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THIRD DIVISION

[G. R. No. 131512. January 20, 2000]

LAND TRANSPORTATION OFFICE [LTO], represented by Assistant Secretary Manuel F. Bruan, LTO Regional Office, Region X represented by its Regional Director, Timoteo A. Garcia; and LTO Butuan represented by Rosita G. Sadiaga, its Registrar, *petitioners, vs.* **CITY OF BUTUAN, represented in this case by Democrito D. Plaza II, City Mayor,** *respondent.*

SYNOPSIS

The issue is whether the power of the Land Registration Office (LTO) to register, tricycles in particular, as well as to issue licenses for the driving thereof, has devolved to local government units under the provisions of the Local Government Code.

The Department of Transportation and Communications (DOTC) through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. Registration and licensing functions are vested in the LTO while franchising and regulatory responsibilities are vested in the LTFRB. Under the Local Government Code, LGUs now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. The functions of the LTO relative to the registration of motor vehicles and issuance of licenses for the driving thereof, however, was unaffected. Hence, the assailed decision which enjoined the LTO from requiring due registration of tricycles and license for driving thereof was reversed and set aside.

SYLLABUS

1. **POLITICAL LAW; DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC); LAND TRANSPORTATION OFFICE (LTO) AND THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB); POWERS AND FUNCTIONS.** — The

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Department of Transportation and Communications ("DOTC"), through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. The LTO is a line agency under the DOTC whose powers and functions, pursuant to Article III, Section 4 (d) [1], of R.A. No. 4136, otherwise known as *Land Transportation and Traffic Code,* as amended, deal primarily with the registration of all motor vehicles and the licensing of drivers thereof. The LTFRB, upon the other hand, is the governing body tasked by E.O. No. 202, dated 19 June 1987, to regulate the operation of public utility or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC"). Finely put, registration and *licensing* functions are vested in the LTO while *franchising* and *regulatory* reponsibilities had been vested in the LTFRB.

2. **ID.; LOCAL GOVERNMENT CODE; FUNCTIONS OF THE DOTC TRANSFERRED TO THE LOCAL GOVERNMENT UNITS (LGU).** — Under the Local Government Code, certain functions of the DOTC were transferred to the LGUs, thusly: "SEC. 458. Powers, Duties, Functions and Compensation. – xxx (3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licences, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall: xxx (VI) Subject to the guidelines prescribed by the Department of Transportation and Communications, *regulate the operation of tricycles* and *grant franchises for the operation* thereof within the territorial jurisdiction of the city."

3. **STATUTORY CONSTRUCTION; TO REGULATE; DEFINED.** — "To regulate" means to fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; or to subject to governing principles or laws.

4. **ID.; FRANCHISE; DEFINED.** — A franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right.

5. **ID.; TO REGISTER AND DRIVER'S LICENSE; DEFINED.** — "To register" means to record formally and exactly, to enroll, or to enter precisely in a list or the like, and a "driver's license"

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is the certificate or license issued by the government which authorizes a person to operate a motor vehicle.

6. **POLITICAL LAW; LOCAL GOVERNMENT CODE; POWER OF LGUs TO REGULATE TRICYCLES; LIMITATIONS.** — Under Article 458 (a)[3-VI] of the Local Government Code, the power of LGUs to regulate the operation of tricycles and to grant fanchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications ("DOTC") issued "*Guidelines to Implement the Devolution of LTFRBs Franchising Authority over Tricycles-For-Hire to Local Government Units Pursuant to the Local Government Code.*" From the explicit language of the statute, as well as the corresponding guidelines issued by DOTC, *the newly delegated powers pertain to the franchising and regulatory powers theretofore exercised by the LTFRB and not to the functions of the LTO relative to the registration of motor vehicles and issuance of licenses for the driving thereof.* Clearly unaffected by the Local Government Code are the powers of LTO under R.A. No. 4136 requiring the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country. The Commissioner of Land Transportation and his deputies are empowered at anytime to examine and inspect such motor vehicles to determine whether said vehicles are registered, or are unsightly, unsafe, improperly marked or equipped, or otherwise unfit to be operated on because of possible excessive damage to highways, bridges and other infrastructures. The LTO is additionally charged with being the central repository and custodian of all records of all motor vehicles.

7. **STATUTORY CONSTRUCTION; DELEGATED REGULATORY AND TAXING POWER TO THE LGUs BY THE LOCAL GOVERNMENT CODE; DISCUSSED IN CASE AT BAR.** — The reliance made by respondents on the broad taxing power of local government units, specifically under Section 133 of the Local Government Code, is tangential. Police power and taxation, along with eminent domain, are inherent powers of sovereignty which the State might share with local government units by delegation given under a constitutional or a statutory

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fiat. All these inherent powers are for a public purpose and legislative in nature but the similarities just about end there. The basic aim of police power is public good and welfare. Taxation, in its case, focuses on the power of government to raise revenue in order to support its existence and carry out its legitimate objectives. Although correlative to each other in many respects, the grant of one does not necessarily carry with it the grant of the other. The two powers are, by tradition and jurisprudence, separate and distinct powers, varying in their respective concepts, character, scopes and limitations. To construe the tax provisions of Section 133(1) indistinctively would result in the repeal to that extent of LTO's regulatory power which evidently has not been intended. If it were otherwise, the law could have just said so in Section 447 and 458 of Book III of the Local Government Code in the same manner that the specific devolution of LTFRB's power on franchising of tricycles has been provided. Repeal by implication is not favored. The power over tricycles granted under Section 458(a)(3)(VI) of the Local Government Code to LGUs is the power to regulate their operation and to grant franchises for the operation thereof. The exclusionary clause contained in the tax provisions of Section 133(1) of the Local Government Code must not be held to have had the effect of withdrawing the express power of LTO to cause the registration of all motor vehicles and the issuance of licenses for the driving thereof. These functions of the LTO are essentially regulatory in nature, exercised pursuant to the police power of the State, whose basic objectives are to achieve road safety by insuring the road worthiness of these motor vehicles and the competence of drivers prescribed by R.A. 4136. Not insignificant is the rule that a statute must not be construed in isolation but must be taken in harmony with the extant body of laws.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Nelbert T. Poculan for respondent.

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DECISION

VITUG, *J.*:

The 1987 Constitution enunciates the policy that the territorial and political subdivisions shall enjoy local autonomy.[1] In obedience to that, mandate of the fundamental law, Republic Act ("R.A.") No.7160, otherwise known as the Local Government Code,[2] expresses that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy in order to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals, and that it is a basic aim of the State to provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities and resources.

While the Constitution seeks to strengthen local units and ensure their viability, clearly, however, it has never been the intention of that organic law to create an imperium in imperio and install an *intra* sovereign political subdivision independent of a single sovereign state.

The Court is asked in this instance to resolve the issue of whether under the present set up *the power of the Land Registration Office ("LTO") to register, tricycles in particular, as well as to issue licenses for the driving thereof, has likewise devolved to local government units.*

The Regional Trial Court (Branch 2) of Butuan City held[3] that the authority to register tricycles, the grant of the corresponding franchise, the issuance of tricycle drivers' license, and the collection of fees therefor had all been vested in the

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[1] Section 2, Article X of the 1987 Constitution.

[2] The law was approved on 10 October 1991 and it became effective on 01 January 1992.

[3] Per Judge Rosarito Dabalos.

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Local Government Units ("LGUs"). Accordingly, it decreed the issuance of a permanent writ of injunction against LTO, prohibiting and enjoining LTO, as well as its employees and other persons acting in its behalf, from (a) registering tricycles and (b) issuing licenses to drivers of tricycles. The Court of Appeals, on appeal to it, sustained the trial court.

The adverse rulings of both the court *a quo* and the appellate court prompted the LTO to file the instant petition for review on *certiorari* to annul and set aside the decision,[4] dated 17 November 1997, of the Court of Appeals affirming the permanent injunctive writ order of the Regional Trial Court (Branch 2) of Butuan City.

Respondent City of Butuan asserts that one of the salient provisions introduced by the Local Government Code is in the area of local taxation which allows LGUs to collect registration fees or charges along with, in its view, the corresponding issuance of all kinds of licenses or permits for the driving of tricycles.

The 1987 Constitution provides:

"Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."[5]

Section 129 and Section 133 of the Local Government Code read:

"SEC. 129. *Power to Create Sources of Revenue.* — Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

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[4] Penned by Justice Jorge S. Imperial, concurred in by Justices Ramon U. Mabutas, Jr. and Hilarion L. Aquino.

[5] Sec. 5, Art. X.

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"SEC. 133. Common Limitations on the Taxing Powers of Local Government Units.— Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

"x x x x x x x x x.

"(I) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles."

Relying on the foregoing provisions of the law, the Sangguniang Panglungsod ("SP") of Butuan, on 16 August 1992, passed SP Ordinance No. 916-92 entitled *"An Ordinance Regulating the Operation of Tricycles-for-Hire, Providing Mechanism for the Issuance of Franchise, Registration and Permit, and Imposing Penalties for Violations thereof and for other Purposes."* The ordinance provided for, among other things, the payment of franchise fees for the grant of the franchise of tricycles-for-hire, fees for the registration of the vehicle, and fees for the issuance of a permit for the driving thereof.

Petitioner LTO explains that one of the functions of the national government that, indeed, has been transferred to local government units is the franchising authority over tricycles-for-hire of the Land Transportation Franchising and Regulatory Board ("LTFRB") but not, it asseverates, the authority of LTO to register all motor vehicles and to issue to qualified persons of licenses to drive such vehicles.

In order to settle the variant positions of the parties, the City of Butuan, represented by its City Mayor Democrito D. Plaza, filed on 28 June 1994 with the trial court a petition for "prohibition, mandamus, injunction with a prayer for preliminary restraining order ex-parte" seeking the declaration of the validity of SP Ordinance No. 962-93 and the prohibition of the registration of tricycles-for-hire and the issuance of licenses for the driving thereof by the LTO.

LTO opposed the prayer in the petition.

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On 20 March 1995, the trial court rendered a resolution; the dispositive portion read:

"In view of the foregoing, let a permanent injunctive writ be issued against the respondent Land Transportation Office and the other respondents, prohibiting and enjoining them, their employees, officers, attorney's or other persons acting in their behalf from forcing or compelling Tricycles to be registered with, and drivers to secure their licenses from respondent LTO or secure franchise from LTFRB and from collecting fees thereon. It should be understood that the registration, franchise of tricycles and driver's license/permit granted or issued by the City of Butuan are valid only within the territorial limits of Butuan City.

"No pronouncement as to costs."[6]

Petitioners timely moved for a reconsideration of the above resolution but it was to no avail. Petitioners then appealed to the Court of Appeals. In its now assailed decision, the appellate court, on 17 November 1997, sustained the trial court. It ruled:

"WHEREFORE, the petition is hereby DISMISSED and the questioned permanent injunctive writ issued by the court *a quo* dated March 20, 1995 AFFIRMED."[7]

Coming up to this Court, petitioners raise this sole assignment of error, to wit:

"The Court of Appeals [has] erred in sustaining the validity of the writ of injunction issued by the trial court which enjoined LTO from (1) registering tricycles-for-hire and (2) issuing licenses for the driving thereof since the Local Government Code devolved only the franchising authority of the LTFRB. Functions of the LTO were not devolved to the LGUs."[8]

The petition is impressed with merit.

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[6] *Rollo*, p. 34.

[7] *Rollo*, p. 31.

[8] *Rollo*, pp.10-11.

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The Department of Transportation and Communications[9] ("DOTC"), through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. The LTO is a line agency under the DOTC whose powers and functions, pursuant to Article III, Section 4 (d) [1],[10] of R.A. No. 4136, otherwise known as *Land Transportation and Traffic Code*, as amended, deal primarily with the registration of all motor vehicles and the licensing of drivers thereof. The LTFRB, upon the other hand, is the governing body tasked by E.O. No. 202, dated 19 June 1987, to regulate the operation of public utility or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC").[11] Finely put, registration and

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[9] Book IV, Title XV, Chapter 1, Section 2 of the Administrative Code of 1987 reads:

"SEC. 2. Mandate. The Department of Transportation and Communications shall be the primary policy, planning, programming, coordinating, implementing, regulating and administrative entity of the Executive Branch of the government in the promotion, development and regulation of dependable and coordinated networks of transportation and communications system as well as in the fast, safe, efficient and reliable postal, transportation and communications services."

[10] (1) With the approval of the Secretary of Public Works [Transportation] and Communications, to issue rules and regulations not in conflict with the provisions of this Act, prescribing the procedure for the examination, licensing and bonding of drivers; the registration and re-registration of motor vehicles, transfer of ownership, change of status; the replacement of lost certificates, licenses, badges, permits or number plates; and to prescribe the minimum standards and specifications including allowable gross weight, allowable length, width and height of motor vehicles, distribution of loads, allowable loads on tires, change of tire sizes, body design or carrying capacity subsequent to registration and all other special cases which may arise for which no specific provision is otherwise made in this Act." (Italics supplied)

[11] "SEC. 5. *Powers and Functions of the Land Transportation Franchising and Regulatory Board.* — The Board shall have the following powers and functions:

a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans and programs approved by the Department of T ransportation and Communications;

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licensing functions are vested in the LTO while *franchising* and *regulatory* responsibilities had been vested in the LTFRB.

Under the Local Government Code, certain functions of the DOTC were transferred to the LGUs, thusly:

"SEC. 458. Powers, Duties, Functions and Compensation. —

"x x x x x x x x x

"(3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licenses, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall:

"x x x x x x x x x.

"(VI) Subject to the guidelines prescribed by the Department of Transportation and Communications, *regulate the operation of tricycles* and *grant franchises for the operation* thereof within the territorial jurisdiction of the city." (Italics supplied)

LGUs indubitably now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. "To regulate" means to fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; or to subject to governing principles or laws.[12] A franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right.[13] On the other hand, "to register" means to record formally and exactly, to enroll, or to enter precisely in a list or the like,[14] and a "driver's license" is the certificate or license issued by the

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b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor";

[12] *Black's Law Dictionary,* Sixth edition, p. 1286.

[13] *Ibid.*, p. 658.

[14] *Ibid.*, p. 1283.

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government which authorizes a person to operate a motor vehicle.[15] The devolution of the functions of the DOTC, performed by the LTFRB, to the LGUs, as so aptly observed by the Solicitor General, is aimed at curbing the alarming increase of accidents in national highways involving tricycles. It has been the perception that local governments are in good position to achieve the end desired by the law-making body because of their proximity to the situation that can enable them to address that serious concern better than the national government.

It may not be amiss to state, nevertheless, that under Article 458 (a)[3-VI] of the Local Government Code, the power of LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications ("DOTC") issued *"Guidelines to Implement the Devolution of LTFRBs Franchising Authority over Tricycles-For-Hire to Local Government Units Pursuant to the Local Government Code."* Pertinent provisions of the guidelines state:

"In lieu of the Land Transportation Franchising and Regulatory Board (LTFRB) in the DOTC, the Sangguniang Bayan/Sangguniang Panglungsod (SB/SP) shall perform the following:

"(a) Issue, amend, revise, renew, suspend, or cancel MTOP and prescribe the appropriate terms and conditions therefor;

"x x x x x x x x x.

"Operating Conditions:

"1. For safety reasons, no tricycles should operate on national highways utilized by 4 wheel vehicles greater than 4 tons and where normal speed exceed 40 KPH. However, the SB/SP may provide exceptions if there is no alternative route.

"2. Zones must be within the boundaries of the municipality/city. However, existing zones within more than one municipality/ city shall be maintained, provided that operators serving said

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[15] *Ibid.*, p. 495.

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zone shall secure MTOP's from each of the municipalities/ cities having jurisdiction over the areas covered by the zone.

"3. A common color for tricycles-for-hire operating in the same zone may be imposed. Each unit shall be assigned and bear an identification number, aside from its LTO license plate number.

"4. An operator wishing to stop service completely, or to suspend service for more than one month, should report in writing such termination or suspension to the SB/SP which originally granted the MTOP prior thereto. Transfer to another zone may be permitted upon application.

"5. The MTOP shall be valid for three (3) years, renewable for the same period. Transfer to another zone, change of ownership of unit or transfer of MTOP shall be construed as an amendment to an MTOP and shall require appropriate approval of the SB/ SP.

"6. Operators shall employ only drivers duly licensed by LTO for tricycles-for-hire.

"7. No tricycle-for-hire shall be allowed to carry more passengers and/or goods than it is designed for.

"8. A tricycle-for-hire shall be allowed to operate like a taxi service, *i.e.*, service is rendered upon demand and without a fixed route within a zone."[16]

Such as can be gleaned from the explicit language of the statute, as well as the corresponding guidelines issued by DOTC, the *newly delegated powers pertain to the franchising and regulatory powers theretofore exercised by the LTFRB and not to the functions of the LTO relative to the registration of motor vehicles and issuance of licenses for the driving thereof.* Clearly unaffected by the Local Government Code are the powers of LTO under R.A. No. 4136 requiring the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country. Thus —

"SEC. 5. All motor vehicles and other vehicles must be registered. — (a) No motor vehicle shall be used or operated on or

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[16] *Rollo*, pp. 153-154.

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upon any public highway of the Philippines unless the same is properly registered for the current year in accordance with the provisions of this Act (Article 1, Chapter II, R.A. No. 4136).

The Commissioner of Land Transportation and his deputies are empowered at anytime to examine and inspect such motor vehicles to determine whether said vehicles are registered, or are unsightly, unsafe, improperly marked or equipped, or otherwise unfit to be operated on because of possible excessive damage to highways, bridges and other infrastructures.[17] The LTO is additionally charged with being the central repository and custodian of all records of all motor vehicles.[18]

The Court shares the apprehension of the Solicitor General if the above functions were to likewise devolve to local government units; he states:

"If the tricycle registration function of respondent LTO is decentralized, the incidence of theft of tricycles will most certainly go up, and stolen tricycles registered in one local government could be registered in another with ease. The determination of ownership thereof will also become very difficult.

"Fake driver's licenses will likewise proliferate. This likely scenario unfolds where a tricycle driver, not qualified by petitioner LTO's testing, could secure a license from one municipality, and when the same is confiscated, could just go to another municipality to secure another license.

"Devolution will entail the hiring of additional personnel charged with inspecting tricycles for road worthiness, testing drivers, and documentation. Revenues raised from tricycle registration may not

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[17] Section 4(d)[6]. Article III, Chapter I.

[18] Section 4(d)[2]. Article III, Chapter I, reads in full: "(2) To compile and arrange all applications, certificates, permits, licenses, and to enter, note and record thereon transfers, notifications, suspensions, revocations, or judgments of conviction rendered by competent courts concerning violations of this Act, with the end in view of preserving and making easily available such documents and records to public officers and private persons properly and legitimately interested therein."

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be enough to meet salaries of additional personnel and incidental costs for tools and equipment."[19]

The reliance made by respondents on the broad taxing power of local government units, specifically under Section 133 of the Local Government Code, is tangential. Police power and taxation, along with eminent domain, are inherent powers of sovereignty which the State might share with local government units by delegation given under a constitutional or a statutory fiat. All these inherent powers are for a public purpose and legislative in nature but the similarities just about end there. The basic aim of police power is public good and welfare. Taxation, in its case, focuses on the power of government to raise revenue in order to support its existence and carry out its legitimate objectives. Although correlative to each other in many respects, the grant of one does not necessarily carry with it the grant of the other. The two powers are, by tradition and jurisprudence, separate and distinct powers, varying in their respective concepts, character, scopes and limitations. To construe the tax provisions of Section 133(1) indistinctively would result in the repeal to that extent of LTO's regulatory power which evidently has not been intended. If it were otherwise, the law could have just said so in Section 447 and 458 of Book III of the Local Government Code in the same manner that the specific devolution of LTFRB's power on franchising of tricycles has been provided. Repeal by implication is not favored.[20] The power over tricycles granted under Section 458(a)(3)(VI) of the Local Government Code to LGUs is the power to regulate their operation and to grant franchises for the operation thereof. The exclusionary clause contained in the tax provisions of Section 133(1) of the Local Government Code must not be held to have had the effect

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[19] *Rollo*, pp. 159-160.

[20] In *Laguna Lake Development Authority vs. Court of Appeals,* this Court has ruled that a special law cannot be repealed, amended or altered by a subsequent general law by mere supposition, and that the charter of LLDA which embodies a valid exercise of police power should prevail over the Local Government Code on matters affecting the lake.

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of withdrawing the express power of LTO to cause the registration of all motor vehicles and the issuance of licenses for the driving thereof. These functions of the LTO are essentially regulatory in nature, exercised pursuant to the police power of the State, whose basic objectives are to achieve road safety by insuring the road worthiness of these motor vehicles and the competence of drivers prescribed by R. A. 4136. Not insignificant is the rule that a statute must not be construed in isolation but must be taken in harmony with the extant body of laws.[21]

The Court cannot end this decision without expressing its own serious concern over the seeming laxity in the grant of franchises for the operation of tricycles-for-hire and in allowing the indiscriminate use by such vehicles on public highways and principal thoroughfares. Senator Aquilino C. Pimentel, Jr., the principal author, and sponsor of the bill that eventually has become to be known as the Local Government Code, has aptly remarked:

"Tricycles are a popular means of transportation, specially in the countryside. They are, unfortunately, being allowed to drive along highways and principal thoroughfares where they pose hazards to their passengers arising from potential collisions with buses, cars and jeepneys.

"The operation of tricycles within a municipality may be regulated by the Sangguniang Bayan. In this connection, the Sangguniang concerned would do well to consider prohibiting the operation of tricycles along or across highways invite collisions with faster and bigger vehicles and impede the flow of traffic."[22]

The need for ensuring public safety and convenience to commuters and pedestrians alike is paramount. It might be well, indeed, for public officials concerned to pay heed to a number of provisions in our laws that can warrant in appropriate cases an incurrence of criminal and civil liabilities. Thus —

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[21] *Sajonas vs. CA*, 258 SCRA 79.

[22] *Rollo*, pp. 152.153.

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The Revised Penal Code —

"Art. 208. *Prosecution of offenses; negligence and tolerance.*— The penalty of *prision correccional* in its minimum period and suspension shall be imposed upon any public officer, or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses."

The Civil Code —

"Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

"Art. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action."

"Art. 2189. Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision."

The Local Government Code —

"Sec. 24. *Liability for Damages.* — Local government units and their officials are not exempt from liability for death or injury to persons or damage to property."

WHEREFORE, the assailed decision which enjoins the Land Transportation Office from requiring the due registration of tricycles and a license for the driving thereof is REVERSED and SET ASIDE.

No pronouncements on costs.

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Let copies of this decision be likewise furnished the Department of Interior and Local Governments, the Department of Public Works and Highways and the Department of Transportation and Communication.

SO ORDERED.

Melo (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 131894-98. January 20, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS DOCENA *y* PAGAYANAN,** *accused-appellant.*

SYNOPSIS

Accused-appellant Docena was found guilty of raping his own daughter in a joint decision of five criminal cases instituted against him. Hence, this appeal.

The absence of medical examination and the alleged loose moral character of the victim are immaterial in the prosecution of the rape case. Further, the lack of physical resistance and the delay in reporting the crime are not considered consent. In rape by a father against his own daughter, the moral ascendancy and influence over the latter substitutes for violence and intimidation. At any rate, on the alleged rape committed on December 25, 1996, the Court found that appellant employed neither threat nor intimidation when he demanded sex with complainant who acceded to the same. Hence, the Court affirmed the decision of the trial court and appellant was ordered to pay the victim ₱50,000 indemnity *ex delicto,* ₱50,000