

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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CONCURRING OPINION

VELASCO, JR., J.:

The issue in the present case hinges upon the consequence of a reclassification of a mandated discount as a deduction from the gross income instead of a tax credit deductible from the tax liability of affected taxpayers. In particular, the petition questions the constitutionality of Section 4 of Republic Act No. (RA) 9257, and its implementing rules, which has allowed the amount representing the 20% forcible discount to senior citizens as a deduction from gross income rather than a tax credit.

As cited by the *ponencia*, this Court had previously resolved the issue in *Carlos Superdrug v. DSWD (Carlos Superdrug)* by sustaining the reclassification as a proper implement of the police power of the State. A view, however, has been advanced that We should take a second look at the doctrine laid down in *Carlos Superdrug* and declare Sec. 4 of RA 9257 as an improper exercise of the power of eminent domain by the State as it permits the deprivation of private property without just compensation.

Indeed, the practice of allowing taking of private property without just compensation is an abhorrent policy. However, I do not agree that such policy underpins Sec. 4 of RA 9257. Rather, it is my humble opinion that Sec. 4 of RA 9257 is no more than a regulation of the right to profits of certain taxpayers in order to benefit a significant sector of society. It is, thus, a valid exercise of the police power of the State.

The right to profit, as distinguished from profit itself, is not subject to expropriation as it is of a mercurial character that denies the possibility of taking for a public purpose. It is a right solely within the discretion of the taxpayers that cannot be appropriated by the government. The mandated 20% discount for the benefit of senior citizens is not a property already vested with the taxpayer before the sale of the product or service. Such percentage of the sale price may include both the markup on the cost of the good or service and the income to be gained from the sale. Without the sale and corresponding purchase by senior citizens, there is no gain derived by

the taxpayer. This nebulous nature of the financial gain of the seller deters the acquisition by the state of the “domain” or ownership of the right to such financial gain through expropriation. At best, the State is empowered to **regulate this right to the acquisition of this financial gain** to benefit senior citizens by ensuring that the good or service be sold to them at a price 20% less than the regular selling price.

Time and again, this Court has recognized the fundamental police power of the State to regulate the exercise of various rights holding that “equally fundamental with the private right is that of the public to regulate it in the common interest.”¹ This Court has, for instance, recognized the power of the State to regulate and temper the right of employers to dismiss their employees.² Similarly, We have sustained the State’s power to regulate the right to acquire and possess arms.³ Contractual rights are also subject to the regulatory police power of the State.⁴ The right to profit is not immune from this regulatory power of the State intended to promote the common good and the attainment of social justice. As early as the first half of the past century, this Court has rejected the doctrine of *laissez faire* as an axiom of economic theory and has upheld the power of the State to regulate businesses even to the extent of limiting their profit.⁵ Thus, the imposition of price control is recognized as a valid exercise of police power that does not give businessmen the right to be compensated for the amount of what they could have earned considering the demand of the market. The effect of RA 9257 is not dissimilar to a price control law.

The fact that the State has not fixed an amount to be deducted from the selling price of certain goods and services to senior citizens indicates that RA 9257 is a regulatory law under the police power of the State. It is an acknowledgment that proprietors can and will factor in the potential deduction of 20% of the price given to some of their customers, i.e., the senior citizens, in the overall pricing strategy of their products and services. RA 9257 has to be sure not obliterated the right of taxpayers to profit nor divested them of profits already earned; it simply regulated the right to the

¹ *Philippine American Life Insurance Company v. Auditor General*, No. L-19255, January 18, 1968; citing *Nebbia v. New York*, 291 U.S. 502, 523, 78 L. ed. 940, 948-949.

² *Gelmart Industries, Inc. v. National Labor Relations Commission*, G.R. No. 85668, August 10, 1989, 176 SCRA 295.

³ *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534.


⁴ *Philippine American Life Insurance Company*, supra note 1.

⁵ *Ermita-Malate Hotel and Hotel Operators Association, Inc., et al. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849. See also *Edu v. Ericta*, No. L-32096, October 24, 1970, citing *Pampanga Bus Co. v. Pambusco’s Employees’ Union*, 68 Phil. 541 (1939); *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485 (1940); *International Hardwood and Veneer Company v. The Pangil Federation of Labor*, 70 Phil. 602 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 340 (1940); *Tapang v. Court of Industrial Relations*, 72 Phil. 79 (1941); *People v. Rosenthal*, 68 Phil. 328 (1939); *Pangasinan Trans. Co., Inc. v. Public Service Com.*, 70 Phil. 221 (1940); *Camacho v. Court of Industrial Relations*, 80 Phil. 848 (1948); *Ongsiaco v. Gamboa*, 86 Phil. 50 (1950); *De Ramas v. Court of Agrarian Relations*, No. L-19555, May 29, 1964, 11 SCRA 171; *Del Rosario v. De los Santos*, No. L-20589, March 21, 1968, 22 SCRA 1196; *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Phil. Air Lines Employees’ Asso. v. Phil Air Lines, Inc.*, No. L-18559, June 30, 1964, 11 SCRA 387; *People v. Chu Chi*, 92 Phil. 977 (1953); *Roman Catholic Archbishop of Manila v. Social Security Com.*, No. L-15045, January 20, 1961, 1 SCRA 10. cf. *Director of Forestry v. Muñoz*, No. L-24746, June 28, 1968, 23 SCRA 1183.

attainment of these profits. The enforcement of the 20% discount in favor of senior citizens does not, therefore, partake the nature of “taking” in the context of eminent domain. As such, proprietors like petitioners cannot insist that they are entitled to a peso-for-peso compensation for complying with the valid regulation embodied in RA 9257 that restricts their right to profit.

As it is a regulatory law, not a law implementing the power of eminent domain, the assertion that the use of the 20% discount as a deduction negates its role as a “just compensation” is mislaid and irrelevant. In the first place, as RA 9257 is a regulatory law, the allowance to use the 20% discount, as a deduction from the gross income for purposes of computing the income tax payable to the government, is not intended as compensation. Rather, it is simply a recognition of the fact that no income was realized by the taxpayer to the extent of the 20% of the selling price by virtue of the discount given to senior citizens. Be that as it may, the logical result is that no tax on income can be imposed by the State. In other words, by forcing some businesses to give a 20% discount to senior citizens, the government is likewise foregoing the taxes it could have otherwise earned from the earnings pertinent to the 20% discount. This is the real import of Sec. 4 of RA 9257. As RA 9257 does not sanction any taking of private property, the regulatory law does not require the payment of compensation.

Finally, it must be noted that the issue of validity of Sec. 4 of RA 9257 has already been settled. After years of implementation of the law, economic progress has not been put to a halt. In fact, it has not been alleged that a business establishment commonly patronized by senior citizens and covered by RA 9257 had shut down because of the mandate to give the 20% discount and the supposed deficient “compensation” under Sec. 4 of RA 9257. This clearly shows that the regulation made in the subject law is a minimal encumbrance to businesses that must not be employed to overthrow an otherwise reasonable, logical, and just instrument of the social justice policy of our Constitution.



PRESBITERO J. VELASCO, JR.
Associate Justice