POLITICAL LAW

2018 Cases

POLITICAL AND INTERNATIONAL LAW

(2018 Cases)

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CHERIE ANNE R. BUZON
Officer-In-Charge

ATTY. LEAN JEFF M. MAGSOMBOL
Adviser

ATTY. NILO T. DIVINA
Dean

DEAN'S CIRCLE 2019

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THE CITY OF BACOLOD, HON. MAYOR EVELIO R. LEONARDIA, ATTY. ALLAN L. ZAMORA AND ARCH. LEMUEL D. REYNALDO, IN THEIR PERSONAL CAPACITIES AND IN THEIR CAPACITIES AS OFFICIALS OF THE CITY OF BACOLOD, *PETITIONERS*, -versus- PHUTURE VISIONS CO., INC., *RESPONDENT*.

G.R. No. 190289, THIRD DIVISION, January 17, 2018, VELASCO JR., *J.*

No consent to be sued and be liable for damages can thus be implied from the mere conferment and exercise of the power to issue business permits and licences. Accordingly, there is merit in petitioners' argument that they cannot be sued by respondent since the City's consent had not been secured for this purpose.

Injury alone does not give respondent the right to recover damages, but it must also have a right of action for the legal wrong inflicted by petitioners. In order that the law will give redress for an act causing damage, there must be damnum et injuria that act must be not only hurtful, but wrongful. Considering that respondent had no legal right to operate the bingo operations at the outset, then it is not entitled to the damages which it is demanding from petitioners.

FACTS:

The instant case stems from the *Petition for Mandamus and Damages* filed by respondent Phuture Visions Co., Inc. (Phuture) on March 5, 2007 against petitioners City of Bacolod, Hon. Mayor Evelio R. Leonardia, Atty. Allan L. Zamora (now deceased) and Arch. Lemuel D. Reynaldo.

On January 10, 2007, Phuture applied for the renewal of its mayor's permit with "professional services, band/entertainment services" as its declared line of business, providing the address of the business as "RH Building, 26 Lacson Street, Barangay 5" instead of SM Bacolod where respondent's bingo operations was located.

Upon submission of the requirements on February 19,2007 and while the application was being processed, Phuture was issued a "claim slip" for it to claim the actual mayor's permit on March 16, 2007 if the requirements were found to be in order.However, petitioners found discrepancies in Phuture's submitted requirements, wherein the application form was notarized earlier than the amendment of its Articles of Incorporation (AOI) to reflect the company's primary purpose for bingo

operations. Aside from this, respondent failed to pay the necessary permit fee/assessment fee under the applicable tax ordinances of the City of Bacolod.
Without waiting for the release of the mayor's permit, respondent started the operation of its bingo outlet at SM Bacolod. This prompted the former City Legal Officer, Atty. Allan Zamora, to issue a Closure Order dated March 2, 2007, pursuant to City Tax Ordinance No. 93-001, Series of 1993, which declares unlawful for any person to operate any business in the City of Bacolod without first obtaining a permit therefor from the City Mayor and paying the necessary permit fee and other charges to the City Treasurer.

The Closure Order was presented by petitioners' representative to respondent's lawyers to negotiate a possible peaceful solution before its implementation. However, respondent simply ignored the information relayed to them and thus, at around 6:00 a.m. on March 3, 2007, the Composite Enforcement Unit under the Office of the City Legal Officer implemented the Closure Order.

In a Decision dated March 20, 2007, the RTC denied the prayer for the issuance of a temporary mandatory order and dismissed the case for lack of merit. On appeal, the CA partially granted the appeal by affirming the trial court's denial of the application for a temporary mandatory order but reversing the dismissal of the suit for damages and ordering the case to be reinstated and remanded to the court of origin for further proceedings. Hence, the instant petition.

Petitioners' argued that hearing the action for damages effectively violates the City's immunity from suit since respondent had not yet obtained the consent of the City Government of Bacolod to be included in the claim for damages. They also argue that the other petitioners, the City Mayor and other officials impleaded, are similarly immune from suit since the acts they performed were within their lawful duty and functions. Moreover, petitioners maintain that they were merely performing governmental or sovereign acts and exercised their legal rights and duties to implement the provisions of the City Ordinance. Finally, petitioners contend that the assailed Decision contained inconsistencies such that the CA declared mandamus to be an inappropriate remedy, yet allowed the case for damages to prosper.

In its Comment, respondent Phuture argues that the grounds raised by petitioners should not be considered since these were only invoked for the first time on appeal. Aside from this, respondent asserts that the case for damages should proceed since petitioners allegedly caused the illegal closure of its bingo outlet without proper notice and hearing and with obvious discrimination.

ISSUES:

1. Whether petitioners have given their consent to be sued. (NO)
2. Whether petitioners can be made liable to pay respondent damages. (NO)

RULING:

1. Petitioners have not given their consent to be sued

The principle of immunity from suit is embodied in Section 3, Article XVI of the 1987 Philippine Constitution which states that "[t]he State cannot be sued without its consent." The purpose behind this principle is to prevent the loss of governmental efficiency as a result of the time and energy it

would require to defend itself against lawsuits.The State and its political subdivisions are open to suit only when they consent to it.

Consent may be express or implied, such as when the government exercises its proprietary functions, or where such is embodied in a general or special law. In the present case, respondent sued petitioners for the latter's refusal to issue a mayor's permit for bingo operations and for closing its business on account of the lack of such permit. However, while the authority of city mayors to issue or grant licenses and business permits is granted by the Local Government Code (LGC), which also vests local government units with corporate powers, one of which is the power to sue and be sued, this Court has held that the power to issue or grant licenses and business permits is not an exercise of the government's proprietary function. Instead, it is in an exercise of the police power of the State, ergo a governmental act.

No consent to be sued and be liable for damages can thus be implied from the mere conferment and exercise of the power to issue business permits and licences. Accordingly, there is merit in petitioners' argument that they cannot be sued by respondent since the City's consent had not been secured for this purpose. This is notwithstanding petitioners' failure to raise this exculpatory defense at the first instance before the trial court or even before the appellate court.

As this Court has repeatedly held, waiver of immunity from suit, being in derogation of sovereignty, will not be lightly inferred.[33] Moreover, it deserves mentioning that the City of Bacolod as a government agency or instrumentality cannot be estopped by the omission, mistake or error of its officials or agents.[34] Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers.[35] Hence, we cannot hold petitioners estopped from invoking their immunity from suit on account of having raised it only for the first time on appeal.

2. Petitioners are not liable for damages

Based on the observations made by the trial court, it appears that respondent had no clear and unmistakable legal right to operate its bingo operations at the onset. Respondent failed to establish that it had duly applied for the proper permit for bingo operations with the Office of the Mayor and, instead, merely relied on the questionable claim stub to support its claim. The trial court also found that the application form submitted by respondent pertained to a renewal of respondent's business for "Professional Services, Band/Entertainment Services" located at "RH Bldg., 26th Lacson St." and not at SM Bacolod. These factual findings by the trial court belie respondent's claim that it had the right to operate its bingo operations at SM Bacolod.

Certainly, respondent's claim that it had applied for a license for bingo operations is questionable since, as it had admitted in its *Petition for Mandamus and Damages*, the primary purpose in its AOI was only amended to reflect bingo operations on February 14, 2007 or more than a month after it had supposedly applied for a license for bingo operations with the Office of the Mayor. It is settled that a judicial admission is binding on the person who makes it, and absent any showing that it was made through palpable mistake, no amount of rationalization can offset such admission.[40] This admission clearly casts doubt on respondent's so-called right to operate its business of bingo operations.

Petitioners, in ordering the closure of respondent's bingo operations, were exercising their duty to

implement laws and ordinances which include the local government's authority to issue licenses and permits for business operations in the city. This authority is granted to them as a delegated exercise of the police power of the State. It must be emphasized that the nature of bingo operations is a form of gambling; thus, its operation is a mere privilege which could not only be regulated, but may also very well be revoked or closed down when public interests so require.

In this jurisdiction, we adhere to the principle that injury alone does not give respondent the right to recover damages, but it must also have a right of action for the legal wrong inflicted by petitioners. In order that the law will give redress for an act causing damage, there must be *damnum et injuria* that act must be not only hurtful, but wrongful.

Considering that respondent had no legal right to operate the bingo operations at the outset, then it is not entitled to the damages which it is demanding from petitioners.

II. LEGISLATIVE DEPARTMENT

A. Legislative power

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1. Senate

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ANTONIO F. TRILLANES IV, *Petitioner*, -versus- HON. EVANGELINE C. CASTILLO-MARIGOMEN, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 101 AND ANTONIO L. TIU, *Respondents.*
G.R. No. 223451, FIRST DIVISION, March 14, 2018, TIJAM, *J.*

Parliamentary immunity refers to utterances made by Congressmen ***in the performance of their official functions****, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the* ***official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such****, at the time of the performance of the acts in question.*

It is, thus, clear that parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the legislative process."To participate in or respond to media interviews is not an official

function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature," outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution.

In this case, petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called Hacienda Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate.Contrary to petitioner's stance, therefore, he cannot invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

FACTS:

Petitioner, as a Senator of the Republic of the Philippines, filed Proposed Senate Resolution No. 826 (P.S. Resolution No. 826) directing the Senate's Committee on Accountability of Public Officials and Investigations to investigate, in aid of legislation, the alleged P1.601 Billion overpricing of the new 11-storey Makati City Hall II Parking Building, the reported overpricing of the 22-storey Makati City Hall Building at the average cost of P240,000.00 per square meter, and related anomalies purportedly committed by former and local government officials.

Petitioner alleged that at the October 8, 2014 Senate Blue Ribbon Sub-Committee (SBRS) hearing on P.S. Resolution No. 826, former Makati Vice Mayor Ernesto Mercado (Mercado) testified on how he helped former Vice President Jejomar Binay (VP Binay) acquire and expand what is now a 350-hectare estate in Barangay Rosario, Batangas, which has been referred to as the *Hacienda* Binay.

Petitioner averred that private respondent thereafter claimed "absolute ownership" of the estate, albeit asserting that it only covered 145 hectares, through his company called Sunchamp Real Estate Corporation, which purportedly entered into a Memorandum of Agreement (MOA) with a certain Laureano R. Gregorio, Jr., the alleged owner of the consolidated estate and its improvements.

Petitioner admitted that during media interviews at the Senate, particularly during gaps and breaks in the plenary hearings as well as committee hearings, and in reply to the media's request to respond to private respondent's claim over the estate, he expressed his opinion that based on his office's review of the documents, private respondent appears to be a "front" or "nominee" or is acting as a "dummy" of the actual and beneficial owner of the estate, VP Bina

On October 22, 2014, private respondent filed a Complaint for Damagesagainst petitioner for the latter's alleged defamatory statements before the media from October 8 to 14, 2014, specifically his repeated accusations that private respondent is a mere "dummy" of VP Binay.

Private respondent alleged that he is a legitimate businessman engaged in various businesses primarily in the agricultural sector, and that he has substantial shareholdings, whether in his own name or through his holding companies, in numerous corporations and companies, globally, some of which are publicly listed. He averred that because of petitioner's defamatory statements, his reputation was severely tarnished as shown by the steep drop in the stock prices of his publicly listed companies.

Petitioner in his Answer with Motion to Dismiss contended that his statements, having been made in the course of the performance of his duties as a Senator, are covered by his parliamentary immunity under Article VI, Section 11 of the 1987 Constitution.

On May 19, 2015, public respondent issued the Orderdenying petitioner's motion to dismiss.

In his Comment, private respondent contends that petitioner cannot invoke parliamentary immunity as his utterances were made in various media interviews, beyond the scope of his official duties as Senator, and that the constitutional right to free speech can be raised only against the government, not against private individuals.

ISSUE:

Whether or not the statements made by the petitioner in media interviews are covered by parliamentary immunity. (NO)

RULING:

Parliamentary immunity refers to utterances made by Congressmen **in the performance of their official functions**, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the **official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such**, at the time of the performance of the acts in question.

> In *Jimenez*, a civil action for damages was filed against a member of the House of Representatives for the publication, in several newspapers of general circulation, of an open letter to the President which spoke of operational plans of some ambitious officers of the Armed Forces of the Philippines (AFP) involving a "massive political build-up" of then Secretary of National Defense Jesus Vargas to prepare him to become a presidential candidate, a *coup d'etat*, and a speech from General Arellano challenging Congress' authority and integrity to rally members of the AFP behind him and to gain civilian support.
>
> Holding that the open letter did not fall under the privilege of speech or debate under the Constitution, the Court declared:
>
> The publication involved in this case does not belong to this category. According to the complaint herein, it was an open letter to the President of the Philippines, dated November 14, 1958, when Congress presumably was not in session, and defendant caused said letter to be published in several newspapers of general circulation in the Philippines, on or about said date. It is obvious that, in thus causing the communication to be so published, he was **not performing his official duty, either as a member of Congress or as officer or any Committee thereof**. Hence, contrary to the finding made by His Honor, the trial Judge, said communication is **not absolutely privileged**.

In this case, petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called *Hacienda* Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate. With *Jimenez* as our guidepost, it is evident that petitioner's remarks fall outside the privilege of speech or debate under Section 11, Article VI of the 1987

Constitution. The statements were clearly not part of any speech delivered in the Senate or any of its committees. They were also not spoken in the course of any debate in said fora. It cannot likewise be successfully contended that they were made in the official discharge or performance of petitioner's duties as a Senator, as the remarks were not part of or integral to the legislative process.

Legislative acts are not all-encompassing. **The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.**

It is, thus, clear that parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the legislative process."To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature," outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution. Contrary to petitioner's stance, therefore, he cannot invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

D. Discipline of members

E. Process of law-making

F. Quorum and voting majorities

G. Appropriation and re-alignment

HON. JONATHAN A. DELA CRUZ and HON. GUSTAVO S. TAMBUNTING, AS MEMBERS OF THE HOUSE OF REPRESENTATIVES and AS TAXPAYERS, *Petitioner*, -versus- HON. PAQUITO N. OCHOA JR., IN HIS CAPACITY AS THE EXECUTIVE SECRETARY; HON. JOSEPH EMILIO A. ABAYA, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; HON. FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; and HON. ROSALIA V. DE LEON, IN HER CAPACITY AS THE NATIONAL TREASURER, *Respondents*.
G.R. No. 219683, EN BANC, January 23, 2018, BERSAMIN, *J.*

In Goh v. Bayron, the Court explained that:

> *x xxTo be valid, an appropriation must indicate a specific amount and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. For example, the purpose can be to "conduct elections," which*

even if not expressly spelled out covers regular, special, or recall elections. The purpose of the appropriation is still specific - to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections.

The Court holds that the appropriation for motor vehicle registration naturally and logically included plate-making inasmuch as plate-making was an integral component of the registration process. Plate-making ensured that the LTO fulfilled its function to "aid law enforcement and improve the motor vehicle registration database."

FACTS:

The Department of Transportation and Communications (DOTC)is 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 systems as well as in the fast, safe, efficient, and reliable postal, transportation and communication services. One of its line agencies is the Land Transportation Office(LTO) which is tasked, among others, to register motor vehicles and regulate their operation. In accordance with its mandate, the LTO is required to issue motor vehicle license plates which serve to identify registered vehicles as they ply the roads.

Recently, the LTO formulated the Motor Vehicle License Plate Standardization Program (MVPSP) to supply new license plates for both old and new vehicle registrants. The LTO, through the General Appropriations Act, intends to apply the sum of P3,851,600,100 being the Approved Budget for the Contract, for payment of approximately P5,236,439 for Motor Vehicles and approximately P9,968,017 for motorcycles.

The DOTC published in newspapers of general circulation the Invitation to Bid for the supply and delivery of motor vehicle license plates for the MVPSP. The DOTC Bids and Awards Committee then issued a General Bid Bulletin setting the date for the Submission and Opening of Bids. The DOTC on July 22, 2013 issued the Notice of Award to JKG-Power Plates who made the lowest offer. Despite the notice of award, the contract signing of the project was not immediately undertaken. On February 21, 2014, the contract for MVPSP was finally signed by. It was approved by public respondent Joseph Emilio Abaya (Secretary Abaya), as DOTC Secretary.

The COA later on issued Notice of Suspension and a Notice of Disallowance dated July 13, 2015 stating therein that it had disallowed the advance payment of P477,901,329 to JKG Power Plates for the supply and delivery of motor vehicle plates on the ground that the transaction had been irregular and illegal for being in violation of Sections 46(1) and 47, Book V of the *Administrative Code of 1987*; Sections 85(1) and 86 of the *Government Auditing Code of the Philippines*; DBM Circular Letter No. 2004-12; and the implementing rules of the *Government Procurement Reform Act*.

The petitioners instituted this special civil action assailing the constitutionality of the implementation of the MVPSP using funds appropriated under the 2014 GAA, arguing that:

A. The transfer of the appropriation for the Motor Vehicle Registration and Driver's Licensing Regulatory Services under the GAA 2014 and the application and implementation of said transferred appropriation to the MVPSP is unconstitutional.

B. The fact that MVPSP does not appear as an item under the Motor Vehicle Registration and Driver's Licensing Regulatory Services in effect deprives the President of its veto powers under Section 27(2) of Article VI of the Constitution and must be declared as unconstitutional.

C. The public expenditure in the amount of P3,186,008,860 for the MVPSP in the absence of an appropriation under the GAA 2013 and GAA 2014 is unconstitutional.

ISSUE:

Whether or not the 2014 GAA included an appropriation for the implementation of the MVPSP (Yes) and whether the use of the appropriation under 2014 GAA for the implementation of the MVPSP was constitutional. (YES)

RULING:

The implementation of the MVPSP was properly funded under the appropriation for *Motor Vehicle Registration and Driver's Licensing Regulatory Services* in the 2014 GAA; hence, no unconstitutional transfer of funds took place

According to the petitioners, the 2014 GAA appropriated P4,843,753,000 specifically only for the Major Final Output 2 (MFO2): *Motor Vehicle Registration and Driver's Licensing Regulatory Services*. They argue that considering that *Motor vehicle plate making project* did not appear as an item in the 2014 National Expenditure Program (NEP) and the 2014 GAA, the use of the funds allocated for the MFO2: *Motor Vehicle Registration and Driver's Licensing Regulatory Services*amounted to an unconstitutional transfer of appropriations prohibited by Article VI, Section 25 (5) of the Constitution.

The petitioners' argument lacks persuasion. In *Goh v. Bayron*, the Court explained that:

> x xxTo be valid, an appropriation must indicate a specific amount and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. For example, the purpose can be to "conduct elections," which even if not expressly spelled out covers regular, special, or recall elections. The purpose of the appropriation is still specific - to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections.

The Court holds that the appropriation for motor vehicle registration naturally and logically included plate-making inasmuch as plate-making was an integral component of the registration process. Plate-making ensured that the LTO fulfilled its function to "aid law enforcement and improve the motor vehicle registration database."

The inclusion of the MVPSP in the line item for the MFO2 was further explained in Details of the FY 2014 Budget. The proposed budget for the MFO2 stated in the 2014 NEP, which was only P2,354,653,000, would be inadequate to fund the implementation of the MVPSP. Thus, Secretary Abaya wrote to DBM Secretary Florencio Abad to request the modification of the 2014 NEP by way of a realignment to increase the MFO2 budget by P2,489,600,100 for the LTO Plate Standardization Program. That Congress approved the request for the P2,489,600,100 increase was indubitable. This

is borne out by the fact that the final amount appropriated for MFO2 under the 2014 GAA aggregated to P4,843,753,000 (*i.e.*, P2,489,600,100 +P2,354,153,000). Such final increased amount was almost exactly identical to the total appearing in Details of the FY 2014 Budget. Indeed, the legislative intent to fund the MVPSP under the 2014 GAA was manifest.

Considering that Congress appropriated P4,843,753,000 for the MFO2 (inclusive of the requested increase of P2,489,600,100) for the purpose of funding the LTO's MVPSP, the inescapable conclusion is that the 2014 GAA itself contained the direct appropriation necessary to implement the MVPSP. Under the circumstances, there was no unconstitutional transfer of funds because no transfer of funds was made to augment the item *Motor Vehicle Registration and Driver's Licensing Regulatory Services* to include the funding for the MVPSP.

The petitioners also contended that the implementation of the MVPSP using the funds allocated under the item MFO2: *Motor Vehicle Registration and Driver's Licensing Regulatory Services* was unconstitutional because the item constituted a lump-sum appropriation that undermined the exercise by the President of his veto power under Article VI, Section 27(2) of the Constitution.

The petitioners' contention lacks merit. Starting in 2014, the National Government adopted the system of "Performance Informed Budgeting" in the preparation and presentation of the National Budget. This adoption is expressed in Section 2 of the general provisions of the 2014 GAA, to wit:

> Sec. 2. Performance Informed Budgeting. The amounts appropriated herein considered the physical accomplishments vis-a-vis performance targets of departments, bureaus, offices and instrumentalities of the National Government, including Constitutional Offices enjoying fiscal autonomy, SUCs and GOCCs, formulated in terms of Major Final Outputs (MFOs) and their corresponding Performance Indicators under the Organizational Performance Indicator Framework, the results-based budgeting system being adopted in the whole of government. Accordingly, the budget allocations for the various programs and projects under this Act are informed by, among others, the actual performance of spending units in delivering their MFOs and their impact on the sectoral and societal objectives and priorities set by the National Government. This is consistent with the national policy of orienting the budget towards the achievement of explicit objectives and desire budget outcomes, as well as for greater transparency and accountability in public spending. x xx

Under the system of Performance Informed Budgeting, the PAPS (program, activity or project) are grouped or aligned into the Major Final Outputs (MFOs). However, the groupings do not mean that there are no longer any line-items. As explained in *Belgica v. Executive Secretary*, line-items under appropriations should be "specific appropriations of money" that will enable the President to discernibly veto the same, to wit:

> An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of Bengzon v. Secretary of Justice of the Philippine Islands, the US Supreme Court characterized an item of appropriation as follows:
>
> > "An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill."

> On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.
>
> Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence - meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same.

In *Araullo v. Aquino III*, the Court has expounded the term *item* as the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class, *viz*.:

> Indeed, Section 25(5) of the 1987 Constitution mentions of the term *item* that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*, we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions, x xx
>
> xxxx
>
> Accordingly, the *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

The petitioners' contention that the MFO2 constituted a lump-sum appropriation had no basis. The specific appropriations of money were still found under Details of the FY 2014 Budget which was attached to the 2014 GAA.
As gleaned from the Details of the FY 2014 Budget, the MFOs constituted the expense category or class; while the last and indivisible purpose of each program under the MFOs were enumerated under the Details of the FY 2014 Budget. In particular, the specific purpose provided under the MFO2 was an appropriation for a Motor vehicle registration system. Such specific purpose satisfied the requirement of a valid line-item that the President could discernibly veto.

CAREER EXECUTIVE SERVICE BOARD, REPRESENTED BY ITS EXECUTIVE DIRECTOR, MARIA ANTHONETTE VELASCO-ALLONES, *Petitioner*, - versus - COMMISSION ON AUDIT; THE AUDIT TEAM LEADER, CAREER EXECUTIVE SERVICE BOARD; AND THE SUPERVISING AUDITOR, CLUSTER A - GENERAL PUBLIC SERVICES I, NATIONAL GOVERNMENT SECTOR, *Respondents.*
G.R. No. 212348, EN BANC, June 19, 2018, BERSAMIN, *J.*

Article VI of the 1987 Constitution ordains that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The only exception is found in Section 25(5), Article VI of

the 1987 Constitution, by which the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Philippines, and the heads of the Constitutional Commissions are authorized to transfer appropriations... to augment any item in the GAA for their respective offices from the savings in other items of their respective appropriations. The CESB is definitely not among the officials or agencies authorized to transfer their savings in other items of its appropriation.

FACTS:

The CESB granted to its officials and employees various monetary benefits in CY 2002 and CY 2003 pursuant to Section 2, Article V of the Collective Negotiation Agreement it had entered into with the *Samahan ng KawaningNagkakaisasaDiwa, Gawa at Nilalayon* (SANDIGAN), a duly accredited organization of its employees.

Upon post-audit, respondent ATL issued Audit Observation Memorandum No. 2003 AAR-12, assailing the legality of the grant of benefits. In due time, the Director of the Legal and Adjudication Office National (LAO-N) issued ND No. 2004-67 declaring that the payment of said monetary benefits has no legal support.

On December 10, 2004, the CESB's Executive Director, Mary Ann Z. Fernandez-Mendoza, filed a request seeking the reconsideration of ND No. 2004-67 which the LAO-N denied. The CESB appealed, but the LAO-N also denied. Ultimately, respondent COA rendered the assailed Decision No. 2010- 121 affirming ND No. 2004-67. Hence, this present recourse.

ISSUES:

1. Whether respondent COA committed grave abuse of discretion when it affirmed the recommendation of the Audit Team Leader and the Supervising Auditor disallowing the monetary benefits granted by the petitioner. (NO)

2. Whether respondent COA committed grave abuse of discretion when it ordered the refund of the amounts received by the CESB employees.

RULING:

1. The COA did not commit grave abuse of discretion. Being the guardian of public funds, it has been vested by the 1987 Constitution with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate, accounting and auditing rules and regulations.

Section 3.10 of National Budget Circular No. 487 reads:

> As an exception to Section 55 of the General Provisions of R.A. No. 9206, agencies are authorized to use savings to cover payment of TLB, RA x xx and collective negotiation agreement (CNA) incentives even if no specific appropriation is provided for the purpose.

DBM did not have any hand in the determination of the CNA benefits and incentives to be given to the CESB's employees and officers because the CNA had been entered into only by and between the

CESB and SANDIGAN. As such, the DBM could not have expressly determined and authorized the additional compensations.

3, Rule VIII of the IRR listed the benefits that were not subject to negotiation, to wit:

> Section 3. Those that require appropriation of funds, such as the following, are not negotiable: a. Increase in the salary emoluments and other allowances not presently provided for by law; b. Facilities requiring capital outlays; c. Car plan; d. Provident fund; e. Special hospitalization, medical and dental services; f. Rice/sugar/other subsidies; g. Travel expenses; h. Increase in retirement benefits.

In light of the foregoing provisions, the COA was correct in holding that the benefits given under the CNA were not allowed under Executive Order (EO) 180 and its Implementing Rules and Regulations because the benefits given by the CESB to its employees and officers were not subject to negotiation.

In addition, the CESB's reliance on National Budget Circular 487 was bereft of legal anchor considering that the CESB had no legal authority to use its savings for the payment of the monetary benefits.

Article VI of the 1987 Constitution ordains that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The only exception is found in Section 25(5), Article VI of the 1987 Constitution, by which the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Philippines, and the heads of the Constitutional Commissions are authorized to transfer appropriations... to augment any item in the GAA for their respective offices from the savings in other items of their respective appropriations.

The CESB is definitely not among the officials or agencies authorized to transfer their savings in other items of its appropriation. The CESB, although intended to be an autonomous entity, is administratively attached to the Civil Service Commission,. and does not wield the power to authorize the augmentation of items of its appropriations from savings in other items of its appropriations.

2. CESB and its employees need not return the benefits received because of their good faith. In *De Jesus v. Commission on Audit*, the parties acted in good faith and the court did not countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. This doctrine of good faith has been consistently followed in many other rulings. Recently, in *Philippine Economic Zone Authority v. Commission on Audit*, the Court has reiterated that the affirmance of the disallowance of payments or disbursements does not automatically cast liability on the responsible officers when good faith could be considered as a valid defense.

In fine, good faith is properly appreciated in favor of the public officials and employees involved when: (1) the concerned public officials authorize or the concerned employees receive the disallowed payment upon an honest belief that such authority to cause payment or to receive payment is valid and legal; or (2) there is absence of circumstances that ought to put the concerned public officials or employees upon inquiry as to the validity or legality of the payment; or (3) the document relied upon and signed shows no palpable, or patent, or definite defects; or (4) the concerned public officer's trust and confidence in his subordinates upon whom the duty to ensure the validity or legality of the payment primarily devolves are within the parameters of tolerable... judgment and permissible

margins of error; or (5) there has been no prior jurisprudence or ruling on the allowance or disallowance of the subject or similar payment.

The officials of the CESB who authorized and caused the disallowed payment of the CNA benefits apparently acted and believed in the honest that the grant of the monetary benefits was proper and had legal basis. Similarly, the recipients of the disallowed payment honestly believed that they were legally entitled to said benefits as the product of the CNA between the CESB and SANDIGAN, and thus received the benefits in good faith.

H. Legislative inquiries and oversight functions

ARVIN R. BALAG, *Petitioner*, *v.* SENATE OF THE PHILIPPINES, SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS DRUGS, SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS, SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS AND REVISION OF CODES AND MGEN. JOSE V. BALAJADIA, JR. (RET.) IN HIS CAPACITY AS SENATE SERGEANT-AT-ARMS, *Respondents*.
G.R. No. 234608, EN BANC, July 03, 2018, GESMUNDO, *J.*

The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. ***Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.***

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked.

In Arnault, it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject.Accordingly, ***as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised****. Conversely,* ***once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases*** *and there is no more genuine necessity to penalize the detained witness.*

FACTS:

On September 17, 2017, Horacio III,a first year law student of the UST, died allegedly due to hazing conducted by the Aegis Juris Fraternity.On September 19, 2017, SR No. 504,was filed by Senator Zubiricondemning the death of Horacio III and directing the appropriate Senate Committee to conduct an investigation, **in aid of legislation**, to hold those responsible accountable.

On September 20, 2017, SR No. 510, entitled: "A Resolution Directing the Appropriate Senate Committees to Conduct An Inquiry, In Aid of Legislation, into the Recent Death of Horacio Tomas Castillo III Allegedly Due to Hazing-Related Activities" was filed by Senator Aquino IV. The Senate Committee on Public Order and Dangerous Drugs chaired by Senator Lacson together with the Committees on Justice and Human Rights and Constitutional Amendment and Revision of Codes, invited petitioner and several other persons to the Joint Public Hearing.

Petitioner attended the senate hearing. In the course of the proceedings, Senator Poe asked petitioner if he was the president of Aegis Juris Fraternity but he refused to answer the question and invoked his right against self-incrimination. She manifested that petitioner's signature appeared on the application for recognition of the AJ Fraternity and on the organizational sheet, indicating that he was the president. Petitioner, again, invoked his right against self-incrimination.

Senator Poe then **moved to cite him in contempt**, which was seconded by Senators Villanueva and Zubiri. Senator Lacson ruled that the motion was properly seconded, hence, the Senate Sergeant-at-arms was ordered to place petitioner in detention after the committee hearing. Thereafter, petitioner apologized for his earlier statement and moved for the lifting of his contempt. He admitted that he was a member of the AJ Fraternity but he was not aware as to who its president was because, at that time, he was enrolled in another school.Senator Villanueva repeated his question to petitioner but the latter, again, invoked his right against self-incrimination. Thus, petitioner was **placed under the custody of the Senate Sergeant-at-arms**.

In its Resolutiondated December 12, 2017, the Court ordered in the interim the **immediate release** of petitioner pending resolution of the instant petition.

ISSUES:

I.Whether or not the petition is moot and academic. (YES)

II. Whether or not the period of detention under the senate's inherent power of contempt is indefinite. (NO)

RULING:

I.The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In this case, the Court finds that there is no more justiciable controversy. Petitioner essentially alleges that respondents unlawfully exercised their power of contempt and that his detention was invalid.

As discussed earlier, in its resolution dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition. Thus, petitioner was no longer detained under the Senate's authority.Evidently, respondent committees have terminated their legislative inquiry. The Senate even went further by approving on its 3rd reading the proposed bill, Senate Bill No. 1662, the result of the inquiry in aid of legislation. Indeed, the petition has become moot and academic.

Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot and academic. This Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events when any of the following instances are present:

(1) Grave constitutional violations;
(2) Exceptional character of the case;

(3) Paramount public interest;
(4) The case presents an opportunity to guide the bench, the bar, and the public; or
(5) The case is capable of repetition yet evading review.

In this case, the petition presents a critical and decisive issue that must be addressed by Court: what is the duration of the detention for a contempt ordered by the Senate?This issue must be threshed out as the Senate's exercise of its power of contempt without a definite period is capable of repetition. Moreover, the indefinite detention of persons cited in contempt impairs their constitutional right to liberty. Thus, paramount public interest requires the Court to determine such issue to ensure that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.

The contempt order issued against petitioner simply stated that he would be arrested and detained until such time that he gives his true testimony, or otherwise purges himself of the contempt. It does not provide any definite and concrete period of detention. Neither does the Senate Rules specify a precise period of detention when a person is cited in contempt.

II. The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. **Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.**

Congress' power of contempt rests solely upon the **right of self-preservation** and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself.Even *arguendo* that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a **restriction to the liberty** of the said witness. It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. **An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.**

Nevertheless, it is recognized that the **Senate's inherent power of contempt is of utmost importance**. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change.

Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The **balancing of interest** requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other.

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked.

In *Arnault*, it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject.Accordingly, **as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised**. Conversely, **once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases** and there is no more genuine necessity to penalize the detained witness.

In fine, the interests of the Senate and the witnesses appearing in its legislative inquiry are balanced. The Senate can continuously and effectively exercise its power of contempt during the legislative inquiry against recalcitrant witnesses, even during recess. Such power can be exercised by the Senate immediately when the witness performs a contemptuous act, subject to its own rules and the constitutional rights of the said witness.In addition, if the Congress decides to extend the period of imprisonment for the contempt committed by a witness beyond the duration of the legislative inquiry, then it may file a criminal case under the existing statute or enact a new law to increase the definite period of imprisonment.

I. Power of impeachment

J. Electoral Tribunals

K. Commission on Appointments

L. Initiative and referendum

III. EXECUTIVE DEPARTMENT

A. Qualifications, election, and term of the President and Vice-President

B. Privileges, inhibitions, and disqualifications

C. Powers of the President

1. Executive and administrative powers in general

2. Power of appointment

a. Confirmation and by-passed appointments

b. Midnight and ad interim appointments

c. Power of removal

3. Power of control and supervision

a. Doctrine of qualified political agency

b. Executive departments and officers

c. Local Government Units

4. Military powers

a. Calling out power

b. Declaration of Martial Law and suspension of the privilege of the writ of habeas corpus; requisites and parameters of extension

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERICE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, AND EMMANUEL A. BILLONES, Petitioners, - versus – SENATE PRESIDENT AQUILINO PIMENTEL III, SPEAKER PANTALEON D. ALVAREZ, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN N. LORENZANA, BUDGET SECRETARY BENJAMIN E. DIOKNO AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL REY LEONARDO GUERRERO, Respondents.
G.R. No. 235935, EN BANC, February 6, 2018, TIJAM, *J.*

*Section 18, Article VII of the 1987 Constitution requires **two factual bases for the extension** of the proclamation of martial law or of the suspension of the privilege of the writ of habeas corpus: (a) the **invasion or rebellion persists**; and (b) **public safety requires** the extension.*

> *The reasons cited by the President in his request for further extension **indicate that the rebellion**, which caused him to issue Proclamation No. 216, **continues to exist** and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces and continued attacks.*
>
> *The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, **present a significant danger to public safety.***

FACTS:

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the whole of Mindanao for a period not exceeding sixty (60) days, to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG).

Within the 48-hour period set in Section 18, Article VII of the Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the events and reasons that impelled him to issue Proclamation No. 216. Thereafter, both Houses expressed full support to the Proclamation and finding no cause to revoke the same.

On July 18, 2017, the President requested the Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2, extending Proclamation No. 216 until December 31, 2017. In a letter to the President, through Defense Secretary Lorenzana, the Armed Forces of the Philippines (AFP) Chief of Staff, General Rey Leonardo Guerrero (General Guerrero), recommended the further extension of martial law and

suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year beginning January 1, 2018. Acting on said recommendations, the President, in a letter dated December 8, 2017, asked both the Senate and the House of Representatives to further extend the proclamation of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018, or for such period as the Congress may determine. In granting the President's request, the Congress stated:

> "WHEREAS, the President informed the Congress of the Philippines of the remarkable progress made during the period of Martial Law, but nevertheless reported the following essential facts: First, despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization; Second, the Turaifie Group has likewise been monitored to be planning to conduct bombings, notably targeting the Cotabato area; Third, the Bangsamoro Islamic Freedom Fighters continue to defy the government by perpetrating at least fifteen (15) violent incidents; Fourth, the remnants of the Abu Sayyaf Group in Basilan, Sulu, Tawi-tawi, and Zamboanga Peninsula remain a serious security concern; and last, the New People's Army took advantage of the situation and intensified their decades-long rebellion against the government…"
>
> "WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, such proclamation or suspension for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;"
>
> "WHEREAS, on December 13, 2017, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session by two hundred forty (240) affirmative votes comprising the majority of all its Members, has determined that rebellion persists, and that public safety indubitably requires the further extension of the Proclamation of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao"

Based on their respective petitions and memoranda and their oral arguments before this Court on January 16, 2018 and January 17, 2018, petitioners' arguments are:

(a) The Congress committed grave abuse of discretion for precipitately and perfunctorily approving the extension of martial law despite the absence of sufficient factual basis. In G.R. No. 235935, petitioners impute grave abuse of discretion specifically against the "leadership and supermajority" of both Chambers of Congress, arguing that the extension was approved with inordinate haste as the Congress' deliberation was unduly constricted to an indecent 3 hours and 35 minutes.
(b) The Constitution allows only a one-time extension of martial law and/or suspension of the privilege of the writ of habeas corpus, not a series of extensions amounting to perpetuity. In addition, the period of extension of martial law should satisfy the standards of necessity and reasonableness.
(c) The one-year extension of the proclamation of martial law and suspension of the privilege of the writ of habeas corpus lacked sufficient factual basis because there is no actual rebellion in Mindanao. The Marawi siege and the other grounds under Proclamation No. 216 that were used as the alleged bases to justify the extension have already been resolved and no longer persist.

(d) Since the framers of the 1987 Constitution removed the phrase "imminent danger" as one of the grounds for declaring martial law, the President can no longer declare or extend martial law on the basis of mere threats of an impending rebellion.
(e) The alleged rebellion in Mindanao does not endanger public safety. The threat to public safety contemplated under Section 18, Article VII of the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.
(f) There is no need to extend martial law to suppress or defeat remnants of vanquished terrorist groups, as these may be quelled and addressed using lesser extraordinary powers (i.e., calling out powers) of the President.
(g) Petitioners in G.R. No. 235935 allege that martial law and the suspension of the writ trigger the commission of human rights violations and suppression of civil liberties. In fact, the implementation of the same resulted to intensified human rights violations in Mindanao.

Respondents, through the Office of the Solicitor General, argue that:

(a) The period for deliberation on the President's request for further extension was not unduly constricted. The extension or revocation of martial law cannot be equated with the process of ordinary legislation. Given the time-sensitive nature of martial law or its extension, the time cap was necessary in the interest of expediency.
(b) The Constitution does not limit the period for which Congress can extend the proclamation and the suspension, nor does it prohibit Congress from granting further extension. In the absence of any express or implied prohibition in the Constitution, the Court cannot prevent Congress from granting further extensions.
(c) Although the leadership of the Mautes was decimated in Marawi, the rebellion in Mindanao persists as the surviving members of the militant group have not laid down their arms. The remnants remain a formidable force to be reckoned with, especially since they have established linkage with other rebel groups. With the persistence of rebellion in the region, the extension of martial law is, therefore, not just for preventive reasons. The extension is premised on the existence of an ongoing rebellion.
(d) Under the Constitution, the extension of martial law and the suspension of the privilege of the writ of habeas corpus are justified as long as there is rebellion and public safety requires it. The provision does not require that the group that started the rebellion should be the same group that should continue the uprising. Thus, the violence committed by other groups, such as the BIFF, AKP, ASG, DI Maguid, and DI Toraype (Turaifie) should be taken into consideration in determining whether the rebellion has been completely quelled, as they are part of the rebellion.
(e) The President has the sole prerogative to choose which of the extraordinary commander-in-chief powers to use against the rebellion plaguing Mindanao. Thus, petitioners cannot insist that the Court impose upon the President the proper measure to defeat a rebellion.
(f) The alleged human rights violations are irrelevant in the determination of whether Congress had sufficient factual basis to further extend martial law and suspend the privilege of the writ of habeas corpus. As ruled in Lagman, petitioners' claim of alleged human rights violations should be resolved in a separate proceeding and should not be taken cognizance of by the Court.

(g) Martial law does not automatically equate to curtailment and suppression of civil liberties and individual freedom. A state of martial law does not suspend the operation of the Constitution, including the Bill of Rights. The Constitution lays down safeguards to protect human rights during martial law. Civil courts are not supplanted.

ISSUES:

I. Whether the rebellion persists as to satisfy the first condition for the extension of martial law or of the suspension of the privilege of the writ of habeas corpus. (YES)
II. Whether the acts, circumstances and events upon which the extension was based posed a significant danger, injury or harm to the general public. (YES)

RULING:

At the core of the instant petitions is a challenge to the "joint executive and legislative act," embodied in the President's December 8, 2017 initiative and in the latter's Resolution of Both Houses No. 4, which further extended the implementation of martial law and the suspension of the privilege of the writ of habeas corpus in the entire Mindanao for one year, from January 1 to December 31, 2018. Petitioners assail not only the sufficiency of the factual basis of this extension, but also the manner in which it was approved.

No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings. In Pimentel, Jr., et al. v. Senate Committee of the Whole, this constitutionally-vested authority is recognized as a grant of full discretionary authority to each House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.

In other words, the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

Congress has the power to extend and determine the period of martial law and the suspension of the privilege of the writ of habeas corpus. Section 18, Article VII of the 1987 Constitution provides:

> SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a**

period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

While it does not specify the number of times that the Congress is allowed to approve an extension of martial law or the suspension of the privilege of the writ of habeas corpus, Section 18, Article VII is clear that the only limitations to the exercise of the congressional authority to extend such proclamation or suspension are that the extension should be upon the President's initiative; that it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and that it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen. Plain textual reading of Section 18, Article VII and the records of the deliberation of the Constitutional Commission buttress the view that as regards the frequency and duration of the extension, the determinative factor is as long as "the invasion or rebellion persists and public safety requires" such extension.

Section 18, Article VII of the 1987 Constitution requires **two factual bases for the extension** of the proclamation of martial law or of the suspension of the privilege of the writ of habeas corpus: (a) the **invasion or rebellion persists**; and (b) **public safety requires** the extension.

I. Rebellion persists

The reasons cited by the President in his request for further extension indicate that the rebellion, which caused him to issue Proclamation No. 216, continues to exist and its "remnants" have been resolute in establishing a DAESH/ISIS territory in Mindanao, carrying on through the recruitment and training of new members, financial and logistical build-up, consolidation of forces and continued attacks.

In recommending the one-year extension of Proclamation No. 216 to the President, AFP General Guerrero cited, among others, the continued armed resistance of the DAESH-inspired DIWM and their allies.

The rebellion that spawned the Marawi crisis persists, and that its remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory.

Petitioners in G.R. No. 235935 argue that "remnants" or a residue of a rebel group cannot possibly mount a rebellion. The argument, however, fails to take into account the 185 persons identified in the Martial Law Arrest Orders who are still at large; the 400 new members whom said remnants were able to recruit; the influx of 48 FTFs who are training the new recruits in their ways of terrorism; and the financial and logistical build-up which the group is currently undertaking with their sympathizers and protectors.

The termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. As noted in Aquino, Jr. v. Enrile, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict. Furthermore, as We explained in Lagman, "(t)he crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots."

The Court, thus, finds that the government has sufficiently established the persistence of the DAESH/ISIS rebellion.

II. Public safety requires the extension

The rising number of these rebel groups, their training in and predilection to terrorism, and their resoluteness in wresting control of Mindanao from the government, pose a serious danger to Mindanao. In a short period after the Marawi crisis was put under control, said rebel groups have managed to increase their number by 400, almost the same strength as the group that initially stormed Marawi. Their current number is now more than half the 1,010 rebels in Marawi which had taken the AFP five months to neutralize. To wait until a new battleground is chosen by these rebel groups before We consider them a significant threat to public safety is neither sound nor prudent.

The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

The facts as provided by the Executive and considered by Congress amply establish that rebellion persists in Mindanao and public safety is significantly endangered by it. The Court, thus, holds that there exists sufficient factual basis for the further extension sought by the President and approved by the Congress in its Resolution of Both Houses No. 4.

The determination of which among the constitutionally given military powers should be exercised in a given set of factual circumstances is a prerogative of the President. The Court's power of review, as provided under Section 18, Article VII do not empower the Court to advise, nor dictate its own judgment upon the President, as to which and how these military powers should be exercised.

Petitioners' fear that the one-year extension of martial law will only intensify the human rights violations committed by government forces against civilians. However, the possibility of abuse and even the country's martial law experience under the Marcos regime did not prevent the framers of the 1987 Constitution from including it among the Commander-in-Chief powers of the President. This is in recognition of the fact that during critical times when the security or survival of the state is greatly imperiled, an equally vast and extraordinary measure should be available for the President to protect and defend it. Nevertheless, cognizant of such possibility of abuse, the framers of the 1987 Constitution endeavored to institute a system of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties.

Human rights violations and abuses in the implementation of martial law and suspension powers cannot by any measure be condoned. However, as the Court settled in Lagman, alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of habeas corpus should be resolved in a separate proceeding.

This Court has likewise promulgated rules aimed at enforcing human rights. In A.M. No. 07-9-12-SC, this Court made available the **remedy of a writ of amparo** to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. Similarly, in A.M. No. 08-1-16-SC, this Court also crafted the rule on the **writ of habeas data** to provide a remedy for any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

5. Executive clemency

6. Powers pertinent to foreign relations

D. Rules of succession

IV. JUDICIAL DEPARTMENT

A. Judicial power

HEIRS OF RAMON ARCE, SR., PETITIONERS, V. DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY SECRETARY VIRGILIO DELOS REYES, RESPONDENT.

G.R. No. 228503, FIRST DIVISION, July 25, 2018, TIJAM, J.

It is well-settled that this Court is called upon to settle or resolve only actual cases and controversies, not to render advisory opinions.There must be an existing case or controversy that is ripe for judicial determination, not conjectural or anticipatory.

FACTS:

Victoria Homes, Inc. was the registered owner of three lots (subject lots). These lots are situated in BarioBagbagan, Muntinlupa, Rizal (now Barangay Tunasan, Muntinlupa City, Metro Manila). Since 1967, respondents [Oscar], [Efren], [Cornelio], [Domingo] and [Nolasco] (herein represented by his heirs) were farmers-tenants of Victoria Homes, cultivating and planting rice and corn on the lots.

Victoria Homes without notifying the farmers, sold the subject lots to Springsun Management Systems Corporation (Springsun). Accordingly, new TCTs were issued in the name of Springsun. Springsun subsequently mortgaged the subject lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino) as security for its various loans. When Springsun failed to pay its loans, the mortgage was foreclosed extra-judicially. At the public auction sale, the lots were sold to Banco Filipino, being the highest bidder, but they were eventually redeemed by Springsun.

The farmers filed with the RTC a complaint against Springsun and Banco Filipino for Prohibition/*Certiorari*, Reconveyance/Redemption, Damages, Injunction with Preliminary Injunction and TRO or, simply, an action for Redemption.

The RTC rendered a decision in favor of the farmers, authorizing them to redeem the subject lots from Springsun. On appeal to the CA, the appellate court affirmed the RTC decision with a modification on the award of attorney's fees.

Aggrieved, Springsun elevated the matter to the Supreme Court. The SC affirmed the CA Decision.

The case was docketed as G.R. No. 161029. With the denial of Springsun's motion for reconsideration, the same became final and executory; accordingly, an entry of judgment was made. The farmers thus moved for the execution of the Decision.

SMS instituted an action for Annulment of Judgment with prayer for the issuance of a TRO before the CA. SMS sought the annulment of the RTC decision allowing the farmers to redeem the subject property. The CA, however, dismissed the petition. The matter was elevated to the SC *via* a petition for review on *certiorari* but the same was denied. After the denial of its motion for reconsideration, the Decision became final and executory; and an entry of judgment was subsequently made.

Meanwhile, on December 18, 2003, the farmers executed an Irrevocable Power of Attorney in favor of Mariano Nocom (Nocom), authorizing him, among other things, to comply with the SC's January 19, 2005 Decision by paying the redemption price to Springsun and/or to the court. [The farmers], however, challenged the power of attorney in an action for revocation with the RTC.

In a summary judgment, the RTC annulled the Irrevocable Power of Attorney for being contrary to law and public policy. The RTC explained that the power of attorney was a disguised conveyance of the statutory right of redemption that is prohibited under R.A. No. 3844. The CA affirmed the RTC decision. However, this Court in G.R. No. 182984, set aside the CA Decision and concluded that the RTC erred in rendering the summary judgment. The Court thus remanded the case to the RTC for proper proceedings and proper disposition, according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

As SMS refused to accept the redemption amount, the farmers deposited the said amounts, duly evidenced by official receipts, with the RTC. The RTC further granted the farmers' motion for execution and consequently, new TCTs were issued in the names of the farmers.

SMS and the farmers (except Oscar) executed a document, denominated as *Kasunduan*, wherein the latter agreed to receive P300,000 each from the former, as compromise settlement. SMS then filed a Motion to Hold Execution in Abeyance on the Ground of Supervening Event.

The RTC denied SMS' motion.

The CA rendered the assailed Decision, finding SMS guilty of forum shopping. It further held that the compromise agreement could not novate the Court's earlier Decision in G.R. No. 161029 because only four out of five parties executed the agreement.

In their motions for reconsideration, Nocom and the respondents principally argued that: 1) the validity of the Irrevocable Power of Attorney (IPA) has been already laid to rest. This Court, in G.R. No. 182984, reversed the RTC of Muntinlupa, Branch 203 and the CA when it summarily invalidated the IPA. This Court remanded the case to the RTC and directed the parties to present their evidence to determine the validity of the IPA. However, instead of the respondents presenting their evidence,

the latter filed a motion to dismiss the action for revocation of the IPA. The dismissal order of the RTC became final and executory and effectively barred the relitigation of the same issues.

ISSUE:

Whether or not the CA correctly upheld the RTC when it denied the Motion to Hold in Abeyance Execution on Ground of Supervening Event filed by SMS in its Order.

RULING:

Yes. The CA correctly upheld the RTC when it denied the Motion to Hold in Abeyance Execution on Ground of Supervening Event filed by SMS in its Order**.**

After careful scrutiny of the records of the case and the motions for reconsideration, the Supreme Court finds the respondents' and Nocom's arguments meritorious. Accordingly, the Supreme Court grants the motions for reconsideration.

Indeed, unless annulled by the courts in an appropriate proceeding, the IPA remains valid.

Recall that on December 18, 2013, respondents executed the IPA authorizing Nocom, among others, to pay the redemption price of P9,790,612.00 to the court. Oscar, by himself, filed a Petition to Revoke Power of Attorneyagainst Nocom.

On June 15, 2006, the RTC, Branch 203 of Muntinlupa City issued a Summary Judgmentrevoking the IPA. Upon appeal to the CA, the latter affirmed the summary revocation of the IPA. However, this Court in G.R. No. 182984, reversed the RTC and CA Decision and concluded that the RTC erred in rendering the summary judgment. The Court thus remanded , the case to the RTC for proper proceedings and proper disposition.

Before the RTC, Oscar, with the intervention of the other respondents, instead of presenting their evidence to show the invalidity of the IPA, moved to dismiss the case for the revocation of the IPA. Thus, the RTC, on September 20, 2011, issued an Orderdismissing the case. The said dismissal order was not appealed by the parties, hence, became final and executory.

By the dismissal of the action for revoking the IPA, there is no longer any controversy surrounding the validity of the IPA. It is well-settled that this Court is called upon to settle or resolve only actual cases and controversies, not to render advisory opinions.There must be an existing case or controversy that is ripe for judicial determination, not conjectural or anticipatory.

This Court, in its earlier Resolution , held that:

"We must recall that, in our January 19, 2005 Decision, we upheld respondents' right to redeem the subject lots for P9,790,612.00. On December 18, 2003, respondents executed an Irrevocable Power of Attorney in favor of Nocom, authorizing him to redeem the subject lots. Pursuant to the aforesaid authority, Nocom deposited with the court the redemption money plus commission on August 4, 2005. Consequently, the certificates of title in the name of petitioner were cancelled, and new ones were issued in the name of respondents. It was only on August 20, 2005 that [SMS] and respondents executed the Kasunduan or the compromise agreement. Although we could have easily declared that the agreement was invalid as there was nothing more to compromise at that time with the redemption of the property by Nocom, yet, as narrated earlier, respondents assailed in a separate

case the validity of the Irrevocable Power of Attorney allegedly executed by them in favor of Nocom. x xx"

As the Supreme Court found earlier, respondents moved for the dismissal of the case revoking the IPA. The dismissal became final and order. Thus, absent any ruling of the court invalidating the IPA, the latter remains valid and binds the parties thereto. As such, Nocom validly redeemed the subject lots from SMS by consigning the redemption price to the court on August 4, 2005. Corollarily, at the time of the execution of the Kasunduan, there is nothing more to compromise since the subject lots had already been validly redeemed by Nocom.

With the validity of the IPA and the redemption made by Nocom, the compromise agreement executed by SMS with the respondents is null and void.

B. Judicial review

1. Requisites

2. Political question doctrine

3. Moot questions

BARANGAY CHAIRMAN HERBERT O. CHUA, *Petitioner,* -versus- COMMISSION ON ELECTIONS, HON. MARIANITO C. SANTOS, in his capacity as the PRESIDING JUDGE OF METC, BRANCH 57, SAN JUAN CITY, and SOPHIA PATRICIA K. GIL, *Respondent.*

G.R. No. 236573, EN BANC, August 14, 2018, REYES, JR., *J.*

"An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value." There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. Deliberating on the merits of the petition would be an exercise in futility as whatever may be the outcome thereof may no longer be enforced.

The Court also takes judicial notice of the fact that Chua won the 2018 Barangay Elections in Barangay Addition Hills, San Juan City as Punong Barangay, the very same office which was the subject of his election protest albeit in the immediately preceding barangay elections in 2013. Considering that there is no longer any post to vacate or assume, the petition must be dismissed on the ground of mootness.

FACTS:

Chua and Gil were candidates for the position of Punong Barangay of Addition Hills, San Juan City in the October 28, 2013 Barangay Elections. After the canvassing of the votes, Chua was proclaimed the winner after obtaining 465 votes as against Gil's 460 votes.

On May 7, 2013, Gil filed an election protest with the Metropolitan Trial Court (MeTC) of San Juan City, alleging that fraud and illegal acts marred the voting and counting thereof in all the fifteen precincts of Barangay Addition Hills, San Juan City. Specifically, she questioned (1) the presence of

voters who are not residents of the barangay (2) that votes were erroneously counted in favor of Chua by the Chairmen of the Board of Election Tellers (BETs), and; (3) that ballots where the space provided for the Punong Barangay was left blank and her name was mistakenly written on the first line for Kagawad slots were not credited in her favor.

In his Answer, Chua claimed that the Verification and Certification Against Forum Shopping attached to the election protest was defective thereby making the same a mere scrap of paper. He added that Gil's claims were based on mere hearsay and self-serving allegations.

The MeTC dismissed the election protest. Gil filed an appeal of the decision of the MeTC with the Comelec, and the latter reversed MeTC's decision. Dissatisfied, Chua filed a verified motion for reconsideration of the foregoing resolution to the Comelec *En Banc which was, however, denied.*

Chua filed a Manifestation with Clarification and Motion to Stay Execution, praying for the Comelec to hold in abeyance the entry of judgment and/or the issuance of a writ of execution on the ground that Gil has abandoned her election protest when she filed a certificate of candidacy for the position of councilor for the second district of San Juan City on October 18, 2015.

On January 19, 2018, the Comelec *En Banc* issued an Order, denying the Manifestation with Clarification and Motion to Stay Execution filed by Chua. It ruled that the said manifestation is in the nature of a motion for reconsideration of the Comelec *En Banc's* resolution which is among the prohibited pleading enumerated in Section 1(d), Rule 13 of the Comelec Rules of Procedure.

ISSUE:

Whether the case has been rendered moot and academic by the recently-concluded Barangay and SK Elections held on May 14, 2018. (YES)

Ruling:

"An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value." There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. Deliberating on the merits of the petition would be an exercise in futility as whatever may be the outcome thereof may no longer be enforced.

The Court also takes judicial notice of the fact that Chua won the 2018 Barangay Elections in Barangay Addition Hills, San Juan City as Punong Barangay, the very same office which was the subject of his election protest albeit in the immediately preceding barangay elections in 2013. Considering that there is no longer any post to vacate or assume, the petition must be dismissed on the ground of mootness.

4. Operative fact doctrine

C. Safeguards of judicial independence

1. Judicial and Bar Council

a. Composition

b. Powers

2. Fiscal autonomy

D. Qualifications of members of the Judiciary

E. Workings of the Supreme Court

1. En banc and division cases

2. Procedural rule-making

3. Administrative supervision over lower courts

RE: MEMORANDUM DATED JULY 10, 2017 FROM ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO
A.M. No. 17-07-05-SC, EN BANC, July 03, 2018, LEONEN, *J.*
RE: LETTER OF RESIGNATION OF ATTY. BRENDA JAY ANGELES MENDOZA, PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER
A.M. No. 18-02-13-SC, EN BANC, July 03, 2018, LEONEN, *J.*

The Resolution dated September 29, 2005 in A.M. No. 05-9-29-SC was issued after A.M. No. 99-12-08-SC (Revised). However, A.M. No. 05-9-29-SC itself does not state that it modifies, amends, or supplements A.M. No. 99-12-08-SC (Revised). A.M. No. 05-9-29-SC does not contain any express grant to the Chairpersons of the Division the power to appoint all personnel enumerated in it. Moreover, as shown above, ***some positions listed in A.M. No. 05-9-29-SC continue to be appointed by the Court En Banc****. Thus,* ***A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions****.*

Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in ***A.M. No. 99-12-08-SC (Revised)****, while seemingly broad as to encompass all appointments of personnel in the judiciary, is* ***contradicted by this Court's Resolutions and practices****, both prior to and following its adoption. Several third-level positions within the Judiciary, such as the Court Administrator, Deputy Court Administrators, and Assistant Court Administrators, as well as third-level PHILJA officials, continue to be appointed by the Court En Banc, and not by the Chairpersons of the Divisions.*

To ensure consistency in the extent of the delegation of the appointing power, ***all positions with salary grades 29 and higher, and those with judicial rank, in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, PHILJA, and the Judicial and Bar Council, shall be filled only by the Court En Banc****, subject to any other requirement in law or Court Resolution. This shall be without prejudice to any exceptions or qualifications that may hereafter be made by the Court En Bancfor the delegation of its appointing power to the Chairpersons of the Divisions.*

FACTS:

Associate Justice Leonardo-De Castro presented to this Court via a Memorandum that the appointment of the incumbent PHILJA Chief of Office for the Philippine Mediation Center, Atty.

Mendoza, is not in accordance with Administrative Order No. 33-2008, which requires appointment by this Court upon the recommendation of PHILJA.

She pointed out that unlike the previous appointments to the position, Atty. Mendoza was not appointed by the Court *En Banc*, upon the recommendation of the PHILJA Board of Trustees in a board resolution. Instead, Atty. Mendoza was appointed by virtue of Memorandum Order No. 26-2016 dated June 28, 2016, signed only by the Chief Justice and the 2 most senior Associate Justices.

It was the position of Associate Justice Leonardo-De Castro that since **the Constitution vests** in this Court **the power of appointment** of all officials and employees of the judiciary,this power can only be exercised by the **Court *En Banc***, unless duly delegated by a court resolution.

She proposed that the Resolution dated April 22, 2003 in A.M. No. 99-12-08-SC (Revised), which was cited as the basis for Memorandum Order No. 26-2016, should be clarified as to the scope of the authority to appoint that is delegated to the Chief Justice and the Chairpersons of the Divisions.

A.M. No. 99-12-08-SC (Revised) states, among others, that the "[a]ppointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court"shall be referred to the Chairpersons of the Divisions.

Associate Justice Leonardo-De Castro was of the view that the "personnel" referred to in A.M. No. 99-12-08-SC (Revised) should exclude high-ranking officials of the highly technical and/or policy-determining third-level positions below the Chief Justice and Associate Justices. She pointed to A.M. No. 05-9-29-SC, which enumerates the third-level positions as those with salary grades 26 and higher, as a guide for which positions should continue to be appointed by the Court *En Banc*.

This matter invokes the administrative powers of the Supreme Court *En Banc*. It does not call for the exercise of this Court's adjudicative powers. Thus, the purpose of this Resolution is to resolve pending questions as to the interpretation of this Court's power as contained in the Constitution, relevant laws, and this Court's administrative orders.

ISSUE:

Whether or not third-level positions should be appointed by the Court *En Banc*. (YES)

RULING:

The 1987 Constitution vests the power of appointment within the judiciary in the Supreme Court. The "Supreme Court" in which this **appointing power is conferred** is the **Court *En Banc***:

> The power to appoint conferred directly by the Constitution on the Supreme Court *en banc*and on the Constitutional Commissions is also self-executing and not subject to legislative limitations or conditions.
>
> Also, the 1987 Constitution speaks of vesting the power to appoint "**in the courts**, or in the heads of departments, agencies, commissions, or boards." This is consistent with **Section 5(6), Article VIII** of the 1987 Constitution which states that the "Supreme Court shall . . .

> [a]ppoint all officials and employees of the Judiciary in accordance with the Civil Service Law," making the Supreme Court *En Banc* the appointing power.

This Court's nature as a collegial body requires that the appointing power be exercised by the Court *En Banc*, consistent with Article VIII, Section 1 of the Constitution:

> Section 1. The judicial power shall be vested in *one Supreme Court* and in such lower courts as may be established by law. . . .

A collegial body or court is one in which each member has approximately equal power and authority. Moreover, its members act on the basis of consensus or majority rule. Since this Court is a collegial court, each Justice has equal power and authority, and all Justices must act on the basis of consensus or majority rule. The only exception is when the Court *En Banc*itself delegates the exercise of some of its powers.

"The three powers of government-executive, legislative, and judicial-have been generally viewed as non-delegable." Nonetheless, the delegation of these powers has been found necessary owing to the complexity of modem governments.This Court, which is conferred with not only the power of judicial review, but also the role of administrator over all courts and their personnel,has found it necessary to delegate some matters to dispense justice effectively and efficiently. This Court has resolved to delegate the disposition of certain matters to its 3 divisions, to their chairpersons, or to the Chief Justice alone.

This Court issued its Resolution in A.M. No. 99-12-08-SC, titled "Referral of Administrative Matters and Cases to the Divisions of the Court, The Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution" Among the matters which were referred to the Chairpersons of the Divisions for their action or resolution is the appointment power of this Court.

Adopted in 2012, the Supreme Court Human Resource Manualstates the procedure of appointment of positions within this Court.The selection of appointees in career service differs according to the level of the position.Under **A.M. No. 05-9-29-SC**,third-level positions in this Court with salary grade 26 and above, excluding the Chief Justice, the Associate Justices, and the Regular Members of the Judicial and Bar Council are classified as "highly technical or policy-determining." These positions range from the PHILJA Chancellor and Court Administrator, both with salary grade 31, to Court Attorney V and PHILJA Attorney V, both with salary grade 26. **Third-level positions with salary grade 26or higher** created after A.M. No. 05-9-29-SC shall likewise **be deemed highly technical or policy-determining positions**.Under the Supreme Court Human Resource Manual, these positions are filled in by the Chief Justice, with the concurrence of the Chairpersons of the Divisions.

Despite the procedure in the Supreme Court Human Resource Manual, **there are third-level positions**, classified as highly technical or policy-determining pursuant to A.M. No. 05-9-29-SC, **which have been and continue to be appointed by the Court *En Banc*.**

The Resolution dated September 29, 2005 in A.M. No. 05-9-29-SC was issued after A.M. No. 99-12-08-SC (Revised). However, A.M. No. 05-9-29-SC itself does not state that it modifies, amends, or supplements A.M. No. 99-12-08-SC (Revised). A.M. No. 05-9-29-SC does not contain any express grant to the Chairpersons of the Division the power to appoint all personnel enumerated in it. Moreover, as shown above, **some positions listed in A.M. No. 05-9-29-SC continue to be appointed by the**

Court *En Banc*. Thus, **A.M. No. 05-9-29-SC cannot serve as a clear and unequivocal source of the delegated power of appointment of all third-level personnel to the Chairpersons of the Divisions**.

Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. Here, the delegation of the power of appointment by this Court to the Chairpersons of the Divisions in **A.M. No. 99-12-08-SC (Revised)**, while seemingly broad as to encompass all appointments of personnel in the judiciary, is **contradicted by this Court's Resolutions and practices**, both prior to and following its adoption. Several third-level positions within the Judiciary, such as the **Court Administrator, Deputy Court Administrators, and Assistant Court Administrators**, as well as **third-level PHILJA officials**, continue to be **appointed by the Court *En Banc***, and not by the Chairpersons of the Divisions.

To ensure consistency in the extent of the delegation of the appointing power, **all positions with salary grades 29 and higher, and those with judicial rank, in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, PHILJA, and the Judicial and Bar Council, shall be filled only by the Court *En Banc***, subject to any other requirement in law or Court Resolution. This shall be without prejudice to any exceptions or qualifications that may hereafter be made by the Court *En Banc*for the delegation of its appointing power to the Chairpersons of the Divisions.

4. Original and appellate jurisdiction

V. CONSTITUTIONAL COMMISSIONS

A. Common provisions

B. Powers and functions of the CSC, COMELEC, and COA

PHILIPPINE HEALTH INSURANCE CORPORATION REGIONAL OFFICE- CARAGA, *Petitioners,* – versus- COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, MA. GRACIA PULIDO-TAN, HEIDI L. MENDOZA, JOSE F. FABIA, *Respondents*.
G.R. No. 230218, EN BANC, August 14, 2018, TIJAM, *J.*

The extent of the power of Government-Owned and Controlled Corporations (GOCC), like Philhealth, to fix compensation and the grant of allowances to its officers and employees had already been conclusively laid down in Philippine Health Insurance Corporation v. Commission On Audit, to wit:

> ***Notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.***

Thus, in this case, Philhealth CARAGA's power to fix the compensation of its personnel as granted by its charter, does not necessarily mean that it has unbridled discretion to issue any and all kinds of allowances and other forms of benefits or compensation package, limited only by the provisions of its charter. The power of GOCCs or its board to fix the salaries, allowances and bonuses must still conform to compensation and position classification standards laid down by applicable laws, as discussed above. To sustain Philhealth CARAGA's claim that it has unbridled authority to unilaterally fix its compensation package will result in an invalid delegation of legislative power. Further, Philhealth CARAGA's fiscal autonomy does not automatically preclude the COA's power to disallow the grant of allowances in cases of irregular, excessive, unnecessary, or unconscionable expenditures of government funds.

However, Philhealth CARAGA acted in good faith in releasing contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts to its officers, employees and contractors and need not refund the said amount.

FACTS:

On 2008, Philhealth CARAGA granted its officers, employees and contractors various benefits, among others are: contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts, amounting to P49,874,228.02.

On 2009, the Audit Team Leader (ATL) of Philhealth CARAGA issued Notice of Disallowance (ND) Nos. 09-005-501-(09) to 09-019-501-(09) on the payment of benefits to officers, employees and contractors of Philhealth CARAGA in the calendar year of 2009 in the total amount of P49,874,228.02.

The reason for the disallowance was the lack of approval from the Office of the President (OP) through the Department of Budget and Management (DBM) as required under the laws.

The Audit Team Leader (ATL) ruled that although Philhealth CARAGA was exempted from the coverage of Republic Act (R.A.) No. 6758, also known as the Compensation and Position Classification Act of 1989, and that the Philhealth CARAGA Board of Directors members acted within their powers to fix the compensation of its personnel, the additional compensation package should have been reviewed and approved by the OP through the DBM before it was implemented. Thus, the grants were considered irregular and illegal.

Philhealth CARAGA challenged the constitutionality and applicability of the above-mentioned laws. Philhealth CARAGA also averred that the laws cited by the ATL divested the Philhealth CARAGA Board of Directors of its prerogative to fix compensation as granted by its charters. Philhealth CARAGA further averred that the benefits were received by its officers, employees and contractors in good faith and equity dictates that it may not be refunded.

The COA Regional Director of R.O. No. XIII, rendered its Decision and affirmed the notices of disallowance with modifications.

On automatic review, the COA Commission Proper in a Decisionupheld the Decision of the COA Regional Director R.O. No. XIII. It also ordered the recomputation of the amount of the disallowance to reflect the actual amount paid to its recipients net of tax.

ISSUE:

Whether the disallowance of the COA should be uphold. (YES)

RULING:

The COA as constitutional office and guardian of public funds is endowed with the exclusive authority to determine and account government revenue and expenditures, and disallow irregular, unnecessary excessive used of government funds.

In support of its grant of the subject allowances and benefits, Philhealth CARAGA persistently invokes its fiscal autonomy enunciated under Article IV, Section 16(n) of R.A. No. 7875, *viz*: to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation.

Even if Philhealth CARAGA is exempted from Office of Compensation and Position Classification under Section 16 of R.A. No. 6758, and enjoys fiscal autonomy as enunciated under Section 16(n) of R.A. No. 7875, it does not necessarily connotes that Philhealth CARAGA's discretion on the matter of fixing compensation and benefits are absolute. It must still conform to the standards laid down by the rules as covered by Section 6 of P.D. No. 1597.

The extent of the power of Government-Owned and Controlled Corporations (GOCC), like Philhealth, to fix compensation and the grant of allowances to its officers and employees had already been conclusively laid down in *Philippine Health Insurance Corporation v. Commission On Audit*, to wit:

> **The PCSO charter evidently does not grant its Board the unbridled authority to set salaries and allowances of officials and employees. On the contrary, as a government owned and/or -controlled corporation (GOCC), it was expressly covered by P.D. No. 985 or "The Budgetary Reform Decree on Compensation and Position Classification of 1976," and its 1978 amendment, P.D. No. 1597 (Further Rationalizing the System of Compensation and Position Classification in the National Government), and mandated to comply with the rules of then Office of Compensation and Position Classification (OCPC) under the DBM.**
>
> **Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*, the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, *i.e.*, its compensation system, including the allowances granted by the Board, must strictly conform with that provided for other government agencies under R.A. No. 6758 in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597.**
>
> The Court, in the same case, further elaborated on the rule that notwithstanding any exemption granted under their charters, the power of GOCCs to fix salaries and allowances

> must still conform to compensation and position classification standards laid down by applicable law. Citing *Philippine Retirement Authority (PRA) v. Buñag*, We said:
>
> In accordance with the ruling of this Court in *Intia*, we agree with petitioner PRA that these provisions should be read together with P.D. No. 985 and P.D. No. 1597, particularly Section 6 of P.D. No. 1597; **Thus, notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other *honoraria*, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.**

Thus, Philhealth CARAGA's power to fix the compensation of its personnel as granted by its charter, does not necessarily mean that it has unbridled discretion to issue any and all kinds of allowances and other forms of benefits or compensation package, limited only by the provisions of its charter. The power of GOCCs or its board to fix the salaries, allowances and bonuses must still conform to compensation and position classification standards laid down by applicable laws, as discussed above. To sustain Philhealth CARAGA's claim that it has unbridled authority to unilaterally fix its compensation package will result in an invalid delegation of legislative power. Further, Philhealth CARAGA's fiscal autonomy does not automatically preclude the COA's power to disallow the grant of allowances in cases of irregular, excessive, unnecessary, or unconscionable expenditures of government funds.
As discussed and quoted above, Philhealth CARAGA's compensation standardization scheme notwithstanding its exemption from the coverage of the Office of Compensation and Position Classification requires it to observe the guidelines issued by the President and to submit a report to DBM. The rationale for the review of the DBM is to provide for the standardized compensation of all government employees and officials, including those in GOCCs under Salary Standardization Laws, which are P.D. No. 985, its amendment, P.D. No. 1597, R.A. No. 6758 and R.A. No. 10149, based on government's national policy of equal pay for work of equal value and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions.

Furthermore, the subject disallowance of Philhealth CARAGA pertain to additional benefits such as contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts, which are considered additional benefits and incentives that require the recommendation of DBM and approval of the President.

Thus, COA's disallowance of the various benefits granted to Philhealth CARAGA officers, employees and contractors in the total amount of P49,874,228.02 is in order.

However, Philhealth CARAGA acted in good faith in releasing contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts to its officers, employees and contractors and need not refund the said amount.

The case of *Maritime*ruled that benefits and other allowances received by payees or recipients in good faith need not refund the disallowed amount, we quote the pertinent discussion on this matter for reference:

With regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing jurisprudence provides that recipients or payees need not refund these disallowed amounts when they received these in good faith. Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith. "On the other hand, officers who participated in the approval of the disallowed allowances or benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith."

BINGA HYDROELECTRIC PLANT, INC., HEREIN REPRESENTED BY ITS EXECUTIVE VICE-PRESIDENT, ERWIN T. TAN, *PETITIONER*, -versus- COMMISSION ON AUDIT AND NATIONAL POWER CORPORATION, *RESPONDENTS.*

G.R. No. 218721,EN BANC, July 10, 2018, JARDELEZA, J.

The authority to compromise a settled claim or liability exceeding P100,000.00 involving a government agency is vested, not in the COA, but exclusively in Congress. An agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.[31] Thus, the provision applies to all GOCCs, with or without original charters. A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision.

In this case, the liabilities of the NPC in the amounts of $5,000,000.00 and P40,118,442.79 far exceed P100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not. In its Resolution denying the motion for reconsideration of BHEPI, the COA did make a recommendation to Congress, which unfortunately for BHEPI, was for the denial of the claim embodied in the Compromise Agreement. Thus, the COA did not gravely abuse its discretion in making such recommendation, even if it went against a final and executory judgment of an appellate court.

FACTS:

In March 2003, the Binga Hydroelectric Plant, Inc. (BHEPI)[4] and the National Power Corporation (NPC),[5] together with the Power Sector Assets and Liabilities Management Corporation (PSALM),[6] entered into a Settlement Framework Agreement (SFA)[7] for the complete resolution and settlement of all claims and disputes between BHEPI and NPC in connection with the Rehabilitate-Operate-Leaseback (ROL) Contract of the Binga Hydroelectric Power Plant located at Tinongdan, Itogon, Benguet. The SFA pertinently provided that NPC shall pay BHEPI an amount equivalent to $5,000,000.00. It was preconditioned on the complete settlement of the unpaid claims of the subcontractors and employees of BHEPI in the amount of $6,812,552.55 and upon their execution of absolute quitclaims and waivers of rights and claims against the NPC.[8]

BHEPI and NPC also agreed that BHEPI would exert its best efforts to negotiate with its subcontractors and employees to further reduce their claims on record. Any savings to be generated from this reduction shall be equally shared between the NPC and BHEPI.[9]

The SFA was endorsed by the Department of Justice (DOJ) and approved by the Secretary of the Department of Energy (DOE). It was adopted *in toto* by the Boards of the NPC and PSALM in their resolutions.[10]

In May 2005, due to the alleged failure of the NPC to comply with the conditions of the SFA, BHEPI filed a case for specific performance with damages before the Regional Trial Court (RTC) of Baguio City. BHEPJ demanded for the payment of $5,000,000.00, plus $1,700,000.00 representing 50% of generated savings realized from the reduction of the claims of its subcontractors and employees.[11] The RTC dismissed the case, prompting BHEPI to appeal before the Court of Appeals (CA). During the pendency of the appeal, BHEPI and NPC filed a joint motion to approve compromise agreement.[12] Assisted by the Office of the Solicitor General (OSG), the NPC agreed to pay BHEPI $5,000,000.00, representing complete settlement of the unpaid claims of subcontractors/employees, and P40,118,442.79 as savings realized from the reduction of the claims of subcontractors and employees, subject to certain conditions.[13] The CA approved the Compromise Agreement[14] and, accordingly, dismissed the appeal. An Entry of Judgment was subsequently issued.[15]

BHEPI moved for the execution of the judgment of the CA before the RTC, but the trial court noted that execution of money claims against the government including government-owned and controlled corporations (GOCCs) should be lodged before the COA.[16] Thus, BHEPI filed its petition[17] for money claim before the COA, praying that the COA take cognizance of the CA's judgment award on the Compromise Agreement.

In the assailed Decision, the COA denied BHEPI's money claim. The COA ruled that the power to compromise claims is vested exclusively in the Commission or Congress, pursuant to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of Executive Order (EO) No. 292, also known as the Administrative Code of 1987. Thus, the Compromise Agreement not having been submitted to the COA for approval, as required by law, is null and void.

ISSUE:
Whether the COA committed grave abuse of discretion in denying the money claim.

RULING:

The Court have ruled in *Strategic Alliance Development Corporation v. Radstock Securities Limited*,[30] that Section 36 of PD No. 1445, enacted on June 11, 1978, has been superseded by a later law - Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, which provides:

> Sec. 20. *Power to Compromise Claims*. - (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress** x xx.

Under this provision, the authority to compromise a settled claim or liability exceeding P100,000.00 involving a government agency is vested, not in the COA, but exclusively in Congress. An agency of

the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.[31] Thus, the provision applies to all GOCCs, with or without original charters. A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision.

In this case, the liabilities of the NPC in the amounts of $5,000,000.00 and P40,118,442.79 far exceed P100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not. In its Resolution denying the motion for reconsideration of BHEPI, the COA did make a recommendation to Congress, which unfortunately for BHEPI, was for the denial of the claim embodied in the Compromise Agreement. Thus, the COA did not gravely abuse its discretion in making such recommendation, even if it went against a final and executory judgment of an appellate court.

Contrary to the arguments of BHEPI and the NPC, the finality of the CA's judgment does not preclude the COA from ruling on the validity and veracity of the claims. As already discussed, EO No. 292 and PD No. 1445 give the COA the authority to do so, prescinding from its role to recommend the compromise of claims before Congress. This is consistent with the general jurisdiction of the COA to examine, audit, and settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.

C. Composition and qualifications of members

D. Prohibited offices and interests

E. Review of final orders, resolutions, and decisions

VI. BILL OF RIGHTS

A. Fundamental powers of the State

1. Police power

2. Eminent domain

NATIONAL TRANSMISSION CORPORATION, ***Petitioner***, *v.* **MA. MAGDALENA LOURDES LACSON-DE LEON, MA. ELIZABETH JOSEPHINE L. DE LEON, RAMON LUIS EUGENIO L. DE LEON, MA. TERESA CECILIA L. DE LEON, MA. BARBARA KATHLEEN L. DE LEON, MARY GRACE HELENE L. DE LEON, JOSE MARIA LEANDRO L. DE LEON, MA. MARGARETHE ROSE OLSON, AND HILDEGARDE MARIE OLSON**, ***Respondents***.
G.R. No. 221624, SECOND DIVISION, July 04, 2018, CARPIO, *J.*

Just compensation must be based on theselling price of similar lands in thevicinity at the time of taking. Considering that the land classification of the property to be expropriated is residential, then its fair

market value must be pegged at the raw land value of the adjacent property of the same character. Hence, the Court fixes just compensation for the property at PhP600.00 per square meter, being the raw land value of Montinola Subdivision.

FACTS

NAPOCOR filed with the trial court a complaint against Maria Teresa Lacson De Leon for the expropriation of a parcel of land measuring 39,347 square meters located in Barangay Vista Alegre, Bacolod City. The trial court, upon motion by NAPOCOR, issued an Order directing the issuance of a Writ of Possession in favor of NAPOCOR upon proof that an amount equivalent to 100% of the value of the property based on the current zonal valuation by the Bureau of Internal Revenue (BIR) was deposited with the Land Bank of the Philippines in the name of respondents. On 2 February 2004, the delivery of possession of the property was made by the trial court sheriff. Adopting the findings of the board of commissioners, the trial court ordered NAPOCOR to pay respondents just compensation, consequential damages and attorney's fees. The Court of Appeals affirmed with modification the Decision dated 15 October 2007 of the trial court by deleting the award of attorney's fees and imposing an interest at the rate of 12% per annum on the award of just compensation from 2 February 2004 until full payment.

ISSUE

Whether the determination of just compensation has factual basis (NO)

RULING

While the use of the current selling price of **similar** lands in the vicinity finds basis in Section 5(d) of RA 8974, the commissioners erred when they computed for the average of three nearby subdivisions to determine just compensation. Based on the Narrative Report, the highest and best use of the Montinola Subdivision is residential, while that of Victorina Heights Subdivision and Green Acres Subdivision is residential and commercial. In other words, the three subdivisions are **not** similar lands in the vicinity of the property to be expropriated. Getting the average of their current selling prices to arrive at the just compensation for a purely residential property is bereft of basis. Considering that the land classification of the property to be expropriated is residential, then its fair market value must be pegged at the raw land value of the adjacent property of the same character. Hence, the Court fixes just compensation for the property at PhP600.00 per square meter, being the raw land value of Montinola Subdivision.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE TOLL REGULATORY BOARD, *Petitioner*, -versus - SPOUSES TOMAS C. LEGASPI AND RUPERTA V. ESQUITO, PABLO VILLA, TEODORA VILLA, FLORENCIO VILLA, AND RURAL BANK OF CALAMBA (LAGUNA), INC., *Respondents*.

G.R. No. 221995, SECOND DIVISION, October 03, 2018, CARPIO, J.

The purpose of just compensation is to compensate the owner of the property taken by the State. Just compensation is the fair and full equivalent of the property at the time of the taking. Under Section 5 of RA 8974, the standards for the determination of just compensation are:

> *Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:*
>
> *(a) The classification and use for which the property is suited;*
> *(b) The developmental costs for improving the land;*
> *(c) The value declared by the owners;*
> *(d) The current selling price of similar lands in the vicinity;*
> *(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;*
> *(f) The size, shape or location, tax declaration and zonal valuation of the land;*
> *(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and*
> *(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.*

The Court of Appeals, in affirming the trial court's valuation of P3,500 per square meter as just compensation, considered several factors including the standards enumerated under Section 5 of RA 8974.

FACTS:

On 21 June 2005, the Republic of the Philippines (petitioner) filed a complaint for expropriation before the Regional Trial Court of Calamba City (trial court) against respondents Spouses Tomas C. Legaspi and Ruperta V. Esquito, Pablo Villa, Teodora Villa, and Florencio Villa, who were the registered owners of the lots located in Barangay Saimsim, Calamba City, Laguna, portions of which were sought to be expropriated. Respondent Rural Bank of Calamba (Laguna), Inc. (bank) was impleaded because the lot of Spouses Tomas C. Legaspi and Ruperta V. Esquito was mortgaged to the bank. The affected subject lots, with a total area of 13,002 square meters, were expropriated for the construction and implementation of the South Luzon Tollway Extension Project.

In its Order dated 30 November 2006, the trial court ordered the parties to nominate their representatives to the Board of Commissioners, which is tasked to assist the trial court in determining just compensation.

On 7 November 2007, the trial court issued an order constituting the Board of Commissioners based on the nominees submitted by the parties. On 20 November 2009, the Board of Commissioners submitted the Commissioners' Report, with the following recommended amounts as just compensation for the subject lots: (1) Chairman of the Board of Commissioners, Atty. Allan Hilbero - P3,000 per square meter; (2) Commissioner Antonio Amata (petitioner's nominee) - P2,500 per square meter; and (3) Commissioner Cecilia Panganiban (respondents' nominee) - P4,500 per square meter.

On 16 December 2009, the trial court rendered a Decision fixing the amount of Three Thousand Five Hundred (Php3,500.00) Pesos per square meter as the just compensation for the properties of defendants herein.

Petitioner appealed the 16 December 2009 Decision and the 14 March 2014 Order of the trial court.

The Court of Appeals denied petitioner's appeal, and affirmed the 16 December 2009 Decision and the 14 March 2014 Order of the trial court.

ISSUE:

Whether the Court of Appeals erred in upholding the trial court's decision and order, fixing just compensation for the subject lots at P3,500 per square meter. (NO)

RULING:

We find the petition without merit.

Petitioner argues that the amount of P3,500 per square meter is excessive and not supported by evidence. Petitioner maintains that just compensation for the subject lots should only be P240 per square meter based on the 2004 BIR zonal value, which is competent proof of the fair market value of the subject lots.

This Court has defined just compensation in expropriation cases as:

> Notably, just compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample."

The purpose of just compensation is to compensate the owner of the property taken by the State. Just compensation is the fair and full equivalent of the property at the time of the taking. Under Section 5 of RA 8974, the standards for the determination of just compensation are:

> Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

> (a) The classification and use for which the property is suited;
> (b) The developmental costs for improving the land;
> (c) The value declared by the owners;
> (d) The current selling price of similar lands in the vicinity;
> (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
> (f) The size, shape or location, tax declaration and zonal valuation of the land;
> (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
> (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The Court of Appeals, in affirming the trial court's valuation of P3,500 per square meter as just compensation, considered several factors including the standards enumerated under Section 5 of RA 8974. In affirming the valuation of P3,500 per square meter as just compensation for the subject lots, the Court of Appeals explained:

> All told, from a consideration of the above-stated figures, namely: (1) Php 3,000.00 per square meter proposed by the Chairman of the Board of Commissioners; (2) Php 2,500.00 per square meter proposed by plaintiff-appellant Republic's nominee; (3) Php 4,500.00 per square meter proposed by defendants-appellees' nominee; (4) Php 5,000.00 per square meter valuation as certified by the Office of the City Mayor; (5) Php 9,000.00 per square meter selling price of Ayala Land; (6) Php 2,500.00 per square meter zonal value five (5) years prior to the filing of the complaint; (7) Php 3,400 per square meter revised zonal value in 2010; and [8] Php 2,250.00 per square meter paid by plaintiff-appellant Republic to other affected landowners, it can be easily gleaned that plaintiff-appellant Republic's insistence on the price of Php 240.00 per square meter, which is about ten (10) times less than the lowest rate of Php 2,250.00 per square meter, is outrageous and unjustified.
>
> It should be borne in mind that the word "just" is used to modify the meaning of the word "compensation", to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. The owner's loss is not only his property but also its income-generating potential. Prescinding from all the foregoing, this Court finds that the lower court's valuation of Php 3,500.00 per square meter is fair and sensible under the circumstances. The lower court exercised reasonable judgment in arriving at a compromise between the proposals of the parties' nominees, and this Court finds no cogent reason to disturb the same.

Clearly, the ruling of both the trial court and the Court of Appeals, fixing just compensation at P3,500 per square meter for the subject lots, is supported by evidence. Furthermore, petitioner's insistence that just compensation should be pegged at the zonal value of P240 per square meter is erroneous. This Court has ruled in several expropriation cases that the zonal valuation, which is merely one of the indices of the fair market value of real estate, cannot be the sole basis for the determination of just compensation of properties under expropriation. Indeed, under Section 5 of RA 8974, the zonal valuation of the land is only one of the standards to be considered in determining the valuation of the land subject of expropriation.

3. Taxation

B. Private acts and the Bill of Rights

C. Rights to life, liberty, and property

1. Procedural and substantive due process

DEPARTMENT OF TRANSPORTATION (DOTR), MARITIME INDUSTRY AUTHORITY (MARINA), and PHILIPPINE COAST GUARD (PCG), *Petitioners*, -versus- PHILIPPINE PETROLEUM SEA TRANSPORT ASSOCIATION, HERMA SHIPPING & TRANSPORT CORPORATION, ISLAS TANKERS SEATRANSPORT CORPORATION, MIS MARITIME CORPORATION, PETROLIFT, INC., GOLDEN ALBATROSS SHIPPING CORPORATION, VIA MARINE CORPORATION, and CARGOMARINE CORPORATION, *Respondents.*
G.R. No. 230107, EN BANC, July 24, 2018, VELASCO, JR., *J.*

The equal protection guaranty under the Constitution does not preclude classification as long as the classification is reasonable and not arbitrary.Here, the purpose of the subject legislation is the implementation of the 1992 Civil Liability Convention and the 1992 Fund Convention, both of which only expressly cover sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo. Additionally, it is internationally well-recognized that oil tankers pose a greater risk to the environment and to people. Hence, the classification in Section 22 of RA 9483 and its IRR does not violate the equal protection clause.

Where the due process and equal protection clauses are invoked,there is a need for proof of such persuasive character as would lead to such a conclusion. Here,respondents themselves state that they have the option of passing the expense to the consumers. Thus, they have sufficient leeway in the conduct of their business that would allow them to realize profits notwithstanding the enforcement of Section 22.In any case, the determination of whether a measure or charge is confiscatory or notwill not solely depend on the amount that will be accumulated therefrom. Other factors must likewise be considered such as the purposes for which the fund will be used.Viewed from the context of oil spills, any amount, even millions or billions, cannot be said to be actually exorbitant or excessive. Hence, the imposition of the 10-centavo impost does not violate the due process clause.

FACTS:

In light of repeated oilspills that have threatenedthe Philippines's marine biosphere, Congress was prompted to pass a law implementing the InternationalConvention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention).Both Conventions only expressly cover sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo.On June 2, 2007, Republic Act (RA) No. 9483, or the "Oil Pollution Compensation Act of 2007" was signed into law. The provisions relevant to this case are Section 22 (a) of Republic Act No. (RA) 9483 and Section 1, Rule X of its Implementing Rules and Regulations (IRR), by imposing "ten centavos (10c) per liter for every delivery or transshipment of oil made by tanker barges and tanker haulers."

ISSUE:

Whether Section 22 (a) of RA 9483 and Section 1, Rule X of its IRR are unconstitutional. (NO)

RULING:

The classification in Section 22 of RA 9483 and its IRR does not violate the equal protection clause.

The equal protection guaranty under the Constitution means that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances. However, this clause does not preclude classification as long as the classification is reasonable and not arbitrary.

Here, separating "tankers and barges hauling oil and for petroleum products in Philippine waterways and coast wise shipping routes" from other sea-borne vesselsdoes not violate the equal protection clause. The purpose of the subject legislation is the implementation of the 1992 Civil Liability Convention and the 1992 Fund Convention. Both Conventions only expressly cover sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo.

Aside from the difference in the purposes behind their existence and navigation, it is internationally well-recognized that oil tankers pose a greater risk to the environment and to people. As a matter of fact, these types of vessels have long been considered as a separate class and are being given a different treatment by various organizations.

The imposition of the 10-centavo impost does not violate the due process clause.

Where the due process and equal protection clauses are invoked, considering that they are not fixed rules but rather broad standards, there is a need for proof of such persuasive character as would lead to such a conclusion. Absent such a showing, the presumption of validity must prevail.

Here, the hypothetical computations provided by the respondents do not equate to a material and actual impact that the questioned impost will have on their businesses. As a matter of fact, respondents themselves state that they have the option of passing the expense to the consumers. Thus, they have sufficient leeway in the conduct of their business that would allow them to realize profits notwithstanding the enforcement of Section 22.

Additionally, the error in the computations lies in the fact that it failed to consider the operation of Section 22 which dictates that the impost shall be 10 centavos per litre only on the first year. This allows for a retention, increase, or reduction in the succeeding years, whichever is determined to be necessary. This scenario was not taken into account when respondents made the computations.

In any case, the determination of whether a measure or charge is confiscatory or not, within the purview of the due process clause, will not solely depend on the amount that will be accumulated therefrom. Other factors must likewise be considered such as the purposes for which the fund will be used and the costs which said purposes entail, among others. Viewed from the context of oil spills and the current incapacity of our enforcement agencies to timely and adequately respond to oil spill

incidents, plus the aforementioned characteristics of our natural resources and the environment, any amount, even millions or billions, cannot be said to be actually exorbitant or excessive in the furtherance of RA 9483's objectives.

2. Void-for-vagueness doctrine

3. Hierarchy of rights

D. Equal protection

1. Requisites for valid classification

REGINA ONGSIAKO REYES, *Petitioner, - versus* - HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, *Respondent.*

G.R. No. 221103, EN BANC, October 16, 2018, CARPIO, *J.*

Rule 6 of the 2015 HRET Rules does not grant additional powers to the Justices but rather maintains the balance of power between the members from the Judicial and Legislative departments as envisioned by the framers of the 1935 and 1987 Constitutions. The presence of the three Justices is meant to tone down the political nature of the cases involved and do away with the impression that party interests play a part in the decision-making process. It was held that said rule does not violate the equal protection clause because there is a substantial distinction between the Justices of the Supreme Court and the members of the House of Representatives. There are only three Justice-members while there are six Legislator-members of the HRET.

FACTS:

Petitioner alleges that she has two pending quo warranto cases before the HRET. On 1 November 2015, the HRET published the 2015 Revised Rules of the House of Representatives Electoral Tribunal (2015 HRET Rules). Petitioner alleges that Rule 6 of the 2015 HRET Rules is unconstitutional as it gives the Justices denial or veto powers over the proceedings by simply absenting themselves from any hearing. In addition, petitioner alleges the following:

1. That the 2015 HRET Rules grant more powers to the Justices, individually, than the legislators by requiring the presence of at least one Justice in order to constitute a quorum. That even when all six legislators are present, they cannot constitute themselves as a body and cannot act as an Executive Committee without the presence of any of the Justices.
2. That the rule violates the equal protection clause of the Constitution by conferring the privilege of being indispensable members upon the Justices.
3. That the quorum requirement under the 2015 HRET Rules is ambiguous because it requires only the presence of at least one Justice and four Members of the Tribunal. According to petitioner, the four Members are not limited to legislators and may include the other two Justices.

4. That Rule 15, in relation to Rules 17 and 18, of the 2015 HRET Rules unconstitutionally expanded the jurisdiction of the COMELEC. That under Section 17, Article VI of the 1987 Constitution as well as the 2011 Rules of the HRET, a petition may be filed within 15 days from the date of the proclamation of the winner, making such proclamation the operative fact for the HRET to acquire jurisdiction. However, Rule 15 of the 2015 HRET Rules requires that to be considered a Member of the House of Representatives, there should be (1) a valid proclamation; (2) a proper oath; and (3) assumption of office.

Petitioner alleges that the application of the 2015 HRET Rules to all pending cases could prejudice her cases before the HRET.

ISSUE:

The issue before this Court is the constitutionality of the following provisions of the 2015 HRET Rules:

(1) Rule 6(a) requiring the presence of at least one Justice in order to constitute a quorum
(2) ;(2) Rule 15, paragraph 2, in relation to Rule 17; and
(3) (3) Rule 6, in relation to Rule 69.

RULING:

The petition has no merit.

Petitioner alleges that the requirement under Rule 6 of the 2015HRET Rules that at least one Justice should be present to constitute a quorum violates the equal protection clause of the 1987 Constitution and gives undue power to the Justices over the legislators.

The argument has no merit. The main objective of the framers of our Constitution in providing for the establishment, first, of an Electoral Commission, and then of one Electoral Tribunal for each House of Congress, was to insure the exercise of judicial impartiality in the disposition of election contests affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely: (a) the party having the largest number of votes, and the party having the second largest number of votes, in the National Assembly or in each House of Congress, were given the same number of representatives in the Electoral Commission or Tribunal, so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (b) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal with judicial temper.

Rule 6 of the 2015 HRET Rules does not grant additional powers to the Justices but rather **maintains the balance of power between the members from the Judicial and Legislative departments as envisioned by the framers of the 1935 and 1987 Constitutions**. The presence of the three Justices is meant to tone down the political nature of the cases involved and do away with the impression that party interests play a part in the decision-making process.

Rule 6(a) of the 2015 HRET Rules requires the presence of at least one Justice and four members of the Tribunal to constitute a quorum. This means that even when all the Justices are present, at least two members of the House of Representatives need to be present to constitute a quorum**. Without this rule, it would be possible for five members of the House of Representatives to convene and have a quorum even when no Justice is present. This would render ineffective the rationale contemplated by the framers of the 1935 and 1987 Constitutions for placing the Justices as members of the HRET.** Indeed, petitioner is nitpicking in claiming that Rule 6(a) unduly favors the Justices because under the same rule, it is possible for four members of the House of Representatives and only one Justice to constitute a quorum. Rule 6(a) of the 2015 HRET Rules does not make the Justices indispensable members to constitute a quorum but ensures that representatives from both the Judicial and Legislative departments are present to constitute a quorum.

Contrary to petitioner's allegation, Rule 6(a) of the 2015 HRET Rules does not violate the equal protection clause of the Constitution. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.

In the case of the HRET**, there is a substantial distinction between the Justices of the Supreme Court and the members of the House of Representatives.** There are only three Justice-members while there are six Legislator-members of the HRET. Hence, there is a valid classification. The classification is justified because it was placed to ensure the presence of members from both the Judicial and Legislative branches of the government to constitute a quorum. There is no violation of the equal protection clause of the Constitution.

Petitioner likewise questions Rule 6 in relation to Rule 69 of the 2015 HRET Rules for being ambiguous, questionable, and undemocratic.

The ambiguity referred to by petitioner is absurd and stems from an erroneous understanding of the Rules. As pointed out by the HRET, a member of the Tribunal who inhibits or is disqualified from participating in the deliberations cannot be considered present for the purpose of having a quorum. In addition, Rule 69 clearly shows that the Supreme Court and the House of Representatives have the authority to designate a Special Member or Members who could act as temporary replacement or replacements in cases where one or some of the Members of the Tribunal inhibit from a case or are disqualified from participating in the deliberations of a particular election contest when the required quorum cannot be met. There is no basis to petitioner's claim that a member who inhibits or otherwise disqualified can sit in the deliberations to achieve the required quorum.

The Rules clearly state that any action or resolution of the Executive Committee "shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation." Hence, even if only three members of the HRET acted as an Executive Committee, and even if all these three members are Justices of the Supreme Court, their actions are subject to the confirmation by the entire Tribunal or at least five of its members who constitute a quorum.

Petitioner alleges that the HRET unduly expanded the jurisdiction of the COMELEC.

Petitioner alleges that these Rules will allow the COMELEC to assume jurisdiction between the time of the election and within 15 days from June 30 of the election year or the date of actual assumption of office, whichever is later. Further, the requirements of a valid proclamation and a proper oath will allow the COMELEC to look into these matters until there is an actual assumption of office.

However, the Court takes judicial notice that in its Resolution No. 16, Series of 2018, the HRET amended Rules 17 and 18 of the 2015 HRET Rules. The amendments to Rules 17 and 18 of the 2015 HRET Rules were made "with respect to the reckoning point within which to file an election protest or a petition for quo warranto, respectively, in order to further promote a just and expeditious determination and disposition of every election contest brought before the Tribunal." The recent amendments clarified and removed any doubt as to the reckoning date for the filing of an election protest. The losing candidate can determine with certainty when to file his election protest.

2. Rational basis, strict scrutiny, and intermediate scrutiny tests

E. Searches and seizures

1. Requisites for a valid warrant

JORGE DABON, a.k.a. GEORGE DEBONE @ GEORGE, *Petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *Respondent.*

G.R. No. 208775, FIRST DIVISION, January 22, 2018, TIJAM, *J.*

In People v. Go, We rendered inadmissible the evidence obtained in violation of this rule and stressed that the Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Section 8, Rule 126 provides that the search should be witnessed by two witnesses of sufficient age and discretion residing in the same locality only in the absence of either the lawful occupant of the premises or any member of his family.

In People v. Del Castillo, We ruled that although the lawful occupants were present during the search, the fact that they were not allowed to witness the search of the premises violates the mandatory requirement.

In Bulauitan v. People, We decided for the acquittal of the accused because of failure to comply with the aforequoted rule, which rendered the evidence against himinadmissible.

Article 3 section 2 of the 1987 Constitution provides for the protection of the people's rights against unreasonable searches and seizure. The State and its agents cannot conduct searches and seizures without the requisite warrant. Otherwise, the constitutional right is violated. It must, however, be clarified that a search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules

provide parameters in the proper conduct of a search. Section 8 of Rule 126 provides that no search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. The law is mandatory to ensure the regularity in the execution of the search warrant. This requirement is intended to guarantee that the implementing officers will not act arbitrarily which may tantamount to desecration of the right enshrined in our Constitution.

FACTS:

Law enforcement agents applied for a search warrant after the surveillance and test-buy operations conducted by the operatives of the Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG) in Bohol, which confirmed that Dabon was engaged in illegal drug activity. Search Warrant No. 15, which armed law enforcement agents to search Dabon's residence for violation of Sections 11 and 12, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, was issued.

On July 26, 2003, at about 5:30 a.m., Police Inspector Hermano Mallari (P/Insp. Mallari), Senior Police Officer 2 Arsenio Maglinte (SPO2 Maglinte), SPO1 Noel Triste (SPO1 Triste), Police Officer 3 John Gilbert Basalo (PO3 Basalo), PO3 David Enterina (PO3 Enterina), PO2 GaudiosoDatoy (PO2 Datoy) and PO2 Herold Bihag (PO2 Bihag) of the Bohol Criminal Investigation and Detection Team proceeded to an apartment unit at Boal District, Tagbilaran City where the residence of Dabon is situated. Upon reaching the two-storey apartment at about 7:30am, the CIDG operatives requested Barangay Kagawad Ariel Angalot (Brgy. KagawadAngalot), City Councilor Jose Angalot (Councilor Angalot), Sangguniang Kabataan Chairman Marianne Angalot (SK Chairman Angalot), media representative Charles Responte (Responte) and Department of Justice (DOJ) representative Zacarias Castro (Castro) to witness the search. The group entered the house and the CIDG, together with Brgy. KagawadAngalot and SK Chairman Angalot went to the second floor where Dabon and his family resided. They found EusubioDumaluan (Dumaluan) in the living room while Dabon was inside one of the bedrooms.

After P/Insp. Mallari **handed the copy of the search warrant to Dabon,** the CIDG operatives **searched the kitchen where PO2 Datoy and PO2 Enterina found, in the presence of Brgy. KagawadAngalot,** drug paraphernalia. The police officers then frisked Dumaluan and recovered from his pocket, a coin purse, a lighter, a metal clip, three empty decks of suspected shabu, two pieces of blade and crumpled tin foil.

The police officers proceeded to search one of the bedrooms where PO2 Datoy and PO2 Enterina, **in the presence of Brgy. KagawadAngalot,** found three plastic sachets containing suspected shabu, which were hidden in the folded of clothes inside a drawer. They also recovered drug paraphernalia. The three plastic sachets and the drug paraphernalia were **turned over to SPO1 Triste who inventoried and placed them in evidence bags in the presence of Councilor Angalot, Brgy.**

KagawadAngalot, SK Chairman Angalot, media representative Responte and DOJ representative Castro.

On July 28, 2003, PO2 Diola of the Bohol Provincial Office of the PNP Crime Laboratory received from PO2 Imperina a letter signed by P/Insp. Mallari requesting the conduct of chemical examination on the seized items. The letter and the seized items were turned over to P/Insp. David Tan (P/Insp. Tan), a Forensic Chemical Officer.

The chemical examination and confirmatory test conducted by P/Insp. Tan on the seized items yielded positive results for the presence of methylamphetamine hydrochloride. Hence, Two Information were filed against Dabon for violation of Sections 11 and 12, Article II of R.A. No. 9165. Also, an information for violation of Section 12, Article II of R.A. No. 9165 was filed against Dumaluan.

Dabon argued that he was surprised when he was awakened by alleged members of the CIDG, who entered his room, pointing guns at him and telling them that they will conduct a raid. **Dabon and Dumaluan claimed that they were not allowed to witness the search conducted by the CIDG. Instead, they were ordered to stay and sit in the living room while other members of the household were locked inside the room of their house helper.**

On July 10, 2008, the RTC ruled that the search implemented in Dabon's residence was valid and consequently found Dabon guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of R.A. No. 9165. The RTC upheld the presumption of regularity in the performance of the police officers' duties in the absence of ill motives on their part.

Only Dabon filed a Motion for Reconsideration. In said motion, he essentially questioned the admissibility of the seized items as neither he nor any member of his family was present when the search was conducted. However, the motion was denied. Dabon filed an appeal.

On July 27, 2012, the CA affirmed the conviction of Dabon. A motion for reconsideration was filed by Dabon, which was denied.

ISSUE:

Is the evidence obtained against Dabon admissible? (NO)

RULING:

No. **Article 3 section 2 of the 1987 Constitution** provides for the protection of the people's rights against unreasonable searches and seizures, to wit:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause

> to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Thus, the State and its agents cannot conduct searches and seizures without the requisite warrant. Otherwise, the constitutional right is violated.

It must, however, be clarified that a search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search. One of those parameters set by law is **Section 8 of Rule 126,** to wit:

> Section 8. Search of house, room, or premise to be made in presence of two witnesses. — No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

The law is mandatory to ensure the regularity in the execution of the search warrant. This requirement is intended to guarantee that the implementing officers will not act arbitrarily which may tantamount to desecration of the right enshrined in our Constitution.

In this case, it is undisputed that Dabon and his wife were actually present in their residence when the police officers conducted the search in the bedroom where the drugs and drug paraphernalia were found. It was also undisputed that, as the CA recognized, **only Brgy. KagawadAngalot was present to witness the same.** Also, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the **two-witness rule** was not complied with as only one witness, Brgy. KagawadAngalot, was present when the search was conducted. As told, based on the testimonies of PO2 Datoy and Brgy. KagawadAngalot, it is clear that the mandatory rule under Section 8 was violated. Clearly, the contention of the Office of the Solicitor General (OSG) that SK Chairman Angalot was there was belied by the statement of PO2 Datoy and Brgy. KagawadAngalot. Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the **exclusionary rule** applies, i.e., any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose.

2. Warrantless searches and seizures

3. Administrative arrests

4. Evidence obtained through purely mechanical acts

F. Privacy of communications and correspondence

1. Private and public communications

2. Intrusion, when allowed; exclusionary rule

G. Freedom of speech and expression

1. Prior restraint and subsequent punishment

2. Content-based and content-neutral regulations

3. Facial challenges and the overbreadth doctrine

4. Dangerous tendency, balancing of interests, and clear and present danger tests

5. State regulation of different types of mass media

6. Commercial speech

7. Unprotected speech

H. Freedom of religion

1. Non-establishment and free-exercise clauses

2. Benevolent neutrality and conscientious objectors

3. Lemon and compelling state interest tests

I. Liberty of abode and right to travel

1. Scope and limitations

EFRAIM C. GENUINO, ERWIN F. GENUINO and SHERYL G. SEE, *Petitioners,* -versus - HON. LEILA M. DE LIMA, IN HER CAPACITY AS SECRETARY OF JUSTICE, and RICARDO V. PARAS III, IN HIS CAPACITY AS CHIEF STATE COUNSEL, CRISTINO L. NAGUIAT, JR. and THE BUREAU OF IMMIGRATION, *Respondents.*
G.R. No. 197930, EN BANC, April 17, 2018, REYES, JR., J

MA. GLORIA MACAPAGAL-ARROYO, *Petitioner,*-versus - HON. LEILA M. DE LIMA, AS SECRETARY OF THE DEPARTMENT OF JUSTICE and RICARDO A. DAVID, JR., AS COMMISSIONER OF THE BUREAU OF IMMIGRATION, *Respondents*.
G.R. No. 199034, EN BANC, April 17, 2018, REYES, JR., J

JOSE MIGUEL T. ARROYO, *Petitioner,* -versus - HON. LEILA M. DE LIMA, AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND RICARDO V. PARAS III, AS CHIEF STATE COUNSEL, DEPARTMENT OF JUSTICE AND RICARDO A. DAVID, JR., IN HIS CAPACITY AS COMMISSIONER, BUREAU OF IMMIGRATION, *Respondents.*
G.R. No. 199046, EN BANC, April 17, 2018, REYES, JR., J

Article III of the Constitution provides: Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired ***except in the interest of national security, public safety or public health, as maybe provided by law.*** *Clearly, under the provision, there are only three considerations*

that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment.

There is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation

To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval.

FACTS:

On May 25, 2010, then Acting DOJ Secretary Alberto C. Agra issued the assailed DOJ Circular No. 41, consolidating DOJ Circular Nos. 17 and 18, which will govern the issuance and implementation of Hold Departure Orders (HDO), Watchlist Order (WLO), and Allow Departure Orders (ADO)

DOJ Circular No. 17 prescribes the rules and regulations governing the issuance of HDOs. DOJ Circular No. 18 prescribes the rules and regulations governing the issuance and implementation of watchlist orders. **In particular, it provides for the power of the DOJ Secretary to issue a Watchlist Order (WLO) against persons with criminal cases pending preliminary investigation or petition for review before the DOJ**. Further, it states that the DOJ Secretary may issue an ADO to a person subject of a WLO who intends to leave the country for some exceptional reasons.

After the expiration of Gloria Macapagal Arroyo's (GMA) term as President of the Republic of the Philippines, criminal complaints were filed against her before the DOJ. In view of these complaints, Secretary De Lima issued a DOJ Watchlist Order pursuant to her authority under DOJ Circular No. 41.

In GR No. 199304, GMA filed the present Petition for Certiorari and Prohibition under Rule 65 to annul and set aside DOJ Circular No. 41 and WLOs issued against her for allegedly being unconstitutional for violating the Constitutional guarantee of the right to travel. A few hours thereafter, Miguel Arroyo filed a separate Petition for Certiorari, and Prohibition under the same rule likewise assailing the constitutionality of DOJ Circular No. 41. Miguel Arroyo's petition was docketed as G.R. No. 199046.

Meanwhile, in G.R. No. 197930, HDO No. 2011-64 dated July 22, 2011 was issued against Genuinos, among others, after criminal complaints for various charges were filed against them. When their plea for the lifting of the HDO was denied, they instituted the present petition (197930). In a Resolution, the Court consolidated the said petition with G.R. Nos. 199034 and 199046.

ISSUE:

Whether DOJ Circular No. 41 is constitutional (NO)

RULING:

The right to travel is part of the "liberty" of which a citizen cannot be deprived without due process of law. It is part and parcel of the guarantee of freedom of movement that the Constitution affords its citizen. Pertinently, Section 6, Article III of the Constitution provides:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired **except in the interest of national security, public safety or public health, as maybe provided by law**.

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.

The issuance of DOJ Circular No. 41 has no legal basis. The Court is in quandary of identifying the authority from which the DOJ believed its power to restrain the right to travel emanates. There is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation.

To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval. It is a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987."

It is, however, important to stress that before there can even be a valid administrative issuance, there must first be a showing that the delegation of legislative power is itself valid. It is valid only if there is a law that (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard the limits of which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions

Sections 1 and 3, Book IV, Title III, Chapter 1 of E.O. No. 292 reads:

Section 1. Declaration of Policy.

Section 3. Powers and Functions. - to accomplish its mandate, the Department shall have the following powers and functions:

(1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required;

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

x xxx

(6) Provide immigration and naturalization regulatory services and implement the laws governing citizenship and the admission and stay of aliens;

(7) Provide legal services to the national government and its functionaries, including government-owned and controlled corporations and their subsidiaries;

(8) Such other functions as may be provided by law.

A plain reading of the foregoing provisions shows that they are mere general provisions designed to lay down the purposes of the enactment and the broad enumeration of the powers and functions of the DOJ. In no way can they be interpreted as a grant of power to curtail a fundamental right as the language of the provision itself does not lend to that stretched construction. **To be specific, Section 1 is simply a declaration of policy**, the essence of the law, which provides for the statement of the guiding principle, the purpose and the necessity for the enactment. The declaration of policy is most useful in statutory construction as an aid in the interpretation of the meaning of the substantive provisions of the law. It is preliminary to the substantive portions of the law and certainly not the part in which the more significant and particular mandates are contained.

In the same way, **Section 3 does not authorize the DOJ to issue WLOs and HDOs to restrict the constitutional right to travel.** There is even no mention of the exigencies stated in the Constitution that will justify the impairment. The provision simply grants the DOJ the power to investigate the commission of crimes and prosecute offenders, which are basically the functions of the agency. However, it does not carry with it the power to indiscriminately devise all means it deems proper in performing its functions without regard to constitutionally-protected rights. The curtailment of a fundamental right, which is what DOJ Circular No. 41 does, cannot be read into the mentioned provision of the law. Any impairment or restriction in the exercise of a constitutional right must be clear, categorical and unambiguous.

As such, it is a compulsory requirement that there be an existing law, complete and sufficient in itself, conferring the expressed authority to the concerned agency to promulgate rules. On its own, the DOJ cannot make rules, its authority being confined to execution of laws. The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted. **Without a clear mandate of an existing law, an administrative issuance is *ultra vires.***

Indeed, the DOJ has the power to investigate the commission of crimes and prosecute offenders. Its zealousness in pursuing its mandate is laudable but more admirable when tempered by fairness and justice. It must constantly be reminded that **in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.**

It bears emphasizing that the conduct of a preliminary investigation is an implement of due process which essentially benefits the accused as it accords an opportunity for the presentation of his side with regard to the accusation. The accused may, however, opt to waive his presence in the preliminary investigation. In any case, whether the accused responds to a subpoena, the investigating prosecutor shall resolve the complaint within 10 days after the filing of the same.

The point is that in the conduct of a preliminary investigation, the presence of the accused is not necessary for the prosecutor to discharge his investigatory duties. If the accused chooses to waive his presence or fails to submit countervailing evidence, that is his own lookout. Ultimately, he shall be bound by the determination of the prosecutor on the presence of probable cause and he cannot claim denial of due process.

The DOJ therefore cannot justify the restraint in the liberty of movement imposed by DOJ Circular No. 41 on the ground that it is necessary to ensure presence and attendance in the preliminary investigation of the complaints. There is also no authority of law granting it the power to compel the attendance of the subjects of a preliminary investigation, pursuant to its investigatory powers under E.O. No. 292. Its investigatory power is simply inquisitorial and, unfortunately, not broad enough to embrace the imposition of restraint on the liberty of movement.

Without a law to justify its action, the issuance of DOJ Circular No. 41 is an unauthorized act of the DOJ of empowering itself under the pretext of dire exigency or urgent necessity. This action runs afoul the separation of powers between the three branches of the government and cannot be upheld. Even the Supreme Court, in the exercise of its power to promulgate rules is limited in that the same shall not diminish, increase, or modify substantive rights. This should have cautioned the DOJ, which is only one of the many agencies of the executive branch, to be more scrutinizing in its actions especially when they affect substantive rights, like the right to travel.

2. Watch-list and hold departure orders

J. Right to information

1. Scope and limitations

2. Publication of laws and regulations

K. Right of association

L. Eminent Domain

1. Concept of public use

2. Just compensation

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),*Petitioner*–versus-LEONOR MACABAGDAL, represented by EULOGIA MACABAGDAL PASCUAL (formerly John Doe "DDD"), *Respondent.*
G.R.No. 227215, SECOND DIVISION, JANUARY 10, 2018, PERLAS-BERNABE, *J.*

From the date of the taking until the just compensation was finally fixed at ₱9,000.00/sq. m., petitioner had only paid a provisional deposit in the amount of ₱550,000.00 (i.e., at ₱2,750.00/sq. m.). This left an unpaid balance of the "principal sum of the just compensation," warranting the imposition of interest.

However, as aptly pointed out by petitioner, the 12% p.a. rate of legal interest is only applicable until June 30, 2013 because of BSP-MB Circular No. 799. Thereafter, legal interest shall be at 6%.

Legal interest shall run not from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession, when deprivation of property commenced.

FACTS:

On January 23, 2008, the Republic of the Philippines represented by the DPWH, filed before the RTC a complaint against an unknown owner for the expropriation of a 200-sq. m. lot in Valenzuela City, for the construction of NLEX.

Petitioner applied for and was granted a writ of possession over the subject lot on May 5, 2008, and was required to make a provisional deposit with the court of the amount of ₱550,000.00

Respondent Leonor Macabagdal was substituted as party upon showing that the TCT is registered in her name. She did not oppose the expropriation, and she received the provisional deposit.

The RTC appointed a board of commissioners which recommended a fair market value of ₱9,000.00/sq. m. as the just compensation which the RTC later held to be reasonable and just.

The RTC fixed the just compensation at ₱9,000.00/ sq. m.; directed petitioner to pay the same, less the provisional deposit of ₱550,000.00; and imposed legal interest at the rate of 12% p.a. on the unpaid balance, computed from the time of the taking of the subject lot until full payment.

Petitioner went to the CA, questioning the just compensation of ₱9,000.00/sq. m. and the award of 12% interest p.a. instead of 6% p.a. as provided under BSP-MB Circular No. 799, Series of 2013.

The CA affirmed the RTC ruling.

Petitioner claims that the CA did not rule on the issue of the applicable rate of interest which should be at twelve percent (12%) p.a. from the filing of the complaint until June 30, 2013, and thereafter, at six percent (6%) p.a. until full payment.

ISSUE:

Whether or not the CA committed reversible error in affirming the RTC's imposition of interest at the rate of twelve percent (12%) p.a. on the unpaid balance, computed from the time of the taking of the subject lot until full payment

RULING:

The petition is partly meritorious.

The court recognizes that the owner's loss is not only his property, but also its income-generating potential. Thus, when property is taken, full compensation of its value must be immediately paid to achieve a fair exchange for the property and the potential income lost. The value of the landholdings

should be equivalent to the principal sum of the just compensation due, and **interest is due and should be paid to compensate for the unpaid balance of this principal sum after taking has been completed.** This shall comprise the *real, substantial, full,* and *ample* value of the expropriated property, and constitutes due compliance with the constitutional requirement of just compensation.

In this case, from the date of the taking of the subject lot on May 5, 2008 when the RTC issued a writ of possession in favor of petitioner, until the just compensation therefor was finally fixed at ₱9,000.00/sq. m., petitioner had only paid a provisional deposit in the amount of ₱550,000.00 *(i.e.,* at ₱2,750.00/sq. m.). Thus, this left an unpaid balance of the "principal sum of the just compensation," warranting the imposition of interest. It is settled that the **delay in the payment of just compensation amounts to an effective forbearance of money, entitling the landowner to interest on the difference in the amount between the final amount as adjudged by the court and the initial payment** made by the government.

However, as aptly pointed out by petitioner, the 12% p.a. rate of legal interest is only applicable until June 30, 2013. Thereafter, legal interest shall be at 6% p.a. in line with BSP-MB Circular No. 799, Series of 2013. Prevailing jurisprudence has upheld the applicability of this circular to forbearances of money in expropriation cases, contrary to respondent's contention. The cases of *Sy v. Local Government of Quezon* City and *Land Bank of the Philippines v. Wycoco,* cited by respondent are both inapplicable because they were all decided prior to the effectivity of the circular.

Legal interest shall run *not* from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession on May 5, 2008, the date of deprivation of property.

The legal interest to be imposed on the unpaid balance of the just compensation for the subject lot, is to be computed at the rate of twelve percent 12% p.a. from the date of the taking on May 5, 2008 until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due respondent shall earn legal interest at the rate of 6% p. a. The rest of the CA decision stands.

THE MANILA BANKING CORPORATION, *Petitioner*, -versus- BASES CONVERSION AND DEVELOPMENT AUTHORITY, *Respondents*.
G.R. No. 230144, THIRD DIVISION, January 22, 2018, VELASCO JR., *J.*

Time and again, this Court has ruled that the determination of just compensation must be based on reliable and actual data, as explained in Republic of the Philippines v. C.C. Unson Company, Inc., to wit

> *In Republic v. Asia Pacific Integrated Steel Corporation, the Court defined just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such 'just'-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts are required to be more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds."*

FACTS:

Respondent Bases Conversion and Development Authority (BCDA) is a government corporation tasked mainly to manage the Clark and Subic military reservations/camps and their extensions and to adopt and implement a comprehensive development plan for their conversion into productive uses, with a view to promoting the economic and social development of the country. Among the powers expressly granted to it is the power to exercise the right of eminent domain.

In 2003, BCDA filed a complaint against herein petitioner The Manila Banking Corporation (TMBC) seeking to expropriate a 166,355 square meter parcel of land in Pampanga registered in the name of TMBC. BCDA alleged that the subject property was classified as agricultural land and had the zonal value of P30 per square meter at the time of filing of the complaint. Records reveal that a Final Offer to Buy in 2003 was sent by BCDA to TMBC, whereby BCDA offered the price of P75 per square meter for the subject property.

In 2005, the RTC declared that BCDA has clearly established its lawful right to take the property sought to be expropriated for public use or purpose upon the payment of just compensation. The parties were ordered to submit their nominations for the commissioners who will assist the trial court in arriving at the just compensation for the subject property. The final group of Commissioners consisted of Mr. Alberto Murillo Jr who was nominee-appraiser of BCDA, Engr. Roger Tolosa Jr who was the nominee of TMBC, and Engr. Glen Lansangan, Municipal Planning and Development Officer of Porac, Pampanga.

The Commissioners did not come up with a group report, but made individual reports after their ocular inspection. Engr. Tolosa submitted an appraisal of P388 per square meter. Engr. Lansangan recommended that the Fair Market Value of the property is P350 per square meter. On the other hand, the Report of Mr. Murillo submitted an appraisal of P30 per square meter which according to him was based at the time of taking and was reasonable and fair enough to both parties considering that the subject property consisted only agricultural lands which have a lower value than industrial or commercial lots.

In a decision rendered in 2012 (2012 decision), the RTC ordered BCDA to pay TMBC the amount of P250 per square meter as just compensation for the property taken for a total of Php 37,898,740.

Upon Motion for Reconsideration filed by BCDA, the RTC issued an Order reopening the case and requiring the parties to submit judicial affidavits to hear the case anew. The RTC issued an Order in 2014 (2014 order) granting BCDA's motion for reconsideration fixing the just compensation at P190 per square meter or a total of P32,881,210.

BCDA elevated the case to the CA, seeking to reverse the RTC's determination of just compensation.

In2016, the CA rendered the assailed Decision, giving due course to the petition and ruling in favor of BCDA. The CA reversed the RTC and fixed the amount of just compensation to P75 per square meter or a total of Php12,979,425.

In reversing and setting aside the trial court's determination of just compensation, the CA reviewed the reports submitted by the commissioners, as well as the trial court's 2012 Decision and 2014 Order. The CA noted that while the trial court based its first valuation on the recommendations of the

commissioners, it did not give any explanation on how it arrived at the amount of P250 per square meter. As for the second valuation of P190, the CA observed that the trial court gave more weight to two documents included in Engr. Tolosa's Report, specifically: 1) Resolution No. 12-2006 of the DPWH Provincial Appraisal Committee which fixed the just compensation of an expropriated land for the PoracMancatian Dike Project at P190 per square meter and 2) Deed of Absolute Sale between TMBC and DPWH over the property taken in the area for the price of P190 per square meter.

ISSUE:

Whether the CA erred in awarding just compensation at the rate of P75 per square meter, instead of P250 per square meter as originally ordered by the RTC in its September 4, 2012 Decision, or P190 per square meter as reconsidered by the RTC in its 2014 Order. (NO)

RULING:

The CA was correct in reversing the trial court and in fixing the just compensation at P75 per square meter

Section 5 of RA 8974 provides:

> Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:
>
> (a) The classification and use for which the property is suited
> (b) The developmental costs for improving the land;
> (c) The value declared by the owners;
> (d) The current selling price of similar lands in the vicinity
> (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;
> (f) The size, shape or location, tax declaration and zonal valuation of the land;
> (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
> (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

There is no question that at the time of taking of the subject property, it was classified as agricultural land, based on the records of the Municipal Assessor's Office of Porac, Pampanga. As observed in the Commissioner's Report, the subject property consists of sugar land and sand deposits. While there were allegations that the property was reclassified to industrial land, there was no sign of industrial development at the time of the ocular inspection except for the construction of the SCTEX project.

Engr. Lansangan's Report could not be given any weight since he did not provide any explanation for arriving at his recommendation of P350 per square meter as just compensation for the subject property, except for his declaration that he arrived at the same based on the price information he had

researched from reputable sources, as well as the highest and best use of the property and the zoning and current land usage in the locality.

During his testimony, Engr. Lansangan clarified that his recommendation was based on the reclassification of the property to residential, commercial and industrial areas, the BIR Zonal Valuation as industrial area with assessed value of P200 per square meter, and the value for residential area at P500 per square meter, the average of which is P350 per square meter. However, Engr. Lansangan's recommendation was erroneous since it was established that the subject property was not included in the area which was reclassified by the province. Furthermore, the reclassification was made after the time of taking of the subject property; thus, any change in valuation as a result thereof would have no bearing on the amount of just compensation.

As for Engr. Tolosa's Report, a review thereof shows that his recommendation to set the just compensation for the subject property at the amount of P388 per square meter was mostly based on the market approach, where the value of the land is based on sales and listings of comparable properties within the vicinity. While this approach is an acceptable basis to determine just compensation, the data gathered by Engr. Tolosa on which he relied his recommendation were based on current market values at the time of the ocular inspection which was on October 6, 2011— almost eight years from the time of taking of the subject property in November 2003.

In arriving at the amount of P250 per square meter, the trial court relied on the eight DPWH transactions of neighboring properties as relevant market data on the actual value of the subject property in November 2003. The RTC failed to consider the nine Deeds of Absolute Sale between BCDA and several landowners for the sale of properties situated in Barangay Dolores, Porac, Pampanga with selling price ranging from P60 to P75 per square meter, which were executed between March 2004 and September 2008. The RTC reasoned that the BCDA allegedly failed to establish the proximity of these properties with the subject property.

As correctly observed by the CA, the properties subject of the nine deeds of absolute sale were directly contiguous and adjacent to the subject property.

> The RTC committed a reversible error for it is plainly obvious that the areas expropriated for the SCTEX project are contiguous and adjacent properties. Specifically, the lands covered by no less than nine (9) Deeds of Absolute Sale are all situated in Barangay Dolores, Municipality of Porac, Province of Pampanga. BCDA's offer to buy the subject property at Php75.00 per square meter was the same selling price of its neighboring properties affected by the same infrastructure project. Such price is also based on the following factual considerations: (1) the nature of the subject property as agricultural land with no improvements ("no electricity, no road outlet and not accessible to regular mode of transportation"); (2) the zonal valuation by the BIR (Php30.00 per square meter); and (3) tax declarations ("Agricultural-Sugar") indicating the total market value of the subject property at Php27,400.

Time and again, this Court has ruled that the determination of just compensation must be based on reliable and actual data, as explained in *Republic of the Philippines v. C.C. Unson Company, Inc*., to wit

> In *Republic v. Asia Pacific Integrated Steel Corporation*, the Court defined just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to intensify the

meaning of the word 'compensation' and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such 'just'-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts are required to be more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds."

The Court further stated in *National Power Corporation v. Tuazon*, that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional *raison d'etre*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation." Legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. They are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount of just compensation.

LANDBANK OF THE PHILIPPINES, petitioner –versus- EDNA MAYOALCANTARA and HEIRS OF CRISTY MAYO ALCANTARA, respondents.

G.R. No. 187423, THIRD DIVISION, February 28, 2018, MARTIRES, J.

Until and unless declared invalid in a proper case, the basic formulas contained in DAR administrative orders partake of the nature of statutes; hence, courts have the positive legal duty to consider, and not disregard, their use and application in the determination of just compensation for agricultural lands covered by R.A. No. 6657

FACTS:

The assailed ruling involves the determination of just compensation for a piece of agricultural land acquired by the government in 1998 for the Comprehensive Agrarian Reform Program (CARP) under Republic Act (R.A.) No. 6657. The SAC determined that just compensation for the land was P2,267,620.00, a valuation based on its fair market value. The CA sustained this determination.

LBP insisted before the CA, as it insists before this Court, that the valuation should be based on the basic formula set by the Department of Agrarian Reform (DAR) in its pertinent administrative orders; hence, just compensation for respondents' land should be P1,210,252.96.

ISSUE:

Whether or not the valuation proposed by LBP for respondents' land is the just compensation contemplated by law for CARP lands. (NO)

RULING:

No. The valuation proposed by LBP for respondents' land is not the just compensation contemplated by law for CARP lands.

The points the parties raise are nothing new, having been previously passed upon by the Court. We conduct the present review in the light of Alfonso v. LBP, by which this Court, sitting En Banc, reaffirmed an established jurisprudential rule, viz., that until and unless declared invalid in a proper case, the basic formulas contained in DAR administrative orders partake of the nature of statutes; hence, courts have the positive legal duty to consider, and not disregard, their use and application in the determination of just compensation for agricultural lands covered by R.A. No. 6657.

Courts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion.

As its decision and order make plain, the SAC deviated from, nay rejected, the formula set by the DAR in the subject administrative orders. The CA joined the SAC in the rejection.

In the main, the SAC presents two explanations for the deviation: first, that respondents' land is "no longer productive, as the trees are over 100 years old and are more productive if utilized as coconut lumber," and, second, that the land has already been converted into a subdivision, increasing its value "three hundredfold." These circumstances, the SAC reasoned out, render the use of the DAR formulas in the valuation of respondents' land anomalous as well as disadvantageous to landowners.

We are unable to accept these explanations. They are neither well-reasoned nor supported by the evidence on record.

In fine, the SAC failed to present a well-reasoned justification, as supported by the evidence on record, for why it deviated from the DAR formula. Hence, it ruled in blatant disregard of the factors spelled out in Section 17 of R.A. No. 6657. The SAC's valuation in this case must be struck down as illegal and set aside.

APO FRUITS CORPORATION, *Petitioner*, *-versus-* THE LAND BANK OF THE PHILIPPINES AND DEPARTMENT OF AGRARIAN REFORM, *Respondents.*
G.R. Nos. 217985-86, 218920-21, FIRST DIVISION, March 21, 2018, TIJAM, *J.*

Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. The Court thus finds that the just compensation for the subject property, taking into account the distance of the subject property to different landmarks in Tagum City the fact that it is planted with commercial bamboos, the Average of Sales Data used by the commissioners, the Deeds of Sale of properties found near and adjacent to the subject property, is hereby fixed at Php 130.00 per sq m.

Furthermore, the requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657. In the present case, LBP merely deposited the amount of Php 3,814,053.53 as initial payment of the just compensation. There is a staggering difference between the initial payment made by the LBP and the amount of the just

compensation due to Apo. It is therefore necessary to hold LBP liable to pay for the legal interest due to its delay in fully satisfying the payment of the just compensation.

FACTS:

Apo was the registered owner of a 115.2179 hectare land situated in San Isidro, Tagum City, Davao del Norte. In 1995, Apo voluntarily offered to sell the subject property to the government for purposes of the CARP. Apo was then referred to LBP for initial valuation of the subject property.

In 1996, Apo received from the DAR Provincial Agrarian Reform Office (PARO) in Davao a Notice of Land Valuation and Acquisition informing Apo that the value of the subject property was Php 16.5484 per square meter or for the total amount of Php 165,484.47 per ha. Finding the said valuation low, Apo rejected the offer.

Meanwhile, the DAR requested LBP to deposit the amount of Php 3,814,053.53 as initial payment for the subject property. Thereafter, the PARO directed the Register of Deeds of Tagum City to cancel TCT No. 113359. The subject property was then transferred in the name of the Republic of the Philippines. Corollarily, several Certificates of Land Ownership (CLOAs) were issued in favor of farmer-beneficiaries.

Not satisfied with the valuation of LBP, Apo filed a complaint for determination of just compensation with the DARAB. Unfortunately, the said case remained pending for almost six (6) years without resolution. Apo then filed a Complaint for determination of just compensation before the RTC of Tagum City, Branch 2, acting as a special agrarian court (SAC). During the proceedings, the RTC appointed commissioners to ascertain the just, fair and reasonable value of the subject property.

The commissioners then submitted a Report finding a valuation of Php 134.42 per sq m.The commissioners relied on its "research gathering of primary data from concerned line agencies, the plaintiff and other sources such as the Tax Declaration, Deeds of Sale of properties found near or adjacent to the properties to be valuated." Further, upon ocular inspection, the commissioners found that the subject property was planted with commercial bamboos. The commissioners took into consideration the Php 130.00 appraisal of Apo's own assessment done by Cuervo Appraisers Inc. Since the Php 134.42 value determined by the commissioners was even higher than the Php 130.00 valuation of Apo's own appraisers, the commissioners recommended the amount of Php 130.00 per sq m or the amount of Php 149,783,000.00 for the entire 115.2179 has as just compensation.

RTC rendered a Decision adopting the findings of the commissioners. Aggrieved, LBP and DAR filed separate Petitions for Review before the CA. CA consolidated the two cases then rendered a Decision modifying the RTC decision. It set the just compensation at P103.33 per [sq m]. Furthermore, it held that there shall be 12% interest *per annum* on the unpaid balance of the just compensation, computed from December 9, 1996, the date when the Government took the land, to May 9, 2008, the time when [LBP] paid the balance on the principal amount. The motions for reconsideration filed by LBP, DAR and Apo were denied by the CA in its Resolution. Hence, the instant petitions.

ISSUES:

1) Whether the CA erred in finding the amount of Php 103.33 per sq m is the just compensation for the subject property contrary to the findings of the commissioners and the RTC? (YES)

2) Whether the 12% interest on the unpaid just compensation should be counted from December 9, 1996, the time of the taking until full payment or only until May 9, 2008 as based by the CA in *Apo Fruits Corporation v. CA*, G.R. No. 164195? (YES)

RULING:

(1) Land Bank of the Philippines is ordered to pay the amount of **Php 130.00 per square meter** or the total amount of **Php 149,783,270.00** to Apo Fruits Corporation as just compensation of the subject property.

Section 17 of R.A. No. 6657 provides:

> Sec. 17. ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors' shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In the case of *Ramon Alfonso v. Land Bank of the Philippines and Department of Agrarian Reform*, the Court ruled that the determination of just compensation is a judicial function. To guide the RTC-SAC in the exercise of its function, Section 17 of R.A. No. 6657 enumerates the factors required to be taken into account to correctly determine just compensation.

Further, in the recent case of *Land Bank of the Philippines v. Miguel Omengan*, the Court held that:

Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken.

The commissioners and the RTC in arriving at their conclusion took into account and meticulously considered the different factors provided for in Section 17 of R.A. No. 6657. The Court thus finds that the just compensation for the subject property, taking into account the distance of the subject property to different landmarks in Tagum City the fact that it is planted with commercial bamboos, the Average of Sales Data used by the commissioners, the Deeds of Sale of properties found near and adjacent to the subject property, is hereby fixed at Php 130.00 per sq m.

(2) Land Bank of the Philippines is ordered to pay legal interest of twelve percent (12%) *per annum* imposed on the amount Php 149,783,270.00 counted from December 9, 1996, the time of the taking of the subject property, until June 30, 2013. Thereafter, a legal interest of six percent (6%) *per annum* is imposed counted from July 1, 2013 until full payment thereof.

In *Republic of the Phils. v. CA*, this Court held that:

If property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred. The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner.

In the recent case of *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*, the Court had the occasion to rule that the mere fact that the LBP made an initial payment of the just compensation does not mean that the government is not liable for any delay in the payment of just compensation, thus: **The requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657.**

In the present case, LBP merely deposited the amount of Php 3,814,053.53 as initial payment of the just compensation. There is a staggering difference between the initial payment made by the LBP and the amount of the just compensation due to Apo. It should be noted that the subject property has already been taken by the government on December 9, 1996. Up to this date, the just compensation has not been fully paid. During the interim, Apo is deprived of the income it would have made had it been properly compensated for the properties at the time of the taking. It is therefore necessary to hold LBP liable to pay for the legal interest due to its delay in fully satisfying the payment of the just compensation.

As to the award of attorney's fees, while the general rule is that attorney's fees cannot be recovered as part of the damages because no premium should be placed on the right to litigate, the Court deems it proper to affirm the award of 10% attorney's fees in favor of Apo.

HACIENDA LUISITA INCORPORATED, PETITIONER, LUISITA INDUSTRIAL PARK CORPORATION AND RIZAL COMMERCIAL BANKING CORPORATION*, Petitioners-in-Intervention, -versus-* PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA, RENE GALANG, NOEL MALLARI, AND JULIO SUNIGA AND HIS SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. AND WINDSOR ANDAYA,*Respondents*.

G.R. No. 171101, En Banc, April 24, 2018, VELASCO JR., ***J***

As regards the meaning of "legitimate corporate expenses," We refer to the definition of "ordinary and necessary expenses" used for taxation purposes. Thus:

Ordinarily, an expense will be considered 'necessary' where the expenditure is appropriate and helpful in the development of the taxpayer's business. It is 'ordinary' when it connotes a payment which is normal in relation to the business of the taxpayer and the surrounding circumstances. The term 'ordinary' does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.

x xx Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.

FACTS:

This is pursuant to the Motion for Execution filed by the respondent Mallari. The Court directed petitioner Hacienda Luisita Incorporated (HLI) to, among other things, pay the 6,296 qualified farm-worker beneficiaries (FWBs) of the hacienda the unspent or unused balance of the proceeds of the sale of the 580.51-hectare lot received by the company, viz:

HLI is directed to pay the original 6,296 FWBs the consideration of PhP500,000,000 received by it from Luisita Realty, Inc. for the sale to the latter of 200 hectares out of the 500 hectares covered by the August 14, 1996 Conversion Order, the consideration of PhP750,000,000 received by its owned subsidiary, Centennary Holdings, Inc., for the sale of the remaining 300 hectares of the aforementioned 500-hectare lot to Luisita Industrial Park Corporation, and the price of PhP80,511,500 paid by the government through the Bases Conversion Development Authority for the sale of the 80.51-hectare lot used for the construction of the SCTEX road network. From the total amount of PhP1,330,511,500 (PhP500,000,000 + PhP750,000,000 + PhP80,511,500 = PhP1,330,511,500) shall be deducted the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes. For this purpose, DAR is ordered to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary Holdings, Inc. to determine if the PhP1,330,511,500 proceeds of the sale of the three (3) aforementioned lots were actually used or spent for legitimate corporate purposes. Any unspent or unused balance and any disallowed expenditures as determined by the audit shall be distributed to the 6,296 original FWBs.

HLI is entitled to just compensation for the agricultural land that will be transferred to DAR to be reckoned from November 21, 1989 which is the date of issuance of PARC Resolution No. 89-12-2. DAR
and LBP are ordered to determine the compensation due to HLI.

Thus, for purposes of determining the actual amount that may be distributed to the qualified FWBs, the Court issued a Resolution appointing a panel of three accounting firms.

ISSUE:

How much of the just compensation was utilized for legitimate corporate expenses and the amount remaining unspent that can be distributed to FWBs

RULING:

The panel shall DETERMINE the legitimate corporate expenses incurred by HLI from the respective dates of receipt by HLI of the payments for the properties until Our July 5, 2011 Decision became final and executory, which expenses shall be deducted from the PhP1,330,511,500 proceeds of the sale of the 580.51 hectare HLI property.

The audit panel was appointed to determine if the P1,330,511,500 proceeds of the sale of the lots were actually used or spent for legitimate corporate purposes by HLI. Given that, as previously stated, any unspent or unused balance and any disallowed expenditures as determined by the panel shall be distributed to the 6,296 FWBs. Essentially, to arrive at what shall be deemed the unspent or unused balance of the sales proceeds, the following are to be deducted therefrom:

1. 3% of the proceeds that were already paid to the FWBs;

2. tax expenses relating to the transfer of titles to the transferees; and

3. expenditures incurred by the Company for legitimate corporate expenses.

As to the meaning of the term "legitimate corporate expenses," the Court's January 28, 2014 Resolution likewise clarified it by referring to the definition of "ordinary and necessary expenses" used for taxation purposes, viz:

As regards the meaning of "legitimate corporate expenses," We refer to the definition of "ordinary and necessary expenses" used for taxation purposes. Thus:

Ordinarily, an expense will be considered 'necessary' where the expenditure is appropriate and helpful in the development of the taxpayer's business. It is 'ordinary' when it connotes a payment which is normal in relation to the business of the taxpayer and the surrounding circumstances. The term 'ordinary' does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.

x xx Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.

To sum up, all three members of the audit panel have determined that the legitimate corporate expenses of HLI for the years 1998 up to 2011, coupled with the taxes and expenses related to the sale and the 3% share already distributed to the FWBs, far exceed the proceeds of the sale of the adverted 580.51-hectare lot. In net effect, there is no longer any unspent or unused balance of the sales proceeds available for distribution.

FELISA AGRICULTURAL CORPORATION, *Petitioner*, -versus- NATIONAL TRANSMISSION CORPORATION (HAVING BEEN SUBSTITUTED IN LIEU OF THE NATIONAL POWER CORPORATION), *Respondent*.

G.R. Nos. 231655 and 231670, SECOND DIVISION, July 02, 2018, PERLAS-BERNABE, *J*.

Section 2, Rule 67 of the Rules of Court requires the expropriator to deposit the amount equivalent to the assessed value of the property to be expropriated prior to entry. The assessed value of a real property constitutes a mere percentage of its fair market value based on the assessment levels fixed under the pertinent ordinance passed by the local government where the property is located. In contrast, RA 8974 requires the payment of the amount equivalent to 100% of the current zonal value of the property, which is usually a higher amount.

In this case, the government had long entered the subject land and constructed the transmission towers and lines. However, petitioner initiated inverse condemnation proceedings after the effectivity of RA 8974 on November 26, 2000; hence, procedurally and substantially, the said law should govern.

FACTS:

The instant case stemmed from a Complaintfor recovery of possession with damages or payment of just compensation filed by petitioner Felisa Agricultural Corporation against NPC before the RTC.

Petitioner claimed that in 1997, it discovered that the NPC's transmission towers and transmission lines were located within a 19,635-square meter portionof its lands situated in Bacolod City. Further verification revealed that the transmission towers were constructed sometime before 1985 by NPC which entered the subject land without its knowledge and consent.

NPC denied having entered the subject land without any authority, and claimed that petitioner's President, JovitoSayson, granted it the permit to enter on September 21, 1989 for the construction of the 138 KV Mabinay-Bacolod Transmission Line. It further countered that since the transmission lines have been in existence for more than ten years, a continuous easement of right of way has already been established. Considering, however, that the action was brought beyond the five-year prescriptive period to do so in accordance with the NPC Charter, the claim is barred by prescription.

Subsequently, the parties agreed to settle the case at the price of P400.00/sq. m. but the proposed compromise did not push through in view of the failure of the Office of the Solicitor General to act on the Deed of Sale entered into by the parties.

Subsequently, petitioner moved that NPC be immediately ordered to pay the amount of P7,845,000.0012 representing the 100% zonal value of the subject land in accordance with Republic Act No8974.NPC opposed the motion, contending that the said law only applies to expropriation cases initiated by the government to acquire property for any national government infrastructure project.

The RTC granted the motion and directed NPC or its assignee to compensate petitioner in the amount of P7,845,000.00 as initial payment. It likewise denied the NPC's motion for reconsideration holding that the initial payment is not the just compensation that is determined in the decision that shall

dispose the case. The law so provides to obviate the long litigation and the landowner is partially paid.

NPC filed a petition for certiorari before the CA.

The CA granted the certiorari petition, thereby nullifying and setting aside the RTC Orders. It ruled that RA 8974 finds no application to the recovery of possession case as it only applies to an expropriation proceeding.

Petitioner moved for reconsideration, contending that RA 8974 applies even if the government failed or refused to file an expropriation case considering that: (a) the recovery of possession case partakes of the nature of an inverse expropriation proceedings; and (b) the initiatory complaint was filed after its effectivity.

The CA denied the motion. It ruled that since the taking of the property occurred sometime in 1985, RA 8974 which was approved and took effect subsequent thereto does not apply, and the provisions of Rule 67 of the Rules of Court should govern the case. It remanded the case to the RTC for the determination of just compensation plus legal interest reckoned from the time of the taking.

ISSUE:

Whether or not the CA was correct in holding that Rule 67 of the Rules of Court and not RA 8974 should govern the case

RULING:

No. The general rule is that upon the filing of the expropriation complaint, the plaintiff has the right to take or enterinto possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property. An exception to this procedure is provided by RA 8974 with respect to national government projects, which requires the payment of 100% of the zonal value of the property to be expropriated as the provisional value.38 It must be emphasized, however, that whether a deposit is made under Rule 67 of the Rules of Court or the provisional value of the property is paid pursuant to RA 8974,39 the said amount serves the double-purpose of: (a) pre-payment if the property is fully expropriated, and (b) indemnity for damages if the proceedings are dismissed.

Section 2, Rule 67 of the Rules of Court requires the expropriator to deposit the amount equivalent to the assessed value of the property to be expropriated prior to entry. The assessed value of a real property constitutes a mere percentage of its fair market value based on the assessment levels fixed under the pertinent ordinance passed by the local government where the property is located. In contrast, RA 8974 requires the payment of the amount equivalent to 100% of the current zonal value of the property, which is usually a higher amount.

In a previous case the Court has recognized that while expropriation proceedings have always demanded just compensation in exchange for private property, the deposit requirement under Rule 67 of the Rules of Court impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. It

declared that it is the plain intent of RA 8974 to supersede the system of deposit under Rule 67 with the scheme of 'immediate payment' in cases involving national government infrastructure projects.

The appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of RA 8974. Specifically, this prescribes the new standard in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession. Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects.

Statutes are generally applied prospectively unless they expressly allow a retroactive application. It is well known that the principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law. However, if a right be declared for the first time by a subsequent law, it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.

In this case, the government had long entered the subject land and constructed the transmission towers and lines. However, petitioner initiated inverse condemnation proceedings after the effectivity of RA 8974 on November 26, 2000; hence, procedurally and substantially, the said law should govern. Notably, the payment of the provisional value of the subject land equivalent to 100% of its current zonal value is declared for the first time by the said law which is evidently more favorable to the landowner than the mere deposit of its assessed value52 as required by Rule 67.

Besides, there is no legal impediment to the issuance of a writ of possession in favor of respondent, as successor of NPC, despite entry to the subject land long before the filing of the inverse condemnation proceedings before the RTC because physical possession gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership thereon.

Since the NPC's entry in the subject land on September 21, 1989, or for almost twenty-nine years, the registered owner had been effectively deprived of the beneficial enjoyment of the subject land without having been paid a single centavo.The Court reminds the government and its agencies that it is their obligation to immediately initiate eminent domain proceedings whenever they intend to take private property for any public purpose, which includes the payment of the provisional value thereof.

Accordingly, the case should be remanded to the RTC for the determination of just compensation for the subject land, taking into consideration, the relevant standards set forth under RA 8974.

It must be emphasized that RA 8974 does not take away from the courts the power to judicially determine the amount of just compensation. It merely provides relevant standards in order to facilitate the determination of just compensation and sets the minimum price of the property as the provisional value to immediately recompense the landowner with the same degree of speed as the taking of the property, which reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity.

The Court deems it proper to modify the amount of the provisional value from P7,845,000.00 to P7,854,000.00 computed by multiplying the area of 19,635 sq. m. occupied by the transmission lines

by the zonal value of the subject land at P400.00/sq. m. Moreover, it must be clarified that the government's initial payment of the land's provisional value does not excuse it from avoiding payment of interest on any difference between the amount of final just compensation adjudged and the initial payment.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), ***Petitioner*****, - versus - ESTRELLA R. DECENA, MARIETA DECENA BRAZIL, NOLAND D. BRAZIL, HEIRS OF EDITA R. DECENA, AS REPRESENTED BY VIRGILIO C. BRAZIL, SR.,** ***Respondents.***
G.R. No. 212786, SECOND DIVISION, July 30, 2018, CAGUIOA, *J.*

To begin with, it has been held in a plethora of cases that the determination of just compensation in an expropriation proceeding is a function addressed to the sound discretion of the courts. Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation. Consequently, the determination of just compensation remains to be an exercise of judicial discretion, so long as courts consider the standards laid down in statutes for the determination of just compensation, in this case, Section 5 of R.A. 8974.

The specific wording of Section 5 of R.A. 8974 provides: "in order to facilitate the determination of just compensation, the courts may consider them" — thus operating to confer discretion. Being simply standards, it is still the court that renders judgment as to what amount should be awarded and how to arrive at such an amount. And, in the absence of a finding of abuse, arbitrariness, or serious error, the exercise of such discretion may not be interfered with. ***In the present case, the Court finds no abuse, arbitrariness, or error on the part of the lower court.***

That the RTC found the amounts recommended by the BOC or the PACI to be, by themselves, incomplete indication of the fair market value of the property cannot be considered an indicium of arbitrariness. To recall, the BOC Report was primarily based the on the zonal valuation and average recorded sales of property within the vicinity, while the PACI report was predominantly based only on sales and listings of comparable property within the vicinity. With both recommended valuations — a BOC valuation of P17,893.33 per square meter and a PACI valuation of P30,000.00 — as guideposts, the court determined the fair market value of the property to be P25,000.00, in the exercise of its discretion to substitute its own estimate of the value of the property as gathered from the records. ***Considering that the amount of just compensation was arrived at after due consideration of the applicable statutory standards, the Court sees no cogent reason to disturb the findings of the RTC, as wholly affirmed by the CA.***

FACTS:

The petitioner Republic sought to acquire respondents' properties, all of which are located along Old Balara, Quezon City, as part of its Circumferential Road 5 (C5 Road) Extension Road Widening Project. The attempts by the petitioner to obtain the subject properties through negotiated sale failed, prompting petitioner to institute five (5) separate complaints for expropriation against respondents, which were later consolidated before the RTC.

Petitioner filed an Ex-Parte Motion for the Issuance of Writ of Possession, stating that it had deposited with the Land Bank of the Philippines (LBP) an amount equivalent to 100% of the current zonal valuation of the subject properties, in compliance with Section 4(a) of Republic Act No. 8974.

Subsequently, the RTC issued an Order of Condemnation and created a Board of Commissioners (BOC). The BOC submitted its report, recommending an amount of **P17,893.33 per square meter** as just compensation. In arriving at this amount, the BOC considered the following: (i) the BIR zonal valuation of P14,000.00; (ii) the average recorded sales of properties within the vicinity of P14,490.00 which were based on Records from the year 2011-2012; and (iii) the highest recorded sale for adjacent properties, which was P25,190.00.

Respondents, on the other hand, submitted a valuation based on the Appraisal Report of the Philippine Appraisal Company, Inc. (PACI). The PACI report recommended a valuation of **P30,000.00 per square meter**. The PACI employed a "market data approach," considering the prices for sales, listings, and other data of comparable properties within the vicinity, with specific focus on properties located along Commonwealth and within the Ayala Heights Subdivision.

The RTC fixed the just compensation at **P25,000.00 per square meter.** The RTC ruled that in determining the just compensation, it cannot take into consideration the BIR Zonal Valuation as the same is always relatively less than the fair market value. The valuation recommended by the commissioners cannot also be adopted as the appraised value was arrived at considering only the average of recorded sales of property within or adjacent to the subject property in Tandang Sora, the BIR Zonal Valuation, and the highest recorded sale for adjacent property. The valuation recommended by PACI predominantly based on the sales, listings and other market data of comparable property within the vicinity cannot be entirely relied upon.

The CA affirmed the RTC Decision *in toto.*

ISSUE:

Whether the RTC's determination of just compensation at P25,000.00 per square meter is proper. (YES)

RULING:

To begin with, it has been held in a plethora of cases that the determination of just compensation in an expropriation proceeding is a function addressed to the sound discretion of the courts. Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation. Consequently, the determination of just compensation remains to be an exercise of judicial discretion, so long as courts consider the standards laid down in statutes for the determination of just compensation, in this case, Section 5 of R.A. 8974.

The specific wording of Section 5 of R.A. 8974 provides: "in order to facilitate the determination of just compensation, the courts *may* consider them" — thus operating to confer discretion. Being simply standards, it is still the court that renders judgment as to what amount should be awarded and how to arrive at such an amount. And, in the absence of a finding of abuse, arbitrariness, or serious error, the exercise of such discretion may not be interfered with. **In the present case, the Court finds no abuse, arbitrariness, or error on the part of the lower court.**

That the RTC found the amounts recommended by the BOC or the PACI to be, by *themselves*, incomplete indication of the fair market value of the property cannot be considered an indicium of arbitrariness. To recall, the BOC Report was primarily based the on the zonal valuation and average recorded sales of property within the vicinity, while the PACI report was predominantly based only on sales and listings of comparable property within the vicinity. With both recommended valuations — a BOC valuation of P17,893.33 per square meter and a PACI valuation of P30,000.00 — as guideposts, the court determined the fair market value of the property to be P25,000.00, in the exercise of its discretion to substitute its own estimate of the value of the property as gathered from the records. **Considering that the amount of just compensation was arrived at after due consideration of the applicable statutory standards, the Court sees no cogent reason to disturb the findings of the RTC, as wholly affirmed by the CA.**

In fine, the Court holds that the CA did not err when it found that the RTC had properly and judiciously considered the standards set forth in Section 5 of R.A. 8974 in arriving at the just compensation of P25,000.00 per square meter.

Finally, in accordance with prevailing jurisprudence, just compensation contemplates just and prompt payment, and prompt payment, in turn, requires the payment ***in full*** of the just compensation as finally determined by the courts. Read vis-a-vis Section 10, Rule 67 of the Rules of Court, this means that the petitioner incurs in delay if it does not pay the property owner in the full amount of just compensation as of the date of the taking.

In other words, R.A. 8974 requires the government to pay at two stages: ***first*****, immediately upon the filing of the complaint, the initial deposit** which is 100% of the value of the property based on the current relevant zonal valuation of the BIR, and the value of the improvements and/or structures sought to be expropriated; and ***second***, the just compensation as determined by the court, when the decision becomes final and executory, in which case the implementing agency shall pay the owner the difference between the just compensation as determined by the court and the amount already or initially paid.

Accordingly, absent full payment of just compensation, interest on the unpaid portion (*i.e.*, the just compensation determined by the court at the time the decision becomes final and executory minus the initial deposit), likewise runs as a matter of law and follows as a matter of course — in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

Considering the foregoing, the Court finds that the petitioner owes the respondents: (1) the **unpaid portion** of the fair market value, that is, the balance between the fair market value as finally determined by the court (computed at P25,000.00 per square meter) and the amount of the initial deposit made by the government; (2) ***interest*** on that **unpaid portion**, which interest begins to run from the date of taking; and (3) ***interest*** on the fair market value from the date of the taking to the date of the initial deposit by the petitioner.

LAND BANK OF THE PHILIPPINES, *Petitioner*, - versus - PRADO VERDE CORPORATION, *Respondent* [G.R. No. 208112]
PRADO VERDE CORPORATION, *Petitioner*, - versus - LAND BANK OF THE PHILIPPINES, *Respondent* [G.R. No. 210243]
x----------x
LAND BANK OF THE PHILIPPINES, *Petitioner*, - versus - PRADO VERDE CORPORATION, *Respondent*.
G.R. No. 208004, THIRD DIVISION, July 30, 2018, GESMUNDO, *J.*

In eminent domain, the determination of just compensation is principally a judicial function of the RTC, acting as a Special Agrarian Court. The RTC-SAC, however, must comply with the Court's ruling in Alfonso v. Land Bank of the Philippines necessitating compliance with the guidelines and factors laid down by law in determining just compensation, where the Court specifically emphasized that:

> *Out of regard for the DAR's expertise as the concerned implementing agency,* ***courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law****. x x x*

Undoubtedly, the courts are not at liberty to deviate from the DAR basic formula, unless such deviations are amply supported by facts and reasoned justification. ***While this Court acknowledges the SAC's effort to abide by and conform to the prevailing law and regulations on land valuation, We cannot fully subscribe to its finding and in ultimately fixing the amount of just compensation because of its failure to apply the correct formula.***

As the subject properties are undisputedly lands acquired under P.D. No. 27, they should be valued following the guidelines set forth in DAR A.O. No. 1.

We agree with Land Bank that since the subject land has already been distributed by the DAR to the farmer-beneficiaries and the DAR valuation is rejected by the landowner and is undergoing a just compensation case in court, ***the first formula – LV = (CNI x 0.90) + (MV x 0.10) – should be used in determining just compensation of the 2.4975 hectares of land subject of this case****.*

The 2-factor formula of LV = (CNI x 0.90) + (MV x 0.10) would have been the better alternative. Clearly, the SAC failed to abide by the implementing rules of the agrarian law and deviated therefrom without any justification.

FACTS:

Prado was the owner of an agricultural land known as Lot 5834-A, covered by TCT No. 4141 issued in the name of Legazpi Oil Company, Inc. (Legazpi Oil), from which Prado bought said property. The property remained registered in the name of Legazpi Oil and the sale was not annotated on the TCT. However, a deed of absolute sale in favor of United Plaza Properties, Inc. was presented for registration and was duly registered before the Registry of Deeds of Legazpi. The said property was placed within the coverage of the Agrarian Reform Program under P.D. No. 27 and a portion thereof, with an area of 2.4975 hectares, was placed within the coverage of Operation Land Transfer. As of August 2010, the landowner of the agricultural property had not yet been compensated. Prado received the claims folder from the Department of Agrarian Reform (DAR).

Meanwhile, pursuant to Emancipation Patent issued by DAR, the Registry of Deeds entered in its registry TCT Nos. 58 and 59 over portions of Lot 5834-A, which portions were now known as Lot No. 5834-A-1, issued in the name of farmer-beneficiary Salustiano Arcinue, and Lot No. 5834-A-2 issued in the name of farmer-beneficiary Agapito Azupardo, respectively. Thus, TCT No. 4141 was partially cancelled with regard to the 2.4975 hectare portion, which was previously classified as riceland of Lot No. 5834-A.

Land Bank initially valued the acquired property in the amount of P38,885.04 pursuant to P.D. No. 27. Then, a revaluation was made and the compensation was pegged in the amount of P59,457.05 which amount, for unknown reason, was not received by the landowner. Thus, Prado filed an agrarian suit before the RTC.

During the pendency of the case, Land Bank further revalued the property using the reckoning dates of production data and values pursuant to A.O. No. 1, series of 2010, which the DAR issued under R.A. No. 9700, and the two-factor formula prescribed therein [(LV = (CNI x 0.90) + (MV x 0.10)], thus arriving at the amount of P214,026.38. However, Prado rejected the revalued compensation.

The RTC, acting as a Special Agrarian Court (SAC), fixed the amount of just compensation at **P294,495.20.** The trial court held that just compensation of the subject properties should be computed pursuant to A.O. No. 5, Series of 1998, as amended by A.O. No. 2, Series of 2009 and A.O. No. 1, Series of 2010, which reckoned the determination of just compensation based on the condition of the property prevailing within the 12-month period preceding June 30, 2009, the presumptive date of taking.

Unsatisfied, both parties moved for reconsideration, which were denied. Thus, Prado and Land Bank filed their respective petitions for review before the CA.

The CA ruled that the trial court correctly applied the three-factor formula prescribed under A.O. No. 1, Series of 2010. It also did not agree with Prado's contention that the fair market value of the land should be used as the basis for the computation of just compensation. Instead, the CA, citing *Allied Banking Corp. v. LBP*, ruled that a market data approach cannot replace the factors enumerated in the agrarian law and the computation in accordance with the DAR administrative order implementing it, and that the measure of just compensation in agrarian reform is different from ordinary expropriation where lands are likewise taken for public use.

The CA further ruled that the three-factor formula was correctly applied by the court *a quo* in the valuation of Prado's landholding. It held that the court a quo's findings closely conformed to the factors listed in Section 17 of RA No. 6657 especially the factors of *actual use and income of the subject properties*. It has been consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value, assessor's value and the volume and the value of produce is valid and accords with Section 17 of the said law.

Land Bank, however, avers that while the SAC recognized that the AOs implementing R.A. No. 6657, as amended by R.A. No. 9700, should be followed in the determination of just compensation, yet it did not follow the factors and formula under DAR A.O. No. 1, S. 2010 for a P.D. No. 27 covered land, such as in this case, where the valuation is challenged by the landowner. Instead, the SAC erroneously used the formula for P.D. No. 27 lands that are still to be covered under the new law, thus, the

adjudged compensation was violative of agrarian reform laws and established jurisprudence. Land Bank argues that the SAC cannot invoke judicial discretion in justifying its decision disregarding the prescribed formula for the determination of just compensation. Therefore, in upholding the decision of the SAC, the CA committed reversible error.

ISSUE:

Whether SAC's determination of just compensation was proper. (NO)

RULING:

In eminent domain, the determination of just compensation is principally a judicial function of the RTC, acting as a Special Agrarian Court. The RTC-SAC, however, must comply with the Court's ruling in *Alfonso v. Land Bank of the Philippines* necessitating compliance with the guidelines and factors laid down by law in determining just compensation, where the Court specifically emphasized that:

> Out of regard for the DAR's expertise as the concerned implementing agency, **courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law**. x x x

Undoubtedly, the courts are not at liberty to deviate from the DAR basic formula, unless such deviations are amply supported by facts and reasoned justification.

The SAC, which the CA affirmed, held that, all three (3) relevant factors mentioned in either A.O. No. 2, series of 2009 and/or A.O. No. 1, series of 2010 are present. Thus, the three-factor formula prescribed in A.O. No. 1, series of 2010 is applicable. **However, while this Court acknowledges the SAC's effort to abide by and conform to the prevailing law and regulations on land valuation, We cannot fully subscribe to its finding and in ultimately fixing the amount of just compensation because of its failure to apply the correct formula.**

As the subject properties are undisputedly lands acquired under P.D. No. 27, they should be valued following the guidelines set forth in DAR A.O. No. 1.

As previously discussed, there were two (2) formulas provided for in DAR A.O. No. 1. Item IV(1) thereof refers to lands already distributed by the DAR to the farmer-beneficiaries where documentation and/or valuation are/is not yet complete (DNYD) and for claims with the Land Bank. On the other hand, Item IV(2) of A.O. No. 1 refers to lands falling under Phase 1 of R.A. No. 9700.

We agree with Land Bank that since the subject land has already been distributed by the DAR to the farmer-beneficiaries and the DAR valuation is rejected by the landowner and is undergoing a just compensation case in court, **the first formula – *LV = (CNI x 0.90) + (MV x 0.10)* – should be used in determining just compensation of the 2.4975 hectares of land subject of this case**. Records would show that Land Bank has clearly presented the relevant factors it considered in fixing the amount of just compensation. These factors were also sufficiently substantiated.

On the contrary, even with its effort to apply the DAR basic formula of LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10), which is the second formula under DAR A.O. No. 1, series of 2010, **the SAC still erred**

in using the same. It is observed that, in arriving at the comparable sales (CS) factor, the SAC merely adopted the commissioner's report that the subject land had a zonal value of P20.00 per square meter or a total amount of P200,000.00 per hectare. The SAC immediately considered such data as the CS, which is one of the three (3) factors needed in the DAR basic formula.

In this case, the SAC did not take into consideration any comparable sale transactions because records did not show any. The reported P20.00/sq. m. zonal value of the land was simply multiplied by 10,000 sq. m. to arrive at the amount of P200,000.00 as the CS, a formula that is not one of those mentioned. The SAC should not have forced using the 3-factor formula considering that no Comparable Sales was reported. Instead, it should have opted using an alternative formula provided by the rules which the data gathered permits. **The 2-factor formula of LV = (CNI x 0.90) + (MV x 0.10) would have been the better alternative. Clearly, the SAC failed to abide by the implementing rules of the agrarian law and deviated therefrom without any justification.**

The Court reiterates its pronouncement in *Alfonso v. Land Bank of the Philippines*, where we declare that:

> While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. Until a direct challenge is successfully mounted against Section 17 and the basic formulas, it should be applied to all pending litigation involving just compensation in agrarian reform.
>
> In fixing the just compensation in agrarian cases, courts are duty-bound to apply and consider the factors provided for in Sec. 17 of R.A. No. 6657, as amended, which are translated into the applicable DAR formulas. Although the courts have the power to make a final determination of just compensation as a result of its exercise of judicial discretion, a deviation from prevailing formulas on land valuation would be allowed for as long as such deviation is rational and amply substantiated.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH); ENGR. REBECCA J. ROCES, DISTRICT ENGINEER, 2ND DISTRICT ENGINEERING OFFICE OF CAMARINES SUR; AND ENGR. VICTORINO M. DEL SOCORRO, JR., PROJECT ENGINEER, DPWH, BARAS, CANAMAN, CAMARINES SUR, ***Petitioners*****,-versus-SPOUSES CORNELIO ALFORTE AND SUSANA ALFORTE**, ***Respondents*****.**

G.R. No. 217051, FIRST DIVISION, August 22, 2018, DEL CASTILLO, *J.*

In Republic v. Spouses Regulto, lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected. With the existence of the said easement of right-of-way in favor of the Government, the petitioners may appropriate the portion of the land necessary for the construction of the bypass road without paying for it, except for damages to the improvements. Consequently, the petitioners are ordered to obtain the necessary quitclaim deed from the Spouses

Regulto for the 162-square-meter strip of land to be utilized in the bypass road project. (Citations omitted)

In the case at hand, respondents are thus required to execute the corresponding quitclaim in favor of the State, with respect to the 127 square meters of respondents' land. Nonetheless, the Court observes that, while respondents' land is only 300 square meters, the State requires 127 square meters thereof for its road project - or nearly half of the whole property. This could affect the integrity of the whole property, and may materially impair the land to such extent that it may be deemed a taking of the same - which thus entitles respondents to just compensation for the remaining portion of their property. In this regard, a thorough determination by the trial court must be made.

FACTS:

Respondents Cornelio and Susana Alforte were the registered owners of a 300-square meter parcel of land covered by TCT 29597. The subject property was originally covered by a March 21, 1956 Free Patent and April 14, 1956 Original Certificate of Title No. 235,issued pursuant to CA 141 or the Public Land Act.

127 square meters of the subject property will be traversed by the Naga City-Milaor Bypass Road construction project of the DPWH. For this reason, respondents filed a Complaint to compel petitioners to pay them just compensation for the 127-square meter area that would have been lost to the road project.

Petitioners filed their Answer praying for the dismissal on the ground, among others, of lack of cause of action - arguing that, since the property was originally acquired by free patent, an easement in favor of the government of 60 meters existed without need of payment of just compensation - except if there were improvements, pursuant to Section 112 of CA 141, as amended by Presidential Decree (PD) No. 1361

The Naga RTC was not persuaded by defendants' argument that the 60-meter legal encumbrance on the property, by virtue of Section 112, CA 141, precludes spouses Alforte from claiming just compensation.

ISSUE:

Whether or not the legal easement established by Section 112, CA 141 in favor of the Government outright authorized it to take a portion of the subject property without paying just compensation (NO)

RULING:

Respondents' TCT 29597 specifically contains a proviso stating that said title is "subject to the provisions of the x xx Property Registration Decree and the Public Land Act, as well as to those of the Mining Laws x xx." Their title is therefore necessarily subject to the easement provided in Section 112, as amended. Such a proviso exists in TCT 29597 since it was derived from a free patent issued on March 21, 1956. A legal easement of right-of-way exists in favor of the Government over land that was originally public land awarded by free patent even if the land was subsequently sold to another. This was the ruling in *Republic v. Spouses Regulto*, where the Court made the following pronouncement:

This Court held that 'a legal easement of right-of-way exists in favor of the Government over land that was originally a public land awarded by free patent even if the land is subsequently sold to another.' This Court has expounded that the 'ruling would be otherwise if the land was originally a private property, to which just compensation must be paid for the taking of a part thereof for public use as an easement of right-of-way.'

Jurisprudence settles that one of the reservations and conditions under the Original Certificate of Title of land granted by free patent is that the said land is subject '*to all conditions and public easements and servitudes recognized and prescribed by law especially those mentioned in Sections 109, 110, 111, 112, 113 and 114, Commonwealth Act No. 141, as amended*.'

Section 112 of C.A No. 141, as amended, provides that lands granted by patent shall be subjected to a right-of-way in favor of the Government, to wit:

Sec. 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters on width for public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, airport runways, including sites necessary for terminal buildings and other government structures needed for full operation of the airport, as well as areas and sites for government buildings for Resident and/or Project Engineers needed in the prosecution of government-infrastructure projects, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, with damages for the improvements only.

In other words, lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected.

With the existence of the said easement of right-of-way in favor of the Government, the petitioners may appropriate the portion of the land necessary for the construction of the bypass road without paying for it, except for damages to the improvements. Consequently, the petitioners are ordered to obtain the necessary quitclaim deed from the Spouses Regulto for the 162-square-meter strip of land to be utilized in the bypass road project. (Citations omitted)

In the case at hand, respondents are thus required to execute the corresponding quitclaim in favor of the State, with respect to the 127 square meters of respondents' land.

Nonetheless, the Court observes that, while respondents' land is only 300 square meters, the State requires 127 square meters thereof for its road project - or *nearly half of the whole property*. This could affect the integrity of the whole property, and may materially impair the land to such extent that it may be deemed a taking of the same - which thus entitles respondents to just compensation for the remaining portion of their property. In this regard, a thorough determination by the trial court must be made.

In the *Regulto* case cited above, the State took 162 square meters of the landowners' 300-square meter property, for which the Court declared that there was a taking of the whole property. It was held therein that -

It is noted that the 162 square meters of the subject property traversed by the bypass road project is well within the limit provided by the law. While this Court concurs that the petitioners are not obliged to pay just compensation in the enforcement of its easement of right-of-way to lands which originated from public lands granted by free patent, we, however, rule that petitioners are not free from any liability as to the consequence of enforcing the said right-of-way granted over the original 7,759-square-meter property to the 300-square-meter property belonging to the Spouses Regulto.

There is 'taking,' in the context of the State's inherent power of eminent domain, when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or material impairment of the value of his property or when he is deprived of the ordinary use thereof. Using one of these standards, it is apparent that there is taking of the remaining area of the property of the Spouses Regulto. It is true that no burden was imposed thereon, and that the spouses still retained title and possession of the property. The fact that more than half of the property shall be devoted to the bypass road will undoubtedly result in material impairment of the value of the property. It reduced the subject property to an area of 138 square meters.

In *Bartolata v. Republic*, the Court held:

To recapitulate, two elements must concur before the property owner will be entitled to just compensation for the remaining property under Sec. 112 of CA 141: (1) that the remainder is not subject to the statutory lien of right of way; and (2) that the enforcement of the right of way results in the practical destruction or material impairment of the value of the remaining property, or in the property owner being dispossessed or otherwise deprived of the normal use of the said remainder.

Thus, there must be a thorough determination by the trial court if the utilization and taking of the 127-square meter portion of respondents' land amounts to a taking of the whole property - as it amounts to the material impairment of the value of the remaining portion, or if the respondents are being dispossessed or otherwise deprived of the normal use thereof.

3. Expropriation by local government units

M. Non-impairment of contracts

N. Free access to courts and adequate legal assistance

O. Custodial investigation rights

P. Rights of the accused

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus - CEASAR CONLU Y BENETUA, *Appellant*.
G.R. No. 225213, SECOND DIVISION, October 03, 2018, CARPIO, J.

For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) that the transaction or sale took place between the accused and the poseur-buyer; and (2) that the dangerous drug subject of the transaction or sale is presented in court as evidence of the corpus delicti.

In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The ten or seven meter distance between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer.

Furthermore, there is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken. PO2 Libo-on's testimony does not clearly state that he saw the poseur-buyer giving the buy-bust item to PO2 Bernil and PO2 Libo-on seems uncertain whether he had custody of the buy-bust item from the time it was allegedly handed by the poseur-buyer to PO2 Bernil

In People v. Ismael, the Court stressed that in cases of illegal sale of dangerous drugs, the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

FACTS:

Appellant was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165 in Criminal Case Nos. 8615-69 and 8616-69. Since appellant was acquitted in Criminal Case No. 8615-69, the subject of this appeal is Criminal Case No. 8616-69 only.

The Information in Criminal Case No. 8616-69 reads:

> That on April 18, 2012 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one heat[-]sealed sachet of shabu marked as "PALI-BBI" to an asset of the Silay City PNP posing as a poseur buyer in exchange for One two hundred peso bill with serial number T300611 and [one] fifty peso bill with serial number GF888950 all marked with an underline at the last digit of each serial number.
>
> CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty. Thus, trial ensued.

In its Brief, the prosecution presented the following version of the facts:

The Chief of Police ordered a buy-bust operation by members of the Silay PNP and their civilian agents. They coordinated with the Philippine Drug Enforcement Agency (PDEA) in Silay City.

Marked money worth P250.00 was prepared and duly recorded before it was given to the police asset for use in the planned buy-bust. They then proceeded to the target area in Villa Hergon, Barangay Rizal, Silay City, Negros Occidental. The poseur-buyer went ahead to the target location.

Police operatives followed and went to the location of the operation after fifteen (15) minutes. Police officers Libo-on and Bernil were located approximately fifty (50) meters from where the asset and appellant were supposed to conduct their transaction when the poseur-buyer then called up the police operatives and told them to get ready. The police then moved toward the site, approximately ten (10) meters from where their asset and appellant were about to meet.

The poseur-buyer at that moment approached appellant and gave the latter the marked money. Appellant then put the marked money in the right front pocket of his cargo short pants, and then pulled out a small sachet containing crystalline substance and gave it to the poseur-buyer. To notify the operatives that the transaction was complete, the asset performed the pre-arranged signal by putting his right hand over his head. The operatives immediately rushed to the scene to arrest appellant.

The RTC held that the prosecution "more than amply complied" with the requisites for a successful buy-bust operation concerning illegal drugs. The RTC stated that "the buy-bust operation on accused x x x was not a random police operation. It was well-planned and duly coordinated with the Philippine Drug Enforcement Agency (PDEA). The material and focal incidents in the conduct of said operation were well-documented and clearly laid by the prosecution."

In affirming the RTC's decision, the Court of Appeals found all the requirements for the prosecution of illegal sale of dangerous drugs have been positively and clearly established through the credible testimonies of the arresting officers.

ISSUE:

Whether or not all the requirements for the prosecution of illegal sale of dangerous drugs have been positively and clearly established through the credible testimonies of the arresting officers. (NO)

RULING:

We acquit for failure of the prosecution to prove the illegal sale of the dangerous drug beyond reasonable doubt and failure of the prosecution to prove the unbroken chain of custody of the dangerous drug.

For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) that the transaction or sale took place between the accused and the poseur-buyer; and (2) that the dangerous drug subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.

In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The ten or seven meter distance between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer. This is clear from PO2 Libo-on's testimony, to wit:

> Q.
> So what did the suspect do when the marked money was handed to him by the poseur buyer?
> A.
> The suspect took the marked money, then put it inside his right front pocket and **took something from his right side** because he was wearing a cargo shorts at that time and that we believed that it was a Shabu [sic] and gave it to our poseur buyer.

In *Sindac v. People*, the Court, in acquitting the accused, took into account the distance between the police officers and the site of the alleged drug transaction. The Court invalidated the *in flagrante delicto* arrest and warrantless search on the ground that no criminal overt act could be attributed to the accused as to result in suspicion in the mind of the arresting officers.

In *People v. Guzon,* the Court found that the prosecution failed to prove that the illegal sale actually transpired, given the distance between the police officer and the poseur-buyer.

Moreover, the prosecution's failure to present the poseur-buyer proved fatal to its case. It must also be noted that, as appellant maintains, the buy-bust item was only 0.01 gram in weight which is minuscule in amount for PO2 Lib-on and PO2 Bernil to clearly see the alleged illegal transaction that took place.

In *People v. Casacop*, the Court held that the poseur-buyer should have been presented as a witness considering the minuscule amount of the buy-bust item, thus:

> The transaction was between accused-appellant and the poseur-buyer, while PO1 Bautista watched the transaction a few meters away.
>
> His statement that he saw "accused[-appellant] hand over something" creates reasonable doubt whether the item given by the poseur-buyer to PO1 Bautista is the same "something" that accused-appellant allegedly gave the poseur-buyer.
>
> x x x x
>
> Non-presentation of the poseur-buyer also defeats the case of the plaintiff-appellee. The testimony of the poseur-buyer is not "merely corroborative of the apprehending officers-eyewitnesses' testimonies[,]" as plaintiff-appellee alleges. The poseur-buyer had personal knowledge of the transaction since he conducted the actual transaction. PO1 Bautista was merely an observer from several meters away. Further, **the amount involved is so small that the reason for not presenting the poseur-buyer does not square with such a minuscule amount**.

Furthermore, there is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken. PO2 Libo-on's testimony does not clearly state that he saw the poseur-buyer giving the buy-bust item to PO2 Bernil and PO2 Libo-on seems uncertain whether he had custody of the buy-bust item from the time it was allegedly handed by the poseur-buyer to PO2 Bernil, to wit:

> Q.
> What did you do with that buy bust item?

A.
I think I was the one who made custody of the buy bust item and I marked the buy bust item as "PALI-BBI" as buy bust item.

In *People v. Ismael*, the Court stressed that in cases of illegal sale of dangerous drugs, the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

In *Mallillin v. People*, cited in *People v. Ismael*, the Court explained the chain of custody rule as follows:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain**. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

In this case, as stated, there was uncertainty whether the dangerous drug allegedly purchased by the poseur-buyer was actually handed over by the poseur-buyer to PO2 Bernil since PO2 Libo-on's testimony did not clearly establish that he saw the hand over. Thus, there is no testimony on the precise moment the dangerous drug was allegedly turned over to PO2 Bernil. Accordingly, the unbroken chain of custody of the dangerous drug, which is required in the successful prosecution of illegal drug cases, was not established.

WHEREFORE, we GRANT the appeal. We ACQUIT appellant Ceasar Conlu y Benetua for violation of Section 5, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt and ORDER his immediate release from confinement at the New Bilibid Prison in Muntinlupa City.

Q. Right to the speedy disposition of cases

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ALEJANDRO E. GAMOS, AND ROSALYN G. GILE, *Respondents*.
G.R. Nos. 232197-98, FIRST DIVISION, April 16, 2018, TIJAM, *J.*

This Court, in Martin v. Ver, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an ad hoc basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and

must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

In this case, the court a quo's sweeping conclusion that it took the OMB seven years from the filing of the First Complaint in 2008 before the complaints were filed with the court and that as such, respondents Gamos and Gile were subjected to uncertainty with regard to their cases, was not well-taken.

FACTS:

Two separate complaints were filed against former Sta. Magdalena, Sorsogon Mayor Alejandro E. Gamos, Municipal Accountant Rosalyn E. Gile, and Municipal Treasurer Virginia E. Laco for violation of Section 3(e) of Republic Act No. 3019 (First Complaint) and of Article 217 of the Revised Penal Code (Second Complaint), arising from alleged illegal cash advances made in the years 2004 to 2007.

On March 31, 2008, Gamos, Gile, and Laco were directed to submit their counter-affidavits to the First Complaint dated February 18, 2008. Having obtained an extension of time upon their motion, Gamos, Gile, and Laco filed their counter-affidavits on May 12, 2008. Gallanosa and Robillos filed their Replythereto. Gamos and Gile then filed a Joint Rejoinder-Affidavit.

On February 23, 2010, Gamos, Gile, and Laco were directed to file their counter-affidavits to the Second Complaint dated December 3, 2009. On two separate occasions, they filed a motion for extension of time to file counter-affidavits. On May 7, 2010, they asked for the dismissal of the Second Complaint in a Joint Counter-Affidavit with Motion to Dismiss. Gallanosa filed a Replythereto.

In a Consolidated Resolutiondated October 19, 2010, the OMB investigating officer found that it is premature to determine criminal and administrative liabilities considering that the COA audit reports, upon which the complaints were based, were not yet final. Thus, the dismissal of the complaints was recommended without prejudice. The said October 19, 2010 Consolidated Resolution was approved only on May 17, 2011.

On June 26, 2011, Gallanosa and Robillos filed a Motion for Reconsideration of the said October 19, 2010 Consolidated Resolution. On October 11, 2011, Gamos, Gile, and Laco were required to file a comment to the motion for reconsideration. They filed a motion for extension of time to file comment. Their Comment-Opposition to the Motion for Reconsideration was filed on December 5, 2011.

On June 13, 2013, Gallanosa and Robillos' June 26, 2011 motion for reconsideration was finally resolved, granting the same, finding probable cause to indict Gamos, Gile, and Laco for malversation of public funds.On March 30, 2015, two Informations for malversation of public funds were filed against Gamos, Gile, and Laco before the Sandiganbayan.

On November 22, 2016, Gamos and Giles filed a Motion to Dismiss on the ground of capricious and vexatious delay in the OMB's conduct of preliminary investigation to the damage and prejudice of the accused.

Sandiganbayan issued its assailed Resolution, dismissing the cases, on the ground of delay, depriving the respondents-accused Gamos, Gile and Laco of their right to a speedy disposition of their cases.

ISSUE:

Whether or not respondents' right to speedy disposition of their cases was violated (NO)

RULING:

Time and again, this Court has held that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular and due regard must be given to the facts and circumstances peculiar to each case. Further, the right to speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

In the case of *Remulla v. Sandiganbayan and Maliksi*, this Court explained:

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.

In this case, the court *a quo*'s sweeping conclusion that it took the OMB seven years from the filing of the First Complaint in 2008 before the complaints were filed with the court and that as such, respondents Gamos and Gile were subjected to uncertainty with regard to their cases, was not well-taken.

The First Complaint was filed on February 18, 2008. Contrary to the court *a quo*'s conclusion, by March 31, 2008, the OMB already acted upon the said complaint by directing the respondents to respond thereto. In the next proceeding months from April to June of the same year, pleadings from both the complainants and the respondents were filed. Pending the investigation of the First Complaint, the Second Complaint was filed on December 30, 2009. Again, several exchanges of pleadings were filed by both parties thereafter from February to October of 2010, until the investigating officer issued the October 19, 2010 Consolidated Resolution, recommending for the dismissal of the cases on the ground of prematurity, considering the request lodged by the respondents before the COA to review its audit reports upon which the complaints were based. In view of the consecutive resignations of the Deputy OMB for Luzon and the OMB on April 7, 2011 and May 6, 2011, the Consolidated Resolution was approved by the then Acting OMB only 11 days after the former OMB's resignation or on May 17, 2011.

With such developments to the cases after the dismissal thereof, which dismissal was notably without prejudice to the refiling if warranted considering the outcome of the COA's review of the pertinent audit reports as requested by the respondents, We do not find it unreasonable for the investigating officer to embark into the detailed investigation of the cases. As alleged, there were 63 cash advance transactions in the two complaints to investigated upon, covering the period of 2004 to 2007. Notably, it took the investigating officer only a year and three months from the receipt of the last

pleading on March 9, 2012 to conclude the investigation and find probable cause against respondents as reflected in the grant of Gallanosa and Robillos' motion for reconsideration on June 13, 2013.

As can be gleaned from the assailed resolutions, these circumstances were not considered by the court *a quo* as it, evidently, merely ventured into a mathematical computation of the period from the filing of the First Complaint to the filing of the Informations before it.

Another essential matter disregarded by the court *a quo* is the fact that there is nothing on record that would show that respondents asserted this right to speedy disposition during the OMB proceedings when they alleged that the delay occurred. In fact, it took respondents one year and eight months after the Informations were filed before the court *a quo* on March 30, 2015 before they finally asserted such right in their Motion to Dismiss filed on November 22, 2016.

Neither was there a considerable prejudice caused by a delay upon the respondents. Respondents were practically not made to undergo any investigative proceeding prior to the COA's response to respondents' request for the review of the audit reports upon which the complaints were anchored. Hence, the investigating officer recommended the dismissal of the complaints while such request was pending as it was premature to base a determination of administrative and criminal liability upon reports which were then considered to have not yet attained finality. Precisely, the investigating officer started the investigation upon the submission of the COA's denial of such request in 2012. This also bolsters OUR conclusion that the determination of whether or not there was delay in the investigation proceedings cannot be indiscriminately reckoned from the mere filing of the First Complaint.

Likewise in this case, there is no allegation, much less proof, that respondents were persecuted, oppressed, or made to undergo any vexatious process during investigation period before the filing of the Informations.

ELPIDIO TAGAAN MAGANTE, *Petitioner*, -versus- SANDIGANBAYAN, (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES, *Respondent*s.

G.R. No. 230950-51, THIRD DIVISION, July 23, 2018, VELASCO JR., *J.*

The SCnotes that the case against petitioner was initiated on January 7, 2011, when the PACPO-OMB-Visayas filed a formal complaint against petitioner. Thus, petitioner's preliminary investigation lasted from January 7, 2011 until April 15, 2016, or about five years and three months from the date of the filing of the formal complaint.

Since the duration of the preliminary investigation is excessive, it is incumbent then on the prosecution to justify the delay. Unfortunately, no circumstance in this case warranted the protracted period of investigation.

Verily, the order requiring respondents to file their counter-affidavits was issued on February 15, 2011. No clarificatory hearing or further investigation was conducted that could have added a new dimension to the case. On May 6, 2011, the criminal complaint was then already deemed submitted for resolution. Yet, it would only be on April 15, 2016 when petitioner would once again hear about the case, through his receipt of the adverse ruling finding probable cause to charge him with splitting of contracts and

falsification of public documents. Noticeably, the prosecution did not offer any acceptable explanation for this gap between February 15, 2011 and April 15, 2016. Contrary to the finding of the Sandiganbayan, there is a hiatus on the part of the Ombudsman during this period. Left unsatisfactorily explained, this amounts to a violation of petitioner's constitutional right to a speedy disposition of case, corollarily warranting the dismissal of the criminal case against him.

FACTS:

Two informations for Falsification of Public Documents and for Splitting of Contractswere filed against petitionerElpidio Magante on October 7, 2016 before the Sandiganbayan.

Thereafter, petitioner filed a Motion to Dismiss the cases against him on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to a speedy disposition of cases. Petitioner claimed that it took the Ombudsman about seven years, reckoned from the commencement of the fact-finding investigation in 2009 up to 2016, to issue its Resolution directing the filing of two separate informations against him. Petitioner reckoned the period from April 21, 2009, the date of the Affidavit and Narrative Audit Report that was submitted by Delfin Aguilar, Regional Director of the Commission on Audit Regional Office which led to the commencement of a fact-finding investigation by the Ombudsman.

Petitioner likewise asserted that even if the period were to be counted from February 15, 2011, which is the date when the Ombudsman issued an Order directing him to submit their respective counter-affidavits, up to the approval of its Resolution, still, there is a clear inordinate delay of five years and two months in resolving his case. Petitioner invoked the Court's pronouncements in *Tatad v. Sandiganbayan*, *Angchangco v. Ombudsman*, *Roque v. Ombudsman*, *Coscolluela v. Sandiganbayan*, and *People v. Sandiganbayan* to advance his theory.

The Sandiganbayandenied petitioner's Motion to Dismiss for utter lack of merit. It held that in *Tatad*, there were peculiar circumstances attendant to the three-year delay in terminating the preliminary investigation against him. ''*Political motivations played a vital role in activating and propelling the prosecutorial process*;" and, there was a departure from the established procedure in conducting the preliminary investigation and that the issues involved were simple.Unlike in *Tatad*, the present cases involve no imputation of any political motivation in the filing of the present *Informations* against the petitioner.

The Sandiganbayan took into account that fact that petitioner did not file any *motion* or letter seeking the early resolution of the case against him and signifying that he was not waiving his right to its speedy disposition.

Thus, the Sandiganbayan held that petitioner must be deemed to have waived said right for his failure to assert it with reasonable promptitude.

ISSUE:

Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions without regard to the constitutional right of the petitioner to speedy disposition of the investigation of the case and to the various SC decisions upholding said constitutional right. (Yes)

RULING:

Prevailing jurisprudence on the speedy disposition of cases is sourced from the landmark ruling of the US Supreme Court in *Barker v. Wingo*wherein a delicate balancing test was crafted to determine whether or not the right had been violated:

> A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

a. Length of delay

The reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The SC held that the period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

b. Reasons for the delay

Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent.

c. Assertion of Right by the Accused

The Court had ruled in several cases that failure to move for the early resolution of the preliminary investigation or similar reliefs before the Ombudsman amounted to a virtual waiver of the constitutional right. In *Dela Peña v. Sandiganbayan*for example, the SC held that it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is allowing the delay only to later claim it as a ruse for dismissal.

d. Prejudice to the respondent

Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party.

Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and

concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Applying these factors to the case at bar, theSC finds grave abuse of discretion on the part of the Sandiganbayan in rendering its questioned Resolutions denying the petitioner's Motion to Dismiss.

The SCnotes that the case against petitioner was initiated on January 7, 2011, when the PACPO-OMB-Visayas filed a formal complaint against petitioner. Thus, petitioner's preliminary investigation lasted from January 7, 2011 until April 15, 2016, or about five years and three months from the date of the filing of the formal complaint.

Since the duration of the preliminary investigation is excessive, it is incumbent then on the prosecution to justify the delay. Unfortunately, no circumstance in this case warranted the protracted period of investigation.

Verily, the order requiring respondents to file their counter-affidavits was issued on February 15, 2011. No clarificatory hearing or further investigation was conducted that could have added a new dimension to the case. On May 6, 2011, the criminal complaint was then already deemed submitted for resolution. Yet, it would only be on April 15, 2016 when petitioner would once again hear about the case, through his receipt of the adverse ruling finding probable cause to charge him with splitting of contracts and falsification of public documents. Noticeably, the prosecution did not offer any acceptable explanation for this gap between February 15, 2011 and April 15, 2016. Contrary to the finding of the Sandiganbayan, there is a hiatus on the part of the Ombudsman during this period. Left unsatisfactorily explained, this amounts to a violation of petitioner's constitutional right to a speedy disposition of case, corollarily warranting the dismissal of the criminal case against him.

The SC disagrees with the anti-graft court's ratiocinations for the denial of the Motion to Dismiss. The plea for dismissal cannot be premised on the finding that the instant criminal complaints were not politically-motivated unlike in *Tatad*. That the filing of the criminal complaint is ill-motivated is then not a requisite before the right to a speedy disposition of a case can be invoked.

The prosecution harps on the fact that there were ten respondents in the complaint file with the OMB and each of them was afforded the right to explain themselves. Also, the records of the case were allegedly voluminous that entailed considerable time to study and analyze. However, the SC find that these reasonsdo not sufficiently explain the more than five-year long preliminary investigation.

Petitioner's alleged failure to assert his right is not a veritable ground for the denial of the motion in the absence of any motion, pleading, or act on his part that contributed to the delay. It is not for him to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period. Thus, it is of no moment that petitioner herein did not file any motion before the Ombudsman to expedite the proceeding. It is sufficient that he raised the constitutional infraction prior to his arraignment before the Sandiganbayan.

Neither can petitioner be deemed to have waived his right to a speedy disposition of a case when he filed a motion for reconsideration against an adverse resolution of the Ombudsman. The filing of this singular motion cannot by itself be considered as active participation in the preliminary investigation proceeding that amounted to a waiver of a constitutional right. At most, this can only be weighed against herein petitioner in determining whether or not the delay in his investigation was justified.

Lastly, there could have been no grave prejudice suffered by the State from the delay since the criminal charges for falsification of public documents and splitting of contracts are offenses that chiefly rely on the presentation of documentary evidence that, at this point, has already formed part of the records of the case. The evidence of the prosecution is then sufficiently protected and preserved. This weighs heavily against the State and in favor of petitioner who is at a tactical disadvantage in going against the well-oiled machinery of the government and its infinite resources.

CESAR MATAS CAGANG, PETITIONER, VS. SANDIGANBAYAN, FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN; AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

[G.R. No. 206438, EN BANC, July 31, 2018, LEONEN, J.]

Every accused has the rights to due process and to speedy disposition of cases. Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. Nonetheless, the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right.

FACTS:

G.R. Nos. 206438 and 206458 are Petitions for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunctionassailing the Resolutions of the Sandiganbayan. The assailed Resolutions denied Cesar MatasCagang's (Cagang) Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

G.R. Nos. 210141-42, on the other hand, refer to a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunctionassailing the Orderand Resolutionof the Sandiganbayan. The assailed Resolutions denied Cagang's Motion to Quash Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

Both Petitions question the Sandiganbayan's denial to quash the Informations and Order of Arrest against Cagang despite the Office of the Ombudsman's alleged inordinate delay in the termination of the preliminary investigation.

The criminal complaint against petitioner was filed on February 10, 2003. On August 11, 2004, the Office of the Ombudsman issued a Resolution finding probable cause against petitioner. This

Resolution, however, was modified by the Resolution dated October 18, 2004, which ordered the conduct of further fact-finding investigation against some of the other respondents in the case. This further fact-finding was resolved by the Office of the Ombudsman on April 12, 2005. On August 8, 2011, or six years after the recommendation to file informations against petitioner was approved by Tanodbayan Marcelo, Assistant Special Prosecutor II Pilarita T. Lapitan submitted the informations for Ombudsman Carpio Morales' review. Informations against petitioner were filed on November 17, 2011.

ISSUE:

Whether or not respondent committed inordinate delay in the resolution and termination of the preliminary investigation against petitioner.

RULING:

No. Respondent did not commit an inordinate delay in the resolution and termination of the preliminary investigation against petitioner.

There is no showing that the case was attended by malice. There is no evidence that it was politically motivated. Neither party alleges this fact. Thus, this Court must analyze the existence and cause of delay.

Six years is beyond the reasonable period of fact-finding of ninety days. The burden of proving the justification of the delay, therefore, is on the prosecution, or in this case, respondent.

Respondent alleged that the delay in the filing of the informations was justified since it was still determining whether accused Mary Ann Gadian (Gadian) could be utilized as a state witness and it still had to verify accused Felipe Constantino's death. The recommendation, however, to utilize Gadian as a state witness was approved by Tanodbayan Marcelo on December 20, 2004. Felipe Constantino's death was verified by the Sandiganbayan in its November 14, 2006 Order. There is, thus, delay from November 14, 2006 to August 8, 2011.

The Supreme Court finds, however, that despite the pendency of the case since 2003, petitioner only invoked his right to speedy disposition of cases when the informations were filed on November 17, 2011. Unlike in Duterte and Coscolluela, petitioner was aware that the preliminary investigation was not yet terminated.

Admittedly, while there was delay, petitioner has not shown that he asserted his rights during this period, choosing instead to wait until the information was filed against him with the Sandiganbayan.

Furthermore, the case before the Sandiganbayan involves the alleged malversation of millions in public money. The Sandiganbayan has yet to determine the guilt or innocence of petitioner. In the Decision dated June 17, 2010 of the Sandiganbayan acquitting petitioner in Crim. Case No. 28331:

"We wish to iterate our observation gathered from the evidence on record that the subject transaction is highly suspect. There is a seeming acceptance of the use of questionable supporting documents to secure the release of public funds in the province, and the apparent undue haste in the processing and eventual withdrawal of such funds. However, obvious as the irregularities may be, which can only lead to distrust in the ability of public officials to safeguard public funds, we are

limited to a review only of the evidence presented vis-a-vis the charges brought forth before this Court. Thus, We cannot make any pronouncement in regard to such seeming irregularities."

The records of the case show that the transactions investigated are complex and numerous. As respondent points out, there were over a hundred individuals investigated, and eventually, 40 of them were determined to have been involved in 81 different anomalous transactions. Even granting that the Commission on Audit's Audit Report exhaustively investigated each transaction, "the prosecution is not bound by the findings of the Commission on Audit; it must rely on its own independent judgment in the determination of probable cause."Delays in the investigation and review would have been inevitable in the hands of a competent and independent Ombudsman.

The dismissal of the complaints, while favorable to petitioner, would undoubtedly be prejudicial to the State. "The State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman." The State is as much entitled to due process as the accused.

The Supreme Court finds that there is no violation of the accused's right to speedy disposition of cases considering that there was a waiver of the delay of a complex case. Definitely, granting the present Petitions and finding grave abuse of discretion on the part of the Sandiganbayan will only prejudice the due process rights of the State.

ERNESTINA A. PAGDANGANAN, RODERICK APACIBLE PAGDANGANAN, MARIA ROSARIO LOTA, REPRESENTED BY HER ATTORNEY-IN-FACT, ERNESTINA A. PAGDANGANAN, ERNEST JEROME PAGDANGANAN, AND SANDRA APACIBLE PAGDANGANAN, AS THE HEIRS AND SUBSTITUTES OF DECEASED ISAURO J. PAGDANGANAN, ALFONSO ORTIGAS OLONDRIZ, AND CITIBANK N.A. HONG KONG, *Petitioners*, *v.* THE COURT OF APPEALS AND MA. SUSANA A.S. MADRIGAL, MA. ANA A.S. MADRIGAL, MA. ROSA A.S. MADRIGAL, MATHILDA S. OLONDRIZ, VICENTE A.S. MADRIGAL, ROSEMARIE OPIS-MALASIG, MARIA TERESA S. UBANO, EDUARDO E. DELA CRUZ, AND GUILLER B. ASIDO, RESPONDENTS, *Respondents*.

G.R. No. 202678, THIRD DIVISION, September 05, 2018, LEONEN, *J.*:

The Court of Appeals is given a 12-month period to resolve any case that has already been submitted for decision. Any case still pending 12 months after submission for decision may be considered as delay.

In this case, however, petitioners' invocation of the right to speedy disposition of cases is misplaced since the Court of Appeals has resolved the petition in a timely manner within the period provided by law. The Court of Appeals finally resolved the Petition in its February 8, 2013 Decision, or less than two (2) months from its final pronouncement submitting the case for decision.

The Court of Appeals repeatedly explained to petitioners that their case could have been resolved sooner had they not filed their numerous motions.

FACTS:

Solid Guaranty is a domestic corporation engaged in the insurance business. Solid Guaranty, through Pagdanganan, a minority stockholder, filed a complaint for interpleader before the RTC-Manila. The complaint was filed because of the alleged conflicting claims between Ma. Susana A.S. Madrigal, Ma. Ana A.S. Madrigal, and Ma. Rosa A.S. Madrigal (collectively, the Madrigals), and Citibank over the shares of stock previously held by the late Antonio P. Madrigal.

The petitioner filed a Petition for Mandamus seeking to compel the CA to resolve the Petition in CA-G.R. SP No. 104291,alleging that the CA committed inordinate delay in violation of the right to speedy disposition of cases.

ISSUES:

1)Whether or not the petition has already become moot in view of the Court of Appeals February 8, 2013 Decision. (YES)

2)Whether or not the Court of Appeals committed inordinate delay in resolving the petition in CA-G.R. SP No. 104291. (NO)

RULING:

I. The Petition is dismissed for being moot and academic

x xx In *Baldo v. Commission on Elections*:

A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.x xx

In this Petition, petitioners prayed for the issuance of a writ of mandamus to compel the Court of Appeals to resolve CA-G.R. SP No. 104291.However, the Court of Appeals already rendered a Decision in CA-G.R. SP No. 104291 on February 8, 2013. It also resolved petitioners' Motion for Reconsideration on March 10, 2014. Despite the occurrence of these subsequent events, petitioners, in their Memorandum, reiterated their prayer for this Court to compel the Court of Appeals to resolve CA-G.R. SP No. 104291.

Any issuance of a writ of mandamus in this case, however, becomes an exercise in futility. The Court of Appeals cannot be compelled to resolve a case it has already fully resolved. This Petition must be dismissed for being moot.

II.Even assuming that this Court could still pass upon the substantive issue in this case, the Petition would still be denied for lack of merit. The Court of Appeals did not delay in resolving CA-G.R. SP No. 104291.

All persons have the constitutional right to speedy disposition of cases.To this end, the Constitution specifies specific time periods when courts may resolve cases:

Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

Under this provision, **the Court of Appeals is given a 12-month period to resolve any case that has already been submitted for decision. Any case still pending 12 months after submission for decision may be considered as delay.** The parties may file the necessary action, such as a petition for mandamus, to protect their constitutional right to speedy disposition of cases.

In this case, however, petitioners' invocation of the right to speedy disposition of cases is misplaced since the Court of Appeals has resolved the petition in a timely manner within the period provided by law.

x xx**The Court of Appeals finally resolved the Petition in its February 8, 2013 Decision, or less than two (2) months from its final pronouncement submitting the case for decision.**

It was, thus, inaccurate for petitioners to accuse the Court of Appeals of delay in resolving their petition filed in 2008 without taking into account the numerous pleadings they had filed while the petition was pending.

The Court of Appeals repeatedly explained to petitioners that their case could have been resolved sooner had they not filed their numerous motions. Vigilance should not be a license for parties to incessantly badger courts into action. Inundating courts with countless interlocutory motions for the sole purpose of moving the case along can only be counterproductive. Instead of resolving the main petition, courts will have to devote their time and resources in resolving these pleadings.

Petitioners are reminded that litigation is not won by the party who files the most pleadings. Had they exercised even the slightest bit of patience, they would have realized that the Court of Appeals exerted efforts to resolve their case with due and deliberate dispatch.

MIGUEL DRACULAN ESCOBAR, *Petitioner*, *v.* PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN (THIRD DIVISION), *Respondents*

G.R. Nos. 228349 and 228353, FIRST DIVISION, September 19, 2018, TIJAM, *J.*

REYNALDO F. CONSTANTINO, *Petitioner*, *v.* SANDIGANBAYAN, THIRD DIVISION, AND PEOPLE OF THE PHILIPPINES, *Respondents*.

G.R. NOS. 229895-96, FIRST DIVISION, September 19, 2018, TIJAM, *J.*

In no uncertain terms, the Constitution declares that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi judicial or administrative bodies."

The passage of more than seven (7) years before the OMB-Mindanao elected to file the Informations with the Sandiganbayan is certainly prejudicial to the petitioners' constitutional right to speedy disposition of cases. It defeats the salutary objective of said right, which is "to assure that an innocent person may be free from anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose."

FACTS:

Petitioners Escobar and Constantino were elected officers of the Province of Sarangani. Escobar served as a governor for the period 2001 to 2004; while Constantino was the Vice Mayor of Malungon, Sarangani Province.

Sometime in 2003, various anonymous complaints were filed before the Office of the Ombudsman for Mindanao (OMB-Mindanao) against officers and employees of the Province for allegedly utilizing dummy cooperatives and people's organizations as beneficiaries of funds sourced out from Grants and Aids and from the Countrywide Development Fund (CDF) of Representative Erwin Chiongbian.

On August 11, 2004, Graft Investigation and Prosecution Officers (GIPOs) issued a Resolution finding probable cause against the provincial officers, among them was Escobar, for Malversation through Falsification of Public Documents and violation of Section 3(e) of Republic Act (R.A.) No. 3019, and recommended the filing of the corresponding information.

On April 15, 2005, the GIPOs issued another Resolution finding probable cause against Constantino for the same crime allegedly committed by Escobar. The GIPOs recommended that Constantino be included as one of the accused in the information.

On August 8, 2011, the OMB-Mindanao issued a Memorandum, approving the recommendation of the GIPOs.

Eventually, on May 7, 2012, two (2) Informations, one for Malversation through Falsification of Public Documents and another for violation of Section 3(e) of R.A. No. 3019 were filed against petitioners with the Sandiganbayan. The Informations accused petitioners in conspiracy with other officers of the Province of having taken advantage of their office in falsifying Disbursement Voucher No. 401-2002-5-63 dated May 29, 2002, by making it appear that financial assistance in the amount of P250,000.00 had been requested by Bamboo Craftsman of DatalBatong, Malungon, Sarangani Province, which resulted to the damage and prejudice of the government.

Escobar filed an Omnibus Motion (i) for Dismissal Prohibition; (ii) for Quashal of Information/Reinvestigation dated July 19, 2012, arguing among others, that the piecemeal filing of criminal informations against him, seven (7) years apart from each other, is violative of his constitutional right to due process, his right to speedy disposition of cases, and the basic tenets of fairplay.

On January 13, 2015, the Sandiganbayan issued a Resolutiondenying the Omnibus Motions to Dismiss separately filed by petitioners.

On November 22, 2016, the Sandiganbayan issued another Resolutiondenying Constantino's Manifestation with Urgent Motion for Reconsideration dated March 9, 2015 and Escobar's Motion for Reconsideration dated March 13, 2015.

Aggrieved, the petitioners sought a review of the Sandiganbayan's twin resolutions.

Escobar filed a Verified Petition for Review under Rule 45 of the Rules of Court.

ISSUE:

Whether or not the respondents committed certiorariable error in finding the delay of eight (8) years in the filing of the two (2) informations not inordinate justified and did not violate the right to speedy disposition of cases against [Escobar]. (YES)

RULING:

The OMB-Mindanao, for its failure within a reasonable time, to resolve the criminal charges, let alone to file the same with the Sandiganbayan, violated petitioners' right to speedy disposition of their cases, as well as its own constitutional duty to act promptly on complaints filed before it.

In no uncertain terms, the Constitution declares that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi judicial or administrative bodies." This right, like the right to a speedy trial, is deemed violated when the proceedings is attended by vexatious, capricious, and oppressive delays;or when unjustified postponements of the trial are asked for and secured; "or [even] without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried." X XX

It is clear that the preliminary investigation by the OMB-Mindanao lasted more than six (6) years before its approval; and the filing of the Informations with the Sandiganbayan took seven (7) long years counted from the finding of probable cause. X XX

I. Reasons for the delay.

The aforementioned discussion in the OMB-Mindanao's delay remains unjustified. We cannot subscribe to the Sandiganbayan's sweeping statement that the delay was caused by the prosecution's limited resources; the volume of the case record; and the further fact that, then Tanodbayan Marcelo ordered the investigation on the persons who used fictitious names in encashing checks, among others. This is insufficient. What glares from the records is the fact that the completion of the preliminary investigation accounted for six (6) years and the filing of the Informations were more than seven (7) years. What transpired during the interval or inactivity has not been adequately proven and justified.

II. Invocation of the constitutional right

The records show that petitioners invoked their right to speedy disposition of cases immediately after the Informations were filed with the Sandiganbayan…. [In fact as] we have emphatically held in *Cervantes v. Sandiganbayan:*

It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, **regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence** provided that it was not due to causes directly attributable to him. X XX

II. Prejudice caused by the delay

The passage of more than seven (7) years before the OMB-Mindanao elected to file the Informations with the Sandiganbayan is certainly prejudicial to the petitioners' constitutional right to speedy disposition of cases. It defeats the salutary objective of said right, which is "to assure that an innocent person may be free from anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose." To perpetuate a violation of this right by the lengthy delay would result to petitioners' inability to adequately prepare for their case and would create a situation where the defense witnesses are unable to recall accurately the events of the distant past, leading to the impairment of petitioners' possible defenses. This, we cannot countenance without running afoul to the Constitution.

GERARDA H. VILLA, *Petitioner*, -versus- STANLEY FERNANDEZ, FLORENTINO AMPIL, JR., AND NOEL CABANGON, *Respondents*.

G.R. No. 219548, SECOND DIVISION, October 17, 2018, CARPIO, J.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution. Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose. Thus, the right to speedy trial is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having one's case tried.

The CA's ruling, as supported by the records, reveals that the following circumstances delayed the proceedings against Fernandez, Ampil, and Cabangon: (1) the prosecution failed to comply with the Order of the RTC Branch 130 dated 21 September 1995, reiterated in another Order dated 27 December 1995, requiring it to secure the records of Criminal Case No. 38340(91) from the CA; (2) from Ampil's and Cabangon's arraignment on 29 November 1993 and Fernandez's arraignment on 3 December 1993, the initial trial of the case commenced only on 28 March 2005, or more than 11 years later; (3) the RTC Branch 130 resolved Ampil's motion to quash filed on 10 October 1994, and Fernandez's omnibus motion filed on 19 October 1994, only on 8 March 2005 or more than 10 years after the motions were filed; and (4) the RTC Branch 130 resolved Fernandez, Ampil, and Cabangon's Joint Motion to Dismiss filed on 5 December 2006, only on 9 January 2012, or more than five years after the motion was filed. Moreover, the RTC Branch 130, in its Order, stated the reasons for the delay of the proceedings before

it, such as: (1) the dismissal from the service of Judge Hamoy; (2) Judge Sardillo's heavy workload; (3) the CA's order restraining the proceeding of the case; and (4) the Motion for Transfer of Trial Venue and the Motion for Inhibition filed by the prosecution. Clearly, the reasons for the delay of the proceedings against Fernandez, Ampil, and Cabangon are not attributable to them.

FACTS:

The present case stemmed from the death of Leonardo "Lenny" H. Villa, a neophyte-participant at the initiation rites of the Aquila Legis Fraternity in 1991. Because of his death, an Amended Information charging 35 members of the Aquila with the crime of Homicide was filed. Out of the 35 members, 26 members were charged with homicide in Criminal Case No. C-38340(91), while 9 members were charged with homicide in Criminal Case No. C-38340. The 26 members were jointly tried, while the trial against the remaining 9 members was held in abeyance.

After the promulgation of the decision against the 26 members who were tried separately, the Regional Trial Court of Caloocan City ordered for: (a) the issuance of warrants of arrest against five of the nine members, namely: Enrico de Vera III (de Vera), Anselmo Adriano (Adriano), Marcus Joel Ramos (Ramos), Fernandez, and Cabangon; and (b) the arraignment of four of the nine members, namely: Crisanto Saruca, Jr. (Saruca), Manuel Escalona II (Escalona), Reynaldo Concepcion (Concepcion), and Ampil. All of the nine members entered a plea of not guilty.

RTC Branch 130 granted the Motion to Dismiss Criminal Case No. C-38340 against Concepcion, upon finding that the failure of the prosecution to prosecute the case for an unreasonable period of time violated his right to speedy trial. On the other hand, the RTC Branch 130 denied the separate Motions to Dismiss filed by Saruca, Escalona, and Adriano. RTC Branch 130 also denied the Motion to Dismiss filed by Ramos. The RTC Branch 130 reasoned out that the trial against the remaining eight members could now proceed, since the prosecution could already obtain the original records of the case from the CA, which already decided the appeal of the 26 members. Upon denial of their motions to dismiss, Ramos, Saruca, Escalona, and Adriano appealed to the CA. CA granted the appeal of Ramos, Saruca, Escalona, and Adriano and dismissed Criminal Case No. C-38340 against them after finding that their right to speedy trial was violated.

Fernandez, Ampil, and Cabangon filed a Joint Motion to Dismiss with the RTC Branch 130, alleging that: (1) their constitutional right to a speedy trial was violated because the suit has been pending for more than 15 years, or since the filing of the Amended Information on 15 November 1991; (2) the CA's Decision dismissing Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to the violation of their right to speedy trial should also apply to them because they are similarly situated with Ramos, Saruca, Escalona, and Adriano; and (3) their participation in the initial stages of the trial did not preclude the filing of a motion to dismiss on the ground of violation of their right to speedy trial.

On 1 February 2012, the Court, in Villareal v. People of the Philippines (Villareal), convicted 5 of the 26 members of Aquila charged in Criminal Case No. C-3 8340(91) with reckless imprudence resulting in homicide, and affirmed the acquittal of 20 of the 26 members. The case against one of the 26 members was closed and terminated due to his death during the pendency of the case. In the same case, the Court affirmed the dismissal of Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to violation of the right to speedy trial.

RTC Branch 130 issued an Order denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon. CA reversed the findings of the RTC Branch 130 and dismissed Criminal Case No. C-38340 against Fernandez, Ampil, and Cabangon. The CA held that the RTC Branch 130 committed grave

abuse of discretion in denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon, because it failed to recognize and uphold their constitutional right to speedy trial.

ISSUES:

Whether or not the CA committed grave, serious and reversible errors in finding that the delay in the proceedings in Criminal Case No. 38340 is of such nature that violates the right of respondents to speedy trial. (NO)

RULING:

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution. Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose. Thus, the right to speedy trial is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having one's case tried. Equally applicable is the balancing test used to determine whether a person has been denied the right to speedy trial, in which the conduct of both the prosecution and the defendant is weighed, and such factors as length of the delay, reason for the delay, the assertion or non-assertion of the right, and prejudice resulting from the delay, are considered.

In the present petition, Villa insists that the right to speedy trial of Fernandez, Ampil, and Cabangon was not violated because the reasons for the delay were attributable to them, and they failed to timely invoke their right, unlike Ramos, Saruca, Escalona, and Adriano.

Contrary to Villa's assertion, the CA's ruling, as supported by the records, reveals that the following circumstances delayed the proceedings against Fernandez, Ampil, and Cabangon: (1) the prosecution failed to comply with the Order of the RTC Branch 130 dated 21 September 1995, reiterated in another Order dated 27 December 1995, requiring it to secure the records of Criminal Case No. 38340(91) from the CA; (2) from Ampil's and Cabangon's arraignment on 29 November 1993 and Fernandez's arraignment on 3 December 1993, the initial trial of the case commenced only on 28 March 2005, or more than 11 years later; (3) the RTC Branch 130 resolved Ampil's motion to quash filed on 10 October 1994, and Fernandez's omnibus motion filed on 19 October 1994, only on 8 March 2005 or more than 10 years after the motions were filed; and (4) the RTC Branch 130 resolved Fernandez, Ampil, and Cabangon's Joint Motion to Dismiss filed on 5 December 2006, only on 9 January 2012, or more than five years after the motion was filed. Moreover, the RTC Branch 130, in its Order, stated the reasons for the delay of the proceedings before it, such as: (1) the dismissal from the service of Judge Hamoy; (2) Judge Sardillo's heavy workload; (3) the CA's order restraining the proceeding of the case; and (4) the Motion for Transfer of Trial Venue and the Motion for Inhibition filed by the prosecution. Clearly, the reasons for the delay of the proceedings against Fernandez, Ampil, and Cabangon are not attributable to them.

Moreover, the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano are similar to the reasons for the delay in the proceedings against Fernandez, Ampil, and Cabangon. In Villareal, we held that the prosecution's failure to comply with the Orders of the trial court and the inaction of the trial court for almost seven years amount to a violation of the right to speedy trial of Ramos, Saruca, Escalona, and Adriano. In this case, not only were the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano present as to Fernandez, Ampil, and

Cabangon, but also more unjustifiable circumstances added delay to the proceedings against them, such as the RTC's delayed resolution of the motions to quash and motion to dismiss. Thus, there is more reason to apply our ruling in Villareal to Fernandez, Ampil, and Cabangon, and find that their right to speedy trial has been violated.

Furthermore, contrary to Villa's contention that Fernandez, Ampil, and Cabangon failed to invoke their right, Villa's petition before us states that: "[o]n 19 April 2005, Ampil filed a Manifestation vehemently objecting to the indefinite suspension of the pre-trial and trial proceedings of the case, xxx. On 09 May 2005, Fernandez, and Cabangon filed their Manifestation posting no objection to the Manifestation and/or Motion for Resumption of Hearing." Moreover, Fernandez, Ampil, and Cabangon filed with RTC Branch 130 on 5 December 2006 the Joint Motion to Dismiss invoking violation of their right to speedy trial, which Motion to Dismiss was resolved only on 9 January 2012 or five years later. In Almeda v. Office of the Ombudsman, we held that petitioner's letter and manifestations seeking the immediate resolution of her case cannot be considered late, and no waiver of her right to speedy trial or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same. Similarly in this case, we find that Fernandez, Ampil, and Cabangon timely invoked and did not waive their right to speedy trial.

R. Right against self-incrimination

S. Right against double jeopardy

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee -versus-LINO ALEJANDRO y PIMENTEL, Accused-Appellant

G.R. No. 223099, FIRST DIVISION, January 11, 2018, TIJAM, *J*

The 1987 Constitution guarantees the right of the accused against double jeopardy, thus:

*For double jeopardy to attach, the following elements must concur: (1) a **valid information** sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of **competent jurisdiction**; (3) the accused has been **arraigned and had pleaded**; and (4) the accused was **convicted or acquitted** or the case was dismissed without his express consent.*[21]

Here, all the elements were present. There was a valid information for two counts of rape over which the RTC had jurisdiction and to which the accused-appellant entered a plea of not guilty. After the trial, a judgment of acquittal was thereafter rendered and promulgated on July 25, 2011. What is peculiar in this case is that a judgment of acquittal was rendered based on the mistaken notion that the private complainant failed to testify; allegedly because of the mix-up of orders with a different case involving the same accused-appellant. This, however, does not change the fact that a judgment of acquittal had already been promulgated.

FACTS:

Accused-appellant was charged with two counts of rape, defined and penalized under Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act No. 8369[3], of a 12-year old minor, AAA.Upon arraignment, accused-appellant entered a plea of not guilty and trial ensued. On

July 26, 2011, the RTC promulgated a Decision acquitting the accused-appellant. On the same day, however, the RTC recalled the said decision and issued an Order stating that upon manifestation of Assistant Provincial Prosecutor Roderick Cruz that there were Orders that were inadvertently placed in the record of Criminal Case No. Br. 20-4979 involving the same accused but different private complainant-victim, XXX, which if considered will result in a different verdict.

Accused-appellant filed a Motion for Reconsideration arguing that a judgment of acquittal is immediately final and executory and can neither be withdrawn nor modified, because to do so would place an accused-appellant in double jeopardy. RTC denied the motion in an Order stating: "Admittedly, the Court erroneously declared in its Decision that private complainant AAA did not testify in Court. When in truth and in fact said private complainant took the witness stand on September 3, 2008 as evidenced by the Order dated September 3, 2008 which was mistakenly captioned as Crim. Case No. 4979 instead of Crim. Cases Nos. Br. 20- 6096 & 6097 and as a result thereof, the Order dated September 3, 2008 was erroneously attached by the Court employee to the records of another criminal case entitled People of the Philippines versus Lino Alejandro, wherein the private complainant is a certain xxx."

A Joint Decision dated July 26, 2011 was rendered by the RTC, finding accused-appellant guilty of two counts of rape. Accused-appellant appealed to the CA, but the CA dismissed the appeal.

ISSUE:

Whether or not the recall of the judgment of acquittal will result in double jeopardy. (YES)

RULING:

In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The 1987 Constitution guarantees the right of the accused against double jeopardy, thus:

Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent.

Here, all the elements were present. There was a valid information for two counts of rape over which the RTC had jurisdiction and to which the accused-appellant entered a plea of not guilty. After the trial, a judgment of acquittal was thereafter rendered and promulgated on July 25, 2011. What is peculiar in this case is that a judgment of acquittal was rendered based on the mistaken notion that the private complainant failed to testify; allegedly because of the mix-up of orders with a different case involving the same accused-appellant. This, however, does not change the fact that a judgment of acquittal had already been promulgated. Indeed, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.

> The rule on double jeopardy, however, is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where

there has been a grave abuse of discretion under exceptional circumstances. We find that these exceptions do not exist in this case.Here, there was no deprivation of due process or mistrial because the records show that the prosecution was actually able to present their case and their witnesses.

T. Involuntary servitude

U. Right against excessive fines, and cruel and inhuman punishments

V. Non-imprisonment for debts

W. Ex post facto laws and bills of attainder

JOSE "JINGGOY" P. EJERCITO ESTRADA and MA. PRESENTACION VITUG EJERCITO, *Petitioners,* -versus- SANDIGANBAYAN (FIFTH DIVISION); ANTI-MONEY LAUNDERING COUNCIL, REPRESENTED BY ITS EXECUTIVE DIRECTOR, JULIA C. BACAY-ABAD; and PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE SPECIAL PROSECUTOR, *Respondents.*
G.R. No. 217682, EN BANC, July 17, 2018, BERSAMIN, *J.*

In Republic v. Eugenio, Jr., an ex post facto law is a law that either:
(1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or
(2) aggravates a crime, or makes the crime greater than it was when committed; or
(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or
(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or
(5) assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or
(6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

Unlike the passage of R.A. No. 9160 in order to allow an exception to the general rule on bank secrecy, the amendment introduced by R.A. No. 10167 does away with the notice to the account holder at the time when the bank inquiry order is applied for. In this case, the elimination of the requirement of notice, by itself, is not a removal of any lawful protection to the account holder because the AMLC is only exercising its investigative powers at this stage. Indeed, R.A. No. 10167, in recognition of the ex post facto clause of the Constitution, explicitly provides that "the penal provisions shall not apply to acts done prior to the effectivity of the AMLA on October 17, 2001."

FACTS:
On September 11, 2013, Benhur K. Luy, Merlina P. Sunas, Gertrudes K. Luy, Nova Kay Batal-Macalintal, Elena S. Abundo and Avelina C. Lingo (whistleblowers) executed their

PinagsamangSinumpaangSalaysay in which they revealed the details of the Pork Barrel Scam that involved the misuse or illegal diversion by certain legislators of their allocations from the Priority Development Assistance Fund (PDAF) in connivance with Janet Lim Napoles (Napoles), the whistleblowers' former employer.

The National Bureau of Investigation (NBI) conducted its investigation, and on September 16, 2013 resolved to file in the Office of the Ombudsman verified criminal complaints for plunder, malversation, direct bribery, and graft and corrupt practices against the persons involved in the Pork Barrel Scam, including petitioner Senator Jose "Jinggoy" P. Ejercito Estrada (Estrada).

Acting on the criminal complaints, the Office of the Ombudsman requested the Anti-Money Laundering Council (AMLC) on October 11, 2013 to conduct a financial investigation of the bank accounts of the petitioners and others.

On March 28, 2014, the Office of the Ombudsman issued a joint resolution finding probable cause to indict Estrada and other persons for plunder and for violation of Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

Meanwhile, the AMLC, determining that Estrada's accounts were probably related to the charge of plunder and the violation of R.A. No. 3019 charged against him and others, **authorized its secretariat to file in the Court of Appeals (CA) an ex parte application for bank inquiry pursuant to R.A. No. 9160, as amended (The Anti-Money Laundering Act).** In the resolution promulgated on May 28, 2014, the CA granted the ex parte application.

In the information dated June 5, 2014 filed in the Sandiganbayan, the Office of the Ombudsman charged Estrada and others with plunder In the process of inquiring into Estrada's accounts, the AMLC discovered that Estrada had transferred substantial sums of money to the accounts of his wife, co-petitioner Ma. PresentacionVitugEjercito (Ejercito), on the dates relevant to the Pork Barrel Scam. Considering that the transfers lacked apparent legal or economic justifications, the AMLC concluded that the accounts were linked to a predicate crime of plunder. Hence, the AMLC filed in the CA a supplemental ex parte application for the bank inquiry to be conducted on Ejercito's accounts, among others. On August 15, 2014, the CA granted the supplemental ex parte application.

On January 23, 2015, Estrada filed the motion to suppress. On February 2, 2015, the Sandiganbayan issued the assailed resolution denying the motion to suppress. Estrada moved for reconsideration, but the Sandiganbayan denied his motion on March 2, 2015. Hence, the petitioners have come to the Court by petition for certiorari, prohibition and mandamus.

In its comment, the AMLC posits that Ejercito is not a proper party; that R.A. No. 10167 does not violate the constitutional rights to privacy and to due process; that R.A. No. 10167 is not an ex post facto law; that the Congress has the power to enact R.A. No. 10167; and that the Inquiry Report did

not emanate from a fishing expedition, and, as such, the Inquiry Report and the testimony of Atty. Negradas were admissible as evidence against Estrada.

ISSUE:

Whether R.A. No. 10167 is an ex post facto law?

RULING:

The amendment to Section 11 of R.A. 9160 **allowing an ex parte application for the bank inquiry does not violate the proscription against ex post facto laws.**

An **ex post facto law** is a law that either:
(1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or
(2) aggravates a crime, or makes the crime greater than it was when committed; or
(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or
(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or
(5) assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or
(6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

The petitioners rely on Republic v. Eugenio, Jr., wherein the Court declared that the proscription against ex post facto laws should be applied to the interpretation of the original text of Section 11 of R.A. No. 9160 because the passage of said law "stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to the account holder." Accordingly, we held therein that the application for the bank inquiry order as the means of inquiring into records of transactions entered into prior to the passage of R.A. No. 9160 would be constitutionally infirm, offensive as it was to the ex post facto clause of the Constitution.

The petitioners' reliance on Republic v. Eugenio, Jr. is misplaced. Unlike the passage of R.A. No. 9160 in order to allow an exception to the general rule on bank secrecy, the amendment introduced by R.A. No. 10167 does away with the notice to the account holder at the time when the bank inquiry order is applied for. The elimination of the requirement of notice, by itself, is not a removal of any lawful protection to the account holder because the AMLC is only exercising its investigative powers at this stage. Indeed, R.A. No. 10167, in recognition of the ex post facto clause of the Constitution, explicitly provides that "the penal provisions shall not apply to acts done prior to the effectivity of the AMLA on October 17, 2001."

Furthermore, the AMLC's inquiry and examination into bank accounts are not undertaken whimsically based on its investigative discretion. The AMLC and the CA are respectively required to ascertain the existence of probable cause before any bank inquiry order is issued. Section 11 of R.A. 9160, even with the allowance of an ex parte application therefor, cannot be categorized as authorizing the issuance of a general warrant. This is because a search warrant or warrant of arrest contemplates a direct object but the bank inquiry order does not involve the seizure of persons or property.

Lastly, the holder of a bank account subject of a bank inquiry order issued ex parte is not without recourse. He has the opportunity to question the issuance of the bank inquiry order after a freeze order is issued against the account. He can then assail not only the finding of probable cause for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order.

X. Writs of habeas corpus, kalikasan, habeas data, and amparo

GEN. EMMANUEL BAUTISTA, IN HIS CAPACITY AS THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP), GEN. EDUARDO AÑO, IN HIS CAPACITY AS COMMANDING OFFICER OF THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), GEN. HERNANDO IRIBERRI, IN HIS CAPACITY AS COMMANDING GENERAL OF THE PHILIPPINE ARMY, GEN. BENITO ANTONIO T. DE LEON, IN HIS CAPACITY AS COMMANDING GENERAL OF THE 5TH INFANTRY DIVISION, AND PC/SUPT. MIGUEL DE MAYO LAUREL, IN HIS CAPACITY AS CHIEF OF THE ISABELA PROVINCIAL POLICE OFFICE., Petitioners, -versus – ATTY. MARIA CATHERINE DANNUG-SALUCON, *Respondent.*
G.R. No. 221862, EN BANC, January 23, 2018, BERSAMIN, *J.*

Verily, proceedings related to the petition for the issuance of the writ of amparo should allow not only direct evidence, but also circumstantial evidence. Under Razon, Jr. v. Tagitis, ***even hearsay testimony may be considered by the amparo court provided such testimony can lead to conclusions consistent with the admissible evidence adduced.*** *What the respondent obviously established is that the threats to her right to life, liberty and security were neither imaginary nor contrived, but real and probable. The gunning down of her paralegal Bugatti after he had relayed to her his observation that they had been under surveillance was the immediate proof of the threat.* ***The purpose and noble objectives of the special rules on the writ of amparo may be rendered inutile if the rigid standards of evidence applicable in ordinary judicial proceedings were not tempered*** *with such flexibility.*

FACTS:

Respondent was at a lunch meeting with the relatives of a detained political prisoner client who was allegedly among several leaders of people's organizations/sectoral organizations who were falsely charged in a murder and frustrated murder case pending before the RTC of Lagawe, Ifugao. William Bugatti, her paralegal who was working with her on said case and who was also an activist and human rights defender, informed her that he had personally observed that surveillance was being conducted on them. Thus, he suggested certain security measures for her own protection. Respondent realized

the significance of Bugatti's advice when he was fatally gunned down later that evening. Respondent had asked him early that very day to identify the names, ranks and addresses of the handler/s of the prosecution witness in the Lagawe case.

That same evening, respondent was informed by a client working as a civilian asset for the PNP Intelligence Section that the Regional Intelligence of the PNP issued a directive to PNP Burgos, Isabela, respondent's hometown, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer." On March 31, 2014, respondent again received a call from her confidential informant, confirming that she was indeed the subject of surveillance. Upon further investigation, respondent discovered that individuals riding on motorcycles questioned vendors in front of respondent's office as to where she went, with whom, what time she usually returned and who stayed behind in the office whenever she left. Also that a member of the Criminal Investigation Service (CIS) of the Criminal Investigation Detection Group (CIDG) came to the law office, asking for the respondent, but without telling her secretary why he was looking for her, that soldiers came to respondent's office in the guise of asking her to notarize documents and insisted on leaving the document and picking it up later on when respondent arrived.

In her petition, thus, respondent posited that the above-described acts, taking into consideration previous incidents where human rights lawyers, human rights defenders, political activists and defenders, were killed or abducted after being labeled as "communists" and being subjected to military surveillance, may be interpreted as preliminary acts leading to the abduction and/or killing of respondent.

Petitioners categorically denied respondent's allegations that she was ever under surveillance by the military and/or police under the command of petitioner's officials. Petitioners also objected to the impleading of other petitioners in their official capacities, allegedly under the doctrine of command responsibility, maintaining that it can only be invoked in a full-blown criminal or administrative case and not in a summary amparo proceeding.

Petitioners also alleged that upon receipt of the CA Resolution promulgated on April 22, 2014, they immediately exerted efforts to conduct an inquiry and to gather information about the purported threats on the life, liberty and security of the respondent. Petitioners also noted that respondent's testimony consisted of mere unverified accounts from an unknown person whose identity respondent did not want to reveal. Respondent could not categorically identify and link any of the said individuals to petitioners, claiming only that they were military-looking men.

The CA rendered the assailed decision granting the privilege of the writs of amparo and habeas data. The CA found that petitioner has substantially proven by substantial evidence her entitlement to the writs of amparo and habeas data.

ISSUES:

I. Whether or not the CA erred in admitting and considering Atty. Salucon's evidence despite being largely based on hearsay information. (NO)
II. Whether or not the CA erred in finding Atty. Salucon's evidence sufficient to justify the granting of the privilege of the writs of amparo and habeas data. (NO)

III. Whether or not the CA erred in directing the petitioners to exert extraordinary diligence and efforts to conduct further investigation in order to determine the veracity of Atty. Salucon's alleged harassment and surveillance. (NO)

RULING:

I.

In Razon, Jr. v. Tagitis, the Court adopted the standard of totality of evidence for granting the privilege of the writ of amparo, explaining:

> "The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, we reduce our rules to the most basic test of reason — i.e., to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test."

Razon, Jr. v. Tagitis cited the ruling in Velasquez Rodriguez, wherein the InterAmerican Court of Human Rights (IACHR) took note that enforced disappearances could generally be proved only through circumstantial or indirect evidence or by logical inference; and that it would be impossible otherwise to prove that an individual had been made to disappear because of the State's virtual monopoly of access to pertinent evidence, or because the deliberate use of the State's power to destroy pertinent evidence was inherent in the practice of enforced disappearances. Hence, the reliance on circumstantial evidence and hearsay testimony of witnesses is permissible.

Under the totality of evidence standard, **hearsay testimony may be admitted and appreciated** depending on the facts and circumstances unique to each petition **for the issuance of the writ of amparo provided such hearsay testimony is consistent with the admissible evidence adduced**. Yet, such use of the standard does not unquestioningly authorize the automatic admissibility of hearsay evidence in all amparo proceedings. The matter of the admissibility of evidence should still depend on the facts and circumstances peculiar to each case.

II

The petition for the writ of amparo partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner.

Upon due consideration of the facts and circumstances enumerated by the respondent's petition, the CA opined that it would **be all the more difficult to obtain direct evidence to prove the respondent's entitlement to the privilege of the writ of amparo because no extrajudicial killing or enforced disappearance had yet occurred**. Indeed, her petition referred to acts that merely threatened to violate her rights to life, liberty and security, or that could be appreciated only as preliminary steps to her probable extrajudicial killing or enforced disappearance. Even so, it would be uncharacteristic for the courts, especially this Court, to simply told their arms and ignore the palpable threats to her life, liberty and security and just wait for the irreversible to happen to her. **The direct evidence might not come at all, given the abuse of the State's power to destroy evidence** being inherent in enforced disappearances or extrajudicial killings.

Verily, proceedings related to the petition for the issuance of the writ of amparo should allow not only direct evidence, but also circumstantial evidence. Under Razon, Jr. v. Tagitis, **even hearsay testimony may be considered by the amparo court provided such testimony can lead to conclusions consistent with the admissible evidence adduced**. What the respondent obviously established is that the threats to her right to life, liberty and security were neither imaginary nor contrived, but real and probable. The gunning down of her paralegal Bugatti after he had relayed to her his observation that they had been under surveillance was the immediate proof of the threat. The purpose and noble objectives of the special rules on the writ of amparo may be rendered inutile if the rigid standards of evidence applicable in ordinary judicial proceedings were not tempered with such flexibility.

III

The directive of the CA for the petitioners to exert extraordinary diligence in conducting further investigations was valid and proper. In Razon, Jr. v. Tagitis, the Court spelled out the two-fold burden that the public authorities had to discharge in situations of extrajudicial killings and enforced disappearances, viz.:

> "The burden for the public authorities to discharge in these situations, under the Rule on the Writ of Amparo, is twofold. The first is to **ensure that all efforts at disclosure and investigation** are undertaken under pain of indirect contempt from this Court when governmental efforts are less than what the individual situations require. The second is to **address the disappearance**, so that the life of the victim is preserved and his or her liberty and security restored.

The petitioners (and their successors in office), by merely issuing orders to their subordinates under their respective commands and relying on the latter's reports without conducting independent investigations on their own to determine the veracity of the respondent's allegations, did not discharge the two-fold burden. Thereby, they did not exercise extraordinary diligence. They could not escape the responsibility of conducting the investigation with extraordinary diligence by deflecting the responsibility to other investigatory agencies of the Government. The duty of extraordinary diligence pertains to them, and to no other.

VII. CITIZENSHIP

A. Who are Filipino citizens

B. Modes of acquiring citizenship

IN THE MATTER OF THE PETITION FOR ADMISSION TO CITIZENSHIP OF MANISH C. MAHTANI, MANISH C. MAHTANI, *Petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, *Respondent.*

G.R. No. 211118, FIRST DIVISION, March 21, 2018, TIJAM, *J*.

Jurisprudence is to the effect that the requirement of "some known lucrative trade, profession, or lawful occupation means not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that there is

*an **appreciable margin of his income over his expenses** as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid ones becoming the object of charity or a public charge.*

In this case, Mahtani did not provide any documentary evidence that would show his actual financial status, which would support such finding. At most, the evidence presented by Mahtani merely proves that he and his family live in comfort or that their cost of living is above that of an average person or family. In simple terms, what Mahtani accomplished to demonstrate with the pieces of evidence that he presented are just "expenses", nothing more. As it appears, Mahtani's income may be sufficient to meet his family's basic needs, but there is simply no sufficient proof that it is enough to create an appreciable margin of income over expenses.

It appears on the said tax returns that Mahtani's income ranges from P620,000 to P715,000 annually or P51,000 to P60,000 per month, this amount may have been sufficient to fufill his and his family's basic needs and comfort but again, there is no ample proof that it was enough to create an appreciable margin of income over expenses.

FACTS:

Manish C. Mahtani (Mahtani), a citizen of the Republic of India, filed a Declaration of Intent to become a citizen of the Philippines with the Office of the Solicitor General (OSG).

Mahtani filed a Petition for Naturalizationdated April 15, 2008, which alleged that:

He was born on 4 August 1970 in Bombay, Republic of India. He is currently a citizen of the Republic of India. That he is married and has 3 children. His child, Adriana Ysabel, currently studies at Rosemont School, a school recognized by the Department of Education, Culture, and Sports. His other two are not yet of school age. He first arrived in the Philippines with his mother when he was 9 months old but would returned to India for his studies. He has continuously resided in the Philippines for more than fifteen (15) years since 21 August 1992 – the date when he arrived to establish his permanent residence in the Philippines. He is engaged in a lawful lucrative occupation. He is currently the Vice-President for Operations of Sprint International, Inc., which is the importer, manufacturer, and exclusive distributor of Speedo swimwear and athletic gear in the Philippines.

The RTC of Pasig City granted the petition. According to the RTC, it appears that Mahtani has all the qualifications and none of the disqualifications required under the law to become a naturalized Filipino citizen.

On appeal, the Republic of the Philippines (the Republic), through the OSG, faulted the RTC for granting the petition despite Mahtani's failure to prove that he has a lucrative trade, profession, or occupation. Also, the Republic averred that Mahtani failed to present credible persons as character witnesses.

The Republic argued that while Mahtani may have proved that he is employed as the Vice President for Operations of Sprint International, Inc., he failed to present any evidence to support that he is engaged in a "lucrative" occupation, except his own testimony. Moreover, the Republic averred that Mahtani failed to present evidence that he has been paying taxes to the government.

The CA reversed the RTC ruling, finding that Mahtani failed to prove an essential qualification, i.e., that he has a lucrative occupation and that there is no showing that he paid taxes due to the government.

On Motion for Reconsideration with Motion to Take Judicial Notice, Mahtani insisted that the law does not require a "lawful occupation" to be "lucrative" under the principles of statutory construction. Nonetheless, it is his position that he was able to sufficiently prove that his occupation is lucrative under the prevailing standard of living. In this motion, Mahtani also argued that there is no provision in the law that requires an applicant for naturalization to present proof that he has made his tax payments. Nevertheless, he submitted copies of his income tax returns during fiscal years 2006 to 2013, which shows that from 2006 to 2008, he was earning P620,000 annually while for the years 2009 to 2012, he was earning P682,375 annually, which are much higher than an average income during the period.

The CA, however, denied Mahtani's motion for reconsideration.

ISSUE:

Whether Mahtani was able to prove that he has some known lucrative trade, profession or lawful occupation in accordance with Section 2, paragraph 4 of Commonwealth Act No. 473 as amended. (NO)

RULING:

Admission to citizenship is one of the highest privileges that our Republic can confer upon an alien. It is everyone's duty, especially the courts, to ensure that this valuable privilege be no bestowed except upon person fully qualified for it, and upon strict compliance with the law.

Jurisprudence is to the effect that the requirement of "some known lucrative trade, profession, or lawful occupation means not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that there is an *appreciable margin of his income over his expenses* as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid ones becoming the object of charity or a public charge.

In this case, Mahtani did not provide any documentary evidence that would show his actual financial status, which would support such finding. At most, the evidence presented by Mahtani merely proves that he and his family live in comfort or that their cost of living is above that of an average person or family. In simple terms, what Mahtani accomplished to demonstrate with the pieces of evidence that he presented are just "expenses", nothing more. As it appears, Mahtani's income may be sufficient to meet his family's basic needs, but there is simply no sufficient proof that it is enough to create an appreciable margin of income over expenses.

As correctly pointed out by the OSG, it appears on the said tax returns that Mahtani's income ranges from P620,000 to P715,000 annually or P51,000 to P60,000 per month. Considering the costly lifestyle that Mahtani is trying to impress to the courts with such income, the Court is constrained to conclude that while the same may have been sufficient to fufill his and his family's basic needs and

comfort, again, there is no ample proof that it was enough to create an appreciable margin of income over expenses.

The concept of a lucrative trade, profession, or lawful occupation in the contemplation of law speaks of adequacy *and* sustainability.

REPUBLIC, *Petitioner,* -versus- GO PEI HUNG, *Respondent*.
G.R. No. 212785, FIRST DIVISION, April 04, 2018, DEL CASTILLO, *J.*

To repeat, strict compliance with all statutory requirements is necessary before an applicant may acquire Philippine citizenship by naturalization. The absence of even a single requirement is fatal to an application for naturalization.

Respondent came to the country sometime in 1973; thus, he should have attached a Certificate of Arrival to his Petition for Naturalization. This is mandatory as respondent must prove that he entered the country legally and not by unlawful means or any other manner that is not sanctioned by law. Because if he entered the country illegally, this would render his stay in the country unwarranted from the start, and no number of years' stay here will validate his unlawful entry. The spring cannot rise higher than its source, so to speak.

FACTS:

Respondent Go Pei Hung - a British subject and Hong Kong resident - filed a Petition for Naturalizationseeking Philippine citizenship. After trial, the RTC issued its Decision granting the respondent's petition for naturalization.

Petitioner interposed an appeal with the CA. According to the OSG, the petition for naturalization should not have been granted because: i) respondent did not file his declaration of intention with the OSG; and ii) respondent did not state the details of his arrival in the Philippines in his petition and the certificate of arrival was not attached to the petition, as required under CA No. 473.

The CA ruled to dismiss the appeal. It is convinced that petitioner-appellee has been residing in the Philippines earlier than 1989. As narrated in the petition, he commenced his residence in the Philippines in 1973 at 2277-B Luna Street Pasay City. A year later, he enrolled at the Philippine Pasay Chinese School, where he later graduated from Grade VI in 1976. Thus, counted from 1973 to 2007 when he filed the petition for naturalization, petitioner-appellee had been continuously residing in the Philippines for more than thirty (30) years. Pursuant to Section 6 of CA 473, as amended, petitioner-appellee is exempted from filing the aforesaid declaration of intention.

Relatedly, considering that petitioner-appellee is exempted from filing the declaration of intention, petitioner-appellee is also exempted from filing the certificate of arrival which is, after all, just a component of the declaration of intention as provided under Section 5 of CA No. 473, as amended.

ISSUE:

Whether or not respondent's failure to attach the requisite certificate of arrival to his petition is fatal to the same (YES)

RULING:

In *Republic v. Huang Te Fu,* a case decided by this *ponente,* the following pronouncement was made:

In *Republic v. Hong,* it was held in essence that an applicant for naturalization must show full and complete compliance with the requirements of the naturalization law; otherwise, his petition for naturalization will be denied. This *ponente* has likewise held that "[t]he courts must always be mindful that naturalization proceedings are imbued with the highest public interest. Naturalization laws should he rigidly enforced and strictly construed in favor of the government and against the applicant. The burden of proof rests upon the applicant to show full and complete compliance with the requirements of law."

Section 7 of the Revised Naturalization Law or CA 473 requires, among others, that an applicant for naturalization must attach a Certificate of Arrival to the Petition for Naturalization:

Section 7. Petition for citizenship. – Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname… **the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came…The certificate of arrival, and the declaration of intention must be made part of the petition.** (Emphasis supplied)

Respondent came to the country sometime in 1973; thus, he should have attached a Certificate of Arrival to his Petition for Naturalization. This is mandatory as respondent must prove that he entered the country legally and not by unlawful means or any other manner that is not sanctioned by law. Because if he entered the country illegally, this would render his stay in the country unwarranted from the start, and no number of years' stay here will validate his unlawful entry. The spring cannot rise higher than its source, so to speak.

In *Republic v. Judge De la Rosa,* this Court held that the failure to attach a copy of the applicant's certificate of arrival to the petition as required by Section 7 of CA 473 is fatal to an applicant's petition for naturalization. The ruling in said case proceeds from pronouncements in the past, to wit:

Naturalization granted without the filing of a certificate of arrival as required by the statute, the same being a matter of substance, is illegally procured. (U.S, vs. Ness, 62 L. Ed. 321).

x xx Again in the above quoted Section 7 of the law, the certificate of arrival must be made a part of the petition. This provision is mandatory and it has been enacted for the purpose of preventing aliens, who have surreptitiously come into the islands without the proper document or certificate of entry, from acquiring citizenship by naturalization, unless the said provision is complied with. This Court cannot grant the petition as the said grant would be a clear violation of the express mandate of the law.

The Certificate of Arrival should prove that respondent's entry to the country is lawful. Without it, his Petition for Naturalization is incomplete and must be denied outright.

Even if respondent acquired permanent resident status, this does not do away with the requirement of said certificate of arrival. An application to become a naturalized Philippine citizen involves requirements different and separate from that for permanent residency here.

Respondent likewise argues that the required certificate of arrival is a "mere component part in the filing of the Declaration of Intention"and thus unnecessary since he is exempt from submitting the latter document.

This is not correct. The Declaration of Intention is entirely different from the Certificate of Arrival; the latter is just as important because it proves that the applicant's entry to the country was not illegal - that he was a documented alien whose arrival and presence in the country is in good faith and with evident intention to submit to and abide by the laws of the Republic. Certainly, an illegal and surreptitious entry into the country by aliens whose undocumented arrival constitutes a threat to national security and the safety of its citizens may not be rewarded later on with citizenship by naturalization or otherwise; to repeat, a spring will not rise higher than its source.

To repeat, strict compliance with all statutory requirements is necessary before an applicant may acquire Philippine citizenship by naturalization. The absence of even a single requirement is fatal to an application for naturalization

C. Loss and re-acquisition

of Philippine citizenship

D. Dual citizenship and dual allegiance

E. Foundlings

VIII. LAW ON PUBLIC OFFICERS

A. General principles

B. Modes of acquiring title to public office

C. Kinds of appointment

D. Eligibility and qualification requirements

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA, *Petitioner, -versus-*MARIA LOURDES P.A. SERENO, *Respondent.*
G.R. No. 237428, En Banc, June 19, 2018, Tijam, J.

Quo warranto as a remedy to oust an ineligible public official may be availed of when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid. Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a quo warranto proceeding, but of impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative or criminal action, if otherwise.

FACTS:

Maria Lourdes Sereno served as a member of the faculty of the UP college of Law (UP) from 1986 to 2006. From 2003 to 2006, she was also employed as legal counsel for the Republic of the Philippines in two international arbitrations known as the PIATCO cases, and a Deputy Commissioner of the Commission on Human Rights.

The U.P. Human Resources Development Office (UP HRDO) certified that there was no record on respondent's file of any permission to engage in limited practice of profession. Its records also show that the Statement of Assets, Liabilities and Net Worth (SALN) available were those for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 (9 SALN). In a manifestation, she attached her 1989 SALN which she supposedly sourced from "filing cabinets" or "drawers of UP". Her 2009 SALN was unsubscribed and was filed before the Office of the Clerk of Court only on 2012. In sum, only 11 out of 25 SALNs that ought to have been filed are available on record.

On August 2010, President Benigno Aquino III appointed the respondent as an Associate Justice. In 2012, the position of Chief Justice was declared vacant. The JBC announced the opening for applications and nominations, and required the applicants to submit all their previous SALNs up to 31 December 2011 for those in public service (instead of the usual last two years of public service). It was further provided that, "applicants with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination." The respondent, in a letter to the JBC, expressed that since she resigned from UP Law on 2006 and became a private practitioner, her nomination was considered as that coming from the private sector; thus, she is only required to comply with the requirements imposed on nominees from the private sector. The respondent likewise added that it is reasonable to consider it infeasible to retrieve her 15-year old government records and that the clearance issued by UP HRDO and CSC should be taken in her favor.

Despite the submission of only 3 SALNs, respondent was listed as applicant no. 14 with an annotation that she had complete requirements and a note stating that it is reasonable to consider it infeasible to retrieve all her government records. Thereafter, on August 2012, the respondent was appointed as the Chief Justice of the Supreme Court.

On August 2017, or 5 years after her appointment, Atty. Larry Gadon filed an impeachment complaint against respondent with the House Committee on Justice, alleging that the respondent failed to make truthful declarations in her SALNs. After the respondent has filed her reply, the House Committee on Justice conducted several hearings on the determination of probable cause, the last of which was held on February 27, 2018.

During the hearings, it was revealed that respondent purportedly failed to file her SALNs while she was a member of the faculty of the UP Law and that she filed her SALN only for the years 1998, 2002 and 2006. During the hearing on February 7, 2018, the House Committee on Justice, Justice Peralta, as a resource person being then acting ex-officio chairman of the JBC, was not made aware of the incomplete SALNs of Sereno.

Such complaint filed in the House spawned to 2 relevant incidents. One of which was the letter dated 21 February 2018 of Atty. Eligio Mallari to the OSG requesting the latter to initiate a quo warranto proceeding against Respondent. Invoking the Court's original jurisdiction, under Section 5(1), Article VIII of the Constitution in relation to the special civil action under Rule 66 of the Rules of Court, the

OSG filed the petition for the issuance of the extraordinary writ of quo warranto to declare as void the appointment of the respondent as the Chief Justice and to oust and altogether exclude the respondent therefrom.

Through a Joint Motion for Leave to Intervene and Admit Attached Comment-In-Intervention, movant intervenors composed of Capistrano, et al., Zarate et al., the IBP, Senators Leila M. De Lima and Antonio Trillanes IV seek to intervene in the present petition as citizens and taxpayers and senators of the Republic.

The respondent then filed a Motion for Inhibition against Associate Justices Bersamin, Peralta, Jardeleza, Tijam, and Leonardo-De Castro, imputing actual bias for having testified against her on the impeachment hearing before the House of Representatives.

The Case for the Republic

In justifying resort to a petition for quo warranto, the Republic argues that quo warranto is available as a remedy even as against impeachable officers, like the respondent. The Republic argues that a petition for quo warranto is different from the impeachment proceedings because in the former what is being sought is to question the validity of her appointment, while the impeachment complaint accuses her of committing culpable violation of the Constitution and betrayal of public trust while in office, citing *Funa v. Chairman Villar, Estrada v. Desierto* and *Nacionalista Party v. De Vera.*

The Republic further argues that an action for *quo warranto*is the proper remedy to question the validity of respondent's appointment and its imprescriptible right to bring such action under the maxim *nullum tempus occuritregi ("no time run against the king").* Hence, the OSG seasonably filed the petition within the one-year reglementary period under Section 11, Rule 66 since the respondent's transgressions only came to light during the impeachment proceedings. Moreover, even assuming that the one-year period is applicable to the OSG, considering that SALNs are not published, the OSG will have no other means by which to know the disqualification.

The Republic also contends that the respondent's failure to submit her SALNs disqualifies her from being a candidate for the position of the Chief Justice. She also failed to prove her integrity which is a requirement under Section 7(3), Article VIII of the Constitution. According to the Republic posits that the JBC's ostensible nomination of respondent does not extinguish the fact that the latter failed to comply with the SALN requirement as the filing thereof remains to be a constitutional and statutory requirement.

In sum, the Republic contends that respondent's failure to submit her SALNs as required by the JBC disqualifies her, at the outset, from being a candidate for the position of Chief Justice. Lacking her SALNs, respondent has not proven her integrity which is a requirement under the Constitution. The Republic thus concludes that since respondent is ineligible for the position of Chief Justice for lack of proven integrity, she has no right to hold office and may therefore be ousted via quo warranto.

The Case for the Respondent

The respondent contends that an impeachable officer may only be ousted through impeachment as provided for in Section 2, Article XI of the Constitution and jurisprudence. The respondent further contends that the clear intention of the framers of the Constitution was to create an exclusive category of public officers who can be removed only by impeachment and not otherwise.

Impeachment was chosen as the method of removing certain high-ranking government officers to shield them from harassment suits that will prevent them from performing their functions which are vital to the continued operations of government.

It is likewise argued by the respondent that the petition is time-barred as Section 11, Rule 66 of the ROC provides that a petition for quo warranto must be filed within 1 year from the "cause of ouster" and not from the discovery of the disqualification.

Moreover, the respondent argues that the Court cannot presume that she failed to file her SALNs because as a public officer, she enjoys the presumption that her appointment to office was regular. Hence, the Republic failed to overcome the presumption that her appointment to office was regular, pointing out that the UP HRDO had certified that she had been cleared of all administrative responsibilities. Her integrity is a political question which can only be decided by the JBC and the President and it did so in the affirmative when it included the respondent's name in the shortlist of nominees for the position of Chief Justice.

As to where her SALNs are, respondent avers that some of her SALNs were in fact found in the records of the UP HRDO and she was able to retrieve copies of some of her SALNs from UP Law. The respondent contends that the fact that SALNs are missing cannot give rise to the interference that they are not filed. The fact that 11 SALNs were filed should give an interference to a pattern of filing, not of non-filing.

The Motions for Inhibition

Respondent seeks the inhibition of 5 Justices of the Court, namely: Associate Justices Bersamin, Peralta, Jardeleza, Tijam, and Leonardo-De Castro. She imputes actual bias on said Justices for having testified before the House Committee on Justice on the impeachment complaint, on Justice Bersamin due to his personal resentment against the respondent, on Justice Jardeleza due to his challenging the integrity of the respondent during the nomination process, on Justice Tijam based on the latter's statement in an article that if the respondent is liable for culpable violation of the Constitution. She also mentioned of Justices Tijam and Bersamin wearing a touch of red during the "Red Monday" protest wherein judges and court employees called on the respondent to resign. She also seeks to disqualify Justice Martires for his insinuations questioning the respondent's mental or psychological fitness.

ISSUES:

A. PRELIMINARY ISSUES:

1. Whether the Court should entertain the motion for intervention.
2. Whether the Court should grant the motion for the inhibition of Sereno against five Justices.

B. SUBSTANTIVE ISSUES

1. Whether the Court can assume jurisdiction over the instant petition for *quo warranto.*
2. Whether the petition is dismissible outright on the ground of prescription.
3. Whether the respondent is eligible for the position of Chief Justice.
    a. Whether the determination of a candidate's eligibility for nomination is the sole and exclusive function of the JBC, and whether such determination partakes of the character of a political question outside the Court's supervisory and review powers;

b. Whether Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations; and if so, whether the failure to file SALNs voids the nomination and appointment of Respondent as Chief Justice;
c. Whether Respondent failed to comply with the submission of SALNs as required by the JBC; and if so, whether the failure to submit SALNs to the JBC voids the nomination and appointment of Respondent as Chief Justice; and
d. In case of a finding that Respondent is ineligible to hold the position of Chief Justice, whether the subsequent nomination by the JBC and the appointment by the President cured such ineligibility.

4. Whether respondent is a de jure or de facto officer.

RULING:

On the Preliminary Issues

Anent the first issue: Motions for Intervention

The Court resolved to deny the motions for intervention respectively filed by Capistrano *et al.,* Zarate *et al,.* Senators De Lima and Trillanes,and to note the IBP's intervention. herein movant-intervenors' sentiments, no matter how noble, do not, in any way, come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention. The intervenors failed to show any legal interest of such nature that they will either gain or lose by the direct legal operation of the judgment.

Anent the second issue: Motions for Inhibition

There is no basis for the associate justices to inhibit in the case. Bias must be proven with clear and convincing evidence. Mere imputation of bias or partiality is not enough ground for inhibition. In this case, the court ruled that the appearance of the Associate Justices in the hearings of Committee on Justice was only in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against Respondent could not be doubted. In addition to that, the their appearance was with the imprimatur of the Court En Banc.

The insinuations of Justice Tijam reveals that the intent was only to prod respondent to observe and respect the constitutional process of impleachment. As to the wearing of a red tie of Justices Tijam and Bersamin, respondent's allegations of personal bias are baseless and unfair. The Members of the Court are beholden to no one, except to the sovereign Filipino people who ordained and promulgated the Constitution. As a collegial body, the Supreme Court adjudicates without fear or favor.

On the Substantive Issues

Anent the first issue: The Court has jurisdiction of the over the petition for Quo Warranto.

The Supreme Court has original jurisdiction over an action for quo warranto. Section 5, Article VIII of the Constitution provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamuns, quo warranto,* and *habeas corpus.* Section 7, Rule 66 of Rules of Court also provides that the venue for an action for *quo warranto*is in the Regional Trial Court of Manila, Court of Appeals, or Supreme Court when commenced by the Solicitor General.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the SC's original jurisdiction in this case

is allowed when there are special and important reasons therefor. In this case, direct resort to the Court is justified considering that the action for *quo warranto*questions the qualification of no less than a Member of the Court. It is a matter of public concern over which the government takes special interest as it cannot allow an intruder or impostor to occupy a public position.

Granting that the petition is likewise of transcendental importance and has far-reaching implications, the Court is empowered to exercise its power of judicial review. To exercise restraint in reviewing an impeachable officer's appointment is a clear renunciation of a judicial duty. An outright dismissal of the petition based on speculation that respondent will eventually be tried on impeachment is a clear abdication of the Court's duty to settle actual controversy squarely presented before it. *Quo warranto* proceedings are essentially judicial in character – it calls for the exercise of the Supreme Court's constitutional duty and power to decide cases and settle actual controversies. This constitutional duty cannot be abdicated or transferred in favor of, or in deference to, any other branch of the government including the Congress, even as it acts as an impeachment court through the Senate.

To differentiate, impeachment is a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office. Meanwhile, an action for *quo warranto*, involves a judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules.

Despite the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to (1) jurisdiction; (2) grounds; (3) applicable rules pertaining to initiation, filing and dismissal; and (4) limitations.

Anent the second issue: The petition is not dismissible on the ground of prescription

Section 2, Rule 66 of the ROC makes it compulsory for the Solicitor General to commence a *quo warranto* action. The one-year limitation is not applicable when the Petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest. Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the public is involved, the lapse of time presents no effective bar as in the cases of *People v. Bailey, State ex rel Stovall v. Meneley, and State ex rel Anaya v. McBride.* Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of !aches or prescription. Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case.

The Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster. The respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in UP. Recall that in response to the JBC requiring her submission of previous SALNs, respondent never categorically said that she filed them. Instead, she cleverly hid the fact of non-filing by stating that she should not be required to submit the documents as she was considered to be coming from private practice and that it was not feasible to retrieve most of her records in the academe as they were more than 15 years old.

Anent the third issue: The respondent is not eligible for the position of Chief Justice

a. The Supreme Court's supervisory authority over the JBC consists of seeing to it that the JBC complies with its own rules.

Section 8(1), Article VIII of the Constitution provides that "A Judicial and Bar Council is herebycreated under the supervision of the Supreme Court." The power of supervision means

"overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." The JBC's duty to recommend or nominate, although calling for discretion, is neither absolute nor unlimited. Thus, the Supreme Court has authority, as an incident of its power of supervision over JBC, to insure that JBC faithfully executes its duties as the constitution requires of it. The Supreme Court has power to inquire into the process leading to the respondent's nomination for Chief Justice. Qualifications under the constitution cannot be waived or bargained away by JBC and one of which is that "a Member of the Judiciary must be a person of ***proven*** competence, ***integrity***, probity, and independence.

b. Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations, which voids her nomination and appointment as Chief Justice.

Section 17, Article XI of the Constitution states that "A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth." This has likewise been required by RA 3019 and RA 6713. The filing of SALN is so important for purposes of transparency and accountability that failure to comply with such requirement may result in not only dismissal from public service but also criminal liability such as imprisonment, fine and disqualification to hold public office. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office.

Respondent chronically failed to file her SALNs and thus violated the Constitution, the law and the Code of Judicial Conduct. A member of the Judiciary who commits such violations cannot be deemed to be a person of proven integrity. Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Her defenses do not lie: 1) The *Doblada doctrine* does not persuade because in that case, Doblada was able to present contrary proof that the missing SALNs were, in fact, transmitted to the OCA; 2) Being on leave from government service is not equivalent to separation from service; 3) While respondent is not required by law to keep a record of her SALNs, logic dictates that she should have obtained a certification to attest to the fact of filing; 4) That UP HRDO never asked respondent to comply with the SALN laws holds no water as the duty to comply with such is incumbent with the respondent; 5) That respondent's compliance with the SALN requirement was reflected in the matrix of requirements and shortlist prepared by the JBC is dispelled by the fact that the appointment goes into her qualifications which were mistakenly believed to be present, and that she should have been disqualified at the outset.

In addition to that, the SALNs filed by respondent covering her years of government service in U.P. appear to have been executed and filed under suspicious circumstances; her SALNs filed with the UPHRDO were either belatedly filed or belatedly notarized, while SALNs filed as Chief Justice were also attended by irregularities.

c. Respondent failed to comply with the submission of SALNs as required by the JBC.

The JBC required the submission of at least ten SALNs from those applicants who are incumbent Associate Justices, absent which, the applicant ought not to have been interviewed, much less been considered for nomination. From the minutes of the meeting of the JBC, it appeared that the respondent was singled out from the rest of the applicants for having failed to submit a single piece of SALN for her years of service in UP Law. The established and undisputed fact is respondent failed to submit the required number of SALNs in violation of the rules set by the JBC itself during the

process of nomination. There was no indication that the JBC deemed the three SALNs submitted by Respondent for her 20 years as a professor in UP Law and two years as Justice, as substantial compliance. Subsequently, it appeared that it was only Sereno who was not able to substantially comply with the SALN requirement, and instead of complying, Sereno wrote a letter containing justifications why she should no longer be required to file the SALNs: that she resigned from UP in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that UP cleared her of all academic and administrative responsibilities and charges.

Contrary to her argument that the SALNs are old and are infeasible to retrieve, the Republic was able to retrieve some of the SALNs dating back to 1985. For these reasons, the JBC should no longer have considered Respondent for interview as it already required the submission of, at least, the SALNs corresponding to the immediately preceding 10 years up to December 31, 2011.

The requirement to submit the SALNs, along with the waiver of bank deposits, is not an empty requirement that may easily be dispensed with, but was placed by the JBC itself for a reason — in order to allow the JBC to carry on its mandate of recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs. Respondent's failure to submit her SALNs to the JBC means that she was not able to prove her integrity at the time of her application as Chief Justice.

d. Subsequent nomination by the JBC and the appointment by the President did not cure the ineligibility.

The inclusion of the respondent's name in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC does not ratify her compliance with the SALN requirement. The invalidity of the respondent's appointment springs from her lack of qualifications. Her inclusion in the shortlist does not negate nor supply her with the requisite proof of integrity. She should have been disqualified at the outset. Her letter of July 23, 2012 was not deliberated by JBC *en banc*. Thus, JBC *en banc* cannot be deemed to have considered her eligible because the failure to submit her SALNs was not squarely addressed by the body. Her nomination in the shortlist and subsequent appointment do not estop the Republic or the SC from looking into her qualifications. It appears that her inclusion was made under the erroneous belief that she complied with all the legal requirements.

Neither will the President's act of appointment cause to qualify the respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself.

Anent the fourth issue: The respondent is a de facto officer removable through quo warranto

A de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto. He differs from a mere usurper who undertakes to act officially without any color of right and from a judge de jure who is in all respects legally appointed and qualified.

The effect of finding that a person appointed to an office is ineligible therefore is that his presumably valid appointment will give him color of title that confers on him the status of a de facto officer. For lack of a constitutional qualification, the respondent is ineligible to hold the position of a Chief Justice and is merely holding a colorable right or title thereto. Thus, she never attained the status of an impeachable official and her removal from the office, other than by impeachment is justified. The remedy, therefore, of *a* quo warrantoat the instance of the State is proper to oust respondent from the appointive position of Chief Justice.

E. Disabilities and inhibitions of public officers

CELSO OLIVIER T. DATOR, ***Petitioner*****, -versus- HON. CONCHITA CARPIO-MORALES, IN HER CAPACITY AS THE OMBUDSMAN, AND HON. GERARD A. MOSQUERA, IN HIS CAPACITY AS THE DEPUTY OMBUDSMAN FOR LUZON, AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT**, ***Respondents*****.**
G.R. No. 237742, FIRST DIVISION, October 8, 2018, TIJAM, J.

CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order. Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee. Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order.

FACTS:

The case stemmed from a complaint[2] filed on May 2, 2016 by complainant Moises B. Villasenor against the incumbent Mayor of Lucban, Quezon, petitioner Celso Olivier T. Dator, and Maria Lyncelle D. Macandile, also of Lucban, Quezon for grave misconduct, grave abuse of authority and nepotism.

It was alleged that in his immediately preceding term, Dator hired his sister, Macandile, as Chief Administrative Officer through a Job Order and designated her as Municipal Administrator. There was no appointment paper that was submitted to the Sangguniang Bayan for the required confirmation pursuant to Sec. 443(d) of the Local Government Code. It was also alleged that Macandile lacked the qualifications of a Municipal Administrator and her Job Order stated that "*the above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the 1) hiring authority and/or 2) representatives of the hiring agency*", when in truth and in fact, she is the sister of Dator.

In the Joint Counter-Affidavit of Dator and Macandile, they denied the charges and stated that Macandile was merely granted an authority to perform the duties and functions of an administrator in the exigency and best interest of public service. They stated that Macandile's credentials showed her competence as she worked as a Head Nurse in Ginebra San Miguel, Inc. from 1994 to 2005. They further alleged that the position of Municipal Administrator did not exist in the municipality's plantilla of personnel, hence, there was no appointment paper submitted to the Sangguniang Bayan for confirmation. They also countered that the position of Municipal Administrator is primarily confidential, non-career and coterminous with the appointing authority and that the Job Order was executed for payroll purposes only. They submitted copies of the Job Order forms issued during the administration of the complainant, where a Dr. Palermo C. Salvacion was designated as Chief Administrative Officer from 2007 to 2010.

On March 20, 2017, the Ombudsman rendered a Decision dismissing the charges against Macandile, but finding Dator administratively liable for Simple Misconduct. The OMB noted that since the position of Municipal Administrator was not in the plantilla, Dator should have requested the Sangguniang Bayan to create the said position through an ordinance. The OMB ruled that in the issuance of the Job Order and S.O. No. 2, Series of 2014, Dator exhibited reprehensible conduct. It also found Dator's act of affixing his signature in the Job Order, which contained an attestation that Macandile is not related within the fourth degree of consanguinity to the hiring authority, despite

knowledge of its falsity, is a clear transgression of the norms and standards expected of him as a government official.

A Motion for Reconsideration was filed by Dator. A Supplement to the Motion for Reconsideration dated November 6, 2017 was likewise filed by his new counsel, in collaboration with the counsel of record. Dator also filed a Motion for Clarification, seeking clarification as to the correct penalty imposed – whether it is 6 months suspension or 1 month and one 1 day suspension. Consequently, Dator filed before the CA a Petition for Injunction with Prayer for Issuance of Preliminary Injunction and/or Temporary Restraining Order, praying for respondents to desist and refrain from implementing the OMB's Decision.

The CA denied the petition outright. Subsequently, the OMB denied Dator's Motion for Reconsideration. It also clarified that the seeming conflict in the proper penalty imposable on Dator was due to an honest oversight in the footnote of the OMB decision, and clarified that the penalty imposed on Dator is six months suspension without pay.

ISSUE:

Whether the OMB was correct in ruling that Dator is liable for simple misconduct. (YES)

RULING:

The OMB was correct in ruling that Dator's act of issuing the Special Order No.2, Series of 2014 and Job Order that hired his sister, Macandile, as Chief Administrative Officer, was irregular.

As correctly noted by the OMB, the position of a Municipal Administrator is unique, because, while it is coterminous with the appointing authority and highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480 of the LGC. The position does not fall within the confidential/personal staff contemplated under Section 1(e) Rule X of Revised Omnibus Rules on Appointments and Other Personnel Actions which dispenses with the eligibility and experience requirements.

Furthermore, the Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Services) as it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.

The situation in this case is precisely what is being prevented by the said resolution where the appointing authority effectively creates a short-cut or circumvents the law as regards the determination of fitness or eligibility to a position, by merely hiring one who would otherwise have to go through the rigorous process mandated by the law, through a contract of service or job order.

CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order. Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee. Macandile, being the sister of Dator, is

clearly within the scope of the prohibition from being hired under a contract of services and job order.

Given the foregoing, Dator was thus properly held liable for simple misconduct.

F. Rights and liabilities of public officers

BAYANI F. FERNANDO, ANGELITO S. VERGEL DE DIOS, CESAR S. LACUNA, RUBEN C. GUILLERMO, RAMON S. ONA, FELIMON T. TARRAGO, FEDERICO E. CASTILLO, ALLAN ARCEO, DANILO M. SEÑORAN,* RENE ESTIPONA AND EDENISON F. FAINSAN, IN HIS CAPACITY AS THE INCUMBENT ASSISTANT GENERAL MANAGER FOR FINANCE AND ADMINISTRATION OF THE METRO MANILA DEVELOPMENT AUTHORITY, *Petitioners*, - versus - HONORABLE COMMISSION ON AUDIT *EN BANC*, RIZALINA Q. MUTIA, DIRECTOR IV, CLUSTER BGENERAL PUBLIC SERVICE II AND DEFENSE, NATIONAL GOVERNMENT SECTOR, COMMISSION ON AUDIT AND IRENEO B. MANALO, STATE AUDITOR V, SUPERVISING AUDITOR, COMMISSION ON AUDIT, *Respondents*.
G.R. No. 214910, EN BANC, February 13, 2018, JARDELEZA, *J.*

Section 43, Chapter V, Book VI of the Administrative Code of 1987 expressly provides that "every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received."

Complementarily, Section 103 of PD No. 1445 provides that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds. The prudent and cautious use of these funds is dictated by their nature as funds and property ***held in trust*** *by the public officers for the benefit of the sovereign trustees the people themselves - and for the specific public purposes for which they are appropriated. To maintain inviolate the public trust reposed on them, public officers must exercise* ***ordinary diligence*** *or the* ***diligence of a good father of a family****. This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law imposes upon public officers the obligation to return these amounts.*

The bottom line is, petitioners allowed and approved the disbursement of funds for the payment to WLTC, without withholding or deducting the correct amount of liquidated damages and contract cost variance. Their very admission in their petition that WLTC was at fault for the delay and guilty of violating the provisions of the contract against subcontracting proves that they have acted negligently in the disbursement of the payment to WLTC.

In our earlier discussion, we highlighted several dubious circumstances relating to the issuances of the SOs, the contract time extension, and the payment of the contract cost variance.

Coupled with these is the own admission of petitioners about violations in the Contract. These acts prove that petitioners had knowledge of facts and circumstances which would render the disbursements illegal. They were thus grossly negligent in their duties. We hold that petitioners are liable for the disallowance.

FACTS:

The MMDA conducted a public bidding for the Design and Construction of Steel Pedestrian Bridges, with William L. Tan Construction (WLTC) emerging as the winning bidder. Thus, on March 24, 2004, the MMDA and WLTC executed a Contract where the latter agreed to design and construct 14 steel pedestrian bridges for a price of P196,291,834.71 to be completed within 120 calendar days from receipt of the Notice to Proceed (NTP).

During the construction, WLTC executed Deeds of Assignment for parts of the project to third-party contractors. The MMDA also issued three suspension orders (SOs) to WLTC on various dates, as well as the corresponding resume orders subsequently. Based on WLTC's claimed work accomplishment, the MMDA paid WLTC a total of P161,903,009.85 net of taxes, and withheld P9,052,570.48 as retention fee. The MMDA also did not pay WLTC the difference of P5,861,078.43 since it was the computed liquidated damages for the 120-calendar day delay in the completion of the project.

On post-audit, the **Supervising Auditor of COA-MMDA** issued Notice of Suspension (NS) on all payments pending the MMDA's submission of required documents within 90 days from notice, and by reason of the Technical Evaluation Reports (TERs) of COA engineers. The TERs concluded that the contract cost of P199,801,671.91 was excessive for being 29.63% above the COA Estimated Cost of P151,409,330.45 due to high percentage mark-up and erroneous computation of site works. The TERs also showed that the liquidated damages to be imposed should be P18,153,348.63, instead of P5,861 ,078.43, due to the delay in the construction for 344 days.

The **COA State Auditor** issued Notice of Disallowance (ND) ruling that the documents requested under the NS remained unsubmitted. As such, the suspended transactions matured into a disallowance pursuant to Section 82 of Presidential Decree No. 1445. The COA State Auditor held WLTC, its subcontractors, and petitioners, except EdenisonFainsan (Fainsan), liable for the disallowance.

The MMDA appealed before the COA-NGS Cluster-B, attaching WLTC's request for extension of the contract period dated February 10, 2005 and the approval of the MMDA dated February 17, 2005.

The **COA-NGS Cluster-B** lifted the disallowance, except for liquidated damages of P2,063,321.56. It reevaluated the disallowance and found that the increased deployment of labor and equipment was necessary in the actual implementation of the project. The contract cost variance was, upon re-evaluation, found to be well within the COA allowable limit. The liquidated damages were reduced after the team considered the granted request for extension of time to WLTC.

The decision of the COA NOS Cluster-B was elevated to the COA Proper on automatic review.

The **COA Proper** disapproved the decision of the COA-NGS Cluster-B and denied the appeal of the MMDA with modifications. It reduced the original disallowance from P161,903,009.85 to P37,255,307.46 consisting of liquidated damages of P18,153,348.63 and contract cost variance of

P19,101,958.83. This was further reduced to P22,341,658.55 considering that the MMDA already withheld P9,052,570.48 as retention money and P5,861,078.43 as liquidated damages. **The COA Proper named WLTC and the responsible officials of the MMDA liable for the disallowance.**

It further ruled that WLTC was liable for P18,153,348.63 due to the delay in the construction for 344 days. The COA Proper faulted the MMDA and the COA-NGS Cluster-S for considering the SO dated March 23, 2004 and using the April 21, 2004, the date of the RO, as the effective date of the Contract. The COA Proper held that it was incorrect to do so because there was no project to suspend yet on March 23, 2004 as the contract was executed on March 24, 2004. **Said SO was also merely signed by Ramon Ona (Ona), for and in behalf of the MMDA. The COA Proper held that he did not have authority to issue any SO or contract that will bind the Government.**

The COA Proper also upheld the original disallowance of P19,101,958.83 representing contract cost variance. WLTC explained that this pertains to additional cost of manpower and equipment due to increased deployment of labor and equipment to expedite the completion of the project. **However, the COA Proper found that WLTC only needed to expedite the completion of the project because it had long been overdue. Thus, the alleged additional cost of manpower and equipment should not be borne by the Government.**

ISSUE:

Whether the petitioners (the responsible MMDA officials) can be held liable for the disallowance. (YES)

RULING:

We sustain petitioners' position that Ona, as Project Manager, had the authority to issue the SOs and ROs, and to approve the request for extension of contract time on behalf of the MMDA. Office Order No. 220, series of 2003 issued by then MMDA Chairman Bayani Fernando, and which designated Ona as Project Manager, has the general objective of ensuring the proper implementation of the project. We find that the authority to suspend construction work and grant requests for contract time extension are necessarily included in Ona's tasks.

We note further that the MMDA never repudiated the acts of Ona, but has, in fact, ratified the same. However, this is not to take anything away from the COA's duty to look into the propriety of Ona's acts. As specifically applied here, it is well within the scope of the COA's authority to evaluate and determine whether the SOs or the extension of the contract time, which necessarily includes the waiver of any penalty or liquidated damages to be imposed, is valid. The plain reason is that government funds are involved. Hence, even if the MMDA, through Ona, favorably granted the requests for suspension of work and the extension of contract time, this cannot bind or preclude the COA from exercising its constitutionally mandated function in reviewing the same and to ensure its conformity with the law. Thus, the COA is traditionally given free rein in the exercise of its constitutional duty to examine and audit expenditures of public funds especially those which are palpably beyond what is allowed by law.

Bearing all the foregoing in mind, we find no grave abuse of discretion on the part of the COA in issuing its assailed Decision because:

1. Petitioners do not deny the fact of delay in the project and actually state in their petition that it is undisputed. It appears that petitioners, for some reason, treated the first SO and RO on March 23, 2004 and April 21, 2004, respectively, to have pushed the effectivity of the contract to April 21, 2004. This is erroneous. As the name itself suggests, the SO should have only suspended the operation and nothing more.
2. Petitioners also failed to belie the COA's finding that the first SO was dated March 23, 2004. This was highly suspicious because the Notice of Award and the NP were issued on the next day, March 24, 2004. The COA is correct, therefore, in holding that there was no contract or project to suspend yet when the first SO was issued.
3. Considering, therefore, that the original effectivity (March 24, 2004) and expiry (July 21, 2004) of the contract must stand, it follows that the succeeding SOs in July 30, 2004 and November 15, 2004 are invalid. No extension of contract time was issued before the expiry of the contract.
4. Petitioners claim that WLTC requested for an extension of contract time and the MMDA granted the same. Even if we were to assume that the contract time was validly extended, and that the subsequent SOs could have likewise been feasible, the supposed contract time extension must still fail. Significantly, as admitted by Fainsan, the extension was not covered with Performance Security.

Petitioners, however, insist that the consequences of delay in the form of liquidated damages should fall on the shoulders of WLTC alone because it was the one who requested the suspension of work (and extension of contract time). The MMDA, on the other hand, never suspended the work operations at its own discretion; it merely assented to the requests "upon finding of reasonable justification therefor."As for the contract cost variance, petitioners posit it was due to WLTC's act of subcontracting parts of the project. This was allegedly made entirely at the behest and preference of WLTC upon realizing that it cannot complete the project on time. Petitioners denied any participation in the acts of WLTC and even alleged that these were in violation of the Contract.

However, the bottom line is, petitioners allowed and approved the disbursement of funds for the payment to WLTC, without withholding or deducting the correct amount of liquidated damages and contract cost variance. Their very admission in their petition that WLTC was at fault for the delay and guilty of violating the provisions of the contract against subcontracting proves that they have acted negligently in the disbursement of the payment to WLTC.

Petitioners are correct that under RA No. 9184, liquidated damages are payable by the contractor in case of breach of contract. As the owner of the project, however, the MMDA has the obligation to make sure that the contractor pays in case of breach. Paragraph 3, Item CI 8 of the Implementing Rules and Regulations of PD No. 1594 provides that liquidated damages "shall be deducted from any money due or which may become due the contractor under the contract, and/or collect such liquidated damages from the retention money or other securities posted by the contractor, whichever is convenient to the Government." This is mandatory.

As to the contract cost variance, the COA found that by February 2005, the project was only halfway done despite having three subcontractors already. WLTC executed another agreement with a fourth subcontractor, Yamato, which finally expedited the construction. **The COA is correct, therefore, in holding that these alleged additional costs of manpower and equipment must not be borne by the Government.** These are not the same as additional or extra work which are performed over and above of what is required under the contract which would necessitate compensation for the

contractor. In any case, these costs cannot be validly considered as additional or extra work costing because they were not shown to have been duly covered by change or extra work orders.

Worse, as admitted by petitioners, the alleged additional costs of manpower and equipment were incurred by WLTC *after having entered into subcontract agreements*, in violation of its contract with the MMDA. Thus, petitioners should not have allowed the disbursement to pay for this alleged contract cost variance. All told, the disallowance, as modified by the COA Proper, must be upheld.

In its Decision, the COA Proper held WLTC and the responsible officials of the MMDA liable for the disallowance. The responsible officials referred to are those originally named in the ND: (1) Bayani Fernando, Angelita Vergel de Dios, Cesar Lacuna, Ruben Guillermo, Ramon Ona, FelimonTarrago, Federico Castillo, Allan Arceo, Danilo Señoran, and Rene Estipona.

The COA Proper is correct in holding WLTC and the above MMDA officials solidarily liable for the disallowance. Section 43, Chapter V, Book VI of the Administrative Code of 1987 expressly provides that "every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received."

Complementarily, Section 103 of PD No. 1445 provides that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. In determining who are liable for audit disallowances or charges, the COA is guided by Section 19 of the Manual of Certificate of Settlement and Balances,which provides:

> 19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby.

The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds. The prudent and cautious use of these funds is dictated by their nature as funds and property **held in trust** by the public officers for the benefit of the sovereign trustees the people themselves - and for the specific public purposes for which they are appropriated. To maintain inviolate the public trust reposed on them, public officers must exercise **ordinary diligence** or the **diligence of a good father of a family**. This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law imposes upon public officers the obligation to return these amounts.

In our earlier discussion, we highlighted several dubious circumstances relating to the issuances of the SOs, the contract time extension, and the payment of the contract cost

variance. Coupled with these is the own admission of petitioners about violations in the Contract. These acts prove that petitioners had knowledge of facts and circumstances which would render the disbursements illegal. They were thus grossly negligent in their duties. We hold that petitioners are liable for the disallowance.

FERNANDO A. MELENDRES, *Petitioner* –versus- OMBUDSMAN MA. MERCEDITAS N. GUTIERREZ AND JOSE PEPITO M. AMORES, M.D., *Respondents*.
G.R. No. 194346, First Division, June 18, 2018, Tijam, J.

Misconduct generally means wrongful, improper or unlawful conduct, motivated by premeditated, obstinate or intentional purpose.""It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer."In addition, in order to be considered grave misconduct, it must be shown that the acts involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.

FACTS:

The Department of Health and Department of Budget and Management approved the realignment of funds, which was covered by SARO No. BMB-B-00-0192, in the amount of P73,258,377.00 for the completion of the rehabilitation of the Lung Center of the Philippines. Melendres, then Executive Director of the LCP, entrusted with the implementation and administration of the SARO, requested the Branch Manager of the Land Bank of the Philippines West Triangle Branch for the issuance of a Manager's Check in the amount of P73,258,377.00.

On February 4, 2002, Melendres requested the Office of the Government Corporate Counsel to review and evaluate a supposed Investment Management Agreement with Philippine Veterans Bank. However, even prior to the response of the OGCC for the contract review, Melendres transmitted the manager's check to PVB with instructions to place the same under an IMA for 30 days.

On May 3, 2002, the OGCC replied to Melendres' request. It appears that Melendres, along with Albilio C. Cano, Manager of the Administrative and Ancillary Department of the LCP, and Angeline Rojas, Chief of Finance Services of the LCP, continued to authorize the roll over of the funds placed in PVB. Thereafter, Ma. Milagros Campomanes-Yuhico requested Melendres to return the signed IMA and to submit certain documents, which was referred by the latter to the Cash Division.

Hence, a complaint for Grave Misconduct was filed by Jose Pepito Amores, the Deputy Director for Hospital Support Services of the LCP against Melendres, Cano, Rojas, Chona Victoria Reyes-Guray, Branch Head of the PVB Aurora Boulevard Branch and Yuhico as Assistant Vice-President of PVB. The complaint alleged that Melendres, along with the other officials of LCP, "in clear conspiracy with one another", caused undue injury to the government and the LCP when they misappropriated the funds for LCP's renovation by utilizing the same for private investment purposes to the detriment of the government medical service.

Melendres, for his part, denied Amores' accusations. He explained that he did not place the money in an IMA because he was awaiting the advice and opinion of the OGCC on the matter. Melendres claimed

that the IMA was never formalized nor implemented, as he has not signed the IMA. He further asserted that the transfer of funds to PVB was authorized under the LCP Board of Trustees' Resolution of January 30, 2002.

The Ombudsman found Melendres, Cano and Rojas guilty of grave misconduct. The Ombudsman found that it was clear from the correspondence of the therein respondents with the PVB officials that they intended to enter into an investment agreement. Likewise, the Ombudsman denied petitioner's motion for reconsideration.

Melendres then appealed to the CA under Rule 43 of the Rules of Court. The CA, through a Resolution, required Melendres to submit, within 3 days from receipt, clearly legible copies of material portions of the record and other supporting documents, with warning that failure to comply will result to the dismissal of the petition. However, instead of complying with the said Resolution, Melendres submitted a motion requesting for an extension of 15 days within which to comply.

The CA dismissed the petition for failure to comply with the Resolution. The motion for reconsideration was likewise denied. Hence, the instant petition.

ISSUE:

Whether Melendres is guilty of grave misconduct. (NO)

RULING:

No. Melendres is liable for simple misconduct.

Misconduct generally means wrongful, improper or unlawful conduct, motivated by premeditated, obstinate or intentional purpose.""It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer."In addition, in order to be considered grave misconduct, it must be shown that the acts involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.

In this case, this Court finds that the evidence on record do not establish that the placement of LCP funds with the PVB was attended with corrupt motives or willful disregard of established rules as to fully satisfy the standard of substantial evidence. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

"Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." In this case, it is apparent that the record simply did not show how Melendres purportedly used his position as LCP's Executive Director to procure unwarranted benefits from the transaction.

The foregoing notwithstanding, this Court finds that Melendres cannot be completely exonerated from administrative liability. The circumstances surrounding the placement of LCP funds in PVB leaves much to be desired. Indeed, Melendres transferred the funds without an investment contract

and specific authority from the LCP Board of Trustees which authorizes him, or another official to invest in PVB the amount of P73,258,377.00. By such acts, Melendres committed a serious lapse of judgment sufficient to hold him liable for simple misconduct.

FIELD INVESTIGATION UNIT-OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, ***Petitioner*****, -versus- . RAQUEL A. DE CASTRO, *Respondent*.**
G.R. No. 232666, SECOND DIVISION, June 20, 2018 REYES, JR., J.

To recapitulate, there are at least three primary conditions or requirements that must be met before local funds can be disbursed. First, the local budget officer must certify to the existence of appropriation that has been legally made for the purpose. Second, the local accountant must have obligated said appropriation. Third, the local treasurer certifies to the availability of funds for the purpose. From the foregoing it is clear that the respondent's certification on the disbursement vouchers is necessary to consummate the subject transaction with the Municipality. Her repeated certification on the disbursement vouchers covering numerous transactions clearly shows flagrant disregard of the law or rules. Simply put, the culpability of the respondent has been clearly established. Her acts coupled with the surrounding circumstances constitute Grave Misconduct.

FACTS:

Raquel A. De Castro worked as a Municipal Accountant for the Municipality of Bongabong, Oriental Mindoro. Various transactions and payments have been made for the years 2006 to 2010. The Field Investigation Unit (FIU)-Office of the Deputy Ombudsman for Luzon charged respondent for Conduct Prejudicial to the Best Interest of the Service and Grave Misconduct. FIU stated that Section 89 of R.A. No. 7160, prohibits local government officials from engaging, directly or indirectly, in any business transaction with the local government unit in which he is an official whereby money is to be paid, directly or indirectly, out of the resources of the local government unit to such person or firm.

Respondent asserted that she neither intervened nor participated directly or indirectly in the process and consummation of the subject transactions. She maintained that her signature appearing on the disbursement vouchers only meant that she had certified that the documents supporting the subject transactions were complete. The respondent also emphasized that the initiative to enter into the subject transactions did not come from her, but from the Bids and Awards Committee (BAC), when it requested the Pink Enterprises and other establishments to submit quotations for the goods and services needed by the Municipality of Bongabong.

The Office of the Deputy Ombudsman for Luzon exonerated the respondent from the charge. On the other hand, the CA held that the respondent is guilty of Simple Misconduct only there being no substantial evidence to show that any of the elements of corruption, clear intent to violate the law or flagrant disregard of rules is present.

ISSUE:

Whether the CA erred in downgrading the liability of the respondent from grave misconduct to simple misconduct.

RULING:

Respondent, on more than one occasion, knowingly certified and approved disbursement vouchers covering transactions between the Municipality of Bongabong and Pink Enterprises. She certified the same notwithstanding the fact that she clearly had pecuniary interests, albeit indirect, therein. The prohibition laid down in Sections 89 and 341 of R.A. No. 7160 are clear in this regard, to wit:

> Section 89. Prohibited Business and Pecuniary Interest. –
>
> (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:
>
> Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
>
> x xxx
>
> Section 341. Prohibitions Against Pecuniary Interest. -Without prejudice to criminal prosecution under applicable laws, any local treasurer, accountant, budget officer, or other accountable local officer having any pecuniary interest, direct or indirect, in any contract, work or other business of the local government unit of which he is an accountable officer shall be administratively liable therefor.

In downgrading the respondent's liability from Grave to Simple Misconduct, the CA clearly failed to consider the respondent's repeated violation of the law which transpired for four years from 2006 to 2010. That the respondent divulged in her Statement of Assets, Liabilities and Net Worth (SALN) her connection with Pink Enterprises does not absolve her from liability. She violated an express prohibition by law when she certified the disbursement vouchers knowing fully well that her connection with Pink Enterprises prohibited her from doing so. Given the length of time she has been in government service, she cannot feign ignorance as to the prohibitions imposed by law on government employees. That she stood idly by whilst transactions between Pink Enterprises and the Municipality of Bongabong were consummated on numerous occasions point to no other conclusion but that she had wilfully and knowingly violated the law.

While the respondent is correct in her claim that the initiative to enter into the subject transactions did not come from her, she is wrong in asserting that she neither intervened nor participated in the consummation of the subject transactions. Chapter IV of R.A. No. 7160, specifically Section 344 thereof, states the basic requirements for disbursement of local funds, to wit:

> Section 344. Certification, and Approval of, Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP,

> National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.
>
> In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.
>
> In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor. (Underlining and emphasis ours)

To recapitulate, there are at least three primary conditions or requirements that must be met before local funds can be disbursed. First, the local budget officer must certify to the existence of appropriation that has been legally made for the purpose. Second, the local accountant must have obligated said appropriation. Third, the local treasurer certifies to the availability of funds for the purpose. From the foregoing it is clear that the respondent's certification on the disbursement vouchers is necessary to consummate the subject transaction with the Municipality. Her repeated certification on the disbursement vouchers covering numerous transactions clearly shows flagrant disregard of the law or rules. Simply put, the culpability of the respondent has been clearly established. Her acts coupled with the surrounding circumstances constitute Grave Misconduct.

JOSE L. DIAZ, *Petitioner*, -versus- THE OFFICE OF THE OMBUDSMAN, *Respondent*.

G.R. No. 203217, FIRST DIVISION, July 02, 2018, TIJAM, *J*.

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.

Petitioner made it appear that gasoline thus withdrawn was used for a government vehicle despite the fact that said vehicle was already declared "unserviceable." Notwithstanding the fact that he was already receiving transportation allowance, he was also able to obtain fuel, purchased with government funds, for his personal vehicle, which clearly indicates a disposition to defraud.

The finding of guilt against petitioner, for the administrative offense of dishonesty under Section 52 (A) (l),53 Rule IV of the URACCS, must stand.

FACTS:

The Office of the Ombudsman filed a complaint against several personnel, including petitioner, of the Veterinary Inspection of the City of Manila for violations of Section 3 (e) and (i) of Republic Act No. 3019, Article 220 of the Revised Penal Code for Illegal Use of Public Funds or Property and for Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service under the Uniform Rules on Administrative Cases in the Civil Service.

The complaint alleged that petitioner, who was already receiving transportation allowance, caused the request for the purchase and withdrawal of gasoline despite the fact that the engine no. 406Y18

of the Jeep Yellow unit he received from the Public Recreation Bureau has been decommissioned and a certainToyota Land cruiser had been declared unserviceable and authorized to be disposed.

The VIB's "Gasoline Fuel Supplies Ledger Card Withdrawals" revealed that 4,555 liters of gasoline were withdrawn for the Toyota Land Cruiser while 6,500 liters were withdrawn for the Jeep Yellow for a period of fiveyears.

Petitioner denied the charges for being malicious and unfounded. He countered that the Toyota Land Cruiser was used by VIB despite the fact that it was already reported as unserviceablebecause said engine was already replaced. He denied knowledge of gasoline withdrawals for his personal vehicle bearing plate no. PPR-691, arguing that his signature did not appear on the SLC and no evidence was presented to prove that he had requested for fuel.

The Office of the Ombudsman rendered the Joint Decision finding petitioner guilty of dishonesty under Section 52(A)(l), Rule IV of the URACCS. The charges against the other officials were dismissed for lack of substantial evidence. The Ombudsman held that there was substantial evidence that petitioner and Reyes used government gasoline for personal use.

They filed a petition for review, which the CA denied.

The CA found that the Ombudsman's findings were supported by substantial evidence. The CA rejected petitioner and Reyes' allegation that the vehicles were among the unserviceable properties auctioned off and withdrawn from the VIB's premises in August 2004, noting that the documents they presented to support such claim did not specify said vehicle. The CA refused to consider their length of service as a mitigating circumstance because they committed a series of violations over a number of years.

Petitioner argues that the Ombudsman's findings, as sustained by the CA, were not supported by substantial evidence. Supposing guilt, he posits that the supreme penalty of dismissal was too harsh considering that he has been in government service for 22 years and this was his first offense.

ISSUE:

Whether or not the Ombudsman's findings are supported by substantial evidence

RULING:

Yes. The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality, by the courts because of their special knowledge and expertise over matters falling under their jurisdiction. When supported by substantial evidence, their findings of fact are deemed conclusive.

More than a mere scintilla of evidence, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even

if the evidence might not be overwhelming. Applying this standard of proof, the Court finds no cogent reason to overturn the Ombudsman's conclusions, as affirmed by the CA.

Indeed, the SLC showed gasoline withdrawals from 1999 to 2003 for the said vehicles which were already decommissioned and declared unserviceable. Furthermore, petitioner had that he was already receiving transportation allowance during the period covered by the subject gasoline withdrawals. The foregoing circumstances ineluctably justify the Ombudsman's finding that petitioner committed dishonesty.

While petitioner maintains that these Ledger Cards had been prepared with ill motive, no evidence of malice or instance of spite had been presented or alleged by him. Furthermore, that the SLC were not prepared or signed by him will not divest said documents of probative value. Being public documents, they are prima facie proof of their contents.

The trustworthiness of public documents and the value given to the entries made therein could be grounded on (1) the sense of official duty in the preparation of the statement made, (2) the penalty which is usually affixed to a breach of that duty, (3) the routine and disinterested origin of most such statements, and (4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred.Absent evidence to the contrary, the SLC are presumed to have been regularly prepared by accountable officers who enjoy the legal presumption of regularity in the performance of their functions.

The Court finds implausible petitioner's claim that his office continued to use the vehicle with plate no. SCB-995 even if it had been declared "unserviceable" on August 31, 1999.If the engine had been replaced after December 1, 1998, it makes no sense for petitioner to consider said vehicle as unserviceable on August 31, 1999.

Petitioner's disclaimer of his signature cannot be sustained. The signature appears similar to his other signatures which appear on record and which he had not disputed. Petitioner also previously confirmed the same Report in his Counter-Affidavit.

Although petitioner admitted that he authorized the withdrawal of the subject vehicle for disposal, he claims that the vehicle was not taken out of the VIB's premises until 2004 after it was auctioned off together with other unserviceable items. In support of this claim, petitioner submitted a Certification of a public bidding and a letterauthorizing the withdrawal of the unserviceable properties by the winning bidder. However, neither of these documents showed that the subject vehicle was among the items purchased at the public bidding.

In fine, what remains of petitioner's defense is a bare denial. Juxtaposed to the GIB-A's evidence, it cannot overturn the Ombudsman's finding, as affirmed by the CA, that petitioner committed acts of dishonesty.

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.

As the evidence shows, the questioned gasoline withdrawals by petitioner were made through deception. He made it appear that gasoline thus withdrawn was used for a government vehicle despite the fact that said vehicle was already declared "unserviceable." Notwithstanding the fact that he was already receiving transportation allowance, he was also able to obtain fuel, purchased with government funds, for his personal vehicle, which clearly indicates a disposition to defraud. Thus, the finding of guilt against petitioner, for the administrative offense of dishonesty under Section 52 (A)(l),53 Rule IV of the URACCS, must stand.

Section 52 (A)(l), Rule IV of the URACCS supports the penalty of dismissal imposed on the petitioner. His actions constituted a grave offense which cannot be mitigated by the length of his government service or the fact that it was his first offense. As the CA acutely observed, petitioner committed a series of violations over a number of years while in government service.

Dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

The accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service are consistent with Section 58(a),56 Rule IV of the URACCS.

G. De facto vs. de jure officers

H. Termination of official relation

I. The Civil Service

CAREER EXECUTIVE SERVICE BOARD, represented by CHAIRPERSON BERNARDO P. ABESAMIS, EXECUTIVE DIRECTOR MA. ANTHONETTE VELASCO-ALLONES, and DEPUTY EXECUTIVE DIRECTOR ARTURO M. LACHICA, *Petitioners,* -versus- CIVIL SERVICE COMMISSION, represented by CHAIRMAN FRANCISCO T. DUQUE III and BLESILDA V. LODEVICO, *Respondents*.
G.R. No. 196890, FIRST DIVISION, January 11, 2018, TIJAM, *J.*

Two requisites must concur in order that an employee in the career executive service (CES) may attain security of tenure, to wit: (a) CES eligibility; and (b) Appointment to the appropriate CES rank. Here, Lodevico met the first requisite as she is a CES eligible, evidenced by a Certificate of Eligibility. However, the second requisite is wanting, because there was no evidence which proves that Lodevico was appointed to a CES rank.Hence, Lodevico's appointment was merely temporary, and her services may be terminated with or without cause. Consequently, her removal from service based on MC Nos. 1 and 2, which discharged all non-Career Executive Service Officers (non-CESO) occupying CES positions in all agencies, was proper.

FACTS:

This is a petition for certiorariand prohibition under Rule 65, seeking to declare null and void the Decision of the Civil Service Commission, which declared null and void the Memorandum issued by Chairman Bernardo Abesamis (Chairman Abesamis) of the Career Executive Service Board (CESB).

Private respondent BlesildaLodevico (Lodevico) was appointed by then President Gloria Macapagal-Arroyo as Director III, Recruitment and Career Development Service, CESB. Lodevico possesses a Career Service Executive Eligibility as evidenced by the Certificate of Eligibility issued by the CSC. The Office of the President (OP) issued Memorandum Circular No. 1 (MC 1), which declared all non-CES positions vacant as of June 30, 2010. The OP then promulgated the Implementing Guidelines of MC 1, which states that all non-CESOs in all agencies of the Executive Branch shall remain in office and continue to perform their duties until July 31, 2010 or until their resignations have been accepted and/or their replacements have been appointed or designated, whichever comes first.

Acting pursuant to MC 1 and its implementing guidelines, Chairman Abesamis of the CESB issued a Memorandum which informed Lodevico that she shall only remain in office and continue to perform her duties and responsibilities until July 31, 2010. Meanwhile, Memorandum Circular No. 2 (MC 2), which extended the term stated under MC 1 to October 31, 2010, was issued.

Lodevico filed her appeal on the Memorandum issued by Chairperson Abesamis before the CSC. The CSC rendered the assailed Decision, which granted the appeal of Lodevico and declared null and void the termination of her services. The CSC denied the CESB's motion for reconsideration. Hence, this petition.

ISSUE:

Whether the dismissal of Lodevico as Director III, Recruitment and Career Development Services from the CESB, is proper. (YES)

RULING:

Two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit: (a) CES eligibility; and (b) Appointment to the appropriate CES rank.

CES eligibility can be acquired by passing the requisite civil service examinations and obtaining passing grade to the same. After completing and passing the examination process, said employee is entitled to conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Such conferment of eligibility is done by the CESB through a formal Board Resolution after an evaluation is done of the employee's performance in the four stages of the CES eligibility examinations.

However, conferment of a CES eligibility does not complete one's membership in the CES nor does it confer security of tenure. It is also necessary that an individual who was conferred CES eligibility be appointed to a CES rank. Such appointment is made by the President upon the recommendation of the CESB. Only after such process will the employee's appointment in the service be considered as a permanent one, entitling him to security of tenure.

Here, Lodevico met the first requisite as she is a CES eligible, evidenced by a Certificate of Eligibility. However, the second requisite is wanting, because there was no evidence which proves that Lodevico was appointed to a CES rank. Hence, Lodevico's appointment was merely temporary. Her services may be terminated with or without cause, for the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. Consequently, her removal from service based on MC Nos. 1 and 2, which discharged all non-CESO occupying CES positions in all agencies, was proper.

ATTY. MA. JASMINE P. LOOD, MARY JANE G. CORPUZ, and MA. HAZEL P. SEBIAL, COMPLAINANTS, *Petitioners,* -versus- RUEL V. DELICANA, LEGAL RESEARCHER, BRANCH 3, MUNICIPAL TRIAL COURT IN CITIES, GENERAL SANTOS CITY, SOUTH COTABATO, *Respondents.*

A.M. No. P-18-3796, FIRST DIVISION, January 22, 2018, TIJAM, *J*

The ruling in Bayaca v. Judge Ram[l] is instructive in the matter, viz.:
We have repeatedly ruled in a number of cases that mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member of the bench. The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Courts interest in the affairs of the judiciary is of paramount concern. For sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary, inasmuch as the various programs and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties as in the instant case.

Time and again, the Court have repeatedly stressed that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judges to the most junior clerks. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness. Under Section 46 D (2) of the Revised Rules on Administrative Cases in the Civil Service, simple misconduct is classified as a less grave offense. It is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. However, in several administrative cases, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors.

FACTS:

Respondent Delicana, a Legal Researcher of Municipal Trial Court in Cities of General Santos City, South Cotabato, Branch 3, filed an administrative case against Judge Alejandro Ramon C. Alano (Judge

Alano), Executive and Presiding Judge of MTCC of General Santos City, Branch 3, wherein he protested the designation of Mary Jane Ganer-Corpuz (Ganer-Corpuz), Sheriff III, Office of the Clerk of Court, MTCC of General Santos City as Acting Clerk of Court of MTCC-Branch 3.

Delicana averred that Ganer-Corpuz's designation as acting Clerk of Court was improper considering that during the office's meeting on February 3, 2014, it was agreed that the acting Clerk of Court will be chosen from among the staff within the same branch. Also, Delicana mentioned that he likewise filed a separate administrative complaint against Atty. Lood and Ganer-Corpuz.

Consequently, Ganer-Corpuz, together with Atty. Lood and Ma. Hazel P. Sebial, filed their Affidavit of Complaint against Delicana wherein they charged him for Conduct Prejudicial to the Best Interest of the Service.Specifically, herein complainants averred that, despite the same being an internal matter and affecting only the employees of MTCC of General Santos, Branch 3, Delicana disseminated copies of his administrative complaint filed against herein complainants, as well as the minutes of the office meeting, to the following:

> (i) Office of the Court Administrator (OCA); (ii) Hon. Emilio S. Quianzon, Presiding Judge; Branch 2, MTCC of General Santos City; (iii) Hon. Oscar P. Noel, Jr., Executive Judge, Regional Trial Court (RTC) of General Santos City; (iv). Atty. Marion Gay C. Mirabueno, COC, RTC-OCC of General Santos City; (v) Hon. Jose C. Blanza, Jr., Chief City Prosecutor, City Prosecutor's Office of General Santos City; (vi) Hon. Lorna B. Santiago, Acting Judge (Judge Santiago), Municipal Circuit Trial Court (MCTC), Alabel-Malungon, Sarangani Province; (vii) Atty. Caroline Z. Tajon, Chief, Public Attorney's Office of General Santos City; (viii) Atty. Mary Anne L. Lagare-Academia, President of the Integrated Bar of the Philippines, General Santos City; (ix) Hon. Ronnel C. Rivera, Mayor of General Santos City; (x) Hon. ShirlynBañas-Nograles, Vice-Mayor of General Santos City; (xi) Atty. Arnel A. Zapatos, City Administrator of General Santos City; (xii) Atty. Andres S. Mission (Atty. Mission), President of the Philippine Association of Court Employees (PACE) of General Santos City; and (xiii) Atty. Maria Fe Maloloy-on (Atty. Maloloy-on), National President of PACE.

Complainants claimed that the sending of the said confidential documents to offices that do not have anything to do with the resolution of the present case is libelous, scandalous, and deleterious.

On February 23, 2016, the OCA directed Delicana to file his Comment within 10 days from receipt thereof. In his Comment, Delicana countered that her letter to Judge Alano was a legitimate, legal, and valid objection to the designation of Ganer-Corpuz, who is an "outsider" of MTCC of General Santos City, Branch 3. Delicana further alleged that only the cover letter of the complaint against herein complainants were attached in his letter. Also, he claimed that only excerpts of the minutes of the meeting were included which he honestly presumed to be not malicious. Moreover, Delicana claimed that complainants failed to substantiate his alleged infraction. According to Delicana, there was no intention on his part to defame, malign, or destroy complainants' reputation.

On January 23, 2017, the OCA recommended that Delicana be suspended from office for one year for conduct prejudicial to the best interest of the service.

ISSUE:

Whether Delicana is guilty of simple misconduct? (YES)

RULING:

Yes. The Court finds Delicana guilty of simple misconduct.

Time and again, the Court have repeatedly stressed that **the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judges to the most junior clerks. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary.** Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

In this case, in disseminating the letter, minutes of the meeting and administrative case of complainants, Delicana contributed to the erosion of the public's confidence in the judiciary. Indeed, the Court frowns upon any display of animosity by any court employee. Colleagues in the judiciary, including those occupying the lowliest positions, are entitled to basic courtesy and respect.

As correctly observed by the OCA, Delicana failed to observe the proper decorum expected of members of the judiciary. Notably, when respondent maliciously disseminated the minutes of the meeting and administrative case of complainants with the intent to embarrass them, the investigation has yet to commence. In indiscriminately providing a copy of the administrative case to those who are not even privy to the case, even if it consists of the covering letter only of the complaint, it was enough to inform whoever should read it that an administrative complaint has been filed against complainants which would unnecessarily harm their reputation. Delicana's impropriety subjected the image of the court to public distrust. Thus, Delicana is guilty of simple misconduct.

As to penalty, under Section 46 D (2) of the Revised Rules on Administrative Cases in the Civil Service, simple misconduct is classified as a less grave offense. It is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. In the present case, considering that Delicana was already previously reprimanded and fined in the amount P1,0000 for conduct unbecoming a court employee and conduct prejudicial to the best interest of the service with a stem warning that a repetition of the same or similar act shall be dealt with more severely, the imposable penalty for this second offense against Delicana is dismissal from service.

However, in several administrative cases, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. In this case, the Court takes into consideration Delicana's long years of service in the judiciary of more than 17 years as well as his reconciliation with complainant Ganer-Corpuz. Hence, Delicana is meted the penalty of suspension of one (1) year without pay, with a stern warning that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

ANONYMOUS COMPLAINT AGAINST EMELIANO C. CAMAY, JR., UTILITY WORKER I, BRANCH 61, REGIONAL TRIAL COURT, BOGO CITY, CEBU

A.M. No. P-17-3659, EN BANC, March 20, 2018**,** PER CURIAM

In Anonymous v. Radam, the Court declared that "if the father of the child born out of wedlock is himself married to a woman other than the mother, there is a cause for administrative sanction against either the father or the mother. In such a case, the 'disgraceful and immoral conduct' consists of having extramarital relations with a married person." Disgraceful and immoral conduct is an offense classified under the RRACCS as a grave offense punishable by suspension of six months and one day to one year for the first offense. Camay admitted to cohabiting with a woman who was not his wife and to having a child with her despite his marriage to his wife not having been legally severed. As such, the finding of the OCA that Camay was guilty of disgraceful and immoral conduct is upheld.

The letter and spirit of Section 8 of Republic Act No. 6713, which requires all public officials and employees to accomplish and submit a declaration of assets, liabilities, net worth and financial and business interests, including information on real property, its improvements, acquisition costs, assessed value and current fair market value. In the instant case, Camay declared the house and lot located in Taytayan Hills in his SALNs for 2001, 2003, and 2004 but did not indicate the date of acquisition of such property. He again intermittently declared the property in 2009 and 2011. He did not declare the property in 2002, 2007, 2008 and 2010.

In Office of the Court Administrator v. Juan Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.

FACTS:

By letter dated February 18, 2003, an anonymous complainant charged Emeliano C. Camay, Jr., the Utility Worker 1 of Branch 61 of the Regional Trial Court (RTC) in Bogo City, Cebu with the aforestated offenses.

The complainant alleged that Camay, a married man, had been cohabiting with a woman who was not his wife, and they had a son by the name of Junmar; that he had been serving as the contact person of a surety company in the posting of surety bonds in the RTC; that for every 10 bonds processed, he would receive the proceeds for the 11th bond; that he had allowed a representative of the surety company to wait at his table, beside the desk of the clerk of court; that he was the owner of a big house, a motorcycle, and an iPhone; that he had demanded P20,000.00 for the entertainment of the

Presiding Judge Antonio D. Marigomen; and that he had a collection of pictures of naked girls in his phone that he showed to anyone interested in engaging in sexual activity for money.

The complaint was referred to Executive Judge Teresita Abarquez-Galandia of the RTC in Mandaue City for discreet investigation.

The files of Camay in the Office of Administrative Services of the Office of the Court Administrator (OCA) showed that Camay was married to Mary Joy Y. Santiago; that his Personal Data Sheet (PDS), BIR form No. 2305 and SALN for 2003 carried the notation of "married/but separated in fact" regarding his civil status; that he had left blank the space for the name of his spouse in the forms for 2002; that he declared as a dependent child in his undated BIR Form No. 2305 one "Jumar Guevarra Camay," who was born on July 25, 2001; and that his PDS and SALN for various periods from 2005 to 2011 revealed a Jumar Camay, bom on July 25, 2002, as one of his children below 18 years of age.

It appeared in Camay's SALNs for 2001, 2003 and 2004 that he had a house worth between P40,000.00 and P60,000.00 in Taytayan Hills, Bogo City but without any indication on the date of his acquisition; that in 2009, he declared his acquisition in that year of a house and lot worth P350,000.00 in Taytayan; that in his 2011 SALN, he declared the same property to be worth at P500,000.00; that he did not declare any real property in his SALNs for 2002, 2007 and 2008; that he also declared in his SALN dated April 20, 2012 a motorcycle worth P45,000.00 acquired in 2002, and another one worth P68,900.00 acquired in 2012; that his SALNs showed that he did not have any other source of income like business interests or financial connections; and that his monthly salary was his only source of income.

The OCA, agreeing with the report and recommendation of Judge Galanida, recommended that Camay be found and declared guilty of disgraceful and immoral conduct punishable under Section 46, Rule 10 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACCS) for cohabiting with a woman who was not his wife, and having a child with her; that he be also held to have violated Section 8, in relation to Section 11, of Republic Act No. 6713 for failing to properly disclose his real property in several of his SALNs; and that on the matter of bail bond fixing, he be found to have facilitated or secured bail bonds in violation of Administrative Circular No. 5, series of 1988.

ISSUE:

Whether or not Camay may be found guilty of immorality, disgraceful conduct and bail bond fixing (YES)

RULING:

Camay admitted to cohabiting with a woman who was not his wife and to having a child with her despite his marriage to his wife not having been legally severed. As such, the finding of the OCA that Camay was guilty of disgraceful and immoral conduct is upheld. In *Anonymous v. Radam*, the Court declared that "if the father of the child born out of wedlock is himself married to a woman other than the mother, there is a cause for administrative sanction against either the father or the mother. In such a case, the 'disgraceful and immoral conduct' consists of having extramarital relations with a married person."

Furthermore, we uphold the recommendation of the OCA on Camay's surety bail fixing activities. Prosecutor Moralde attested that it was public knowledge in the RTC that Camay was the man to

approach if any party wanted to post surety bail because he could facilitate the reduction of the recommended amounts of the bail; and that Camay transacted in behalf of the Plaridel Surety and Insurance Company, the only surety company authorized to transact in Branch 61 of the RTC. Notwithstanding the lack of direct evidence proving his having acquired financial gain from the bond transactions, the fact that he had assisted and facilitated the processing of the bail requirements for parties with cases in the RTC constituted substantial evidence of such financial gain on his part.

Finally, the finding that Camay did not consistently declare his true assets and actual net worth in his SALNs is. upheld. He declared the house and lot located in Taytayan Hills in his SALNs for 2001, 2003, and 2004 but did not indicate the date of acquisition of such property. He again intermittently declared the property in 2009 and 2011. He did not declare the property in 2002, 2007, 2008 and 2010. His omissions violated the letter and spirit of Section 8 of Republic Act No. 6713, which requires all public officials and employees to accomplish and submit a declaration of assets, liabilities, net worth and financial and business interests, including information on real property, its improvements, acquisition costs, assessed value and current fair market value.

Lastly every person who serves in the Judiciary should heed the following reminder issued in *Office of the Court Administrator v. Juan*:

xxx [C]ourt employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. **Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.**

RE: DROPPING FROM THE ROLLS OF MR. ARNO D. DEL ROSARIO, COURT STENOGRAPHER II, BRANCH 41, METROPOLITAN COURT, QUEZON PERALTA, CITY.

AM NO. 17-12-135-MeTC, SECOND DIVISION, April 16, 2018, PERLAS-BERNABE, *J.*

It is the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. A court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service and Section 63, Rule XVI of the Omnibus Rules on Leave authorized and provide the procedure for the dropping from the rolls of employees who are absent without approved leave for an extended period of time. An official or employee may be dropped from the rolls without prior notice if the said employee had been absent continuously without official leave for, at least 30 working days.

In this case, Mr. Del Rosario has been absent without official leave since February 3, 2007. His prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court. He grossly neglected the duties of his office and failed to adhere to the high standards of public accountability imposed on all those in the government service.

FACTS:

The record for the Employees' Leave Division, OAS of the Office of the Court Administrator show that Mr. Del Rosario had not submitted either his daily time record from February 3, 2017 to present or any application for leave covering such period. In addition, the records of Employees' Welfare and Benefits Division, OAS of the OCA show that it received an application for retirement from Mr. Del Rosario effective February 3, 2017. However, he has not submitted the necessary documents of his application for its approval. Mr. Del Rosario's name was excluded from the payroll starting April 2017. Presiding Judge Analie B. Oga-Brual requested to drop Del Rosario from the rolls or declare his position vacant considering his absences without official leave. The OCA recommended that Mr. Del Rosario be dropped from the rolls due to his absences without official leave, his position be declared vacant and informed about his separation from the service.

ISSUE:

Whether or not Mr. Del Rosario should be dropped from the rolls due to his absences without official leave. (YES)

RULING:

Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service and Section 63, Rule XVI of the Omnibus Rules on Leave authorized and provide the procedure for the dropping from the rolls of employees who are absent without approved leave for an extended period of time. An official or employee may be dropped from the rolls without prior notice if the said employee had been absent continuously without official leave for, at least 30 working days.

In this case, Mr. Del Rosario had been absent without official leave since February 3, 2017. Such absence caused disruption in the normal function of the court and inefficiency in the public service. Such act contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. Mr. Del Rosario grossly disregarded and neglected the duties of his office and failed to adhere to the high standards of public accountability imposed on all those in the government service.

JULIUS E. PAGDUGA, *Complainant,* -versus- ROBERTO "BOBBY" R. DIMSON, SHERIFF IV, REGIONAL TRIAL COURT OF VALENZUELA CITY, BRANCH 171, *Respondent.*
A.M. No. P-18-3833, SECOND DIVISION, April 16, 2018, PERLAS-BERNABE, *J.*

Conduct Prejudicial to the Best Interest of the Service involves a demeanor of a public officer, which tends to tarnish the image and integrity of his/her public office.

Whereas Dishonesty is defined as the concealment or distortion of the truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple. Less Serious Dishonesty entails the presence of any of the following circumstances: (a) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under Serious Dishonesty;

(b) the respondent did not take advantage of his/her position in committing the dishonest act; and (c) other analogous circumstances.

Finally, Simple Neglect of Duty means the failure of an employee or official to give proper attention to a task expected of him/her, signifying a disregard of a duty resulting from carelessness or indifference.

FACTS:

In complainant's letter-complaint, it was alleged that respondent personally attended to the execution proceedings in connection with a decision rendered by the RTC of Quezon City, Branch 221 (RTC-QC Br. 221) despite not having been deputized by the court to do so. He also claimed that respondent is a Sheriff of a different court; (1) that on 21 April 2014, respondent personally went with the sheriff of RTC-QC Br. 221 to complainant's address for the purpose of enforcing the aforesaid RTC-QC Br. 221 ruling; (2) on 24 April 2014, respondent attended the conference between the parties-litigants in the case decided by RTC-QC Br. 221; (3) on 28 April 2014, respondent returned to complainant's address to check if the latter's group already complied with the notice to vacate issued by the sheriff of RTC-QC Br. 221, and even threatened them that he will call the police if the do not leave; (4) on 29 April 2014, respondent personally supervised the execution of the RTC-QC Br. 221 ruling and even handed financial assistance to those who voluntarily vacated the property; and (5) sometime in the first week of May 2014, respondent returned to the property and supervised its fencing.

However, according to respondent (via his Comment), he was a brother-in-law of one of the counsels in the case ruled by RTC-QC Br. 221. He was only assisting the implementation of the amicable settlement so as to prevent physical conflict between the parties. He added that he only went there on his brother-in-law's behest, and that he never introduced himself as a sheriff of another court. He only did those in his personal capacity and never during his official time.

OCA found the respondent guilty of usurpation of authority and abuse of authority. OCA further recommended that respondent be found guilty of Conduct Prejudicial to the Best Interest of the Service, Less Serious Dishonesty, and Simple Neglect of Duty.

ISSUE:

Whether of not respondent should be held administratively liable for the acts complained of. (YES)

RULING:

The respondent is guilty of all three offenses: (a) Conduct Prejudicial to the Best Interest of the Service, Less Serious Dishonesty, and Simple Neglect of Duty; (b) usurpation of authority and abuse of authority; and (c) Less Serious Dishonesty.

The reasons are as follows: (1) he is a Sheriff of RTC-Valenzuela Br. 171, and he encroached on the authority, duties, and functions of the Sheriff of Conduct Prejudicial to the Best Interest of the Service when he personally appeared at the subject property, without being deputized to do so; (2) respondent lied when he claimed to have done so in his personal time and capacity, when in fact, he acted during his official time, as evidenced by his accomplished Daily Time Record which indicated his presence in his station in RTC-Valenzuela Br. 171 during those instances; and (3) in attending to

such matter extraneous to his duties as sheriff of RTC-Valenzuela Br. 171, he neglected his own duties and functions to that court.

OFFICE OF THE COURT ADMINISTRATOR (OCA) –versus- CLERK OF COURT II MICHAEL S. CALIJA

A.M NO. P-16-3586, EN BANC, JUNE 05, 2018, *Per curiam*

Repeated failure to submit the required monthly financial reports and refusal to heed to OCA's directives on numerous occasions amounts to gross neglect of duty as clerk of court which warrants a dismissal from service pursuant to Sec. 50 (A) of the 2017 Rules of Administrative cases in the civil service.

FACTS:

Respondent Michael S. Calija, Clerk of Court II of the Municipal Circuit Trial Court (MCTC) of Dingras-Marcos, Ilocos Norte, repeatedly failed to submit Monthly Financial Reports of court funds on several occasions under Office of the Court Administrator (OCA) Circular No. 113-2004. Respondent's salary was withheld for his repeated failure to submit monthly financial reports on the Judiciary Development Fund (JDF), Special Allowance for the Judiciary (SAJ) Fund, and Fiduciary Fund (FF). He was twice admonished and sternly warned by the Court to be more circumspect in the performance of his duty.

The Legal Office of the OCA even recommended that a financial audit be immediately conducted to ascertain apparent irregularities and wrongdoings in the course of respondent's duties that would warrant the filing of appropriate civil, criminal, and administrative charges. The OCA required the respondent to show cause within a non-extendible period of five days from notice. In view of this, Atty. Barribal-Co charged respondent with dereliction of duty in her Memorandum Report. The OCA twice required him to submit a comment thereon but respondent yet again failed to. Thus, prompting the Court to hold him guilty of gross insubordination for his repeated failure to comply with the show cause letter.

ISSUE:

Whether or not respondent is guilty of dereliction of duty (YES)

RULING:

It cannot be denied that respondent has been consistently remiss in complying with the mandate of OCA Circular No. 113-2204 requiring the submission of monthly reports of collections of court funds and fees. The Court has often reminded clerks of court that they act as custodians of court funds, and as such, they are required to immediately deposit the funds which they receive in their official capacity to the authorized government depositories for they are not supposed to keep such funds in their custody. For this reason, they are mandated to timely deposit judiciary collections as well as to submit monthly financial reports on the same.

Respondent had been warned and even admonished for his blatant disregard of the Court and OCA directives; yet, no amount of warning nor admonition caused him to be more circumspect in the performance of his duties to seasonably comply with OCA Circular No. 113-2004. Respondent

committed gross neglect of duty which is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. It is such neglect, which from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten public welfare. Under Sec. 50 (A) of the 2017 Rules of Administrative cases in the Civil service, gross neglect of duty is classified as a grave offense, which merits the penalty of dismissal from service even at the first instance.

OFFICE OF THE COURT ADMINISTRATOR, ***complainant -versus- GILBERT T. INMENZO, Clerk of Court III, Metropolitan Trial Court, Branch 52, Caloocan City,respondent.***
A.M. No. P-16-3617, SECOND DIVISION, June 6, 2018, CARPIO, *J.*

Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others.A simple act of neglect resulting to loss of funds, documents, properties or ***exhibits in custodia legis*** *ruins the confidence lodged by litigants or the public in our judicial process.*

FACTS:

Respondent Gilbert Inmenzo was the Clerk of Court III of METC, Branch 52 of Caloocan City. Pursuant to the Order of then Acting Presiding Judge Josephine Advento-Vito Cruz, Inmenzo issued a *subpoena duces tecum/ad testificandum* directing PO2 Joselito Bagting to bring the evidence in Criminal Case No. 229179, entitled *People v. Hidalgo*, on 31 May 2007 before the MeTC. Inmenzo acknowledged receiving from PO2 Bagting, "ONE (1) .38 CALIBER PISTOL marked as Exhibit E, 9MM" (firearm), among the evidence subject of the subpoena.

Subsequently, Judge Sasondoncillo found out that the firearmwas missing. Thus, on 11 December 2012, Judge Sasondoncillo wrote the OCA requesting for an investigation of the missing firearm.In the Initial Investigation Report dated 19 February 2014, the investigation team found that Inmenzo received in *custodia legis* the missing firearm from PO2 Bagting on 31 May 2007, evidenced by an acknowledgment receipt.Inmenzo, however, denied having received the firearm but admitted he signed the acknoledgement receipt. Thus, the Investigating Judge recommended the imposition of the penalty of six months suspension on Inmenzo for simple neglect of duty, after finding that the firearm was lost while under Inmenzo's custody due to his carelessness.||

ISSUE:

Whether or not Inmenzo is liable for simple neglect of duty (YES)

RULING:

The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others. Rule 136, Section 7 of the Rules of Court further provides that the clerk of court shall safely keep all records, papers, files, exhibits, and public property committed in his charge. Section

1 of Canon IV of the Code of Conduct for Court Personnel stresses that court personnel shall at all times perform official duties properly and diligently. A simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by litigants or the public in our judicial process.

In the present case, Inmenzo, while he was clerk of court, clearly received the firearm from PO2 Bagting and marked it as an exhibit, based on the acknowledgment receipt Inmenzo himself admittedly signed. He, however, failed to explain the whereabouts of the firearm after receiving it and consequently, lost it under his custody. As court custodian, it was his responsibility to ensure that exhibits are safely kept and the same are readily available upon the request of the parties or order of the court. Having a heavy workload and mentioning the dilapidated state of storage facilities of the court are unavailing defenses. Being the chief administrative officer, he plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another. It is likewise his duty to inform the judge of the necessary repair of the dilapidated storage facilities of the court. His attempt to escape responsibility over the loss of the exhibit under his care and custody must therefore fail.||For failing to give due attention to the task expected of him resulting to the loss of a firearm committed in his charge, we find Inmenzo guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.It is classified under the Revised Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.

RE: DROPPING FROM THE ROLLS OF MR. FLORANTE B. SUMANGIL, CLERK III, REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 119.

A.M. No. 18-04-79-RTC, SECOND DIVISION, June 20, 2018 PERLAS-BERNABE, J

Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes the dropping from the rolls of employees who have been continuously absent without official leave for at least thirty (30) working days, without the need for prior notice:

> *Rule 20*
> *DROPPING FROM THE ROLLS*
>
> *Section 107. Grounds and Procedure for Dropping from the Rolls. Officers and employees who are absent without approved leave, have unsatisfactory or poor performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:*
>
> *a. Absence Without Approved Leave*
> *An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.*

He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address. (Underscoring supplied)

Based on the cited provision, Sumangil should be separated from the service or be dropped from the rolls in view of his continued absences since December 2017.

FACTS:

The records of the Employees' Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), show that Sumangil has not submitted his Daily Time Record (DTR) since December 27, 2017 up to the present or filed any application for leave. Thus, he has been on AWOL since December 1, 2017. Acting Presiding Judge Bibiano G. Colasito of the RTC forwarded to the OCA the letter-report of Branch Clerk of Court Atty. Maria Bernadette B. Opeda relative to Sumangil's prolonged absences without leave starting on December 27, 2017. Atty. Opeda reported that she was informed by Sumangil's housemate that the latter left for Mindanao last December 31, 2017. On the other hand, Sumangil's daughter, Dyna Sumangil, told her that none of her relatives had seen her father and that the latter visited his own mother but had not returned. Atty. Opeda also inquired from his friends but no one knew his whereabouts. To date, Sumangil has yet to submit his DTR or a duly approved application for leave.

The OCA recommended that: (a) Sumangil's name be dropped from the rolls effective December 1, 2017 for having been absent without official leave; (b) his position be declared vacant; and (c) he be informed about his separation from the service at his last known address on record at 117 Pasadena, Barangay 70, Zone 9, Pasay City. The OCA added, however, that Sumangil is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

RULING:

Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes the dropping from the rolls of employees who have been continuously absent without official leave for at least thirty (30) working days, without the need for prior notice:

Rule 20
DROPPING FROM THE ROLLS

Section 107. Grounds and Procedure for Dropping from the Rolls. Officers and employees who are absent without approved leave, have unsatisfactory or poor performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:

a. Absence Without Approved Leave

An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.

> He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address. (Underscoring supplied)

Based on the cited provision, Sumangil should be separated from the service or be dropped from the rolls in view of his continued absences since December 2017.

Sumangil's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court, and in this regard, contravened his duty as a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy responsibility of upholding public accountability and maintaining the people's faith in the Judiciary. By failing to report for work since December 2017, Sumangil grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.

Nevertheless, as the OCA correctly pointed out, dropping from the rolls is non-disciplinary in nature, and thus, Sumangil's separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government.

J. Personnel actions

K. Accountability of public officers

JOSIE CASTILLO-CO, *Petitioner*, -versus- HONORABLE SANDIGANBAYAN (SECOND DIVISION), AND PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 184766, SECOND DIVISION, August 15, 2018, A. REYES, JR., *J*.

When a local legislative board gives the local chief executive authority to perform a certain act or enter into a specific transaction, the latter ought to strictly abide by the express terms of such authority. Any deviation therefrom, to the detriment of the local government unit, constitutes an offense punishable under the Anti-Graft and Corrupt Practices Act, for which the chief executive must be held accountable.

A resolution is a declaration of the will of a municipal corporation or local government unit on a given matter. In the case at bar, ***the inclination of the Province of Quirino, as shown by Resolution No. 120 and Resolution No. 06-A, was evidently to procure brand new heavy machinery. To its prejudice, however, Gov. Co caused the expenditure of public funds allotted for that purpose on reconditioned equipment instead****. Worse, she did so knowingly. When she entered into the loan with the PNB and the sale with Nakajima Trading, she was well aware of the existence and tenor of Resolution No. 120. She likewise knew, prior to the sale, that the subject equipment was merely reconditioned and not brand new as required by the Sangguniang Panlalawigan. Nonetheless, to the detriment of the province, she pushed through with the transaction. To the Court, this act clearly caused gross and manifest disadvantage to the government.*

FACTS:

On June 27, 1997, Junie E. Cua, (Rep. Cua) Representative of the Province of Quirino and the Chairman of the Committee on Good Government of the House of Representatives, filed a letter-complaint before the Office of the Ombudsman against the petitioner, Gov. Co, and the Provincial Engineer of the Province of Quirino, Virgilio Ringor (Engr. Ringor), for violations of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Acts, Frauds Against the Public Treasury, and Malversation of Public Funds.

In the letter-complaint, Rep. Cua alleged that irregularities attended the purchase of heavy equipment by the Provincial Government of Quirino from Nakajima Trading Co., Ltd. (Nakajima Trading).

According to Rep. Cua, prior to contracting with Nakajima Trading and in order to fund the purchase, Gov. Co entered into a loan agreement with the Philippine National Bank (PNB) by virtue of a resolution of the Sangguniang Panlalawigan of Quirino. The resolution authorized Gov. Co to obtain a loan to fund the purchase of brand new heavy equipment.

However, on January 11, 1996, Gov. Co entered into an agreement to purchase reconditioned heavy equipment instead, with the Province of Quirino as the buyer and Nakajima Trading as the seller.

The letter-complaint also alleged that Gov. Co agreed to advance 40% of the total purchase price before the delivery of the machinery would be effected, in violation of the prohibition on advance payments found in Section 338 of the Local Government Code of 1991.

Rep. Cua additionally averred that the equipment purchased by the Province of Quirino was overpriced. To substantiate this allegation, he presented quotations comparing the prices of the equipment furnished by Nakajima Trading and similar or equivalent models of the same machines from local suppliers.

Lastly, Rep. Cua alleged that despite full payment of the purchase price, the Province of Quirino did not receive everything owing it under the agreement with Nakajima Trading.According to Rep. Cua, Nakajima Trading failed to ship an Ingersol-Rand SP 100 Vibratory Road Roller and a set of tools and spare parts within the stipulated 90-day delivery period. While the amount pertaining to the equipment was subsequently returned, Rep. Cua averred that Nakajima Trading did not refund the amount of interest pertaining to the refunded amount, to the prejudice of the province.

The Sandiganbayan found Gov. Co guilty of entering into a transaction grossly and manifestly disadvantageous to the government, in violation of Section 3(g) of R.A. No. 3019.

The anti-graft court ruled that Gov. Co had entered into an agreement to purchase reconditioned heavy equipment when the authority given to her by the Sangguniang Panlalawigan of Quirino was for the purpose of obtaining a loan to fund the purchase of brand new equipment. It held that she was not able to show that the Sangguniang Panlalawigan had ratified the purchase of reconditioned equipment, thus causing gross and manifest disadvantage to the province.

ISSUE:

Whether Gov. Co violated R.A. No. 3019. (YES)

RULING:

When a local legislative board gives the local chief executive authority to perform a certain act or enter into a specific transaction, the latter ought to strictly abide by the express terms of such authority. Any deviation therefrom, to the detriment of the local government unit, constitutes an offense punishable under the Anti-Graft and Corrupt Practices Act, for which the chief executive must be held accountable.

R.A. No. 3019 was enacted to repress certain acts of public officers and private persons alike that constitute graft or corrupt practices or may lead thereto.

Particularly, Section 3(g) of R.A. No. 3019, under which Governor Co was charged and found guilty, relevantly provides:

Section. 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x xxx

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

In *Henry T. Go vs. Sandiganbayan*, the elements of the offense defined in Section 3(g) of R.A. No. 3019 were enumerated, to wit:

(1) that the accused is a public officer;

(2) that he or she entered into a contract or transaction on behalf of the government; and

(3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

There is no debate as to the existence of the first two elements.

As for the third element, the Sandiganbayan finds, and that Court agrees, that the following acts caused gross and manifest disadvantage to the Province of Quirino:

First, entering into an agreement to purchase reconditioned heavy equipment, contrary to the terms of Sangguniang Panlalawigan Resolution No. 120, which authorized Gov. Co to purchase only brand new heavy equipment;

Second, advancing forty (40%) percent of the total contract price to Nakajima Trading, in violation of Section 338 of the Local Government Code, which explicitly prohibits advance payments; and

Third, paying the balance, or sixty (60%) percent of the total contract price, despite non-compliance by Nakajima Trading with a provision in the agreement, which provided that delivery had to be effected within ninety (90) days from payment.

Anent the first act, it was settled at the trial that on December 23, 1995, when the loan agreement with the PNB was entered into, and on January 11, 1996, when the sale with Nakajima Trading was contracted, Gov. Co possessed authority to purchase brand new equipment on behalf of the Province of Quirino. The local government unit granted her such authority through two resolutions enacted by its provincial legislative council or Sangguniang Panlalawigan. These resolutions were presented into evidence by the prosecution to prove Gov. Co's want of authority to purchase reconditioned equipment.

The first resolution was Sangguniang Panlalawigan Resolution No. 120 dated October 20, 1995, which expressly authorized Gov. Co to negotiate with and obtain a loan from the PNB to fund the purchase of brand new machinery. **The province manifested its intent to purchase heavy equipment through this resolution, which, in no uncertain terms, provided that such equipment had to be brand new.**

Moreover, the Sandiganbayan found that on December 23, 1995, the PNB granted the loan to the province on the basis of the aforementioned resolution. This, however, failed to materialize.

A resolution is a declaration of the will of a municipal corporation or local government unit on a given matter. In the case at bar, **the inclination of the Province of Quirino, as shown by Resolution No. 120 and Resolution No. 06-A, was evidently to procure brand new heavy machinery. To its prejudice, however, Gov. Co caused the expenditure of public funds allotted for that purpose on reconditioned equipment instead**. Worse, she did so knowingly. When she entered into the loan with the PNB and the sale with Nakajima Trading, she was well aware of the existence and tenor of Resolution No. 120. She likewise knew, prior to the sale, that the subject equipment was merely reconditioned and not brand new as required by the Sangguniang Panlalawigan. Nonetheless, to the detriment of the province, she pushed through with the transaction. To the Court, this act clearly caused gross and manifest disadvantage to the government.

HON. JOSEPHINE ZARATE-FERNANDEZ, EXECUTIVE JUDGE AND PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 76, SAN MATEO, RIZAL, *complainant* -versus- RAINIER M. LOVENDINO, COURT AIDE OF THE REGIONAL TRIAL COURT, BRANCH 76, SAN MATEO, RIZAL, *respondent.*

AM No. P-16-3530 (Formerly AM No. 16-08-306-RTC), EN BANC, 06 March 2018, PER CURIAM

As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service, and in this light, are always expected to act in a manner free from reproach. Any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.

For tarnishing the image and integrity of the bench by stealing court evidence and using it for his own benefit, Lovendino's name should be perpetually stripped from the rolls of men and women of the Judiciary. Taken together, these are grounds for disqualification under the Civil Service Law.

FACTS:

Hon. Josephine Zarate-Fernandez filed a letter complaint against Rainier Lovendino, court aide of Hon. Zarate-Fernandez's court, for the unlawful taking of drug specimens stored in the court's vault.

A criminal case for violation of RA 9165 was re-opened before the court of Hon. Zarate-Fernandez. During the hearing, the RTC ordered that the specimens be brought out for identification. Despite diligent search by the evidence custodian, said specimens could not be located. It turned out that 21 cases before the RTC had missing drug specimens and were apparently stolen.

After adding up the circumstances, Hon. Zarate-Fernandez concluded that it was Lovendino who stole the missing specimens. After the discovery of the unlawful taking of the drugs, Lovendino had stopped reporting for duty. He also refused to make known his whereabouts. According to Hon. Zarate Fernandez, his flight was an indication that he intends to avoid criminal prosecution. Further, Lovendino was arrested for selling a pilfered firearm which turned out to be under the custody of the court.

ISSUE:

Whether or not Lovendino are administratively liable for the charges against him. (YES)

RULING:

Yes. He is administratively guilty of grave misconduct, serious dishonesty, conduct prejudicial to the best interest of service, and insubordination. As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service, and in this light, are always expected to act in a manner free from reproach. Any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.

Lovendino committed grave misconduct because theft of the exhibits and the illegal sale of the pilfered firearm are clear transgressions of the law. He is also guilty for dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. By stealing the evidence of the court and using it for his own benefit, he likewise committed conduct prejudicial to the best interest of the service. Lastly, he is liable for insubordination for failure to comply with the OCA and the Court's directives, despite the personal services of notices to him.

For tarnishing the image and integrity of the bench by stealing court evidence and using it for his own benefit, Lovendino 's name should be perpetually stripped from the rolls of men and women of the Judiciary. Taken together, these are grounds for disqualification under the Civil Service Law.

1. Discipline

RUBE K. GAMOLO, JR., CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, BUKIDNON, complainant –versus- REBA A. BELIGOLO, COURT STENOGRAPHER II, MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, BUKIDNON, respondent.

A.M. No. P-13-3154, THIRD DIVISION, March 7, 2018, BERSAMIN, J.

Neglect of duty is the failure to give one's attention to a task expected of the public employee. Simple neglect of duty is contrasted from gross neglect, the latter being such neglect that, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. Gross neglect does not necessarily include willful neglect or intentional official wrongdoing. Those responsible for such act or omission cannot escape the disciplinary power of this Court. The imposable penalty for gross neglect of duty is dismissal from the service.

FACTS:

According to the complainant, the respondent did not transcribe and submit on time pursuant to Administrative Circular No. 24-90 the transcript of stenographic notes (TSNs) and orders of the MTCC in fourteen criminal cases.

In her comment, respondent denied being an incorrigible employee, claiming that she had been elected president of the Bukidnon Chapter of the Court Stenographic Reporters Association of the Philippines (COSTRAPHIL), and had received performance ratings ranging from "Satisfactory" to "Very Satisfactory" from December 1997 up to the filing of the complaint; and that she had submitted the TSNs and prepared and complied with the orders in the criminal cases.

ISSUE:

Whether or not respondent is guilty of gross neglect of duty. (NO)

RULING:

No. Respondent is not guilty of gross neglect of duty. He is only guilty of simple neglect of duty.

Administrative Circular No. 24-90 requires all stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken."

Although the respondent did not comply with her duty to submit her TSNs within the prescribed period, there is no showing that her failing to do so was habitual. Also, she ultimately submitted the TSNs and transcribed the orders. As such, she was liable for simple neglect of duty.

Neglect of duty is the failure to give one's attention to a task expected of the public employee. Simple neglect of duty is contrasted from gross neglect, the latter being such neglect that, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. Gross neglect does not necessarily include willful neglect or intentional official wrongdoing. Those responsible for such act or omission cannot escape the disciplinary power of this Court. The imposable penalty for gross neglect of duty is dismissal from the service.

Under Rule IV, Section 52 of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is considered a less grave offense, and is punishable by suspension from office (for one month and one day to six months) on the first offense, and dismissal on the second offense. We hasten to point out, however, that the penalty can be mitigated. In Seangio v. Parce , we imposed a fine of P2,000.00 upon finding the respondent guilty of simple neglect of duty, observing that although delay attended the transcription of the stenographic notes, no apparent ill or malicious motive on the part of respondent was established; hence, absent any attribution and substantial

proof of fraud or bad faith on the part of respondent, her failure to transcribe the stenographic notes on time constituted simple neglect of duty.

The penalty of fine may be imposed on the respondent. There was no showing of her having committed the delay with bad faith or fraud. But the fine should be P5,000.00 considering the number of cases where she had failed to submit the TSNs and orders on time.

a. Grounds

PHILIPPINE NATIONAL POLICE-CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG), ***Petitioner***, **-versus - P/SUPT.* ERMILANDO VILLAFUERTE**, ***Respondent***.
G.R. Nos. 219771 & 219773, EN BANC, September 18, 2018, CAGUIOA, *J.*

In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, petitioner is imputing liability to respondent Villafuerte on the simple fact that the award of the contract to MAPTRA was made through the documents that he drafted. ***This is egregious error.*** *Using the same logic, respondent Villafuerte's participation in the alleged conspiracy thus becomes equivocal, to say the least, considering that he was also the one who drafted the demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for Estafa against the officials of MAPTRA upon the instructions of P/Dir. George Quinto Piano. In other words, petitioner cannot judge respondent Villafuerte's actions based on the end result of the documents drafted.*

Based on the foregoing, ***petitioner miserably failed to establish a nexus between the ministerial act of drafting the said documents and a scheme to defraud the Government.*** *Petitioner cannot satisfy the threshold of substantial evidence using only conjectures and suppositions; the mere fact that an irregular procurement process was uncovered does not mean that all persons involved, regardless of rank or functions, were acting together in conspiracy. Moreover, as already discussed above, neither does proof of criminal conspiracy automatically impute administrative liability on all those concerned.*

FACTS:

Sometime in 2009, the Philippine National Police programed to purchase three (3) fully equipped helicopters with an approved budget of Php105,000,000.00. After two (2) scheduled public bidding failed, another bidding was conducted with two proponents participated *(sic)* namely: MAPTRA and BEELINE.

The Bids and Awards Committee of the PNP resolved to award the contract to MAPTRA. The head of BAC Secretariat PSSUPT Detran instructed petitioner Villafuerte to prepare the necessary documents pertaining to the award of the contract to the winning bidder MAPTRA. Hence, petitioner Villafuerte prepared the Supply Contract and the Notice to Proceed was signed by then PNP Chief Jesus Versoza.

On 10 February 2010, a fully equipped Robinson R44 Helicopter was delivered to PNP. A certification of inspection was issued on 22 February 2010. Thus, the PNP released to MAPTRA the remaining 50% balance.

Later on, an investigation was conducted regarding the procurement of the said helicopters and the investigating body allegedly found that the helicopters that were subject of the procurement were not brand new contrary to the requirement of the PNP procurement.

As a result of the investigation, a Complaint dated November 25, 2011 (Complaint) was filed by the OMB-Field Investigation Office, charging several public and private respondents, including respondent Villafuerte, with various criminal and administrative offenses, which included *inter alia:* (i) violation of paragraphs (e) and (g), Section 3, Republic Act No. (RA) 3019, in relation to RA 9184, and (ii) Dishonesty, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service under paragraphs 1, 2 and 20, Section 52(A), Uniform Rules on Administrative Cases in the Civil Service.

In the Office of the Ombudsman's (OMB) Resolution, the OMB concluded that the procurement process was marred with irregularities and found substantial evidence to hold respondent Villafuerte guilty of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service. The OMB likewise ordered the filing of a corresponding Information for violation of Section 3(e) of RA 3019 with the Sandiganbayan against respondent Villafuerte for the same acts.

In the Decision dated January 28, 2015, the CA reversed the OMB Resolution and exonerated respondent Villafuerte from the administrative charges.

ISSUE:

Whether the CA committed reversible error in reversing the OMB Resolution finding respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service. (NO)

RULING*:*

In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

In the main, petitioner alleges that as a member of the BAC Secretariat, respondent Villafuerte was charged with the duty of (i) taking custody of procurement documents and other records, and (ii) assisting in managing the procurement processes and as such, he was expected to know whether the legal specifications for the procurement of the LPOHs under pertinent laws were satisfied. Petitioner claims that since respondent Villafuerte had custody over the procurement documents, he therefore had the opportunity to examine the documents submitted by MAPTRA and should have known that the latter failed to meet the requirements under the law. Petitioner further claims that respondent Villafuerte should have been cautious enough to inquire behind MAPTRA's eligibility instead of "simply closing his eyes to the apparent and obvious irregularities surrounding the procurement process."

Proceeding from the foregoing, petitioner thus faults respondent Villafuerte for drafting several documents that led to the award of the contract to MAPTRA, which allegedly amounted to Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service. Specifically, petitioner posits

that respondent Villafuerte made it appear that MAPTRA possessed all the qualifications of a qualified bidder — when in fact it did not — thus resulting to damage to the Government.

Essentially, petitioner would like to impress upon the Court that respondent Villafuerte, through his individual actions, was part of a larger conspiracy in the procurement of the LPOHs and as such, is liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

Petitioner fails to persuade.

In the first place, conspiracy as a means of incurring liability is strictly confined to criminal cases; even assuming that the records indicate the existence of a felonious scheme, the administrative liability of a person allegedly involved in such scheme cannot be established through conspiracy, considering that one's administrative liability is separate and distinct from penal liability. Thus, in administrative cases, the only inquiry in determining liability is simply whether the respondent, through his individual actions, committed the charges against him that render him administratively liable.

In any case, it bears stressing that while the OMB's factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, **this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process.** For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense; **conspiracy is not the product of negligence but of intentionality on the part of cohorts. Conspiracy is never presumed.**

Here, petitioner is imputing liability to respondent Villafuerte on the simple fact that the award of the contract to MAPTRA was made through the documents that he drafted. **This is egregious error.** Using the same logic, respondent Villafuerte's participation in the alleged conspiracy thus becomes equivocal, to say the least, considering that he was also the one who drafted the demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for Estafa against the officials of MAPTRA upon the instructions of P/Dir. George Quinto Piano. In other words, petitioner cannot judge respondent Villafuerte's actions based on the end result of the documents drafted.

Based on the foregoing, **petitioner miserably failed to establish a nexus between the ministerial act of drafting the said documents and a scheme to defraud the Government.** Petitioner cannot satisfy the threshold of substantial evidence using only conjectures and suppositions; the mere fact that an irregular procurement process was uncovered does not mean that all persons involved, regardless of rank or functions, were acting together in conspiracy. Moreover, as already discussed above, neither does proof of criminal conspiracy automatically impute administrative liability on all those concerned.

Parenthetically, petitioner makes much of the fact that respondent Villafuerte was under the Office of Legal Affairs of the PNP before being detailed to the BAC Secretariat. From this fact, petitioner concludes that respondent Villafuerte's legal background "should have cautioned him that it was improper to award the contract to MAPTRA" and therefore he could no longer escape culpability from his act of drafting the necessary documents recommending the award to MAPTRA. This reasoning is specious.

Even as petitioner does not contest the CA's finding that respondent Villafuerte's duties as Member of the BAC Secretariat are ministerial in nature, it insists on holding respondent Villafuerte liable. **What petitioner is thus doing is effectively imposing additional duties upon respondent Villafuerte by the mere fact that he previously worked under the Office of Legal Affairs; that respondent Villafuerte's purported failure to o above and beyond his regular functions under the BAC Secretariat makes him equally responsible for the damage resulting to the government. This is untenable and simply unfair.** While eagerness in public service is indeed ideal, there is simply no basis in fact to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof. **To be certain, an opportunity to examine documents does not, by any means, impose a mandatory duty to examine the same.**

Neither can dishonesty or conduct prejudicial to the service be attributed to respondent Villafuerte by the mere fact that he drafted Negotiation Committee Resolution No. 2009-04 recommending the award of the contract to MAPTRA as a sole proprietorship, notwithstanding the fact that it was apparently issued a Certificate of Incorporation on June 10, 2009, or five (5) days prior to the June 15, 2009 negotiations leading to the issuance of Negotiation Committee Resolution No. 2009-04. Petitioner specifically posits that respondent Villafuerte, who was present in the June 15, 2009 negotiations, effectively consented to the irregularities attending the procurement process due to his knowledge that MAPTRA represented itself as a sole proprietorship despite being incorporated a few days earlier.

The Court disagrees; without more, such bare circumstance does not qualify as substantial evidence that respondent Villafuerte was guilty of any impropriety and therefore administratively liable. No deliberate intention to mislead the Government in pursuance of a larger conspiracy can be derived from the mere fact that there was a purported error in designating MAPTRA either as a sole proprietorship or a corporation.

Thus, as a mere Member of the BAC Secretariat, respondent Villafuerte had no compelling reason to evaluate MAPTRA's eligibility all over again while drafting the pertinent documents, especially as such is not even a part of his duties.

More importantly, there is nothing explicit in the statutory duties of the BAC Secretariat that would require respondent Villafuerte to further examine the findings of the Negotiation Committee, which is the body charged with evaluating the qualifications of MAPTRA. That respondent Villafuerte had incidentally applied his legal knowledge and training does not discount the fact that he drafted the contested documents purely under the instructions of his superiors — not as a result of any exercise of discretion on his part. Such circumstance undeniably points to the conclusion that his duties are only ministerial in nature.

Again, it is untenably and simply unfair to effectively impose additional duties upon respondent Villafuerte by the mere fact that he is a lawyer so that his purported failure to go above and beyond his regular functions under the BAC Secretariat makes him part of a conspiracy to defraud the government. To reiterate, there is simply no basis to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof.

All told, the Court is not prepared to punish respondent Villafuerte for merely discharging the ministerial functions of his office as Member of the BAC Secretariat, especially when such acts were made pursuant to the instructions of his superiors. Without more, and there being absolutely no substantial evidence existing from the records to hold respondent Villafuerte liable for either Serious Dishonesty or Conduct Prejudicial to the Best Interest of the Service, the judgment here can be no other than total exoneration.

b. Jurisdiction

c. Dismissal, preventive suspension, reinstatement and back salaries

CIVIL SERVICE COMMISSION, *Petitioner*, *v.* **GABRIEL MORALDE,** *Respondent.*
PROVINCE OF MISAMIS ORIENTAL, *Petitioner*, *v.* **GABRIEL MORALDE**, *Respondent*.
G.R. No. 211077 and G.R. No. 211318, THIRD DIVISION, August 15, 2018, LEONEN, *J.*

Retirement itself may not be voluntary, but the retiree's acceptance of his or her state and ensuing pursuit of benefits certainly is. Applying for benefits is an independent, willful act through which a civil servant consciously manifests before the concerned government organ, the GSIS, his or her intent to avail of a utility attendant to his or her state. As to the receipt of Republic Act No. 8291's separation benefits, it is true that a public officer or employee who avails of separation benefits is not irreversibly precluded from again rendering service to the government at a later time. Nevertheless, at that moment that a public officer or employee manifests intent to avail of separation benefits, that public officer or employee concedes his or her intent to actually "separate from" government, that is, to put an end to his or her employment.

Moralde willfully severed his employer-employee relationship with the government. This is the inescapable implication of his deliberate petitioning for benefits. This voluntary termination of employment was made before the administrative complaint against Moralde could be resolved by the Province, at the first instance, and then referred to the Commission, on appeal. It was also successfully concealed for almost nine (9) years. Its discovery was made only long after the Commission ruled on his appeal. Evidently, the CSC's ruling on Moralde's appeal was a pointless superfluity. Any pronouncement on his continuance in office was reduced to a purely academic exercise as Moralde had already put himself out of office.

FACTS:
Moralde's services were engaged as a Dental Aide in the Province's Provincial Health Office. Moralde was formally charged with falsifying his Daily Time Records for March and April 1998. Unknown to the Province's officials, Moralde went to the GSIS while the administrative case against him was pending. There, he filed an "application for retirement" under RA No. 8291, otherwise known as the "Revised Government Service Insurance Act of 1977."

The very next day, then Provincial Governor Calingin, issued a memorandum, finding Moralde guilty of the charge dismissing him from service.Moralde filed an appeal before the Civil Service Commission.

Thereafter, GSIS wrote to Moralde, stating that his "application for retirement under RA No. 8291 at age 38.5 years" had been approved. It specified November 8, 1998, the date Moralde filed his retirement application, as the date of his retirement's effectivity.

CSC then issued a resolution, setting aside Governor Calingin's termination order. Moralde moved for the execution of said resolution. CSC also issued a resolution, ruling that Moralde should be reinstated. Pursuant to this, then Misamis Oriental Governor issued an Order reinstating Moralde.

It was only in July 2007 while the Province was processing his papers for his reinstatement that it found out about his successful application for retirement. Thus, on October 25, 2007, the Province filed before the CSC a **Motion for New Trial and/or Modification of Judgement**.

Moralde opposed the Province's motion, arguing that the judgment sought to be modified had already become final and executory. He maintained that what he had received or collected from GSIS was his separation benefits, which did not preclude him from questioning his dismissal's validity.

CSC denied the Province's Motion for New Trial and/or Modification of Judgement on the ground that "the Resolution sought to be modified already attained finality." It also conceded, however, that "the issue of Moralde's reinstatement to the service with payment of backwages has become moot and academic."

Moralde filed a Motion for Reconsideration, which CSC denied. Moralde filed a Petition for Review before the CA.CA ruled in favor of Moralde, noting that while Moralde had rendered more than 16 years of service, he was only 38 years old upon his purported retirement, and thus, was years ahead of being qualified to retire. It explained that given his ineligibility for retirement benefits, what Moralde received from the GSIS could have only been separation benefits. Both the CSC's and the Province's Motions for Reconsideration were denied. Hence, these consolidated petitions.

ISSUE:
Whether or not petitioner CSC erred in setting aside its ruling to reinstate respondent Gabriel Moralde on the ground that the same ruling has become impracticable or unviable, hence, moot and academic? (NO)

RULING:
CA rightly differentiated between the receipt of retirement benefits, under Section 13, and the receipt of separation benefits, under Section 11 of RA No. 8291. They differ on the specific benefits they confer, on the qualifications required of those who seek to avail of those benefits, the requisite age and length of service, the availability of monthly pensions, and the computation of the amount that will be immediately released to an approved applicant.

While retirement benefits differ from separation benefits, a public officer who applies to receive either of them nevertheless acts out of the same contemplation: the complete and unequivocal termination of his or her employer-employee relationship with the government. This is because, by their very nature, retirement and separation benefits become available only when employment ceases.

Retirement as a public officer or employee is no less "a withdrawal from office, public station, . . . occupation, or public duty." RA No. 8291's retirement benefits are not predicated upon the forcible

termination of a civil servant's employment arising from the employer's desire to cease professional relations with a specific, unwanted individual.

Retirement itself may not be voluntary, but the retiree's acceptance of his or her state and ensuing pursuit of benefits certainly is. Applying for benefits is an independent, willful act through which a civil servant consciously manifests before the concerned government organ, the GSIS, his or her intent to avail of a utility attendant to his or her state.

As to the receipt of Republic Act No. 8291's separation benefits, it is true that a public officer or employee who avails of separation benefits is not irreversibly precluded from again rendering service to the government at a later time. Nevertheless, at that moment that a public officer or employee manifests intent to avail of *separation* benefits, that public officer or employee concedes his or her intent to actually "*separate* from" government, that is, to put an end to his or her employment. By Section 11's own text, availing of such benefits demands specific action on the part of the applicant, i.e., that he or she "resigns or separates from the service."

The CA was correct in noting that Moralde was in no position to receive retirement benefits. At 38 years of age, he was not qualified for Section 13's benefits. Logically, what he qualified for and received must have been in the nature of Republic Act No. 8291's separation benefits. However, the distinction that the Court of Appeals harps on hardly works in Moralde's favor. From Section 11's plain text, the mere act of availing these benefits presupposes both a civil servant's conscious "resignation or separat[ion] from the service," and a concurrently deliberate petition or application for benefits.

Moralde's confusion on the nuances between Section 13's and Section 11's benefits may be overlooked, but the underlying voluntariness of his separation from service cannot be denied. This voluntary intent to separate from service, erroneously stated as "retirement," is demonstrated by the records.

Moralde willfully severed his employer-employee relationship with the government. This is the inescapable implication of his deliberate petitioning for benefits. This voluntary termination of employment was made before the administrative complaint against Moralde could be resolved by the Province, at the first instance, and then referred to the Commission, on appeal. It was also successfully concealed for almost nine (9) years. Its discovery was made only long after the Commission ruled on his appeal. Evidently, the CSC's ruling on Moralde's appeal was a pointless superfluity. Any pronouncement on his continuance in office was reduced to a purely academic exercise as Moralde had already put himself out of office.

OFFICE OF THE OMBUDSMAN, REPRESENTED BY OMBUDSMAN CONCHITA CARPIO MORALES, *Petitioner –versus-*MARIA ROWENA REGALADO, *Respondent*.
G.R. Nos. 208481-82, THIRD DIVISION, February 07, 2018, LEONEN, *J.*

The CA noted, as a mitigating circumstance, "that petitioner has not been previously charged of any offense and this is the very first time that she was found to be administratively liable." In taking this as a mitigating circumstance, the CA ran afoul of the clear text of the Uniform Rules on Administrative Cases in the Civil Service. Rule IV, Section 52(A)(3) of these Rules unqualifiedly states that ***dismissal shall be meted even if it is only the first offense****.*

*Jurisprudence has been definite on this point. This Court's En Banc Decision in Duque v. Velosunderscored how "**the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance**." In Medina v. Commission on Audit,this Court emphasized that "**a grave offense cannot be mitigated by the fact that the accused is a first-time offender or by the length of service of the accused.**"*

The fact that an offender was caught for the first time does not, in any way, abate the gravity of what he or she actually committed**. Grave misconduct is not a question of frequency, but, as its own name suggests, of gravity or weight. One who commits grave misconduct is one who, by the mere fact of that misconduct, has proven himself or herself unworthy of the continuing confidence of the public. **By his or her very commission of that grave offense, the offender forfeits any right to hold public office.

FACTS:

Respondent Regalado was a public employee, holding the position **Immigration Officer I** with the Bureau of Immigration. Doromal, the owner and administrator of St. Martha's Day Care Center and Tutorial Center, Inc., went to the Davao Office of the Bureau of Immigration to inquire about its letter requiring her school to obtain an accreditation to admit foreign students. There, she met Regalado, who told her that she needed to pay **P50,000** as "**processing fee**" for the accreditation. Doromal commented that the amount was prohibitive. Regalado responded that she could reduce the amount. Regalado sent Doromal a text message encouraging her to pursue the accreditation as Regalado allegedly managed to reduce the accreditation fee to P10,000.

Regalado came to inspect St. Martha's. When Regalado had finished, she reminded Doromal that she would also have to pay "**honorarium**." Regalado further instructed Doromal to come to her office with the cash **enclosed in an unmarked brown envelope** and to say that it contained "additional documents," if anyone were to inquire about its contents.

Doromal could not personally come to Regalado's office, so Diaz went in Doromal's stead. She was accompanied by Tautho, a Kindergarten teacher at St. Martha's. Diaz carried with her an unmarked brown envelope containing P1,500 inside as "**honorarium**." Unsatisfied, Regalado instructed Diaz and Tautho to **return** the following day **with P30,000**. She then directed them to pay the accreditation fee of P10,000 with the cashier. Regalado demanded that they **surrender** to her **the official receipt**.

Doromal, Diaz, and Tautho filed with the Office of the Ombudsman for Mindanao a Complaint against Regalado.Thus, an administrative case was filed for **Grave Misconduct**. The Office of the Ombudsman found Regalado guilty and meted with the penalty of **dismissal** from the service. The Acting Ombudsman approved the Decision. The CA affirmed in *toto* the ruling. Upon a Motion for Reconsideration, the CA amended its decision. It added that "this is the very **first time** that [Regalado] was found to be administratively liable,"and that she had previously been credited with "**good work performance**."On account of the **mitigating circumstances**, the CA modified Regalado's penalty to only **1-year suspension** without pay.

ISSUE:

Whether or not the CA erred in meting upon respondent the reduced penalty of 1-year suspension without pay. (YES)

RULING:

No one has a vested right to public office. One can continue to hold public office only for as long as he or she proves worthy of public trust.

Consistent with the dignity of public office, our civil service system maintains that **misconduct tainted with** "**any of the additional elements of corruption, willful intent to violate the law or disregard of established rules**"is **grave**. This gravity means that misconduct was committed with such depravity that it justifies not only putting an end to an individual's current engagement as a public servant, but also the foreclosure of any further opportunity at occupying public office.

Accordingly, the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) consider **grave misconduct** as a **grave offense** warranting the ultimate **penalty of dismissal from service** with the accessory penalties of cancellation of eligibility, perpetual disqualification from public office, bar from taking civil service examinations, and forfeiture of retirement benefits.

In like manner, Civil Service Commission Resolution No. 991936, the Uniform Rules on Administrative Cases in the Civil Service, which were in effect during respondent's commission of the acts charged against her, provided:

> **RULE IV**
> **Penalties**
>
> Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are **grave offenses** with their corresponding penalties:
>
> 3. **Grave Misconduct**
>
> 1st offense – **Dismissal**

Section 7(d) of R.A. 6713 specifically identifies as unlawful the solicitation or acceptance of gifts "in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office." It is without question that respondent violated Section 7(d) of R.A. 6713. The CA summarized her "modus operandi," as follows:

> [T]he *modus operandi* of [Regalado] is to present to applicants for accreditation a fake copy of Office M.O. RBR 00-57 providing an accreditation fee of P50,000 to be able to charge the said amount, when the actual fee required is only P10,000. If the applicant cannot afford to pay such a high amount, [Regalado], as she did in the present case, will tell the applicant that through her efforts, she will be able to reduce the accreditation fee to P10,000. However, in return, the applicant will have to give an honorarium to [Regalado's] boss amounting to at least P30,000.

It is clear, then, that respondent's actions deserve the supreme penalty of dismissal from service. The CA, however, held that certain circumstances warrant the reduction of respondent's penalty to a year-long suspension. The CA was in serious error.

The CA noted, as a mitigating circumstance, "that petitioner has not been previously charged of any offense and this is the very first time that she was found to be administratively liable." In taking this as a mitigating circumstance, the CA ran afoul of the clear text of the Uniform Rules on Administrative Cases in the Civil Service. Rule IV, Section 52(A)(3) of these Rules unqualifiedly states that **dismissal shall be meted even if it is only the first offense**.

Jurisprudence has been definite on this point. This Court's *En Banc* Decision in *Duque v. Velos*underscored how "**the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance**." In *Medina v. Commission on Audit,*this Court emphasized that "**a grave offense cannot be mitigated by the fact that the accused is a first-time offender or by the length of service of the accused.**"

The fact that an offender was caught for the first time does not, in any way, abate the gravity of what he or she actually committed. Grave misconduct is not a question of frequency, but, as its own name suggests, of gravity or weight. One who commits grave misconduct is one who, by the mere fact of that misconduct, has proven himself or herself unworthy of the continuing confidence of the public. **By his or her very commission of that grave offense, the offender forfeits any right to hold public office.**

The CA also cited respondent's supposed "good work performance"and referenced "affidavits executed by the representatives of other schools previously assisted by [respondent] . . . stating their satisfaction with the service rendered by [her]." This Court is, quite frankly, baffled by how solicited statements of support from supposedly satisfied clients could operate to erode the liability of one such as respondent.

The plain and evident truth is that, while the language of the charge against respondent seemed austere and unadorned, she did so much more than merely solicit pecuniary benefits from the complainants. A more appropriate summation of respondent's actions should recognize how she was so brazen in extorting—not merely soliciting, but downright badgering—money from the complainants. Most telling of respondent's audacity and depravity is how she did not mince words in not only professing her own corruption, but even besmirching the entire government. Asked by Diaz if she was making demands "under the table," respondent answered, *"Yes, my dear, that's the system ng government.*"She even added, *"Ganito ang system, anoakomagmamalinis?"*

The civil service cannot have itself overrun by officers such as respondent. They make a mockery of every ideal that public service exemplifies. For once, some individuals had the courage to not condone her corruption. This is enough to show that respondent is nowhere near deserving of public trust. As a measure of recompense to the public, and as a portent to others who may be similarly disposed, this Court does not hesitate to impose upon respondent the supreme administrative penalty of dismissal from government service.

CAMILO L. SABIO, *Petitioner –versus-* FIELD INVESTIGATION OFFICE (FIO), OFFICE OF THE OMBUDSMAN, *Respondent*.
G.R. No. 229882, EN BANC, February 13, 2018, *PER CURIAM*

At the outset, the Court emphasizes that as a general rule, ***factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight,***

especially when affirmed by the CA. *In this case, the Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which the CA affirmed.*

FACTS:

This case stemmed from separate Complaintsfiled by respondent Field Investigation Office (FIO) of the Ombudsman charging petitioner Sabio, former Chairman of the Presidential Commission on Good Government (PCGG), of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service arising out of the following acts:

> *(1)***excess monthly charges** in the official use of PCGG-issued **cellular phones** for the years 2005 to 2007 in the total amount of P25,594.76,in violation of: *(a)* the P10,000.00 cap under Office Order No. CLS-001-2005 dated August 25, 2005;*(b)* Commission on Audit (COA) Circular No. 85-55-Aagainst unnecessary, excessive, and extravagant expenditures; and *(c)* Administrative Order No. 103dated August 31, 2004 requiring all government agencies to adopt austerity measures, including at least 10% reduction in the consumption of utilities;
>
> *(2)***failure to deposit** the aggregate amount of P10,350,000.00 consisting **of the cash advances and partial remittances** from sequestered corporations, *i.e.,* the Independent Realty Corporation (IRC) and Mid-Pasig Land Development Corporation (MPLDC),to the Agrarian Reform Fund of the Comprehensive Agrarian Reform Program (CARP), through the Bureau of Treasury (BOT), as required under Section 63 of R.A. 6657, as amended in relation to Sections 20 and 21 of E.O. 229;and
>
> *(3)***failure to liquidate** despite demand the amount of P1,555,862.03 out **of the total cash advances** that he used in his travels and litigation of foreign cases,as required by Section 89 of P.D.. 1445and COA Circular No. 97-002dated February 10, 1997.

The Ombudsman found substantial evidence against petitioner and accordingly, adjudged him guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service pursuant to Section 52 (A) of the Uniform Rules on Administrative Cases in the Civil Service. The CA declared the Ombudsman ruling to be amply supported by substantial evidence, and thus, affirmed the same.

ISSUE:

Whether or not the CA erred in upholding that petitioner is guilty of the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. (NO)

RULING:

At the outset, the Court emphasizes that as a general rule, **factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.** In this case, the Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which the CA affirmed.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. **To warrant dismissal** from the service,

the **misconduct must be grave**, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate **gross misconduct** from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest** in the former.

On the other hand, dishonesty has been defined as the concealment or **distortion of truth,** which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Civil Service Commission Resolution No. 06-0538classifies dishonesty in three (3) gradations, namely: **serious, less serious or simple**.

In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: *(a)* the dishonest act caused serious damage and grave prejudice to the Government; *(b)* the respondent gravely abused his authority in order to commit the dishonest act; *(c)***where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;***(d)* the dishonest act exhibits moral depravity on the part of respondent; *(e)* the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; *(f)* the dishonest act was committed several times or in various occasions; *(g)* the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and *(h)* other analogous circumstances.

Dishonesty, like bad faith, is not simply bad judgment or negligence, but **a question of intention**. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the **facts and circumstances giving rise to the act committed** by the respondent, but also of his **state of mind at the time the offense was committed**, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.

Both grave misconduct and serious dishonesty, of which petitioner was charged, are classified as ***grave offenses*** for which the **penalty of dismissal is meted even for first time offenders**.

After a judicious study of the case, the Court finds that the evidence on record sufficiently demonstrate petitioner's culpability for the charges and fully satisfy the standard of substantial evidence, which is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.

1. <u>With respect to petitioner's excess cellular phone charges aggregating to P25,594.76</u>.

As aptly pointed out by the CA, petitioner cannot disregard with impunity Office Order No. CLS-001-2005 limiting the use of the PCGG-issued cellular phones, which he himself issued in line with the austerity measures implemented by the government to lessen operating expenses.

While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, a public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or **flagrant disregard of established rule are manifest,**as in this case. Flagrant disregard of rules has been jurisprudentially demonstrated. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**

Here, petitioner's flagrant disregard of the rule imposing a P10,000.00 cap on cellular phone usage is readily apparent from his repeated incurrence of irregular, excessive, and/or extravagant cellular phone charges over and above said cap for 7 of the 12 billing periods when excess usages were noted. Likewise, the intent to procure some benefit for himself is manifest from the undisputed fact that said charges have remained unpaid to datedespite the clear provisions of Office Order No. CLS-001-2005 that any and all amounts in excess of the said cap shall be paid by the end-user.

2. With respect to petitioner's failure to remit to the CARP fund through the BOT the P10,350,000.00 remittances from the sequestered corporations that he used as cash advances, which he likewise failed to liquidate.

Under Section 63of RA 6657, as amended, **all** amounts derived from the sale of ill-gotten wealth recovered through the PCGG shall accrue to the CARP fundand shall be **considered automatically appropriated** for such purpose pursuant to Sections 20and 21of EO 229. By its very nature, **ill-gotten wealthassumes a public character as they supposedly originated from the government itself, and must, perforce, be returned to the public treasury,** subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts.**Accordingly, the proceeds from the sales thereof should likewise be remitted to the public treasury.**

However, despite the express provisions of Section 63 of R.A. 6657, as amended, petitioner converted the P10,350,000.00 remittances from the sequestered corporations and the proceeds of the sale of A. Soriano Corporation shares, which formed part of the ill-gotten wealth of former President Ferdinand E. Marcos,as his cash advances, and admittedly failed to verify the exact amount of resources made available to him to successfully carry out his tasks.

In a last ditch effort to escape administrative liability for the complained acts, petitioner invokedhis acquittal in the allied criminal cases for Violation of Section 3 (e) of R.A. 3019and Malversation of Public Funds under Article 217of the Revised Penal Code.However, the Court holds that such acquittal on the basis of insufficiency of evidence which engendered reasonable doubt, cannot work in petitioner's favor.

An administrative case is, as a rule, independent from criminal proceedings. As such, the dismissal of a criminal case on the ground of insufficiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is merely substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt or that degree of proof which produces conviction in an unprejudiced mind.

3. With respect to petitioner's failure to liquidate despite demand the amount of P1,555,862.03 out of the total cash advances that he used in his travels and litigation of foreign cases.

Petitioner claims that the amount of P1,555,862.03 forms part of his CIF which he utilized to successfully accomplish his mission and to carry out his tasks as then PCGG Chairman,and that his acquittal in the related criminal casenegates any gross misconduct and serious dishonesty on his part. Corollarily, as discussed in the immediately preceding section, such contentions must be dismissed as mere evasive tactics to skirt compliance with the proper liquidation procedures under COA Circular No. 97-002. As aptly observed by the CA:

> Instead of presenting documentary evidence, such as receipts and vouchers, to satisfactorily show that the amount was spent for the purposes for which it was released, [petitioner] proceeded to glorify the achievements of the PCGG under his watch and discussed the historical origin of its mandate. His lengthy exposition, to be sure, is not responsive to the charge and is deemed an extraneous matter that would not sway this Court in exonerating him from administrative liability.

Petitioner's liability for grave misconduct and serious dishonesty must, perforce, be sustained.

RUTH NADIA N. DE LOS SANTOS, *Complainant,* -versus – JOSE RENE C. VASQUEZ, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 41 BACOLOD CITY, NEGROS OCCIDENTAL, *Respondent.*
A.M. No. P-18-3792, EN BANC, February 20, 2018, PER CURIAM:

Employees of the Judiciary should be living examples of uprightness ***not only in the performance of official duties but also in their personal and private dealings*** *with other people so as to preserve the good name and standing of the courts in the community at all times. Indeed, the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel from the judge to the lowest of its rank and file who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.*

In the present case, ***respondent's act of slapping the shoulder of complainant, and his use of improper and intemperate words and his threat*** *against her should not be countenanced. Without a doubt, such acts* ***tarnished not only the image and integrity of the public office but also the public perception of the very image of the Judiciary of which he was a part of.***

FACTS:

Complainant alleged that on July 27, 2015 at around 4:00 o'clock in the afternoon, while she was doing her groceries at MJ Store, she met respondent's wife, Beverly Vasquez (Beverly), who owed her a sum of money; that while confronting Beverly about her loan, respondent, who was smelling and reeking of liquor, suddenly appeared from behind and hit her left arm and threatened her saying, "Indi mopaghulatonnga may matabosaimokagmadug an gid ang kamot ko," which meant "Don't wait that something will happen to you and cause my hand to be stained"

Because of fear and respondent's threat, complainant caused the incident to be recorded in the police blotter at Police Station 7, Mansilingan, Bacolod City.

Prior to the incident, she filed 2 separate cases against respondent and his wife: (1) Collection of Sum of Money where the MTCC rendered a decision in her favour; and (2) Estafa which was pending with the Office of the City Prosecutor of Bacolod City.

In his Comment to the Affidavit-Complaint, respondent denied hitting complainant and stated that he was not drunk at the time the incident occurred. He asserted that on July 27, 2015, he was in the Mansilingan area serving summons when his wife, Beverly, called and told him that they were out of cooking gas. Because his wife had no money and he was in the area, he told his wife to meet him at MG Store. As he was entering the store, respondent saw his wife and complainant in a tussle with the latter holding his wife's arm, shaking her and pointing a finger at her face. He confronted complainant and they had an exchange of words about the manner of her collection and her actuations against his wife. Respondent claimed that complainant provoked him until he lost his patience and angrily told her, "Indi napaghulatanga mag dug-anaykita" (don't wait for things to get worse).

In his Investigation Report, Executive Judge Raymond Joseph G. Javier (EJ Javier) found no evidence to sustain the charges of dishonesty and abuse of authority against respondent. He, however, found respondent guilty of conduct unbecoming a court employee and recommended that he be suspended from the service for a period of six (6) months without pay considering that he had been previously found administratively liable for the same offense.

ISSUE:

Whether or not the dismissal of respondent from service is warranted. (YES)

RULING:

It must be stressed that employees of the Judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve the good name and standing of the courts in the community at all times. Indeed, the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel from the judge to the lowest of its rank and file who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.

In the present case, respondent's act of slapping the shoulder of complainant, and his use of improper and intemperate words and his threat against her should not be countenanced. Without a doubt, such acts tarnished not only the image and integrity of the public office but also the public perception of the very image of the Judiciary of which he was a part of.

Any scandalous behavior or any act that may erode the people's esteem for the Judiciary is unbecoming of an employee, and tantamount to simple misconduct.

Moreover, the Court takes note of the fact that respondent left the office during office hours without securing the necessary permission from his superiors. His explanation that he was in the area serving summons when he needed to meet his wife supposedly to give her money for their cooking gas, is bereft of merit. During the hearing conducted on May 19, 2017, respondent admitted that he was not armed with a written authority to travel when he allegedly served the summonses and court processes, and could not even remember the cases for which these summonses were issued.

Under Section 52 (B), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. The Court notes that **this is not the first time that respondent has been administratively charged**. In A.M. No. P-07-2313, respondent was found guilty of conduct unbecoming of a government employee. He was suspended for a period of two (2) months and was sternly warned that a repetition of the same or similar act would be dealt with more severely. **Despite such warning, respondent repeated the same act. Hence, the ultimate penalty of dismissal should be imposed.**

RE: REPORT OF EXECUTIVE JUDGE SOLIVER C. PERAS, REGIONAL TRIAL COURT OF CEBU CITY (RTC), BRANCH 10, ON THE ACTS OF INSUBORDINATION OF UTILITY WORKER I CATALINA Z. CAMASO, OFFICE OF THE CLERK OF COURT, RTC.

A.M. No. 15-02-47-RTC, SECOND DIVISION, RESOLUTION, March 21, 2018, PERLAS-BERNABE, *J.*

Section 93 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) authorizes and provides the procedure for the dropping from the rolls of employees who, inter alia, are no longer fit to perform his or her duties.

In this case, Judge Peras received reports from Camaso's colleagues regarding the latter's strange and abnormal behavior, thus, prompting the OCA to recommend that Camaso be subjected to a series of tests to evaluate her neuro-psychiatric well-being. In view of the foregoing, the Court is constrained to drop Camaso from the rolls.

FACTS:

In his complaint, Judge Peras alleged that he issued a Memorandumtemporarily detailing Camaso to Branch 10 to assist in the filing, delivery, and mailing of letters and correspondences in the said court. As Camaso neither reported to the same branch nor proffered an explanation therefor, Judge Peras sent her two (2) subsequent memoranda directing her to explain in writing such non-compliance; however, Camaso ignored such directives.

Further, Judge Peras averred that Camaso has been acting and behaving "strangely and abnormally," as exhibited by the latter's following acts: (a) claiming that she will not retire upon reaching the age of 65, citing that she is a "national employee;" and (b) sitting on top of the backrest of a chair and resting her feet on the seat of the same chair, placing herself in danger of falling.

In view of the foregoing, Judge Peras requested the OCA to conduct a psychiatric evaluation on Camaso to determine her fitness to work. On the basis of Judge Peras's allegations, the OCA issued a Memorandum recommending that the matter be referred to Dr. Banzon, Senior Chief Staff Officer of the Court's Medical and Dental Services, for the conduct of a neuro-psychiatric evaluation on Camaso and a report be submitted thereafter.

Subsequently, Dr. Banzon submitted a letter, stating that the examinations done on Camaso indicate that she is suffering from *Delusional Disorder, Mixed Type (Grandiose and Persecutory)*, and that in the absence of psychiatric management, she will be unable to maintain good inter-personal relationships

with her co-workers. In light thereof, the OCA issued a Memorandum recommending that Camaso be required to comment on why she should not be dropped from the rolls for being mentally unfit.

In her handwritten Letter-Comment, Camaso maintained that Judge Peras has no jurisdiction over her as she is assigned to the RTC Library, which is under the supervision of the OCA. In a Memorandum, the OCA recommended that Camaso be dropped from the rolls without forfeiture of any benefits due her, for being mentally unfit to perform her duties.

ISSUE:

Whether or not Camaso should be dropped from the rolls for being mentally unfit to perform her duties? (YES)

RULING:

Section 93 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) authorizes and provides the procedure for the dropping from the rolls of employees who, *inter alia*, are no longer fit to perform his or her duties.

> Section 93. *Grounds and Procedure for Dropping from the Rolls*. — Officers and employees who are x xx shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:
>
> c. Physically Unfit
>
> 3. An officer or employee who is behaving abnormally and manifests continuing mental disorder and incapacity to work as reported by his/her co-workers or immediate supervisor and confirmed by a competent physician, may likewise be dropped from the rolls.
>
> 4. For the purpose of the three (3) preceding paragraphs, notice shall be given to the officer or employee concerned containing a brief statement of the nature of his/her incapacity to work.

In this case, Judge Peras received reports from Camaso's colleagues regarding the latter's strange and abnormal behavior, thus, prompting the OCA to recommend that Camaso be subjected to a series of tests to evaluate her neuro-psychiatric well-being. After conducting such tests, the psychologist found that there are already: (*a*) deterioration in almost all facets of Camaso's mental functioning; and (*b*) distortion in her perception of things, making a limited grasp of reality. These findings are then corroborated by the psychiatrist, who found Camaso to be suffering from a psychological impairment, *i.e., Delusional Disorder, Mixed Type (Grandiose and Persecutory)*, which gives her a distorted view of reality that affects her social judgment, planning, and decision-making. Worse, when asked to comment on this case, Camaso not only failed to refute such findings against her, but also exhibited her impaired mental cognition and deteriorating mental health.

In view of the foregoing, the Court is constrained to drop Camaso from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Camaso's separation from the service shall neither result in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification from re-employment in the government service.

OFFICE OF THE COURT ADMINISTRATOR, ***Complainant***, ***-versus-*GILBERT T. INMENZO, CLERK OF COURT III, METROPOLITAN TRIAL COURT, BRANCH 52, CALOOCAN CITY**, ***Respondent***.
A.M. No. P-16-3617, SECOND DIVISION**,** June 06, 2018**,** CARPIO, J**.**

Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. It is classified under the Revised Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.

For failing to give due attention to the task expected of him resulting to the loss of a firearm committed in his charge, we find Inmenzo guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.

FACTS:

On 24 March 2004, respondent Gilbert T. Inmenzo (Inmenzo) was appointed as Clerk of Court III of the MeTC.

Pursuant to the Order dated 8 March 2007 of then Acting Presiding Judge Josephine Advento-Vito Cruz, Inmenzo issued a s*ubpoena duces tecum/ad testificandum* directing PO2 Joselito Bagting (PO2 Bagting) to bring the evidence in Criminal Case No. 229179, entitled *People v. Hidalgo*, on 31 May 2007 before the MeTC. On 31 May 2007, Inmenzo acknowledged receiving from PO2 Bagting, "ONE (1) .38 CALIBER PISTOL marked as Exhibit E, 9MM" (firearm), among the evidence subject of the subpoena.

Around the week of 8 November 2012, Judge Sasondoncillo found out that the firearm involved in Criminal Case No. 229179 was missing. Thus, on 11 December 2012, Judge Sasondoncillo wrote the OCA requesting for an investigation of the missing firearm. She attached in her letter: (a) her Memorandum to Inmenzo asking him to produce the missing firearm within 72 hours or explain in writing why the firearm could not be produced; and (b) Inmenzo's Reply to the Memorandum.

In the Initial Investigation Reportdated 19 February 2014, the investigation team found that Inmenzo received in *custodia legis* the missing firearm from PO2 Bagting on 31 May 2007, evidenced by an acknowledgment receipt. Thus, they recommended that the instant matter be considered a formal administrative complaint against Inmenzo and that he be required to comment on it.

On 15 July 2015, Inmenzo resigned from the service as Clerk of Court III.

In a Resolutiondated 3 August 2015, the Court, through the Second Division, resolved to refer the instant administrative complaint to the Executive Judge of the MeTC for investigation, report and recommendation, considering that factual issues, which were material to the ultimate resolution of the case, could be ventilated only in a formal investigation.

In the Formal Investigation Reportdated 20 January 2016, Investigating Judge Michael V. Francisco (Investigating Judge) recommended the imposition of the penalty of six months suspension on Inmenzo for simple neglect of duty, after finding that the firearm was lost while under Inmenzo's custody due to his carelessness.

In a Memorandumdated 27 September 2016 addressed to Senior Associate Justice Antonio T. Carpio, the OCA adopted *in toto* the findings of the Investigating Judge, except as to the penalty.

In a Resolution dated 28 November 2016, the Court resolved to re docket the instant administrative complaint as a regular administrative matter against Inmenzo.

ISSUE:

Whether or not Inmenzo is guilty of simple neglect of duty (YES)

RULING:

The Court adopts the findings and recommendations of the OCA, except as to the penalty.

The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others. Rule 136, Section 7 of the Rules of Court further provides that the clerk of court shall safely keep all records, papers, files, exhibits, and public property committed in his charge. Section I of Canon IV of the Code of Conduct for Court Personnel stresses that court personnel shall at all times perform official duties properly and diligently. A simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by litigants or the public in our judicial process.

In the present case, Inmenzo, while he was clerk of court, clearly received the firearm from PO2 Bagting and marked it as an exhibit, based on the acknowledgment receipt Inmenzo himself admittedly signed. He, however, failed to explain the whereabouts of the firearm after receiving it and consequently, lost it under his custody. As court custodian, it was his responsibility to ensure that exhibits are safely kept and the same are readily available upon the request of the parties or order of the court.Having a heavy workload and mentioning the dilapidated state of storage facilities of the court are unavailing defenses. Being the chief administrative officer, he plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.It is likewise his duty to inform the judge of the necessary repair of the dilapidated storage facilities of the court. His attempt to escape responsibility over the loss of the exhibit under his care and custody must therefore fail.

In *Bongalos v. Monungolh*,we found respondent clerk of court guilty of gross neglect of duty and ordered him to pay the fine of P20,000 for entrusting the prosecution's evidence, specifically gun and bullets, to a police officer, causing the loss of evidence. We held that he did not exert any effort to retrieve the evidence when it was discovered missing, and he simply blamed the prosecution for is disappearance.In *Office of the Court Administrator v. Judge Ramirez*,we found the respondent clerk of court liable for simple neglect of duty and imposed upon her the penalty of suspension for one month and one day, for failing to inform the judge of the necessary repair of the dilapidated condition of the steel cabinet where the pieces of evidence are stored, resulting to the loss of firearms and other exhibits stored in it. In *Office of the Court Administrator v. Cabe*,we admonished respondent Officer-in-Charge of the Office of the Clerk of Court and ordered him to pay a fine of P20,000 for failing to conduct a proper inventory of exhibits and to turn over the firearms to the nearest Constabulary Command, causing the loss of the firearms.

For failing to give due attention to the task expected of him resulting to the loss of a firearm committed in his charge, we find Inmenzo guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. It is classified under the Revised Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense. In *Judge Sasondoncillo v. Inmenzo*,we reprimanded Inmenzo for violation of Circular No. 62-97 for exceeding the allowable teaching hours of 10 hours a week. Considering the prevailing jurisprudence and this is Inmenzo's second offense, we find that the payment of an increased fine of P20,000 would be more reasonable than that recommended by the OCA.

CONSTANCIA BENONG-LINDE, ***Complainant***, **-versus-**. **FELADELFA L. LOMANTAS, SOCIAL WELFARE OFFICER II, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, TAGBILARAN CITY, BOHOL**, ***Respondent***.

A.M. No. P-18-3842 (Formerly OCA IPI No. 12-3965-P), FIRST DIVISION, June 11, 2018, DEL CASTILLO, *J.*

Under the Uniform Rules on Administrative Cases in the Civil Service, administrative offenses are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

Simple misconduct is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense.

By definition, "[s]imple misconduct is a transgression of some established rule of action;" an unacceptable behavior that transgresses the established rules of conduct for public officers. "Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action." Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.

We agree with the investigating judge and with the OCA both of whom found respondent guilty of simple misconduct, in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. Stress must be laid on the fact that respondent had not at all received any order from the court directing her to conduct any case study, and with which she had no connection at all.

FACTS:

Complainant averred that minors Mary Arianne Sarzuelo (Mary) and Alec JorizSarzuelo (Alec) were born out of wedlock to her son, Archiles B. Linde (Archiles) and his former girlfriend, Aloha Sarzuelo (Aloha). When Archiles and Aloha parted ways, complainant took care of Mary and Alec. Believing that exercising custody over these minor children was in their best interest, complainant filed before the RTC of Tagbilaran City a verified Petitionfor custody docketed as SP Proc. No. 2853. However, in an Orderdated August 9, 2012, the RTC of Tagbilaran City archived the custody case for failure to personally serve summons upon Archiles who was abroad at the time.

According to complainant, at around 9:00 p.m. on April 30, 2012, respondent went to her house and forced her to house Mary and Alec from their sleep purportedly to enable her (respondent) to conduct a case study on these minors. The respondent also informed her that the success or failure of the case "depended upon the tip of her ballpen". Complainant was surprised at this arrogant outburst as the proceedings for the custody case had yet to commence; moreover, the RTC had not yet directed respondent to conduct a case study.

On September 8, 2012, at around 7:00 a.m., respondent again went to complainant's house and tried to force complainant and her grandchildren to board her car, purportedly as part of her case study. Complainant refused, and told respondent that they would hear mass at 12:00 noon that day, as it was Mary's 12th birthday. However, when complainant and Mary arrived at the church, they were met by respondent and Aloha, who, along with four other persons, got hold of Mary. Complainant then went to the police station near the church to have the incident recorded. Complainant claimed that respondent also repaired to the police station, and therein announced that she had control over the custody case. Complainant then suggested to respondent that Mary be allowed to go home as she (complainant) had planned a birthday party for her; and that after the birthday party Aloha could spend time with Mary. However, Aloha did not agree to this suggestion. All of a sudden, Mercy Sarzuelo (Mercy), Aloha's mother, dragged Mary and forced her inside respondent's car. Complainant tried to go with them, but respondent pushed her out of the car, causing her to fall down on the pavement. Respondent then left with her companions, taking Mary with them. Complainant promptly made a police report of this incident. Later, complainant learned that on September 19, 2012, Aloha, together with Mercy and respondent, went to Mary's school, and asked for the issuance of Mary's card and her Form 137. On said occasion, respondent bragged to Mary's teacher that nobody could file a case against her because she was a court employee.

In her Reply-Affidavit,complainant claimed that she was constrained to file the present administrative complaint because she wanted to bring to the attention of the proper authorities respondent's rude behavior as a Social Worker, specifically her uncalled for and officious meddling in a pending custody case that was none of her business at all.

The Court, upon recommendation of the Office of the Court Administrator (OCA), resolved to refer the matter to the Executive Judge of RTC Tagbilaran City, Bohol for investigation, report and recommendation.

In his Investigation Report of June 29, 2016, Investigating Judge Suceso A. Arcamo (Judge Arcamo) of the RTC of Tagbilaran City noted that complainant, in an Affidavit of Desistancedated June 1, 2016, had manifested her loss of interest in pursuing the instant administrative case. In the said affidavit, complainant said that she had already forgiven respondent and that she wanted to buy peace as she had been ordained as 3rd Order of the Servants of Mary.

Notwithstanding this Affidavit of Desistance, Judge Arcamo, however, thought it proper to proceed with the investigation given the fact that complainant did not say that the allegations in the complaint were false or made up. Hence, Judge Arcamo recommended that respondent be held guilty of simple misconduct and that she be penalized with suspension for one month.

The OCA agreed *in toto* with the findings and recommendation of Judge Arcamo. The OCA recommended that respondent be found guilty of simple misconduct and that she be suspended for a period of one (1) month without pay.

ISSUE:

Whether or not respondent is guilty of simple misconduct (YES)

RULING:

At the outset, this Court agrees that the OCA has taken the right stance in insisting that the present administrative case must proceed notwithstanding complainant's execution of an Affidavit of Desistance. The filing of the said affidavit by the complainant for alleged loss of interest does not *ipso facto* result in the termination of the administrative case nor does it render the case mooted.

In *Sy v. Binasing,*we held that —

> An affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel.

This Court finds the OCA's report and recommendation well-taken, and fully substantiated, and is adopting the same, save for a minor modification in the penalty

In *Judge Yrastorza, Sr. v. Latiza,*this Court ruled —

> Court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the lowliest clerk to the presiding judge, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary. x xx

We agree with the investigating judge and with the OCA both of whom found respondent guilty of simple misconduct, in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. Stress must be laid on the fact that respondent had not at all received any order from the court directing her to conduct any case study, and with which she had no connection at all.

Under the *Uniform Rules on Administrative Cases in the Civil Service,* administrative offenses are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

Simple misconduct is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense.

By definition, "[s]imple misconduct is a transgression of some established rule of action;" an unacceptable behavior that transgresses the established rules of conduct for public officers. "Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary

action." Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.

In the case at bench, we find reprehensible respondent's acts of meddling or intervening in an otherwise archived custody case and in arrogantly flouting that the success of the said case rested upon the "tip of her ballpen." Such a conceited display of self-importance is a failure of circumspection that calls for disciplinary sanction by this Court. "The law does not tolerate misconduct by a civil servant." There is hardly any doubt that respondent had acted in such a way that is an assault upon the norm of decency, and diminishes the people's respect for those in the government service, particularly for those employed in the judiciary.

Nevertheless, we find it proper to modify the penalty to be meted out against respondent in view of supervening event.

The Court would have imposed upon respondent the recommended penalty of one month suspension were it not for the fact that she had retired from the government service on September 2, 2017. Hence, we take the view that the appropriate penalty to be meted out against respondent, in lieu of suspension, is, as it ought to be, a fine in an amount equivalent to her salary for one month.

OFFICE OF THE OMBUDSMAN AND THE FACT-FINDING INVESTIGATION BUREAU (FFIB), OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (MOLEO), ***Petitioners*****,-versus-PS/SUPT. RAINIER A. ESPINA**, ***Respondent*****.**

G.R. No. 213500, RESOLUTION, SPECIAL FIRST DIVISION, September 12, 2018, PER CURIAM.

In Office of the Court Administrator v. Egipto, Jr., the Court imposed the penalty of one (1)-year suspension without pay instead of dismissal from service to respondent who was found guilty of gross neglect of duty, considering his length of service, among others. In Fact-finding and Intelligence Bureau v. Campaña, a similar penalty was imposed on respondent who was found guilty of a grave offense meriting dismissal, in view of his length of service, his unblemished record in the past, and the fact that it was his first offense. In Civil Service Commission v. Belagan, the Court also imposed a one (1)-year suspension on respondent who was found guilty of a grave offense warranting dismissal, taking into account his numerous awards, and the fact that it was his first time to be administratively charged.

Considering that it is Espina's first offense in his 29 straight years of active service in the Armed Forces of the Philippines and the PNP which were attended with numerous awards or service commendations, and untainted reputation in his career as a police officer that was not disputed, the Court is equally impelled to remove him from the severe consequences of the penalty of dismissal from service, following jurisprudential precedents and pursuant to the discretion granted by the RRACCS.

FACTS:

For resolution is respondent Rainier A. Espina's Motion for Reconsideration, seeking to reverse and set aside the Court's Decisionfinding him guilty of Gross Neglect of Duty, and dismissing him from government service with all the accessory penalties.

As the Court explained in its Decision, while SOP No. XX4 cited by Espina did not expressly require him, as Acting Chief and Head of the Philippine National Police (PNP) Management Division, to

physically re-inspect, re-check, and verify the deliveries to the PNP as reported by the property inspectors under him, he had the duty "to reasonably ensure that [the IRFs] were prepared in accordance with law, keeping in mind the basic requirement that the goods allegedly delivered to and services allegedly performed for the government have actually been delivered and performed."

His notation-signature on the IRFs just below the statement "NOTED" did not simply indicate that he took cognizance of the existence of the IRFs, but that he confirmed: *(a)* the PNP's receipt of the tires and other supplies when there were actually no such items delivered; and *(b)* the performance of repair and refurbishment works on the V-150 Light Armored Vehicles when the works procured have not actually been rendered when such IRFs were signed. Given the amounts involved and the timing of the alleged deliveries, the circumstances reasonably imposed on Espina a higher degree of care and vigilance in the discharge of his duties. However, he failed to employ the degree of diligence expected of him considering the high position he occupied and the responsibilities it carried.

In his Motion for Reconsideration, Espina pleas for reduction of the imposable penalty by invoking mitigating circumstances of: *(a)* first offense; *(b)* length of service; and *(c)* awards/commendations.

ISSUE:

Whether or not the presence of mitigating circumstances should be appreciated in favor of Espina (YES)

RULING:

Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Hence, in several cases, the Court has reduced the imposable penalty of dismissal from service for humanitarian reasons in view, among others of respondent's length of service, unblemished record in the past, and numerous awards.

In *Office of the Court Administrator v. Egipto, Jr.,* the Court imposed the penalty of one (1)-year suspension without pay instead of dismissal from service to respondent who was found guilty of gross neglect of duty, considering his length of service, among others. In *Fact-finding and Intelligence Bureau v. Campaña,* a similar penalty was imposed on respondent who was found guilty of a grave offense meriting dismissal, in view of his length of service, his unblemished record in the past, and the fact that it was his first offense. In *Civil Service Commission v. Belagan,* the Court also imposed a one (1)-year suspension on respondent who was found guilty of a grave offense warranting dismissal, taking into account his numerous awards, and the fact that it was his first time to be administratively charged.

Considering that it is Espina's first offense in his 29 straight years of active service in the Armed Forces of the Philippines and the PNP which were attended with numerous awards or service commendations, and untainted reputation in his career as a police officer that was not disputed, the Court is equally impelled to remove him from the severe consequences of the penalty of dismissal from service, following jurisprudential precedents and pursuant to the discretion granted by the RRACCS. While the Court does not condone the wrongdoing of public officers and employees, neither will it negate any move to recognize their length of service in the government. Consequently, the Court hereby reduces the penalty imposed on him to one (1)-year suspension from service without

pay, reckoned from the time that the Office of the Ombudsman's (Ombudsman) Joint Resolution dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* - versus -. DAHLIA E. BORROMEO, CLERK OF COURT II, MUNICIPAL TRIAL COURT IN CITIES [MTCC], BIÑAN, LAGUNA, *Respondent.*

A.M. No. P-18-3841 (Formerly A.M. No. 01-12-323-MTC), EN BANC, September 18, 2018, PER CURIAM

It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Thus, an unwarranted failure to fulfil these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.

The respondent did not faithfully perform and discharge her duty and responsibility as the Clerk of Court of the MTCC of being the custodian of the funds, revenues, properties and premises of the court she served. The respondent's failure to remit her cash collections and to submit her monthly financial reports constituted gross dishonesty and grave misconduct. She was also administratively liable for gross neglect of duty.

FACTS:

Respondent Dahlia Borromeo is a clerk of court who despite repeated demands failed to submit the records required for the examination of her books of accounts to the Fiscal Monitoring Division of the Court Management Office (FMD CMO) in the Office of the Court Administrator (OCA).

An initial audit was conducted. The audit shows that records and accounting controls are in disarray. Ms. Borromeo has no procedure at all in the manner of filing system, accounting system and delegation of work. There are missing official receipts which were issued for Fiduciary Collections. Ms. Borromeo failed to remit her collections on Judiciary Development Fund (JDF) and Clerk of Court (CoC) General Fund. Further, Ms. Borromeo allowed Ms. Cecil Reyes, her purported private secretary, to perform the duties and responsibilities of a regular court employee.

The Court ordered Borromeo restitution of the shortages on JDF and CoC General Fund, explain why she is allowing Ms. Cecil Reyes, who is not an employee of the court to have access to the records of the court and to perform the regular functions of a court employee and produce all Fiduciary Fund records from July 1995 to present. Borromeo was meted with a preventive suspension until compliance with the orders.

The Court referred the matter to the OCA. However, the respondent's continued non-compliance with the directives of the Court prompted the Court to order the conduct of the financial audit. The results of the financial audit showed that the respondent had incurred shortages.

The OCA issued a memorandum recommending the dismissal of respondent.

ISSUE:

Whether the recommendation of dismissal is warranted (YES)

RULING:

The respondent was the Clerk of Court of the MTCC in Biñan City in Laguna. She was the custodian and officer responsible for the safekeeping and custody of the funds, revenues, properties and premises of the court she served. She was clearly bound to perform the duty and responsibility to the utmost of her abilities. In *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* it is held that:

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Thus, an unwarranted failure to fulfil these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.

The respondent did not faithfully perform and discharge her duty and responsibility as the Clerk of Court of the MTCC of being the custodian of the funds, revenues, properties and premises of the court she served. Compounding her situation was that despite committing to submit her reports and the receipts for the cash bonds withdrawn from the Fiduciary Fund, she did not submit anything to the OCA in direct disobedience to the directives of the Court

The respondent's failure to remit her cash collections and to submit her monthly financial reports constituted gross dishonesty and grave misconduct. She was also administratively liable for gross neglect of duty.

Under Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty, grave misconduct and gross neglect of duty are classified as grave offenses, and any of said offenses can merit dismissal from the service even upon the first commission.

For her failure to live up to the high ethical standards expected of her as a court employee and accountable officer, the respondent's dismissal from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and government-controlled corporations is in order and fully warranted.

POLICE DIRECTOR GENERAL RICARDO C. MARQUEZ, IN HIS CAPACITY AS THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP) (IN LIEU OF FORMER PNP OFFICER-INCHARGE, POLICE DEPUTY DIRECTOR GENERAL LEONARDO A. ESPINA), *Petitioner*, - versus - PO2 ARNOLD P. MAYO, *Respondent*

G.R. No. 218534, FIRST DIVISION, September 17, 2018, TIJAM, J.

The second proviso which renders disciplinary actions involving demotion or dismissal from the service imposed by the Chief of the PNP qualifies the general statement that disciplinary actions imposed upon a member of the PNP is final and executory. Thus, the fact that disciplinary actions imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the NAB, which only renders the same not immediately final, but also not immediately executory when an appeal has been seasonably filed with the NAB.

However, dismissal of respondent's appeal before the Secretary of the Department of Interior and Local Government is executory pending appeal.

FACTS:

On January 25, 2012, at about 9:00 a.m., respondent PO2 Mayo, together with SPO3 MenalynTuralba, PO3 Jose Turalba, and PO1 Elizalde Visaya went to Annaliza's iron workshop where they tried to dismantle a bomb wrapped in red cloth with the use of a pipe wrenchbut failed to do so. SPO3 Turalba and Annaliza told respondent PO2 Mayo and the other officers to discontinue as it could cause the bomb to explode. The police officers then left but came back around 2:00 p.m. At this juncture, the police officers requested CruzaldoDaguio, Annaliza's husband, to spot the bomb with a welding torch. Cruzaldo refused, saying that the bomb might explode, but the police officers persuaded him stating that it will not explode considering they are bomb experts. While Cruzaldo was spotting the tip of the bomb, it suddenly exploded, killing Cruzaldo and PO1 Visaya on the spot and wounding nine (9) civilians. This prompted Annaliza to file a complaint.

The Police Director General found respondent PO2 Mayo guilty of grave misconduct and imposed the extreme penalty of dismissal from the PNP service. Respondent lodged an appeal before the National Police Commission (NAPOLCOM) National Appellate Board.

Meanwhile pursuant to the decision of the Police Director General, the PNP issued S.O. No. 9999 dismissing respondent PO2 Mayo from the service.

As the said SO was about to be implemented, respondent PO2 Mayo filed a Petition for Injunction with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction before the RTC.

Respondent PO2 Mayo argued that the SO was void as the decision was not yet final and executory and he has still a pending appeal before the NAPOLCOM National Appellate Board.

While the case for injunction is pending, NAPOLCOM has already affirmed the Decision of the Police Director General. When elevated to the Office of the Secretary of the Department of Interior and Local Government (DILG), the appeal was also dismissed.

The RTC granted the injunction on the ground the disciplinary action involving demotion or dismissal embodied in the decision/order/resolution shall not be immediately executory by the mere fact of its rendition because it shall only be so if no motion for reconsideration or appeal is filed AND if appeal was taken and it was not acted upon within the given period.

ISSUE:

Whether the decision meting out dismissal is executory pending appeal (YES)

RULING:

The Decision and the Resolution of the Chief of the PNP is not immediately executory, pending respondent's PO2 Mayo's appeal before the NAB. Nevertheless, supervening events compels this Court to reverse the judgment of the RTC and dissolve the writ of injunction it issued.

Preliminarily, the Court notes that NAPOLCOM Memorandum Circular (M.C.) No. 2007-001 has been repealed by NAPOLCOM M.C. No. 2016-002. Nevertheless, we shall continue to apply the provisions of NMC No. 2007-001, as this was the prevailing rule during the pendency and resolution of the present case.

The provision of law governing the finality of disciplinary actions against police officers is Sec. 45 of R.A. No. 6975, as amended, also known as the Department of Interior and Local Government Act of 1990, to wit:

Section. 45. Finality of Disciplinary Action. - The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: Provided, furthermore, The regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: Provided, finally, That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.

In the *National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) v. P/Inp. John A. Mamauag*, this Court held that Section 45 of R.A. No. 6975, as amended, provides that a disciplinary action imposed upon a member of the PNP shall be final and executory, and disciplinary actions are appealable only if it involves either a demotion or dismissal from the service. The second proviso which renders disciplinary actions involving demotion or dismissal from the service imposed by the Chief of the PNP qualifies the general statement that disciplinary actions imposed upon a member of the PNP is final and executory. Thus, the fact that disciplinary actions imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the NAB, which only renders the same not immediately final, but also not immediately executory when an appeal has been seasonably filed with the NAB.

However, dismissal of respondent's appeal before the Secretary of the Department of Interior and Local Government is executory pending appeal. By dismissing respondent's PO2 Mayo's appeal, the

Secretary of the DILG, in effect, confirmed respondent's PO2 Mayo's dismissal from the service. Such dismissal from the service is executory, pursuant to Section 47 of Book V, Executive Order (E.O.) No. 292, or the Administrative Code of 1987. This provision of the Civil Service laws is also applicable to the PNP, [38] which states:

Sec. 47. Disciplinary Jurisdiction. – X XX (4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. X XX

With respondent PO2 Mayo's appeal already resolved unfavorably, and such resolution being executory, this Court finds no impediment in reversing the Decision and the Resolution of the RTC and lifting the injunction that it issued.

d. Condonation doctrine

2. Impeachment

3. The Ombudsman

a. Functions

JONNEL D. ESPALDON, *Petitioner*, -versus -RICHARD E. BUBAN IN HIS CAPACITY AS GRAFT INVESTIGATION AND PROSECUTION OFFICER II, MEDWIN S. DIZON IN HIS CAPACITY AS DIRECTOR, PIAB-A, ALEU A. AMANTE IN HIS CAPACITY AS ASSISTANT OMBUDSMAN, PAMO I, AND CONCHITA CARPIO MORALES IN HER CAPACITY AS OMBUDSMAN OF THE REPUBLIC OF THE PHILIPPINES, PETER L. CALIMAG, ASSISTANT SECRETARY, REVENUE AFFAIRS and LEGAL AFFAIRS GROUP, DEPARTMENT OF FINANCE, RENATO M. GARBO III, MA. LETICIA MALMALATEO, MARLON K. TAULI, FRAYN M. BANAWA, and JOHNNY CAGUIAT, ALL NBI AGENTS, NATIONAL BUREAU OF INVESTIGATION, ROGELIO M. SABADO, and PRUDENCIO S. DAR, JR., RAILWAY POLICE, PHILIPPINE NATIONAL RAILWAYS, ANTONIO MARIANO ALMEDA, IRENEO C. QUIZON, ARIEL SARMIENTO, DOMINGO BEGUERAS, JOHN DOES/JANE DOES, NBI and/or PNR, *Respondents*.

G.R. No. 202784, FIRST DIVISION, April 18, 2018, TIJAM, J.

Clearly, as the law, its implementing rules, and interpretative jurisprudence stand, the dismissal by the Ombudsman on grounds provided under Section 20 (R.A. No. 6770) is applicable only to ***administrative complaints.*** *Its invocation in the* ***present criminal case*** *is therefore misplaced.*

FACTS:

The National Bureau of Investigation (NBI) received information that Ferrotech Steel Corporation and/or its President, Benito Keh employed schemes to evade payment of taxes by failing to issue sales invoices and falsifying sales invoices in violation of the NIRC. Upon verification of the information, the NBI applied for the issuance of search warrants to search premises occupied and/or used by Ferrotech Steel Corporation and/or Keh before the regional trial court (RTC)

The search warrants were issued by the RTC. On even date, these search warrants were served by NBI agents, Philippine National Railways (PNR) personnel and private individuals, who are the respondents in this case.

Espaldon, the Corporate Secretary of Metal Exponents, Inc., and the counsel of Ferrotech Steel Corporation and Metalex International Inc., alleged that several irregularities attended the implementation of the search warrants, i.e., heavily armed NBI agents were present; the non-NBI agents were not authorized in writing to participate in the search; private individuals orchestrated the search and pointed the items to be seized; documents and items belonging to Metalex International, Inc., Metal Exponents, Inc., and other companies not mentioned in the search warrants were also seized; and the employees were illegally detained, prohibited from using their phones and leaving the office, and threatened with bodily harm.

Consequently, Espaldon filed administrative and criminal complaints before the Ombudsman

The Ombudsman dismissed the administrative and criminal complaint in separate-worded Orders. The dismissal of both the administrative and the criminal complaints were grounded on Section 20(1) of R.A. No. 6770, which provides:

Sec. 20: Exceptions. The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body.

ISSUE:

Whether the Ombudsman gravely abused its discretion in dismissing the criminal complaint on the basis of Section 20 (1) of R.A. No. 6770 (YES)

RULING

Section 20 of R.A. No. 6770, reads:

Section 20: Exceptions. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

Jurisprudence has so far settled that dismissal based on the grounds provided under Section 20 is not mandatory and is discretionary on the part of the evaluating Ombudsman or Deputy Ombudsman evaluating the administrative complaint. **Clearly, as the law, its implementing rules, and interpretative jurisprudence stand, the dismissal by the Ombudsman on grounds provided under Section 20 is applicable only to administrative complaints**. Its invocation in the present criminal case is therefore misplaced.

Contrariwise, the procedure in criminal cases requires that the Ombudsman evaluate the complaint and after evaluation, to make its recommendations in accordance with Section 2, Rule II of the Administrative Order No. 07, as follows:

Section 2: Evaluation – Upon evaluating the complaint, investigating officer shall recommend whether it may be:

a) dismissed outright for want of palpable merit;

Thus, the only instance when an outright dismissal of a criminal complaint is warranted is when such complaint is palpably devoid of merit. Nothing in the assailed Orders would show that the Ombudsman found the complaint to have suffered from utter lack of merit. In fact, the assailed Orders are empty except for the citation of Section 20 as basis for outright dismissal. It is thus inaccurate and misleading for the Ombudsman to profess that the criminal complaint was dismissed only after the conduct of a preliminary investigation, when the complaint never reached that stage to begin with. Clearly, the Ombudsman committed grave abuse of discretion when it evaluated and consequently dismissed a criminal complaint based on grounds peculiar to administrative cases and in an unexplained deviation from its own rules of procedure.

Nevertheless, the Court, at this stage, cannot pre-empt whatever action will be had by the Ombudsman after evaluation of the criminal complaint. It is not for the Court to pronounce whether the criminal complaint should be subjected to preliminary investigation. All the more, it will be premature for the Court to decide in this present petition whether or not there exists probable cause for the filing of the criminal information against respondents. These matters, not being proper subjects of the instant petition are best left to the Ombudsman's appropriate action.

OFFICE OF THE OMBUDSMAN, *Petitioner*, -versus- EFREN BONGAIS, HOUSING AND HOMESITE REGULATION OFFICER IV, CITY HOUSING AND SETTLEMENTS OFFICE, CALAMBA CITY, *Respondent*.

G.R. No. 226405, SECOND DIVISION, July 23, 2018, PERLAS-BERNABE, *J.*

To warrant intervention under Rule 19 of the Rules of Court, the intervenor must possess legal interest in the matter in controversy. In addition to legal interest, the intervenor must file the motion to intervene before rendition of the judgment, the intervention being ancillary and supplemental to an existing litigation, not an independent action. Corollarily, when the case is resolved or is otherwise terminated, the right to intervene likewise expires.

The rule requiring intervention before rendition of judgment, however, is not inflexible. As jurisprudence has shown, interventions have been allowed even beyond the period prescribed in the Rule when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised, as will be shown below. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances. After all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.

Concrete examples of the exception to the period rule in intervention are the cases of Quimbo and Macabulos where apart from the sufficiency of the Ombudsman's findings of administrative liability, the

validity or constitutionality of the Ombudsman's powers and mandate was put in issue…Thus, it would appear that the Court allowed the Ombudsman's belated intervention in Quimbo and Macabulosbecause of the grave legal issues raised that affected the Ombudsman's mandate and power, which, as mentioned, may be considered as an exception to the general rule reinforced in Gutierrez that the intervention must be timely made by the Ombudsman before rendition of judgment.

Since the SC does not find any of the excepting circumstances laid down in jurisprudence obtaining in this case, the general rule provided under Section 2 of Rule 19, as reinforced in Gutierrez, squarely applies. Hence, while the Ombudsman had legal interest to intervene in the proceeding, the period for the filing of its motion to intervene had already lapsed as it was filed after the CA had promulgated its Decision.

FACTS:

Efren Bongais, in his capacity as Housing and Homesite Regulation Officer IV of the City Housing and Settlements Office, City of Calamba, Laguna, was charged for grave misconduct and dishonesty before the Ombudsman.

The Ombudsman found Bongais guilty of Grave Misconduct, and accordingly, meted out the penalty of dismissal from the service. Bongais sought reconsideration, which the Ombudsman denied. Thus, he elevated the case to the CA via Petition for Review under Rule 43 of the Rules of Court.

The CA granted the petition, and accordingly, modified the Ombudsman Decision, finding Bongais guilty of Simple Neglect of Duty only and imposing on him the penalty of suspension for a period of six months.

Dissatisfied with the CA ruling, the Ombudsman filed an Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration, arguing that it "was not expressly impleaded as a party-respondent in the case," and thus, prayed for leave to intervene.

The CA denied the Ombudsman's Omnibus Motion for lack of interest to intervene in the proceeding; hence, this petition.

ISSUE:

Whether the CA erred in denying the Ombudsman's Omnibus Motion to Intervene. (No)

RULING:

Jurisprudence defines intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceedings. It is, however, settled that intervention is not a matter of right, but is instead addressed to the sound discretion of the courts and can be secured only in accordance with the terms of the applicable statute or rule. Rule 19 of the Rules of Court prescribes the manner by which intervention may be sought, thus:

> Section 1. *Who may intervene*. - **A person who has a legal interest in the matter in litigation**, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof **may, with leave of court, be allowed to intervene in the action**. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.
>
> Section 2. *Time to intervene.* - **The motion to intervene may be filed at any time before rendition of judgment by the trial court.** A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

To warrant intervention under Rule 19 of the Rules of Court, the intervenor must possess legal interest in the matter in controversy. In addition to legal interest, the intervenor must file the motion to intervene before rendition of the judgment, the intervention being ancillary and supplemental to an existing litigation, not an independent action. Corollarily, when the case is resolved or is otherwise terminated, the right to intervene likewise expires.

The Court agrees that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. In the 2008 case of *Ombudsman v. Samaniego*, the SC categorically ruled that, even if not impleaded as a party in the proceedings, the Office of the Ombudsman has legal interest to intervene and defend its ruling in administrative cases before the CA, its interest proceeding, as it is, from its duty to act as a champion of the people and to preserve the integrity of the public service. The Court reiterated *Samaniego* and upheld the Ombudsman's standing to intervene in *Ombudsman v. De Chavez, Ombudsman v. Quimbo,* and recently, in *Ombudsman v. Gutierrez*

However, in *Ombudsman v. Sison, Ombudsman v. Magno*and *Ombudsman v. Liggayu*, the SC denied the Ombudsman's motion to intervene since in these cases, the Ombudsman moved to intervene after the CA had already rendered judgment on the appeal of its administrative ruling. Thus, it would appear that the Court was impelled to deny the Ombudsman's intervention in these cases because it was already filed beyond the allowable period.

In the 2017 case of *Gutierrez*, the Court clarified that it should now be considered as settled doctrine that the Ombudsman has legal standing to intervene in appeals from its rulings in administrative cases, provided, *that the Ombudsman moves for intervention before rendition of judgment*, pursuant to Rule 19 of the Rules Court, lest its motion be denied as the Court did in *Sison, Magno*, and *Liggayu*.

The rule requiring intervention before rendition of judgment, however, is not inflexible. As jurisprudence has shown, interventions have been allowed even beyond the period prescribed in the Rule when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised, as will be shown below. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances. After all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.

Concrete examples of the exception to the period rule in intervention are the cases of *Quimbo* and *Macabulos* where apart from the sufficiency of the Ombudsman's findings of administrative liability, the validity or constitutionality of the Ombudsman's powers and mandate was put in issue. In *Quimbo*, the issue of whether or not the Ombudsman has the power to directly impose sanctions on the public official or employee it found to be at fault was raised and addressed by the Court. *Macabulos*, on the other hand, presented the questions of whether or not the Ombudsman is barred by prescription from investigating a complaint filed more than one year from the occurrence of the act complained of, and whether or not the penalty of dismissal pending appeal is immediately executory. Thus, it would appear that the Court allowed the Ombudsman's belated intervention in *Quimbo* and*Macabulos*because of the grave legal issues raised that affected the Ombudsman's mandate and power, which, as mentioned, may be considered as an exception to the general rule reinforced in *Gutierrez* that the intervention must be timely made by the Ombudsman before rendition of judgment.

Since the SC does not find any of the excepting circumstances laid down in jurisprudenceobtaining in this case, the general rule provided under Section 2 of Rule 19, as reinforced in *Gutierrez*, squarely applies. Hence, while the Ombudsman had legal interest to intervene in the proceeding, the period for the filing of its motion to intervene had already lapsed as it was filed after the CA had promulgated its Decision.

b. Judicial review in administrative proceedings

OFFICE OF THE OMBUDSMAN, *Petitioner*, -versus- LOVING F. FETALVERO, JR, *Respondent*.
G.R. No. 2coa50, THIRD DIVISION, July 23, 2018, LEONEN, *J.*

Petitioner claims that respondent was guilty of dishonesty and misconduct because of the undue preference that he purportedly extended to Lockheed.As the complainant, petitioner has the burden of proving that respondent deliberately committed falsehood or transgressed established rules to give Lockheed undue preference during the bidding process of the contract for services.

Petitioner fails to discharge its burden. What petitioner managed to prove was only that respondent, upon orders of his superior, collated the ratings and recommendations submitted by the other officers and then summarized them into a report. By no stretch of mind can respondent's submission of a report, an act which was done within the confines of his function as the Superintendent of the Port District Office, be seen as an unlawful act.

In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."

FACTS:

Lockheed Detective and Watchman Agency (Lockheed) was the security services contractor for Philippine Ports Authority's Port District Office-Luzon. When the time came to bid for a new security provider, Lockheed applied for accreditation to bid for the security services contract.

Officers from the Port Police Department reviewed Lockheed's performance and gave it a rating of 78.30 or "fair." Lockheed's fair rating effectively disqualified it from being accredited to bid for the new security services contract.

Philippine Ports Authority Assistant General Manager for Operations Benjamin Cecilio (Cecilio) referred Lockheed's rating to Port District Office-Luzon for its review and comments. Port District Office-Luzon Security Staff Officer Captain Geronimo Grospe (Grospe) recommended the reconsideration of its rating and the issuance of its Certificate of Accreditation to bid for the new security services contract.Port District Office-Luzon Port District Manager Hector Miole (Miole) also recommended the recomputation of Lockheed's rating and the issuance of its Certificate of Accreditation.

Cecilio thereafter directed Port District Office-Luzon Superintendent Loving Fetalvero, Jr. to review Grospe's and Miole's recommendations against the guidelines and to draft a reply.Port Management Office-Puerto Princesa, Palawan Station Commander AquilinoPeregrino then submitted Lockheed's reevaluation performance to Miole.

Cecilio eventually adapted Grospe's and Miele's recommendations and issued Lockheed a Certificate of Final Rating, with a readjusted rating of 83.97, or satisfactory, from the original rating of 78.30, or fair, making Lockheed eligible for the accreditation to bid.

Port Police Department Division Manager Maximo Aguirre then filed a complaint-affidavit against Cecilio, Fetalvero, Miele, Grospe, and Peregrino for Grave Misconduct and Dishonesty. Aguirre averred that the Port Police Officers who gave Lockheed its original rating did not participate in its reevaluation, contrary to the claims of Peregrine that they did. Thus, Aguirre asserted that Cecilio committed deceit, misrepresentation, and deception because the reassessment was without basis and was done to favor Lockheed.

Graft Investigation and Prosecution Officer I Moreno Generoso dismissed the complaint. However, in a Review Resolution, Assistant Special Prosecutor III Roberto Agagonrecommended the reversal of said Decision and the dismissal from service of the charged officers. The recommendation was approved by the Deputy Ombudsman for Luzon Mark Jalandoni.

Fetalvero appealed to the CA claiming that his acts of collating and computing Lockheed's reevaluated ratings from Grospe and Miole were "ministerial ... done in the regular performance of his duty."

The CA granted Fetalvero's petition and held that Fetalvero's acts did not constitute dishonesty and grave misconduct.

In the presentcase, petitioner asserts that respondent's acts of adjusting Lockheed's ratings and giving it undue preference call for a finding of administrative liability for grave misconduct and dishonesty.Citing *Mira v. Dosono*, petitioner insists that when it comes to administrative proceedings, the lowest standard of substantial evidence will suffice for administrative liability to attach. Nonetheless, petitioner claims that even if respondent indeed only acted in a ministerial capacity, this will not absolve him of administrative liability.

ISSUE:

Whether there is substantial evidence to hold respondent administratively liable for dishonesty and misconduct. (No)

RULING:

Petitioner claims that respondent was guilty of dishonesty and misconduct because of the undue preference that he purportedly extended to Lockheed.

Petitioner sets forth in his complaint that it was Grospe and Miole who recommended to Cecilio the reconsideration and readjustment of Lockheed's rating, while respondent, upon Cecilio's instructions, reviewed their recommendations vis-a-vis the guidelines. Nowhere was it alleged that respondent likewise recommended the reconsideration or readjustment of Lockheed's original rating. This supports respondent's assertion that he performed the ministerial task of creating a report by collating and computing the ratings transmitted to him by Miole.

Petitioner attempts to pin liability on respondent by insisting that the Certificate of Final Rating issued by Cecilio was "loosely based" on the reply that petitioner drafted. However, as respondent's reply is a compilation of Lockheed's ratings, it is inevitable that it will be referred to for the issuance of Certificate of Final Rating in Lockheed's favor. This cannot be interpreted as respondent's positive act to recompute or adjust Lockheed's rating to give it undue preference.

As the complainant, petitioner has the burden of proving that respondent deliberately committed falsehood or transgressed established rules to give Lockheed undue preference during the bidding process of the contract for services.

Petitioner fails to discharge its burden. What petitioner managed to prove was only that respondent, upon orders of his superior, collated the ratings and recommendations submitted by the other officers and then summarized them into a report. By no stretch of mind can respondent's submission of a report, an act which was done within the confines of his function as the Superintendent of the Port District Office, be seen as an unlawful act.

In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."

c. Judicial review in penal proceedings

REY NATHANIEL C. IFURUNG, *Petitioner*, -*versus*- HON. CONCHITA C. CARPIO MORALES IN HER CAPACITY AS THE OMBUDSMAN, HON. MELCHOR ARTHUR H. CARANDANG, HON. GERARD ABETO MOSQUERA, HON. PAUL ELMER M. CLEMENTE, HON. RODOLFO M. ELMAN, HON. CYRIL ENGUERRA RAMOS IN THEIR CAPACITIES AS DEPUTIES OMBUDSMAN, AND THE OFFICE OF THE OMBUDSMAN, *Respondents*.
G.R. No. 232131, EN BANC, April 24, 2018, MARTIRES, *J.*

In our review of Sec. 8(3) of R.A. No. 6770, we note that in case of death, resignation, removal, or permanent disability of the Ombudsman, the new Ombudsman shall be appointed for a full term. Undoubtedly, Sec. 8(3), R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution in so far as it provides that the Ombudsman and the deputies shall serve for a term of seven years. Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.

Going back to our earlier pronouncement that the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute, the Court rules that the petitioner has miserably failed to prove that Sec. 8(3) of R.A. No. 6770 transgresses the provisions of the 1987 Constitution. As such, the Court has no option but to deny the petition.

FACTS:

Petitioner maintains that the constitutional issue raised in his petition is of transcendental importance since this Court's ruling will finally determine the correct term and tenure of the Ombudsman and his deputies and settle the matter as to the constitutionality of Sec. 8(3) of R.A. No. 6770. He alleges that Sec. 8(3), in relation to Sec. 7 of R.A. No. 6770, which provides that in case of a vacancy at the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman and his deputies, the newly appointed Ombudsman and his deputies shall be appointed to a full term of seven (7) years, is constitutionally infirm as it contravenes Sec. 11 in relation to Secs. 8 and 10 of Art. XI of the 1987 Constitution. He avers that like all constitutionally created positions, i.e., President, Vice-President, Senators, Members of the House of Representatives and Members of the Civil Service Commission *(CSC),* the Commission on Elections *(COMELEC),* and the Commission on Audit *(COA),* the successor to the positions of the Ombudsman and deputies should serve only the unexpired term of the predecessor.

Hence, petitioner insists that the incumbent Ombudsman and deputies have been overstaying in their present positions for more than two years considering that their terms have expired on 1 February 2015. "To allow them to stay in the said positions one day longer constitutes a continuing affront to the 1987 Constitution, unduly clips presidential prerogatives, and deprives the nation of the services of legitimate Ombudsman and Deputies Ombudsman."

ISSUE:

Whether Section 8(3) of R.A. No. 6770 is unconstitutional for being violative of Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine constitution and applicable jurisprudence. (NO)

RULING:

Sec. 8(3) of R.A. No. 6770 is not unconstitutional.

Contrary to the position of the petitioner, Sec. 11, Art. XI by itself is clear and can stand on its own. Notably, the framers plainly provided for a seven-year term of the Ombudsman and the deputies. For sure, nowhere in the Constitution can it be gathered that the appointment to any vacancy for the

position of Ombudsman and the deputies shall be only for the unexpired term of the predecessor. This can only mean that it was the intent of the framers that the appointment to the positions of the Ombudsman and the deputies, whether it be for the expired or unexpired term of the predecessor, shall always be for a full term of seven years. *Ubilex non distinguitnecnosdistingueredebemus.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated.

More importantly, it can be easily deduced from the decrees issued by President Marcos preceding the creation of the Office of the Ombudsman under the 1987 Constitution that the appointment of the Tanodbayan and the deputies shall be for a full term of seven years regardless of the reason for the vacancy in the position.

Jurisprudence teaches us that a statute should be construed in harmony with the constitution x xx

In our review of Sec. 8(3) of R.A. No. 6770, we note that in case of death, resignation, removal, or permanent disability of the Ombudsman, the new Ombudsman shall be appointed for a full term. Undoubtedly, Sec. 8(3), R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution in so far as it provides that the Ombudsman and the deputies shall serve for a term of seven years. Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.

x xx

Petitioner failed to consider that there are other offices created under the 1987 Constitution where the successor is not limited to hold office for the unexpired term of the predecessor. To name a few: (a) the justices of the Supreme Court and the judges of the lower courts hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office; hence, in case the incumbent reaches the age of seventy or when a vacancy occurs for any other reason, the successor shall hold office until he reaches the age of seventy or becomes incapacitated to discharge his duties; (b) the JBC, where the regular members are the following: a representative each from the Integrated Bar of the Philippines *(IBP)* and the private sector; a professor of law; and a retired member of the Supreme Court. Of the regular members first appointed, the representative of the IBP shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year. The Chief Justice shall be the *ex officio* Chairman of the JBC, and the Secretary of Justice and a representative of the Congress as *ex officio* Members. Thus, the Chief Justice shall remain as the *ex officio* JBC Chairman until the mandatory retirement age of 70 or becomes incapacitated to discharge the duties of the office; the Secretary of Justice, while holding this Cabinet position; and the representative of Congress,until recalled by the chamber or until the term of the representative expires, his term prematurely ends due to death, resignation, removal, or permanent disability; (c) the Senate and the House Electoral Tribunal, where each electoral tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or the House of Representatives, as the case may be, who shall be chosen on

the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the electoral tribunal shall be its Chairman. Following the earlier discussion on the JBC, the term of the Justices shall be until they reach the mandatory retirement age of 70 or become incapacitated to discharge the duties of the office; and the members of the Senate and the House of Representatives, until they are recalled by the chamber, or their term expires, or their term prematurely ends due to death, resignation, removal, or permanent disability; and (e) the Commission on Appointments *(CA),* which shall be composed of twelve Senators and twelve members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented herein. The President of the Senate shall be the *ex officio* chairman of the CA.[120] Hence, the *ex officio* chairman shall remain as such until he becomes the President of the Senate, while the members shall continue as such until recalled by the chamber, or until their term expires, or their term prematurely ends due to death, resignation, removal, or permanent disability.

X XX

Going back to our earlier pronouncement that the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute, the Court rules that the petitioner has miserably failed to prove that Sec. 8(3) of R.A. No. 6770 transgresses the provisions of the 1987 Constitution. As such, the Court has no option but to deny the petition.

To summarize:

Pertinent to Sec. 10, Art. XI of the 1987 Constitution, it is only as to the **rank and salary** that the Ombudsman and the deputies shall be the same with the chairman and members, respectively, of the constitutional commissions.

Harmonizing Sec. 11, Art. XI of the 1987 Constitution with Sec. 8(3) of R.A. No. 6770, in any vacancy for the positions of Ombudsman and the deputies, whether as a result of the expiration of the term or death, resignation, removal, or permanent disability of the predecessor, the successor shall always be appointed for a <u>full term of seven years</u>.

Unlike the constitutional commissions in Art. IX of the 1987 Constitution, the seven-year term of office of the first appointees for Ombudsman and the deputies is not reckoned from 2 February 1987, but shall be reckoned from their date of appointment. Accordingly, the present Ombudsman and deputies shall serve a full term of seven years from their date of appointment unless their term is cut short by death, resignation, removal, or permanent disability.

The *Gaminde* ruling applies to the constitutional commissions and not to the Office of the Ombudsman.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *PETITIONER,*-versus- HON. MA. MERCEDITAS GUTIERREZ, IN HER CAPACITY AS OMBUDSMAN, RENATO D. TAYAG, ISMAEL REINOSO, JUAN TRIVINO, JUAN PONCE ENRILE, MARIO ORTIZ, GENEROSO TANSECO, FAUSTINO SY CHANGCO, VICENTE ABAD SANTOS, EUSEBIO VILLATUYA, MANUEL MORALES, JOSE ROÑO, TROADIO T. QUIAZON, RUBEN ANCHETA, FERNANDO MARAMAG, JR., GERONIMO VELASCO, EDGARDO L. TORDESILLAS, JAIME C. LAYA, GERARDO P. SICAT, ARTURO R. TANCO, JR., PLACIDO L. MAPA, JR., PANFILO DOMINGO, VICTORINO L. OJEDA, TEODORO DE VERA, ALEJANDRO LUKBAN, JR., ROMEO TAN, LUIS RECATO, BENITO S. DYCHIAO, ELPIDIO M. BORJA, *RESPONDENTS.*

G.R. No. 189800, SECOND DIVISION, July 09, 2018, REYES, JR., J.

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.

A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of.

FACTS:

Bicolandia Sugar Development Corporation (BISUDECO) is a domestic corporation engaged in the business of sugarcane milling. It was incorporated on September 30, 1970, with an initial authorized capital stock worth P10,000,000.00 of which P2,010,000.00 worth of shares were subscribed and P510,000.00 worth were paid up. Its incorporators were private respondents Ojeda, de Vera, Lukban, Tan, Recato, Dychiao, Borja, and Edmund Cea (Cea) (Deceased).

On August 12, 1972, BISUDECO's authorized capital stock was increased to P36,300,000.00, of which P5,260,000.00 worth of shares were subscribed and P1,315,000.00 worth were paid up.

In 1971, BISUDECO filed a loan request with Philippine National Bank (PNB) for the issuance of a stand-by letter of credit. The loan request in the total amount of P172,583,125.00 was recommended to the PNB Board of Directors and was approved under PNB Resolution No. 157-D dated October 27, 1971. Allegedly, at this time, BISUDECO had no sufficient capital and collateral, and had assets amounting to only P510,000.00 as reflected in its Balance Sheet dated December 31, 1971.

When BISUDECO failed to comply with the conditions imposed on the grant of loan, that it must have sufficient capital and collateral, it requested for modifications in the guarantee conditions. PNB approved the requested modifications under Resolution No. 141-C.[8]Despite the amendments made, BISUDECO still failed to submit and comply with the guarantee conditions. Nonetheless, PNB further accommodated BISUDECO and passed PNB Resolution No. 137-C[9] approving modifications in the terms and conditions and facilitating the implementation and opening of the letter of credit.

PCGG claims that despite continuously incurring losses in its milling operations resulting to capital deficiency, BISUDECO was extended by PNB undue and unwarranted accommodations from 1977 to 1985 by way of grant of the several loans.

On February 27, 1987, PNB's rights, titles and interests were transferred to the Philippine Government through a Deed of Transfer, including the account of BISUDECO. In 1994, after study and investigation, the Presidential Ad Hoc Fact Finding Committee (Committee), in reference to Memorandum No. 61,[12] found that the loan accounts of BISUDECO were behest loans due to the following characteristics: a) the accounts were under collateralized; and b) the borrower corporation was undercapitalized.[13]

Thus, on January 28, 2005, PCGG filed with the Ombudsman a complaint against private respondents (in their capacities as members of PNB's Board of Directors and Officers of BISUDECO) for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

In its Resolution[14] dated June 23, 2006, the Ombudsman dismissed the Complaint on the grounds of lack of probable cause and prescription.PCGG filed a Motion for Reconsideration but the same was denied by the Ombudsman in an Order[16] dated January 7, 2009.Hence, the instant Petition.

ISSUE:

Whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing PCGG's Complaint on the ground of lack of probable cause. (NO)

RULING:

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.In the case of *Buchanan v. Viuda De Esteban*, probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[33]

A careful perusal of the records reveals that the only basis of PCGG for imputing liability on private respondents is the fact that the latter were members of PNB's Board of Directors at the time the loan transactions were entered into. While it is true that a finding of probable cause does not require a finding of guilt nor absolute certainty, PCGG cannot merely rely on the private respondents' membership in the Board to hold the latter liable for the acts complained of.

In the case of *Kara-an v. Office of the Ombudsman*,[34] the Court ruled that approval of a loan during incumbency as director does not automatically establish probable cause absent a showing of personal participation in any irregularity as regards approval of the loan. As a general rule, a corporation has a separate and distinct personality from those who represent it. Personal liability will only attach to a director or officer if they are guilty of any of the following: (1) willfully or knowingly vote or assent to patently unlawful acts of the corporation; (2) gross negligence; or (3) bad faith.

In this case, PCGG failed to allege in the complaint and in the present petition the particular acts of private respondents which constitutes a violation of Sections 3(e) and (g) of R.A. No. 3019. It is not sufficient for PCGG to merely provide a list of names of the PNB Board members for the years covering the subject loans absent proof of the latter's individual participation in the approval thereof.

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, the Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. If it were otherwise, the Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.

4. Office of the Special Prosecutor

5. The Sandiganbayan

IX. ADMINISTRATIVE LAW

A. General principles

BASES CONVERSION AND DEVELOPMENT AUTHORITY, *Petitioner*, - *versus* - COMMISSIONER OF INTERNAL REVENUE, *Respondent*.
G.R. No. 205925, SECOND DIVISION, June 20, 2018, REYES, JR., *J.*

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a GOCC. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities. Under Section 21, Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.

FACTS:

On October 8, 2010, BCDA filed a petition for review with the CTA in order to preserve its right to pursue its claim for refund of the Creditable Withholding Tax (CWT) in the amount of Php122,079,442.53, which was paid under protest from March 19, 2008 to October 8, 2008. The CWT was in connection with its sale of the BCDA-allocated units as its share in the Serendra Project pursuant to the Joint Development Agreement with Ayala Land, Inc.

The petition for review was filed with a Request for Exemption from the Payment of Filing Fees in the amount of Php1,209,457.90. CTA First Division denied BCDA's Request for Exemption and ordered it to pay the filing fees within five days from notice. BCDA was once again ordered to pay the filing fees within five days from notice, otherwise, the petition for review will be dismissed.

BCDA filed a petition for review with the CTA En Banc, which petition was returned and not deemed filed without the payment of the correct legal fees. BCDA emphasized its position that it is exempt from the payment of such fees. The petition was dismissed. The Officer-In-Charge of the First Division refused to receive the checks for the payment of the filing fees, and the Motion for Reconsideration.

CDA moved for reconsideration of the Resolution dated April 26, 2011 and prayed that it be allowed to pay the prescribed docket fees of Php1,209,457.90 without qualification. On June 9, 2011, the CTA First Division denied both motions for reconsideration. BCDA filed a petition for review with the CTA En Banc but the same was dismissed. In its assailed Decision, it adopted and affirmed the findings of the First Division. Undeterred, BCDA filed a Motion for Reconsideration but was likewise denied by the CTA En Banc. Hence, this petition.

ISSUE:

Whether BCDA is exempt from payment of docket fees.

RULING:

BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees.

Section 21, Rule 141 of the Rules or Court

> SEC. 21. Government exempt. – The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees.

Section 2(10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government "instrumentality" and a "GOCC", to wit:

> SEC. 2. General Terms Defined. x xxx (10) Instrumentality refers to any agency of the National Government. not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x xx. x xxx (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one percent of its capital stock: x xx.

The grant of these corporate powers is likewise stated in Section 3 of Republic Act (R.A.) No. 7227; also known as The Bases Conversion and Development Act of 1992 which provides for BCDA's manner of creation, to wit:

> Sec. 3. Creation of the Bases Conversion and Development Authority. - There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation.

From the foregoing, it is clear that a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes. In the 2006 case of *Manila International Airport Authority v. CA*, the court ruled that many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a GOCC. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.

In the 2007 case of *Philippine Fisheries Development Authority v. CA,* the Court reiterated that a government instrumentality retains its classification as such albeit having been endowed with some if not all corporate powers.

BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code. A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose - to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses. From the foregoing, it is clear that BCDA is neither a stock nor a non-stock corporation. BCDA is a government instrumentality vested with corporate powers. Under Section 21, Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.

B. Powers of administrative agencies

1. Quasi-legislative (rule-making) power

a. Kinds of administrative rules and regulations

b. Requisites for validity

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner* –versus- COMMISSION ON AUDIT, *respondent*.

G.R. No. 221706, EN BANC, March 13, 2018, GESMUNDO, *J.*

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressiouniusestexclusioalterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

FACTS:

On March 29, 2006, the DBP Board passed Resolution No. 0121 approving, among others, the entitlement of the DBP Chairman and Board, except for the DBP President and Chief Executive Officer, representation benefits. The DBP alleged that then President Gloria Macapagal Arroyo attached a Note stating "No objection" on the said memorandum.

DBP paid its Board members benefits which were accounted as Representation and Entertainment-Others. It likewise paid the Board members rice subsidy and anniversary bonuses. Based on the DBP Schedule of Allowance granted to Chairman and Members of the Board, 9 as of December 31, 2006, DBP has paid the members of the Board rice subsidy, anniversary bonuses and representation and entertainment expenses in the total amount of P16,656,200.09.

Upon post-audit of the DBP accounts, the Supervising Auditor from the COA issued Audit Observation Memorandum. It stated therein that the Board's compensations, which were charged under Representation and Entertainment-Others expense, were contrary to Section 8 of Executive Order (E.O.) No. 81, as amended by Republic Act (R.A.) No. 8523*(DBP Charter)*. The AOM stated that pursuant to the law, the Board members are only entitled to per diem.

The Supervising Auditor issued a Notice of Disallowance against the DBP, which stated: that pursuant to the DBP Charter, the Board members are only entitled to per diems; that the approval of the President under Section 8 of DBP Charter only refers to the increase of the per diem for each meeting attended; and that COA Decision No. 2001-026 dated January 25, 2001, provided that granting additional compensation to the Board members other than those prescribed requires legislative action and that it cannot be substituted by administrative authorization. It declared that the total amount disallowed of P16,565,200.09 must be returned by the Board members, Certify Payroll/HRM, Accountant, Cashier, and all payees per attached payrolls and schedules. SDHTEC

The Director of COA-Corporate Government Sector and COA both affirmed the Notice of Disallowance.

ISSUES:

(1) Whether the authority if the Board under Section 8 of the DBP charter, with the approval of the Philippine president, is limited to the amount of the per diem that may be granted to the board of directors. (YES)

(2) Whether the officers are liable to refund the subject compensation and benefits they received. (NO)

RULING:

(1) Section 8 of the DBP Charter only mentions per diem as the compensation of the members of its Board. It does not declare any additional benefit, other than per diems, which the said members of the Board may receive. Conspicuously, the heading of the provision states that Section 8 only refers to the Board, their composition, tenure and **per diems**.

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressiouniusestexclusioalterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds

from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

Accordingly, the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines," at the beginning of the 8th paragraph, Section 8 of the DBP Charter refers to the authority of the Board, with the approval of the President, to increase the per diems of Board members only. The second sentence therein, which states that "[t]he total amount of per diems for every single month shall not exceed the sum of Seven thousand five hundred pesos (P7,500.00)," bolsters the interpretation that the provision only refers to the per diem and not to the payment of any additional benefit of the Board.

In *BCDA v. COA*, the Court explained the rationale why the Board cannot grant its members benefits other than those expressly mentioned by law. Applying the rationale in this case, Section 8 of the DBP Charter, which expressly states that Board members will receive per diems, would be rendered inoperative if the Board, with the approval of the President, would grant additional benefits not cited under the law. Further, limitations on the increase of the per diems would also be rendered futile because the Board could disregard the same in allowing additional and higher benefits.

(2) Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites:

(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and
(2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.

Here, the DBP believed in good faith that they could grant additional benefits to the Board members based on Section 8 of the DBP Charter. When the Board issued DBP Resolution Nos. 0121 and 0037, they honestly believed they were entitled to the said compensation. More so, the DBP claimed that the additional benefits had the *imprimatur* of President Arroyo.

Likewise, at the time of the issuance of the said DBP resolutions on March 29, 2006 and August 23, 2006, there was still no existing jurisprudence or administrative order or regulation expressly prohibiting the disbursement of benefits and compensation to the DBP Board members aside from per diems. It was only on February 26, 2009 that the Court promulgated *BCDA v. COA* prohibiting the grant of compensation other than per diems to Board members.

DEVELOPMENT BANK OF THE PHILIPPINES, ***Petitioner***, ***v.*** **COMMISSION ON AUDIT**, ***Respondent***
G.R. No. 210838, EN BANC., July 03, 2018, TIJAM, *J.*

In Dulce M. Abanilla v. Commission On Audit, reiterating Alliance of Government Workers v. Minister of Labor and Employment[25]:

Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, ***not through collective bargaining agreements****.*

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the Salary Standardization Law.

FACTS

DBP, a government financial institution created and operating under its own charter[4], was faced with labor unrest in 2003 due to its employees' insistence that they be paid their benefits. After a series of conferences referred to as a governance forum, the employees' group and DBP arrived at an agreement to put an end to the division causing disruptions in bank operations. The DBP Board of Directors (BOD) adopted Board Resolution No. 0133[6] dated May 9, 2003, approving a one-time grant called the Governance Forum Productivity Award (GFPA) to DBP's officers and employees. An audit team was subsequently constituted to look into the legality of the GFPA pursuant to Office Order No. 2003-078 of the COA Legal and Adjudication Office. As a result, Audit Observation Memorandum (AOM) No. 001[8] dated January 7, 2005 found the grant of the GFPA without legal basis and recommended its refund.

DBP received Notice of Disallowance from COA's Legal and Adjudication Team. DBP filed a motion for reconsideration. COA's Fraud Audit and Investigation Office (FAIO) treated DBP's Motion for Reconsideration (MR) as an appeal and upheld the disallowance. Upon appeal, the Commission denied the Petition for Review and held that there was no denial of due process as the COA's general audit power does not restrict itself on the grounds relied upon by the agency's auditor.

ISSUE

Whether or not the COA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, when it disallowed the GFPA on the basis that it was in the nature of a compromise agreement to settle a labor dispute, allegedly an *ultra vires* act of DBP's BOD? (NO)

RULING

Notably, while Sec. 13 of DBP's charter as amended on February 14, 1998, exempts it from existing laws on compensation and position classification, it concludes by expressly stating that DBP's system of compensation shall nonetheless conform to the principles under the Salary Standardization Law. From this, there is no basis to conclude that the DBP's BOD was conferred unbridled authority to fix the salaries and allowances of its officers and employees. The authority granted DBP to freely fix its

compensation structure under which it may grant allowances and monetary awards remains circumscribed by the SSL; it may not entirely depart from the spirit of the guidelines therein.

What made the GFPA granted by the DBP to its officers and employees in 2003 unique was that it was the product of a compromise arrived at after negotiations between DBP employees and management referred to as a governance forum. The COA considered the process undertaken as labor negotiations.

It appears that DBP misconstrued its authority to compromise. Sec. 9 (e) of its charter authorizes its BOD to compromise or release any claim or settled liability to or against the bank. To interpret the provision as including contested benefits that are demanded by employees of a chartered GFI such as the DBP is a wide stretch. To reiterate, its officers and employees' remunerations may only be granted in the manner provided under Sec. 13 of its charter and conformably with the SSL.

The COA's insistence that industrial peace is not a determining factor under the principles of the SSL in fixing the compensation of DBP's employees, is correct. The grant of a wider latitude to DBP's BOD in fixing remunerations and emoluments does not include an abrogation of the principle that employees in the civil service "cannot use the same weapons employed by the workers in the private sector to secure concessions from their employees."[24] While employees of chartered GFIs enjoy the constitutional right to bargain collectively, they may only do so for non economic benefits and those not fixed by law, and may not resort to acts amounting to work stoppages or interruptions. There is no other way to view the GFPA, other than as a monetary benefit collectively wrung by DBP's employees under threat of disruption to the bank's smooth operations. We held in *Dulce M. Abanilla v. Commission On Audit*, reiterating *Alliance of Government Workers v. Minister of Labor and Employment*[25]:

Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, **not through collective bargaining agreements**.[26] (Emphasis in the original)

All told, the grant of GFPA was indeed an *ultra vires* act or beyond the authority of DBP's BOD. There was no grave abuse of discretion on the part of COA when it disallowed the GFPA on the basis of a compromise agreement to settle a labor dispute. We thus, sustain the disallowance.

PHILIPPINE HEALTH INSURANCE CORPORATION, *Petitioner,* -versus – COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY AND SUPERVISING AUDITOR ELENA L. AGUSTIN, *Respondents.*
G.R. No. 222710, EN BANC, July 24, 2018, TIJAM, J.

Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith. On the other hand, officers who participated in the approval of the disallowed allowances or benefits were required to refund only the amounts received when they were found to be in bad faith or grossly negligent amounting to bad faith.

The Court however, finds that the ***COA failed to show bad faith on the part of the approving officers in disbursing the disallowed longevity pay****. Further, the PhilHealth officers and other employees were presumed to have acted in good faith when they allowed and/or received the longevity pay, in the honest belief that there was legal basis for such grant. The PhilHealth personnel in turn accepted the longevity pay benefits believing that they were entitled to such benefit.*

Even though We find that the PhilHealth personnel who received the longevity pay acted in good faith under the honest belief that there was legal basis for such payment, the return of the received longevity pay in the ND No. H.O. 12-005 (11) dated July 23, 2012 is in order*. We reiterate that the ND No. H.O. 12-005 (11) dated July 23, 2012* ***already attained its finality for failure of PhilHealth to file an appeal within the reglementary period****, which is six (6) months or 180 days after the Resident Auditor issued the disallowance. We can no longer reverse, much less modify the same without disregarding the doctrine of immutability of judgment.*

FACTS:

On March 26, 1992, RA No. 7305, otherwise known as The Magna Carta of Public Health Workers was signed into law. Accordingly, public health workers (PHWs) were granted allowances and benefits, among others, the longevity pay, which states:

> "Section 23. Longevity Pay. — A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to a health worker for every five (5) years of continuous, efficient and meritorious services rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act."

Former Department of Health (DOH) Secretary Alberto G. Romualdez, Jr. issued a Certification dated February 20, 2000, declaring PhilHealth officers and employees as public health workers.

The Office of the Government Corporate Counsel (OGCC) in its Opinion 064, Series of 2001, stated that the term health-related work under Section 3 of RA No. 7305, includes not only the direct delivery or provision of health services but also the aspect of financing and regulation of health services. Thus, in its opinion, the PhilHealth officers and employees were deemed engaged in health-related works for purposes of entitlement to the longevity pay.

On January 31, 2012, the PhilHealth Board passed and approved Resolution No. 1584, S. 2012, which among others, confirmed the grant of longevity pay to its officers and employees for the period of January to September 2011.

However, Supervising Auditor Agustin found unsatisfactory the justifications for the grant of longevity pay, and thus issued ND No. H.O. 12-005 (11) dated July 23, 2012.

Philhealth received the ND No. H.O. 12-005 (11) on July 30, 2012, and after 179 days from receipt thereof or on January 25, 2013, Philhealth filed its appeal memorandum before the COA Corporate Government Sector. The COA Corporate Government Sector upheld the ND No. H.O. 12-005 (11) in its Decision. The COA ruled that PhilHealth personnel were not public health workers but merely engaged in paying and utilization of health services by its covered beneficiaries. On April 1, 2015, the COA Commission Proper in a Decision No. 2015-094, dismissed the petition for being filed out of time. Aggrieved, PhilHealth filed the instant Petition for Certiorari with prayer for TRO and WPI before the Court.

ISSUES:

(I) Whether PhilHealth personnel are considered public health workers within the contemplation of Section 3 of RA No. 7305, as well as Section 1 of Rule III of its Implementing Rules and Regulations (IRR). (NO)

(II) Whether PhilHealth employees received the longevity pay in good faith (YES) and even if the disallowance is sustained, they cannot be required to refund the same. (NO)

RULING:

(I)

To be included within the coverage of Section 3 of RA No. 7305, as well as Section 1 of Rule III of its IRR, an employee must be principally tasked to render health or health-related services, such as in hospitals, sanitaria, health infirmaries, health centers, clinical laboratories and facilities and other similar activities which involved health services to the public; medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; employees of the health-related establishments, that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved in health or health-related services. Otherwise stated, **an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law.**

Here, PhilHealth's mandate is the administrator of the National Health Insurance Program through which, covered employees may ensure affordable, acceptable, accessible health care services for all citizens of the Philippines. Stated otherwise, PhilHealth is prohibited from providing health care directly, from buying and dispensing drugs and pharmaceuticals, from employing physicians and other professionals for the purpose of directly rendering care, and from owning or investing in health care facilities.

The functions of the PhilHealth personnel are not principally related to health services. Its powers and functions are elaborated under Article IV, Section 16 of RA No. 7875. PhilHealth's objective as the National Health Insurance Program provider, is to help the people pay for health care services; unlike workers or employees of the government and private hospitals, clinics, health centers and units, medical service institutions, clinical laboratories, treatment and rehabilitation centers, health-related establishments of government corporations, and the specific health service section, division, bureau or unit of a government agency, who are actually engaged in health work services.

(II)

With regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing jurisprudence provides that recipients or payees need not refund these disallowed amounts when they received these in good faith. Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith. On the other hand, officers who participated in the approval of the disallowed allowances or benefits were required to refund only the amounts received when they were found to be in bad faith or grossly negligent amounting to bad faith.

The Court however, finds that the **COA failed to show bad faith on the part of the approving officers in disbursing the disallowed longevity pay**. Further, the PhilHealth officers and other employees were presumed to have acted in good faith when they allowed and/or received the longevity pay, in the honest belief that there was legal basis for such grant. The PhilHealth personnel in turn accepted the longevity pay benefits believing that they were entitled to such benefit.

Even though We find that the PhilHealth personnel who received the longevity pay acted in good faith under the honest belief that there was legal basis for such payment, the return of the received longevity pay in the ND No. H.O. 12-005 (11) dated July 23, 2012 is in order. We reiterate that the ND No. H.O. 12-005 (11) dated July 23, 2012 **already attained its finality for failure of PhilHealth to file an appeal within the reglementary period**, which is six (6) months or 180 days after the Resident Auditor issued the disallowance. We can no longer reverse, much less modify the same without disregarding the doctrine of immutability of judgment.

SECRETARY MARIO G. MONTEJO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF SCIENCE AND TECHNOLOGY (DOST), *Petitioner,* -versus – COMMISSION ON AUDIT (COA), AND THE DIRECTOR, NATIONAL GOVERNMENT SECTOR, CLUSTER B-GENERAL PUBLIC SERVICES II AND DEFENSE, COMMISSION ON AUDIT, *Respondents.*
G.R. No. 232272, EN BANC, July 24, 2018, PERALTA, J.

Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that ***recipients or payees in good faith need not refund these disallowed amounts****. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.*

Petitioner's erroneous interpretation of the DBM circular aside, ***the action of petitioner was indicative of good faith because he acted in an honest belief that the grant of the CNA Incentives had legal bases****. It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. Thus, although this Court considers the questioned Notices of Disallowance valid, this Court also considers it to be in the better interest of justice and prudence that petitioner, other officials concerned and the employees who benefited from the CNA Incentives be relieved of any personal liability to refund the disallowed amount.*

FACTS:

During the Calendar Year 2010, petitioner released CNA Incentives in the total amount of P5,870,883.79 to the DOST employees. Thereafter, on July 5, 2011, petitioner received an Audit Observation Memorandum (AOM) dated June 27, 2011 from the Audit Team Leader of the Office of Auditor, COA, noting various alleged deficiencies in the grant of CNA Incentives by petitioner to its employees. On July 14, 2011, petitioner filed his Letter-Reply 5 dated July 11, 2011 and submitted the required documents, certifications, detailed computations and justifications as required by the Office of the Auditor.

State Auditor IV Flordeliza A. Ares and State Auditor V Myrna K. Sebial issued Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 disallowing petitioner's grant of CNA Incentives to DOST employees in the total amount of P5,870,883.79 on the alleged ground that it is violative of the provisions of Public Sector Labor Management Council (PSLMC) Resolution No. 4 dated November 14, 2002, Budget Circular No. 2006-1 dated February 1, 2006 and Administrative Order No. 135 dated December 27, 2005.

In Calendar Year 2011, petitioner also released to DOST employees CNA Incentives in the total amount of P4,774,821.49.

Thereafter, State Auditor IV Ares and State Auditor V Sebial issued Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011 disallowing petitioner's grant of CNA Incentives to its employees.

Petitioner appealed to the National Government Sector (NGS), Cluster B-General Services II and Defense, COA, the two Notices of Disallowance issued by the Office of Auditor.

The NGS rendered its Decision dated October 4, 2012, affirming the two Notices of Disallowance.On October 18, 2016, the COA En Banc rendered its Decision, denying the petition for review. According to the COA En Banc, the grant of CNA Incentives by petitioner violated Sections 5.7, 7.1 and 7.1.1 of DBM Budget Circular No. 2006-1, since petitioner paid the CNA Incentives during the middle of CY 2010 and 2011 and at the end of CY 2010. The COA En Banc also found that petitioner failed to submit proof that the grant of CNA Incentives was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Furthermore, the COA En Banc held that the officers who approved the grant of CNA Incentives should be solidarily liable for the total disbursement and that the payees should be held liable for the amount they received pursuant to the principle of solutioindebiti.

ISSUE:

(I) Whether or not the COA erred in disallowing petitioner's grant of CNA Incentives to DOST officials and employees. (NO)

RULING:

(I)

As aptly found by the COA, several provisions of DBM BC No. 2006-1, particularly Items 5.7 and 7.1, have been violated in the release of the CNA Incentives. The said provisions read as follows:

> "5.7 The CNA Incentive for the year shall be paid as a **one-time benefit after the end of the year**, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year. xxx xxxxxx
>
> 7.1 The CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:
>
> 7.1.1 Such savings were **generated out of the cost-cutting measures** identified in the CNA and supplements thereto; x xx"

In this case, the DOST paid or granted the CNA Incentive during the middle of CY 2010 and CY 2011, and again at the end of the same year in 2010. The above-provisions of DBM BC No. 2006-1 is clear and self-explanatory. As correctly ruled by the COA En Banc, petitioner did not comply with the directive of the DBM Circular, thus:

> "x xx It is clear from the aforecited provisions that the payment of CNA incentive should be a one-time benefit after the end of the year, when the planned programs/activities/projects have already been implemented and completed in accordance with the performance targets for the year. DOST did not comply with this directive as it made a mid-year payment of CNA incentive."
>
> "Likewise, DOST could have easily proven that the payment of CNA incentive was solely sourced from the savings generated from the cost-cutting measures conducted by showing a comparative statement of DBM approved level of operating expenses. But DOST failed to submit proof to that effect, thus, payment of CNA incentive should be disallowed."

COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect.

Nevertheless, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.

Petitioner's erroneous interpretation of the DBM circular aside, the action of petitioner was indicative of good faith because **he acted in an honest belief that the grant of the CNA Incentives had legal bases**. It is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. Thus, although this Court considers the questioned Notices of Disallowance valid, this Court also considers it to be in the better interest of justice and prudence that petitioner, other officials concerned and the employees who benefited from the CNA Incentives be relieved of any personal liability to refund the disallowed amount.

2. Quasi-judicial (adjudicatory) power

a. Administrative due process

MARIA THERESA B. BONOT, *petitioner* –versus- EUNICE G. PRILA, *respondent*.
G.R. No. 219525, FIRST DIVISION, August 6, 2018, TIJAM, *J*.

*In administrative cases, "[a] formal or trial-type hearing is **not** always necessary." It has long been settled that administrative due process only requires that "[t]he decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected." Otherwise stated, objections on the ground of due process violations do not lie against an administrative agency resolving a case solely on the basis of position papers, affidavits or documentary*

evidence submitted by the parties because affidavits of witnesses may take the place of their direct testimony.

FACTS:

Sometime in March 2012, Prila, who then worked as Administrative Aide III at the Central Bicol State University of Agriculture (CBSUA), was informed by her colleagues that Dra. Bonot, the Dean of the College of Arts and Sciences at CBSUA, uttered defamatory statements against her. This prompted Prila to file an administrative complaint against Dra. Bonot for Grave Misconduct before the Civil Service Commission Regional Office No. V (CSCRO5) on August 9, 2012.

To support her charge against Dra. Bonot, Prila submitted a sworn Preliminary Inquiry stating that she was sexually harassed by Dr. Alden Bonot (Dr. Bonot), the husband of herein respondent and the Campus Administrator of CBSUA, sometime in February 2012. On the said date, Prila claimed that Dr. Bonot instructed her to open his laptop, showed her a picture of a woman wearing a bikini, and asked inappropriate questions about her body. Shortly thereafter, Prila was transferred to another office upon her request. Prila alleged that Dra. Bonot made defamatory utterances against her because of the said incident.

The CSCRO5, acting on Prila's complaint, ordered Dra. Bonot to submit her counter-affidavit together with affidavits of her witnesses and other documentary evidence, if any. In compliance thereto, Dra. Bonot filed her Counter-Affidavit on September 20, 2012 together with affidavits of her witnesses. Dra. Bonot raised the defense that the accusatory statements of Prila against her were not based on the personal knowledge of Prila and were mere hearsay.

The CSCRO5 rendered a Decision dismissing the complaint of Prila, stating that her allegations against Dra. Bonot were baseless and completely hearsay.

The CA promulgated its Decision reversing the rulings of the CSC and the CSCRO5 and remanding the case to the latter to allow Prila the opportunity to substantiate her allegations in the complaint. The CA found that the CSC acted arbitrarily when it held that Prila did not substantiate her accusations against Dra. Bonot without giving the former the opportunity to do so. Moreover, the CA held that the CSC deprived Prila her constitutional right to due process while affording the same to Dra. Bonot by allowing her to answer and to be heard on the charges against her. The dispositive portion of the CA Decision reads:

ISSUE

Whether the CA erred in finding that Prila was deprived her right to due process by the CSC. (YES)

RULING:

In *Vivo v. Phil. Amusement and Gaming Corporation*, We had ruled that "[t]he essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of." In administrative cases, "[a] formal or trial-type hearing is **not** always necessary." It has long been settled that administrative due process only requires

that "[t]he decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected." Otherwise stated, objections on the ground of due process violations do not lie against an administrative agency resolving a case solely on the basis of position papers, affidavits or documentary evidence submitted by the parties because affidavits of witnesses may take the place of their direct testimony.

With the foregoing, We find that the CSC did not deprive nor violate the right of Prila to due process as she was given the opportunity to submit the affidavits of Alanis and Rivero to corroborate her accusations against Dra. Bonot, and that these pieces of evidence were already considered and weighed by the CSC in rendering its April 8, 2013 Decision.

BOARD OF INVESTMENTS, *Petitioner*, *v.* **SR METALS, INC.**, *Respondent*.
G.R. No. 219927, FIRST DIVISION, October 03, 2018, DEL CASTILLO, *J.*

Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of." Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure.

FACTS:
Petitioner Board of Investments (BOI) is a government agency created under Republic Act (RA) No. 5186. It is an attached agency of the Department of Trade and Industry (DTI) and is the lead government agency responsible for the promotion of investments in the Philippines. Respondent SR Metals, Inc., on the other hand, is a corporation engaged in the business of mining in Tubay, Agusan Del Norte.

On April 3, 2008, respondent filed with petitioner an Application for Registration as a new producer of beneficiated nickel ore on a non-pioneer status in relation to its proposed Nickel Project.

On June 4, 2008, petitioner approved the application and issued Certificate of Registration No. 2008-113 in favor of respondent as a new producer of beneficiated nickel silicate ore/lateritic nickel ore on a non-pioneer status. Accordingly, respondent was granted an Income Tax Holiday (ITH) incentive under the Omnibus Investment Code for the period 2008 to 2012.

On August 31,2010, the *Sangguniang Bayan* of the Municipality of Tubay issued Resolution No. 2010-090, requesting the cancellation of respondent's BOI registration on the following grounds:
(1) [that respondent was] not a manufacturer or product processor or a beneficiation plant;

(2) [that respondent] was engaged in the direct shipping of unprocessed ore which employed the method of open-cut mining contrary to what [was] stated in its [Certificate of] Registration as a new producer of beneficiated nickel silicate ore/lateritic nickel ore; and

(3) [that respondent] applied for tax exemption x x x without informing or consulting the [M]unicipality of Tubay and the immediate stakeholders.

To prove its claims, the *Sangguniang Bayan* submitted to petitioner Certifications from the Municipal Engineer's Office, the Municipal Assessor's Office, and the Municipal Planning and Development Office attesting that respondent had no industrial building or processing plant declared under its name.

On April 11, 2011, petitioner issued a letter to respondent informing it of the *Sangguniang Bayan's* Resolution requesting for the cancellation of respondent's BOI registration. In the same letter, petitioner directed respondent to submit a reply within 15 days from receipt of the said letter.

In its Reply, respondent explained that it was a producer of beneficiated nickel/lateritic nickel ore; that it was registered as a new producer of beneficiated nickel silicate ore/lateritic nickel ore, and not as a beneficiation plant; and that consultation with the concerned local government was not required under the 2007 Investment Properties Plan (IPP).

On May 24, 2012, petitioner issued a letter informing respondent that, during the February 12, 2012 Board Meeting, the Board resolved to withdraw respondent's ITH incentive for failure to comply with:

(1) the requirements on new projects under the 2007 IPP, specifically the establishment of another line (beneficiation plant) and the infusion of new investment in fixed assets; and

(2) the Specific Terms and Conditions attached to respondent's Project Approval Sheet and Certificate of Registration, requiring respondent to submit a progress report on the implementation of the registered project and to adhere to a project timetable on the acquisition of machinery/equipment.

Respondent sought reconsideration, submitting a summary of the major equipment composing the beneficiation plant as well as a summary of machineries and equipment and the individual proofs of ownership of the machineries and equipment it had acquired. Respondent elevated the matter before the CA *via* a Petition under Rule 43 of the Rules of Court. The CA rendered the assailed Decision finding respondent entitled to the ITH incentive under the Omnibus Investment Code. The CA further said that respondent was denied due process when petitioner failed to inform respondent that a formal administrative investigation had already been initiated against it.

ISSUE:

Whether petitioner observed due process in withdrawing respondent's ITH incentive. (YES)

RULING:

Petitioner imputes error on the CA in finding that respondent was not afforded due process. Petitioner insists that respondent was informed in the letter dated April 11, 2011 of its violation and was given several opportunities to refute the same.

Respondent, however, highlights the failure of petitioner to follow the procedure for the Cancellation of Registration provided in Sections 1 to 4, Rule II of the 2004 BOI Revised Rules.

Respondent claims that the Resolution of the *Sangguniang Bayan* of the Municipality of Tubay cannot be considered as a verified complaint nor can the letter dated April 11, 2011 be deemed as a show-cause letter. Petitioner likewise cannot claim that it initiated *motu proprio* proceedings against respondent considering that it failed to prepare a memorandum as required under Section 1 of the BOI Revised Rules.

Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of."Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure.

In this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court, nonetheless, finds that essentially respondent was afforded due process since it was informed of the allegations against it and was given ample opportunity to refute the same. Records show that respondent received the letter dated April 11, 2011 informing it of the allegations made by the *Sangguniang Bayan* and of the *Sangguniang Bayan's* request for the cancellation of respondent's BOI registration; that the said letter required respondent to file a reply within 15 days from receipt of the same; that respondent was allowed to submit evidence to refute the allegations against it; and that respondent sought reconsideration of the withdrawal of its ITH incentive. These clearly show that the essence of due process was complied with.

b. Administrative appeal and review

SHERWIN T. GATCHALIAN, *petitioner* –versus- OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE OF THE OFFICE OF THE OMBUDSMAN, *respondents*.
G.R. No. 229288, SECOND DIVISION, August 1, 2018, CAGUIOA, *J.*

In Kuizon v. Desierto and Mendoza-Arce v. Office of the Ombudsman, we held that this Court has jurisdiction over petitions for certiorari questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of Dagan v. Office of the Ombudsman (Visayas) that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The Dagan ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman — first enunciated in Fabian v. Desierto — that is, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for certiorari under Rule 65, must be filed with the Court of Appeals.|||

FACTS:

Six different criminal complaints were filed by the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman), against several individuals, including petitioner Sherwin T. Gatchalian (Gatchalian). The said complaint arose from the sale of shares in Express Savings Bank, Inc. (ESBI), in which Gatchalian was a stockholder, in 2009, to Local Water Utilities Administration (LWUA), a government-owned and controlled corporation (GOCC).

In a Joint Resolution, the Ombudsman found probable cause to indict Gatchalian of the following: (a) one count of violation of Section 3 (e) of R.A. 3019, (b) one count of malversation of public funds, and (c) one count of violation of Section X126.2 (C) (1) and (2) of MORB in relation to Sections 36 and 37 of R.A. 7653.

The respondents in the Ombudsman cases, including Gatchalian, filed separate motions for reconsideration of the Joint Resolution. However the Ombudsman issued a Joint Order denying the motions for reconsideration.

Aggrieved, Gatchalian filed with the CA a Petition for *Certiorari* under Rule 65 of the Rules of Court, and sought to annul the Joint Resolution and the Joint Order of the Ombudsman for having been issued with grave abuse of discretion. Ultimately, Gatchalian claimed that there was no probable cause to indict him of the crimes charged. Procedurally, he explained that he filed the Petition for *Certiorari* with the CA, and not with this Court, because of the ruling in *Morales v. Court of Appeals*.

On September 19, 2016, the Ombudsman, through the Office of the Solicitor General (OSG), filed a Comment on the Petition for *Certiorari*. The OSG argued that the CA had no jurisdiction to take cognizance of the case, as the decisions of the Ombudsman in criminal cases were unappealable and may thus be assailed only through a petition for *certiorari* under Rule 65 filed with the Supreme Court. On the merits, it maintained that the Joint Resolution and the Joint Order were based on evidence, and were thus issued without grave abuse of discretion.

Before the filing of the OSG's Comment, however, the CA had already issued a Resolution dated September 13, 2016 wherein it held that it had no jurisdiction over the case. The CA opined that the *Morales* ruling should be understood in its proper context, *i.e.*, that what was assailed therein was the preventive suspension order arising from an **administrative case** filed against a public official.

Gatchalian thus appealed to this Court. He maintains that the import of the decision in *Morales* is that the remedy for parties aggrieved by decisions of the Ombudsman is to file with the CA a petition for review under Rule 43 for administrative cases, and a petition for *certiorari* under Rule 65 for criminal cases.

ISSUE:

Whether the CA erred in dismissing Gatchalian's Petition for *Certiorari* under Rule 65 for its alleged lack of jurisdiction over the said case. (NO)

RULING:

The first case on the matter was the 1998 case of *Fabian vs. Desierto,* where the Court held that Section 27 of Republic Act No. 6770, which provides that all "orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule

45 of the Rules of Court," was **unconstitutional** for it increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. The Court thus held that "appeals from decisions of the Office of the Ombudsman in **administrative disciplinary cases** should be taken to the Court of Appeals under the provisions of Rule 43."

Subsequently, in *Kuizon v. Desierto,* the Court stressed that the ruling in *Fabian* was limited only to administrative cases, and added that it is the Supreme Court which has jurisdiction when the assailed decision, resolution, or order was an incident of a criminal action.

With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court, in *Tirol, Jr. v. Del Rosario,* held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court.

The Court in *Tirol, Jr.,* however, was unable to specify the court — whether it be the RTC, the CA, or the Supreme Court — to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.Five years after, the Court clarified in *Estrada v. Desierto* that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause — or the lack thereof — by the Ombudsman should be filed with the Supreme Court.

In this petition, Gatchalian argues that the decision of the Court *En Banc* in *Morales v. Court of Appeals* abandoned the principles enunciated in the aforementioned line of cases.

The Court disagrees.

In the *Morales* case, what was involved was the preventive suspension order issued by the Ombudsman against Jejomar Binay, Jr. (Binay) in an **administrative case** filed against the latter. The preventive suspension order was questioned by Binay in the CA via a petition for *certiorari* under Rule 65 with a prayer for the issuance of a temporary restraining order (TRO). The CA then granted Binay's prayer for a TRO, which the Ombudsman thereafter questioned in this Court for being in violation of Section 14 of R.A. 6770, which provides:

> SECTION 14. *Restrictions*. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.
>
> No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Relying on the second paragraph of the abovequoted provision, the Ombudsman also questioned the CA's subject matter jurisdiction over the petition for *certiorari* filed by Binay.

The Court in *Morales* applied the same rationale used in *Fabian*, and held that the second paragraph of Section 14 is unconstitutional.

Gatchalian argues that the consequence of the foregoing is that *all* orders, directives, and decisions of the Ombudsman — whether it be an incident of an administrative or criminal case — are now reviewable by the CA.

The contention is untenable.

A thorough reading of the *Morales* decision, would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases. The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that *Morales* dealt with an interlocutory order in an administrative case, it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.

It is thus clear that the *Morales* decision never intended to disturb the well-established distinction between the appellate remedies for orders, directives, and decisions arising from administrative cases and those arising from non-administrative or criminal cases.

The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for *certiorari* under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of Kuizon, Tirol Jr., Mendoza-Arce v. Ombudsman, *Estrada*, and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers. The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate procedure for orders and decisions by the Ombudsman in criminal cases is concerned.

c. Administrative res judicata

3. Fact-finding, investigative, licensing, and rate-fixing powers

ELMER P. LEE, Petitioner vs.**ESTELA V. SALES, DEPUTY COMMISSIONER LEGAL AND INSPECTION GROUP; EFREN P. MARTINEZ, CHIEF PERSONNEL INQUIRY DIVISION; NESTOR S. VALEROSO, REGIONAL DIRECTOR, REVENUE REGION NO. 8; and ALL OF THE BIR AND ALL PERSONS ACTING ON THEIR ORDERS OR BEHALF**, Respondents

G.R. No. 205294, THIRD DIVISION, JULY 4, 2018, LEONEN, *J.*

After a ruling supported by evidence has been rendered and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.

Notably, at the time the Office of the Ombudsman's July 16, 2012 Decision was issued in this case, the amendatory Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006, had already been issued. Thus, respondents did not err in implementing petitioner's dismissal from office.

FACTS

The Field Investigation Office, Office of the Ombudsman, through Associate Graft Investigation Officer I Dennis G. Buenaventura, charged the spouses Elmer and Mary Ramirez Lee (collectively, the Spouses Lee) with dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.[6] The Spouses Lee were both employed at the Bureau of Internal Revenue as Revenue Officer I. The Ombudsman found the Spouses Lee guilty of dishonesty and grave misconduct. The Ombudsman held that they had the willful intent to violate Section 7 of Republic Act No. 3019, in relation to Section 8 of Republic Act No. 1379, when they failed to declare their true, detailed, and sworn statements of their business and financial interests. The Ombudsman found that these acts amounted to gross misconduct, and ordered them to be "dismissed from service effective immediately with forfeiture of all of their benefits, except accrued leave credits, if any, with prejudice to their reemployment in the government." Elmer filed a Motion for Reconsideration

In an October 1, 2012 letter, Elmer informed Martinez and Valeroso of his pending motion for reconsideration, and that the Office of the Ombudsman's July 16, 2012 Decision was not yet final and executory. [17] However, Sales, the Deputy Commissioner of the Legal Inspection Group, as well as Martinez, insisted on Elmer's dismissal. Elmer filed a Petition for Injunction and/or Prohibition and Damages with Prayer for Writ of Preliminary Mandatory Injunction and/or Writ of Preliminary Injunction. He claimed that his dismissal pre-empted and rendered moot his motion for reconsideration. [21] The Regional Trial Court denied Elmer's prayer.

ISSUE

Whether or not a pending motion for reconsideration stays the execution of a decision of the Ombudsman dismissing a public officer from service (NO)

RULING

A pending motion for reconsideration of a decision issued by the Office of the Ombudsman does not stay its immediate execution. This is clear under the rules of the Office of the Ombudsman and our jurisprudence. The Office of the Ombudsman issued Administrative Order No. 7, as amended by Administrative Order No. 17, Rule III, Section 7, which states:

Section 7. *Finality and execution of decision.* - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Moreover, Ombudsman Memorandum Circular No. 01, Series of 2006, provides:

Section 7 Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Both Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006 were issued by the Ombudsman, an independent Constitutional office, pursuant to its rule-making power under the 1987 Constitution[51]and Republic Act No. 6770[52] to effectively exercise its mandate to investigate any act or omission of any public official, employee, office, or agency, when this act or omission appears to be illegal, unjust, improper, or inefficient. [53]For this Court to not give deference to the Ombudsman's discretion would be to interfere with its Constitutional power to promulgate its own rules for the execution of its decisions.

The Ombudsman is the Constitutional body tasked to preserve the integrity of public service, and must be beholden to no one. [55] To uphold its independence,[56] this Court has adopted a general policy of non-interference with the exercise of the Ombudsman of its prosecutorial and investigatory powers. [57] The execution of its decisions is part of the exercise of these powers to which this Court gives deference.

Further, after a ruling supported by evidence has been rendered and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.

Notably, at the time the Office of the Ombudsman's July 16, 2012 Decision was issued in this case, the amendatory Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006, had already been issued. Thus, respondents did not err in implementing petitioner's dismissal from office.

C. Doctrines of primary jurisdiction and exhaustion of administrative remedies

THE PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES (PBOAP), THE SOUTHERN LUZON BUS OPERATORS ASSOCIATION, INC. (SO-LUBOA), THE INTER CITY BUS OPERATORS ASSOCIATION (INTERBOA), and THE CITY OF SAN JOSE DEL MONTE BUS OPERATORS ASSOCIATION (CSJDMBOA), *Petitioners,* -versus- DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB), *Respondents*.

G.R. No. 202275, EN BANC, July 17, 2018, LEONEN, *J.*

In Pambujan Sur United Mine Workers v. Samar Mining Company, Inc., it explained the doctrine of primary administrative jurisdiction, thus:

> *That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.*

In contrast, exhaustion of administrative remedies requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter.

Discussion of the doctrines of primary jurisdiction and exhaustion of administrative remedies aside, the present case does not require the application of either doctrine. Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued in the exercise of the DOLE's and the LTFRB's quasi-legislative powers and, as discussed, the doctrines of primary jurisdiction and exhaustion of administrative remedies may only be invoked in matters involving the exercise of quasi-judicial power.

FACTS:

To ensure road safety and address the risk-taking behavior of bus drivers as its declared objective, the LTFRB issued Memorandum Circular No. 2012-001[1] on January 4, 2012, requiring "all Public Utility Bus (PUB) operators to secure Labor Standards Compliance Certificates" under pain of revocation of their existing certificates of public convenience or denial of an application for a new certificate.

Five (5) days later or on January 9, 2012, the DOLE issued Department Order No. 118-12, elaborating on the part-fixed-part--performance-based compensation system referred to in the LTFRB Memorandum Circular No. 2012-001. Department Order No. 118-12, among others, provides for the rule for computing the fixed and the performance-based component of a public utility bus driver's or conductor's wage.

On January 28, 2012, Atty. Emmanuel A. Mahipus, on behalf of the Provincial Bus Operators Association of the Philippines, Integrated Metro Manila Bus Operators Association, Inter City Bus Operators Association, the City of San Jose Del Monte Bus Operators Association, and Pro-Bus, wrote to then Secretary of Labor and Employment Rosalinda Dimapilis-Baldoz, requesting to defer the implementation of Department Order No. 118-12. The request, however, was not acted upon.

Meanwhile, on February 27, 2012 and in compliance with Rule III, Section 3 of Department Order No. 118-12, the National Wages and Productivity Commission issued NWPC Guidelines No. 1 to serve as Operational Guidelines on Department Order No. 118-12. NWPC Guidelines No. 1 suggested formulae for computing the fixed-based and the performance-based components of a bus driver's or conductor's wage.

On July 4, 2012, petitioners filed before this Court a Petition with Urgent Request for Immediate Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction, impleading the DOLE and the LTFRB as respondents. They pray that this Court enjoin the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001 for being violative of their right to due process, equal protection, and non- impairment of obligation of contracts.

On July 13, 2012, petitioners filed the Urgent Manifestation with Motion for Clarification, alleging that Atty. Ma. Victoria Gleoresty Guerra announced in a press conference that this Court agreed to issue a status quo ante order in the case. They prayed that this Court clarify whether a status quo ante order was indeed issued.

In its July 13, 2012 Resolution, this Court noted without action the Urgent Manifestation with Motion for Clarification. A Very Urgent Motion for Reconsideration... of the July 13, 2012 Resolution was filed by petitioners on which respondents filed a Comment.

On July 27, 2012, the Metropolitan Manila Development Authority (MMDA) filed a Motion for Leave to Intervene, alleging "direct and material interest in upholding the constitutionality of [Department Order No. 118-12 and Memorandum Circular No. 2012-001]." This Court granted the MMDA's Motion in its August 10, 2012 Resolution.

In its September 3, 2013 Resolution, this Court directed the parties to file their respective memoranda. As earlier stated, petitioners assail the constitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001, arguing that these issuances violate petitioners' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws.

Respondents counter that petitioners have no legal standing to file the present Petition considering that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are directed against bus operators, not against associations of bus operators such as petitioners. They add that petitioners violated the doctrine of hierarchy courts in directly filing their Petition before this Court. For these reasons, respondents pray for the dismissal of the Petition.

ISSUE:

Whether or not this case falls under the Court's power of judicial review?

RULING:

This **Court's power of judicial review** is anchored on **Article VIII, Section 1 of the Constitution**:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Our governmental structure rests on the principle of separation of powers. Under our constitutional order, the legislative branch enacts law, the executive branch implements the law, and the judiciary construes the law.

Administrative actions reviewable by this Court, therefore, may either be quasi-legislative or quasi-judicial. As the name implies, **quasi-legislative or rule-making power** is the power of an administrative agency to make rules and regulations that have the force and effect of law so long as they are issued "within the confines of the granting statute." The enabling law must be complete, with sufficient standards to guide the administrative agency in exercising its rule-making power. As an exception to the rule on non- delegation of legislative power, administrative rules and regulations must be "germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law."

On the other hand, **quasi-judicial or administrative adjudicatory power** is "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."

Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining when judicial remedies may properly be availed of Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts on the first instance as part of their judicial power.

However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies.

In Pambujan Sur United Mine Workers v. Samar Mining Company, Inc., it explained the **doctrine of primary administrative jurisdiction**, thus:

> That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.

Usually contrasted with the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies. Though both concepts aim to maximize the special technical knowledge of administrative agencies, the **doctrine of primary administrative jurisdiction requires courts to not resolve or "determine a controversy involving a question which is within the jurisdiction of an administrative tribunal."**

The issue is jurisdictional and the court, when confronted with a case under the jurisdiction of an administrative agency, has no option but to dismiss it. In contrast, **exhaustion of administrative remedies** requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter. However, in deference to the special and technical expertise of the administrative agency, courts must yield to the administrative agency by suspending the proceedings. As such, parties must exhaust all the remedies within the administrative machinery before resort to courts is allowed.

Discussion of the doctrines of primary jurisdiction and exhaustion of administrative remedies aside, the present case does not require the application of either doctrine. Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued in the exercise of the DOLE's and the LTFRB's quasi-legislative powers and, as discussed, the doctrines of primary jurisdiction and exhaustion of administrative remedies may only be invoked in matters involving the exercise of quasi-judicial power. Specifically, Department Order No. 118-12 enforces the application of labor standards provisions, i.e., payment of minimum wage and grant of social welfare benefits in the public bus transportation industry. For its part, Memorandum Circular No. 2012-001 was issued by the LTFRB in the exercise of its power to prescribe the terms and conditions for the issuance of a certificate of public convenience and its power to promulgate and enforce rules and regulations on land transportation public utilities.

X. ELECTION LAW

A. Suffrage

1. Qualification and disqualification of voters

2. Registration and deactivation

3. Inclusion and exclusion proceedings

4. Local and overseas absentee voting

5. Detainee voting

B. Candidacy

1. Qualifications and disqualifications of candidates

2. Filing of certificates of candidacy

a. Effect of filing

b. Substitution and withdrawal of candidates

c. Nuisance candidates

CONSERTINO C. SANTOS, *Petitioner*, *v.* **COMMISSION ON ELECTIONS (COMELEC) EN BANC AND JENNIFER ANTIQUERA ROXAS,** *Respondents*

RICARDO ESCOBAR SANTOS AND MA. ANTONIA CARBALLO CUNETA, *Petitioners*, *v.***COMMISSION ON ELECTIONS AND JENNIFER ANTIQUERA ROXAS**, *Respondents*.
G.R. No. 235058 and G.R. NO. 235064, EN BANC, September 04, 2018, GESMUNDO, *J.*

The better approach would be to allow the crediting of the votes of the nuisance candidate to the legitimate candidate, who have similar names, ***regardless whether the decision or resolution of the COMELEC became final and executory before or after the elections****. In that way, the will of the electorate shall be respected as observed in Bautista and Martinez III.Correspondingly, the votes for Rosalie, a nuisance candidate, should be credited in favor of respondent, the legitimate candidate, under the second writ of execution.*

In this case, the certificate of canvass stated that Rosalie received 13,328 votes; while respondent received 33,738 votes. In the first writ of execution, the COMELEC applied the simple arithmetic formula of counting the 13,328 votes cast for Rosalie in favor of respondent, thus, the total number of votes garnered by respondent was 47,066. Similarly, in the second writ of execution, the COMELEC applied the same simple arithmetic formula and stated that respondent had 47,066 votes.

As discussed, the simple arithmetic formula of the COMELEC in a multi-slot office, where there is a nuisance candidate, is inaccurate. Thus, the ballots containing the votes for nuisance candidate Rosalie must be credited in favor of respondent. However, if there are ballots which contain both votes in favor of Rosalie and respondent, only one vote shall be credited in favor of respondent.

FACTS:
Jennifer AntiqueraRoxas filed a **certificate of candidacy** for the position of member of the *Sangguniang Panlungsod* for the First District of Pasay City for the May 9, 2016 National and Local Elections. Subsequently, she filed a **petition for disqualification** against Rosalie Isles Roxas before the COMELEC praying that the latter be declared a nuisance candidate because her certificate of candidacy *(COC)* was only filed for the sole purpose of causing confusion among the voters by the similarity of their names. She pointed out that Rosalie stated that her nickname was "Jenn-Rose," to

impersonate the former, when Rosalie's real nickname was actually "Saleng." Respondent also argued that Rosalie's intent to confuse the voters was apparent because she chose the name "Roxas Jenn-Rose" to appear in the official ballot even though respondent, a re-electionist candidate, was already using the name "Roxas Jenny" for election purposes.

COMELEC Second Division granted the petition and declared Rosalie a nuisance candidate. Rosalie filed a motion for reconsideration before the COMELEC. While such was pending with the COMELEC, the National and Local Elections proceeded on May 9, 2016. The top six (6) candidates were proclaimed as duly elected members of the First District of the*Sangguniang Panlungsod* of Pasay City. Respondent was not included because she ranked in 7th place; while Rosalie ranked in 14th place.

Respondent filed an Election Protest *Ad Cautelam* against Consertino C. Santos *(Santos),* the candidate who ranked in 6th place, before the COMELEC praying that the votes cast for Rosalie, who was declared a nuisance candidate, be credited to her; that the proclamation of Santos as a member of the *Sangguniang Panlungsod* for the First District of Pasay be annulled; that she be proclaimed as the winning candidate for the *Sangguniang Panlungsod* of First District of Pasay City. More than two (2) months after the elections, the COMELEC-En *Banc* issued a Resolution denying Rosalie's motion for reconsideration. COMELEC-*En Banc* declared its resolution final and executory.

COMELEC-*En Banc* issued a Writ of Execution *(first writ of execution)* to implement the resolutions. Pursuant to such, the Special City Board of Canvassers of Pasay City *(SCBOC)* convened and counted 13,328 votes for respondent and consequently amended the statement of votes.

Thereafter, the *COMELEC-En Banc* issued another **writ of execution *(second writ of execution)*** directing the Special City Board of Canvassers for the First District of Pasay City, among others, to (1) annul the proclamation of Jerome Ruiz, Ma. Antonia, Alberto, Ricardo, and Consertino as the 2nd, 3rd, 4th, 5th and 6th Members of the Sangguniang Panlungsod for the First District of Pasay City; (2) proclaim the following as the duly elected Members of the Sangguniang Panlungsod Members for the First District of Pasay City:

Names of Candidates	**Number of Votes**	**Ranking**
Calixto, Mark Anthony Aguas	51,369	1
Roxas, Jennifer Antiquera	**47,066**	**2**
Advincula, Jerome Ruiz	45,986	3
Cuneta, Ma. Antonia Carballo	41,835	4
Alvina, Alberto Cerdeña	36,994	5
Santos, Ricardo Escobar	35,756	6

Santos, Ricardo and Antonia, collectively referred to as petitioners, were served with a copy of the second writ of execution. Hence, these consolidated petitions.

ISSUES:

(1) Whether or not votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name, even if the declaration of the nuisance candidate became final only after the elections? (YES)

(2) Whether or not there must be a specific proceeding, particularly an election protest or a petition to declare the proceedings before the board of canvassers illegal, before the said votes could be credited? (NO)

(3) Whether or not there was a violation of the right to due process? (NO)
(4) Whether or not the votes of the nuisance candidate are automatically added to the legitimate candidate in a multi-slot office? (NO)

RULING:
The Court affirms with modification the November 8, 2017 writ of execution of the COMELEC-*En Banc.*The COMELEC's declaration of Rosalie as a nuisance candidate, which was sought to be implemented by the assailed writ of execution resulted into: (1) Antonia and Ricardo's ranking were changed from 3rd and 5th place to 4th and 6th place, respectively; and (2) Constantino was dislodged as a winning candidate as member of the *Sangguniang Panlungsod* of the First District of Pasay City.

(1) ***The votes shall be credited to the legitimate candidate regardless whether the decision in the nuisance case becomes final and executory before or after the elections***
Petitioners argue that the votes of the nuisance candidate shall only be credited in favor of the legitimate candidate if the decision in the nuisance case becomes final and executory before the elections.

The Court is not convinced. **Section 11 (K) (a) of COMELEC Resolution No. 10083** requires that the decision of the COMELEC in the said case must become final and executory **before** the elections. At that moment, the votes for the candidate with the cancelled COC shall be considered stray and the candidate who obtains the second highest number of votes shall be proclaimed. Under **Section 11 (K) (c) of COMELEC Resolution No. 10083**, which refers to petitions for disqualifications under Section 72 of the Omnibus Election Code, if the case becomes final and executory **after** the elections, then the rule on succession, if allowed, shall apply. Consequently, the specific period when the case becomes final and executory before or after the elections, is material and relevant.

On the contrary, **Section 11 (K) (b) of COMELEC Resolution No. 10083**, which specifically refers to nuisance petitions under Section 69 of the Omnibus Election Code, states that the votes cast for the nuisance candidate shall be added to the candidate that shares the same surname with the former. **It does not distinguish whether the decision in the nuisance case became final and executory before or after the elections**.

To reiterate, in a nuisance petition, the votes of the nuisance candidate shall be credited to the legitimate candidate once the decision becomes final and executory, whether before or after the elections. Accordingly, when there is a final and executory judgment in a nuisance case, it shall be effective and operative as of election day. It is as if the nuisance candidate was never a candidate to be voted for because his candidacy caused confusion to the electorate and it showed his lack of *bona fide* intention to run for office. To sanction the argument of petitioners would promote the practice of fielding nuisance candidates and delaying the resolution of nuisance cases after the election in order to prevent the proclamation of legitimate candidates.

The better approach would be to allow the crediting of the votes of the nuisance candidate to the legitimate candidate, who have similar names, **regardless whether the decision or resolution of the COMELEC became final and executory before or after the elections**. In that way, the will of the electorate shall be respected as observed in *Bautista* and *Martinez III.*Correspondingly, the votes for Rosalie, a nuisance candidate, should be credited in favor of respondent, the legitimate candidate, under the second writ of execution.

(2) ***No separate proceeding to execute a decision declaring a nuisance candidate***
Section 69 of the Omnibus Election Code states that the COMELEC may declare a person as a nuisance candidate *motu proprio* or through a verified petition. In *Dela Cruz,* the Court discussed that the said petition to declare a person as a nuisance candidate is akin to a petition to cancel or deny due course a COC under Section 78 of the Omnibus Election Code.

A cancelled certificate cannot give rise to a valid candidacy, much less to valid votes. **Thus, a petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for.**As long as there is a final and executory judgment declaring a person a nuisance candidate, the votes received by the nuisance candidate shall be credited to the legitimate candidate.

Likewise, to subscribe to petitioners' argument – that there should be a separate proceeding solely for the purpose of crediting the votes in favor of the legitimate candidate – would be absurd.Here, the crediting of the votes of the nuisance candidate to respondent as a legitimate candidate, whose names are similar, is a necessary consequence of the COMELEC's declaration that Rosalie is a nuisance candidate. Consequently, the transfer of votes of the nuisance candidate to the legitimate candidate can be validly accomplished in the execution proceedings of the nuisance case.

(3) ***There was no violation of the right to due process***
The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. The other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are not real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case.

Nevertheless, in the case at bench, even if the other candidates are not real parties-in-interest in respondent's petition for disqualification, the Court finds that the COMELEC gave petitioners sufficient opportunity to be heard during the execution proceedings of the nuisance case. Notably, Ricardo exhaustively exercised his right to be heard and filed multiple motions and manifestations before the COMELEC during the execution proceedings of the nuisance case. The COMELEC even considered the said incidents on the merits and issued an order denying the same because other pending actions sufficiently address the issues raised. Petitioners were likewise given a copy of the second writ of execution, thus, they were able to institute these present petitions. The Court is of the view that the COMELEC properly exercised its jurisdiction and gave petitioners the opportunity to ventilate their grievances, even though they are technically not real parties in interests in the nuisance case.

(4) ***In a multi-slot office, the votes of the nuisance candidate are not automatically added to the legitimate candidate***
While the OSG argues that the votes of Rosalie should be credited in favor of respondent pursuant to *Dela Cruz,* the said votes should not be automatically added. It explained that in a multi-slot office,

it is possible that the legitimate candidate and nuisance candidate may both receive votes in one ballot.

The OSG's argument is meritorious. In a multi-slot office, such as membership of the *Sangguniang Panlungsod,* a registered voter may vote for more than one candidate. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter.

Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates.

As properly discussed by the OSG, a legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. At the same time, it is also possible that a voter may be confused when he reads the ballot containing the similar names of the nuisance candidate and the legitimate candidate. In his eagerness to vote, he may shade both ovals for the two candidates to ensure that the legitimate candidate is voted for. Similarly, in that case, the legitimate candidate may receive two (2) votes from one voter by applying the simple arithmetic formula adopted by the COMELEC when the nuisance candidate's COC is cancelled.

Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate.

In this case, the certificate of canvass stated that Rosalie received 13,328 votes; while respondent received 33,738 votes. In the first writ of execution, the COMELEC applied the simple arithmetic formula of counting the 13,328 votes cast for Rosalie in favor of respondent, thus, the total number of votes garnered by respondent was 47,066. Similarly, in the second writ of execution, the COMELEC applied the same simple arithmetic formula and stated that respondent had 47,066 votes.

As discussed above, the simple arithmetic formula of the COMELEC in a multi-slot office, where there is a nuisance candidate, is inaccurate. Thus, the ballots containing the votes for nuisance candidate Rosalie must be credited in favor of respondent. However, if there are ballots which contain both votes in favor of Rosalie and respondent, only one vote shall be credited in favor of respondent.

d. Duties of the COMELEC

C. Remedies and jurisdiction

1. Petition to deny due course or cancel a certificate of candidacy

2. Petition for disqualification

ATTY. PABLO B. FRANCISCO, *Petitioner* –versus-COMMISSION ON ELECTIONS AND ATTY. JOHNIELLE KEITH P. NIETO, *Respondents*.
G.R. No. 230249, EN BANC, April 24, 2018, VELASCO JR., *J.*

A prior court judgment is not required before the remedy under Sec. 68 of the OEC can prosper. This is highlighted by the provision itself, which contemplates of two scenarios: first, there is a final decision by a competent court that the candidate is guilty of an election offense and second, it is the Commission itself that found that the candidate committed any of the enumerated prohibited acts. Noteworthy is that in the second scenario, it is not required that there be a prior final judgment; it is sufficient that the Commission itself made the determination. The conjunction "or" separating "competent court" and "the Commission" could only mean that the legislative intent was for both bodies to be clothed with authority to ascertain whether or not there is evidence that the respondent candidate ought to be disqualified.

We are, therefore, constrained to rule that the COMELEC erred when, relying on Poe, it imposed the requirement of a prior court judgment before resolving the current controversy.

FACTS:

Francisco is a registered voter in Cainta, Rizal, while Nieto was elected as mayor of the same municipality in 2013. Nieto filed a certificate of candidacy (COC) to signify his bid for re-election for the 2016 National and Local Elections. On April 8, 2016, Francisco filed before the COMELEC a **Petition for Disqualification** against Nieto, alleging that on April 1-2, 2016, respondent made financial contributions out of the government coffers for the asphalt-paving of the road entrance along Imelda Avenue of Cainta Green Park Village. This, according to petitioner, amounted to the expending of public funds within 45 days before the 2016 polls and to illegal contributions for road repairs, respectively punishable under Secs. 261(v) and 104of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code (OEC). Petitioner further claimed that the said asphalt paving was one of the accomplishments that respondent reported on his Facebook page. In his Answer, Nieto countered that the questioned asphalting project was subjected to **public bidding** on March 15, 2016, with a Notice of Award issued on March 21, 2016. Thus, the asphalting project falls within the excepted public works mentioned in Sec. 261(v)(l)(b) of the OEC.

While the case was on-going, Nieto would be re-elected as municipal mayor of Cainta, Rizal, having garnered the plurality of votes upon the conclusion of the 2016 polls.

ISSUE:

Whether or not a prior judgment is not a precondition to filing a Petition for Disqualification. (YES)

RULING:

Petitioner is correct in his contention that a prior judgment is not a precondition to filing a Petition for Disqualification. Nevertheless, the petition must necessarily fail for lack of substantial evidence to establish that private respondent committed an election offense.

The essence of a disqualification proceeding that invokes Sec. 68 of the OEC is to bar an individual from becoming a candidate or from continuing as a candidate for public office based not on the candidate's lack of qualification, but on his possession of a disqualification as declared by a final decision of a competent court, or as found by the Commission.The jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the OEC. All other election offenses are beyond the ambit of COMELEC jurisdiction.

Meanwhile, for a Petition to Deny Due Course or to Cancel COC under Sec. 78 of the OEC to prosper, the candidate must have made a material misrepresentation involving his eligibility or qualification for the office to which he seeks election, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for elective officeenumerated under Sec. 74 of the OEC. Moreover, the false representation under Sec. 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.The relief is granted not because of the candidate's lack of eligibility per se, but because of his or her false misrepresentation of possessing the statutory qualifications.

The doctrine in *Poe* was never meant to apply to Petitions for Disqualification. A prior court judgment is not required before the remedy under Sec. 68 of the OEC can prosper. This is highlighted by the provision itself, which contemplates of two scenarios: *first*, there is a final decision by a competent court that the candidate is guilty of an election offense and *second*, it is the Commission itself that found that the candidate committed any of the enumerated prohibited acts. Noteworthy is that in the second scenario, it is not required that there be a prior final judgment; it is sufficient that the Commission itself made the determination. The conjunction "*or*" separating "*competent court*" and "*the Commission*" could only mean that the legislative intent was for both bodies to be clothed with authority to ascertain whether or not there is evidence that the respondent candidate ought to be disqualified.

Furthermore, the quantum of proof necessary in election cases is, as in all administrative cases, substantial evidence. This is defined as such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.**To impose prior conviction of an election offense as a condition *sine qua non* before a Petition for Disqualification can be launched would be tantamount to requiring proof beyond reasonable doub**t, which is significantly beyond what our laws require.

We are, therefore, constrained to rule that the COMELEC erred when, relying on *Poe*, it imposed the requirement of a prior court judgment before resolving the current controversy.

The records are bereft of evidence to hold that respondent violated Secs. 261(v) and 104 of the Omnibus Election Code.

Notwithstanding the COMELEC's error in applying *Poe*, the petition must nevertheless fail. Though the COMELEC can properly take cognizance of the Petition for Disqualification without issue, petitioner miserably failed to tender evidence that respondent committed the election offenses imputed.

The quantum of proof necessary in election cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion. Corollarily, the rule is that he who alleges must prove Thus, the burden is on Francisco to establish through substantial evidence

that Nieto unlawfully disbursed government funds during the election ban, a burden that Francisco failed to discharge.

There is simply a dearth of evidence to support petitioner's claim that respondent violated Sec. 261(v) of the OEC. To be sure, petitioner merely submitted the following to support his allegations:

1. Pictures of the asphalt-paving along Imelda Avenue of Cainta Green Park Village, Barangay San Isidro, Cainta, Rizal;

2. Picture of the Facebook page of the respondent acknowledging the project as one of the accomplishments of his administration; and

3. Picture of a tarpaulin banner expressing gratitude for the asphalt-paving.

The photographs petitioner presented depicting the construction and works done on the asphalting project would only prove the fact of paving, which is not even contested. They do not, however, establish that respondent expended public funds or made financial contributions during the election prohibition.

On the other hand, respondent Nieto sufficiently parried the alleged commission of the election offenses by proving that the asphalting project squarely falls under the exception in Sec. 261 (v)(l)(b). The provision states:

v. Prohibition against release, disbursement or expenditure of public funds. - **Any public official** or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, **during forty-five days before a regular election** and thirty days before a special election, releases, **disburses or expends any public funds** for:

1. **Any and all kinds of public works, except** the following:

xxxx

b. **Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election:** Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract; (emphasis added)

There being substantial evidence to support Nieto's defense that the construction procurement for the project was aboveboard, there is then no reason to disturb public respondent's rulings.

3. Failure of election, call of special election

4. Pre-proclamation controversy

5. Election protest

6. Quo warranto

XI. LOCAL GOVERNMENTS

A. Principles of local autonomy

B. Autonomous regions and their relation to the national government

C. Local government units

1. Powers

a. Police power (general welfare clause)

HON. LEONCIO EVASCO, JR., IN HIS CAPACITY AS OIG CITY ENGINEER OF DAVAO CITY AND HON. WENDEL AVISADO, IN HIS CAPACITY AS THE CITY ADMINISTRATOR OF DAVAO CITY, *Petitioners*, - versus - ALEX P. MONTANEZ, DOING BUSINESS UNDER THE NAME AND STYLE APM OR AD AND PROMO MANAGEMENT, *Respondents*, DAVAO BILLBOARD AND SIGNMAKERS ASSOCIATION (DABASA), INC., *Respondent-Intervenor*.
G.R. No. 199172, FIRST DIVISION, February 21, 2018, LEONARDO-DE CASTRO, *J.*

While police power is lodged primarily in the National Legislature, Congress may delegate this power to local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

R.A. No. 4354 otherwise known as the Revised Charter of the City of Davao (Davao City Charter), ***vested the local Sangguniang Panlungsod with the legislative power to regulate, prohibit, and fix license fees for the display, construction, and maintenance of billboards and similar structures****. As such, Congress expressly granted the Davao City government, through the Sangguniang Panlungsod, police power to regulate billboard structures within its territorial jurisdiction.*

An ordinance constitutes a valid exercise of police power if: (a) it has a ***lawful subject*** *such that the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (b) it uses a* ***lawful method*** *such that its implementing measures must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.*

First, Ordinance No. 092-2000 seeks to regulate all signs and sign structures based on prescribed standards as to its location, design, size, quality of materials, construction and maintenance to: (a) safeguard the life and property of Davao City's inhabitants; (b) keep the surroundings clean and orderly; (c) ensure public decency and good taste; and (d) preserve a harmonious aesthetic relationship of these structures as against the general surroundings.

Second, the ordinance employs the following rules in implementing its policy: (a) minimum distances must be observed in installing and constructing outdoor billboards; (b) additional requirements shall

be observed in locations designated as "regulated areas" to preserve the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline, and the view of Samal Island; (c) sign permits must be secured from and proper fees paid to the city government; and (d) billboards without permits, without the required marking signs, or otherwise violative of any provision thereof shall be removed, allowing the owner 60 days from receipt of notice to correct and address its violation.

For the foregoing reasons, the validity of Ordinance No. 092-2000, including the provisions at issue in the present petition, Sections 7, 8, 37, and 45 must be upheld.

FACTS:

The city government of Davao (City Government), through its Sangguniang Panlungsod, approved Ordinance No. 092-2000 entitled *"An Ordinance Regulating the Construction, Repair, Renovation, Erection, Installation and Maintenance of Outdoor Advertising Materials and For Related Purposes."* Sections 7, 8, 37, and 45 of the said Ordinance are as follows:

> **SECTION 7 – BILLBOARD**. Outdoor advertising signs shall not be allowed in a residential zone as designated in the Official Zoning Map. Adjacent billboards shall be erected in such a way as to maintain 150.00 meters unobstructed line of sight.
>
> Billboards and other self-supporting outdoor signs along highways shall be located within a minimum of 10.00 meters away from the property lines abutting the road right-of-way.
>
> **SECTION 8 - REGULATED AREAS**. Bridge approach areas within 200 meters of the following bridges shall be designated as "regulated areas" in order to preserve, among others, the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline and the view of Samal Island x xx
>
> **SECTION 37 – FEES**. Fees for the application of Sign Permits to be paid at the Office of the City Treasurer x xx
>
> **SECTION 45 - REMOVAL.** The City Engineer or his duly authorized representative shall remove, upon recommendation of the Building Official, the following at the expense of the displaying party x xx

The petitioner City Engineer of Davao City (City Engineer) started sending notices of illegal construction to various outdoor advertising businesses, including Ad & Promo Management (APM), owned by respondent Alex P. Montanez. The City Engineer reminded the entities to secure a permit or apply for a renewal for each billboard structure as required by Ordinance No. 092-2000.

Thereafter, the City Engineer issued orders of demolition directing erring outdoor advertising businesses, including APM, to "voluntarily dismantle" their billboards that violate Ordinance No. 092-2000. Otherwise, the city government shall remove these structures without further notice.

Respondent Montanez then filed a petition for injunction and declaration of nullity of Ordinance No. 092-2000 and Order of Demolition with application for a writ of preliminary injunction and TRO before the RTC. Respondent claimed that Ordinance No. 092-2000 is unconstitutional for being

overbreadth in its application, vague, and inconsistent with the Presidential Decree No. 1096 or the National Building Code of the Philippines (National Building Code).

RTC granted respondent's application for the issuance of a writ of preliminary injunction.

Meanwhile, in response to the damage caused by typhoon Milenyo, former President Gloria Macapagal-Arroyo (President Arroyo) issued Administrative Order (AO) No. 160 directing the Department of Public Works and Highways (DPWH) to conduct nationwide field inspections, evaluations, and assessments of billboards, and to abate and dismantle those: (a) posing imminent danger or threat to the life, health, safety and property of the public; (b) violating applicable laws, rules and regulations; (c) constructed within the easement of road right-of-way; and/or (d) constructed without the necessary permits.

Assuming the role given by AO No. 160, Acting DPWH Secretary Hermogenes E. Ebdane, Jr. issued National Building Code Development Office (NBCDO) Memorandum Circular No. 3 directing all local government building officials to cease and desist from processing application for, and issuing and renewing billboard permits.

While respondent's case was still pending before the RTC, the city government issued another Order of Demolition, this time directed against Prime Advertisements & Signs (Prime), on the ground that the latter's billboards had no sign permits and encroached a portion of the road right of way. The city government ordered Prime to voluntarily trim its structures. Otherwise, the same shall be removed.

This prompted respondent-intervenor Davao Billboards and Signmakers Association, Inc. (DABASA) to intervene in the case, in behalf of its members, consisting of outdoor advertising and signmaker businesses in Davao City, such as APM and Prime.

The RTC ruled in favor of respondents Montanez and DABASA. The RTC declared Sections 7, 8, and 41 of the City Ordinance No. 092-2000, void and unconstitutional for being contrary to the National Building Code.

Both parties moved for reconsideration. Thus, the RTC, in its Joint Order, modified its original decision. It declared Sections 7, 8, and 37 of the City Ordinance No. 092-2000, void and unconstitutional for being contrary to the National Building Code. It deleted Section 41 of the same Ordinance.

Aggrieved, the petitioner City Engineer sought recourse before the CA. The CA denied the appeal. It declared Sections 7, 8, and 45 of the City Ordinance No. 092-2000, null and void. It, however, reinstated Section 41 of the same Ordinance.

Again, both parties moved for reconsideration. Subsequently, the CA promulgated its Amended Decision. It declared Sections 7, 8, 37, and 45 of the City Ordinance No. 092-2000, null and void. It, however, reinstated Section 41 of the same Ordinance.

The petitioner City Engineer argues that Ordinance No. 092-2000 is not inconsistent with the National Building Code. *As to Section 7*, it cannot be held to be inconsistent with Section 1002, under Chapter 10, of the National Building Code because said provision applies to all building projections, in general. *As to Section ff*, Section 458(a)(3)(iv) of R.A. No. 7160 or the Local Government Code of

the Philippines (LGC), the city government has the power to regulate the display of signs for the purpose of preserving the natural view and beauty of the surroundings. Aesthetic considerations do not constitute undue interference on property rights because it merely sets a limitation and, in fact, still allows construction of property, provided it is done beyond the setback. *As to Section 37*, when the CA nullified the same, it did not state the specific legal findings and bases supporting its nullity. *As to Section 45*, the CA went beyond its authority when it invalidated the said Section because both of the parties did not raise any issue as to the validity of the said section. Moreover, under the LGC, the city engineer is empowered to perform duties and functions prescribed by ordinances, such as Ordinance No. 092-2000. Thus, the city engineer has the authority to cause the removal of structures found to have violated the ordinance.

The respondents, on the other hand, maintain that Ordinance No. 092-2000 is invalid. *First*, Section 7 of the Ordinance contradicts the National Building Code because, while the latter does not impose a minimum setback from the property lines abutting the road right-of-way, the said provision requires a 10-meter setback. *Second*, Section 8's establishment of "regulated areas" in keeping with aesthetic purposes of the surroundings is not a valid exercise of police power. *Third*, the fees required by Section 37 of the ordinance are excessive, confiscatory, and oppressive. *Fourth*, Section 45, insofar as it empowers the building official to cause the removal of erring billboards, is an undue delegation of derivative power. Under the National Building Code, the building official's authority is limited to the determination of ruinous and dangerous buildings and structures.

ISSUE:

Whether Ordinance No. 092-2000, particularly Sections 7, 8, 37, and 45, is valid and constitutional. (YES)

RULING:

It is settled that an ordinance's validity shall be upheld if the following requisites are present: *First*, the local government unit must possess the power to enact an ordinance covering a particular subject matter and according to the procedure prescribed by law. *Second*, the ordinance must not contravene the fundamental law of the land, or an act of the legislature, or must not be against public policy or must not be unreasonable, oppressive, partial, discriminating or in derogation of a common right.

The power to regulate billboards was validly delegated to the local city council via Davao 's charter

Ordinance No. 092-2000, which regulates the construction and installation of building and other structures such as billboards within Davao City, is an exercise of police power. It has been stressed in *Metropolitan Manila Development Authority v. Bel-Air Village Association* that while police power is lodged primarily in the National Legislature, Congress may delegate this power to local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

R.A. No. 4354 otherwise known as the Revised Charter of the City of Davao (Davao City Charter), **vested the local Sangguniang Panlungsod with the legislative power to regulate, prohibit, and fix license fees for the display, construction, and maintenance of billboards and similar structures**. As such, Congress expressly granted the Davao City government, through the

Sangguniang Panlungsod, police power to regulate billboard structures within its territorial jurisdiction.

Consistency between Ordinance No. 092-2000 and the National Building Code is irrelevant

As stated earlier, the power to regulate billboards within its territorial jurisdiction has been delegated by Congress to the city government via the Davao City Charter. The city government does not need to refer to the procedures laid down in the National Building Code to exercise this power. **Thus, the consistency between Ordinance No. 092-2000 with the National Building Code is irrelevant to the validity of the former.** To be clear, even if the National Building Code imposes minimum requirements as to the construction and regulation of billboards, **the city government may impose stricter limitations because its police power to do so originates from its charter and not from the National Building Code**.

Ordinance No. 092-2000 is a valid exercise of police power

An ordinance constitutes a valid exercise of police power if: (a) it has a **lawful subject** such that the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (b) it uses a **lawful method** such that its implementing measures must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

First, Ordinance No. 092-2000 seeks to regulate all signs and sign structures based on prescribed standards as to its location, design, size, quality of materials, construction and maintenance to: (a) safeguard the life and property of Davao City's inhabitants; (b) keep the surroundings clean and orderly; (c) ensure public decency and good taste; and (d) preserve a harmonious aesthetic relationship of these structures as against the general surroundings.

Second, the ordinance employs the following rules in implementing its policy: (a) minimum distances must be observed in installing and constructing outdoor billboards; (b) additional requirements shall be observed in locations designated as "regulated areas" to preserve the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline, and the view of Samal Island; (c) sign permits must be secured from and proper fees paid to the city government; and (d) billboards without permits, without the required marking signs, or otherwise violative of any provision thereof shall be removed, allowing the owner 60 days from receipt of notice to correct and address its violation.

For the foregoing reasons, the validity of Ordinance No. 092-2000, including the provisions at issue in the present petition, Sections 7, 8, 37, and 45 must be upheld.

b. Eminent domain

c. Taxing power

CITY OF PASIG and CRISPINA –versus- SALUMBRE, in her capacity as OIC-City Treasurer of Pasig City, *petitioners*, *vs.* MANILA ELECTRIC COMPANY, *respondent*.
G.R. No. 181710, THIRD DIVISION, March 7, 2018, MARTIRES, *J.*

Under the Local Government Code of 1991, a municipality is bereft of authority to levy and impose franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces

and cities only. A franchise tax levied by a municipality is, thus, null and void. The nullity is not cured by the subsequent conversion of the municipality into a city.

FACTS:

On 26 December 1992, the Sangguniang Bayan of the Municipality of Pasig enacted Ordinance No. 25 which, under its Article 3, Section 32, imposed a franchise tax on all business venture operations carried out through a franchise within the municipality.

By virtue of Republic Act (R.A.) No. 7829, which took effect on 25 January 1995, the Municipality of Pasig was converted into a highly urbanized city to be known as the City of Pasig.

On 24 August 2001, the Treasurer's Office of the City Government of Pasig informed the Manila Electric Company *(MERALCO)*, a grantee of a legislative franchise, that it is liable to pay taxes for the period 1996 to 1999, pursuant to Municipal Ordinance No. 25. The city, thereafter, on two separate occasions, demanded payment of the said tax in the amount of P435,332,196.00, exclusive of penalties.

On 8 February 2002, MERALCO protested the validity of the demand claiming that the same be withdrawn and cancelled. In view of the inaction by the Treasurer's Office, MERALCO instituted an action before the RTC. The latter ruled in favor of the City of Pasig,

The CA reversed the decision of RTC. It ratiocinated that the LGC authorizes cities to levy a franchise tax. However, the basis of the City of Pasig's demand for payment of franchise tax was Section 32, Article 3 of Ordinance No. 25 which was enacted at a time when Pasig **was still a municipality and had no authority to levy a franchise tax.** From the time of its conversion into a city, Pasig has not enacted a new ordinance for the imposition of a franchise tax. The conversion of Pasig into a city, the CA explained, did not rectify the defect of the said ordinance.

ISSUE:

Whether the CA was correct in ruling that the City of Pasig had no valid basis for its imposition of franchise tax for the period 1996 to 1999. (YES)

RULING:

The power to impose franchise tax belongs to the province by virtue of Section 137 of the LGC. On the other hand, the municipalities are prohibited from levying the taxes specifically allocated to provinces under Section 142. Section 151 empowers the cities to levy taxes, fees and charges allowed to both provinces and municipalities.

The LGC further provides that the power to impose a tax, fee, or charge or to generate revenue shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance. This simply means that the local government unit cannot solely rely on the statutory provision granting specific taxing powers, such as the authority to levy franchise tax. The enactment of an ordinance is indispensable for it is the legal basis of the imposition and collection of taxes upon covered taxpayers. Without the ordinance, there is nothing to enforce by way of assessment and collection.

However, an ordinance must pass muster the test of constitutionality and the test of consistency with the prevailing laws. Otherwise, it shall be void.

It is not disputed that at the time the ordinance in question was enacted in 1992, the local government of Pasig, then a municipality, had no authority to levy franchise tax. Article 5 of the Civil Code explicitly provides, "acts executed against the provisions of mandatory or prohibitory

laws shall be void, except when the law itself authorizers their validity." Section 32 of Municipal Ordinance No. 25 is, thus, void for being in direct contravention with Section 142 of the LGC. Being void, it cannot be given any legal effect. An assessment and collection pursuant to the said ordinance is, perforce, legally infirm.

The cityhood law of Pasig did not cure the defect of the questioned ordinance. A void ordinance cannot legally exist, it cannot have binding force and effect. Such is Section 32 of Municipal Ordinance No. 25 and, being so, is **outside** the comprehension of Section 45 of R.A. No. 7829 which provides that "All municipal ordinances of the municipality of Pasig existing at the time of the approval of this Act shall continue to be in force within the City of Pasig."

CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO A. AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, AND ATTY. JOSE MALVAR VILLEGAS, *Petitioners*, -versus- EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; SECRETARY CESAR PURISIMA, DEPARTMENT OF FINANCE; SECRETARY FLORENCIO H. ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT; COMMISSIONER KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE; AND NATIONAL TREASURER ROBERTO TAN, BUREAU OF THE TREASURY, *Respondents*.

G.R. No. 199802, EN BANC, July 03, 2018, BERSAMIN, *J*.

Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution.The phrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base from which the just share of the LGU comes. Section 284 has effectively deprived the LGUs from deriving their just share from other national taxes.

The exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

FACTS:

The petitioners hereby challenge the manner in which the just share in the national taxes of the local government units (LGUs) has been computed.

Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code (LGC), in order to guarantee the fiscal autonomy of the LGUs by specifically providing that:

"SECTION 284. Allotment of Internal Revenue Taxes. — Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:

(a) On the first year of the effectivity of this Code, thirty percent (30%);

(b) On the second year, thirty-five percent (35%); and

(c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of **national internal revenue taxes** of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services."

According to the implementing rules and regulations of the LGC, the IRA is determined on the basis of the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue.

Mandanas, et al. allege herein that certain collections of NIRTs by the Bureau of Customs– specifically: excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) – have not been included in the base amounts for the computation of the IRA; that such taxes, albeit collected by the BOC, should form part of the base from which the IRA should be computed because they constituted NIRTs; that, consequently, the release of the additional amount of P60,750,000,000.00 to the LGUs as their IRA for FY 2012 should be ordered; and that for the same reason the LGUs should also be released their unpaid IRA for FY 1992 to FY 2011, inclusive, totaling P438,103,906,675.73.

Congressman Enrique Garcia, Jr., avers that the insertion by Congress of the words internal revenue in the phrase national taxes found in Section 284 of the LGC caused the diminution of the base for determining the just share of the LGUs, and should be declared unconstitutional; that, moreover, the exclusion of certain taxes and accounts pursuant to or in accordance with special laws was similarly constitutionally untenable; that the VATs and excise taxes collected by the BOC should be included in the computation of the IRA; and that the respondents should compute the IRA on the basis of all national tax collections, and thereafter distribute any shortfall to the LGUs.

ISSUE:

Whether or not the exclusion of certain national taxes from the base amount for the computation of the just share of the LGUs in the national taxes is constitutional

RULING:

No. **Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution.**

Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a just share in the national taxes, viz.:

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Section 6mentions national taxes as the source of the just share of the LGUs while Section 284 ordains that the share of the LGUs be taken from national internal revenue taxes instead.

Thephrase national internal revenue taxes engrafted in Section 284 is undoubtedly more restrictive than the term national taxes written in Section 6. **Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base** from which the just share of the LGU comes. Such departure is impermissible. Verbalegis non estrecedendum (from the words of a statute there should be no departure). Equally impermissible is that **Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs** under the 1987 Constitution.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.

What the phrase national internal revenue taxes as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code, as amended by R.A. No. 8424, viz.:

Section 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes: (a) Income tax; (b) Estate and donor's taxes; (c) Value-added tax; (d) Other percentage taxes; (e) Excise taxes; (f) Documentary stamp taxes; and(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

In view of the foregoing enumeration of what are the national internal revenue taxes, **Section 284 has effectively deprived the LGUs from deriving their just share from other national taxes, like the customs duties.**

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. It is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country.

It is clear from the foregoing clarification that **the exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution**.

However, the petitioners' prayer for the payment of the arrears of the LGUs' just share on the theory that the computation of the base amount had been unconstitutional all along cannot be granted.

It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should

receive the difference between the just share they should have received had the LGC properly reckoned. This puts the National Government in arrears as to the just share of the LGUs.

However, doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.

Hence, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise.

Section 6, Article X of the 1987 Constitution commands that the just share of the LGUs in national taxes shall be automatically released to them. The LGUs are not required to perform any act or thing in order to receive their just share in the national taxes.Hence, the just share of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

The Court declares the phrase "internal revenue" appearing in Section 284 of the Local Government Code unconstitutional, and deletes the phrase from Section 284, Section 285, Section 287, and Section 290. Such sections are modified to reflect the deletion of the phrase "internal revenue". **Any mention of "Internal Revenue Allotment" or "IRA" in the LGC and its IRR shall be understood as pertaining to the allotment of the Local Government Units derived from national taxes.**

The collections of national taxes for inclusion in the base of the just share the Local Government Units shall include, but shall not be limited to, the following:

(a) The national internal revenue taxes enumerated in Section 21 of the National Internal Revenue Code, as amended, collected by the Bureau of Internal Revenue and the Bureau of Customs;

(b) Tariff and customs duties collected by the Bureau of Customs;

(c) 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao.

The remaining 50% of the collections of value-added taxes and 70% of the collections of the other national taxes in the Autonomous Region in Muslim Mindanao shall be the exclusive share of the Autonomous Region in Muslim Mindanao pursuant to Section 9 and Section 15 of Republic Act No. 9054.

(d) 60% of the national taxes collected from the exploitation and development of the national wealth.

The remaining 401% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host Local Government Units pursuant to Section 290 of Republic Act No. 7160 (Local Government Code);

(e) 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products.

The remaining 15% shall accrue to the special purpose funds created by Republic Act No. 7171 and Republic Act No. 7227;

(f) The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and

(g) 5% of the 25% franchise taxes given to the National Government under Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632.

NOEMI S. CRUZ AND HEIRS OF HERMENEGILDO T. CRUZ, REPRESENTED BY NOEMI S. CRUZ, ***Petitioners*****,-versus-CITY OF MAKATI, CITY TREASURER OF MAKATI, THE REGISTER OF DEEDS OF MAKATI, LAVERNE REALTY AND DEVELOPMENT CORPORATION**, ***Respondents.***

G.R. No. 210894, FIRST DIVISION, September 12, 2018, DEL CASTILLO, *J.*

The public interest involved here mandates that technicalities should take a backseat to the substantive issues. There is a grave danger that taxpayers may unwittingly lose their real properties to unscrupulous local government units, officials, or private individuals or entities as a result of an irregular application of the LGC provisions authorizing the levy and delinquency sale of real property for non-payment of the real property tax. This is a reality that cannot be ignored. For this reason, the Court must excuse petitioners for their procedural lapses, as it must address instead the issue of irregular conduct of levies and delinquency sales of real properties for non-payment of the real property tax, which is alarming considering that of the two cases that this Court is made aware of, there appears to be one common denominator, and that is the respondent herein, Laverne Realty and Development Corporation. Needless to state, petitioners are liable to lose their property without due process of law to Laverne which was previously involved in an irregular sale conducted under similar circumstances.

FACTS:

Petitioner-spouses Noemi Cruz and Hermenegildo Cruz were the registered owners of Unit 407 in Cityland Condominium 10, Tower II which was levied upon by the respondent City of Makati for non-payment of real property taxes thereon after their designated employee-representative failed to remit the entrusted tax payments and appeared to have absconded with the money instead. The subject property was auctioned off and sold to respondent Laverne Realty and Development Corporation as the highest bidder.

Petitioners failed to redeem the subject property, prompting Laverne to file in 2009, before the Makati RTC Branch 148, a petition to surrender the owner's duplicate copy of the title to the subject property (LRC Case).

In 2007, petitioners filed before Makati RTC Branch 62, a Complaint for annulment of the Laverne sale with prayer for injunctive relief and damages and costs (Civil Case). Petitioners alleged that the levy and sale by the respondent city to Laverne were null and void because the notice of billing statements for real property were mistakenly sent to Unit 1407 instead of Unit 407; no warrant of levy was ever received by them; the notice of delinquency sale was not posted as required by the Local Government Code (LGC); the Makati Treasurer's Office did not notify petitioners of the warrant

of levy as required by the LGC; and respondents did not remit the excess of the proceeds of the sale to petitioners as required by the LGC.

Petitioners filed an Omnibus Motion to consolidate Civil Case with LRC Case. The Makati RTC Branch 62 issued an Order dated November 25, 2011, stating as follows: Before the court rules on this motion, the court awaits the resolution of Branch 148 regarding the motion filed with this court. The petitioner is given the opportunity to inform the court if there are any developments prior to the same.

Later on, the Makati RTC Branch 62 issued another Order dismissing the Civil Case for petitioners' failure to comply with the Order of November 25, 2011, and pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

Meanwhile, in the LRC Case or Laverne's petition to surrender the owner's copy of the title to the subject property, petitioners filed a demurrer to evidence, which the Makati RTC Branch 148 granted.

Thereafter, petitioners filed an original petition for *certiorari* before the CA questioning the Orders of the Makati RTC Branch 62 dismissing the Civil case. The CA dismissed the petition.

ISSUE:

Whether or not the dismissal by RTC Branch 62 of the Civil Case on procedural grounds was proper notwithstanding the finding by RTC Branch 148 that the tax delinquency sale was irregular (NO)

RULING:

The trial court's sole reason for dismissing the Civil Case was petitioners' repeated failure to comply with the trial court's orders for them to inform it of the developments in their motion for consolidation filed before the Makati RTC Branch 148 in the LRC Case.

However, with the developments in the LRC Case, that is, its dismissal by the Makati RTC Branch 148 for lack of compliance with the LGC relative to the sending, publication, and posting of the notice of tax delinquency, the service of the warrant of levy, and the sending of billing statements, and the corresponding dismissal of respondent's appeal before the CA, it has become obvious that there is nothing to consolidate with the case before Makati RTC Branch 62, or the Civil Case. There is no more ground to compel petitioners to comply with the Makati RTC Branch 62's orders; they have been overtaken by events.

The public interest involved here mandates that technicalities should take a backseat to the substantive issues. There is a grave danger that taxpayers may unwittingly lose their real properties to unscrupulous local government units, officials, or private individuals or entities as a result of an irregular application of the LGC provisions authorizing the levy and delinquency sale of real property for non-payment of the real property tax. This is a reality that cannot be ignored. For this reason, the Court must excuse petitioners for their procedural lapses, as it must address instead the issue of irregular conduct of levies and delinquency sales of real properties for non-payment of the real property tax, which is alarming considering that of the two cases that this Court is made aware of, there appears to be one common denominator, and that is the respondent herein, Laverne Realty and Development Corporation. Needless to state, petitioners are liable to lose their property without due

process of law to Laverne which was previously involved in an irregular sale conducted under similar circumstances.

The public auction of land to satisfy delinquency in the payment of real estate tax derogates or impinges on property rights and due process. Thus, the steps prescribed by law are mandatory and must be strictly followed; if not, the sale of the real property is invalid and does not make its purchaser the new owner. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws.

First, no evidence was adduced to prove that the notice of levy was ever received by the CSDC. There was no proof either that such notice was served on the occupant of the property. It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void although preceded by proper advertisement or publication. This proceeds from the principle of administrative proceedings for the sale of private lands for non-payment of taxes being in personam.

Second, the notice of tax delinquency was not proven to have been posted at the Makati City Hall and in Barangay Dasmariñas, Makati City, where the property is located. It was not proven either that the required advertisements were effected in accordance with law.

Respondent must be reminded that the requirements for a tax delinquency sale under the LGC are mandatory. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite notice, as in this case, is tantamount to a violation of the delinquent taxpayer's substantial right to due process.

As the tax sale was null and void, the title of the buyer therein was also null and void.

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., *Petitioner*, -versus- THE CITY OF MANILA; LIBERTY M. TOLEDO, IN HER CAPACITY AS TREASURER OF MANILA; GABRIEL ESPINO, IN HIS CAPACITY AS RESIDENT AUDITOR OF MANILA; AND THE CITY COUNCIL OF MANILA, *Respondents*.

G.R. No. 185622, THIRD DIVISION, October 17, 2018, LEONEN, J.

If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."

On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

Here, there is no dispute on the refund of P6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999, as ordered by the Court of Tax Appeals Second Division in its May 17, 2006 Decision on to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the Court of Tax Appeals Second Division on the ground that petitioner failed to comply with the requirements of Section 195.

When petitioner raised the applicability of Section 196 to the claim for refund of these subsequent payments, the Court of Tax Appeals Second Division, as affirmed by the Court of Tax Appeals En Banc, held that Section 196 cannot apply as petitioner previously anchored its claims under Section 195.

FACTS:

International Container, a corporation with its principal place of business in Manila, renewed its business license for 1999. It was assessed for two (2) business taxes: one for which it was already paying, and another for which it was newly assessed. It was already paying a local annual business tax for contractors equivalent to 75% of 1% of its gross receipts for the preceding calendar year pursuant to Section 18 of Manila Ordinance No. 7794. The newly assessed business tax was computed at 50% of 1% of its gross receipts for the previous calendar year, pursuant to Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. It paid the additional assessment, but filed a protest letter9 dated July 15, 1999 before the City Treasurer of Manila.

When the City Treasurer failed to decide International Container's protest within 60 days from the protest, International Container filed before the Regional Trial Court of Manila its Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order against the City Treasurer and Resident Auditor of Manila. The City Treasurer and the Resident Auditor of Manila moved for the dismissal of the Petition for Certiorari and Prohibition on the ground that International Container had no cause of action, since it had failed to comply with the requirements of Section 187 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

The Regional Trial Court granted the City Treasurer and the Resident Auditor's motion and dismissed International Container's Petition for Certiorari and Prohibition. International Container appealed the dismissal to the Court of Appeals, which set aside the Regional Trial Court's dismissal and ordered the case remanded to the Regional Trial Court for further proceedings.

While the Petition for Certiorari and Prohibition was pending, the City of Manila continued to impose the business tax under Section 21 (A), in addition to the business tax under Section 18, on International Container so that it would be issued business permits. On June 17, 2003, International

Container sent a letter addressed to the City Treasurer of Manila, reiterating its protest to the business tax under Section 21 (A) and requesting for a refund of its payments in the amount of P27,800,674.36 in accordance with Section 196 of the Local Government Code.

International Container filed an Amended and Supplemental Petition, alleging, among others, that since the payment of both business taxes was a pre-condition to the renewal of International Container's business permit, it was compelled to pay, and had been paying under protest. It amended its prayer to include not only the refund of business taxes paid for the first three (3) quarters of 1999, but also the taxes continuously paid afterwards.

RTC dismissed the Amended and Supplemental Petition, again finding that International Container failed to comply with the requirements of Section 195 of the Local Government Code. Under Section 195 of the Local Government Code, International Container had 60 days to appeal the denial to a competent court. However, instead of appealing the denial, it resorted to a Petition for Certiorari and Prohibition, which was not a remedy prescribed under Section 195 of the Local Government Code. By failing to avail of the proper remedy, the assessments made against it became conclusive and unappealable.

International Container filed a Petition for Review against the City of Manila, its City Treasurer, its Resident Auditor, and its City Council before the CTA. It prayed that the Court of Tax Appeals set aside the Regional Trial Court February 28, 2005 Decision, and order the City of Manila and its Officials to refund the business taxes assessed, demanded, and collected under Section 21 (A) in the amount of P39,268,772.41. This amount corresponded to the periods from 1999 to the first quarter of 2004 plus any and all subsequent payments until the case would have been finally decided. Finally, it prayed that the Court of Tax Appeals order the City of Manila and its Officials to desist from imposing and collecting the business tax under Section 21 (A), and to pay attorney's fees.

The CTA Second Division issued its decision setting aside the RTC's Decision and partially granting International Container's prayer for a refund. It found that imposing the business tax under Section 21 (A) in addition to the contractors' tax under Section 18 constituted direct double taxation.

International Container filed a Petition for Review with Prayer for Temporary Restraining Order and/or Preliminary Injunction before the Court of Tax Appeals En Banc. It argued that the Court of Tax Appeals Second Division should have applied Section 196 of the Local Government Code for the payments that it had made subsequent to the third quarter of 1999, pointing out that it had prayed for a refund as early as the proceedings in the RTC. Moreover, Sections 195 and 196 pertain to separate and independent remedies; to resort to Section 195 as a condition precedent to availing of the remedy under Section 196 was illogical.

The CTA En Banc issued its Decision, dismissing the Petition for Review for lack of merit. Contrary to the claim of International Container, the Court of Tax Appeals En Banc found that International Container's causes of action in the Regional Trial Court and Court of Tax Appeals Second Division were different from each other.

International Container filed its Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the September 5, 2008 Decision and December 12, 2008 Resolution of the Court of Tax Appeals En Banc.

In its Petition for Review, International Container claims that it is entitled to a refund of P6,224,250.000 plus P57,865,901.68 in payments of taxes under Section 21 (A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Manila Ordinance No. 7807. First, it argues that it raised the issue of the refund at the earliest possible instance at the administrative level, and later, before the Regional Trial Court, and not only on appeal. It points out that in its July 15, 1999 Letter to the City of Manila and its Officials, it requested that if the questioned assessment had already been paid, then the amount paid should be refunded. For the amounts paid for the fourth quarter of 1999 up to the second quarter of 2003, it demanded a refund and expressly cited Section 196 of the Local Government Code in its June 17, 2003 Letter. The City Treasurer, in its September 1, 2005 Letter, even acknowledged that International Container had made a claim for refund or tax credit. Second, petitioner argues that when it filed its Petition before the Regional Trial Court, it availed of two (2) remedies: a protest under Section 195 of the Local Government Code for the assessments made by the City of Manila and its Officials for the first three (3) quarters of 1999, and a refund under Section 196 of the Local Government Code for its subsequent payments.

ISSUES:

Whether or not Section 195 or Section 196 of the Local Government Code govern petitioner International Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards. (NO)

RULING:

Sections 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes:

Section 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Section 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer

fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."

On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

Here, there is no dispute on the refund of P6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999, as ordered by the Court of Tax Appeals Second Division in its May 17, 2006 Decision on to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the Court of Tax Appeals Second Division on the ground that petitioner failed to comply with the requirements of Section 195.

When petitioner raised the applicability of Section 196 to the claim for refund of these subsequent payments, the Court of Tax Appeals Second Division, as affirmed by the Court of Tax Appeals En Banc, held that Section 196 cannot apply as petitioner previously anchored its claims under Section 195.

The nature of an action is determined by the allegations in the complaint and the character of the relief sought. Here, petitioner seeks a refund of taxes that respondents had collected. Following City of Manila, refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund.

What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties."

No such precondition is necessary for a claim for refund pursuant to Section 196.

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999.

The "assessments" from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila.115 While these receipts state the amount

and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the "notice of assessment" required under Section 195 of the Local Government Code.

When petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have prompted resort to the remedy laid down in Section 196, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two (2)-year period.

A tax refund or credit is in the nature of a tax exemption, construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence.

To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: first, file a written claim for refund or credit with the local treasurer; and second, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

As to the first requirement, the records show that the following written claims for refund were made by petitioner:

In its June 17, 2003 Letter to the City Treasurer, it claimed a refund of P27,800,674.36 for taxes paid from the fourth quarter of 1999 up to the second quarter of 2003.

In its August 18, 2005 Letter to the City Treasurer, it claimed a refund of P14,190,092.90 for taxes paid for the third quarter of 2003 up to the second quarter of 2005.

Thereafter, petitioner sent its January 10, 2007 Letter to the City Treasurer claiming a refund of taxes paid for the third quarter of 2005 until the fourth quarter of 2006, pursuant to the Court of Tax Appeals Second Division May 17, 2006 Decision.

As for the taxes paid thereafter and were not covered by these letters, petitioner readily admits that it did not make separate written claims for refund, citing that "there was no further necessity" to make these claims. It argues that to file further claims before respondent City Treasurer would have been "another exercise in futility" as it would have merely raised the same grounds that it already raised in its June 17, 2003 Letter.

The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action. When there is an adequate remedy available with the administrative remedy, then courts will decline to interfere when the party refuses, or fails, to avail of it. Nonetheless, the failure to exhaust administrative remedies is not always fatal to a party's cause. This Court has admitted of several exceptions to the doctrine:

As correctly suggested by the respondent court, however, there are a number of instances when the doctrine may be dispensed with and judicial action validly resorted to immediately. Among these exceptional cases are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is [no] other plain, speedy and adequate remedy; 8) when strong public

interest is involved; 9) when the subject of the controversy is private land; and 10) in quo warranto proceedings. (Citations omitted)

As correctly pointed out by petitioner, the filing of written claims with respondent City Treasurer for every collection of tax under Section 21 (A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Ordinance No. 7807, would have yielded the same result every time. This is bolstered by respondent City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until there would have been a final judicial determination of the invalidity of Section 21 (A).

Further, the issue at the core of petitioner's claims for refund, the validity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law. When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies.

Thus, petitioner's failure to file written claims of refund for all of the taxes under Section 21 (A) with respondent City Treasurer is warranted under the circumstances.

Similarly, petitioner complied with the second requirement under Section 196 of the Local Government Code that it must file its judicial action for refund within two (2) years from the date of payment, or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Section 21 (A) from the time of the filing of its Petition until the finality of the case.

As acknowledged by respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. This only took place when the Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21 (A) final and executory on July 2, 2007. Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition.

d. Legislative power

i. Requisites for valid ordinance

ALFREDO G. GERMAR, *Petitioner*, *v.* **FELICIANO P. LEGASPI**, *Respondent*.
G.R. No. 232532, SECOND DIVISION, October 01, 2018, REYES, A., *J.*

Applying the pronouncement in the Quisumbing case, if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required.

FACTS:

The petitioner, Alfredo G. Germar (Germar), won the mayoralty position during the May 2013 elections in the Municipality of Norzagaray, Province of Bulacan. He replaced the former mayor, respondent Feliciano P. Legaspi (Legaspi).

During Germar's term, he entered into contracts for professional service with six (6) consultants. The consultants were to advice the office of the mayor on municipal administration and governance, barangay affairs, business investment and trade, calamity and disaster, and the last two consultants, on security relations.

From the records of the case, it appears that the budget for the salary of the consultants is found in the appropriation ordinance of the municipality for the year 2013. Particularly, it is a line-item called as "Consultancy Services" found under the category "Maintenance and Other Operating Expenses" of the Office of the Mayor. These provisions are found in a detailed list which is annexed to the appropriation ordinance, with the heading, "Programmed Appropriation and Obligation by Object of Expenditure."

A year into Germar's service as the mayor of the municipality, Legaspi filed a complaint against the former, together with the six (6) consultants and the Municipal Human Resources Officer of the municipality, before the Office of the Ombudsman (OMB). The charges, both criminal and administrative, included Grave Misconduct, Gross Dishonesty, Grave Abuse of Authority, Malversation and Violation of Republic Act (R.A.) No 7160, R.A. No. 6713, R.A. No. 3019.

In the administrative aspect of the complaint, which is the subject matter of this case, Legaspi averred that Germar entered into these contracts of professional service without the prior authorization of the Sangguniang Bayan. This, Legaspi asserted, is a violation of Section 444 of the Local Government Code, which deals with the powers, duties, function, and compensation of the local chief executive.

On the administrative charges, the OMB held Germar liable for "Grave Misconduct," it dismissed the case against the six (6) consultants and the Human Resources Officer. Without filing a motion for reconsideration to the OMB Consolidated Resolution, Germar elevated the case to the Court of Appeals.The Court of Appeals found petitioner guilty of grave misconduct for entering into consultancy service contracts without the Sangguniang Bayan's authorization. Upon the denial of petitioner Germar's motion for reconsideration, he filed the instant petition for review on *certiorari*.

ISSUE:

Whether or not the item of "Consultancy Services" in the appropriation ordinance of the Municipality of Norzagaray is sufficient authorization for the petitioner to sign the contracts of professional service (YES)

RULING:

In the case of Quisumbing, if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required.

This delineation first enunciated in *Quisumbing* is further elaborated by the Court in the recent case of*Verceles, Jr. v. Commission on Audit*. In *Verceles*, the Court agreed that the prior authorization for the local chief executive to enter into contracts on behalf of the municipality may be in the form of an appropriation ordinance, for as long as the same specifically covers the project, cost, or contract to be entered into by the local government unit. *Verceles* explained:

If the project or program is identified in the appropriation ordinance in sufficient detail, then there is no more need to obtain a separate or additional authority from the sanggunian. In such case, the project and the cost are already identified and approved by the sanggunian through the appropriation ordinance. To require the local chief executive to secure another authorization for a project that has been specifically identified and approved by the sanggunian is antithetical to a responsive local government envisioned in the Constitution and in the LGC.

On the other hand, the need for a covering contract arises when the project is identified in generic terms. The covering contract must also be approved by the sanggunian.

More, the delineation propounded by the Court in *Verceles* is likewise followed in the case at hand. The cost-in this case P900,000.00, or contract-in this case the contract for professional services entered into by Germar, has been properly and dearly identified in the appropriations ordinance. As compared to a lump-sum EDF budget in *Verceles* where there was no mention of any detail of the project to which the fund shall be utilized, the line-item subject of the present case has been identified by the Sangguniang Panlalawigan in the appropriations ordinance. To require a further elaboration of what type of consulting agreement should be entered into is akin to requiring what type of calamity there should be before the calamity fund should be used, or what kind of representation there should be before the representation expense could be used. Clearly, the line-item "Consultancy Services" in the MOOE budget of the Office of the Mayor is meant to provide consultants to the Office of the Mayor for the purpose of its day-to-day operations. This is as specific as the line-item could be reasonably provided for in the appropriation ordinance, and the Sangguniang Bayan, by including this in the appropriation ordinance, already acceded to the procurement of consulting services by the Office of the Mayor. Again, in the language of *Verceles*, to require the local chief executive to secure another authorization from the Sangguniang Bayan for this line-item, despite it being specifically identified and subsequently approved, is antithetical to a responsive local government envisioned in the Constitution and the Local Government Code.

It remains apparent that an authorization from the Sangguniang Bayan, which is separate from the appropriations ordinance for the fiscal year 2013, is not warranted. Germar's action of entering into contracts of professional service with the six (6) consultants could not be considered as a transgression of an established and definite rule of action, nor could it be considered a forbidden act, a dereliction of duty, or an unlawful behavior. Neither is there any *willful intent to violate the law* or any *willful intent to disregard established rules* for clearly, Germar's action is within the parameters of the law as established by the Court in the cases of *Quisumbing* and*Verceles*.

ii. Local initiative and referendum

e. Ultra vires acts

2. Liability

3. Settlement of boundary disputes

4. Vacancies and succession

5. Recall

6. Term limits

XII. NATIONAL ECONOMY AND PATRIMONY

A. Regalian doctrine

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DIRECTOR OF THE LAND MANAGEMENT BUREAU (LMB), *Petitioner*, *-versus-* FILEMON SAROMO, *Respondent*.
G.R. No. 189803, SECOND DIVISION, March 14, 2018, CAGUIOA, *J*.

The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like.

Given the foregoing, the misapprehension of the "facts" as adduced by Saromo through the foregoing testimonial evidence warrants the review by the Court of the findings of fact of both the CA and the RTC. ***Without the official declaration that the subject land is alienable and disposable or proof of its declassification into disposable agricultural land, the "unclassified public forest land's" legal classification of the subject land remains.***

FACTS:

On September 25, 1980, Geodetic Engineer Francisco C. Guevarra surveyed the land subject of this case for FilemonSaromo. At the bottom left hand portion of the plan is a NOTE that states: "This survey is formerly a portion of China Sea. This survey is inside **unclassified public forest land** and is apparently inside the area covered by Proclamation No. 1801 dated November 10, 1978. This survey is within 100.00 meters strip along the shore line. This survey was endorsed by the District Land Officer D.L.O. No. (IV-A-1), Batangas City dated December 11, 1980." The survey plan of the subject lot includes the salvage zone.

On December 11, 1980, the survey plan was endorsed by the District Land Officer, Batangas City and on the following day, December 12, 1980, the plan was approved by Flor U. Pelayo, Officer-in-Charge.

On December 24, 1980, Saromo, then fifty years old, executed an Application for Free Patent, covering the subject property, which he filed with the Bureau of Lands, District Land Office No. IV-A-1 in Batangas City. The application stated among others that the land is an agricultural public land covered by Survey No. PSU-4-A-004479, containing an area of forty five thousand eight hundred eight (45,808) square meters and that Saromo first occupied and cultivated the land by himself in 1944.

On the same date, Saromo executed an affidavit, stating that he is the holder of Free Patent Application No. (IV-A-1) 15603.

On March 4, 1981, Alberto A. Aguilar executed an investigation report stating that he went to and

examined the land applied for by Saromo; that the land applied for is inside agricultural area under proposed Project No. 31 LC Map 225.

On May 18, 1981, Jaime Juanillo, District Land Officer, issued an Order approving the application for free patent of Saromo and ordering the issuance of Patent No. 17522 in his favor. The Order stated that the land applied for has been classified as alienable and disposable; the investigation conducted by Land Investigation/Inspector Alberto A. Aguilar revealed that the land applied for has been occupied and cultivated by the applicant himself and/or his predecessors-in-interest since July 4, 1926 or prior thereto.

On May 26, 1981, Original Certificate of Title No. P-331 was issued in the name of FilemonSaromo by Deputy Register of Deeds for the Province of Batangas.

On October 16, 1981, a certain Luis Mendoza filed with the Bureau of Lands a protest against the Free Patent awarded to Saromo.

On September 6, 1999, the Director of Lands issued Special Order No. 99-99 creating an investigation team to verify and determine the legality of the issuance of Free Patent No. 17522, now OCT No. P-331, in the name of Saromo covering the subject parcel of land identified as Lot No. 3, Plan PSU-4-A-004479.

The investigation team found that the area subject of Saromo's Free Patent is inside unclassified public forest and covered by Proclamation No. 1801 declaring the whole of Batangas Coastline as tourist zone.

The Republic, in its Complaint, alleged that the subject lot covered by OCT No. P-331 is inside the unclassified forest land and also inside the area covered by Proclamation No. 1801 dated November 10, 1978 declaring the land as Tourist Zones and Marine Preserve under the administration and control of the Philippine Tourism Industry. It further alleged that upon ocular inspection, it was ascertained that the land is situated along the coastline of Brgy. Balibago and that since it is part of the shore, it concluded that the subject lot is part of the public dominion and therefore, cannot be titled in the name of private person.

The RTC rendered a decision in favor of Saromo. The Republic appealed the RTC Decision to the CA.The CA denied the appeal of the Republic.

ISSUE:

1. Whether the subject land is an alienable and disposable land. (NO)
2. Whether the Regalian Doctrine applies. (YES)

RULING:

1.

As the Court held in *The Secretary of the Department of Environment and Natural Resources v. Yap*, forest land of the public domain in the context of both the Public Land Act and the Constitution is a classification descriptive of its legal nature or status and does not have to be descriptive of what the land looks like, *viz.*:

> Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "*agricultural, forest or timber, mineral lands and national parks*," do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. The discussion in *Heirs of Amunategui v. Director of Forestry*[55] is particularly instructive:
>
> A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. **The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like.** Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes.

From the foregoing, testimonial evidence on the physical layout or condition of the subject land-that it was planted with coconut trees and beach houses had been constructed thereon - are not conclusive on the classification of the subject land as alienable agricultural land. **Rather, it is the official proclamation releasing the land classified as public forest land to form part of disposable agricultural lands of the public domain that is definitive. Such official proclamation, if there is any, is conspicuously missing in the instant case.**

The term "unclassified land" is likewise a legal classification and a positive act is required to declassify inalienable public land into disposable agricultural land. The Court in *Heirs of the late Sps. Palanca v. Republic* observed that:

> While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition. When the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership. This is because, pursuant to Constitutional precepts, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in such lands and is charged with the conservation of such patrimony. Thus, the Court has emphasized the need to show in registration proceedings that the government, through a positive act, has declassified inalienable public land into disposable land for agricultural or other purposes.

Given the foregoing, the misapprehension of the "facts" as adduced by Saromo through the foregoing testimonial evidence warrants the review by the Court of the findings of fact of both the CA and the RTC. **Without the official declaration that the subject land is alienable and disposable or proof**

of its declassification into disposable agricultural land, the "unclassified public forest land's" legal classification of the subject land remains.

2.

In *Republic v. Hachero*, the Court observed:

> Reversion is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation therefore is a matter between the grantor and the grantee.

x xx. In *Estate of the Late Jesus S. Yujuico v. Republic (Yujuico case)*, reversion was defined as an action which seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. It bears to point out, though, that the Court also allowed the resort by the Government to actions for reversion to cancel titles that were void for reasons other than fraud, i.e., violation by the grantee of a patent of the conditions imposed by law; and lack of jurisdiction of the Director of Lands to grant a patent covering inalienable forest land or portion of a river, **even when such grant was made through mere oversight**.

Since, at the very least, the government officials concerned in the processing and approval of Saromo's free patent application erred or were mistaken in granting a free patent over unclassified public forest land, which could not be registered under the Torrens system and over which the Director of Lands had no jurisdiction, the free patent issued to Saromo ought to be cancelled. In the same vein, the Torrens title issued pursuant to the invalid free patent should likewise be cancelled.

Since the reversion of the subject land to the State is in order, needless to say that the Regalian doctrine has been accordingly applied in the resolution of this case.

B. Nationalist and citizenship requirement provisions

C. Exploration, development, and utilization of natural resources

CORAZON LIWAT-MOYA, as substituted by her surviving heirs, namely: MARIA THERESA MOYA SIOSON, ROSEMARIE MOYA KITHCART and MARIA CORAZON MOYA GARCIA, *Petitioner*,-*versus*- EXECUTIVE SECRETARY EDUARDO R. ERMITA and RAPID CITY REALTY & DEVELOPMENT CORPORATION, FOR ITSELF and AS AUTHORIZED REPRESENTATIVE OF CENTURY PEAK CORPORATION, *Respondents*.
G.R. No. 191249, THIRD DIVISION, March 14, 2018, MARTIRES, *J*.

It is therefore clear that the preferential right given to applications still pending upon the effectivity of R.A. No. 7942 is subject to the following conditions: (1) that the applicant submits the status report, letter of intent, and all the lacking requirements as provided by DMO No. 97-07; and (2) that said compliance is performed within the deadlines set. The non-fulfilment of any of these conditions precludes the DENR Secretary, through the MGB, from even considering the grant of an MPSA to petitioner, for such grant contemplates that the applicant has completed the requirements and that an evaluation thereof shows his competence to undertake mineral production. Clearly, without the complete requirements, the MGB would have no basis for evaluation.

It is not disputed that petitioner filed her application for MPSA on 22 May 1991, under P.D. No. 463 and the rules then operative; that her compliance with the requirements was substantial rather than complete; that she was directed to submit additional requirements by the MGB through a letter-notice dated 15 February 1993, which was not heeded; that her application was still pending when R.A. No. 7942 took effect on 3 March 1995; that the MGB sent her another letter dated February 1997, which again went unheeded; that DMO No. 97-07 was thereafter issued on 27 August 1997 and published in The Manila Times a day after; and that petitioner failed to submit the requirements under DMO No. 97-07 within the deadline set therein.

FACTS:

On 22 May 1991, petitioner Corazon Liwat-Moya (*petitioner*) filed an application for Mineral Production Sharing Agreement (*MPSA*) with the Mines and Geosciences Bureau (*MGB*). The application was denominated as AMPSA No. SMR-013-96, covering 650 hectares of land located at Loreto, Surigao del Norte, within Parcel III of the Surigao Mineral Reservation (*SMR*). Pursuant to her application, petitioner undertook the required publications. She also alleged that she had substantially complied with the mandatory documentary requirements of her application for MPSA.

On 15 February 1993 and 19 February 1997, the MGB sent notice-letters to petitioner, requiring her to submit additional requirements for her application. The MGB did not receive any response.

On 3 March 1995, Republic Act (*R.A.*) No. 7942, or the Philippine Mining Act of 1995, was enacted. Pursuant to the preferential rights given by R.A. No. 7942 to mining claims and applications when the law took effect, the Department of Environment and Natural Resources (*DENR*) issued DENR Memorandum Order (*DMO*) 91-01 providing the "Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes." Under Section 13 thereof, all holders of pending applications for MPSA which still lack mandatory requirements shall submit on or before 15 September 1997, a status report on all such requirements and a letter of intent undertaking to fully comply with all mandatory requirements within forty-five (45) calendar days, or until 30 October 1997.

On 24 November 1998, the MGB sent a letter to petitioner notifying her of her failure to submit all the mandatory requirements under DMO No. 97-07'. There was no response from petitioner. Consequently, on 26 February 2001, the MGB, through then-director Floracio C. Ramos, issued an order denying petitioner's application for MPSA on the ground of noncompliance with pertinent laws, rules and regulations despite due notice, particularly on petitioner's noncompliance with the set deadlines under DMO No. 97-07.

On 25 June 2001, respondent Rapid City Realty & Development Corporation (*RCKDC*) filed with the MGB three (3) exploration permit applications (*EPA*). The area covered by petitioner's application for MPSA is included in RCRDC's EPA. On 7 January 2004, the MGB issued an area clearance certifying that the area covered by RCRDC's EPA was not in conflict with any valid and existing mining tenements.

On 21 December 2004, petitioner filed a motion for reconsideration of the MGB's 26 February 2001 order, which was denied. Petitioner appealed to the DENR Secretary, which reversed the MGB's order. The DENR Secretary also directed the MGB to set a schedule for compliance with the mandatory requirements upon petitioner's receipt of a copy of the decision.

On 25 May 2006, RCRDC conditionally assigned its rights and interests over EPA-000058-XIII to Century Peak Corporation (CPC) through a Deed of Conditional Assignment.

Aggrieved, RCRDC filed an appeal with the Office of the President (OP). The OP, through the Executive Secretary Ermita reversed the order of the DENR Secretary. It also held that the DENR Secretary erred in reinstating petitioner's cancelled application for MPSA because records show her negligence relative to her application which is thus barred by laches.

Petitioner filed a motion for reconsideration of the OP decision, but it was denied. Thereafter, petitioner filed a petition for review under Rule 43 with the CA, assailing this decision. The CA denied the same.

ISSUE:

Whether the Petitioner's application for MPSA should be granted. (NO)

RULING:

It is the policy of our mining laws to promote national growth through the grant of supervised exploration and development of mineral resources to qualified persons, necessitating the complete and prompt compliance with requirements.

Relative to mineral production sharing agreements under P.D. No. 463, Executive Order (*E.O.*) No. 279 also instructs that said agreements should incorporate the minimum terms and conditions enumerated therein. Towards this end, DENR Administrative Order (*DAO*) No. 57, providing the guidelines on mineral production sharing agreements under E.O. No. 279, sets forth the minimum requirements that must be submitted by prospective proponents.

These provisions bring to the fore the intent of the law to boost national economy by granting mineral exploration and development only to qualified persons who can competently and promptly undertake mining operations.

They underscore the need not only for complete but also prompt compliance with the specific requirements of the rules. Complete compliance is necessary to ensure that the MPSA applicant is a qualified person as defined under the law and has the requisite skills, financial resources, and technical ability to conduct mineral exploration and development consistent with state policies. Prompt compliance, on the other hand, ensures that non-moving applications are weeded out in order to give other qualified persons an opportunity to develop mining areas whose potential for mineral production might never be realized, to the detriment of our national economy.

DAO No. 96-40, or the Revised Implementing Rules and Regulations (*IRR*) of R.A. No. 7942, in compliance with the above mandate, sets a specific date for compliance and further provides that failure to exercise the preferential rights granted by the law within the stated period results in automatic abandonment of the pending application.

It is therefore clear that the preferential right given to applications still pending upon the effectivity of R.A. No. 7942 is subject to the following conditions: (1) that the applicant submits the status report, letter of intent, and all the lacking requirements as provided by DMO No. 97-07; and (2) that said compliance is performed within the deadlines set. The non-fulfilment of any of these conditions precludes the DENR Secretary, through the MGB, from even considering the grant of an MPSA to petitioner, for such grant contemplates that the applicant has completed the requirements and that

an evaluation thereof shows his competence to undertake mineral production. Clearly, without the complete requirements, the MGB would have no basis for evaluation.

It is not disputed that petitioner filed her application for MPSA on 22 May 1991, under P.D. No. 463 and the rules then operative; that her compliance with the requirements was substantial rather than complete; that she was directed to submit additional requirements by the MGB through a letter-notice dated 15 February 1993, which was not heeded; that her application was still pending when R.A. No. 7942 took effect on 3 March 1995; that the MGB sent her another letter dated February 1997, which again went unheeded; that DMO No. 97-07 was thereafter issued on 27 August 1997 and published in *The Manila Times* a day after; and that petitioner failed to submit the requirements under DMO No. 97-07 within the deadline set therein.

Notably, the rules[26] mandate that petitioner's failure to submit a status report, letter of intent, and the other requirements to complete her pending MPSA application within the prescribed period shall cause the automatic cancellation of her mining application.

D. Franchises, authority, and certificates for public utilities

E. Acquisition, ownership and transfer of public and private lands

MATEO ENCARNACION (DECEASED), SUBSTITUTED BY HIS HEIRS, NAMELY: ELSA DEPLIAN-ENCARNACION, KRIZZA MARIE D. ENCARNACION, LORETA ENCARNACION, CARMELITA E. STADERMAN, CORAZON S. ENCARNACION, RIZALINA ENCARNACION-PARONG, VICTORIA ENCARNACION-DULA, MARIA HELEN ENCARNACION-DAY, TERESITA ENCARNACION-MANALANG, GEORGE ENCARNACION, MARY MITCHIE E. EDWARDSON, ERNESTO ENCARNACION, MATEO ENCARNACION, JR., and GRACE WAGNER, *Petitioners*, -versus-THOMAS JOHNSON, *Respondent*.
G.R. No. 192285, FIRST DIVISION, July 11, 2018, JARDELEZA, *J.*

In Matthews v. Taylor, the rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision. We had cases where aliens wanted that a particular property be declared as part of their father's estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their aliens' favor; and that a contract of sale be nullified for their lack of consent.

Section 7, Article XII of the Constitution states:

> *Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.*

The fundamental law is clear that aliens, whether individuals or corporations, are disqualified from acquiring lands of the public domain. The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos.

In this case, it is undisputed that respondent is a Canadian citizen. Respondent neither denied this, nor alleged that he became a Filipino citizen. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines. Concomitantly, respondent is also prohibited from participating in the execution sale, which has for its object, the transfer of ownership and title of property to the highest bidder. What cannot be legally done directly cannot be done indirectly.

FACTS:

On October 6, 2000, respondent filed an action for breach of contract with prayer for damages and costs against spouses NarvinEdwarson (Narvin) and Mary MitchieEdwarson (also known as Mary Encarnacion; hereinafter shall be referred to as Mary), Mateo's daughter, before the Vancouver Registry of the Supreme Court of British Columbia, Canada. Respondent alleged that Narvin and Mary convinced him to invest his money and personal property in a vehicle leasing company owned by the couple, which turned out to be a fraudulent business scheme. The couple neither deposited the promised profits into his account nor gave an accounting or explanation as to where his funds went.

The Supreme Court of British Columbia gave due course to respondent's action and ordered summons to be served upon Narvin and Mary. While service of summons was being attempted, respondent moved that the Supreme Court of British Columbia grant him a Mareva injunction, with ex juris affect, to restrain Narvin and Mary from dealing with any of their assets except as is necessary for payment of ordinary living expenses or to carry on their ordinary business.

On October 6, 2000, the Supreme Court of British Columbia issued a Mareva injunction and authorized respondent, among others, to obtain orders in foreign jurisdictions which would permit its enforcement in those jurisdictions. Further, the Supreme Court of British Columbia issued a Default Judgment.

On February 24, 2003, respondent filed an action for recognition and enforcement of foreign judgment with prayer for the recognition of the Mareva injunction with Branch 72 of the RTC of Olongapo City, docketed as Civil Case No. 110-0-2003. Respondent also simultaneously petitioned to be allowed to litigate as a pauper litigant. The RTC granted his petition.

On March 5, 2003, the RTC issued an Order restraining Narvin and Mary from disposing or encumbering their assets, as well as those belonging to, or controlled by, the Zambales-Canada Foundation, the 5-E Foundation, and those belonging to Mateo (for being properties transferred in fraud of creditors). On May 12, 2003, the RTC ordered the Register of Deeds of Zambales and the Provincial Assessor to annotate its March 5, 2003 Order on the titles and tax declarations of all properties owned by Narvin and Mary, as well as those belonging to Mateo. Thereafter, the RTC

ordered the service of summonses by publication upon Narvin and Mary. Despite publication, Narvin and Mary still failed to file their answer. Accordingly, on December 1, 2003, the RTC declared them in default, and subsequently rendered a judgment in default.

On March 30, 2004, the RTC issued a Writ of Execution authorizing the sheriff to attach sufficient properties belonging to Narvin and Mary to satisfy the judgment award. On August 3, 2004, the RTC, modified the Writ of Execution. It issued an Amended Writ of Execution authorizing the sheriff to include the properties registered in the name of Mateo as subject of the execution. **Subsequently, 13 levied properties not covered by certificates of title were sold in public auction on June 23, 2004, wherein respondent placed the highest bid of P10,000,000.00.**

On January 11, 2005, respondent filed a motion for clarificatory order seeking further amendment of the writ of execution to expressly authorize the levy of the properties in the name of Mateo whose title and tax declarations were previously annotated with the March 30, 2004 Order. Subsequently, Mateo filed an Affidavit of Third Party Claim claiming that he is the owner of 14 parcels of land which were being levied.

On September 10, 2007, or more than two years after the February 17, 2005 Order was issued, Mateo filed a petition for annulment of judgment. He alleged that he is the owner of 18 properties levied that he was not made a party to the case; and that the inclusion of his properties in the levy and execution sale were made without notice to him. In his answer, respondent countered that the tax declarations under Mateo's name cannot be invoked as a legal basis to claim ownership over the properties. Respondent also averred that the RTC conducted an investigation and had already excluded from the levy certain properties which undisputedly belonged to Mateo. Meanwhile, another sale resulted in a Certificate of Sale in favor of respondent. **Respondent was the highest bidder for these properties in the total amount of P4,000,000.00.**

On November 3, 2008, the RTC issued an Order granting the motion for consolidation of title filed by respondent over the properties subject of the Certificates of Sale. During the pendency of the proceedings before the CA, Mateo died and was substituted by his heirs (petitioners), including his daughter Mary.

On January 12, 2009, petitioners amended their argument to aver that all the proceedings in Civil Case No. 110-0-2003 should be annulled on the ground of lack of jurisdiction and extrinsic fraud. On August 12, 2009, the CA denied the petition. On May 13, 2010, the CA denied petitioners' motion for reconsideration. Hence, this petition.

ISSUE:

Whether respondent, an alien, may own private lands by virtue of an execution sale?

RULING:

No. We nullify the sale of the private lands to respondent for being a flagrant violation of Section 7, Article XII of the Constitution. **The Constitution provides a prohibition on foreign ownership of lands.** In this case, said violation was committed when respondent was allowed to participate in the public auction sales where, as highest bidder, he acquired land.

Section 7, Article XII of the Constitution states:

> Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The fundamental law is clear that aliens, **whether individuals or corporations, are disqualified from acquiring lands of the public domain.** The **right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos.** Consequently, they are also disqualified from acquiring private lands.

In Matthews v. Taylor, we took cognizance of the violation of the Constitutional prohibition on alien land ownership despite the failure of the trial and appellate courts to consider and apply these constitutional principles. The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision. We had cases where aliens wanted that a particular property be declared as part of their father's estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their aliens' favor; and that a contract of sale be nullified for their lack of consent.

In this case, **it is undisputed that respondent is a Canadian citizen.** Respondent neither denied this, nor alleged that he became a Filipino citizen. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines. Concomitantly, respondent is also prohibited from participating in the execution sale, which has for its object, the transfer of ownership and title of property to the highest bidder. **What cannot be legally done directly cannot be done indirectly.** In light of this, we nullify the auction sales conducted on June 23, 2004 and November 29, 2006 where respondent was declared the highest bidder, as well as the proceedings which led to the acquisition of ownership by respondent over the lands involved. We thus remand the case back to Branch 72 of the RTC of Olongapo City, to conduct anew the auction sale of the levied properties, and to exclude respondent from participating as bidder.

SM SYSTEMS CORPORATION (FORMERLY SPRINGSUN MANAGEMENT SYSTEMS CORPORATION), PETITIONER, VS. OSCAR CAMERINO, EFREN CAMERINO, CORNELIO MANTILE, DOMINGO ENRIQUEZ AND HEIRS OF NOLASCO DEL ROSARIO, RESPONDENTS.

[G.R. No. 178591, SPECIAL THIRD DIVISION, July 30, 2018, TIJAM, J.]

Lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus, exempted from agrarian reform.

FACTS:

As early as the 1950s, even before the advent of R.A. No. 6657,otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988, through which the State implements its policy for a Comprehensive Agrarian Reform Program (CARP), the Heirs of Ramon Arce, Sr., namely, Eulalio Arce, Lorenza Arce, Ramon Arce, Jr., Mauro Arce and Esperanza Arce, (petitioners) were registered owners of a parcel of land (referred to as subject lands). The subject lands were utilized as pasture lands for the petitioners' cattle, i.e., buffaloes, carabaos and goats (hereinafter referred to as livestock), for milk and dairy production in the manufacture of Selecta Carabao's Milk and Ice Cream (now Arce Dairy Ice Cream).

Sometime in 1998, the Philippine Carabao Center-Department of Agriculture (PCC-DA) recommended that petitioners' livestock be transferred to avoid the liver fluke infestation in the area. In compliance with PCC-DA's recommendation, petitioners transferred the older and milking livestock, which are susceptible to infection, to their feedlot facility located in Novaliches, Quezon City (Novaliches property). The younger cattle, which are not susceptible to the fluke infection, remained in the subject lands.

Notwithstanding the transfer of some of their livestock, petitioners continued to plant and grow napier grass in the subject lands. The napier grass were then cut, carried and used as fodder for their livestock which were maintained both in the subject lands and in the Novaliches property.

The Provincial Agrarian Reform Officer (PARO) issued a Notice of Coverage (NOC) over the subject lands under the CARP. In response, petitioners sent a letterto the PARO seeking to exclude and exempt the subject lands from the NOC considering that it has been utilized for livestock raising even before the enactment of the CARP. The PARO of DAR Region IV-A considered the letter as a Petition for Exclusion from CARP Coverage.

Municipal Agrarian Reform Officer (MARO) issued a Report and Recommendation and recommended the grant of the Petition for Exclusion from CARP Coverage.

The Legal Division of the DAR Provincial Office (DARPO) issued an Evaluation Report and Recommendation and likewise recommended the grant of the Petition for Exclusion from CARP Coverage.

The petitioners filed a Manifestation to Lift Notice of Coverage with the PARO, which was treated as a petition with the PARO.This was anchored on the ground that petitioners were in the business of livestock raising, and were using the subject lands as pasture lands for their buffaloes which produce the carabao milk for their ice cream products. The petitioners claimed that the NOC is contrary to the

1987 Philippine Constitution which provides that livestock farms are not among those described as agricultural lands subject to land reform.

Rommel Bote, Attorney II of DARPO, submitted a Memorandum addressed to DARPO's Chief of Legal Divsion, indicating therein that the petition is meritorious and thus, recommending the lifting of the NOC upon the subject lands.

Based on these findings, DAR Regional Director Antonio G. Evangelista (RD Evangelista) issued an Order, granting the Petition to Lift Notice of Coverage. RD Evangelista issued a Certification,stating that the Order had become final and executory, considering that no motion for reconsideration and/or appeal was filed.

Meanwhile, Joevin M. Ucag (Ucag) of DAR submitted an Ocular Inspection Report to the MARO, stating that "there was no livestock/cattle found in the area of Macabud, Rodriguez, Rizal".

Subsequently, the Samahan ng mgaMagsasakangNagkakaisasa Sitio Calumpit (SAMANACA), through their leaders, sent letters to DAR Secretary Virgilio R. De Los Reyes (Secretary De Los Reyes), seeking to annul RD Evangelista's Order. The letters were treated as a Petition to Annul an Invalid Resolution by the Regional Director.

Petitioners filed their Comment and countered that RD Evangelista's Order had become final and executory and that the subject lands were within the retention limit. Thus, they prayed for the dismissal of SAMANACA's Letters-Petition.

DAR Secretary De Los Reyes issued an Order,denying petitioners' Petition for Exclusion from CARP Coverage. The DAR ruled, among others, that while it is true that the subject lands had been a livestock farm prior to the CARP's enactment, the petitioners failed to prove that the said lands are actually, directly, exclusively and continuously used for livestock activity up to the present. According to the DAR, there were no longer cattle and livestock facilities within the subject lands.

Petitioners filed a Motion for Reconsideration (with Motion for Ocular Inspection; a Supplemental Motion for Reconsideration; and, a Second Supplemental Motion for Reconsiderationof the DAR's Order. In these motions, the petitioners, alleged, among others that their right to due process were violated when the alleged ocular inspection on the subject lands was conducted by Ucag without prior notice to them, thereby depriving them the right to refute such findings. They averred that Ucag never entered the gated premises of the subject lands and that, had there been an inspection, he must have conducted the same only from outside the premises. Petitioners likewise averred that it is unlikely that Ucag could have spotted the livestock therein considering that the same were lying on a sloping plain, combined with the tall napier grasses.

Thereafter, petitioners filed an Appeal Memorandumwith the Office of the President (OP) and averred, among others, as follows: (1) DAR Secretary De Los Reyes erred in reversing RD Evangelista's Order after it already attained finality; (2) the subject lands were presently and exclusively utilized for livestock raising; (3) only a number of livestock (older and milking) were transferred from the subject lands to the Novaliches facility at the instance of the PCC-DA, while the younger livestock remained in the subject lands; and, (4) SAMANACA has no legal standing to assail RD Evangelista's Order since they were never in possession of the subject lands and they were not tenants, farmers and tillers thereon.

The OP rendered its Decision,and ruled that petitioners' subject lands were exempted from the coverage of CARP.

The DAR filed a Petition for Reviewwith the CA and prayed for the reversal of the OP's Decision. The CA granted the same in its assailed Decision. The CA held, among others, that petitioners failed to refute or deny that since 1998, there were no longer cattle in the subject lands and that the same were no longer used as grazing lands.

Hence, this petition.

ISSUE:

Whether or not the subject lands are exempted from the coverage of the CARP.

RULING:

Yes. The subject lands are exempted from the coverage of the CARP.

Contrary to the rulings of the DAR and the CA, the subject lands are exempted from the coverage of the CARP.

The CARP shall cover all public and private agricultural lands, including other lands of the public domain suitable for agriculture, regardless of tenurial arrangement and commodity produced.Section 3(c) thereof defines "agricultural land" as land devoted to agricultural activity and not classified as mineral, forest, residential, commercial or industrial land.

In Luz Farms v. The Honorable Secretary of the Department of Agrarian Reform, the Court declared unconstitutional the CARL provisions that included lands devoted to livestock under the coverage of the CARP. The transcripts of the deliberations of the Constitutional Commission of 1986 on the meaning of the word "agricultural" showed that it was never the intention of the framers of the Constitution to include the livestock and poultry industry in the coverage of the constitutionally mandated agrarian reform program of the government.

Reiterating the SC's ruling in the Luz Farms case, the SC held in Natalia Realty and Estate Developers and Investors Corp. Inc. v. Department of Agrarian Reform Sec. Benjamin T. Leong and Dir. Wilfredo Leano, DAR REGION IV,that industrial, commercial and residential lands are not covered by the CARL. In the same case, We stressed that while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial.

Guided by the foregoing, lands devoted to the raising of livestock, poultry and swine have been classified as industrial, not agricultural, and thus, exempted from agrarian reform.

A thorough review of the records reveals that there is substantial evidence to show that the entirety of the petitioners' subject lands were devoted to livestock production since the 1950s, i.e., even before the enactment of the CARL on June 15, 1988. No less than the DAR, who has the competence to determine the status of the land,acknowledged this when it held that:

"It cannot be denied that the Arce properties [subject lands] had been a livestock farm. The documentary evidence presented by the Applicants [petitioners] established the existence of

livestock activity in the landholding prior (sic) the enactment of the CARL on 15 June 1988, such as Certificates of Ownership of Large Cattle issued from 1981 to 1988, Certification from the Philippine Carabao Center attesting that the Selarce Farm is a cooperator of the Center as early as 1982, and the Technical Paper published by the Philippine Council for Agriculture and Resources Research featuring the Arce Farm in the "Philippines Recommends for Carabao Production 1978." These documents were positively affirmed by DARPO personnel in their investigation report and recommending for the exclusion of the said landholdings."

Indeed, the subject lands are utilized for livestock raising, and as such, classified as industrial, and not agricultural lands. Thus, they are exempted from agrarian reform.

F. Practice of professions

G. Organization and regulation of corporations, private and public

H. Monopolies, restraint of trade, and unfair competition

XIII. SOCIAL JUSTICE AND HUMAN RIGHTS

A. Concept

B. Economic, social, and cultural rights

DEPARTMENT OF AGRARIAN REFORM, QUEZON CITY & PABLO MENDOZA*, Petitioner, - versus* - ROMEO C. CARRIEDO, *Respondents.*

G.R. No. 176549, SPECIAL THIRD DIVISION, October 10, 2018, JARDALEZA, *J.*

Both the Constitution and CARL underscore the underlying principle of the agrarian reform program, that is, to endeavor a more equitable and just distribution of agricultural lands taking into account, among others, equity considerations. There is merit in the DAR's contention that the objective of AO 05-06 is equitable—that in order to ensure the effective implementation of the CARL, previous sales of landholding (without DAR clearance) should be treated as the exercise of retention rights of the landowner, as embodied in Item No. 4 of the said administrative order.

FACTS:

In this case, the court resolves the motion for reconsideration filed by the Department of Agrarian Reform (DAR) of the Decision dated January 20, 2016. The DAR was not given the opportunity to participate in the proceedings before the Court of Appeals and before this Court, until it filed its motion for reconsideration of this Court's Decision. The DAR contends that the agency had been denied due process when it was not afforded the opportunity to refute the allegations against the validity of DAR AO 05-06 before the Court of Appeals and before this Court. It argues that it was not even notified of the petition filed before the Court of Appeals; nor did the Court of Appeals notify the DAR of the proceedings and its Decision. The DAR, therefore, insists that the Decision dated January 20, 2016 be reconsidered by this Court especially so that the issues involve the enforcement and validity of its regulations.

The Decision adjudged Item No. 4 of AO 05-06 as ultra vires for providing terms which appear to expand or modify some provisions of the CARL. The DAR argues that this ruling sets back the Comprehensive Agrarian Reform Program by upsetting its established substantive and procedural components. Particularly, the DAR contends that the nullification of Item No. 4 of AO 05-06 disregarded the long-standing procedure where the DAR treats a sale (without its clearance) as valid based on the doctrine of estoppel, and that the sold portion is treated as the landowner's retained area

ISSUE:

Whether Item No. 4 of AO 05-06 and the relevant provisions of the CARL are valid.

RULING:

On the validity of Item No. 4, AO 05-06

The DAR's argument has merit. The Constitution mandates for an agrarian reform program, to wit:

> Art. 8, Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

To give life to the foregoing Constitutional provision, the CARL provides, among others:

> Sec. 2. Declaration of Principles and Policies. -It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture. To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

Both the Constitution and CARL underscore the underlying principle of the agrarian reform program, that is, to endeavor a more equitable and just distribution of agricultural lands taking into account, among others, equity considerations. There is merit in the DAR's contention that the objective of AO 05-06 is equitable—that in order to ensure the effective implementation of the CARL, previous sales of landholding (without DAR clearance) should be treated as the exercise of retention rights of the landowner, as embodied in Item No. 4 of the said administrative order.

DAR posits that the Decision "will provide landowners unbridled freedom to dispose any or all of their agricultural properties without DAR clearance and still at a moment's notice decide which of those lands he wishes to retain, to the prejudice not only of the tenants and/or farmer beneficiaries

but of the entire CARP as well." The DAR, therefore, maintains that AO 05-06 is the regulation adopted by the agency precisely in order to prevent these perceived dangers in the implementation of the CARL.

The court agrees. AO 05-06 is in consonance with the **Stewardship Doctrine**, which has been held to be the property concept in Section 6, Article II of the 1973 Constitution. Under this concept, private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners. As a mere steward, the individual must exercise his rights to the property not for his own exclusive and selfish benefit but for the good of the entire community or nation.

This interpretation is consistent with the objective of the agrarian reform program, which is, of course, land distribution to the landless farmers and farmworkers. Further, Item No. 4 of AO 05-06 is consistent with Section 70 of the CARL as the former likewise treats the sale of the first five hectares (in case of multiple/series of transactions) as valid, such that the same already constitutes the retained area of the landowner. This legal consequence arising from the previous sale of land therefore eliminates the prejudice, in terms of equitable land distribution, that may befall the landless farmers and farmworkers. Therefore, Item No. 4 of AO 05-06 is valid.

***The Decision also adjudged that CLOAs are not equivalent to a Torrens certificate of title, and thus are not indefeasible. The DAR disagrees and submits that this ruling relegated Emancipation Patents and CLOAs to the status of a Certificate of Land Transfer, which is merely part of the preparatory steps for the eventual issuance of a certificate of title. We agree with the DAR. A Certificate of Land Ownership Award or CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in the CARL and other applicable laws.

C. Commission on Human Rights

XIV. EDUCATION, SCIENCE, TECHNOLOGY, ARTS, CULTURE AND SPORTS

A. Academic Freedom

COUNCIL OF TEACHERS AND STAFF OF COLLEGES AND UNIVERSITIES OF THE PHILIPPINES (CoTeSCUP), et al., *Petitioners,* -versus- SECRETARY OF EDUCATION, et al., *Respondents.*
G.R. No. 216930, En Banc, October 9, 2018, CAGUIOA, J.

Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The grounds for nullity must be clear beyond reasonable doubt. Hence, for the Court to nullify the assailed laws, petitioners must clearly establish that the constitutional provisions they cite bestow upon them demandable and enforceable rights and that such rights clash against the State's exercise of its police power under the K to 12 Law.

The Court holds that the K to 12 Law did not violate petitioners' right to due process nor did it violate the equal protection clause. In JMM Promotion and Management, Inc. v. Court of Appeals, the Court explained the object and purpose of the equal protection clause in this wise:

The equal protection clause is directed principally against undue favor and individual or class privilege. *It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that* ***all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed****.*

FACTS:

On May 15, 2013, the Philippine Congress passed the *K to 12 Law*, which took effect on June 8, 2013. The *K to 12 Law* seeks to achieve, among others, the following objectives: (1) decongest the curriculum; (2) prepare the students for higher education; (3) prepare the students for the labor market; and (4) comply with global standards.

The K to 12 basic education was implemented in parts. In 2012, DepEd started unclogging the BEC to conform to the K to 12 Curriculum. Thus, DO No. 31 was issued setting forth policy guidelines in the implementation of the Grades 1 to 10 of the K to 12 Curriculum. To accommodate the changes brought about by the *K to 12 Law*, and after several public consultations with stakeholders were held, CMO No. 20, entitled *General Education Curriculum: Holistic Understandings, Intellectual and Civic Competencies* was issued on June 28, 2013. CMO No. 20 provides the framework and rationale of the revised General Education curriculum.

On September 4, 2013, the K to 12 IRR was issued. In compliance with the mandate, DOLE organized three area-wide tripartite education fora on K to 12 in Luzon, Visayas and Mindanao. DOLE also conducted regional consultations with HEIs, teaching and non teaching personnel. As a result of the tripartite consultations, the *Joint Guidelines on the Implementation of the Labor and Management Component of Republic Act No. 10533 (Joint Guidelines)* to (*a*) ensure the sustainability of private and public educational institutions; (*b*) protect the rights, interests, and welfare of teaching and non-teaching personnel; and (*c*) optimize employment retention or prevent displacement of faculty and non-academic personnel in private and public HEIs during the transition.

Claiming that the K to 12 Basic Education Program violates various constitutional provisions, various petitions were filed praying that the *K to 12 Law*, *K to 12 IRR*, DO No. 31, *Joint Guidelines*, and CMO No. 20, be declared unconstitutional. The present consolidated petitions pray for the issuance of a TRO and/or Writ of Preliminary Injunction against the implementation of the *K to 12 Law* and other administrative issuances in relation thereto. The petitioners assail the State's exercise of police power to regulate education through the adoption of the K to 12 Basic Education Program, because the *K to 12 Law* and its related issuances purportedly violate several Constitutional provisions. For petitioners in G.R. No. 218123, a number of prospective senior high school students will be unable to choose their profession or vocation because of the limit on what senior high schools can offer and the availability of the different strands. Petitioners also argue that the use of the mother tongue or the regional or native language as primary medium of instruction for kindergarten and the first 3 years of elementary education contravenes Section 7, Article XIV of the 1987 Philippine Constitution, which expressly limits and constrains regional languages simply as auxiliary media of instruction. Petitioners in G.R. No. 216930 also allege that faculty from HEI stand to lose their academic freedom when they are transferred to senior high school level as provided in the *K to 12 Law*, the *K to 12 Law IRR* and the Joint Guidelines

Petitioners also assert that the *K to 12 Law* is unconstitutional for violating the due process clause, as the means employed is allegedly not proportional to the end to be achieved, and that there is supposedly an alternative and less intrusive way of accomplishing the avowed objectives of the law. In addition, they claim that the assailed law is violative of the due process clause because, allegedly, the law served the interests of only a select few.

The Solicitor General, on behalf of the public respondents, opposed these petitions. The OSG submits that the cases filed by petitioners involve the resolution of purely political questions which go into the wisdom of the law. The OSG also contends that the *K to 12 Law* was enacted in accordance with the procedure prescribed in the Constitution.

ISSUES:

1. Whether the *K to 12 Law*, *K to 12 IRR*, DO No. 31 and/or the Joint Guidelines contravene provisions of the Philippine Constitution on:
   a. the right of every citizen to select a profession or course of study (Section 5[3], Article XIV); (NO)
   b. the use of Filipino as medium of official communication and as language of instruction in the educational system (Section 6, Article XIV); and regional languages as auxiliary media of instruction (Section 7, Article XIV); (NO) and
   c. academic freedom (Section 5[2], Article XIV) (NO)
2. Whether the *K to 12 Law* violates petitioners' right to substantive due process and equal protection of the laws. (NO)

RULING:

1. The K to 12 Law and/or any of its related issuances do not contravene or violate the provisions of the Constitution.

Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The grounds for nullity must be clear beyond reasonable doubt. Hence, for the Court to nullify the assailed laws, petitioners must clearly establish that the constitutional provisions they cite bestow upon them demandable and enforceable rights and that such rights clash against the State's exercise of its police power under the *K to 12 Law*. In this case, petitioners cannot merely claim that the *K to 12 Law* and/or any of its related issuances contravene or violate any of their rights under several constitutional provisions because these provisions simply state a policy that may be "used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws."

A. Right to select a profession or course of study

There is no conflict between the *K to 12 Law* and its IRR and the right of the senior high school students to choose their profession or course of study. Petitioners have failed to show that the State has imposed unfair and inequitable conditions for senior high schools to enroll in their chosen path. The K to 12 Program is precisely designed in such a way that students may choose to enroll in public or private senior high schools which offer the strands of their choice.

B. Mother tongue as medium of instruction

There is no conflict between the use of the mother tongue as a primary medium of instruction and Section 7, Article XIV of the 1987 Philippine Constitution. It is clear from the deliberations that it was never the intent of the framers of the Constitution to use only Filipino and English as the exclusive media of instruction. It is evident that Congress has the power to enact a law that designates Filipino as the primary medium of instruction even in the regions but, in the absence of such law, the regional languages may be used as primary media of instruction. The Congress, however, opted not to enact such law. On the contrary, the Congress, in the exercise of its wisdom, provided that the regional languages shall be the primary media of instruction in the early stages of schooling. Verily, this act of Congress was not only Constitutionally permissible, but was likewise an exercise of an exclusive prerogative to which the Court cannot interfere with.

C. Academic Freedom

Without question, petitioners, who are faculty members in HEIs, indeed possess the academic freedom granted by Constitution. This Court, in its previous decisions, has defined academic freedom for the individual member of the academe as "the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments."

However, the Court does not agree with petitioners that their transfer to the secondary level, as provided by the *K to 12 Law* and the assailed issuances, constitutes a violation of their academic freedom. Civil servants, like petitioners, may be removed from service for a valid cause, such as when there is a *bona fide* reorganization, or a position has been abolished or rendered redundant, or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service.

2. The K to 12 Law does not violate substantive due process and equal protection of the laws.

There is no conflict between the *K to 12 Law* and right of due process of the students. It is established that due process is comprised of two components, namely, substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.

Substantive due process, the aspect of due process invoked in this case, requires an inquiry on the intrinsic validity of the law in interfering with the rights of the person to his property. Two things must concur: (1) the interest of the public, in general, as distinguished from those of a particular class, requires the intervention of the State; and (2) the means employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals.

Here, the *K to 12 Law* does not offend the substantive due process of petitioners. The assailed law's declaration of policy itself reveals that, contrary to the claims of petitioners, the objectives of the law serve the interest of the public and not only of a particular class. Without ruling on the effectiveness of the revised curriculum, it is erroneous to view the *K to 12 Law* and the DepEd Orders in question extending basic education by 2 years simply to comply with international standards; rather, the basic

education curriculum was restructured according to what the political departments believed is the best approach to learning, or what they call as the "spiral approach."

The Court holds that the *K to 12 Law* did not violate petitioners' right to due process nor did it violate the equal protection clause. In *JMM Promotion and Management, Inc. v. Court of Appeals*, the Court explained the object and purpose of the equal protection clause in this wise:

> **The equal protection clause is directed principally against undue favor and individual or class privilege.** It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that **all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed**...

To emphasize, valid classifications require *real* and *substantial* differences to justify the variance of treatment between the classes. In this case, the *K to 12 IRR* confirms the inclusiveness of the design of the Enhanced Basic Education in mandating that the enhanced basic education programs should be able to address the physical, intellectual, psychosocial, and cultural needs of learners. The IRR mandates that the Basic Education Program should include programs for the gifted and talented, those with disabilities, the Madrasah Program for Muslim learners, Indigenous Peoples Programs, and Programs for Learners under Difficult Circumstances. The *K to 12 IRR* also allows the acceleration of learners in public and private educational institutions.

Furthermore, the Court, no matter how vast its powers are, cannot trample on the previously discussed right of schools to enhance their curricula and the primary right of parents to rear their children, which includes the right to determine which schools are best suited for their children's needs. Even before the passage of the *K to 12 Law*, private educational institutions had already been allowed to enhance the prescribed curriculum, considering the State's recognition of the complementary roles of public and private institutions in the educational system. Hence, the Court cannot sustain petitioners' submission that the assailed law is invalid based on this ground.

XV. THE FAMILY

A. Rights

XVI. AMENDMENTS OR REVISIONS OF THE CONSTITUTION

A. Procedure to amend or revise the Constitution

XVII. PUBLIC INTERNATIONAL LAW

A. Concepts

1. Obligations ergaomnes

2. Jus cogens

- 3. Ex aequo et bono

B. Relationship between international and national law

C. Sources of obligations in international law

D. Subjects

- 1. States
- 2. International organizations
- 3. Individuals

E. Jurisdiction of states

- 1. Basis of jurisdiction
  - a. Territoriality principle
  - b. Nationality principle and statelessness
  - c. Protective principle
  - d. Universality principle
  - e. Passive personality principle
- 2. Exemptions from jurisdiction
  - a. Act of State doctrine b. International organizations and its officers

F. General principles of treaty law

G. Doctrine of state responsibility

I. Refugees

J. Extradition

K. Basic principles of International Human Rights Law

L. Basic principles of International Humanitarian Law

M. Law of the sea

- 1. Baselines
- 2. Archipelagic states
- 3. Internal waters
- 4. Territorial sea
- 5. Contiguous zone
- 6. Exclusive economic zone

7. Continental shelf and extended continental shelf

8. International Tribunal for the Law of the Sea

N. Basic principles of International Environmental Law