Republic of the Philippines
Supreme Court
Manila

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PHILIPPINE CONTRACTORS ACCREDITATION BOARD, Petitioner,	**G.R. No. 217590**
	Present:
- versus -	PERALTA, *CJ,* PERLAS-BERNABE, LEONEN, CAGUIOA, REYES, A.B., JR., GESMUNDO, REYES, J.C., JR., HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, DELOS SANTOS, and GAERLAN, *JJ.*
MANILA WATER COMPANY, INC., Respondent.	Promulgated: March 10, 2020

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DECISION

GESMUNDO, *J*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, the Philippine Contractors Accreditation Board *(PCAB; hereinafter referred to as petitioner)* seeks the reversal of the February 24, 2014 Resolution[2] and the February 10, 2015 Order[3] of the Regional Trial Court,

[1] *Rollo*, pp. 22-35.
[2] Id. at 39-41; penned by Presiding Judge Ralph S. Lee.
[3] Id. at 42; penned by Presiding Judge Ralph S. Lee.

Quezon City, Branch 83 *(RTC)* which granted the petition for declaratory relief filed by Manila Water Company, Inc. *(respondent)* and declared Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines or the Implementing Rules and Regulations *(IRR)* of Republic Act *(R.A.)* No. 4566[4] void.

The Court is asked to determine the validity of Section 3.1, Rule 3 of the IRR which provides:

> Rule 3 CONTRACTOR'S LICENSE
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> Section 3.1 License Types
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> Two types of licenses are hereby instituted and designated as follows:
>
> a) The Regular License
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> "Regular License" means a license of the type issued to a domestic construction firm which shall authorize the licensee to engage in construction contracting within the field and scope of his license classification(s) for as long as the license validity is maintained through annual renewal; unless renewal is denied or the license is suspended, cancelled or revoked for cause(s).
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> The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.
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> * Adjusted to 60% under Art. 48 of Chapter III, Book II of the Omnibus Investment Code of 1987.
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> b) The Special License
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> "Special License" means a license of the type issued to a joint venture, a consortium, a foreign constructor or a project owner which shall authorize the licensee to engage only in the construction of a single specific undertaking/project. In case the licensee is a foreign firm, the license authorization shall be further subject to condition(s) as may have been imposed by the proper Philippine government authority in the grant of the privilege for him to so engage in construction contracting in the

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[4] An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and For Other Purposes, otherwise known as the Contractors' License Law (1965).

> Philippines. Annual renewal shall be required for as long as the undertaking/project is in progress, but shall be restricted to only as many times as necessary for completion of the same.
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> The following can qualify only for the Special License:
>
> ba) A joint venture, consortium or any such similar association organized for a single specific undertaking/project;
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> bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.
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> bc) A project owner undertaking by himself, sans the service of a constructor, the construction of a project intended for sale, lease, commercial/industrial use or any other income generating purpose.[5]

Antecedents

On July 9, 2012, respondent wrote petitioner seeking accreditation of its foreign contractors to undertake its contracts for the construction of necessary facilities for its waterworks and sewerage system. On November 8, 2012, petitioner replied stating that under Section 3.1 of the IRR, regular licenses are reserved for, and issued only to, contractor-firms of Filipino sole proprietorship or partnership/corporation with at least 60% Filipino equity participation and duly organized and existing, under and by virtue of the laws of the Philippines. Petitioner also pointed out that since the purported construction contracts adverted to by respondent do not appear as Build-Operate-Transfer *(BOT)* contracts and are not foreign assisted/financed projects required to undergo international competitive biddings which are exempted under R.A. No. 7718, then the issuance of the contractor's license in the context of the said law is not warranted.[6]

Thereafter, respondent filed a Petition for Declaratory Relief[7] before the trial court which sought for the determination of the validity of Section 3.1, Rule 3 of the IRR issued by petitioner. Respondent claimed that the said provision is unconstitutional since it creates restrictions on foreign investments, a power exclusively vested on Congress by the Constitution. It also argued that the same provision adds restrictions to R.A. No. 4566 which the latter does not provide.[8]

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[5] Id. at 91-92.
[6] Id. at 26.
[7] Id. at 43-74.
[8] Id. at 43-44.

Petitioner, represented by the Office of the Solicitor General *(OSG)*, countered that R.A. No. 4566 grants petitioner the authority to effect classification of contractors and limit the scope of each contractor to those in which he is classified to engage in. It is their position that the IRR does not discriminate since it does not totally prohibit foreign contractors but, instead, requires them to obtain a special license.[9]

The RTC ruled in favor of respondent and declared Section 3.1, Rule 3 of the IRR void. It held that the same does not merely interpret or implement the law but creates an entirely new restriction that is not found in the law. While Section 17 of R.A. No. 4566 allows the board to effect classifications, the same provision requires the qualification to be reasonable. The trial court believed that the classification effected by the IRR is unreasonable as it imposes additional burdens on foreign entities which are not found in the law or the Constitution.[10]

Petitioner's motion for reconsideration was denied.[11] Hence, this petition.

Petitioner PCAB's contentions

Petitioner contends that it is within its duty and authority to issue the assailed IRR. Section 5 of R.A. No. 4566 expressly confers upon petitioner the duty and power to issue the IRR of the same act. Section 17 of the same law also empowers petitioner to adopt the necessary rules and regulations to effect the classification of contractors. Considering also that the construction business is a highly technical industry, R.A. No. 4566 cannot, by itself, thoroughly address all issues and factors in the issuance of licenses in such industry. Thus, the same can only be effectively regulated by petitioner pursuant to its powers and functions under R.A. No. 4566, which includes the authority to issue the assailed IRR.[12]

Further, the questioned provision of the IRR is consistent with the 1987 Constitution and existing laws, rules, regulations and policies. The IRR does not restrict the construction industry to Filipinos, but merely regulates the issuance of licenses to foreign contractors, subject to reasonable regulatory measures pertinent to their nature of being based outside the Philippines. The questioned provision of the IRR is consistent with the

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[9] Id. at 155-168.
[10] Id. at 40-41.
[11] Id. at 42.
[12] Id. at 30-32.

reasonable necessity of ensuring continuous and updated monitoring and regulation of foreign contractors, who are distinct from local contractors since they are not based in the Philippines and thus, may be situated beyond the reach of the government for possible enforcement of the contractor's liability/warranty such as Article 1723 of the Civil Code and Rule 62.2.3.1 of the revised IRR of R.A. No. 9184,[13] among others. Finally, the regulatory measures contained in the IRR are consistent with Section 14, Article XII of the 1987 Constitution, which mandates that practice of all professions in the Philippines be limited to Filipino citizens, save in cases prescribed by law, in relation to R.A. No. 465,[14] as amended by R.A. No. 6511,[15] which in turn considers construction as a profession by including contractors in its list of professionals. The IRR is consistent with the aforesaid provision of the law in as much as the law itself recognizes the distinction between foreign and local contractors.[16]

Respondent Manila Water's arguments

In its Comment,[17] respondent avers that petitioner exceeded its jurisdiction by issuing Section 3.1, Rule 3 of the IRR, as the power to impose nationality requirements in areas of investment is exclusively vested on Congress under Section 10, Article XII of the Constitution and not to a mere administrative agency. The assailed provision of the IRR contradicts and pre-empts statutory provisions as nowhere in R.A. No. 4566 does the legislature authorize petitioner to impose nationality qualifications in order for an entity to obtain a license in the construction business. It is also the view of respondent that petitioner's stand contradicts the executive policy which already commits the removal of restrictions in the construction industry that are evident in the following:

1) The Department of Justice *(DOJ)* Memorandum dated September 21, 2011 addressed to the Department of Finance *(DOF)* opined that the assailed section of the IRR should be amended in order to align itself with the current policy of liberalizing and rationalizing investments as it has observed that: a) R.A. No. 4566 is silent as to the nationality requirement for constructors with regard to the 60% Filipino equity

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[13] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, otherwise known as the Government Procurement Reform Act (2003).

[14] An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes (1950).

[15] An Act Amending Republic Act Numbered Four Hundred Sixty-Five Entitled "An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes" (1972).

[16] *Rollo,* pp. 32-34.

[17] Id. at 196-246.

participation in case of issuance of a license; b) that the construction industry is not among the investment areas or activities which are specifically reserved to Philippine nationals; and c) the Filipino equity requirement is not consistent with the present policy of the state to rationalize investments.[18]

2) The Department of Trade and Industry *(DTI)* and the Construction Industry Authority of the Philippines *(CIAP)* have recognized, in an article posted in its website, that for the local construction industry to be globally competitive, there is a need to strengthen the Philippines' international participation through free trade agreements.[19]

3) The DTI, thru the Philippine Overseas Construction Board *(POCB)*, in a consultation meeting with stakeholders from the construction industry, requested for the removal of restrictions in order to establish better ties with the international trade community.[20]

There is also nothing in the Constitution or any law that imposes nationality or Filipino equity requirements with respect to the construction industry. Petitioner insists that contracting for construction is not a profession; rather, construction is an industry. It follows that it is not within the ambit of Section 14, Article XII of the 1987 Constitution in relation to R.A. No. 465, as amended by R.A. No. 6511, that covers individuals and not corporations or firms, which cannot be considered professionals.[21]

The assailed section of the IRR violates Executive Order *(E.O.)* No. 858[22] (now E.O. No. 98)[23] and R.A. No. 7718,[24] as it excludes waterworks and sewerages from the coverage of infrastructure projects. Petitioner likewise has no basis in changing the meaning of R.A. No. 7718 by excluding works that are, in fact, specifically mentioned by the said law and E.O. No. 98, by imposing a requirement that is not supported by any single word or phrase thereof.[25]

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[18] Id. at 213-215.
[19] Id. at 215-216.
[20] Id. at 216-217.
[21] Id. at 217-221.
[22] Promulgating the Eighth Regular Foreign Investment Negative List (2010).
[23] Promulgating the Ninth Regular Foreign Investment Negative List (2012).
[24] An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" (1994).
[25] Id. at 240-243.

Amicus Curiae Brief of the Philippine Competition Commission[26]

The Philippine Competition Commission *(PCC)* moved to intervene as *amicus curiae* in this case, asserting that under the Philippine Competition Act *(PCA)* otherwise known as R.A. No. 10667, from which it owes its existence, it is mandated to issue advisory opinions and guidelines on competition matters and to advocate pro-competitive policies of the government.[27]

The PCC had a different view with the OSG and mainly argues that: 1) the nationality-based restriction imposed by the assailed regulation is a "barrier to entry," and 2) barriers to entry violate the constitutional state policy against unfair competition.[28]

The nationality requirement imposed under the assailed provision of the IRR erects a substantial barrier to the entry of foreign contractors in the construction industry. As a minority participant in the entity, a foreign firm is exposed to the risk of pursuing major management decisions over which it does not have full control. The assailed provision results in a scenario where foreign firms are deterred from investing in the Philippines as they do not have the comfort of having full control and management over their investments, unless they are able to find a reliable local partner.[29]

A survey of data also indicates the restrictiveness of the nationality requirement on foreign firms. Bearing in mind that ease of entry into an industry is a positive sign of competitiveness, the data from petitioner shows that statistics from 2013-2015 indicate that a large majority of the total licenses issued during the period did not automatically translate to the entry of new participants in the construction industry. The contractors undertake major infrastructure projects which facilitate the development of Filipino skills and bring in much needed investment and advanced technology; however, their potential to share these benefits to the entire industry is blunted by their very limited participation. Insofar as the rate of entry of new participants indicating the level of competition within the given industry, the consistently minuscule rate of entry of both foreign firms and new players in the construction industry is quite indicative of how competition in the industry remained relatively stagnant and inert throughout the years. Comparative data also shows that restrictive policies translate to lower levels

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[26] Id. at 410-441.
[27] Id. at 366.
[28] Id. at 423-438.
[29] Id. at 425-426.

of foreign direct investments *(FDI)* inflows. These FDI represent investment in production facilities and its significance for developing countries is considerably great. Not only can FDI add to investible resources and capital formation but, more importantly, they are means of transferring production technology, skills, innovative capacity, and organizational and managerial practices between locations, as well as of accessing international marketing networks.[30]

The advantages of lifting the nationality-based restriction in the assailed regulation cannot be overemphasized. Noting the infrastructure backlog in the Philippines, foreign contractors have expressed willingness to help address this concern. Foreign contractors expect to undertake large projects which would involve the application of the newest and most advanced technologies should the restrictions be lifted.[31]

The PCC also points out that the stricter and broader language of Section 19, Article XII of the Constitution provides the legal impetus for nullifying governmental acts that restrain competition. Such acts can range from laws passed by Congress, to rules and regulations issued by administrative agencies, and even contracts entered into by the government with a private party. A more comprehensive competition policy embodied in the present Constitution empowers the Court to nullify both public and private acts that restrain competition.[32]

Case in point is *Tatad v. Secretary of the Department of Energy*[33] *(Tatad),* where the Court declared R.A. No. 8180[34] unconstitutional, because: 1) it gave more power to an already powerful oil oligopoly; 2) it blocked the entry of effective competitors; and 3) it would sire an even more powerful oligopoly, whose unchecked power would prejudice the interest of the consumers and compromise the general welfare. The Court found that the assailed provision had imposed substantial barriers to the entry of prospective players, thus, creating the clear danger that the deregulated market in the downstream oil industry would not operate under an atmosphere of free and fair competition. In this case, the nationality-based restriction imposed by petitioner effectively barred the entry of new players, particularly foreign firms, in the construction industry in violation of the constitutional policy against unfair competition.[35]

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[30] Id. at 426-429.
[31] Id. at 430.
[32] Id. at 432-433.
[33] 346 Phil. 321 (1997).
[34] An Act Deregulating the Downstream Oil Industry, and for Other Purposes (1996).
[35] *Rollo*, pp. 433-436.

Section 19, Article XII of the Constitution is a directly enforceable constitutional principle (anti-trust principle), as demonstrated in *Tatad*. The express prohibition has two significant implications: 1) it has a nullifying function, such that any act which contravenes the state policy must necessarily be declared unconstitutional, and hence, void; and 2) it has a compulsive function, such that every government regulation must take into account, and be consistent with, the enunciated state policy. The prohibition imposes an obligation to incorporate the state policy in every government regulation.[36]

Since the assailed provision of the IRR is contrary to the anti-trust principle of the Constitution, petitioner has the burden to show that the nationality requirement seeks to fulfill an important and substantial state interest, which cannot be achieved through other less restrictive means. However, PCC is of the opinion that petitioner failed to meet this burden. The reasons stated in its petition do not equate to an important and substantial state interest which cannot be achieved through other less restrictive means.[37]

The government's purported interest in applying contractors' warranty laws and regulating the practice of profession deserves no merit when weighed against the detrimental impact of the assailed regulation on the construction industry. The industry suffers from exorbitant costs of construction services due to limited supply of firms offering the same. Moreover, the government's interest in continuous and updated monitoring and regulation of foreign contractors can be achieved without denying foreign firms the same benefits given to domestic firms, as this can be addressed through other means under existing laws. Also, the supposed government interest in limiting the practice of a profession to Filipino citizens is inapplicable to construction considering that contracting for purposes of engaging in construction activities is not a profession, as it is not one regulated by the Professional Regulation Commission (PRC) and the term "professional" refers to an individual not a corporation or firm.[38]

Finally, the PCC said that to achieve the objectives of a national competition policy, the government should address public restraints as much as it enjoins private restraints, which means that it should ensure a level playing field for all industry players regardless of whether these players are controlled by the private sector or the state. Economically sound policies should not give incumbents competitive advantages for tenuous reasons such

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[36] Id. at 436-438.
[37] Id. at 437.
[38] Id. at 437-438.

as nationality alone. Claims of protecting the interest of the public through regulatory action should be evaluated in terms of resulting incentive distortions that reduce competition and the countervailing efficiencies arising from said regulation. Discriminating in favor of certain market participants, without valid economic basis or policy rationale, tends to reward poor performance, reduce competitive pressure, and distort incentives to innovate. In this case, the stated objectives of the assailed provision of the IRR can and should be achieved in other ways which do not necessarily favor certain players and lessen competition in the construction industry. Consumer welfare, which in this case refers to the welfare of both household and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality.[39]

In view of the above, the PCC is of the position that the Court is called upon to rule in favor of the economic rights of the people and declare the assailed regulation null and void.[40]

ISSUE

Petitioner asserts that:

THE REGIONAL TRIAL COURT GRAVELY ERRED IN DECLARING AS VOID RULE 3, SECTION 3.1 OF THE REVISED RULES AND REGULATIONS GOVERNING LICENSING AND ACCREDITATION OF CONSTRUCTORS IN THE PHILIPPINES BECAUSE:

a. The issuance of the assailed Rule is within the duty and authority of respondent PCAB.

b. The assailed Rule is consistent with the 1987 Constitution and existing laws, rules, regulations and policies.[41]

THE COURT'S RULING

The crux of the controversy is the validity of Section 3.1, Rule 3 of the IRR of R.A. No. 4566. To resolve this issue, the Court must answer

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[39] Id. at 438-439.
[40] Id. at 440.
[41] Id. at 28.

whether the assailed provision is contrary to the Constitution and if the same constitutes unfair competition.

We find the petition without merit.

It can easily be discerned that the intention of petitioner in imposing the assailed section of the IRR is to protect the interests of the Filipino construction industry. However, the manner in which it was done raises constitutional issues on the validity of the IRR.

The Constitution provides safeguards to protect the Filipino industry against domination of foreigners; thus, laws were enacted to secure this state policy, particularly in areas where national economy and patrimony must be protected in our own jurisdiction.

Petitioner anchors its authority to issue the assailed IRR on Section 17 of R.A. No. 4566, which provides:

> **Section 17.** ***Power to classify and limit operations***. The Board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified to engage, as respectively defined in section nine. A license may make application for classification and be thus classified in more than one classification if the licensee meets the qualifications prescribed by the Board for such additional classification or classifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

A reading of the above provision shows that petitioner is authorized to adopt rules to effect classification of contractors as may be necessary. However, as the RTC observed, Congress did not intend to discriminate against foreign contractors as there is no restriction that may be found in R.A. No. 4566.

As aptly pointed out by Justice Bernabe in her Concurring Opinion, We should emphasize the rule in statutory construction that "every part of the statute must be interpreted with reference to the context, *i.e.* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to

the whole law."[42]

In accordance thereto, the phrase "to effect the classification of contractors" under Section 17 should be read in relation to Section 16 of R.A. No. 4566 which provides for an enumeration of the statutorily-mandated classifications for the contracting business, *viz*:

> Section 16. Classification. – For the purpose of classification, the contracting business includes any or all of the following branches.
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> (a) General engineering contracting;
> (b) General building contracting; and
> (c) Specialty contracting.

These terms are then correspondingly defined in subsections (c), (d), and (e), Section 9 of R.A. No. 4566.

Pursuant to the directive under Section 17 of R.A. No. 4566 of PCAB to "effect the classification of contractors," Section 5.1 of the IRR on "License Classification and Categorization" sub-classified the three (3) main contracting classifications as defined in Section 9 of R.A. No. 4566 by areas of specialization. However, PCAB went beyond the prescribed classifications under Section 16 of R.A. No. 4566 and proceeded to create the nationality-based license types under Section 3.1. Additionally, while Section 5 of R.A. No. 4566 authorizes PCAB to "issue, suspend, and revoke licenses of contractors," this general authority to issue licenses must be read in conjunction with Sections 16 and 17 of R.A. No. 4566 if the licensing power of the PCAB is to be exercised to the extent that the PCAB would be effectively creating substantial classifications between certain types of contractors.

In fine, PCAB exceeded the confines of the delegating statute when it created the nationality-based license types under Section 3.1. Basic is the rule that "the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation."[43]

Moreover, the RTC also emphasized that while Section 17 of R.A. No. 4566 allows petitioner to effect classifications, the same should be reasonable. The approach on how it was justified by petitioner as a reasonable classification cannot be upheld by this Court.

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[42] *Philippine International Trading Corporation vs. Commission on Audit*, 635 Phil. 447, 454 (2010).
[43] *Lokin, Jr. vs. Commission on Elections*, 635 Phil, 372, 392 (2010).

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Petitioner insists that the regulation was formed consistent with Section 14, Article XII of the 1987 Constitution,[44] which mandates the practice of all professions in the Philippines be limited to Filipino citizens. Petitioner considers construction as a profession by including contractors in the list of professionals under R.A. No. 465, as amended by R.A. No. 6511.

We do not agree.

The argument of petitioner is misplaced. Section 14, Article XII of the Constitution refers to the privilege of a natural person to exercise his profession in the Philippines.[45] On the other hand, under Article IV of R.A. No. 4566, even partnerships, corporations and organizations can qualify for a contractor's license through its responsible officer.[46] The "profession" under the aforesaid provision refers to the practice of natural persons of a certain field in which they are trained, certified, and licensed. Being a licensed contractor does not automatically qualify within the ambit of the Constitution as a "profession" *per se*.

A contractor under R.A. No. 4566 does not refer to a specific practice of profession, *i.e.* architecture, engineering, medicine, accountancy and the like. In fact, Section 9(a) and (b) of R.A. No. 4566 reads:

ARTICLE II
Application of the Act

Section 9. *Definition of terms.* As used in this Act:

(a) "Persons" include an individual, firm, partnership, corporation, association or other organization, or any combination of any thereof.

(b) "Contractor" is deemed synonymous with the term "builder" and, hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other

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[44] Section 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[45] Bernas (intent of the 1986 Constitution), p. 687.

[46] Republic Act No. 4566 (1965), Section 20.

> structures or works in connection therewith. The term contractor includes subcontractor and specialty contractor.

Suffice it to say that a corporation or juridical person, in this case a construction firm, cannot be considered a "professional" that is being exclusively restricted by the Constitution and our laws to Filipino citizens. The licensing of contractors is not to engage in the practice of a specific profession, but rather to engage in the business of contracting/construction.

The basis for petitioner's argument, that construction is considered a profession, is also out of context. We emphasize that R.A. No. 6511 is an act which standardizes the examination and registration fees charged by the National Examining Board; thus, the list contains individual applicants for ***any*** of the licensure examinations conducted by any of the boards, under the Office of the Boards of Examiners, who shall pay examination fees. It covers applicants of any licensure examinations, but is not limited to licensing of professionals. In other words, licensed contractors are listed therein as they are required by law to undergo a licensure examination, which fee is regulated. It does not follow that just because a license is required under R.A. No. 4566, a licensed contractor is already considered a professional under the Constitution.

Professionalizing the construction business is different from the exercise of profession which the Constitution exclusively restricts to Filipino citizens. To reiterate, the license required under R.A. No. 4566 is for purposes of engaging in the business of contracting under the terms of the said act for a fiscal year or a certain period/project, and not for the purpose of practicing a particular profession. The responsible officer who secures a license for contracting, for his own business or for the company, may already be a professional in his own field (*i.e.,* engineer, architect). Then again, the license acquired under R.A. No. 4566 does not make the licensed contractor a "professional" within the meaning contemplated under Section 14, Article XII of the 1987 Constitution.

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More telling is the fact that applicants for contractor's licenses are not required to have Philippine citizenship unlike those who are considered as professionals in the country.[47] Contrary to petitioner's claim, the citizenship or equity requirement to qualify for a contractor's license is one of the basic qualifications which Congress would have prescribed, had it really intended to do so. Worthy to note that Congress also did not prescribe a minimum educational requirement for a contractor to be issued a license, as opposed to the professionals referred to under the Constitution. The law merely requires at least two years of experience in the construction industry, and knowledge of building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business. Therefore, this Court cannot countenance the reason offered by petitioner as basis to set an equity requirement for the issuance of a regular license.

If R.A. No. 4566 and its IRR indeed viewed the construction industry as a profession and contractors as professionals whose practice may be limited to Filipino citizens, then the challenged provision runs contrary to such policy, as it would allow foreigners to operate with a regular license through a construction firm as long as their equity therein does not exceed 40%.

We agree with respondent that a scrutiny of R.A. No. 4566 reveals that there is nothing which would indicate that petitioner is authorized to set an equity limit for a contractor's license. As argued by respondent, it is Congress which has the power to determine certain areas of investments which must be reserved to Filipinos, upon recommendation of the National Economic Development Authority *(NEDA),* and when national interest requires.[48] Again, we do not find any basis in any law enacted by Congress for the equity requirement set by petitioner in the assailed regulation. This power is not even impliedly delegated to petitioner under R.A. No. 4566 from which it anchors its existence and authority.

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[47] Republic Act No. 4566, Article IV, Section 20 provides:

> Section 20. *Qualifications of applicants for contractors' licenses.* The Board shall require an applicant to show at least two years of experience in the construction industry, and knowledge of the building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business as the Board deems necessary for the safety of the contracting business of the pubic.
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> For the purpose of this section, a partnership, corporation, or any other organization may qualify through its responsible managing officer appearing personally before the Board who shall prove that he is a bona fide responsible officer of such firm and that he exercises or is in a position to exercise authority over the contracting business of his principal or employer in the following manner: (1) to make technical and administrative decisions; and, (2) to hire, superintend, promote, transfer, lay off, discipline or discharge employees.

[48] See *Espina v. Zamora*, 645 Phil. 269, 280 (2010).

Accordingly, this Court finds that the construction industry is not one which the Constitution has reserved exclusively for Filipinos. Neither do the laws enacted by Congress show any indication that foreigners are proscribed from entering into the same projects as Filipinos in the field of construction. Thus, we find that setting the equity limit for a certain type of contractor's license has no basis.

Evidently, respondent's argument of alleged unfair competition does not apply in this case. Fundamentally, the Constitution was enacted for the protection of the Filipinos. As a consequence, the argument that foreigners are put in a disadvantageous position against Filipinos with the enactment of the assailed regulation will not stand against the genuine intent of petitioner to protect the Filipino construction industry. Nevertheless, the Court is not unaware of the economic benefits of opening the construction industry to foreigners.

In resolving the issue at hand, *Tañada v. Angara*[49] is instructive. The Court has ruled that "the constitutional policy of a 'self-reliant and independent national economy' does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither 'economic seclusion' nor 'mendicancy in the international community.'"[50] "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition."[51] It was further held that "while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is *unfair.*"[52]

This was further bolstered in *Espina v. Zamora, Jr.*[53] where the Court held:

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[49] 338 Phil. 546 (1997).
[50] Id. at 588.
[51] Id. at 589.
[52] Id. at 585; citation omitted.
[53] Supra note 48.

The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.

In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.[54]

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[54] Id. at 279-280; citations omitted.

As a consequence, this Court finds the assailed regulation inconsistent with the intent of the Constitution in no less than one aspect. The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well.[55] The evil sought to be prevented by petitioner, that a contractor's warranty cannot be imposed as foreign contractors are beyond reach of the government and the genuine intent of protecting the Filipino consumers by ensuring continuous and updated monitoring and regulation of foreign contractors, may be addressed with some form of regulation other than restricting the contractor's license which leads to deprivation of economic growth and advancement of the construction industry.

For instance, it is a standard practice in the construction industry that contractors are required to post or put up a performance bond to ensure faithful compliance under their contract. In case of foreign construction companies engaging business in the Philippines, petitioner's apprehension that it would be difficult to go after them in case of contractual breach can be addressed by requiring them at all times to put up a performance bond issued by a domestic bonding company.

Absent any showing that the competition expected in the construction industry, should we open the same to foreigners, would be unfair to our citizens, the industry should not be restricted to Filipinos only. As opined by the PCC, it would encourage healthy competition among local and foreign contractors and the market will have alternative options depending on the needs of each construction project. This will also open opportunities for development and innovation that the foreign industry may introduce to our local contractors to make them more competitive in the world market.

On the assertion of petitioner that the assailed provision of the IRR merely regulates the license of foreign contractors and does not restrict the construction industry to Filipinos, We rule that these are contrary to the obvious consequence of the assailed regulation. The statistics shown by PCC, from petitioner's own data, reveal the apparent disparity of licenses granted to Filipinos and foreigners. In 2015, out of the 1,600 special licenses issued, only 20 were issued to foreign firms while 4 were issued to joint ventures with foreign participation.[56] PCC also showed that from 2013-2015, a large majority of the total licenses issued during this period did not translate to the entry of new participants in the construction industry.[57] Apart from these statistics, and considering the limited scope of the special license,

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[55] *Tatad v. Secretary of Department of Energy*, supra note 33, at 380.
[56] *Rollo*, p. 427.
[57] Id.

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the additional burden and expenses of securing the same scare away foreign investors.[58] Evidently, the assailed regulation is a deterrent to the entry of foreign players in the construction industry.

The opinion of the Secretary of Justice in a Memorandum[59] dated September 21, 2011, although not binding, is persuasive. It pointed out that one of the objectives of Presidential Decree *(P.D.)* No. 1746,[60] the law which amended R.A. No. 4566, is for CIAP to rationalize the investments in the construction industry in accordance with national investment priorities and development needs. It also stressed that the construction industry is not among the investment areas or activities specifically reserved to Philippine nationals under E.O. No. 858. In line with this, the Secretary opines that the assailed IRR, Rule 3.1 in particular, may be amended to be consistent with the policy under R.A. No. 4566, as amended, and the present policy of the state to rationalize investments.[61]

Worthy to note that the first[62] and second[63] Foreign Investments Negative List *(FINL)* included "private domestic construction contracts (RA No. 4566, Article XIV, Section 14 of the Constitution)." These FINLs were issued in 1994 and 1996, respectively. Noticeably, from the third FINL[64] in 1998 until the most recent 11th FINL (2018),[65] private construction contracts were no longer included in the list. This means that the restriction on foreign investments on private construction contracts was already lifted as early as 1998. The opening of investment areas to foreign investors is an indication of a developing economy to which our governing and implementing laws must also adapt to depending on the demands of the industry and economy. It follows that the assailed IRR which was last amended in 1989, or thirty (30) years ago, must also conform to these developments in order to be consistent with the current state policy.

In sum, this Court finds justifiable basis to strike down the assailed Section 3 of the IRR of R.A. No. 4566. Accordingly, the RTC is correct in declaring Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines void.

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[58] Id. at 425-426.
[59] Id. at 323-328.
[60] Creating the Construction Industry Authority of the Philippines (CIAP) (1980).
[61] *Rollo*, pp. 327-328.
[62] Executive Order No. 182 (First Regular Foreign Investment Negative List, June 22, 1994).
[63] Executive Order No. 362 (Second Regular Foreign Investment Negative List, August 20, 1996).
[64] Executive Order No. 11 (Approving the Third Regular Foreign Investments Negative List, August 11, 1998).
[65] Executive Order No. 65 (Promulgating the Eleventh Regular Foreign Investment Negative List, October 29, 2018).

However, we deem it fit to modify the ruling of the RTC to specifically address the issue resolved in this case and limit the scope of nullity of the assailed rule. Thus, only the following portions of Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors in the Philippines are hereby declared void and are hereby struck down:

RULE III

Contractor's License

SECTION 3.1 *License Types.* —

Two types of Licenses are hereby instituted and designated as follows:

a) The Regular License

The Regular License shall be reserved for and issued only to constructor-firms of Filipino sole proprietorship, or partnership/corporation with at least seventy percent (70)* Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines.

b) The Special License

xxxx

The following can qualify only for the Special License:

xxxx

bb) A foreign firm legally allowed by the proper Philippine government authority to undertake construction activities in the Philippines.

xxxx.

Likewise, in order to fully harmonize the rest of the IRR, Rule 12, Section 12.7 thereof must also be nullified, to wit:

RULE XII

License Denial, and Cancellation

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SECTION 12.7 *Introduction of Foreign Equity.* —

An introduction of thirty percent (30%)* or more of foreign equity into a construction firm holding a Regular License shall ipso

facto invalidate the license. The constructor may apply for a Special License subject to stipulations in Sec. 3.1(b) hereof.

WHEREFORE, the petition is **DENIED**. Accordingly, the February 24, 2014 Resolution and the February 10, 2015 Order of the Regional Trial Court, Quezon City, Branch 83 *(RTC)* are **AFFIRMED** with **MODIFICATION,** in so far as Rule 3, Section 3.1 (a) paragraph 2, Section 3.1 (b) subparagraph (bb), and Rule 12, Section 12.7 of the Revised Rules and Regulations Governing Licensing and Accreditation of Constructors, implementing Republic Act No. 4566, otherwise known as the Contractors' License Law in the Philippines, are hereby declared **VOID.**

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII 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.

DIOSDADO M. PERALTA
Chief Justice