

ANA THERESIA “RISA” HONTIVEROS-BARAQUEL, DANIEL L. EDRALIN, VICTOR M. GONZALES, SR., JOSE APOLLO R. ADO, RENE D. SORIANO, ALLIANCE OF PROGRESSIVE LABOR, BUKLURAN NG MANGGAGAWANG...

G.R. No. 181293. February 23, 2015

Ponente: SERENO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-181293/>

SERENO, C.J.:

This is an original petition for certiorari and prohibition under Rule 65 of the Rules of Court, with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, seeking the annulment of the following:

- The Amendment to the Supplemental Toll Operation Agreement executed on 18 July 2007 between the Republic of the Philippines, the Philippine National Construction Corporation, and Citra Metro Manila Tollways Corporation;
- The Memorandum dated 20 July 2007 of the Secretary of Transportation and Communications, approving the Amendment to the Supplemental Toll Operation Agreement;
- The Memorandum of Agreement executed on 21 December 2007 between the Philippine National Construction Corporation, PNCC Skyway Corporation, and Citra Metro Manila Tollways Corporation; and
- The Toll Operation Certificate issued by the Toll Regulatory Board on 28 December 2007 in favor of Skyway O & M Corporation.

The annulment of the above is sought for being unconstitutional, contrary to law, and grossly disadvantageous to the government. Petitioners also seek to prohibit Skyway O & M Corporation from assuming operations and maintenance responsibilities over the Skyway toll facilities.

ANTECEDENT FACTS

The Toll Regulatory Board (TRB) was created on 31 March 1977 by Presidential Decree No. (P.D.) 1112[1] in order to supervise and regulate, on behalf of the government, the collection of toll fees and the operation of toll facilities by the private sector.

On the same date, P.D. 1113[2] was issued granting to the Construction and Development Corporation of the Philippines (now Philippine National Construction Corporation or PNCC) the right, privilege, and authority to construct, operate, and maintain toll facilities in the North and South Luzon Toll Expressways for a period of 30 years starting 1 May 1977.

TRB and PNCC later entered into a Toll Operation Agreement,[3] which prescribed the operating conditions of the right granted to PNCC under P.D. 1113.

P.D. 1113 was amended by P.D. 1894,[4] which granted PNCC the right, privilege, and authority to construct, maintain, and operate the North Luzon, South Luzon and Metro Manila Expressways, together with the toll facilities appurtenant thereto. The term of 30 years provided under P. D. 1113 starting from 1 May 1977 remained the same for the North and the South Luzon Expressways, while the franchise granted for the Metro Manila Expressway (MME) provided a term of 30 years commencing from the date of completion of the project.

On 22 September 1993, PNCC entered into an agreement[5] with PT Citra Lamtoro Gung Persada (CITRA), a limited liability company organized and established under the laws of the Republic of Indonesia, whereby the latter committed to provide PNCC with a pre-feasibility study on the proposed MME project. The agreement was supplemented[6] on 14 February 1994 with a related undertaking on the part of CITRA. CITRA was to provide a preliminary feasibility study on the Metro Manila Skyways (MMS) project, a system of elevated roadway networks passing through the heart of the Metropolitan Manila area. In order to accelerate the actual implementation of both the MME and the MMS projects, PNCC and CITRA entered into a second agreement.[7] Through that agreement, CITRA committed to finance and undertake the preparation, updating, and revalidation of previous studies on the construction, operation, and maintenance of the projects.

As a result of the feasibility and related studies, PNCC and CITRA submitted, through the TRB, a Joint Investment Proposal (JIP) to the Republic of the Philippines.[8] The JIP embodied the implementation schedule for the financing, design and construction of the MMS in three stages: the South Metro Manila Skyway, the North Metro Manila Skyway, and the Central Metro Manila Skyway.[9]

The TRB reviewed, evaluated and approved the JIP, particularly as it related to Stage 1, Phases 1 and 2; and Stage 2, Phase 1 of the South Metro Manila Skyway.

On 30 August 1995, PNCC and CITRA entered into a Business and Joint Venture Agreement[10] and created the Citra Metro Manila Tollways Corporation (CMMTC). CMMTC was a joint venture corporation organized under Philippine laws to serve as a channel through which CITRA shall participate in the construction and development of the project.

On 27 November 1995, the Republic of the Philippines – through the TRB – as Grantor, CMMTC as Investor, and PNCC as Operator executed a Supplemental Toll Operation Agreement (STOA)[11] covering Stage 1, Phases 1 and 2; and Stage 2, Phase 1 of the South Metro Manila Skyway. Under the STOA, the design and construction of the project roads became the primary and exclusive privilege and responsibility of CMMTC. The operation and maintenance of the project roads became the primary and exclusive privilege and responsibility of the PNCC Skyway Corporation (PSC), a wholly owned subsidiary of PNCC, which undertook and performed the latter's obligations under the STOA.

CMMTC completed the design and construction of Stage 1 of the South Metro Manila Skyway, which was operated and maintained by PSC.[12]

On 18 July 2007, the Republic of the Philippines, through the TRB, CMMTC, and PNCC executed the assailed Amendment to the Supplemental Toll Operation Agreement (ASTOA).[13] The ASTOA incorporated the amendments, revisions, and modifications necessary to cover the design and construction of Stage 2 of the South Metro Manila Skyway. Also under the ASTOA, Skyway O & M Corporation (SOMCO) replaced PSC in performing the operations and maintenance of Stage 1 of the South Metro Manila Skyway.

Pursuant to the authority granted to him under Executive Order No. (E.O.) 497[14] dated 24 January 2006, Department of Transportation and Communications (DOTC) Secretary Leandro Mendoza approved the ASTOA through the challenged Memorandum dated 20 July 2007.[15]

On 21 December 2007, PNCC, PSC, and CMMTC entered into the assailed Memorandum of Agreement (MOA)[16] providing for the successful and seamless assumption by SOMCO of the operations and maintenance of Stage 1 of the South Metro Manila Skyway. Under the MOA, PSC received the amount of ₱320 million which was used for the settlement of its liabilities arising from the consequent retrenchment or separation of its affected employees.

The TRB issued the challenged Toll Operation Certificate (TOC)[17] to SOMCO on 28 December 2007, authorizing the latter to operate and maintain Stage 1 of the South Metro Manila Skyway effective 10:00 p.m. on 31 December 2007.

Meanwhile, on 28 December 2007, petitioner PNCC Traffic Management and Security Department Workers Organization (PTMSDWO) filed a Notice of Strike against PSC on the ground of unfair labor practice, specifically union busting.[18] The Secretary of Labor and Employment[19] assumed jurisdiction over the dispute in an Order dated 31 December 2007 and set the initial hearing of the case on 2 January 2008.[20]

On 3 January 2008, petitioners PTMSDWO and PNCC Skyway Corporation Employees Union (PSCEU) filed before the Regional Trial Court of Parañaque City, Branch 258 (RTC), a complaint against respondents TRB, PNCC, PSC, CMMTC, and SOMCO. The complaint was for injunction and prohibition with a prayer for a writ of preliminary injunction and/or a temporary restraining order, and sought to prohibit the implementation of the ASTOA and the MOA, as well as the assumption of the toll operations by SOMCO.[21] Petitioners PSCEU and PTMSDWO also sought the subsequent nullification of the ASTOA and the MOA for being contrary to law and for being grossly disadvantageous to the government.[22] They later filed an Amended Complaint[23] dated 8 January 2008, additionally praying that PSC be allowed to continue the toll operations. With the exception of TRB, all defendants therein filed their Opposition.

On 23 January 2008, the RTC issued an Order[24] denying the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. According to the RTC, petitioners were seeking to enjoin a national government infrastructure project. Under Republic Act No. (R.A.) 8975,[25] lower courts are prohibited from issuing a temporary restraining order or preliminary injunction against the government – or any person or entity acting under the government’s direction – to restrain the execution, implementation, or operation of any such contract or project. Furthermore, the RTC ruled that it could no longer issue a temporary restraining order or preliminary injunction, considering that the act sought to be restrained had already been consummated.[26] The ASTOA, the MOA, and the assumption of the toll operations by SOMCO took effect at 10:00 p.m. on 31 December 2007, while petitioners PSCEU and PTMSDWO sought to prohibit their implementation only on 3 January 2008.

In view of its denial of the ancillary prayer, the RTC required defendants to file their respective Answers to the Amended Complaint.[27]

On 28 January 2008, petitioners PSCEU and PTMSDWO filed a Notice of Dismissal with Urgent Ex-Parte Motion for the Issuance of Order Confirming the Dismissal,[28] considering that no Answers had yet been filed. On the basis thereof, the RTC dismissed the case without prejudice on 29 January 2008.[29]

On 4 February 2008, petitioners filed the instant Petition[30] before this Court. On 13 February 2008, we required respondents to comment on the same.[31]

Meanwhile, defendants PNCC[32] and PSC[33] filed their respective Motions for Partial Reconsideration of the Order of the RTC dismissing the case without prejudice. Both argued that the RTC should have dismissed the case with prejudice. They pointed out that petitioners PSCEU and PTMSDWO had acted in bad faith by filing the

complaint before the RTC, despite the pendency of a labor case over which the Secretary of Labor and Employment had assumed jurisdiction. Defendant CMMTC joined PNCC and PSC in moving for a partial reconsideration of the RTC Order.[34]

The RTC denied the Motions for Partial Reconsideration in an Order dated 13 June 2008.[35]

Before this Court, SOMCO,[36] PSC,[37] PNCC,[38] CMMTC,[39] and TRB[40] filed their respective Comments on the Petition.

THE PARTIES' POSITIONS

Petitioners argue that the franchise for toll operations was exclusively vested by P.D. 1113 in PNCC, which exercised the powers under its franchise through PSC in accordance with the STOA. By agreeing to the arrangement whereby SOMCO would replace PSC in the toll operations and management, PNCC seriously breached the terms and conditions of its undertaking under the franchise and effectively abdicated its rights and privileges in favor of SOMCO.

Furthermore, the TOC granted to SOMCO was highly irregular and contrary to law, because 1) it did not indicate the conditions that shall be imposed on SOMCO as provided under P.D. 1112;[41] 2) none of the requirements on public bidding, negotiations, or even publication was complied with before the issuance of the TOC to SOMCO; 3) applying the stricter "grandfather rule," SOMCO does not qualify as a facility operator as defined under R.A. 6957,[42] as amended by R.A. 7718;[43] and 4) there were no public notices and hearings conducted wherein all legitimate issues and concerns about the transfer of the toll operations would have been properly ventilated.

Petitioners also claim that the approval by the DOTC Secretary of the ASTOA could not take the place of the presidential approval required under P.D. 1113[44] and P.D. 1894[45] concerning the franchise granted to PNCC.

Finally, petitioners claim that the assumption of the toll operations by SOMCO was grossly disadvantageous to the government, because 1) for a measly capital investment of P2.5 million, SOMCO stands to earn P400 million in gross revenues based on official and historical records; 2) with its measly capital, SOMCO would not be able to cover the direct overhead for personal services in the amount of P226 million as borne out by Commission on Audit reports; 3) the net revenue from toll operations would go to private shareholders of SOMCO, whereas all earnings of PSC when it was still in charge of the toll operations went to PNCC – the mother company whose earnings, as an "acquired-asset corporation," formed part of the public treasury; 4) the new arrangement would result in the poor delivery of toll services by SOMCO, which had no proven track record; 5) PSC received only P320 million as settlement for the transfer of toll operations to SOMCO.

All respondents counter that petitioners do not have the requisite legal standing to file the petition. According to respondents, petitioner Hontiveros-Baraquel filed the instant petition as a legislator in her capacity as party-list representative of Akbayan. As such, she was only allowed to sue to question the validity of any official action when it infringed on her prerogative as a legislator.[46] Presently, she has cited no such prerogative, power, or privilege that is adversely affected by the assailed acts.[47]

While suing as citizens, the individual petitioners have not shown any personal or substantial interest in the case indicating that they sustained or will sustain direct injury as a result of the implementation of the assailed acts.[48] The maintenance of the suit by petitioners as taxpayers has no merit either because the assailed acts do not involve the disbursement of public funds.[49] Finally, the bringing of the suit by petitioners as people's organizations does not automatically confer legal standing, especially since petitioner-organizations do not even allege that they represent their members,[50] nor do they cite any particular constitutional provision that has been

violated or disregarded by the assailed acts.[51] In fact, the suit raises only issues of contract law, and none of the petitioners is a party or is privy to the assailed agreements and issuances.[52]

Respondents also argue that petitioners violate the hierarchy of courts. In particular, it is alleged that while lower courts are prohibited from issuing temporary restraining orders or preliminary injunctions against national government projects under R.A. 8975, the law does not preclude them from assuming jurisdiction over complaints that seek the nullification of a national government project as ultimate relief.[53]

As a final procedural challenge to the petition, respondents aver that petitioners are guilty of forum shopping. When petitioners filed the instant petition, the case before the RTC seeking similar reliefs was still pending, as respondents PNCC, PSC and CMMTC had moved for the partial reconsideration of the RTC's Order of dismissal within the reglementary period.[54] Furthermore, the instant case and the one before the RTC were filed while petitioners' labor grievances seeking similar reliefs were also being heard before the Department of Labor and Employment.[55]

On the merits of the arguments in the petition, respondents argue that nothing in the ASTOA, the approval thereof by the DOTC Secretary, the MOA, or the TOC was violative of the Constitution.

It is argued that the authority to operate a public utility can be granted by administrative agencies when authorized by law.[56] Under P.D. 1112, the TRB is empowered to grant authority and enter into contracts for the construction, operation, and maintenance of a toll facility,[57] such as the ASTOA in this case. Also, the ASTOA was an amendment, not to the legislative franchise of PNCC, but to the STOA previously executed between the Republic of the Philippines through the TRB, PNCC, and CMMTC.[58] In fact, PNCC's franchise was never sold, transferred, or otherwise assigned to SOMCO[59] in the same way that PSC's previous assumption of the operation and maintenance of the South Metro Manila Skyway did not amount to a sale, transfer or assignment of PNCC's franchise.[60]

There can be no valid objection to the approval of the ASTOA by the DOTC Secretary, because he was authorized by the President to do so by virtue of E.O. 497.[61] Also, the phrase "subject to the approval of the President of the Philippines" in P.D. 1112 and 1113 does not in any way mean that the presidential approval must be obtained prior to the execution of a contract, or that the approval be made personally by the President.[62] The presidential approval may be obtained under the doctrine of qualified political agency.[63]

Respondents argue that there is no merit in the claim that the TOC granted to SOMCO was highly irregular and contrary to law. First, the TOC clearly states that the toll operation and maintenance by SOMCO shall be regulated by the Republic of the Philippines in accordance with P.D. 1112, the STOA, the toll operations and maintenance rules and regulations, and lawful orders, instructions, and conditions that may be imposed from time to time.[64] Second, there is no need to comply with the public bidding and negotiation requirements, because the South Metro Manila Skyway is an ongoing project, not a new one.[65] Furthermore, the STOA, which was the basis for the ASTOA, was concluded way before the effectivity of R.A. 9184[66] in 2003.[67]

Third, SOMCO is a Filipino corporation with substantial 72% Filipino ownership.[68] Fourth, the law requires prior notice and hearing only in an administrative body's exercise of quasi-judicial functions.[69] In this case, the transfer of the toll operations and maintenance to SOMCO was a contractual arrangement entered into in accordance with law.[70]

Finally, the assumption of the toll operation and maintenance by SOMCO is not disadvantageous to the government. Petitioners belittle the P2.5 million capitalization of SOMCO, considering that PSC's capitalization at the time it was incorporated was merely P500,000.[71]

Respondents claim that under the ASTOA, PNCC shall get a direct share in the toll revenues without any corollary obligation, unlike the arrangement in the STOA whereby PNCC's 10% share in the toll revenues was intended primarily for the toll operation and maintenance by PSC.[72]

Finally, respondents assert that there is no reason to fear that the assumption by SOMCO would result in poor delivery of toll services. CITRA and the other shareholders of SOMCO are entities with experience and proven track record in toll operations.[73] Also, SOMCO hired or absorbed more than 300 PSC employees,[74] who brought with them their work expertise and experience.

ISSUES

The instant case shall be resolved on the basis of the following issues:

Procedural:

- Whether petitioners have standing;
- Whether petitioners are guilty of forum-shopping;

Substantive:

- Whether the TRB has the power to grant authority to operate a toll facility;
- Whether the TOC issued to SOMCO was valid;
- Whether the approval of the ASTOA by the DOTC Secretary was valid; and
- Whether the assumption of toll operations by SOMCO is disadvantageous to the government.

Our Ruling

I

Not all petitioners have personality to sue.

Standing is a constitutional law concept allowing suits to be brought not necessarily by parties personally injured by the operation of a law or official action, but by concerned citizens, taxpayers, or voters who sue in the public interest.[75] Determining the standing of concerned citizens, taxpayers, or voters requires a partial consideration of the substantive merit of the constitutional question,[76] or at least a preliminary estimate thereof.[77]

In this case, petitioners raise the power of Congress to grant franchises as a constitutional question. They allege that the execution of the ASTOA and the MOA, the approval of the ASTOA by the DOTC Secretary and the issuance of the TOC infringed on the constitutional power of Congress, which has the sole authority to grant franchises for the operation of public utilities.

This Court has had a few occasions to rule that a franchise from Congress is not required before each and every public utility may operate.[78] Unless there is a law that specifically requires a franchise for the operation of a public utility, particular agencies in the executive branch may issue authorizations and licenses for the operation of certain classes of public utilities.[79] In the instant case, there is no law that states that a legislative franchise is necessary for the operation of toll facilities.

In *PAL v. Civil Aeronautics Board*,[80] this Court enunciated:

Congress has granted certain administrative agencies the power to grant licenses for, or to authorize the operation of certain public utilities. With the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a

constantly growing tendency towards the delegation of greater powers by the legislature, and towards the approval of the practice by the courts. It is generally recognized that a franchise may be derived indirectly from the state through a duly designated agency, and to this extent, the power to grant franchises has frequently been delegated, even to agencies other than those of a legislative nature. In pursuance of this, it has been held that privileges conferred by grant by local authorities as agents for the state constitute as much a legislative franchise as though the grant had been made by an act of the Legislature.[81]

It is thus clear that Congress does not have the sole authority to grant franchises for the operation of public utilities. Considering the foregoing, we find that the petition raises no issue of constitutional import. More particularly, no legislative prerogative, power, or privilege has been impaired. Hence, legislators have no standing to file the instant petition, for they are only allowed to sue to question the validity of any official action when it infringes on their prerogatives as members of Congress.[82] Standing is accorded to them only if there is an unmistakable showing that the challenged official act affects or impairs their rights and prerogatives as legislators.[83]

In line with our ruling in *Kilosbayan, Inc. v. Morato*,^[84] the rule concerning a real party in interest – which is applicable to private litigation – rather than the liberal rule on standing, should be applied to petitioners.

A real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.^[85] One's interest must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.^[86] The purposes of the rule are to prevent the prosecution of actions by persons without any right or title to or interest in the case; to require that the actual party entitled to legal relief be the one to prosecute the action; to avoid a multiplicity of suits; and to discourage litigation and keep it within certain bounds, pursuant to sound public policy.^[87]

At bottom, what is being questioned in the petition is the relinquishment by PSC of the toll operations in favor of SOMCO, effectively leading to the cessation of the former's business. In this case, we find that among petitioners, the only real parties in interest are the labor unions PSCEU and PTMSDWO.

PSCEU and PTMSDWO filed the petition not as a representative suit on behalf of their members who are rank-and-file employees of PSC, but as people's organizations "invested with a public duty to defend the rule of law."^[88] PSCEU and PTMSDWO cite *Kilosbayan v. Ermita*^[89] as authority to support their standing to file the instant suit.

It is well to point out that the Court, in *Ermita*, accorded standing to people's organizations to file the suit, because the matter involved therein was the qualification of a person to be appointed as a member of this Court – "an issue of utmost and far-reaching constitutional importance."^[90] As discussed, the instant petition raises no genuine constitutional issues.

Nevertheless, for a different reason, we accord standing to PSCEU and PTMSDWO to file the instant suit. With the transfer of toll operations to SOMCO and the resulting cessation of PSC's business comes the retrenchment and separation of all its employees. The existence of petitioner labor unions would terminate with the dissolution of its employer and the separation of its members. This is why the petition also prays that this Court issue an order "that would smoothly preserve the toll operations services of respondent PNCC and/or respondent PSC under its legislative franchise."^[91] We have recognized that the right of self-preservation is inherent in every labor union or any organization for that matter.^[92] Thus, PSCEU and PTMSDWO, as real parties in interest, have the personality to question the assumption of the toll operations by SOMCO.

II

PSCEU and PTMSDWO are not

guilty of forum-shopping.

Forum shopping refers to the act of availing of several remedies in different courts and/or administrative agencies, either simultaneously or successively, when these remedies are substantially founded on the same material facts and circumstances and raise basically the same issues either pending in or already resolved by some other court or administrative agency.[93] What is pivotal in determining whether forum shopping exists is the vexation caused to the courts and litigants and the possibility of conflicting decisions being rendered by different courts and/or administrative agencies upon the same issues.[94]

The elements of forum shopping are as follows: a) identity of parties or at least such parties that represent the same interests in both actions; b) identity of rights asserted and the relief prayed for, the relief founded on the same facts; and c) identity of the two preceding particulars, such that any judgment rendered in one action will amount to res judicata in the other.[95]

Respondents argue that petitioners PSCEU and PTMSDWO committed forum shopping by filing the complaint for injunction and prohibition before the RTC during the pendency of NCMB-NCR-NS-12-188-07 entitled In Re: Labor Dispute at PNCC Skyway Corporation. It was a case they also filed, over which the Secretary of Labor and Employment has assumed jurisdiction.

The case involves a Notice of Strike filed against PSC on the ground of unfair labor practice. While the specific act in question is not specified, the prohibited acts constituting unfair labor practice[96] essentially relate to violations concerning the workers' right to self-organization.[97] When compared with the complaint filed with the RTC for injunction and prohibition seeking to prohibit the implementation of the ASTOA and the MOA, as well as the assumption of the toll operations by SOMCO for being unconstitutional, contrary to law and disadvantageous to the government, it is easily discernible that there is no identity of rights asserted and relief prayed for. These cases are distinct and dissimilar in their nature and character.

For the sake of argument, let us assume that, in order to hurt the unions, PSC feigned a cessation of business that led to the retrenchment and separation of all employees. That is an unfair labor practice. In that complaint, the unions cannot be expected to ask for, or the Secretary of Labor and Employment to grant, the annulment of the ASTOA and the MOA and the continuation of toll operations by PSC. The Secretary would only focus on the legality of the retrenchment and separation, and on the presence or absence of bad faith in PSC's cessation of business. On the other hand, the complaint before the RTC would require it to focus on the legality of the ASTOA, the MOA and the transfer of toll operations. Ultimately, even if the Secretary of Labor and Employment makes a finding of unfair labor practice, this determination would not amount to res judicata as regards the case before the RTC.

We also reject the claim of respondents that petitioners PSCEU and PTMSDWO committed forum shopping by filing the instant petition before this Court while the motion for partial reconsideration of the RTC's Order of dismissal without prejudice was still pending. Section 1, Rule 17 of the Rules of Court states:

SECTION 1. Dismissal upon notice by plaintiff. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

In this case, petitioners PSCEU and PTMSDWO had filed a notice of dismissal of the complaint before the RTC on 28 January 2008, before respondents filed their Answers. The following day, the RTC issued an order confirming the dismissal. Under the above-cited rule, this confirmation is the only qualification imposed on the

right of a party to dismiss the action before the adverse party files an answer.[98] In this case, the dismissal of the action therefore became effective upon that confirmation by the RTC despite the subsequent filing of the motions for partial reconsideration.

Thus, when the instant petition was filed on 4 February 2008, the complaint before the RTC was no longer pending. The complaint was dismissed without prejudice by virtue of the notice of dismissal filed by petitioners PSCEU and PTMSDWO. Consequently, there was not even any need for petitioners to mention the prior filing and dismissal of the complaint in the certificate of non-forum shopping in the instant petition,[99] but they did so anyway.[100]

Parenthetically, in their motions for partial reconsideration, respondents PNCC and PSC insisted that the dismissal should have been with prejudice, because petitioners allegedly acted in bad faith in filing the notice of dismissal, were guilty of forum shopping, and did not notify respondents of their intention to file a notice of dismissal. With regard to the first and the third allegation, petitioners may ask for dismissal at any time before the filing of the answer as a matter of right, even if the notice cites “the most ridiculous of grounds for dismissal.”[101] As to the second, we have already ruled that there was no forum shopping as regards the successive filings of the labor case and the complaint before the RTC.

III

TRB has the power to grant
authority to operate a toll facility.

This matter has already been settled by the Court in *Francisco, Jr. v. TRB*,[102] which ruled thus:

It is abundantly clear that Sections 3 (a) and (e) of P.D. 1112 in relation to Section 4 of P.D. 1894 have invested the TRB with sufficient power to grant a qualified person or entity with authority to construct, maintain, and operate a toll facility and to issue the corresponding toll operating permit or TOC.

Sections 3 (a) and (e) of P.D. 1112 and Section 4 of P.D. 1894 amply provide the power to grant authority to operate toll facilities:

Section 3. Powers and Duties of the Board. – The Board shall have in addition to its general powers of administration the following powers and duties:

(a) Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporations or associations qualified under the Constitution and authorized by law to engage in toll operations;

x x x x x x x x

(e) To grant authority to operate a toll facility and to issue therefore the necessary “Toll Operation Certificate” subject to such conditions as shall be imposed by the Board including inter alia the following:

(1)

That the Operator shall desist from collecting toll upon the expiration of the Toll Operation Certificate.

(2)

That the entire facility operated as a toll system including all operation and maintenance equipment directly related thereto shall be turned over to the government immediately upon the expiration of the Toll Operation Certificate.

(3)

That the toll operator shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the Toll Operation Certificate to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the President of the Philippines. In the event of any valid transfer of the Toll Operation Certificate, the Transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extent as if the Toll Operation Certificate has been granted to the same person, firm, company, corporation or other commercial or legal entity.

(4)

That in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace and order, the President of the Philippines may cause the total or partial closing of the toll facility or order to take over thereof by the Government without prejudice to the payment of just compensation.

(5)

That no guarantee, Certificate of Indebtedness, collateral, securities, or bonds shall be issued by any government agency or government-owned or controlled corporation on any financing program of the toll operator in connection with his undertaking under the Toll Operation Certificate.

(6)

The Toll Operation Certificate may be amended, modified or revoked whenever the public interest so requires.

(a)

The Board shall promulgate rules and regulations governing the procedures for the grant of Toll Certificates. The rights and privileges of a grantee under a Toll Operation Certificate shall be defined by the Board.

(b)

To issue rules and regulations to carry out the purposes of this Decree.

SECTION 4. The Toll Regulatory Board is hereby given jurisdiction and supervision over the GRANTEE with respect to the Expressways, the toll facilities necessarily appurtenant thereto and, subject to the provisions of Section 8 and 9 hereof, the toll that the GRANTEE will charge the users thereof.

By explicit provision of law, the TRB was given the power to grant administrative franchise for toll facility projects.[103] (Emphases supplied)

We cannot abide by the contention of petitioners that the franchise for toll operations was exclusively vested in PNCC, which effectively breached its franchise when it transferred the toll operations to SOMCO. First, there is nothing in P.D. 1113 or P.D. 1894 that states that the franchise granted to PNCC is to the exclusion of all others.

Second, if we were to go by the theory of petitioners, it is only the operation and maintenance of the toll facilities that is vested with PNCC. This interpretation is contrary to the wording of P.D. 1113 and P.D. 1894 granting PNCC the right, privilege and authority to construct, operate and maintain the North Luzon, South Luzon and Metro Manila Expressways and their toll facilities.

It appears that petitioners have confused the franchise granted under P.D. 1113 and P.D. 1894 with particular provisions in the STOA. To clarify, the operation and maintenance of the project roads were the primary and exclusive privilege and responsibility of PNCC through PSC under the STOA. On the other hand, the design and construction of the project roads were the primary and exclusive privilege and responsibility of CMMTC.

However, with the execution of the ASTOA, the parties agreed that SOMCO shall replace PSC in undertaking the operations and maintenance of the project roads. Thus, the “exclusivity clause” was a matter of agreement between the parties, which amended it in a later contract; it was not a matter provided under the law.

Third, aside from having been granted the power to grant administrative franchises for toll facility projects, TRB is also empowered to modify, amend, and impose additional conditions on the franchise of PNCC in an appropriate contract, particularly when public interest calls for it. This is provided under Section 3 of P.D. 1113 and Section 6 of P.D. 1894, to wit:

SECTION 3. This franchise is granted subject to such conditions as may be imposed by the [Toll Regulatory] Board in an appropriate contract to be executed for this purpose, and with the understanding and upon the condition that it shall be subject to amendment, alteration or repeal when public interest so requires.

x x x x x x x x

SECTION 6. This franchise is granted subject to such conditions, consistent with the provisions of this Decree, as may be imposed by the Toll Regulatory Board in the Toll Operation Agreement and such other modifications or amendments that may be made thereto, and with the understanding and upon the condition that it shall be subject to amendment or alteration when public interest so dictates.

Section 6 of P.D. 1894 specifically mentions the Toll Operation Agreement. The STOA was one such modification or amendment of the franchise of PNCC. So was the ASTOA, which further modified the franchise. PNCC cannot be said to have breached its franchise when it transferred the toll operations to SOMCO. PNCC remained the franchise holder for the construction, operation, and maintenance of the project roads; it only opted to partner with investors in the exercise of its franchise leading to the organization of companies such as PSC and SOMCO.

Again, considering that PNCC was granted the right, privilege, and authority to construct, operate, and maintain the North Luzon, South Luzon, and Metro Manila Expressways and their toll facilities, we have not heard petitioners decrying the “breach” by PNCC of its franchise when it agreed to make CMMTC responsible for the design and construction of the project roads under the STOA.

IV

The TOC issued to SOMCO was not irregular.

Petitioners argue that the conditions provided under Section 3(e) of P.D. 1112[104] were not imposed on SOMCO, because these do not appear on the face of the TOC. Petitioners are mistaken.

The TOC, as a grant of authority from the government, is subject to the latter’s control insofar as the grant affects or concerns the public.[105] Like all other franchises or licenses issued by the government, the TOC is issued subject to terms, conditions, and limitations under existing laws and agreements. This rule especially holds true in this instance since the TRB has the power to issue “the necessary ‘Toll Operation Certificate’ subject to such conditions as shall be imposed by the Board including inter alia” those specified under Section 3(e) of P.D. 1112. Thus, impliedly written into every TOC are the conditions prescribed therein.

In any case, part of the TOC issued to SOMCO reads:

Pursuant to Section 3(e) of Presidential Decree No. 1112 or the Toll Operation Decree, Skyway O & M Corporation is hereby given authority to operate and maintain Stage 1 of the South Metro Manila Skyway effective as of 10:00 p.m. of 31 December 2007.

This authorization is issued upon the clear understanding that the operation and maintenance of Stage 1 of the South Metro Manila Skyway as a toll facility and the collection of toll fees shall be closely supervised and

regulated by the Grantor, by and through the Board of Directors, in accordance with the terms and conditions set forth in the STOA, as amended, the rules and regulations duly promulgated by the Grantor for toll road operations and maintenance, as well as the lawful orders, instructions and conditions which the Grantor, through the TRB, may impose from time to time in view of the public nature of the facility.

As regards the allegation that none of the requirements for public bidding was observed before the TOC was issued to SOMCO, this matter was also squarely answered by the Court in *Francisco, Jr. v. TRB*,^[106] to wit:

Where, in the instant case, a franchisee undertakes the tollway projects of construction, rehabilitation and expansion of the tollways under its franchise, there is no need for a public bidding. In pursuing the projects with the vast resource requirements, the franchisee can partner with other investors, which it may choose in the exercise of its management prerogatives. In this case, no public bidding is required upon the franchisee in choosing its partners as such process was done in the exercise of management prerogatives and in pursuit of its right of *delectus personae*. Thus, the subject tollway projects were undertaken by companies, which are the product of the joint ventures between PNCC and its chosen partners.^[107]

Under the STOA in this case, PNCC partnered with CMMTC in Stages 1 and 2 of the South Metro Manila Skyway. The STOA gave birth to PSC, which was put in charge of the operation and maintenance of the project roads. The ASTOA had to be executed for Stage 2 to accommodate changes and modifications in the original design. The ASTOA then brought forth the incorporation of SOMCO to replace PSC in the operations and maintenance of Stage 1 of the South Metro Manila Skyway. Clearly, no public bidding was necessary because PNCC, the franchisee, merely exercised its management prerogative when it decided to undertake the construction, operation, and maintenance of the project roads through companies which are products of joint ventures with chosen partners.

Petitioners also insist that SOMCO is not qualified to operate a toll facility, because it does not meet the nationality requirement for a corporation when scrutinized under the “grandfather rule.” Other than advancing this argument, however, petitioners have not shown how SOMCO fails to meet the nationality requirement for a public utility operator. Petitioners only aver in their petition that 40% of SOMCO is owned by CMMTC, a foreign company, while the rest is owned by the following: a) Toll Road Operation and Maintenance Venture Corporation (TROMVC), almost 40% of which is owned by a Singaporean company; b) Assetvalues Holding Company, Inc. (AHCI), of which almost 40% is Dutch-owned; and c) Metro Strategic Infrastructure Holdings, Inc. (MSIHI), 40% of which is owned by Metro Pacific Corporation, whose ownership or nationality was not specified.^[108]

Section 11, Article XII of the Constitution provides that “[n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x.” Clearly, under the Constitution, a corporation at least 60% of whose capital is owned by Filipinos is of Philippine nationality. Considering this constitutional provision, petitioners’ silence on the ownership of the remaining 60% of the corporations cited is very telling.

In order to rebut petitioners’ allegations, respondents readily present matrices showing the itemization of percentage ownerships of the subscribed capital stock of SOMCO, as well as that of TROMVC, AHCI, and MSIHI. Respondents attempt to show that all these corporations are of Philippine nationality, with 60% of their capital stock owned by Filipino citizens. We need not reproduce the itemization here. Suffice it to say that in their Consolidated Reply,^[109] petitioners did not refute the unanimous claim of respondents. It is axiomatic that one who alleges a fact has the burden of proving it. On this matter, we find that petitioners have failed to prove their allegation that SOMCO is not qualified to operate a toll facility for failure to meet the nationality requirement under the Constitution.

Finally, no public notices and hearings were necessary prior to the issuance of the TOC to SOMCO. For the same reason that a public bidding is not necessary, PNCC cannot be required to call for public hearings concerning matters within its prerogative. At any rate, we have studied P.D. 1112 and the Implementing Rules and Regulations Authorizing the Establishment of Toll Facilities and found no provision requiring the issuance of public notices and the conduct of public hearings prior to the issuance of a TOC.

V

Approval of the ASTOA by the DOTC Secretary was approval by the President.

The doctrine of qualified political agency declares that, save in matters on which the Constitution or the circumstances require the President to act personally, executive and administrative functions are exercised through executive departments headed by cabinet secretaries, whose acts are presumptively the acts of the President unless disapproved by the latter.[110] As explained in *Villena v. Executive Secretary*,[111] this doctrine is rooted in the Constitution:

x x x With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence," and, in the language of Attorney-General Cushing, "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority." Secretaries of departments, of course, exercise certain powers under the law but the law cannot impair or in any way affect the constitutional power of control and direction of the President. As a matter of executive policy, they may be granted departmental autonomy as to certain matters but this is by mere concession of the executive, in the absence of valid legislation in the particular field. If the President, then, is the authority in the Executive Department, he assumes the corresponding responsibility. The head of a department is a man of his confidence; he controls and directs his acts; he appoints him and can remove him at pleasure; he is the executive, not any of his secretaries.[112] x x x (Citations omitted)

Applying the doctrine of qualified political agency, we have ruled that the Secretary of Environment and Natural Resources can validly order the transfer of a regional office by virtue of the power of the President to reorganize the national government.[113] In *Constantino v. Cuisia*,[114] the Court upheld the authority of the Secretary of Finance to execute debt-relief contracts. The authority emanates from the power of the President to contract foreign loans under Section 20, Article VII of the Constitution. In *Angeles v. Gaité*,[115] the Court ruled that there can be no issue with regard to the President's act of limiting his power to review decisions and orders of the Secretary of Justice, especially since the decision or order was issued by the secretary, the President's "own alter ego." [116]

There can be no question that the act of the secretary is the act of the President, unless repudiated by the latter. In this case, approval of the ASTOA by the DOTC Secretary had the same effect as approval by the President. The same would be true even without the issuance of E.O. 497, in which the President, on 24 January 2006, specifically delegated to the DOTC Secretary the authority to approve contracts entered into by the TRB.

Petitioners are unimpressed. They cite Section 8 of P.D. 1113 and Section 13 of P.D. 1894 as follows:

SECTION 8. The GRANTEE shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights or privileges acquired hereby, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation without the prior approval of the President of the Philippines. In the event that this franchise is sold, transferred or assigned, the transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extents as if the franchise has been granted to the same person, firm, company, corporation or other commercial or legal entity. (Emphasis supplied)

SECTION 13. The GRANTEE shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights or privileges required hereby, to any person, firm, company, corporation or other legal entity, nor merge with any other company or corporation without the prior approval of the President of the Philippines.

In the event that this franchise is sold, transferred or assigned, the transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extent as if the franchise has been granted to the said person, firm, company, corporation or other legal entity. (Emphasis supplied)

Petitioners insist that based on the above provisions, it is the President who should give personal approval considering that the power to grant franchises was exclusively vested in Congress. Hence, to allow the DOTC Secretary to exercise the power of approval would supposedly dilute that legislative prerogative.

The argument of petitioners is founded on the assumption that PNCC in some way leased, transferred, granted the usufruct of, sold, or assigned to SOMCO its franchise or the rights or privileges PNCC had acquired by it. Here lies the error in petitioners' stand. First, as discussed above, the power to grant franchises or issue authorizations for the operation of a public utility is not exclusively exercised by Congress. Second, except where the situation falls within that special class that demands the exclusive and personal exercise by the President of constitutionally vested power,[117] the President acts through alter egos whose acts are as if the Chief Executive's own.

Third, no lease, transfer, grant of usufruct, sale, or assignment of franchise by PNCC or its merger with another company ever took place.

The creation of the TRB and the grant of franchise to PNCC were made in the light of the recognition on the part of the government that the private sector had to be involved as an alternative source of financing for the pursuance of national infrastructure projects. As the franchise holder for the construction, maintenance and operation of infrastructure toll facilities, PNCC was equipped with the right and privilege, but not necessarily the means, to undertake the project. This is where joint ventures with private investors become necessary.

A joint venture is an association of companies jointly undertaking a commercial endeavor, with all of them contributing assets and sharing risks, profits, and losses.[118] It is hardly distinguishable from a partnership considering that their elements are similar and, thus, generally governed by the law on partnership.[119]

In joint ventures with investor companies, PNCC contributes the franchise it possesses, while the partner contributes the financing – both necessary for the construction, maintenance, and operation of the toll facilities. PNCC did not thereby lease, transfer, grant the usufruct of, sell, or assign its franchise or other rights or privileges. This remains true even though the partnership acquires a distinct and separate personality from that of the joint venturers or leads to the formation of a new company that is the product of such joint venture, such as PSC and SOMCO in this case.

Hence, when we say that the approval by the DOTC Secretary in this case was approval by the President, it was not in connection with the franchise of PNCC, as required under Section 8 of P.D. 1113 and Section 13 of P.D.

1894. Rather, the approval was in connection with the powers of the TRB to enter into contracts on behalf of the government as provided under Section 3(a) of P.D. 1112, which states:

SECTION 3. Powers and Duties of the Board. – The Board shall have in addition to its general powers of administration the following powers and duties:

(a) Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporations or associations qualified under the Constitution and authorized by law to engage in toll operations; (Emphasis supplied)

VI

Petitioners have not shown that the transfer of toll operations to SOMCO was grossly disadvantageous to the government.

In support of their contention that the transfer of toll operations from PSC to SOMCO was grossly disadvantageous to the government, petitioners belittle the initial capital investment, private ownership, and track record of SOMCO.

When one uses the term “grossly disadvantageous to the government,” the allegations in support thereof must reflect the meaning accorded to the phrase. “Gross” means glaring, reprehensible, culpable, flagrant, and shocking.[120] It requires that the mere allegation shows that the disadvantage on the part of the government is unmistakable, obvious, and certain.

In this case, we find that the allegations of petitioners are nothing more than speculations, apprehensions, and suppositions. They speculate that with its “measly” capital investment, SOMCO would not be able to cover the overhead expenses for personal services alone. They fear that the revenue from toll operations would go to “private pockets” in exchange for a small settlement amount to be given to PSC. Given that SOMCO has no proven track record, petitioners deduce that its assumption of the toll operations would lead to poor delivery of toll services to the public.

The aim in the establishment of toll facilities is to draw from private resources the financing of government infrastructure projects. Naturally, these private investors would want to receive reasonable return on their investments. Thus, the collection of toll fees for the use of public improvements has been authorized, subject to supervision and regulation by the national government.[121] As regards the P320 million settlement given to PSC, the amount was to be used principally for the payment of its liabilities of PSC arising from the retrenchment of its employees. We note that under the MOA, the residual assets of PSC shall still be offered for sale to CMMTC, subject to valuation.[122] Thus, it would be inaccurate to say that PSC would receive only P320 million for the entire arrangement.

It is quite understandable that SOMCO does not yet have a proven track record in toll operations, considering that it was only the ASTOA and the MOA that gave birth to it. We are not prepared to rule that this lack of track record would result in poor delivery of toll services, especially because most of the former employees of PSC have been rehired by SOMCO, an allegation of respondents that was never refuted by petitioners. Neither are we prepared to take the amount of SOMCO’s initial capital investment against it, as it is considerably higher than ₱500,000, the authorized capital stock of PSC as of 2002.[123]

A FINAL NOTE

R.A. 8975 prohibits lower courts from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government – or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government’s direction – to restrain, prohibit or compel acts related to the implementation and completion of government infrastructure projects.

The rationale for the law is easily discernible. Injunctions and restraining orders tend to derail the expeditious and efficient implementation and completion of government infrastructure projects; increase construction, maintenance and repair costs; and delay the enjoyment of the social and economic benefits therefrom. Thus, unless the matter is of extreme urgency involving a constitutional issue, judges of lower courts who shall issue injunctive writs or restraining orders in violation of the law shall be administratively liable.

The law is clear that what is prohibited is merely the issuance of provisional orders enjoining the implementation of a national government project. R.A. 8975 does not bar lower courts from assuming jurisdiction over complaints that seek the nullification or implementation of a national government infrastructure project as ultimate relief.[124]

There is no question that the ultimate prayer in the instant case is the nullification of a national government project considering that the ASTOA involved the design and construction of Stage 2 of the South Metro Manila Skyway, as well as the operation and maintenance of Stage 1 thereof. The prayer is grounded on the contract’s alleged unconstitutionality, violation of the law, and gross disadvantage to the government. Such principal action and relief were within the jurisdiction of the RTC, which acted correctly when it ordered respondents to file their respective answers to the complaint, even while it denied the prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order in observance of R.A. 8975.

It was therefore error on the part of petitioners to come directly before this Court for the sole reason that the lower courts will not be able to grant the prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin the assumption of toll operations by SOMCO. The error even takes on a whole new meaning, because SOMCO assumed responsibility for the operations and maintenance of the South Metro Manila Skyway at 10:00 p.m. on 31 December 2007. On the other hand, the complaint before the RTC seeking to enjoin the assumption by SOMCO was filed only on 3 January 2008, while the instant petition was filed on 4 February 2008.

As we held in *Aznar Brothers Realty, Inc. v. CA*,^[125] injunction does not lie when the act sought to be enjoined has already become a *fait accompli* or an accomplished or consummated act.

Parties must observe the hierarchy of courts before seeking relief from this Court. Observance thereof minimizes the imposition on the already limited time of this Court and prevents delay, intended or otherwise, in the adjudication of cases.^[126] We do not appreciate the litigants’ practice of directly seeking recourse before this Court, relying on the gravitas of a personality yet making serious claims without the proof to support them.

WHEREFORE, the petition is DISMISSED. The prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order is DENIED.

SO ORDERED.

Leonardo-De Castro, Bersamin, Perez, and Perlas-Bernabe, JJ., concur.

[1] The Toll Operation Decree.

[2] Granting the Construction and Development Corporation of the Philippines (CDCP) a Franchise to Operate, Construct and Maintain Toll Facilities in the North and South Luzon Toll Expressways and for other Purposes.

[3] Rollo, pp. 312-326.

[4] 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.

[5] Id. at 328-330.

[6] Id. at 331-340.

[7] Id. at 342-354.

[8] Id. at 227.

[9] Id.

[10] Id. at 355-377.

[11] Id. at 378-446.

[12] Id. at 51.

[13] Id. at 51-95.

[14] DELEGATING TO THE SECRETARY OF TRANSPORTATION AND COMMUNICATIONS THE APPROVAL OF CONTRACTS ENTERED INTO BY THE TOLL REGULATORY BOARD

WHEREAS, the Toll Operation Decree of 31st March 1977 grants to the Toll Regulatory Board the power, subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or juridical, for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges, and public thoroughfares;

NOW THEREFORE I, GLORIA M. ARROYO, President of the Philippines do hereby delegate to the Secretary of Transportation and Communications the authority to approve contracts entered into by the Toll Regulatory Board.

DONE in the City of Manila, this 24th day of January, in the year of Our Lord, Two Thousand and Six.

[15] Rollo, p. 96.

[16] Id. at 97-107.

[17] Id. at 49-50.

[18] Id. at 528.

[19] Former Secretary Arturo D. Brion, now a Member of this Court.

[20] Id. at 528-529.

[21] Id. at 111.

[22] Id.

[23] Id. at 715-733.

[24] Id. at 110-115.

[25] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for other Purposes.

[26] Rollo, p. 115.

[27] Id.

[28] Id. at 116-118.

[29] Id. at 119.

[30] Id. at 3-48.

[31] Id. at 126-127.

[32] Id. at 945-951.

[33] Id. at 952-958.

[34] Id. at 959-971.

[35] Id. at 1205-1206.

[36] Id. at 222-310.

[37] Id. at 469-504.

[38] Id. at 532-568.

[39] Id. at 569-670.

[40] Id. at 1111-1163.

[41] SECTION 3. Powers and Duties of the [Toll Regulatory] Board. — The Board shall have in addition to its general powers of administration the following powers and duties:

(e) To grant authority to operate a toll facility and to issue therefore the necessary “Toll Operation Certificate” subject to such conditions as shall be imposed by the Board including inter alia the following:

- 1) That the Operator shall desist from collecting toll upon the expiration of the Toll Operation Certificate.
- 2) That the entire facility operated as a toll system including all operation and maintenance equipment directly related thereto shall be turned over to the government immediately upon the expiration of the Toll Operation Certificate.
- 3) That the toll operator shall not lease, transfer, grant the usufruct of, sell or assign the rights or privileges acquired under the Toll Operation Certificate to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the President of the Philippines. In the event of any valid transfer of the Toll Operation Certificate, the Transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and

completely and to the same extent as if the Toll Operation Certificate has been granted to the same person, firm, company, corporation or other commercial or legal entity.

4) That in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace and order, the President of the Philippines may cause the total or partial closing of the toll facility or order to take over thereof by the Government without prejudice to the payment of just compensation.

5) That no guarantee, Certificate of Indebtedness, collateral, securities, or bonds shall be issued by any government agency or government-owned or controlled corporation on any financing program of the toll operator in connection with his undertaking under the Toll Operation Certificate.

6) The Toll Operation Certificate may be amended, modified or revoked whenever the public interest so requires.

[42] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes.

Section 2. Definition of Terms. — The following terms used in this Act shall have the meanings stated below:

(m) Facility operator — A company registered with the Securities and Exchange Commission, which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users: Provided, That in case the facility requires a public utility franchise, the facility operator shall be Filipino or at least sixty per centum (60%) owned by Filipinos. (Emphasis supplied)

[43] An Act Amending Certain Sections of Republic Act No. 6957, Entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes.”

[44] Section 8. The GRANTEE [PNCC] shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights or privileges acquired hereby, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation without the prior approval of the President of the Philippines. In the event that this franchise is sold, transferred or assigned, the transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extents as if the franchise has been granted to the same person, firm, company, corporation or other commercial or legal entity. (Emphasis supplied)

[45] Section 13. The GRANTEE [PNCC] shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights or privileges required hereby, to any person, firm, company, corporation or other legal entity, nor merge with any other company or corporation without the prior approval of the President of the Philippines.

In the event that this franchise is sold, transferred or assigned, the transferee shall be subject to all the conditions, terms, restrictions and limitations of this Decree as fully and completely and to the same extent as if the franchise has been granted to the said person, firm, company, corporation or other legal entity. (Emphasis supplied)

[46] Rollo, pp. 240-241, 1137.

[47] Id. at 241, 492-493.

[48] Id. at 245-246, 489-490, 543-545, 1137.

[49] Id. at 246-247, 1137-1138.

[50] Id. at 252, 609.

[51] Id. at 249, 1138.

[52] Id. at 488-489, 543, 605-608, 1139-1140.

[53] Id. at 256-261.

[54] Id. at 477-480, 539-542, 592-599, 1127-1132.

[55] Id. at 481-484, 599-601.

[56] Id. at 262-274, 1143-1144.

[57] Id. at 266-270, 499, 622-624, 1144.

[58] Id. at 270.

[59] Id. at 282-285.

[60] Id. at 285-287.

[61] Id. at 276-282, 627-628, 1147-1148.

[62] Id. at 277, 629, 1148-1151.

[63] Id. at 277-279, 628, 1146-1147.

[64] Id. at 288-289, 631, 1152-1153.

[65] Id. at 290, 632-634, 1152.

[66] Government Procurement Reform Act.

[67] Rollo, p. 291, 634-635.

[68] Id. at 293, 636-640, 1153-1154.

[69] Id. at 641-642.

[70] Id. at 643.

[71] Id. at 299-300, 500, 645.

[72] Id. at 300, 646-650, 1158-1159.

[73] Id. at 500, 653, 1159.

[74] Id. at 302, 1159.

[75] *Kilosbayan, Inc. v. Morato*, 316 Phil. 652 (1995).

[76] Id.

[77] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC*, 352 Phil. 153 (1998).

[78] *Oroport Cargohandling Services, Inc. v. Phividec Industrial Authority*, 582 Phil. 197 (2008); *Philippine Airlines, Inc. v. Civil Aeronautics Board*, 337 Phil. 254 (1997); *Albano v. Reyes*, 256 Phil. 718 (1989).

[79] *Associated Communications & Wireless Services-United Broadcasting Networks v. National*

Telecommunications Commission, 445 Phil. 623 (2003).

[80] 337 Phil. 254 (1997).

[81] *Id.* at 265.

[82] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003).

[83] *Jaworski v. PAGCOR*, 464 Phil. 375 (2004).

[84] 320 Phil. 171 (1995).

[85] RULES OF COURT, Rule 3, Sec. 2.

[86] *Pantranco Employees Association v. NLRC*, 600 Phil. 645 (2009); *VSC Commercial Enterprises, Inc. v. CA*, 442 Phil. 269 (2002).

[87] *Spouses Oco v. Limbaring*, 516 Phil. 691 (2006).

[88] *Rollo*, p. 9.

[89] 553 Phil. 331 (2007).

[90] *Id.* at 339-340.

[91] *Rollo*, p. 33.

[92] *Tanduary Distillery Labor Union v. NLRC*, 233 Phil. 488 (1987) citing *Villar v. Inciong*, 206 Phil. 366 (1983).

[93] *Hydro Resources Contractors Corp. v. National Irrigation Administration*, 484 Phil. 581 (2004); *Land Car, Inc. v. Bachelor Express, Inc.*, 462 Phil. 796 (2003).

[94] *Rudecon Management Corporation v. Singson*, 494 Phil. 581 (2005).

[95] *Ao-as v. CA*, 524 Phil. 646 (2006).

[96] THE LABOR CODE OF THE PHILIPPINES, ARTICLE 257. Unfair Labor Practices of Employers. It shall be unlawful for an employer to commit any of the following unfair labor practice:

- a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
- c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
- d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;
- e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees

paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

g) To violate the duty to bargain collectively as prescribed by this Code;

h) To pay negotiation or attorneys fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

[97] Great Pacific Life Employees Union v. Great Pacific Life Assurance Corp., 362 Phil. 452 (1999).

[98] O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation, 520 Phil. 318 (2006).

[99] Roxas v. CA, 415 Phil. 430 (2001).

[100] Rollo, pp. 34-48.

[101] O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation, *supra* at 326.

[102] G.R. Nos. 166910, 169917, 173630 and 183599, 19 October 2010, 633 SCRA 470.

[103] *Id.* at 496-498.

[104] See note 41.

[105] Manila Jockey Club, Inc. v. CA, 360 Phil. 367 (1998).

[106] *Supra*.

[107] *Id.* at 555-556.

[108] Rollo, p. 16.

[109] *Id.* at 1172-1204.

[110] Villena v. Secretary of the Interior, 67 Phil. 451 (1939).

[111] *Id.*

[112] *Id.* at 464-465.

[113] DENR v. DENR Region 12 Employees, 456 Phil. 635 (2003).

[114] 509 Phil. 486 (2005).

[115] G.R. No. 165276, 25 November 2009, 605 SCRA 408.

[116] Id. at 417.

[117] Angeles v. Gaite, *supra*.

[118] JG Summit Holdings, Inc. v. CA, 398 Phil. 955 (2000).

[119] Litonjua, Jr. v. Litonjua, Sr., 573 Phil. 707 (2005).

[120] Sajul v. Sandiganbayan, 398 Phil. 1082 (2000).

[121] P.D. 1112, third “Whereas” clause.

[122] Rollo, p. 103.

[123] Id. at 994-999, Amended Articles of Incorporation of PSC.

[124] Republic v. Nolasco, 496 Phil. 853 (2005).

[125] 384 Phil. 95 (2000).

[126] People v. Azarraga, G.R. Nos. 187117 and 187127, 12 October 2011, 659 SCRA 34.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

Start free at <https://batas.org>

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

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

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