

EN BANC

[G.R. No. 166910, October 19, 2010]

ERNESTO B. FRANCISCO, JR. AND JOSE MA. O. HIZON, PETITIONERS, VS. TOLL REGULATORY BOARD, PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, MANILA NORTH TOLLWAYS CORPORATION, BENPRES HOLDINGS CORPORATION, FIRST PHILIPPINE INFRASTRUCTURE DEVELOPMENT CORPORATION, TOLLWAY MANAGEMENT CORPORATION, PNCC SKYWAY CORPORATION, CITRA METRO MANILA TOLLWAYS CORPORATION AND HOPEWELL CROWN INFRASTRUCTURE, INC., RESPONDENTS.

[G.R. NO. 169917]

HON. IMEE R. MARCOS, RONALDO B. ZAMORA, CONSUMERS UNION OF THE PHILIPPINES, INC., QUIRINO A. MARQUINEZ, HON. LUIS A. ASISTIO, HON. ERICO BASILIO A. FABIAN, HON. RENATO "KA RENE" B. MAGTUBO, HON. RODOLFO G. PLAZA, HON. ANTONIO M. SERAPIO, HON. EMMANUEL JOEL J. VILLANUEVA, HON. ANIBAN NG MGA MANGGAGAWA SA AGRIKULTURA (AMA), INC., ANIBAN NG MGA MAGSASAKA, MANGINGISDA AT MANGGAGAWA SA AGRIKULTURA-KATIPUNAN, INC., KAISAHAN NG MGA MAGSASAKA SA AGRIKULTURA, INC., KILUSAN NG MANGAGAWANG MAKABAYAN, PETITIONERS, VS. THE REPUBLIC OF THE PHILIPPINES, ACTING BY AND THROUGH THE TOLL REGULATORY BOARD, MANILA NORTH TOLLWAYS CORPORATION, PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, AND FIRST PHILIPPINE INFRASTRUCTURE DEVELOPMENT CORP., RESPONDENTS.

[G.R. NO. 173630]

GISING KABATAAN MOVEMENT, INC., BARANGAY COUNCIL OF SAN ANTONIO, MUNICIPALITY OF SAN PEDRO, LAGUNA [AS REPRESENTED BY COUNCILOR CARLON G. AMBAYEC], AND YOUNG PROFESSIONALS AND ENTREPRENEURS OF SAN PEDRO, LAGUNA PETITIONERS, VS. THE REPUBLIC OF THE PHILIPPINES, ACTING THROUGH THE TOLL REGULATORY BOARD (TRB), PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC), RESPONDENTS.

[G.R. NO. 183599]

THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE TOLL REGULATORY BOARD, PETITIONER, VS. YOUNG

PROFESSIONALS AND ENTREPRENEURS OF SAN PEDRO, LAGUNA, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

Before us are four petitions; the first three are special civil actions under Rule 65, assailing and seeking to nullify certain statutory provisions, presidential actions and implementing orders, toll operation-related contracts and issuances on the construction, maintenance and operation of the major tollway systems in Luzon. The petitions likewise seek to restrain and permanently prohibit the implementation of the allegedly illegal toll fee rate hikes for the use of the North Luzon Expressway ("NLEX"), South Luzon Expressway ("SLEX") and the South Metro Manila Skyway ("SMMS"). The fourth, a petition for review under Rule 45, seeks to annul and set aside the decision dated June 23, 2008 of the Regional Trial Court ("RTC") of Pasig, in SCA No. 3138-PSG, enjoining the original toll operating franchisee from collecting toll fees in the SLEX.

By Resolution of March 20, 2007, the Court ordered the consolidation of the first three petitions, docketed as **G.R. Nos. 166910, 169917 and 173630**, respectively. The fourth petition, **G.R. No. 183599**, would later be ordered consolidated with the earlier three petitions.

The Facts

The antecedent facts are as follows--

On March 31, 1977, then President Ferdinand E. Marcos issued Presidential Decree No. ("P.D.") 1112, authorizing the establishment of toll facilities on public improvements.^[1] This issuance, in its preamble, explicitly acknowledged "the huge financial requirements" and the necessity of tapping "the resources of the private sector" to implement the government's infrastructure programs. In order to attract private sector involvement, P.D. 1112 allowed "the collection of toll fees for the use of certain public improvements that would allow a reasonable rate of return on investments." The same decree created the Toll Regulatory Board ("TRB") and invested it under Section 3 (a) (d) and (e) with the power to enter, for the Republic, into contracts for the construction, maintenance and operation of tollways, **grant authority to operate a toll facility**, issue therefor the necessary Toll Operation Certificate ("TOC") and fix initial toll rates, and, from time to time, adjust the same after due notice and hearing.

On the same date, P.D. 1113 was issued, granting to the Philippine National Construction Corporation ("PNCC"), then known as the Construction and Development Corporation of the Philippines ("CDCP"), for a period of thirty years from May 1977 - or up to May 2007 - a franchise to construct, maintain and operate toll facilities in the North Luzon and South Luzon Expressways, with the right to collect toll fees at such rates as the TRB may fix and/or authorize. Particularly, Section 1 of P.D. 1113 delineates the coverage of the expressways from Balintawak, Caloocan City to Carmen, Rosales, Pangasinan and from Nichols, Pasay City to Lucena, Quezon. And because the franchise is not self-executing, as it was in fact made subject, under Section 3 of P.D. 1113, to "such conditions as may be imposed

by the Board in an appropriate contract to be executed for such purpose," TRB and PNCC signed in October 1977, a Toll Operation Agreement ("TOA") on the North Luzon and South Luzon Tollways, providing for the detailed terms and conditions for the construction, maintenance and operation of the expressway.^[2]

On December 22, 1983, P.D. 1894 was issued therein further granting PNCC a franchise over the Metro Manila Expressway ("MMEX"), and the expanded and delineated NLEX and SLEX. Particularly, PNCC was granted the *"right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the North Luzon Expressway and/or South Luzon Expressway as may be approved by the [TRB]."*^[3] Under Section 2 of P.D. 1894, *"the franchise granted the [MMEX] and all extensions, linkages, stretches and diversions after the approval of the decree that may be constructed after the approval of this decree [on December 22, 1983] shall likewise have a term of thirty (30) years, commencing from the date of completion of the project."*

As expressly set out in P.D. 1113 and reiterated in P.D. 1894, PNCC may sell or assign its franchise thereunder granted or cede the usufruct^[4] thereof upon the President's approval.^[5] This same provision on franchise transfer and cession of usufruct is likewise found in P.D. 1112.^[6]

Then came the 1987 Constitution with its franchise provision.^[7]

In 1993, the Government Corporate Counsel ("GCC"), acting on PNCC's request, issued Opinion No. 224, s. 1993,^[8] later affirmed by the Secretary of Justice,^[9] holding that PNCC may, subject to certain clearance and approval requirements, enter into a joint venture ("JV") agreement ("JVA") with private entities without going into public bidding in the selection of its JV partners. PNCC's query was evidently prompted by the need to seek out alternative sources of financing for expanding and improving existing expressways, and to link them to economic zones in the north and to the CALABARZON area in the south.

MOU FOR THE CONSTRUCTION, REHABILITATION AND EXPANSION OF EXPRESSWAYS

On February 8, 1994, the Department of Public Works and Highways ("DPWH"), TRB, PNCC, Benpres Holdings Corporation ("Benpres") and First Philippine Holdings Corporation ("FPHC"), among other private and government entities/agencies, executed a Memorandum of Understanding ("MOU") envisaged to open the door for the entry of private capital in the rehabilitation, expansion (to Subic and Clark) and extension, as flagship projects, of the expressways north of Manila, over which PNCC has a franchise. To carry out their undertakings under the MOU, Benpres and FPHC formed, as their infrastructure holding arm, the First Philippine Infrastructure and Development Corporation ("FPIDC").

Consequent to the MOU execution, PNCC entered into financial and/or technical JVAs with private entities/investors for the toll operation of its franchised areas following

what may be considered as a standard pattern, viz.: (a) after a JVA is concluded and the usual government approval of the assignment by PNCC of the usufruct in the franchise under P.D. 1113, as amended, secured, a new JV company is specifically formed to undertake a defined toll road project; (b) the Republic of the Philippines, through the TRB, as grantor, PNCC, as operator, and the new corporation, as investor/concessionaire, with its lender, as the case may be, then execute a Supplemental Toll Operation Agreement ("STOA") to implement the TOA previously issued; and (c) once the requisite STOA approval is given, project prosecution starts and upon the completion of the toll road project or of a divisible phase thereof, the TRB fixes or approves the initial toll rate after which, it passes a board resolution prescribing the periodic toll rate adjustment.

The STOA defines the **scope of the road project coverage, the terminal date of the concession**, and includes provisions on initial toll rate and a built-in formula for adjustment of toll rates, investment recovery clauses and contract termination in the event of the concessionaire's, PNCC's or TRB's default, as the case may be.

The following events or transactions, involving the personalities as indicated, transpired with respect to the following projects:

THE SOUTH METRO MANILA SKYWAY (SMMS) (BUENDIA - BICUTAN ELEVATED STRETCH) PROJECT

PNCC entered into a JV partnership arrangement with P.T. Citra, an Indonesian company, and created, for the SMMS project, the Citra Metro Manila Tollways Corporation ("CMMTC").

On November 27, 1995, TRB, PNCC and CMMTC executed a STOA for the SMMS project ("CITRA STOA"). And on April 7, 1996, then President Fidel V. Ramos approved the CITRA STOA.

Phase I of the SMMS project - the Bicutan to Buendia elevated expressway stretch - was completed in December 1998, and the consequent initial toll rates for its use implemented a month after. On November 26, 2004, the TRB passed Resolution No. 2004-53, approving the periodic toll rate adjustment for the SMMS.

THE NLEX EXPANSION PROJECT (REHABILITATED AND WIDENED NLEX, SUBIC EXPRESSWAY, CIRCUMFERENTIAL ROAD C-5)

In reply to the query of the then TRB Chairman, the Department of Justice ("DOJ") issued DOJ Opinion No. 79, s. of 1994, echoing an earlier opinion of the GCC, that the TRB can implement the NLEX expansion project through a JV scheme with private investors possessing the requisite technical and financial capabilities.

On May 16, 1995, then President Ramos approved the assignment of PNCC's usufructuary rights as franchise holder to a JV company to be formed by PNCC and FPIDC. PNCC and FPIDC would later ink a JVA for the rehabilitation and modernization of the NLEX - referred in certain pleadings as the North Luzon Tollway project.^[10] The Manila North Tollways Corporation ("MNTC") was formed for the purpose.

On April 30, 1998, the Republic, through the TRB, PNCC and MNTC, executed a

STOA for the North Luzon Tollway project ("MNTC STOA") in which MNTC was authorized, *inter alia*, to subcontract the operation and maintenance of the project, provided that the majority of the outstanding shares of the contractor shall be owned by MNTC. The MNTC STOA covers three phases comprising of ten segments, including the rehabilitated and widened NLEX, the Subic Expressway and the circumferential Road C-5.^[11] The STOA is to be **effective for thirty years**, reckoned from the issuance of the toll operation permit for the last completed phase or until December 31, 2030, whichever is earlier. The Office of the President ("OP") approved the STOA on June 15, 1998.

On August 2, 2000, pursuant to the MNTC STOA, the Tollways Management Corporation ("TMC")--formerly known as the Manila North Tollways Operation and Maintenance Corporation--was created to undertake the operation and maintenance of the NLEX tollway facilities, interchanges and related works.

On January 27, 2005, the TRB issued Resolution No. 2005-04 approving the initial authorized toll rates for the closed and flat toll systems applicable to the new NLEX.

THE SOUTH LUZON EXPRESSWAY PROJECT (NICHOLS TO LUCENA CITY)

For the SLEX expansion project, PNCC and Hopewell Holdings Limited ("HHL"), as JV partners, executed a Memorandum of Agreement ("MOA"),^[12] which eventually led to the formation of a JV company - Hopewell Crown Infrastructure, Inc. ("HCII"), now MTD Manila Expressways, Inc., ("MTDME"). And pursuant to the PNCC-MTDME JVA, the South Luzon Tollway Corporation ("SLTC") and the Manila Toll Expressway Systems, Inc. ("MATES") were incorporated to undertake the financing, construction, operation and maintenance of the resulting Project Toll Roads forming part of the SLEX. The toll road projects are divisible toll sections or segments, each segment defined as to its starting and end points and each with the corresponding distance coverage. The proposed JVA, as later amended, between PNCC and MTDME was approved by the OP on June 30, 2000.

Eventually, or on February 1, 2006, a STOA^[13] for the financing, design, construction, lane expansion and maintenance of the Project Toll Roads (PTR) of the rehabilitated and improved SLEX was executed by and among the Republic, PNCC, SLTC, as investor, and MATES, as operator. To be precise, the PTRs, under the STOA, comprise and contemplated the full rehabilitation and/or roadway widening of the following existing toll roads or facilities: PTR 1 - that portion of the tollway commencing at the end of South MM Skyway to the Filinvest exit at Alabang (1-242 km); PTR 2 - the tollway from Alabang to Calamba, Laguna (27.28 km); PTR 3 - the tollway from Calamba to Sto. Tomas, Batangas (7.6 km) and PTR 4 - the tollway from Sto. Tomas to Lucena City (54.27 km).^[14]

Under Clause 6.03 of the STOA, the Operator, after substantially completing a TPR, shall file an application for a Toll Operation Permit over the relevant completed TPR or segment, which shall include a request for a review and approval by the TRB of the calculation of the new current authorized toll rate.

G.R. No. 166910

Petitioners Francisco and Hizon, as taxpayers and expressway users, seek to nullify