

THIRD DIVISION

[G.R. No. 141949, October 14, 2002]

CEFERINO PADUA, PETITIONER, VS. HON. SANTIAGO RANADA, PRESIDING JUDGE OF MAKATI, RTC, BRANCH 137, PHILIPPINE NATIONAL CONSTRUCTION CORP., TOLL REGULATORY BOARD, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

[G.R. NO. 151108. OCTOBER 14, 2002]

EDUARDO C. ZIALCITA, PETITIONER, VS. TOLL REGULATORY BOARD AND CITRA METRO MANILA TOLLWAYS CORPORATION, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

The focal point upon which these two consolidated cases converge is whether Resolution No. 2001-89 issued by the Toll Regulatory Board (TRB) is valid.

A brief narration of the factual backdrop is imperative, thus:

On November 9, 2001, the TRB issued Resolution No. 2001-89 authorizing provisional toll rate adjustments at the Metro Manila Skyway, effective January 1, 2002,^[1] thus:

"NOW THEREFORE, it is RESOLVED, as it is hereby **RESOLVED:**

1. That in view of urgent public interest, the Board hereby **GRANTS** to the Metro Manila Skyway Project, Provisional Relief in accordance with Rule 10, Section 3 of the Rules of Practice and Procedure Governing Hearing before the Toll Regulatory Board which states, among others "that the Board may grant (provisional relief)...in its own initiative...without prejudice to the final decision after completion of the hearing...;"

2. That the Provisional Relief shall be in form of an interim toll rate adjustment in accordance with Section 7.04(3) of the Supplemental Toll Operation Agreement, dated November 27, 1995, referring to Interim Adjustments in Toll Rates upon the occurrence of a significant currency devaluation:

"Be APPROVED, as it is hereby **APPROVED.**

"RESOLVED FURTHER, as it is hereby **RESOLVED:**

"That the Provisional Toll Rates, which are not to exceed the following:

Section	Unrounded Toll Rates	Toll Rates for Implementation		
		CLASS 1	CLASS 2	CLASS 3
Elevated Portion	75.00	75.00	150.00	225.00
At-Grade Portion				
Magallanes to Bicutan	75.00	75.00	150.00	225.00
Bicutan to Sucat	11.21	11.00	22.50	34.00
Sucac to Alabang	10.99	11.00	21.00	32.50

* includes C5 entry/exit and Merville exit.

"For implementation starting January 1, 2002 after its publication once a week for three (3) consecutive weeks in a newspaper of general circulation and that said Provisional Toll Rate Increase shall remain in effect until such time that the TRB Board has determined otherwise:

"Be **APPROVED** as it is hereby **APPROVED**.

"**RESOLVED FURTHERMORE**, as it is hereby **RESOLVED** that the Provisional Toll Rates be implemented in two (2) stages in accordance with the following schedule:

Section	Unrounded Toll Rates as Maximum for One (1) Year	Toll Rates for Implementation For Class 1 as Reference	
		JANUARY 1, 2002 to JUNE 30, 2002	JULY 1, 2002 to DECEMBER 31, 2002
Elevated Portion	75.00	65.00	75.00
At-Grade Portion			
Magallanes to Bicutan	19.35	15.00	20.00
Bicutan to Sucat	11.21	9.00	11.00
Sucac to	10.99	9.00	11.00

"PROVIDED that the recovery of the sum from the interim rate adjustment shall be applied starting the year 2003.

"APPROVED as it is hereby **APPROVED.**"

On December 17, 24 and 31, 2001, the above Resolution approving provisional toll rate adjustments was published in the newspapers of general circulation.^[2]

Tracing back the events that led to the issuance of the said Resolution, it appears that on February 27, 2001 the Citra Metro Manila Tollways Corporation (CITRA) filed with the TRB an application for an interim adjustment of the toll rates at the Metro Manila Skyway Project – Stage 1.^[3] CITRA moored its petition on the provisions of the "Supplemental Toll Operation Agreement" (STOA),^[4] authorizing it, as the investor, to apply for and if warranted, to be granted an interim adjustment of toll rates in the event of a "significant currency devaluation." The relevant portions of the STOA read:

- a. The Investor and/or the Operator shall be entitled to apply for and if warranted, to be granted an interim adjustment of Toll Rates upon the occurrence of any of the following events:

x x x x x x

(ii) a significant currency devaluation

x x x x x x

(i) A currency devaluation shall be deemed "significant" if it results in a depreciation of the value of the Philippine peso relative to the US dollar by at least 10%. For purposes hereof the exchange rate between the Philippine peso and the US dollar which shall be applicable shall be the exchange rate between the above mentioned currencies in effect as of the date of approval of the prevailing preceding Toll Rate.

(ii) The Investor's right to apply for an interim Toll Rate adjustment under section 7.04 (3) (a) (ii) shall be effective only while any Financing is outstanding and have not yet been paid in full.

x x x x x x

(iv) An interim adjustment in Toll Rate shall be considered such amount as may be required to provide interim relief to the Investor from a substantial increase in debt-service burden resulting from the devaluation."^[5]

Claiming that the peso exchange rate to a U.S. dollar had devaluated from P26.1671 in 1995 to P48.00 in 2000, CITRA alleged that there was a compelling need for the increase of the toll rates to meet the loan obligations of the Project and the substantial increase in debt-service burden.

Due to heavy opposition, CITRA's petition remained unresolved. This prompted CITRA to file on October 9, 2001 an "Urgent Motion for Provisional Approval,"^[6] this

time, invoking Section 3, Rule 10 of the "Rules of Practice and Procedure Governing Hearing Before the Toll Regulatory Board" (TRB Rules of Procedure) which provides:

"SECTION 3. Provisional Relief. – Upon the filing of an application or petition for the approval of the initial toll rate or toll rate adjustment, or **at any stage**, thereafter, **the Board may grant on motion of the pleader or in its own initiative, the relief prayed for without prejudice to a final decision** after completion of the hearing should the Board find that the pleading, together with the affidavits and supporting documents attached thereto and such additional evidence as may have been requested and presented, substantially support the provisional order; Provided: That the Board may, *motu proprio*, continue to issue orders or grant relief in the exercise of its powers of general supervision under existing laws. Provided: Finally, that pending finality of the decision, the Board may require the Petitioner to deposit in whole or in part in escrow the provisionally approved adjustment or initial toll rates." (Emphasis supplied)

On October 30, 2001, CITRA moved to withdraw^[7] its "Urgent Motion for Provisional Approval" without prejudice to its right to seek or be granted provisional relief under the above-quoted provisions of the TRB Rules of Procedure, obviously, referring to the power of the Board to act on its own initiative.

On November 7, 2001, CITRA wrote a letter^[8] to TRB expressing its concern over the undue delay in the proceeding, stressing that any further setback would bring the Project's financial condition, as well as the Philippine banking system, to a total collapse. CITRA recounted that out of the US\$354 million funding from creditors, two-thirds (2/3) thereof came from the Philippine banks and financial institutions, such as the Landbank of the Philippines and the Government Service Insurance Services. Thus, CITRA requested TRB to find a timely solution to its predicament.

On November 9, 2001, TRB granted CITRA's motion to withdraw^[9] the Urgent Motion for Provisional Approval and, at the same time, issued Resolution No. 2001-89,^[10] earlier quoted.

Hence, petitioners Ceferino Padua and Eduardo Zialcita assail before this Court the validity and legality of TRB Resolution No. 2001-89.

Petitioner Ceferino Padua, as a toll payer, filed an "Urgent Motion for a Temporary Restraining Order to Stop Arbitrary Toll Fee Increases"^[11] in G.R. No. 141949,^[12] a petition for mandamus earlier filed by him. In that petition, Padua seeks to compel respondent Judge Santiago Ranada of the Regional Trial Court, Branch 137, Makati City, to issue a writ of execution for the enforcement of the Court of Appeals' Decision dated August 4, 1989 in CA-G.R. SP No. 13235. In its Decision, the Court of Appeals ordered the exclusion of certain portions of the expressways (from Villamor Air Base to Alabang in the South, and from Balintawak to Tabang in the North) from the franchise of the PNCC.

In his urgent motion, petitioner Padua claims that: (1) Resolution No. 2001-89 was issued without the required publication and in violation of due process; (2) alone, TRB Executive Director Jaime S. Dumlao, Jr., could not authorize the provisional toll rate adjustments because the TRB is a collegial body; and (3) CITRA has no

standing to apply for a toll fee increase since it is an “investor” and not a “franchisee-operator.”

On January 4, 2002, petitioner Padua filed a “Supplemental Urgent Motion for a TRO against Toll Fee Increases,”^[13] arguing further that: (1) Resolution 2001-89 refers exclusively to the Metro Manila Skyway Project, hence, there is no legal basis for the imposition of the increased rate at the at-grade portions; (2) Resolution No. 2001-89 was issued without basis considering that while it was signed by three (3) of the five members of the TRB, none of them actually attended the hearing; and (3) the computation of the rate adjustment under the STOA is inconsistent with the rate adjustment formula under Presidential Decree No. 1894.^[14]

On January 10, 2002, the Office of the Solicitor General (OSG) filed, in behalf of public respondent TRB, Philippine National Construction Corporation (PNCC), Department of Public Works and Highways (DPWH) and Judge Ranada, a “Consolidated Comment”^[15] contending that: (1) the TRB has the exclusive jurisdiction over all matters relating to toll rates; (2) Resolution No. 2001-89 covers both the Skyway and the at-grade level of the South Luzon Expressway as provided under the STOA; (3) that while Resolution No. 2001-89 does not mention any factual basis to justify its issuance, however, it does not mean that TRB's finding of facts is not supported by evidence; and (4) petitioner Padua cannot assail the validity of the STOA because he is not a party thereto.

Upon the other hand, on January 9, 2002, petitioner Eduardo Zialcita, as a taxpayer and as Congressman of Parañaque City, filed the present petition for prohibition^[16] with prayer for a temporary restraining order and/or writ of preliminary injunction against TRB and CITRA, docketed as **G.R. No. 151108**, impugning the same Resolution No. 2001-89.

Petitioner Zialcita asserts that the provisional toll rate adjustments are exorbitant and that the TRB violated its own Charter, Presidential Decree No. 1112,^[17] when it promulgated Resolution No. 2001-89 without the benefit of any public hearing. He also maintains that the TRB violated the Constitution when it did not express clearly and distinctly the facts and the law on which Resolution No. 2001-89 was based. And lastly, he claims that Section 3, Rule 10 of the TRB Rules of Procedure is not sanctioned by P.D. No. 1112.

Private respondent CITRA, in its comment^[18] on Congressman Zialcita’s petition, counters that: (1) the TRB has primary administrative jurisdiction over all matters relating to toll rates; (2) prohibition is an inappropriate remedy because its function is to restrain acts about to be done and not acts already accomplished; (3) Resolution No. 2001-89 was issued in accordance with law; (4) Section 3, Rule 10 of the TRB Rules is constitutional; and (5) private respondent and the Republic of the Philippines would suffer more irreparable damages than petitioner.

The TRB, through the OSG, filed a separate comment^[19] reiterating the same arguments raised by private respondent CITRA.

On January 11, 2002, this Court resolved to consolidate the instant petitions, G.R. No. 141949 and G.R. No. 151108.^[20]

We rule for the respondents.