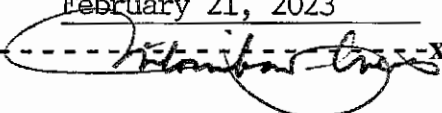


EN BANC

G.R. No. 209216 – EXECUTIVE SECRETARY LEANDRO MENDOZA, DEPARTMENT OF ENERGY – DEPARTMENT OF JUSTICE JOINT TASK FORCE AND DEPARTMENT OF ENERGY SECRETARY ANGELO I. REYES, Petitioners, v. PILIPINAS SHELL PETROLEUM CORPORATION, Respondent.

Promulgated:

February 21, 2023

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SEPARATE CONCURRING OPINION

CAGUIOA, J.:

This Opinion was originally a conscientious dissent from the *ponencia*'s original submission that only the President has the authority to exercise the emergency takeover power being challenged in this petition.

Thus, while my concurrence essentially reiterates the *ponencia*, it must be clarified that the arguments mirrored herein were brought about by the *ponencia* having finally adopted what once was my dissent. Given this, I now express my concurrence to the *ponencia*, as revised, as it now reverses and sets aside the Court Appeals (CA) Decision¹ and declares Section 14(e) of Republic Act (R.A.) No. 8479² constitutional.

Section 14(e) of R.A. No. 8479, [also known as the Downstream Oil Industry Deregulation Act of 1998], provides –

In times of national emergency, when the public interest so requires, the DOE may, during the emergency, under reasonable terms prescribed by it, temporarily take over or direct the operation of any person or entity in the Industry. (Emphasis supplied)

The validity of this provision was challenged, through an action for declaratory relief³ filed before the Regional Trial Court of Makati (RTC) by respondent Pilipinas Shell Petroleum Corporation (Pilipinas Shell), for being oppressive, unreasonable, and an invalid delegation of emergency powers to the Executive Department.⁴

¹ *Rollo*, pp. 44-54. Penned by Associate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court), and Mario V. Lopez (now a Member of this Court) concurring.

² An Act Deregulating the Downstream Oil Industry, and for Other Purposes (Downstream Oil Industry Deregulation Act of 1998).

³ *Ponencia*, p. 5.

⁴ *Id.* at 3.



The RTC issued a decision favorable to Pilipinas Shell, declaring Section 14(e) of R.A. No. 8479⁵ void and unconstitutional.⁵ Petitioners appealed to the CA, which affirmed the RTC's decision.⁶ Aggrieved, petitioners filed the present petition before the Court,⁷ arguing that the challenged provision is a proper delegation of the power to exercise emergency powers to the President, through the Department of Energy (DOE).⁸

In reversing and setting aside the Decision of the CA, the *ponencia* declares Section 14(e) of R.A. No. 8479 constitutional.⁹

I concur.

Justiciability

While the *ponencia* had initially taken the position that actual harm or injury is necessary in order for a controversy to become justiciable, it now fully adopts the position that I have taken from the very inception of the deliberations in the instant case as regards the requirement of actual case or controversy. To be sure, as I had consistently put forward in several other cases, the latest of which being the recently decided case of *Universal Robina Corporation v. Department of Trade and Industry*¹⁰ (*URC v. DTI*), actual facts resulting from the assailed law, as applied, are not absolutely necessary in all cases in order for the Court to exercise its power of judicial review. Once and for all, with this case and that of *URC v. DTI*, it should now be definitively settled that “mere contrariety of legal rights” constitutes a justiciable controversy.

To be sure, this correct understanding of justiciability is entrenched in jurisprudence. As early as *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*¹¹ (*Province of North Cotabato*), the Court already ruled that “when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right[,] but in fact the duty of the judiciary to settle the dispute.”¹² In other words, it is sufficient that the questioned law has been enacted, or that the challenged action was approved for an actual case or controversy to exist. Stated differently, petitioners need not await the “implementing evil to befall on them”,¹³ or for them to actually suffer the injury or harm before challenging these acts as illegal or unconstitutional.¹⁴

⁵ *Id.* at 4–6.

⁶ *Id.* at 6–7.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Ponencia*, p. 36.

¹⁰ G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].

¹¹ 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*].

¹² *Id.* at 486.

¹³ *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 107 (2000) [Per J. Panganiban, *En Banc*].

¹⁴ *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 120 (2014) [Per J. Mendoza, *En Banc*].



This was also the position taken by the Court in *SPARK v. Quezon City*¹⁵ where it proceeded to rule on the constitutionality of the curfew ordinances in several cities in Metro Manila, **even if there was no allegation that petitioners therein already violated said ordinances or that they already suffered actual harm or injury.** The Court notably found the case therein already justiciable due to the “evident clash of the parties’ legal claims.”¹⁶

As well, in *Inmates of New Bilibid Prison v. De Lima*¹⁷ (*Inmates of New Bilibid*) it was ruled that a judicial controversy already exists if “there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.”¹⁸ Indeed, as succinctly stated by the majority in *Republic v. Maria Basa Express Jeepney Operators and Drivers Association, Inc.*¹⁹ (*Maria Basa*) citing *Inmates of New Bilibid*, **“the existence of an actual case or controversy does not call for concrete acts, as an actual case may exist even in the absence of ‘tangible instances’.”**²⁰

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

In the instant case, the present petition stemmed from an action for declaratory relief that was filed by Pilipinas Shell before the RTC to raise a question of law, i.e., the constitutionality of Section 14(e) of R.A. No. 8479. Here, the *ponencia* does not only find Pilipinas Shell’s question justiciable, it also gives due course to the declaratory relief that was filed by Pilipinas Shell to raise the unconstitutionality of Section 14(e) of R.A. No. 8479. **Notably, this is notwithstanding the fact that the case is bereft of any contention whatsoever that Pilipinas Shell committed overt acts in violation of the law or that it suffered actual harm after the passage of R.A. No. 8479.** Verily, what existed when Pilipinas Shell filed its petition was a mere contrariety of legal rights between oil companies on the one hand, and the DOE on the other. In other words, there were no “actual facts”.

Again, justiciability and absence of overt acts constituting breach of a law or regulation are not mutually exclusive, especially in an action for declaratory relief. In fact, both are essential requisites of said remedy.²¹ In *Malana v. Tappa*,²² it was explained that:

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

¹⁶ *Id.* at 1091.

¹⁷ 854 Phil. 675 (2019) [Per J. Peralta, *En Banc*].

¹⁸ *Id.* at 693 and 694.

¹⁹ G.R. Nos. 206486, 212604, 212682 and 212800, August 16, 2022 [Per J. Lopez, J., *En Banc*].

²⁰ *Id.* at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

²¹ *Ferrer v. Roco*, 637 Phil. 310 (2010) [Per J. Mendoza, Second Division].

²² 616 Phil. 177 (2009) [Per J. Chico-Nazario, Third Division].

[A]n action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained only before the breach or violation of the statute, deed, or contract to which it refers. **A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.**

Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the courts can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject has already been infringed or transgressed before the institution of the action.²³ (Emphasis supplied)

To be sure, the presence of a justiciable controversy is already satisfied “when an actual controversy or the **ripening seeds** thereof exist between the parties, all of whom are *sui juris* and before the court, and the declaration sought will help in ending the controversy.”²⁴ Thus, in *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*²⁵ (*Viron*), the Court ruled that the requirement of a justiciable controversy was not lacking when therein respondents, bus operators with terminals in Metro Manila, filed petitions for declaratory relief to challenge the constitutionality of the Executive Order directing the elimination of bus terminals along major thoroughfares in Metro Manila. Aside from the immediate effectivity of said Executive Order, the Court found that there were circumstances evincing the intention of the government to proceed with this project, which was apparent from the ongoing planning and construction of a centralized station.²⁶

It is therefore ***incongruent***, to say the least, to equate absence of overt act with lack of actual case or controversy. Again, at the risk of being repetitive, to rule in this manner would render nugatory or inutile an action for declaratory relief as there would be no proper time to avail of this remedy, for there is no real room between its prematurity and the expiration of its availability.

In all, I agree with the *ponencia* in its finding of actual case and controversy in the subject declaratory relief filed by Pilipinas Shell to question the constitutionality of a law it has not yet breached or violated.

Constitutionally vested powers of the President

²³ *Id.* at 188–189.

²⁴ *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121, 134 (2007) [Per J. Carpio-Morales, *En Banc*].

²⁵ *Id.*

²⁶ *Id.*

Pilipinas Shell claims that Section 14(e) of R.A. No. 8479 is unconstitutional primarily because Congress delegated the temporary emergency takeover power to the DOE, not the President personally, as supposedly required under Article VI, Section 23 and Article XII, Section 17 of the Constitution, which read:

ARTICLE VI
THE LEGISLATIVE DEPARTMENT

SECTION 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) In times of war or other national emergency, **the Congress may, by law, authorize the President**, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof. (Emphasis supplied)

ARTICLE XII
NATIONAL ECONOMY AND PATRIMONY

SECTION 17. In times of national emergency, when the public interest so requires, **the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.** (Emphasis supplied)

Pilipinas Shell is in error.

In *David v. Arroyo*²⁷ (*David*), the Court elucidated that the takeover power provided under Article XII, Section 17 of the Constitution is part of the emergency powers which are generally reposed upon Congress, as may be deduced from the language of Article VI, Section 23 of the Constitution.²⁸ Further, the Court in *David* held that the President may only exercise such temporary emergency takeover power when the same is delegated to him or her by Congress pursuant to a law or statute,²⁹ to wit:

But the **exercise** of emergency powers, such as the taking over of privately owned public utility or business affected with public interest, is a different matter. This requires a delegation from Congress.

Courts have often said that constitutional provisions *in pari materia* are to be construed together. Otherwise stated, different clauses, sections, and provisions of a constitution which relate to the same subject matter will be construed together and considered in the light of each other. Considering that Section 17 of Article XII and Section 23 of Article

²⁷ 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

²⁸ *Id.* at 789.

²⁹ *Id.*



VI, previously quoted, relate to national emergencies, they must be read together to determine the limitation of the exercise of emergency powers.

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. **Thus, when Section 17 states that** “the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest,” ***it refers to Congress, not the President.*** Now, whether or not the President may exercise such power is dependent on whether Congress may delegate it to him [or her] pursuant to a law prescribing the reasonable terms thereof.³⁰ (Emphasis supplied)

David therefore instructs that since the “State” under Article XII, Section 17 refers to Congress, then it is only the latter that can exercise this temporary takeover power which it does by way of a law. *David* goes on to say that “whether or not the President may exercise such power is dependent on whether Congress may delegate it to him [or her],”³¹ thereby signaling that such power can be delegated to an entity other than the President. This is precisely what Section 14(e) of R.A. No. 8479 does in identifying the DOE as the executive agency to wield such power.

In other words, **by the very text** of Article XII, Section 17 of the Constitution, the framers conceived of this delegation by Congress to the department heads, such as the Secretary of Energy, because the latter act as *alter egos* of the President. Accordingly, I do not agree that the emergency takeover power of the Congress may be delegated ONLY to the President personally, as Pilipinas Shell espouses.³²

In our presidential system, we recognize a single and not a plural Executive. The President is “the Executive of the Government of the Philippines, and no other.”³³ Logically therefore, our Constitution has named only the “President” whenever it refers to the Executive Department in its provisions.

This does not mean, however, that the President is expected to exercise all of his or her powers and mandates in person.³⁴ To require such is ***neither practical nor efficient*** as the President has many responsibilities and he or she cannot be expected to attend to multifarious responsibilities at the same time. This is precisely the problem addressed by the well-settled doctrine of qualified political agency, which postulates that:

³⁰ *Id.* at 788.

³¹ *Id.* at 789.

³² *Ponencia*, p. 8.

³³ *Villena v. Secretary of Interior*, 67 Phil. 451, 464 (1939) [Per J. Laurel, *En Banc*]; *Lacson-Magallanes Co., Inc. v. Paño*, 129 Phil. 123 (1967) [Per J. Sanchez, *En Banc*].

³⁴ JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 889 (2009 ed.).



[A]ll executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, **except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he [or she] act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments,** and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.³⁵ (Emphasis supplied)

Viewed differently, what this means is that in the faithful execution of the laws,³⁶ the qualified political agency is the rule to be followed. This doctrine—developed specifically because the President cannot be expected to attend to multifarious responsibilities at the same time—allows for effective governance and, at the same time, is circumscribed by the power and authority of the President himself or herself as the Constitution expressly provides that the President has “control of all the executive departments, bureaus, and offices”³⁷ with the power to “alter or modify or nullify or set aside what a subordinate officer had done in the performance of his [or her] duties and to substitute the judgment of the former for that of the latter.”³⁸

Both the Constitution and the Court recognize that “each head of a department is, and must be, the President’s *alter ego* in the matters of that department where the President is required by law to exercise authority.”³⁹ In *Planas v. Gil*,⁴⁰ the Court ruled that “in the exercise of his [or her] executive power, the President can act through the heads of the executive departments.”⁴¹ **It bears repeating that this rule of governance is already a well-settled and age-old doctrine.**

By way of exception, there are what have been identified as that special class of constitutionally-vested powers that only the President can and must exercise exclusively and personally. These constitutional powers that only the President can wield were identified in *Spouses Constantino v. Cuisia*⁴² (*Spouses Constantino*) where the Court held:

Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or *alter ego* of the President. Justice Laurel, in his *ponencia* in *Villena*, makes this clear:

³⁵ *Lacson-Magallanes Co., Inc. v. Paño*, *supra* note 33, at 132.

³⁶ Article VII, Section 17, 1987 Constitution: “The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.”

³⁷ *Id.*

³⁸ *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955) [Per J. Padilla, *En Banc*].

³⁹ *Philippine Institute for Development Studies v. Commission on Audit*, 860 Phil. 303, 327 (2019) [Per J. Leonen, *En Banc*].

⁴⁰ 67 Phil. 62 (1939) [Per J. Laurel, *En Banc*].

⁴¹ *Id.* at 77.

⁴² 509 Phil. 486 (2005) [Per J. Tinga, *En Banc*].

Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. **There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him [or her] in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his [or her] power to suspend the writ of *habeas corpus* and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him [or her] of the benign prerogative of mercy (par. 6, sec. 11, *idem*).**

These distinctions hold true to this day. **There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.** The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the **constitutionally vested power.** The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.⁴³ (Emphasis supplied)

I agree with the *ponencia* that the temporary emergency takeover power under Article XII, Section 17 of the Constitution cannot be viewed as belonging to that special class of constitutionally-vested powers that only the President can and must exercise exclusively and personally.⁴⁴ Following the doctrine in *Spouses Constantino*, the exercise of the takeover power during times of national emergency **will not involve the suspension of fundamental freedoms enshrined in the Constitution.**

In the same case of *Spouses Constantino*, the Court had the occasion to declare that the borrowing power of the President under Article VII, Section 20⁴⁵ and his or her authority to impose tariffs and imposts⁴⁶ based on Article VI, Section 28⁴⁷ of the Constitution are not special constitutional powers of the President, and may therefore be delegated by Congress directly to the

⁴³ *Id.* at 518.

⁴⁴ *Ponencia*, p. 34.

⁴⁵ “The **President** may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.” (Emphasis supplied)

⁴⁶ *Spouses Constantino v. Cuisia*, *supra* note 42, at 520. Citing *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp.*, 478-Phil. 85, 546 (2004) [Per J. Tinga, Second Division].

⁴⁷ “The Congress may, by law, authorize the **President** to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.” (Emphasis supplied)

Secretary of Finance and the Secretary of Trade and Industry, respectively, as *alter egos* of the President, viz.:

We cannot conclude that the power of the President to contract or guarantee foreign debts falls within the same exceptional class. Indubitably, the decision to contract or guarantee foreign debts is of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance.

Another important qualification must be made. The Secretary of Finance or any designated *alter ego* of the President is bound to secure the latter's prior consent to or subsequent ratification of his [or her] acts. In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the *alter ego* will definitely have binding effect. Had petitioners herein succeeded in demonstrating that the President actually withheld approval and/or repudiated the Financing Program, there could be a cause of action to nullify the acts of respondents. Notably though, petitioners do not assert that respondents pursued the Program without prior authorization of the President or that the terms of the contract were agreed upon without the President's authorization. Congruent with the avowed preference of then President Aquino to honor and restructure existing foreign debts, the lack of showing that she countermanded the acts of respondents leads us to conclude that said acts carried presidential approval.

With constitutional parameters already established, we may also note, as a source of supplementary guidance, the provisions of R.A. No. 245. The afore-quoted Section 1 thereof empowers the Secretary of Finance with the approval of the President and after consultation of the Monetary Board, "to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his [or her] judgment may be necessary, and to issue therefor evidences of indebtedness of the Philippine Government." Ineluctably then, while the President wields the borrowing power it is the Secretary of Finance who normally carries out its thrusts.

In our recent rulings in *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp.*, this Court had occasion to examine the authority granted by Congress to the Department of Trade and Industry (DTI) Secretary to impose safeguard measures pursuant to the Safeguard Measures Act. In doing so, the Court was impelled to construe Section 28(2), Article VI of the Constitution, which allowed Congress, by law, to authorize the President to "fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government."

While the Court refused to uphold the broad construction of the grant of power as preferred by the DTI Secretary, **it nonetheless tacitly acknowledged that Congress could designate the DTI Secretary, in his [or her] capacity as *alter ego* of the President, to exercise the authority vested on the chief executive under Section 28(2), Article VI.** At the same time, the Court emphasized that since Section 28(2), Article VI authorized Congress to impose limitations and restrictions on the authority of the President to impose tariffs and imposts, the DTI Secretary was



necessarily subjected to the same restrictions that Congress could impose on the President in the exercise of this taxing power.

Similarly, in the instant case, the Constitution allocates to the President the exercise of the foreign borrowing power “subject to such limitations as may be provided under law.” Following *Southern Cross*, but in line with the limitations as defined in *Villena*, the presidential prerogative may be exercised by the President’s alter ego, who in this case is the Secretary of Finance.⁴⁸ (Emphasis supplied)

While I agree with the *ponencia* that these cases are not on all fours with the instant case⁴⁹ considering the difference in the factual backdrop and the constitutional provisions involved, I strongly submit that the seminal doctrine espoused therein still applies in interpreting Article VI, Section 23 of the Constitution.

In the case before us, the takeover of companies in the downstream oil industry **will only affect the property rights of business owners, not for any iniquitous reason, but to prevent or regulate monopolies in times of national emergency.**⁵⁰ To be clear, that there are different ways to achieve this end, such as the imposition of price caps or the prohibition on price increases, is beside the point as it now questions the wisdom of the law which deems the takeover of oil companies during times of emergency imperative.

Further, unlike the declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, the takeover of privately-owned downstream oil companies will **not replace, in any way, the powers and prerogatives of both the Legislative or the Judiciary, as indeed, the regulation of the operation and management of any privately owned public utility or business affected with public interest lies with the Executive.**⁵¹

In plain terms, the exercise of the takeover powers cannot be said, borrowing the language of *Spouses Constantino*, to have the same *gravitas* and exceptional import as the other recognized powers belonging in the special class of constitutionally-vested powers that only the President can wield. At the risk of being repetitive, these powers **should involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.**

To be sure, jurisprudence abounds in declaring that it is not required, **as a rule**, that the delegation be exclusive to the President alone.

⁴⁸ *Spouses Constantino v. Cuisia*, *supra* note 42, at 518-520.

⁴⁹ *Ponencia*, p. 34.

⁵⁰ See *Garcia v. Corona*, 378 Phil. 848 (1999) [Per J. Ynares-Santiago, *En Banc*].

⁵¹ See *Ynchausti Steamship Company v. The Public Utility Commissioner and The Board of Appeal*, 44 Phil. 363 (1923) [Per J. Antonio, Second Division]; *The Manila Electric Company v. The Public Service Commission*, 60 Phil. 658 (1934) [Per J. Villa-Real, *En Banc*].



For instance, in *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp.*,⁵² the Court declared the provision of R.A. No. 8800, also known as the Safeguard Measures Act, granting the Department of Trade and Industry Secretary the power to set tariff imposts, a valid delegation of legislative power. This is notwithstanding the fact that under Article VI, Section 28(2) of the Constitution, the Congress may only delegate said power to the "President".⁵³ Further, in *Araneta v. Gatmaitan*⁵⁴ (*Araneta*) the Court also declared as a valid delegation of legislative power the specific provisions of Commonwealth Act No. 471, which granted the Secretary of Agriculture and Natural Resources the power "to provide by regulations such restrictions as he deemed necessary in order to preserve the aquatic resources of the land."

All that having been said, it bears repeating that even as Congress delegates its powers to the department heads, the President can still exercise these powers and authorities since he or she has control over all the heads of the executive departments, bureaus, and offices, and the latter are merely his or her *alter egos*. The President can even alter, modify, nullify, or set aside his or her subordinate's actions as he or she may deem proper or necessary.⁵⁵ This doctrine is explained in *Araneta*, to wit:

Now, if under the law the Secretary of Agriculture and Natural Resources has authority to regulate or ban the fishing by trawl which, it is claimed, obnoxious for it carries away fish eggs and fry's which should be preserved, can the President of the Philippines exercise that same power and authority? Section 10(1), Article VII of the Constitution of the Philippines prescribes:

SECTION 10 (1). The President shall have *control* of all the executive departments, bureaus or offices, exercises general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

Section 63 of the Revised Administrative Code reads as follows:

SECTION 63. EXECUTIVE ORDERS AND EXECUTIVE PROCLAMATION. — Administrative acts and commands of the President of the Philippines touching the organization or mode of operation of the Government or rearranging or readjusting any of the district, divisions, parts or ports of the Philippines, and all acts and commands *governing the general performance of duties by public employees or disposing of issues of general concern shall be made in executive orders.*

....

⁵² *Supra* note 46.

⁵³ "The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government." (Emphasis supplied)

⁵⁴ 101 Phil. 328 (1957) [Per J. Felix, *En Banc*].

⁵⁵ *Mondano v. Silvoza*, *supra* note 38, at 148.

Regarding department organization Section 74 of the Revised Administrative Code also provides that:

All executive functions of the government of the Republic of the Philippines shall be directly under the Executive Departments subject to the supervision and control of the President of the Philippines in matters of general policy. The Departments are established for the proper distribution of the work of the Executive, for the performance of the functions expressly assigned to them by law, and in order that each branch of the administration may have a chief responsible for its direction and policy. Each Department Secretary shall assume the burden of, and responsibility for, all activities of the Government under his [or her] control and supervision.

For administrative purposes the President of the Philippines shall be considered the Department Head of the Executive Office.

One of the executive departments is that of Agriculture and Natural Resources which by law is placed under the direction and control of the Secretary, who exercises its functions subject to the general supervision and control of the President of the Philippines (Sec. 75, R. A. C.). Moreover, 'executive orders, regulations, decrees and proclamations relative to matters under the supervision or jurisdiction of a Department, the promulgation whereof is expressly assigned by law to the President of the Philippines, shall as a general rule, be issued upon proposition and recommendation of the respective Department' (Sec. 79-A, R.A.C.), and there can be no doubt that the promulgation of the questioned Executive Orders was upon the proposition and recommendation of the Secretary of Agriculture and Natural Resources and that is why said Secretary, who was and is called upon to enforce said executive Orders, was made a party defendant in one of the cases at bar (G.R. No. L-9191).⁵⁶

Practically speaking as well, the President, who may not have the technical competence and expertise, cannot be expected to personally take over or direct the operation of an oil company. Clearly, this is not the intention of the framers of our Constitution especially considering that the takeover is exercised during times of national emergency, when time is of the essence and the President is expected to attend to other more relevant issues.

There is no question that the exercise of the takeover power will have cascading effects to the community at large. But that is exactly the point of the law—the law seeks to prevent, for the welfare of the community at large, the evil of "temporary monopolies" during times of national emergencies.⁵⁷ In fine, I cannot see why the takeover of oil companies cannot be left to the discretion of the DOE, the agency that has the expertise in energy matters and which was created precisely for the purpose of regulating these types of entities.⁵⁸ Stated differently, I cannot see why Pilipinas Shell is insisting on

⁵⁶ See *Araneta v. Gatmaitan*, *supra* note 46.

⁵⁷ See *Garcia v. Corona*, *supra* note 50.

⁵⁸ Republic Act No. 7638 (1992), An Act Creating the Department of Energy Rationalizing the Organization and Functions of Government Agencies Related to Energy and for Other Purposes, Section 5(e).

the personal takeover of oil companies by the President, who may not have the time, especially during national emergencies, as well as the expertise.

In view of the foregoing, I maintain my position and **CONCUR** with the *ponencia* that the emergency takeover power under Article XII, Section 17 of the Constitution may be delegated to the heads of the Executive departments, in this case the Secretary of Energy, and for this reason, Section 14(e) of R.A. No. 8479 is neither *ultra vires* nor unconstitutional.



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Associate Justice