EN BANC

G.R. No. 211772 – INTEGRATED BAR OF THE PHILIPPINES, Petitioner, **AND PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., PHILIPPINE DENTAL ASSOCIATION,** Petitioners-in-intervention, ***versus*** **SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE AND COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE,** Respondents.

G.R. No. 212178 – ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC., Petitioner, ***versus*** **HON. SECRETARY OF FINANCE CESAR V. PURISIMA AND HON. COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES,** Respondents.

Promulgated:

April 18, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

In all, I concur that the subject case presents an actual case or controversy, and that portions of Section 2(1) and Section 2(2) of the assailed Revenue Regulations No. 4-2014 (RR 4-2014),[1] specifically the requirement for self-employed professionals (a) to submit an affidavit where they indicate their rates, manner of billings, as well as the factors considered in determining their service fees, and (b) to register their appointment books with the Bureau of Internal Revenue (BIR), should be struck down for being unconstitutional.

I.

The *ponencia* finds the subject case justiciable, to wit:

> To stress, before us are the representative organizations of professionals whose members, patients, clients' fundamental rights to privacy are supposedly violated. They assail a regulation issued by agents of fiscal policy and tax collection who mandate the disclosure of their patients' and clients' names and appointment. The competing rights and the *prima facie* showing of grave abuse of discretion call for proper adjudication.

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[1] Bureau of Internal Revenue, Guidelines and Policies for the Monitoring of Service Fees of Professionals, Revenue Regulations No. 4-2014 [RR 4-2014].

> Thus, petitioners present an actual case or controversy, which merits this Court's exercise of judicial review.[2]

As I had consistently put forward in several other cases, and finally adopted by the present members of the *en banc*, the latest of which being the recently decided *Executive Secretary v. Pilipinas Shell*[3] (*ES v. Pilipinas Shell*), and *Universal Robina Corporation v. Department of Trade and Industry*[4] (*URC v. DTI*), actual facts resulting from the assailed law, as applied, are not absolutely necessary in all cases in order for the Court to exercise its power of judicial review. Once and for all, with this case and that of *ES v. Pilipinas Shell* and *URC v. DTI*, it should now be definitively settled that **"mere contrariety of legal rights"** constitutes a justiciable controversy.

To be sure, this correct understanding of justiciability is entrenched in jurisprudence. As early as *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*[5] (*Province of North Cotabato*), the Court already ruled that "when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right[,] but in fact the duty of the judiciary to settle the dispute."[6] In other words, it is sufficient that the questioned law has been enacted, or that the challenged action was approved for an actual case or controversy to exist. Stated differently, petitioners need not await the "implementing evil to befall on them",[7] or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional.[8]

As may be recalled, this was also the position taken by the Court in *SPARK v. Quezon City*,[9] where it upheld the constitutionality of the curfew ordinances in several cities in Metro Manila, even if there was no allegation that petitioners therein already violated said ordinances or that they already suffered actual harm or injury, which would then constitute the so-called "actual facts". The Court notably found the case already justiciable due to the "evident clash of the parties' legal claims."[10]

As well, in *Inmates of New Bilibid Prison v. De Lima*,[11] it was ruled that a judicial controversy already exists if "there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[12] Indeed, as succinctly stated by the majority in *Republic v. Maria Basa Express Jeepney Operators and Drivers Association, Inc.*[13]

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2 *Ponencia*, p. 13.
3 G.R. No. 209216, February 21, 2023.
4 G.R. No. 203353, February 14, 2023.
5 *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*].
6 *Id.* at 486.
7 *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000) [Per J. Panganiban, *En Banc*].
8 *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 127 (2014) [Per J. Mendoza, *En Banc*].
9 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].
10 *Id.* at 1091.
11 854 Phil. 675 (2019) [Per J. Peralta, *En Banc*].
12 *Id.* at 693–694.
13 G.R. Nos. 206486, 212604, 212682, and 212800, August 16, 2022 [Per J. Lopez, J., *En Banc*].

(*Maria Basa*), citing *Inmates of New Bilibid*, "the existence of an actual case or controversy does not call for concrete acts, as an actual case may exist even in the absence of 'tangible instances'."[14]

Thus, following the principle of *stare decisis et non quieta movere*—or to follow past precedents and do not disturb what has been settled—the Court should no longer recalibrate the meaning of the actual case or controversy requirement.

In the instant case, the present petition stemmed from consolidated petitions for prohibition and *mandamus* filed by petitioners before the Court to raise a question of law, i.e., the constitutionality of RR 4-2014. Here, the *ponencia* correctly finds petitioners' questions justiciable. Notably, this is notwithstanding the fact that the case is bereft of any contention whatsoever that petitioners already committed overt acts in violation of the assailed regulations or that they already suffered actual harm after its passage. In fact, shortly after RR 4-2014 took effect on April 5, 2014, the Court issued a Temporary Restraining Order against its implementation.[15] Verily, what existed when petitioners filed their petition was a mere contrariety of legal rights between petitioners and their patients and clients on the one hand, and the Department of Finance (DOF) and the BIR on the other. In other words, there were no "actual facts".

Again, I stress anew that justiciability and absence of overt acts constituting breach of a law or regulation are not mutually exclusive, especially in an action for prohibition which also prays for a preliminary injunction, such as the case herein. A petition for prohibition is a preventive remedy to restrain the doing of some act which is about to be done.[16] It cannot restrain acts that are already accomplished.[17] Similarly, an action for injunction, which has for its purpose the enjoinment of a defendant from the commission or continuance of a specific act, would be dismissed if the act sought to be restrained has been accomplished or fully executed.[18] Under these circumstances, the breach or the injury is merely imminent, and it would be incongruous for the Court to require further overt acts before ruling on the petition as by that time, the act sought to be enjoined would already be *fait accompli*.

II.

Section 2(1) of RR 4-2014 mandates the following:

> Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, **all self-employed**

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14 *Id.* at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
15 *Ponencia*, p. 4.
16 *Agustin v. De la Fuente*, 84 Phil. 515, 517 (1949) [Per J. Reyes, *En Banc*].
17 *See Montes v. Court of Appeals*, 523 Phil. 98, 105 (2006) [Per J. Tinga, Third Division].
18 *Manila Banking Corp. v. Court of Appeals*, 265 Phil. 142, 149 (1990) [Per J. Narvasa, First Division].

> **professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees** upon registration and every year thereafter on or before January 31. (Emphasis supplied)

According to the *ponencia*, while the requirement for self-employed professionals to register with the BIR and pay an annual registration fee are valid,[19] the BIR's power to require submission of the aforementioned affidavits lacks reasonable or statutory basis,[20] and is therefore, unconstitutional.[21] In line with this, the *ponencia* enunciates that:

> The affidavit that the issuances required may be akin to receipts, which are written evidence of the value of services. However, but it is indicative only, and the supposed fee is determined *before* the service is performed. It does not bind professionals to the disclosures in their affidavits, and it appears to allow them to ultimately charge higher or lower. It is vague how the affidavit aids the tax collector in the performance of her duties in ascertaining the payable tax.
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> Thus, there appears no compelling need for sworn statements of the rates and manner of billing among professionals. It is irrelevant, baseless, and serves no legitimate purpose. This is not the proper exercise of delegated power of subordinate legislation in an administrative agency. This is unconstitutional.

Respondents herein harp that the assailed submission of an affidavit may find support from Sections 5 and 244 of the Tax Code, which read as follows:

> ***SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.*** — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
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> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
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> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

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19 *Ponencia*, pp. 26–27.
20 *Id.* p. 29.
21 *Id.* p. 30.

> ***SEC. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.*** — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

On this matter, I join the *ponencia,* as well as the opinions of Associate Justices Rodil V. Zalameda (Justice Zalameda), Jose Midas P. Marquez (Justice Marquez) and Maria Filomena D. Singh (Justice Singh).

Preliminarily, I point out that while Section 244 of the Tax Code authorizes the Secretary of Finance to promulgate rules and regulations for the effective implementation and enforcement of the Tax Code, this power is necessarily limited to what is provided for in the legislative enactment. As elucidated in *Department of Finance v. Asia United Bank*:[22]

> It is settled that administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out. **When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable.** Surely, courts will not countenance such administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.
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> We underline that the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. **The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. It bears stressing, however, that administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by "filling in" the details.** All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law.
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> Indeed, administrative issuances, such as revenue regulations, cannot simply amend the law it seeks to implement. **In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, We held that a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter.** To reiterate, the courts will not countenance an administrative regulation that overrides the statute it seeks to implement.
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> Ultimately, this Court once again clarifies that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. Hence, administrative regulations cannot extend the law or amend a legislative enactment, for settled is the rule that administrative regulations

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[22] G.R. Nos. 240163 and 240168–69, December 1, 2021 [Per J. Zalameda, Third Division].

> must be in harmony with the provisions of the law. It cannot be stressed enough that administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant nor to modify, the law. To underscore, it is only the Congress which has the power to repeal or amend the law.
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> To be sure, RR 4-2011 is anchored on Section 244 of the Tax Code which empowers the SOF, upon recommendation of the CIR, to promulgate rules and regulations for the effective enforcement of the provisions of the Tax Code. **As discussed by Associate Justice Japar B. Dimaampao, since RRs are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that is as of the Tax Code it implements. Being products of a delegated power to create new and additional legal provisions that have the effect of law, RRs should be within the scope of the statutory authority granted by the legislature to the administrative agency.** It is required that the regulation be germane to the objects and purposes of the law, and that it be not in contravention to, but in conformity with, the standards prescribed by law.[23] (Emphasis supplied)

Here, the BIR clearly expanded Section 5 of the Tax Code, which allows the CIR to obtain information relative to the tax liability of taxpayers, by requiring self-employed professionals to submit the aforementioned affidavit. Without doubt, Section 2(1) of RR 4-2014 does not only modify, but also contravenes the law.

For one, I agree with the opinions of Justice Zalameda, Justice Marquez, and Justice Singh that Section 5 of the Tax Code pertains to powers of the CIR to properly assess and collect taxes **after a taxable transaction has already been made, or in case of service providers, once service has already been rendered**. To be sure, the authorities granted to the CIR pursuant to Section 5 of the Tax Code are limited to achieving the following purposes: (a) ascertaining the correctness of any return; (b) making a return when none has been made; (c) determining the liability of any person for any internal revenue tax; (d) collecting any such liability; or (e) in evaluating tax compliance. Clearly, these objectives become relevant ***only after* a taxable transaction is made or service is rendered**. Thus, any information prior to rendering the service, or even preceding the engagement of the professional, should be considered as outside the scope of Section 5.

As correctly pointed out by my esteemed colleagues, the affidavit required under Section 2(1) of RR 4-2014 is an example of a "pre-sale" information that is not covered by Section 5 of the Tax Code. As aptly observed by the *ponencia* as well, "[t]he affidavit that the issuance requires may be akin to receipts, which are written evidence of the value of services. However, it is *indicative* only, and the supposed fee is determined *before* the service is performed."[24] While it may be indicative of the value of services

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[23] *Id.* at 6–8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[24] *Ponencia*, p. 29.

offered by self-employed professionals, the same is still irrelevant in achieving the purposes enumerated in Section 5 of the Tax Code since taxes will still be assessed and collected on the basis of the rates actually charged by the professionals ***after*** the rendition of services.

For another, I likewise agree with the observation of Justice Marquez that Section 5(B) of the Tax Code is carefully crafted to exclude taxpayers from the power of the CIR to demand "any information" for the purpose of properly assessing and collecting taxes. As such, Section 5 expressly provides that "any information" may only be obtained from any persons "other than the person whose internal revenue tax liability is subject to audit or investigation," i.e., the taxpayer. As aptly noted by Associate Justice Amy C. Lazaro-Javier, the deliberations of the Bicameral Conference Committee on Ways support the interpretation that the coercive power to obtain "any information" is directed only to third persons and not the taxpayers.[25] Therefore, to require submission of information not from third persons, but from taxpayers, unduly expands and modifies Section 5(B) of the Tax Code.

All told, I concur with the *ponencia* that that portion of Section 2(1) which requires self-employed professionals to submit their affidavits of rates, manner of billing, and factors considered in determining their service fees is unconstitutional.

III.

On the other hand, Section 2(2) of RR 4-2014 reads:

> Self-employed professionals are **obligated to register** the books of accounts and **official appointment books** of their practice of profession/occupation/calling before using the same. **The official appointment books shall contain only the names of the client and the date/time of the meeting.** They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions. (Emphasis supplied)

I agree with the ruling of the *ponencia* that requiring self-employed professionals to register their appointment books, which contain their clients' name and appointment schedules, encroaches upon privacy rights. Aside from the grounds already exhaustively enumerated and comprehensively discussed by the *ponencia*, I would like to add that this requirement violates the general principle of proportionality that is espoused in Republic Act No. 10173 or the Data Privacy Act of 2012,[26] *viz:*

> ***SEC. 18. Principles of Transparency, Legitimate Purpose and Proportionality.*** — The processing of personal data shall be allowed

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25 Concurring Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 7–10.

26 An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this Purpose a National Privacy Commission, and for Other Purposes, Republic Act No. 10173 [Data Privacy Act], Section 11.

> subject to adherence to the principles of transparency, legitimate purpose, and proportionality.
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> c. Proportionality. The processing of information shall be **adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose.** Personal data shall be processed **only if the purpose of the processing could not reasonably be fulfilled by other means.**[27] (Emphasis supplied)

To my mind, requiring self-employed professionals to disclose their clients' names and their appointment schedules is already excessive *vis-à-vis* the declared purpose of RR 4-2014, which is to monitor the fees charged by these professionals, aid the BIR personnel in conducting tax audit, and boost revenue collections. To be sure, these objectives can be fulfilled even if the client names are anonymized and their appointment schedules not specified.

In light of the foregoing, I express my concurrence with finding portions of Section 2(2) of RR 4-2014 unconstitutional. While requiring self-employed professionals to register their books of accounts is valid because it finds statutory basis in the Tax Code, the same cannot be said for the requirement to register the appointment books of self-employed professionals.

IV.

A final word.

The main purpose of RR 4-2014 is to minimize tax evasion among self-employed professionals. By requiring taxpayers to submit a schedule of their rates and their appointment books, the BIR can more or less estimate or have an accurate baseline of a person's tax liability. This can be done by simply multiplying the number of paid appointments or consultations by the rates of services.

To my mind, however, with the requirement to register the appointment books being struck down for violating privacy rights, the objective of RR 4-2014 to aid the BIR in conducting tax audit can no longer be met. Standing alone, the requirement to submit an affidavit of schedule of fees, is irrelevant for purposes of tax assessment and collection. Verily, without the number of client appointments or patient consultations, the BIR is left with just a table of fees that a self-employed professional may charge his or her clients or patients. Evidently, the BIR cannot, with just this information, minimize tax evasion in the industry. Thus, for no longer being germane to the purpose of the Tax Code and RR 4-2014, the requirement to submit an affidavit of schedule of fees should definitely be invalidated as well.

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[27] National Privacy Commission, Implementing Rules and Regulations of the Data Privacy Act of 2012, Republic Act No. 10173, Rule IV, Section 18.

To this end, I would like to also point out that nothing in the Tax Code or in RR 4-2014 binds the professionals to the disclosure in their affidavits. If the affidavits are not binding to the professionals, then why require them in the first place? To be sure, RR 4-2014 is also silent as regards the possibility of charging a different rate once the affidavit is already submitted to the BIR. While neither the Tax Code nor RR 4-2014 penalizes professionals if they stray from their declared schedule of fees, I emphasize that Article 183 of the Revised Penal Code still penalizes perjury or the making of false testimony under oath. Stated simply, all that the submission of affidavit of fees does is to compel a taxpayer to furnish evidence that can be used against him or her—this is not only unreasonable, but completely unwarranted.

Thus, for the reasons above, I fully concur with the *ponencia.* Accordingly, I **VOTE** to declare as **VOID** portions of both Sections 2(1) and 2(2) of the Revenue Regulation No. 4-2014, insofar as they require self-employed professionals (a) to submit an affidavit where they indicate their rates, manner of billings, as well as the factors considered in determining their service fees, and (b) to register their appointment books with the BIR.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice