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G.R. No. 215650 — AUGUSTO L. SYJUCO, JR., *petitioner, versus* **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.; TEODORO CASIÑO; MELQUIADES A. ROBLES; ELMER C. LABOG; SAMMY T. MALUNES; FERDINAND R. GAITE; VENCER CRISOSTOMO; JOSSEL I. EBESATE; GLORIA G. ARELLANO; HERMAN TIU LAUREL; MYRLEON E. PERALTA; AMORSOLO L. COMPETENTE; ELVIRA Y. MEDINA; MARIA DONNA GREY MIRANDA; ANGELO VILLANUEVA SUAREZ; JOSE SONNY G. MATULA; DAVID L. DIWA; JAMES BERNARD E. RELATIVO; and GIOVANNI A. TAPANG, *petitioners, versus* **JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; RENATO Z. SAN JOSE, in his capacity as OFFICER-IN-CHARGE OF METRO RAIL TRANSPORT 3 OFFICE; LIGHT RAIL TRANSIT AUTHORITY, represented by HONORITO D. CHANECO as ADMINISTRATOR; METRO RAIL TRANSIT CORPORATION; and LIGHT RAIL MANILA CORPORATION,** *respondents*;

G.R. No. 215703 — UNITED FILIPINO CONSUMERS AND COMMUTERS, INC., represented by its PRESIDENT RODOLFO B. JAVELLANA, JR., *petitioner, versus* **JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; METRO RAIL TRANSIT CORPORATION; and LIGHT RAIL TRANSIT AUTHORITY,** *respondents*;

G.R. No. 215704 — BAYAN MUNA REPRESENTATIVE NERI JAVIER COLMENARES; BAYAN MUNA REPRESENTATIVE CARLOS ISAGANI ZARATE; ANTHONY IAN CRUZ; IMELDA V. LUNA; and CARL ANTHONY ALA, *petitioners, versus* **JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; LIGHT RAIL TRANSIT AUTHORITY; and RENATO Z. SAN JOSE, in his capacity as OFFICER-IN-CHARGE OF METRO RAIL TRANSIT 3 OFFICE,** *respondents*;

G.R. No. 216735 — JOSEPH VICTOR G. EJERCITO, JOSE L. ATIENZA, JR., IRWIN C. TIENG, MARIANO MICHAEL DEL MONTE VELARDE, JR., LEAH D. PAQUIZ, GUSTAVO S.

TAMBUNTING, JESUS CRISPIN C. REMULLA, ALAN A. TANJUSAY, ALLAN S. MONTAÑO, LEODY Q. DE GUZMAN, RENATO B. MAGTUBO, and ANNIE E. GERON, *petitioners*, ***versus*** **WINSTON M. GINEZ, in his capacity as CHAIRPERSON OF THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD; JOSEPH EMILIO A. ABAYA, in his capacity as SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; RENATO Z. SAN JOSE, in his capacity as OFFICER-IN-CHARGE OF METRO RAIL TRANSIT 3 OFFICE; LIGHT RAIL TRANSIT AUTHORITY; METRO RAIL TRANSPORT CORPORATION; and LIGHT RAIL MANILA CORPORATION,** *respondents.*

Promulgated:

March 28, 2023

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

These consolidated petitions challenge the validity of Department of Transportation and Communications[1] (DOTC) Department Order (DO) No. 2014-014,[2] which adopted a uniform distance-based fare scheme for the Light Rail Transit (LRT) Lines 1 (LRT-1) and 2 (LRT-2), and the Metro Rail Transit (MRT) Line 3 (MRT-3).[3] Petitioners claim, among others, that the DOTC Secretary and the Light Rail Transit Authority (LRTA) do not have the authority to impose a fare increase for the LRT and the MRT. In addition, they posit that DO No. 2014-014 was issued without the requisite notice and hearing, in violation of the due process clause of the Constitution. Thus, they filed the present petitions before the Court to nullify DO No. 2014-014 and to enjoin respondents from further implementing the fare increase.[4]

The *ponencia* dismisses the petitions and upholds the validity of DO No. 2014-014 for substantially complying with the requirements of notice and hearing. The notice and hearing requirement for fixing rates is applicable in this case, despite the quasi-legislative nature of the issuance, following *Manila International Airport Authority v. Airspan Corporation*[5] (*MIAA*), where the Court held that attached agencies to the DOTC should comply with

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1 Following the creation of the Department of Information and Communications Technology (DICT) by virtue of Republic Act No. 10844 (AN ACT CREATING THE DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, DEFINING ITS POWERS AND FUNCTIONS APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, dated May 23, 2016), the DOTC is now the Department of Transportation (DOTr).

2 Light Rail Transit (LRT) Lines 1 & 2 and Metro Rail Transit (MRT) Line 3 Fare Adjustment, dated December 18, 2014.

3 *Ponencia*, p. 4.

4 Id. at 12.

5 486 Phil. 1136 (2004), cited in the *ponencia*, p. 51.

the requisite public consultation under Executive Order No. 292 or the Administrative Code of 1987 (Administrative Code).[6]

As for the substantive due process requirements, the *ponencia* finds that the fares were reasonable and just, as these were determined in consideration of a number of factors affecting the operations and status of the rail lines.[7]

I concur as to the result. However, I respectfully maintain my dissent from the holding by the majority that the assailed issuance is a rate-fixing regulation.

The threshold issue here is the reduction of the subsidies to the passenger fares for the LRT-1, the LRT-2, and the MRT-3, which alone resulted in the concomitant increase of fares. While the issue of subsidy reduction, as a policy decision, is relevant to the procedural issue of justiciability, it is also significant in determining whether notice and hearing are required in the first place. The Court should therefore make a prior determination that the assailed Department Order was indeed an exercise of the rate-fixing authority before going into the merits of the notice and hearing requirements.

Thus, I respectfully submit this Concurring and Dissenting Opinion to expound on my position that the challenged regulation does ***not*** involve rate-fixing. Rather, it only implements the executive policy of reducing the subsidies allotted for the expenses of operating the railway system. For this reason, there is no legal requirement for the DOTC and the LRTA to hold any public consultation before its implementation, the consequent adjustment in the fares having resulted ***only*** from the decreased subsidy.

That being said, if the Court were to assume that the subject regulation is in the nature of a rate-fixing function, I agree with the *ponencia* that the DOTC and the LRTA complied with the notice and hearing requirements under the Administrative Code. The exercise of a quasi-legislative or rate-fixing power is not as stringent as those required for quasi-judicial proceedings. To this point, the records clearly establish that the DOTC and the LRTA held public consultations for the new fare scheme that comply with the notice and requirement hearing in the Administrative Code. The adjusted fare scheme, brought about by the reduction in government subsidy, is likewise reasonable and just.

I.

Respondents in these consolidated petitions, particularly the Light Rail Manila Corporation and the Metro Rail Transit Corporation, argue that DO No. 2014-014 was merely a reduction in government subsidy. As such, the challenged regulation is not an exercise of a rate-fixing authority by the LRTA

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6 Id. at 1145

7 *Ponencia*, pp. 61-63.

and the DOTC, which requires prior notice and hearing.[8] Relatedly, the DOTC points out that the fare adjustment was made pursuant to legitimate policy objectives, which include the "[r]eallocation of government resources to other priority infrastructure and social services projects," as well as to "[reduce] the government subsidies to the LRT lines and cross-subsidies to Metro Manila commuters by all taxpayers."[9] For these reasons, respondents collectively argue that the requirement of prior public consultation should not apply.

The *ponencia* does not discuss the merits of this argument, and immediately proceeds instead to rule on the respective authority of the DOTC and the LRTA to increase the fare for the MRT-3, and for the LRT-1 and LRT-2. The DOTC and the LRTA are ultimately found to have acted within the bounds of their authority in providing for higher rates for transit commuters.[10] While the challenged regulation is deemed to have been validly issued, the *ponencia*'s ruling is premised on the conclusion that DO No. 2014-014 was in the nature of a rate-fixing regulation, which in turn, must comply with the notice and hearing requirements of the Administrative Code.

I respectfully disagree.

"Rates" refer to the:

> "charge to the public for a service open to all and upon the same terms, including individual or joint rates, tolls, classifications, or schedules thereof, as well as commutation, mileage, kilometrage and other special rates which shall be imposed by law or regulation to be observed and followed by any person."[11]

Since a fare represents the price applicable to commuters using public transport, it may be reasonably inferred that setting or adjusting fares may constitute as "rate-fixing."

However, the revision of the fare schedule by virtue of DO No. 2014-014 was not an exercise of the regulatory power to fix rates. In order to come within the purview of the regulatory function of "rate-fixing," the rates must be for purposes of not only covering the costs of operation, but also of providing the public utility with a reasonable return on investment.

In *Republic v. Manila Electric Co.*,[12] the Court explained the considerations in prescribing or adjusting rates for the services of a public utility:

> In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. **However, the power to regulate rates**

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8 *Rollo* (G.R. No. 215650), Vol. 3, pp. 1171-1179, 1232-1239, Memorandum for Public Respondents dated November 3, 2016.

9 *Rollo* (G.R. No. 215650), Vol. 2, p. 986, Memorandum for Public Respondents dated November 3, 2016.

10 *Ponencia*, pp. 35-46.

11 ADMINISTRATIVE CODE of 1987, Book VII, Chapter 1, Sec. 2(3).

12 440 Phil. 389 (2002).

does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be [ones] that [yield] a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered. The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests.

In his famous dissenting opinion in the 1923 case of *Southwestern Bell Tel. Co. v. Public Service Commission*, Mr. Justice Brandeis wrote:

> The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in an enterprise. Upon the capital so invested, the Federal Constitution guarantees to the utility the opportunity to earn a fair return x x x. The Constitution does not guarantee to the utility the opportunity to earn a return on the value of all items of property used by the utility, or of any of them.
>
> x x x x
>
> The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His [or her] company is the substitute for the State in the performance of the public service, thus becoming a public servant. **The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business.**
>
> x x x x

In determining the just and reasonable rates to be charged by a public utility, three major factors are considered by the regulating agency: a) rate of return; b) rate base; and c) the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base. The rate of return is a judgment percentage which, if multiplied with the rate base, provides a fair return on the public utility for the use of its property for service to the public. The rate of return of a public utility is not prescribed by statute but by administrative and judicial pronouncements. This Court has consistently adopted a 12% rate of return for public utilities. The rate base, on the other hand, is an evaluation of the property devoted by the utility to the public service or the value of invested capital or property which the utility is entitled to a return.[13] (Emphasis supplied)

As well, in *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*,[14] the Court discussed the nature of rate-fixing in this wise:

> Moreover, rate making or rate fixing is not an easy task. It is a delicate and sensitive government function that requires dexterity of judgment and sound discretion with the settled goal of arriving at a just and reasonable rate acceptable to both the public utility and the public. Several factors, in fact, have to be taken into consideration before a balance could

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[13] Id. at 397-400.

[14] 309 Phil. 358 (1994).

> be achieved. A rate should not be confiscatory as would place an operator in a situation where he [or she] will continue to operate at a loss. **Hence, the rate should enable public utilities to generate revenues sufficient to cover operational costs *and provide reasonable return on the investments***. On the other hand, a rate which is too high becomes discriminatory. It is contrary to public interest. A rate, therefore, must be reasonable and fair and must be *affordable* to the end user who will utilize the services.[15] (Emphasis supplied)

While administrative agencies engaged in rate-fixing should balance the interests of the public with the public utility rendering the service, ultimately, a "public utility is entitled to a just compensation and a fair return upon the value of its property while it is being used by the public."[16]

From the foregoing, it may easily be gleaned that the function of fixing rates necessarily involves a determination of a reasonable return on the investment on the part of the public utility.

The significance of this purpose should not be lost to the Court. Here, the DOTC and the LRTA did not issue DO No. 2014-014 to increase the earnings and in turn, recoup the investments made in the railway systems. It was issued in response to the President's fiscal policy, a policy which the President had every authority to impose, of reducing the government subsidy on these railway transit systems. The *ponencia* itself recognizes this, citing former President Benigno Simeon Aquino III's State of the Nation Address on July 22, 2013, in which "he reiterated the need to adjust the LRT's and MRT's fares so that the government subsidy x x x can be used for other social services."[17]

As a matter of policy, the government may subsidize social and economic programs for the general welfare of the public. These subsidies are often more apparent in targeted assistance programs such as the Fuel Subsidy Program, where identified beneficiaries are directly provided with cash to lessen the impact of the increase in oil prices.[18] Also illustrative of the direct targeted assistance programs is the *Pantawid Pasada Program* where certain franchise holders of public utility jeepneys nationwide were provided with a fuel card for a certain amount.[19] Other subsidy programs also come in the form of discounts for a specified class of persons, as in the case of senior citizens, who are granted 20% discounts in commodities, to improve their welfare as they are "less likely to be gainfully employed, more prone to illnesses and

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15 Id. at 378.

16 *Metropolitan Water District v. Public Service Commission*, 58 Phil. 397, 400 (1933).

17 *Ponencia*, p. 57.

18 Department of Budget and Management, *DBM Releases P3.0 Billion for Fuel Subsidy and Discount Programs*, available at <https://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/2102-dbm-releases-p3-0-billion-for-fuel-subsidy-and-discount-programs#>; See also Republic Act No. 11639, 2022 General Appropriations Act, Volume I-B, XXV, Department of Transportation, available at <https://www dbm.gov.ph/wp-content/uploads/GAA/GAA2022/Volumel /DOTr/DOTr.pdf>, where an appropriation for the Fuel Subsidy Program is allotted for public utility vehicle (PUV), taxi, tricycle, and full-time ride-hailing and delivery service drivers nationwide, when the average crude oil price reaches a certain threshold (Special Provision no. 8).

19 LTFRB, *Pantawid Pasada* Fuel Card Processes and Requirements, available at <https://ltfrb.gov.ph/?p=3938>.

other disabilities and, thus, in need of subsidy in purchasing basic commodities."[20]

In the case of public transport systems, the government may likewise subsidize the costs for the operation of a public transit. This ensures that majority of its users are able to afford the fare, which in turn, increases mobility. A recent example is the EDSA Bus Carrousel, which was fully subsidized by the government and provided road-based transport at no cost to commuters along the route.[21]

For the major urban public railways such as the LRT-1, the LRT-2, and the MRT-3, the government subsidy is not as direct because commuters still pay for the fare in order to use the train. The government, however, bears a significant portion of the costs to operate these transit systems.[22] The Memorandum[23] dated October 27, 2010 by the Secretary of Finance, the Secretary of Budget and Management, the Secretary of Transportation and Communications, and the Socio-Economic Planning Secretary showed that the government subsidized more than half of the fares for each passenger as the farebox revenue for these railways cannot fully cover the total operating and maintenance expenses. The relevant figures in the October 27, 2010 Memorandum may be summarized in this wise:

	Average Fare	**Full-Cost Fare (2010)**	**Government Subsidy**	**Percentage of Government Subsidy**
LRT-1	₱14.20	₱35.77	₱21.57	60%
LRT-2	₱13.51	₱60.75	₱47.24	78%
MRT-3	₱12.30	₱60.03	₱47.73	80%

Immediately preceding the issuance of DO No. 2014-014, the actual cost per passenger for the LRT-1 and LRT-2 was ₱34.74 as of December 12, 2013. Since the passenger pays an average of ₱14.28, the difference of ₱20.46 or 59% of the actual cost was shouldered by the government. For the MRT-3, the actual cost was ₱53.96 and the average fare was ₱12.30. The difference of ₱41.66, which represents 77% of the actual cost, was likewise assumed by the government.[24]

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20 *Manila Memorial Park, Inc. v. Secretary of Social Welfare and Development*, 722 Phil. 538, 578 (2013).

21 *N.B.* This was funded through, R.A. No. 11494, AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, or the Bayanihan to Recover as One Act, dated September 11, 2020, Secs. 4(fff) and 10(g)(2).

22 Andra Charis Mijares, Madan B. Regmi, Tetsuo Yai, *Enhancing the sustainability and inclusiveness of the Metro Manila's urban transportation systems: Proposed fare and policy reforms*, UN ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (ESCAP), Transport and Communications Bulletin for Asia and the Pacific (No. 84, 2014), available at <https://www.unescap.org/sites/default/files/Bulletin%2084%20-%20Article%203_0.pdf>.

23 *Rollo* (G.R. No. 215650), Vol. 1, pp. 105-108.

24 Id. at 218; Andra Charis Mijares, Madan B. Regmi, Tetsuo Yai, *Enhancing the sustainability and inclusiveness of the Metro Manila's urban transportation systems: Proposed fare and policy reforms*, supra note 22.

Unlike the targeted subsidies in which financial assistance is readily handed out to identified beneficiaries, the subsidy for these railway systems indirectly benefits the public by keeping the fare down. Be that as it may, much in same way that the government cannot be precluded from reducing these direct financial subsidies, either by decreasing the amount or cutting down the number of beneficiaries, the Court cannot bar the government from substantially decreasing the subsidies extended to the commuting public. To my mind, **these are matters of Executive wisdom that the Court cannot inquire into**.

A careful reading of DO No. 2014-014 would reveal that its issuance was predicated on the "user-pays" principle in the Medium-Term Philippine Development Plan, with the end view of "an equitable distribution of government funds currently dedicated to subsidizing the operations of the [LRT-1, the LRT-2, and the MRT-3] in Metro Manila to much-needed development projects and relief operations in other parts of Luzon, Visayas, and Mindanao."[25] The tenor of the challenged regulation, therefore, was not to increase the fares for the solitary purpose of generating more revenue for these railways — rather, it implements the reduction of subsidies allotted for the operation and maintenance expenses of the LRT and the MRT, in line with the fiscal policy of the Executive to reallocate these funds for other worthwhile government projects.

In this light, prior notice and hearing are not required, as this is not a rate-fixing function within the purview of the Administrative Code. At the risk of being repetitive, the rates were not adjusted to allow the railway operators to profit from the operation of the public utility, or to recoup their capital expenditures. The fares were inevitably affected because the government subsidy to cover the deficit between the cost and the farebox revenue was reduced.[26] Stated differently, had the subsidy been granted through direct monetary transfer to each passenger in order to cover a portion of his or her fare, the subsequent reduction or withdrawal of the subsidy, which results in the payment of an increased or adjusted fare, cannot be characterized as a rate-fixing function.

On this point, it bears noting that the preparation of the government budget is an Executive function, conferred by the Constitution on the President. Section 22, Article VII of the 1987 Constitution states:

> Section 22. The President shall submit to Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

While no public funds may be paid out of the Treasury except in pursuance of an appropriation made by law, Congress may not increase the

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25 DO No. 2014-014 dated December 18, 2014.

26 *See* Andra Charis Mijares, Madan B. Regmi, Tetsuo Yai, *Enhancing the sustainability and inclusiveness of the Metro Manila's urban transportation systems: Proposed fare and policy reforms*, supra note 22.

appropriation recommended by the President.[27] This is founded on the principle that fiscal matters relating to the preparation and execution of the government budget are functions of the Executive. The Court's ruling in *Guingona, Jr. v. Carague*[28] emphasizes the discretion granted to the President in the preparation of the budget:

> The Government budgetary process has been graphically described to consist of four major phases as aptly discussed by the Solicitor General:
>
> > The Government budgeting process consists of four major phases:
> >
> > > 1. *Budget preparation.* The first step is essentially tasked upon the Executive Branch and covers the estimation of government revenues, **the determination of budgetary priorities and activities within the constraints imposed by available revenues and by borrowing limits, and the translation of desired priorities and activities into expenditure levels.**
> > >
> > > Budget preparation starts with the budget call issued by the Department of Budget and Management. Each agency is required to submit agency budget estimates in line with the requirements consistent with the general ceilings set by the Development Budget Coordinating Council (DBCC).
> > >
> > > With regard to debt servicing, the DBCC staff, based on the macroeconomic projections of interest rates (e.g. LIBOR rate) and estimated sources of domestic and foreign financing, estimates debt service levels. Upon issuance of budget call, the Bureau of Treasury computes for the interest and principal payments for the year for all direct national government borrowings and other liabilities assumed by the same.
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> > > 2. *Legislative authorization.* At this stage, Congress enters the picture and deliberates or acts on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law.[29] (Emphasis suppied)

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27 CONSTITUTION, Art. VI, Sec. 25(1).
28 273 Phil. 443 (1991).
29 Id. at 460.

Evidently, any grant or withdrawal of financial assistance has a corresponding item in the appropriations bill, the amount of which is left to the discretion of the President. The consequence of expanding or contracting subsidies, while felt as an increase or decrease in the prices of goods or, as in this case, the fares for public transit, is only an effect of the Executive's exercise of its authority to determine the budget. The Court certainly has no business in questioning the extent of these subsidies. Neither should the Court unduly burden the authority of the Executive by subjecting to public consultation any concomitant withdrawal or reduction of subsidies.

In *Citizens' Alliance for Consumer Protection v. Energy Regulatory Board*,[30] the Court was confronted with a challenge on the constitutionality of the Oil Price Stabilization Fund (OPSF), or the trust account established to minimize the frequent price changes brought about by the adjustments in prices for crude oil and petroleum products. In rejecting the challenge that the same was oppressive and arbitrary, the Court recognized that the OPSF "is in effect a device through which the domestic prices of petroleum products are subsidized in part."[31] Any question as to its propriety were deemed as questions that go into "the wisdom, justice and expediency of the establishment of the OPSF, issues which are not properly addressed to this Court and which this Court may not constitutionally pass upon."[32]

Further, in *Garcia v. Executive Secretary*,[33] the Court did not give due course to the challenge on the constitutionality of the law deregulating the oil industry. The Court emphasized that any ruling deciding on when and to what extent the deregulation should take place would necessarily pass upon the wisdom of the policy of deregulation.[34]

Verily, issues on the extent of a government subsidy, much less the grant thereof, are matters of policy that are left for the determination of the Executive. With the increasing ridership in the LRT and the MRT, and considering the inevitable depreciation of the railways over time, the burden of continuously covering the operation and maintenance expense would likewise increase. In this regard, any adjustment to the subsidy, or even the non-adjustment thereof, would unavoidably have an effect on the fares. Such effect, by itself, does not immediately trigger the requirements for public consultation. To rule that the policy decision to subsidize a public transit system is an exercise of rate-fixing would inevitably bind the President to requirements of notice and hearing under the Administrative Code. **This is a delimitation on the power of the President not only to prescribe the budget, but it likewise imposes a heavy fiscal burden to be carried by each succeeding administration.**

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30 245 Phil. 467 (1988).
31 Id. at 485.
32 Id. at 486.
33 602 Phil. 64 (2009).
34 Id. at 75.

In sum, DO No. 2014-014 was only issued pursuant to the fiscal policy of withdrawing or reducing the subsidies on the operation and maintenance of these railways. By issuing the challenged regulation, the DOTC and the LRTA were not engaged in the exercise of a rate-fixing function, for which the requisite public consultation must be observed. Ultimately, the President's exercise of his or her power to propose the budget for the administration of government includes the concomitant power to make adjustments in the subsidies for the government's programs.

II.

At any rate, even on the assumption that DO No. 2014-014 is an exercise of the DOTC's and LRTA's rate-fixing authority, I submit that the requisites of prior notice and hearing were complied with and that the adjusted fares are just and reasonable.

I expound.

The question as to whether notice and hearing is required in the exercise of an administrative agency's quasi-legislative power is not novel. As the *ponencia* aptly discussed, this issue was initially settled in *Vigan Electric Light Company Inc. v. The Public Service Commission*[35] (*Vigan Electric*), where the Court held that when the rules or rates are meant to apply to all without distinction, then the rate-fixing function partakes of a legislative character that does not require prior notice and hearing. However, if the rates apply exclusively to one party, grounded upon a finding of fact, the function partakes of a quasi-judicial character, the exercise of which demands prior notice and hearing.[36]

This doctrine was reiterated in *Central Bank of the Philippines v. Cloribel*[37] (*Central Bank*). The Court, however, further clarified that previous notice and hearing are not essential to the validity of rules and regulations that impose rates for the general public, unless there is a statutory requirement to this effect:

> Then, too, the Central Bank is supposed to gather relevant data and make the necessary study, but has no legal obligation to notify and hear anybody, before exercising its power to fix the maximum rates of interest that banks may pay on deposits or any other obligations. Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. **It is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise, and there is**

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35 119 Phil. 304 (1964).
36 Id. at 312.
37 150-A Phil. 86 (1972).

> **no statutory requirement to this effect**, insofar as the fixing of maximum rates of interest payable by banks is concerned.[38] (Emphasis supplied)

Thus, while *Vigan Electric* indeed dispensed with the requirement of prior notice and hearing in the administrative agency's exercise of its rate-fixing authority, this is not a hard-and-fast rule. If the governing law requires the conduct of notice and hearing before the adjustment or imposition of rates, there should be compliance with these twin requirements even if the rates apply to all enterprises, without distinction. This rule was concisely summarized in *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*[39] (*Association of International Shipping Lines*), where the Court held as follows:

> 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**.
>
> 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 <u>except where the legislature itself requires it</u>**.[40] (Emphasis and underscoring supplied)

In *Francisco, Jr. v. Toll Regulatory Board*,[41] the Court was confronted with the validity of the provisions in the Supplemental Toll Operation Agreements that supposedly tied the hands of the Toll Regulatory Board (TRB) by allowing automatic adjustments in toll rates according to a fixed formula. These provisions, petitioners therein claimed, negated the public hearing requirement.[42] The Court rejected this argument, declaring that the plain language of Presidential Decree (PD) No. 1112[43] and PD No. 1894[44] should apply, which allow only the imposition of initial toll rates without any public hearing. For subsequent toll rate adjustments, the Court pronounced that the tollway operators and the TRB are statutorily required to undergo the requirements of public hearing and publication.[45]

Parenthetically, in *MIAA*, the Court was confronted with the validity of the revised fees, charges, and rates for the use of the facilities of the Manila International Airport Authority (MIAA). Respondents therein alleged that the new rates lack prior notice and hearing, as these were imposed without complying with the requirements of the Administrative Code.[46] The MIAA countered that its charter authorizes it to increase fees without need of public

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38 Id. at 101.
39 494 Phil. 664 (2005).
40 Id. at 676-677.
41 648 Phil. 54 (2010).
42 Id. at 125-126.
43 Titled TOLL OPERATION DECREE, dated March 31, 1977.
44 Titled AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, dated December 22, 1983.
45 *Francisco, Jr. v. Toll Regulatory Board*, supra note 41, at 139.
46 *Manila International Airport Authority v. Airspan Corporation*, supra note 5, at 1140.

hearing.[47] However, the Court ruled that since the MIAA is an attached agency of the DOTC (now, the DOTr), it is likewise governed by Section 9(2), Chapter 2, Book VII of the Administrative Code, which requires notice and public hearing in the fixing of rates.[48] The MIAA failed to comply with this requirement, and as a result, the rate increases were declared invalid.

Based on the foregoing, it is evident that *Vigan Electric* was effectively modified by the Court's succeeding pronouncements in *Central Bank*, *Association of International Shipping Lines*, and *MIAA*. Accordingly, when the governing law imposes the requirement of notice and hearing even for rules and rates promulgated pursuant to an agency's rule-making power, compliance with this requirement is essential to the validity thereof. In other words, despite the quasi-legislative character of rate-fixing, the administrative agency may not necessarily dispense with the requirement of public consultation when the governing statute explicitly requires the conduct of notice and hearing. In such instances, the administrative agency should notify the public and provide it an opportunity to be heard before imposing the new rates.

III.

Having established that the Court should likewise inquire whether the governing law requires notice and hearing, I submit that even assuming *arguendo* that these requisites are required in the issuance of DO No. 2014-014, the same were duly observed.

The twin requirements on notice and hearing are pertinently provided under the Administrative Code, to wit:

> 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.
>
> (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 case of opposition, the rules on contested cases shall be observed.[49] (Emphasis supplied)

As earlier mentioned, the Court already recognized in *MIAA* that the DOTC (hereinafter, the DOTr) is governed by this provision of the Administrative Code. Thus, it cannot unilaterally impose new rates, even if such rates apply to the general public, without the required notice and hearing. Otherwise, the regulation will be declared void for violating the due process requirements of the Administrative Code.

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47 Id. at 1142.
48 Id. at 1145.
49 ADMINISTRATIVE CODE of 1987, Book VII, Chapter 2 (Rules and Regulations).

Be that as it may, the *MIAA* ruling does not squarely apply in this case.[50] Unlike the factual circumstances of *MIAA* where there was a complete absence of notice and hearing, the DOTr in this case did not unilaterally impose the new fare scheme for the public railways. On the contrary, the records show that it sufficiently complied with the requirements of the Administrative Code before issuing DO No. 2014-014.

The *ponencia* itself establishes that there were three separate dates for public consultation preceding DO No. 2014-014: on February 4 and 5, 2011, and on December 12, 2013.[51] The records further establish that Notices of Public Consultation were published in two newspapers of general circulation for each date, as required under Section 9(2), Chapter 2, Book VII of the Administrative Code:

> (1) The Notice of Public Consultation for February 4 and 5, 2011 was published in the Philippine Daily Inquirer and Manila Bulletin on January 20 and 27, 2011,[52] respectively;
>
> (2) The Notice of Public Consultation for December 12, 2013 was likewise published in the Philippine Daily Inquirer and Manila Bulletin on December 5, 2013.[53]

As the *ponencia* now recognizes, the clear conduct of notice and hearing through these public consultations constitutes sufficient compliance with the Administrative Code. Petitioners argue, however, that public consultations should have been conducted anew, since the factual circumstances obtaining during the hearings conducted in 2011 and 2013 no longer apply when the fare adjustment was subsequently enacted in 2014. In other words, the public consultation should have been conducted immediately prior or contemporaneous to the issuance of DO No. 2014-014 in order to be valid.

Petitioners' arguments are untenable.

The prior notice and hearing requirements are undoubtedly anchored on due process considerations. Due process, however, is not a rigid and inflexible concept. It depends on the circumstances and "varies with the subject matter and necessities of the situation."[54] For administrative proceedings, due process should not be tantamount to the requirements for judicial or adjudicatory processes. In the exercise of a quasi-legislative power, the administrative agency does not determine the rights and liabilities of particular parties before the tribunal. It also does not require the administrative agency to consider conflicting evidence, or to assess the credibility of

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50 *Ponencia*, pp. 51-54.
51 Id. at 8-9.
52 *Rollo* (G.R. No. 215650), Vol. I, p. 120.
53 Id. at 131-132.
54 See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 707 (1919); See also *Saunar v. Ermita*, 822 Phil. 536, 546 (2017).

witnesses. In the end, when an administrative agency is exercising its quasi-legislative power, it is called to make a judgment on a matter of policy within its mandate and expertise that would apply to all persons without distinction.

Thus, in *Association of International Shipping Lines*, the Court held that it is within the sound discretion of the Philippine Ports Authority to increase the stevedoring and arrastre charges in its ports.[55] While such regulation was initially deemed as an exercise of its rule-making power, the Court ruled in the alternative that even if prior notice and hearing were required, this was adequately complied with by the public hearing held on November 8, 2000 with the stakeholders.[56] As in this case, the public hearing in *Association of International Shipping Lines* was held more than a year prior to the issuance of the challenged regulation on December 21, 2001, but the Court upheld the regulation nonetheless.

Likewise, in *Republic v. Maria Basa*,[57] herein *ponente* upheld the DOTC's issuance that increased the fines for traffic violations, even if the public consultations were held in 2002, or six years prior to the implementation thereof. This issuance was eventually superseded by another, for which consultations were indeed conducted several months prior. That the proximity of the consultations to either regulation was not issue in this case is precisely the point. The number of public consultations or the period it took to notify the public did not affect the validity of these issuances.

Here, while the most recent public consultation was held a year prior to the issuance of DO No. 2014-014, the fare scheme did not deviate from the proposal previously consulted with the public. DO No. 2014-014 still adhered to the distance-based fare computation with ₱11.00 as the base fare and an additional ₱1.00 per kilometer. To be sure, the implementation of the new fare scheme was merely deferred. There was no material change in the proposal, and as such, the consultations held in February 2011 and December 2013 should suffice. Bearing in mind the nature of DO No. 2014-014 as a quasi-legislative issuance, the DOTr complied with the requirement of notice and hearing, consistent with the spirit of public participation and transparency enshrined in the Administrative Code.

In all, the essence of due process is to afford the public an opportunity to be heard, or to grant it a fair and reasonable opportunity to explain its side.[58] This ensures responsiveness in policy-making, which in turn, allows for a more effective government administration. If the Court were to hold otherwise, the distinction between an administrative agency's adjudicatory and regulatory functions is rendered nugatory. Worse, this can seriously hamper the discharge of an administrative agency's regulatory functions, as this effectively requires the agency to adhere to the same standards of due

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55 *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, supra note 39, at 674.

56 Id. at 677.

57 G.R. Nos. 206486, 212604, 212682, and 212800. August 16, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68571>.

58 See *Association of International Shipping Lines, Inc. v. Philippine Ports Authority*, supra note 39, at 679.

process as in quasi-judicial cases. The Court should not bind the hands of administrative agencies in the exercise of their regulatory functions by imposing a restrictive interpretation of the public consultation requirement in the Administrative Code.

IV.

Furthermore, I respectfully submit that the fare increase under DO No. 2014-014 is, in any case, just and reasonable.

In the fixing of rates, the only standard which the legislature is required to prescribe for the guidance of the administrative authority is that the rate be reasonable and just.[59] What is a just and reasonable rate is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened, and independent judgment. The requirement of reasonableness comprehends such rates which must not be so low as to be confiscatory, or too high as to be oppressive. In determining whether a rate is confiscatory, it is essential also to consider the given situation, requirements, and opportunities of the utility.[60]

Here, given the long years since the fares in the subject public utilities have been increased, it cannot be gainsaid that the herein adjustments made are just and reasonable.

Prior to the implementation of the present increase, the last time the LRT-1 ticket prices were even increased was in 2003. On the other hand, as for the LRT-2 and the MRT-3, this was the first time that their ticket prices were increased since their first operations in 2003 and 2000, respectively. As shown in the Memorandum to the President dated October 27, 2010 on the key decision points about the LRT Fare Adjustment submitted by the then Administration's economic managers, the LRT fares in 2010 have fallen below the fare levels of Metro Manila buses and jeepneys.[61] The Memorandum indeed demonstrated that an average 8.25-kilometer trip charged ₱14.20 for LRT-1, ₱13.51 for LRT-2, and ₱12.30 for MRT-3. Meanwhile, the same trip charged an average of ₱11.55, ₱15.01, and ₱18.15 for jeepneys, regular buses, and aircon buses, respectively.[62]

As such, the then LRT and MRT fares were shown to have been no longer aligned with those of road-based public utility vehicles, and thus necessitated an increase.[63]

Moreover, the Memorandum significantly provided that to keep the LRT fares at their then current rates would increase the total government subsidy from ₱13.85 billion in 2010 to ₱17.06 billion in 2011 because the

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59 *Republic v. Manila Electric Company*, supra note 12, at 398.
60 Id.
61 *Rollo* (G.R. No. 215650), Vol. 1, p. 105, Annex 2 of the Public Respondent LRTA's Comment.
62 Id.
63 Id. at 89, LRTA Fare Restructuring Study.

farebox ratio or net retail revenue of the LRTA lines was projected to fall below 1.0, which meant higher operating and maintenance costs.[64]

Finally, as aptly raised by the LRTA, the fare adjustment was needed in order for it to have the capacity to utilize its revenues not solely on maintenance and operation costs, but also for the improvement of its facilities and for its continuous provision of better services with its investment in rehabilitation and upgrading of the system.[65] The reduction in the subsidy was likewise intended for repurposing these funds for other development projects and relief operations in other parts of the country.[66]

All these foregoing reasons show that incontrovertibly, the fare adjustments were just and reasonable policy determinations of the Executive. It should not escape the attention of the Court that petitioners, in essence, dispute the wisdom and the justification for the reduction of subsidies, and the consequent effect on the rail lines' fares. These are matters beyond the purview of the Court's power of judicial review as it is not equipped with the authority to weigh the competing values of subsidizing public transit and a sound fiscal policy. In the final analysis, the questions presented in these consolidated cases are best addressed to the political departments of government.

Based on these premises, I **CONCUR** in the result. I **DISSENT** insofar as DO No. 2014-014 is deemed to be a rate-fixing regulation.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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64 Id. *Rollo* (G.R. No. 215650), Vol. 2, p. 1009, LRTA Memorandum.
65 *Rollo* (G.R. No. 215650), Vol. 2, pp. 1011-1012, LRTA Memorandum.
66 *Rollo* (G.R. No. 215650), Vol. 1, p. 133, DO No. 2014-014.