

EN BANC

[G.R. No. 199669, April 25, 2017]

**SOUTHERN LUZON DRUG CORPORATION, PETITIONER, V. THE
DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, THE
NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS,
THE DEPARTMENT OF FINANCE, AND THE BUREAU OF INTERNAL
REVENUE, RESPONDENTS.**

DECISION

REYES, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] dated June 17, 2011, and Resolution^[3] dated November 25, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 102486, which dismissed the petition for prohibition filed by Southern Luzon Drug Corporation (petitioner) against the Department of Social Welfare and Development (DSWD), the National Council for the Welfare of Disabled Persons (NCWDP) (now National Council on Disability Affairs or NCDA), the Department of Finance (DOF) and the Bureau of Internal Revenue (collectively, the respondents), which sought to prohibit the implementation of Section 4(a) of Republic Act (R.A.) No. 9257, otherwise known as the "*Expanded Senior Citizens Act of 2003*" and Section 32 of R.A. No. 9442, which amends the "*Magna Carta for Disabled Persons*," particularly the granting of 20% discount on the purchase of medicines by senior citizens and persons with disability (PWD), respectively, and treating them as tax deduction.

The petitioner is a domestic corporation engaged in the business of drugstore operation in the Philippines while the respondents are government agencies, office and bureau tasked to monitor compliance with R.A. Nos. 9257 and 9442, promulgate implementing rules and regulations for their effective implementation, as well as prosecute and revoke licenses of erring establishments.

Factual Antecedents

On April 23, 1992, R.A. No. 7432, entitled "*An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other Purposes*," was enacted. Under the said law, a senior citizen, who must be at least 60 years old and has an annual income of not more than P60,000.00,^[4] may avail of the privileges provided in Section 4 thereof, one of which is 20% discount on the purchase of medicines. The said provision states:

Sec. 4. Privileges for the Senior Citizen. – x x x:

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 ours)

To recoup the amount given as discount to qualified senior citizens, covered establishments can claim an equal amount as tax credit which can be applied against the income tax due from them.

On February 26, 2004, then President Gloria Macapagal-Arroyo signed R.A. No. 9257, amending some provisions of R.A. No. 7432. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. Further, R.A. No. 9257 modified the tax treatment of the discount granted to senior citizens, from tax credit to tax deduction from gross income, computed based on the net cost of goods sold or services rendered. The pertinent provision, as amended by R.A. No. 9257, reads as follows:

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 establishments, 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 ours)

On May 28, 2004, the DSWD issued the Implementing Rules and Regulations (IRR) of R.A. No. 9257. Article 8 of Rule VI of the said IRR provides:

Article 8. *Tax Deduction of Establishments.* - The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments; Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation 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; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF). (Emphasis ours)

The change in the tax treatment of the discount given to senior citizens did not sit well with some drug store owners and corporations, claiming it affected the profitability of their business. Thus, on January 13, 2005, Carlos Superdrug Corporation (Carlos Superdrug), together with other corporation and proprietors operating drugstores in the Philippines, filed a Petition for Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction before this Court, entitled *Carlos Superdrug Corporation v. DSWD*,^[5] docketed as G.R. No. 166494, assailing the constitutionality of Section 4(a) of R.A. No. 9257 primarily on the ground that it amounts to taking of private property without payment of just compensation. In a Decision dated June 29, 2007, the Court upheld the constitutionality of the assailed provision, holding that the same is a legitimate exercise of police power. The relevant portions of the decision read, thus:

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.

x x x x

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably

detrimental to petitioners, the Court will refrain from quashing a legislative act.

WHEREFORE, the petition is *DISMISSED* for lack of merit.^[6] (Citations omitted)

On August 1, 2007, Carlos Superdrug filed a motion for reconsideration of the foregoing decision. Subsequently, the Court issued Resolution dated August 21, 2007, denying the said motion with finality.^[7]

Meanwhile, on March 24, 1992, R.A. No. 7277 pertaining to the "*Magna Carta for Disabled Persons*" was enacted, codifying the rights and privileges of PWDs. Thereafter, on April 30, 2007, R.A. No. 9442 was enacted, amending R.A. No. 7277. One of the salient amendments in the law is the insertion of Chapter 8 in Title 2 thereof, which enumerates the other privileges and incentives of PWDs, including the grant of 20% discount on the purchase of medicines. Similar to R.A. No. 9257, covered establishments shall claim the discounts given to PWDs as tax deductions from the gross income, based on the net cost of goods sold or services rendered. Section 32 of R.A. No. 9442 reads:

CHAPTER 8. Other Privileges and Incentives

SEC. 32. Persons with disability shall be entitled to the following:

x x x x

(c) At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;

x x x x

The establishments may claim the discounts granted in subsections (a), (b), (c), (e), (f) and (g) as tax deductions based on the net cost of the goods sold or services rendered: *Provided, however,* 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 (NIRC), as amended. (Emphasis ours)

Pursuant to the foregoing, the IRR of R.A. No. 9442 was promulgated by the DSWD, Department of Education, DOF, Department of Tourism and the Department of Transportation and Communications.^[8] Sections 5.1 and 6.1.d thereof provide:

Sec. 5. *Definition of Terms.* For purposes of these Rules and Regulations, these terms are defined as follows:

5.1. **Persons with Disability** are those individuals defined under Section 4 of RA 7277, "An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Persons with Disability as amended and their integration into the Mainstream of Society and for Other Purposes." This is defined

as a person suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in a manner or within the range considered normal for human being. Disability shall mean: (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

x x x x

6.1.d **Purchase of Medicine** – At least twenty percent (20%) discount on the purchase of medicine for the exclusive use and enjoyment of persons with disability. All drug stores, hospital, pharmacies, clinics and other similar establishments selling medicines are required to provide at least twenty percent (20%) discount subject to the guidelines issued by DOH and PHILHEALTH.

On February 26, 2008, the petitioner filed a Petition for Prohibition with Application for TRO and/or Writ of Preliminary Injunction^[9] with the CA, seeking to declare as unconstitutional (a) Section 4(a) of R.A. No. 9257, and (b) Section 32 of R.A. No. 9442 and Section 5.1 of its IRR, insofar as these provisions only allow tax deduction on the gross income based on the net cost of goods sold or services rendered as compensation to private establishments for the 20% discount that they are required to grant to senior citizens and PWDs. Further, the petitioner prayed that the respondents be permanently enjoined from implementing the assailed provisions.

Ruling of the CA

On June 17, 2011, the CA dismissed the petition, reiterating the ruling of the Court in *Carlos Superdrug*^[10] particularly that Section 4(a) of R.A. No. 9257 was a valid exercise of police power. Moreover, the CA held that considering that the same question had been raised by parties similarly situated and was resolved in *Carlos Superdrug*, the rule of *stare decisis* stood as a hindrance to any further attempt to relitigate the same issue. It further noted that jurisdictional considerations also compel the dismissal of the action. It particularly emphasized that it has no original or appellate jurisdiction to pass upon the constitutionality of the assailed laws,^[11] the same pertaining to the Regional Trial Court (RTC). Even assuming that it had concurrent jurisdiction with the RTC, the principle of hierarchy of courts mandates that the case be commenced and heard by the lower court.^[12] The CA further ruled that the petitioner resorted to the wrong remedy as a petition for prohibition will not lie to restrain the actions of the respondents for the simple reason that they do not exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the questioned provisions. Also, the petition was wanting of the allegations of the specific acts committed by the respondents that demonstrate the exercise of these powers which may be properly challenged in a petition for prohibition.^[13]

The petitioner filed its Motion for Reconsideration^[14] of the Decision dated June 17, 2011 of the CA, but the same was denied in a Resolution^[15] dated November 25,