

Republic of the Philippines
COURT OF APPEALS

Manila

ELEVENTH DIVISION

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**DRUGSTORES
ASSOCIATION OF THE
PHILIPPINES, INC., SAVE
MORE DRUG, INC.,
MANSON DRUG
CORPORATION, SOUTH
STAR DRUG INC., and
NORTHERN LUZON DRUG
CORPORATION,**
Petitioners,

CA-G.R. SP NO. 109903

Members:

**TIJAM, N. G., *Chairman*
GONZALES-SISON, M., and
BUESER, D. Q., II:**

Promulgated:

JUL 26 2010

-versus-

**NATIONAL COUNCIL ON
DISABILITY AFFAIRS,
DEPARTMENT OF HEALTH,
DEPARTMENT OF
FINANCE, BUREAU OF
INTERNAL REVENUE,
DEPARTMENT OF
INTERIOR AND LOCAL
GOVERNMENT, and
DEPARTMENT OF SOCIAL
WELFARE AND
DEVELOPMENT,**
Respondents.

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DECISION

TIJAM, J.

This petition for *Prohibition with application for a Temporary Restraining Order and/or a writ of Preliminary Injunction* seeks to annul and enjoin the implementation of the following laws:

1. Section 32 of Republic Act (RA) No. 7277¹ as amended by RA No. 9442;²
2. Section 6, Rule IV of the Implementing Rules and Regulations of RA No.9442;
3. National Council on Disability Affairs (NCDA) Administrative Order 1;
4. Department of Health (DOH) Administrative Order 2009-11;
5. Department of Finance Revenue Regulation 001-09. ↓

¹ Otherwise known as "Magna Carta for Disabled Persons," March 24, 1992.

² An Act Amending Republic Act No. 7277, otherwise known as the "Magna Carta for Disabled Persons, and for other purposes"

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CHAPTER 8. Other Privileges and Incentives

"SEC. 32. Persons with disability shall be entitled to the following:

(c) **At least twenty percent (20%) discount for the purchase of medicines in all drugstores for the exclusive use or enjoyment of persons with disability;**

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On March 24, 1992, Republic Act (RA) No. 7277, otherwise known as the "*Magna Carta for Disabled Persons*," was passed into law, which grants certain rights and privileges to all disabled persons, especially in the fields of employment, education, health, social services and others. Subsequently, on April 30, 2007, RA No. 9442 was enacted amending Section 32 of RA No. 7277 which, among others, granted "*Persons with Disabilities*" (PWDs) benefits in the form of a 20% discount on their purchased medicines in all drug stores nationwide. The said discount may, however, be deducted from their gross income based on the net cost of the goods sold or services rendered. Meanwhile, the Department of Social Welfare and Development (DSWD), National Council for the Welfare of Disabled Person (NCWDP now NCDA) and the Bureau of Internal Revenue (BIR), in consultation with other agencies of the government, issued several implementing rules for RA No. 7277 as amended by RA No. 9442.

Aggrieved by the effects of the assailed laws, Petitioners filed this petition for prohibition on the following grounds:

"1. The required 20% discount on the purchase of medicines by persons with disability under Section 32 of RA 7277 as amended by RA 9442 is unconstitutional for failing to provide just compensation upon the taking of property for public use.

2. Section 32 of RA 7277 as amended by RA 9442 is unconstitutional and void for violating due process. It bases entitlement to the 20% discount on any of the three documents, none of which has relation to a medical findings of disability. It grants financial benefits to PWDs for their purchase of medicines that have no relation to their specific disability. ✓

3. Section 32 of RA 7727 as amended by RA 9442 is unconstitutional and void for violating the equal protection clause. It fails to make substantial distinction between PWDs and marginalized PWDs.

4. Section 6.11 and Section 6.1(d), Rule IV of the Implementing Rules and Regulations of RA 9442, NCDA AO 1, DOH AO 2009-11 are unconstitutional for constituting undue delegation of legislative power.

5. Section 6.11.3, Rule IV of the Implementing Rules and Regulations of RA 9442 is void for being ultra vires.

6. Section IV (D) of NCDA AO 1 is unconstitutional and void. It is ultra vires, violates due process, and is an undue delegation. It authorizes a non-physician to confirm the medical condition of disability, and leaves the implementation of what is supposed to be a State power to a private person.

7. Clause 3, Part I and Clause 1, Part VI of NCDA AO 1 are void for being ultra vires and for being unreasonable in violation of the due protection clause under the Constitution.

8. The definitions under Section 4(a), Section 4(b) and Section 4(c) of RA 7727 as amended by RA 9442, Rule 1 of the Implementing Rules and Regulations of RA 7727, Section 5.1 of the Implementing Rules and Regulations of RA 9442, NCDA AO1 and DOH AO 2009-11 are vague and unconstitutional. ✓

9. NCDA AO 1 and DOH AO 2009-11 are invalid, defective and unenforceable for lack of proper publication and filing with the Office of the National Administrative Register.”

The petition is partly granted.

Petitioners claim that the 20% discount granted by RA No. 9442 to PWDs is confiscatory as it violated their rights under Section 9³ Article III, of the Constitution. They claimed that, when a government exercises its power of eminent domain, the property owner must be paid just compensation. However, in the instant case, the prescribed tax deduction scheme under RA No. 9442, based on the net cost of the goods, does not allow Petitioners to collect full reimbursement of the 20% discount granted to PWDs, hence, they are unduly deprived of their earnings.

We find Petitioners' contention not persuasive.

We apply by analogy the similar case of **Carlos Superdrug Corporation, et al. vs. DSWD, et al.**,⁴ wherein the Supreme Court held that Section 4 of RA No. 9257,⁵ which grants 20% discount on the purchased medicine of the senior citizens is a legitimate exercise of police power, to wit:

"The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and

³ Section 9. Private property shall not be taken for public use without just compensation.

⁴ G.R. No. 166494, June 29, 2007.

⁵ Otherwise known as "Expanded Senior Citizen Act of 2003."

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circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.

In treating the discount as a tax deduction, petitioners insist that they will incur losses because, referring to the DOF Opinion, for every P1.00 senior citizen discount that petitioners would give, P0.68 will be shouldered by them as only P0.32 will be refunded by the government by way of a tax deduction. xxx"

Based on the foregoing reasoning and justification, We find that the grant of 20% discount on the purchased medicines of the ↓

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PWDs is similarly considered a valid exercise of the police power of the State, hence, it is constitutional. In *Carlos Superdrug* case, the Supreme Court held that the Court is not oblivious to the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, Petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.⁶ Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good,⁷ as in the instant case. Hence, the Department of Finance (DOF) Revenue Regulations No. 001-09 implementing RA No. 9442 relative to the privilege of the PWDs and the tax incentives, which is the tax deduction scheme, provided to the affected establishments in the form of a 20% discount is valid.

It is a declared policy of RA No. 7727, as amended by RA No. 9442, that the said laws are intended to give full support to the improvement of the total well-being of the disabled persons. Like the Senior Citizen's Act, these laws also give special privileges and benefits to PWDs as part of the society. Thru the police power of the government, a law was enacted granting PWDs 20% discounts from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants, recreation centers, purchase of medicines and other products for the exclusive use of the PWDs. Thus, We cannot give credence to Petitioners' argument that the 20% discount should be limited to medicines ✓

⁶ *Carlos SuperDrugs Corp., et. al vs. DSWD, et. al.*, G.R. No.166494, June 29, 2007.

⁷ *Ibid.*

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which are connected with the particular disability of the PWDs. Petitioners' claim that RA No. 7277 applies only to marginalized PWDs⁸ is belied by the express provision of Section 3, RA No. 7277, which enunciates that the law applies to **all disabled persons**. Although there are special provisions in RA No. 7277 wherein the government grants marginalized PWDs benefits like financial assistance to marginalized but deserving disabled student in pursuing post secondary or tertiary education, free postal fees, and etc,⁹ the subsequent enactment of RA No. 9442 amending RA No. 7277, explicitly applies to all PWDs regardless of their status in life; to hold otherwise would defeat the purpose of the law.

Section 32 of RA No. 7277 as amended by RA No. 9442 did not violate substantive due process. The said laws and its implementing rules adequately set up reasonable guidelines for strict availment of the discount in order that the benefits can be exclusively enjoyed by the true PWDs. We do not agree with Petitioners' contention that the law is arbitrary as it does not even require an applicant to present certification from a licensed private or government physician, showing that the applicant is indeed considered a PWD as contemplated by the law.

True, RA No. 9442¹⁰ and Section 6.11 of IRR of RA No. 9442 do not specifically provide a requirement of certification from a ✓

⁸ See Section 3, Republic Act No. 7277.

"Section 3. Coverage. - **This Act shall cover all disabled persons and to the extent herein provided**, departments, offices and agencies of the National Government or non government organizations involved in the attainment of the objectives of this Act."

⁹ See Section 13, 19, 21,24,27 and 37 of RA No. 7277.

¹⁰ Section 32, RA No. 9442.

"The above mentioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto:

- (I) An identification card issued by the city or municipal mayor or the barangay captain of the place where the persons with disability resides;
- (II) The passport of the persons with disability concerned; or
- (III) Transportation discount fare Identification Card
- (IV) issued by the National Council for the Welfare of Disabled Persons (NCWDP).

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licensed physician. However, Section 6.11¹¹ of IRR of RA No. 9442 contains a provision stating that it is *subject to the guidelines issued by the NCWDP in coordination with DSWD, DOH and DILG*. Also, Section 5 of RA No. 9442 provides that *the DSWD, NCDA and BIR in consultation with the concerned Senate and House committees and other agencies, organizations, and establishment, shall formulate an implementing rules and regulation pertinent to the provision of RA 9442*. Hence, the issue regarding the significant requisite of certification from a physician confirming an applicant's medical condition was validly delegated by the legislature to the concerned administrative agency namely the DOH and NCDA. We stress that the lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute. The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the non-delegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."¹²

The IRR (Implementing Rules and Regulations) of RA No. 7277 and RA No. 9442 were jointly issued by the concerned agencies. The DOH, thru its Administrative Order (AO) No. 2009-0011, issued guidelines for the 20% discount on the purchased

¹¹6.11 The abovementioned privileges are available only to persons with disability who are Filipino citizens upon submission of any of the following as proof of his/her entitlement thereto **subject to the guidelines issued by the NCWDP in coordination with DSWD, DOH and DILG**.

6.11.1 An identification card issued by the city or municipal mayor or the barangay captains of the place where the persons with disability resides;

6.11.2 The passport of the persons with disability concerned; or

6.11.3 Transportation discount fare Identification Card (ID) issued by the National Council for the Welfare of Disabled Persons (NCWDP). However, upon effectivity of this Implementing Rules and Regulations, NCWDP will already adopt the Identification card issued by the Local Government Unit for purposes of uniformity in the implementation. NCWDP will provide the design and specification of the identification card that will be issued by the Local Government Units.

¹² See, Soriano vs. MTRCB, et al. G.R. No. 165636, April 29, 2009.

