2000 (RA 2000) or the Limited Access Highway Act. Petitioners also seek to declare Department Order No. 123 (DO 123) and Administrative Order No. 1 (AO 1)[2] unconstitutional.

Antecedent Facts

The facts are not in dispute. As summarized by the Solicitor General, the facts are as follows:

> - On January 10, 2001, petitioners filed before the trial court a Petition for Declaratory Judgment with Application for Temporary Restraining Order and Injunction docketed as Civil Case No. 01-034. The petition sought the declaration of nullity of the following administrative issuances for being inconsistent with the provisions of Republic Act 2000, entitled "Limited Access Highway Act" enacted in 1957:
>
> - DPWH Administrative Order No. 1, Series of 1968;
>
> - DPWH Department Order No. 74, Series of 1993;
>
> - Art. II, Sec. 3(a) of the Revised Rules on Limited Access Facilities promulgated in 199[8] by the DPWH thru the Toll Regulatory Board (TRB).
>
> - Previously, pursuant to its mandate under R.A. 2000, DPWH issued on June 25, 1998 Department Order (DO) No. 215 declaring the Manila-Cavite (Coastal Road) Toll Expressway as limited access facilities.
>
> - Accordingly, petitioners filed an Amended Petition on February 8, 2001 wherein petitioners sought the declaration of nullity of the aforesaid administrative issuances. Moreover, petitioners prayed for the issuance of a temporary restraining order and/or preliminary injunction to prevent the enforcement of the total ban on motorcycles along the entire breadth of North and South Luzon Expressways and the Manila-Cavite (Coastal Road) Toll Expressway under DO 215.
>
> - On June 28, 2001, the trial court, thru then Presiding Judge Teofilo Guadiz, after due hearing, issued an order granting petitioners' application for preliminary injunction. On July 16, 2001, a writ of preliminary injunction

> was issued by the trial court, conditioned upon petitioners' filing of cash bond in the amount of P100,000.00, which petitioners subsequently complied with.
>
> - On July 18, 2001, the DPWH acting thru the TRB, issued Department Order No. 123 allowing motorcycles with engine displacement of 400 cubic centimeters inside limited access facilities (toll ways).
>
> - Upon the assumption of Honorable Presiding Judge Ma. Cristina Cornejo, both the petitioners and respondents were required to file their respective Memoranda. Petitioners likewise filed [their] Supplemental Memorandum. Thereafter, the case was deemed submitted for decision.
>
> - Consequently, on March 10, 2003, the trial court issued the assailed decision dismissing the petition but declaring invalid DO 123. Petitioners moved for a reconsideration of the dismissal of their petition; but it was denied by the trial court in its Order dated June 16, 2003.[3]

Hence, this petition.

The RTC's Ruling

The dispositive portion of the RTC's Decision dated 10 March 2003 reads:

> WHEREFORE, [t]he Petition is denied/dismissed insofar as petitioners seek to declare null and void ab initio DPWH Department Order No. 74, Series of 1993, Administrative Order No. 1, and Art. II, Sec. 3(a) of the Revised Rules on Limited Access Facilities promulgated by the DPWH thru the TRB, the presumed validity thereof not having been overcome; but the petition is granted insofar as DPWH Department Order No. 123 is concerned, declaring the same to be invalid for being violative of the equal protection clause of the Constitution.
>
> SO ORDERED.[4]

The Issues

Petitioners seek a reversal and raise the following issues for resolution:

> - WHETHER THE RTC'S DECISION IS ALREADY BARRED BY RES JUDICATA;
>
> - WHETHER DO 74, DO 215 AND THE TRB REGULATIONS CONTRAVENE RA 2000; AND
>
> - WHETHER AO 1 AND DO 123 ARE UNCONSTITUTIONAL.[5]

The Ruling of the Court

The petition is partly meritorious.

Whether the RTC's Decision DismissingPetitioners' Case is Barred by Res Judicata
Petitioners rely on the RTC's Order dated 28 June 2001, which granted their prayer for a writ of preliminary injunction. Since respondents did not appeal from that Order, petitioners argue that the Order became "a final judgment" on the issues. Petitioners conclude that the RTC erred when it subsequently dismissed their petition in its Decision dated 10 March 2003.

Petitioners are mistaken. As the RTC correctly stated, the Order dated 28 June 2001 was not an adjudication on the merits of the case that would trigger res judicata. A preliminary injunction does not serve as a final determination of the issues. It is a provisional remedy, which merely serves to preserve the status quo until the court could hear the merits of the case.[6] Thus, Section 9 of Rule 58 of the 1997 Rules of Civil Procedure requires the issuance of a final injunction to confirm the preliminary injunction should the court during trial determine that the acts complained of deserve to be permanently enjoined. A preliminary injunction is a mere


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adjunct, an ancillary remedy which exists only as an incident of the main proceeding.[7]

Validity of DO 74, DO 215and the TRB Regulations

Petitioners claim that DO 74,[8] DO 215,[9] and the TRB's Rules and Regulations issued under them violate the provisions of RA 2000. They contend that the two issuances unduly expanded the power of the DPWH in Section 4 of RA 2000 to regulate toll ways. Petitioners assert that the DPWH's regulatory authority is limited to acts like redesigning curbings or central dividing sections. They claim that the DPWH is only allowed to re-design the physical structure of toll ways, and not to determine "who or what can be qualified as toll way users."[10]

Section 4 of RA 2000[11] reads:

> SEC. 4. Design of limited access facility. - The Department of Public Works and Communications is authorized to so design any limited access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and its determination of such design shall be final. In this connection, it is authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person, shall have any right of ingress or egress to, from or across limited access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time. (Emphasis supplied)

On 19 February 1968, Secretary Antonio V. Raquiza of the Department of Public Works and Communications issued AO 1, which, among others, prohibited motorcycles on limited access highways. The pertinent provisions of AO 1 read:

> SUBJECT: Revised Rules and Regulations
> Governing Limited Access
> Highways
>
> By virtue of the authority granted the Secretary [of] Public Works and Communications under Section 3 of R.A. 2000, otherwise known as the Limited Access Highway Act, the following rules and regulations governing limited access highways are hereby promulgated for the guidance of all concerned:
>
> x x x x
>
> Section 3 - On limited access highways, it is unlawful for any person or group of persons to:
>
> x x x x
>
> (h) Drive any bicycle, tricycle, pedicab, motorcycle or any vehicle (not motorized);
>
> x x x x[12](Emphasis supplied)

On 5 April 1993, Acting Secretary Edmundo V. Mir of the Department of Public Works and Highways issued DO 74:

> SUBJECT: Declaration of the North Luzon Expressway from Balintawak to Tabang and the South Luzon Expressway from Nichols to Alabang as Limited Access Facilities
>
> Pursuant to Section 2 of Republic Act No. 2000, a limited access facility is defined as "a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air or view by reason of the fact that their proper[t]y abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commerical [sic] vehicles shall be


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> excluded; or they may be free ways open to use by all customary forms of street and highway traffic."
>
> Section 3 of the same Act authorizes the Department of Public Works and Communications (now Department of Public Works and Highways) "to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever it is of the opinion that traffic conditions, present or future, will justify such special facilities."
>
> Therefore, by virtue of the authority granted above, the Department of Public Works and Highways hereby designates and declares the Balintawak to Tabang Sections of the North Luzon Expressway, and the Nichols to Alabang Sections of the South Luzon Expressways, to be LIMITED ACCESS HIGHWAYS/FACILITIES subject to such rules and regulations that may be imposed by the DPWH thru the Toll Regulatory Board (TRB).
>
> In view thereof, the National Capital Region (NCR) of this Department is hereby ordered, after consultation with the TRB and in coordination with the Philippine National Police (PNP), to close all illegal openings along the said Limited Access Highways/Facilities. In this connection, the NCR is instructed to organize its own enforcement and security group for the purpose of assuring the continued closure of the right-of-way fences and the implementation of the rules and regulations that may be imposed by the DPWH thru the TRB.
>
> This Order shall take effect immediately.[13]

On 25 June 1998, then DPWH Secretary Gregorio R. Vigilar issued DO 215:

> SUBJECT: Declaration of the R-1 Expressway, from Seaside drive to Zapote, C-5 Link Expressway, from Zapote to Noveleta, of the Manila Cavite Toll Expressway as Limited Access Facility.
>
> Pursuant to Section 2 of Republic Act No. 2000, a limited access facility is defined as "a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded; or they may be free ways open to use by all customary forms of street and highway traffic."
>
> Section 3 of the same Act authorizes the Department of Public Works and Communications (now Department of Public Works and Highways) "to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever it is of the opinion that traffic conditions, present or future, will justify such special facilities."
>
> Therefore, by virtue of the authority granted above, the Department of Public Works and Highways hereby designates and declares the R-1 Expressway, C-5 Link Expressway and the R-1 Extension Expressway Sections of the Manila Cavite Toll Expressway to be LIMITED ACCESS HIGHWAYS/FACILITIES subject to such rules and regulations that may be imposed by the DPWH thru the Toll Regulatory Board (TRB).
>
> In view thereof, the National Capital Region (NCR) of this Department is hereby ordered, after consultation with the TRB and in coordination with the Philippine National Police (PNP), to close all illegal openings along the said Limited Access Highways/Facilities. In this connection, the NCR is instructed to organize its own enforcement and security group for the purpose of assuring the continued closure of the right-of-way fences and the implementation of the rules and regulations that may be imposed by the DPWH thru the TRB.
>
> This Order shall take effect immediately.[14]

The RTC held that Section 4 of RA 2000 expressly authorized the DPWH to design limited access facilities and to regulate, restrict, or prohibit access as to serve the traffic for which such facilities are intended. According to the RTC, such authority to regulate, restrict, or prohibit logically includes the determination of who and what can and

cannot be permitted entry or access into the limited access facilities. Thus, the RTC concluded that AO 1, DO 74, and the Revised Rules and Regulations on Limited Access Facilities, which ban motorcycles' entry or access to the limited access facilities, are not inconsistent with RA 2000.

RA 2000, otherwise known as the Limited Access Highway Act, was approved on 22 June 1957. Section 4 of RA 2000 provides that "[t]he Department of Public Works and Communications is authorized to so design any limited access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended." The RTC construed this authorization to regulate, restrict, or prohibit access to limited access facilities to apply to the Department of Public Works and Highways (DPWH).

The RTC's ruling is based on a wrong premise. The RTC assumed that the DPWH derived its authority from its predecessor, the Department of Public Works and Communications, which is expressly authorized to regulate, restrict, or prohibit access to limited access facilities under Section 4 of RA 2000. However, such assumption fails to consider the evolution of the Department of Public Works and Communications.

Under Act No. 2711, otherwise known as the Revised Administrative Code, approved on 10 March 1917, there were only seven executive departments, namely: the Department of the Interior, the Department of Finance, the Department of Justice, the Department of Agriculture and Commerce, the Department of Public Works and Communications, the Department of Public Instruction, and the Department of Labor.[15] On 20 June 1964, Republic Act No. 4136[16] created the Land Transportation Commission under the Department of Public Works and Communications. Later, the Department of Public Works and Communications was restructured into the Department of Public Works, Transportation and Communications.

On 16 May 1974, Presidential Decree No. 458 (PD 458) separated the Bureau of Public Highways from the Department of Public Works, Transportation and Communications and created it as a department to be known as Department of Public Highways. Under Section 3 of PD 458, the Department of Public Highways is "responsible for developing and implementing programs on the construction and maintenance of roads, bridges and airport runways."

With the amendment of the 1973 Philippine Constitution in 1976, resulting in the shift in the form of government, national agencies were renamed from Departments to Ministries. Thus, the Department of Public Works, Transportation and Communications became the Ministry of Public Works, Transportation and Communications.

On 23 July 1979, then President Ferdinand E. Marcos issued Executive Order No. 546 (EO 546), creating a Ministry of Public Works and a Ministry of Transportation and Communications.[17] Under Section 1 of EO 546, the Ministry of Public Works assumed the public works functions of the Ministry of Public Works, Transportation and Communications. The functions of the Ministry of Public Works were the "construction, maintenance and repair of port works, harbor facilities, lighthouses, navigational aids, shore protection works, airport buildings and associated facilities, public buildings and school buildings, monuments and other related structures, as well as undertaking harbor and river dredging works, reclamation of foreshore and swampland areas, water supply, and flood control and drainage works."[18]

On the other hand, the Ministry of Transportation and Communications became the "primary policy, planning, programming, coordinating, implementing, regulating and administrative entity of the executive branch of the government in the promotion, development, and regulation of a dependable and coordinated network of transportation and communication systems."[19] The functions of the Ministry of Transportation and Communications were:

- Coordinate and supervise all activities of the Ministry relative to transportation and communications;


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- Formulate and recommend national policies and guidelines for the preparation and implementation of an integrated and comprehensive transportation and communications system at the national, regional and local levels;

- Establish and administer comprehensive and integrated programs for transportation and communication, and for this purpose, may call on any agency, corporation, or organization, whether government or private, whose development programs include transportation and communications as an integral part to participate and assist in the preparation and implementation of such programs;

- Regulate, whenever necessary, activities relative to transportation and communications and prescribe and collect fees in the exercise of such power;

- Assess, review and provide direction to transportation and communications research and development programs of the government in coordination with other institutions concerned; and

- Perform such other functions as may be necessary to carry into effect the provisions of this Executive Order.[20] (Emphasis supplied)

On 27 July 1981, then President Marcos issued Executive Order No. 710 (EO 710), which merged the Ministry of Public Works and the Ministry of Public Highways for "greater simplicity and economy in operations."[21] The restructured agency became known as the Ministry of Public Works and Highways. Under Section 1 of EO 710 the functions of the Ministry of Public Works and the Ministry of Public Highways[22] were transferred to the Ministry of Public Works and Highways.

Upon the ratification of the 1987 Constitution in February 1987, the former Ministry of Public Works and Highways became the Department of Public Works and Highways (DPWH) and the former Ministry of Transportation and Communications became the Department of Transportation and Communications (DOTC).

DPWH issued DO 74 and DO 215 declaring certain expressways as limited access facilities on 5 April 1993 and 25 June 1998, respectively. Later, the TRB, under the DPWH, issued the Revised Rules and Regulations on Limited Access Facilities. However, on 23 July 1979, long before these department orders and regulations were issued, the Ministry of Public Works, Transportation and Communications was divided into two agencies - the Ministry of Public Works and the Ministry of Transportation and Communications - by virtue of EO 546. The question is, which of these two agencies is now authorized to regulate, restrict, or prohibit access to limited access facilities?[23]

Under Section 1 of EO 546, the Ministry of Public Works (now DPWH) assumed the public works functions of the Ministry of Public Works, Transportation and Communications. On the other hand, among the functions of the Ministry of Transportation and Communications (now Department of Transportation and Communications [DOTC]) were to (1) formulate and recommend national policies and guidelines for the preparation and implementation of an integrated and comprehensive transportation and communications systems at the national, regional, and local levels; and (2) regulate, whenever necessary, activities relative to transportation and communications and prescribe and collect fees in the exercise of such power. Clearly, under EO 546, it is the DOTC, not the DPWH, which has authority to regulate, restrict, or prohibit access to limited access facilities.

Even under Executive Order No. 125 (EO 125)[24] and Executive Order No. 125-A (EO 125-A),[25] which further reorganized the DOTC, the authority to administer and enforce all laws, rules and regulations relative to transportation is clearly with the DOTC.[26]

Thus, DO 74 and DO 215 are void because the DPWH has no authority to declare certain expressways as limited access facilities. Under the law, it is the DOTC which is authorized to administer and enforce all laws, rules and

regulations in the field of transportation and to regulate related activities.

Since the DPWH has no authority to regulate activities relative to transportation, the TRB[27] cannot derive its power from the DPWH to issue regulations governing limited access facilities. The DPWH cannot delegate a power or function which it does not possess in the first place. Since DO 74 and DO 215 are void, it follows that the rules implementing them are likewise void.

Whether AO 1 and DO 123are Unconstitutional

DPWH Secretary Simeon A. Datumanong issued DO 123 on 18 July 2001. DO 123 reads in part:

> SUBJECT: Revised Rules and Regulations
> Governing Limited Access Highways
>
> By virtue of the authority granted the Secretary of Public Works and Highways under Section 3 of R.A. 2000, otherwise known as the Limited Access Highway Act, the following revised rules and regulations governing limited access highways are hereby promulgated for the guidance of all concerned:
> 1. Administrative Order No. 1 dated February 19, 1968, issued by the Secretary of the then Department of Public Works and Communications, is hereby amended by deleting the word "motorcycles" mentioned in Section 3(h) thereof. Therefore, motorcycles are hereby allowed to operate inside the toll roads and limited access highways, subject to the following:
> a. Motorcycles shall have an engine displacement of at least 400 cubic centimeters (cc) provided that:

x x x x[28] (Emphasis supplied)

The RTC's Decision dated 10 March 2003 declared DO 123 unconstitutional on the ground that it violates the equal protection clause by allowing only motorcycles with at least 400 cubic centimeters engine displacement to use the toll ways. The RTC reasoned that the creation of a distinction within the class of motorcycles was not based on real differences.

We need not pass upon the constitutionality of the classification of motorcycles under DO 123. As previously discussed, the DPWH has no authority to regulate limited access highways since EO 546 has devolved this function to the DOTC. Thus, DO 123 is void for want of authority of the DPWH to promulgate it.

On the other hand, the assailed portion of AO 1 states:

> Section 3. On limited access highways, it is unlawful for any person or group of persons to:
>
> x x x x
> (h) Drive any bicycle, tricycle, pedicab, motorcycle or any vehicle (not motorized);
> x x x x

Petitioners assail the DPWH's failure to provide "scientific" and "objective" data on the danger of having motorcycles plying our highways. They attack this exercise of police power as baseless and unwarranted. Petitioners belabor the fact that there are studies that provide proof that motorcycles are safe modes of transport. They also claim that AO 1 introduces an unreasonable classification by singling-out motorcycles from other motorized modes of transport. Finally, petitioners argue that AO 1 violates their right to travel.

Petitioners' arguments do not convince us.

We emphasize that the Secretary of the Department of Public Works and Communications issued AO 1 on 19 February 1968. Section 3 of RA 2000[29] authorized the issuance of the guidelines. In contrast, DPWH issued DO 74, DO 215 and DO 123 after EO 546 devolved to the DOTC the authority to regulate limited access highways.

We now discuss the constitutionality of AO 1. Administrative issuances have the force and effect of law.[30] They benefit from the same presumption of validity and constitutionality enjoyed by statutes.[31] These two precepts place a heavy burden upon any party assailing governmental regulations. The burden of proving unconstitutionality rests on such party.[32] The burden becomes heavier when the police power is at issue.

The use of public highways by motor vehicles is subject to regulation as an exercise of the police power of the state.[33] The police power is far-reaching in scope and is the "most essential, insistent and illimitable" of all government powers.[34] The tendency is to extend rather than to restrict the use of police power. The sole standard in measuring its exercise is reasonableness.[35] What is "reasonable" is not subject to exact definition or scientific formulation. No all-embracing test of reasonableness exists,[36] for its determination rests upon human judgment applied to the facts and circumstances of each particular case.[37]

We find that AO 1 does not impose unreasonable restrictions. It merely outlines several precautionary measures, to which toll way users must adhere. These rules were designed to ensure public safety and the uninhibited flow of traffic within limited access facilities. They cover several subjects, from what lanes should be used by a certain vehicle, to maximum vehicle height. The prohibition of certain types of vehicles is but one of these. None of these rules violates reason. The purpose of these rules and the logic behind them are quite evident. A toll way is not an ordinary road. The special purpose for which a toll way is constructed necessitates the imposition of guidelines in the manner of its use and operation. Inevitably, such rules will restrict certain rights. But the mere fact that certain rights are restricted does not invalidate the rules.

Consider Section 3(g) of AO 1, which prohibits the conduct of rallies inside toll ways.[38] The regulation affects the right to peaceably assemble. The exercise of police power involves restriction, restriction being implicit in the power itself. Thus, the test of constitutionality of a police power measure is limited to an inquiry on whether the restriction imposed on constitutional rights is reasonable, and not whether it imposes a restriction on those rights.

None of the rules outlined in AO 1 strikes us as arbitrary and capricious. The DPWH, through the Solicitor General, maintains that the toll ways were not designed to accommodate motorcycles and that their presence in the toll ways will compromise safety and traffic considerations. The DPWH points out that the same study the petitioners rely on cites that the inability of other drivers to detect motorcycles is the predominant cause of accidents.[39] Arguably, prohibiting the use of motorcycles in toll ways may not be the "best" measure to ensure the safety and comfort of those who ply the toll ways.

However, the means by which the government chooses to act is not judged in terms of what is "best," rather, on simply whether the act is reasonable. The validity of a police power measure does not depend upon the absolute assurance that the purpose desired can in fact be probably fully accomplished, or upon the certainty that it will best serve the purpose intended.[40] Reason, not scientific exactitude, is the measure of the validity of the governmental regulation. Arguments based on what is "best" are arguments reserved for the Legislature's discussion. Judicial intervention in such matters will only be warranted if the assailed regulation is patently whimsical. We do not find the situation in this case to be so.

Neither do we find AO 1 oppressive. Petitioners are not being deprived of their right to use the limited access facility. They are merely being required, just like the rest of the public, to adhere to the rules on how to use the facility. AO 1 does not infringe upon petitioners' right to travel but merely bars motorcycles, bicycles, tricycles, pedicabs, and any non-motorized vehicles as the mode of traveling along limited access highways.[41] Several cheap, accessible and practical alternative modes of transport are open to petitioners. There is nothing oppressive in being required to take a bus or drive a car instead of one's scooter, bicycle, calesa, or motorcycle upon using a toll way.


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Petitioners' reliance on the studies they gathered is misplaced. Police power does not rely upon the existence of definitive studies to support its use. Indeed, no requirement exists that the exercise of police power must first be conclusively justified by research. The yardstick has always been simply whether the government's act is reasonable and not oppressive.[42] The use of "reason" in this sense is simply meant to guard against arbitrary and capricious government action. Scientific certainty and conclusiveness, though desirable, may not be demanded in every situation. Otherwise, no government will be able to act in situations demanding the exercise of its residual powers because it will be tied up conducting studies.

A police power measure may be assailed upon proof that it unduly violates constitutional limitations like due process and equal protection of the law.[43] Petitioners' attempt to seek redress from the motorcycle ban under the aegis of equal protection must fail. Petitioners' contention that AO 1 unreasonably singles out motorcycles is specious. To begin with, classification by itself is not prohibited.[44]

A classification can only be assailed if it is deemed invidious, that is, it is not based on real or substantial differences. As explained by Chief Justice Fernando in Bautista v. Juinio:[45]

> x x x To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may under such circumstances invoked the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical is analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding the rest.

We find that it is neither warranted nor reasonable for petitioners to say that the only justifiable classification among modes of transport is the motorized against the non-motorized. Not all motorized vehicles are created equal. A 16-wheeler truck is substantially different from other light vehicles. The first may be denied access to some roads where the latter are free to drive. Old vehicles may be reasonably differentiated from newer models.[46] We find that real and substantial differences exist between a motorcycle and other forms of transport sufficient to justify its classification among those prohibited from plying the toll ways. Amongst all types of motorized transport, it is obvious, even to a child, that a motorcycle is quite different from a car, a bus or a truck. The most obvious and troubling difference would be that a two-wheeled vehicle is less stable and more easily overturned than a four-wheeled vehicle.

A classification based on practical convenience and common knowledge is not unconstitutional simply because it may lack purely theoretical or scientific uniformity. Moreover, we take note that the Philippines is home to a host of unique motorized modes of transport ranging from modified hand-carts (kuliglig) to bicycle "sidecars" outfitted with a motor. To follow petitioners' argument to its logical conclusion would open up toll ways to all these contraptions. Both safety and traffic considerations militate against any ruling that would bring about such a nightmare.

Petitioners complain that the prohibition on the use of motorcycles in toll ways unduly deprive them of their right to travel.

We are not persuaded.

A toll way is not an ordinary road. As a facility designed to promote the fastest access to certain destinations, its use, operation, and maintenance require close regulation. Public interest and safety require the imposition of certain restrictions on toll ways that do not apply to ordinary roads. As a special kind of road, it is but reasonable that not all forms of transport could use it.

The right to travel does not mean the right to choose any vehicle in traversing a toll way. The right to travel refers to the right to move from one place to another. Petitioners can traverse the toll way any time they choose using private or public four-wheeled vehicles. Petitioners are not denied the right to move from Point A to Point B along the toll way. Petitioners are free to access the toll way, much as the rest of the public can. The mode by which petitioners wish to travel pertains to the manner of using the toll way, a subject that can be validly limited by regulation.

Petitioners themselves admit that alternative routes are available to them. Their complaint is that these routes are not the safest and most convenient. Even if their claim is true, it hardly qualifies as an undue curtailment of their freedom of movement and travel. The right to travel does not entitle a person to the best form of transport or to the most convenient route to his destination. The obstructions found in normal streets, which petitioners complain of (i.e., potholes, manholes, construction barriers, etc.), are not suffered by them alone.

Finally, petitioners assert that their possession of a driver's license from the Land Transportation Office (LTO) and the fact that their vehicles are registered with that office entitle them to use all kinds of roads in the country. Again, petitioners are mistaken. There exists no absolute right to drive. On the contrary, this privilege, is heavily regulated. Only a qualified group is allowed to drive motor vehicles: those who pass the tests administered by the LTO. A driver's license issued by the LTO merely allows one to drive a particular mode of transport. It is not a license to drive or operate any form of transportation on any type of road. Vehicle registration in the LTO on the other hand merely signifies the roadworthiness of a vehicle. This does not preclude the government from prescribing which roads are accessible to certain vehicles.

WHEREFORE, we PARTLY GRANT the petition. We MODIFY the Decision dated 10 March 2003 of the Regional Trial Court, Branch 147, Makati City and its Order dated 16 June 2003 in Civil Case No. 01-034. We declare VOID Department Order Nos. 74, 215, and 123 of the Department of Public Works and Highways, and the Revised Rules and Regulations on Limited Access Facilities of the Toll Regulatory Board. We declare VALID Administrative Order No. 1 of the Department of Public Works and Communications.

**SO ORDERED.**

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Velasco, Jr., JJ., concur.
Ynares-Santiago, J., on official leave.
Azcuna, Chico-Nazario, and Garcia, JJ., joins the dissenting opinion of J. Tinga.
Tinga, J., see dissenting opinion.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.[2] Revised Rules and Regulations Governing Limited Access Highways, issued on 19 February 1968.[3] Rollo, pp. 330-333.[4] Id. at 68.[5] Id. at 22.[6] Searth Commodities Corp. v. Court of Appeals, G.R. No. 64220, 31 March 1992, 207 SCRA 622.[7] Urbanes, Jr. v. Court of Appeals, G.R. No. 117964, 28 March 2001, 355 SCRA 537.[8] Declaring the North and South Luzon Expressways as Limited Access Facilities. It also authorized the TRB to issue rules and regulations to be applied to the two highways.[9] Declaring the R-1 Expressway, the C-5 Link Expressway and the R-1 Extension

Expressway as Limited Access Facilities.[10] Rollo, p. 31.[11] Limited Access Highway Act, approved on 22 June 1957.[12] Rollo, pp. 89-90.[13] Id. at 91.[14] Id. at 96.[15] Section 75 of Act No. 2711.[16] Land Transportation and Traffic Code.[17] The purpose for the creation of two separate ministries was explained in the "WHEREAS" clauses of EO 546:

> WHEREAS, the accelerated pace of national development requires the effective, purposeful and unified implementation of public works projects and the effective control and supervision of transportation and communications facilities and services;
>
> WHEREAS, the development, rehabilitation, improvement, construction, maintenance and repairs of ports, flood control and drainage systems, buildings, water supply systems; and other public works facilities involve the utilization of technologies and manpower different from those required for the control and supervision of transportation and communications facilities and services;
>
> WHEREAS, a rational distribution of the functions of government pertaining to public works on one hand and control and supervision of facilities and services related to transportation and communications on the other would enhance the efficiency of government;
>
> WHEREAS, in keeping with the policy of government to effect continuing reforms in the organizational structure to enhance efficiency and effectiveness, it is necessary to entrust in one ministry all functions pertaining to the construction, repair and maintenance of public works facilities and restructure the organization for the control and supervision of transportation and communications facilities and services in the country; and
>
> x x x x

[18]Section 3 of EO 546.[19]Section 6 of EO 546.[20] Section 8 of EO 546.[21] See "WHEREAS" clauses of EO 710.[22] Presidential Decree No. 458, creating the Department of Public Highways, provides under Section 3 the function of the department:

> SEC. 3. Relationships between the Department Proper, the Bureaus and the Regional Offices. -- The Department Proper shall have direct line supervision over the bureaus and regional offices. It shall be responsible for developing and implementing programs on the construction and maintenance of roads, bridges and airport runways. The Bureau of Construction and Maintenance shall be essentially staff in character and as such, shall exercise only functional supervision over the regional offices, while the Bureau of Equipment shall provide equipment support to the field offices through its equipment depots and area shops. x x x

[23] This authority was expressly granted to the Department of Public Works and Communications under Section 4 of RA 2000.[24] Reorganization Act of the Ministry of Transportation and Communications, approved on 30 January 1987.[25] Amending EO 125, approved on 13 April 1987.[26] Section 5 of EO 125, as amended by EO 125-A, enumerates the powers and functions of the DOTC:

> Sec. 5. Powers and Functions. - To accomplish its mandate, the Department [DOTC] shall have the following powers and functions:
>
> (a) Formulate and recommend national policies and guidelines for the preparation and implementation of integrated and comprehensive transportation and communications systems at the national, regional and local levels;
> (b) Establish and administer comprehensive and integrated programs for transportation and communications, and for this purpose, may call on any agency, corporation, or organization, whether public or private, whose development programs include transportation and communications as an integral part thereof, to participate and assist in the preparation and implementation of such program;
> (c) Assess, review and provide direction to transportation and communication research and development


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programs of the government in coordination with other institutions concerned;
(d) Administer and enforce all laws, rules and regulations in the field of transportation and communications;
(e) Coordinate with the Department of Public Works and Highways in the design, location, development, rehabilitation, improvement, construction, maintenance and repair of all infrastructure projects and facilities of the Department. However, government corporate entities attached to the Department shall be authorized to undertake specialized telecommunications, ports, airports and railways projects and facilities as directed by the President of the Philippines or as provided by law;
(f) Establish, operate and maintain a nationwide postal system that shall include mail processing, delivery services, and money order services and promote the art of philately;
(g) Issue certificates of public convenience for the operation of public land and rail transportation utilities and services;
(h) Accredit foreign aircraft manufacturers and/or international organizations for aircraft certification in accordance with established procedures and standards;
(i) Establish and prescribe rules and regulations for identification of routes, zones and/or areas of operation of particular operators of public land services;
(j) Establish and prescribe rules and regulations for the establishment, operation and maintenance of such telecommunications facilities in areas not adequately served by the private sector in order to render such domestic and overseas services that are necessary with due consideration for advances in technology;
(k) Establish and prescribe rules and regulations for the operation and maintenance of a nationwide postal system that shall include mail processing, delivery services, money order services and promotion of philately;
(l) Establish and prescribe rules and regulations for the issuance of certificates of public convenience for public land transportation utilities, such as motor vehicles, trimobiles and railways;
(m) Establish and prescribe rules and regulations for the inspection and registration of air and land transportation facilities, such as motor vehicles, trimobiles, railways and aircrafts;
(n) Establish and prescribe rules and regulations for the issuance of licenses to qualified motor vehicle drivers, conductors, and airmen;
(o) Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof;
(p) Determine, fix and/or prescribe charges and/or rates pertinent to the operation of public air and land transportation utility facilities and services, except such rates and/or charges as may prescribed by the Civil Aeronautics Board under its charter, and, in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine government as the proper arbiter of such charges or rates;
(q) Establish and prescribe the rules, regulations, procedures and standards for the accreditation of driving schools;
(r) Administer and operate the Civil Aviation Training Center (CATC) and the National Telecommunications Training Institute (NTTI); and
(s) Perform such other powers and functions as may be prescribed by law, or as may be necessary, incidental, or proper to its mandate or as may be assigned from time to time by the President of the Republic of the Philippines. (Emphasis supplied). See also Section 3, Chapter 1, Title XV, Book IV of the Administrative Code of 1987.

[27] The TRB, which was created under Presidential Decree No. 1112, was attached to the DPWH on 9 July 1990 by virtue of Republic Act No. 6957. Executive Order No. 67, dated 26 January 1999, transferred the TRB to the Office of the President. On 10 October 2002, the TRB was transferred to the DOTC by virtue of Executive Order No. 133.

[28] Rollo, p. 242.[29] Section 3 of RA 2000 reads:

SEC. 3. Authority to establish limited access facilities. - The Department of Public Works and

> Communications is hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever it is of the opinion that traffic conditions, present or future, will justify such special facilities: Provided, That within provinces, cities and towns, the establishment of such limited access facilities insofar as they affect provincial, city and municipal streets and plazas shall have the consent of provincial board, city or municipal council as the case may be.

[30] Eslao v. Commission on Audit, G.R. No. 108310, 1 September 1994, 236 SCRA 161.[31] Id.[32] JMM Promotion and Management, Inc. v. Court of Appeals, G.R. No. 120095, 5 August 1996, 260 SCRA 319.[33] Wall v. King, 109 F. Supp. 198 (1952); Munz v. Harnett, 6 F. Supp. 158 (1933); Schwartzman Service v. Stahl, 60 F.2d 1034 (1932).[34] Ichong v. Hernandez, 101 Phil. 1155, 1163 (1957).[35] Department of Education, Culture and Sports v. San Diego, G.R. No. 89572, 21 December 1989, 180 SCRA 533.[36] City of Raleigh v. Norfolk Southern Railway Co., 165 S.E.2d 745 (1969).[37] Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses, 117 N.E.2d 115 (1954).[38] Section 3 - On limited access highways, it is unlawful for any person or group of persons to:

> x x x x
> (g) Jaywalk, loiter, litter, or travel by foot, drive or herd animals, conduct or hold rallies, parades, funeral processions and the like;
> x x x x

[39] Rollo, p. 395.[40] Hunter v. Owens, 80 Fla. 812, 86 So. 839 (1920).[41] See American Motorcyclist Ass'n. v. Park Comm'n. of City of Brockton, 575 N.E.2d 754 (1991). In this case, the plaintiffs sought declaratory and injunctive relief from a park commission regulation which prohibited motorcycles and mopeds in the city park. The court held that the regulation did not infringe upon plaintiffs' right to travel. The court held that the right to travel does not require the state to avoid any regulation of methods of transportation. According to the court, the regulation does not prevent any person from traveling once inside the park but merely bars motorcycles as the mode of transportation.[42] United States v. Toribio, 15 Phil. 85 (1910).[43] Ichong v. Hernandez, 101 Phil. 1155 (1957).[44] Dumlao v. COMELEC, No. L-52245, 22 January 1980, 95 SCRA 392.[45] 212 Phil. 307, 317-318 (1984).[46] Taxicab Operators of Metro Manila, Inc. v. Board of Transportation, 202 Phil. 925 (1982).

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## DISSENTING OPINION

**TINGA, J.:**

I dissent from the opinion which has found favor with the majority holding that Department of Public Works and Highways (DPWH) Department Orders Nos. 74, 215 and 123 are void for want of authority on the part of the DPWH to promulgate them.

The fundamental question which seeks an answer from this Court is which between the DPWH and the Department of Transportation and Communications (DOTC) has the charge of implementing Republic Act No. 2000, otherwise known as the Limited Access Highway Act. These two departments have mutually exclusive functions in the general scheme of government. The DPWH oversees the construction, maintenance and operation of public works and infrastructure facilities, and administers the highway system. The DOTC, on the other hand, directs the nation's transportation and communication network systems. To resolve this case, it is crucial for us to determine within which sphere of functions the powers granted under the Limited Access Highway Act fall, i.e., whether the Limited Access Highway Act involves the administration of the highway system or the management of the transportation network.

After tracing the evolution of the Department of Public Works and Communications (DPWC) which was originally given the authority under the Limited Access Highway Act to regulate, restrict or prohibit access to limited access facilities, the ponencia concludes that this authority was eventually bestowed upon the DOTC.

With due respect, I cannot share this conclusion. I shall explain.

The Limited Access Highway Act authorized the DPWC "to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever it is of the opinion that traffic conditions present or future, will justify such special facilities..."[1] At the time of the enactment of the Limited Access Highway Act in 1957, the Bureau of Public Highways (BPH) had already been created as an office under the DPWC by RA 1192 in 1954.[2]

Under RA 1192, the Commissioner of Public Highways was directly responsible for administering the Philippine Highway Act of 1953;[3] preparing long-range programs of highway development, improvement and construction; formulating uniform practices for the physical design of highway facilities; directing research in matters of highway planning, location, design, construction and maintenance, including the testing of materials and the proper and efficient use of highway equipment; promoting sane economy in the expenditure of highway funds, utilization of supplies and materials, preservation of property and equipment, and management operations; preparing annual budgets of proposed expenditures for construction, reconstruction, and improvement work; and supervising the signing of vouchers, orders for supplies, materials, and any other expenditures.

The task of administering the nation's highways squarely fell on the shoulders of the Commissioner of Public Highways as specified in RA 1192. Upon the enactment of the Limited Access Highway Act in 1957, it was also the BPH, headed by the Commissioner of Public Highways, which carried out the functions of establishing and regulating the highways and streets to be used as limited access facilities.

It is significant to note that the establishment of limited access facilities requires engineering expertise, for which reason the Limited Access Highway Act specifically authorized the DPWC "to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper land for such traffic by appropriate signs, markers, stripes, and other devices." The BPH, with its mandate to plan and administer the national highway program and the Chief Highway Engineer[4] at its disposal, was in the best position to establish and regulate limited access facilities.

It is worth mentioning that even under the Revised Philippine Highway Act[5] passed in 1972, the BPH was designated as the agency of the DPWC "that has the charge of the administration of highways." The Revised Philippine Highway Act primarily controls the disposition of the Highway Special Fund; the manner of its apportionment and release; the selection and designation of highways or highway projects to receive national aid; the expenditures for the administration, maintenance, improvement, betterment and rehabilitation of highway projects; and the classification of highways, widths, acquisition and use of rights of way. However, it also provides for the establishment of an integrated system of highways, and vests in the Secretary of the DPWC the power to make rules and regulations and make such recommendations as he may deem necessary to preserve and protect the highways and insure traffic safety.[6] I submit that the duty of highway administration and management vested upon the BPH and succeeded to by the DPWH includes the duty to regulate the use and enjoyment thereof.

In 1974, the BPH was separated from the Department of Public Works, Transportation and Communications (DPWTC). It was expanded and restructured into the Department of Public Highways (DPH) by virtue of Presidential Decree No. 458 (PD 458).[7]


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With the shift in the form of government resulting from the amendment of the 1973 Constitution, national agencies were renamed from departments to ministries. Thus, the DPWTC became the Ministry of Public Works, Transportation and Communications (MPWTC) and the DPH became the Ministry of Public Highways (MPH).

In 1979, President Marcos issued Executive Order No. 546 (EO 546)[8] creating a Ministry of Public Works (MPW) which assumed the public works functions of the MPWTC and was charged with the "construction, maintenance and repair of port-works, harbor facilities, lighthouses, navigational aids, shore protection works, airport buildings and associated facilities, public buildings and school buildings, monuments and other related structures, as well as undertaking harbor and river dredging works, reclamation of foreshore and swampland areas, water supply, and flood control and drainage works."[9]

EO 546 also created a Ministry of Transportation and Communications (MOTC) declared as the "primary policy, planning, programming, coordinating, implementing, regulating and administrative entity of the executive branch of the government in the promotion, development, and regulation of a dependable and coordinated network of transportation and communication systems..."[10]

The ponencia correctly noted that the MPW took over the public works functions of the MPWTC. However, it omitted mention of the fact that even as these new ministries were created, the MPH continued to exist and exercise the powers vested in it by RA 1192, including those under the Limited Access Highway Act. Because of the MPH's continued existence, at no time were these functions ever transferred to or exercised by the MPW or even the MOTC. I vigorously reiterate that the creation of these two ministries did not affect the existence of the MPH or result in the transfer of the functions of the MPH to the MPW and the MOTC. The MPH continued to exist as a distinct entity with clearly-delineated functions, including the duty of highway administration.

The MPW and the MPH were later abolished by EO 710[11] which, instead, created a Ministry of Public Works and Highways (MPWH) and transferred to the latter the functions of the abolished ministries. The MPWH is now known as the DPWH, the government's primary engineering and construction arm, responsible for the planning, design, construction and maintenance of infrastructures such as roads, bridges, flood control systems, water resource development projects and other public works.

The foregoing history of the DPWH, which has evolved from its predecessors, the BPH, DPH, MPH and MPWH, I submit, supports my view that it is the DPWH, and not the DOTC, which has inherited the functions previously exercised by the BPH, including those granted by the Limited Access Highway Act.

The Limited Access Highway Act confers the authority to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use under Sec. 3 thereof, and the powers to design, regulate, restrict, or prohibit access to these limited access facilities under Sec. 4. Although they appear in different sections of the law, the clear and unmistakable intent was for all of these powers to be integrated in and exercised by just one entity, the DPWC.

Instead of continuing with the integration of the mandate under the Limited Highway Act, the ponencia essentially dichotomizes these functions covered by the mandate. While it appears to concede that the functions of the DPWH includes the planning, design, construction, maintenance and operation of infrastructure facilities, which should also include limited access facilities, in the same breath it posits that the powers to regulate, restrict or prohibit access thereto have been devolved to the DOTC. This is obvious from the way the ponencia focuses on the regulatory power of the DOTC under the Administrative Code in furtherance of the view that the DPWH does not have the authority to regulate, restrict or prohibit access to limited access facilities, and sidesteps a discussion on the powers conferred under Section 3 of the Limited Access Highway Act which, by their very nature, can only be exercised by the DPWH. I submit that this approach is inconsistent with the intent of the law for the

powers conferred therein to be exercised by only one entity.

Justice Carpio asserts that as the DOTC is empowered to administer and enforce all laws, rules and regulations in the field of transportation and communications, so is it granted authority over limited access facilities. I beg to differ.

The authority of the DOTC over land transportation is exercised by the Land Transportation Office (LTO) and covers the inspection and registration of motor vehicles, issuance of licenses and permits, enforcement of land transportation rules and regulations, and adjudication of traffic cases. These functions have remained the same despite the changes in the names of the LTO and the reorganizations it underwent.

The predecessor of the LTO is the Land Transportation Commission (LTC) created in 1964 by RA 4136.[12] RA 4136 was amended by RA Nos. 5715 and 6374, PD Nos. 382, 843, 896, 1057, 1934, 1950 and 1958, and BP Blg. 43, 74 and 398, and is now known as the Land Transportation and Traffic Code. Its provisions control the registration and operation of motor vehicles and the licensing of owners, dealers, conductors, drivers, and similar matters.

The powers and duties of the former LTC Commissioner, now exercised by the LTO, are as follows:

> (1) With the approval of the Secretary of Public Works and Communications, to issue rules and regulations not in conflict with the provisions of this Act, prescribing the procedure for the examination, licensing and bonding of drivers; the registration and re-registration of motor vehicles, transfer of ownership, change of status; the replacement of lost certificates, licenses, badges, permits or number plates; and to prescribe the minimum standards and specifications including allowable gross weight, allowable length, width and height of motor vehicles, distribution of loads, allowable loads on tires, change of tire sizes, body design or carrying capacity subsequent to registration and all other special cases which may arise for which no specific provision is otherwise made in this Act.
>
> (2) To compile and arrange all applications, certificates, permits, licenses, and to enter, note and record thereon transfers, notifications, suspensions, revocations, or judgments of conviction rendered by competent courts concerning violations of this Act, with the end in view of preserving and making easily available such documents and records to public officers and private persons properly and legitimately interested therein.
>
> (3) To give public notice of the certificates, permits, licenses and badges issued, suspended or revoked and/or motor vehicles transferred and/or drivers bonded under the provisions of this Act.
>
> (4) The Commissioner of Land Transportation, with the approval of the Secretary of Public Works and Communications, may designate as his deputy and agent any employee of the Land Transportation Commission, or such other government employees as he may deem expedient to assist in the carrying out the provisions of this Act.
>
> (5) The Commissioner of Land Transportation and his deputies are hereby authorized to make arrests for violations of the provisions of this Act in so far as motor vehicles are concerned; to issue subpoena and subpoena duces tecum to compel the appearance of motor vehicle operators and drivers and/or other persons or conductors; and to use all reasonable means within their powers to secure enforcement of the provisions of this Act.
>
> (6) The Commissioner of Land Transportation or his deputies may at any time examine and inspect any motor vehicle to determine whether such motor vehicle is registered, or is unsightly, unsafe, overloaded, improperly marked or equipped, or otherwise unfit to be operated because of possible excessive damage to highways, bridges and/or culverts;
>
> (7) The Philippine Constabulary and the city and municipal police forces are hereby given the authority and the

> primary responsibility and duty to prevent violations of this Act, and to carry out the police provisions hereof within their respective jurisdictions: Provided, That all apprehensions made shall be submitted for final disposition to the Commissioner and his deputies within twenty-four hours from the date of apprehension.
>
> (8) All cases involving violations of this Act shall be endorsed immediately by the apprehending officer to the Land Transportation Commission. Where such violations necessitate immediate action, the same shall be endorsed in the traffic court, city or municipal court for summary investigation, hearing and disposition, but in all such cases, appropriate notices of the apprehensions and dispositions thereof shall be given to the Commissioner of Land Transportation by the law-enforcement agency and the court concerned.
>
> Notation of such dispositions shall be entered in the records, and a copy shall be mailed to the owner and to the driver concerned.

Nowhere in this list of functions is there any indication that the LTO has the authority to establish and regulate limited access facilities. The traffic rules and regulations which the LTO is tasked to enforce pertains to traffic rules enumerated in the Land Transportation and Traffic Code, including speed limit and keeping to the right, overtaking and passing a vehicle and turning at intersections, right of way and signals, turning and parking, reckless driving, right of way for police and other emergency vehicles, tampering with vehicles, hitching to a vehicle, driving or parking on sidewalk, driving while under the influence of liquor or narcotic drug, obstruction of traffic and duty of driver in case of accident.[13]

Significantly, even as it codified all laws relative to land transportation and traffic, the Land Transportation and Traffic Code, as amended, makes no mention of or reference to the establishment and regulation of limited access facilities, a tacit recognition of the DOTC's lack of authority on the matter.

Justice Carpio's pronouncement that the Administrative Code of 1987 (Administrative Code) confers upon the DOTC the authority to establish and regulate limited access facilities is an inference based on an erroneous reading of the law. The Administrative Code does provide, among others, that the DOTC shall administer and enforce all laws, rules and regulations in the field of transportation and communications, and establish and prescribe the corresponding rules and regulations for enforcement of laws governing land transportation. I submit, however, that if we were to interpret these provisions correctly and apply them to the instant case, it is imperative that a distinction be drawn between the power to regulate transportation and the power to regulate highways, the former being a DOTC prerogative, and the latter an authority unquestionably belonging to the DPWH.

Transportation is defined as the movement of goods or persons from one place to another by a carrier.[14] And so it is that the powers vested in the DOTC refer to its authority over transportation carriers and utilities and makes no mention at all of highways as clearly demonstrated by the Reply's enumeration of the DOTC's powers under the Administrative Code.

In contrast, the Administrative Code makes several references to the DPWH's authority over highways, defined as roadways laid out or constructed to accommodate modes of travel and other related purposes.[15] It provides:

> Sec. 3. Powers and Functions.-The Department, in order to carry out its mandate, shall:
>
> (1) Provide technical services for the planning, design, construction, maintenance, or operation of infrastructure facilities;
>
> (2) Develop and implement effective codes, standards, and reasonable guidelines to ensure the safety of all public and private structures in the country and assure efficiency and proper quality in the construction of public works;
>
> (3) Ascertain that all public works plans and project implementation designs are consistent with current


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standards and guidelines;

(4) Identify, plan, secure funding for, program, design, construct or undertake prequalification, bedding, and award of contracts of public works projects with the exception only of specialized projects undertaken by Government corporate entities with established technical capability and as directed by the President of the Philippines or as provided by law;

(5) Provide the works supervision function for all public works construction and ensure that actual construction is done in accordance with approved government plans and specifications;

(6) Assist other agencies, including the local governments, in determining the most suitable entity to undertake the actual construction of public works projects;

(7) Maintain or cause to be maintained all highways, flood control, and other public works throughout the country except those that are the responsibility of other agencies as directed by the President of the Philippines or as provided by law;

(8) Provide an integrated planning for highways, flood control and water resources development systems, and other public works;

(9) Classify roads and highways into national, regional, provincial, city, municipal, and barangay roads and highways, based on objective criteria it shall adopt; provide or authorize the conversion of roads and highways from one category to another;

(10) Delegate, to any agency it determines to have adequate technical capability, any of the foregoing powers and functions; and

(11) Perform such other functions as may be provided by law.

The foregoing references to the DPWH's power over highways, and the concurrent absence of any such reference in the DOTC, to my mind, are unmistakable indications of the Administrative Code's intention to recognize and acknowledge the DPWH's exclusive competence and jurisdiction in matters of highway administration and management.

Parenthetically, I should like to point out that the ponencia leaned heavily on the premise that EO 546 devolved the authority to regulate limited access highways to the DOTC. Justice Carpio merely took off from my reference to the Administrative Code to support his view that the DPWH does not have the power to regulate access to limited access facilities since this is not a function specified by the Administrative Code.

Apart from emphasizing yet again that the creation by EO 546 of the MPW and MOTC did not affect the existence of and functions exercised by the MPH, I also accentuate the fact that the Administrative Code did not repeal the Philippine Highway Act of 1953, as amended. Even as the Administrative Code codified the powers and functions of the departments of the executive branch including the DPWH and the DOTC, the authority to administer the nation's highway system, which, I submit, includes the power to establish and regulate limited access facilities, remained to be a function of the DPWH. To reiterate, there is nothing in the Administrative Code which vests in the DOTC the administration of the Limited Access Highway Act or the regulation of the use of highways.

Finally, since the DPWH has traditionally exercised the power and authority to establish and regulate limited access facilities to the exclusion of and without objection from other government agencies including the DOTC, I submit that we grant judicial imprimatur to its jurisdiction absent any unequivocal conferment of authority on the DOTC.

A parallelism can be drawn between this case and another in which an administrative agency has maintained its own interpretation of a particular statute. In Saxbe v. Bustos,[16] for example, an administrative construction of the Immigration and Naturalization Act classified a worker who lives in Canada or Mexico and commutes to work in the United States either daily or seasonally as a variety of "special immigrant" or an immigrant lawfully admitted for permanent residence who is returning from a visit abroad. The United Farm Workers objected to the benefits given to alien workers of this classification, such as those that allow them to leave the country temporarily, re-enter without regard to quotas, and dispense with visas or other formal documentation. The Court upheld the agency interpretation saying that the Court's conclusion reflects the administrative practice, dating back at least to 1927 when the Bureau of Immigration was part of the Department of Labor, which is entitled to great weight.

Similarly, in this case, the questioned department orders were issued between 1993-2001. Through all these years, and even earlier in the case of Administrative Order No. 1 issued in 1968, the DPWH has been exercising the functions under the Limited Access Highway Act. Judicial deference should be accorded this long-standing practice consistently acquiesced to and recognized by the other executive departments, including the DOTC.

FOR THE FOREGOING REASONS, I cannot concur with my colleagues in their judgment. I vote for the dismissal of the petitions.

---

[1] Incidentally, in 1951, the DPWC was already reconstituted as the Department of Public Works, Transportation and Communication (DPWTC).

[2] An Act to Create the Bureau of Public Highways, Abolishing the Division of Highways of the Bureau of Public Works approved on August 25, 1954.

**[3] RA 917.**

[4] Under Sec. 4 of RA 1192, the Chief Highway Engineer was directly responsible for: (1) coordinating the various phases of planning, location, design, construction and maintenance of public highways; (2) coordinating matters of line and grade with the services on design of bridges and railroad crossings; (3) coordinating matters of research and specifications with other highway services; (4) checking and passing on final awards of contracts; and (5) reviewing and passing on highway budgets prepared by the corresponding division or service.

[5] See PD 17, October 5, 1972, with the attached Revised Philippine Highway Act.

[6] Sec. 19, Art. VIII and Sec. 20, Art. IX.

[7] Amending Presidential Decree no. 1 Dated September 24, 1972 Relative to Part X of the Integrated Reorganization Plan promulgated on May 16, 1974.

[8] Creating a Ministry of Public Works and a Ministry of Transportation and Communications dated July 23, 1979.

[9] Sec. 3.

[10] Sec. 6.

[11] Creating a Ministry of Public Works and Highways dated July 27, 1981.

[12] An Act To Compile The Laws Relative To Land Transportation And Traffic Rules, To Create A Land Transportation Commission And For Other Purposes.


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[13] Articles I-V, RA 4136.

[14] BLACK'S LAW DICTIONARY, 6[th] Ed.

[15] Id.

[16] 419 U.S. 65, 95 S.Ct. 272, 42 L.Ed. 231 (1974) cited by Alfred C. Aman, Jr. and William T. Mayton in Administrative Law, 2[nd] Ed, 2001, p. 499.


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