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[G.R. No. 96266. July 18, 1991]

**ERNESTO M. MACEDA,** *petitioner*, *vs.* **ENERGY REGULATORY BOARD, CALTEX (Philippines), INC., PILIPINAS SHELL PETROLEUM CORPORATION and PETRON CORPORATION,** *respondents*.

[G.R. No. 96349. July 18, 1991]

**EUGENIO O. ORIGINAL, IRENEO N. AARON, JR., RENE LEDESMA, ROLANDO VALLE, ORLANDO MONTANO, STEVE ABITANG, NERI JINON, WILFREDO DELEONIO, RENATO BORRO, RODRIGO DE VERA, ALVIN BAYUANG, JESUS MELENDEZ, NUMERIANO CAJILIG, JR., RUFINO DE LA CRUZ and JOVELINO G. TIPON,** *petitioners*, *vs.* **ENERGY REGULATORY BOARD, CALTEX (Philippines), INC., PILIPINAS SHELL PETROLEUM CORPORATION and PETRON CORPORATION,** *respondents*.

[G.R. No. 96284. July 18, 1991]

**CEFERINO S. PAREDES, JR.,** *petitioner*, *vs.* **ENERGY REGULATORY BOARD, CALTEX (Philippines), INC., PILIPINAS SHELL, INC. and PETROPHIL CORPORATION,** *respondents*.

SYLLABUS

**1. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; ENERGY REGULATORY BOARD; TECHNICAL RULES OF PROCEDURE IN ADMINISTRATIVE BODIES, RELAXED.** — Petitioner Maceda maintains that this order of proof deprived him of his right to finish his cross-examination of Petron's witnesses and denied him his right to cross-examine each of the witnesses of Caltex and Shell. He points out that this relaxed procedure

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resulted in the denial of due process. We disagree. The Solicitor General has pointed out: "x x x The order of testimony both with respect to the examination of the particular witness and to the general course of the trial *is within the discretion* of the court and the exercise of this discretion in permitting to be introduced out of the order prescribed by the rules is *not improper* (88 C.J.S. 206-207). Such a relaxed procedure is especially true in administrative bodies, such as the ERB, which *in matters of rate or price fixing, is considered as exercising a quasi-legislative*, not quasi-judicial, function. As such administrative agency, it is not bound by the strict or technical rules of evidence governing court proceedings."

**2. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF ADMINISTRATIVE BODIES, GENERALLY UPHELD ON APPEAL.** — Petitioner Maceda also claims that there is no substantial evidence on record to support the provisional relief. We have, in G.R. Nos. 95203-05, previously taken judicial notice of matters and events related to the oil industry, as follows: "x x x '(1) as of June 30, 1990, the OPSF has incurred a deficit of ₱6.1 Billion; (2) the exchange rate has fallen to ₱28.00 to $1.00; (3) the country's balance of payments is expected to reach $1 Billion; (4) our trade deficit is at $2.855 Billion as of the first nine months of the year.' The Solicitor General likewise commented: Among the pieces of evidence considered by ERB in the grant of the contested provisional relief were: (1) certified copies of bills of lading issued by crude oil suppliers to the private respondents; (2) reports of the Bankers Association of the Philippines of the peso-dollar exchange rate at the BAP oil pit; and (3) OPSF status reports of the Office of Energy Affairs. The ERB was likewise guided in the determination of international crude oil prices by traditional authoritative sources of information on crude oil and petroleum products, such as Platt's Oilgram and Petroleum Intelligence Weekly." Thus, We concede ERB's authority to grant the provisional increase in oil price.

**3. ID.; ACTIONS; OIL COMPANIES ARE ENTITLED TO MUCH RELIEF AS THE FACT ALLEGED CONSTITUTING THE COURSE OF ACTION MAY WARRANT.** — We shall thus respect the ERB's Order of December 5, 1990 granting a provisional price increase on petroleum products premised on the oil companies' OPSF claims, crude cost peso differentials, forex risk for a subsidy on sale to NPC (p. 167,

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*Rollo*), since the oil companies are "entitled to as much relief as the fact alleged constituting the course of action may warrant."

**4. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; ENERGY REGULATORY BOARD; INCREASE IN OIL PRICES DOES NOT CONSTITUTE ILLEGAL TAXATION.** — In G.R. No. 96349, petitioner Original additionally claims that if the price increase will be used to augment the OPSF this will constitute illegal taxation. In the *Maceda* case, (G.R. Nos. 95203-05, *supra*) this Court has already ruled that "the Board Order authorizing the proceeds generated by the increase to be deposited to the OPSF is not an act of taxation but is authorized by Presidential Decree No. 1956, as amended by Executive Order No. 137.

**5. ID.; POLITICAL LAW; ISSUE ON INCREASE OF OIL PRICES, A POLITICAL QUESTION.** — We lament Our helplessness over this second provisional increase in oil price. We have stated that this "is a question best judged by the political leadership."

**6. ID.; ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; ENERGY REGULATORY BOARD; PRONOUNCEMENT JUSTIFYING INCREASE IN OIL PRICES, NOT FINAL.** — While the government is able to justify a provisional increase, these findings "are not final, and it is up to petitioners to demonstrate that the present economic picture does not warrant a permanent increase." In this regard, We also note the Solicitor General's comments that "the ERB is not averse to the idea of a presidential review of its decision," except that there is no law at present authorizing the same. Perhaps, as pointed out by Justice Padilla, our lawmakers may see the wisdom of allowing presidential review of the decisions of the ERB, since, despite its being a quasi-judicial body, it is still "an administrative body under the Office of the President whose decisions should be appealed to the President under the established principle of exhaustion of administrative remedies," especially on a matter as transcendental as oil price increases which affect the lives of almost all Filipinos.

**SARMIENTO, *J.*, *concurring*:**

**1. POLITICAL LAW; ISSUE ON INCREASE IN PRICES OF OIL, A POLITICAL QUESTION.** — As the Court held in the first

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*Maceda v. Energy Regulatory Board*, oil pricing "is a question best judged by the political leadership" and oil prices are (and have been apparently), political, rather than economic decisions.

**2. ID.; ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; ENERGY REGULATORY BOARD; PROVISIONAL PRICE INCREASE; CAUSE OF GRANT.** — The first Maceda case sustained the grant of provisional price increases *ex parte* not only because Section 8 of Executive Order No. 172 authorized the grant of provisional relief without a hearing but because fluctuations in the foreign exchange rates, for instance, were, and are, a matter of judicial notice, and a hearing thereafter was necessary only to see whether or not the ERB determined the rates correctly.

**3. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; GRANT OF PROVISIONAL INCREASE IN FUEL OIL BY THE ENERGY REGULATORY BOARD, A DENIAL THEREOF.** — I agree with Justice Padilla insofar as he refers to the "present scheme of allowing provisional price increase" as a "scheme [to defraud] the people." I would like to go further. As I indicated, the ERB does no more than to punch calculators for the Government — which *decides* oil price increases. The comedy of December, 1990, when the Board adjusted prices in a matter of days, is a confirmation of this point. As Justice Padilla noted, the readjustment of December 10, 1990 was in fact prompted by "presidential requests" which does not speak well of the Board's independence and which in fact bares the truth as to who really makes the decision. (The readjustment, consisting in the reduction in diesel fuel and a corresponding increase in gasoline, sought to mollify the indignation of the public.) I agree with Justice Padilla that it amounts to fraud on the people to make them believe that the ERB can give them a fair hearing, indeed, if it cant do anything at all.

**PARAS, *J.*, *dissenting*:**

**POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE PRESIDENT; ENERGY REGULATORY BOARD HAS ABSOLUTELY NO POWER TO TAX.** — The ERB has absolutely no power to tax which is solely the prerogative of Congress. This is what the ERB is precisely doing by getting money from the people to *ultimately* subsidize the ravenous oil companies.

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**PADILLA, *J.*, *dissenting:***

1. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; THE PEOPLE, THROUGH THEIR REPRESENTATIVES, DESERVE TO BE GIVEN FULL OPPORTUNITY TO BE HEARD IN THEIR OPPOSITION TO ANY INCREASE IN THE PRICES OF FUEL.** — In the matter of price increases of oil products, which vitally affects the people, especially those in the middle and low income groups, any increase, *provisional or otherwise*, should be allowed only after the Energy Regulatory Board (ERB) shall have fully determined, through *bona fide* and full-dress hearings, that it is absolutely necessary and by how much it shall be effected. The people, represented by reputable oppositors, deserve to be given full opportunity to be heard in their opposition to any increase in the prices of fuel. The right to be heard includes not only the right to present one's case and submit evidence in support thereof, but also the right to confront and cross-examine the witnesses of the adverse parties.

2. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE BODIES GENERALLY UPHELD ON APPEAL; CASE AT BAR, AN EXCEPTION.** — ERB's claim that the second provisional increase was duly supported by evidence, is belied by its own act of modifying said order (of provisional increase) not only once but twice, upon the "request" of the President. First, the ERB rolled back the prices of fuel just a day after it issued the questioned order, altering the allocation of the increase. Second, on 10 December 1990, the ERB further modified the price of petroleum products resulting in reduction of the weighted average provisional increase from ₱2.82 to ₱2.05 per liter, but only after the President had announced that she would meet with the leaders of both Houses of Congress, to discuss the creation of a special fund to be raised from additional taxes, to subsidize the prices of petroleum products. These acts of the ERB, ostensibly sparked by "presidential requests" clearly demonstrate that the evidence did not, in the first place, justify the price increases it had ordered on 5 and 6 December 1990. Furthermore, the ERB never came out with a categorical and official declaration of how much was the so-called deficit of the Oil Price Stabilization Fund (OPSF) and how much of the oil price increases was intended to cover such deficit.

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## RESOLUTION

**MEDIALDEA, *J.*:**

In G.R. No. 96266, petitioner Maceda seeks nullification of the Energy Regulatory Board (ERB) Orders dated December 5 and 6, 1990 on the ground that the hearings conducted on the second provisional increase in oil prices did not allow him substantial cross-examination, in effect, allegedly, a denial of due process.

The facts of the case are as follows:

Upon the outbreak of the Persian Gulf conflict on August 2, 1990, private respondents oil companies filed with the ERB their respective applications on oil price increases (docketed as ERB Case Nos. 90-106, 90-382 and 90-384, respectively).

On September 21, 1990, the ERB issued an order granting a provisional increase of ₱1.42 per liter. Petitioner Maceda filed a petition for Prohibition on September 26,1990 (*E. Maceda v. ERB, et al.*, G.R. No. 95203), seeking to nullify the provisional increase. We dismissed the petition on December 18, 1990, reaffirming ERB's authority to grant provisional increase even without prior hearing, pursuant to Sec. 8 of E.O. No. 172, clarifying as follows:

"What must be stressed is that while under Executive Order No. 172, a hearing is indispensable, it does not preclude the Board from ordering, *ex-parte*, a provisional increase, as it did here, subject to its final disposition of whether or not: (1) to make it permanent; (2) to reduce or increase it further; or (3) to deny the application. Section 3, paragraph (e) is akin to a temporary restraining order or a writ of preliminary attachment issued by the courts, which are given *ex-parte* and which are subject to the resolution of the main case.

"Section 3, paragraph (e) and Section 8 do not negate each other, or otherwise, operate exclusively of the other, in that the Board may resort to one but not to both at the same time. Section 3(e) outlines the jurisdiction of the Board and the grounds for which it may decree a price adjustment, subject to the requirements of notice

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and hearing. Pending that, however, it may order, under Section 8, an authority to increase *provisionally*, without need of a hearing, subject to the final outcome of the proceeding. The Board, of course, is not prevented from conducting a hearing on the grant of provisional authority — which is of course, the better procedure — however, it cannot be stigmatized later if it failed to conduct one. (pp. 129-130, *Rollo*) (Italics Ours)

In the same order of September 21, 1990, authorizing provisional increase, the ERB set the applications for hearing with due notice to all interested parties on October 16, 1990. Petitioner Maceda failed to appear at said hearing as well as on the second hearing on October 17, 1990.

To afford registered oppositors the opportunity to cross-examine the witnesses, the ERB set the continuation of the hearing to October 24, 1990. This was postponed to November 5, 1990, on written notice of petitioner Maceda.

On November 5, 1990, the three oil companies filed their respective motions for leave to file or admit amended/supplemental applications to further increase the prices of petroleum products.

The ERB admitted the respective supplemental/amended petitions on November 6, 1990 at the same time requiring applicants to publish the corresponding Notices of Public Hearing in two newspapers of general circulation (p. 4, *Rollo* and Annexes "F" and "G", pp. 60 and 62, *Rollo*).

Hearing for the presentation of the evidence-in-chief commenced on November 21, 1990 with ERB ruling that testimonies of witnesses were to be in the form of Affidavits (p. 6, *Rollo*). ERB subsequently outlined the procedure to be observed in the reception of evidence, as follows:

"CHAIRMAN FERNANDO:

"Well, at the last hearing, applicant Caltex presented its evidence-in-chief and there is an understanding or it is the Board's wish that for purposes of good order in the presentation of the evidence considering that these are being heard together, we will defer the cross-examination of applicant Caltex's witness and ask the other applicants to present their evidence-in-chief so that the oppositors

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will have a better idea of what all of these will lead to because as I mentioned earlier, it has been traditional and it is the intention of the Board to act on these applications on an industry-wide basis, whether to accept, reject, modify or whatever, the Board will do it on an industry-wide basis, so, the best way to have (sic) the oppositors and the Board a clear picture of what the applicants are asking for is to have all the evidence-in-chief to be placed on record first and then the examination will come later, the cross-examination will come later. x x x (pp. 5-6, tsn., November 23, 1990, ERB Cases Nos. 90-106, 90-382 and 90-334)." (p. 162, *Rollo*)

Petitioner Maceda maintains that this order of proof deprived him of his right to finish his cross-examination of Petron's witnesses and denied him his right to cross-examine each of the witnesses of Caltex and Shell. He points out that this relaxed procedure resulted in the denial of due process.

We disagree. The Solicitor General has pointed out:

"x x x The order of testimony both with respect to the examination of the particular witness and to the general course of the trial *is within the discretion* of the court and the exercise of this discretion in permitting to be introduced out of the order prescribed by the rules is *not improper* (88 C.J.S. 206-207)

"Such a relaxed procedure is especially true in administrative bodies, such as the ERB, which *in matters of rate or price fixing, is considered as exercising a quasi-legislative*, not quasi-judicial, function. As such administrative agency, it is not bound by the strict or technical rules of evidence governing court proceedings (Sec. 29, Public Service Act; *Dickenson v. United States*, 346, U.S. 389, 98 L. ed. 132, 74 S. St. 152). (Italics Ours)

"In fact, Section 2, Rule I of the Rules of Practice and Procedure Governing Hearings Before the ERB provides that —

> "These Rules shall govern pleadings, practice and procedure before the Energy Regulatory Board in all matters of inquiry, study, hearing, investigation and/or any other proceedings within the jurisdiction of the Board. *However, in the broader interest of justice, the Board may, in any particular matter, except itself from these rules and apply such suitable procedure as shall promote the objectives of the Order.*"

(pp. 163-164, *Rollo*)

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Petitioner Maceda also claims that there is no substantial evidence on record to support the provisional relief.

We have, in G.R. Nos. 95203-05, previously taken judicial notice of matters and events related to the oil industry, as follows:

"x x x '(1) as of June 30, 1990, the OPSF has incurred a deficit of ₱6.1 Billion; (2) the exchange rate has fallen to ₱28.00 to $1.00; (3) the country's balance of payments is expected to reach $1 Billion; (4) our trade deficit is at ₱2.855 Billion as of the first nine months of the year.'

"x x x x x x x x x" (p. 150, *Rollo*).

The Solicitor General likewise commented:

"Among the pieces of evidence considered by ERB in the grant of the contested provisional relief were: (1) certified copies of bills of lading issued by crude oil suppliers to the private respondents; (2) reports of the Bankers Association of the Philippines on the peso-dollar exchange rate at the BAP oil pit; and (3) OPSF status reports of the Office of Energy Affairs. The ERB was likewise guided in the determination of international crude oil prices by traditional authoritative sources of information on crude oil and petroleum products, such as Platt's Oilgram and Petroleum Intelligence Weekly." (p. 158, *Rollo*)

Thus, We concede ERB's authority to grant the provisional increase in oil price, as We note that the Order of December 5, 1990 explicitly stated:

"in the light, therefore, of the rise in crude oil importation costs, which as earlier mentioned, reached an average of $30.3318 per barrel at $25.551/US $ in September-October 1990; the huge OPSF deficit which, as reported by the Office of Energy Affairs, has amounted to ₱5.7 Billion (based on filed claims only and net of the ₱5 Billion OPSF) as of September 30, 1990, and is estimated to further increase to over ₱10 Billion by end-December 1990; the decision of the government to discontinue subsidizing oil prices in view of inflationary pressures; the apparent inadequacy of the proposed additional ₱5.1 Billion government appropriation for the OPSF; and the sharp drop in the value of the peso in relation to the US dollar to ₱28/US $, this Board is left with no other recourse but to grant applicants oil companies further relief by increasing the prices of petroleum products sold by them." (p. 161, *Rollo*)

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Petitioner Maceda together with petitioner Original (G.R. No. 96349) also claim that the provisional increase involved amounts over and above that sought by the petitioning oil companies.

The Solicitor General has pointed out that *aside from* the *increase in crude oil prices*, all the applications of the respondent oil companies filed with the ERB, *covered claims from the OPSF*.

We shall thus respect the ERB's Order of December 5, 1990 granting a provisional price increase on petroleum products premised on the oil companies' OPSF claims, crude cost peso differentials, forex risk for a subsidy on sale to NPC (p. 167, *Rollo*), since the oil companies are "entitled to as much relief as the fact alleged constituting the course of action may warrant," (*Javellana v. D.O. Plaza Enterprises, Inc.*, G.R. No. L-28297, March 30,1970, 32 SCRA 261 citing *Rosales v. Reyes*, 25 Phil. 495; *Aguilar v. Rubiato*, 40 Phil. 470) as follows:

| | Petron | Shell | Caltex | Per Liter Weighted Average |
|---|---|---|---|---|
| Crude Cost | ₱ 3.11 | ₱3.6047 | ₱2.9248 | ₱3.1523 |
| Peso Cost Diff'l | 2.1747 | 1.5203 | 1.5669 | 1.8123 |
| Forex Risk Fee | -0.1089 | -0.0719 | -0.0790 | -0.0896 |
| Subsidy on Sales to NPC | 0.1955 | 0.0685 | 0.0590 | 0.1203 |
| Total Price Increase Applied for | ₱5.3713 | ₱5.1216 | ₱4.4717 | ₱4.9954 |
| Less: September 21 Price Relief | | | | |
| Actual Price Increase | | | ₱1.42 | |
| Actual Tax Reduction: Ad Valorem Tax | | | | |

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| | | | |
|---|---|---|---|
| (per Sept. 1, 1990 price build-up) | ₱ 1.3333 | | |
| Specific Tax (per Oct. 5, 1990 price build-up) | .6264 | .7069 | 2.1269 |
| Net Price Increase Applied for | | | 2.8685 |

Nonetheless, it is relevant to point out that on December 10, 1990, the ERB, in response to the President's appeal, brought back the increases in Premium and Regular gasoline to the levels mandated by the December 5, 1990 Order (₱6.9600 and ₱6.3900, respectively), as follows:

| "Product | In Pesos Per Liter OPSF |
|---|---|
| Premium Gasoline | 6.9600 |
| Regular Gasoline | 6.3900 |
| Avturbo | 4.9950 |
| Kerosene | 1.4100 |
| Diesel Oil | 1.4100 |
| Fuel Oil/Feedstock | 0.2405 |
| LPG | 1.2200 |
| Asphalt | 2.5000 |
| Thinner | 2.5000 |

In G.R. No. 96349, petitioner Original additionally claims that if the price increase will be used to augment the OPSF this will constitute illegal taxation. In the Maceda case, (G.R. Nos. 95203-05, *supra*) this Court has already ruled that "the Board Order authorizing the proceeds generated by the increase to be deposited to the OPSF is not an act of taxation but is authorized by Presidential Decree No. 1956, as amended by Executive Order No. 137.

The petitions of E.O. Original, *et al.* (G.R. No. 96349) and C.S. Povedas, Jr. (G.R. No. 96284), insofar as they question the ERB's authority under Sec. 8 of E.O. 172, have become moot and academic.

We lament Our helplessness over this second provisional increase in oil price. We have stated that this "is a question best judged by the political leadership" (G.R. Nos. 95203-05,

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G.R. Nos. 95119-21, *supra*). We wish to reiterate Our previous pronouncements therein that while the government is able to justify a provisional increase, these findings "are not final, and it is up to petitioners to demonstrate that the present economic picture does not warrant a permanent increase."

In this regard, We also note the Solicitor General's comments that "the ERB is not averse to the idea of a presidential review of its decision," except that there is no law at present authorizing the same. Perhaps, as pointed out by Justice Padilla, our lawmakers may see the wisdom of allowing presidential review of the decisions of the ERB, since, despite its being a quasi-judicial body, it is still "an administrative body under the Office of the President whose decisions should be appealed to the President under the established principle of exhaustion of administrative remedies," especially on a matter as transcendental as oil price increases which affect the lives of almost all Filipinos.

**ACCORDINGLY**, the petitions are hereby DISMISSED.

**SO ORDERED.**

*Narvasa, Melencio-Herrera, Feliciano, Gancayco, Bidin, Griño-Aquino,* and *Regalado, JJ.*, concur.

*Sarmiento, J.*, see separate opinion.

*Davide, Jr., J.*, in the result.

*Gutierrez, Jr., J.*, joins *J.* Padilla's dissent.

*Cruz, J.*, joins Justices Paras and Padilla in their dissents.

*Paras* and *Padilla, JJ.*, see separate dissenting opinions.

*Fernan, C.J.*, no part, formerly counsel for 1 of the respondents.

## SEPARATE OPINION

**SARMIENTO, *J.*:**

I would like to point out a few things in view of the majority's reliance on the first Maceda case.[1]

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[1] G.R. Nos. 95203-05, December 18, 1990.

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The first Maceda case was a challenge on provisional oil price increases decreed by the Energy Regulatory Board (ERB). This Court sustained the Board, as it is sustaining the Board in this case, on a few economic outputs, namely, the Oil Price Stabilization Fund (OPSF) deficit, the deteriorating exchange rate, and the balance of payments and trade gaps.

As I held in my dissent in yet another Maceda case, *Maceda v. Macaraig*,[2] the current oil price increases were (are) also the result of the devaluation of the currency, since a devalued peso forced oil companies to pay more pesos for oil worth in dollars.

I simply wish to state what has apparently been left unstated in the course of debate and perhaps, the real score behind recurring oil price hikes and why the ERB has been very quick in granting them.

The truth is that petroleum prices have been dictated by the Government's economic maneuvers, and not rather the vagaries of the world market. The truth is that the recent oil hikes have nothing to do with Saddam Hussein or the Gulf crisis (during which oil prices in fact dropped) and are, rather, the natural consequences of calculated moves by the Government in its effort to meet so-called International Monetary Fund (IMF) targets.

In 1989, the Government of the Republic of the Philippines submitted its letter of intent to the IMF outlining the country's economic program from 1989 through 1992. In its paragraph 19, it states that:

> The Government intends to continue with the floating exchange rate system established in October 1984 . . .[3]

Since exchange control was abolished and the floating rate system was established, the Philippine peso has seen a series of devaluations that have progressively pushed up prices,

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[2] G.R. No. 88291, May 31, 1991.

[3] Memorandum on Economic Policy of the Government of the Philippines, March 6, 1989, *Bulletin Today*, March 15, 1989, p. 35, col. 5.

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significantly, prices of petroleum. According to one authority, devaluation has been a "standard prescription" to correct balance of payments (BOP) deficits.[4] It makes dollars expensive, discourages import and encourages exports, and forces dollars conservation.[5]

It is a matter of opinion whether or not devaluation has been good for the country and whether or not it has realized these objectives. The truth is that, whatever it has accomplished, oil — which is imported — *has* been subject to the effects of devaluation.

Early this year, Governor Jose Cuisia of the Central Bank, Secretary Jesus Estanislao of the Department of Finance, and Secretary Guillermo Carague of the Budget and Management Department, wrote Mr. Michael Camdessus of the International Monetary Fund (the letter of intent) and informed him of the country's "Economic Stabilization Plan, 1991-92." The Plan recognized certain economic imbalances that have supposedly inhibited growth, in particular, inflation and an increasing balance of payments deficit, and drew a program centered on "a strong effort to bring down the overall fiscal deficit" through, among other things, "the gradual elimination of the deficit of the Oil Price Stabilization Fund."[6] It spelled out, among other things, a "[r]estoration of a sustainable external position requir[ing] the continuation of a *flexible* exchange rate policy . . ."[7] and described in detail an "Oil Price and Energy Policy" focused on wiping out the OPSF deficit, to wit:

x x x x x x x x x

A substantial erosion in the overall fiscal position occurred in 1989 and 1990 as a result of official price support for oil products

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[4] Henares, Hilarion, "*Devaluation, the last resort,*" *Bulletin Today*, June 1, 1984.

[5] *Id.*

[6] Memorandum on Philippine Economic Stabilization Plan; 1991-92, February, 1991, *Daily Globe*, February 4, 1991, p. 10.

[7] *Id.*, italics supplied.

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provided through the OPSF. Despite a lowering of the excise tax on oil in September 1990 and average domestic oil price increases of about 30 percent in September and 32 percent in December 1990, the fund continued to incur a deficit during the second half of 1990. The cumulative OPSF deficit (excluding unfiled claims) at end-December 1990 is estimated at ₱8.8 billion, and this deficit will rise in the first part of 1991. However the cumulative OPSF deficit is to be eliminated by the end of the third quarter of 1991. To this end, the Government intends to follow a pricing policy that ensures attainment of zero balance within the specific time. *In particular, the Government will maintain present price levels despite projected world price declines*. In addition, a budgetary transfer of ₱5 billion will be provided in 1991 to settle outstanding claim of the OPSF.

15. Full deregulation of oil prices continues to be an important objective of the Government once calm has been restored to world oil markets. Meanwhile the technical and legal groundwork is being laid with a view to full deregulation as soon as practicable.

16. The principal objectives of the Government's policy in the energy sector are: (i) the development of economically viable indigenous energy resources, mainly thermal, geothermal and hydro-electric power, together with ensuring adequate maintenance of existing facilities; (ii) promoting more efficient use of energy resources through various energy conservation measures; and (iii) the elimination of distortions in every resource allocation through appropriate pricing policies.[8]

x x x x x x x x x

As I said, Philippine oil prices today have nothing to do with the law on supply and demand, if they had anything to do with it in recent years. (I also gather that the Government is intending to readjust the prices of gasoline and diesel fuel soon since apparently, low diesel prices have reduced the demand for gasoline resulting in "distortions.")

As the Court held in the first *Maceda v. Energy Regulatory Board*,[9] oil pricing "is a question best judged by the political

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[8] *Id.*, italics supplied.

[9] *Supra*: see fn. 1.

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leadership" and oil prices are (and have been apparently), political, rather than economic, decisions.

I am not to be mistaken as accepting the "letter of intent" as a correct prescription — much less a necessary medicine — although I will be lacking in candor if I did not say that it is a bitter pill to swallow. What I must be understood as saying is that "oil" is a political card to be played on a political board rather than the courts, so long, of course, as nobody has done anything illegal.

The "politics of oil" as spelled out in the Government's letter of intent likewise bring to light the true nature of the ERB. Under the Memorandum on Philippine Economic Stabilization Plan:

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In the past, energy prices had been set to broadly reflect the average cost of supply. However, the lack of transparency of the pricing mechanism and subsidization of consumption have increasingly become a cause for concern. To alleviate some of these problems, in mid-1987, the Government established the Energy Regulatory Board (ERB), a quasi-judicial body empowered with the setting and regulation of the pricing of petroleum products and electricity tariffs, the regulation of additions to oil refining capacity, and the regulation of importing, transporting, processing and distributing all energy resources. (Petroleum pricing policy is described in paragraphs 14 and 15.) In addition to the full pass-through of changes in oil prices to power tariffs, the Government is committed to the adoption of long-run marginal cost pricing for electricity. To this end, NPC intends to introduce a marginal cost based tariff structure to ensure that it meets its target of achieving a rate of return of eight percent on its rate base.[10]

it is apparent that the Board, in spite of its "independence" (from the Office of the President), is bound by the terms of the program and that it has after all, no genuine discretion to deny requests for price adjustments by oil companies. I seriously doubt whether or not it is possessed of that discretion judging

[10] Memorandum on Philippine Economic Stabilization Plan, *id.*

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first, from its performance since 1987 (in which it has not overruled the Government on "oil cases") and the fact that the exchange rate, the balance of payment deficit, and the OPSF deficiency are matters of simple arithmetic.

And certainly, the Board can not possibly overrule the Government's "letter of intent."

The first Maceda case sustained the grant of provisional price increases *ex parte* not only because Section 8 of Executive Order No. 172 authorized the grant of provisional relief without a hearing but because fluctuations in the foreign exchange rates, for instance, were, and are, a matter of judicial notice, and a hearing thereafter was necessary only to see whether or not the ERB determined the rates correctly.

This likewise brings to light the necessity for an ERB to fix rates since it does not, after all, fix (meaning decide) rates but merely announces their imminence-based on demonstrable figures — of higher rates. The Court however can not question the wisdom of a statute and after all, I suppose the Government can make use of an accountant.

I agree with Justice Padilla insofar as he refers to the "present scheme of allowing provisional price increase" as a "scheme [to defraud] the people." I would like to go further. As I indicated, the ERB does no more than to punch calculators for the Government — which *decides* oil price increases. The comedy of December, 1990, when the Board adjusted prices in a matter of days, is a confirmation of this point. As Justice Padilla noted, the readjustment of December 10, 1990 was in fact prompted by "presidential requests" which does not speak well of the Board's independence and which in fact bares the truth as to who really makes the decision. (The readjustment, consisting in the reduction in diesel fuel and a corresponding increase in gasoline, sought to mollify the indignation of the public.)

I agree with Justice Padilla that it amounts to fraud on the people to make them believe that the ERB can give them a fair hearing, indeed, if it can do anything at all.

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I agree, finally, with Justice Padilla that the nation is one in crisis, and evidently, the "ravenous" oil companies Justice Paras refers to, have not helped any. I submit however that we have not succeeded in fingering the real villain — the letter of intent. Saddam's Middle East folly has nothing to do with that.

**DISSENTING OPINION**

**PARAS, *J.:***

I dissent. As I have long previously indicated, the ERB has absolutely no power to tax which is solely the prerogative of Congress. This is what the ERB is precisely doing by getting money from the people to *ultimately* subsidize the ravenous oil companies. Additionally, the stubborn refusal of the ERB to effectively rollback oil prices is a continuing bestial insult to the intelligence of our countrymen, and a gross abandonment of the people in their hour of economic misery. I therefore vote for a complete and effective rollback of all oil prices.

**DISSENTING OPINION**

**PADILLA, *J.:***

I regret that I can not concur in the majority opinion.

In the matter of price increases of oil products, which vitally affects the people, especially those in the middle and low income groups, any increase, *provisional or otherwise*, should be allowed only after the Energy Regulatory Board (ERB) shall have fully determined, through *bona fide* and full-dress hearings, that it is absolutely necessary and by how much it shall be effected. The people, represented by reputable oppositors, deserve to be given full opportunity to be heard in their opposition to any increase in the prices of fuel. The right to be heard includes not only the right to present one's case and submit evidence in support thereof, but also the right to confront and cross-examine the witnesses of the adverse parties.

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Because of the procedure adopted by the ERB in the reception of evidence leading to the price increases of 5 and 6 December 1990, petitioner Maceda was not able to finish his cross-examination of Petron's sole witness. And, even before each of the witnesses of Shell and Caltex could be cross-examined by petitioners and before they could present evidence in support of their opposition to the increase, the ERB had already issued its 5 December 1990 order allowing a "provisional increase" sought by the oil companies in their respective supplemental applications.

That there were postponements of scheduled hearings before the ERB, at the instance of oppositor Maceda, did not justify a denial of the right of oppositors to be heard. The postponements were not intended to delay the proceedings. In fact, the resetting of the scheduled hearings on November 14, 15 and 16 to a later date, upon motion of petitioner Maceda, was to enable him to file a written opposition to the supplemental applications filed by the oil companies.

The ERB acted hastily in granting the provisional increases sought by the oil companies even before the oppositors could submit evidence in support of their opposition. The fact that the questioned orders merely allowed a provisional increase is beside the point, for past experiences have shown that so-called "provisional increases" allowed by the ERB ultimately became permanent.

ERB's claim that the second provisional increase was duly supported by evidence, is belied by its own act of modifying said order (of provisional increase) not only once but twice, upon the "request" of the President. First, the ERB rolled back the prices of fuel just a day after it issued the questioned order, altering the allocation of the increase. Second, on 10 December 1990, the ERB further modified the price of petroleum products resulting in reduction of the weighted average provisional increase from ₱2.82 to ₱2.05 per liter, but only after the President had announced that she would meet with the leaders of both Houses of Congress, to discuss the creation of a special fund to be

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raised from additional taxes, to subsidize the prices of petroleum products.[1]

These acts of the ERB, ostensibly sparked by "presidential requests" clearly demonstrate that the evidence did not, in the first place, justify the price increases it had ordered on 5 and 6 December 1990. Furthermore, the ERB never came out with a categorical and official declaration of how much was the so-called deficit of the Oil Price Stabilization Fund (OPSF) and how much of the oil price increases was intended to cover such deficit.

In the midst of a national crisis related to oil price increases, each and every one is called upon to assume his/its share of continuing sacrifices. The public, the government, as well as the oil companies should work hand in hand in solving the present problem that confronts us. We are not unmindful of the fact that the oil companies are profit-oriented. However, profits should not be their only concern in times of deepening inability of the people to cope with their prices with "built-in-margins." A reduction of profits during these crucial and trying times, is certainly in order considering that in the past, the oil companies had unquestionably made tremendous profits.

In view of the foregoing, I vote to GRANT the petition for the nullification of the 5 and 6 December 1990 orders of the ERB and for a roll-back of the prices of oil products to levels existing before 5 and 6 December 1990 until hearings before the ERB are finally concluded.

Before closing, I also would like to submit for congressional consideration two (2) proposals in the public interest. They are:

(1) to do away with the present scheme of allowing provisional price increases of oil products. This scheme, to my mind, is misleading and serves as an excuse for unilateral and arbitrary ERB-action. As already noted, these provisional price increases are, to all intents and purposes, permanent when fixed. To that extent, the scheme is a fraud on the people.

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[1] Comment by Public Respondent ERB, *Rollo*, p. 152.

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(2) all decisions and orders of the ERB should be *expressly* made appealable by statute to the President of the Philippines whose decisions shall be final, except in cases involving questions of law or grave abuse of discretion which may be elevated to the Supreme Court in a special civil action for *certiorari* under Rule 65 of the Rules of Court.

While at present, decisions and orders of the ERB are, in my considered opinion, appealable to the President under the principle of "exhaustion of administrative remedies," it is nevertheless desirable that the appealability of ERB decisions and orders to the President be placed beyond any and all doubts. In this way, the President of the Philippines has to assume full responsibility for all price increases in oil products, which should be the case because the matter involved is not only one of national interest but profoundly one of people's survival.

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**SECOND DIVISION**

[G.R. Nos. 97475-76. July 18, 1991]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DIOSCORO VILLAMAYOR *y* OCAMPO @ JESSIE,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; RAPE; MAY BE COMMITTED EVEN IF NO FORCE WAS USED.** — Under Article 335, par. 1, of the Revised Penal Code, rape is committed by having carnal knowledge of a woman by using force *or intimidation*. When appellant threatened the victim with a knife during the sexual intercourse,