EN BANC

G.R. No. 215650 – AUGUSTO L. SYJUCO, JR., Petitioner, **v. JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; HONORITO D. CHANECO, in his capacity as ADMINISTRATOR OF LIGHT RAIL TRANSIT AUTHORITY; and RENATO Z. SAN JOSE, in his capacity as Officer-in-Charge of the METRO RAIL TRANSPORT 3 OFFICE,** Respondents;

G.R. No. 215653 – BAGONG ALYANSANG MAKABAYAN, represented by its SECRETARY GENERAL, RENATO REYES, JR., et al., Petitioners, **v. JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, et. al.,** Respondents;

G.R. No. 215703 – UNITED FILIPINO CONSUMERS AND COMMUTERS, INC., represented by its PRESIDENT RODOLFO B. JAVELLANA, JR., Petitioner, **v. JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, et. al.,** Respondents;

G.R. No. 215704 – BAYAN MUNA REPRESENTATIVE NERI JAVIER COLMENARES, et al., Petitioners, **v. JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, et. al.,** Respondents;

G.R. No. 216735 – JOSEPH VICTOR G. EJERCITO, et al., Petitioners, **v. WINSTON M. GINEZ, in his capacity as CHAIRPERSON OF THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, et al.,** Respondents.

Promulgated:

March 28, 2023

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CONCURRENCE

LAZARO-JAVIER, *J.:*

I **concur** with the dismissal of the petitions.

I **agree** with the *ponencia* of my esteemed colleague Associate Justice Jhosep Y. Lopez that Department Order No. 2014-014 (DO 2014-014) of the then Department of Transportation and Communications (DOTC) **complied** with Book VII, Chapter 2, Section 9(2) of the *Administrative Code of 1987*.

This provision reads in full:

> SECTION 9. Public Participation.– x x x x
>
> (2) In the fixing of rates, **no rule or final order shall be valid** unless the **proposed rates** shall have been **published** in a newspaper of general circulation **at least two (2) weeks before the first hearing thereon**. (Emphasis supplied)
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> x x x x

The facts are not disputed. As I gather from the *ponencia*:

Fares for the trains at the Light Rail Transit (LRT) Lines 1 and 2 and the Metro Rail Transit (MRT) Line 3 were subsidized by our taxpayers, riders, and non-riders alike. In August 2010, to reduce the subsidies, the Office of the President directed the Light Rail Transit Authority (LRTA), a government instrumentality vested with corporate powers *and* an attached agency to the DOTC, to conduct studies on the feasibility of fare rate hikes. Later, the DOTC was itself involved in this staff work. The study was vetted by top officials of the LRTA and the DOTC.

In October 2010, the Secretary of Finance, the Secretary of Budget and Management, the Secretary of Transportation and Communications, and the Secretary of Socio-Economic Planning (economic managers) executed a Memorandum for the Office of the President regarding the LRT fare adjustment. Eventually, the study report was submitted to the LRTA Board for its approval during its regular meeting in January 2011. During the meeting, the LRTA Board *provisionally* approved the **proposed fare adjustment of PHP 11.00 boarding fare plus PHP 1.00/km, with the corresponding fare matrices**.

Apparently, in compliance with the above-quoted Section 9, the LRTA Board scheduled **public consultation to be held on two occasions** – February 4 and 5, 2011. It **also published** the Notice of Public Consultation in the Philippine Daily Inquirer on January 20, 2011 and The Manilla Bulletin on January 27, 2011.

The result of the public consultations was unfavorable to the proposed fare adjustment. The LRTA Board, nevertheless, *finally* approved at its level the fare adjustment based on the distance-based fare scheme. The Land

Transportation Franchising and Regulatory Board (LTFRB) concurred in the proposed fare adjustment.

In May 2011, however, the LRTA Board and the DOTC decided to **indefinitely defer the implementation** of the fare increase. The proposed fare adjustment was dormant until June 26, 2013 when the LRTA Board revived the proposed fare adjustment *with its amendment to remove student discounts*. On July 22, 2013, in his State of the Nation Address, then President Benigno Simeon Aquino III announced the policy to remove subsidies to the MRT and LRT fares.

On November 26, 2013, the LRTA Board simply **resurrected the 2011 proposed fare adjustment**, *i.e.*, PHP 11.00 plus PHP 1.00/km fare adjustment for LRT-1 and LRT-2, as its *provisional* fare adjustment proposal. This was the first step fare adjustment. It was scheduled to be implemented on August 1, 2013. A second step implementation was decided to run through a **public consultation that was held on December 12, 2013**.

On December 18, 2013, the LRTA Board **confirmed** at its level the LRT fare adjustment using the same PHP 11.00 plus PHP 1.00/km formula, subject to consultation with the LTFRB. On December 19, 2013, the LTFRB Chair signified that the LTFRB had no objections to the fare adjustment.

On December 18, 2014, respondent Abaya, then DOTC Secretary, issued the assailed DO 2014-014. This was published in the Philippine Daily Inquirer on December 20, 2014 and became effective on January 4, 2015. DO 2014-014 imposed the uniform base fare of PHP 11.00 plus PHP 1.00 per kilometer of distance traveled.

The proposed fare adjustment was the **same 2011 proposed fare adjustment** that was published in a newspaper of general circulation on January 20, 2011, or at least two weeks prior to the first public consultation on February 4, 2011. In due course, this same proposed fare adjustment resulted in the assailed DO 2014-014.

Clearly, DO 2014-014 **complied** with Section 9(2) as above-quoted. The proposed fare adjustment was in fact **published** on January 20, 2011, or at least **two weeks** prior to the **first** hearing, which was the **first public consultation** on February 4, 2011. The end-product—DO 2014-014—must be upheld since the *proposed rates* were published as instructed by Section 9(2).

First, the statutory requirement of publication at least two weeks prior to the first hearing or public consultation is **distinct** from the element of the

public participation itself where the public may be heard. They should not be confused with each other.

In any event, there is **no requirement** in Section 9(2) or anywhere in the *Administrative Code of 1987* that the hearings or public consultations **ought to be held within a particular time frame** before the adoption of the final order of fare or rate adjustments.

Second, the mandatory **publication** in Section 9(2) has **nothing** to do with the time interval between the public consultations held *and* the date of **actual publication** of the **final order** of fare or rate adjustments, which here is DO 2014-014. Section 9(2) is clear that the publication refers to the ***proposed*** **rates** and the time interval of at least two weeks prior to the first hearing. Thus, respondents **clearly adhered** to Section 9(2).

The purpose of the publication requirement is **to give notice** to the public to vent their sentiments on the proposed fare adjustment. The notice **precisely gave that desired result**. The first two public consultations resulted in the deferral of the implementation of the proposed fare hike. The third one allowed further vetting of the proposal. The solicitation of the LTFRB's position gave a government third-party objective assessment thereof. It cannot be said that Section 9(2) publication did not accomplish its purpose.

Third, Section 9(1) of Book VII, Chapter 2 of the *Administrative Code of 1987* itself defines public participation in the fixing of rates (or fares in the case at bar) as simply the **opportunity to interested parties to submit their views prior to the adoption** of the final order of fare or rate adjustments, **as far as practicable.**[1] Here, there were **three public consultations** and **two referrals to the LTFRB**, which is **not** obliged by law but was nonetheless done as a check-and-balance mechanism.

To be sure, even if there were oppositions to the proposed fare adjustments, the **rules on contested case** did **not** come into play. Under Section 9(3) of Book VII, Chapter 2 of the *Administrative Code of 1987*, "[i]n case of opposition, the rules on contested cases shall be observed." Section 2(5) of Book VII, Chapter 1, however, defines a **contested case** as:

> x x x any proceeding, including licensing, in which the legal rights, duties or privileges **asserted by specific parties** as required by the Constitution or by law are to be determined after hearing. (Emphasis supplied)
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> x x x x

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[1] SECTION 9. Public Participation. — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

Here, the proposed fare adjustments were to impact *en masse*. **No specific parties** were involved. To apply the rules[2] on contested cases where millions of riders are **potential parties** and **witnesses** would **grind agency proceeding and action to a halt**. Further, as the Court has stressed several times, rate-fixing looks to the future and not to past events for which a hearing to ascertain these past disputed facts are determined. Hence, a judicial-type notice and hearing is inappropriate.

Thus, in *GMA Network, Inc. v. Commission on Elections*,[3] the Court held:

> In earlier cases, the Court observed that the issuance of rules and regulations in the exercise of an administrative agency's quasi-legislative or rule making power generally **does not require prior notice and hearing** except if the law provides otherwise. **The requirement for an opportunity to be heard under the exception is provided for under** Book VII, Chapter 2, **Section 9** of Executive Order (EO) No. 292 (the Administrative Code of 1987). This provision reads:

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[2] Administrative Code of 1987, Book VII, Chapter 3: SECTION 11. Notice and Hearing in Contested Cases. — (1) In any contested case all parties shall be entitled to notice and hearing. The notice shall be served at least five (5) days before the date of the hearing and shall state the date, time and place of the hearing.
(2) The parties shall be given opportunity to present evidence and argument on all issues. If not precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement or default.
(3) The agency shall keep an official record of its proceedings.
SECTION 12. Rules of Evidence. — In a contested case:
(1) The agency may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.
(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a certified copy thereof may be accepted.
(3) Every party shall have the right to cross-examine witnesses presented against him and to submit rebuttal evidence.
(4) The agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed.
SECTION 13. Subpoena. — In any contested case, the agency shall have the power to require the attendance of witnesses or the production of books, papers, documents and other pertinent data, upon request of any party before or during the hearing upon showing of general relevance. Unless otherwise provided by law, the agency may, in case of disobedience, invoke the aid of the Regional Trial Court within whose jurisdiction the contested case being heard falls. The Court may punish contumacy or refusal as contempt.
SECTION 14. Decision. — Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.
SECTION 15. Finality of Order. — The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.
SECTION 16. Publication and Compilation of Decisions. — (1) Every agency shall publish and make available for public inspection all decisions or final orders in the adjudication of contested cases.
(2) It shall be the duty of the records officer of the agency or his equivalent functionary to prepare a register or compilation of those decisions or final orders for use by the public.

[3] 742 Phil. 174 (2014).

> Section 9. Public Participation. —
>
> (1) If not otherwise required by law, an agency shall, **as far as practicable**, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

A **patent characteristic of this provision** is **its permissive language** in **requiring notice** and **the opportunity to be heard**. The **non-mandatory nature of a prior hearing** arises from the **nature of the proceedings** where **quasi-legislative power** is exercised: the proceedings **do not involve the determination of past events or facts** that would otherwise have to be ascertained as basis of an agency's action and discretion. **On the contrary**, the proceedings are **intended to govern future conduct**. Accordingly, the **requirement of prior notice and hearing is not indispensable for the validity** of the exercise of the power.[4] (Emphasis supplied)

Senior Associate Justice Leonen was emphatic of this rule when his *ponencia*[5] ruled:

> However, **notice and hearing** are **not required** when an administrative agency exercises its quasi-legislative power. The reason is that in the exercise of quasi-legislative power, the administrative agency makes no "determination of past events or facts."[6] (Emphasis supplied)

In *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*,[7] the Court equated the fixing of rates affecting *en masse* with a quasi-legislative power where generally **no** notice and hearing are mandatory:

> The fixing of rates is generally a legislative power, whether exercised by the legislature itself or delegated through an administrative agency.
>
> Where the rules and/or rates imposed by an administrative agency apply exclusively to a particular party, predicated upon a finding of fact, the agency performs a function partaking of a quasi-judicial character and prior notice and hearing are essential to the validity thereof.
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> If the **agency is in the exercise of its legislative functions or where the rates are meant to apply to all enterprises of a given kind** throughout the country, however, the grant of **prior notice and hearing to the affected parties is not a requirement of due process** except where the legislature itself requires it.[8] (Emphasis supplied)

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4 Id. at 276–277.
5 Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018).
6 Id. at 265.
7 494 Phil. 664 (2005).
8 Id. at 676–677.

The above rulings echoed precedents such as *Alliance for the Family Foundation, Philippines, Inc. v. Garin*,[9] *Dagan v. Philippine Racing Commission*,[10] and *Abella v. Civil Service Commission*.[11]

The **hearing** or **public participation** element in Section 9(2) is **fulfilled** where **consultations** were **held to give interested personalities the opportunity** to attend and submit their views. In *Carbonilla v. Board of Airlines Representatives*,[12] the Court thus decided:

> BAR raises the alleged failure of BOC to publish the required notice of public hearing and to conduct public hearings to give all parties the opportunity to be heard prior to the issuance of CAO 1-2005 as required under Section 9 (2), Chapter I, Book VII of the Administrative Code of the Philippines. Section 9 (2) provides:
>
> Sec. 9. Public Participation. — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.
>
> (3) In cases of opposition, the rules on contested cases shall be observed.
>
> BAR's argument has no merit.
>
> The BOC **created a committee to re-evaluate the proposed increase** in the rate of overtime pay and for two years, **several meetings were conducted** with the agencies concerned to discuss the proposal. **BAR and the Airline Operators Council participated in these meetings** and discussions. Hence, BAR cannot claim that it was denied due process in the imposition of the increase of the overtime rate. CAO 1-2005 was published in the Manila Standard, a newspaper of general circulation in the Philippines on 18 February 2005 and while it was supposed to take effect on 5 March 2005, or 15 days after its publication, the BOC-NAIA still deferred BAR's compliance until 16 March 2005.[13] (Emphasis supplied)

Notably, the public participation called for in Section 9 does **not** guarantee a result in favor of anyone, especially any oppositor. The actual process is governed by what is practicable, which in turn must also account for the nature of the decision involved and the process that the agency itself sees to be reasonable. It is a hearing on what the future holds. It is not a hearing to correct past grievances, though this may be a relevant backdrop to the **future**. In any event, the agency proceeding is **not required by any law** to

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[9] 793 Phil. 831 (2017).
[10] 598 Phil. 406 (2009).
[11] 485 Phil. 182 (2004).
[12] 673 Phil. 413 (2011).
[13] Id. at 441–442.

set a timeline between the holding of the public consultations and the making of a final order. **Ideally**, there should only be a **short gap**. It is unlike the requirement for courts to decide within a certain period after the termination of the court proceedings – but even then the court decision does not become void just because it was rendered late.

Finally, we cannot hamstring the political branches of government in their manner of arriving at policy decisions. The string of precedents above-mentioned is the **clearest indicator of our sincerest respect** for the proceedings and work of these counterpart political agencies.

Respondents were confounded with decisions whether to continue with subsidies or allow the user-pays principle to determine the price of riding the LRT and MRT. Telling them **how to conduct their unearthing of legislative and policy-related facts**, I most respectfully submit, is **beyond our competence** to dictate. Telling them what legislative and policy-related facts are relevant and what are already stale is also **beyond our institutional ability** to determine. We look only at whether they have complied with the law, here, Book VII, Chapter 2, Section 9 of the *Administrative Code of 1987*, on publication and public participation. As shown, respondents faithfully have.

ACCORDINGLY, I concur in the **dismissal** of the petitions and vote to **confirm** the validity of the Department Order No. 2014-014.

AMY C. LAZARO-JAVIER
Associate Justice