

PHILIPPINE CONTRACTORS ACCREDITATION BOARD, PETITIONER, VS. MANILA WATER COMPANY, INC., RESPONDENT.

G.R. No. 217590. March 10, 2020

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

In this Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, the Philippine Contractors Accreditation Board (PCAB; hereinafter referred to as petitioner) seeks the reversal of the February 24, 2014 Resolution[2] and the February 10, 2015 Order[3] of the Regional Trial Court, Quezon City, Branch 83 (RTC) which granted the petition for declaratory relief filed by Manila Water Company, Inc. (respondent) and declared Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines or the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 4566[4] void.

The Court is asked to determine the validity of Section 3.1, Rule 3 of the IRR which provides:

Rule 3 CONTRACTOR'S LICENSE

Section 3.1 License Types

Two types of licenses are hereby instituted and designated as follows:

a)

The Regular License

"Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

* Adjusted to 60% under Art. 48 of Chapter III, Book II of the Omnibus Investment Code of 1987.

b)

The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the

privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

ba)

A joint venture, consortium or any such similar association organized for a single specific undertaking/project;

bb)

A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

bc)

A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[5]

Antecedents

On July 9, 2012, respondent wrote petitioner seeking accreditation of its foreign contractors to undertake its contracts for the construction of necessary facilities for its waterworks and sewerage system. On November 8, 2012, petitioner replied stating that under Section 3.1 of the IRR, regular licenses are reserved for, and issued only to, contractor-firms of Filipino sole proprietorship or partnership/corporation with at least 60% Filipino equity participation and duly organized and existing, under and by virtue of the laws of the Philippines. Petitioner also pointed out that since the purported construction contracts adverted to by respondent do not appear as Build-Operate-Transfer (BOT) contracts and are not foreign assisted/financed projects required to undergo international competitive biddings which are exempted under R.A. No. 7718, then the issuance of the contractor's license in the context of the said law is not warranted.[6]

Thereafter, respondent filed a Petition for Declaratory Relief[7] before the trial court which sought for the determination of the validity of Section 3.1, Rule 3 of the IRR issued by petitioner. Respondent claimed that the said provision is unconstitutional since it creates restrictions on foreign investments, a power exclusively vested on Congress by the Constitution. It also argued that the same provision adds restrictions to R.A. No. 4566 which the latter does not provide.[8]

Petitioner, represented by the Office of the Solicitor General (OSG), countered that R.A. No. 4566 grants petitioner the authority to effect classification of contractors and limit the scope of each contractor to those in which he is classified to engage in. It is their position that the IRR does not discriminate since it does not totally prohibit foreign contractors but, instead, requires them to obtain a special license.[9]

The RTC ruled in favor of respondent and declared Section 3.1, Rule 3 of the IRR void. It held that the same does not merely interpret or implement the law but creates an entirely new restriction that is not found in the law. While Section 17 of R.A. No. 4566 allows the board to effect classifications, the same provision requires the qualification to be reasonable. The trial court believed that the classification effected by the IRR is unreasonable as it imposes additional burdens on foreign entities which are not found in the law or the Constitution.[10]

Petitioner's motion for reconsideration was denied.[11] Hence, this petition.

Petitioner PCAB's contentions

Petitioner contends that it is within its duty and authority to issue the assailed IRR. Section 5 of R.A. No. 4566 expressly confers upon petitioner the duty and power to issue the IRR of the same act. Section 17 of the same law also empowers petitioner to adopt the necessary rules and regulations to effect the classification of contractors. Considering also that the construction business is a highly technical industry, R.A. No. 4566 cannot, by itself, thoroughly address all issues and factors in the issuance of licenses in such industry. Thus, the same can only be effectively regulated by petitioner pursuant to its powers and functions under R.A. No. 4566, which includes the authority to issue the assailed IRR.[12]

Further, the questioned provision of the IRR is consistent with the 1987 Constitution and existing laws, rules, regulations and policies. The IRR does not restrict the construction industry to Filipinos, but merely regulates the issuance of licenses to foreign contractors, subject to reasonable regulatory measures pertinent to their nature of being based outside the Philippines. The questioned provision of the IRR is consistent with the reasonable necessity of ensuring continuous and updated monitoring and regulation of foreign contractors, who are distinct from local contractors since they are not based in the Philippines and thus, may be situated beyond the reach of the government for possible enforcement of the contractor's liability/warranty such as Article 1723 of the Civil Code and Rule 62.2.3.1 of the revised IRR of R.A. No. 9184,[13] among others. Finally, the regulatory measures contained in the IRR are consistent with Section 14, Article XII of the 1987 Constitution, which mandates that practice of all professions in the Philippines be limited to Filipino citizens, save in cases prescribed by law, in relation to R.A. No. 465,[14] as amended by R.A. No. 6511,[15] which in turn considers construction as a profession by including contractors in its list of professionals. The IRR is consistent with the aforesaid provision of the law in as much as the law itself recognizes the distinction between foreign and local contractors.[16]

Respondent Manila Waters arguments

In its Comment,[17] respondent avers that petitioner exceeded its jurisdiction by issuing Section 3.1, Rule 3 of the IRR, as the power to impose nationality requirements in areas of investment is exclusively vested on Congress under Section 10, Article XII of the Constitution and not to a mere administrative agency. The assailed provision of the IRR contradicts and pre-empts statutory provisions as nowhere in R.A. No. 4566 does the legislature authorize petitioner to impose nationality qualifications in order for an entity to obtain a license in the construction business. It is also the view of respondent that petitioner's stand contradicts the executive policy which already commits the removal of restrictions in the construction industry that are evident in the following:

1)

The Department of Justice (DOJ) Memorandum dated September 21, 2011 addressed to the Department of Finance (DOF) opined that the assailed section of the IRR should be amended in order to align itself with the current policy of liberalizing and rationalizing investments as it has observed that: a) R.A. No. 4566 is silent as to the nationality requirement for constructors with regard to the 60% Filipino equity participation in case of issuance of a license; b) that the construction industry is not among the investment areas or activities which are specifically reserved to Philippine nationals; and c) the Filipino equity requirement is not consistent with the present policy of the state to rationalize investments.[18]

2)

The Department of Trade and Industry (DTI) and the Construction Industry Authority of the Philippines (CIAP) have recognized, in an article posted in its website, that for the local construction industry to be globally competitive, there is a need to strengthen the Philippines' international participation through free trade

agreements.[19]

3)

The DTI, thru the Philippine Overseas Construction Board (POCB), in a consultation meeting with stakeholders from the construction industry, requested for the removal of restrictions in order to establish better ties with the international trade community.[20]

There is also nothing in the Constitution or any law that imposes nationality or Filipino equity requirements with respect to the construction industry. Petitioner insists that contracting for construction is not a profession; rather, construction is an industry. It follows that it is not within the ambit of Section 14, Article XII of the 1987 Constitution in relation to R.A. No. 465, as amended by R.A. No. 6511, that covers individuals and not corporations or firms, which cannot be considered professionals.[21]

The assailed section of the IRR violates Executive Order (E.O.) No. 858[22] (now E.O. No. 98)[23] and R.A. No. 7718,[24] as it excludes waterworks and sewerages from the coverage of infrastructure projects. Petitioner likewise has no basis in changing the meaning of R.A. No. 7718 by excluding works that are, in fact, specifically mentioned by the said law and E.O. No. 98, by imposing a requirement that is not supported by any single word or phrase thereof.[25]

Amicus Curiae Brief of the Philippine Competition Commission[26]

The Philippine Competition Commission (PCC) moved to intervene as amicus curiae in this case, asserting that under the Philippine Competition Act (PCA) otherwise known as R.A. No. 10667, from which it owes its existence, it is mandated to issue advisory opinions and guidelines on competition matters and to advocate pro-competitive policies of the government.[27]

The PCC had a different view with the OSG and mainly argues that: 1) the nationality-based restriction imposed by the assailed regulation is a "barrier to entry," and 2) barriers to entry violate the constitutional state policy against unfair competition.[28]

The nationality requirement imposed under the assailed provision of the IRR erects a substantial barrier to the entry of foreign contractors in the construction industry. As a minority participant in the entity, a foreign firm is exposed to the risk of pursuing major management decisions over which it does not have full control. The assailed provision results in a scenario where foreign firms are deterred from investing in the Philippines as they do not have the comfort of having full control and management over their investments, unless they are able to find a reliable local partner.[29]

A survey of data also indicates the restrictiveness of the nationality requirement on foreign firms. Bearing in mind that ease of entry into an industry is a positive sign of competitiveness, the data from petitioner shows that statistics from 2013-2015 indicate that a large majority of the total licenses issued during the period did not automatically translate to the entry of new participants in the construction industry. The contractors undertake major infrastructure projects which facilitate the development of Filipino skills and bring in much needed investment and advanced technology; however, their potential to share these benefits to the entire industry is blunted by their very limited participation. Insofar as the rate of entry of new participants indicating the level of competition within the given industry, the consistently minuscule rate of entry of both foreign firms and new players in the construction industry is quite indicative of how competition in the industry remained relatively stagnant and inert throughout the years. Comparative data also shows that restrictive policies translate to lower levels of foreign direct investments (FDI) inflows. These FDI represent investment in production facilities and its significance for developing countries is considerably great. Not only can FDI add to investible resources and

capital formation but, more importantly, they are means of transferring production technology, skills, innovative capacity, and organizational and managerial practices between locations, as well as of accessing international marketing networks.[30]

The advantages of lifting the nationality-based restriction in the assailed regulation cannot be overemphasized. Noting the infrastructure backlog in the Philippines, foreign contractors have expressed willingness to help address this concern. Foreign contractors expect to undertake large projects which would involve the application of the newest and most advanced technologies should the restrictions be lifted.[31]

The PCC also points out that the stricter and broader language of Section 19, Article XII of the Constitution provides the legal impetus for nullifying governmental acts that restrain competition. Such acts can range from laws passed by Congress, to rules and regulations issued by administrative agencies, and even contracts entered into by the government with a private party. A more comprehensive competition policy embodied in the present Constitution empowers the Court to nullify both public and private acts that restrain competition.[32]

Case in point is *Tatad v. Secretary of the Department of Energy*[33] (*Tatad*), where the Court declared R.A. No. 8180[34] unconstitutional, because: 1) it gave more power to an already powerful oil oligopoly; 2) it blocked the entry of effective competitors; and 3) it would sire an even more powerful oligopoly, whose unchecked power would prejudice the interest of the consumers and compromise the general welfare. The Court found that the assailed provision had imposed substantial barriers to the entry of prospective players, thus, creating the clear danger that the deregulated market in the downstream oil industry would not operate under an atmosphere of free and fair competition. In this case, the nationality-based restriction imposed by petitioner effectively barred the entry of new players, particularly foreign firms, in the construction industry in violation of the constitutional policy against unfair competition.[35]

Section 19, Article XII of the Constitution is a directly enforceable constitutional principle (anti-trust principle), as demonstrated in *Tatad*. The express prohibition has two significant implications: 1) it has a nullifying function, such that any act which contravenes the state policy must necessarily be declared unconstitutional, and hence, void; and 2) it has a compulsive function, such that every government regulation must take into account, and be consistent with, the enunciated state policy. The prohibition imposes an obligation to incorporate the state policy in every government regulation.[36]

Since the assailed provision of the IRR is contrary to the anti-trust principle of the Constitution, petitioner has the burden to show that the nationality requirement seeks to fulfill an important and substantial state interest, which cannot be achieved through other less restrictive means. However, PCC is of the opinion that petitioner failed to meet this burden. The reasons stated in its petition do not equate to an important and substantial state interest which cannot be achieved through other less restrictive means.[37]

The government's purported interest in applying contractors' warranty laws and regulating the practice of profession deserves no merit when weighed against the detrimental impact of the assailed regulation on the construction industry. The industry suffers from exorbitant costs of construction services due to limited supply of firms offering the same. Moreover, the government's interest in continuous and updated monitoring and regulation of foreign contractors can be achieved without denying foreign firms the same benefits given to domestic firms, as this can be addressed through other means under existing laws. Also, the supposed government interest in limiting the practice of a profession to Filipino citizens is inapplicable to construction considering that contracting for purposes of engaging in construction activities is not a profession, as it is not one regulated by the Professional Regulation Commission (PRC) and the term "professional" refers to an individual not a corporation or firm.[38]

Finally, the PCC said that to achieve the objectives of a national competition policy, the government should

address public restraints as much as it enjoins private restraints, which means that it should ensure a level playing field for all industry players regardless of whether these players are controlled by the private sector or the state. Economically sound policies should not give incumbents competitive advantages for tenuous reasons such as nationality alone. Claims of protecting the interest of the public through regulatory action should be evaluated in terms of resulting incentive distortions that reduce competition and the countervailing efficiencies arising from said regulation. Discriminating in favor of certain market participants, without valid economic basis or policy rationale, tends to reward poor performance, reduce competitive pressure, and distort incentives to innovate. In this case, the stated objectives of the assailed provision of the IRR can and should be achieved in other ways which do not necessarily favor certain players and lessen competition in the construction industry. Consumer welfare, which in this case refers to the welfare of both household and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality.[39]

In view of the above, the PCC is of the position that the Court is called upon to rule in favor of the economic rights of the people and declare the assailed regulation null and void.[40]

ISSUE

Petitioner asserts that:

THE REGIONAL TRIAL COURT GRAVELY ERRED IN DECLARING AS VOID RULE 3, SECTION 3.1 OF THE REVISED RULES AND REGULATIONS GOVERNING LICENSING AND ACCREDITATION OF CONSTRUCTORS IN THE PHILIPPINES BECAUSE:

- The issuance of the assailed Rule is within the duty and authority of respondent PCAB.
- The assailed Rule is consistent with the 1987 Constitution and existing laws, rules, regulations and policies.[41]

THE COURT'S RULING

The crux of the controversy is the validity of Section 3.1, Rule 3 of the IRR of R.A. No. 4566. To resolve this issue, the Court must answer whether the assailed provision is contrary to the Constitution and if the same constitutes unfair competition.

We find the petition without merit.

It can easily be discerned that the intention of petitioner in imposing the assailed section of the IRR is to protect the interests of the Filipino construction industry. However, the manner in which it was done raises constitutional issues on the validity of the IRR.

The Constitution provides safeguards to protect the Filipino industry against domination of foreigners; thus, laws were enacted to secure this state policy, particularly in areas where national economy and patrimony must be protected in our own jurisdiction.

Petitioner anchors its authority to issue the assailed IRR on Section 17 of R.A. No. 4566, which provides:

Section 17. Power to classify and limit operations. The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A license may make application for classification and be thus classified in more than one classification if the

licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

A reading of the above provision shows that petitioner is authorized to adopt rules to effect classification of contractors as may be necessary. However, as the RTC observed, Congress did not intend to discriminate against foreign contractors as there is no restriction that may be found in R.A. No. 4566.

As aptly pointed out by Justice Bernabe in her Concurring Opinion, We should emphasize the rule in statutory construction that "every part of the statute must be interpreted with reference to the context, i.e. that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law." [42]

In accordance thereto, the phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of R.A. No. 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, viz.:

Section 16. Classification. - For the purpose of classification, the contracting business includes any or all of the following branches.

- (a) General engineering contracting;
- (b) General building contracting; and
- (c) Specialty contracting.

These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9 of R.A. No. 4566.

Pursuant to the directive under Section 17 of R.A. No. 4566 of PCAB to "effect the classification of contractors," Section 5.1 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of R.A. No. 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of R.A. No. 4566 and proceeded to create the nationality-based license types under Section 3.1. Additionally, while Section 5 of R.A. No. 4566 authorizes PCAB to "issue, suspend, and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of R.A. No. 4566 if the licensing power of the PCAB is to be exercised to the extent that the PCAB would be effectively creating substantial classifications between certain types of contractors.

In fine, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1. Basic is the rule that "the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation." [43]

Moreover, the RTC also emphasized that while Section 17 of R.A. No. 4566 allows petitioner to effect classifications, the same should be reasonable. The approach on how it was justified by petitioner as a reasonable classification cannot be upheld by this Court.

Petitioner insists that the regulation was formed consistent with Section 14, Article XII of the 1987 Constitution, [44] which mandates the practice of all professions in the Philippines be limited to Filipino citizens. Petitioner considers construction as a profession by including contractors in the list of professionals under R.A. No. 465, as amended by R.A. No. 6511.

We do not agree.

The argument of petitioner is misplaced. Section 14, Article XII of the Constitution refers to the privilege of a natural person to exercise his profession in the Philippines.[45] On the other hand, under Article IV of R.A. No. 4566, even partnerships, corporations and organizations can qualify for a contractor's license through its responsible officer.[46] The "profession" under the aforesaid provision refers to the practice of natural persons of a certain field in which they are trained, certified, and licensed. Being a licensed contractor does not automatically qualify within the ambit of the Constitution as a "profession" per se.

A contractor under R.A. No. 4566 does not refer to a specific practice of profession, i.e. architecture, engineering, medicine, accountancy and the like. In fact, Section 9(a) and (b) of R.A. No. 4566 reads:

ARTICLE II

Application of the Act

Section 9. Definition of terms. As used in this Act:

(a) "Persons" include an individual, firm, partnership, corporation, association or other organization, or any combination of any thereof

(b) "Contractor" is deemed synonymous with the term "builder" and, hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term contractor includes subcontractor and specialty contractor.

Suffice it to say that a corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens. The licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/construction.

The basis for petitioner's argument, that construction is considered a profession, is also out of context. We emphasize that R.A. No. 6511 is an act which standardizes the examination and registration fees charged by the National Examining Board; thus, the list contains individual applicants for any of the licensure examinations conducted by any of the boards, under the Office of the Boards of Examiners, who shall pay examination fees. It covers applicants of any licensure examinations, but is not limited to licensing of professionals. In other words, licensed contractors are listed therein as they are required by law to undergo a licensure examination, which fee is regulated. It does not follow that just because a license is required under R.A. No. 4566, a licensed contractor is already considered a professional under the Constitution.

Professionalizing the construction business is different from the exercise of profession which the Constitution exclusively restricts to Filipino citizens. To reiterate, the license required under R.A. No. 4566 is for purposes of engaging in the business of contracting under the terms of the said act for a fiscal year or a certain period/project, and not for the purpose of practicing a particular profession. The responsible officer who secures a license for contracting, for his own business or for the company, may already be a professional in his own field (i.e., engineer, architect). Then again, the license acquired under R.A. No. 4566 does not make the licensed contractor a "professional" within the meaning contemplated under Section 14, Article XII of the 1987 Constitution.

More telling is the fact that applicants for contractor's licenses are not required to have Philippine citizenship unlike those who are considered as professionals in the country.[47] Contrary to petitioner's claim, the citizenship

or equity requirement to qualify for a contractor's license is one of the basic qualifications which Congress would have prescribed, had it really intended to do so. Worthy to note that Congress also did not prescribe a minimum educational requirement for a contractor to be issued a license, as opposed to the professionals referred to under the Constitution. The law merely requires at least two years of experience in the construction industry, and knowledge of building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business. Therefore, this Court cannot countenance the reason offered by petitioner as basis to set an equity requirement for the issuance of a regular license.

If R.A. No. 4566 and its IRR indeed viewed the construction industry as a profession and contractors as professionals whose practice may be limited to Filipino citizens, then the challenged provision runs contrary to such policy, as it would allow foreigners to operate with a regular license through a construction firm as long as their equity therein does not exceed 40%.

We agree with respondent that a scrutiny of R.A. No. 4566 reveals that there is nothing which would indicate that petitioner is authorized to set an equity limit for a contractor's license. As argued by respondent, it is Congress which has the power to determine certain areas of investments which must be reserved to Filipinos, upon recommendation of the National Economic Development Authority (NEDA), and when national interest requires.[48] Again, we do not find any basis in any law enacted by Congress for the equity requirement set by petitioner in the assailed regulation. This power is not even impliedly delegated to petitioner under R.A. No. 4566 from which it anchors its existence and authority.

Accordingly, this Court finds that the construction industry is not one which the Constitution has reserved exclusively for Filipinos. Neither do the laws enacted by Congress show any indication that foreigners are proscribed from entering into the same projects as Filipinos in the field of construction. Thus, we find that setting the equity limit for a certain type of contractor's license has no basis.

Evidently, respondent's argument of alleged unfair competition does not apply in this case. Fundamentally, the Constitution was enacted for the protection of the Filipinos. As a consequence, the argument that foreigners are put in a disadvantageous position against Filipinos with the enactment of the assailed regulation will not stand against the genuine intent of petitioner to protect the Filipino construction industry. Nevertheless, the Court is not unaware of the economic benefits of opening the construction industry to foreigners.

In resolving the issue at hand, *Tañada v. Angara*[49] is instructive. The Court has ruled that "the constitutional policy of a 'self-reliant and independent national economy' does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither 'economic seclusion' nor 'mendicancy in the international community.'"[50] "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition."[51] It was further held that "while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair."[52]

This was further bolstered in *Espina v. Zamora, Jr.*[53] where the Court held:

The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of

economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.

In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.[54]

As a consequence, this Court finds the assailed regulation inconsistent with the intent of the Constitution in no less than one aspect. The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well.[55] The evil sought to be prevented by petitioner, that a contractor's warranty cannot be imposed as foreign contractors are beyond reach of the government and the genuine intent of protecting the Filipino consumers by ensuring continuous and updated monitoring and regulation of foreign contractors, may be addressed with some form of regulation other than restricting the contractor's license which leads to deprivation of economic growth and advancement of the construction industry.

For instance, it is a standard practice in the construction industry that contractors are required to post or put up a performance bond to ensure faithful compliance under their contract. In case of foreign construction companies engaging business in the Philippines, petitioner's apprehension that it would be difficult to go after them in case of contractual breach can be addressed by requiring them at all times to put up a performance bond issued by a domestic bonding company.

Absent any showing that the competition expected in the construction industry, should we open the same to foreigners, would be unfair to our citizens, the industry should not be restricted to Filipinos only. As opined by the PCC, it would encourage healthy competition among local and foreign contractors and the market will have

alternative options depending on the needs of each construction project. This will also open opportunities for development and innovation that the foreign industry may introduce to our local contractors to make them more competitive in the world market.

On the assertion of petitioner that the assailed provision of the IRR merely regulates the license of foreign contractors and does not restrict the construction industry to Filipinos, We rule that these are contrary to the obvious consequence of the assailed regulation. The statistics shown by PCC, from petitioner's own data, reveal the apparent disparity of licenses granted to Filipinos and foreigners. In 2015, out of the 1,600 special licenses issued, only 20 were issued to foreign firms while 4 were issued to joint ventures with foreign participation.[56] PCC also showed that from 2013-2015, a large majority of the total licenses issued during this period did not translate to the entry of new participants in the construction industry.[57] Apart from these statistics, and considering the limited scope of the special license, the additional burden and expenses of securing the same scare away foreign investors.[58] Evidently, the assailed regulation is a deterrent to the entry of foreign players in the construction industry.

The opinion of the Secretary of Justice in a Memorandum[59] dated September 21, 2011, although not binding, is persuasive. It pointed out that one of the objectives of Presidential Decree (P.D.) No. 1746,[60] the law which amended R.A. No. 4566, is for CIAP to rationalize the investments in the construction industry in accordance with national investment priorities and development needs. It also stressed that the construction industry is not among the investment areas or activities specifically reserved to Philippine nationals under E.O. No. 858. In line with this, the Secretary opines that the assailed IRR, Rule 3.1 in particular, may be amended to be consistent with the policy under R.A. No. 4566, as amended, and the present policy of the state to rationalize investments.[61]

Worthy to note that the first[62] and second[63] Foreign Investments Negative List (FINL) included "private domestic construction contracts (RA No. 4566, Article XIV, Section 14 of the Constitution)." These FINLs were issued in 1994 and 1996, respectively. Noticeably, from the third FINL[64] in 1998 until the most recent 11[th] FINL (2018),[65] private construction contracts were no longer included in the list. This means that the restriction on foreign investments on private construction contracts was already lifted as early as 1998. The opening of investment areas to foreign investors is an indication of a developing economy to which our governing and implementing laws must also adapt to depending on the demands of the industry and economy. It follows that the assailed IRR which was last amended in 1989, or thirty (30) years ago, must also conform to these developments in order to be consistent with the current state policy.

In sum, this Court finds justifiable basis to strike down the assailed Section 3 of the IRR of R.A. No. 4566. Accordingly, the RTC is correct in declaring Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines void.

However, we deem it fit to modify the ruling of the RTC to specifically address the issue resolved in this case and limit the scope of nullity of the assailed rule. Thus, only the following portions of Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines are hereby declared void and are hereby struck down:

RULE III

Contractor's License

SECTION 3.1 License Types. —

Two types of Licenses are hereby instituted and designated as follows:

a) The Regular License

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

b) The Special License

xxxx

The following can qualify only for the Special License:

xxxx

bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

xxxx.

Likewise, in order to fully harmonize the rest of the IRR, Rule 12, Section 12.7 thereof must also be nullified, to wit:

RULE XII

License Denial, and Cancellation

xxxx

SECTION 12.7 Introduction of Foreign Equity. —

An introduction of thirty percent (30%)* or more of foreign equity into a construction firm holding a Regular License shall ipso facto invalidate the license. The constructor may apply for a Special License subject to stipulations in Sec. 3.1 (b) hereof.

WHEREFORE, the petition is DENIED. Accordingly, the February 24, 2014 Resolution and the February 10, 2015 Order of the Regional Trial Court, Quezon City, Branch 83 (RTC) are AFFIRMED with MODIFICATION, in so far as Rule 3, Section 3.1 (a) paragraph 2, Section 3.1 (b) subparagraph (bb), and Rule 12, Section 12.7 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors, implementing Republic Act No. 4566, otherwise known as the Contractors' License Law in the Philippines, are hereby declared VOID.

SO ORDERED.

Peralta (C.J.), Caguioa, A. Reyes, Jr., J. Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

Perlas-Bernabe, J., see concurring opinion.

Leonen, J., see separate opinion.

[1] Rollo, pp. 22-35.

[2] Id. at 39-41; penned by Presiding Judge Ralph S. Lee.

[3] Id. at 42; penned by Presiding Judge Ralph S. Lee.

[4] An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and For Other Purposes, otherwise known as the Contractors' License Law (1965).

[5] Id. at 91-92.

[6] Id. at 26.

[7] Id. at 43-74.

[8] Id. at 43-44.

[9] Id. at 155-168.

[10] Id. at 40-41.

[11] Id. at 42.

[12] Id. at 30-32.

[13] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, otherwise known as the Government Procurement Reform Act (2003).

[14] An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes (1950).

[15] An Act Amending Republic Act Numbered Four Hundred Sixty-Five Entitled "An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes" (1972).

[16] Rollo, pp. 32-34.

[17] Id. at 196-246.

[18] Id. at 213-215.

[19] Id. at 215-216.

[20] Id. at 216-217.

[21] Id. at 217-221.

[22] Promulgating the Eighth Regular Foreign Investment Negative List (2010).

[23] Promulgating the Ninth Regular Foreign Investment Negative List (2012).

[24] 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" (1994).

[25] Id. at 240-243.

[26] Id. at 410-441.

[27] Id. at 366.

[28] Id. at 423-438.

[29] Id. at 425-426.

[30] Id. at 426-429.

[31] Id. at 430.

[32] Id. at 432-433.

[33] 346 Phil. 321 (1997).

[34] An Act Deregulating the Downstream Oil Industry, and for Other Purposes (1996).

[35] Rollo, pp. 433-436.

[36] Id. at 436-438.

[37] Id. at 437.

[38] Id. at 437-438.

[39] Id. at 438-439.

[40] Id. at 440.

[41] Id. at 28.

[42] Philippine International Trading Corporation vs. Commission on Audit, 635 Phil. 447, 454 (2010).

[43] Lokin, Jr. vs. Commission on Elections, 635 Phil. 372, 392 (2010).

[44] Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and crafts men in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[45] Bernas (intent of the 1986 Constitution), p. 687.

[46] Republic Act No. 4566 (1965), Section 20.

[47] Republic Act No. 4566, Article IV, Section 20 provides:

Section 20. Qualifications of applicants for contractors' licenses. The Board shall require an applicant to show at least two years of experience in the construction industry, and knowledge of the building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business as the Board deems necessary for the safety of the contracting business of the public.

For the purpose of this section, a partnership, corporation, or any other organization may qualify through its responsible managing officer appearing personally before the Board who shall prove that he is a bona fide responsible officer of such firm and that he exercises or is in a position to exercise authority over the contracting business of his principal or employer in the following manner: (1) to make technical and administrative decisions; and, (2) to hire, superintend, promote, transfer, lay off, discipline or discharge employees.

[48] See Espina v. Zamora, 645 Phil. 269, 280 (2010).

[49] 338 Phil. 546 (1997).

[50] Id. at 588.

- [51] Id. at 589.
- [52] Id. at 585; citation omitted.
- [53] Supra note 48.
- [54] Id. at 279-280; citations omitted.
- [55] Tatad v. Secretary of Department of Energy, supra note 33, at 380.
- [56] Rollo, p. 427.
- [57] Id.
- [58] Id. at 425-426.
- [59] Id. at 323-328.
- [60] Creating the Construction Industry Authority of the Philippines (CIAP) (1980).
- [61] Rollo, pp. 327-328.
- [62] Executive Order No. 182 (First Regular Foreign Investment Negative List, June 22, 1994).
- [63] Executive Order No. 362 (Second Regular Foreign Investment Negative List, August 20, 1996).
- [64] Executive Order No. 11 (Approving the Third Regular Foreign Investments Negative List, August 11, 1998).
- [65] Executive Order No. 65 (Promulgating the Eleventh Regular Foreign Investment Negative List, October 29, 2018).

CONCURRING OPINION

PERLAS-BERNABE, J.:

This case calls upon the Court to determine the validity of Section 3.1, Rule 3 (Section 3.1) of the Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines or the Implementing Rules and Regulations of Republic Act No. (RA) 4566[1] (IRR) issued by petitioner Philippine Contractors Accreditation Board (PCAB) which created a classification of licenses based on nationality, to wit:

RULE 3 CONTRACTOR'S LICENSE

SECTION 3.1 License Types. Two types of licenses are hereby instituted and designated as follows:

a)

The Regular License

"Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70%)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

*Adjusted to 60% under Art. 48 of Chapter III, Book II of the Omnibus Investment Code of 1987

b)

The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

ba)

A joint venture, consortium or any such similar association organized for a single specific undertaking/project;

bb)

A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

bc)

A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[2]

This issue was brought to the fore through a petition for declaratory relief filed by respondent Manila Water Company, Inc. (respondent). Essentially, it is respondent's position that PCAB usurped legislative powers vested in Congress under Section 10, Article XII of the 1987 Constitution (Section 10, Article XII) when it imposed a nationality requirement in the issuance of regular licenses.[3] It argues that by issuing the assailed provision, PCAB took it upon itself to "reserve to citizens of the Philippines" the issuance of a regular license. The constitutional provision reads:

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

x x x (Emphases supplied)

Respondent likewise asserts that the assailed provision is void for being a product of PCAB's improper exercise of rule-making power as it creates requirements not found in and contrary to RA 4566.[4]

For its part, PCAB counters that the assailed IRR provision is consistent with the Constitution because it does not prohibit foreign contractors in the Philippines but merely regulates the kind and extent of license given to them.[5] The regulation is necessary to ensure continuous and updated monitoring and regulation of foreign contractors, who are not based in the Philippines, and thus, situated beyond the government's reach for possible enforcement of the contractor's liability/warranty under existing laws.[6]

PCAB further stresses that it is authorized under Section 5[7] of RA 4566 to "issue, suspend and revoke licenses of contractors" and under Section 17[8] to "adopt reasonably necessary rules and regulations to effect the classification of contractors." [9] PCAB insists that while RA 4566 does not explicitly mention a classification between local and foreign contractors, this does not necessarily mean that PCAB has no authority to establish such classifications.[10]

In striking down the assailed provision, the ponencia explains that while Section 17 of RA 4566 authorizes PCAB to adopt rules to effect classification, nothing in that law shows Congress' intent to discriminate against foreign contractors. It states that there is no basis in any law enacted by Congress for the equity requirement set by PCAB in the assailed regulation.[11]

I concur.

At the onset, I deem it apt to clarify that that Section 3.1 did not violate, Section 10, Article XII. The constitutional provision states that Congress shall reserve to Filipino citizens certain areas of development. In my view, when a nationality requirement is set for a particular industry in the Philippines, foreigners who exceed the threshold are no longer allowed to engage in the industry. This is not the case here. While Section 3.1 creates a barrier to entry for foreign contractors, it does not prohibit them from engaging in the Philippine construction industry. It merely imposes a more stringent restriction on them. Hence, no usurpation of Congress' power under Section 10, Article XII occurred.

On this score, it is relevant to mention that RA 7042,[12] or the "Foreign Investments Act of 1991," mandates the formulation of a Foreign Investment Negative List which specifies investment areas that are reserved to Filipino nationals, such that foreign players are not allowed to engage in those areas.[13] In contrast, the assailed IRR provision still allows foreign contractors to engage in the construction business albeit with a more restrictive license. As PCAB explains, the more stringent licensing regulation for foreign contractors is necessary to ensure "continuous and updated monitoring and regulation of foreign contractors – who are x x x situated beyond the reach of the x x x government for possible enforcement of the contractor's liability/warranty." [14] Hence, PCAB is correct in saying that Section 3.1 does not restrict the construction industry to Filipinos, but rather, regulates the issuance of licenses to foreign contractors based on its perceived considerations pertinent to these foreign contractors' nature of being based outside the Philippines.[15]

This notwithstanding, and as the ponencia holds,[16] PCAB has exceeded its delegated authority to make the foregoing license classification, which hence, renders Section 3.1 altogether null and void.

"Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power. For this reason, valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature." [17] The Court has ruled that "administrative regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may, but it is their obligation to strike down such regulations." [18]

In this case, PCAB anchors its authority to create the nationality-based classifications of licenses on Sections 5 and 17 of RA 4566, to wit:

Section 5. Powers and Duties of the Board. — The Board is vested with authority to issue, suspend and revoke licenses of contractor, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge x x x

x x x x

Section 17. Power to Classify and Limit Operations. — The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications. (Emphases and underscoring supplied)

However, a cursory examination of RA 4566's provisions shows that Section 17 thereof is not a proper basis for PCAB to create license types based on nationality. The phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of RA 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, viz.:

Section 16. Classification. – For the purpose of classification, the contracting business includes any or all of the following branches.

- (a) General engineering contracting;
- (b) General building contracting; and
- (c) Specialty contracting.

These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9[19] of RA 4566.

Pursuant to the directive under Section 17 of RA 4566 for PCAB to "effect the classification of contractors," Section 5.1, Rule 5 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of RA 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of RA 4566 and proceeded to create the nationality-based license types under Section 3.1. Furthermore, while Section 5 of RA 4566 authorizes PCAB to "issue, suspend and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of RA 4566 if the licensing power of PCAB is to be exercised to the extent that PCAB would be effectively creating substantial classifications between certain types of contractors. Indeed, "every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law." [20]

Accordingly, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1, rendering the same, as well as the correlative provisions mentioned in the ponencia, void.

[1] Entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes," approved on June 19, 1965.

[2] Rollo, p. 91; emphasis supplied.

[3] See *id.* at 204-205.

[4] See *id.* at 196-197.

[5] *Id.* at 32.

[6] *Id.* at 33.

[7] Section 5. Powers and Duties of the Board. – The Board is vested with authority to issue, suspend and revoke licenses of contractors, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge and, for this purpose, issue subpoena and subpoena duces tecum to secure appearance of witnesses in connection with the charges presented to the Board, and to discharge such other powers and duties affecting the construction industry in the Philippines.

x x x x (Emphasis supplied)

[8] Section 17. Power to Classify and Limit Operations. – The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications. (Emphasis supplied)

[9] See *rollo*, p. 30.

[10] *Id.* at 31.

[11] See *ponencia*, pp. 15-16.

[12] Entitled "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES," approved on June 13, 1991.

[13] See Section 8 of RA 7042.

[14] *Rollo*, p. 33.

[15] See *id.* at 32. See also *ponencia*, pp. 4-5.

[16] See *ponencia*, p. 19.

[17] *Re: Entitlement to Hazard Pay of Supreme Court Medical and Dental Clinic Personnel*, 592 Phil. 389, 398 (2008); emphasis supplied.

[18] *Department of Agrarian Reform v. Carriedo*, 778 Phil. 656, 681 (2016). See also *Re: Entitlement to Hazard Pay of Supreme Court Medical and Dental Clinic Personnel*, *id.* at 399-400, which provides: "Indeed, when an administrative agency enters into the exercise of the specific power of implementing a statute, it is bound by what is provided for in the same legislative enactment in as much as its rule-making power is a delegated legislative power which may not be used either to abridge the authority given by the Congress or the Constitution or to enlarge the power beyond the scope intended. The power may not be validly extended by implication beyond what may be necessary for its just and reasonable execution. In other words, the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of a law,

inasmuch as the power is confined to implementing the law or putting it into effect. Therefore, such rules and regulations must not be inconsistent with the provisions of existing laws, particularly the statute being administered and implemented by the agency concerned, that is to say, the statute to which the issuance relates. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it."

[19] Section 9. Definition of Terms. – As used in this Act:

xxxx

(c) A "general engineering contractor" is a person whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams, hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other system for the transmission of petroleum and other liquid or gaseous substances, land leveling and earth moving projects, excavating, grading, trenching, paving and surfacing work.

(d) A "general building contractor" is a person whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds and other recreational works, refineries, chemical plants, and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, cement and concrete works in connection with the abovementioned fixed works.

A person who merely furnishes material s or supplies under section eleven without fabricating them into, or consuming them in the performance of the work of the general building contractor does not necessarily fall within this definition.

(e) A "specialty contractor" is a person whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

[20] Philippine International Trading Corporation v. Commission on Audit, 635 Phil. 447, 454 (2010).

DISSENTING OPINION

LEONEN, J.:

Central to the resolution of this case is the validity of Rule 3, Section 3.1 of the Implementing Rules and Regulations of Republic Act No. 4566, or the Contractors' License Law.

The Implementing Rules and Regulations were crafted by the Philippine Contractors Accreditation Board, which had been created to carry out the objectives of Republic Act No. 4566. Among its powers include the "authority to issue, suspend[,] and revoke"[1] contractors' licenses.

Moreover, Section 17 of the law gives the Philippine Contractors Accreditation Board the power to classify contractors. The provision states:

SECTION 17. Power to classify and limit operations. — The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A licensee may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

Pursuant to these provisions, the Philippine Contractors Accreditation Board, in crafting the Implementing Rules and Regulations, classified two (2) types of licenses that may be granted to contractors. In particular, Rule 3, Section 3.1 states:

Rule 3

CONTRACTOR'S LICENSE

Section 3.1. License Types

Two types of licenses are hereby instituted and designated as follows:

a)

The Regular License

"Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least 60% Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

b)

The Special License

"Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.

The following can qualify only for the Special License:

a)

A joint venture, consortium or any such similar association organized for a single specific undertaking/project;

b)

A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines;

c)

A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[2]

In this case, Manila Water Company, Inc. (Manila Water) had initially applied for a regular license of its foreign contractors for the construction of waterworks and sewerage system. However, the Philippine Contractors Accreditation Board denied the application, reasoning that regular licenses were only granted to local contractors under Rule 3, Section 3.1.[3]

As such, Manila Water filed a Petition for Declaratory Relief before the Regional Trial Court, seeking a determination of whether Section 3.1 was valid. It claimed that the provision was unconstitutional for going beyond the law in that it imposed restrictions on foreign investments that are not found in Republic Act No. 4566 or the Constitution.[4]

In its ruling, the trial court agreed with Manila Water. It held that while Section 17 of the law allowed classifications, Section 3.1 was unreasonable for its added restrictions on foreign investments.[5]

The Philippine Contractors Accreditation Board moved for reconsideration, to no avail. Hence, it filed this Petition for Review.[6]

Before this Court, petitioner mainly contended that Section 3.1 was consistent with the Constitution and existing laws. It argued that the implementing rules did not impose a nationality requirement on construction investment, but merely regulated the issuance of licenses with respect to foreign contractors. Petitioner also maintained that it was within its duty and authority to adopt necessary rules to effect contractors' classifications.[7]

The majority denied the Petition. It ruled that Section 3.1 was void for unduly discriminating against foreign contractors.[8]

The majority held that the nationality-based restriction on professionals was not applicable to industries.[9] It also ruled that nothing in Republic Act No. 4566 authorized petitioner to set an equity limit for contractors.[10]

Moreover, the majority, citing *Tañada v. Angara*[11] and *Espina v. Zamora, Jr.*,[12] reasoned that allowing foreign contractors would lead to economic benefits,[13] consistent with the constitutional protection of the people's economic rights.[14] For that, it relied on the Philippine Competition Commission's opinion that allowing foreign contractors would encourage healthy competition. The majority also cited statistics showing the minuscule number of foreign contractors due to the regulation's deterring effect.[15]

I register my dissent.

I

The assailed classification under Section 3.1 does not run afoul of the Constitution.

Respondent argued that petitioner exceeded its jurisdiction in making the classification, claiming that the power to impose nationality requirements in areas of investment is exclusively vested on Congress.[16] It cited Article XII,

Section 10 of the Constitution, which reads:

SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities. (Emphasis supplied)

Contrary to respondent's claim, the classification of licenses does not create a nationality requirement. Section 3.1 is not an absolute restriction against foreign contractors, but is merely a licensing regulation.

A reading of the provision, as well as the entirety of Republic Act No. 4566, will show that foreign contractors are not prohibited from engaging in the construction industry.

Section 3.1 simply classifies two (2) types of licenses that may be applied for, which will then determine the documentary requirements,[17] expiry of the license,[18] and number of projects a licensee may undertake under a single license.[19] It does not prohibit foreign contractors from applying for a license.

Notably, there is no distinction between regular and special licenses as to the terms and conditions,[20] qualifications for licensing,[21] and license application processing.[22] More important, Republic Act No. 4566 and its Implementing Rules and Regulations do not state restrictions against foreign contractors as to the type of projects they may apply for.

The classification appears to have only been meant to facilitate the grant of licenses. The documentary requirements for a special license, it would seem, aid petitioner in processing a foreign contractor's application. For example, the special license requires a board resolution authorizing a resident alien representative in the country and a certification that the project is foreign-financed. These requirements set special licenses apart from regular licenses, and are necessary given that foreign contractors may at times be beyond the government's reach.[23]

Clearly, Section 3.1 neither precludes foreign entities from applying for a license, nor does it impose an equity requirement.

I agree with the opinion of Justice Estela Perlas-Bernabe that Section 3.1 does not prohibit foreign entities from engaging in the Philippine construction industry, but only imposes a more stringent regulation. In no way does it usurp the legislative power to create nationality requirements under Article XII, Section 10 of the Constitution.[24]

Similarly, the classification under Section 3.1 does not contradict the doctrines laid down in Tañada and Espina.

In Tañada, this Court held that the World Trade Organization Agreement signed by then President Fidel V. Ramos does not run against the constitutional provisions on economic nationalism.[25] It ruled that our economic policy is not isolationist in character. While the Constitution mandates a bias in favor of the domestic market, this should be balanced with the growing need for business integration with the rest of the world. Thus, the limit placed is only intended to protect Filipino enterprises against unfair foreign competition and trade practices.[26] This Court held:

Furthermore, the constitutional policy of a "self-reliant and independent national economy" does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community." . . .

. . . .

The WTO reliance on "most favored nation," "national treatment," and "trade without discrimination" cannot be struck down as unconstitutional as in fact they are rules of equality and reciprocity that apply to all WTO members. Aside from envisioning a trade policy based on "equality and reciprocity," the fundamental law encourages industries that are "competitive in both domestic and foreign markets," thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets. Indeed, Filipino managers and Filipino enterprises have shown capability and tenacity to compete internationally. And given a free trade environment, Filipino entrepreneurs and managers in Hongkong have demonstrated the Filipino capacity to grow and to prosper against the best offered under a policy of *laissez faire*.^[27] (Citations omitted)

Meanwhile, in *Espina*, this Court ruled on the constitutionality of the Retail Trade Liberalization Act of 2000. The law had expressly repealed Republic Act No. 1180, "which absolutely prohibited foreign nationals from engaging in the retail trade business."^[28]

In upholding the law's constitutionality, this Court reiterated the doctrine in *Tañada*:

The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.^[29] (Citation omitted)

Furthermore, this Court held that allowing foreigners to engage in business is not tantamount to a denial of Filipinos' right to property and due process of law. It found nothing that showed that the law would eventually lead to alien control of the retail trade business.^[30]

Section 3.1 does not run counter to the rulings in these cases. In no way does the license classification restrict foreign contractors from doing business and obtaining licenses in the Philippines. The license types—regular and special—only differ as to the documentary requirements and expiry of licenses. Section 3.1 neither prohibits nor limits the number of foreign contractors that want to engage in construction in the country. It is consistent with the policy of global integration and openness to foreign investment.

The classification of licenses does not restrict, but only regulates the contractors' application. By imposing additional requirements on foreign contractors, petitioner can address licensing concerns. As it had explained, foreign contractors are treated differently from local ones in that those additional requirements are imposed for monitoring and regulation.

II

Furthermore, the classification under Section 3.1 does not exceed the bounds of Republic Act No. 4566.

It is settled that administrative agencies delegated with legislative power may enact implementing rules and regulations of a law. However, for these rules to be valid, they must be within the bounds of the statute's provisions. In *Conte v. Commission on Audit*:^[31]

A rule or regulation must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.^[32] (Citations omitted)

To recall, Section 17 of Republic Act No. 4566 gives petitioner a wide discretion to adopt necessary rules to effect classifications, consistent with the established practice and procedure in the construction business.

To effectively issue licenses, petitioner can demand various requirements as it deems fit. Additionally, it appears that the contractor's nationality only has an effect on licensing requirements, but it does not limit the operations a contractor may undertake. Nothing in Section 3.1 suggests that a foreign contractor's projects would be limited to general engineering contracting or specialty contracting only.^[33]

Indeed, the text of Section 17 remains clear: a contractor may qualify for any or all categories of contracting business, regardless of the license type they hold.

III

Finally, the Philippine Competition Commission, as *amicus curiae*, opined that the supposed nationality-based restriction under Section 3.1 is an example of barriers to entry, which, it claimed, violate the constitutional policy against unfair competition. With this, the majority agreed, ruling that "the assailed regulation is a deterrent on entry of foreign players in the construction industry."^[34]

The Philippine Competition Act, however, does not apply here.

The Philippine Competition Act has a universal objective: to "[e]nhance economic efficiency and promote free and fair competition in trade, industry[,] and all commercial economic activities[.]"^[35] It seeks to reinforce measures that "safeguard competitive conditions"^[36] in the market.

A competitive market is fostered when individual entities "try to outdo each other in terms of price and/or the quality of their product."^[37] This translates to market players producing the best quality of products at the least price; otherwise, consumers will go to competitors who offer better products at a lower price.^[38] Thus, in a competitive market, individual entities have no market power—that is, the ability to dictate a product or service's price. To facilitate this, however, there must be an open entry and exit of entities to make room for a sufficient number of competing players.^[39]

Barriers to entry are factors that prevent firms from joining the market, and these may be structural, firm behavior, or government policy-induced.^[40] Among them, structural barriers to entry are natural barriers in entering the market. For example, an entity that wishes to enter an industry must consider sunk costs, or investments that cannot be recuperated. Should the entity fail, they increase losses and make the entry to the market less

attractive.[41] Sunk costs may be in the form of physical and human investments, startup losses, and advertising costs. Large capital requirements, such as investment in equipment, are other examples of a natural barrier to entry.[42]

Barriers to entry foil the competitive market because they give market power to incumbent entities, allowing them to control the supply and price.[43] For instance, in a monopoly, only one (1) supplier persists because "there are barriers to entry that make it impossible for competing firms to appear." [44] Monopolies can be found in public utilities such as local water, telecommunications, cable, and power companies, where structural barriers such as large investment costs for building a facility or obtaining access to natural resources are present.[45]

However, competition policy and law only ensure that firms in the market play fair. Fair, in this context, means that an entity becomes dominant in the market because it is more efficient than its competitors, such that it is able to produce goods or services at the lowest cost.[46]

Prohibited acts under the Philippine Competition Act are laid out in its Chapter III. Particularly, Sections 14 and 15 flag anti-competitive agreements and entities that abuse their dominant position.[47]

Our competition law does not per se outlaw market imperfections. It only prohibits abusive behaviors that substantially prevent, restrict, or lessen competition.[48] It does not preclude natural or structural market failures, such as barriers to entry and market dominance.

In *Gios-Samar, Inc. v. Department of Transportation and Communications*, [49] this Court clarified that under the Philippine Competition Act, "an entity is not prohibited from, or held liable for prosecution and punishment for, simply securing a dominant position in the relevant market in which it operates. It is only when that entity engages in conduct in abuse of its dominant position that it will be exposed to prosecution and possible punishment." [50]

Similarly, Section 15(b) of the Philippine Competition Act makes an important distinction: entities that impose barriers to entry or commit acts "that prevent competitors from growing within the market in an anti-competitive manner" are deemed as abusing their dominant position; however, if the barriers imposed "develop in the market as a result of on arising from a superior product or process, business acumen, or legal rights or laws[,] they are not proscribed.

Structural barriers to entry are common in construction industries. The amount of investment needed in place and the sunk costs it will entail are structural barriers to entry on new contractors. In this context, foreign contractors are expected to be burdened with additional requirements and more stringent conditions given their substantial difference from domestic contractors. Certainly, this does not constitute an unfair entity behavior that competition law guards against.

Thus, to conclude that all barriers to entry are illegal is inaccurate. The Philippine Competition Act will only operate in instances of unfair abusive behavior that are intended to substantially prevent, restrict, or lessen competition.

Besides, while the majority pointed out that the classification under Section 3.1 results in adverse market consequences such as fewer foreign contractors, this is a policy issue that is not within the province of this Court. This should be addressed to our lawmakers, in whose hands rest determining the best policy for our economy.

ACCORDINGLY, I vote to GRANT the Petition.

[1] Republic Act No. 4566 (1965), sec. 5 provides:

SECTION 5. Powers and Duties of the Board. — The Board is vested with authority to issue, suspend and revoke licenses of contractors, to investigate such violations of this Act and the regulations thereunder as may come to its knowledge and, for this purpose, issue subpoena and subpoena duces tecum to secure appearance of witnesses in connection with the charges presented to the Board, and to discharge such other powers and duties affecting the construction industry in the Philippines.

The Board may, with the approval of the President of the Philippines, issue such rules and regulations as may be deemed necessary to carry out the provisions of this Act, to adopt a code of ethics for contractors and to have an official seal to authenticate its official documents.

[2] Implementing Rules and Regulations of Republic Act. No. 4566 (1965), sec. 3.1.

[3] Ponencia, p. 3.

[4] Id.

[5] Id. at 4. Filed under Rule 45 of the Rules of Court.

[6] Id.

[7] Id. at 4-5.

[8] Id. at 11.

[9] Id. at 12-14.

[10] Id. at 15.

[11] 338 Phil. 546 (1997) [Per J . Panganiban, En Banc].

[12] 645 Phil. 269 (2010) [Per J. Abad, En Banc].

[13] Ponencia, p. 16.

[14] Id. at 16-18.

[15] Id. at 18-19.

[16] Id. at 5.

[17] Implementing Rules and Regulations of Republic Act No. 4566 (1965), secs. 4.5. and 4.6 provide:

SECTION 4.5 Regular License Application Documents. —

An application for a Regular License shall comprise of the following:

a) Duly accomplished application form as prescribed by the Board;

b) ORGANIZATION

ba) List of corporate directors and officers/partners (for Corporation/Partnership only);

bb) List of stockholders/partners and their respective equity holdings in the applicant firm (for Corporation/Partnership only);

bc) Certificate of Registration with the Bureau of Domestic Trade (for sole proprietorship only);

bd) Certificate of Registration with the Securities and Exchange Commission and Articles of Incorporation and By-Laws (for corporation/partnership only);

be) SSS Certificate of Membership of the Company;

bf) Nomination of Authorize Managing Officer;

bg) Curriculum Vitae of Authorized Managing Officer/Proprietor;

c) FINANCIAL

- ca) Latest audited financial statements signed on each and every page by a Certified Public Accountant, and properly stamped-received by the Bureau of Internal Revenue;
- cb) Supplementary schedules of the latest audited financial statements of the applicant for the immediately preceding taxable year, except in case of a newly formed corporation or partnership;
- cc) Income Tax Return of the applicant for the immediately preceding taxable year properly stamped-received by BIR and the official receipt covering income tax paid, except in case of a newly formed Corporation/Partnership;
- cd) Authorization to depository bank to release information to PCAB;
- ce) Bank Statement of Account for the last month of the immediately preceding taxable year certified by, the Bank Manager;
- cf) Transfer Certificate of Title, tax declaration, latest official receipt covering payment of realty tax of land and other real properties owned by the firm;
- d) EQUIPMENT CAPACITY
 - da) List of equipment currently owned;
 - db) Deed of Sale or Invoice with complete address of vendor or official receipt issued by the vendor covering the equipment currently owned;
 - dc) Certificate of Registration with current official receipt of BLT registration fees paid covering transportation and delivery equipment owned by the firm;
- e) EXPERIENCE OF SUSTAINING TECHNICAL EMPLOYEES
 - ea) List of technical personnel employed by the company;
 - eb) Affidavit of Sustaining Technical Employee(s);
 - ec) Curriculum vitae of Sustaining Technical Employee(s); and
 - ed) SSS Form R-1 to include the name of the Nominated Technical Employee(s)

The Board may require the submission of pertinent documents/information other than the above in order to fully determine the qualifications of an applicant.

SECTION 4.6 Special License Application Documents. —

An application for a Special License shall comprise, on a case to case basis, of the following:

....

- e) A foreign Constructor
 - ea) Application properly accomplished on form as prescribed by the Board;
 - eb) General Information Sheet;
 - ec) Board Resolution authorizing its Resident Alien Representative in the Philippines to act for and in behalf of the company. The Board Resolution must define the scope and/or limitations of the powers of the Resident Alien Representative;
 - ed) Board Resolution appointing and authorizing the Filipino Resident Agent to accept summons and other legal process in behalf of the applicant;
 - ee) Copy of Contractors License/Permit/Authority issued by the appropriate government agency in the home country of the applicant foreign contractor, if required by the home government;
 - ef) Certification from the appropriate Tendering Agency (Ministry, Bureau, Office) that the project is foreign financed/internationally-funded and that international bidding is required, or the participation of foreign contractors is allowed under Bilateral Agreement entered into by and between the Philippine Government and the foreign/International Financing Institution;
 - eg) Certificate issued by the Board of Investments allowing the foreign contractor to undertake construction project in the Philippines;
 - eh) Copy of "Invitation to Bid" or "Instruction to Bidders" or "Notice to Bidders" showing the date of bidding;
 - ei) List of completed construction project(s) in the Philippines undertaken by the company during the last three (3) years showing the following: Title of Projects, Location, Tendering Agency (DPWH, MWSS, NIA, etc.) Lending Institution (IBRD, ADB, OECF), Date contract was signed, Date of completion, Loan Agreement No.;
 - ej) List of on-going construction project(s) in the Philippines being undertaken by the company showing the

following: Title of Projects, Location, tendering Agency, Lending Institution, Date Contract was signed, scheduled date of completion, Loan Agreement No.;

ek) Audited Financial Statements during the preceding year; and

el) Philippine Income Tax Return during the preceding year, if applicable.

f) A Project Owner

fa) All documents required in Sec. 4.5 hereof

fb) Identification of the project by title owned and location.

[18] Implementing Rules and Regulations of Republic Act No. 4566 (1965), sec. 3.2 provides:

SECTION 3.2 License Validity. —

a) Regular License

A Regular License shall be valid for one fiscal year, from the 1st of July to the 30th of June of the ensuing year, unless suspended, invalidated, cancelled or revoked earlier by the Board, and shall be renewed annually. A license issued after the 1st of July shall be valid for the remaining part of the fiscal year.

b) Special License

A Special License, shall be cancelled by the Board upon completion of the single specific undertaking/project authorized by the license and to which it is, therefore, restricted, even though before expiry of the fiscal year.

[19] Implementing Rules and Regulations of Republic Act No. 4566 (1965), secs. 10.1 and 10.2 provide:

SECTION 10.1 Regular License Authorization. —

A licensed constructor, issued a Regular License as defined in Sec. 3.1 (a) thereof, is authorized to engage in construction contracting in the Philippines, within the field and scope of his classification(s) in accordance with the provisions of Sec. 5.4 hereof. In case of a provisionally renewed License, however, such authorization shall be subject to any restriction as may be imposed by the Board.

SECTION 10.2 Special License Authorization. —

A licensed constructor, issued a Special License as defined in Sec. 3.1 (b) is authorized to engage only in one single specific construction undertaking/project in the Philippines. In case of a provisionally renewed License, each authorization shall be further subject to any restriction as may be imposed by the Board.

[20] Implementing Rules and Regulations of Republic Act No. 4566 (1965), sec. 3.3 provides:

SECTION 3.3 Terms and Conditions of a Contractor's License.—

a) The License is non-transferable.

b) The License is valid during the contracting fiscal year (July 1 to June 30) for which it was issued provided it has not been suspended, cancelled or revoked by the Board.

c) The license is to be renewed annually on or before the expiration of its validity

d) The Licensee must not submit any bid, or enter into any construction contract after the License has expired and before the same is renewed otherwise the constructor shall be deemed to be operating without a contractor's License and shall be liable to appropriate disciplinary action and payment of additional License fee.

e) The Licensee must not undertake/implement any construction project which is not within the scope of his License classification otherwise he shall be liable to appropriate disciplinary action and payment of additional licensing fee.

f) The Licensee's qualification is subject to review at any time to ascertain the constructor's eligibility to the present classification and category of his License.

g) License category may be upgraded and other classifications may be added to the license upon formal application by the Licensee together with all the necessary supporting documents

h) The Licensee must notify the Board in writing of resignation or disassociation of any of its Sustaining Technical Employee and must replace the said employee within a period of ninety days from the date of resignation or disassociation.

- i) The Licensee must submit to the Board monitoring reports that may be required from time to time.
- j) The Licensee must observe and abide by the provisions of Republic Act No. 4566, as amended by Presidential Decree No. 1746, its implementing Rules and Regulations, and other orders or instructions which the Board may issue from time to time pursuant to its power and authority under the Law.
- k) The Licensee must at all times observe and adhere to the letters and spirit of the code of ethics for constructors.
- l) Any misrepresentation or false information submitted to the Board shall subject the Licensee to administrative disciplinary action without prejudice to the imposition of penal sanctions provided by law.
- m) A Licensee who is retiring from the construction business must advise the Board in writing and must immediately surrender the license to the Board for cancellation.

[21] Implementing Rules and Regulations of Republic Act No. 4566(1965), sec. 4.1 provides:

SECTION 4. 1 Qualifications for Licensing. —

To be eligible as a candidate for licensing, an applicant shall have the following minimum qualifications deemed by the Board to be necessary for the safety of the public and the interest of both the public and the construction industry;

- a) He must, by virtue of his Sustaining Technical Employee or by himself, if sole-proprietor-applicant, have at least two (2) years * of construction implementation experience, and knowledge of Philippine construction-building codes and ordinances, labor safety codes and other laws applicable to construction operation, subject to the nomination requirement as provided for under Section 4.2 hereof.
- b) He must, by virtue of his Authorized Managing Officer or by himself, if a sole-proprietor-applicant, have at least two (2) years of experience in construction contracting, business management and contract administration, and knowledge of Philippine laws on contracts, liens, taxation labor and other construction business matters, subject to the nomination requirement as provided for under Section 4.3 hereof.
- c) He must have a stock holders'/owner's equity or networth of at least the amount required to qualify for the lowest constructor category; and
- d) If a partnership or corporation, the applicant firm shall have, in its Articles of Partnership/Incorporation, construction as a primary purpose, or as a division or department separate and distinguishable from the overall organization of the firm.

The foregoing notwithstanding, the eligibility of an applicant shall be further contingent upon his non-possession of any of the disqualifications for or impediments to licensing as stipulated in Sec. 11.1 hereof.

[22] Implementing Rules and Regulations of Republic Act No. 4566 (1965), sec. 4.7 provides:

SECTION 4.7 License Application Processing. — The processing of License applications shall be made on a monthly batch basis. The Board shall either approve or disapprove each application subject to subsequent approval of the Authority. The Board's decision shall be communicated in writing to each applicant within ten (10) days from the date of such decision and, accordingly, the license certificates shall be prepared for and issued to those whose applications were duly approved.

Any applicant who was not satisfied with the Board's decision on its application may file a written request for reconsideration and to present appropriate documents to the Board in support of such request within thirty (30) days from receipt of notice thereof. Failure to do so shall be a ground for the Board not to entertain such request if filed beyond the prescribed thirty (30) day period.

[23] Implementing Rules and Regulations of Republic Act No. 4566 (1965), sec. 4.6.

[24] J. Perlas-Bernabe, Concurring Opinion, pp. 3-4.

[25] See CONST., art. II, sec. 19, and art. XII, secs. 10 and 12.

[26] Tañada v. Angara, 338 Phil. 546 (1997) [Per J. Panganiban, En Banc].

[27] Id. at 588-589.

[28] Espina v. Zamora, Jr., 645 Phil. 269, 273 (2010) [Per J. Abad, En Banc].

[29] Id. at 279.

[30] Id.

[31] 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

[32] Id. at 36.

[33] Republic Act N o. 4566 (1965), sec. 16 provides:

SECTION 16. Classification. - For the purpose of classification, the contracting business includes any or all of the following branches.

- (a) General engineering contracting;
- (b) General building contracting; and
- (c) Specialty contracting.

[34] Ponencia, p. 19.

[35] Republic Act No. 10667 (2015), sec. 2.

[36] Republic Act No. 10667 (2015), sec. 2 provides:

SECTION 2. Declaration of Policy. — The efficiency of market competition as a mechanism for allocating goods and services is a generally accepted precept. The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged and the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed, the State shall:

- (a) Enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its political agencies as a whole;
- (b) Prevent economic concentration which will control the production, distribution, trade, or industry that will unduly stifle competition, lessen, manipulate or constrict the discipline of free markets; and
- (c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

[37] Erlinda M. Medalla, Understanding the New Philippine Competition Act, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 3 (2017).

[38] Id.

[39] Id.

[40] Id. at 5.

[41] R. Preston MacAfee, et al., What is a Barrier to Entry, The American Economic Review, 94 American Economic Association, 463 (2004).

[42] Erlinda M. Medalla, Understanding the New Philippine Competition Act, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 8 (2017).

[43] Id.

[44] 1 Robert Cooter, Law and Economics, 35 (4th ed., 2003).

[45] Id.

[46] Erlinda M. Medalla, Understanding the New Philippine Competition Act, Philippine Institute for Development Studies Discussion Paper Series No. 2017-14, 7 (2017).

[47] Republic Act No. 10667 (2015), secs. 14 and 15 provide:

SECTION 14. Anti-Competitive Agreements. —

(a) The following agreements, between or among competitors, are per se prohibited:

- (1) Restricting competition as to price, or components thereof, or other terms of trade;
- (2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

- (1) Setting, limiting, or controlling production, markets, technical development, or investment;
- (2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

SECTION 15. Abuse of Dominant Position. — It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: Provided, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of

the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: Provided, That the following shall be considered permissible price differentials:

- (1) Socialized pricing for the less fortunate sector of the economy;
 - (2) Price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;
 - (3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and
 - (4) Price changes in response to changing market conditions, marketability of goods or services, or volume;
- (e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: Provided, That nothing contained in this Act shall prohibit or render unlawful:
- (1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or
 - (2) Agreements protecting intellectual property rights, confidential information, or trade secrets;
- (f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
- (g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;
- (h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior, product or process, business acumen or legal rights or laws shall not be considered unfair prices; and
- (i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act:

Provided, That nothing in this Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition:

Provided, further, That any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position:

Provided, finally, That the foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in this Act.

[48] Republic Act No. 10667 (2015), secs. 14 and 15.

[49] G.R. No. 217158, March 12, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970>> [Per J. Jardeleza, En Banc].

[50] Id.

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