



Republic of the Philippines
Supreme Court
Manila

EN BANC

**MIGRANTE
INTERNATIONAL, FELIZA B.
BENITEZ, JENNIFER BORBE,
MARIA LOVINA CASTRO,
MICHELLE CUSTODIO,
ERVIE FUENTES, FATIMA
MAMPO, ELVIRA MONTERO,
ROSARIO J. VALDESCO,
VERNA VILLANCIO, NERI
COLMENARES, CARLOS
ISAGANI T. ZARATE,
FERDINAND GAITE,
EUFEMIA CULLAMAT, Bayan
Muna Partylist Representatives;
ARLENE D. BROSAS, Gabriela
Women's Party Representative;
FRANCISCA L. CASTRO, ACT-
Teachers Partylist
Representative; and SARAH
JANE I. ELAGO, Kabataan
Partylist Representative,
Petitioners,**

G.R. No. 248680

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,**
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:

November 5, 2024

- versus -

**SOCIAL SECURITY SYSTEM,
represented by CARLOS G.
DOMINGUEZ III, in his capacity
as Chairman, AURORA C.**

* On Official Business.

** On Official Leave.

IGNACIO, SSS President and Vice-Chairman, DEPARTMENT OF FOREIGN AFFAIRS, represented by TEODORO LOCSIN, JR., in his capacity as Secretary, and DEPARTMENT OF LABOR AND EMPLOYMENT, represented by SILVESTRE H. BELLO III, in his capacity as Secretary, and PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, represented by its Administrator BERNARD OLALIA,
Respondents.

x-----x

DECISION

SINGH, J.:

Before the Court is a Petition for *Certiorari* and Prohibition¹ under Rule 65 of the Rules of Court filed by petitioners Migrante International, Feliza B. Benitez, Jennifer Borbe, Maria Lovina Castro, Michelle Custodio, Ervie Fuentes, Fatima Mampo, Elvira Montero, Rosario J. Valdesco, Verna Villancio, Neri Colmenares, Carlos Isagani T. Zarate, Ferdinand Gaité, Eufemia Cullamat, Bayan Muna Partylist Representatives; Arlene D. Brosas, Gabriela Women's Party Representative; Francisca L. Castro, ACT-Teachers Partylist Representative; and Sarah Jane I. Elago, Kabataan Partylist Representative (collectively Migrante International et al.). Migrante International et al. seek to nullify subsections (a), (c), and (e) of Section 9-B of Republic Act No. 11199² or the Social Security Act of 2018 and Rule 14, Sections 1, 5, 5.a, 5.b, 6, 7(iii), and 7 (iv) of the Implementing Rules and Regulations (IRR) of Republic Act No. 11199,³ for violating the equal protection clause of the Constitution, for being an unjust deprivation of property, and for violating the right to travel.⁴ Migrante International et al. also seek to prohibit the respondents from enforcing the aforementioned provisions of Republic Act No. 11199 and its IRR.⁵

¹ *Rollo*, pp. 3–73.

² (2018).

³ *Rollo*, p. 6.

⁴ *Id.* at 18–19.

⁵ *Id.* at 6.



The Facts

On February 7, 2019, then President Rodrigo Duterte signed into law Republic Act No. 11199,⁶ otherwise known as the Social Security Act of 2018. One of the significant amendments introduced by Republic Act No. 11199 is the compulsory coverage by the Social Security System (SSS) of all sea-based and land-based Overseas Filipino Workers (OFWs). For this purpose, land-based OFWs are treated in the same manner as self-employed persons. Pertinently, the assailed provisions of Republic Act No. 11199 are quoted as follows:

Section 9-B. Compulsory Coverage of Overseas Filipino Workers (OFWs) -

(a) Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022: *Provided, That they are not over [60] years of age.*

All benefit provisions under this Act shall apply to all covered OFWs. The benefits include, among others, retirement, death, disability, funeral, sickness[,] and maternity.

....

(c) *Land-based OFWs are compulsory members of the SSS and considered in the same manner as self-employed persons under such rules and regulations that the Commission shall prescribe.*

....

(e) *The Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE) and, the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement. (Emphasis supplied)*

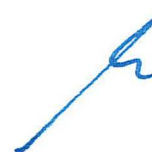
In accordance with Section 30 of Republic Act No. 11199, the Social Security Commission (SSC) promulgated the IRR of Republic Act No. 11199, which was published in the Philippine Star on June 2, 2019. Rule 14 of the IRR pertains to the compulsory coverage of OFWs. The challenged provisions of Rule 14 are quoted as follows:

RULE 14

Coverage of Overseas Filipino Workers

SEC 1. COMPULSORY OFW COVERAGE. - Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under [Republic Act] No. 8042 or the Migrant Workers and Overseas Filipinos Act

⁶ (2019).



of 1995 as amended [by Republic Act No. 10022], provided they are not over [60] years of age. [Sec 9-B, (a), 1st par]

- i. An OFW refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which [they are] not [citizen] or on-board a vessel navigating the foreign seas other than a government ship used for military or noncommercial purposes, or on an installation located offshore or on the high seas. A “person to be engaged in a remunerated activity” refers to an applicant worker who has been promised or assured employment overseas.
- ii. An OFW shall be allowed to register for initial coverage with the SSS up to the day of [their] 60th birthday.

....


SEC 5. LAND-BASED OFWS. - Land-based OFWs are compulsory members of the SSS and are considered in the same manner as self-employed persons, until a Bilateral Labor Agreement (BLA) shall have been entered into, under the following provisions of the Social Security Act of 2018 and such other rules and regulations that the Commission shall prescribe: [Sec 9-B, (c)]

- i. If the land-based OFW realizes no income in any given month, [they] shall not be required to pay contributions for that month; [Sec 11-A]
- ii. The contributions of land-based OFWs shall be fixed and determined in accordance with the provisions of the Social Security Act of 2018; [Sec 19-A in relation to Sec 4 (a) (4)]
- iii. The monthly earnings declared by a land-based OFW at the time of [their] registration with the SSS shall be the basis of [their] initial MSC and the corresponding amount of monthly contribution; [Sec 19-A, 1st proviso]
- iv. A land-based OFW member shall pay both the employer and the employee contributions; and [Sec 19-A, 1st proviso]
- v. The monthly earnings declared by a land-based OFW at the time of [their] registration shall remain the basis of [their] MSC unless [they make] another declaration of [their] monthly earnings, in which case such latest declaration becomes the new basis of [their] MSC. [Sec 19-A, 2nd paragraph]

SEC. 5.a. MSC FOR LAND-BASED OFWS. - The minimum MSC for land-based OFWs shall be [PHP 8,000.00] [SSC Resolution No. 90 dated [January 25,] 2017], provided that those who are receiving monthly earnings lower than [PHP] 8,000.00 shall pay the contribution based on the said minimum MSC. [Sec 4 (a) (9), 2nd proviso]

Changes in the MSC of a land-based OFW member shall be in accordance with the following policies: [SSC Resolution No. 728 dated [August 20,] 2014]

- i. For the initial contribution payment, [they] shall be allowed to change [their] MSC to an MSC higher or lower than the one indicated at the



time of registration, depending on actual deployment and realization of earnings abroad without having to present any proof thereof, provided that the new MSC is not lower than the prevailing minimum MSC for OFWs. Said contribution shall be deemed as the new declaration of earnings and shall be the basis in determining compliance with the allowable change in succeeding MSC.

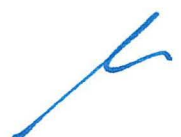
- ii. A land-based OFW member who is below [55] years old shall be allowed to change [their] MSC without limit in frequency and in number of salary brackets in a given calendar year, but in no case shall it be lower than the prevailing minimum MSC for OFWs. Submission of written request or declaration of earnings is not required.
- iii. A land-based OFW member who is 55 years old and above shall be allowed to increase [their] MSC only once in a given calendar year and by one [] salary bracket only from the last posted MSC, regardless of whether proof of earnings is presented or not, except for the following cases whereby certain rules shall apply accordingly:
 - a) In case of a change in [their] membership type from employed/self-employed/voluntary to OFW-member for the first time, [they] shall be allowed to increase [their] MSC without limit and without having to present proof of earnings; and
 - b) In case of a higher maximum MSC under a new applicable schedule of contributions, [they] shall be allowed to increase [their] MSC up to the new maximum MSC, without having to present proof of earnings, provided that [their] last posted MSC corresponds to the maximum MSC under the immediately preceding schedule of contributions.

The corresponding MSC of the first contribution in the above cases shall be the basis in determining compliance with the allowable change in succeeding MSC. No limit shall be imposed in case of decrease in MSC, but in no case shall it be lower than the prevailing minimum MSC for OFWs.

- iv. An OFW-member may opt to pay [their] monthly contributions in advance regardless of the number of months or years. However, [they] may be required to settle underpayment/s in the future resulting from any policy change affecting the applicable schedule of contributions for the advance payments made.

SEC 5.b. DEADLINE FOR PAYMENT OF LAND-BASED OFWs. - The deadline for payment of contributions of land-based OFW members shall be as follows: [SSC Resolution No. 728 dated [August 20,] 2014]

- i. Contributions for the months of January to September of a given calendar year may be paid up to December 31 of the same year; and
- ii. Contributions for the months of October to December of a given calendar year may be paid up to January 31 of the succeeding year. No contribution paid retroactively by a land-based OFW-member based on the above deadline shall be used in determining [their]



eligibility to any benefit arising from a contingency wherein the date of payment is within or after the semester of contingency.

SEC 6. MANDATE OF DFA AND DOLE. – The DFA, the DOLE and all its agencies involved in deploying OFWs for employment abroad are mandated to negotiate BLAs with the OFWs' host countries to ensure that the employers of land-based OFWs, similar to the principals of sea-based OFWs, pay the required contributions, in which case these land-based OFWs shall no longer be considered in the same manner as self-employed persons under the Social Security Act of 2018. Instead, they shall be considered as compulsorily covered employees with employer and employee shares in contributions that shall be provided for in the BLAs and their implementing administrative agreements, [Sec 9-B, (d)] provided that in countries which already extend social security coverage to OFWs, the DFA through the Philippine Embassies and the DOLE shall negotiate further agreements to serve the best interests of the OFWs. [Sec 9-B, (d), proviso]

SEC 7. BILATERAL SOCIAL SECURITY AND LABOR AGREEMENTS AND OTHER MEASURES FOR ENFORCEMENT. - The DFA, the DOLE and the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement. [Sec 9-B, (e)]

....

iii. For land-based OFWs in countries without any SSA or BLA with the Republic of the Philippines, the measures for enforcement of compulsory coverage shall include, among others, the collection of contribution payments by the Philippine Overseas Employment Administration (POEA) and/or the concerned attached DOLE agencies, through its applicable documentation and deployment processes such as the issuance of Overseas Employment Certificate (OEC), as follows:

- a) For new hires, direct/name hires and government-to-government hires - one [] monthly contribution; and
- b) For re-hires/returning workers/Balik-Manggagawa - three [] monthly contributions.

iv. The DFA, the DOLE and the SSS shall enter into an agreement on the implementation of their joint mandate to ensure the compulsory coverage of OFWs, covering the following undertakings, among others:

- a) Creation of a Joint Committee to craft the enabling issuances/instruments;
- b) Establishment of data linkages and compliance monitoring schemes;
- c) Arrangements on OFW member servicing and benefit disbursements, including the required documentation for unemployment benefit claims;
- d) Rationalization of SSS representation in Foreign Service Posts; and
- e) Conduct of information campaigns.

Migrante International et al. filed this Petition before the Court against the SSS, the Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE), and the Philippine Overseas Employment



Administration (POEA) (collectively DFA et al.), to seek the nullification of subsections (a), (c), and (e) of Section 9-B of Republic Act No. 11199 and Rule 14, Sections 1, 5, 5-A, 5-B, 6, 7 (iii), and 7 (iv) of its IRR, for being unconstitutional. Migrante International et al. also pray to prohibit the respondents from enforcing the assailed provisions of Republic Act No. 11199 and its IRR.

The Arguments of Migrante International et al.

Procedural Aspects

Migrante International et al. assert that they have met the requisites for judicial review.⁷ According to Migrante International et al., there exists an actual case or controversy in this case, given the evident clash of the parties' respective legal claims.⁸ Furthermore, Republic Act No. 11199 has already been signed by the President and the IRR has been published in a newspaper of general circulation. Thus, the threat of injury is not merely speculative or hypothetical, but, rather, real and apparent.⁹

Migrante International et al. also maintain that they all have legal standing to file the Petition as citizens, considering that the issues raised are of transcendental importance.¹⁰ Petitioner Migrante International (Migrante) asserts its legal standing as an association of Filipino migrants that has chapters in 24 countries.¹¹ Petitioners Feliza B. Benitez, Jennifer Borbe, Maria Lovina Castro, Michelle Custodio, Ervie Fuentes, Fatima Mampo, Elvira Montero, Rosario J. Valdesco, and Verna Villancio, all land-based OFWs, (collectively petitioners land-based OFWs) argue that they have sufficiently shown their standing to file the Petition, as they are in immediate danger of sustaining some direct injury because of the enforcement of the assailed law and IRR.¹² Migrante International et al., who are legislators, assert legal standing based on the alleged infringement of their legislative prerogatives.¹³

Additionally, Migrante International et al. argue that the remedies of *certiorari* and prohibition are proper since the Petition raises constitutional issues.¹⁴ Further, Migrante International et al. claim that the direct recourse to the Court is justified, emphasizing transcendental issues involving pure questions of law raised in the Petition.¹⁵

⁷ *Id.* at 350.

⁸ *Id.* at 351.

⁹ *Id.*

¹⁰ *Id.* at 11.

¹¹ *Id.*

¹² *Id.* at 354.

¹³ *Id.* at 355.

¹⁴ *Id.* at 356.

¹⁵ *Id.*

Finally, the respondents DFA, DOLE, and POEA were properly impleaded since the Petition is also one for prohibition and they are the government agencies mandated to implement the law.¹⁶

Substantive Aspects

Migrante International et al. argue that Section 9-B, subsections (a), (c), and (e) of Republic Act No. 11199 are unconstitutional for violating the equal protection clause.¹⁷ They contend that land-based OFWs are not similarly situated as local employees on account of the nature of their employment.¹⁸ Unlike local employees whose employers contribute to SSS, there is no similar favorable provision for land-based OFWs.¹⁹ Since their employers are outside Philippine jurisdiction, the land-based OFWs must pay both employee and employer shares. While the assailed law envisions bilateral agreements with the host countries of the OFWs to change this, Migrante International et al. highlight that this remains uncertain. Meanwhile, land-based OFWs bear the burden.²⁰

Additionally, Migrante International et al. argue that treating land-based OFWs as self-employed persons lacks reasonable justification.²¹ Furthermore, they question the distinction between land-based and sea-based OFWs regarding employer contributions. Sea-based OFWs have manning agencies paying for them, while land-based OFWs—even those with agents—must cover the entire SSS premium until bilateral agreements are secured.²²

Moreover, Migrante International et al. challenge the compulsory contribution mechanism under Rule 14, Section 7(iii) of the IRR. Under this provision, land-based OFWs must pay contributions as self-employed before leaving the country as a requirement for receiving their overseas employment certificate (OEC).²³ Migrante International et al. claim that this imposition deprives them of property without due process and restricts their right to work.²⁴ Additionally, it is *ultra vires* on the part of the SSS to enforce compulsory coverage of land-based OFWs through the issuance of OECs.²⁵ Migrante International et al. claim that enforcing SSS coverage *via* OEC issuance is patently oppressive and discriminatory.²⁶

¹⁶ *Id.* at 357.

¹⁷ *Id.* at 358.

¹⁸ *Id.* at 359.

¹⁹ *Id.* at 360.

²⁰ *Id.* at 361.

²¹ *Id.* at 362.

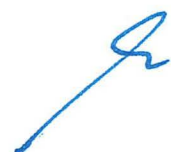
²² *Id.* at 28.

²³ *Id.* at 365.

²⁴ *Id.* at 366.

²⁵ *Id.*

²⁶ *Id.* at 367.



Finally, Migrante International et al. assert that the issuance of OEC to ensure collection of SSS contributions violates the constitutional right to travel.²⁷

The Arguments of DFA et al.

Procedural Aspects

On the other hand, DFA et al. posit that the Petition does not satisfy all the requirements for the exercise of judicial review.²⁸

Regarding legal standing, DFA et al. contend that Migrante International et al. have not effectively demonstrated direct and personal injury resulting from the implementation of the assailed provisions of Republic Act No. 11199 and its IRR.²⁹ Specifically, the petitioners land-based OFWs lack legal standing because they have not proven current deployment or employment. Regarding petitioner Migrante, the respondent SSS points out that it did not submit any proof to establish its authority to represent its members.³⁰ Furthermore, the respondents DFA, POEA, and DOLE argue that Migrante has also failed to demonstrate how its existence or its purpose as an association will suffer or be injured as a result of the enactment of the assailed provisions of Republic Act No. 11199 and its IRR.³¹ The respondents SSS, DFA, and DOLE also contend that the argument of Migrante International et al., who are legislators, that the assailed provisions of the IRR infringe on their legislative prerogatives, lacks legal basis.³² DFA et al. also dispute Migrante International et al.'s claim that the issues raised in the Petition are of transcendental importance.³³

DFA et al. argue that the Petition does not pose an actual and justiciable controversy.³⁴ The respondent SSS emphasized that Migrante International et al. failed to show that there is an actual injury committed against OFWs because of the enactment of the assailed provisions of Republic Act No. 11199 and its IRR.³⁵ Further, respondents DFA, DOLE, and POEA stressed that Republic Act No. 11199 and its IRR would have no real effect on the OFWs unless the instrumentalities of the government with jurisdiction over OFW deployment – particularly the DOLE and the POEA—promulgate rules and regulations or perform acts in furtherance of the provisions.³⁶ The Petition

²⁷ *Id.* at 369.

²⁸ *Id.* at 393; 443.

²⁹ *Id.* at 395.

³⁰ *Id.* at 397.

³¹ *Id.* at 447.

³² *Id.* at 449.

³³ *Id.* at 398; 449.

³⁴ *Id.* at 400; 443.

³⁵ *Id.* at 403.

³⁶ *Id.* at 445.



failed to show an instance where the POEA denied the issuance of an OEC to an OFW for failure to pay SSS contributions.³⁷

Moreover, the respondents DFA, DOLE, and POEA argue that a petition for *certiorari* and prohibition is not a remedy available to Migrante International et al. to question the wisdom of a declared state policy requiring compulsory coverage in the SSS.³⁸ The manner in which OFWs are to be covered by the SSS is a prerogative exclusively vested in the legislature.³⁹ This policy matter was determined by the Congress during the enactment of Republic Act No. 11199. Although the choice made by the Congress may be perceived as erroneous, the appropriate remedy is to seek the amendment or repeal of the statute through legislative channels.⁴⁰

Similarly, DFA et al. claim that Migrante International et al. erred by directly filing the Petition before the Court without exhausting other available remedies.⁴¹ They could have filed an ordinary action before the Regional Trial Court (RTC) or filed a petition for declaratory relief.⁴² Furthermore, they failed to adhere to the doctrine of hierarchy of courts, bypassing lower courts without compelling reasons.⁴³

Additionally, the respondents DFA, DOLE, and POEA argue that Migrante International et al. erred in impleading them as respondents.⁴⁴ The Petition failed to specify acts committed by the DFA, DOLE and POEA amounting to grave abuse of discretion. These government agencies did not promulgate rules or regulations or perform acts related to the assailed provisions of Republic Act No. 11199 and its IRR.⁴⁵ Respondents DFA, DOLE, and POEA point out that notably absent from the Petition are the House of Representatives and the Senate, despite their role in enacting the law—a procedural oversight given their status as indispensable parties.⁴⁶

Substantive Aspects

The respondent SSS emphasized that Republic Act No. 11199 and its IRR are presumed constitutional, unless proven otherwise.⁴⁷

³⁷ *Id.*

³⁸ *Id.* at 452.

³⁹ *Id.* at 454.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 455.

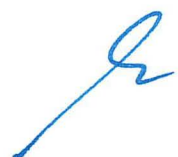
⁴³ *Id.* at 404; 457.

⁴⁴ *Id.* at 463.

⁴⁵ *Id.*

⁴⁶ *Id.* 463–464.

⁴⁷ *Id.* at 407.



DFA et al. dispute Migrante International et al.'s claim that there is a violation of the equal protection clause.⁴⁸ Land-based OFWs, like other employees, must be afforded social protection; thus, the requirement for compulsory coverage.⁴⁹ However, considering the jurisdictional impediment regarding the foreign employers of land-based OFWs, there is necessarily a different treatment as to the payment of their contribution.⁵⁰ Like self-employed persons, no employer may be compelled to pay the employer's share for the land-based OFWs. Thus, according to the respondents, land-based OFWs and self-employed persons are similarly situated.⁵¹

Additionally, the respondents DFA, DOLE, and POEA point out that the difference in the treatment of land-based and sea-based OFWs rests on a substantial distinction that is germane to the purpose of the law.⁵² Sea-based OFWs' principal employers are bound by standard contracts and international conventions, making them liable for SSS contributions.⁵³ Manning agencies, acting as employers for sea-based OFWs, share this liability.⁵⁴ However, no similar legal or contractual provision requires foreign employers of land-based OFWs to contribute to the SSS.⁵⁵

Furthermore, respondents DFA, DOLE, and POEA added that the compulsory collection of SSS contributions from land-based OFWs does not constitute deprivation of property.⁵⁶ This imposition is reasonably necessary to enforce the constitutional mandate of promoting social justice under Republic Act No. 11199, as well as in the exercise of the police power of the State.⁵⁷ It ensures the existence of SSS benefits that covered OFWs will enjoy during times of need. SSS contributions are not a burden, but serve as preparation and protection against possible unforeseen circumstances.⁵⁸ As to the use of the OEC to ensure collection of the SSS contributions, respondent SSS argue that this is a legal compulsion in the exercise of the police power of the State.⁵⁹

Finally, Migrante International et al. argue that the requirements for issuance of OEC, which include payment of SSS premiums, does not violate the right to travel.⁶⁰ Respondent SSS points out that these requirements do not curtail the right to travel considering the highly regulatory nature of overseas

⁴⁸ *Id.* at 407; 465.

⁴⁹ *Id.* at 408.

⁵⁰ *Id.* at 467-468.

⁵¹ *Id.* at 409,469.

⁵² *Id.* at 471.

⁵³ *Id.* at 471-472.

⁵⁴ *Id.* at 410; 472.

⁵⁵ *Id.* at 472.

⁵⁶ *Id.* at 474.

⁵⁷ *Id.* at 475.

⁵⁸ *Id.* at 478.

⁵⁹ *Id.* at 418.

⁶⁰ *Id.* at 420; 479.



employment.⁶¹ In this regard, respondents DFA, DOLE, and POEA added that the State can validly impose various procedures and requirements before an OFW can be deployed for work abroad.⁶²

The Issues

This Court resolves the following issues:

The Procedural Issues

- I. Whether a petition for *certiorari* and prohibition is the correct remedy in assailing the provisions of Republic Act No. 11199 and its IRR.
- II. Whether the direct resort to the Court is justified.
- III. Whether the Petition satisfy all the requisites for judicial review.

The Substantive Issues

- I. Whether subsections (a), (c) and (e) of Section 9-B of Republic Act No. 11199 and Sections 1, 5, 5-A, 5-B, 6, 7 (iii) and (iv) of the IRR, violate the equal protection clause of the Constitution.
- II. Whether the compulsory collection of contribution mechanism under Rule 14, Section 7(iii) of the IRR a valid exercise of the State's police power.
- III. Whether Rule 14, Section 7(iii) of the IRR violate the right to travel.

The Ruling of the Court

The Procedural Issues

Propriety of a Petition for Review on Certiorari and Prohibition

Migrante International et al. seek to declare as unconstitutional certain provisions of Republic Act No. 11199 and its IRR. For this purpose, they availed of the remedy of *certiorari* and prohibition under Rule 65 of the Rules of Court. On the other hand, DFA et al. argue that a petition for *certiorari* and prohibition is not a remedy available to question the wisdom of a declared State policy requiring the compulsory coverage of OFWs in the SSS.

⁶¹ *Id.* at 420.

⁶² *Id.* at 484.

Under Article VIII, Section 1 of the Constitution, judicial power includes the duty of the courts of justice not only “to settle actual controversies involving rights which are legally demandable and enforceable,” but also “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” The Court’s expanded power of judicial review provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In *Francisco v. The House of Representatives*,⁶³ the Court recognized that this expanded jurisdiction was meant “to ensure the potency of the power of judicial review to curb grave abuse of discretion by ‘any branch or instrumentality of government.’”⁶⁴

As early as in *Tañada v. Angara*,⁶⁵ the Court has held that *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review, prohibit, or nullify, when proper, acts of legislative and executive officials.

This principle has been consistently invoked by the Court in cases where the Court’s expanded judicial power was invoked to question the constitutionality of legislative and executive acts.

In *Magallona v. Ermita*,⁶⁶ the Court allowed the resort to *certiorari* and prohibition to assail the constitutionality of Republic Act No. 9522, which adjusted the country’s archipelagic baselines and classified the baseline regime of nearby territories.

In *Belgica, et.al. v. Hon. Exec. Sec. Ochoa, Jr., et al.*,⁶⁷ the Court affirmed that the special civil actions of *certiorari* and prohibition are proper remedial vehicles to test the constitutionality of the Pork Barrel System.

⁶³ 460 Phil. 830 (2003) [Per J. Carpio Morales, *En Banc*].

⁶⁴ *Id.* at 883.

⁶⁵ 338 Phil. 546, 575 (1997) [Per J. Panganiban, First Division].

⁶⁶ 671 Phil. 243 (2011) [Per J. Carpio, *En Banc*].

⁶⁷ 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].



In *Araullo v. Aquino*,⁶⁸ the Court clarified that the remedies of *certiorari* and prohibition are broader in scope and reach, and affirmed that these are appropriate remedies to assail the constitutionality of the Disbursement Acceleration Program (DAP) of the executive and all other issuances implementing the DAP.

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,⁶⁹ the Court held as proper the remedies of the writs of *certiorari* and prohibition to assail the constitutionality of curfew ordinances.

In *Private Hospitals Association of the Philippines, Inc. v. Medialdea*,⁷⁰ the Court ruled that the remedies of *certiorari* and prohibition under Rule 65 of the Rules of Court were correctly availed of to assail the constitutionality of Republic Act No. 10932 and enjoin its enforcement, notwithstanding that these governmental actions do not involve the exercise of judicial, quasi-judicial or ministerial functions.

In *ACT Teachers Rep. Antonio Tinio v. Duterte*,⁷¹ the Court took cognizance of a petition for *certiorari* and prohibition to question the constitutionality of Republic Act No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act.

In the recent case of *Bayyo Association, Inc. v. Tugade*,⁷² the Court reiterated that a petition for *certiorari* and prohibition is a proper remedy in assailing the constitutionality of paragraph 5.2 of Department Order No. 2017-011 issued by the Department of Transportation.

Following this trend in jurisprudence and considering that the present Petition assails the constitutionality of Republic Act No. 11199 and its IRR, Migrant International et al. correctly availed of the special civil action of *certiorari* and prohibition.

Direct resort to the Court is justified

DFA et al. claim that Migrant International et al. violated the doctrine of hierarchy of courts when it directly filed the Petition before the Court.⁷³ Migrant International et al. counter that the direct recourse to the Court is

⁶⁸ 752 Phil. 716 (2015) [Per J. Bersamin, *En Banc*].

⁶⁹ 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

⁷⁰ 842 Phil. 747 (2018) [Per J. Tijam, *En Banc*].

⁷¹ G.R. Nos. 236118 and 236925, January 24, 2023 [Per J. Dimaampao, *En Banc*] at 12. This pinpoint citation refers to the Copy of the Decision uploaded to the Supreme Court website.

⁷² G.R. No. 254001, July 11, 2023 [Per J. Singh, *En Banc*] at 9. This pinpoint citation refers to the Copy of the Decision uploaded to the Supreme Court website.

⁷³ *Rollo*, p. 404.

justified considering that the Petition raises transcendental issues involving questions of law.⁷⁴

The doctrine of hierarchy of courts dictates that, as a rule, petitions for the issuance of extraordinary writs should first be made with the lower-ranked court exercising concurrent jurisdiction with a higher court.⁷⁵

Nonetheless, the Court has recognized several exceptions to the rule on hierarchy of courts. In *The Diocese of Bacolod v. COMELEC*,⁷⁶ the Court enumerated instances where direct resort to the Court is allowed:

1. when there are genuine issues of constitutionality that must be addressed at the most immediate time;
2. when the issues involved are of transcendental importance;
3. in cases of first impression;
4. the constitutional issues raised are better decided by the Supreme Court;
5. the time element or exigency in certain situations;
6. the filed petition reviews an act of a constitutional organ;
7. when there is no other plain, speedy, and adequate remedy in the ordinary course of law;
8. the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.⁷⁷

To justify a direct resort to this Court, the parties must clearly and specifically allege in their petitions the special and important reasons therefor. More importantly, the Court emphasized in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*,⁷⁸ that to invoke this Court's original jurisdiction, only questions of law must be involved. This Court is not a trier of facts; it is not equipped to receive and evaluate evidence in the first instance.

The Court notes that this is not the first time that a petition assailing the constitutionality of Section 9-B of Republic Act No. 11199 was filed before this Court. In *Joint Ship Manning Group, Inc. v. Social Security System*,⁷⁹ the Court took cognizance of a petition for *certiorari* and prohibition filed by manning agencies seeking to annul and declare as unconstitutional Section 9-B of Republic Act No. 11199 for an alleged violation of their constitutionally guaranteed rights to due process and equal protection. The Court justified the direct resort to the Court because of the existence of two of the exceptions,

⁷⁴ *Id.* at 357.

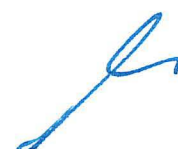
⁷⁵ *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 779-780 (2018) [Per J. Tijam, *En Banc*].

⁷⁶ 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

⁷⁷ *Id.* at 331-335.

⁷⁸ 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

⁷⁹ 876 Phil. 596,615-616 (2020) [Per J. Gesmundo, *En Banc*].



particularly: (1) that this case is of first impression; and (2) that the present issue involves public welfare and the advancement of public policy or demanded by the broader interest of justice. The Court explained that the assailed law pertains to the welfare of OFWs, who are considered modern-day Filipino heroes, and the grant of social protection in their favor. Additionally, the Court observed that, for the first time, the social security membership and contributions, particularly of our seafarers, are mandated by law. Consequently, the Court deemed it necessary to discuss the substantive aspect of the issues involved in that case.

In this case, the law assailed is likewise Republic Act No. 11199. Unlike *Joint Ship Manning*, however, the assailed provisions in this case pertain to land-based OFWs. Nevertheless, the Court also finds it imperative to ensure that the mandatory social security coverage of land-based OFWs adheres to constitutional parameters. Further, the question of whether the assailed provisions of Republic Act No. 11199 and its IRR violate the Constitution not only presents a genuine issue of constitutionality, but also involves a question of law. Thus, the direct resort to the Court is justified.

Requisites for Judicial Review

Notwithstanding the propriety of the legal vehicle employed, the requirements for the exercise of the Court's judicial review, even under its expanded jurisdiction, must nevertheless be satisfied, namely:

- (1) an actual case or controversy calling for the exercise of judicial power;
- (2) the person challenging the act must have 'standing' to challenge; he or she must have a personal and substantial interest in the case such that he or she has sustained, or will sustain, direct injury as a result of this enforcement;
- (3) the question on constitutionality must be raised at the earliest possible opportunity; and
- (4) the issue of constitutionality must be the very *lis mota* of the case.

Actual Case or Controversy

Of utmost importance among the requirements for justiciability is the existence of an actual case or controversy. In *Kilusang Mayo Uno, et al. v. Aquino III*,⁸⁰ the Court discussed the concept of actual case or controversy:

There is an actual case or controversy if there is a "conflict of legal right, an opposite legal claims susceptible of judicial resolution." A

⁸⁰ 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].



petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.⁸¹

In *Information Technology Foundation of the Philippines v. COMELEC*,⁸² the Court elaborated on the requirement of actual case and controversy:

In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.⁸³

There is also an actual case or controversy when there is a clear and convincing showing of contrariety of legal rights. In *Atty. Calleja v. Executive Secretary Medialdea*,⁸⁴ the Court explained what contrariety of legal rights is:

*An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.⁸⁵ (Emphasis supplied, citations omitted)*

In *Executive Secretary v. Filipinas Shell Petroleum Corp.*,⁸⁶ the Court reiterated this pronouncement and further clarified how contrariety of rights may be established:

⁸¹ *Id.* at 1188.

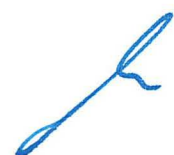
⁸² 499 Phil. 281 (2005) [Per C.J. Panganiban, *En Banc*].

⁸³ *Id.* at 305.

⁸⁴ 918-B Phil. 1 (2021) [Per J. Carandang, *En Banc*].

⁸⁵ *Id.* at 55–56.

⁸⁶ G.R. No. 209216, February 21, 2023 [Per SAJ. Leonen, *En Banc*].



Thus, in asserting a contrariety of legal rights, merely alleging an incongruence of rights between the parties is not enough. *The party availing of the remedy must demonstrate that the law is so contrary to their rights that there is no interpretation other than that there is a factual breach of rights. No demonstrable contrariety of legal rights exists when there are possible ways to interpret the provision of a statute, regulation, or ordinance that will save its constitutionality.* In other words, the party must show that the only possible way to interpret the provision is one that is unconstitutional. Moreover, the party must show that the case cannot be legally settled until the constitutional issue is resolved, that is, that it is the very *lis mota* of the case, and therefore, ripe for adjudication.⁸⁷ (Emphasis supplied, citation omitted)

In *Belgica v. Ochoa*,⁸⁸ the Court found the existence of an actual and justiciable controversy because the parties' opposing legal claims regarding the constitutionality of the pork barrel system, satisfied the requirement of contrariety of legal rights.⁸⁹

In *Universal Robina Corporation v. Department of Trade and Industry*,⁹⁰ the Court found a clear and convincing presence of contrariety of legal rights between respondent Department of Trade and Industry, which maintained its authority when profiteering occurred, and the petitioner, which maintained that the provision on profiteering is void for vagueness.

In *Octaviano v. Board of Architecture of the Professional Regulation Commission*,⁹¹ the Court found that the requirement of contrariety of legal rights is satisfied considering the parties' adverse and antagonistic positions on the constitutionality and validity of the assailed resolutions.

Closely related to the requisite of actual case or controversy is that the question must be ripe for adjudication. A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.⁹² In *Atty. Lozano v. Speaker Nograles*,⁹³ the Court declared that whether a case is ripe for adjudication is determined by an evaluation of two aspects: "first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration."⁹⁴

⁸⁷ *Id.* at 21-22. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁸⁸ 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].

⁸⁹ *Id.* at 520.

⁹⁰ G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*] at 13. This pinpoint citation refers to the Copy of the Decision uploaded to the Supreme Court website.

⁹¹ G.R. No. 239350, August 22, 2023 [Per J. Leonen, *En Banc*] at 12. This pinpoint citation refers to the Copy of the Decision uploaded to the Supreme Court website.

⁹² *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000) [Per J. Kapunan, *En Banc*].

⁹³ 607 Phil. 334 (2009) [Per C.J. Puno, *En Banc*].

⁹⁴ *Id.* at 341.

Applying these precepts, the Court finds that there exists an actual and justiciable controversy in this case considering the evident clash of the parties' legal claims, particularly on whether the assailed provisions of Republic Act No. 11199 and its IRR violate the land-based OFW's constitutional rights. Further, the Court notes that Republic Act No. 11199 has been in force for the last five years. The contested provisions, should they be deemed unconstitutional, have already affected land-based OFWs.

Locus standi

In the case of *Anak Mindanao Party List Group v. Exec. Sec. Ermita*,⁹⁵ the Court discussed the concept of "locus standi" or legal standing:

Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.⁹⁶

It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.⁹⁷

For a concerned party to be allowed to raise a constitutional question, it must show that: (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.⁹⁸

The legal standing doctrine, however, admits of exceptions. This Court has taken cognizance of petitions filed by those lacking personal or substantial interest in the challenged governmental act, yet whose petitions raise "constitutional issue[s] of critical significance."⁹⁹ In *Funa v. Villar*,¹⁰⁰ the

⁹⁵ 558 Phil. 338 (2007) [Per J. Carpio-Morales, *En Banc*].

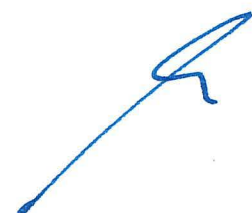
⁹⁶ *Id.* at 350.

⁹⁷ *Id.* at 351.

⁹⁸ *Id.*

⁹⁹ *Funa v. Villar*, 686 Phil. 571, 585 (2012) [Per J. Velasco, Jr., *En Banc*].

¹⁰⁰ 686 Phil. 571 (2012) [Per J. Velasco, Jr., *En Banc*].



Court summarized the requirements for granting legal standing to “non traditional suitors:”¹⁰¹

- 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
- 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.¹⁰²

Nonetheless, the Court emphasized in *Falcis v. Civil Registrar General*,¹⁰³ that even for exceptional suers, the party must claim some kind of injury-in-fact:

For concerned citizens, it is an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of. For taxpayers, they must show “sufficient interest in preventing the illegal expenditure of money raised by taxation[.]” Legislators, meanwhile, must show that some government act infringes on the prerogatives of their office. Third-party suits must likewise be brought by litigants who have “sufficiently concrete interest” in the outcome of the dispute.¹⁰⁴

In this case, petitioner Migrante asserts its legal standing as an association of Filipino migrants that has chapters in 24 countries.

The Court has previously allowed associations to sue on behalf of their members.

In *The Executive Secretary v. The Hon. Court of Appeals*,¹⁰⁵ the Asian Recruitment Council Philippine Chapter, Inc. filed a petition for declaratory relief before the Court seeking to declare certain provisions of Republic Act No. 8042¹⁰⁶ or the Migrant Workers and Overseas Filipinos Act of 1995 unconstitutional. The association sued on behalf of its members who were recruitment agencies. The Court took cognizance of the association’s petition and said that an association “is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.”¹⁰⁷ The Court found that the board resolutions of

¹⁰¹ *Id.* at 585-586.

¹⁰² *Id.*

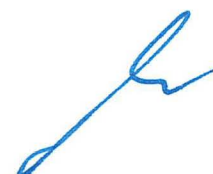
¹⁰³ 861 Phil. 388 (2019) [Per J. Leonen, *En Banc*].

¹⁰⁴ *Id.* at 533.

¹⁰⁵ 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

¹⁰⁶ (1995).

¹⁰⁷ 473 Phil. 27, 51 (2004) [Per J. Callejo, Sr., Second Division].



the individual members of the Asian Recruitment Council Philippine Chapter, Inc. attached to the petition, were enough proof that the individual members authorized the association to sue on their behalf.

In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*,¹⁰⁸ the Court allowed the Pharmaceutical and Health Care Association of the Philippines to sue on behalf of its members to question the constitutionality of the rules implementing the Milk Code. The Court considered the amended articles of incorporation of the association and found that it was formed “to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public.”¹⁰⁹ Citing the case of *Executive Secretary v. Court of Appeals*,¹¹⁰ the Court declared that “the modern view is that an association has standing to complain of injuries to its members.”¹¹¹

In *Holy Spirit Homeowners Association, Inc. v. Defensor*,¹¹² the Holy Spirit Homeowners Association, Inc. filed a petition for prohibition, praying that this Court enjoin the National Government Center Administration Committee from enforcing the rules implementing RA No. 9207. The Court declared that the Holy Spirit Homeowners Association, Inc. “ha[d] the legal standing to institute the [petition for prohibition] whether or not it is the duly recognized association of homeowners in the [National Government Center].”¹¹³ The Court noted that the individual members of the association were residents of the National Government Center. Therefore, “they are covered and stand to be either benefited or injured by the enforcement of the [implementing rules], particularly as regards the selection process of beneficiaries and lot allocation to qualified beneficiaries.”¹¹⁴

Notably, in these cases, the Court found that the associations established who their members were, their authority to sue on behalf of their members, and that the members would be directly injured by the challenged governmental acts.

On the contrary, in *Provincial Bus Operators Association of the Phils. v. DOLE*,¹¹⁵ the Court found that the Provincial Bus Operators Association of the Philippines failed to establish who their members were and if these members allowed them to sue on their behalf. The Court noted that the association did not present any proof, such as board resolutions of their

¹⁰⁸ 561 Phil. 386 (2007) [Per J. Austria-Martinez, *En Banc*].

¹⁰⁹ *Id.* at 396.

¹¹⁰ 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

¹¹¹ *Id.* at 50.

¹¹² 529 Phil. 573 (2006) [Per J. Tinga, *En Banc*].

¹¹³ *Id.* at 584.

¹¹⁴ *Id.*

¹¹⁵ 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

alleged members or their own articles of incorporation, authorizing them to act as their members' representatives in suits involving their members' individual rights.¹¹⁶

Similarly, in *Bayyo*, the Court dismissed a petition for *certiorari* and prohibition filed before the Court to seek the nullification of paragraph 5.2 of Department Order No. 2017-011 issued by the Department of Transportation, due to the petitioners' lack of legal standing. The Court noted that Bayyo Association Inc. merely submitted its SEC Certificate of Registration. The Court found this insufficient to establish that it is a legitimate association of PUJ operators and drivers. Further, Bayyo Association Inc. also failed to establish who its members were and whether it has been duly authorized by said members to institute the case.

In this case, Migrante submitted its Certificate of Incorporation, Articles of Incorporation, and By-Laws. However, an examination of these documents would show that these do not establish who the members of Migrante are. Further, Migrante failed to submit any proof of its authority to institute the case on behalf of the migrant workers it purportedly represents. Thus, Migrante has no standing to sue as an association on behalf of its members.

As to the petitioners who are land-based OFWs, respondent SSS correctly observed that they failed to clearly state if they are currently deployed or employed as OFWs since the OECs they submitted were processed years before the assailed law took effect.¹¹⁷ Further, the Court agrees with the respondents that they failed to establish that they sustained any injury or are in imminent danger of sustaining some direct injury as a result of the promulgation of the assailed provisions of Republic Act No. 11199 and its IRR. Hence, the petitioners land-based OFWs have not established their legal standing either.

Regarding petitioners who are legislators, they claim that they have established their legal standing. According to them, the assailed provisions of the IRR are *ultra vires* and infringe on their legislative prerogatives.

The Court agrees.

When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives.¹¹⁸ Consequently, the allegation in

¹¹⁶ *Id.* at 257.

¹¹⁷ *Rollo*, p. 395

¹¹⁸ *Purisima v. Lazatin*, 801 Phil. 395, 413 (2016) [Per J. Brion, *En Banc*].



the Petition that the assailed provisions of the IRR directly contravenes the provisions of Republic Act No. 11199 grants a member of Congress legal standing to challenge the issuance to prevent undue encroachment of legislative power by the executive.¹¹⁹

Nonetheless, in this case, all the petitioners invoke one of the exceptions to the rule on legal standing: they are filing this Petition as concerned citizens, raising issues of transcendental importance.¹²⁰

To be clear, the mere invocation of the alleged transcendental importance of the issues raised is not enough to automatically clothe the petitioners with legal standing.

As previously discussed, there exists an actual case or controversy before the Court. To reiterate the Court's ruling in *Joint Ship Manning Group, Inc. et al. v. Social Security System, et al.*,¹²¹ Republic Act No. 11199 concerns the grant of social protection in favor of OFWs. This law, which has been effective since 2019, mandates the social security membership and contributions of OFWs for the first time. By addressing the issues related to compulsory coverage in the SSS of land-based OFWs, the Court can ensure that this social security protection operates in their favor. Hailed as modern-day heroes for their significant contributions to the Philippine economy, resolving the constitutional issues at hand would also serve as a recognition of their service and sacrifices.

Earliest Possible Opportunity

Regarding the third requirement that the question on constitutionality must be raised at the earliest possible opportunity, the Court held in *Arceta v. Mangrobang*¹²² that it does not necessitate an immediate elevation of the matter to the Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised in the proceedings in the court below. Considering that the present constitutional challenge against Republic Act No. 11199 and its IRR was directly filed with this Court, the third requirement of judicial review of "earliest possible opportunity" is met because the issue of constitutionality is raised at the first instance.¹²³

Lis Mota


¹¹⁹ *Rollo*, p. 366.

¹²⁰ *Id.* at 11.

¹²¹ 876 Phil. 596 (2020) [Per J. Gesmundo, *En Banc*].

¹²² 476 Phil. 106 (2004) [Per J. Quisumbing, *En Banc*].

¹²³ *Atty. Calleja v. Executive Secretary Medialdea*, 918-B Phil. 1 (2021) [Per J. Carandang, *En Banc*].



The final requirement of *lis mota* dictates that “[t]he Court will not pass upon a constitutional question, although properly presented.... if the case can be disposed of on some other [ground] such as the application of a statute or general law.”¹²⁴ Thus, the petitioners must be able to show that the case cannot be legally resolved unless the constitutional question raised is adjudicated. The *lis mota* requirement is based on the rule that every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.¹²⁵

In this case, the Petition alleges constitutional issues affecting the provisions of Republic Act No. 11199 and its IRR. Thus, the issue of constitutionality raised in the Petition is the very *lis mota* of the case.

Having resolved the procedural issues, the constitutionality of the assailed provisions of Republic Act No. 11199 and its IRR must now be addressed squarely.

The Substantive Issues

No Violation of the Equal Protection Clause

The petitioners argue that Section 9-B, subsections (a), (c), and (e) of Republic Act No. 11199 are unconstitutional for violating the equal protection clause.¹²⁶

The equal protection clause under the Constitution means that “no person or class of persons shall be denied of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances.”¹²⁷

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed.¹²⁸

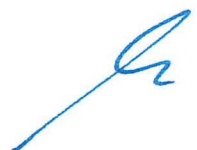
¹²⁴ *Parcon-Song v. Parcon*, 876 Phil. 364, 400 (2020) [Per J. Leonen, *En Banc*], citing *Ty v. Hon. Trampe*, 321 Phil. 81, 103 (1995) [Per J. Panganiban, *En Banc*].

¹²⁵ *Garcia v. Executive Secretary*, 602 Phil. 64, 82 (2009) [Per J. Brion, *En Banc*].

¹²⁶ *Rollo*, p. 358.

¹²⁷ *Tolentino v. Board of Accountancy*, 90 Phil. 83, 90 (1951) [Per J. Bautista, *En Banc*].

¹²⁸ *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals, Cebu Ciy, et al.* 868 Phil. 93, 108 (2020) [Per J. Leonen, *En Banc*].



The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary,¹²⁹ such that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.¹³⁰ It is only in cases where there are real and substantial differences to distinguish one class from another that the law may treat and regulate one class differently from the other.¹³¹

Thus, a statute that treats one class differently from another class will not violate the equal protection clause as long as the classification is valid. In *Samahan ng Progresibong Kabataan v. Quezon City*,¹³² the Court summarized the three tests to determine the reasonableness of a classification:

The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.¹³³

In this case, the Court must apply only the rational basis test since Republic Act No. 11199 is a social welfare legislation. Rational basis test is applied to legislative or executive acts that have the general nature of economic or social welfare legislation.¹³⁴

In this jurisdiction, the Court mainly decides equal protection challenges using a “rational basis” test, coupled with a “deferential” scrutiny of legislative classifications and a reluctance to invalidate a law unless there

¹²⁹ *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599, 609 (2010) [Per J. Corona, Third Division].

¹³⁰ *GSIS, Cebu City Branch v. Montesclaros* 478 Phil. 573, 587 (2004) [Per J. Carpio, *En Banc*].

¹³¹ *Id.* at 587-588.

¹³² 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

¹³³ *Id.* at 1113-1114, citing *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, *En Banc*]; *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*]; *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 77 (2010) [Per J. Del Castillo, *En Banc*]; JOAQUIN BERNAS, S.J. THE 1987 CONSTITUTION OF THE PHILIPPINES : A COMMENTARY 139-140 (2009); Concurring Opinion of Associate Justice Teresita J. Leonardo-De Castro in *Garcia v. Drilon*, 712 Phil. 44, 124-127 (2013) [Per J. Perlas-Bernabe, *En Banc*]; *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 97-98 (2014) [Per J. Abad, *En Banc*]; *Mosqueda v. Filipino Banana Growers & Exporters Association, Inc.*, 793 Phil. 17 (2016) [Per J. Bersamin, *En Banc*].

¹³⁴ J. Nachura, Concurring and Dissenting Opinion in *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374 (2010) [Per J. Mendoza, *En Banc*].



is a showing of a clear and unequivocal breach of the Constitution.¹³⁵ In *British American Tobacco v. Sec. Camacho*,¹³⁶ the Court explained that:

Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. *The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.*¹³⁷ (Emphasis supplied)

The Court notes that a declared policy of Republic Act No. 11199 is to extend social security protection to Filipino workers, local or overseas, and their beneficiaries.¹³⁸

Thus, for the first time, sea-based and land-based OFWs are now compulsorily covered by the SSS. For this purpose, land-based OFWs are treated in the same manner as self-employed persons. However, the DFA, the DOLE, and all its agencies involved in deploying OFWs for employment abroad are mandated to negotiate bilateral labor agreements with the OFWs' host countries to ensure that the employers of land-based OFWs, similar to the principals of sea-based OFWs, pay the required SSS contributions, in which case these land-based OFWs shall no longer be considered in the same manner as self-employed persons.

Migrante International et al. point out that land-based OFWs are treated in the same manner as local employees in terms of compulsory coverage in the SSS.¹³⁹ However, Migrante International et al. argue that land-based OFWs are not similarly situated as local employees, since the employers of land-based OFWs are beyond the ambit of Philippine laws and government enforcement¹⁴⁰ While treated alike in terms of compulsory coverage, the petitioners question the difference of treatment in terms of the privilege of mandating the employer's contribution.¹⁴¹ Additionally, Migrante International et al. argue that the treatment of land-based OFWs as self-employed persons has no reasonable justification¹⁴² because unlike self-

¹³⁵ *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 549 (2010) [Per J. Mendoza, *En Banc*].

¹³⁶ 584 Phil. 489 (2008) [Per J. Ynares-Santiago, *En Banc*].

¹³⁷ *Id.* at 525.

¹³⁸ Republic Act No. 11199 (2018), sec. 2.

¹³⁹ *Rollo*, p. 362.

¹⁴⁰ *Id.* at 360.

¹⁴¹ *Id.* at 362.

¹⁴² *Id.*



employed persons, land-based OFWs are employees with actual employers.¹⁴³ Furthermore, there is no reasonable basis for land-based OFWs to be treated differently from sea-based OFWs.¹⁴⁴ Sea-based OFWs have manning agencies paying for them as employers, while land-based OFWs, even those with manning agents, will have to pay the whole amount of SSS premiums until such time as the Philippine government secures the bilateral agreements.¹⁴⁵

The Court finds that there is reasonable basis to warrant differential treatment among local employees, self-employed persons, land-based OFWs, and sea-based OFWs.

As previously mentioned, Republic Act No. 11199 aims to extend social security protection to Filipino workers, both local and overseas, and their beneficiaries. Irrespective of employment type, all employees have the right to access essential social security benefits. Social security serves as a safeguard against various life-cycle risks, including old age, unemployment, sickness, injury, maternity, disability, and loss of income. Without such protection, employees and their beneficiaries could face insurmountable financial hardships due to unforeseen events. Therefore, Republic Act No. 11199 mandates compulsory coverage in the SSS to ensure that its members have timely and reliable social security protection. Membership in the SSS aligns with the lawful exercise of the police power of the State.¹⁴⁶

Furthermore, the right to social security is firmly anchored in international human rights law, particularly the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Articles 22 and 25 of the UDHR categorically state that everyone, as a member of society, has the right to social security, as well as to a standard of living adequate for their health and well-being. Additionally, Article 9 of the ICESCR establishes a clear legal obligation for countries to progressively implement the right to social security.

As a signatory to these international human rights instruments, the passage of Republic Act No. 11199 to specifically include OFWs in the coverage of the SSS affirms the Philippines' commitment to the progressive realization of providing all employees the right to social security protection. Thus, the Court affirms that membership in the SSS is mandatory for all OFWs, whether land-based or sea-based.

¹⁴³ *Id.* at 363.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 364.

¹⁴⁶ *Philippine Blooming Mills Co., Inc. v. Social Security System*, 124 Phil. 499 (1966) [Per J. Barrera, *En Banc*].



In ensuring that all workers have access to social security protection, the State must address differences in the employees' nature of employment, status, and place of work. However, this cannot be done in transgression of fundamental rights.

The Court notes that land-based OFWs occupy a unique position. Indubitably, they have the right to social security protection, just like any other employee. However, as correctly pointed out by the respondents, the absence of social security agreements or bilateral labor agreements leaves the Philippine government without a means to compel foreign employers to contribute the employer's share of SSS premiums.¹⁴⁷ Consequently, land-based OFWs find themselves compelled to bear the supposed employer's share, akin to self-employed individuals. This arrangement arises not from discrimination, but from practical necessity.

As to the differential treatment of land-based OFWs and sea-based OFWs, the Court has already settled in *Joint Ship Manning Group, Inc.* that Section 9-B of Republic Act No. 11199 does not violate the equal protection clause due to the presence of a substantial distinction:

Contrary thereto, land-based OFWs do not have singular or uniform employment contract because of the variety of work they perform. Their contracts depend on the nature of their employment and their place of work.

This is not the first time that the issue of the substantial distinction between the sea-based OFWs and land-based OFWs has been raised before the Court. In *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration (Conference of Maritime Manning Agencies, Inc.)*, the petitioners therein assailed the constitutionality of the POEA's power to increase the minimum compensation and benefits in favor of seafarers under their SEC. One of their arguments was that there is violation of the equal protection clause because of an alleged discrimination against foreign shipowners and principals employing Filipino seamen and in favor of foreign employers employing overseas Filipinos who are not seamen, or land-based OFWs.

In that case, the Court declared that there was no violation of the equal protection clause because there is valid substantial distinction between sea-based OFWs and land-based OFWs, particularly, in work environment, safety, dangers and risks to life and limb, and accessibility to social, civic, and spiritual activities. It was stated that:

There is, as well, no merit to the claim that the assailed resolution and memorandum circular violate the equal protection and contract clauses of the Constitution. To support its contention of inequality, the petitioners claim discrimination against foreign shipowners and principals employing Filipino seamen and in favor of foreign

¹⁴⁷ *Id.* at 468.



employers employing overseas Filipinos who are not seamen.

It is an established principle of constitutional law that the guaranty of equal protection of the laws is not violated by legislation based on reasonable classification. And for the classification to be reasonable, it (1) must rest on substantial distinctions; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. *There can be no dispute about the dissimilarities between land-based and sea-based Filipino overseas workers in terms of, among other things, work environment, safety, dangers and risks to life and limb, and accessibility to social, civic, and spiritual activities.*

*Accordingly, it is an indisputable fact that there is a substantial distinction between sea-based OFWs and land-based OFWs as enunciated in the cited case of Conference of Maritime Manning Agencies, Inc. Thus, these two [] classifications of OFWs can be treated differently.*¹⁴⁸ (Emphasis supplied, citations omitted)

Further, the petitioners in *Joint Ship Manning Group, Inc.* also argued that the different classification of manning agencies of seafarers, as solidarily liable with the principal foreign ship owners for SSS contributions, is unfair. They pointed out that the DFA and DOLE are only mandated to secure bilateral labor agreements with land-based OFWs, but not for sea-based OFWs, which violates the equal protection clause.

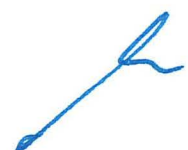
The Court rejected the argument and explained that:

Thus, the solidary liability of manning agencies with respect to principal foreign ship owners has been established by law, particularly, [Republic Act] No. 8042, as amended, and duly implemented by the 2016 POEA Rules. Sec. 9-B (b) of [Republic Act] No. 11199, which treats manning agencies as employers for the sole purpose of recognizing their joint and solidary liability in favor of seafarers, simply acknowledged the existing law and regulations. This provision was not created by Congress out of thin air; instead, it was based on the cited law and regulations, which manning agencies already acceded to. Due to this existing and recognized solidary liability of manning agencies, it was reasonable for the law to no longer mandate the DFA and DOLE to secure bilateral labor agreements because the SSS coverage of the seafarers are already safeguarded.¹⁴⁹

Thus, the liability of manning agencies with respect to the contribution of SSS premiums of sea-based OFWs under Section 9-B of Republic Act No. 11199, is founded on legal and contractual obligations. In contrast, there is no

¹⁴⁸ *Joint Ship Manning Group, Inc. et al. v. Social Security System, et. al.* 876 Phil. 596, 619-620 (2020) [Per J. Gesmundo, *En Banc*].

¹⁴⁹ *Id.* at 624.



singular or uniform employment contract applicable to land-based OFWs, which would justify imposing the same solidary liability to pay SSS contributions on their recruitment agencies.

Thus, the Court finds that the classification in Section 9-B of Republic Act No. 11199 is grounded on substantial distinctions and rationally furthers a legitimate State interest. Importantly, this classification is also germane to the purpose of the law. Similarly, the assailed provisions do not apply only to existing conditions. All land-based OFWs are completely covered by the SSS, without any conditions. Hence, the third and fourth requisites—that the classification must not be limited to existing conditions only and that it must apply equally to all members of the same class—are complied with. There is therefore no violation of the equal protection clause.

Invalid Exercise of Police Power

The petitioners argue that the mechanism by which the compulsory SSS contributions are collected from the land-based OFWs under Rule 14, Section 7(iii) of the IRR of Republic Act No. 11199 constitutes an unjust deprivation of property without due process of law.¹⁵⁰ According to the petitioners, it is *ultra vires* on the part of the SSS to enforce compulsory coverage of land-based OFWs through the issuance of OECs.¹⁵¹ Additionally, the petitioners argue that this is patently oppressive.¹⁵²

Article III, Section 1 of the Constitution states that no person shall be deprived of property without due process of law. Protected property includes the right to work and the right to earn a living. In *JMM Promotion and Management, Inc. v. Court of Appeals*,¹⁵³ the Court held that:

A profession, trade[,] or calling is a property right within the meaning of our constitutional guarantees. *One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.*¹⁵⁴ (Emphasis supplied)

However, the right to property is not absolute. The State may deprive persons of property through the exercise of police power. However, such deprivation must be carried out with due process.

¹⁵⁰ *Rollo*, p. 366.

¹⁵¹ *Id.*

¹⁵² *Id.* at 367.

¹⁵³ 329 Phil. 87 (1996) [Per J. Kapunan, First Division].

¹⁵⁴ *Id.*



In the exercise of police power, “property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state.”¹⁵⁵ The State’s police power must not be arbitrary or unreasonable. Its purpose is to promote general welfare, public health and safety, among others. This measure, exercised out of necessity, may interfere with personal liberties or property rights in order to advance common good.¹⁵⁶ To warrant such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.¹⁵⁷

To reiterate, Republic Act No. 11199 was enacted pursuant to the policy of the government to “promote social justice and ensure meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden.”¹⁵⁸ It is clear that said enactment implements the general welfare mandate of the Constitution and constitutes a lawful subject for the exercise of the police power of the State.

What is being challenged here, however, is the mechanism by which the compulsory SSS contributions are collected from the land-based OFWs. To recall, the assailed provision of the IRR provides that for land-based OFWs in countries without any social security agreements or bilateral labor agreements with the Philippines, the measures for enforcement of compulsory coverage shall include, among others, the collection of contribution payments by the POEA and/or the concerned attached DOLE agencies, through its applicable documentation and deployment processes such as the issuance of the OEC.

As correctly pointed out by *Migrante International et al.*, this is beyond the rule-making power delegated by the legislature to respondents the SSS, the DFA, and the DOLE. Section 9-B (e) of Republic Act No. 11199 provides that the DFA, DOLE, and SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.¹⁵⁹

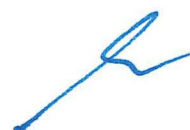
¹⁵⁵ *Didipio Earth-Savers’ Multi-Purpose Association, Inc. v. Sec. Gozun*, 520 Phil. 457, 476 (2006) [Per J. Chico-Nazario, *En Banc*].

¹⁵⁶ *Southern Luzon Drug Corporation v. DSWD*, 809 Phil. 315, 342 (2017) [Per J. Reyes, *En Banc*].

¹⁵⁷ *Department of Education, Culture and Sports v. San Diego*, 259 Phil. 1016, 1021 (1989) [Per J. Cruz, *En Banc*].

¹⁵⁸ Republic Act No. 11199 (2018), sec. 2.

¹⁵⁹ *Rollo* at 366.



The Court agrees with the petitioners that the use of deployment processes, such as the OECs, cannot be considered as “other measures for enforcement” following the principle of *ejusdem generis*.

The basic statutory construction principle of *ejusdem generis* states that a general term following an enumeration of specific words of the same class is to be construed to include or be restricted to things akin to or resembling, or of the same kind or class as those specifically mentioned.¹⁶⁰

In *National Power Corporation v. Angas*,¹⁶¹ the Court explained the purpose and rationale of the principle of *ejusdem generis*:

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, *Statutory Construction*, 3rd ed., pp. 395-400].¹⁶²

In this case, the general phrase “other measures for enforcement” follows the enumeration of “bilateral social security and labor agreements”. These bilateral social security and labor agreements are established with countries hosting OFWs to safeguard their welfare and social security rights. Applying the principle of *ejusdem generis*, the “other measures of enforcement” should be of a similar nature to bilateral social security and labor agreements. Notably, the use of OECs does not fall within the same category as bilateral social security and labor agreements.

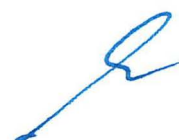
Furthermore, in his sponsorship speech, Senator Richard Gordon emphasized that land-based and sea-based OFWs are included in the coverage of the SSS to ensure that they would have pension when they retire. Senator Gordon highlighted that the DFA and the DOLE would be the primary agencies that would negotiate for the OFWs, especially those working in Middle East countries, while enhancing the functions of the Philippine embassies therein, to enable them to collect the SSS contributions.¹⁶³ Thus, Republic Act No. 11199 placed the primary burden on the DFA and the DOLE to ensure the compulsory collection of the SSS contributions of land-based OFWs. Consequently, it can be reasonably concluded that intrusive measures, such as subjecting the issuance of the OECs to this pre-condition, were not

¹⁶⁰ *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, 690 Phil. 321, 333 (2012) [Per J. Sereno, Second Division].

¹⁶¹ 284-A Phil. 39 (1992) [Per J. Paras, Second Division].

¹⁶² See also *Pelizloy Realty Corporation v. The Province of Benguet*, 708 Phil. 466, 481(2013) [Per J. Leonen, Third Division].

¹⁶³ Journal, Senate, 17th Congress, Session No. 76 (May 22, 2018).



intended as “other measures for enforcement” for the collection of SSS contributions.

Additionally, the POEA and the concerned attached DOLE agencies are not authorized by Republic Act No. 11199 to collect SSS contributions nor is the SSS allowed to delegate collection of SSS contributions to these agencies. While the SSS is given the authority to formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of Republic Act No. 11199,¹⁶⁴ its exercise must be within the confines of the law it seeks to implement. It has been settled that the rules and regulations that administrative agencies promulgate 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 be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid.¹⁶⁵ Thus Rule 14, Section 7(iii) of the IRR must be struck down for being inconsistent with the provisions of Republic Act No. 11199.

Additionally, requiring the land-based OFWs to pay in advance their SSS contributions for the issuance of their OECs is not reasonably necessary to accomplish the State’s objective of affording them social security protection. As correctly pointed out by Migrant International et al., land-based OFWs who have not even commenced employment yet, much less received their salaries, are compelled to advance their SSS contributions. It is also noteworthy that, in fact, prior to the issuance of an OEC, a worker is technically not considered an OFW yet. The OEC serves as proof that the worker has been processed by the POEA for deployment.¹⁶⁶ However, despite this, they are being compelled to prepay the required SSS contributions; otherwise, they cannot leave the country due to the absence of an OEC. This situation places an undue burden on our OFWs, who often resort to borrowing money to cover costly deployment expenses. The Court is reminded of the hardships and sacrifices faced by our OFWs. In *Olarte v. Nayona*,¹⁶⁷ the Court held that:

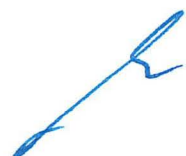
Our overseas workers belong to a disadvantaged class. Most of them come from the poorest sector of our society. Their profile shows they live in suffocating slums, trapped in an environment of crimes. Hardly literate and in ill health, their only hope lies in jobs they find with difficulty in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains, cross the seas, endure

¹⁶⁴ Republic Act No. 11199 (2018), sec. 4(a)(1).

¹⁶⁵ *SMART Communications Inc. v. National Telecommunications Commission*, 456 Phil. 145,156 (2003) [Per J. Ynares-Santiago, First Division].

¹⁶⁶ Rule II, no. 26, Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Filipino Workers of 2016.

¹⁶⁷ 461 Phil. 429 (2003) [Per J. Sandoval-Gutierrez, Third Division].



slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. The least we can do is to protect them with our laws.¹⁶⁸

Furthermore, to enforce compulsory coverage of land-based OFWs through the issuance of OECs is unduly oppressive, unreasonable, and repugnant to the Constitution. It undermines the mandate of the Constitution to protect the rights of overseas workers and to promote their welfare. Article XIII, Section 3 of the Constitution states that the State shall: (1) afford full protection to overseas labor; (2) promote full employment and equality of employment opportunities for all; and (3) guarantee the rights of all workers to security of tenure, humane conditions of work, and a living wage. Article II, Section 18 of the Constitution states that, “The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.” Yet, this provision places an undue burden on the land-based OFWs by imposing as condition to the issuance of their OEC the payment of the employer’s contribution, an onus not placed on any other class of employee under the SSS coverage.

To emphasize, Republic Act No. 11199 itself offers less intrusive measures to ensure the collection of SSS contributions from land-based OFWs. These include social security agreements, bilateral labor agreements, and other similar measures for enforcement. Requiring OFWs to pay their SSS contributions before they can secure their OECs does not meet the criteria for a valid police power measure.

Violation of the Right to Travel

Finally, *Migrante International et al.* assert that Section 7(iii) of Rule 14 of the IRR of Republic Act No. 11199 also violates their right to travel.

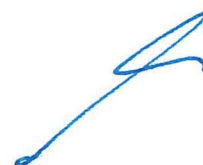
The Court agrees.

The right to travel is part of the “liberty” of which a citizen cannot be deprived without due process of law. It is part and parcel of the guarantee of freedom of movement that the Constitution affords its citizen.¹⁶⁹ Pertinently, Article III, Section 6 of the Constitution provides:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest

¹⁶⁸ *Id.* at 431.

¹⁶⁹ *Genuino v. De Lima* 829 Phil. 691, 715–716. (2018).



of national security, public safety or public health, as may be provided by law.

Based on the foregoing, it is apparent that the right to travel is not absolute. It may be impaired by a law that concerns national security, public safety or public health. It does not differentiate between measures that directly restrict the right to travel and those that do so indirectly in furtherance of another State purpose. Any government action that indirectly or incidentally affects a constitutional right is still significant, as any impairment of constitutionally protected rights must strictly comply with the Constitution's mandate.¹⁷⁰

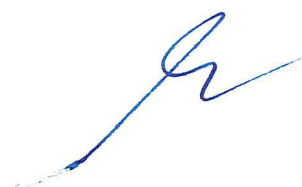
In the case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,¹⁷¹ the Court examined the significance of the right to travel, highlighting its connection to other fundamental rights. The Court emphasized that the right to travel refers to the right to move freely from the Philippines to other countries or within the Philippines. It is a right embraced within the general concept of liberty and includes the right of citizens to be free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life. It is essential as it enables individuals to access and exercise their other rights, such as the rights to education, free expression, assembly, association, and religion.¹⁷² In *SPARK*, the Court characterized curfew ordinances as restrictive of the minors' right to travel, although primarily imposed for the interest of public safety, particularly the promotion of juvenile safety and prevention of juvenile crime.

Similarly, in this case, the assailed provision of the IRR provides that land-based OFWs are required to pay in advance their SSS contributions for the issuance of the OEC. However, without the OEC, a land-based OFW's right to travel abroad is significantly restricted, as their right to work overseas hinges on obtaining the OEC. Without the OEC, a land-based OFW cannot be deployed to their place of work. Since the primary purpose of a land-based OFW's travel abroad is to work, requiring them to pay their SSS contributions in advance to obtain their OEC effectively deprives them of their right to travel and, consequently, their livelihood. Thus, the assailed provision of the IRR poses an actual restriction on the right to travel, although primarily imposed to enforce collection of SSS contributions. Additionally, this impairment on the land-based OFWs' right to travel does not serve the interest of national security, public safety or public health; rather, it primarily aims to enforce the collection of the required SSS contributions.

¹⁷⁰ See J. Caguioa, Dissenting Opinion in *Zabal v. Duterte*, 846 Phil. 743, 929 (2019) [Per J. Del Castillo, *En Banc*].

¹⁷¹ 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

¹⁷² *Id.* at 1106.



Furthermore, the existence of a law is a requirement for the curtailment of the right to travel.

In *Genuino v. De Lima*,¹⁷³ the Court highlighted the necessity of a law before the right to travel may be impaired:

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. *As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health.* This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.¹⁷⁴ (Emphasis supplied)

In this case, the restriction on the land-based OFWs' right to travel is merely provided in an IRR. As mentioned, the existence of a law is a requirement for the curtailment of the right to travel. It is essential to note that the IRR is not a law; it is merely an administrative issuance designed to implement the provisions of Republic Act No. 11199. The authority of the Social Security Commission to promulgate the assailed provision of the IRR is anchored on Section 9-B and Section 30 of Republic Act No. 11199, which respectively provides:

Section 9-B. Compulsory Coverage of Overseas Filipino Workers (OFWs) -

(a) Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022: *Provided, That they are not over [60] years of age.*

All benefit provisions under this Act shall apply to all covered OFWs. The benefits include, among others, retirement, death, disability, funeral, sickness and maternity.

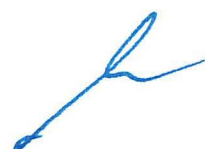
....

(c) Land-based OFWs are compulsory members of the SSS and considered in the same manner as self-employed persons under such rules and regulations that the Commission shall prescribe.

....

¹⁷³ 829 Phil. 691 (2018) [Per J. Reyes, Jr., *En Banc*].

¹⁷⁴ *Id.* at 717.



(e) The DFA, the DOLE and, the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.

Section 30. Implementing Rules and Regulations. - The Commission shall promulgate the necessary rules and regulations to implement this Act not later than [90] days after its effectivity. (Emphasis supplied)

Certainly, there is nothing in the foregoing provisions of Republic Act No. 11199 which authorizes the restriction of the right to travel to enforce the land-based OFWs compulsory coverage in the SSS. Any impairment or restriction in the exercise of a constitutional right must be clear, categorical and unambiguous. The rule is that:

Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.¹⁷⁵

Consequently, the constitutional requirement that any impairment of the right to travel must be explicitly provided in a law is not met.

A Final Note

Social security protection is fundamentally grounded in the State's police power. By mandating social security coverage, the State ensures that all workers, regardless of their nature of employment, location, and status, have access to essential social security benefits, in times of need. This is especially beneficial to OFWs, who leave their families behind to work abroad. Aside from enduring separation from their loved ones, OFWs often face harsh working conditions, including long hours, excessive workloads and inadequate safety measures. Through coverage in the SSS, OFWs and their beneficiaries are safeguarded from the hazards of disability, sickness, maternity, old age, death, and loss of income. While social security protection for OFWs is crucial, the State grapples with challenges related to differences in workers' nature of employment, status, and place of work. In addressing these challenges, the State is justified in making reasonable distinctions among workers to ensure comprehensive SSS for all. However, it is essential that the State does not unduly burden OFWs when enforcing the collection of SSS contributions. Unfortunately, the assailed provision of the IRR of Republic Act No. 11199 requires land-based OFWs to pay SSS contributions before receiving their OEC. This measure unjustly deprives land-based OFWs

¹⁷⁵ *SMART Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division].



of their right to work and places an inordinate restraint on their right to travel. To truly honor the sacrifices of our OFWs, often hailed as modern-day heroes, it is crucial to refrain from oppressive policies that unfairly burden them.

ACCORDINGLY, the Petition for *Certiorari* and Prohibition is **PARTLY GRANTED**. Rule 14, Section 7(iii) of the Implementing Rules and Regulations of Republic Act No. 11199 is declared **UNCONSTITUTIONAL** for being contrary to Sections 1 and 6 of Article III of the Constitution.

The Social Security System, Philippine Overseas Employment Administration, and Department of Labor and Employment are **PERMANENTLY ENJOINED** from implementing this unconstitutional provision.

The constitutionality of the assailed provisions of Republic Act No. 11199 and the remaining assailed provisions of the Implementing Rules and Regulations of Republic Act No. 11199 are **UPHELD**. Pursuant to Rule 50, Section 1 of the Implementing Rules and Regulations of Republic Act No. 11199, these provisions remain in force and effect.

SO ORDERED.

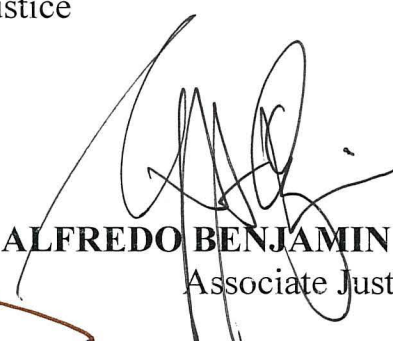

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring and dissenting opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See Concurring & Dissenting

On Official Business

RAMON PAUL L. HERNANDO
Associate Justice

Please See Dissent

[Signature]
AMY C. LAZARO-JAVIER
Associate Justice

[Signature]
HENRI JEAN PAUL B. INTING
Associate Justice

[Signature]
RODIL V. ZALAMEDA
Associate Justice

[Signature]
MARION V. LOPEZ
Associate Justice

On Official Leave
SAMUEL H. GAERLAN
Associate Justice

[Signature]
RICARDO R. ROSARIO
Associate Justice

[Signature]
JHOSEP Y. LOPEZ
Associate Justice

[Signature]
JAPAR B. DIMAAMPAO
Associate Justice

[Signature]
JOSE MIDAS P. MARQUEZ
Associate Justice

[Signature]
ANTONIO T. KHO, JR.
Associate Justice

[Handwritten mark]

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

