

EN BANC

G.R. No. 175356 (MANILA MEMORIAL PARK, INC. and LA FUNERARIA PAZ-SUCAT, INC. v. SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT and THE SECRETARY OF THE DEPARTMENT OF FINANCE)

Promulgated:

DECEMBER 03, 2013

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DISSENTING OPINION

CARPIO, J.:

The main issue in this case is the constitutionality of Section 4 of Republic Act No. 7432¹ (R.A. 7432), as amended by Republic Act No. 9257² (R.A. 9257), which states that establishments may claim the 20% mandatory discount to senior citizens as tax deduction, and thus no longer as tax credit. Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc. (petitioners) allege that the tax deduction scheme under R.A. 9257 violates Section 9, Article III of the Constitution which provides that “[p]rivate property shall not be taken for public use without just compensation.”

Section 4 of R.A. 7432, as amended by R.A. 9257, provides:

SEC. 4. *Privileges for the Senior Citizens.* – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted.** Provided, further, That the total amount of

¹ An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes.

² An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the Purpose Republic Act No. 7432, Otherwise Known as “An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes.” It was further amended by R.A. No. 9994, or the “Expanded Senior Citizens Act of 2010.”

the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

The constitutionality of Section 4(a) of R.A. 7432, as amended by R.A. 9257, had been passed upon by the Court in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*.³

In *Carlos Superdrug Corporation*, the Court made a distinction between the tax credit scheme under Section 4 of R.A. 7432 (the old Senior Citizens Act) and the tax deduction scheme under R.A. 9257 (the Expanded Senior Citizens Act). Under the tax credit scheme, the establishments are paid back 100% of the discount they give to senior citizens. Under the tax deduction scheme, they are only paid back about 32% of the 20% discount granted to senior citizens.

The Court cited in *Carlos Superdrug Corporation* the clarification by the Department of Finance, through Director IV Ma. Lourdes B. Recente, which explained the difference between tax credit and tax deduction, as follows:

1) The difference between the Tax Credit (under the Old Senior Citizens Act) and Tax Deduction (under the Expanded Senior Citizens Act).

1.1. The provision of Section 4 of R.A. No. 7432 (the old Senior Citizens Act) grants twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicines anywhere in the country, the costs of which may be claimed by the private establishments concerned as **tax credit**.

Effectively, a **tax credit** is a peso-for-peso deduction from a taxpayer's tax liability due to the government of the amount of discounts such establishment has granted to a senior citizen. The establishment recovers the full amount of discount given to a senior citizen and hence, the government shoulders 100% of the discounts granted.

It must be noted, however, that conceptually, a **tax credit** scheme under the Philippine tax system, necessitates that prior payments of taxes have been made and the taxpayer is attempting to recover this tax payment from his/her income tax due. The tax credit scheme under R.A. No. 7432 is, therefore, inapplicable since no tax payments have previously occurred.

1.2. The provision under R.A. No. 9257, on the other hand, provides that the establishment concerned may claim the discounts under Section 4(a), (f), (g) and (h) as **tax deduction** from gross income, based on the net cost of goods sold or services rendered.

³ 553 Phil. 120 (2007).



Under this scheme, the establishment concerned is allowed to deduct from gross income, in computing for its tax liability, the amount of discounts granted to senior citizens. Effectively, the government loses in terms of foregone revenues an amount equivalent to the marginal tax rate the said establishment is liable to pay the government. This will be an amount equivalent to 32% of the twenty percent (20%) discounts so granted. The establishment shoulders the remaining portion of the granted discounts.⁴ (Emphasis in the original)

Thus, under the tax deduction scheme, there is no full compensation for the 20% discount that private establishments are forced to give to senior citizens.

The justification for the validity of the tax deduction, which the majority opinion adopts, was explained by the Court in *Carlos Superdrug Corporation* as a lawful exercise of police power. The Court ruled:

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as “the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs.” It is “[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.”

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.⁵

⁴ Id. at 125-126.

⁵ Id. at 132-133. Citations omitted.

In the case before us, the majority opinion declares that it finds no reason to overturn or modify the ruling in *Carlos Superdrug Corporation*. The majority opinion also declares that the Court's earlier decision in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*⁶ (*Central Luzon Drug Corporation*) holding that "the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use"⁷ and that the permanent reduction in the total revenues of private establishments is "a forced subsidy corresponding to the taking of private property for *public use or benefit*"⁸ is an *obiter dictum* and is not a binding precedent. The majority opinion reasons that the Court in *Central Luzon Drug Corporation* was not confronted with the issue of whether the 20% discount was an exercise of police power or eminent domain.

The sole issue, according to the Court's decision in *Central Luzon Drug Corporation*, was whether a private establishment may claim the cost of the 20% discount granted to senior citizens as a tax credit even though an establishment operates at a loss. However, a reading of the decision shows that petitioner raised the issue of "[w]hether the Court of Appeals erred in holding that respondent may claim the 20% sales discount as a tax credit instead of as a tax deduction from gross income or gross sales."⁹ In that case, the BIR erroneously treated the 20% discount as a tax deduction under Sections 2.i and 4 of Revenue Regulations No. 2-94 (RR 2-94), despite the provision of the law mandating that it should be treated as a tax credit. The erroneous treatment by the BIR under RR 2-94 necessitated the discussion explaining why the tax credit benefit given to private establishments should be deemed just compensation. The Court explained in *Central Luzon Drug Corporation*:

Fourth, Sections 2.i and 4 of RR 2-94 deny the exercise by the State of its power of eminent domain. Be it stressed that the privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. **Accordingly, the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use.**

The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest*, *public benefit*, *public welfare*, and *public convenience*. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. **The permanent reduction in their total revenues is a forced**

⁶ 496 Phil. 307 (2005).

⁷ *Id.* at 335.

⁸ *Id.*

⁹ *Id.* at 318.

subsidy corresponding to the taking of private property for *public use* or *benefit*.

As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues.

Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but “enforced contributions exacted on pain of penal sanctions” and “clearly imposed for a *public purpose*.” In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth.


While it is a declared commitment under Section 1 of RA 7432, social justice “cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto.” For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

To put it differently, a private establishment that merely breaks even— without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its *gross income* or its *gross sales*. Operating at a loss through no fault of its own, it will realize that the *tax credit* limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of *tax credits* denied those that are losing, because no taxes are due from the latter.¹⁰ (Emphasis supplied)

The foregoing discussion formed part of the explanation of this Court in *Central Luzon Drug Corporation* why Sections 2.i and 4 of RR 2-94 were erroneously issued. The foregoing discussion was certainly **not** unnecessary or immaterial in the resolution of the case;¹¹ hence, the discussion is definitely **not** *obiter dictum*.

¹⁰ Id. at 335-337. Citations omitted.

¹¹ In *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 382-383 (2001), the Court defined *obiter dictum* as “words of a prior opinion entirely unnecessary for the decision of the case” (“Black’s Law Dictionary”, p. 1222, citing the case of “*Noel v. Olds*,” 78 U.S. App. D.C. 155) or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding (“Webster’s Third New International Dictionary,” p. 1555).



As regards *Carlos Superdrug Corporation*, a second look at the case shows that it barely distinguished between police power and eminent domain. While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain.

In the early case of *People v. Pomar*,¹² the Court acknowledged that “[b]y reason of the constant growth of public opinion in a developing civilization, the term ‘police power’ has never been, and we do not believe can be, clearly and definitely defined and circumscribed.”¹³ The Court stated that the “definition of the police power of the state must depend upon the particular law and the particular facts to which it is to be applied.”¹⁴ **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that are destroyed or placed outside the commerce of man.** The Court declared in *Pomar*:

It is believed and confidently asserted that no case can be found, in civilized society and well-organized governments, where individuals have been deprived of their property, under the police power of the state, without compensation, except in cases where the property in question was used for the purpose of violating some law legally adopted, or constitutes a nuisance. Among such cases may be mentioned: Apparatus used in counterfeiting the money of the state; firearms illegally possessed; opium possessed in violation of law; apparatus used for gambling in violation of law; buildings and property used for the purpose of violating laws prohibiting the manufacture and sale of intoxicating liquors; and all cases in which the property itself has become a nuisance and dangerous and detrimental to the public health, morals and general welfare of the state. In all of such cases, and in many more which might be cited, the destruction of the property is permitted in the exercise of the police power of the state. But it must first be established that such property was used as the instrument for the violation of a valid existing law. (*Mugler vs. Kansan*, 123 U.S. 623; *Slaughter-House Cases*, 16 Wall. [U.S.] 36; *Butchers’ Union, etc., Co. vs. Crescent City, etc., Co.*, 111 U.S. 746; *John Stuart Mill* - “On Liberty,” 28, 29)

Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every law for the restraint and punishment of crimes, for the preservation of the public

¹² 46 Phil. 440 (1924).

¹³ *Id.* at 445.

¹⁴ *Id.*



peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law – the constitution. (*Mugler vs. Kansan*, 123 U.S. 623)¹⁵ (Emphasis supplied)

In *City Government of Quezon City v. Hon. Judge Ericta*,¹⁶ the Court quoted with approval the trial court's decision declaring null and void Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council, thus:

We start the discussion with a restatement of certain basic principles. Occupying the forefront in the bill of rights is the provision which states that 'no person shall be deprived of life, liberty or property without due process of law. (Art. III, Section 1 subparagraph 1, Constitution)

On the other hand, there are three inherent powers of government by which the state interferes with the property rights, namely– (1) police power, (2) eminent domain, [and] (3) taxation. These are said to exist independently of the Constitution as necessary attributes of sovereignty.

Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in *Political Law* by Tañada and Carreon, V-11, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. *If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare.* In police power, the owner does not recover from the government for injury sustained in consequence thereof (12 C.J. 623). It has been said that police power is the most essential of government powers, at times the most insistent, and always one of the least limitable of the powers of government (*Ruby vs. Provincial Board*, 39 Phil. 660; *Ichong vs. Hernandez*, L-7995, May 31, 1957). This power embraces the whole system of public regulation (*U.S. vs. Linsuya Fan*, 10 Phil. 104). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope. Being coextensive with self-preservation and survival itself, it is the most positive and active of all governmental processes, the most essential insistent and illimitable. Especially it is so under the modern democratic framework where the demands of society and nations have multiplied to almost unimaginable proportions. The field and scope of police power have become almost boundless, just as the fields of public interest and public welfare have become almost all embracing and have transcended human foresight. Since the Court cannot foresee the needs and demands of public interest and welfare, they cannot delimit beforehand the extent or scope of the police power by which and through which the state seeks to

¹⁵ Id. at 454-455.

¹⁶ 207 Phil. 648 (1983).



attain or achieve public interest and welfare. (*Ichong vs. Hernandez*, L-7995, May 31, 1957).

The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power, the conflict between this power of government and the due process clause of the Constitution is oftentimes inevitable.

It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms.¹⁷ (Boldfacing and italicization supplied)

Clearly, taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man.

On the other hand, the power of eminent domain has been described as –

x x x ‘the highest and most exact idea of property remaining in the government’ that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. It is a right to take or reassert dominion over property within the state for public use or to meet public exigency. It is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. The only direct constitutional qualification is that “private property should not be taken for public use without just compensation.” This proscription is intended to provide a safeguard against possible abuse and so to protect as well the individual against whose property the power is sought to be enforced.¹⁸

In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation.¹⁹

Fr. Joaquin G. Bernas, S.J., expounded:

Both police power and the power of eminent domain have the general welfare for their object. The former achieves its object by regulation while the latter by “taking”. When property right is impaired by regulation, compensation is not required; whereas, when property is taken, the Constitution prescribes just compensation. **Hence, a sharp distinction must be made between regulation and taking.**

¹⁷ Id. at 654-655.

¹⁸ *Manosca v. CA*, 322 Phil. 442, 448 (1996).

¹⁹ *Moday v. Court of Appeals*, 335 Phil. 1057 (1997).



When title to property is transferred to the expropriating authority, there is a clear case of compensable taking. However, as will be seen, it is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is in cases where title remains with the private owner that inquiry must be made whether the impairment of property right is merely regulation or already amounts to compensable taking.

An analysis of existing jurisprudence yields the rule that when a property interest is appropriated and applied to some public purpose, there is compensable taking. Where, however, a property interest is merely restricted because continued unrestricted use would be injurious to public welfare or where property is destroyed because continued existence of the property would be injurious to public interest, there is no compensable taking.²⁰ (Emphasis supplied)

In Section 4 of R.A. 7432, it is undeniable that there is taking of property for public use. Private property is anything that is subject to private ownership. The property taken for public use applies not only to land but also to other proprietary property, including the mandatory discounts given to senior citizens which form part of the gross sales of the private establishments that are forced to give them. **The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership.** The taking of property under Section 4 of R.A. 7432 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain.**


Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens belongs to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership.²¹ The issue of profit or loss to the establishments is immaterial.

Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator."²² The Court explained:

²⁰ J. Bernas, S.J., *THE 1987 CONSTITUTION OF THE PHILIPPINES, A COMMENTARY* 379 (1996 ed.)

²¹ See Section 4, Rule IV, Implementing Rules and Regulations of R.A. No. 9994.

²² *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, 30 January 2013, 689 SCRA 554.



x x x. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that **the amount to be tendered for the property to be taken shall be real, substantial, full and ample.** x x x.²³ (Emphasis supplied)

The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full and ample compensation. In *Carlos Superdrug Corporation*, the Court conceded that “[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit.”²⁴ The Court ruled that “[t]his constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.”²⁵ Despite these pronouncements admitting there was compensable taking, **the Court still proceeded to rule that “the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.”**

There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed – when the burden constitutes a taking of private property for public use – then the burden becomes an exercise of eminent domain for which just compensation is required.

An example of a burden that can be validly imposed on private establishments is the requirement under Article 157 of the Labor Code that employers with a certain number of employees should maintain a clinic and employ a registered nurse, a physician, and a dentist, depending on the number of employees. Article 157 of the Labor Code provides:

Art. 157. Emergency medical and dental services. – It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

- a. The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;

²³ Id. at 562.

²⁴ Supra note 3, at 129-130.

²⁵ Id. at 130.



- b. The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and
- c. The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

x x x x


Article 157 is a burden imposed by the State on private employers to complement a government program of promoting a healthy workplace. The employer itself, however, benefits fully from this burden because the health of its workers while in the workplace is a legitimate concern of the private employer. Moreover, the cost of maintaining the clinic and staff is part of the **legislated wages** for which the private employer is **fully compensated** by the services of the employees. In the case of the senior citizen's discount, the private establishment is compensated only in the equivalent amount of 32% of the mandatory discount. There are no services rendered by the senior citizens, or any other form of payment, that could make up for the 68% balance of the mandatory discount. Clearly, the private establishments cannot recover the full amount of the discount they give and thus there is taking to the extent of the amount that cannot be recovered.

Another example of a burden that can be validly imposed on a private establishment is the requirement under Section 19 in relation to Section 18 of the Social Security Law²⁶ and Section 7 of the Pag-IBIG Fund²⁷ for the employer to contribute a certain amount to fund the benefits of its employees. The amounts contributed by private employers form part of the **legislated wages** of employees. The private employers are deemed **fully compensated** for these amounts by the services rendered by the employees.

In the present case, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." *Carlos Superdrug Corporation* should be abandoned by this Court and *Central Luzon Drug Corporation* re-affirmed.

²⁶ Republic Act No. 8282, otherwise known as the Social Security Act of 1997, which amended Republic Act No. 1161.

²⁷ Republic Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009.



Carlos Superdrug Corporation admitted that the permanent reduction in the total revenues of private establishments is a **“compensable taking for which petitioners would ordinarily become entitled to a just compensation.”**²⁸ However, *Carlos Superdrug Corporation* considered that there was sufficient basis for taking without compensation by invoking the exercise of police power of the State. In doing so, the Court failed to consider that a **permanent** taking of property for public use is an exercise of eminent domain for which the government must pay compensation. Eminent domain is a sub-class of police power and its exercise is subject to certain conditions, that is, the taking of property for public use and payment of just compensation.

It is incorrect to say that private establishments only suffer a minimal loss when they give a 20% discount to senior citizens. Under R.A. 9257, the 20% discount applies to **“all establishments** relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;”²⁹ **“admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of senior citizens;”**³⁰ **“medical and dental services, and diagnostic and laboratory fees provided under Section 4(e) including professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the Department of Health, in coordination with the Philippine Health Insurance Corporation;”**³¹ **“fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens;”**³² and **“public railways, skyways and bus fare for the exclusive use and enjoyment of senior citizens.”**³³ **The 20% discount cannot be considered minimal because not all private establishments make a 20% margin of profit. Besides, on its face alone, a 20% mandatory discount based on the gross selling price is huge. The 20% mandatory discount is more than the 12% Value Added Tax, itself not an insignificant amount.**

The majority opinion states that the grant of 20% discount to senior citizens is a regulation of businesses similar to the regulation of public utilities and businesses imbued with public interest. The majority opinion states:

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment

²⁸ Supra note 3, at 130.

²⁹ Section 4(a).

³⁰ Section 4(b).

³¹ Section 4(f).

³² Section 4(g).

³³ Section 4(h).



control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate or return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to a class of senior citizens.

x x x.³⁴

However, the majority opinion admits that the 20% mandatory discount is **only “similar to, but with substantial distinctions** from price control or rate of return on investment control laws” which “regulate public utilities or industries/enterprises imbued with public interest.” Since there are admittedly **“substantial distinctions,”** regulatory laws on public utilities and industries imbued with public interest cannot be used as justification for the 20% mandatory discount without payment of just compensation. The profits of public utilities are regulated because they operate under franchises granted by the State. Only those who are granted franchises by the State can operate public utilities, and these franchisees have agreed to limit their profits as condition for the grant of the franchises. The profits of industries imbued with public interest, but which do not enjoy franchises from the State, can only be regulated **temporarily** during emergencies like calamities. There has to be an emergency to trigger price control on businesses and only for the duration of the emergency. The profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently. The majority opinion cites a case³⁵ that allegedly allows the State to limit the net profits of private establishments. However, the case cited by the majority opinion refers to **franchise holders of electric plants.**

The State cannot compel private establishments without franchises to grant discounts, or to operate at a loss, because that constitutes taking of private property for public use without just compensation. The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 1987 Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. One example is the two-day liquor ban during elections under Article 261 of the Omnibus Election Code but this, again, is **only for a limited period.** This is a valid exercise of police power of the State.

³⁴ Decision, p. 20.

³⁵ *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968).



However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there must be just compensation because the regulation now reaches the level of eminent domain.**

The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

Finally, the 20% discount granted to senior citizens is not *per se* unreasonable. It is the provision that the 20% discount may be claimed by private establishments as tax deduction, and no longer as tax credit, that is oppressive and confiscatory.

Prior to its amendment, Section 4 of R.A. 7432 reads:

SEC. 4. *Privileges for the Senior Citizens.* - The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments, relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit;**

x x x x (Emphasis supplied)

Under R.A. 9257, the amendment reads:

SEC. 4. *Privileges for the Senior Citizens.* - The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of



senior citizens, including funeral and burial services for the death of senior citizens;

x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted.** Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

Due to the patent unconstitutionality of Section 4 of R.A. 7432, as amended by R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, the old law, or Section 4 of R.A. 7432, which allows the 20% discount as tax credit, is automatically reinstated. Where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force.³⁶ An amendatory law, if declared null and void, in legal contemplation does not exist.³⁷ The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit.

ACCORDINGLY, I vote to **GRANT** the petition.



ANTONIO T. CARPIO
Associate Justice

³⁶ See *Government of the Philippine Islands v. Agoncillo*, 50 Phil. 348 (1927), citing *Eberle v. Michigan* 232 U.S. 700 [1914], *People v. Mensching*, 187 N.Y.S., 8, 10 L.R.A., 625 [1907].

³⁷ See *Coca-Cola Bottlers Phils., Inc. v. City of Manila*, 526 Phil. 249 (2006).