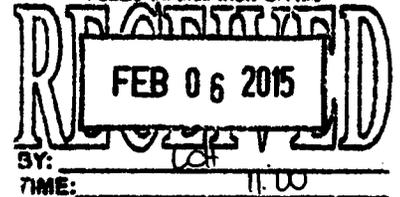




Republic of the Philippines
Supreme Court
Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JANUARY 13, 2015, which reads as follows:

“G.R. No. 193414 – DEPARTMENT OF HEALTH, represented by DR. ENRIQUE C. ONA, in his official capacity as Department Secretary, Petitioner v. HONORABLE JUDGE ALEXANDER P. TAMAYO, in his official capacity as Presiding Judge of Branch 15, Regional Trial Court, Malolos, Bulacan; and MIGHTY CORPORATION, represented by JAMES VINCENT C. NAVARETE, Respondents.

G.R. No. 195177 – DEPARTMENT OF HEALTH, Petitioner v. HON. FELIX P. REYES, in his capacity as Presiding Judge, RTC, Branch 272, Marikina City, and FORTUNE TOBACCO CORPORATION, Respondents.

G.R. No. 199503 – JUAN M. FLAVIER, EMERITO L. ROJAS, DANILO M. SEGISMUNDO, ROBERTO DE GALA ALVAREZ, EUGENIO TUNGCU, JR., AMANCIO P. BENAS, MANUEL S. MOSQUEDA, EDMUNDO ROXAS, DARIO V. TALOSIG, MIGUEL JARDIN, PIO LAWAG, JOSE MANMANO, JUAN C. PERALTA, FRANCIS TIMBRE, FAUSTO RECIPROCO, JESSIE C. OCHOA, RODOLFO PALENZUELA, BERNARDO M. QUIJANO, SR., ROMEO A. BUENSUCESO, DAVID B. CAMPAÑANO, ALVIN A. TRABUCON, AQUILINO A. BALSAMO, ELLIMAR J. JUNTADO, EDGARDO T. CANDIDO, JAY-PEE F. CAMARA, DONALD Z. DATO-ON, ALVIN V.

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TOBACCO COMPANY; JT INTERNATIONAL (PHILIPPINES); AMERICAN TOBACCO (PHILS) LTD; ASSOCIATED ANGLO AMERICAN TOBACCO CORP.; IMPERIAL TOBACCO CORPORATION; LA CAMPANA FABRICA DE TABACOS, INC.; TABAQUERIA DE FILIPINAS INC.; CAPITAL TOBACCO CORP.; STERLING TOBACCO CORPORATION; PHILIPPINE TOBACCO INSTITUTE; and THE DEPARTMENT OF HEALTH, Respondents.

G.R. No. 202461 – DEPARTMENT OF HEALTH, Petitioner v. PMFTC, INC., Respondent.

On June 23, 2003, Republic Act No. 9211 (*Tobacco Regulation Act*) amended Article 94¹ of Republic Act No. 7394 (*The Consumer Act of the Philippines*) by providing in its Section 13 as follows:

SECTION 13. Warnings on Cigarette Packages.—Under this Act:

a. All packages in which tobacco products are provided to consumers withdrawn from the manufacturing facility of all manufacturers or imported into the Philippines intended for sale to the market, starting 1 January 2004, shall be printed, in either English or Filipino, on a rotating basis or separately and simultaneously, the following health warnings:

“GOVERNMENT WARNING: Cigarette Smoking is Dangerous to Your Health;”

“GOVERNMENT WARNING: Cigarettes are Addictive;”

“GOVERNMENT WARNING: Tobacco Smoke Can Harm Your Children;” or

“GOVERNMENT WARNING: Smoking Kills.”

b. Upon effectivity of this Act until 30 June 2006, the health warning shall be located on one side panel of every tobacco product package and occupy not less than fifty percent (50%) of such side panel including any border or frame.

¹ Art. 94. *Labeling Requirements of Cigarettes.* - All cigarettes for sale or distribution within the country shall be contained in a package which shall bear the following statement or its equivalent in Filipino: "Warning: Cigarette Smoking is Dangerous to Your Health". Such statement shall be located in conspicuous place on every cigarette package and shall appear in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the package. Any advertisement of cigarette shall contain the name warning as indicated in the label.

c. Beginning 1 July 2006, the health warning shall be located on the bottom portion of one (1) front panel of every tobacco product package and occupy not less than thirty percent (30%) of such front panel including any border or frame. The text of the warning shall appear in clearly legible type in black text on a white background with a black border and in contrast by typography, layout or color to the other printed matters on the package. The health warning shall occupy a total area of not less than fifty percent (50%) of the total warning frame.

d. The warnings shall be rotated periodically, or separately and simultaneously printed, so that within any twenty-four (24) month period, the four (4) variations of the warnings shall appear with proportionate frequency.

e. The warning shall not be hidden or obscured by other printed information or images, or printed in a location where tax or fiscal stamps are likely to be applied to the package or placed in a location where it will be damaged when the package is opened. If the warning to be printed on the package is likely to be obscured or obliterated by a wrapper on the package, the warning must be printed on both the wrapper and the package.

f. In addition to the health warning, all packages of tobacco products that are provided to consumers shall contain, on one side panel, the following statement in a clear, legible and conspicuous manner: "NO SALE TO MINORS" or "NOT FOR SALE TO MINORS." The statement shall occupy an area of not less than ten percent (10%) of such side panel and shall appear in contrast by color, typography or layout with all the other printed material on the side panel.

g. No other printed warnings, except the health warning and the message required in this Section, paragraph f. shall be placed on cigarette packages. (Underscoring supplied for emphasis)

On September 23, 2003, the Philippines, represented by then Department of Health (DOH) Secretary Manuel Dayrit, signed the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC).²

In 2005, the Philippine Senate ratified the FCTC by a two-thirds vote of its members in accordance with the Constitution. Following the deposit of the instrument of ratification, the FCTC went into force in the country.³

² *Rollo* (G.R. No. 202461), p. 47.

³ *Id.*

In its Article 7, the FCTC mandated the state parties to adopt and implement effective legislative, executive, administrative and other measures necessary to carry out their obligations under Article 11 of the treaty, to wit:

Article 7. Non-price measures to reduce the demand for tobacco - The Parties recognize that comprehensive non-price measures are an effective and important means of reducing tobacco consumption. Each Party shall adopt and implement effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8 to 13 and shall cooperate, as appropriate, with each other directly or through competent international bodies with a view to their implementation. The Conference of the Parties shall propose appropriate guidelines for the implementation of the provisions of these Articles.

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Article 11. Packaging and labeling of tobacco products –

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

(a) tobacco product packaging and labeling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”; and

(b) each unit packet and package of tobacco products and any outside packaging and labeling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages:

- (i) shall be approved by the competent national authority,
- (ii) shall be rotating,
- (iii) shall be large, clear, visible and legible,

(iv) should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas,

(v) may be in the form of or include pictures or pictograms.

2. Each unit packet and package of tobacco products and any outside packaging and labeling of such products shall, in addition to the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

3. Each Party shall require that the warnings and other textual information specified in paragraphs 1(b) and paragraph 2 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labeling of such products in its principal language or languages.

4. For the purposes of this Article, the term “outside packaging and labeling” in relation to tobacco products applies to any packaging and labeling used in the retail sale of the product.

Implementing the Philippines’ obligations under Article 7 and Article 11 of the FCTC, the DOH issued Administrative Order No. 2010-0013 dated May 25, 2010 entitled *Requiring Graphic Health Information on Tobacco Product Packages, Adopting Measures to Ensure that Tobacco Product Packaging and Labeling Do Not Promote Tobacco By Any Means That are False, Misleading, Deceptive, or Likely to Create an Erroneous Impression, and Matters Related Thereto* (the assailed AO) requiring graphic health information on tobacco product packages; prohibiting the promotion of any tobacco product using misleading descriptors and/or information; and allowing tobacco companies a period of 90 days from the effectivity on June 9, 2010 to comply with the AO.⁴

Respondents Fortune Tobacco Corporation, PMFTC, Inc., Telengtan Brothers & Sons, Inc., Mighty Corporation, and JT International (Philippines), Inc. filed suits in various Regional Trial Courts seeking to nullify the assailed AO and to enjoin its implementation on the ground of its being detrimental to the tobacco industry. The suits represented that the assailed AO ran counter to Section 13(g) of Republic Act No. 9211; that compliance with the assailed AO would expose them to sanctions and

⁴ *Rollo* (G.R. No. 193414), p. 13.

penalties under Republic Act No. 9211; and that the DOH had no legal authority to issue the assailed AO.⁵

G.R. No. 193414

On July 5, 2010, respondent Mighty Corporation filed a complaint for declaratory relief⁶ (with application for a writ of preliminary injunction and temporary restraining order) against the DOH in the Regional Trial Court (RTC) in Malolos, Bulacan. In its order dated July 16, 2010,⁷ Branch 15 of the RTC granted the temporary restraining order (TRO) applied for effective for 20 days from its issuance. In the first scheduled hearing, respondent Presiding Judge of Branch 15 dictated in open court his order granting the DOH's motion to file its motion to dismiss until July 26, 2010, and giving Mighty Corporation until July 28, 2010 to file its opposition/comment to the motion to dismiss.⁸ To its surprise, however, the DOH received the challenged order dated July 22, 2010,⁹ whereby the RTC *motu proprio* revised its earlier order to now require the DOH to file its comment/opposition to the application for preliminary injunction. The DOH sought the reconsideration of the challenged order as well as the dismissal of the complaint on the ground of the plaintiff's failure to exhaust administrative remedies and the RTC's lack of jurisdiction over the action for declaratory relief.

On July 29, 2010, the RTC denied the DOH's motion for reconsideration, and granted Mighty Corporation's application for a writ of preliminary injunction.¹⁰

The DOH then moved for reconsideration of the July 22, 2010 order.¹¹

Pending the hearing of the suit for declaratory relief in the RTC, the DOH filed the petition for *certiorari* and prohibition in this Court.

On January 15, 2011, former Secretaries of the DOH, namely: Dr. Esperanza I. Cabral, Dr. Francisco T. Duque III, Dr. Jaime Z. Galvez-Tan, Dr. Alberto G. Romualdez Jr., and Dr. Alfredo R.A. Bengzon, filed a *Motion for Leave to Intervene in the case and their Petition-in-Intervention*.¹²

By resolution dated February 2, 2011,¹³ the Court granted the *Motion for Leave to Intervene in the case and their Petition-in-Intervention*.

⁵ *Rollo* (G.R. No. 199503), p. 15.

⁶ *Rollo* (G.R. No. 193414), pp. 125-134.

⁷ *Rollo* (G.R. No. 199503), pp. 135-136.

⁸ *Rollo* (G.R. No. 193414), p. 15.

⁹ *Id.* at 69.

¹⁰ *Id.* at 70-72.

¹¹ *Id.* at 75-107.

¹² *Id.* at 313-351.

¹³ *Id.* at 824.

G.R. No. 195177

On June 3, 2010, Fortune Tobacco Corporation filed its own action for declaratory relief in the RTC in Marikina City, Branch 272,¹⁴ to declare the assailed AO void, and to permanently enjoin and prohibit its implementation.

On June 9, 2010, Branch 272 of the RTC in Marikina City issued a TRO against the DOH effective for 20 days.¹⁵

On July 1, 2010, the same RTC issued an order granting the prayer of Fortune Tobacco Corporation for the issuance of a writ of preliminary injunction.¹⁶

The DOH filed an omnibus motion seeking reconsideration of the order dated July 1, 2010, and the dismissal of the action. On November 22, 2010, however, the RTC in Marikina City issued the questioned order,¹⁷ denying the petitioner's omnibus motion.

The petitioner then brought its action for *certiorari*¹⁸ in this Court to challenge the orders of the RTC enjoining the implementation of the assailed AO.

G.R. No. 199503

Former Senator Juan Flavier and others instituted a special civil action for declaratory relief in the Makati RTC against Fortune Tobacco Corporation, Inc., Telengtan Brothers & Sons, Inc., Mighty Corporation, and JT International (Philippines), Inc. to maintain the validity of the assailed AO and the power of the DOH to issue such AO.

However, the RTC granted¹⁹ the respondents' motion to dismiss on the ground that the plaintiffs had no legal standing to file the action, and that there was no justiciable controversy, with the RTC holding that the assailed AO was made in violation of existing law and issued in excess of DOH's authority thereby declaring the assailed AO null and void.²⁰

After the motion for reconsideration was denied on September 21, 2011, Flavier, *et al.* came to the Court for relief.

¹⁴ *Rollo* (G.R. No. 195177), pp. 131-181.

¹⁵ *Id.* at 292.

¹⁶ *Id.* at 51-54.

¹⁷ *Id.* at 43-50.

¹⁸ *Id.* at 2-39.

¹⁹ *Rollo* (G.R. No. 199503), pp. 173-204.

²⁰ *Rollo* (G.R. No. 195177), p. 204.

G.R. No. 202461

Feeling aggrieved by the issuance of the assailed AO, PMFTC, Inc. brought its petition for prohibition in the RTC in Tanauan City, Branch 6, with application for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of the assailed AO. On February 24, 2012, the RTC held in its decision that the assailed AO constituted a usurpation of legislative power, and was, therefore, null and void; hence, its enforcement was prohibited.²¹ It ruled that the assailed AO ran afoul of Section 13(g) of Republic Act No. 9211, which forbade further regulation of labeling on tobacco products. Although it opined that the FCTC already formed part of Philippine laws, it held nonetheless that there remained the question as to whether the treaty was self-executing or required an act of Congress. It categorically declared that the FCTC was not self-executing, particularly Section 11 thereof.

After its motion for reconsideration was denied,²² the DOH appealed the decision of the RTC by petition for review on *certiorari*.

Common Antecedents

By its resolution dated January 8, 2013,²³ the Court ordered the consolidation of G.R. No. 193414 (*DOH v. Hon. Alexander Tamayo and Mighty Corporation*), an En Banc case, with all the other cases, namely: G.R. No. 195177 (*DOH v. Hon. Felix P. Reyes, et al.*), a Second Division case, and G.R. No. 199503 (*Juan Flavier, et al. v. Hon. Winlove M. Dumayas, et al.*), a First Division case. The Court also ordered the consolidation of G.R. No. 202461 with the other cases under the resolution dated October 21, 2013.

On July 15, 2014, President Aquino signed Republic Act No. 10643 (*The Graphic Health Warnings Law*) into law, whereby the Philippines recognizes that as a state-party to the FCTC, the Philippines has come under obligation “to inform every person of the health consequences of tobacco consumption and exposure to tobacco smoke; to enact effective measures to curb and reduce tobacco use, especially among the youth; and to protect public health policy from the commercial and vested interests of the tobacco industry.”²⁴ *The Graphic Health Warnings Law* has also acknowledged the Philippines’ duty under Article 11 of the FCTC to adopt and implement effective health warnings on tobacco products.

²¹ *Rollo* (G.R. No. 202461), pp. 90-114.

²² *Id.* at 115-116.

²³ *Rollo* (G.R. No. 193414), p. 1638.

²⁴ Section 2, Republic Act No. 10643.

Ruling of the Court

Clearly, Republic Act No. 10643 has expressly repealed not only the assailed AO, whose validity was the main subject matter of these cases, but also Section 13 of Republic Act No. 9211, and Sections 18(e) and 23(a)(1)(b) of BIR Revenue Regulations No. 3-2006. The repeal is express, to wit:

Section 20. *Repealing Clause.* – Section 13 on Warning on Cigarette Packages of Republic Act No. 9211, DOH Administrative Order No. 2010-0013 and BIR Revenue Regulations No. 3-2006, Sections 18(e) and 23(a)(1)(b) are hereby repealed. All other laws, decrees, executive orders and other administrative issuances and parts thereof which are inconsistent with the provisions of this Act are hereby modified, superseded or repealed accordingly.

The repeal is a supervening event that has rendered these consolidated cases moot and academic. An issue that ceases to present a justiciable controversy is said to become moot and academic, so that a declaration on the issue would be of no practical use or value.²⁵ Otherwise put, “[a]n action is considered ‘moot’ when it no longer presents a justiciable controversy because the issues involved have become academic or dead[,] or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties x x x. Simply stated, there is nothing for the xxx court to resolve as [its] determination x x x has been overtaken by subsequent events.”²⁶

Although, as pronounced in *David v. Macapagal-Arroyo*,²⁷ the moot-and-academic principle is not a magic formula that automatically dissuades courts from resolving cases, for they will still decide cases, otherwise moot and academic, should they find that:

- (a) There is a grave violation of the Constitution;
- (b) The situation is of exceptional character, and paramount public interest is involved;
- (c) The constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; or
- (d) A case is capable of repetition yet evading review.

²⁵ *Land Bank of the Philippines v. Suntay*, G.R. No. 188376, December 14, 2011, 662 SCRA 614, 639.

²⁶ *Santiago v. Court of Appeals*, G.R. No. 121908, January 26, 1998, 285 SCRA 16, 21-22, cited in *Galicto v. Aquino III*, G.R. No. 193978, February 29, 2012, 667 SCRA 150, 177.

²⁷ G.R. Nos. 171396, 171400, 171409, 171483, 171485, 171489, and 171424, May 3, 2006, 489 SCRA 160, 214-215, cited in *Land Bank of the Philippines v. Suntay*, supra.

A careful perusal shows that these consolidated cases do not fall under any of the above-stated exceptions. Indeed, the Legislature, through its enactment of Republic Act No. 10643, has written *finis* to the constitutional issues raised herein, rendering it pointless for the Court to still determine the issues.

WHEREFORE, the Court **DISMISSES** the petitions for being moot and academic. No pronouncement on costs of suit.” Brion, J., on leave. Jardeleza, J., no part. (20)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court //

- Over -

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wmd 11315 (20) 2515